

**GENERAL CONDITIONS FOR
WEBB COUNTY CONSTRUCTION CONTRACT
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Webb County General Conditions
Mangana Hein Road Extension Project (I.T.B. 2022-015)
Webb County, Owner – Anderson Columbia Co., Inc., Contractor

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GENERAL CONDITIONS FOR WEBB COUNTY CONSTRUCTION CONTRACTS

ARTICLE I. GENERAL PROVISIONS

1.1 CONTRACT DEFINITIONS

Wherever used in the Contract Documents and printed with initial capital letters, the terms listed below shall have the meanings indicated, which are applicable to both the singular and plural thereof.

1.1.1 **“ALTERNATE”** means a variation in the Work in which WEBB COUNTY requires a price separate from the Base Bid. If an Alternate is accepted by WEBB COUNTY, the variation shall become a part of the Contract through award of the Contract and the Base Bid shall be adjusted to include the amount quoted as stated in the Notice of Award to Contractor. If an Alternate is accepted by WEBB COUNTY, and later deleted, WEBB COUNTY shall be entitled to a credit in the full value of the Alternate as priced in Contractor’s Bid Proposal.

1.1.2 **“AMENDMENT”** is a written modification of the Contract prepared by WEBB COUNTY or Design Consultant and signed by WEBB COUNTY and Contractor, (and approved by the WEBB COUNTY COMMISSIONERS COURT, if required) which authorizes an addition, deletion or revision in the Work (specifically the services) or an adjustment in the Contract Sum or the Contract Times and is issued on or after the Effective Date of the Contract.

1.1.3 **“BASE BID”** is the price quoted for the Work before Alternates are considered.

1.1.4 **“CHANGE ORDER”** refer to **Article VII** herein for definition.

1.1.5 **“WEBB COUNTY”** is defined in **Article II** herein.

1.1.6 **“WEBB COUNTY COMMISSIONERS COURT”** means the duly elected members of the WEBB COUNTY COMMISSIONERS COURT of WEBB COUNTY, Texas.

1.1.7 **“CONSTRUCTION OBSERVER/INSPECTOR** (hereafter referred to as **“COI”**) is the authorized representative of WEBB COUNTY to observe and inspect any or all parts of the Project and the materials to be used therein. Also referred to herein as Resident Inspector.

1.1.8 **“CONTRACT”** means the Contract Documents which represent the entire and integrated agreement between WEBB COUNTY and Contractor and supersede all prior negotiations, representations or agreements, either written or oral. The terms and conditions of the Contract Documents may be changed only in writing by a Field Work Directive, Change Order or Amendment. The Contract Documents shall not be construed to create a contractual relationship of any kind between:

- (1) Design Consultant and Contractor;

- (2) WEBB COUNTY and a Subcontractor or Sub-Subcontractor; or
- (3) any persons or entities other than WEBB COUNTY and Contractor.

1.19 **“CONTRACT DOCUMENTS”** means the Construction Contract between WEBB COUNTY and Contractor, which consists of, but is not limited to, the following: the solicitation documents, the Notice of Award, an enabling WEBB COUNTY Ordinance and all other contract-related documents, which include:

- (1) General Conditions;
- (2) Vertical and/or Horizontal specific General Conditions and Special Conditions included by Special Provisions or addenda;
- (3) Drawings;
- (4) Specifications;
- (5) addenda issued prior to the close of the solicitation period;
- (6) other documents listed in the Contract, including Field Work Directives, Change Orders and/or Amendments; and
- (7) a written order for a minor change in the Work issued by Design Consultant and/or WEBB COUNTY, as described in **Article VII** herein.

The geotechnical and subsurface reports, which WEBB COUNTY may have provided to Contractor, specifically are excluded from the Contract Documents.

1.110 **“CONTRACT TIME”** means, unless otherwise provided, the period of time, including any authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work. When the plural (“Contract Times”) is used, it refers to milestones designated in the Work Progress Schedule.

1.111 **“CONTRACTOR”** means the entity entering into a Contract with WEBB COUNTY to complete the Work. Contractor, as used herein, includes Construction Manager at Risk or other applicable entities performing work under a Contract with WEBB COUNTY.

1.112 **“DAY”** as used in the Contract Documents shall mean Calendar Day, unless otherwise specifically defined. A Calendar Day is a day of 24 hours, measured from midnight to the next midnight, unless otherwise specifically stipulated. For Projects not affecting WEBB COUNTY traffic, a determination made solely by WEBB COUNTY on a project-by-project basis, a Working Day is measured from sunrise to sundown Monday through Friday, except legal holidays, or the hours during which Contractor has been authorized and/or directed to work by WEBB COUNTY. For Projects affecting WEBB COUNTY traffic, a determination made solely by WEBB COUNTY on a project-by-project basis, a working day shall mean sunrise to sundown Monday through

Saturday, except legal holidays, or hours during which Contractor has been authorized and/or directed to work by WEBB COUNTY.

