

the Contract Documents and, in particular but without limiting the generality of the foregoing, the Work as a whole and, as appropriate, each and every part thereof, shall comply with the requirements of any performance Specifications.

323. Any design errors or omissions noted by Contractor during its review promptly shall be reported to WEBB COUNTY, but it is recognized the Contractor's review is made in Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents. Contractor is not required to ascertain if Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes, and rules and regulations, but any nonconformity discovered by or made known to Contractor promptly shall be reported both to WEBB COUNTY and Design Consultant.
324. If Contractor believes additional cost or time is involved because of clarifications or instructions issued by Design Consultant, in response to the Contractor's Notices or Requests for Information ("RFI"), Contractor shall make Claims as provided in **Section 4.3.5** and **Section 4.3.6** herein. If Contractor fails to perform the obligations of **Section 3.2.1** and **Section 3.2.2** herein, Contractor shall pay such costs and damages to WEBB COUNTY, to include applicable Liquidated Damages, as would have been avoided if Contractor had performed such obligations. Contractor shall not be liable to WEBB COUNTY or Design Consultant for damages resulting from errors, inconsistencies or omissions in the Contract Documents or for differences between field measurements or conditions and the Contract Documents, unless Contractor recognized or should have recognized such error, inconsistency, omission or differences and knowingly failed to report it to WEBB COUNTY and Design Consultant, as required by this **Section 3.2.3**.

3.3. SUPERVISION AND CONSTRUCTION PROCEDURES

- 33.1. Contractor shall supervise, inspect and direct the Work competently and efficiently, exercising the skill and attention of a reasonably prudent Contractor, devoting such attention and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor solely shall be responsible for the means, methods, techniques, sequences, procedures and coordination of all portions of the Work under the Contract, unless the Contract Documents give other specific instructions concerning these matters. If the Contract Documents give specific instructions concerning construction means, methods and/or techniques, Contractor then shall evaluate the jobsite safety thereof and, except as stated herein below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If, upon its evaluation, Contractor determines such means, methods, techniques, sequences or procedures may not be safe, Contractor shall give timely written notice to WEBB COUNTY and

Design Consultant and Contractor shall not proceed with that portion of the Work without further written instructions from WEBB COUNTY. Sequencing and procedures shall be coordinated and agreed upon by WEBB COUNTY, Design Consultant and Contractor.

332. Contractor shall be responsible to WEBB COUNTY for the acts and omissions of Contractor's agents and employees, Subcontractors and their agents and employees and other persons or entities performing portions of the Work for or on behalf of Contractor or any of its Subcontractors.
333. Contractor shall be responsible for inspection of portions of Work already performed, to determine which such portion are in proper condition to receive subsequent Work.
334. Contractor shall bear responsibility for design and execution of acceptable trenching and shoring procedures, in accordance with Texas Government Code, Section 2166.303 and Texas Health and Safety Code, Subchapter C, Sections 756.021, et seq.
335. It is understood and agreed the relationship of Contractor to WEBB COUNTY shall be of an independent contractor. Nothing contained or inferable in the Contract documents shall be read, deemed or construed to make Contractor the agent, servant or employee of WEBB COUNTY or create any partnership, joint venture or other association between WEBB COUNTY and Contractor. Any direction or instruction by WEBB COUNTY, in respect of the Work, shall relate to the results WEBB COUNTY desires to obtain from the Work and shall in no way affect Contractor's independent contractor status, as described herein.
336. Contractor shall review Subcontractor(s) written safety programs, procedures and precautions in connection with performance of the Work. However, Contractor's duties shall not relieve any Subcontractor(s) or any other person or entity (e.g. a supplier), including any person or entity with whom Contractor does not have a contractual relationship, of their responsibility or liability relative to compliance with all applicable federal, state and local laws, rules, regulations and ordinances, which shall include the obligation to provide for the safety of their employees, persons, and property and their requirements to maintain a work environment free of recognized hazards. The foregoing notwithstanding, the requirements of this **Section 3.3.6** are not intended to impose upon Contractor any additional obligations Contractor would not have under any applicable state or federal laws including, but not limited to, any rules, regulations or statutes pertaining to the Occupational Safety and Health Administration.

3.4. LABOR AND MATERIALS

- 34.1. Unless otherwise provided in the Contract Documents, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and

machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

3.4.2. PREVAILING WAGE RATE AND LABOR STANDARD PROVISIONS. The Provisions of Chapter 2258 of the Texas Government Code expressly are made a part of this Contract. In accordance therewith, a schedule of the general prevailing rate of per diem wages in this locality for each craft or type of worker needed to perform this Contract shall be obtained by Contractor from WEBB COUNTY and included in Contractor's Project bid package, prior to Contractor bidding of the Project and such schedule shall become a part hereof. Contractor shall forfeit, as a penalty to WEBB COUNTY, sixty dollars (\$60.00) for each laborer, worker or mechanic employed for each calendar day, or portion thereof, in which such laborer, worker or mechanic is paid less than the stipulated prevailing wage rates for any work done under this Contract by the Contractor or any Subcontractor employed on the project. The establishment of prevailing wage rates, pursuant to Chapter 2258 of the Texas Government Code, shall not be construed to relieve Contractor from its obligation under any federal or state law, regarding the wages to be paid to or hours worked by laborers, workers or mechanics, insofar as applicable to the work to be performed hereunder. Contractor, in the execution of this Project, agrees it shall not discriminate in its employment practices against any person because of race, color, creed, sex, or origin. Contractor agrees it shall not engage in employment practices which have the effect of discriminating against employees or prospective employees because of race, color, creed, national origin, sex, age, handicap or political belief or affiliation. This Contract provision shall be included in its entirety in all Subcontractor agreements entered into by the Contractor or any Subcontractor employed on the project.

3.4.3. SUBSTITUTIONS

- 3.4.3.1. Contractor's proposed substitutions and alternates may be rejected by WEBB COUNTY without explanation and shall be considered by WEBB COUNTY only under one or more of the following conditions:
- (a) the proposal is required for compliance with interpretation of code requirements or insurance regulations then existing;
 - (b) specified products are unavailable through no fault of Contractor; and
 - (c) when, in the judgment of WEBB COUNTY or Design Consultant, a substitution substantially would be in WEBB COUNTY's best interests in terms of cost, time or other

considerations.

3.4.3.2. Contractor shall submit to WEBB COUNTY and Design Consultant:

- (a) a full explanation of the proposed substitution and submittal of all supporting data, including technical information, catalog cuts, warranties, test results, installation instructions, operating procedures and other like information necessary for a complete evaluation of the substitution;
- (b) a written explanation of the reasons the substitution is necessary, including the benefits to WEBB COUNTY and to the Work, in the event the substitution is acceptable to WEBB COUNTY;
- (c) the adjustment, if any, in the Contract Sum;
- (d) the adjustment, if any, in the time of completion of the Contract and the construction schedule; and
- (e) in the event of a substitution under Section 3.4.3.1 herein, an affidavit stating:
 - (1) Contractor's proposed substitution conforms to and meets all the requirements of the pertinent Specifications and requirements shown on the Drawings; and
 - (2) Contractor accepts the warranty and correction obligations in connection with the proposed substitution as if originally specified by Design Consultant.

Proposals for substitutions shall be submitted to Design Consultant in sufficient time to allow Design Consultant no less than fourteen (14) calendar days for review. No substitutions shall be considered or allowed without Contractor's submittal of complete substantiating data and information as stated hereinbefore.

3.4.3.3. In the event of a substitution submittal under this **Section 3.4.3**, and whether or not any such proposed substitution is accepted by WEBB COUNTY or Design Consultant, Contractor shall reimburse WEBB COUNTY, at WEBB COUNTY's reasonable

discretion, for any fees incurred and charged by Design Consultant or other Consultants for evaluating each proposed substitute.

3.4.3.4. Except as otherwise stipulated in the Contract Documents or required for safety or protection of persons or the Work or property at the Site or adjacent thereto, no Work shall be allowed by WEBB COUNTY between the hours of 10:00 p.m. and 6:00 a.m. of the following calendar day, unless directed by the ODR or requested in writing by Contractor and approved by WEBB COUNTY.

344. Contractor shall, at all times, enforce strict discipline and good order among persons working on the Project and shall not employ or continue to employ any unfit person on the Project or any person not skilled in the assigned work. Contractor shall be liable for and responsible to WEBB COUNTY for all acts and omissions of its employees, all tiers of its Subcontractors, material suppliers, anyone who Contractor may allow to perform any Work on the Project and their respective officers, agents, employees, and Consultants who Contractor may allow to come on the job site, with the exception of WEBB COUNTY or WEBB COUNTY's Designee. WEBB COUNTY, at any time, for any reason or for no reason, may direct Contractor to remove any employee, Subcontractor, material supplier or anyone else from the Project and Contractor promptly shall comply with WEBB COUNTY's direction. In addition, if Contractor receives written notice from WEBB COUNTY complaining about any Subcontractor, employee or anyone who is a hindrance to the proper or timely execution of the Work, Contractor shall remedy such complaint without delay to the Project and at no additional cost to WEBB COUNTY. This provision shall be included in all contracts between Contractor and all Subcontractors of all tiers.

345. Contractor recognizes, accepts and hereby acknowledges the Project Site is a public facility representing WEBB COUNTY. As such, Contractor shall prohibit the possession or use of alcohol, controlled substances, and any prohibited weapons on the Project Site and shall require appropriate dress of Contractor's forces consistent with the nature of the Work being performed, including the wearing of shirts at all times. Harassment of any kind, including sexual harassment, of employees of Contractor or any Subcontractor, employees or Consultants of WEBB COUNTY or of any visitor to the Project site, by Contractor, employee(s) of Contractor, a Subcontractor or an employee of Subcontractor is strictly forbidden. Any person, Contractor, employee of Contractor, Subcontractor or employee of Subcontractor who is found to have engaged in such conduct shall be subject to appropriate disciplinary action by Contractor and/or WEBB COUNTY, including the removal and exclusion of the violating person(s) or employee(s) of Contractor or Subcontractor from the Project Site and, if WEBB COUNTY so elects, termination from the Project.

346. Contractor only shall employ or use labor in connection with the Work capable of working harmoniously with all trades, crafts and any other individuals associated with the Project.
347. All materials and installed equipment shall be as specified in the Contract Documents and, if not so specified, shall be new and of good quality, except as otherwise provided in the Contract Documents. If required by WEBB COUNTY or Design Consultant, Contractor shall furnish satisfactory evidence (including reports of required tests) as to the source, kind and quality of materials and equipment installed. Contractor may make substitutions only with the consent of WEBB COUNTY, after Contractor's compliance with **Section 3.4.3** herein.
348. All materials shall be shipped, stored and handled in a manner which shall protect and ensure their condition at the time of incorporation in the Work. After installation, all materials shall be properly protected against damage to ensure they are in the condition as required by **Section 3.5.1** herein when the Work is Substantially Completed or WEBB COUNTY takes over use and occupancy, whichever is earlier.
349. Contractor shall procure and furnish to WEBB COUNTY all guarantees, warranties, spares and maintenance manuals called for by the Specifications or which normally are provided by a manufacturer. The maintenance manual shall include a catalog for any equipment, materials, supplies or parts used in the inspection, calibration, maintenance or repair of the equipment and items in the catalog shall be readily available for purchase.
- 34.10. During construction of the Work and for four (4) years after final completion or longer if, during the duration of this Contract or during the four (4) years after the final completion of the Work, a dispute between any parties to this Project exists, Contractor shall retain and shall require all Subcontractors to retain for inspection and audit by WEBB COUNTY all books, accounts, reports, files, time cards, material invoices, payrolls and evidence of all other direct or indirect costs related to the bidding and performance of this Work. Upon request by WEBB COUNTY, a legible copy or the original of any or all such records shall be produced by Contractor at the administrative office of WEBB COUNTY. To the extent it requests copies of such documents, WEBB COUNTY shall reimburse Contractor and its Subcontractors for copying costs. Contractor shall not be required to keep records of or provide access to the makeup of any negotiated and agreed-to lump sums, unit prices or fixed overhead and profit multipliers.

3.5. WARRANTY

- 35.1. Contractor warrants materials and equipment furnished and installed under the

Contract shall be new and of good quality, unless otherwise required or permitted by the Contract Documents, the Work shall be free from defects not inherent in the quality required or permitted and the Work shall conform to the requirements of the Contract Documents. Work not conforming to this warranty and these requirements, including substitutions not properly approved and authorized by WEBB COUNTY, may be considered defective. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Contractor, improper or insufficient maintenance, improper operation, normal wear and tear and normal usage, and additional damage or defects caused by WEBB COUNTY's failure to promptly notify Contractor. If required by WEBB COUNTY, Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

352. A right of action by WEBB COUNTY for any breach of Contractor's express warranty herein shall be in addition to, and not in lieu of, any other remedies WEBB COUNTY may have under this Contract at law or in equity, regarding any defective Work.
353. The warranty provided in **Section 3.5.1** herein shall be in addition to and not in limitation of any other warranty or remedy required by law or by the Contract Documents. Such warranty shall be interpreted to require Contractor, upon written timely demand by WEBB COUNTY, to replace defective materials and equipment and re-execute any defective Work disclosed to the Contractor by WEBB COUNTY within a period of one (1) year after Substantial Completion of the applicable Work or, in the event of a latent defect, within one (1) year after discovery thereof by WEBB COUNTY.
354. All warranties shall be assignable by WEBB COUNTY. Submittal of all warranties and guarantees are required as a prerequisite to the final payment.
355. Except when a longer warranty time is specifically called for in the Specifications or is otherwise provided by law or by manufacturer, all warranties shall be at minimum for twelve (12) months and shall be in form and content otherwise reasonably satisfactory to WEBB COUNTY. WEBB COUNTY and Contractor acknowledge the Project may involve construction work on more than one (1) building or section of infrastructure of WEBB COUNTY's. While the overall Project shall have a single date for Substantial Completion of the Work and Final Completion of the Work, each building, section of infrastructure or approved phase of each section of infrastructure may have its own separate and independent date of Substantial Completion or Final Completion.
356. If separate dates for Substantial Completion and Final Completion are established and granted by WEBB COUNTY, at WEBB COUNTY's sole discretion and as a result of WEBB COUNTY electing partially to occupy areas prior to the Project's overall date for Substantial Completion, Contractor shall

maintain a complete and accurate schedule of the dates of Substantial Completion and, if WEBB COUNTY accepts partial occupancy of those completed areas, the dates upon which the one (1) year warranty on each building, phase or section of infrastructure granted Substantial Completion shall expire. If separate dates are granted, Contractor agrees to provide notice of the warranty expiration date(s) to WEBB COUNTY and Design Consultant at least one (1) month prior to the expiration of the one (1) year warranty period on each building, section of infrastructure or each phase of the section of infrastructure which has achieved Substantial Completion.