1.1.13 **“DEPARTMENT”** means the Webb County Engineering Department

1.1.14 **“DESIGN CONSULTANT”** means, unless the context clearly indicates otherwise, an Engineer, Architect or other Design Consultant in private practice, licensed to do work in Texas and retained for a specific project under a contractual agreement with WEBB COUNTY. In the event there is no private Engineer, Architect or other Design Consultant then the DEPARTMENT ENGINEER is the DESIGN CONSULTANT.

1.1.15 **“DEEMS” AND/OR “DEEMED”** means objectively and reasonably determined..

1.1.16 **“DRAWINGS”** (also referred to herein as **“Plans”**) are the graphic and pictorial portions of the Contract Documents, wherever located and whenever issued, showing the design, location and dimensions of Work, generally including elevations, sections, details, schedules and diagrams.

1.1.17 Failings, neglect, defaults have to be substantial, material and/or significant as to result in loss or cost in more than nominal.

1.1.18 **“FIELD WORK DIRECTIVES” OR “FORCE ACCOUNT”** is a written order signed by WEBB COUNTY directing a change in the Work prior to agreement and adjustment, if any, in the Contract Sum and/or Contract, as further defined in **Section 7.3** herein.

1.1.19 **“HAZARDOUS SUBSTANCE”** is defined to include the following:

- (a) any asbestos or any material which contains any hydrated mineral silicate, including chrysolite, amosite, crocidolite, tremolite, anthophyllite or actinolite, whether friable or non-friable;
- (b) any polychlorinated biphenyls (“PCBs”), or PCB-containing materials, or fluids;
- (c) radon;
- (d) any other hazardous, radioactive, toxic or noxious substance, material, pollutant, or solid, liquid or gaseous waste; any pollutant or contaminant (including but not limited to petroleum, petroleum hydrocarbons, petroleum products, crude oil or any fractions thereof, any oil or gas exploration or production waste, any natural gas, synthetic gas or any mixture thereof, lead, or other toxic metals) which in its condition, concentration or area of release could have a significant effect on human health, the environment, or natural resources;
- (e) any substance, whether by its nature or its use, is subject to regulation or requires environmental investigation, monitoring, or remediation under any federal, state, or local environmental laws, rules, or regulations;

- (f) any underground storage tanks, as defined in 42 U.S.C. Section 6991(1)(A)(I) (including those defined by Section 9001(1) of the 1984 Hazardous and Solid Waste Amendments to the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.;
- (g) the Texas Water Code Annotated Section 26.344; and Title 30 of the Texas Administrative Code Sections 334.3 and 334.4), whether empty, filled or partially filled with any substance; and
- (h) any other hazardous material, hazardous waste, hazardous substance, solid waste, and toxic substance as those or similar terms are defined under any federal, state, or local environmental laws, rules, or regulations.

1.120 **“LIQUIDATED DAMAGES”** reflect the daily monetary compensation, as designated in the Project’s solicitation documents, to be paid to WEBB COUNTY by Contractor for losses/damages incurred by WEBB COUNTY as a result of Contractor’s failure to achieve the contractual dates for Substantial Completion and/or Final Completion of the Project.

1.121 **“NOTICE TO PROCEED (HEREIN ALSO REFERRED TO AS “WORK PROJECT AUTHORIZATION” OR “NTP”)**” is a written notice given by WEBB COUNTY to Contractor establishing the date on which the Contract Time shall commence to run and the date on which Contractor may begin performance of its contractual obligations.

1.122 **“OWNER”** is defined in **Article II** herein.

1.123 **“OWNER’S DESIGNATED REPRESENTATIVE (ODR)”** means the person(s) designated by WEBB COUNTY to act for WEBB COUNTY.

1.124 **“PARTY”** shall refer to WEBB COUNTY or Contractor individually herein.

1.125 **“PARTIES”** shall refer to WEBB COUNTY and Contractor collectively herein.

1.126 **“PROJECT”** means the total design and construction of Work performed under the Contract Documents and may be the whole or a part of the Project and which may include construction by WEBB COUNTY or by separate contractors. All references in these General Conditions to or concerning the Work or the Site of the Work shall use the term “Project,” notwithstanding the Work referenced only may be a part of the Project.

1.127 **“PROJECT MANAGEMENT TEAM”** is composed of WEBB COUNTY, its representatives, Design Consultant and Program Manager (if any) for this Work.

1.128 **“SITE”** means the land(s) or area(s) (as indicated in the Contract Documents) furnished by WEBB COUNTY, upon which the Work is to be performed, including rights-of- way and easements for access thereto, and such other lands furnished by WEBB COUNTY which are designated for the use of Contractor.

1.129 **“SPECIAL CONDITIONS”** are terms and conditions to a contractual agreement which supplement and are superior to these General Conditions and grant greater authority or impose greater restrictions upon Contractor, beyond those granted or imposed in these General Conditions. WEBB COUNTY’s Horizontal Special Conditions are attached hereto, made a part of these General Conditions and shall be used as applicable.

1.130 **“SPECIFICATIONS”** are those elements of the Contract Documents consisting of the written requirements for materials, equipment, construction systems, standards, workmanship for the Work, performance of related services and other technical requirements.

1.131 **“SUBSTANTIAL COMPLETION”** is the date certified by WEBB COUNTY and Design Consultant, in accordance with **Section 9.8** herein, when the Work, or a designated portion thereof, is sufficiently complete in accordance with the Contract Documents so as to be operational and fit for the intended use by WEBB COUNTY.

1.132 **“TEMPORARY BENCH MARKS (TBM)”** are temporary affixed marks which establish the exact elevation of a place; TBMs are used by surveyors in measuring site elevations or as a starting point for surveys.

1.133 **“THE 3D MODEL”** is the Building Information Model prepared by Design Consultant in the format designated, approved and acceptable to WEBB COUNTY with databases of materials, products and systems available for use by Contractor to prepare schedules for cost estimating, product and materials placement schedules and evaluations of crash incidences. The 3D Model, if available, may be used as a tool, however all information taken from the Model is the responsibility of Contractor and not WEBB COUNTY or Design Consultant.

1.134 **“WORK”** means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by Contractor, or any Subcontractors, Sub-Subcontractors, material suppliers or any other entities for which Contractor is responsible, to fulfill the Contractor’s obligations. The Work may constitute the whole or a part of the Project.

1.135 **OTHER DEFINITIONS.** As used in the Contract Documents, the following additional terms have the following meanings:

1.1.33.1 “provide” means to furnish, install, fabricate, deliver and erect, including all services, materials, appurtenances and all other expenses necessary to complete in place and ready for operation or use;

1.1.33.2 “shall” means the mandatory action of the Party of which reference is being made;

1.1.33.3 “as required” means as prescribed in the Contract Documents; and

1.1.33.4 “as necessary” means all action essential or needed to complete the work in accordance with the Contract Documents and applicable laws, ordinances, construction codes and regulations.

1.2 PRELIMINARY MATTERS

1.2.1 Upon the WEBB COUNTY Commissioners Court's award of the project, a Notice of Award Letter shall be sent to Contractor by WEBB COUNTY, notifying Contractor of the award of a contract. In its Notice of Award Letter, Contractor shall be informed of a date certain by which Contractor's bond(s) and evidence of insurance shall be delivered to WEBB COUNTY.

1.2.2 **DELIVERY OF CONTRACT AND BONDS.** Not later than the Pre-Construction meeting and prior to the commencement of any Work on the Project, Contractor shall deliver a fully executed Contract to WEBB COUNTY, along with such bonds as Contractor may be required to furnish, including, but not limited to, a required payment bond in the form and amount specified in the Contract Documents and these General Conditions and a required performance bond in the form and amount specified in the Contract Documents and these General Conditions.

1.2.3 **DELIVERY OF EVIDENCE OF INSURANCE.** Not later than the Pre-Construction meeting, and prior to the commencement of any Work under this Contract, Contractor shall deliver evidence of insurance to WEBB COUNTY. Contractor shall furnish an original completed Certificate of Insurance and a copy of all insurance policies, together with all required endorsements thereto, required by the Contract Documents to WEBB COUNTY, or its delegated department, clearly labeled with the name of the Project and which shall contain all information required by the Contract Documents. Contractor shall be prohibited from commencing the Work and WEBB COUNTY shall have no duty to pay or perform under this Contract until such evidence of insurance is delivered to WEBB COUNTY. No officer or employee, other than WEBB COUNTY's Commissioners Court, shall have authority to waive this requirement.