- 35.7. Prior to termination of any one (1) year warranty period, Contractor shall accompany WEBB COUNTY and Design Consultant on re-inspection of the building, section of infrastructure or phase of the section of infrastructure and be responsible for correcting any reasonable additional deficiencies not caused by WEBB COUNTY or by the use of the building, section of infrastructure or phase of the section of infrastructure observed and/or reported during the re-inspection.
- 35.8. For extended warranties required by the Contract Documents, WEBB COUNTY shall notify Contractor of deficiencies and Contractor shall start remedying these defects within seven (7) calendar days of initial notification from WEBB COUNTY. Contractor shall prosecute the work without interruption until accepted by WEBB COUNTY and Design Consultant, even though such prosecution may extend beyond the limit of the warranty period. If Contractor fails to provide notice of the expiration of the one (1) year warranty period at least one (1) month prior to the expiration date and conduct the required walk through with WEBB COUNTY, Contractor's warranty obligations described in this **Section 3.5.5** shall continue until such inspection is conducted and any deficiencies found in the inspection is corrected.
- 35.9. Warranties shall become effective on a date established by WEBB COUNTY in accordance with the Contract Documents. This date shall be the date of Substantial Completion of the entire Work, unless otherwise provided in any Certificate of Partial Substantial Completion approved by the Parties, except for Work to be completed or corrected after the date of Substantial Completion and prior to final payment and those occurrences addressed in **Section 3.5.3** herein. Warranties for Work to be completed or corrected after the date of Substantial Completion and prior to Final Completion shall become effective on the later of the date the Work is completed or corrected and accepted by WEBB COUNTY and Design Consultant or the date of final completion of the Work.
- 35.10. Neither final payment nor compliance by Contractor with any provision in the Contract Documents shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve Contractor or its sureties of liability, with respect to any warranties or responsibility for faulty materials and

workmanship. Contractor warrants all Work shall conform to the requirements of the Contract Documents.

35.11. Contractor agrees to assign to WEBB COUNTY, at the time of Final Completion of the Work, any and all manufacturer's warranties relating to materials and labor used in the Work and further agrees to perform the Work in such manner so as to preserve any and all such manufacturer's warranties, provided such assignment shall contain a reservation of Contractor's right also to enforce the manufacturer's warranties. As a condition precedent to final payment, Contractor shall prepare a notebook with reference tabs and submit three (3) copies of the notebook to WEBB COUNTY which shall include a complete set of warranties from Subcontractors, manufacturers or suppliers, as appropriate, and executed by and between Contractor and WEBB COUNTY, as required under this Contract, with a specified warranty commencement date, as required by the Contract Documents. Copies of the complete set of warranties from Subcontractors, manufacturers and/or suppliers, as appropriate, executed by Contractor as required by the Contract Documents, with and between WEBB COUNTY and Contractor. A specified warranty commencement date, as required by the Contract Documents, also shall be submitted to WEBB COUNTY in an electronic format (PDF) on a Compact Disc (CD).

35.12. When Contractor is constructing a building, the building shall be watertight and leak proof at every point and in every area, except where leaks can be attributed to damage to the building by external forces beyond Contractor's control. Contractor, immediately upon notification by WEBB COUNTY of water penetration, shall determine the source of water penetration and perform any work necessary to make the building watertight. Contractor also shall repair or replace any damaged material, finishes and/or fixtures damaged as a result of any water penetration, returning the building to original condition. The costs of such determination and repair shall be borne by Contractor only to the extent the leak(s) is/are attributable to faulty workmanship or unauthorized or defective materials.

3.6. TAXES

Contractor shall not include in the Contract Sum or any modification thereto any amount for sales, use or similar taxes for which WEBB COUNTY is exempt. Upon request by Contractor, WEBB COUNTY shall provide Contractor with a tax exemption certificate or other documentation necessary to establish WEBB COUNTY's exemption from such taxes.

3.7. PERMITS, FEES AND NOTICES

37.1. PERMITS. Unless otherwise provided in the Contract Documents or by WEBB COUNTY, as per **Section 2.2.5** herein, it is the responsibility of and Contractor shall secure all permits, licenses and inspections. WEBB COUNTY and Design

Consultant may assist Contractor, when necessary, in obtaining such permits, licenses and inspections necessary for the proper execution and completion of the work. For federally funded construction projects, when applicable, WEBB COUNTY shall prepare and submit the necessary paperwork to satisfy Texas Pollutant Discharge Elimination System (hereafter referred to as "TPDES"), regulations of the Texas Commission on Environmental Quality.

- 3.72. Contractor shall comply with and give all notices required by law, ordinance, rule, regulations and lawful orders of public authorities applicable to performance of the Work.
- 3.73. It is not Contractor's responsibility to ascertain the Contract Documents are in accordance with applicable laws, statutes, ordinances, building codes and rules and regulations. However, if Contractor observes portions of the Contract Documents are at variance therewith, Contractor promptly shall notify WEBB COUNTY and Design Consultant in writing of any variances and all necessary changes shall be accomplished by appropriate modification(s) before Contractor performs any Work affected by such modification(s).
- 3.74. If Contractor performs Work knowing Work is contrary to laws, statutes, ordinances, building codes and rules and regulations, without such notice to and approval from WEBB COUNTY and Design Consultant, Contractor shall assume sole responsibility for performing such Work and shall bear all costs attributable to correct such Work.
- 3.75. Contractor also shall assist WEBB COUNTY in obtaining all permits and approvals and, at WEBB COUNTY's request, pay all fees and expenses, if any, associated with TPDES regulations of the Texas Commission on Environmental Quality, as well as local authorities, if applicable, which require completion of documentation and/or acquisition of a "Land Disturbing Activities Permit" for a Project. Contractor's obligations under this paragraph do not require it to perform engineering services during the pre-construction phase to prepare proper drainage for the Project Site. However, any drainage alterations made by Contractor during the construction process, which require the issuance of a permit, shall be at Contractor's sole cost. It shall be Contractor's responsibility to prepare and submit the permit approval documentation provided by the regulatory agencies prior to beginning any Work.

3.8. ALLOWANCES

- 3.8.1. Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as WEBB COUNTY may direct, but Contractor shall not be required to employ persons or entities to whom Contractor has reasonable objection.

382. Unless otherwise provided in the Contract Documents:
- 3.8.2.1. Allowances shall cover the cost to Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
 - 3.8.2.2. Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit and other expenses, contemplated for stated allowance, shall be included in the allowances;
 - 3.8.2.3. Whenever actual costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect both the difference between actual costs and the allowances under **Section 3.8.2.1** herein and all changes in Contractor's costs under **Section 3.8.2.2** herein.
383. Materials and equipment under an allowance shall be selected by WEBB COUNTY within such time as is reasonably specified by Contractor as necessary to avoid any delay in the Work.

3.9. SUPERINTENDENT/KEY PERSONNEL

391. At all times during the progress of the Work, Contractor shall assign a competent resident superintendent who is able to communicate fluently in English, along with any necessary assistant(s) who is/are satisfactory to WEBB COUNTY. Any superintendent designee shall be identified in writing to WEBB COUNTY promptly after WEBB COUNTY issues written Notice to Proceed. The superintendent shall represent Contractor at all time and all directions given to the superintendent shall be binding on Contractor. The designated superintendent shall not be replaced without written notice to and the approval of WEBB COUNTY, which approval shall not be unreasonably withheld, except with good reason (including any termination or disability of the superintendent) or under extraordinary circumstances. The superintendent may not be employed on any other project prior to Final Completion of the Work without the approval of WEBB COUNTY, which approval shall not be unreasonably withheld.
392. Contractor shall furnish a list to Design Consultant and WEBB COUNTY of all Architects, Engineers, Consultants, Sub-Consultants, job-site superintendents, Subcontractors and suppliers involved in the Project construction. Design Consultant also shall provide said information to WEBB COUNTY.
- 3.9.2.1. WEBB COUNTY, upon the showing of good and reasonable

cause, may reject or require removal of any Architect, Engineer, Consultant, Sub-Consultant, job superintendent, employee of the Contractor, Subcontractor or sub- Subcontractor and/or supplier involved in the Project.

- 3.9.2.2. Contractor shall provide an adequate staff for the proper coordination and expedition of the Work. WEBB COUNTY reserves the right to require Contractor to remove from the Project any employee(s) WEBB COUNTY, at its sole discretion, deems incompetent, careless, insubordinate, unnecessary or in violation of any provision in these Contract Documents. This provision is applicable to Subcontractors, sub-Subcontractors and their employees.
- 3.9.2.3. WEBB COUNTY reserves the right to utilize one or more of its employees or Consultants to function in the capacity of WEBB COUNTY's Inspector, whose primary function shall be daily inspections, checking pay requests or construction timelines and the verification of the storage of supplies and materials.
- 3.9.2.4. Contractor shall not change any key personnel or key Subcontractors without the prior written consent of WEBB COUNTY, which consent shall not be unreasonably withheld. In the event key personnel leaves Contractor's employment, such key personnel's replacement shall be subject to WEBB COUNTY's reasonable approval.

3.10. CONTRACTOR'S PROJECT SCHEDULES

- 3.10.1. PROJECT SCHEDULE METHOD. Contractor shall create and maintain a Critical Path Method (hereafter referred to as "CPM") Project Schedule, showing the manner of execution of Work which Contractor intends to follow, in order to complete the Project within the allotted time. The Project Schedule shall employ CPM for the planning, scheduling and reporting of Work, as described in this **Section 3.10**. Contractor shall create and maintain the Project Schedule. The observance of the requirements herein is an essential part of the Work to be performed under the Contract.
- 3.10.2. SCHEDULING PERSONNEL. Unless otherwise indicated in writing by WEBB COUNTY, Contractor shall provide an individual, who shall be referred to hereafter as "Scheduler", to create and maintain the Project Schedule. Scheduler shall be proficient in CPM analysis, possess sufficient experience to be able to perform required tasks and able to prepare and interpret reports. Scheduler shall be made available for discussion or meetings when requested by WEBB COUNTY.

3.103. PROJECT SCHEDULE SUBMISSION

- 3.10.3.1. Unless indicated otherwise, Contractor shall submit Project Schedule(s) for the Work in relation to the entire Project to WEBB COUNTY and Design Consultant at least three (3) calendar days prior to the pre-construction conference.
- 3.10.3.2. All Project Schedule submittals shall be in the electronic form to include PDF plots of the schedule, a PDF plot defining the Critical Path and two week look-ahead, and include the native compatible scheduling file format. Contractor shall submit the schedule to WEBB COUNTY and Design Consultant via electronic mail, CD-Rom or any other electronic format acceptable to WEBB COUNTY.
- 3.10.3.3. This initial schedule shall indicate the dates for starting and completing the various aspects/phases required to complete the Work, including mobilization, procurement, installation, testing, inspection and acceptance of all the Work of the Contract, including any contractually mandated milestone dates. The Project Schedule shall not exceed the time limits set forth in the Contract Documents. Contractor shall organize the Project Schedule and provide adequate detail so the Schedule is capable of measuring and forecasting the effect of delaying events on completed and uncompleted activities.
- 3.10.3.4. The Project Schedule shall show the order in which Contractor proposes to carry out the Work in accordance with the final approved phasing plan, if any, and the anticipated start and completion dates of each phase of the Work. The Project Schedule shall be in the form of a time scaled work progress chart, to indicate the percentage of Work scheduled for completion at various critical milestones.
- 3.10.3.5. Contractor shall maintain a schedule of Shop Drawings and Sample Submittals and each submitted Shop Drawing and Sample Submittal shall list each required submittal and the expected time(s) for submitting, reviewing and processing such submittal.
- 3.10.3.6. WEBB COUNTY shall review the Project Schedule within fifteen (15) calendar days for compliance with the Specifications and notify Contractor of its acceptability.

3.104. PROJECT SCHEDULE SEQUENCING. The Project Schedule shall show the sequence and interdependence of activities required for complete performance of the Work. Contractor shall be responsible for assuring all Work sequences

are logical and show a coordinated plan of Work in accordance with the sequence of work outlined in the Plans. The purpose of WEBB COUNTY requiring the Project Schedule shall be to:

- 3.10.4.1. Ensure adequate planning during the execution and progress of the Work in accordance with the allowable number of calendar days and all milestones;
- 3.10.4.2. Assure coordination of the efforts of Contractor, WEBB COUNTY, utilities and others that may be involved in the Project and those activities are included in the Schedule highlighting coordination points with others;
- 3.10.4.3. Assist Contractor and WEBB COUNTY in monitoring the progress of the Work and evaluating proposed changes to the Contract; and
- 3.10.4.4. Assist WEBB COUNTY in administering the Contract time requirements.

3.105. PROJECT SCHEDULE ACTIVITIES. Contractor shall provide WEBB COUNTY a legend for all abbreviations used. The activities shall be coded so organized plots of the Project Schedule may be produced. Typical activity coding includes traffic control phase, location and work type. Contractor shall show an estimated production rate per working day for each Work activity. Activity durations shall be based on production rates shown. Each activity on the Project Schedule shall include:

- 3.10.5.1. An activity number utilizing an alphanumeric designation system agreeable to WEBB COUNTY;
- 3.10.5.2. A concise description of the Work represented by the activity; and
- 3.10.5.3. Activity durations in whole work days, with a maximum of twenty (20) work days. Durations greater than twenty (20) work days may be used for non-construction activities (mobilization, submittal preparation, curing, etc.), and other activities mutually agreeable between WEBB COUNTY and Contractor.

3.106. PROJECT SCHEDULE WORK DURATION AND RESOURCES

- 3.10.6.1. The Project Schedule layout shall be grouped by Project and then by Work Breakdown Structure (hereafter referred to as "WBS") for organizational purposes.
- 3.10.6.2. The original and remaining Work duration shall be displayed.

The grouping band shall, by default, report Work days planned. One additional level of effort activity shall be added to the schedule as a "time calculator" with a seven (7) day calendar without holidays reflected. The calculation of days should be reflected in the appropriate duration columns.

3.10.6.3. Pursuant to the definitions in **Section 1.1.12** herein, if Contractor's Project does not affect WEBB COUNTY traffic, a determination made solely by WEBB COUNTY on a project-by-project basis, Work shall be scheduled based upon Contractor's five (5) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software. If Contractor's Project affects WEBB COUNTY traffic, a determination made solely by WEBB COUNTY on a project-by-project basis, Work shall be scheduled upon Contractor's six (6) day work week, utilizing the appropriate calendar assignments and using compatible Project Scheduling software.

3.10.6.4. Assign working calendars for the days Contractor plans to work. Contractor shall designate all twelve (12) WEBB COUNTY holidays as non-working days (holidays). For dates beyond the then-current calendar year, Contractor shall assume WEBB COUNTY holidays are the same as the current calendar year.

3.10.6.5. Seasonal weather conditions shall be considered and included in the Project Schedule for all work influenced by temperature and/or precipitation. Seasonal weather conditions shall be determined by an assessment of average historical climatic conditions. Average historical weather data is available through the National Oceanic and Atmospheric Administration (hereafter referred to as "NOAA"). These effects shall be simulated through the use of work calendars for each major work type (i.e., earthwork, concrete paving, structures, asphalt, drainage, etc.). Project and work calendars should be updated each month to show days actually able to work on the various work activities.

3.10.6.6. Only WEBB COUNTY responsible delays in activities affecting milestone dates or the Contract completion date, as determined by CPM analysis, shall be considered for a time extension.