1.2.4 **NOTICE TO PROCEED AND COMMENCEMENT OF CONTRACT TIMES.** Unless otherwise stated on the Notice to Proceed, the Contract Time shall commence to run on the date stated on the Notice to Proceed. No Work shall commence any earlier than the date stated on Notice to Proceed and no Work shall be performed by Contractor or any Subcontractor prior to issuance of the Notice to Proceed. Any work commenced prior to Contractor receiving a Notice to Proceed is performed at Contractor's risk.

1.2.5 **SUBMISSION OF PROJECT SCHEDULE(S).** Prior to commencement of Work (unless otherwise specified elsewhere in the Contract Documents), Contractor shall submit to the Webb County Engineer and Design Consultant or their designee the Project schedule(s), as defined in **Section 3.10** herein, a minimum of five (5) days prior to the Pre-Construction Conference.

1.2.6 **PRE-CONSTRUCTION CONFERENCE.** Before Contractor commences any Work on the Project, a Pre-Construction Conference attended by Contractor, Design Consultant, OWNER'S DESIGNATED REPRESENTATIVE(s) and others, as appropriate, shall be held to establish a working understanding among the Parties as to the Work and discuss, at minimum: the Project Schedule(s) referenced in this **Article 1**; the procedures for handling Shop Drawings and other submittals; the processing of Applications for Payment; and Contractor maintaining required records. The Notice to Proceed may be issued at the Pre-Construction Conference or issued by

WEBB COUNTY at any time at WEBB COUNTY's discretion. Said issuance of the Notice to Proceed shall not be unreasonably withheld by WEBB COUNTY.

1.2.7 Payments for services, goods, work, equipment and materials are contingent upon and subject to the availability and appropriation of funds. In the event funds are not available, appropriated or encumbered to fund a Project, then, at WEBB COUNTY's discretion, this Contract may be terminated immediately with no additional liability to WEBB COUNTY.

1.3 CONTRACT DOCUMENTS

1.3.1 **EXECUTION OF CONTRACT DOCUMENTS.** Execution of the Contract by Contractor is a representation Contractor has been provided unrestricted access to the existing improvements and conditions on the Project Site, Contractor thoroughly has investigated the visible conditions at the Site and the general local conditions affecting the Work and Contractor's investigation was instrumental in preparing its bid or proposal submitted to WEBB COUNTY to perform the Work. Contractor shall not make or be entitled to any claim for any adjustment to the Contract Time or the Contract Sum arising from conditions which Contractor discovered or, in the exercise of reasonable care, should have discovered in Contractor's investigation.

1.3.2 **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE.** The Drawings, Specifications and other documents, including those in electronic form, prepared by Design Consultant, its Consultants or other Consultants retained by WEBB COUNTY for the Project, which describe the Work to be executed by Contractor (collectively referred to as the "Construction Documents") are and shall remain the property of WEBB COUNTY, whether the Project for which they are made is executed or not. Contractor shall be permitted to retain one record set. Neither Contractor nor any Subcontractor, sub-Subcontractor or material or equipment supplier shall own or claim a copyright in the Drawings, Specifications and other documents prepared by Design Consultant or Design Consultant's Consultants. All copies of Construction Documents, except Contractor's record set, shall be returned or suitably accounted for to Design Consultant on request and upon completion of the Work. The Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant's Consultants, along with copies thereof furnished to Contractor, are for use solely with respect to this Project. The drawings, Specifications or other documents are not to be used by Contractor or any Subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the specific written consent of WEBB COUNTY. Any such use without written authorization shall be at the sole risk and liability of Contractor. Contractor, Subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Design Consultant and the Design Consultant's Consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by Design Consultant and Design Consultant's Consultants. Submittal or distribution to meet official regulatory requirements or for other purposes, in connection with this Project, is not to be construed as publication.

1321 All of Contractor's non-proprietary, documentary Work product, including reports and correspondence to WEBB COUNTY, prepared pursuant to this Contract, shall be the property of WEBB COUNTY and, upon completion of this Contract and upon written request by WEBB COUNTY, promptly shall be delivered to WEBB COUNTY in a reasonably organized form, without restriction on its future use by WEBB COUNTY. For the avoidance of doubt, documentary Work product does not include privileged communications, proprietary information and documents used to prepare Contractor's Bid Proposal.

1322 Contractor may retain for its files any copies of documents it chooses to retain and may use its Work product as it deems fit. Any materially- significant Work product lost or destroyed by Contractor shall be replaced or reproduced at Contractor's non-reimbursable sole cost. In addition, WEBB COUNTY shall have access during normal business hours, during the duration this Contract is in effect and for four (4) years after the final completion of the Work, unless there is an ongoing dispute under the Contract, then such access period shall extend longer until final resolution of the dispute, to all of Contractor's records and documents covering reimbursable expenses, actual base hourly rates, time cards and annual salary escalation records maintained in connection with this Contract for purposes of auditing same at the sole cost of WEBB COUNTY. The purpose of any such audit shall be for the verification of such 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. Nothing herein shall deny Contractor the right to retain duplicates. Refusal by Contractor to comply with the provisions hereof shall entitle WEBB COUNTY to withhold any payment(s) to Contractor until compliance is obtained.

1323 All of Contractor's documentary Work product shall be maintained within Contractor's offices, unless otherwise authorized by WEBB COUNTY. After expiration of this Contract, Contractor's documents may be archived in the Contractor's central record storage facility but shall remain accessible to WEBB COUNTY for the four (4) year period cited in **Section 1.3.22** herein.

1.3.3 CORRELATION AND INTENT. The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by Contractor. The Contract Documents are complementary and what is required by one shall be as binding as if required by all. Performance by Contractor shall be required only to the extent consistent with the Contract Documents and which reasonably is inferable from the Contract Documents as deemed necessary to produce the indicated results. In cases of discrepancy between any drawing and the dimension figures written thereon:

- (1) The dimension figures shall govern over scaled dimensions;
- (2) Detailed Drawings and accompanying notations shall govern over general Drawings;

- (3) Specifications shall govern over Drawings, subject to **Section 1.3.3.6** herein;
- (4) Supplemental Conditions shall govern over General Conditions;
- (5) Special Conditions shall govern over Specifications, Drawings and General/Supplemental Conditions; and
- (6) Negotiated Special Conditions shall govern over Special Conditions.

The most recent revision of Plans shall control over older revisions provided same are delivered to Contractor before the Work is commenced on the prior revisions. If Contractor is not provided the most recent and Contractor expended labor and material based on a prior revision, any removal and correction needed to comply with the most recent revision must be pursuant to a Change Order

1331 Organization of the Specifications into divisions, sections, articles, and the arrangement of Drawings shall not control Contractor in dividing the Work among Subcontractors or establishing the extent of Work to be performed by any trade.

1332 Unless otherwise stated in the Contract Documents, words having well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Where the phrases "directed by", "ordered by" or "to the satisfaction of" WEBB COUNTY, Design Consultant or WEBB COUNTY's Resident Inspector or other specified designation occur, it is understood the directions, orders or instructions to which they relate are those within the scope of and authorized by the Contract Documents.

1333 Reference to manufacturer's instructions, standard specifications, manuals or codes of any technical society, organization or association, laws or regulations of any governmental authority, or to any other documents, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Contractor's Bid Proposal, except as otherwise may be specifically stated or where a particular issue is indicated. Municipal and utility standards shall govern except in case of conflict with the Specifications. In case of a conflict between the Specifications and the referenced standard, the more stringent shall govern.

1334 The most recently issued Document takes precedence over previous issues of the same Document. The order of precedence is as follows, with the highest authority listed herein as "1" and in descending order:

1. Modifications to the Project Contract signed by Contractor, WEBB COUNTY and Design Consultant;
2. Addenda, with those of later date(s) having precedence over those with earlier date(s);

3. Special Conditions;
4. Supplemental Conditions;
4. General Conditions;
5. Special Provisions (Horizontal Projects);
6. Specifications;
7. Drawings;

1335 Should the Drawings and Specifications be inconsistent, contract pricing shall be based on the better quality and greater quantity of work indicated. In the event of the above-mentioned inconsistency, WEBB COUNTY shall determine the resolution of the inconsistency.

1336 In the Drawings and Specifications, where certain products, manufacturer's trade names or catalog numbers are given, such information is given for the sole and express purpose of establishing a standard of function, dimension, appearance and quality of design in harmony with the Work and is not intended for the purpose of limiting competition. Materials or equipment shall not be substituted unless such a substitution has been specifically accepted for use on this Project by WEBB COUNTY and Design Consultant.

1337 When the work is governed by reference to standards, building codes, manufacturer's instructions or other documents, unless otherwise specified, the edition currently in place as of the date of the submission of the bid shall apply.

1338 Requirements of public authorities apply as minimum requirements only and do not supersede more stringent specified requirements.

1339 Special Provisions, if any, shall be issued by WEBB COUNTY directly to Contractor, shall become part of the Project Specifications and shall modify WEBB COUNTY's Standard Specifications.