3.10.7. PROJECT SCHEDULE - OTHER REQUIREMENTS. The Project Schedule shall:

3.10.7.1. have all Work coded and organized by Work Breakdown Structure ("WBS"). An example of an acceptable WBS shall be provided, upon written request, by WEBB COUNTY to

Contractor;

- 3.10.7.2. reflect Duration Percent complete as the percent complete type;
- 3.10.7.3. reflect Fixed Units as the duration type;
- 3.10.7.4. include submittals with a logical tie to what each drives;
- 3.10.7.5. add proposed Change Order(s) and those Change Order(s) shall be reflected on the Schedule as proposed Change Order(s). This task shall be linked to the schedule with logical ties and approved by WEBB COUNTY. Upon approval of a Change Order, a task shall be renamed and shall identify Work performed and Change Order number and resources shall be added to the task;
- 3.10.7.6. only have constraints in accordance with the Plans;
- 3.10.7.7. include activity milestones for material delivery;
- 3.10.7.8. allow default progress; and
- 3.10.7.9. include a detailed explanation in the Project narrative, if Work is performed out of sequence.

3.10.8. PROJECT SCHEDULE JOINT REVIEW AND ACCEPTANCE

- 3.10.8.1. The Project Schedule and successive updates or revisions thereof are for Contractor's use in managing the Work. The Project Schedule is for the information of WEBB COUNTY and to demonstrate Contractor has complied with requirements for planning the Work. WEBB COUNTY's acceptance of a Schedule, Schedule update(s) or revisions constitutes WEBB COUNTY's agreement to coordinate its own activities with Contractor's activities, as shown on the schedule.
- 3.10.8.2. Within fifteen (15) calendar days of receipt of Contractor's proposed Project Schedule, WEBB COUNTY shall evaluate the Schedule for compliance with this specification and notify Contractor of its findings. If WEBB COUNTY requests a revision or justification, Contractor shall provide satisfaction to WEBB COUNTY within seven (7) calendar days. If Contractor submits a Project Schedule for acceptance, based on a sequence of work not shown in the Plans, Contractor shall notify WEBB COUNTY in writing of said sequence of work, separate from the Schedule submittal.
- 3.10.8.3. WEBB COUNTY's review and acceptance of Contractor's

Project Schedule only is for conformance to the requirements of the Contract Documents. Review and acceptance by WEBB COUNTY of Contractor's Project Schedule does not relieve Contractor of any of its responsibility for the Project Schedule, Contractor's ability to meet interim milestone dates (if so specified) or meeting the Contract completion date, nor does such review and acceptance expressly or by implication warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of Contractor's Project Schedule. In the event Contractor fails to define any element of Work, activity or logic and WEBB COUNTY's review does not detect this omission or error, such omission or error, whether or when discovered by Contractor or WEBB COUNTY, shall be corrected by Contractor at the next monthly schedule update and shall not affect the Project or Contract completion date.

- 3.1084. Acceptance of the Project Schedule, or update and/or revision thereto, does not indicate any approval of Contractor's proposed sequences and duration.
- 3.1085. Acceptance by WEBB COUNTY of the Project Schedule or updated Project Schedule which exceeds contractual time does not alleviate Contractor from meeting the contractual completion date.
- 3.1086. Acceptance of a Project Schedule update or revision indicating early or late completion does not constitute WEBB COUNTY's consent to any changes, alter the terms of the Contract, waive either Contractor's responsibility for timely completion, or waive WEBB COUNTY's right to damages for Contractor's failure to do so.
- 3.1087. Contractor's scheduled dates for completion of any activity or of the entire Work do not constitute a change in terms of the Contract. Change Orders are the only method of modifying the completion date(s) and Contract time.
- 3.1088. Submittal of a schedule, schedule revision, or schedule update constitutes Contractor's representation to WEBB COUNTY, as of the date of the submittal, of the accurate depiction of all progress to date and Contractor shall follow the schedule as submitted in performing the Work.

3.109. PROJECT SCHEDULE UPDATES AND REVISIONS

- 3.1089. The Project Schedule shall be updated monthly, at a minimum,

to reflect progress to date and current plans for completing the Work. A paper and an electronic copy of the update shall be submitted to WEBB COUNTY and Design Consultant as directed. WEBB COUNTY has no duty to make progress payments to Contractor unless Contractor's payment application is accompanied by the updated Project Schedule. The anticipated date of Substantial Completion shall show all extensions of time granted through Change Order(s) as of the date of the update.

- 3.108.10. The Project Schedule update shall be submitted no later than the date the pay application is submitted.
- 3.108.11. Contractor shall meet with WEBB COUNTY each month, at a scheduled Project Schedule update meeting, to review actual progress made through the data date of the schedule update, as determined by WEBB COUNTY. The review of progress shall include dates of activities actually started and/or completed, the percentage of Work completed, the remaining duration of each activity started and/or completed and the amount of Work still to complete, with an analysis of the relationship between the remaining duration of the activity and the quantity of material to install over that given period of time with a citation of past productivity.
- 3.108.12. The monthly Schedule Update shall include a progress narrative, explaining the Project's progress, identifying all progress made out of sequence, defining the Critical Path, identification of any potential delays, and other relevant data. A Project Schedule Narrative template shall be required for the narrative. Upon request, WEBB COUNTY shall supply said template to Contractor.
- 3.108.13. Each Schedule shall segregate the Work into a sufficient number of activities to facilitate the efficient use of critical path method scheduling by Contractor, WEBB COUNTY and Design Consultant. The Project Schedule layout shall be grouped first by Project then by WBS. The layout shall include the following columns:
- (1) Activity ID
 - (2) Activity Description
 - (3) Original Durations
 - (4) Remaining Durations
 - (5) Early Start and Early Finish Dates

- (6) Late Start and Late Finish Dates
- (7) Total Float
- (8) Performance Percent Complete
- (9) Display logic and target bars in the Gantt bar chart view

3.10.8.14. Each schedule shall include activities representing manufacturing, fabrication or ordering lead time for materials, equipment or other items for which Design Consultant is required to review submittals, shop drawings, product data or samples.

3.10.8.15. Each schedule, other than the initial schedule, shall:

- (1) indicate the activities, or portions thereof, which have been completed;
- (2) reflect the actual time for completion of such activities; and
- (3) reflect any changes to the sequence or planned duration of all activities.

3.10.8.16. If any updated schedule exceeds the time limits set forth in the Contract Documents for Substantial Completion of the Work, Contractor shall include, along with its updated schedule, a statement of the reasons for the anticipated delay in achieving Substantial Completion of the Work and Contractor's planned course of action for completing the Work within the time limits set forth in the Contract Documents. If Contractor asserts the failure of WEBB COUNTY or Design Consultant to provide requested and required information to Contractor as the reason for anticipated delay in completion, Contractor also shall specify what information has been requested and is required from WEBB COUNTY or Design Consultant.

3.10.8.17. Neither WEBB COUNTY nor Contractor shall have exclusive ownership of float time in the schedule and all float time shall inure to the benefit of the Project.

3.10.8.18. Submission of any schedule under this Contract constitutes a representation by Contractor, as of the date of the submittal:

- (1) the schedule represents the sequence in which Contractor intends to prosecute the remaining Work;
- (2) the schedule represents the actual sequence and duration used to prosecute the completed Work;
- (3) to the best of its knowledge and belief, Contractor is able to complete the remaining Work in the sequence and time

indicated; and

- (4) Contractor intends to complete the remaining work in the sequence and time indicated.

3.108.19. If Contractor desires to make major changes in the Project Schedule, Contractor shall notify WEBB COUNTY in writing and submit the proposed schedule revision. The written notification shall include the reason for the proposed revision, what the revision is composed of and how the revision was incorporated into the schedule. Major changes are hereby defined as those affecting compliance with the contract requirements and/or those that change the Project's critical path. All other changes may be accomplished through the monthly updating process without written notification.

3.10.9. COMPLETION OF WORK

3.109.1. Contractor is accountable for substantially completing the Work in the Contract Time or as otherwise amended by Change Order.

3.109.2. If, in the sole judgment of WEBB COUNTY, the Schedule update reflects Work is behind schedule and the rate of performance of Work is inadequate to regain scheduled progress to insure Contractor achieving any Project Milestones (including, but not limited to, Substantial Completion) in accordance with the Project Schedule, WEBB COUNTY may, at its sole option, give written notice to Contractor and direct Contractor, at Contractor's sole expense, to propose and adopt a plan to accelerate the Work so the Work conforms to the Project Schedule and Project Milestones previously agreed upon. Contractor may, but is not limited to, propose:

- (1) increasing Project work forces;
- (2) increasing Project equipment or tools;
- (3) increasing the hours of work or number of shifts per day;
- (4) expediting the delivery of Project materials;
- (5) changing, with the approval of WEBB COUNTY, the schedule logic and Work sequences; or
- (6) taking some other action as Contractor may propose, if acceptable to WEBB COUNTY.

3.109.3. Within ten (10) calendar days after such notice from WEBB COUNTY, Contractor shall notify WEBB COUNTY in writing of the specific measures taken and/or planned to be taken to increase the rate of progress of Work on the Project. Contractor

shall include an estimate as to the date of scheduled full progress recovery and an updated Project Schedule, illustrating Contractor's plan for achieving timely completion of the Project Milestone's and the Project's Substantial Completion.

- 3.1094. Should WEBB COUNTY deem Contractor's plan of action inadequate to achieve the desired acceleration to bring the Work back on the Project Schedule and achieve Substantial Completion on time, WEBB COUNTY shall have the right to order Contractor, at Contractor's sole expense, to take any corrective measures WEBB COUNTY deems necessary to expedite the progress of Work including, without limitations:
- (1) increasing work forces and hours, to include Contractor working additional shifts of overtime;
 - (2) supplying additional manpower, equipment and facilities;
 - (3) re-sequencing the Work;
 - (4) expediting the fabrication and supply of materials; and/or
 - (5) other similar measures WEBB COUNTY may direct (hereafter **(1) – (5)** herein above collectively referred to as "Extraordinary Measures").

Such Extraordinary Measures WEBB COUNTY directs shall continue until the progress of the Work complies with the Milestone required by the Contract Documents.

- 3.1095. WEBB COUNTY's right to require Extraordinary Measures solely is for the purpose of ensuring Project Milestones and Substantial Completion of the Work is achieved within the Contract Time. Contractor shall not be entitled to an adjustment in the Contract Sum in connection with Extraordinary Measures required by WEBB COUNTY under or pursuant to this **Section 3.10.10.5**, except as may be provided under the provisions of **Section 4.3.11** herein.

- 3.1096. WEBB COUNTY may exercise the rights furnished pursuant to this **Section 3.10.10.5** as frequently as WEBB COUNTY deems necessary to ensure Contractor's performance of the Work is in compliance with any milestone date or completion date(s) set forth in the Contract Documents.

- 3.1097. If reasonably required by WEBB COUNTY, Contractor also shall prepare and furnish Project cash flow projections, manning data for critical activities and schedules for the purchase and delivery of all critical equipment and material, together with periodic updating thereof.

3.1098. Contractor shall recommend to WEBB COUNTY and Design Consultant a schedule for procurement of long-lead time items, which shall constitute part of the Work as required to meet the Project Schedule.

3.10.10. PROJECT SCHEDULE TIME IMPACT ANALYSIS

3.10.10.1 Contractor shall notify WEBB COUNTY when an impact may justify an extension of Contract time or adjustment of milestone dates. Said notice shall be made by Contractor in writing as soon as possible, but no later than the end of the next estimate period after the commencement of an impact or the notice for a change is given to Contractor. Not providing notice to WEBB COUNTY within twenty (20) calendar days after receipt shall indicate Contractor's approval of the time charges as shown on that time statement. Future consideration of that statement shall not be permitted and Contractor forfeits its right to subsequently request a time extension or time suspension, unless the circumstances prove Contractor could not reasonably have knowledge of the impact by the end of the next estimate period.

3.10.11.1 When changes are initiated or impacts are experienced, Contractor shall submit to WEBB COUNTY a written Time Impact Analysis describing the influence of each change or impact. A "Time Impact Analysis" is an evaluation of the effects of changes in the construction sequence, contract, Plans or site conditions on Contractor's plan for constructing the Project, as represented by the schedule. The purpose of the Time Impact Analysis is to determine if the overall Project has been delayed and, if necessary, to provide Contractor and WEBB COUNTY a basis for making adjustments to the Contract.

3.10.11.2 A Time Impact Analysis shall consist of one or all of the steps listed below:

- (1) Establish the status of the Project before the impact using the most recent Project Schedule Update prior to the impact occurrence.
- (2) Predict the effect of the impact on the most recent Project Schedule Update prior to the impact occurrence. This requires estimating the duration of the impact and inserting the impact into the schedule update. Any other changes made to the schedule including modifications to the calendars or constraints shall be noted.

- (3) Track the effects of the impact on the schedule during its occurrence. Note any changes in sequencing and mitigation efforts.
- (4) Compare the status of the work prior to the impact (**#1 above**) to the prediction of the effect of the impact (**#2 above**), and to the status of the work during and after the effects of the impact are over (**#3 above**). Note: if an impact causes a lack of access to a portion of the Project, the effects of the impact may extend to include a reasonable period for remobilization.

3.10.11.3 The Time Impact Analysis shall be electronically submitted to WEBB COUNTY. If the Project Schedule is revised after the submittal of a Time Impact Analysis but prior to its approval, Contractor promptly shall indicate in writing to WEBB COUNTY the need for any modification to its Time Impact Analysis. One (1) copy of each Time Impact Analysis shall be submitted within fourteen (14) calendar days after the completion of an impact. WEBB COUNTY may require **Step 1** and **Step 2** in **Section 3.10.11.2** herein of the Time Impact Analysis be submitted at the commencement of the impact, if needed to make a decision regarding the suspension of Contract time. Approval or rejection of each Time Impact Analysis by WEBB COUNTY shall be made within fourteen (14) calendar days after receipt, unless subsequent meetings and negotiations are necessary.

3.11. DOCUMENTS AND SAMPLES AT THE SITE

3.11.1 Contractor shall maintain, on Site and for WEBB COUNTY's use, one record copy of the Drawings, Specifications, Addenda, Change Orders and other Amendments, in good order and currently marked, to record field changes and selections made during construction, along with one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These record copies also shall be available to Design Consultant and shall be delivered to Design Consultant for submittal to WEBB COUNTY upon completion of the Work.

3.11.2 Contractor shall at all times maintain job records including, but not limited to, invoices, payment records, payroll records, daily reports, logs, diaries and job meeting minutes applicable to the Project. Contractor shall make such reports and records available for inspection by WEBB COUNTY, Design Consultant and/or their respective agents, during normal business hours if requested by WEBB COUNTY.

3.12. SHOP DRAWINGS, PRODUCT DATA AND SAMPLES

- 3.121. Shop Drawings are drawings, diagrams, illustrations, schedules, performance charts, brochures and other data prepared and furnished by Contractor or its agents, manufacturers, suppliers or distributors and which illustrate and detail some portion of the Work.
- 3.122. Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by Contractor to illustrate materials or equipment for some portion of the Work.
- 3.123. Samples are physical samples of materials, equipment or workmanship representative of some portion of the Work, furnished by the Contractor to WEBB COUNTY, to assist WEBB COUNTY and Design Consultant in the establishment of workmanship and quality standards by which the Work shall be judged.
- 3.124. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. The purpose of their submittals is to demonstrate, for those portions of the Work for which submittals are required by the Contract Documents, the way by which Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by Design Consultant is subject to the limitations of **Section 4.2.8** herein. Informational submittals, upon which Design Consultant is not expected to take responsive action, may be so identified in the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Design Consultant without action.
- 3.125. Contractor shall review for compliance with the Contract Documents, approve and submit to Design Consultant Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of WEBB COUNTY or of separate contractors. Submittals which are not marked as reviewed for compliance with the Contract Documents and approved by Contractor may be returned by Design Consultant without action.
- 3.126. By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, Contractor represents it has determined and verified materials, field measurements and filed construction criteria related thereto, or shall do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.
- 3.127. Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data,

Samples or similar submittals until the respective submittal and review has been approved by Design Consultant. Design Consultant shall review and return such submittals within ten (10) calendar days or within a reasonable period so as to not delay the project.