1.3.4 CONFLICT RESOLUTION BETWEEN DOCUMENTS. Contractor and Consultant hereby agree and acknowledge if anything contained in Consultant's prepared Scope/Project Specifications or anything contained in any other document prepared by or on behalf of Consultant and included with the Project documents is in conflict with the Project solicitation documents and/or with these General Conditions for WEBB COUNTY Construction Contracts, the Project solicitation documents and these General Conditions for WEBB COUNTY Construction Contracts shall take precedence and control to resolve said conflict(s).

1.3.5 INTERPRETATION. In the interest of brevity, the Contract Documents frequently omit

modifying words such as “all” and “any” and articles such as “the” and “an”, but the fact a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

ARTICLE II. WEBB COUNTY

2.1 GENERAL

2.1.1 WEBB COUNTY, Texas, a political subdivision of the State of Texas with its principal office located at 1000 Houston St., Laredo, Texas and identified as “WEBB COUNTY” or as “Owner” in the Contract and these General Conditions, is referred to throughout the Contract Documents as if singular in number. WEBB COUNTY shall designate in writing to Contractor a representative (hereafter referred to as “OWNER’S DESIGNATED REPRESENTATIVE” or “ODR”) who shall have express authority to bind WEBB COUNTY, subject to OWNER’S Commissioners Court approval of any change in the work that affects the Contract time or Contract Sum, with respect to all matters concerning this Contract requiring WEBB COUNTY’S approval or authorization. Whenever the term “WEBB COUNTY” or “WEBB COUNTY” is found in this Contract or the Contract Documents, such term shall include WEBB COUNTY’S agents, elected officials, employees, officers, directors, volunteers, representatives, successors and assigns.

2.1.2 Contractor acknowledges no lien rights exist, with respect to public property.

2.2 INFORMATION AND SERVICES TO BE PROVIDED BY WEBB COUNTY

2.2.1 WEBB COUNTY shall provide and maintain the Preliminary Budget and general schedule, if any, for the Project. The Preliminary Budget shall include the anticipated construction cost, contingencies for changes in the Work during construction and other costs that are the responsibility of WEBB COUNTY. The general schedule shall set forth WEBB COUNTY’S plan for milestone dates and Substantial Completion and Final Completion of the Project.

2.2.2 WEBB COUNTY shall furnish surveys, if in existence and in WEBB COUNTY’S possession, describing physical characteristics, legal limitations and utility locations. The furnishing of these surveys and reports shall not relieve Contractor of any of its duties under the Contract Documents or these General Conditions. Information or services required of WEBB COUNTY by the Contract Documents shall be furnished by WEBB COUNTY with reasonable promptness following actual receipt of a written request from Contractor. It is incumbent upon Contractor to identify, establish and maintain a current schedule of latest dates for submittal and approval by WEBB COUNTY, as required in **Section 3.10** herein, including when such information or services must be delivered. If WEBB COUNTY delivers the information or services to Contractor as scheduled and Contractor is not prepared to accept or act on such information or services, then Contractor shall reimburse WEBB COUNTY for all extra costs incurred by holding, storage, retention or performance, including redeliveries by WEBB COUNTY in order to comply with the current schedule.

2.2.3 Unless otherwise provided in the Contract Documents, Contractor shall be furnished, free of charge, up to three complete sets of the Plans and Specifications by Design Consultant. Additional complete sets of Plans and Specifications, if requested by Contractor, shall be furnished at reproduction cost to Contractor.

2.2.4 WEBB COUNTY's personnel may, but are not required to, be present at the construction site during progress of the Work, along with Design Consultant in the performance of its duties, to verify Contractor's record of the number of workers employed on the Work site, the workers' occupational classification, the time each worker is engaged in the Work and the equipment used by the workers in the performance of the Work, for purpose of verification of Contractor's Applications for Payment and payroll records.

2.2.5 WEBB COUNTY shall reimburse Contractor for the necessary Project-related approvals, fees and required permits with no markup paid to Contractor for these necessary Project-related approvals, fees and required permits costs, unless said costs are stipulated in the Contract Documents as a part of Contractor's cost of Work.

2.2.6 **WEBB COUNTY'S RIGHT TO STOP THE WORK.** If Contractor fails to correct Work reasonably deemed by WEBB COUNTY not in accordance with the requirements of the Contract Documents, as required by **Section 12.3** herein, fails to carry out Work in substantial accordance with the Contract Documents or fails to submit its preliminary schedule(s), bond(s), insurance certificate(s) or any other required submittals, WEBB COUNTY may issue a written order to Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated. The right of WEBB COUNTY to stop the Work shall not give rise to any duty on the part of WEBB COUNTY to exercise this right for the benefit of the Contractor or any other person or entity. This right shall be in addition to and not in restriction of WEBB COUNTY's rights pursuant to **Section 12.3** herein. WEBB COUNTY's issuance of an order to Contractor based on the foregoing to stop the Work shall not give rise to any claim by Contractor for additional time, cost or general conditions costs.