- 3.128. The Work shall be in accordance with approved submittals, except Contractor shall not be relieved of responsibility for deviations from requirements of the Contract Documents by Design Consultant's approval of Shop Drawings, Product Data, Samples or similar submittals unless Contractor specifically has informed Design Consultant in writing of such deviation at the time of submittal and:
- (1) Design Consultant has given written approval in the specific deviation as a minor change in the Work; or
 - (2) a Change Order or Field Work Directive has been issued authorizing the deviation. Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples or similar submittals by Design Consultant's approval thereof.
- 3.129. Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by Design Consultant on previous submittals. In the absence of such written notice, Design Consultant's approval of a resubmission shall not apply to such revisions.
- 3.12.10. Contractor shall not be required to provide professional services which constitute the practice of architecture or engineering unless such services specifically are required by the Contract Documents for a portion of the Work or unless Contractor needs to provide such services in order to carry out Contractor's responsibilities for construction means, methods, techniques, sequences and procedures. Contractor shall not be required to provide professional services in violation of applicable law. If professional design services or certifications by a design professional related to systems, materials or equipment specifically are required of Contractor by the Contract Documents, WEBB COUNTY and Design Consultant shall specify all performance and design criteria such services must satisfy. Contractor shall cause such services or certifications to be provided by a properly Texas-licensed design professional, whose signature and seal shall appear on all drawings, calculations, Specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to Design Consultant. WEBB COUNTY and Design Consultant shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or

approvals performed by such design professionals, provided WEBB COUNTY and Design Consultant have specified to Contractor all performance and design criteria such identified services must satisfy. Pursuant to this **Section 3.12.10**, Design Consultant shall review, approve or take other appropriate action on submittals only for the limited purpose of checking of conformance with information given and the design concept expressed in the Contract Documents. Contractor shall not be responsible for the adequacy of the performance or design criteria required by the Contract Documents.

3.13. USE OF SITE

- 3.13.1. Contractor shall confine construction equipment, the storage of materials and equipment and the operations of workers to areas permitted by law, ordinances, permits or the requirements of the Contract Documents and shall not unreasonably encumber the premises with construction equipment or other materials or equipment.
- 3.13.2. Contractor shall not load nor permit any part of any structure to be loaded in any manner that shall endanger the structure, nor shall Contractor subject any part of the Work or adjacent property to stresses or pressures that shall endanger it.
- 3.13.3. Contractor shall abide by all applicable rules and regulations of WEBB COUNTY with respect to conduct, including smoking, parking of vehicles, security regulations and entry into adjacent facilities owned by WEBB COUNTY.
- 3.13.4. Contractor shall provide access to residents and businesses affected by the construction of this Project to the greatest extent possible, including providing temporary base and asphalt as needed.
- 3.13.5. Contractor shall erect and maintain on Site a Project Bulletin Board, accessible to all Contractor and Subcontractor employees, upon which Contractor shall post and maintain, throughout the Project's duration, all employment and safety information required by law. Contractor further shall post complete Payment and Performance Bond information on the Project Bulletin Board, listing Contractor's bonding and insurance agencies/providers, to include agency contact names, address and telephone numbers.
- 3.13.6. As applicable, WEBB COUNTY shall have appropriate Temporary Bench Marks (hereafter referred to as "TBM") and a baseline (for both horizontal and vertical projects, as applicable) established. As of the date of the Notice To Proceed, it is Contractor's responsibility to protect, preserve and reestablish (if required) the TBM and/or baseline. Construction staking and tolerances shall be in accordance with the "Manual of Practice for Land Surveying in the State of Texas Category 5".

- 3.13.7. As applicable, Contractor shall layout its work from an established baseline and TBM indicated on the drawings and shall be responsible for all measurements in connection with the layout. Contractor shall furnish, at its own expense, all stakes, templates, platforms, equipment, tools, materials and labor required to layout any part of the work. Contractor shall provide cut sheets to WEBB COUNTY's inspector at minimum seven (7) calendar days prior to construction of street and drainage work. Contractor shall establish the necessary offsets, hubs and guards marked showing control designation and offsets for Utility Work, if present. Contractor shall provide cut sheets for improvements where Sewer profiles are provided for various phases of the project and cut sheets for Water profiles, if applicable.

Contractor shall provide staking and preparation of cut sheets after receiving notice to proceed from WEBB COUNTY. If present, Contractor shall provide City Utilities with cut sheets at minimum (7) calendar days prior to commence of utility work. Contractor shall be responsible for maintaining and preserving a baseline and TBM indicated on the drawings for duration of construction. If such marks are destroyed, Contractor shall replace them at its own expense. At the end of construction of the Project, Contractor shall provide WEBB COUNTY a grade certificate prepared by a Registered Professional Land Surveyor. This certificate shall state the infrastructure is constructed in accordance to the construction documents or as approved by WEBB COUNTY and the Engineer of Record, which is noted on the record plan set.

3.14. CUTTING AND PATCHING

- 3.14.1. Contractor shall be responsible for all cutting, fitting or patching required to complete the Work or to make its parts fit together properly.
- 3.14.2. Contractor shall not damage or endanger a portion of the Work or a fully or partially completed construction by either WEBB COUNTY or separate contractors by cutting, patching or otherwise altering such construction, or by excavation. Contractor shall not cut or otherwise alter such construction by WEBB COUNTY or a separate contractor except with written consent of WEBB COUNTY and, if WEBB COUNTY so designates, of such separate contractor and said consent shall not be unreasonably withheld. Contractor unreasonably shall not withhold from WEBB COUNTY or WEBB COUNTY's separate contractor Contractor's consent to cutting or otherwise altering the Work.
- 3.14.3. Any part of the Work damaged by Contractor, either during installation or prior to Substantial Completion of the Work, shall be repaired by Contractor so as to be equal in quality, appearance, serviceability and other respects to an undamaged item or part of the Work. Where this repair cannot fully be accomplished, a damaged item or part shall be replaced by Contactor.

3.15. CLEANING UP

3.15.1. During the progress of the Work, Contractor shall keep the Project Site and surrounding area including, but not limited to, creeks, drainage channels, easements and private property free from accumulations of waste materials, rubbish and other debris resulting from the Work. As applicable, Contractor shall clean, sweep, mop, brush and polish, as appropriate, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. If Contractor fails to clean up as provided in the Contract Documents, WEBB COUNTY may elect to do so and all costs incurred by WEBB COUNTY shall be paid by Contractor.

3.15.2. Prior to Substantial Completion of the Work, Contractor shall remove all waste materials, rubbish and debris from and about the premises, as well as all tools, appliances, construction equipment and machinery and surplus materials, and shall leave the Project Site clean and ready for occupancy by WEBB COUNTY. As applicable, Contractor shall clean, sweep, mop, brush and polish, to WEBB COUNTY's satisfaction, the interior of the improvements and/or renovated areas including, but not limited to, any floors, carpeting, ducts, fixtures and ventilation units operated during construction, and shall clean exterior gutters, drainage, walkways, driveways and roofs of debris. Contractor shall restore to their original condition those portions of the Site not designated for alteration by the Contract Documents. If Contractor fails to clean up the premises as provided in the Contract Documents, WEBB COUNTY may elect to do so and all costs incurred by WEBB COUNTY shall be paid by Contractor.

3.16. ACCESS TO WORK

Contractor shall provide WEBB COUNTY and Design Consultant access to Work in preparation and in progress, wherever located.

3.17. PATENT FEES AND ROYALTIES

Contractor shall pay all license fees and royalties and assume all costs incident to the use of the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others. If a particular invention, design, process, product or device is specified in the Contract Documents for use in the performance of the Work and if to the actual knowledge of WEBB COUNTY its use is subject to patent rights or copyrights calling for the payment of any license fee or royalty to others, the existence of such rights shall be disclosed by WEBB COUNTY in the Contract Documents.

3.18. INDEMNITY PROVISIONS

3.18.1. **CONTRACTOR COVENANTS AND AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD HARMLESS, WEBB COUNTY AND ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF WEBB COUNTY, INDIVIDUALLY AND COLLECTIVELY, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS (INCLUDING THIRD-PARTY CLAIMS), LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL OR BODILY INJURY, DEATH AND PROPERTY DAMAGE, MADE UPON WEBB COUNTY DIRECTLY OR INDIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO CONTRACTOR'S ACTIVITIES UNDER THIS CONTRACT, INCLUDING ANY ACTS OR OMISSIONS OF CONTRACTOR, ANY AGENT, OFFICER, DIRECTOR, REPRESENTATIVE, EMPLOYEE, CONSULTANT OR SUBCONTRACTOR OF CONTRACTOR AND CONTRACTOR'S AND ITS SUBCONTRACTOR'S RESPECTIVE OFFICERS, AGENTS EMPLOYEES, DIRECTORS AND REPRESENTATIVES WHILE IN THE EXERCISE OF THE RIGHTS OR PERFORMANCE OF THE DUTIES UNDER THIS CONTRACT. THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF WEBB COUNTY, ITS OFFICERS OR ITS EMPLOYEES IN INSTANCES WHERE SUCH NEGLIGENCE CAUSES PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE. IN THE EVENT CONTRACTOR AND WEBB COUNTY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO WEBB COUNTY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.**

3.18.2. The provisions of this Indemnity solely are for the benefit of the Parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. Contractor shall advise WEBB COUNTY in writing within twenty-four (24) hours of any claim or demand against WEBB COUNTY or Contractor known to Contractor related to or arising out of Contractor's activities under this Contract and shall see to the investigation and defense of such claim or demand at Contractor's sole cost. WEBB COUNTY shall have the right, at its option and at its own expense, to participate in such defense without relieving Contractor of any of its obligations under this **Section 3.18.**

3.18.3. **INTELLECTUAL PROPERTY INDEMNIFICATION. CONTRACTOR SHALL PROTECT, INDEMNIFY, AND DEFEND AND/OR HANDLE AT ITS OWN COST AND EXPENSE ANY CLAIM OR ACTION**

AGAINST WEBB COUNTY, ITS ELECTED OFFICIALS, EMPLOYEES, OFFICERS, DIRECTORS, VOLUNTEERS AND REPRESENTATIVES OF WEBB COUNTY, INDIVIDUALLY OR COLLECTIVELY, FOR INFRINGEMENT OF ANY UNITED STATES PATENT, COPYRIGHT OR SIMILAR PROPERTY RIGHT INCLUDING, BUT NOT LIMITED TO, MISAPPROPRIATION OF TRADE SECRETS AND ANY INFRINGEMENT BY CONTRACTOR AND ITS EMPLOYEE OR ITS SUBCONTRACTORS AND THEIR AGENTS, SERVANTS AND EMPLOYEES, BASED ON ANY DELIVERABLE OR ANY OTHER MATERIALS FURNISHED HEREUNDER BY CONTRACTOR AND USED BY EITHER WEBB COUNTY OR CONTRACTOR WITHIN THE SCOPE OF THIS CONTRACT (UNLESS SAID INFRINGEMENT RESULTS DIRECTLY FROM CONTRACTOR'S COMPLIANCE WITH WEBB COUNTY'S WRITTEN STANDARDS OR SPECIFICATIONS). CONTRACTOR DOES NOT WARRANT AGAINST INFRINGEMENT BY REASON OF WEBB COUNTY'S OR DESIGN CONSULTANT'S DESIGN OF ARTICLES OR THEIR USE IN COMBINATION WITH OTHER MATERIALS OR IN THE OPERATION OF ANY PROCESS. CONTRACTOR SHALL HAVE THE SOLE RIGHT TO CONDUCT THE DEFENSE OF ANY SUCH CLAIM OR ACTION AND ALL NEGOTIATIONS FOR ITS SETTLEMENT OR COMPROMISE, UNLESS OTHERWISE MUTUALLY AGREED UPON, EXPRESSED IN WRITING AND SIGNED BY THE PARTIES HERETO. CONTRACTOR AGREES TO CONSULT WITH WEBB COUNTY'S ATTORNEY DURING SUCH DEFENSE OR NEGOTIATIONS AND MAKE GOOD FAITH EFFORTS TO AVOID ANY POSITION ADVERSE TO THE INTEREST OF WEBB COUNTY. WEBB COUNTY SHALL MAKE AVAILABLE TO CONTRACTOR ANY DELIVERABLES AND/OR WORKS MADE FOR HIRE BY CONTRACTOR NECESSARY TO THE DEFENSE OF CONTRACTOR AGAINST ANY CLAIM OF INFRINGEMENT FOR THE DURATION OF CONTRACTOR'S LEGAL DEFENSE.

3.184. If such infringement claim or action has occurred or, in Contractor's judgment, is likely to occur, WEBB COUNTY shall allow Contractor, at Contractor's option and expense, (unless such infringement results directly from Contractor's compliance with WEBB COUNTY's written standards or Specifications or by reason of WEBB COUNTY's or Design Consultants' design of articles or their use in combination with other materials or in the operation of any process for which WEBB COUNTY shall be liable) to elect to:

- (1) procure for WEBB COUNTY the right to continue using said deliverable and/or materials;
- (2) modify such deliverable and/or materials to become non- infringing (provided such modification does not adversely affect WEBB

COUNTY's intended use of the deliverable and/or materials as contemplated hereunder);

- (3) replace said deliverable and/or materials with an equally suitable, compatible and functionally equivalent non- infringing deliverable and/or materials at no additional charge to WEBB COUNTY ; or
- (4) if none of the foregoing alternatives is reasonably available to Contractor, upon written request, WEBB COUNTY shall return the deliverable and/or materials in question to Contractor and Contractor shall refund all monies paid by WEBB COUNTY , with respect to such deliverable and/or materials, and accept return of same. If any such cure provided for in this **Section 3.18** shall fail to satisfy the third-party claimant, these actions shall not relieve Contractor from its defense and indemnity obligations set forth in this **Section 3.18**.

3.185. The Indemnification obligations under this **Section 3.18** shall not be limited in any way by the limits of any insurance coverage or any limitation on the amount or type of damages, compensation or benefits payable by, for or to Contractor or any Subcontractor, supplier or any other individual or entity under any insurance policy, workers' compensation acts, disability benefit acts or other employee benefits acts.

3.186. **WORKER SAFETY.** The Indemnification hereunder shall include, without limiting the generality of the foregoing, liability which could arise to WEBB COUNTY, its agents, Consultants and/or representatives or Design Consultant pursuant to State statutes for the safety of workers and, in addition, all Federal statutes and rules existing there under for protection, occupational safety and health to workers. It is agreed the primary obligation of Contractor is to comply with these statutes in the performance by Contractor of the Work and the obligations of WEBB COUNTY, its agents, Consultants and representatives under said statutes are secondary to that of Contractor.