2.2.7 **WEBB COUNTY'S RIGHT TO CARRY OUT THE WORK.** If Contractor defaults, neglects or fails to carry out the Work in accordance with the Contract Documents and fails, within a three (3) work-day period after receipt of written notice from WEBB COUNTY, to commence and continue correction of such default, neglect or failure with diligence and promptness, WEBB COUNTY may, without prejudice to other remedies WEBB COUNTY may have, correct such deficiencies, neglect or failure. In such case, an appropriate Change Order may be issued deducting from payments then or thereafter due Contractor reflecting the reasonable cost of correcting such deficiencies, neglect or failure of Contractor, including all of WEBB COUNTY's incurred expenses and compensation for Design Consultant's additional services made necessary by such default, neglect or failure of Contractor. If payments then or thereafter due Contractor are not sufficient to cover such amounts for the Work performed, Contractor shall pay the difference to WEBB COUNTY.

ARTICLE III. CONTRACTOR

3.1 GENERAL

3.1.1 Contractor is the person or entity identified as such in the Contract and is referred to throughout the Contract Documents as if singular in number. The term "Contractor" means the Contractor or the Contractor's authorized representative.

3.1.2 Contractor shall perform the Work in a good and workmanlike manner, except to the extent the Contract Documents expressly specify a higher degree of finish or workmanship.

3.1.3 Contractor shall not be relieved of its obligations, responsibilities or duties to perform the Work in accordance with the Contract Documents, either by any activities or duties of Design Consultant in Design Consultant's administration of the Contract or by tests, inspections or approvals required or performed by WEBB COUNTY or any person other than the Contractor.

3.2 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY CONTRACTOR

3.2.1 Since the Contract Documents are complementary, before starting each portion of the Work, Contractor carefully shall:

- (1) study and compare the various Drawings and other Contract Documents relative to that portion of the Work and the information furnished by WEBB COUNTY;
- (2) take field measurements of any existing conditions related to that portion of the Work; and
- (3) observe any conditions at the Site affecting the Work.

Any error, inconsistencies or omissions discovered by Contractor shall be promptly reported to WEBB COUNTY via a Request for Information in such form as WEBB COUNTY may require.

3.2.1.1 The exactness of existing grades, elevations, dimensions or locations given on any Drawings issued by Design Consultant, or the work installed by other contractors, is not guaranteed by WEBB COUNTY. Contractor shall, therefore, satisfy itself as to the accuracy of all grades, elevations, dimensions and locations, provided that same are as indicated on the Plans and Specifications.

3.2.1.2 In all cases of interconnection of its Work with existing conditions or with work performed by others, Contractor shall verify at the site all dimensions relating to such existing or other work. Any errors due to Contractor's failure to so verify all such grades, elevations, dimensions or locations shall comply with the Plans and Specification and shall

promptly be rectified by Contractor without any additional cost to WEBB COUNTY.

322 As between WEBB COUNTY and Contractor, and subject to the provisions of **Section 3.2.4** below, Contractor has no responsibility for the timely delivery, completeness, accuracy and/or sufficiency of the Specifications or Drawings (or any errors, omissions, or ambiguities therein), and is not responsible for any failure of the design of the facilities or structures as reflected thereon to be suitable, sound or safe. Contractor shall be deemed to have satisfied itself as to the design contained in and reflected by the Specifications and the Drawings. In particular, but without prejudice to the generality of the foregoing, Contractor shall review the Contract Documents to establish:

- 3.2.2.1 the information is sufficiently complete to perform the Work; and
- 3.2.2.2 there are no obvious or patent ambiguities, inaccuracies or inconsistencies within or between the documents forming the Contract; and
- 3.2.2.3 Contractor shall work with the aforementioned Contract Documents so as to perform the Work and of each and every part thereof to ensure the Work and each and every part thereof shall, jointly and severally, be in accordance with the requirements of 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 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, 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 obvious 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's 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

3.4.1 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. If no prevailing wage rate of per diem wages has been adopted by Webb County then the parties shall use the wage rate determined by the US Department of Labor in accordance with the Davis-Bacon Act, 40 U.S.C. Section 276a, (which can be accessed on the internet at <https://www.dol.gov/> or <https://beta.sam.gov/>) effective as of the date of this Agreement. 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 material hindrance that substantially interferes with or causes an unsafe workplace, or 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 of the violating person(s) or employee(s) of Contractor or Subcontractor from the Project Site; removal or exclusion of a violating person(s) shall only be effectuated after consultation with representatives of WEBB COUNTY, the Contractor and the violating person(s) 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, provided that same are available to Contractor.