3.187. **DEFENSE COUNSEL.** WEBB COUNTY shall have the right to approve defense counsel, of which approval shall not be unreasonably withheld, to be retained by Contractor in fulfilling its obligation hereunder to defend and indemnify WEBB COUNTY, unless such right is expressly waived by WEBB COUNTY in writing. Contractor shall retain WEBB COUNTY - approved defense counsel within ten (10) calendar days of WEBB COUNTY's written notice WEBB COUNTY is invoking its right to Indemnification under this Contract. If Contractor fails to retain counsel within such time period, WEBB COUNTY shall have the right to retain defense counsel on its own behalf and Contractor shall be liable for all costs incurred by WEBB COUNTY. WEBB COUNTY also shall have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.

3.19. REPRESENTATIONS AND WARRANTIES

Exhibit "D"

Webb County General Conditions
Webb County Jail Kitchen Cooler and Freezer Upgrades

Contractor represents and warrants the following to WEBB COUNTY (in addition to the other representations and warranties contained in the Contract Documents), as an inducement to WEBB COUNTY to execute this Contract, which representations and warranties shall survive the execution and delivery of the Contract and the Final Completion of the Work, Contractor:

- 3.191. is financially solvent, able to pay its debts as they mature and possessed of sufficient working capital to complete the Work and perform its obligations under the Contract Documents;
 - 3.192. is able to furnish the plant, tools, materials, supplies, equipment and labor required to complete the Work and perform its obligations hereunder and has sufficient experience and competence to do so;
 - 3.193. is authorized to do business in the State of Texas and properly is licensed by all necessary governmental, public and quasi-public authorities having jurisdiction over it, the Work and the site of the Project;
 - 3.194. is acting within its duly authorized powers to execute this Contract and execute the performance and obligations thereof; and
 - 3.195. had directed its duly authorized representative(s) to visit the Site of the Work, familiarize itself with the local conditions under which the Work is to be performed and correlated its observations with the requirements of the Contract Documents.
- 3.20. BUSINESS STANDARDS

Contractor, in performing its obligations under this Contract, shall establish and maintain appropriate business standards, procedures and controls, including those necessary to avoid any real or apparent impropriety or adverse impact on the interest of WEBB COUNTY or affiliates. Contractor shall review with WEBB COUNTY, at a reasonable frequency during the performance of the Work hereunder, such business standards and procedures including, without limitation, those related to the activities of Contractor's employees, Subcontractors and agents in their relations with WEBB COUNTY's employees, Consultants, agents, representatives, vendors, Subcontractors, other third parties and those relating to the placement and administration of purchase orders and subcontracts.

ARTICLE IV. ADMINISTRATION OF THE CONTRACT

4.1. DESIGN CONSULTANT

A Design Consultant is a person registered as an Architect pursuant to Tex. Occupations Code Ann., Chapter 1051, a Landscape Architect pursuant to Texas Occupations Code, Chapter 1052, and/or a person licensed as a professional Engineer pursuant to Texas Occupations Code, Chapter 1001, or a firm employed by WEBB COUNTY to provide professional architectural or engineering services and exercising overall responsibility for

the design of a Project or a significant portion thereof, and performing certain contract administration responsibilities as set forth in its Contract and these General Conditions. If the employment of a Design Consultant is terminated, WEBB COUNTY shall employ a new Design Consultant whose status under the Contract Documents shall be that of the former Design Consultant.

42. ROLES IN ADMINISTRATION OF THE CONTRACT

42.1. WEBB COUNTY and Design Consultant shall provide administration of the Contract, as described in the Contract Documents, and Design Consultant shall be WEBB COUNTY's representative:

- (1) during construction;
- (2) until final payment is due; and
- (3) with WEBB COUNTY's concurrence, from time to time during the one- year period for correction of Work described in **Article XII** herein.

Design Consultant only shall have authority to act on behalf of WEBB COUNTY to the extent provided in the Contract Documents, unless otherwise modified in writing by WEBB COUNTY in accordance with other provisions of the Contract Documents.

42.2. WEBB COUNTY's instruction to Contractor may be issued through Design Consultant and WEBB COUNTY reserves the right to issue instructions directly to Contractor or through other designated WEBB COUNTY representatives. Contractor understands WEBB COUNTY may modify the authority of such Design Consultant as provided in the terms of its contractual relationship with Design Consultant, and WEBB COUNTY shall, in such event, be vested with powers formerly exercised by such Design Consultant, provided written notice of such modification immediately shall be served on Contractor. Nothing herein shall authorize independent agreements between Contractor and Design Consultant, nor shall Design Consultant be deemed to have a legal relationship with Contractor.

42.3. Neither Design Consultant nor WEBB COUNTY shall have control over, charge of nor be responsible for the construction means, methods or techniques, or for the safety precautions, quality control program and other programs in connection with the Work, since these solely are Contractor's rights and responsibilities under the Contract Documents. Sequencing and procedures shall be coordinated and agreed upon by WEBB COUNTY, Design Consultant and Contractor and shall remain the responsibility of Contractor for implementation.

- 4.24. Design Consultant shall not be responsible for Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. Design Consultant shall not have control over, charge of and shall not be responsible for acts or omissions of Contractor, Subcontractor, their respective agents, employees or any other persons or entities performing portions of the Work.
- 4.25. WEBB COUNTY and Contractor shall endeavor to communicate with each other directly, through Design Consultant and/or through the ODR about matters arising out of or relating to the Contract. Communications by and with Design Consultant's Consultants shall be through Design Consultant. Communications by WEBB COUNTY and Design Consultant with Contractor's employees Subcontractors and material suppliers shall be through Contractor. All communications by and with WEBB COUNTY's separate contractors shall be through WEBB COUNTY.
- 4.26. Design Consultant shall review and approve or take other appropriate action upon Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Design Consultant shall perform these reviews in a timely fashion so as to not delay the Work. Design Consultant promptly shall respond to submittals such as Shop Drawings, Product Data and Samples pursuant to the procedures set forth in the Project Specifications. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of equipment or systems, all of which remain the responsibility of Contractor as required by the Contract Documents. Design Consultant's review of Contractor's submittals shall not relieve the Contractor of the obligations under **Sections 3.3, 3.5 and 3.12** herein. Design Consultant's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by Design Consultant, any construction means, methods, techniques, sequences or procedures. Design Consultant's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- 4.27. Upon written request of WEBB COUNTY or Contractor, Design Consultant shall issue its interpretation of the requirements of the Plans and Specifications. Design Consultant's response to such requests shall be made in writing within a time limit agreed upon or otherwise with reasonable promptness. If no agreement is made concerning the time within which interpretations required of Design Consultant shall be furnished in compliance with this **Section 4.2**, then no delay shall be recognized on account of any failure by Design Consultant to furnish such interpretations except for actual substantiated delays, for which Contractor is not responsible, occurring more than fifteen (15) calendar days after written request is made for the interpretations.
- 4.28. Interpretations and decisions of Design Consultant shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in

writing or in the form of drawings.

429. Design Consultant's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents and not expressly overruled in writing by WEBB COUNTY.

43. CLAIMS AND DISPUTES

43.1. **DEFINITION.** A Claim is a demand or assertion by one of the Parties seeking, as a matter of right, an adjustment or interpretation of Contract terms, payment of money, extension of time or other relief, with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between WEBB COUNTY and Contractor arising out of or relating to the Contract. Claims must be initiated by written notice. Except as contemplated by **Section 8.2** herein, every Claim of Contractor, whether for additional compensation, additional time or other relief including, but not limited to, claims arising from concealed conditions, shall be signed and sworn to by an authorized corporate officer (if not a corporation, then an official of the company authorized to bind Contractor by his/her signature) of Contractor, verifying the truth and accuracy of the Claim. The responsibility to substantiate a Claim shall rest with the Party making the Claim.

43.2. **TIME LIMIT ON CLAIMS.** Except for those Claims resulting from unusually severe weather, as addressed in **Section 4.3.6** herein, Contractor Claims must be initiated within fifteen (15) calendar days after occurrence of the event giving rise to such Claim. Claims by Contractor must be submitted by written notice to both WEBB COUNTY and Design Consultant. Claims by WEBB COUNTY must be submitted by written notice to Contractor. Failure by Contractor to submit written notice of the claim within fifteen (15) calendar days shall constitute a waiver of such claim.

43.3. **CONTINUING CONTRACT PERFORMANCE.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in **Sections 4.5.1, Section 9.7.1** and **Article 14** herein, Contractor shall proceed diligently with performance of the Contract and WEBB COUNTY shall continue to make payments in accordance with the Contract Documents.

43.4. **CLAIMS FOR CONCEALED OR UNKNOWN CONDITIONS.** If conditions are encountered at the Site which either are subsurface or are otherwise concealed physical conditions which were not known to Contractor and which differ materially from those indicated in the Contract Documents or in the reports of investigations and tests of subsurface and latent physical conditions provided by WEBB COUNTY to Contractor prior to the preparation by Contractor of its Bid, as referred to above, or are unknown physical conditions of an unusual nature, which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of

the character provided for in the Contract Documents in the general vicinity of the Project site, then Contractor promptly shall notify WEBB COUNTY and Design Consultant of such conditions before conditions are disturbed, and in no event more than three (3) workdays after first observation of the conditions. Upon notification by Contractor, Design Consultant promptly shall investigate such conditions and report its findings to WEBB COUNTY. If WEBB COUNTY and Contractor cannot agree on an adjustment to the Contract Sum or Contract Time, the adjustment shall be subject to dispute resolution pursuant to **Section 4.5** herein.

43.5. **CLAIMS FOR ADDITIONAL COST.** If Contractor wishes to make a Claim for an increase in the Contract Sum, written notice as provided in this **Section 4.3** shall be given and accepted by WEBB COUNTY before proceeding to execute the Work, provided prior notice is not required for Claims relating to an emergency endangering life or property. Contractor shall file a Claim in accordance with this **Section 4.3** if Contractor believes additional cost is involved for reasons including, but not limited to:

- (1) a written interpretation from Design Consultant;
- (2) an order by WEBB COUNTY to stop the Work where Contractor was not at fault;
- (3) a written order for a minor change in the Work issued by Design Consultant;
- (4) failure of payment by WEBB COUNTY;
- (5) termination of the Contract by WEBB COUNTY for convenience;
- (6) WEBB COUNTY's suspension; or
- (7) other reasonable grounds.

43.6. **CLAIMS FOR ADDITIONAL TIME**

43.6.1. If Contractor wishes to make Claim for an increase in the Contract Time, written notice, as required in this **Section 4.3**, shall be given. Contractor's Claim shall include an estimate of probable impact of delay on progress of the Work in accordance with **Section 3.10.11** herein. In the case of a continuing delay, only one Claim is necessary.

43.6.2. Contractor shall be entitled to an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of weather normally experienced at the job site, as determined from climatological data set forth by

National Weather Service and which affects the Project's critical path. Contractor shall bear the entire economic risk of all-weather delays and disruptions. Contractor shall not be entitled to any increase in the Contract Sum by reason of such delays or disruptions. With regard to Vertical projects with WEBB COUNTY, requests for an extension of time, pursuant to this **Section 4.3.6**, shall be submitted to WEBB COUNTY and Design Consultant not later than the fifteenth (15th) calendar day of the month following the month during which the delays or disruptions occurred and shall include documentation and all details reasonably available, demonstrating the nature and duration of the delays or disruptions and their effect on the critical path of the Schedule. With regard to Horizontal projects with WEBB COUNTY, upon Contractor reaching Substantial Completion, WEBB COUNTY and Contractor shall look back at the entire duration of the calendar day Project and review the totality of what Contractor claims were unusually severe weather disruptions. If the Project was delayed or disrupted due to unusually severe weather in excess of weather normally experienced over the entire duration of the Project, Contractor may make a Claim for an extension of the Contract Time for delays or disruptions due to unusually severe weather in excess of weather normally experienced at the job site, as determined from climatological data set forth by National Weather Service and which affects the Project's critical path. Any time extension granted to Contractor for either Vertical or Horizontal projects under **Section 4.3.6** shall be non-compensatory.

- 4.3.7. **INJURY OR DAMAGE TO PERSON OR PROPERTY.** If either Party to the Contract suffers injury or damage to person or property because of an act or omission of the other Party or an act or omission of others for whose acts such other Party legally is responsible (including, with respect to WEBB COUNTY, the acts or omissions of WEBB COUNTY's separate contractors), written notice of such injury or damage, whether or not insured, shall be given to the other Party within a reasonable time not exceeding three (3) calendar days after the discovery of the injury or damage. The written notice shall provide sufficient detail to enable the other Party to investigate the injury or damage.
- 4.3.8. **CHANGE IN UNIT PRICES.** As applicable, if unit prices are stated in the Contract Documents or subsequently are agreed upon by WEBB COUNTY and Contractor and if quantities originally contemplated are materially changed in a proposed Change Order or Field Work Directive, such that the application of such unit prices to quantities of Work proposed shall cause substantial inequity to WEBB COUNTY or Contractor, the applicable unit prices shall be equitably adjusted.
- 4.3.9. **CLAIMS FOR CONSEQUENTIAL DAMAGES.** Except as otherwise provided in this Contract, in calculating the amount of any Claim or any measure of damages for breach of contract (such provision to survive any termination following such breach), the following standards shall apply both to Claims by Contractor and to Claims by WEBB COUNTY:

- 43.9.1. No consequential, indirect, incidental, punitive or exemplary damages shall be allowed, whether or not foreseeable, regardless of whether based on breach of contract, tort (including negligence), indemnity, strict liability or other bases of liability.
- 43.9.2. No recovery shall be based on a comparison of planned expenditures to total actual expenditures, on estimated losses of labor efficiency, on a comparison of planned man loading to actual man loading or on any other similar analysis used to show total cost or other damages.
- 43.9.3. Damages are limited to extra costs specifically shown to directly have been caused by a proven wrong for which the other Party is claimed to be responsible.
- 43.9.4. The maximum amount of any recovery for delay, to the extent damages for delay are not otherwise disallowed by the terms of the Contract Documents, shall be as is provided in **Article VIII** herein.
- 43.9.5. No damages shall be allowed for home office overhead or other home office charges or any Eichleay formula calculation, except or unless as expressly authorized by the Contract Documents.
- 43.9.6. No profit shall be allowed on any damage Claim, except or unless as expressly authorized by the Contract Documents.
- 4.3.10. **SUBCONTRACTOR PASS-THROUGH CLAIMS.** In the event any Subcontractor of Contractor asserts a Claim to Contractor that Contractor seeks to pass through to WEBB COUNTY under the Contract Documents, any entitlement to submit and assert the Claim as to WEBB COUNTY shall be subject to:
- 43.10.1. the requirements of **Section 4.3** herein of these General Conditions; and
- 43.10.2. the following additional three (3) requirements listed below, all three of said additional requirements shall be conditions precedent to the entitlement of Contractor to seek and assert such Claim against WEBB COUNTY:
- (1) Contractor shall:
- (a) have direct legal liability as a matter of contract, common law or statutory law to Subcontractor for

the claim Subcontractor is asserting; or

- (b) have entered into a written liquidating agreement with Subcontractor, prior to the Claim's occurrence, under which Contractor has agreed to be legally responsible to the Subcontractor for pursuing the assertion of such Claim against WEBB COUNTY under said Contract and for paying to Subcontractor any amount that may be recovered, less Contractor's included markup (subject to the limits in the Contract Documents for any markup). The relationship, liability or responsibilities shall be identified in writing by Contractor to WEBB COUNTY at the time such Claim is submitted to WEBB COUNTY and a copy of any liquidating agreement shall be included by Contractor in the Claim submittal materials.