34.10 During construction of the Work and for ten (10) years after final completion or longer if, during the duration of this Contract or during the ten (10) 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 (hereinafter referred to “stored documents”). 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. In lieu of the foregoing, Contractor may elect to deliver to WEBB COUNTY the Stored Documents or certified copies of same in fulfillment of these requirements.

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 (this is the definition of “defective applied in the Contract Documents”). Contractor’s warranty excludes remedy for damage or defect caused by abuse, Acts of God, Acts of Man (not associated with Contractor), shifting ground, water tables, floods, riots, failure of material as specified in the Contract Documents, 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.

35.2 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 but as limited in the Contract Documents.

35.3 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. After Substantial Completion, such warranty is replaced with Contractor’s one (1) year warranty against defective workmanship and/or defective materials, it being deemed that at Substantial Completion Contractor complied with the Work’s Plans and Specification. During the post Substantial Completion warranty period, upon written timely demand by WEBB COUNTY to Contractor to replace defective workmanship and/or materials and re-execute any such defective Work disclosed

to the Contractor by WEBB COUNTY within a period of one (1) year after Substantial Completion of the applicable Work, within one (1) year after discovery or by the exercise of due diligence should have been discovered by WEBB COUNTY. Latent Defects are limited to being discovered within the one (1) year period and if not, same are not warranted.

354 All warranties shall be assignable to 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 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.

357 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. However, Contractor will not be responsible for any matter excluded from warranty as stated in 3.5.1 above.

358 For extended warranties required by the Contract Documents, WEBB COUNTY shall notify Contractor of deficiencies which are included and not excluded under the Warranty under paragraph 3.5.1 above. 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. However, such obligations are binding on Contractor only if it can be proven that the deficiencies occurred prior to the end of the one (1) warranty period.

359 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. Non-acceptance must be based on material non-compliance with 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).

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

3.7.1 **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.

3.8.2 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.
- 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

3.101 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.

3.102 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 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

3.10.81 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.

3.10.82 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.

3.10.83 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.

3.10.84 Acceptance of the Project Schedule, or update and/or revision thereto, does not indicate any approval of Contractor's proposed sequences and duration.

3.10.85 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.

3.10.9 PROJECT SCHEDULE UPDATES AND REVISIONS

3.1091 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 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.

3.1092 The Project Schedule update shall be submitted no later than the date the pay application is submitted.

3.1093 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.

3.1094 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.

3.1095 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

3.1096 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.

3.1097 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.

3.1098 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.

3.1099 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.

3.109.10 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.

3.109.11 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.

3.10.10 COMPLETION OF WORK

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

3.10.10.2 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.

3.10.10.3 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.

3.10.104 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.

3.10.105 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.

3.10.106 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.

3.10.107 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.

3.10.108 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.

3.10.11 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

3.12.1 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.

3.12.2 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.

3.12.3 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.

3.12.4 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.

3.12.5 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.

3.12.6 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.

3.1210 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

3.141 Contractor shall be responsible for all cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

3.142 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.

3.143 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 Contractor.

3.15 CLEANING UP

3.151 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.

3.152 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 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.

3.182 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.

3.183 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 material 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 Contractor's or its Subcontractors' 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.** If permitted by Contractor's insurance and its sureties 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.

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:

3.19.1 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;

3.19.2 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;

3.19.3 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;

3.19.4 is acting within its duly authorized powers to execute this Contract and execute the performance and obligations thereof; and

3.19.5 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

41 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.

42.4 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.

42.5 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.

426 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.

427 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.

428 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.

432 **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.

433 **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 14.3** herein, Contractor shall proceed diligently with performance of the Contract and WEBB COUNTY shall continue to make payments in accordance with the Contract Documents.

434 **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.

435 **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.

4.3.6 CLAIMS FOR ADDITIONAL TIME

4.3.6.1 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.

4.3.6.2 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:

4.3.9.1 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.

4.3.9.2 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.

4.3.9.3 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.

4.3.9.4 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.

4.3.9.5 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.

4.3.9.6 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:

4.3.10.1 the requirements of **Section 4.3** herein of these General Conditions; and

4.3.10.2 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:

- (a) Contractor shall:
- (b) have direct legal liability as a matter of contract, common law or statutory law to Subcontractor for the claim Subcontractor is asserting; or