(2) Contractor shall have reviewed the Claim of the Subcontractor prior to its submittal to WEBB COUNTY and independently shall have evaluated such Claim in good faith to determine the extent to which the Claim is believed in good faith to be valid. Contractor shall inform WEBB COUNTY it has made a review, evaluation and determination the Claim is being made in good faith and the claim is believed to be valid.

(3) Subcontractor making the Claim to Contractor shall certify to both Contractor and WEBB COUNTY Subcontractor has compiled, reviewed and evaluated the merits of such Claim and the Claim is believed in good faith by Subcontractor to be valid. A copy of the certification by Subcontractor shall be included by Contractor in the Claim submittal materials.

43.103. Any failure of Contractor to comply with any of the foregoing requirements and conditions precedent with regard to any such Claim shall constitute a waiver of any entitlement to submit or pursue such Claim.

43.104. Receipt and review of a Claim by WEBB COUNTY under this **Section 4.3** shall not be construed as a waiver of any defenses to the Claim available to WEBB COUNTY under the Contract Documents or at law.

4.3.11. **WEBB COUNTY'S RIGHT TO ORDER ACCELERATION AND TO**

DENY CLAIMED AND APPROPRIATE TIME EXTENSIONS, IN WHOLE OR IN PART. Contractor acknowledges and agrees Substantial Completion of the Work by or before the Scheduled Completion Date is of substantial importance to WEBB COUNTY. The following provisions, therefore, shall apply:

43.11.1. If Contractor falls behind the approved construction schedule for whatever reason, WEBB COUNTY shall have the right, in WEBB COUNTY's sole discretion, to order Contractor to develop a schedule recovery plan to alter its work sequences or to otherwise accelerate its progress in such a manner as to achieve Substantial Completion on or before the Contract Time completion date or such other date as WEBB COUNTY reasonably may direct. Upon receipt, Contractor shall take any and all action necessary to comply with WEBB COUNTY's order. In such event, any possible right, if any, of Contractor to additional compensation for any acceleration shall be subject to the terms of this **Section 4.3.11**.

43.11.2. In the event WEBB COUNTY agrees Contractor is entitled to an extension of Contract Time and Contractor properly has initiated a Claim for a time extension in accordance with **Section 4.3** herein, WEBB COUNTY shall have the right, in WEBB COUNTY's sole discretion, to deny any portion of Contractor's Claim for an extension of Contract Time and order Contractor to exercise its commercially reasonable efforts to achieve Substantial Completion on or before the contractual date established, but for the existence of the event giving rise to the Claim, by giving written notice to Contractor provided within fourteen (14) calendar days after receipt of Contractor's Claim. If WEBB COUNTY denies Contractor's claim for an extension of Contract Time under this **Section 4.3.11**, either in whole or in part, Contractor shall proceed to prosecute the Work in such a manner as to achieve Substantial Completion on or before the then existing Scheduled Completion Date. If, after initiating good faith acceleration efforts and it is shown, through no fault of Contractor, Contractor fell behind on the approved construction schedule and Contractor still is unable to achieve Substantial Completion within the originally scheduled Contract Time, WEBB COUNTY shall not be entitled to Liquidated Damages. Nothing in this **Section 4.3.11.2** shall prohibit Contractor from filing a Claim for an extension of time Contractor feels it may be owed.

43.11.3. If WEBB COUNTY orders Contractor to accelerate the Work under **Section 4.3.11** herein, and Contractor would have been entitled to a time extension for a reason specifically allowed

under the Contract Documents for an amount of time that would have justified approval by WEBB COUNTY if not for the need and right to complete the Project within the stipulated period, Contractor may initiate a Claim for schedule recovery or acceleration costs, pursuant to **Section 4.3** herein. Any resulting Claim for these costs properly initiated by Contractor under **Section 4.3** herein shall be limited to those reasonable and documented direct costs of labor, materials, equipment and supervision solely and directly attributable to the actual recovery or acceleration activity necessary for Contractor to bring the Work back within the then existing approved construction schedule. These direct costs of Contractor include, but are not limited to, the premium portion of overtime pay for additional crew, shift, or equipment costs, if requested in advance by Contractor and approved in writing by WEBB COUNTY. A percentage markup for the prorated cost of premium on the existing performance and payment bonds and required insurance, profit and field overhead, not to exceed the markups permitted by this Contract, shall be allowed on the claimed costs. **NO OTHER MARKUP FOR PROFIT, OVERHEAD (INCLUDING, BUT NOT LIMITED TO, HOME OFFICE OVERHEAD) OR ANY OTHER COSTS SHALL BE ALLOWED ON ANY ACCELERATION CLAIM.** WEBB COUNTY shall not be liable for any costs related to an acceleration claim other than those described in this **Section 4.3.11**.

4.3.12 **NO WAIVER OF GOVERNMENTAL IMMUNITY.** Nothing in this contract shall be construed to waive WEBB COUNTY's Governmental Immunity from a lawsuit, which Immunity is expressly retained to the extent it is not clearly and unambiguously waived by State law.

4.4. RESOLUTION OF CLAIMS AND DISPUTES

4.4.1. Claims by Contractor against WEBB COUNTY and Claims by WEBB COUNTY against Contractor, including those alleging an error or omission by Design Consultant but excluding those arising under **Section 10.3** and **Section 10.5** herein, shall be referred initially to Design Consultant for consideration and recommendation to WEBB COUNTY.

4.4.2. An initial recommendation by Design Consultant shall be required as a condition precedent to mediation or litigation of all Claims by the Parties arising prior to the date final payment is due, unless thirty (30) calendar days have passed after the Claim has been referred to Design Consultant with no recommendation having been rendered by Design Consultant.

- 4.4.3. Design Consultant shall review Claims and, within ten (10) work days of receipt of a Claim, take one or more of the following actions:
- (1) request additional supporting data from the Party making the Claim;
 - (2) issue an initial recommendation;
 - (3) suggest a compromise; or
 - (4) advise the Parties that Design Consultant is unable to issue an initial Recommendation, due to a lack of sufficient information or conflict of interest.
- 4.4.4. Following receipt of Design Consultant's initial recommendation regarding a Claim, WEBB COUNTY and Contractor shall attempt to reach agreement as to any adjustment to the Contract Sum and/or Contract Time. If no agreement is reached, either Party may request mediation of the dispute, pursuant to **Section 4.5** herein.
- 4.4.5. If Design Consultant requests either or any Party to provide a response to a Claim or to furnish additional supporting data, such requested Party shall provide a response or the requested supporting data to Design Consultant, advise Design Consultant when the response or supporting data shall be furnished or advise Design Consultant that no response or supporting data shall be furnished.
- 4.4.6. With receipt of all information requested by Design Consultant, Design Consultant shall review the Claim and all received information within ten (10) calendar days of receipt of the information and shall take one of the following actions:
- (1) issue a recommendation;
 - (2) suggest a compromise; or
 - (3) advise the Parties Design Consultant is unable to issue a recommendation due to lack information or conflict of interest.
- 4.4.7. Upon Design Consultant's action or inaction, the Parties may agree to accept recommendations made by either Party or may request mediation of the dispute pursuant to **Section 4.5** herein.
- 4.4.8. **WAIVER OF LIEN.** It is understood that, by virtue of this Contract, no mechanic, contractor, material man, artisan or laborer, whether skilled or unskilled, ever shall, in any manner, have a claim or acquire any lien upon the building or any of the improvements of whatever nature or kind so erected or to be erected by virtue of this Contract, nor upon any of the land upon which said building or any of the improvements are so erected, built or situated.

4.5. ALTERNATIVE DISPUTE RESOLUTION

4.5.1. **CONTINUATION OF WORK PENDING DISPUTE RESOLUTION.** Each Party is required to continue to perform its obligations under this Contract pending the final resolution of any dispute arising out of or relating to this Contract, unless it would be impossible or impracticable under the circumstances then present.

4.5.2. **REQUIREMENT FOR SENIOR LEVEL NEGOTIATIONS.** Before invoking mediation or any other alternative dispute process set forth herein, the Parties to this Contract agree that they first shall try to resolve any dispute arising out of or related to this Contract through discussions directly between those senior management representatives within their respective organizations who have overall managerial responsibility for similar projects. Both WEBB COUNTY and Contractor agree that this step shall be a condition precedent to use of any other alternative dispute resolution process. If the Parties' senior management representatives cannot resolve the dispute within thirty (30) calendar days after a Party delivers a written notice of such dispute to the other, then the Parties shall proceed with the alternative dispute resolution process contained in **Section 4.5** herein, including mediation and/or litigation. All negotiations pursuant to this **Section 4.5** are confidential and shall be treated as compromise and settlement negotiations for purposes of applicable rules of evidence.

4.5.3. **MEDIATION.** In the event that WEBB COUNTY and/or Contractor contend that the other has committed a material breach of this Contract, or the Parties cannot reach a resolution of a claim or dispute pursuant to **Section 4.4** herein, as a condition preceding to filing a lawsuit, either Party shall request mediation of the dispute with the following requirements:

4.5.3.1. Request for mediation shall be in writing, and shall request that the mediation commence not less than thirty (30) or more than ninety (90) calendar days following the date of the request, except upon agreement of both Parties.

4.5.3.2. In the event WEBB COUNTY and Contractor are unable to agree to a date for the mediation or to the identity of the mediator(s) within thirty (30) calendar days following the date of the request for mediation, all conditions precedent in this **Section 4.5** shall be deemed to have occurred.

4.5.3.3. The Parties shall share the mediator's fee and any mediation filing fees equally. Venue for any mediation or lawsuit arising under this Contract shall be in Webb County, Texas. Any agreement reached in mediation shall be enforceable as a settlement agreement in any court having jurisdiction thereof.

No provision of this Contract shall waive any immunity or defense. No provision of this Contract is consent to a suit.

4.6. INTERNET-BASED PROJECT MANAGEMENT SYSTEMS.

At its option, WEBB COUNTY may administer its design and construction management through an Internet-based Project Management system. In such cases, Contractor shall conduct communication through this medium and perform all Project-related functions utilizing this management system, to include all correspondences, submittals, Requests for Information, vouchers, payment requests and processing, Amendments, Change Orders and other administrative activities. When such a management system is employed, WEBB COUNTY shall administer the software, provide training to Project Team Members and shall make the software accessible via the Internet to all Project Team Members.

ARTICLE V. SUBCONTRACTORS

5.1. DEFINITION

A Subcontractor is defined and used herein as a person or entity that has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor, Sub-Consultant or an authorized representative of Subcontractor or Sub-Consultant. The term "Subcontractor" does not include a separate contractor or Subcontractor of a separate contractor.

5.2. AWARD OF SUBCONTRACTS AND OTHER CONTRACTS FOR PORTIONS OF THE WORK

- 5.2.1. Contractor shall, prior to entering into an agreement with such Subcontractor, notify WEBB COUNTY in writing of the names of all proposed first-tier Subcontractors for the Work.
- 5.2.2. Contractor shall not employ any Subcontractor or other person or organization (including those who are to furnish the principal items of materials or equipment), whether initially or as a substitute, against whom WEBB COUNTY may have reasonable objection. A Subcontractor or other person or organization identified in writing to WEBB COUNTY, prior to the Notice of Award and not objected to in writing by WEBB COUNTY prior to the Notice of Award, shall be deemed acceptable to WEBB COUNTY. Acceptance of any Subcontractor, other person or organization by WEBB COUNTY shall not constitute a waiver of any right of WEBB COUNTY to reject defective Work. If WEBB COUNTY, after due investigation, has reasonable objection to any Subcontractor, other person or organization proposed by Contractor after the Notice of Award, Contractor shall be required to submit an acceptable substitute. Contractor shall not be required to employ any Subcontractor, other

person or organization against whom Contractor has reasonable objection.

- 5.2.3. Contractor fully shall be responsible to WEBB COUNTY for all acts and omissions of its Subcontractors, persons and organizations directly or indirectly employed by them and persons and organizations for whose acts any of them may be liable to the same extent that Contractor is responsible for the acts and omissions of persons directly employed by Contractor. Nothing in the Contract Documents shall create any contractual relationship between WEBB COUNTY and any Subcontractor or other person or organization having a direct contract with Contractor, nor shall it create any obligation on the part of WEBB COUNTY to pay or to see to the payment of any moneys due any Subcontractor or other person or organization, except as may otherwise be required by law. WEBB COUNTY may furnish to any Subcontractor or other person or organization, to the extent practicable, evidence of amounts paid to Contractor on account of specific Work done.
- 5.2.4. The divisions and sections of the Specifications, as well as the identifications of any Drawings, shall not control Contractor in dividing the Work among Subcontractors or delineating the Work to be performed by any specific trade.
- 5.2.5. All Work performed for Contractor by a Subcontractor shall be performed pursuant to an appropriate agreement between Contractor and Subcontractor which specifically binds Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of WEBB COUNTY.

5.3. SUB-CONTRACTUAL RELATIONS

- 5.3.1. By appropriate agreement, written where legally required for validity, Contractor shall require each Subcontractor, to the extent of the Work to be performed by Subcontractor, to be bound to Contractor by the same terms and conditions of the Contract Documents. Through that binding commitment, Subcontractor shall assume all the obligations and responsibilities, including the responsibility for safety of Subcontractor's Work and workers, which Contractor, by these Documents, assumes toward WEBB COUNTY and Design Consultant. Each Subcontractor agreement shall preserve and protect the rights of WEBB COUNTY and Design Consultant under the Contract Documents, with respect to the Work to be performed by Subcontractor, so that subcontracting thereof shall not prejudice such rights. Where appropriate, Contractor shall require each Subcontractor to enter into similar agreements with Sub-Subcontractors. Contractor shall make available to each proposed Subcontractor, prior to the execution of all Subcontractor agreement(s), copies of the Contract Documents to which Subcontractor(s) shall be bound. Subcontractors similarly shall make copies of applicable portions of such documents available to their respective proposed Sub-Subcontractors.

5.4. CONTINGENT ASSIGNMENT OF SUBCONTRACTS

Each Subcontractor agreement for a portion of the Work assigned by Contractor to WEBB COUNTY shall provide:

- 5.4.1. an assignment is effective only after termination of the Contract by WEBB COUNTY and only for those Subcontractor agreements which WEBB COUNTY accepts by notifying Subcontractor and Contractor in writing; and
- 5.4.2. an assignment is subject to the prior rights of the Surety, if any, obligated under bond relating to the Contract.
- 5.4.3. upon any such assignment, if the Work has been suspended for more than thirty (30) calendar days, Subcontractor's compensation equally shall be adjusted for increase in cost resulting from the suspension.

ARTICLE VI. CONSTRUCTION BY WEBB COUNTY OR BY SEPARATE CONTRACTS

6.1. WEBB COUNTY'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

- 6.1.1. WEBB COUNTY reserves the right to perform construction or operations related to the Project with WEBB COUNTY's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the Site under General Conditions of the Contract identical or substantially similar to these. If Contractor claims that a delay or additional cost is involved, due to such action by WEBB COUNTY, Contractor shall make a Claim as provided in **Section 4.3** herein.
- 6.1.2. When separate contracts are awarded for different portions of the Project or for other construction or operations on the Project Site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor that executes each separate WEBB COUNTY Contractor contract.
- 6.1.3. WEBB COUNTY shall provide for coordination of the activities of WEBB COUNTY's own forces and of each separate contractor with the Work of Contractor and Contractor fully shall cooperate with said coordination. Contractor shall participate with other separate contractors and WEBB COUNTY in reviewing all construction schedules when directed by WEBB COUNTY to do so. Contractor shall make any revisions to its construction schedule deemed necessary after said joint review and mutual agreement. The revised construction schedules then shall constitute the schedules to be used by Contractor, separate contractors and WEBB COUNTY until subsequently revised.
- 6.1.4. Unless otherwise provided in the Contract Documents, when WEBB COUNTY

Exhibit "D"

Webb County General Conditions
Webb County Jail Kitchen Cooler and Freezer Upgrades

and WEBB COUNTY's own forces perform construction or operation related to the Project, WEBB COUNTY shall be subject to the same obligations and to have the same rights that apply to Contractor under these General Conditions and the Contract Documents.

6.2. MUTUAL RESPONSIBILITY

- 6.2.1. Contractor shall afford WEBB COUNTY and WEBB COUNTY's separate contractor(s) reasonable opportunity for the introduction and storage of materials and equipment, the performance of their activities and the coordination of Contractor's construction and operations with theirs, as required by the Contract Documents.
- 6.2.2. If part of Contractor's Work depends upon the construction or operations by WEBB COUNTY or a separate contractor for the proper execution or results, Contractor shall, prior to proceeding with that portion of the Work, promptly report to WEBB COUNTY apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of Contractor to so report shall constitute an acknowledgment that WEBB COUNTY's separate contractor's completed or partially completed construction is fit and proper to receive Contractor's Work, except as to defects not then reasonably discoverable.
- 6.2.3. WEBB COUNTY shall be reimbursed by Contractor for costs incurred by WEBB COUNTY which are payable to a separate contractor because of delays, improperly timed activities or defective construction of Contractor. WEBB COUNTY shall be responsible to Contractor for costs incurred by Contractor because of delays, improperly timed activities and damage to the Work or defective construction of WEBB COUNTY's separate contractor(s).
- 6.2.4. Contractor promptly shall remedy any damage wrongfully caused by Contractor or its Subcontractor(s) to any completed or partially completed construction or to property of WEBB COUNTY or WEBB COUNTY's separate contractor(s), as provided in **Section 10.2.5** herein.
- 6.2.5. WEBB COUNTY and each separate contractor shall have the same responsibilities for cutting and patching as are described for Contractor in **Section 3.14** herein.

6.3. WEBB COUNTY'S RIGHT TO CLEAN UP

If a dispute arises among or between Contractor, WEBB COUNTY's separate contractor(s) and WEBB COUNTY, as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, WEBB COUNTY may clean up and those costs shall be allocated amongst those parties responsible.

ARTICLE VII. CHANGES IN THE WORK

7.1. GENERAL

- 7.1.1. Changes in the Work may be accomplished, after the execution of the Contract and without invalidating the Contract, by Change Order, Field Work Directive/Force Account or order for a minor change in the Work that does not affect the Contract Time or the Contract Sum, subject to the limitations stated in this **Article VII** and elsewhere in the Contract Documents.
- 7.1.2. A Change Order shall be based upon agreement between WEBB COUNTY and Contractor; a Field Work Directive requires a directive by WEBB COUNTY and, if necessary, Design Consultant and may or may not be agreed to by Contractor; and an order for a minor change in the Work that does not affect the Contract Time or the Contract Sum may be issued by WEBB COUNTY.
- 7.1.3. Changes in the Work shall be performed under applicable provisions of the Contract Documents and Contractor promptly shall proceed with the changed Work, unless otherwise provided in a Change Order, Field Work Directive or order for a minor change in the Work or in this **Article VII**.
- 7.1.4. Changes resulting from Change Orders, Field Work Directives or orders for minor changes shall be recorded by Contractor on the As-Built record documents.

7.2. CHANGE ORDERS

- 7.2.1. A Change Order is a written modification of the Contract signed by both WEBB COUNTY and Contractor (and approved by WEBB COUNTY COMMISSIONERS COURT, if required) that authorizes an addition, deletion or revision in the Work or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Contract.
- 7.2.2. Methods used in determining adjustments to the Contract Sum may include those listed in **Section 7.3.4** herein.
- 7.2.3. Acceptance of a Change Order by Contractor shall constitute a full accord and satisfaction for any and all claims and costs of any kind, whether direct or indirect, including, but not limited to impact, delay or acceleration damages arising from the subject matter of the Change Order. Each Change Order shall be specific and final as to prices and any extensions of time, with no reservations or other provisions allowing for future additional money or time as a result of the particular changes identified and fully compensated in the Change Order. The execution of a Change Order by Contractor shall constitute conclusive evidence of Contractor's agreement to the ordered changes in the Work, cost and additional time, if any. This Contract, as amended, forever

releases any Claim against WEBB COUNTY for additional time or compensation for matters relating to or arising out of or resulting from the Work included within or affected by the executed Change Order. This release of any Claim applies to Claims related to the cumulative impact of all Change Orders and to any Claim related to the effect of a change on unchanged Work.

- 724. WEBB COUNTY or Design Consultant shall prepare Change Orders and Field Work Directives and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time. Such changes shall be effected by written order, which Contractor promptly shall carry out and record on the As-Built record documents.
- 725. Contractor and Subcontractors shall be entitled to include overhead and profit in any Change Order only as provided by Project Specifications.

7.3. FIELD WORK DIRECTIVES

- 731. A Field Work Directive is a written directive signed by WEBB COUNTY and, if necessary, Design Consultant directing a change in the Work prior to agreement on an adjustment, if any, in the Contract Sum or Contract time, or both. WEBB COUNTY may, by Field Work Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, with any changes to the Contract Sum and/or the Contract Time to be adjusted according to the terms of this **Section 7.3**.
- 732. A Field Work Directive shall be used in the absence of total agreement on the terms of a Change Order. WEBB COUNTY shall issue a Field Work Directive to Contractor with a defined Not-To-Exceed dollar amount for the scope of Work defined.
- 733. Upon receipt of a Field Work Directive, Contractor promptly shall proceed with the change in the Work involved and, in writing, advise WEBB COUNTY of the Contractor's agreement or disagreement with the method, if any, provided in the Field Work Directive for determining the proposed adjustment in the Contract Sum or Contract Time.
- 734. If the Field Work Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods, as applicable:
 - 7.3.4.1. mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
 - 7.3.4.2. prices, including unit prices, stated in the Contract Documents or subsequently agreed upon;

7.3.4.3. cost to be determined in a manner agreed upon by WEBB COUNTY and Contractor and a mutually acceptable fixed or percentage fee; or

7.3.4.4. as provided in **Section 7.3.6** herein.

735. If Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall initially be determined by Design Consultant on the basis of reasonable costs and savings attributable to the change including, in case of an increase in the Contract Sum, as applicable, a reasonable allowance for overhead and profit. In such case, and also under **Section 7.3.4.3** herein, Contractor shall keep and present, in such form as WEBB COUNTY may prescribe, an itemized and detailed accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this **Section 7.3.5** shall be limited to the following:

7.3.5.1. costs of all labor, including social security, and unemployment insurance, fringe benefits required by Law, agreement or custom, and workers' compensation insurance;

7.3.5.2. costs of all materials, supplies and equipment, including cost of transportation, storage installation, maintenance, dismantling and removal, whether incorporated or consumed;

7.3.5.3. rental costs of all machinery and equipment, exclusive of hand tools, whether rented from Contractor or others, including costs of transportation, installation, minor repairs and replacements, dismantling and removal;

7.3.5.4. expenses incurred in accordance with Contractor's standard personnel policy for travel approved in writing by WEBB COUNTY in advance;

7.3.5.5. costs of premiums for all bonds and insurance, permit fees and allowable sales, use or similar taxes related to the Work;

7.3.5.6. all additional costs of supervision and field office personnel directly attributable to the change; and

7.3.5.7. all payments made by the Contractor to Subcontractors.

736. The amount of credit to be allowed by Contractor to WEBB COUNTY for a deletion or change which results in a net decrease in the Contract Sum shall be actual net cost of the deleted or change Work, plus Contractor's allocated percent for profit and overhead, as confirmed by Design Consultant, subject to

any equitable adjustment recommended by Design Consultant and approved by WEBB COUNTY. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase or decrease, if any, with respect to that change.

737. If WEBB COUNTY and Contractor agree with the determination made by Design Consultant concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

738. If WEBB COUNTY and Contractor cannot reach an agreement on either an adjustment on the Contract Sum and Contract Time, pursuant to an issued Field Work Directive, WEBB COUNTY and Contractor shall execute a Change Order for the adjustment on the Contract Sum or Contract Time, if any, the Parties do agree upon for the Work performed and Contractor reserves the right to file a Claim for any disagreements in Contract Sum or Contract Time not addressed in the Change Order, pursuant to **Section 4.4** herein. If WEBB COUNTY and Contractor cannot agree on both the adjustment in the Contract Sum and the Contract Time associated with an issued Field Work Directive, WEBB COUNTY unilaterally shall file a Change Order listing WEBB COUNTY's adjustment in the Contract Sum and/or Contract Time and Contractor reserves the right to file a Claim for payment and/or time, pursuant to **Section 4.4** herein.

7.4. MINOR CHANGES TO THE WORK

WEBB COUNTY or Design Consultant both shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Contract Documents. Such changes shall be effected by written order and shall be binding on WEBB COUNTY and Contractor. Contractor promptly shall carry out such written orders and record such changes in the As-Built drawings.

7.5. TIME REQUIRED TO PROCESS CHANGE ORDERS

751. All responses by Contractor to proposal requests from WEBB COUNTY or Design Consultant shall be accompanied by a complete itemized breakdown of costs. Responses to proposal requests shall be submitted sufficiently in advance of the required work to allow WEBB COUNTY and Design Consultant a minimum of thirty (30) calendar days after receipt by WEBB COUNTY to review the itemized breakdown and to prepare or distribute additional documents as may be necessary. Each of Contractor's responses to proposal requests shall include a statement that the cost and additional time described and requested in Contractor's response represents the complete, total and final cost and additional Contract Time associated with the extra work, change,

addition to, omission, deviation, substitution or other grounds for seeking extra compensation or additional time under the Contract Documents, without reservation or further recourse.

752. All Change Orders require written approval by either WEBB COUNTY or WEBB COUNTY COMMISSIONERS COURT. The approval process requires a minimum of forty-five (45) calendar days after submission to WEBB COUNTY in final form with all supporting data. Receipt of a submission by WEBB COUNTY does not constitute acceptance or approval of a proposal, nor does it constitute a warranty that the proposal shall be authorized by WEBB COUNTY or WEBB COUNTY COMMISSIONERS COURT Resolution or Administrative Action. **THE TIME REQUIRED FOR THE APPROVAL PROCESS SHALL NOT BE CONSIDERED A DELAY AND NO EXTENSIONS TO THE CONTRACT TIME OR INCREASE IN THE CONTRACT SUM SHALL BE CONSIDERED OR GRANTED AS A RESULT OF THIS PROCESS.** Pending the approval of a Change Order as described above, Contractor shall proceed with the work under a pending Change Order only if directed in writing to do so by WEBB COUNTY.

ARTICLE VIII. TIME

8.1. PROGRESS AND COMPLETION

- 8.1.1. TIME LIMITS STATED IN THE CONTRACT DOCUMENTS ARE OF THE ESSENCE OF THE CONTRACT. By executing the Contract, Contractor confirms that the Contract Time is a reasonable period for performing the Work.
- 8.1.2. Contractor shall proceed with the Work expeditiously using adequate forces and shall achieve Substantial Completion within the Contract Time.
- 8.1.3. For Projects not affecting WEBB COUNTY traffic, a determination made solely by WEBB COUNTY on a project-by-project basis, and a Working Day, as defined in **Section 1.1.1** herein, is measured from sunrise to sundown Monday through Friday, nothing in this **Article VIII** shall be construed as prohibiting Contractor from working on Saturdays if it so desires and giving WEBB COUNTY at least the prerequisite forty-eight (48) hours written notice of intent to perform Work on Saturday, Sunday and holidays so that WEBB COUNTY's representative may be scheduled to observe/inspect said Work and only if Contractor has performed work on the Project during the same week of the requested Saturday, Sunday or holiday.
- 8.1.4. On Projects affecting WEBB COUNTY traffic, a determination made solely by WEBB COUNTY on a project-by-project basis, Contractor shall work sunrise to sundown Monday through Saturday.

8.2. DELAYS AND EXTENSIONS OF TIME

- 82.1. Neither WEBB COUNTY nor Contractor, except as provided for in this **Section 8.2**, shall be liable to the other for any delay to Contractor's Work by reason of fire, act of God, riot, strike or any other cause beyond WEBB COUNTY's control. Should any of these listed factors delay the Work's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and WEBB COUNTY, Contractor shall receive an extension of the Contract Times equal to the delay if a written claim is made within five (5) calendar days of the delaying event and granted by WEBB COUNTY. Under no circumstances shall WEBB COUNTY be liable to pay Contractor any compensation for such delays. Note that any request for an extension of time due to delays or disruption caused by unusually severe weather are addressed in **Section 4.3.6.2** herein.
- 82.2. Should Contractor be delayed solely by the act, negligence or default of WEBB COUNTY or Design Consultant, and should any of these factors delay the Project's critical path, as evidenced by a Time Impact Analysis developed by Contractor and verified by Design Consultant, Program Manager and WEBB COUNTY, Contractor shall receive an extension of the Contract Time equal to the verified delay or portion thereof if a written claim is made within five (5) calendar days of the act, negligence or default of WEBB COUNTY or Design Consultant and granted by WEBB COUNTY. In addition, Contractor, upon timely notice to WEBB COUNTY, with substantiation by WEBB COUNTY and Design Consultant and upon approval of WEBB COUNTY, shall be compensated for its Project facilities and field management expenses on a per diem basis (said per diem includes the costs incurred by Contractor to administer its Work and does not include costs associated for any tier of Subcontractor or supplier to administer their Work. Compensation for Subcontractor's and supplier's compensable delay affecting the Project critical path shall be separate and apart from the per diem cost due and payable to the Contractor) for the particular Project delayed and for the period of the critical path delay attributable to a WEBB COUNTY caused event. In no event shall Contractor be entitled to home office or other off-site expenses or damages.
- 82.3. Claims relating to time shall be made in accordance with applicable provisions of **Section 4.3** herein.
- 82.4. This Contract does not permit the recovery of damages by Contractor for delay, disruption or acceleration, other than those described in **Section 8.2.2** herein, as provided under **Section 4.3.11(3)** herein and those justified by a Time Impact Analysis. Contractor agrees that it fully shall be compensated for all delays solely by an extension of non-compensatory time or as contemplated in **Section 8.2.2** herein.

ARTICLE IX. PAYMENTS AND COMPLETION

9.1. CONTRACT SUM

The Contract Sum is stated in the Contract and, including authorized adjustments, is the total maximum not-to-exceed amount payable by WEBB COUNTY to Contractor for performance of the Work under the Contract Documents. Contractor accepts and agrees that all payments pursuant to this Contract are subject to the availability and appropriation of funds by the WEBB COUNTY COMMISSIONERS COURT. If funds are not available and/or appropriated, this Contract shall immediately be terminated with no liability to any Party to this Contract.

92. SCHEDULE OF VALUES

- 92.1. A Schedule of Values for all of the Work shall be submitted by Contractor and shall include quantities and prices of items which, when added together, equal a contract Price and subdivides the Work into component parts in sufficient detail to serve as the basis for progress payments during performance of the Work. Where applicable, overhead and profit shall be included as a separate line item.
- 92.2. Before the first Application for Payment, Contractor shall submit to WEBB COUNTY and Design Consultant a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as WEBB COUNTY and Design Consultant may require. This schedule, unless objected to by Design Consultant or WEBB COUNTY, shall be used as a basis for reviewing Contractor's Applications for Payment.

93. APPLICATIONS FOR PAYMENT

- 93.1. Contractor shall submit Applications for Payment to WEBB COUNTY electronically, at minimum, every thirty (30) days throughout the duration of the Project. Contractor electronically shall attach to its Application for Payment all data substantiating Contractor's right to payment as WEBB COUNTY or Design Consultant may require, such as copies of requisitions from Subcontractors and material suppliers reflecting retainage, if provided for in the Contract Documents, and reflecting a deduction for Liquidated Damages, if applicable. Applications for Payment shall not include requests for payment for portions of the Work which Contractor does not intend to pay to a Subcontractor or material supplier, unless such Work has been performed by others whom Contractor intends to pay.
- 93.2. Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the Site for subsequent incorporation in the Work and verified by WEBB COUNTY. If approved in advance in writing by WEBB COUNTY, payment similarly may be made for materials and equipment suitably stored off the Site at a location agreed upon in writing and verified by WEBB COUNTY. Payment for materials and equipment stored on or off the Site shall be conditioned upon

compliance by Contractor with procedures reasonably satisfactory to WEBB COUNTY to establish WEBB COUNTY's title to such materials and equipment or otherwise protect WEBB COUNTY's interest. Contractor solely shall be responsible for payment of all costs of applicable insurance, storage and transportation to the site for materials and equipment stored off the site.

933. Contractor warrants that, upon submittal of an Application for Payment, all Work for which payment previously has been received from WEBB COUNTY shall, to the best of Contractor's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of Contractor, Subcontractors, material suppliers or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work. **CONTRACTOR SHALL INDEMNIFY AND HOLD WEBB COUNTY HARMLESS FROM ANY LIENS, CLAIMS, SECURITY INTEREST OR ENCUMBRANCES FILED BY CONTRACTOR, SUBCONTRACTORS OR ANYONE CLAIMING BY, THROUGH OR UNDER CONTRACTOR OR SUBCONTRACTOR(S) FOR ITEMS COVERED BY PAYMENTS MADE BY WEBB COUNTY TO CONTRACTOR.**

934. By submission of an Application for Payment, Contractor certifies that there are no known liens or bond claims outstanding as of the date of said Application for Payment, that all due and payable bills with respect to the Work have been paid to date or are included in the amount requested in the current application and, except for such bills not paid but so included, there is no known basis for the filing of any liens or bond claims relating to the Work and that releases from all Subcontractors and Contractor's material men have been obtained in such form as to constitute an effective release of lien or claim under the laws of the State of Texas covering all Work theretofore performed and for which payment has been made by WEBB COUNTY to Contractor; provided if any of the foregoing is not true and cannot be certified, Contractor shall revise the certificate as appropriate and identify all exceptions to the requested certifications.

94. PAY APPLICATION APPROVAL

94.1. Design Consultant shall, within five (5) business days after the electronic receipt of Contractor's Application for Payment either approve the Application for Payment or reject the Application for Payment and state on the electronic notification to Contractor and WEBB COUNTY the Design Consultant's reasons for withholding approval, as provided in **Section 9.5.1** herein.

94.2. The certification of an Application for Payment shall constitute a representation by Design Consultant to WEBB COUNTY, based on Design Consultant's evaluation of the Work and the data comprising the Application for Payment, that the Work has progressed to the point indicated and that, to the best of Design Consultant's knowledge, information and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations

are subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to results of subsequent tests and inspections, to correction of minor deviations from the Contract Documents prior to completion and to any specific qualifications expressed by Design Consultant. The issuance of a Certificate for Payment further shall constitute a representation that Contractor is entitled to payment in the amount certified. However, the issuance of a Certificate for Payment shall not be a representation Design Consultant has:

- (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work;
- (2) reviewed construction means, methods, techniques, sequences or procedures;
- (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by WEBB COUNTY to substantiate Contractor's right to payment; or
- (4) made an examination to ascertain how or for what purpose Contractor has used money previously paid on account of the Contract Sum.

95. DECISIONS TO REJECT APPLICATION FOR PAYMENT

95.1. The Application for Payment may be rejected to protect WEBB COUNTY for any of the following reasons:

- 9.5.1.1. Work not performed or defective;
- 9.5.1.2. third party claims filed or reasonable evidence indicating a probable filing of such claims for which Contractor is responsible hereunder unless security acceptable to WEBB COUNTY is provided by Contractor;
- 9.5.1.3. failure of Contractor to make payments properly to Subcontractors or for labor, materials or equipment;
- 9.5.1.4. reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum and Contractor has failed to provide WEBB COUNTY adequate assurance of its continued performance within a reasonable time after demand;
- 9.5.1.5. damage to WEBB COUNTY or another contractor;
- 9.5.1.6. reasonable evidence that the Work shall not be completed within the Contract Time, and that the unpaid balance would not be

adequate to cover actual or Liquidated Damages for the anticipated delay;

- 9.5.1.7. persistent failure by Contractor to carry out the Work in accordance with the Contract Documents;
- 9.5.1.8. the applicable Liquidated Damages were not included in the Application for Payment;
- 9.5.1.9. billing for unapproved/unverified materials stored off Site; or
- 9.5.1.10. a current schedule update has not been submitted by Contractor.

952. WEBB COUNTY shall not be deemed in default by reason of rejecting Application for Payment as provided for in **Section 9.5.1** herein.

9.6. PROGRESS PAYMENTS

961. After the final approval of the Application for Payment, WEBB COUNTY may make payment in the manner and within the time provided in the Contract Documents.

962. During the latter part of each month, as the Work progresses on all WEBB COUNTY Contracts regardless of Contract Sum, WEBB COUNTY and Contractor shall determine the cost of the labor and materials incorporated into the Work during that month and actual invoiced cost of Contractor-acquired materials stored on the Project Site, and/or within off-site storage facilities either owned or leased by Contractor. Upon receipt of a complete and mathematically accurate Application for Payment from Contractor, WEBB COUNTY shall make payments, in accordance with **Article IX** herein, to Contractor within thirty (30) calendar days. Installments shall be paid to Contractor at the rate of ninety-five percent (95%) of each monthly invoice within thirty (30) calendar days of WEBB COUNTY receipt of a complete and mathematically accurate Application for Payment from the Contractor, and the retainage held until Final Completion shall be five percent (5%).

963. WEBB COUNTY's payment of installments shall not, in any way, be deemed to be a final acceptance by WEBB COUNTY of any part of the Work, shall not prejudice WEBB COUNTY in the final settlement of the Contract account or shall not relieve Contractor from completion of the Work herein provided.

964. Contractor shall, within ten (10) calendar days following receipt of payment from WEBB COUNTY, pay all bills for labor and materials performed and furnished by others in connection with the construction, furnishing and equipping of the improvements and the performance of the work, and shall, if requested, provide WEBB COUNTY with written evidence of such payment. Contractor's failure to make payments or provide written evidence of such payments within such time shall constitute a material breach of this contract,

unless Contractor is able to demonstrate to WEBB COUNTY bona fide disputes associated with the unpaid Subcontractor(s) or supplier(s) and its/their work. Contractor shall include a provision in each of its subcontracts imposing the same written documentation of payment obligations on its Subcontractors as are applicable to Contractor hereunder, and if WEBB COUNTY so requests, shall provide copies of such Subcontractor payments to WEBB COUNTY. If Contractor has failed to make payment promptly to Contractor's Subcontractors or for materials or labor used in the Work for which WEBB COUNTY has made payment to the Contractor, WEBB COUNTY shall be entitled to withhold payment to Contractor to the extent necessary to protect WEBB COUNTY.

965. WEBB COUNTY and/or Design Consultant shall, if practicable and upon request, furnish to Subcontractor information regarding percentages of completion or amounts applied for by Contractor and action taken thereon by WEBB COUNTY and Design Consultant on account of portions of the Work done by such Subcontractor.
966. Neither WEBB COUNTY nor Design Consultant shall have an obligation to pay or to see to the payment of money to a Subcontractor, except as may otherwise be required by law, if any.
967. Payments to material suppliers shall be treated in a manner similar to that provided in **Section 9.6.2, Section 9.6.3** and **Section 9.6.4** herein regarding Subcontractors.
968. A Certificate for Payment, a progress payment or a partial or entire use or occupancy of the Project by WEBB COUNTY shall not constitute acceptance of Work that was not performed or furnished in accordance with the Contract Documents.
969. Contractor shall, as a condition precedent to any obligation of WEBB COUNTY under this Contract, provide to WEBB COUNTY payment and performance bonds in the full penal amount of the Contract, in accordance with Texas Government Code Chapter 2253.

9.7. SUBSTANTIAL COMPLETION

971. Substantial Completion is defined as the stage in the progress of the Work when the Work – or a designated portion thereof, which WEBB COUNTY agrees to accept separately – sufficiently is complete, in accordance with the Contract Documents, so WEBB COUNTY may occupy or utilize the Work or a designated portion thereof for its intended use. In the event Substantial Completion is not achieved by the designated date, or the date extended by issued and accepted Change Order(s), WEBB COUNTY may withhold payment of sums necessary to pay the estimated Liquidated Damages due WEBB COUNTY. WEBB COUNTY shall be entitled, at any time, to deduct out of any sums due to Contractor any or all Liquidated Damages due WEBB COUNTY in accordance with the Contract between WEBB COUNTY and

Contractor.

- 9.72. When Contractor considers that the Work, or a portion thereof which WEBB COUNTY agrees to accept separately, is Substantially Complete, Contractor shall prepare and submit to WEBB COUNTY and Design Consultant a preliminary comprehensive list of items to be completed or corrected prior to Final Completion and final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.
- 9.73. Upon receipt of Contractor's list of items to be completed or corrected, WEBB COUNTY and Design Consultant shall make a Site inspection to determine whether the Work or designated portion thereof is Substantially Complete. If WEBB COUNTY's or Design Consultant's inspection discloses any item, whether or not it was included on Contractor's list of items to be completed or corrected, which is not sufficiently complete or correct in accordance with the Contract Documents so that WEBB COUNTY may occupy or utilize the Work or designated portion thereof for its intended use, Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon written notification by WEBB COUNTY or Design Consultant. In such case, Contractor then shall submit a request for another inspection by WEBB COUNTY and Design Consultant to determine Substantial Completion and Contractor shall be responsible for all costs incurred and associated with re- inspection.
- 9.74. When the Work – or the designated portion thereof which WEBB COUNTY agrees to accept separately – is Substantially Complete, Design Consultant or WEBB COUNTY shall prepare a Certificate of Substantial Completion (Vertical Projects) or a Letter of Conditional Approval (Horizontal Projects) which shall:
- (1) establish the date of Substantial Completion (which shall be the date on which the Work met the requirements under the Contract Documents for Substantial Completion);
 - (2) establish responsibilities of WEBB COUNTY and Contractor, as agreed to by WEBB COUNTY and Contractor, for security, maintenance, heat, utilities, damage to the Work and insurance; and
 - (3) confirm the time limit by which Contractor shall complete all items on the list accompanying the Certificate.

Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work, or the designated portion thereof, unless otherwise provided in the Certificate of Substantial Completion.

9.8. PARTIAL OCCUPANCY OR USE

- 98.1. WEBB COUNTY may occupy or use any completed or partially completed portion of the Work at any stage of the Work when such partially completed portion is designated by separate agreement with Contractor, provided such occupancy or use is consented to by the insurer, as required under **Section 11.2.5** herein and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is Substantially Complete, provided WEBB COUNTY and Contractor have accepted in writing the responsibilities assigned to each of them for security, maintenance, heat, utilities, damage to the Work and insurance and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When Contractor considers a portion of the Work to be Substantially Complete, Contractor shall prepare and submit a list of items to be completed or corrected prior to Final Completion and final payment and submit such list to WEBB COUNTY and Design Consultant, as provided under **Section 9.8.2** herein. Consent of Contractor to partial occupancy or use shall not be unreasonably withheld. The state of the progress of the Work shall be determined by written agreement between WEBB COUNTY and Contractor or, if no agreement is reached, by the decision of Design Consultant.
- 98.2. Immediately prior to such partial occupancy or use, WEBB COUNTY, Contractor and Design Consultant collectively shall inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 98.3. Unless expressly agreed upon in writing, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.
- 98.4. Upon such partial occupancy or use, and upon Substantial Completion, WEBB COUNTY may assume responsibility for maintenance, security and insuring that portion of the Work that it has put into use.
- 98.5. Partial occupancy or use by WEBB COUNTY does not constitute substantial completion and does not start any warranty period(s).

9.9. FINAL COMPLETION AND FINAL PAYMENT

- 99.1. When all of the Work finally is completed and ready for final inspection, Contractor shall notify WEBB COUNTY and Design Consultant thereof in writing. Thereupon, WEBB COUNTY and Design Consultant shall make final inspection of the Work and, if the Work is complete in full accordance with this Contract and this Contract has been fully performed, the final Application for Payment may be submitted. If WEBB COUNTY and Design Consultant are unable to approve the final Application for Payment for

reasons for which Contractor is responsible and WEBB COUNTY and Design Consultant are required to repeat a final inspection of the Work, Contractor shall be responsible for all costs incurred and associated with such repeat final inspection(s) and said costs may be deducted by WEBB COUNTY from the Contractor's retainage.

992. Contractor shall not be entitled to payment of retainage unless and until it submits to WEBB COUNTY its affidavit that the payrolls, invoices for materials and equipment, and other liabilities, to include Liquidated Damages, connected with the Work for which WEBB COUNTY or WEBB COUNTY's property might be responsible fully have been paid or otherwise satisfied or shall be paid from final payment; releases and waivers of liens from all Subcontractors of Contractor and of any and all other parties required by Design Consultant or WEBB COUNTY that either are unconditional or conditional on receipt of final payment; Certificates of insurance showing continuation of required insurance coverage; such other documents as WEBB COUNTY may request; and consent of Surety to final payment. A Retainage Checklist shall be provided by WEBB COUNTY to Contractor upon request.

993. If, after Substantial Completion of the Work, Final Completion of the Work materially is delayed through no fault of Contractor nor by Issuance of Change Orders affecting Final Completion of the Work, and Design Consultant so confirms, WEBB COUNTY shall, upon application by Contractor and certification by Design Consultant and without terminating the Contract, make payment of the balance due Contractor for that portion of the work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of Surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by Contractor to Design Consultant, prior to certification of such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

994. Request for final payment by Contractor shall constitute a waiver of all claims against WEBB COUNTY, except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

9.10. ADDITIONAL INSPECTIONS

In addition to any Liquidated Damages accrued by and payable to WEBB COUNTY by Contractor, WEBB COUNTY shall be entitled to deduct from the Contract Sum amounts due to Contractor by WEBB COUNTY to compensate Design Consultant for any additional inspections or services provided by Design Consultant, provided Design Consultant undertook these additional inspections or services due to the fault or negligence of Contractor if: