

# FACILITIES DIVISION

**ACCS FORM 5-A**

## SAMPLE ADVERTISEMENT FOR BIDS

Sealed proposals will be received by the Alabama Community College System at the office of:

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**UNTIL:**                    **CST**  
**FOR:**

at which time and place they will be publicly opened and read.

A cashier's check or bid bond payable to Alabama Community College System in an amount not less than five (5) percent of the amount of the bid, but in no event more than \$10,000, must accompany the bidder's proposal. Performance and Payment Bonds and evidence of insurance required in the bid documents will be required at the signing of the Contract.

Drawings and specifications may be examined at the office of:

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**and**

Bid Documents may be obtained from the Architect (Engineer) upon deposit of \$\_\_\_\_\_ per set, which will be refunded in full on the first \_\_\_\_\_ sets issued to each general contract bidder submitting a bonafide bid, upon return of documents in good condition within ten days of bid date. Other sets for general contractors, and sets for subcontractors and dealers, may be obtained with the same deposit, which will be refunded as above, less cost of printing, reproduction, handling, and distribution.

**(If applicable)** Only general contractors who have been approved to bid pursuant to prequalification procedures and criteria established by the Owner will be eligible to bid for the Project. Written prequalification procedures and criteria are available for review at the office of: \_\_\_\_\_.

Bids must be submitted on proposal forms furnished by the Architect (Engineer) or copies thereof. All bidders bidding in amounts exceeding that established by the State Licensing Board for General Contractors must be licensed under the provisions of Title 34, Chapter 8, Code of Alabama, 1975, and must show evidence of license before bidding or bid will not be received or considered by the Architect (Engineer); the bidder shall show such evidence by clearly displaying his or her current license number on the outside of the sealed envelope in which the proposal is delivered. The Owner reserves the right to reject any or all proposals and to waive technical errors if, in the Owner's judgement, the best interests of the Owner will thereby be promoted.

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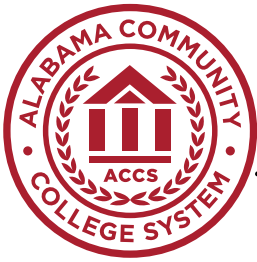
ALABAMA COMMUNITY COLLEGE SYSTEM

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ARCHITECT/ENGINEER

**NOTE:** For projects exceeding \$100,000, this notice must be run once a week for three successive weeks in a newspaper of general circulation in the county or counties in which the project, or any part of the project, is to be performed. Proof of publication is required.

VER: 11092023



## INSTRUCTIONS *to* BIDDERS

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### CONTENTS

- 1.** Bid Documents
- 2.** General Contractor's State Licensing Requirements
- 3.** Qualifications of Bidders and Prequalification Procedures
- 4.** Preference to Resident Contractors
- 5.** Examination of Bid Documents and the Site of the Work
- 6.** Explanations and Interpretations
- 7.** Substitutions
- 8.** Preparation and Delivery of Bids
- 9.** Withdrawal or Revision of Bids
- 10.** Opening of Bids
- 11.** Incomplete and Irregular Bids
- 12.** Bid Errors
- 13.** Disqualification of Bidders
- 14.** Consideration of Bids
- 15.** Bid Alternates
- 16.** Unit Prices
- 17.** Award of Contract

# **1 BID DOCUMENTS:**

The Bid Documents consist of the Advertisement for Bids, these Instructions to Bidders, any supplements to these Instructions to Bidders, the Proposal Form and the Accounting of Sales Tax, and the proposed Contract Documents. The proposed Contract Documents consist of the Construction Contract, the Performance Bond and Payment Bond, the Conditions of the Contract (General, Supplemental, and other Conditions), Drawings, Specifications and all addenda issued prior to execution of the Construction Contract. Bid Documents may be obtained or examined as set forth in the Advertisement for Bids.

# **2 GENERAL CONTRACTOR'S STATE LICENSING REQUIREMENTS:**

When the amount bid for a contract exceeds \$50,000, the bidder must be licensed by the State Licensing Board for General Contractors and must show the Architect evidence of license before bidding or the bid will not be received by the Architect or considered by the Awarding Authority. A bid exceeding the bid limit stipulated in the bidder's license, or which is for work outside of the type or types of work stipulated in the bidder's license, will not be considered. In case of a joint venture of two or more contractors, the amount of the bid shall be within the maximum bid limitation as set by the State Licensing Board for General Contractors of the combined limitations of the partners to the joint venture.

# **3 QUALIFICATIONS of BIDDERS and PREQUALIFICATION PROCEDURES:**

**(a)** Any special qualifications required of general contractors, subcontractors, material suppliers, or fabricators are set forth in the Bid Documents.

**(B)** The Awarding Authority may have elected to prequalify bidders. Parties interested in bidding for this contract are directed to the Advertisement for Bids and Supplemental Instructions to Bidders to determine whether bidders must be prequalified and how they may obtain copies of the Awarding Authority's published prequalification procedures and criteria.

**(C)** Release of Bid Documents by the Architect to a prospective bidder will not constitute any determination by the Awarding Authority or Architect that the bidder has been found to be qualified, prequalified, or responsible.

# **4 PREFERENCE to RESIDENT CONTRACTORS:**

(If this project is federally funded in whole or in part, this Article shall not apply.)

**(A)** In awarding the Contract, preference will be given to Alabama resident contractors and a nonresident bidder domiciled in a state having laws granting preference to local contractors shall be awarded the Contract only on the same basis as the nonresident bidder's state awards contracts to Alabama contractors bidding under similar circumstances.

**(B)** A nonresident bidder is a contractor which is neither organized and existing under the laws of the State of Alabama, nor maintains its principal place of business in the State of Alabama. A nonresident contractor which has maintained a permanent office within the State of Alabama for at least five continuous years shall not thereafter be deemed to be a non-resident contractor so long as the contractor continues to maintain a branch office within Alabama.

**5 EXAMINATION of BID DOCUMENTS and the SITE of the WORK:**

Before submitting a bid for the Work, the bidders shall carefully examine the Bid Documents, visit the site, and satisfy themselves as to the nature and location of the Work, and the general and local conditions, including weather, the general character of the site or building, the character and extent of existing work within or adjacent to the site and any other work being performed thereon at the time of submission of their bids. They shall obtain full knowledge as to transportation, disposal, handling, and storage of materials, availability of water, electric power, and all other facilities in the area which will have a bearing on the performance of the Work for which they submit their bids. The submission of a bid shall constitute a representation by the bidder that the bidder has made such examination and visit and has judged for and satisfied himself or herself as to conditions to be encountered regarding the character, difficulties, quality, and quantities of work to be performed and the material and equipment to be furnished, and as to the contract requirements involved.

**6 EXPLANATIONS and INTERPRETATIONS:**

**(A)** Should any bidder observe any ambiguity, discrepancy, omission, or error in the drawings and specifications, or in any other bid document, or be in doubt as to the intention and meaning of these documents, the bidder should immediately report such to the Architect and request clarification.

**(B)** Clarification will be made only by written Addenda sent to all prospective bidders. Neither the Architect nor the Awarding Authority will be responsible in any manner for verbal answers or instructions regarding intent or meaning of the Bid Documents.

**(C)** In the case of inconsistency between drawings and specifications or within either document, a bidder will be deemed to have included in its bid the better quality or greater quantity of the work involved unless the bidder asked for and obtained the Architect's written clarification of the requirements before submission of a bid.

**7 SUBSTITUTIONS:**

**(A)** The identification of any product, material, system, item of equipment, or service in the Bid Documents by reference to a trade name, manufacturer's name, model number, etc. (hereinafter referred to as "source"), is intended to establish a required standard of performance, design, and quality and is not intended to limit competition unless the provisions of paragraph "d" below apply.

**(B)** When the Bid Documents identify only one or two sources, or three or more sources followed by "or approved equal" or similar wording, the bidder's proposal may be based on a source not identified but considered by the bidder to be equal to the standard of performance, design and quality as specified however, such substitutions must ultimately be approved by the Architect. If the bidder elects to bid on a substitution without "Pre-bid Approval" as described below, then it will be understood that proof of compliance with specified requirements is the exclusive responsibility of the bidder.

**(C)** When the Bid Documents identify three or more sources and the list of sources is not followed by "or approved equal" or similar wording, the bidder's proposal shall be based upon one of the identified sources, unless the bidder obtains "Pre-bid Approval" of another source as described below. Under these conditions it will be expressly understood that no product, material, system, item of equipment, or service that is not

identified in the Bid Documents or granted “Pre-Bid Approval” will be incorporated into the Work unless such substitution is authorized and agreed upon through a Contract Change Order.

**(D)** If the Bid Documents identify only one source and expressly provide that it is an approved sole source for the product, material, system, item of equipment, or service, the bidder’s proposal must be based upon the identified sole source.

**(E)** Procedures for “Pre-bid Approval”. If it is desired that a product, material, system, piece of equipment, or service from a source different from those sources identified in the Bid Documents be approved as an acceptable source, application for the approval of such source must reach the hands of the Architect at least ten days prior to the date set for the opening of bids. At the Architect’s discretion, this ten day provision may be waived. The application for approval of a proposed source must be accompanied by technical data which the applicant desires to submit in support of the application. The Architect will give consideration to reports from reputable independent testing laboratories, verified experience records showing the reputation of the proposed source with previous users, evidence of reputation of the source for prompt delivery, evidence of reputation of the source for efficiency in servicing its products, or any other pertinent written information. The application to the Architect for approval of a proposed source must be accompanied by a schedule setting forth in which respects the materials or equipment submitted for consideration differ from the materials or equipment designated in the Bid Documents. The burden of proof of the merit of the proposed substitution is upon the proposer. To be approved, a proposed source must also meet or exceed all express requirements of the Bid Documents. Approval, if granted, shall not be effective until published by the Architect in an addendum to the Bid Documents.

## **8 PREPARATION and DELIVERY of BIDS:**

### **(A) ACCS Form 5-E: Proposal Form:**

**(1)** Bids must be submitted on the Proposal Form as contained in the Bid Documents; only one copy is required to be submitted. A completed ACCS Form 5-H: Accounting of Sales Tax must be submitted with the Proposal Form.

**(2)** All information requested of the bidder on the Proposal Form must be filled in. The form must be completed by typewriter or hand-printed in ink.

**(3)** Identification of Bidder: On the first page of the Proposal Form the bidder must be fully identified by completing the spaces provided for:

- a.** the legal name of the bidder,
- b.** the state under which laws the bidder’s business is organized and existing,
- c.** the city (and state) in which the bidder has its principal offices,
- d.** the bidder’s business organization, i.e., corporation, partnership, or individual (to be indicated by marking the applicable box and writing in the type of organization if it is not one of those listed), and
- e.** the partners or officers of the bidder’s organization, if the bidder is other than an individual. If the space provided on the Proposal Form is not adequate for this listing, the bidder may insert “See Attachment” in this space and provide the listing on an attachment to the Proposal Form.

(4) Where indicated by the format of the Proposal Form, the bidder must specify lump sum prices in both words and figures. In case of discrepancy between the prices shown in words and in figures, the words will govern.

(5) All bid items requested in the Proposal Form, including alternate bid prices and unit prices for separate items of the Work, must be bid. If a gross sum of bid items is requested in the Proposal Form, the gross sum shall be provided by the bidder.

(6) In the space provided in the Proposal Form under "Bidder's Alabama License", the bidder must insert his or her current general contractor's state license number, current bid limit, and type(s) of work for which bidder is licensed.

(7) The Proposal Form shall be properly signed by the bidder. If the bidder is:

- a. **an individual**, that individual or his or her "authorized representative" must sign the Proposal Form;
  - b. **a partnership**, the Proposal Form must be signed by one of the partners or an "authorized representative" of the Partnership;
  - c. **a corporation**, the president, vice-president, secretary, or "authorized representative" of the corporation shall sign and affix the corporate seal to the Proposal Form.
- As used in these Instructions to Bidders, "authorized representative" is defined as a person to whom the bidder has granted written authority to conduct business in the bidder's behalf by signing and/or modifying the bid. Such written authority shall be signed by the bidder (the individual proprietor, or a member of the Partnership, or an officer of the Corporation) and shall be attached to the Proposal Form.

(8) Interlineation, alterations or erasures on the Proposal Form must be initialed by the bidder or its "authorized representative".

**(B) ACCS Form 5-H: Accounting of Sales Tax**

A completed ACCS Form 5-H: Accounting of Sales Tax must be submitted with ACCS Form 5-E: Proposal Form. Submission of ACCS Form 5-H is required, it is not optional. A proposal shall be rendered non-responsive if an Accounting of Sales Tax is not provided.

**(C) Bid Guaranty**

(1) The Proposal Form must be accompanied by a cashier's check, drawn on an Alabama bank, or a Bid Bond, executed by a surety company duly authorized and qualified to make such bonds in the State of Alabama, payable to the Awarding Authority.

(2) If a Bid Bond is provided in lieu of a cashier's check, the bond shall be on the Bid Bond form as stipulated in the Bid Documents.

(3) The amount of the cashier's check or Bid Bond shall not be less than five percent of the contractor's bid, but is not required to be in an amount more than ten thousand dollars.

**(D) Delivery of Bids:**

(1) Bids will be received until the time set, and at the location designated, in the Advertisement for Bids unless notice is given of postponement. Any bid not received prior to the time set for opening bids will be rejected absent extenuating circumstances and such bids shall be rejected in all cases where received after other bids are opened.

(2) Each bid shall be placed, together with the bid guaranty, in a sealed envelope. On the outside of the envelope the bidder shall write in large letters "Proposal", below which the bidder shall identify the Project and the Work bid on, the name of the bidder, and the bidder's current general contractor's state license number.

(3) Bids may be delivered in person, or by mail if ample time is allowed for delivery. When sent by mail, the sealed envelope containing the bid, marked as indicated above, shall be enclosed in another envelope for mailing.

**9 WITHDRAWAL or REVISION of BIDS:**

(A) A bid may be withdrawn prior to the time set for opening of bids, provided a written request, executed by the bidder or the bidder's "authorized representative", is filed with the Architect prior to that time. The bid will then be returned to the bidder unopened.

(B) A bid which has been sealed in its delivery envelope may be revised by writing the change in price on the outside of the delivery envelope over the signature of the bidder or the bidder's "authorized representative". In revising the bid in this manner, the bidder must only write the amount of the change in price on the envelope **and must not reveal the bid price.**

(C) Written communications, signed by the bidder or its "authorized representative", to revise bids will be accepted if received by the Architect prior to the time set for opening bids. The Architect will record the instructed revision upon opening the bid. Such written communication may be by facsimile if so stipulated in Supplemental Instructions to Bidders. In revising the bid in this manner, the bidder must only write the amount of the change in price **and must not reveal the bid price.**

(D) Except as provided in Article 12 of these Instructions to Bidders, no bid shall be withdrawn, modified, or corrected after the time set for opening bids.

**10 OPENING of BIDS:**

(A) Bids will be opened and read publicly at the time and place indicated in the Advertisement for Bids. Bidders or their authorized representatives are invited to be present.

(B) A list of all proposed major subcontractors and suppliers will be submitted by Bidders to the Architect at a time subsequent to the receipt of bids as established by the Architect in the Bid Documents but in no event shall this time exceed twenty-four (24) hours after receipt of bids. If the list includes a fire alarm contractor and/or fire sprinkler contractor, Bidders will also submit a copy of the fire alarm contractor's and/or fire sprinkler contractor's permits from the State of Alabama Fire Marshal's Office.

**11 INCOMPLETE and IRREGULAR BIDS:**

A bid that is not accompanied by data required by the Bid Documents, or a bid which is in any way incomplete, may be rejected. Any bid which contains any uninitialed alterations or erasures, or any bid which contains any additions, alternate bids, or conditions not called for, or any other irregularities of any kind, will be subject to rejection.

**12 BID ERRORS:**

**(A) Errors and Discrepancies in the Proposal Form.** In case of error in the extension of prices in bids, the unit price will govern. In case of discrepancy between the prices shown in the figures and in words, the words will govern.

**(B) Mistakes within the Bid.** If the low bidder discovers a mistake in its bid, the low bidder may seek withdrawal of its bid without forfeiture of its bid guaranty under the following conditions:

**(1) Timely Notice:** The low bidder must notify the Awarding Authority and Architect in writing, within three working days after the opening of bids, that a mistake was made. This notice must be given within this time frame whether or not award has been made.

**(2) Substantial Mistake:** The mistake must be of such significance as to render the bid price substantially out of proportion to the other bid prices.

**(3) Type of Mistake:** The mistake must be due to calculation or clerical error, an inadvertent omission, or a typographical error which results in an erroneous sum. A mistake of law, judgment, or opinion shall not constitute a valid ground for withdrawal without forfeiture.

**(4) Documentary Evidence:** Clear and convincing documentary evidence of the mistake must be presented to the Awarding Authority and the Architect as soon as possible, but no later than three working days after the opening of bids.

The Awarding Authority's decision regarding a low bidder's request to withdraw its bid without penalty shall be made within 10 days after receipt of the bidder's evidence or by the next regular meeting of the Awarding Authority. Upon withdrawal of bid without penalty, the low bidder shall be prohibited from (1) doing work on the project as a subcontractor or in any other capacity and (2) bidding on the same project if it is re-bid.

**13 DISQUALIFICATION of BIDDERS:**

Any bidder(s) may be disqualified from consideration for contract award for the following reasons:

**(A) Collusion.** Any agreement or collusion among bidders or prospective bidders in restraint of freedom of competition to bid at a fixed price or to refrain from bidding or otherwise shall render the bids void and shall cause the bidders or prospective bidders participating in such agreement or collusion to be disqualified from submitting further bids to the Awarding Authority on future lettings. (See § 39-2-6, Code of Alabama 1975, for possible criminal sanctions.)

**(B) Advance Disclosure.** Any disclosure in advance of the terms of a bid submitted in response to an Advertisement for Bids shall render the proceedings void and require re-advertisement and rebid.



**(C) Failure to Settle Other Contracts.** The Awarding Authority may reject a bid from a bidder who has not paid, or satisfactorily settled, all bills due for labor and material on other contracts in force at the time of letting.

**14 CONSIDERATION of BIDS:**

**(A)** After the bids are opened and read publicly, the bid prices will be compared and the results of this comparison will be available to the public. Until the final award of the contract, however, the Awarding Authority shall have the right to reject any or all bids, and it shall have the right to waive technical errors and irregularities if, in its judgment, the bidder will not have obtained a competitive advantage and the best interests of the Awarding Authority will be promoted.

**(B)** If the Bid Documents request bids for projects or parts of projects in combination or separately, the Bid Documents must include supplements to, these Instructions to Bidders setting forth applicable bid procedures. Award or awards will be made to the lowest responsible and responsive bidder or bidders in accordance with such bid procedures.

**15 BID ALTERNATES:**

**(A)** Bid Alternates: Additive alternate bids are preferred, and may be used in order to obtain prices for the addition of items not included in the base bid. The alternate bids shall be listed in the Proposal Form.

**(B)** Deductive Bid Alternates: Deductive alternate bids shall only be used with the prior approval of the Chief Facilities Officer.

**(C)** ACCS reserves the right to select or reject some, any, or all alternates in making the final determination of the lowest responsible and responsive bidder to whom the Construction Contract is awarded.

**16 UNIT PRICES:**

**(A) Work Bid on a Unit Price Basis.** Where all, or part(s), of the planned Work is bid on a unit price basis, both the unit prices and the extensions of the unit prices constitute a basis of determining the lowest responsible and responsive bidder. In cases of error in the extension of prices of bids, the unit price will govern. A bid may be rejected if any of the unit prices are obviously unbalanced or non-competitive.

**(B) Unit Prices for Application to Change Orders.** As a means of predetermining unit costs for changes in certain elements of the Work, the Bid Documents may require that the bidders furnish unit prices for those items in the Proposal Form. Unit prices for application to changes in the work are not a basis for determining the lowest bidder. Non-competitive unit prices proposed by the successful bidder may be rejected and competitive prices negotiated by the Awarding Authority prior to contract award. Unit prices for application to changes in the work are not effective unless specifically included and agreed upon in the Construction Contract.

**17 AWARD of CONTRACT:**

**(A)** The contract shall be awarded to the lowest responsible and responsive bidder unless the Awarding Authority finds that all the bids are unreasonable or that it is not in the best interest of the Awarding Authority to accept any of the bids. A responsible bidder is one who, among other qualities determined necessary for performance, is competent, experienced, and financially able to perform the contract. A responsive bidder is one who submits a bid that complies with the terms and conditions of the Advertisement for Bids and the Bid Documents. Minor irregularities in the bid shall not defeat responsiveness.

**(B)** A bidder to whom award is made will be notified by telegram, confirmed facsimile, or letter to the address shown on the Proposal Form at the earliest possible date. Unless other time frames are stipulated in Supplemental Instructions to Bidders, the maximum time frames allowed for each step of the process between the opening of bids and the issuance of an order to proceed with the work shall be as follows:

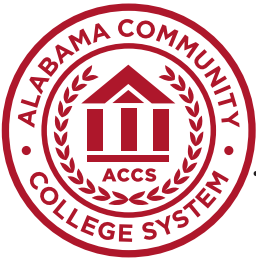
- (1)** Award of contract by Awarding Authority: 30 calendar days after the opening of bids
- (2)** Contractor's return of the fully executed contract, with bonds and evidence of insurance, to the Awarding Authority: 15 calendar days after the contract has been presented to the contractor for signature (from the Lead Design Professional)
- (3)** Awarding Authority's approval of the contractor's bonds and evidence of insurance and completion of contract execution: 20 calendar days after the contractor presents complete and acceptable documents to the Architect
- (4)** Notice To Proceed issued to the contractor along with distribution of the fully executed construction contract to all parties: 15 calendar days after final execution of contract by the Awarding Authority, by various State Agencies if required and by the Governor if his or her signature on the contract is required by law

The time frames stated above, or as otherwise specified in the Bid Documents, may be extended by written agreement between the parties. Failure by the Awarding Authority to comply with the time frames stated above or stipulated in Supplemental Instructions to Bidders, or agreed extensions thereof, shall be just cause for the withdrawal of the contractor's bid and contract without forfeiture of bid security.

Should the successful bidder or bidders to whom the contract is awarded fail to execute the Construction Contract and furnish acceptable Performance and Payment Bonds and satisfactory evidence of insurance within the specified period, the Awarding Authority shall retain from the bid guaranty, if it is a cashier's check, or recover from the principal or the sureties, if the guaranty is a bid bond, the difference between the amount of the contract as awarded and the amount of the bid of the next lowest responsible and responsive bidder, but not more than \$10,000. If no other bids are received, the full amount of the bid guaranty shall be so retained or recovered as liquidated damages for such default. Any sums so retained or recovered shall be the property of the Awarding Authority.

All bid guaranties, except those of the three lowest bona fide bidders, will be returned immediately after bids have been checked, tabulated, and the relation of the bids established. The bid guaranties of the three lowest bidders will be returned as soon as the contract bonds and the contract of the successful bidder have been properly executed and approved. When the award is deferred for a period of time longer than 15 days after the opening of the bids, all bid guaranties, except those of the potentially successful bidders, shall be returned. If no award is made within the specified period, as it may by agreement be extended, all bids will be rejected, and all guaranties returned. If any potentially successful bidder agrees in writing to a stipulated extension in time for consideration of its bid and its bid was guaranteed with a cashier's check, the Awarding Authority may permit the potentially successful bidder to substitute a satisfactory bid bond for the cashier's check.

**END OF INSTRUCTIONS TO BIDDERS**



# FACILITIES DIVISION

## ACCS FORM 5-E

### PROPOSAL FORM

To: Alabama Community College System

Date: \_\_\_\_\_

In compliance with the Advertisement for Bids and subject to all the conditions thereof, the undersigned

hereby proposes to furnish all labor and materials and perform all work required for the construction of  
**WORK:**

in accordance with Drawings and Specifications, dated \_\_\_\_\_, prepared by:  
\_\_\_\_\_, Architect/Engineer

The Bidder, which is organized and existing under the laws of the State of: \_\_\_\_\_,

having its principal offices in the City of: \_\_\_\_\_,

is:      a Corporation                  a Partnership                  an Individual                  Other: \_\_\_\_\_

#### LISTING OF PARTNERS OR OFFICERS:

If Bidder is a Partnership, list all partners and their addresses; if Bidder is a Corporation, list the names, titles, and business addresses of its officers:

**BIDDER'S REPRESENTATION:** The Bidder declares that it has examined the site of the Work, having become fully informed regarding all pertinent conditions, and that it has examined the Drawings and Specifications (including all Addenda received) for the Work and the other Bid and Contract Documents relative thereto, and that it has satisfied itself relative to the Work to be performed.

**ADDENDA:** The Bidder acknowledges receipt of Addenda Nos. \_\_\_\_\_ through \_\_\_\_\_ inclusively.

**BASE BID:** For construction complete as shown and specified, the sum of:

\_\_\_\_\_ Dollars (\$) )

**ALTERNATES:** If alternates as set forth in the Bid Documents are accepted, the following adjustments are to be made to the Base Bid:

For Alternate No. 1 (	)	add	deduct \$
For Alternate No. 2 (	)	add	deduct \$
For Alternate No. 3 (	)	add	deduct \$
For Alternate No. 4 (	)	add	deduct \$
For Alternate No. 5 (	)	add	deduct \$
For Alternate No. 6 (	)	add	deduct \$

**UNIT PRICES** - (Attach to this Proposal Form the unit prices, if any, on a separate sheet.)

**BID SECURITY:** The undersigned agrees to enter into a Construction Contract and furnish the prescribed Performance and Payment Bonds and evidence of insurance within fifteen calendar days, or such other period stated in the Bid Documents, after the contract forms have been presented for signature, provided such presentation is made within 30 calendar days after the opening of bids, or such other period stated in the Bid Documents. As security for this condition, the undersigned further agrees that the funds represented by the Bid Bond (or cashier's check) attached hereto may be called and paid into the account of the Awarding Authority as liquidated damages for failure to so comply.

Attached hereto is a (Mark the appropriate box and provide the applicable information):

Bid Bond, executed by \_\_\_\_\_ as Surety,

A cashier's check on the \_\_\_\_\_ Bank: \_\_\_\_\_,

for the sum of: \_\_\_\_\_

Dollars (\$ \_\_\_\_\_) made payable to the Awarding Authority.

**BIDDER'S ALABAMA LICENSE:**

State License for General Contracting: \_\_\_\_\_ / \_\_\_\_\_ / \_\_\_\_\_  
**License Number                      Bid Limit                      Type(s) of Work**

**CERTIFICATIONS:** The undersigned certifies that he or she is authorized to execute contracts on behalf of the Bidder as legally named, that this proposal is submitted in good faith without fraud or collusion with any other bidder, that the information indicated in this document is true and complete, and that the bid is made in full accord with State law. Notice of acceptance may be sent to the undersigned at the address set forth below.

The Bidder also declares that a list of all proposed major subcontractors and suppliers will be submitted at a time subsequent to the receipt of bids as established by the Architect in the Bid Documents but in no event shall this time exceed twenty-four (24) hours after receipt of bids.

**Legal Name of Bidder:** \_\_\_\_\_

Mailing Address: \_\_\_\_\_

**\*By (Legal Signature):** \_\_\_\_\_

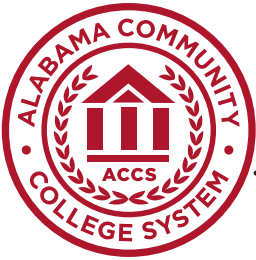
\*Name & Title (Print):

Telephone Number:

**(SEAL)**

Email Address:

\* If other than the individual proprietor, or an above named member of the Partnership, or the above named president, vice-president, or secretary of the Corporation, attach written authority to bind the Bidder. Any modification to a bid shall be over the initials of the person signing the bid, or of an authorized representative.



# FACILITIES DIVISION

## ACCS FORM 5-F

### BID BOND

• Do not staple this form; use clips.

The **PRINCIPAL** (Bidder's Company Name and Address)

Name:

Address:

The **SURETY** (Company Name and Primary Place of Business)

Name:

Address:

The **OWNER**

Name: Alabama Community College System

Address: 135 S. Union Street, Montgomery, AL 36130

The **PROJECT** for which the Principal's Bid is submitted (Project name as it appears in the Bid Documents):

**KNOW ALL MEN BY THESE PRESENTS**, that we, the undersigned Principal and Surety, jointly and severally, hereby bind ourselves, our heirs, executors, administrators, successors, and assigns to the Owner in the **PENAL SUM of five percent (5%) of the amount of the Principal's bid, but in no event more than Ten-thousand Dollars (\$10,000.00).**

**THE CONDITION OF THIS OBLIGATION** is that the Principal has submitted to the Owner the attached bid, which is incorporated herein by reference, for the Project identified above.

**NOW, THEREFORE**, if, within the terms of the Bid Documents, the Owner accepts the Principal's bid and the Principal thereafter either:

(a) executes and delivers a Construction Contract with the required Performance and Payment Bonds (each in the form contained in the Bid Documents and properly completed in accordance with the bid) and delivers evidence of insurance as prescribed in the Bid Documents, or

(b) fails to execute and deliver such Construction Contract with such Bonds and evidence of insurance, but pays the Owner the difference, not to exceed the Penal Sum of this Bond, between the amount of the Principal's Bid and the larger amount for which the Owner may award a Construction Contract for the same Work to another bidder, **then**, this obligation shall be null and void, otherwise it shall remain in full force and effect.

The Surety, for value received, hereby stipulates and agrees that the obligation of the Surety under this Bond shall not in any manner be impaired or affected by any extension of the time within which the Owner may accept the Principal's bid, and the Surety does hereby waive notice of any such extension.

**SIGNED AND SEALED** this \_\_\_\_\_ day of \_\_\_\_\_

**PRINCIPAL:** \_\_\_\_\_

**ATTEST:**

**BY:** \_\_\_\_\_  
NAME AND TITLE

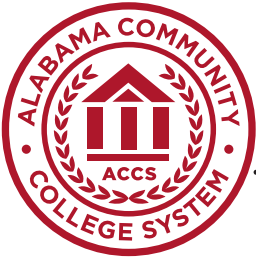
\_\_\_\_\_

**SURETY:** \_\_\_\_\_

**ATTEST:**

**BY:** \_\_\_\_\_  
NAME AND TITLE

\_\_\_\_\_



# FACILITIES DIVISION

**ACCS FORM 5-G***(Quality Assurance Plan must be attached)*

## CONTRACTOR'S STATEMENT OF RESPONSIBILITY FOR CONSTRUCTION OF TORNADO STORM SHELTER (HURRICANE SHELTER WHERE APPLICABLE)

<b>ACCS PROJECT#:</b>		<b>PROJECT NAME#:</b>	
<b>OWNER:</b>			
<b>ARCHITECTURAL/ENGINEERING FIRM:</b>			
<b>CONTRACTING COMPANY:</b>			

I \_\_\_\_\_, acknowledge that I am responsible to the the Alabama Community College System and the Architect/Engineer for the construction of the main wind-force resisting system and any other components listed in the attached Quality Assurance Plan (QAP).

I acknowledge that I am aware of the special requirements contained in the QAP.

I certify that control will be exercised to obtain compliance with the construction documents. The procedures for exercising control shall be as listed below:

- **Control Procedure**
- **How Reported**
- **Distributed To**
- **Distribution Frequency**

*(Attach additional pages if need)*

(Quality Assurance Plan must be attached)

Furthermore, the following persons will be responsible for exercising control in accordance with the QAP. Any changes to the persons listed below will be coordinated with the Owner a minimum of 3 calendar days in advance of the change. The Owner shall provide written objections to the changes within 10 calendar days. No response shall be deemed acceptance.

**Name of Person**                      **Responsibility for QAP**


**Signed on this date,** \_\_\_\_\_

\_\_\_\_\_  
CONTRACTOR COMPANY

**BY:** \_\_\_\_\_

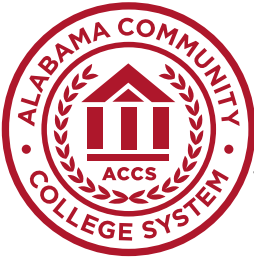
SIGNATURE OF CONTRACTOR

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**Specifications:** *This form must be included in the project manual.*





# FACILITIES DIVISION

## ACCS FORM 5-H

(Must be submitted with ACCS Form 5-E)

### ACCOUNTING OF SALES TAX ATTACHMENT TO ACCS FORM 5-E: PROPOSAL FORM

TO:		DATE:	
NAME OF PROJECT:			

#### **SALES TAX ACCOUNTING**

Pursuant to Act 2013-205, Section 1(g) the Contractor accounts for the sales tax NOT included in the bid proposal form as follows:

			<b><u>ESTIMATED SALES TAX AMOUNT</u></b>
<b>BASE BID:</b>			Dollars \$
For Alternate No. 1 (	)	add	deduct \$
For Alternate No. 2 (	)	add	deduct \$
For Alternate No. 3 (	)	add	deduct \$
For Alternate No. 4 (	)	add	deduct \$
For Alternate No. 5 (	)	add	deduct \$
For Alternate No. 6 (	)	add	deduct \$

**Failure to provide an accounting of sales tax shall render the bid non-responsive. Other than determining responsiveness, sales tax accounting shall not affect the bid pricing nor be considered in the determination of the lowest responsible and responsive bidder.**

**Legal Name of Bidder:**

Mailing Address:

**\*By (Legal Signature):** \_\_\_\_\_

\*Name (Print):

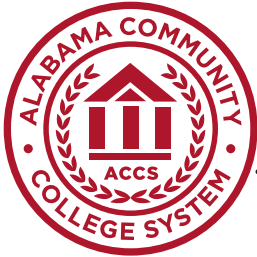
(SEAL)

\*Title (Print):

\*Telephone Number:

Email Address:

**Note:** A completed ACCS Form 5-H: Accounting of Sales Tax must be submitted with ACCS Form 5-E: Proposal Form. A proposal shall be rendered non-responsive if an Accounting of Sales Tax is not provided.



# FACILITIES DIVISION

## ACCS FORM 5-J

You may use your own form provided all requested information and signatures are on your form as well as the "I certify..." statement.  
- DO NOT USE COLORED PRINT OR SHADED TABLES -

### CERTIFIED TABULATION OF BIDS

PROJECT:			AS TABULATED BELOW, BIDS WERE RECEIVED: DATE: TIME: PLACE:		
ACCS PROJECT#:					
CONTRACTOR	SURETY	BASE BID	BID ALT.#1	BID ALT.#2	REMARKS

I certify that the above bids were advertised, were received sealed and were publicly opened and read aloud at the time and place indicated and that this is a true and correct tabulation of all bids received for this project.

\_\_\_\_\_  
ARCHITECTURAL/ENGINEERING FIRM NAME

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_

NOTARY REPUBLIC  
(SEAL)

\_\_\_\_\_  
NAME AND TITLE OF ARCHITECT/ENGINEER

BY: \_\_\_\_\_  
SIGNATURE

VER: 07152024



## ALABAMA DEPARTMENT OF REVENUE

ST: EX-A1-SE  
2/17

## SALES AND USE TAX DIVISION

# Application for Sales Tax Certificate of Exemption

## for Statutorily Exempt Entities

An Alabama Sales Tax Certificate of Exemption shall be used by persons, firms, or corporations coming under the provisions of the Alabama Sales Tax Act **who are not required to have a Sales Tax License.**

**PLEASE COMPLETE EACH LINE APPLICABLE TO YOUR ENTITY. A SALES TAX CERTIFICATE OF EXEMPTION WILL NOT BE ISSUED UNTIL THIS APPLICATION IS PROPERLY COMPLETED.**

1. Federal Employer Identification Number (FEIN) \_\_\_\_\_ 2. Business Telephone (\_\_\_\_) \_\_\_\_\_

3. \_\_\_\_\_

NAME OF PERSON(S), FIRM, CORPORATION, ASSOCIATION, CO-PARTNERSHIP MAKING APPLICATION.

GIVE TRADE NAME

4. Contact Person \_\_\_\_\_

5. Mailing address of home office \_\_\_\_\_

P.O. BOX OR STREET NO. OR R.F.D.

CITY \_\_\_\_\_ COUNTY \_\_\_\_\_ STATE \_\_\_\_\_ ZIP CODE \_\_\_\_\_

6. Location \_\_\_\_\_

CITY \_\_\_\_\_ STREET AND NO. OF HWY. \_\_\_\_\_ COUNTY \_\_\_\_\_ ZIP CODE \_\_\_\_\_

Location must be exact street number or, if on highway or rural route, give details of location. If more than one location, please attach schedule. \_\_\_\_\_

7. Number of businesses in Alabama \_\_\_\_\_

8. Would you like to receive a courtesy email notification to renew your certificate?

☐ No ☐ Yes If yes, you must provide email address: \_\_\_\_\_

9. The Business is: ☐ For Profit ☐ Non-Profit

10. REASON EXEMPTION CLAIMED \_\_\_\_\_

(PRIVATE SCHOOL, UNITED WAY, ETC.) (PROVIDE CODE SECTION OR ACT NUMBER IF KNOWN)

11. Please attach a list of Board Members and a copy of the articles of incorporation. (CEO, CFO, or Executive Director may sign.)

### NOTE

**As a prerequisite to renewal of a certificate, the quadrennial report must be filed as required by law.**

Signed \_\_\_\_\_ Signed \_\_\_\_\_

Title \_\_\_\_\_ Date \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

### MAIL OR EMAIL APPLICATION TO:

Attn.: Exemption Unit

STExemptionUnit@revenue.alabama.gov

Alabama Department of Revenue

Sales and Use Tax Division

P.O. Box 327710

Montgomery, AL 36132-7710

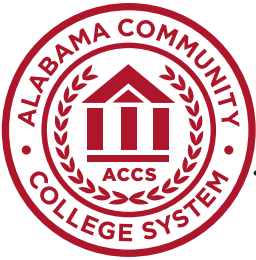
### REVENUE DEPARTMENT USE ONLY

Examiner's Remarks \_\_\_\_\_

Examiner \_\_\_\_\_ Date \_\_\_\_\_

Supervisor's Recommendation \_\_\_\_\_

Supervisor \_\_\_\_\_ Date \_\_\_\_\_



# FACILITIES DIVISION

## ACCS FORM 2-A

### CONSTRUCTION CONTRACT

•Do not staple this form and/or attachments; use clips. Print single-sided; do not submit double-side printed documents.

<b>1</b>	<b>ACCS PROJECT#:</b>			
<b>2</b>	This Construction Contract is entered into this                      day of                      in the year of			
<b>3</b>	between the <b>OWNER</b> , the Alabama Community College System on behalf of:			
Address:				
Email:			Phone:	
<b>4</b>	and the <b>CONTRACTOR</b> ,			
Company Name:				
Address:				
Email:			Phone:	
<b>5</b>	for the <b>WORK</b> of the Project identified as:			
<b>6</b>	The <b>CONTRACT DOCUMENTS</b> are dated		and have been amended by	
<b>7</b>	<b>ADDENDA:</b>			

**8** The **ARCHITECT** is

Firm Name:

Address:

Email:

Phone:

**9** The **CONTRACT SUM** is:

Dollars \$

and is the sum of the Contractor's Base Bid for the Work and the following

**10** **BID ALTERNATE PRICES:****11** The **CONTRACT TIME** is

( ) calendar days

**THE OWNER AND THE CONTRACTOR AGREE AS FOLLOWS:** The Contract Documents, as defined in the General Conditions of the Contract (ACCS Form 2-B), are incorporated herein by reference. The Contractor shall perform the Work in accordance with the Contract Documents. The Owner will pay and the Contractor will accept as full compensation for such performance of the Work, the Contract Sum subject to additions and deductions (including liquidated damages) as provided in the Contract Documents. The Work shall commence on a date to be specified in a Notice to Proceed issued by the Chief Facilities Officer, ACCS Facilities Division, and shall then be substantially completed within the Contract Time.

**12** **LIQUIDATED DAMAGES** for which the Contractor and its Surety (if any) shall be liable and may be required to pay the Owner in accordance with the Contract Documents shall be equal to six percent interest per annum on the total Contract Sum unless a dollar amount is stipulated in the following space, in which case liquidated damages shall be determined at:

Dollars (\$) per calendar day

**13 SPECIAL PROVISIONS:** (Special Provisions may be inserted here, such as acceptance or rejection of unit prices. If Special Provisions are continued in an attachment, identify the attachment below).

**14 STATE GENERAL CONTRACTOR'S LICENSE:** The Contractor does hereby certify that Contractor is currently licensed by the Alabama State Licensing Board for General Contractors and that the certificate for such license bears the following:

License No.:		Expiration Date	
Bid Limit:		Classifications	

The Owner and Contractor have entered into this Construction Contract as of the date first written above and have executed this Construction Contract in sufficient counterparts to enable each contracting party to have an originally executed Construction Contract each of which shall, without proof or accounting for the other counterparts, be deemed an original thereof.

The Owner does hereby certify that this Construction Contract was let in accordance with the provisions of Title 39, Code of Alabama 1975, as amended, and all other applicable provisions of law, and that the terms and commitments of this Construction Contract do not constitute a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment No. 26.

**15****APPROVALS****LOCAL COLLEGE OR TRADE SCHOOL**

BY: \_\_\_\_\_

AS PRESIDENT OF \_\_\_\_\_

**ALABAMA COMMUNITY COLLEGE SYSTEM (ACCS)**

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

CHIEF FACILITIES OFFICER

**CONTRACTING PARTIES**\_\_\_\_\_  
CONTRACTOR COMPANY

BY: \_\_\_\_\_

SIGNATURE

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

**ALABAMA COMMUNITY COLLEGE SYSTEM  
(AS OWNER)**

BY: \_\_\_\_\_

CHANCELLOR

**ATTACHMENTS:**

Copy of Alabama General Contractor's License

Proposal Form (ACCS Form 5-E)

List of all proposed major subcontractors and suppliers

Accounting of Sales Tax (ACCS Form 5-H)

Bid Tabulation

Certificate of Liability Insurance

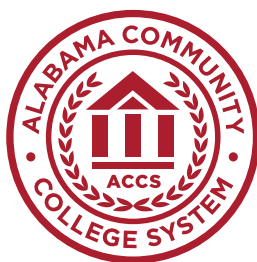
Performance Bond (ACCS Form 2-C)

Payment Bond (ACCS Form 2-D)

State of Alabama Disclosure Statement

E-Verify Memorandum of Understanding

W-9 (Request for Taxpayer Identification Number and Certificate)



### GENERAL CONDITIONS *of the* CONTRACT

#### CONTENTS

- |  |   |
|--|---|
| 1. Definitions   | 27. Owner's Right to Terminate Contract         |
| 2. Intent and Interpretation of the Contract Documents             | 28. Contractor's Right to Suspend or Terminate  |
| 3. Contractor's Representation                                     | 29. Progress Payments                           |
| 4. Documents Furnished to Contractor                               | 30. Certification & Approvals for Payments      |
| 5. Ownership of Drawings   | 31. Payments Withheld                           |
| 6. Supervision, Superintendent, & Employees                        | 32. Substantial Completion                      |
| 7. Review of Contract Documents and Field Conditions by Contractor | 33. Occupancy or Use Prior to Completion        |
| 8. Surveys by Contractor   | 34. Final Payment                               |
| 9. Submittals  | 35. Contractor's Warranty                       |
| 10. Documents and Samples at the Site                              | 36. Indemnification Agreement                   |
| 11. "As-built" Documents   | 37. Insurance                                   |
| 12. Progress Schedule  | 38. Performance and Payment Bonds               |
| 13. Materials, Equipment & Substitutions                           | 39. Assignment                                  |
| 14. Safety & Protection of Persons & Property                      | 40. Construction by Owner or Separate Contracts |
| 15. Hazardous Materials  | 41. Subcontracts                                |
| 16. Inspection of the Work   | 42. Architect's Status                          |
| 17. Correction of Work   | 43. Cash Allowances                             |
| 18. Deductions for Uncorrected Work                                | 44. Permits, Laws and Regulations               |
| 19. Changes in the Work  | 45. Royalties, Patents and Copyrights           |
| 20. Claims for Extra Cost or Extra Work                            | 46. Use of the Site                             |
| 21. Differing Site Conditions                                      | 47. Cutting and Patching                        |
| 22. Claims for Damages   | 48. In-progress and Final Cleanup               |
| 23. Delays   | 49. Liquidated Damages                          |
| 24. Resolution of Claims and Disputes                              | 50. Use of Foreign Material                     |
| 25. Owner's Right to Correct Work                                  | 51. Sign  |
| 26. Owner's Right to Stop or Suspend the Work                      |   |



## Article 1 DEFINITIONS

Whenever the following terms, or pronouns in place of them, are used in the Contract Documents, the intent and meaning shall be interpreted as follows:

- A ACCS FACILITIES DIVISION:** The ACCS Facilities Division, which is responsible for oversight and management of all ACCS construction projects, pursuant to the policies and procedures adopted by the ACCS Board of Trustees.
- B ARCHITECT:** The Architect is the person or entity lawfully licensed to practice architecture in the State of Alabama, who is under contract with the Owner as the primary design professional for the Project and identified as the Architect in the Construction Contract. The term “Architect” means the Architect or the Architect’s authorized representative. If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect. If the primary design professional for the Project is a Professional Engineer, the term “Engineer” shall be substituted for the term “Architect” wherever it appears in this document.
- C CONTRACT:** The Contract is the embodiment of the Contract Documents. The Contract represents the entire and integrated agreement between the Owner and Contractor and supersedes any prior written or oral negotiations, representations or agreements that are not incorporated into the Contract Documents. The Contract may be amended only by a Contract Change Order or a Modification to the Construction Contract. The contractual relationship which the Contract creates between the Owner and the Contractor extends to no other persons or entities. The Contract consists of the following Contract Documents, including all additions, deletions, and modifications incorporated therein before the execution of the Construction Contract:
- (1) Construction Contract
  - (2) Performance and Payment Bonds
  - (3) Conditions of the Contract (General, Supplemental, and other Conditions)
  - (4) Specifications
  - (5) Drawings
  - (6) Contract Change Orders
  - (7) Modifications to the Construction Contract (applicable to PSCA Projects)
- D CONTRACT SUM:** The Contract Sum is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The term “Contract Sum” means the Contract Sum stated in the Construction Contract as may have been increased or decreased by Change Order(s) in accordance with the Contract Documents.
- E CONTRACT TIME:** The Contract Time is the period of time in which the Contractor must achieve Substantial Completion of the Work. The date on which the Contract Time begins is specified in the written Notice To Proceed issued to the Contractor by the Owner. The Date of Substantial Completion is the date established in accordance with Article 32. The term “Contract Time” means the Contract Time stated in the Construction Contract as may have been extended by Change Order(s) in accordance with the Contract Documents. The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

- F CONTRACTOR:** The Contractor is the person or persons, firm, partnership, joint venture, association, corporation, cooperative, limited liability company, or other legal entity, identified as such in the Construction Contract. The term “Contractor” means the Contractor or the Contractor’s authorized representative.
- G DEFECTIVE WORK:** The term “Defective Work” shall apply to: **(1)** any product, material, system, equipment, or service, or its installation or performance, which does not conform to the requirements of the Contract Documents, **(2)** in-progress or completed Work the workmanship of which does not conform to the quality specified or, if not specified, to the quality produced by skilled workers performing work of a similar nature on similar projects in the state, **(3)** substitutions and deviations not properly submitted and approved or otherwise authorized, **(4)** temporary supports, structures, or construction which will not produce the results required by the Contract Documents, and **(5)** materials or equipment rendered unsuitable for incorporation into the Work due to improper storage or protection.
- H CHIEF FACILITIES OFFICER:** The Director of the ACCS Facilities Division.
- I DRAWINGS:** The Drawings are the portions of the Contract Documents showing graphically the design, location, layout, and dimensions of the Work, in the form of plans, elevations, sections, details, schedules, and diagrams.
- J NOTICE TO PROCEED:** A proceed order issued by the Owner, as applicable, fixing the date on which the Contractor shall begin the prosecution of the Work, which is also the date on which the Contract Time shall begin.
- K OWNER:** The Owner is the entity or entities identified as such in the Construction Contract and is referred to throughout the Contract Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative. The term “Owner” as used herein shall be synonymous with the term “Awarding Authority” as defined and used in Title 39 - Public Works, Code of Alabama, 1975, as amended.
- L THE PROJECT:** The Project is the total construction of which the Work required by these Contract Documents may be the entirety or only a part with other portions to be constructed by the Owner or separate contractors.
- M PROJECT MANUAL:** The Project Manual is the volume usually assembled for the Work which may include the Advertisement for Bids, Instructions to Bidders, sample forms, General Conditions of the Contract, Supplementary Conditions, and Specifications of the Work.
- N SPECIFICATIONS:** The Specifications are that portion of the Contract Documents which set forth in writing the standards of quality and performance of products, equipment, materials, systems, and services and workmanship required for acceptable performance of the Work.
- O SUBCONTRACTOR:** A Subcontractor is a person or entity who is undertaking the performance of any part of the Work by virtue of a contract with the Contractor. The term “Subcontractor” means a Subcontractor or its authorized representatives.
- P THE WORK:** The Work is the construction and services required by the Contract Documents and includes all labor, materials, supplies, equipment, and other items and services as are necessary to produce the required construction and to fulfill the Contractor’s obligations under the Contract. The Work may constitute the entire Project or only a portion of it.

**Article 2****INTENT *and* INTERPRETATION of the CONTRACT DOCUMENTS****A INTENT**

It is the intent of the Contract Documents that the Contractor shall properly execute and complete the Work described by the Contract Documents, and unless otherwise provided in the Contract, the Contractor shall provide all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, in full accordance with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**B COMPLEMENTARY DOCUMENTS**

The Contract Documents are complementary. If Work is required by one Contract Document, the Contractor shall perform the Work as if it were required by all of the Contract Documents. However, the Contractor shall be required to perform Work only to the extent that is consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**C ORDER of PRECEDENCE**

Should any discrepancy arise between the various elements of the Contract Documents, precedence shall be given to them in the following order unless to do so would contravene the apparent Intent of the Contract Documents stated in preceding Paragraph A:

- (1) The Construction Contract.
- (2) Addenda, with those of later date having precedence over those of earlier date.
- (3) Supplementary Conditions (or other Conditions which modify the General Conditions of the Contract).
- (4) General Conditions of the Contract.
- (5) The Specifications.
- (6) Details appearing on the Drawings; large scale details shall take precedence over smaller scale details.
- (7) The Drawings; large scale drawings shall take precedence over smaller scale drawings.

**D ORGANIZATION**

Except as may be specifically stated within the technical specifications, neither the organization of the Specifications into divisions, sections, or otherwise, nor any arrangement of the Drawings shall control how the Contractor subcontracts portions of the Work or assigns Work to any trade.

**E INTERPRETATION**

(1) The Contract Documents shall be interpreted collectively, each part complementing the others and consistent with the Intent of the Contract Documents stated in preceding Paragraph A. Unless an item shown or described in the Contract Documents is specifically identified to be furnished or installed by the Owner or others or is identified as "Not In Contract" ("N.I.C."), the Contractor's obligation relative to that item shall be interpreted to include furnishing, assembling, installing, finishing, and/or connecting the item at the Contractor's expense to produce a product or system that is complete, appropriately tested, and in operative condition ready for use or subsequent construction or operation of the Owner or separate contractors. The omission of words or phrases for brevity of the Contract Documents, the inadvertent omission of words or phrases, or obvious typographical or written errors shall not defeat such interpretation as long as it is reasonably inferable from the Contract Documents as a whole.

(2) Words or phrases used in the Contract Documents which have well-known technical or construction industry meanings are to be interpreted consistent with such recognized meanings unless otherwise indicated.

(3) Except as noted otherwise, references to standard specifications or publications of associations, bureaus, or organizations shall mean the latest edition of the referenced standard specification or publication as of the date of the Advertisement for Bids.

(4) In the case of inconsistency between Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Architect's interpretation.

(5) Any portions of the Contract Documents written in longhand must be initialed by all parties.

(6) Any doubt as to the meaning of the Contract Documents or any obscurity as to the wording of them, shall be promptly submitted in writing to the Architect for written interpretation, explanation, or clarification.

#### **F SEVERABILITY**

The partial or complete invalidity of any one or more provision of this Contract shall not affect the validity or continuing force and effect of any other provision.

### **Article 3**

#### **CONTRACTOR'S REPRESENTATION**

By executing the Construction Contract the Contractor represents to the Owner:

- A** The Contractor has visited the site of the Work to become familiar with local conditions under which the Work is to be performed and to evaluate reasonably observable conditions as compared with requirements of the Contract Documents.
- B** The Contractor shall use its best skill and attention to perform the Work in an expeditious manner consistent with the Contract Documents.
- C** The Contractor is an independent contractor and in performance of the Contract remains and shall act as an independent contractor having no authority to represent or obligate the Owner in any manner unless authorized by the Owner in writing.

### **Article 4**

#### **DOCUMENTS FURNISHED *to* CONTRACTOR**

Unless otherwise provided in the Contract Documents, one readable standard PDF set of Drawings and Project Manuals will be furnished to the Contractor by the Architect without charge. Other copies requested will be furnished at reproduction cost.

### **Article 5**

#### **OWNERSHIP *of* DRAWINGS**

All original or duplicated Drawings, Specifications, and other documents prepared by the Architect, and furnished to the Contractor are the property of the Architect and are to be used solely for this Project and not to be used in any manner for other work. Upon completion of the Work, all copies of Drawings and Specifications, with the exception of the Contractor's record set, shall be returned or accounted for by the Contractor to the Architect, on request.

**Article 6****SUPERVISION, SUPERINTENDENT, *and* EMPLOYEES****A SUPERVISION and CONSTRUCTION METHODS**

(1) The term “Construction Methods” means the construction means, methods, techniques, sequences, and procedures utilized by the Contractor in performing the Work. The Contractor is solely responsible for supervising and coordinating the performance of the Work, including the selection of Construction Methods, unless the Contract Documents give other specific instructions concerning these matters.

(2) The Contractor is solely and completely responsible for job site safety, including the protection of persons and property in accordance with Article 14.

(3) The Contractor shall be responsible to the Owner for acts and omissions of not only the Contractor and its agents and employees, but all persons and entities, and their agents and employees, who are performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.

(4) The Contractor shall be responsible to inspect the in-progress and completed Work to verify its compliance with the Contract Documents and to insure that any element or portion of the Work upon which subsequent Work is to be applied or performed is in proper condition to receive the subsequent Work.

**B SUPERINTENDENT**

(1) The Contractor shall employ and maintain a competent level of supervision for the performance of the Work at the Project site, including a superintendent who shall:

- (a) have full authority to receive instructions from the Architect or Owner and to act on those instructions &
- (b) be present at the Project site at all times during which Work is being performed.

(2) Before beginning performance of the Work, the Contractor shall notify the Architect in writing of the name and qualifications of its proposed superintendent so that the Owner may review the individual's qualifications. If, for reasonable cause, the Owner refuses to approve the individual, or withdraws its approval after once giving it, the Contractor shall name a different superintendent for the Owner's review and approval. Any disapproved superintendent will not perform in that capacity thereafter at the Project site.

**C EMPLOYEES**

The Contractor shall permit only fit and skilled persons to perform the Work. The Contractor shall enforce safety procedures, strict discipline, and good order among persons performing the Work. The Contractor will remove from its employment on the Project any person who deliberately or persistently produces non-conforming Work or who fails or refuses to conform to reasonable rules of personal conduct contained in the Contract Documents or implemented by the Owner and delivered to the Contractor in writing during the course of the Work.

**Article 7****REVIEW *of* CONTRACT DOCUMENTS *and* FIELD CONDITIONS *by* CONTRACTOR**

- A** In order to facilitate assembly and installation of the Work in accordance with the Contract Documents, before starting each portion of the Work, the Contractor shall examine and compare the relevant Contract Documents, and compare them to relevant field measurements made by the Contractor and any conditions at the site affecting that portion of the Work.

- B** If the Contractor discovers any errors, omissions, or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the Architect as a written request for information that includes a detailed statement identifying the specific Drawings or Specifications that are in need of clarification and the error, omission, or inconsistency discovered in them.
- (1) The Contractor shall not be expected to act as a licensed design professional and ascertain whether the Contract Documents comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, but the Contractor shall be obligated to promptly notify the Architect of any such noncompliance discovered by or made known to the Contractor. If the Contractor performs Work without fulfilling this notification obligation, the Contractor shall pay the resulting costs and damages that would have been avoided by such notification.
- (2) The Contractor shall not be liable to the Owner for errors, omissions, or inconsistencies that may exist in the Contract Documents, or between the Contract Documents and conditions at the site, unless the Contractor knowingly fails to report a discovered error, omission, or inconsistency to the Architect, in which case the Contractor shall pay the resulting costs and damages that would have been avoided by such notification.
- C** If the Contractor considers the Architect's response to a request for information to constitute a change to the Contract Documents involving additional costs and/or time, the Contractor shall follow the procedures of Article 20, Claims for Extra Cost or Extra Work.
- D** If, with undue frequency, the Contractor requests information that is obtainable through reasonable examination and comparison of the Contract Documents, site conditions, and previous correspondence, interpretations, or clarifications, the Contractor shall be liable to the Owner for reasonable charges from the Architect for the additional services required to review, research, and respond to such requests for information.

## **Article 8**

### **SURVEYS *by* CONTRACTORS**

- A** The Contractor shall provide competent engineering services to assure accurate execution of the Work in accordance with the Contract Documents. The Contractor shall verify the figures given for the contours, approaches and locations shown on the Drawings before starting any Work and be responsible for the accuracy of the finished Work. Without extra cost to the Owner, the Contractor shall engage a licensed surveyor if necessary to verify boundary lines, keep within property lines, and shall be responsible for encroachments on rights or property of public or surrounding property owners.
- B** The Contractor shall establish all base lines for the location of the principal components of the Work and make all detail surveys necessary for construction, including grade stakes, batter boards and other working points, lines and elevations. If the Work involves alteration of or addition to existing structures or improvements, the Contractor shall locate and measure elements of the existing conditions as is necessary to facilitate accurate fabrication, assembly, and installation of new Work in the relationship, alignment, and/or connection to the existing structure or improvement as is shown in the Contract Documents.

## Article 9 SUBMITTALS

- A** Where required by the Contract Documents, the Contractor shall submit shop drawings, product data, samples and other information (hereinafter referred to as Submittals) to the Architect for the purpose of demonstrating the way by which the Contractor proposes to conform to the requirements of the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.
- B** The Contractor shall be responsible to the Owner for the accuracy of its Submittals and the conformity of its submitted information to the requirements of the Contract Documents. Each Submittal shall bear the Contractor's approval, evidencing that the Contractor has reviewed and found the information to be in compliance with the requirements of the Contract Documents. Submittals which are not marked as reviewed and approved by the Contractor may be returned by the Architect without action.
- C** The Contractor shall prepare and deliver its submittals to the Architect sufficiently in advance of construction requirements and in a sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. In coordinating the Submittal process with its construction schedule, the Contractor shall allow sufficient time to permit adequate review by the Architect.
- D** By approving a Submittal the Contractor represents not only that the element of Work presented in the Submittal complies with the requirements of the Contract Documents, but also that the Contractor has:
  - (1)** found the layout and/or dimensions in the Submittal to be comparable with those in the Contract Documents and other relevant Submittals and has made field measurements as necessary to verify their accuracy, and
  - (2)** determined that products, materials, systems, equipment and/or procedures presented in the Submittal are compatible with those presented, or being presented, in other relevant Submittals and with the Contractor's intended Construction Methods.
- E** The Contractor shall not fabricate or perform any portion of the Work for which the Contract Documents require Submittals until the respective Submittals have been approved by the Architect.
- F** In the case of a resubmission, the Contractor shall direct specific attention to all revisions in a Submittal. The Architect's approval of a resubmission shall not apply to any revisions that were not brought to the Architect's attention.
- G** If the Contract Documents specify that a Submittal is to be prepared and sealed by a registered architect or licensed engineer retained by the Contractor, all drawings, calculations, specifications, and certifications of the Submittal shall bear the Alabama seal of registration and signature of the registered/licensed design professional who prepared them or under whose supervision they were prepared. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of such a Submittal, provided that all performance and design criteria that such Submittal must satisfy are sufficiently specified in the Contract Documents. The Architect will review, approve or take other appropriate action on such a Submittal only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria specified in the Contract Documents.



## **H DEVIATIONS**

(1) The Architect is authorized by the Owner to approve “minor” deviations from the requirements of the Contract Documents. “Minor” deviations are defined as those which are in the interest of the Owner, do not materially alter the quality or performance of the finished Work, and do not affect the cost or time of performance of the Work. Deviations which are not “minor” may be authorized only by the Owner through the Change Order procedures of Article 19.

(2) Any deviation from the requirements of the Contract Documents contained in a Submittal shall be clearly identified as a “Deviation from Contract Requirements” (or by similar language) within the Submittal and, in a letter transmitting the Submittal to the Architect, the Contractor shall direct the Architect’s attention to, and request specific approval of, the deviation. Otherwise, the Architect’s approval of a Submittal does not constitute approval of deviations from the requirements of the Contract Documents contained in the Submittal.

(3) The Contractor shall bear all costs and expenses of any changes to the Work, changes to work performed by the Owner or separate contractors, or additional services by the Architect required to accommodate an approved deviation unless the Contractor has specifically informed the Architect in writing of the required changes and a Change Order has been issued authorizing the deviation and accounting for such resulting changes and costs.

## **I ARCHITECT’S REVIEW *and* APPROVAL**

(1) The Architect will review the Contractor’s Submittals for conformance with requirements of, and the design concept expressed in, the Contract Documents and will approve or take other appropriate action upon them. This review is not intended to verify the accuracy and completeness of details such as dimensions and quantities nor to substantiate installation instructions or performance of equipment or systems, all of which remain the responsibility of the Contractor. However, the Architect shall advise the Contractor of any errors or omissions which the Architect may detect during this review. The Architect’s approval of a specific item shall not indicate approval of an assembly of which the item is a component.

(2) The Architect will review and respond to all Submittals with reasonable promptness to avoid delay in the Work or in the activities of the Owner, Contractor or separate contractors, while allowing sufficient time to permit adequate review.

(3) No corrections or changes to Submittals indicated by the Architect will be considered as authorizations to perform Extra Work. If the Contractor considers such correction or change of a Submittal to require Work which differs from the requirements of the Contract Documents, the Contractor shall promptly notify the Architect in writing in accordance with Article 20, Claims for Extra Cost or Extra Work.

## **J CONFORMANCE *with* SUBMITTALS**

The Work shall be constructed in accordance with approved Submittals.



**Article 10**
**DOCUMENTS *and* SAMPLES *at the* SITE**
**A “AS ISSUED” SET**

The Contractor shall maintain at the Project site, in good order, at least one copy of all Addenda, Change Orders, supplemental drawings, written directives and clarifications, and approved Submittals intact as issued, and an updated construction schedule.

**B “POSTED” SET**

The Contractor shall maintain at the Project site, in good order, at least one set of the Drawings and Project Manual into which the Contractor has “posted”(incorporated) all Addenda, Change Orders, supplemental drawings, clarifications, and other information pertinent to the proper performance of the Work. The Contractor shall assure that all sets of the Drawings and Project Manuals being used by the Contractor, Subcontractors, and suppliers are “posted” with the current information to insure that updated Contract Documents are used for performance of the Work.

**C RECORD SET**

One set of the Drawings and Project Manual described in Paragraph B shall be the Contractor’s record set in which the Contractor shall record all field changes, corrections, selections, final locations, and other information as will be duplicated on the “As-built” documents required under Article 11. The Contractor shall record such “as-built” information in its record set as it becomes available through progress of the Work. The Contractor’s performance of this requirement shall be subject to confirmation by the Architect at any time as a prerequisite to approval of Progress Payments.

**D** The documents and samples required by this Article to be maintained at the Project site shall be readily available to the Architect, Owner, AHJ or other reviewing entity, and their representatives.

**Article 11**
**“AS-BUILT” DOCUMENTS**

**A** Unless otherwise provided in the Contract Documents, the Contractor shall deliver two (2) sets or one reapeable standard PDF set of “As-built” documents, as described herein, to the Architect for submission to the Owner upon completion of the Work. Each set of “As-built” documents shall consist of a copy of the Drawings and Project Manual, in like-new condition, into which the Contractor has neatly incorporated all Addenda, Change Orders, supplemental drawings, clarifications, field changes, corrections, selections, actual locations of underground utilities, and other information as required herein or specified elsewhere in the Contract Documents.

**B** The Contractor shall use the following methods for incorporating information into the “As-built” documents:

**(1) Drawings**

**(a)** To the greatest extent practicable, information shall be carefully drawn and lettered, in ink, on the Drawings in the form of sketches, details, plans, notes, and dimensions as required to provide a fully dimensioned record of the Work. When required for clarity, sketches, details, or partial plans shall be drawn on supplemental sheets and bound into the Drawings and referenced on the drawing being revised.

- (b) Where a revised drawing has been furnished by the Architect, the drawing of latest date shall be bound into the Drawings in the place of the superseded drawing.
- (c) Where a supplemental drawing has been furnished by the Architect, the supplemental drawing shall be bound into the Drawings in an appropriate location and referred to by notes added to the drawing being supplemented.
- (d) Where the Architect has furnished details, partial plans, or lengthy notes of which it would be impractical for the Contractor to redraw or letter on a drawing, such information may be affixed to the appropriate drawing with transparent tape if space is available on the drawing.
- (e) Any entry of information made in the Drawings that is the result of an Addendum or Change Order, shall identify the Addendum or Change Order from which it originated.

## **(2) Project Manual**

- (a) A copy of all Addenda and Change Orders, excluding drawings thereof, shall be bound in the front of the Project Manual.
- (b) Where a document, form, or entire specification section is revised, the latest issue shall be bound into the Project Manual in the place of the superseded issue.
- (c) Where information within a specification section is revised, the deleted or revised information shall be drawn through in ink and an adjacent note added identifying the Addendum or Change Order containing the revised information.

- C** Within ten days after the Date of Substantial Completion of the Work, or the last completed portion of the Work, the Contractor shall submit the “As-built” documents to the Architect for approval. If the Architect requires that any corrections be made, the documents will be returned in a reasonable time for correction and resubmission.

## **Article 12**

### **PROGRESS SCHEDULE**

(Not applicable if the Contract Time is 60 days or less.)

- A** The Contractor shall within fifteen days after the date of commencement stated in the Notice to Proceed, or such other time as may be provided in the Contract Documents, prepare and submit to the Architect for review and approval a practicable construction schedule informing the Architect and Owner of the order in which the Contractor plans to carry on the Work within the Contract Time. The Architect’s review and approval of the Contractor’s construction schedule shall be only for compliance with the specified format, Contract Time, and suitability for monitoring progress of the Work and shall not be construed as a representation that the Architect has analyzed the schedule to form opinions of sequences or durations of time represented in the schedule.
- B** If a schedule format is not specified elsewhere in the Contract Documents, the construction schedule shall be prepared using ACCS Form 6-H “Progress Schedule and Report”, (contained in the Project Manual) or similar format of suitable scale and detail to indicate the percentage of Work scheduled to be completed at the end of each month. At the end of each month the Contractor shall enter the actual percentage of completion on the construction schedule submit two copies to the Architect, and attach one copy to each copy of the

monthly Application for Payment. The construction schedule shall be revised to reflect any agreed extensions of the Contract Time or as required by conditions of the Work.

- C** If a more comprehensive schedule format is specified elsewhere in the Contract Documents or voluntarily employed by the Contractor, it may be used in lieu of the form “Progress Schedule and Report” referenced above.
- D** The Contractor’s construction schedule shall be used by the Contractor, Architect, and Owner to determine the adequacy of the Contractor’s progress. The Contractor shall be responsible for maintaining progress in accordance with the currently approved construction schedule and shall increase the number of shifts, and/or overtime operations, days of work, and/or the amount of construction plant and equipment as may be necessary to do so. If the Contractor’s progress falls materially behind the currently approved construction schedule and, in the opinion of the Architect or Owner, the Contractor is not taking sufficient steps to regain schedule, the Architect may, with the Owner’s concurrence, issue the Contractor a Notice to Cure pursuant to Article 27. In such a Notice to Cure the Architect may require the Contractor to submit such supplementary or revised construction schedules as may be deemed necessary to demonstrate the manner in which schedule will be regained.

### **Article 13**

## **EQUIPMENT, MATERIALS, *and* SUBSTITUTIONS**

- A** Every part of the Work shall be executed in a workmanlike manner in accordance with the Contract Documents and approved Submittals. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided or allowed in the Contract Documents to be otherwise.
- B** Whenever a product, material, system, item of equipment, or service is identified in the Contract Documents by reference to a trade name, manufacturer’s name, model number, etc.(hereinafter referred to as “source”), and only one or two sources are listed, or three or more sources are listed and followed by “or approved equal” or similar wording, it is intended to establish a required standard of performance, design, and quality, and the Contractor may submit, for the Architect’s approval, products, materials, systems, equipment, or services of other sources which the Contractor can prove to the Architect’s satisfaction are equal to, or exceed, the standard of performance, design and quality specified, unless the provisions of Paragraph D below apply. Such proposed substitutions are not to be purchased or installed without the Architect’s written approval of the substitution.
- C** If the Contract Documents identify three or more sources for a product, material, system, item of equipment or service to be used and the list of sources is not followed by “or approved equal” or similar wording, the Contractor may make substitution only after evaluation by the Architect and execution of an appropriate Contract Change Order.
- D** If the Contract Documents identify only one source and expressly provide that it is an approved sole source for the product, material, system, item of equipment, or service, the Contractor must furnish the identified sole source.

**Article 14****SAFETY and PROTECTION of PERSONS and PROPERTY**

- A** The Contractor shall be solely and completely responsible for conditions at the Project site, including safety of all persons (including employees) and property. The Contractor shall create, maintain, and supervise conditions and programs to facilitate and promote safe execution of the Work, and shall supervise the Work with the attention and skill required to assure its safe performance. Safety provisions shall conform to OSHA requirements and all other federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more stringent requirement shall be followed. Nothing contained in this Contract shall be construed to mean that the Owner has employed the Architect nor has the Architect employed its consultants to administer, supervise, inspect, or take action regarding safety programs or conditions at the Project site.
- B** The Contractor shall employ Construction Methods, safety precautions, and protective measures that will reasonably prevent damage, injury or loss to:
- (1)** workers and other persons on the Project site and in adjacent and other areas that may be affected by the Contractor's operations;
  - (2)** the Work and materials and equipment to be incorporated into the Work and stored by the Contractor on or off the Project site; and
  - (3)** other property on, or adjacent to, the Project site, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and other improvements not designated in the Contract Documents to be removed, relocated, or replaced.
- C** The Contractor shall be responsible for the prompt remedy of damage and loss to property, including the filing of appropriate insurance claims, caused in whole or in part by the fault or negligence of the Contractor, a Subcontractor, or anyone for whose acts they may be liable.
- D** The Contractor shall comply with and give notices required by applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety and protection of persons or property, including without limitation notices to adjoining property owners of excavation or other construction activities that potentially could cause damage or injury to adjoining property or persons thereon.
- E** The Contractor shall erect and maintain barriers, danger signs, and any other reasonable safeguards and warnings against hazards as may be required for safety and protection during performance of the Contract and shall notify owners and users of adjacent sites and utilities of conditions that may exist or arise which may jeopardize their safety.
- F** If use or storage of explosives or other hazardous materials or equipment or unusual Construction Methods are necessary for execution of the Work, the Contractor shall exercise commensurate care and employ supervisors and workers properly qualified to perform such activity.
- G** The Contractor shall furnish a qualified safety representative at the Project site whose duties shall include the prevention of accidents. The safety representative shall be the Contractor's superintendent, unless the Contractor assigns this duty to another responsible member of its on-site staff and notifies the Owner and Architect in writing of such assignment.

- H** The Contractor shall not permit a load to be applied, or forces introduced, to any part of the construction or site that may cause damage to the construction or site or endanger safety of the construction, site, or persons on or near the site.
- I** The Contractor shall have the right to act as it deems appropriate in emergency situations jeopardizing life or property. The Contractor shall be entitled to equitable adjustment of the Contract Sum or Contract Time for its efforts expended for the sole benefit of the Owner in an emergency. Such adjustment shall be determined as provided in Articles 19 and 20.
- J** The duty of the Architect and the Architect's consultants to visit the Project site to conduct periodic inspections of the Work or for other purposes shall not give rise to a duty to review or approve the adequacy of the Contractor's safety program, safety supervisor, or any safety measure which Contractor takes or fails to take in, on, or near the Project site.

## **Article 15**

### **HAZARDOUS MATERIALS**

- A** A Hazardous Material is any substance or material identified as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing its handling, disposal, and/or clean-up. Existing Hazardous Materials are Hazardous Materials discovered at the Project site and not introduced to the Project site by the Contractor, a Subcontractor, or anyone for whose acts they may be liable.
- B** If, during the performance of the Work, the Contractor encounters a suspected Existing Hazardous Material, the Contractor shall immediately stop work in the affected area, take measures appropriate to the condition to keep people away from the suspected Existing Hazardous Material, and immediately notify the Architect and Owner of the condition in writing.
- C** The Owner shall obtain the services of an independent laboratory or professional consultant, appropriately licensed and qualified, to determine whether the suspected material is a Hazardous Material requiring abatement and, if so, to certify after its abatement that it has been rendered harmless. Any abatement of Existing Hazardous Materials will be the responsibility of the Owner. The Owner will advise the Contractor in writing of the persons or entities who will determine the nature of the suspected material and those who will, if necessary, perform the abatement. The Owner will not employ persons or entities to perform these services to whom the Contractor or Architect has reasonable objection.
- D** After certification by the Owner's independent laboratory or professional consultant that the material is harmless or has been rendered harmless, work in the affected area shall resume upon written agreement between the Owner and Contractor. If the material is found to be an Existing Hazardous Material and the Contractor incurs additional cost or delay due to the presence and abatement of the material, the Contract Sum and/or Contract Time shall be appropriately adjusted by a Contract Change Order pursuant to Article 19.
- E** The Owner shall not be responsible for Hazardous Materials introduced to the Project site by the Contractor, a Subcontractor, or anyone for whose acts they may be liable unless such Hazardous Materials were required by the Contract Documents.

**Article 16****INSPECTION *of the* WORK****A GENERAL**

(1) The Contractor is solely responsible for the Work's compliance with the Contract Documents; therefore, the Contractor shall be responsible to inspect in-progress and completed Work, and shall verify its compliance with the Contract Documents and that any element or portion of the Work upon which subsequent Work is to be applied or performed is in proper condition to receive the subsequent Work. Neither the presence nor absence of inspections by the Architect, Owner, AHJ, any public authority having jurisdiction, or their representatives shall relieve the Contractor of responsibility to inspect the Work, for responsibility for Construction Methods and safety precautions and programs in connection with the Work, or from any other requirement of the Contract Documents.

(2) The Architect, Owner, AHJ, any public authority having jurisdiction, and their representatives shall have access at all times to the Work for inspection whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and inspection. All materials, workmanship, processes of manufacture, and methods of construction, if not otherwise stipulated in the Contract Documents, shall be subject to inspection, examination, and test at any and all places where such manufacture and/or construction are being carried on. Such inspections will not unreasonably interfere with the Contractor's operations.

(3) The Architect will inspect the Work as a representative of the Owner. The Architect's inspections may be supplemented by inspections by an AHJ or other reviewing entity.

(4) The Contractor may be charged by the Owner for any extra cost of inspection incurred by the Owner or Architect on account of material and workmanship not being ready at the time of inspection set by the Contractor.

**B TYPES of INSPECTIONS**

(1) **SCHEDULED INSPECTIONS and CONFERENCES.** Scheduled Inspections and Conferences are conducted by the Architect, scheduled by the Architect in coordination with the Contractor and AHJ where applicable, and are attended by the Contractor and applicable Subcontractors, suppliers and manufacturers. Scheduled Inspections and Conferences of this Contract include:

(a) Pre-construction Conference.

(b) Pre-roofing Conference (not applicable if the Contract involves no roofing work)

(c) Above Ceiling Inspection(s): An above ceiling inspection of all spaces in the building is required before the ceiling material is installed. Above ceiling inspections are to be conducted at a time when all above ceiling systems are complete and tested to the greatest extent reasonable pending installation of the ceiling material. System identifications and markings are to be complete. All fire-rated construction including fire-stopping of penetrations and specified identification above the ceiling shall be complete. Ceiling framing and suspension systems shall be complete with lights, grilles and diffusers, access panels, fire protection drops for sprinkler heads, etc., installed in their final locations to the greatest extent reasonable. Above ceiling framing to support ceiling mounted equipment shall be complete. The above ceiling construction shall be complete to the extent that after the inspection the ceiling material can be installed without disturbance.

**(d) Final Inspection(s):** A Final Inspection shall establish that the Work, or a designated portion of the Work, is Substantially Complete in accordance with Article 32 and is accepted by the Architect, Owner, and AHJ or other reviewing entity as being ready for the Owner's occupancy or use. At the conclusion of this inspection, items requiring correction or completion ("punch list" items) shall be minimal and require only a short period of time for accomplishment to establish Final Acceptance of the Work. If the Work, or designated portion of the Work, includes the installation, or modification, of a fire alarm system or other life safety systems essential to occupancy, such systems shall have been tested and appropriately certified before the Final Inspection.

**(e) Year-end Inspection(s):** An inspection of the Work, or each separately completed portion thereof, is required near the end of the Contractor's one year warranty period(s). The subsequent delivery of the Architect's report of this inspection will serve as confirmation that the Contractor was notified of Defective Work found within the warranty period in accordance with Article 35.

**(2) PERIODIC INSPECTIONS.** Periodic Inspections are conducted throughout the course of the Work by the Architect, the Architect's consultants, their representatives, or other reviewing entity at the direction of the Owner, jointly or independently, with or without advance notice to the Contractor.

**(3) SPECIFIED INSPECTIONS and TESTS.** Specified Inspections and Tests include inspections, tests, demonstrations, and approvals that are either specified in the Contract Documents or required by laws, ordinances, rules, regulations, or orders of public authorities having jurisdiction, to be performed by the Contractor, one of its Subcontractors, or an independent testing laboratory or firm (whether paid for by the Contractor or Owner).

## **C INSPECTIONS *by the* ARCHITECT**

**(1)** The Architect is not authorized to revoke, alter, relax, or waive any requirements of the Contract Documents (other than "minor" deviations as defined in Article 9 and "minor" changes as defined in Article 19), to finally approve or accept any portion of the Work or to issue instructions contrary to the Contract Documents without concurrence of the Owner.

**(2)** The Architect will visit the site at intervals appropriate to the stage of the Contractor's operations and as otherwise necessary to:

- (a)** become generally familiar with the in-progress and completed Work and the quality of the Work,
- (b)** determine whether the Work is progressing in general accordance with the Contractor's schedule and is likely to be completed within the Contract Time,
- (c)** visually compare readily accessible elements of the Work to the requirements of the Contract Documents to determine, in general, if the Contractor's performance of the Work indicates that the Work will conform to the requirements of the Contract Documents when completed,
- (d)** endeavor to guard the Owner against Defective Work,
- (e)** review and address with the Contractor any problems in implementing the requirements of the Contract Documents that the Contractor may have encountered, and
- (f)** keep the Owner fully informed about the Project.



(3) The Architect shall have the authority to reject Defective Work or require its correction, but shall not be required to make exhaustive investigations or examinations of the in-progress or completed portions of the Work to expose the presence of Defective Work. However, it shall be an obligation of the Architect to report in writing, to the Owner, Contractor, and ACCS Facilities Division, any Defective Work recognized by the Architect.

(4) The Architect shall have the authority to require the Contractor to stop work only when, in the Architect's reasonable opinion, such stoppage is necessary to avoid Defective Work. The Architect shall not be liable to the Contractor or Owner for the consequences of any decisions made by the Architect in good faith either to exercise or not to exercise this authority.

(5) "Inspections by the Architect" includes appropriate inspections by the Architect's consultants as dictated by their respective disciplines of design and the stage of the Contractor's operations.

## **D INSPECTIONS BY THE LOCAL AHJ OR INDEPENDENT CODE CONSULTANTS**

(1) The Local AHJ or Independent Code Consultant will:

- (a) participate in scheduled inspections and conferences as practicable,
- (b) perform periodic inspections of in-progress and completed Work to ensure code compliance of the Project and general conformance of the Work with the Contract Documents, and
- (c) monitor the Contractor's progress and performance of the Work.

(2) The Local AHJ or Independent Code Consultant shall have the authority to:

- (a) reject Work that is not in compliance with the State Building Code, unless the Work is in accordance with the Contract Documents in which case the Architect shall initiate appropriate corrective action, and
- (b) notify the Architect, Owner, and Contractor of Defective Work recognized by the Local AHJ or Independent Code Consultant.

(3) The Local AHJ or Independent Code Consultant's periodic inspections will usually be scheduled around key stages of construction based upon information reported by the Architect. As the Architect or Owner deems appropriate, the Local AHJ or Independent Code Consultants can be requested to schedule special inspections or meetings to address specific matters. The written findings of the Local AHJ or Independent Code Consultants will be transmitted to the Owner, Contractor, and Architect.

(4) The Local AHJ or Independent Code Consultant is not authorized to revoke, alter, relax, or waive any requirements of the Contract Documents, to finally approve or accept any portion of the Work or to issue instructions contrary to the Contract Documents without concurrence of the Owner. The Contractor shall not proceed with Work as a result of instructions or findings of the Local AHJ or Independent Code Consultant which the Contractor considers to be a change to the requirements of the Contract Documents without written authorization of the Owner through the Architect.

## **E UNCOVERING WORK**

(1) If the Contractor covers a portion of the Work before it is examined by the Architect and this is contrary to the Architect's request or specific requirements in the Contract Documents, then, upon written request



of the Architect, the Work must be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

(2) Without a prior request or specific requirement that Work be examined by the Architect before it is covered, the Architect may request that Work be uncovered for examination and the Contractor shall uncover it. If the Work is in accordance with the Contract Documents, the Contract Sum shall be equitably adjusted under Article 19 to compensate the Contractor for the costs of uncovering and replacement. If the Work is not in accordance with the Contract Documents, uncovering, correction, and replacement shall be at the Contractor's expense unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs.

## **F SPECIFIED INSPECTIONS *and* TESTS**

(1) The Contractor shall schedule and coordinate Specified Inspections and Tests to be made at appropriate times so as not to delay the progress of the Work or the work of the Owner or separate contractors. If the Contract Documents require that a Specified Inspection or Test be witnessed or attended by the Architect or Architect's consultant, the Contractor shall give the Architect timely notice of the time and place of the Specified Inspection or Test. If a Specified Inspection or Test reveals that Work is not in compliance with requirements of the Contract Documents, the Contractor shall bear the costs of correction, repeating the Specified Inspection or Test, and any related costs incurred by the Owner, including reasonable charges, if any, by the Architect for additional services. Through appropriate Contract Change Order the Owner shall bear costs of tests, inspections or approvals which become Contract requirements subsequent to the receipt of bids.

(2) If the Architect, Owner, or public authority having jurisdiction determines that inspections, tests, demonstrations, or approvals in addition to Specified Inspections and Tests are required, the Contractor shall, upon written instruction from the Architect, arrange for their performance by an entity acceptable to the Owner, giving timely notice to the architect of the time and place of their performance. Related costs shall be borne by the Owner unless the procedures reveal that Work is not in compliance with requirements of the Contract Documents, in which case the Contractor shall bear the costs of correction, repeating the procedures, and any related costs incurred by the Owner, including reasonable charges, if any, by the Architect for additional services.

(3) Unless otherwise required by the Contract Documents, required certificates of Specified Inspections and Tests shall be secured by the Contractor and promptly delivered to the Architect.

(4) Failure of any materials to pass Specified Inspections and Tests will be sufficient cause for refusal to consider any further samples of the same brand or make of that material for use in the Work.

## **Article 17**

### **CORRECTION *of* DEFECTIVE WORK**

**A** The Contractor shall, at the Contractor's expense, promptly correct Defective Work rejected by the Architect or which otherwise becomes known to the Contractor, removing the rejected or nonconforming materials and construction from the project site.

**B** Correction of Defective Work shall be performed in such a timely manner as will avoid delay of completion, use, or occupancy of the Work and the work of the Owner and separate contractors.

- C** The Contractor shall bear all expenses related to the correction of Defective Work, including but not limited to:
- (1) additional testing and inspections, including repeating Specified Inspections and Tests,
  - (2) reasonable services and expenses of the Architect, and (3) the expense of making good all work of the Contractor, Owner, or separate contractors destroyed or damaged by the correction of Defective Work.

## **Article 18**

### **DEDUCTIONS *for* UNCORRECTED WORK**

If the Owner deems it advisable and in the Owner's interest to accept Defective Work, the Owner may allow part or all of such Work to remain in place, provided an equitable deduction from the Contract Sum, acceptable to the Owner, is offered by the Contractor.

## **Article 19**

### **CHANGES *in* WORK**

#### **A GENERAL**

- (1) The Owner may at any time direct the Contractor to make changes in the Work which are within the general scope of the Contract, including changes in the Drawings, Specifications, or other portions of the Contract Documents to add, delete, or otherwise revise portions of the Work. The Architect is authorized by the Owner to direct "minor" changes in the Work by written order to the Contractor. "Minor" changes in the Work are defined as those which are in the interest of the Owner, do not materially alter the quality or performance of the finished Work, and do not affect the cost or time of performance of the Work. Changes in the Work which are not "minor" may be authorized only by the Owner.
- (2) If the Owner directs a change in the Work, the change shall be incorporated into the Contract by a Contract Change Order prepared by the Architect and signed by the Contractor, Owner, and other signatories to the Construction Contract, stating their agreement upon the change or changes in the Work and the adjustments, if any, in the Contract Sum and the Contract Time.
- (3) Subject to compliance with Alabama's Public Works Law, the Owner may, upon agreement by the Contractor, incorporate previously unawarded bid alternates into the Contract.
- (4) In the event of a claim or dispute as to the appropriate adjustment to the Contract Sum or Contract Time due to a directive to make changes in the Work, the Work shall proceed as provided in this article subject to subsequent agreement of the parties or final resolution of the dispute pursuant to Article 24.
- (5) Consent of surety will be obtained for all Contract Change Orders involving an increase in the Contract Sum.
- (6) Changes in the Work shall be performed under applicable provisions of the Contract Documents and the Contractor shall proceed promptly to perform changes in the Work, unless otherwise directed by the Owner through the Architect.
- (7) All change orders require completion of ACCS Form 2-F Contract Change Order and ACCS Form 2-G

Contract Change Order Justification forms. Only Change Orders 10% or greater of the current contract amount require the Owner's legal advisor's signature on the Change Order Justification form.

**B DETERMINATION of ADJUSTMENT of the CONTRACT SUM**

The adjustment of the Contract Sum resulting from a change in the Work shall be determined by one of the following methods, or a combination thereof, as selected by the Owner:

**(1) Lump Sum.** By mutual agreement to a lump sum based on or negotiated from an itemized cost proposal from the Contractor. Additions to the Contract Sum shall include the Contractor's direct costs plus a maximum 15% markup for overhead and profit. Where subcontract work is involved the total mark-up for the Contractor and a Subcontractor shall not exceed 25%. Changes which involve a net credit to the Owner shall include fair and reasonable credits for overhead and profit on the deducted work, in no case less than 5%. For the purposes of this method of determining an adjustment of the Contract Sum, "overhead" shall cover the Contractor's indirect costs of the change, such as the cost of bonds, superintendent and other job office personnel, watchman, job office, job office supplies and expenses, temporary facilities and utilities, and home office expenses.

**(2) Unit Price.** By application of Unit Prices included in the Contract or subsequently agreed to by the parties. However, if the character or quantity originally contemplated is materially changed so that application of such unit price to quantities of Work proposed will cause substantial inequity to either party, the applicable unit price shall be equitably adjusted.

**(3) Force Account.** By directing the Contractor to proceed with the change in the Work on a "force account" basis under which the Contractor shall be reimbursed for reasonable expenditures incurred by the Contractor and its Subcontractors in performing added Work and the Owner shall receive reasonable credit for any deleted Work. The Contractor shall keep and present, in such form as the Owner may prescribe, an itemized accounting of the cost of the change together with sufficient supporting data. Unless otherwise stated in the directive, the adjustment of the Contract Sum shall be limited to the following:

**(a)** costs of labor and supervision, including employee benefits, social security, retirement, unemployment and workers' compensation insurance required by law, agreement, or under Contractor's or Subcontractor's standard personnel policy;

**(b)** cost of materials, supplies and equipment, including cost of delivery, whether incorporated or consumed;

**(c)** rental cost of machinery and equipment, not to exceed prevailing local rates if contractor-owned;

**(d)** costs of premiums for insurance required by the Contract Documents, permit fees, and sales, use or similar taxes related to the change in the Work;

**(e)** reasonable credits to the Owner for the value of deleted Work, without Contractor or Subcontractor mark-ups; and

**(f)** for additions to the Contract Sum, mark-up of the Contractor's direct costs for overhead and profit not exceeding 15% on Contractor's work nor exceeding 25% for Contractor and Subcontractor on a Subcontractor's work. Changes which involve a net credit to the Owner shall include fair and reasonable credits for overhead and profit on the deducted work, in no case less than 5%. For the purposes of this method of determining an adjustment of the Contract Sum, "overhead" shall cover the

Contractor's indirect costs of the change, such as the cost of insurance other than mentioned above, bonds, superintendent and other job office personnel, watchman, use and rental of small tools, job office, job office supplies and expenses, temporary facilities and utilities, and home office expenses.

**C ADJUSTMENT *of the* CONTRACT TIME *due to* CHANGES**

(1) Unless otherwise provided in the Contract Documents, the Contract Time shall be equitably adjusted for the performance of a change provided that the Contractor notifies the Architect in writing that the change will increase the time required to complete the Work. Such notice shall be provided no later than:

(a) with the Contractor's cost proposal stating the number of days of extension requested, or

(b) within ten days after the Contractor receives a directive to proceed with a change in advance of submitting a cost proposal, in which case the notice should provide an estimated number of days of extension to be requested, which may be subject to adjustment in the cost proposal.

(2) The Contract Time shall be extended only to the extent that the change affects the time required to complete the entire Work of the Contract, taking into account the concurrent performance of the changed and unchanged Work.

**D CHANGE ORDER PROCEDURES**

(1) If the Owner proposes to make a change in the Work, the Architect will request that the Contractor provide a cost proposal for making the change to the Work. The request shall be in writing and shall adequately describe the proposed change using drawings, specifications, narrative, or a combination thereof. Within 21 days after receiving such a request, or such other time as may be stated in the request, the Contractor shall prepare and submit to the Architect a written proposal, properly itemized and supported by sufficient substantiating data to facilitate evaluation. The stated time within which the Contractor must submit a proposal may be extended if, within that time, the Contractor makes a written request with reasonable justification thereof.

(2) The Contractor may voluntarily offer a change proposal which, in the Contractor's opinion, will reduce the cost of construction, maintenance, or operation or will improve the cost-effective performance of an element of the Project, in which case the Owner, through the Architect, will accept, reject, or respond otherwise within 21 days after receipt of the proposal, or such other reasonable time as the Contractor may state in the proposal.

(3) If the Contractor's proposal is acceptable to the Owner, or is negotiated to the mutual agreement of the Contractor and Owner, the Architect will prepare an appropriate Contract Change Order for execution. Upon receipt of the fully executed Contract Change Order, the Contractor shall proceed with the change.

(4) In advance of delivery of a fully executed Contract Change Order, the Architect may furnish to the Contractor a written authorization to proceed with an agreed change. However, such an authorization shall be effective only if it:

- (a) identifies the Contractor's accepted or negotiated proposal for the change,
- (b) states the agreed adjustments, if any, in Contract Sum and Contract Time,
- (c) states that funds are available to pay for the change, and
- (d) is signed by the Owner.

(5) If the Contractor and Owner cannot agree on the amount of the adjustment in the Contract Sum for a change, the Owner, through the Architect, may order the Contractor to proceed with the change on a Force Account basis, but the net cost to the Owner shall not exceed the amount quoted in the Contractor's proposal. Such order shall state that funds are available to pay for the change.

(6) If the Contractor does not promptly respond to a request for a proposal, or the Owner determines that the change is essential to the final product of the Work and that the change must be effected immediately to avoid delay of the Project, the Owner may:

- (a) determine with the Contractor a sufficient maximum amount to be authorized for the change and
- (b) direct the Contractor to proceed with the change on a Force Account basis pending delivery of the Contractor's proposal, stating the maximum increase in the Contract Sum that is authorized for the change.

(7) Pending agreement of the parties or final resolution of any dispute of the total amount due the Contractor for a change in the Work, amounts not in dispute for such changes in the Work may be included in Applications for Payment accompanied by an interim Change Order indicating the parties' agreement with part of all of such costs or time extension. Once a dispute is resolved, it shall be implemented by preparation and execution of an appropriate Change Order.

## Article 20

### **CLAIMS *for* EXTRA COST or EXTRA WORK**

- A** If the Contractor considers any instructions by the Architect, Owner, or public authority having jurisdiction or Independent Code Consultant, to be contrary to the requirements of the Contract Documents and will involve extra work and/or cost under the Contract, the Contractor shall give the Architect written notice thereof within ten days after receipt of such instructions, and in any event before proceeding to execute such work. As used in this Article, "instructions" shall include written or oral clarifications, directions, instructions, interpretations, or determinations.
- B** The Contractor's notification pursuant to Paragraph 20.A shall state: (1) the date, circumstances, and source of the instructions, (2) that the Contractor considers the instructions to constitute a change to the Contract Documents and why, and (3) an estimate of extra cost and time that may be involved to the extent an estimate may be reasonably made at that time.
- C** Except for claims relating to an emergency endangering life or property, no claim for extra cost or extra work shall be considered in the absence of prior notice required under Paragraph 20.A.
- D** Within ten days of receipt of a notice pursuant to Paragraph 20.A, the Architect will respond in writing to the Contractor, stating one of the following:
  - (1) The cited instruction is rescinded.
  - (2) The cited instruction is a change in the Work and in which manner the Contractor is to proceed with procedures of Article 19, Changes in the Work.
  - (3) The cited instruction is reconfirmed, is not considered by the Architect to be a change in the Contract Documents, and the Contractor is to proceed with Work as instructed.

- E** If the Architect's response to the Contractor is as in Paragraph 20.D(3), the Contractor shall proceed with the Work as instructed. If the Contractor continues to consider the instructions to constitute a change in the Contract Documents, the Contractor shall, within ten days after receiving the Architect's response, notify the Architect in writing that the Contractor intends to submit a claim pursuant to Article 24, Resolution of Claims and Disputes.

## **Article 21**

### **DIFFERING SITE CONDITIONS**

#### **A DEFINITION**

"Differing Site Conditions" are:

- (1) subsurface or otherwise concealed physical conditions at the Project site which differ materially from those indicated in the Contract Documents, or
- (2) unknown physical conditions at the Project site which are of an unusual nature, differing materially from conditions ordinarily encountered and generally recognized as inherent in construction activities of the character required by the Contract Documents.

#### **B PROCEDURES**

If Differing Site Conditions are encountered, then the party discovering the condition shall promptly notify the other party before the condition is disturbed and in no event later than ten days after discovering the condition. Upon such notice and verification that a Differing Site Condition exists, the Architect will, with reasonable promptness and with the Owner's concurrence, make changes in the Drawings and/or Specifications as are deemed necessary to conform to the Differing Site Condition. Any increase or decrease in the Contract Sum or Contract Time that is warranted by the changes will be made as provided under Article 19, Changes in the Work. If the Architect determines a Differing Site Condition has not been encountered, the Architect shall notify the Owner and Contractor in writing, stating the reason for that determination.

## **Article 22**

### **CLAIMS *for* DAMAGES**

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 of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time after the discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

## **Article 23**

### **DELAYS**

- A** A delay beyond the Contractor's control at any time in the commencement or progress of Work by an act or omission of the Owner, Architect, or any separate contractor or by labor disputes, unusual delay in deliveries, unavoidable casualties, fires, abnormal floods, tornadoes, or other cataclysmic events of nature, may entitle the Contractor to an extension of the Contract Time provided, however, that the Contractor shall, within ten days after the delay first occurs, give written notice to the Architect of the cause of the delay and its probable effect on progress of the entire Work.

- B** Adverse weather conditions that are more severe than anticipated for the locality of the Work during any given month may entitle the Contractor to an extension of Contract Time provided, however;
- (1) the weather conditions had an adverse effect on construction scheduled to be performed during the period in which the adverse weather occurred, which in reasonable sequence would have an effect on completion of the entire Work,
  - (2) the Contractor shall, within twenty-one days after the end of the month in which the delay occurs, give the Architect written notice of the delay that occurred during that month and its probable effect on progress of the Work, and
  - (3) within a reasonable time after giving notice of the delay, the Contractor provides the Architect with sufficient data to document that the weather conditions experienced were unusually severe for the locality of the Work during the month in question. Unless otherwise provided in the Contract Documents, data documenting unusually severe weather conditions shall compare actual weather conditions to the average weather conditions for the month in question during the previous five years as recorded by the National Oceanic and Atmospheric Administration (NOAA) or similar record-keeping entities.
- C** Adjustments, if any, of the Contract Time pursuant to this Article shall be incorporated into the Contract by a Contract Change Order prepared by the Architect and signed by the Contractor, Owner, and other signatories to the Construction Contract or, at closeout of the Contract, by mutual written agreement between the Contractor and Owner. The adjustment of the Contract Time shall not exceed the extent to which the delay extends the time required to complete the entire Work of the Contract.
- D** The Contractor shall not be entitled to any adjustment of the Contract Sum for damage due to delays claimed pursuant to this Article unless the delay was caused by the Owner or Architect and was either:
- (1) the result of bad faith or active interference or
  - (2) beyond the contemplation of the parties and not remedied within a reasonable time after notification by the Contractor of its presence.

## Article 24 RESOLUTION *of* CLAIMS *and* DISPUTES

- A** **APPLICABILITY *of* ARTICLE**
- (1) As used in this Article, “Claims and Disputes” include claims or disputes asserted by the Contractor, its Surety, or Owner arising out of or related to the Contract, or its breach, including without limitation claims seeking, under the provisions of the Contract, equitable adjustment of the Contract Sum or Contract Time and claims and disputes arising between the Contractor (or its Surety) and Owner regarding interpretation of the Contract Documents, performance of the Work, or breach of or compliance with the terms of the Contract.
  - (2) “Resolution” addressed in this Article applies only to Claims and Disputes arising between the Contractor (or its Surety) and Owner and asserted after execution of the Construction Contract and prior to the date upon which final payment is made. Upon making application for final payment the Contractor may reserve the right to subsequent Resolution of existing Claims by including a list of all Claims, in stated amounts, which



remain to be resolved and specifically excluding them from any release of claims executed by the Contractor, and in that event Resolution may occur after final payment is made.

**B CONTINUANCE of PERFORMANCE**

An unresolved Claim or Dispute shall not be just cause for the Contractor to fail or refuse to proceed diligently with performance of the Contract or for the Owner to fail or refuse to continue to make payments in accordance with the Contract Documents.

**C GOOD FAITH EFFORT to SETTLE**

The Contractor and Owner agree that, upon the assertion of a Claim by the other, they will make a good faith effort, with the Architect's assistance and advice, to achieve mutual resolution of the Claim. If mutually agreed, the Contractor and Owner may endeavor to resolve a Claim through mediation. If efforts to settle are not successful, the Claim shall be resolved in accordance with paragraph D or E below, whichever applies.

**D FINAL RESOLUTION for STATE-FUNDED CONTRACTS**

(1) If the Contract is funded in whole or in part with state funds, the final Resolution of Claims and Disputes which cannot be resolved by the Contractor (or its Surety) and Owner shall be by the Chancellor, whose decision shall be final, binding, and conclusive upon the Contractor, its Surety, and the Owner.

(2) When it becomes apparent to the party asserting a Claim (the Claimant) that an impasse to mutual resolution has been reached, the Claimant may request in writing to the Chancellor that the Claim be resolved by decision of a Professional, with Alabama licensing if the profession requires it, appointed by the Chancellor to review and determine the Claim. Such request by the Contractor (or its Surety) shall be submitted through the Owner. Should the Owner fail or refuse to submit the Contractor's request within ten days of receipt of same, the Contractor may forward such request directly to the Chief Facilities Officer. Upon receipt of a request to resolve a Claim, the Chief Facilities Officer will instruct the parties as to procedures to be initiated and followed.

(3) If the respondent to a Claim fails or refuses to participate or cooperate in the Resolution procedures to the extent that the Claimant is compelled to initiate legal proceedings to induce the Respondent to participate or cooperate, the Claimant will be entitled to recover, and may amend its Claim to include, the expense of reasonable attorney's fees so incurred.

**Article 25**

**OWNER'S RIGHT to CORRECT DEFECTIVE WORK**

If the Contractor fails or refuses to correct Defective Work in a timely manner that will avoid delay of completion, use, or occupancy of the Work or work by the Owner or separate contractors, the Architect may give the Contractor written Notice to Cure the Defective Work within a reasonable, stated time. If within ten days after receipt of the Notice to Cure the Contractor has not proceeded and satisfactorily continued to cure the Defective Work or provided the Architect with written verification that satisfactory positive action is in process to cure the Defective Work, the Owner may, without prejudice to any other remedy available to the Owner, correct the Defective Work and deduct the actual cost of the correction from payment then or thereafter due to the Contractor.



**Article 26****OWNER'S RIGHT *to* STOP *and* SUSPEND *the* WORK****A STOPPING *the* WORK *for* CAUSE**

If the Contractor fails to correct Defective Work or persistently fails to carry out Work in accordance with the Contract Documents, the Owner may direct the Contractor in writing to stop the Work, or any part of the Work, until the cause for the Owner's directive has been eliminated; however, the Owner's right to stop the Work shall not be construed as a duty of the Owner to be exercised for the benefit of the Contractor or any other person or entity.

**B SUSPENSION *by the* OWNER *for* CONVENIENCE**

(1) The Owner may, at any time and without cause, direct the Contractor in writing to suspend, delay or interrupt the Work, or any part of the Work, for a period of time as the Owner may determine.

(2) The Contract Sum and Contract Time shall be adjusted, pursuant to Article 19, for reasonable increases in the cost and time caused by an Owner-directed suspension, delay or interruption of Work for the Owner's convenience. However, no adjustment to the Contract Sum shall be made to the extent that the same or concurrent Work is, was or would have been likewise suspended, delayed or interrupted for other reasons not caused by the Owner.

**Article 27****OWNER'S RIGHT *to* TERMINATE CONTRACT****A TERMINATION *by the* OWNER *for* CAUSE**

(1) Causes: The Owner may terminate the Contractor's right to complete the Work, or any designated portion of the Work, if the Contractor:

- (a) should be adjudged bankrupt, or should make a general assignment for the benefit of the Contractor's creditors, or if a receiver should be appointed on account of the Contractor's insolvency to the extent termination for these reasons is permissible under applicable law;
- (b) refuses or fails to prosecute the Work, or any part of the Work, with the diligence that will insure its completion within the Contract Time, including any extensions, or fails to complete the Work within the Contract Time;
- (c) refuses or fails to perform the Work, including prompt correction of Defective Work, in a manner that will insure that the Work, when fully completed, will be in accordance with the Contract Documents;
- (d) fails to pay for labor or materials supplied for the Work or to pay Subcontractors in accordance with the respective Subcontract;
- (e) persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or the instructions of the Architect or Owner; or
- (f) is otherwise guilty of a substantial breach of the Contract.

**(2) Procedure for Unbonded Construction Contracts (Generally, contracts less than \$100,000):**

- (a)** Notice to Cure: In the presence of any of the above conditions the Architect may give the Contractor written notice to cure the condition within a reasonable, stated time, but not less than ten days after the Contractor receives the notice.
- (b)** Notice of Termination: If, at the expiration of the time stated in the Notice to Cure, the Contractor has not proceeded and satisfactorily continued to cure the condition or provided the Architect with written verification that satisfactory positive action is in process to cure the condition, the Owner may, without prejudice to any other rights or remedies of the Owner, give the Contractor written notice that the Contractor's right to complete the Work, or a designated portion of the Work, shall terminate seven days after the Contractor's receipt of the written Notice of Termination.
- (c)** If the Contractor satisfies a Notice to Cure, but the condition for which the notice was first given reoccurs, the Owner may give the Contractor a seven day Notice of Termination without giving the Contractor another Notice to Cure.
- (d)** At the expiration of the seven days of the termination notice, the Owner may:
  - .1 take possession of the site, of all materials and equipment stored on and off site, and of all Contractor-owned tools, construction equipment and machinery, and facilities located at the site, and
  - .2 finish the Work by whatever reasonable method the Owner may deem expedient.
- (e)** The Contractor shall not be entitled to receive further payment under the Contract until the Work is completed.
- (f)** If the Owner's cost of completing the Work, including correction of Defective Work, compensation for additional architectural, engineering, managerial, and administrative services, and reasonable attorneys' fees due to the default and termination, is less than the unpaid balance of the Contract Sum, the excess balance less liquidated damages for delay shall be paid to the Contractor. If such cost to the Owner including attorney's fees, plus liquidated damages, exceeds the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. Final Resolution of any claim or Dispute involving the termination or any amount due any party as a result of the termination shall be pursuant to Article 24.
- (g)** Upon the Contractor's request, the Owner shall furnish to the Contractor a detailed accounting of the Owner's cost of completing the Work.

**(3) Procedure for Bonded Construction Contracts (Generally, contracts over \$100,000):**

- (a)** Notice to Cure: In the presence of any of the above conditions the Architect may give the Contractor and its Surety written Notice to Cure the condition within a reasonable, stated time, but not less than ten days after the Contractor receives the notice.
- (b)** Notice of Termination: If, at the expiration of the time stated in the Notice to Cure, the Contractor has not proceeded and satisfactorily continued to cure the condition or provided the Architect with written verification that satisfactory positive action is in process to cure the condition, the Owner may, without prejudice to any other rights or remedies of the Owner, give the Contractor and its Surety written

notice declaring the Contractor to be in default under the Contract and stating that the Contractor's right to complete the Work, or a designated portion of the Work, shall terminate seven days after the Contractor's receipt of the written Notice of Termination.

(c) If the Contractor satisfies a Notice to Cure, but the condition for which the notice was first given reoccurs, the Owner may give the Contractor a Notice of Termination without giving the Contractor another Notice to Cure.

(d) Demand on the Performance Bond: With the Notice of Termination the Owner shall give the Surety a written demand that, upon the effective date of the Notice of Termination, the Surety promptly fulfill its obligation to take charge of and complete the Work in accordance with the terms of the Performance Bond.

(e) Surety Claims: Upon receiving the Owner's demand on the Performance Bond, the Surety shall assume all rights and obligations of the Contractor under the Contract. However, the Surety shall also have the right to assert "Surety Claims" to the Owner, which are defined as claims relating to acts or omissions of the Owner or Architect prior to termination of the Contractor which may have prejudiced its rights as Surety or its interest in the unpaid balance of the Contract Sum. If the Surety wishes to assert a Surety Claim, it shall give the Owner, through the Architect, written notice within twenty-one days after first recognizing the condition giving rise to the Surety Claim. The Surety Claim shall then be submitted to the Owner, through the Architect, no later than sixty days after giving notice thereof, but no such Surety Claims shall be considered if submitted after the date upon which final payment becomes due. Final resolution of Surety Claims shall be pursuant to Article 24, Resolution of Claims and Disputes. The presence or possibility of a Surety Claim shall not be just cause for the Surety to fail or refuse to take charge of and complete the Work or for the Owner to fail or refuse to continue to make payments in accordance with the Contract Documents.

(f) Payments to Surety: The Surety shall be paid for completing the Work in accordance with the Contract Documents as if the Surety were the Contractor. The Owner shall have the right to deduct from payments to the Surety any reasonable costs incurred by the Owner, including compensation for additional architectural, engineering, managerial, and administrative services, and attorneys' fees as necessitated by termination of the Contractor and completion of the Work by the Surety. No further payments shall be made to the Contractor by the Owner. The Surety shall be solely responsible for any accounting to the Contractor for the portion of the Contract Sum paid to Surety by Owner or for the costs and expenses of completing the Work.

(4) Wrongful Termination: If any notice of termination by the Owner for cause, made in good faith, is determined to have been wrongly given, such termination shall be effective and compensation therefore determined as if it had been a termination for convenience pursuant to Paragraph B below.

## **B** **TERMINATION** *by the* **OWNER for CONVENIENCE**

(1) The Owner may, without cause and at any time, terminate the performance of Work under the Contract in whole, or in part, upon determination by the Owner that such termination is in the Owner's best interest. Such termination is referred to herein as Termination for Convenience.

(2) Upon receipt of a written notice of Termination for Convenience from the Owner, the Contractor shall:

- (a) stop Work as specified in the notice;
- (b) enter into no further subcontracts or purchase orders for materials, services, or facilities, except as may be necessary for Work directed to be performed prior to the effective date of the termination or to complete Work that is not terminated;
- (c) terminate all existing subcontracts and purchase orders to the extent they relate to the terminated Work;
- (d) take such actions as are necessary, or directed by the Architect or Owner, to protect, preserve, and make safe the terminated Work; and
- (e) complete performance of the Work that is not terminated.

(3) In the event of Termination for Convenience, the Contractor shall be entitled to receive payment for the Work performed prior to its termination, including materials and equipment purchased and delivered for incorporation into the terminated Work, and any reasonable costs incurred because of the termination. Such payment shall include reasonable mark-up of costs for overhead and profit, not to exceed the limits stated in Article 19, Changes in the Work. The Contractor shall be entitled to receive payment for reasonable anticipated overhead ("home office") and shall not be entitled to receive payment for any profits anticipated to have been gained from the terminated Work. A proposal for decreasing the Contract Sum shall be submitted to the Architect by the Contractor in such time and detail, and with such supporting documentation, as is reasonably directed by the Owner. Final modification of the Contract shall be by Contract Change Order pursuant to Article 19. Any Claim or Dispute involving the termination or any amount due a party as a result shall be resolved pursuant to Article 24.

## Article 28

### CONTRACTOR'S RIGHT *to* SUSPEND *or* TERMINATE *the* CONTRACT

#### **A** SUSPENSION *by the* OWNER

If all of the Work is suspended or delayed for the Owner's convenience or under an order of any court, or other public authority, for a period of sixty days, through no act or fault of the Contractor or a Subcontractor, or anyone for whose acts they may be liable, then the Contractor may give the Owner a written Notice of Termination which allows the Owner fourteen days after receiving the Notice in which to give the Contractor appropriate written authorization to resume the Work. Absent the Contractor's receipt of such authorization to resume the Work, the Contract shall terminate upon expiration of this fourteen day period and the Contractor will be compensated by the Owner as if the termination had been for the Owner's convenience pursuant to Article 27.B.

#### **B** NONPAYMENT

The Owner's failure to pay the undisputed amount of an Application for Payment within sixty days after receiving it from the Architect (Certified pursuant to Article 30) shall be just cause for the Contractor to give the Owner fourteen days' written notice that the Work will be suspended pending receipt of payment but that the Contract shall terminate if payment is not received within fourteen days (or a longer period stated by the Contractor) of the expiration of the fourteen day notice period.

(1) If the Work is then suspended for nonpayment, but resumed upon receipt of payment, the Contractor will be entitled to compensation as if the suspension had been by the Owner pursuant to Article 26, Paragraph B.

(2) If the Contract is then terminated for nonpayment, the Contractor will be entitled to compensation as if the termination had been by the Owner pursuant to Article 27, Paragraph B.

## Article 29

### PROGRESS PAYMENTS

#### **A** FREQUENCY *of* PROGRESS PAYMENTS

Unless otherwise provided in the Contract Documents, the Owner will make payments to the Contractor as the Work progresses based on monthly estimates prepared and certified by the Contractor, approved and certified by the Architect, and approved by the Owner and other authorities whose approval is required.

#### **B** SCHEDULE *of* VALUES

Within ten days after receiving the Notice to Proceed the Contractor shall submit to the Architect ACCS Form 6-E, Schedule of Values, which is a breakdown of the Contract Sum showing the value of the various parts of the Work for billing purposes. The Schedule of Values shall divide the Contract Sum into as many parts ("line items") as the Architect and Owner determine necessary to permit evaluation and to show amounts attributable to Subcontractors. The Contractor's overhead and profit are to be proportionately distributed throughout the line items of the Schedule of Values. Upon approval, the Schedule of Values shall be used as a basis for monthly Applications for Payment, unless it is later found to be in error. Approved change order amounts shall be added to or incorporated into the Schedule of Values as mutually agreed by the Contractor and Architect.

#### **C** APPLICATIONS *for* PAYMENTS

(1) Based on the approved Schedule of Values, each Application and Certificate for Payment shall show the Contractor's estimate of the value of Work performed in each line item as of the end of the billing period. The Contractor's cost of materials and equipment not yet incorporated into the Work, but delivered and suitably stored on the site, may be considered in monthly Applications for Payment. One payment application per month may be submitted. Each Application and Certificate for Payment shall match to the penny and be accompanied by an attached Schedule of Values.

(2) The Contractor's estimate of the value of Work performed and stored materials must represent such reasonableness as to warrant certification by the Architect to the Owner in accordance with Article 30. Each monthly Application for Payment shall be supported by such data as will substantiate the Contractor's right to payment, including without limitation copies of requisitions from subcontractors and material suppliers.

(3) If no other date is stated in the Contract Documents or agreed upon by the parties, each Application for Payment shall be submitted to the Architect on or about the first day of each month and payment shall be issued to the Contractor within thirty days after an Application for Payment is Certified pursuant to Article 30 and delivered to the Owner.

(4) Application and Certificate for Payment shall be electronically submitted to ACCS Facilities Division for review following the Contractor's, Notary's, Architect's and Owner's signatures.

**D MATERIALS STORED OFF SITE**

Unless otherwise provided in the Contract Documents, the Contractor's cost of materials and equipment to be incorporated into the Work, which are stored off the site, may also be considered in monthly Applications for Payment under the following conditions:

- (1) the contractor has received written approval from the Architect and Owner to store the materials or equipment off site in advance of delivering the materials to the off site location;
- (2) a Certificate of Insurance is furnished to the Architect evidencing that a special insurance policy, or rider to an existing policy, has been obtained by the Contractor providing all-risk property insurance coverage, specifically naming the materials or equipment stored, and naming the Owner as an additionally insured party;
- (3) the Architect is provided with a detailed inventory of the stored materials or equipment and the materials or equipment are clearly marked in correlation to the inventory to facilitate inspection and verification of the presence of the materials or equipment by the Architect or Owner;
- (4) the materials or equipment are properly and safely stored in a bonded warehouse, or a facility otherwise approved in advance by the Architect and Owner; and
- (5) compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest.

**E RETAINAGE**

- (1) Retainage for ACCS Projects shall be governed by Title 39 of the Alabama Code.
- (2) "Retainage" is defined as that money belonging to the contractor which has been retained by ACCS conditioned on final completion and acceptance of all work in connection with a project or projects by the contractor. Retainage shall not be relied upon by Contractor (or Surety) to cover or off-set unearned monies attributable to uncompleted or uncorrected Work.
- (3) In making progress payments the Owner shall retain five percent of the estimated amount of work done and the value of materials stored on the site or suitably stored and insured off-site, and after 50 percent completion has been accomplished, no further retainage shall be withheld. The retainage as set out above shall be held until final completion and acceptance of all work covered by the contract.

**F CONTRACTOR'S CERTIFICATION**

- (1) Each Application for Payment shall bear the Contractor's notarized certification that, to the best of the Contractor's knowledge, information, and belief, the Work covered by the Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payments were issued and payments received from the Owner and that the current payment shown in the Application for Payment has not yet been received.
- (2) By making this certification the Contractor represents to the Architect and Owner that, upon receipt of previous progress payments from the Owner, the Contractor has promptly paid each Subcontractor, in accordance with the terms of its agreement with the Subcontractor, the amount due the Subcontractor from the amount included in the progress payment on account of the Subcontractor's Work and stored materials.

The Architect and Owner may advise Subcontractors and suppliers regarding percentages of completion or amounts requested and/or approved in an Application for Payment on account of the Subcontractor's Work and stored materials.

**G PAYMENT ESTABLISHES OWNERSHIP**

All material and Work covered by progress payments shall become the sole property of the Owner, but the Contractor shall not be relieved from the sole responsibility for the care and protection of material and Work upon which payments have been made and for the restoration of any damaged material and Work.

**Article 30**

**CERTIFICATION *and* APPROVALS *for* PAYMENT**

**A** The Architect's review, approval, and certification of Applications for Payment shall be based on the Architect's general knowledge of the Work obtained through site visits and the information provided by the Contractor with the Application. The Architect shall not be required to perform exhaustive examinations, evaluations, or estimates of the cost of completed or uncompleted Work or stored materials to verify the accuracy of amounts requested by the Contractor, but the Architect shall have the authority to adjust the Contractor's estimate when, in the Architect's reasonable opinion, such estimates are overstated or understated.

**B** Within seven days after receiving the Contractor's monthly Application for Payment, or such other time as may be stated in the Contract Documents, the Architect will take one of the following actions:

**(1)** The Architect will approve and certify the Application as submitted and forward it to the Owner as a Certification for Payment for approval by the Owner (and other approving authorities, if any) and payment.

**(2)** If the Architect takes exception to any amounts claimed by the Contractor and the Contractor and Architect cannot agree on revised amounts, the Architect will promptly issue a Certificate for Payment for the amount for which the Architect is able to certify to the Owner, transmitting a copy of same to the Contractor.

**(3)** To the extent the Architect determines may be necessary to protect the Owner from loss on account of any of the causes stated in Article 31, the Architect may subtract from the Contractor's estimates and will issue a Certificate for Payment to the Owner, with a copy to the Contractor, for such amount as the Architect determines is properly due and notify the Contractor and Owner in writing of the Architect's reasons for withholding payment in whole or in part.

**C** Neither the Architect's issuance of a Certificate for Payment nor the Owner's resulting progress payment shall be a representation to the Contractor that the Work in progress or completed at that time is accepted or deemed to be in conformance with the Contract Documents.

**D** The Architect shall not be required to determine that the Contractor has promptly or fully paid Subcontractors and suppliers or how or for what purpose the Contractor has used monies paid under the Construction Contract. However, the Architect may, upon request and if practical, inform any Subcontractor or supplier of the amount, or percentage of completion, approved or paid to the Contractor on account of the materials supplied or the Work performed by the Subcontractor.



**Article 31****PAYMENTS WITHHELD**

- A** The Architect may nullify or revise a previously issued Certificate for Payment prior to Owner's payment thereunder to the extent as may be necessary in the Architect's opinion to protect the Owner from loss on account of any of the following causes not discovered or fully accounted for at the time of the certification or approval of the Application for Payment:
- (1) Defective Work;
  - (2) filed, or reasonable evidence indicating probable filing of, claims arising out of the Contract by other parties against the Contractor;
  - (3) the Contractor's failure to pay for labor, materials or equipment or to pay Subcontractors;
  - (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
  - (5) damage suffered by the Owner or another contractor caused by the Contractor, a Subcontractor, or anyone for whose acts they may be liable;
  - (6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance is insufficient to cover applicable liquidated damages; or
  - (7) the Contractor's persistent failure to conform to the requirements of the Contract Documents.
- B** If the Owner deems it necessary to withhold payment pursuant to preceding Paragraph A, the Owner will notify the Contractor and Architect in writing of the amount to be withheld and the reason for same.
- C** The Architect shall not be required to withhold payment for completed or partially completed Work for which compliance with the Contract Documents remains to be determined by Specified Inspections or Final Inspections to be performed in their proper sequence. However, if Work for which payment has been approved, certified, or made under an Application for Payment is subsequently determined to be Defective Work, the Architect shall determine an appropriate amount that will protect the Owner's interest against the Defective Work.
- (1) If payment has not been made against the Application for Payment first including the Defective Work, the Architect will notify the Owner and Contractor of the amount to be withheld from the payment until the Defective Work is brought into compliance with the Contract Documents.
  - (2) If payment has been made against the Application for Payment first including the Defective Work, the Architect will withhold the appropriate amount from the next Application for Payment submitted after the determination of noncompliance, such amount to then be withheld until the Defective Work is brought into compliance with the Contract Documents.
- D** The amount withheld will be paid with the next Application for Payment certified and approved after the condition for which the Owner has withheld payment is removed or otherwise resolved to the Owner's satisfaction.
- E** The Owner shall have the right to withhold from payments due the Contractor under this Contract an amount equal to any amount which the Contractor owes the Owner under another contract.



**Article 32**
**SUBSTANTIAL COMPLETION**

- A** Substantial Completion is the stage in the progress of the Work when the Work or designated portion of the Work is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use without disruption or interference by the Contractor in completing or correcting any remaining unfinished Work (“punch list” items). Substantial Completion of the Work, or a designated portion of the Work, is not achieved until so agreed in a Certificate of Substantial Completion signed by the Contractor, Architect, Owner, and AHJ, where applicable.
- B** The Contractor shall notify the Architect in writing when it considers the Work, or a portion of the Work which the Owner has agreed to accept separately, to be substantially complete and ready for a Final Inspection pursuant to Article 16. In this notification the Contractor shall identify any items remaining to be completed or corrected for Final Acceptance prior to final payment.
- C** Substantial Completion is achieved and a Final Inspection is appropriate only when a minimal number of punch list items exists and only a short period of time will be required to correct or complete them. Upon receipt of the Contractor’s notice for a Final Inspection, the Architect will advise the Contractor in writing of any conditions of the Work which the Architect or Owner is aware do not constitute Substantial Completion, otherwise, a Final Inspection will proceed within a reasonable time after the Contractor’s notice is given. However, the Architect will not be required to prepare lengthy listings of punch list items; therefore, if the Final Inspection discloses that Substantial Completion has not been achieved, the Architect may discontinue or suspend the inspection until the Contractor does achieve Substantial Completion.
- D CERTIFICATE of SUBSTANTIAL COMPLETION**
- (1)** When the Work or a designated portion of the Work is substantially complete, the Architect will prepare and sign a Certificate of Substantial Completion to be signed in order by the Contractor and Owner.
- (2)** When signed by all parties, the Certificate of Substantial Completion shall establish the Date of Substantial Completion which is the date upon which:
- (a)** the Work, or designated portion of the Work, is accepted by the Architect and Owner,
  - (b)** the Contractor’s one-year and special warranties for the Work covered by the Certificate commence, unless stated otherwise in the Certificate (the one-year warranty for punch list items completed or corrected after the period allowed in the Certificate shall commence on the date of their Final Acceptance), and
  - (c)** Owner becomes responsible for building security, maintenance, utility services, and insurance, unless stated otherwise in the Certificate.
- (3)** The Certificate of Substantial Completion shall set the time within which the Contractor shall finish all items on the “punch list” accompanying the Certificate. The completion of punch list items shall be a condition precedent to Final Payment.
- (4)** If the Work or designated portion covered by a ACCS Form 6-K, Certificate of Substantial Completion, includes roofing work, the General Contractor’s (5-year) Roofing Guarantee form must be executed by the Contractor and attached to the Certificate of Substantial Completion. If the Contract Documents specify

any other roofing warranties to be provided by the roofing manufacturer, Subcontractor, or Contractor, they must also be attached to the Certificate of Substantial Completion. Failure to do so voids any Certificate of Substantial Completion. This requirement cannot be waived.

- E** The Date of Substantial Completion of the Work, as set in the Certificate of Substantial Completion of the Work or of the last completed portion of the Work, establishes the extent to which the Contractor is liable for Liquidated Damages, if any; however, should the Contractor fail to complete all punch list items within thirty days, or such other time as may be stated in the respective Certificate of Substantial Completion, the Contractor shall bear any expenses, including additional Architectural services and expenses, incurred by the Owner as a result of such failure to complete punch list items in a timely manner.
- F** The Contractor shall complete or correct all items of any remaining Work (“punch list” items) , ready for re-inspection for Final Acceptance, within 30 days after the Date of Substantial Completion unless another date is specified in the Certificate of Substantial Completion. If completed or corrected within this period, warranties of these items commence on the Date of Substantial Completion, otherwise such warranties commence on the date of Final Acceptance of each item. Failure to complete or correct any items of remaining Work (“punch list” items) within 60 days will result in all warranties commencing on the Date of Final Acceptance.
- G** Nothing herein, including paragraph E above, shall limit or waive the Owner's rights under Article 27, including but not limited to issuance of Notices to Cure or Notice of Termination issued to Contractors and Sureties, to obtain completion, correction, or repair of any remaining unfinished Work (“punch list” items).

### **Article 33**

## **OCCUPANCY *or* USE PRIOR *to* COMPLETION**

### **A UPON SUBSTANTIAL COMPLETION**

Prior to completion of the entire Work, the Owner may occupy or begin utilizing any designated portion of the Work on the agreed Date of Substantial Completion of that portion of the Work.

### **B BEFORE SUBSTANTIAL COMPLETION**

(1) The Owner shall not occupy or utilize any portion of the Work before Substantial Completion of that portion has been achieved.

(2) The Owner may deliver furniture and equipment and store, or install it in place ready for occupancy and use, in any designated portion of the Work before it is substantially completed under the following conditions:

- (a)** The Owner's storage or installation of furniture and equipment will not unreasonably disrupt or interfere with the Contractor's completion of the designated portion of the Work.
- (b)** The Contractor consents to the Owner's planned action (such consent shall not be unreasonably withheld).
- (c)** The Owner shall be responsible for insurance coverage of the Owner's furniture and equipment, and the Contractor's liability shall not be increased.

(d) The Contractor, Architect, and Owner will jointly inspect and record the condition of the Work in the area before the Owner delivers and stores or installs furniture and equipment; the Owner will equitably compensate the Contractor for making any repairs to the Work that may subsequently be required due to the Owner's delivery and storage or installation of furniture and equipment.

(e) The Owner's delivery and storage or installation of furniture and equipment shall not be deemed an acceptance of any Work not completed in accordance with the requirements of the Contract Documents.

## Article 34 FINAL PAYMENT

### **A** PREREQUISITES *to* FINAL PAYMENT

The following conditions are prerequisites to Final Payment becoming due the Contractor:

- (1) Full execution of a Certificate of Substantial Completion for the Work, or each designated portion of the Work.
- (2) Final Acceptance of the Work.
- (3) The Contractor's completion, to the satisfaction of the Architect and Owner, of all documentary requirements of the Contract Documents; such as delivery of "as-built" documents, operating and maintenance manuals, warranties, etc.
- (4) Delivery to the Owner of a final Application for Payment, prepared by the Contractor and approved and certified by the Architect. The Architect will prepare the Final Payment Checklist and forward it to the Owner along with the final Application for Payment.
- (5) Completion of an Advertisement for Completion pursuant to Paragraph C below.
- (6) Delivery by the Contractor to the Owner through the Architect of a Release of Claims and such other documents as may be required by Owner, satisfactory in form to the Owner pursuant to Paragraph D below.
- (7) Consent of Surety to Final Payment, if any, to Contractor. This Consent of Surety is required for projects which have Payment and Performance Bonds.
- (8) Delivery by the Contractor to the Architect and Owner of other documents, if any, required by the Contract Documents as prerequisites to Final Payment.

### **B** FINAL ACCEPTANCE *of the* WORK

"Final Acceptance of the Work" shall be achieved when all "punch list" items recorded with the Certificate(s) of Substantial Completion are accounted for by either: (1) their completion or correction by the Contractor and acceptance by the Architect, Owner, and AHJ if applicable, or (2) their resolution under Article 18, Deductions for Uncorrected Work.

### **C** ADVERTISEMENT *for* COMPLETION

- (1) If the Contract Sum is \$100,000 or less, there is no requirement for Advertisement for Completion.
- (2) If the Contract Sum is more than \$100,000: The Contractor, immediately after being notified by the Architect that all other requirements of the Contract have been completed, shall give public notice of

completion of the Contract by having an Advertisement for Completion, similar to the sample contained in the Project Manual, published for a period of four successive weeks in some newspaper of general circulation published within the city or county where the Work was performed. Proof of publication of the Advertisement for Completion shall be made by the Contractor to the Architect by affidavit of the publisher, in duplicate, and a printed copy of the Advertisement for Completion published, in duplicate. If no newspaper is published in the county where the work was done, the notice may be given by posting at the Court House for thirty days and proof of same made by Probate Judge or Sheriff and the Contractor. Final payment shall not be due until thirty days after this public notice is completed.

## **D** **RELEASE of CLAIMS**

The Release of Claims and other documents referenced in Paragraph A(6) above are as follows:

(1) A release executed by Contractor of all claims and claims of lien against the Owner arising under and by virtue of the Contract, other than such claims of the Contractor, if any, as may have been previously made in writing and as may be specifically excepted by the Contractor from the operation of the release in stated amounts to be set forth therein.

(2) An affidavit under oath, if required, stating that so far as the Contractor has knowledge or information, there are no claims or claims of lien which have been or will be filed by any Subcontractor, Supplier or other party for labor or material for which a claim or claim of lien could be filed.

(3) A release, if required, of all claims and claims of lien made by any Subcontractor, Supplier or other party against the Owner or unpaid Contract funds held by the Owner arising under or related to the Work on the Project; provided, however, that if any Subcontractor, Supplier or others refuse to furnish a release of such claims or claims of lien, the Contractor may furnish a bond executed by Contractor and its Surety to the Owner to provide an unconditional obligation to defend, indemnify and hold harmless the Owner against any loss, cost or expense, including attorney's fees, arising out of or as a result of such claims, or claims of lien, in which event Owner may make Final Payment notwithstanding such claims or claims of lien. If Contractor and Surety fail to fulfill their obligations to Owner under the bond, the Owner shall be entitled to recover damages as a result of such failure, including all costs and reasonable attorney's fees incurred to recover such damages.

## **E** **EFFECT of FINAL PAYMENT**

(1) The making of Final Payment shall constitute a waiver of Claims by the Owner except those arising from:

- (a) liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
- (b) failure of the Work to comply with the requirements of the Contract Documents;
- (c) terms of warranties or indemnities required by the Contract Documents, or
- (d) latent defects.

(2) Acceptance of Final Payment by the Contractor shall constitute a waiver of claims by Contractor except those previously made in writing, identified by Contractor as unsettled at the time of final Application for Payment, and specifically excepted from the release provided for in Paragraph D(1), above.

**Article 35****CONTRACTOR'S WARRANTY****A GENERAL WARRANTY**

The Contractor warrants to the Owner and Architect that all materials and equipment furnished under the Contract will be of good quality and new, except such materials as may be expressly provided or allowed in the Contract Documents to be otherwise, and that none of the Work will be Defective Work as defined in Article 1.

**B ONE-YEAR WARRANTY**

(1) If, within one year after the date of Substantial Completion of the Work or each designated portion of the Work (or otherwise as agreed upon in a mutually-executed Certificate of Substantial Completion), any of the Work is found to be Defective Work, the Contractor shall promptly upon receipt of written notice from the Owner or Architect, and without expense to either, replace or correct the Defective Work to conform to the requirements of the Contract Documents, and repair all damage to the site, the building and its contents which is the result of Defective Work or its replacement or correction.

(2) The one-year warranty for punch list items shall begin on the Date of Substantial Completion if they are completed or corrected within the time period allowed in the Certificate of Substantial Completion in which they are recorded. The one-year warranty for punch list items that are not completed or corrected within the time period allowed in the Certificate of Substantial Completion, and other Work performed after Substantial Completion, shall begin on the date of Final Acceptance of the Work. The Contractor's correction of Work pursuant to this warranty does not extend the period of the warranty. The Contractor's one-year warranty does not apply to defects or damages due to improper or insufficient maintenance, improper operation, or wear and tear during normal usage.

(3) Upon recognizing a condition of Defective Work, the Owner shall promptly notify the Contractor of the condition. If the condition is causing damage to the building, its contents, equipment, or site, the Owner shall take reasonable actions to mitigate the damage or its continuation, if practical. If the Contractor fails to proceed promptly to comply with the terms of the warranty, or to provide the Owner with satisfactory written verification that positive action is in process, the Owner may have the Defective Work replaced or corrected and the Contractor and the Contractor's Surety shall be liable for all expense incurred.

(4) Year-end Inspection(s): An inspection of the Work, or each separately completed portion thereof, is required near the end of the Contractor's one-year warranty period(s). The inspection must be scheduled with the Owner, Architect, and AHJ or an Independent Code Consultant, where applicable. The subsequent delivery of the Architect's report of a Year-end Inspection will serve as confirmation that the Contractor was notified of Defective Work found within the warranty period.

(5) The Contractor's warranty of one year is in addition to, and not a limitation of, any other remedy stated herein or available to the Owner under applicable law.

**C GENERAL CONTRACTOR'S ROOFING GUARANTEE**

(1) In addition to any other roof related warranties or guarantees that may be specified in the Contract Documents, the roof and associated work shall be guaranteed by the General Contractor against leaks and defects of materials and workmanship for a period of five (5) years, starting on the Date of Substantial

Completion of the Project as stated in the Certificate of Substantial Completion. This guarantee for punch list items shall begin on the Date of Substantial Completion if they are completed or corrected within the time period allowed in the Certificate of Substantial Completion in which they are recorded. The guarantee for punch list items that are not completed or corrected within the time period allowed in the Certificate of Substantial Completion shall begin on the date of Final Acceptance of the Work.

(2) The “General Contractor’s Roofing Guarantee”, ACCS Form 6-L included in the Project Manual, shall be executed in triplicate, signed by the appropriate party and submitted to the Architect for submission with the Certificate of Substantial Completion to the Owner.

(3) This guarantee does not include costs which might be incurred by the General Contractor in making visits to the site requested by the Owner regarding roof problems that are due to lack of proper maintenance (keeping roof drains and/or gutters clear of debris that cause a stoppage of drainage which results in water ponding, overflowing of flashing, etc.), or damages caused by vandalism or misuse of roof areas. Should the contractor be required to return to the job to correct problems of this nature that are determined not to be related to faulty workmanship and materials in the installation of the roof, payment for actions taken by the Contractor in response to such request will be the responsibility of the Owner. A detailed written report shall be made by the General Contractor on each of these ‘Service Calls’ with copies to the Architect and Owner.

#### **D SPECIAL WARRANTIES**

(1) The Contractor shall deliver to the Owner through the Architect all special or extended warranties required by the Contract Documents from the Contractor, Subcontractors, and suppliers.

(2) The Contractor and the Contractor’s Surety shall be liable to the Owner for such special warranties during the Contractor’s one-year warranty; thereafter, the Contractor’s obligations relative to such special warranties shall be to provide reasonable assistance to the Owner in their enforcement.

#### **E ASSUMPTION of GUARANTEES of OTHERS**

If the Contractor disturbs, alters, or damages any work guaranteed under a separate contract, thereby voiding the guarantee of that work, the Contractor shall restore the work to a condition satisfactory to the Owner and shall also guarantee it to the same extent that it was guaranteed under the separate contract.

### **Article 36**

## **INDEMNIFICATION AGREEMENT**

To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the Owner, Architect, Architect’s consultants, ACCS Facilities Division, and their agents, employees, and consultants (hereinafter collectively referred to as the “Indemnitees”) from and against all claims, damages, losses and expenses, including but not limited to attorneys’ fees, arising out of, related to, or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, and is caused in whole or in part by negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether such claim, damage, loss or expense is caused in part, or is alleged but not legally established to have been caused in whole or in part by the negligence or other fault of a party indemnified hereunder.

This indemnification shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to, or result from performance of the Work.

This indemnification does not extend to the liability of the Architect, or the Architect's Consultants, agents, or employees, arising out of (1) the preparation or approval of maps, shop drawings, opinions, reports, surveys, field orders, Change Orders, drawings or specifications, or (2) the giving of or the failure to give directions or instructions, provided such giving or failure to give instructions is the primary cause of the injury or damage.

This indemnification does not apply to the extent of the sole negligence of the Indemnitees.

### Article 37

## **CONTRACTOR'S *and* SUBCONTRACTORS' INSURANCE**

(Provide entire Article 37 to Contractor's insurance representative.)

### **A GENERAL**

**(1) RESPONSIBILITY.** The Contractor shall be responsible to the Owner from the time of the signing of the Construction Contract or from the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the work by the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of who may be the owner of the property.

**(2) INSURANCE PROVIDERS.** Each of the insurance coverages required below shall be issued by an insurer licensed by the Insurance Commissioner to transact the business of insurance in the State of Alabama for the applicable line of insurance, and such insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) must have a Best Policyholders Rating of "A-" or better and a financial size rating of Class V or larger.

**(3) NOTIFICATION ENDORSEMENT.** Each policy shall be endorsed to provide that the insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire for any reason until thirty days after the Owner has received written notice by certified mail as evidenced by return receipt or until such time as other insurance coverage providing protection equal to protection called for in the Contract Documents shall have been received, accepted and acknowledged by the Owner. Such notice shall be valid only as to the Project as shall have been designated by Project Name and Number in said notice.

**(4) INSURANCE CERTIFICATES.** The Contractor shall procure the insurance coverages identified below, or as otherwise required in the Contract Documents, at the Contractor's own expense, and to evidence that such insurance coverages are in effect, the Contractor shall furnish the Owner an insurance certificate(s) acceptable to the Owner and listing the Owner as the certificate holder. The insurance certificate(s) must be delivered to the Owner with the Construction Contract and Bonds for final approval and execution of the Construction Contract. The insurance certificate must provide the following:

- (a) Name and address of authorized agent of the insurance company
- (b) Name and address of insured
- (c) Name of insurance company or companies
- (d) Description of policies
- (e) Policy Number(s)



- (f) Policy Period(s)
- (g) Limits of liability
- (h) Name and address of Owner as certificate holder
- (i) Project Name and Number, if any
- (j) Signature of authorized agent of the insurance company
- (k) Telephone number of authorized agent of the insurance company
- (l) Mandatory thirty day notice of cancellation / non-renewal / change

**(5) MAXIMUM DEDUCTIBLE.** Self-insured retention, except for qualified self-insurers or group self-insurers, in any policy shall not exceed \$25,000.00.

## **B INSURANCE COVERAGES**

Unless otherwise provided in the Contract Documents, the Contractor shall purchase the types of insurance coverages with liability limits not less than as follows:

### **(1) WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE**

- (a) Workers' Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating the Contractor qualifies to pay its own workers' compensation claims.
- (b) Employer's Liability Insurance limits shall be at least:
  - .1 Bodily Injury by Accident - \$1,000,000 each accident
  - .2 Bodily Injury by Disease - \$1,000,000 each employee

### **(2) COMMERCIAL GENERAL LIABILITY INSURANCE**

- (a) Commercial General Liability Insurance, written on an ISO Occurrence Form (current edition as of the date of Advertisement for Bids) or equivalent, shall include, but need not be limited to, coverage for bodily injury and property damage arising from premises and operations liability, products and completed operations liability, blasting and explosion, collapse of structures, underground damage, personal injury liability and contractual liability. The Commercial General Liability Insurance shall provide at minimum the following limits:

#### **Coverage Limit**

- .1 General Aggregate \$2,000,000.00 per Project
- .2 Products, Completed Operations Aggregate \$2,000,000.00 per Project
- .3 Personal and Advertising Injury \$1,000,000.00 per Occurrence
- .4 Each Occurrence \$1,000,000.00
- (b) Additional Requirements for Commercial General Liability Insurance:
  - .1 The policy shall name the Owner, Architect, ACCS, and their agents, consultants and employees as additional insureds, state that this coverage shall be primary insurance for the additional insureds; and contain no exclusions of the additional insureds relative to job accidents.
  - .2 The policy must include separate per project aggregate limits.

### **(3) COMMERCIAL BUSINESS AUTOMOBILE LIABILITY INSURANCE**

- (a) Commercial Business Automobile Liability Insurance which shall include coverage for bodily



injury and property damage arising from the operation of any owned, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.

**(b)** The policy shall name the Owner, Architect, ACCS, and their agents, consultants, and employees as additional insureds.

#### **(4) COMMERCIAL UMBRELLA LIABILITY INSURANCE**

**(a)** Commercial Umbrella Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Business Automobile Liability and the Workers' Compensation and Employer's Liability to satisfy the minimum limits set forth herein.

**(b)** Minimum Combined Primary Commercial General Liability and Commercial/Excess Umbrella Limits of:

- .1 \$5,000,000 per Occurrence
- .2 \$5,000,000 Aggregate

**(c)** Additional Requirements for Commercial Umbrella Liability Insurance:

- .1 The policy shall name the Owner, Architect, ACCS, and their agents, consultants, and employees as additional insureds.
- .2 The policy must be on an "occurrence" basis.

#### **(5) BUILDER'S RISK INSURANCE**

**(a)** The Builder's Risk Policy shall be made payable to the Owner and Contractor, as their interests may appear. The policy amount shall be equal to 100% of the Contract Sum, written on a Causes of Loss - Special Form (current edition as of the date of Advertisement for Bids), or its equivalent. All deductibles shall be the sole responsibility of the Contractor.

**(b)** The policy shall be endorsed as follows:

"The following may occur without diminishing, changing, altering or otherwise affecting the coverage and protection afforded the insured under this policy:

- .1 Furniture and equipment may be delivered to the insured premises and installed in place ready for use; or
- .2 Partial or complete occupancy by Owner; or
- .3 Performance of work in connection with construction operations insured by the Owner, by agents or lessees or other contractors of the Owner, or by contractors of the lessee of the Owner."

### **SUBCONTRACTORS' INSURANCE**

**(1) WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE.** The Contractor shall require each Subcontractor to obtain and maintain Workers' Compensation and Employer's Liability Insurance coverages as described in preceding Paragraph B, or to be covered by the Contractor's Workers' Compensation and Employer's Liability Insurance while performing Work under the Contract.

**(2) LIABILITY INSURANCE.** The Contractor shall require each Subcontractor to obtain and maintain adequate General Liability, Automobile Liability, and Umbrella Liability Insurance coverages similar to those described in preceding Paragraph B. Such coverage shall be in effect at all times that a Subcontractor is performing Work under the Contract.

**(3) ENFORCEMENT RESPONSIBILITY.** The Contractor shall have responsibility to enforce its Subcontractors' compliance with these or similar insurance requirements; however, the Contractor shall, upon request, provide the Architect or Owner acceptable evidence of insurance for any Subcontractor.

**D TERMINATION of OBLIGATION to INSURE**

Unless otherwise expressly provided in the Contract Documents, the obligation to insure as provided herein shall continue as follows:

**(1) BUILDER'S RISK INSURANCE.** The obligation to insure under Subparagraph B(5) shall remain in effect until the Date of Substantial Completion as shall be established in the Certificate of Substantial Completion. In the event that multiple Certificates of Substantial Completion covering designated portions of the Work are issued, Builder's Risk coverage shall remain in effect until the Date of Substantial Completion as shall be established in the last issued Certificate of Substantial Completion. However, in the case that the Work involves separate buildings, Builder's Risk coverage of each separate building may terminate on the Date of Substantial Completion as established in the Certificate of Substantial Completion issued for each building.

**(2) PRODUCTS and COMPLETED OPERATIONS.** The obligation to carry Products and Completed Operations coverage specified under Subparagraph B(2) shall remain in effect for two years after the Date(s) of Substantial Completion.

**(3) ALL OTHER INSURANCE.** The obligation to carry other insurance coverages specified under Subparagraphs B(1) through B(4) and Paragraph C shall remain in effect after the Date(s) of Substantial Completion until such time as all Work required by the Contract Documents is completed. Equal or similar insurance coverages shall remain in effect if, after completion of the Work, the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, returns to the Project to perform warranty or maintenance work pursuant to the terms of the Contract Documents.

**E WAIVERS of SUBROGATION**

The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents and employees, each of the other, and (2) the Architect, Architect's consultants, separate contractors performing construction or operations related to the Project, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss. But said waiver shall apply only to the extent the loss or damage is covered by builder's risk insurance applicable to the Work or to other property located within or adjacent to the Project, except such rights as they may have to proceeds of such insurance held by the Owner or Contractor as fiduciary. The Owner or Contractor, as appropriate, shall require of the Architect, Architect's consultants, separate contractors, if any, and the subcontractor, sub-subcontractors, suppliers, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of other parties enumerated herein. The Policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to the person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged. The waivers provided for in this paragraph shall not be applicable to loss or damage that occurs after final acceptance of the Work.

**Article 38****PERFORMANCE *and* PAYMENT BONDS****A GENERAL**

Upon signing and returning the Construction Contract to the Owner for final approval and execution, the Contractor shall, at the Contractor's expense, furnish to the Owner a Performance Bond and a Payment Bond (P&P Bonds), ACCS Form 2-C and 2-D, as contained in the Project Manual, each in a penal sum equal to 100% of the Contract Sum. Each bond shall be on the form contained in the Project Manual, shall be executed by a surety company (Surety) acceptable to the Owner and duly authorized and qualified to make such bonds in the State of Alabama in the required amount. There shall be six original P&P Bonds submitted with original signatures for each of the six contracts required. The P&P bonds must be signed either on the same day or after the construction contract date. Each P&P Bond shall have attached thereto an original power of attorney (POA) of the signing official. The POA signature date must be the same day as the P&P Bond's signature date. All signatures must be present.

The provisions of this Article are not applicable to this Contract if the Contract Sum is less than \$100,000, unless bonds are required for this Contract in the Supplemental General Conditions.

**B PERFORMANCE BOND**

Through the Performance Bond, the Surety's obligation to the Owner shall be to assure the prompt and faithful performance of the Contract and Contract Change Orders. The Penal Sum shall remain equal to the Contract Sum as the Contract Sum is adjusted by Contract Change Orders. In case of default on the part of the Contractor, the Surety shall take charge of and complete the Work in accordance with the terms of the Performance Bond. Any reasonable expenses incurred by the Owner as a result of default on the part of the Contractor, including architectural, engineering, administrative, and legal services, shall be recoverable under the Performance Bond.

**C PAYMENT BOND**

Through the Payment Bond the Surety's obligation to the Owner shall be to guarantee that the Contractor and its Subcontractors shall promptly make payment to all persons supplying labor, materials, or supplies for, or in, the prosecution of the Work, including the payment of reasonable attorneys fees incurred by successful claimants or plaintiffs in civil actions on the Bond. Any person or entity indicating that they have a claim of nonpayment under the Bond shall, upon written request, be promptly furnished a certified copy of the Bond and Construction Contract by the Contractor, Architect, Owner, or ACCS, whomever is recipient of the request.

**D CHANGE ORDERS**

The Penal Sum shall remain equal to the Contract Sum as the Contract Sum is adjusted by Contract Change Orders. All Contract Change Orders involving an increase in the Contract Sum will require consent of Surety by endorsement of the Contract Change Order form. The Surety waives notification of any Contract Change Orders involving only extension of the Contract Time.

**E EXPIRATION**

The obligations of the Contractor's performance bond surety shall be coextensive with the contractor's performance obligations under the Contract Documents; provided, however, that the surety's obligation shall expire at the end of the one-year warranty period(s) of Article 35.

## Article 39 ASSIGNMENT

The Contractor shall not assign the Contract or sublet it as a whole nor assign any moneys due or to become due to the Contractor thereunder without the previous written consent of the Owner (and of the Surety, in the case of a bonded Construction Contract). As prescribed by the Public Works Law, the Contract shall in no event be assigned to an unsuccessful bidder for the Contract whose bid was rejected because the bidder was not a responsible or responsive bidder.

## Article 40 CONTRACTION *by* OWNER *or* SEPARATE CONTRACTORS

### A OWNER'S RESERVATION *of* RIGHT

(1) The Owner reserves the right to self-perform, or to award separate contracts for, other portions of the Project and other Project related construction and operations on the site. The contractual conditions of such separate contracts shall be substantially similar to those of this Contract, including insurance requirements and the provisions of this Article. If the Contractor considers such actions to involve delay or additional cost under this Contract, notifications and assertion of claims shall be as provided in Article 20 and Article 23.

(2) When separate contracts are awarded, the term "Contractor" in the separate Contract Documents shall mean the Contractor who executes the respective Construction Contract.

### B COORDINATION

Unless otherwise provided in the Contract Documents, the Owner shall be responsible for coordinating the activities of the Owner's forces and separate contractors with the Work of the Contractor. The Contractor shall cooperate with the Owner and separate contractors, shall participate in reviewing and comparing their construction schedules relative to that of the Contractor when directed to do so, and shall make and adhere to any revisions to the construction schedule resulting from a joint review and mutual agreement.

### C CONDITIONS APPLICABLE *to* WORK PERFORMED *by* OWNER

Unless otherwise provided in the Contract Documents, when the Owner self-performs construction or operations related to the Project, the Owner shall be subject to the same obligations to Contractor as Contractor would have to a separate contractor under the provision of this Article 40.

### D MUTUAL RESPONSIBILITY

(1) The Contractor shall reasonably accommodate the required introduction and storage of materials and equipment and performance of activities by the Owner and separate contractors and shall connect and coordinate the Contractor's Work with theirs as required by the Contract Documents.

(2) By proceeding with an element or portion of the Work that is applied to or performed on construction by the Owner or a separate contractor, or which relies upon their operations, the Contractor accepts the condition of such construction or operations as being suitable for the Contractor's Work, except for conditions that are not reasonably discoverable by the Contractor. If the Contractor discovers any condition in such construction or operations that is not suitable for the proper performance of the Work, the Contractor shall not proceed, but shall instead promptly notify the Architect in writing of the condition discovered.

(3) The Contractor shall reimburse the Owner for any costs incurred by a separate contractor and payable by the Owner because of acts or omissions of the Contractor. Likewise, the Owner shall be responsible to the Contractor for any costs incurred by the Contractor because of the acts or omissions of a separate contractor.

(4) The Contractor shall not cut or otherwise alter construction by the Owner or a separate contractor without the written consent of the Owner and separate contractor; such consent shall not be unreasonably withheld. Likewise, the Contractor shall not unreasonably withhold its consent allowing the Owner or a separate contractor to cut or otherwise alter the Work.

(5) The Contractor shall promptly remedy any damage caused by the Contractor to the construction or property of the Owner or separate contractors.

## Article 41 SUBCONTRACTS

### **A** AWARD *of* SUBCONTRACTS *and* OTHER CONTRACTS *for* PORTIONS *of the* WORK

(1) Unless otherwise provided in the Contract Documents, when delivering the executed Construction Contract, bonds, and evidence of insurance to the Architect, the Contractor shall also submit a listing of Subcontractors proposed for each principal portion of the Work and fabricators or suppliers proposed for furnishing materials or equipment fabricated to the design of the Contract Documents. This listing shall be in addition to any naming of Subcontractors, fabricators, or suppliers that may have been required in the bid process. The Architect will promptly reply to the Contractor in writing stating whether or not the Owner, after due investigation, has reasonable objection to any Subcontractor, fabricator, or supplier proposed by the Contractor. The issuance of the Notice to Proceed in the absence of such objection by the Owner shall constitute notice that no reasonable objection to them is made.

(2) The Contractor shall not contract with a proposed Subcontractor, fabricator, or supplier to whom the Owner has made reasonable and timely objection. Except in accordance with prequalification procedures as may be contained in the Contract Documents, through specified qualifications, or on the grounds of reasonable objection, the Owner may not restrict the Contractor's selection of Subcontractors, fabricators, or suppliers.

(3) Upon the Owner's reasonable objection to a proposed Subcontractor, fabricator, or supplier, the Contractor shall promptly propose another to whom the Owner has no reasonable objection. If the proposed Subcontractor, fabricator, or supplier to whom the Owner made reasonable objection was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be equitably adjusted by Contract Change Order for any resulting difference if the Contractor has acted promptly and responsively in this procedure.

(4) The Contractor shall not change previously selected Subcontractors, fabricators, or suppliers without notifying the Architect and Owner in writing of proposed substitute Subcontractors, fabricators, or suppliers. If the Owner does not make a reasonable objection to a proposed substitute within three working days, the substitute shall be deemed approved.

### **B** SUBCONTRACTUAL RELATIONS

(1) The Contractor agrees to bind every Subcontractor and material supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of the Contract Documents as they

apply to the Subcontractor's and material supplier's portion of the Work.

(2) Nothing contained in the Contract Documents shall be construed as creating any contractual relationship between any Subcontractor and the Owner, nor to create a duty of the Architect, Owner, or Director to resolve disputes between or among the Contractor or its Subcontractors and suppliers or any other duty to such Subcontractors or suppliers.

## Article 42

### ARCHITECT'S STATUS

- A** The Architect is an independent contractor performing, with respect to this Contract, pursuant to an agreement executed between the Owner and the Architect. The Architect has prepared the Drawings and Specifications and assembled the Contract Document and is, therefore, charged with their interpretation and clarification as described in the Contract Documents. As a representative of the Owner, the Architect will endeavor to guard the Owner against variances from the requirements of the Contract Documents by the Contractor. On behalf of the Owner, the Architect will administer the Contract as described in the Contract Documents during construction and the Contractor's one-year warranty.
- B** So as to maintain continuity in administration of the Contract and performance of the Work, and to facilitate complete documentation of the project record, all communications between the Contractor and Owner regarding matters of or related to the Contract shall be directed through the Architect, unless direct communication is otherwise required to provide a legal notification. Unless otherwise authorized by the Architect, communications by and with the Architect's consultants shall be through the Architect. Unless otherwise authorized by the Contractor, communications by and with Subcontractors and material suppliers shall be through the Contractor.

### **C** ARCHITECT'S AUTHORITY

Subject to other provisions of the Contract Documents, the following summarizes some of the authority vested in the Architect by the Owner with respect to the Construction Contract and as further described or conditioned in other Articles of these General Conditions of the Contract.

(1) The Architect is authorized to:

- (a) approve "minor" deviations as defined in Article 9, Submittals,
- (b) make "minor" changes in the Work as defined in Article 19, Changes in the Work,
- (c) reject or require the correction of Defective Work,
- (d) require the Contractor to stop the performance of Defective Work,
- (e) adjust an Application for Payment by the Contractor pursuant to Article 30, Certification and Approval of payments, and
- (f) issue Notices to Cure pursuant to Article 27.

(2) The Architect is not authorized to:

- (a) revoke, alter, relax, or waive any requirements of the Contract Documents (other than "minor" deviations and changes) without concurrence of the Owner,
- (b) finally approve or accept any portion of the Work without concurrence of the Owner,
- (c) issue instructions contrary to the Contract Documents,

- (d) issue Notice of Termination or otherwise terminate the Contract, or
- (e) require the Contractor to stop the Work except only to avoid the performance of Defective Work.

## **D LIMITATIONS of RESPONSIBILITIES**

- (1) The Architect shall not be responsible to Contractors or to others for supervising or coordinating the performance of the Work or for the Construction Methods or safety of the Work, unless the Contract Documents give other specific instructions concerning these matters.
- (2) The Architect will not be responsible to the Contractor (nor the Owner) for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents or for acts or omissions of the Contractor, a Subcontractor, or anyone for whose acts they may be liable. However, the Architect will report to the Owner and Contractor any Defective Work recognized by the Architect.
- (3) The Architect will endeavor to secure faithful performance by Owner and Contractor, and the Architect will not show partiality to either or be liable to either for results of interpretations or decisions rendered in good faith.
- (4) The Contractor's remedies for additional time or expense arising out of or related to this Contract, or the breach thereof, shall be solely as provided for in the Contract Documents. The Contractor shall have no claim or cause of action against the Owner, Architect, or its consultants for any actions or failures to act, whether such claim may be in contract, tort, strict liability, or otherwise, it being the agreement of the parties that the Contractor shall make no claim against the Owner or any agents of the Owner, including the Architect or its consultants, except as may be provided for claims or disputes submitted in accordance with Article 24. The Architect and Architect's consultants shall be considered third party beneficiaries of this provision of the Contract and entitled to enforce same.

## **E ARCHITECT'S DECISIONS**

Decisions by the Architect shall be in writing. The Architect's decisions on matters relating to aesthetic effect will be final and binding if consistent with the intent expressed in the Contract Documents. The Architect's decisions regarding disputes arising between the Contractor and Owner shall be advisory.

## **Article 43 CASH ALLOWANCES**

- A** All allowances stated in the Contract Documents shall be included in the Contract Sum. Items covered by allowances shall be supplied by the Contractor as directed by the Architect or Owner and the Contractor shall afford the Owner the economy of obtaining competitive pricing from responsible bidders for allowance items unless other purchasing procedures are specified in the Contract Documents.
- B** Unless otherwise provided in the Contract Documents:
- (1) allowances shall cover the cost to the Contractor of materials and equipment delivered to the Project site and all applicable taxes, less applicable trade discounts;
- (2) the Contractor's costs for unloading, storing, protecting, and handling at the site, labor, installation, overhead, profit and other expenses related to materials or equipment covered by an allowance shall be included in the Contract Sum but not in the allowances;



(3) if required, the Contract Sum shall be adjusted by Change Order to reflect the actual costs of an allowance.

- C** Any selections of materials or equipment required of the Architect or Owner under an allowance shall be made in sufficient time to avoid delay of the Work.

## **Article 44**

### **PERMITS, LAWS, *and* REGULATIONS**

#### **A PERMITS, FEES AND NOTICES**

(1) Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections (including all AHJ fees) necessary for proper execution and completion of the Work which are customarily secured after award of the Construction Contract and which are in effect on the date of receipt of bids.

(2) The Contractor shall comply with and give notices required by all laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.

#### **B TAXES**

Unless stated otherwise in the Contract Documents, materials incorporated into the Work are exempt from sales and use tax pursuant to Section 40-9-33, Code of Alabama, 1975 as amended. The Owner, Contractor and its subcontractors shall be responsible for complying with rules and regulations of the Sales, Use, & Business Tax Division of the Alabama Department of Revenue regarding certificates and other qualifications necessary to claim such exemption when making qualifying purchases from vendors. The Contractor shall pay all applicable taxes that are not covered by the exemption of Section 40-9-33 and which are imposed as of the date of receipt of bids, including those imposed as of the date of receipt of bids but scheduled to go into effect after that date.

#### **C COMPENSATION *for* INCREASES**

The Contractor shall be compensated for additional costs incurred because of increases in tax rates imposed after the date of receipt of bids.

#### **D ALABAMA IMMIGRATION LAW**

Per ACT 2011-535 as codified in Title 31, Chapter 13 of the Code of Alabama, 1975, as amended:

The contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

#### **E ALABAMA BOYCOTT LAW**

Per Act 2016-312 as codified in Title 41, Chapter 16, Article 1, of the Code of Alabama, 1975, as amended:

The contracting parties affirm, for the duration of the agreement, that they are not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

#### **F ACCOUNTING *of* SALES TAX EXEMPT PROJECTS**

Per Act 2013-205 as codified in Title 40, Chapter 9, Article 1, of the Code of Alabama, 1975, as amended:

In bidding the work on a tax exempt project, the bid form shall provide an accounting for the tax savings.



**Article 45**  
**ROYALTIES, PATENTS, *and* COPYRIGHTS**

The Contractor shall pay all royalties and license fees. The Contractor shall defend, indemnify and hold harmless the Owner, Architect, Architect's consultants, and their agents, employees, and consultants from and against all claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of, related to, or resulting from all suits or claims for infringement of any patent rights or copyrights arising out of the inclusion of any patented or copyrighted materials, methods, or systems selected by the Contractor and used during the execution of or incorporated into the Work. This indemnification does not apply to any suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods, or systems specified in the Contract Documents. However, if the Contractor has information that a specified material, method, or system is or may constitute an infringement of a patent or copyright, the Contractor shall be responsible for any resulting loss unless such information is promptly furnished to the Architect.

**Article 46**  
**USE *of the* SITE**

- A** The Contractor shall confine its operations at the Project site to areas permitted by the Owner and by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials, equipment, employees' vehicles, or debris. The Contractor's operations at the site shall be restricted to the sole purpose of constructing the Work, use of the site as a staging, assembly, or storage area for other business which the Contractor may undertake shall not be permitted.
- B** Unless otherwise provided in the Contract Documents, temporary facilities, such as storage sheds, shops, and offices may be erected on the Project site with the approval of the Architect and Owner. Such temporary buildings and/or utilities shall remain the property of the Contractor, and be removed at the Contractor's expense upon completion of the Work, unless the Owner authorizes their abandonment without removal.

**Article 47**  
**CUTTING *and* PATCHING**

- A** The Contractor shall be responsible for all cutting, fitting, or patching that may be required to execute the Work to the results indicated in the Contract Documents or to make its parts fit together properly.
- B** Any cutting, patching, or excavation by the Contractor shall be supervised and performed in a manner that will not endanger persons nor damage or endanger the Work or any fully or partially completed construction of the Owner or separate contractors.

**Article 48**  
**IN-PROGRESS *and* FINAL CLEANUP**

- A IN-PROGRESS CLEAN-UP**
  - (1)** The Contractor shall at all times during the progress of the Work keep the premises and surrounding area free from rubbish, scrap materials and debris resulting from the Work. Trash and combustible materials shall

not be allowed to accumulate inside buildings or elsewhere on the premises. At no time shall any rubbish be thrown from window openings. Burning of trash and debris on site is not permitted.

(2) The Contractor shall make provisions to minimize and confine dust and debris resulting from construction activities.

## **B FINAL CLEAN-UP**

(1) Before Substantial Completion or Final Acceptance is achieved, the Contractor shall have removed from the Owner's property all construction equipment, tools, and machinery; temporary structures and/or utilities including the foundations thereof (except such as the Owner permits in writing to remain); rubbish, debris, and waste materials; and all surplus materials, leaving the site clean and true to line and grade, and the Work in a safe and clean condition, ready for use and operation.

(2) In addition to the above, and unless otherwise provided in the Contract Documents, the Contractor shall be responsible for the following special cleaning for all trades as the Work is completed:

- (a) Cleaning of all painted, enameled, stained, or baked enamel work: Removal of all marks, stains, finger prints and splatters from such surfaces.
- (b) Cleaning of all glass: Cleaning and removing of all stickers, labels, stains, and paint from all glass, and the washing and polishing of same on interior and exterior.
- (c) Cleaning or polishing of all hardware: Cleaning and polishing of all hardware.
- (d) Cleaning all tile, floor finish of all kinds: Removal of all splatters, stains, paint, dirt, and dust, the washing and polishing of all floors as recommended by the manufacturer or required by the Architect.
- (e) Cleaning of all manufactured articles, materials, fixtures, appliances, and equipment: Removal of all stickers, rust stains, labels, and temporary covers, and cleaning and conditioning of all manufactured articles, material, fixtures, appliances, and electrical, heating, and air conditioning equipment as recommended or directed by the manufacturers, unless otherwise required by the Architect; blowing out or flushing out of all foreign matter from all equipment, piping, tanks, pumps, fans, motors, devices, switches, panels, fixtures, boilers, sanitizing potable water systems; and freeing identification plates on all equipment of excess paint and the polishing thereof.

## **C OWNER'S RIGHT to CLEAN-UP**

If the Contractor fails to comply with these clean-up requirements and then fails to comply with a written directive by the Architect to clean-up the premises within a specified time, the Architect or Owner may implement appropriate clean-up measures and the cost thereof shall be deducted from any amounts due or to become due the Contractor.

## **Article 49 LIQUIDATED DAMAGES**

- A** Time is the essence of the Contract. Any delay in the completion of the Work required by the Contract Documents may cause inconvenience to the public and loss and damage to the Owner including but not limited to interest and additional administrative, architectural, inspection and supervision charges. By

executing the Construction Contract, the Contractor agrees that the Contract Time is sufficient for the achievement of Substantial Completion.

- B** The Contract Documents may provide in the Construction Contract or elsewhere for a certain dollar amount for which the Contractor and its Surety (if any) will be liable to the Owner as liquidated damages for each calendar day after expiration of the Contract Time that the Contractor fails to achieve Substantial Completion of the Work. If such daily liquidated damages are provided for, Owner and Contractor, and its Surety, agree that such amount is reasonable and agree to be bound thereby.
- C** If a daily liquidated damage amount is not otherwise provided for in the Contract Documents, a time charge equal to six percent interest per annum on the total Contract Sum may be made against the Contractor for the entire period after expiration of the Contract Time that the Contractor fails to achieve Substantial Completion of the Work.
- D** The amount of liquidated damages due under either paragraph B or C, above, may be deducted by the Owner from the moneys otherwise due the Contractor in the Final Payment, not as a penalty, but as liquidated damages sustained, or the amount may be recovered from Contractor or its Surety. If part of the Work is substantially completed within the Contract Time and part is not, the stated charge for liquidated damages shall be equitably prorated to that portion of the Work that the Contractor fails to substantially complete within the Contract Time. It is mutually understood and agreed between the parties hereto that such amount is reasonable as liquidated damages.

## **Article 50**

### **USE of FOREIGN MATERIALS**

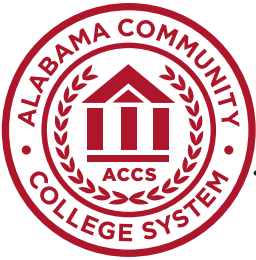
- A** In the performance of the Work the Contractor agrees to use materials, supplies, and products manufactured, mined, processed or otherwise produced in the United States or its territories, if same are available at reasonable and competitive prices and are not contrary to any sole source specification implemented under the Public Works Law.
- B** In the performance of the Work the Contractor agrees to use steel produced in the United States if the Contract Documents require the use of steel and do not limit its supply to a sole source pursuant to the Public Works Law. If the Owner decides that the procurement of domestic steel products becomes impractical as a result of national emergency, national strike, or other cause, the Owner shall waive this restriction.
- C** If domestic steel or other domestic materials, supplies, and products are not used in accordance with preceding Paragraphs A and B, the Contract Sum shall be reduced by an amount equal to any savings or benefits realized by the Contractor.
- D** This Article applies only to Public Works projects financed entirely by the State of Alabama or any political subdivision of the state.

## **Article 51**

### **PROJECT SIGN**

A project sign is not required for ACCS projects unless specifically indicated in the drawings or project manual.

## **END OF GENERAL CONDITIONS OF THE CONTRACT**



# FACILITIES DIVISION

## ACCS FORM 2-C

### PERFORMANCE BOND

<b>7 SURETY'S BOND NUMBER:</b>	
<b>1 The PRINCIPAL</b> (Company name and address of Contractor as appears in the Construction Contract)	
<b>NAME:</b>	
Address:	
<b>2 The SURETY</b> (Company name and primary place of business)	
<b>NAME:</b>	
Address:	
<b>3 The OWNER:</b> THE ALABAMA COMMUNITY COLLEGE SYSTEM ON BEHALF OF:	
Address:	
<b>4 The PENAL SUM</b> of this Bond (the Contract Sum):	
<b>5 DATE</b> of the Construction Contract:	
<b>6 The PROJECT:</b> (Same as appears in the Construction Contract)	

- 1. WE, THE PRINCIPAL (hereinafter “Contractor”) AND THE SURETY**, jointly and severally, hereby bind ourselves, our heirs, executors, administrators, successors, and assigns to the Owner in the Penal Sum stated above for the performance of the Contract, and Contract Change Orders, in accord with the requirements of the Contract Documents, which are incorporated herein by reference. If the Contractor performs the Contract, and Contract Change Orders, in accordance with the Contract Documents, then this obligation shall be null and void; otherwise it shall remain in full force and effect.
- 2.** The Penal Sum shall remain equal to the Contract Sum as the Contract Sum is adjusted by Contract Change Orders. All Contract Change Orders involving an increase in the Contract Sum will require consent of Surety by endorsement of the Contract Change Order form. The Surety waives notification of any Contract Change Orders involving only extension of the Contract Time.
- 3.** Whenever the Architect gives the Contractor and the Surety, at their addresses stated above, a written Notice to Cure a condition for which the Contract may be terminated in accordance with the Contract Documents, the Surety may, within the time stated in the notice, cure or provide the Architect with written verification that satisfactory positive action is in process to cure the condition.
- 4.** The Surety’s obligation under this Bond becomes effective after the Contractor fails to satisfy a Notice to Cure and the Owner:
- (a)** gives the Contractor and the Surety, at their addresses stated above, a written Notice of Termination declaring the Contractor to be in default under the Contract and stating that the Contractor’s right to complete the Work, or a designated portion of the Work, shall terminate seven days after the Contractor’s receipt of the notice; and
  - (b)** gives the Surety a written demand that, upon the effective date of the Notice of Termination, the Surety promptly fulfill its obligation under this Bond.
- 5.** In the presence of the conditions described in Paragraph 4, the Surety shall, at its expense:
- (a)** On the effective date of the Notice of Termination, take charge of the Work and be responsible for the safety, security, and protection of the Work, including materials and equipment stored on and off the Project site, and
  - (b)** Within twenty-one days after the effective date of the Notice of Termination, proceed, or provide the Owner with written verification that satisfactory positive action is in process to facilitate proceeding promptly, to complete the Work in accordance with the Contract Documents, either with the Surety’s resources or through a contract between the Surety and a qualified contractor to whom the Owner has no reasonable objection.

**6.** As conditions precedent to taking charge of and completing the Work pursuant to Paragraph 5, the Surety shall neither require, nor be entitled to, any agreements or conditions other than those of this Bond and the Contract Documents. In taking charge of and completing the Work, the Surety shall assume all rights and obligations of the Contractor under the Contract Documents; however, the Surety shall also have the right to assert "Surety Claims" to the Owner in accordance with the Contract Documents. The presence or possibility of a Surety Claim shall not be just cause for the Surety to fail or refuse to promptly take charge of and complete the Work or for the Owner to fail or refuse to continue to make payments in accordance with the Contract Documents.

**7.** By accepting this Bond as a condition of executing the Construction Contract, and by taking the actions described in Paragraph 4, the Owner agrees that:

**(a)** the Owner shall promptly advise the Surety of the unpaid balance of the Contract Sum and, upon request, shall make available or furnish to the Surety, at the cost of reproduction, any portions of the Project Record, and

**(b)** as the Surety completes the Work, or has it completed by a qualified contractor, the Owner shall pay the Surety, in accordance with terms of payment of the Contract Documents, the unpaid balance of the Contract Sum, less any amounts that may be or become due the Owner from the Contractor under the Construction Contract or from the Contractor or the Surety under this Bond.

**8.** In the presence of the conditions described in Paragraph 4, the Surety's obligation includes responsibility for the correction of Defective Work, liquidated damages, and reimbursement of any reasonable expenses incurred by the Owner as a result of the Contractor's default under the Contract, including architectural, engineering, administrative, and legal services.

**9.** Nothing contained in this Bond shall be construed to mean that the Surety shall be liable to the Owner for an amount exceeding the Penal Sum of this Bond, except in the event that the Surety should be in default under the Bond by failing or refusing to take charge of and complete the Work pursuant to Paragraph 5. If the Surety should fail or refuse to take charge of and complete the Work, the Owner shall have the authority to take charge of and complete the Work, or have it completed, and the following costs to the Owner, less the unpaid balance of the Contract Sum, shall be recoverable under this Bond:

**(a)** the cost of completing the Contractor's responsibilities under the Contract, including correction of Defective Work;

**(b)** additional architectural, engineering, managerial, and administrative services, and reasonable attorneys' fees incident to completing the Work;

(c) interest on, and the cost of obtaining, funds to supplement the unpaid balance of the Contract Sum as may be necessary to cover the foregoing costs;

(d) the fair market value of any reductions in the scope of the Work necessitated by insufficiency of the unpaid balance of the Contract Sum and available supplemental funds to cover the foregoing costs; and

(f) additional architectural, engineering, managerial, and administrative services, and reasonable attorneys' fees incident to ascertaining and collecting the Owner's losses under the Bond.

**10.** All claims and disputes arising out of or related to this bond, or its breach, shall be resolved in accordance with Article 24, General Conditions of the Contract.

**8 SIGNED AND SEALED** this \_\_\_\_\_ of \_\_\_\_\_

**9 SURETY:**

\_\_\_\_\_  
SURETY COMPANY NAME

BY: \_\_\_\_\_  
SIGNEE'S PRINTED NAME

TITLE: \_\_\_\_\_  
SIGNEE'S TITLE

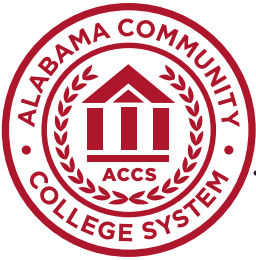
**10 CONTRACTOR as PRINCIPAL:**

\_\_\_\_\_  
CONTRACTOR COMPANY NAME

BY: \_\_\_\_\_  
SIGNEE'S PRINTED NAME

TITLE: \_\_\_\_\_  
SIGNEE'S TITLE

**11 NOTE:** Original power of attorney for the Surety's signatory shall be furnished with the original bond form to be attached to each of the contract forms per project.



# FACILITIES DIVISION

## ACCS FORM 2-D

### PAYMENT BOND

<b>7 SURETY'S BOND NUMBER:</b>	
<b>1 The PRINCIPAL</b> (Company name and address of Contractor as appears in the Construction Contract)	
<b>NAME:</b>	
Address:	
<b>2 The SURETY</b> (Company name and primary place of business)	
<b>NAME:</b>	
Address:	
<b>3 The OWNER:</b> THE ALABAMA COMMUNITY COLLEGE SYSTEM ON BEHALF OF:	
Address:	
<b>4 The PENAL SUM</b> of this Bond (the Contract Sum):	
<b>5 DATE</b> of the Construction Contract:	
<b>6 The PROJECT:</b> (Same as appears in the Construction Contract)	



- 1. WE, THE PRINCIPAL (hereinafter “Contractor”) AND THE SURETY**, jointly and severally, hereby bind ourselves, our heirs, executors, administrators, successors, and assigns to the Owner in the Penal Sum stated above to promptly pay all persons supplying labor, materials, or supplies for or in the prosecution of the Contract, which is incorporated herein by reference, and any modifications thereof by Contract Change Orders. If the Contractor and its Subcontractors promptly pay all persons supplying labor, materials, or supplies for or in the prosecution of the Contract and Contract Change Orders, then this obligation shall be null and void; otherwise to remain and be in full force and effect.
- 2.** The Penal Sum shall remain equal to the Contract Sum as the Contract Sum is adjusted by Contract Change Orders. All Contract Change Orders involving an increase in the Contract Sum will require consent of Surety by endorsement of the Contract Change Order form. The Surety waives notification of any Contract Change Orders involving only extension of the Contract Time.
- 3.** Any person that has furnished labor, materials, or supplies for or in the prosecution of the Contract and Contract Change Orders for which payment has not been timely made may institute a civil action upon this Bond and have their rights and claims adjudicated in a civil action and judgment entered thereon. Notwithstanding the foregoing, a civil action may not be instituted on this bond until 45 days after written notice to the Surety of the amount claimed to be due and the nature of the claim. The civil action must commence not later than one year from the date of final settlement of the Contract. The giving of notice by registered or certified mail, postage prepaid, addressed to the Surety at any of its places of business or offices shall be deemed sufficient. In the event the Surety or Contractor fails to pay the claim in full within 45 days from the mailing of the notice, then the person or persons may recover from the Contractor and Surety, in addition to the amount of the claim, a reasonable attorney’s fee based on the result, together with interest on the claim from the date of the notice.
- 4.** Every person having a right of action on this bond shall, upon written application to the Owner indicating that labor, material, or supplies for the Work have been supplied and that payment has not been made, be promptly furnished a certified copy of this bond and the Construction Contract. The claimant may bring a civil action in the claimant’s name on this Bond against the Contractor and the Surety, or either of them, in the county in which the Work is to be or has been performed or in any other county where venue is otherwise allowed by law.
- 5.** This bond is furnished to comply with Code of Alabama, §39-1-1, and all provisions thereof shall be applicable to civil actions upon this bond.
- 6.** All claims and disputes between Owner and either the Contractor or Surety arising out of or related to this bond, or its breach, shall be resolved in accordance with Article 24, General Conditions of the Contract.

**8** **SIGNED AND SEALED** this \_\_\_\_\_ of \_\_\_\_\_

**9** **SURETY:**

\_\_\_\_\_  
SURETY COMPANY NAME

**BY:** \_\_\_\_\_

SIGNEE'S PRINTED NAME

**TITLE:** \_\_\_\_\_

SIGNEE'S TITLE

**10** **CONTRACTOR** as **PRINCIPAL:**

\_\_\_\_\_  
CONTRACTOR COMPANY NAME

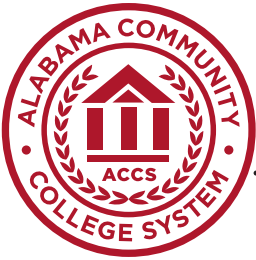
**BY:** \_\_\_\_\_

SIGNEE'S PRINTED NAME

**TITLE:** \_\_\_\_\_

SIGNEE'S TITLE

**11** **NOTE:** Original power of attorney for the Surety's signatory shall be furnished with the original bond form to be attached to each of the contract forms per project.



# FACILITIES DIVISION

## ACCS FORM 2-F

**\*NOTE: Any Change Orders without documented ACCS Facilities Division approval will be at the expense of the Architect and/or the Contractor.**

### CONTRACT CHANGE ORDER

ACCS PROJECT#:		
CHANGE ORDER#:		
DATE:		
PROJECT:		
TO:		
Address:		
<p><b>TERMS:</b> You are hereby authorized, subject to the provisions of your Contract for this project, to make the following changes thereto in accordance with your proposal(s) dated:</p> <p><b>FURNISH</b> the necessary labor, materials, and equipment to: (Description of work to be done or changes to be made. If the description is continued in an attachment, identify the attachment below.)</p>		

Review/Initial of Regional Facilities Director \_\_\_\_\_

VER: 10252024

ORIGINAL CONTRACT SUM		ORIGINAL SUBSTANTIAL COMPLETION DATE	
NET TOTAL OF PREVIOUS CHANGE ORDERS		ORIGINAL CONTRACT DURATION (DAYS)	
PREVIOUS REVISED CONTRACT SUM		NET TOTAL OF DAYS FROM PREVIOUS CHANGE ORDERS	
THIS CHANGE ORDER WILL: INCREASE                  DECREASE		THIS CHANGE ORDER WILL: INCREASE                  DECREASE	
THE CONTRACT SUM BY		THE CONTRACT DURATION BY (DAYS)	
REVISED CONTRACT SUM, INCLUDING THIS CHANGE ORDER		REVISED CONTRACT DURATION, INCLUDING THIS CHANGE ORDER	
The amount of this Change Order will be the responsibility of:		REVISED SUBSTANTIAL COMPLETION DATE, INCLUDING THIS CHANGE ORDER	

The **OWNER** does hereby certify that this **CHANGE ORDER** was executed per the provisions of Title 39, Code of Alabama, 1975, as amended.

RECOMMENDED BY	CONTRACTING PARTIES
<p>_____</p> <p>ARCHITECTURAL/ENGINEERING FIRM</p> <p>BY: _____</p> <p>NAME: _____</p> <p>TITLE: _____</p>	<p>_____</p> <p>CONTRACTOR COMPANY</p> <p>BY: _____</p> <p>NAME: _____</p> <p>TITLE: _____</p>
APPROVALS	
<p>_____</p> <p>COMMUNITY COLLEGE PRESIDENT</p> <p>BY: _____</p> <p>SIGNATURE OF OFFICER</p> <p>NAME: _____</p> <p>TITLE: _____</p>	<p><b>ALABAMA COMMUNITY COLLEGE SYSTEM</b> (AS OWNER)</p> <p>BY: _____</p> <p>CHANCELLOR</p>
<p><b>ALABAMA COMMUNITY COLLEGE SYSTEM (ACCS)</b></p> <p>BY: _____ DATE: _____</p> <p>CHIEF FACILITIES OFFICER</p>	<p><b>CONSENT OF SURETY</b></p> <p>_____</p> <p>SURETY COMPANY</p> <p>BY: _____</p> <p>(ATTACH CURRENT POWER OF ATTORNEY)</p>



# ACCS FORM 2-G

## CHANGE ORDER JUSTIFICATION

CHANGE ORDER #		ACCS PROJECT #		DATE:	
PROJECT NAME & LOCATION:			OWNER ENTITY NAME & ADDRESS:		
CONTRACTOR COMPANY NAME & ADDRESS:			ARCHITECTURAL/ENGINEERING FIRM NAME & ADDRESS:		
DESCRIPTION OF PROPOSED CHANGE(S): <i>Attach contractor's detailed cost proposal(s)</i>					
ORIGINAL CONTRACT SUM			ORIGINAL SUBSTANTIAL COMPLETION DATE		
NET TOTAL OF PREVIOUS CHANGE ORDERS			ORIGINAL CONTRACT DURATION (DAYS)		
PREVIOUS REVISED CONTRACT SUM			NET TOTAL OF DAYS FROM PREVIOUS CHANGE ORDERS		
THIS CHANGE ORDER WILL: INCREASE                  DECREASE			THIS CHANGE ORDER WILL: INCREASE                  DECREASE		
THE CONTRACT SUM BY			THE CONTRACT DURATION BY (DAYS)		
REVISED CONTRACT SUM, INCLUDING THIS CHANGE ORDER			REVISED CONTRACT DURATION, INCLUDING THIS CHANGE ORDER		
			REVISED SUBSTANTIAL COMPLETION DATE, INCLUDING THIS CHANGE ORDER		
THE CHANGE ORDER IS:  Owner (ACCS) directed changes in the Work College requested changes in Work Differing (hidden) site conditions Other (please explain in Section D)			JUSTIFICATION FOR NEED OF CHANGE(S):  Attach documented written approval from ACCS to proceed with change order.		

VER: 01152025

**E JUSTIFICATION OF CHANGE ORDER vs. COMPETITIVE BID:**
**F ARCHITECT/ENGINEER'S EVALUATION OF PROPOSED COST:**

G CHANGER ORDER RECOMMENDED	CHANGE ORDER JUSTIFIED AND APPROVED
<div style="border-bottom: 1px solid black; height: 1.2em; margin-bottom: 5px;"></div> <div style="text-align: center;">ARCHITECTURAL/ENGINEERING FIRM NAME</div>	<div style="text-align: right;">BY: <div style="border-bottom: 1px solid black; display: inline-block; width: 200px;"></div></div> <div style="text-align: center;">ACCS CHIEF FACILITIES OFFICER</div>
<div style="text-align: right;">BY: <div style="border-bottom: 1px solid black; display: inline-block; width: 200px;"></div></div> <div style="text-align: center;">ARCHITECT/ENGINEER'S SIGNATURE</div> <div style="text-align: right;">BY: <div style="border-bottom: 1px solid black; display: inline-block; width: 200px;"></div></div> <div style="text-align: center;">OWNER'S DESIGNATED REPRESENTATIVE SIGNATURE</div>	<div style="text-align: right;">BY: <div style="border-bottom: 1px solid black; display: inline-block; width: 200px;"></div></div> <div style="text-align: center;">OWNER'S LEGAL COUNSEL'S SIGNATURE (FOR CHANGE ORDERS 10% OR GREATER)</div>

**CHANGE ORDER JUSTIFICATION: PURPOSE and INSTRUCTIONS**

The **CHANGE ORDER JUSTIFICATION** is to be prepared by the design professional, who has evaluated the fairness and reasonableness of the proposed cost of the change(s) and recommends that the proposed Change Order be executed. The fully executed Form **CHANGE ORDER JUSTIFICATION** must accompany the proposed Change Order. Instructions for completing the Change Order Justification form are:

**1.** Insert the proposed Change Order Number, date of the Justification, and ACCS Project Number in the spaces provided in the upper right-hand corner.

**2. Section (A):** Insert the complete name and address of the PROJECT, OWNER(S), CONTRACTOR, AND ARCHITECT/ENGINEER.

**3. Section (B):** Provide a complete description of the proposed changes in work, referring to and attaching revised specifications and/or drawings as appropriate. An attachment may be used if additional space is needed. **Attached a copy of the contractor's detailed cost proposal.**

**4. Section (C):** Insert the Original Contract Sum, Net total of previous Change Orders, Revised Contract Sum, the Sum increase or decrease of this Change Order request, and the Revised Contract Sum including this Change Order request. Insert the Original Substantial Completion Date, Original Contract Duration Days, Net total of Days from previous Change Orders, the increase or decrease of Days of this Change Order request, the Revised Contract Duration including this Change Order request, and the Revised Substantial Completion Date including this Change Order request.

**5. Section (D):** Explain why it is necessary, or in the public's interest, to make the proposed change(s) to the Work. Select the type of Change Order. Attach documented written approval.

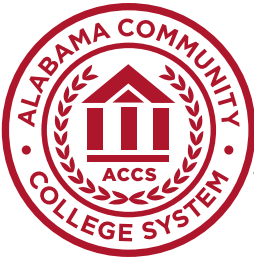
**6. Section (E):** Explain why award of the changed work to the existing contractor instead of awarding the work under the competitive bid process is justified.

**7. Section (F):** The design professional must state his or her evaluation of the reasonableness and fairness of the proposed costs based upon his or her review of the contractor's proposal.

**8. Section (G):** The design professional must recommend the Change Order to the Owner by signing the document; the Owner may require such recommendation from other individuals.

Review/Initial of Regional Facilities Director \_\_\_\_\_

VER: 01152025



# FACILITIES DIVISION

## ACCS FORM 2-H

### SUPPLY BOND

BOND NUMBER:

#### KNOW ALL BY THESE PRESENTS:

That \_\_\_\_\_, called the Principal, and \_\_\_\_\_, a \_\_\_\_\_, called the Surety, and \_\_\_\_\_, called the Obligee, in the amount of \_\_\_\_\_ U.S. Dollars(\$ \_\_\_\_\_), for payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, as provided herein.

**WHEREAS**, Principal entered into that certain material and/or equipment contract ("Contract") with the Obligee dated \_\_\_\_\_ for \_\_\_\_\_, a copy of which is by reference made a part hereof ("Contract").

**NOW, THEREFORE**, if Principal shall faithfully comply with all terms and conditions of said Contract, or if the Principal or Surety shall pay, indemnify, and hold harmless the Obligee from all direct damages sustained by the Obligee as a result of any default by the Principal under the Contract, then this obligation shall be void, otherwise to remain in full force and effect.

**PROVIDED**, however, that it is a condition precedent to recovery under this bond that written notice of any default claimed under the Contract be provided to Surety at the following address:

\_\_\_\_\_  
However, the failure to comply with this notice requirement shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or to release the Surety from its obligations, except to the extent that the Surety demonstrates actual prejudice;

**PROVIDED**, further, that any suit by the Obligee under this bond must be instituted before the later of (a) the expiration of one year from the date the Principal was obligated under the Contract, which may be extended by the agreement of Principal and Obligee, to deliver the materials and/or equipment to the Obligee, or (b) the expiration of one year from the date any other default by the Principal under the Contract;

**PROVIDED**, further, that notwithstanding anything herein to the contrary, the terms of this bond shall be read to be consistent with the requirements of **Title 39** of the **Code of Alabama** relating to performance bonds required of persons contracting for public works, and

**PROVIDED**, further that no right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligee named herein or its successor.

Sealed with our seals and dated this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

**Witness** \_\_\_\_\_

**Witness** \_\_\_\_\_

Agreed and acknowledged this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

By: \_\_\_\_\_  
**Obligee**

**PRINCIPAL:**

\_\_\_\_\_

**Title:** \_\_\_\_\_

**SURETY:**

\_\_\_\_\_

**Title:** \_\_\_\_\_



# State of Alabama Disclosure Statement

(Required by Act 2001-955)

ENTITY COMPLETING FORM

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

( )

STATE AGENCY/DEPARTMENT THAT WILL RECEIVE GOODS, SERVICES, OR IS RESPONSIBLE FOR GRANT AWARD

ADDRESS

CITY, STATE, ZIP

TELEPHONE NUMBER

( )

This form is provided with:

☐

Contract

☐

Proposal

☐

Request for Proposal

☐

Invitation to Bid

☐

Grant Proposal

Have you or any of your partners, divisions, or any related business units previously performed work or provided goods to any State Agency/Department in the current or last fiscal year?

☐

Yes

☐

No

If yes, identify below the State Agency/Department that received the goods or services, the type(s) of goods or services previously provided, and the amount received for the provision of such goods or services.

STATE AGENCY/DEPARTMENT	TYPE OF GOODS/SERVICES	AMOUNT RECEIVED
-------------------------	------------------------	-----------------

Have you or any of your partners, divisions, or any related business units previously applied and received any grants from any State Agency/Department in the current or last fiscal year?

☐

Yes

☐

No

If yes, identify the State Agency/Department that awarded the grant, the date such grant was awarded, and the amount of the grant.

STATE AGENCY/DEPARTMENT	DATE GRANT AWARDED	AMOUNT OF GRANT
-------------------------	--------------------	-----------------

1. List below the name(s) and address(es) of all public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF PUBLIC OFFICIAL/EMPLOYEE	ADDRESS	STATE DEPARTMENT/AGENCY
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OVER



2. List below the name(s) and address(es) of all family members of public officials/public employees with whom you, members of your immediate family, or any of your employees have a family relationship and who may directly personally benefit financially from the proposed transaction. Identify the public officials/public employees and State Department/Agency for which the public officials/public employees work. (Attach additional sheets if necessary.)

NAME OF FAMILY MEMBER	ADDRESS	NAME OF PUBLIC OFFICIAL/ PUBLIC EMPLOYEE	STATE DEPARTMENT/ AGENCY WHERE EMPLOYED
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If you identified individuals in items one and/or two above, describe in detail below the direct financial benefit to be gained by the public officials, public employees, and/or their family members as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

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Describe in detail below any indirect financial benefits to be gained by any public official, public employee, and/or family members of the public official or public employee as the result of the contract, proposal, request for proposal, invitation to bid, or grant proposal. (Attach additional sheets if necessary.)

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List below the name(s) and address(es) of all paid consultants and/or lobbyists utilized to obtain the contract, proposal, request for proposal, invitation to bid, or grant proposal:

NAME OF PAID CONSULTANT/LOBBYIST	ADDRESS
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***By signing below, I certify under oath and penalty of perjury that all statements on or attached to this form are true and correct to the best of my knowledge. I further understand that a civil penalty of ten percent (10%) of the amount of the transaction, not to exceed \$10,000.00, is applied for knowingly providing incorrect or misleading information.***

Signature \_\_\_\_\_ Date \_\_\_\_\_

Notary's Signature \_\_\_\_\_ Date \_\_\_\_\_ Date Notary Expires \_\_\_\_\_

*Act 2001-955 requires the disclosure statement to be completed and filed with all proposals, bids, contracts, or grant proposals to the State of Alabama in excess of \$5,000.*



Company ID Number: \_\_\_\_\_

## **THE E-VERIFY MEMORANDUM OF UNDERSTANDING FOR EMPLOYERS**

### **ARTICLE I PURPOSE AND AUTHORITY**

The parties to this agreement are the Department of Homeland Security (DHS) and the \_\_\_\_\_ (Employer). The purpose of this agreement is to set forth terms and conditions which the Employer will follow while participating in E-Verify.

E-Verify is a program that electronically confirms an employee's eligibility to work in the United States after completion of Form I-9, Employment Eligibility Verification (Form I-9). This Memorandum of Understanding (MOU) explains certain features of the E-Verify program and describes specific responsibilities of the Employer, the Social Security Administration (SSA), and DHS.

Authority for the E-Verify program is found in Title IV, Subtitle A, of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, 110 Stat. 3009, as amended (8 U.S.C. § 1324a note). The Federal Acquisition Regulation (FAR) Subpart 22.18, "Employment Eligibility Verification" and Executive Order 12989, as amended, provide authority for Federal contractors and subcontractors (Federal contractor) to use E-Verify to verify the employment eligibility of certain employees working on Federal contracts.

### **ARTICLE II RESPONSIBILITIES**

#### **A. RESPONSIBILITIES OF THE EMPLOYER**

1. The Employer agrees to display the following notices supplied by DHS in a prominent place that is clearly visible to prospective employees and all employees who are to be verified through the system:
  - a. Notice of E-Verify Participation
  - b. Notice of Right to Work
2. The Employer agrees to provide to the SSA and DHS the names, titles, addresses, and telephone numbers of the Employer representatives to be contacted about E-Verify. The Employer also agrees to keep such information current by providing updated information to SSA and DHS whenever the representatives' contact information changes.
3. The Employer agrees to grant E-Verify access only to current employees who need E-Verify access. Employers must promptly terminate an employee's E-Verify access if the employee is separated from the company or no longer needs access to E-Verify.

4. The Employer agrees to become familiar with and comply with the most recent version of the E-Verify User Manual.
5. The Employer agrees that any Employer Representative who will create E-Verify cases will complete the E-Verify Tutorial before that individual creates any cases.
  - a. The Employer agrees that all Employer representatives will take the refresher tutorials when prompted by E-Verify in order to continue using E-Verify. Failure to complete a refresher tutorial will prevent the Employer Representative from continued use of E-Verify.
6. The Employer agrees to comply with current Form I-9 procedures, with two exceptions:
  - a. If an employee presents a "List B" identity document, the Employer agrees to only accept "List B" documents that contain a photo. (List B documents identified in 8 C.F.R. § 274a.2(b)(1)(B)) can be presented during the Form I-9 process to establish identity.) If an employee objects to the photo requirement for religious reasons, the Employer should contact E-Verify at 888-464-4218.
  - b. If an employee presents a DHS Form I-551 (Permanent Resident Card), Form I-766 (Employment Authorization Document), or U.S. Passport or Passport Card to complete Form I-9, the Employer agrees to make a photocopy of the document and to retain the photocopy with the employee's Form I-9. The Employer will use the photocopy to verify the photo and to assist DHS with its review of photo mismatches that employees contest. DHS may in the future designate other documents that activate the photo screening tool.

Note: Subject only to the exceptions noted previously in this paragraph, employees still retain the right to present any List A, or List B and List C, document(s) to complete the Form I-9.

7. The Employer agrees to record the case verification number on the employee's Form I-9 or to print the screen containing the case verification number and attach it to the employee's Form I-9.
8. The Employer agrees that, although it participates in E-Verify, the Employer has a responsibility to complete, retain, and make available for inspection Forms I-9 that relate to its employees, or from other requirements of applicable regulations or laws, including the obligation to comply with the antidiscrimination requirements of section 274B of the INA with respect to Form I-9 procedures.
  - a. The following modified requirements are the only exceptions to an Employer's obligation to not employ unauthorized workers and comply with the anti-discrimination provision of the INA: (1) List B identity documents must have photos, as described in paragraph 6 above; (2) When an Employer confirms the identity and employment eligibility of newly hired employee using E-Verify procedures, the Employer establishes a rebuttable presumption that it has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act (INA) with respect to the hiring of that employee; (3) If the Employer receives a final nonconfirmation for an employee, but continues to employ that person, the Employer must notify DHS and the Employer is subject to a civil money penalty between \$550 and \$1,100 for each failure to notify DHS of continued employment following a final nonconfirmation; (4) If the Employer continues to employ an employee after receiving a final nonconfirmation, then the Employer is subject to a rebuttable presumption that it has knowingly employed an unauthorized alien in

violation of section 274A(a)(1)(A); and (5) no E-Verify participant is civilly or criminally liable under any law for any action taken in good faith based on information provided through the E-Verify.

b. DHS reserves the right to conduct Form I-9 compliance inspections, as well as any other enforcement or compliance activity authorized by law, including site visits, to ensure proper use of E-Verify.

9. The Employer is strictly prohibited from creating an E-Verify case before the employee has been hired, meaning that a firm offer of employment was extended and accepted and Form I-9 was completed. The Employer agrees to create an E-Verify case for new employees within three Employer business days after each employee has been hired (after both Sections 1 and 2 of Form I-9 have been completed), and to complete as many steps of the E-Verify process as are necessary according to the E-Verify User Manual. If E-Verify is temporarily unavailable, the three-day time period will be extended until it is again operational in order to accommodate the Employer's attempting, in good faith, to make inquiries during the period of unavailability.

10. The Employer agrees not to use E-Verify for pre-employment screening of job applicants, in support of any unlawful employment practice, or for any other use that this MOU or the E-Verify User Manual does not authorize.

11. The Employer must use E-Verify for all new employees. The Employer will not verify selectively and will not verify employees hired before the effective date of this MOU. Employers who are Federal contractors may qualify for exceptions to this requirement as described in Article II.B of this MOU.

12. The Employer agrees to follow appropriate procedures (see Article III below) regarding tentative nonconfirmations. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending. Further, when employees contest a tentative nonconfirmation based upon a photo mismatch, the Employer must take additional steps (see Article III.B. below) to contact DHS with information necessary to resolve the challenge.

13. The Employer agrees not to take any adverse action against an employee based upon the employee's perceived employment eligibility status while SSA or DHS is processing the verification request unless the Employer obtains knowledge (as defined in 8 C.F.R. § 274a.1(l)) that the employee is not work authorized. The Employer understands that an initial inability of the SSA or DHS automated verification system to verify work authorization, a tentative nonconfirmation, a case in continuance (indicating the need for additional time for the government to resolve a case), or the finding of a photo mismatch, does not establish, and should not be interpreted as, evidence that the employee is not work authorized. In any of such cases, the employee must be provided a full and fair opportunity to contest the finding, and if he or she does so, the employee may not be terminated or suffer any adverse employment consequences based upon the employee's perceived employment eligibility status (including denying, reducing, or extending work hours, delaying or preventing training, requiring an employee to work in poorer conditions, withholding pay, refusing to assign the employee to a Federal contract or other assignment, or otherwise assuming that he or she is unauthorized to work) until

and unless secondary verification by SSA or DHS has been completed and a final nonconfirmation has been issued. If the employee does not choose to contest a tentative nonconfirmation or a photo mismatch or if a secondary verification is completed and a final nonconfirmation is issued, then the Employer can find the employee is not work authorized and terminate the employee's employment. Employers or employees with questions about a final nonconfirmation may call E-Verify at 1-888-464-4218 (customer service) or 1-888-897-7781 (worker hotline).

14. The Employer agrees to comply with Title VII of the Civil Rights Act of 1964 and section 274B of the INA as applicable by not discriminating unlawfully against any individual in hiring, firing, employment eligibility verification, or recruitment or referral practices because of his or her national origin or citizenship status, or by committing discriminatory documentary practices. The Employer understands that such illegal practices can include selective verification or use of E-Verify except as provided in part D below, or discharging or refusing to hire employees because they appear or sound "foreign" or have received tentative nonconfirmations. The Employer further understands that any violation of the immigration-related unfair employment practices provisions in section 274B of the INA could subject the Employer to civil penalties, back pay awards, and other sanctions, and violations of Title VII could subject the Employer to back pay awards, compensatory and punitive damages. Violations of either section 274B of the INA or Title VII may also lead to the termination of its participation in E-Verify. If the Employer has any questions relating to the anti-discrimination provision, it should contact OSC at 1-800-255-8155 or 1-800-237-2515 (TDD).

15. The Employer agrees that it will use the information it receives from E-Verify only to confirm the employment eligibility of employees as authorized by this MOU. The Employer agrees that it will safeguard this information, and means of access to it (such as PINS and passwords), to ensure that it is not used for any other purpose and as necessary to protect its confidentiality, including ensuring that it is not disseminated to any person other than employees of the Employer who are authorized to perform the Employer's responsibilities under this MOU, except for such dissemination as may be authorized in advance by SSA or DHS for legitimate purposes.

16. The Employer agrees to notify DHS immediately in the event of a breach of personal information. Breaches are defined as loss of control or unauthorized access to E-Verify personal data. All suspected or confirmed breaches should be reported by calling 1-888-464-4218 or via email at [E-Verify@dhs.gov](mailto:E-Verify@dhs.gov). Please use "Privacy Incident – Password" in the subject line of your email when sending a breach report to E-Verify.

17. The Employer acknowledges that the information it receives from SSA is governed by the Privacy Act (5 U.S.C. § 552a(i)(1) and (3)) and the Social Security Act (42 U.S.C. 1306(a)). Any person who obtains this information under false pretenses or uses it for any purpose other than as provided for in this MOU may be subject to criminal penalties.

18. The Employer agrees to cooperate with DHS and SSA in their compliance monitoring and evaluation of E-Verify, which includes permitting DHS, SSA, their contractors and other agents, upon reasonable notice, to review Forms I-9 and other employment records and to interview it and its employees regarding the Employer's use of E-Verify, and to respond in a prompt and accurate manner to DHS requests for information relating to their participation in E-Verify.

19. The Employer shall not make any false or unauthorized claims or references about its participation in E-Verify on its website, in advertising materials, or other media. The Employer shall not describe its services as federally-approved, federally-certified, or federally-recognized, or use language with a similar intent on its website or other

materials provided to the public. Entering into this MOU does not mean that E-Verify endorses or authorizes your E-Verify services and any claim to that effect is false.

20. The Employer shall not state in its website or other public documents that any language used therein has been provided or approved by DHS, USCIS or the Verification Division, without first obtaining the prior written consent of DHS.

21. The Employer agrees that E-Verify trademarks and logos may be used only under license by DHS/USCIS (see [M-795 \(Web\)](#)) and, other than pursuant to the specific terms of such license, may not be used in any manner that might imply that the Employer's services, products, websites, or publications are sponsored by, endorsed by, licensed by, or affiliated with DHS, USCIS, or E-Verify.

22. The Employer understands that if it uses E-Verify procedures for any purpose other than as authorized by this MOU, the Employer may be subject to appropriate legal action and termination of its participation in E-Verify according to this MOU.

## **B. RESPONSIBILITIES OF FEDERAL CONTRACTORS**

1. If the Employer is a Federal contractor with the FAR E-Verify clause subject to the employment verification terms in Subpart 22.18 of the FAR, it will become familiar with and comply with the most current version of the E-Verify User Manual for Federal Contractors as well as the E-Verify Supplemental Guide for Federal Contractors.

2. In addition to the responsibilities of every employer outlined in this MOU, the Employer understands that if it is a Federal contractor subject to the employment verification terms in Subpart 22.18 of the FAR it must verify the employment eligibility of any "employee assigned to the contract" (as defined in FAR 22.1801). Once an employee has been verified through E-Verify by the Employer, the Employer may not create a second case for the employee through E-Verify.

a. An Employer that is not enrolled in E-Verify as a Federal contractor at the time of a contract award must enroll as a Federal contractor in the E-Verify program within 30 calendar days of contract award and, within 90 days of enrollment, begin to verify employment eligibility of new hires using E-Verify. The Employer must verify those employees who are working in the United States, whether or not they are assigned to the contract. Once the Employer begins verifying new hires, such verification of new hires must be initiated within three business days after the hire date. Once enrolled in E-Verify as a Federal contractor, the Employer must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

b. Employers enrolled in E-Verify as a Federal contractor for 90 days or more at the time of a contract award must use E-Verify to begin verification of employment eligibility for new hires of the Employer who are working in the United States, whether or not assigned to the contract, within three business days after the date of hire. If the Employer is enrolled in E-Verify as a Federal contractor for 90 calendar days or less at the time of contract award, the Employer must, within 90 days of enrollment, begin to use E-Verify to initiate verification of new hires of the contractor who are working in the United States, whether or not assigned to the contract. Such verification of new hires must be initiated within three business days after the date of hire. An Employer enrolled as a Federal contractor in E-Verify must begin verification of each employee assigned to the contract within 90 calendar days after date of contract award or within 30 days after assignment to

the contract, whichever is later.

c. Federal contractors that are institutions of higher education (as defined at 20 U.S.C. 1001(a)), state or local governments, governments of Federally recognized Indian tribes, or sureties performing under a takeover agreement entered into with a Federal agency under a performance bond may choose to only verify new and existing employees assigned to the Federal contract. Such Federal contractors may, however, elect to verify all new hires, and/or all existing employees hired after November 6, 1986. Employers in this category must begin verification of employees assigned to the contract within 90 calendar days after the date of enrollment or within 30 days of an employee's assignment to the contract, whichever date is later.

d. Upon enrollment, Employers who are Federal contractors may elect to verify employment eligibility of all existing employees working in the United States who were hired after November 6, 1986, instead of verifying only those employees assigned to a covered Federal contract. After enrollment, Employers must elect to verify existing staff following DHS procedures and begin E-Verify verification of all existing employees within 180 days after the election.

e. The Employer may use a previously completed Form I-9 as the basis for creating an E-Verify case for an employee assigned to a contract as long as:

- i. That Form I-9 is complete (including the SSN) and complies with Article II.A.6,
- ii. The employee's work authorization has not expired, and
- iii. The Employer has reviewed the Form I-9 information either in person or in communications with the employee to ensure that the employee's Section 1, Form I-9 attestation has not changed (including, but not limited to, a lawful permanent resident alien having become a naturalized U.S. citizen).

f. The Employer shall complete a new Form I-9 consistent with Article II.A.6 or update the previous Form I-9 to provide the necessary information if:

- i. The Employer cannot determine that Form I-9 complies with Article II.A.6,
- ii. The employee's basis for work authorization as attested in Section 1 has expired or changed, or
- iii. The Form I-9 contains no SSN or is otherwise incomplete.

Note: If Section 1 of Form I-9 is otherwise valid and up-to-date and the form otherwise complies with Article II.C.5, but reflects documentation (such as a U.S. passport or Form I-551) that expired after completing Form I-9, the Employer shall not require the production of additional documentation, or use the photo screening tool described in Article II.A.5, subject to any additional or superseding instructions that may be provided on this subject in the E-Verify User Manual.

g. The Employer agrees not to require a second verification using E-Verify of any assigned employee who has previously been verified as a newly hired employee under this MOU or to authorize verification of any existing employee by any Employer that is not a Federal contractor based on this Article.

3. The Employer understands that if it is a Federal contractor, its compliance with this MOU is a performance requirement under the terms of the Federal contract or subcontract, and the Employer consents to the release of information relating to compliance with its verification responsibilities under this MOU to contracting officers or



other officials authorized to review the Employer's compliance with Federal contracting requirements.

### **C. RESPONSIBILITIES OF SSA**

1. SSA agrees to allow DHS to compare data provided by the Employer against SSA's database. SSA sends DHS confirmation that the data sent either matches or does not match the information in SSA's database.
2. SSA agrees to safeguard the information the Employer provides through E-Verify procedures. SSA also agrees to limit access to such information, as is appropriate by law, to individuals responsible for the verification of Social Security numbers or responsible for evaluation of E-Verify or such other persons or entities who may be authorized by SSA as governed by the Privacy Act (5 U.S.C. § 552a), the Social Security Act (42 U.S.C. 1306(a)), and SSA regulations (20 CFR Part 401).
3. SSA agrees to provide case results from its database within three Federal Government work days of the initial inquiry. E-Verify provides the information to the Employer.
4. SSA agrees to update SSA records as necessary if the employee who contests the SSA tentative nonconfirmation visits an SSA field office and provides the required evidence. If the employee visits an SSA field office within the eight Federal Government work days from the date of referral to SSA, SSA agrees to update SSA records, if appropriate, within the eight-day period unless SSA determines that more than eight days may be necessary. In such cases, SSA will provide additional instructions to the employee. If the employee does not visit SSA in the time allowed, E-Verify may provide a final nonconfirmation to the employer.

Note: If an Employer experiences technical problems, or has a policy question, the employer should contact E-Verify at 1-888-464-4218.

### **D. RESPONSIBILITIES OF DHS**

1. DHS agrees to provide the Employer with selected data from DHS databases to enable the Employer to conduct, to the extent authorized by this MOU:
  - a. Automated verification checks on alien employees by electronic means, and
  - b. Photo verification checks (when available) on employees.
2. DHS agrees to assist the Employer with operational problems associated with the Employer's participation in E-Verify. DHS agrees to provide the Employer names, titles, addresses, and telephone numbers of DHS representatives to be contacted during the E-Verify process.
3. DHS agrees to provide to the Employer with access to E-Verify training materials as well as an E-Verify User Manual that contain instructions on E-Verify policies, procedures, and requirements for both SSA and DHS, including restrictions on the use of E-Verify.
4. DHS agrees to train Employers on all important changes made to E-Verify through the use of mandatory refresher tutorials and updates to the E-Verify User Manual. Even without changes to E-Verify, DHS reserves the right to require employers to take mandatory refresher tutorials.
5. DHS agrees to provide to the Employer a notice, which indicates the Employer's participation in E-Verify. DHS also agrees to provide to the Employer anti-discrimination

notices issued by the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC), Civil Rights Division, U.S. Department of Justice.

6. DHS agrees to issue each of the Employer's E-Verify users a unique user identification number and password that permits them to log in to E-Verify.

7. DHS agrees to safeguard the information the Employer provides, and to limit access to such information to individuals responsible for the verification process, for evaluation of E-Verify, or to such other persons or entities as may be authorized by applicable law. Information will be used only to verify the accuracy of Social Security numbers and employment eligibility, to enforce the INA and Federal criminal laws, and to administer Federal contracting requirements.

8. DHS agrees to provide a means of automated verification that provides (in conjunction with SSA verification procedures) confirmation or tentative nonconfirmation of employees' employment eligibility within three Federal Government work days of the initial inquiry.

9. DHS agrees to provide a means of secondary verification (including updating DHS records) for employees who contest DHS tentative nonconfirmations and photo mismatch tentative nonconfirmations. This provides final confirmation or nonconfirmation of the employees' employment eligibility within 10 Federal Government work days of the date of referral to DHS, unless DHS determines that more than 10 days may be necessary. In such cases, DHS will provide additional verification instructions.

### **ARTICLE III**

#### **REFERRAL OF INDIVIDUALS TO SSA AND DHS**

##### **A. REFERRAL TO SSA**

1. If the Employer receives a tentative nonconfirmation issued by SSA, the Employer must print the notice as directed by E-Verify. The Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer agrees to provide written referral instructions to employees and instruct affected employees to bring the English copy of the letter to the SSA. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. After a tentative nonconfirmation, the Employer will refer employees to SSA field offices only as directed by E-Verify. The Employer must record the case verification number, review the employee information submitted to E-Verify to identify any errors, and find out whether the employee contests the tentative nonconfirmation. The Employer will transmit the Social Security number, or any other corrected employee information that SSA requests, to SSA for verification again if this review indicates a need to do so.

4. The Employer will instruct the employee to visit an SSA office within eight Federal Government work days. SSA will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines

that more than 10 days is necessary.

5. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

6. The Employer agrees not to ask the employee to obtain a printout from the Social Security Administration number database (the Numident) or other written verification of the SSN from the SSA.

## **B. REFERRAL TO DHS**

1. If the Employer receives a tentative nonconfirmation issued by DHS, the Employer must promptly notify employees in private of the finding and provide them with the notice and letter containing information specific to the employee's E-Verify case. The Employer also agrees to provide both the English and the translated notice and letter for employees with limited English proficiency to employees. The Employer must allow employees to contest the finding, and not take adverse action against employees if they choose to contest the finding, while their case is still pending.

2. The Employer agrees to obtain the employee's response about whether he or she will contest the tentative nonconfirmation as soon as possible after the Employer receives the tentative nonconfirmation. Only the employee may determine whether he or she will contest the tentative nonconfirmation.

3. The Employer agrees to refer individuals to DHS only when the employee chooses to contest a tentative nonconfirmation.

4. If the employee contests a tentative nonconfirmation issued by DHS, the Employer will instruct the employee to contact DHS through its toll-free hotline (as found on the referral letter) within eight Federal Government work days.

5. If the Employer finds a photo mismatch, the Employer must provide the photo mismatch tentative nonconfirmation notice and follow the instructions outlined in paragraph 1 of this section for tentative nonconfirmations, generally.

6. The Employer agrees that if an employee contests a tentative nonconfirmation based upon a photo mismatch, the Employer will send a copy of the employee's Form I-551, Form I-766, U.S. Passport, or passport card to DHS for review by:

- a. Scanning and uploading the document, or
- b. Sending a photocopy of the document by express mail (furnished and paid for by the employer).

7. The Employer understands that if it cannot determine whether there is a photo match/mismatch, the Employer must forward the employee's documentation to DHS as described in the preceding paragraph. The Employer agrees to resolve the case as specified by the DHS representative who will determine the photo match or mismatch.

8. DHS will electronically transmit the result of the referral to the Employer within 10 Federal Government work days of the referral unless it determines that more than 10 days is necessary.

9. While waiting for case results, the Employer agrees to check the E-Verify system regularly for case updates.

## **ARTICLE IV SERVICE PROVISIONS**

## **A. NO SERVICE FEES**

1. SSA and DHS will not charge the Employer for verification services performed under this MOU. The Employer is responsible for providing equipment needed to make inquiries. To access E-Verify, an Employer will need a personal computer with Internet access.

## **ARTICLE V MODIFICATION AND TERMINATION**

### **A. MODIFICATION**

1. This MOU is effective upon the signature of all parties and shall continue in effect for as long as the SSA and DHS operates the E-Verify program unless modified in writing by the mutual consent of all parties.
2. Any and all E-Verify system enhancements by DHS or SSA, including but not limited to E-Verify checking against additional data sources and instituting new verification policies or procedures, will be covered under this MOU and will not cause the need for a supplemental MOU that outlines these changes.

### **B. TERMINATION**

1. The Employer may terminate this MOU and its participation in E-Verify at any time upon 30 days prior written notice to the other parties.
2. Notwithstanding Article V, part A of this MOU, DHS may terminate this MOU, and thereby the Employer's participation in E-Verify, with or without notice at any time if deemed necessary because of the requirements of law or policy, or upon a determination by SSA or DHS that there has been a breach of system integrity or security by the Employer, or a failure on the part of the Employer to comply with established E-Verify procedures and/or legal requirements. The Employer understands that if it is a Federal contractor, termination of this MOU by any party for any reason may negatively affect the performance of its contractual responsibilities. Similarly, the Employer understands that if it is in a state where E-Verify is mandatory, termination of this by any party MOU may negatively affect the Employer's business.
3. An Employer that is a Federal contractor may terminate this MOU when the Federal contract that requires its participation in E-Verify is terminated or completed. In such cases, the Federal contractor must provide written notice to DHS. If an Employer that is a Federal contractor fails to provide such notice, then that Employer will remain an E-Verify participant, will remain bound by the terms of this MOU that apply to non-Federal contractor participants, and will be required to use the E-Verify procedures to verify the employment eligibility of all newly hired employees.
4. The Employer agrees that E-Verify is not liable for any losses, financial or otherwise, if the Employer is terminated from E-Verify.

## **ARTICLE VI PARTIES**

A. Some or all SSA and DHS responsibilities under this MOU may be performed by contractor(s), and SSA and DHS may adjust verification responsibilities between each

other as necessary. By separate agreement with DHS, SSA has agreed to perform its responsibilities as described in this MOU.

B. Nothing in this MOU is intended, or should be construed, to create any right or benefit, substantive or procedural, enforceable at law by any third party against the United States, its agencies, officers, or employees, or against the Employer, its agents, officers, or employees.

C. The Employer may not assign, directly or indirectly, whether by operation of law, change of control or merger, all or any part of its rights or obligations under this MOU without the prior written consent of DHS, which consent shall not be unreasonably withheld or delayed. Any attempt to sublicense, assign, or transfer any of the rights, duties, or obligations herein is void.

D. Each party shall be solely responsible for defending any claim or action against it arising out of or related to E-Verify or this MOU, whether civil or criminal, and for any liability wherefrom, including (but not limited to) any dispute between the Employer and any other person or entity regarding the applicability of Section 403(d) of IIRIRA to any action taken or allegedly taken by the Employer.

E. The Employer understands that its participation in E-Verify is not confidential information and may be disclosed as authorized or required by law and DHS or SSA policy, including but not limited to, Congressional oversight, E-Verify publicity and media inquiries, determinations of compliance with Federal contractual requirements, and responses to inquiries under the Freedom of Information Act (FOIA).

F. The individuals whose signatures appear below represent that they are authorized to enter into this MOU on behalf of the Employer and DHS respectively. The Employer understands that any inaccurate statement, representation, data or other information provided to DHS may subject the Employer, its subcontractors, its employees, or its representatives to: (1) prosecution for false statements pursuant to 18 U.S.C. 1001 and/or; (2) immediate termination of its MOU and/or; (3) possible debarment or suspension.

G. The foregoing constitutes the full agreement on this subject between DHS and the Employer.

**To be accepted as an E-Verify participant, you should only sign the Employer's Section of the signature page. If you have any questions, contact E-Verify at 1-888-464-4218.**

**Approved by:**

E-Verify Employer	
Name (Please Type or Print)	Title
Signature	Date

<b>Department of Homeland Security – Verification Division</b>	
Name (Please Type or Print)	Title
Signature	Date

<b>Information Required for E-Verify</b>	
Information relating to your Company:	
Company Name:	
Company Facility Address:	
Company Alternate Address:	
County or Parish:	
Employer Identification Number:	
North American Industry Classification Systems Code:	
Parent Company:	
Number of Employees:	
Number of Sites Verified for:	

Are you verifying for more than one site?

If yes, please provide the number of sites verified for in each State:

State	Number of sites	Site(s)
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Information relating to the Program Administrator(s) for your Company on policy questions or operational problems:

Name:

Telephone Number:

Fax Number:

E-mail Address:

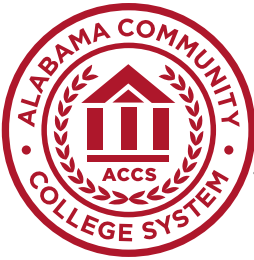
Name:

Telephone Number:

Fax Number:

E-mail Address:





# FACILITIES DIVISION

## ACCS FORM 6-A

### PRE-CONSTRUCTION CONFERENCE CHECKLIST

<b>PROJECT NAME:</b>			
<b>ACCS PROJECT #</b>		<b>DATE:</b>	
<b>ANTICIPATED NTP DATE:</b>		<b>MEETING PLACE:</b>	
<b>ANTICIPATED COMPLETION DATE:</b>		<b>MEETING TIME:</b>	

#### NA 1. INTRODUCTIONS

- A. Attendees have all completed Pre-Construction Sign-In Sheet (Name/Company/Telephone/Email)
- B. Define the Project Team - Introduction of all participants and their roles
  - 1. College Personnel - Owner; ACCS Facilities; College
  - 2. Design Professional(s) - Architect's Representative(s); Engineer's Representative(s)
  - 3. Contractor(s) - Project Manager; Superintendent; Major Sub-Contractor(s)

#### NA 2. PROJECT CONTRACT

- A. ACCS Facilities has authority after bid (no scope changes, change orders, etc without ACCS approval)
- B. Identify Contract Amount - Base Bid plus Alternates
  - 1. Verify Alternates accepted
  - 2. Review of Allowance and Unit Prices
  - 3. Value Engineering
- C. Verify end of Contract has everything checked
- D. Notice to Proceed Date
- E. Contract Completion Date
- F. Liquidated Damages
- G. Most recent construction sets of plans available to contractor
- H. Approved Schedule of Values
  - 1. How to correctly calculate the percentage of the schedule
- I. Letter from manufacturer on long lead times
- J. Approved list of sub-contractors
- K. Approved Weather Days - How to correctly calculate weather days
- L. Contractor to provide building permit after receiving their contract but before receiving Notice to Proceed

#### NA 3. PROCEDURAL AND COORDINATION ITEMS

- A. Point of contact for project. Job Superintendent and phone number.
- B. Contractor's duty to coordinate work of separate contractors
  - 1. CMA responsible for multi-prime contracts
- C. Conduct of contractor's personnel
  - 1. Construction crew members shall conduct themselves professionally at all times
  - 2. No interaction with faculty, staff and/or students
  - 3. No foul language
  - 4. No smoking or use of tobacco products
  - 5. No drugs or alcohol
  - 6. No firearms on school property
- D. Project sign and other job signs
- E. Overall phasing of the work
- F. Communication from College regarding dates and times of unavailability
  - 1. Coordinate outages and work in existing building(s) with Owner

**NA 3. PROCEDURAL AND COORDINATION ITEMS (CONTINUED)**
**G. Use of site and existing building(s), access drive, keep existing exit paths open**

1. Project limits as shown on drawings
2. Building location(s) relative to critical property line, easement, setback, etc.
3. Verify sanitary outfall before committing floor level
4. Protecting trees
5. Contractor must provide own dumpster(s) and cannot use facility dumpsters
6. Parking for workers

**H. Use of existing toilets or need for temporary toilet facilities**
**I. Coordinate and utilities supplied by Owner**

1. Where utility cut off valves are onsite in case of emergency

**J. Material storage, lay down areas and staging areas**
**K. Routine job cleanup**

1. Secure job site (tools, materials, work)

**L. OSHA - report all accidents - safety General Contractor's responsibility**
**M. Contractors reminded of obligation to comply with the Alabama Child Labor Law and E-Verify**
**N. Bring to our attention any issues revealed during work**
**NA 4. OAC MEETINGS FORMAT**
**A. Frequency of OAC meeting**
**B. Architect shall coordinate, schedule, and conduct the OAC Meetings**
**C. Agenda items to be included:**

1. Safety
2. Review back to previous OAC meeting and what has or has not been done
3. Weather and labor report
4. Review of inspection reports and distribution
5. Request for Information (log)
6. Change Orders (log)
7. Allowance (log)
8. ASI (Architects Supplemental Information) (log)
9. Schedule of Values (update)
10. Pay Applications (method of approving monthly payment requests)
11. Shop Drawings, format, time to process (log)
12. Submittal schedule identifying all submittals required and anticipated submission dates
13. Project Schedule is a required agenda item and the Contractor must update the schedule by each meeting
14. If necessary, Design Professional should issue a recovery schedule in order to meet construction deadlines, inspections, etc.

**D. Architect shall complete the meeting minutes for circulation and for the Project Record**
**NA 5. INSPECTIONS AND TESTING**
**A. Advance notice for required inspections, must be requested 14 days in advance**

1. Contractor to notify architect by email of date project will be ready for inspection by AHJ
2. Contractor to verify that their own inspection has been completed before AHJ inspection

**B. Cancellations of inspections may subject contractor to payment of any AHJ cancellation fees**
**C. Other inspections required before work is covered**
**D. Third-party inspections/special inspections**
**E. Soil Testing**

1. Soil compaction, soil type, lab tests, etc.
2. Soil treatment, mix on site in presence of Superintendent

**NA 5. INSPECTIONS AND TESTING (CONTINUED)**

3. Stock piling top soil (location and protection)
4. Procedure if bad soil or rock is encountered, Geotech and special inspections
5. ADEM land disturbance permits shall be required if site is over 1 acre

**F. Above Ceiling Inspections**

1. Required attendees: Contractor, Owner, Architect, MEP Engineers, Major Subs
2. All work must be completed except for installation of ceiling tiles and/or hard ceilings
3. Space must be conditioned
4. Permanent power must be connected unless otherwise arranged
5. Grease duct must be inspected and approved prior to fire wrapping

**G. Life Safety Inspections**

1. Required attendees: Contractor, Owner, Architect, Engineers, Major Subs, Local Fire Marshall
2. Fire alarm certification
3. Fire alarm monitoring requirements (who is listed as first responder)
4. All sprinkler system valves must be electrically supervised
5. Fire alarm and fire sprinkler contractors must be permitted through the State of Alabama Fire Marshall's office. Provide permits
6. Above ground and below ground sprinkler certifications
7. Emergency and exit lighting tests
8. Kitchen hood fire suppression systems must be complete and certified
9. Pressure test/Flush test for underground sprinkler lines (witnessed by Local Fire Marshall, Fire Chief and/or AHJ or Independent Code Consultant)
10. Flush/pressure test for new and/or existing fire hydrants
11. Must have clear egress/access and emergency (for first responders) access to building
12. Must have ADA access completed

**H. Substantial Completion**

1. General Contractor's Roofing Guarantee and Manufacturer's Roofing Warranties must be presented to Owner at Final Inspection and submitted with Certificate of Substantial Completion
2. Certification of Structural Observations from the Structural Engineer of Record must be attached to the Certificate of Substantial Completion form
3. Certificate of Substantial Completion/Final Inspection
4. Advertisement of Completion - start ad after substantial completion (projects less than \$50,000, Owner advertises for 1 week; projects more than \$50,000, Contractor advertises for 4 weeks)

**I. Final Inspection**

1. Completed certificate of structural engineer's observations (for storm shelter)
2. Elevator inspection completed and certificate of operation provided by the State of AL Dept of Labor
3. Boiler/vessels inspection completed and certificate of operation provided by the State of Alabama Department of Labor
4. Elevators/Pressure Vessels must be inspected and approved by the State of Alabama Department of Labor prior to final inspection
5. Release of retainage - 30 days to complete punch list and closeout

**NA 6. CONFERENCES**
**A. Storm Shelter**

1. Required attendees: Contractor, Owner, Architect, Structural Engineer, Major Subs, Special Inspections Representative
2. Completed and signed Contractor's Statement of Responsibility for Construction of Tornado Storm Shelter (Hurricane Shelter Where Applicable) along with the required Quality Assurance Plan (QAP) must be submitted to the Owner at or before the pre-construction conference

**NA 6. CONFERENCES (CONTINUED)**
**B. Roofing**

1. Required attendees: Contractor, Owner, Architect, Roofing Sub, Roofing Manufacturer's Rep
2. No roofing materials installed prior to conference
3. Light gauge metal roof framing and/or wood truss framing to be inspected by structural engineer
4. Roofing submittals and warranties must be approved by Architect prior to pre-roofing conference
5. Roofing manufacturer must provide documentation that roof design and roofing materials meet code requirements for wind uplift and impact resistance
6. Copy of sample roof warranty

**C. Pre-Asphalt Paving Installation and Expectations Meeting**

1. Required attendees: Contractor, Owner, Architect, Asphalt Sub
2. Review sequencing and schedule of paving and striping
3. Schedule to make sure surrounding irrigation is off 2 days before and 2 days after paving
4. Subgrade, milled surface, underlying pavement surface has been approved for paving
5. Review examples of expectations for finished project

**D. Pre-Landscape Sod Installation and Expectations Meeting**

1. Required attendees: Contractor, Owner, Architect, Landscape Sub
2. Review sequencing and schedule of landscaping materials
3. Review expectations of cleared site, rough grade, top soil depth, finish grade and settled surface
4. Review examples of expectations for finished project

**E. Pre-Flooring Installation and Expectations Meeting**

1. Required attendees: Contractor, Owner, Architect, Flooring Sub
2. Review sequencing of the surrounding work (ceilings, walls, painting)
3. Surrounding work completed before final flooring is installed

**NA 7. QUALITY CONTROL**
**A. Concrete**

1. Ready mix plant, file delivery tickets, slump tests, cylinders
2. Surveyor to check foundation wall if location critical
3. Quality of concrete work; concrete testing
4. Inspections before pouring concrete

**B. What is expected of masonry work, mortar additive**
**C. Problems with hollow metal (install proper fire labels)**
**D. Fire damper installation issues**
**E. Potential conflict of mechanical and electrical equipment (shop drawings)**
**F. Return air plenums (no combustibles)**
**G. Protect mechanical and electrical items during interior work**
**H. Coordinate with local fire authority to assure access to the building for firefighting equipment during construction and before final acceptance. Provide fire extinguishers as required.**
**I. Comply with ADA requirements: plumbing fixture heights, toilet partitions widths, turnaround, signage, parking lot striping, etc.**
**J. Craft-faced insulation is not to be installed exposed**
**K. Comply with fire hydrant requirement; coordinate with Local Fire Authority or State Fire Marshall**
**L. Door Hardware and Keying meeting**
**M. As-Built Documents**

1. Contractor must maintain, at all times, As-Built Documents
2. Design professional will review the maintenance of the As-Built Documents at each site visit

**NA 8. PROJECT CLOSEOUT**

<b>A.</b>	<b>All items received by Owner before Final Payment will be issued</b>
1.	Final Payment Application checklist
<b>B.</b>	<b>All close out documentation must be submitted per specifications</b>
<b>C.</b>	<b>Project Close Out documentation</b>
1.	Warranties
2.	Lien Waivers
3.	Operating and Maintenance Manuals
4.	As-Built Drawings
<b>D.</b>	<b>Time extensions (need justification and review weather delays)</b>
<b>E.</b>	<b>Sales tax savings (Alabama Department of Revenue)</b>
<b>F.</b>	<b>Warranty Document Information</b>
1.	Alabama Community College System
2.	Name of College
3.	Address/Name of College Building
4.	Contact Person: Office of the President

**NA 9. OTHER (ADDITIONAL ITEMS SPECIFIC TO THE PROJECT)**

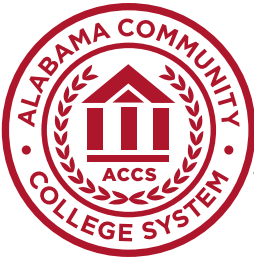
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ATTENDEE LIST	
NAME:	COMPANY:

APPROVALS	
BY: _____	DATE: _____
SIGNATURE OF ARCHITECTURAL/ENGINEERING FIRM	
BY: _____	DATE: _____
OWNER'S DESIGNATED REPRESENTATIVE	
BY: _____	DATE: _____
SIGNATURE OF REGIONAL FACILITIES DIRECTOR	

**ACCS FORM 6-C**

ACCS PROJECT#:		DATE:	
PROJECT NAME:			
Address:			
OWNER ENTITY:			
Address:		Phone:	
		Email:	
CONTRACTOR COMPANY:			
Address:		Phone:	
		Email:	
ARCHITECTURAL/ENGINEERING FIRM:			
Address:		Phone:	
		Email:	
PROJECT DATA ON THE DATE OF OBSERVATION			
#OF WORKERS:		START DATE:	
WEATHER:			
SITE CONDITIONS:			
CONTRACT COMPLETION DATE:		CONTRACTOR COMPLETION DATE:	
SCHEDULED STATE OF COMPLETION:		%	ESTIMATED ACTUAL COMPLETION:
CONTRACTOR'S SUPERINTENDENT:		JOB PHONE:	
COMMENTS/DEFICIENCIES:			
SIGNATURE:		REPORT#:	
CC: Owner, Architect/Engineer, Contractor			



# FACILITIES DIVISION

## ACCS FORM 6-D

### APPLICATION AND CERTIFICATE FOR PAYMENT

Attach Schedule of Values. Attach Current Progress Schedule.

ACCS PROJECT#:		APPLICATION#:		DATE:	
PROJECT:					
TO OWNER:					
Address:		Phone:			
		Email:			
FROM CONTRACTOR:					
Address:		Phone:			
		Email:			
ARCHITECT/ENGINEER:					
Address:		Phone:			
		Email:			
TOTAL ORIGINAL CONTRACT:					
FULLY EXECUTED CHANGE ORDER(S) NUMBERS	THROUGH				
TOTAL CONTRACT TO DATE:					
Work Completed to Date per attached Schedule of Values:					
Stored Materials:					
Total Completed Work and Stored Materials: ( % of Contract To Date)					
<small>5% of Total Completed Work and Stored Materials (TCWSM) is retained when TCWSM is less than or equal to 50% of Total Contract to Date. 0% retained when TCWSM is more than 50% of Total Contract to Date. 0 is retained on final pay app.</small>					
Less Retainage:	Total Due:				
Less Total Previous Payments:					
Balance Due This Estimate:					

#### 1 CONTRACTOR'S CERTIFICATION

The undersigned Contractor certifies that to the best of his knowledge, information, and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by him for Work for which previous Certificates for Payments were issued and payments received from the Owner and that current payment shown herein has not yet been received.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
CONTRACTOR'S SIGNATURE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_

(SEAL)

NOTARY PUBLIC'S SIGNATURE

#### 2 ARCHITECT'S/ENGINEER'S CERTIFICATION

In accordance with the Contract Documents, the Architect/Engineer certifies to the Owner and College that to the best of the Architect's/Engineer's knowledge and belief:

- the work has progressed to the point indicated herein **and according to the updated attached progress schedule**,
- the quality of the Work is in accordance with the Contract documents, and
- the Contractor is entitled to payment of the amount approved.

By: \_\_\_\_\_ Date: \_\_\_\_\_  
ARCHITECT'S/ENGINEER'S SIGNATURE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

#### 3 COLLEGE APPROVAL (non-final progress schedule attached)

By: \_\_\_\_\_  
COLLEGE

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

#### INSTRUCTIONS

- Date of first payment application cannot precede the Notice to Proceed's Begin Date.
- A change order must be fully executed before inclusion on a payment application.
- On a final payment application, all change orders must be fully executed and included.
- Contractor's signature date cannot precede the payment application date.
- Progress schedules must be included with non-final payment applications.
- One payment application per month may be submitted.
- Retainage is released when the Certificate of Substantial Completion is fully executed, all other close-out requirements per General Conditions Article 34 are completed and the final payment

**IF APPLICABLE: ANY PAY APPLICATION THAT REDUCES RETAINAGE REQUIRES ACCS APPROVAL PRIOR TO PROCESSING FOR PAYMENT**

\_\_\_\_\_  
ACCS FACILITIES REPRESENTATIVE

Name: \_\_\_\_\_ Date: \_\_\_\_\_

VER: 12102024

# SCHEDULE OF VALUES

ACCS Form 6-E





Project:								ACCS Form 6-E	
Contractor Company:						ACCS Project No.:			
						Application No.:			
Retainage: 5% of Completed Work and Stored Materials to Date (G) is retained when G Total is less than 50% of Scheduled Value (C) Total. 0 is retained on final payment application.						Application Date:			
						Period From:		Period To:	
A	B	C	D	E	F	G		H	I
Item No.	Description of Work	Scheduled Value (including fully executed change orders)	Work Completed		Materials Presently Stored (Not in D or E)	Completed Work & Stored Materials to Date (D+E+F)	% of Contract to Date (G/C)	Balance to Finish (C-G)	Retainage (Variable Rate)
			From Previous Application (D+E)	This Period					
1.						\$ -			\$ -
2.						\$ -			\$ -
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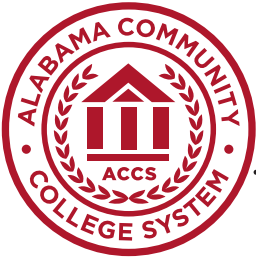


**INVENTORY OF STORED MATERIALS**

Project:			ACCS Project No.:		
Contractor:			For Estimate No.:		
			For Period Ending:		
A	B	C	D	E	F
DESCRIPTION	MATERIALS STORED LAST PERIOD	PURCHASED THIS PERIOD	TOTAL COLUMNS B + C	MATERIALS USED THIS PERIOD	MATERIALS PRESENTLY STORED

To be used as documentation to support value of Stored Materials reported on APPLICATION AND CERTIFICATE FOR PAYMENT.

													ACCS FORM 6-H	
SAMPLE PROGRESS SCHEDULE & REPORT					CONTRACTOR (Contractor may use own form ):					DATE OF REPORT:				
ACCS Project No.:										PROCEED DATE:				
PROJECT:														
					ARCHITECT/ENGINEER:									
WORK DIVISION		%	AMOUNT											
1.	GENERAL REQUIREMENTS													
2.	SITEWORK													
3.	CONCRETE													
4.	MASONRY													
5.	METALS													
6.	WOOD AND PLASTIC													100%
7.	THERMAL AND MOISTURE PROTECTION													90%
8.	DOORS AND WINDOWS													80%
9.	FINISHES													70%
10.	SPECIALTIES													60%
11.	EQUIPMENT													50%
12.	FURNISHINGS													40%
13.	SPECIAL CONSTRUCTION													30%
14.	CONVEYING SYSTEMS													20%
15.	MECHANICAL													10%
16.	ELECTRICAL													0%
TOTAL ORIG. CONTRACT		100%												
ANTICIPATED DRAW IN \$1,000														
ACTUAL DRAW IN \$1,000														
LEGEND:  ANTICIPATED ACTIVITY  ACTUAL ACTIVITY  ANTICIPATED CASH FLOW  ACTUAL CASH FLOW										USE ADDITIONAL SHEETS IF JOB IS SCHEDULED OVER 12 MONTHS.				



# FACILITIES DIVISION

**ACCS FORM 6-J**

## CERTIFICATION OF STRUCTURAL OBSERVATIONS

<b>ACCS PROJECT#:</b>			
<b>PROJECT NAME:</b>			
<b>OWNER:</b>			
<b>CONTRACTING COMPANY:</b>			

I \_\_\_\_\_, do hereby verify that I have personally conducted the visual Design Professional observations of the construction of the structural system for conformance to the approved construction documents for the referenced project. The visual observations of the structural systems were personally conducted by me at all significant construction stages and at the completion of the construction of the structural system. To the best of my knowledge, all structural deficiencies have been resolved except as noted below:

Signed on this date, \_\_\_\_\_

**Design Professional's Seal**

\_\_\_\_\_  
ARCHITECTURAL / ENGINEERING FIRM

\_\_\_\_\_  
SIGNATURE OF ARCHITECT OR  
STRUCTURAL ENGINEER OF RECORD

**PRINTED NAME:** \_\_\_\_\_



# FACILITIES DIVISION

## ACCS FORM 6-K

### CERTIFICATE OF SUBSTANTIAL COMPLETION

TO:  
**ACCS FACILITIES DIVISION**  
135 S. Union Street  
Montgomery, AL 36130  
(334) 293-4500

• Do not staple this form and/or attachments; use clips. Print single-sided; do not submit double-side printed documents

	<b>ACCS PROJECT#:</b>	
<b>OWNER ENTITY NAME AND ADDRESS:</b>  Email to receive executed copy:	<b>ARCHITECTURAL/ENGINEERING FIRM NAME &amp; ADDRESS:</b>  Email to receive executed copy:	
<b>CONTRACTOR COMPANY NAME AND ADDRESS:</b>  Email to receive executed copy:	<b>BONDING COMPANY NAME AND ADDRESS:</b>  Email to receive executed copy:	

#### PROJECT:

**Substantial Completion** has been achieved for \_\_\_\_\_ the entire Work \_\_\_\_\_ the following portion of the Work:

The **Date of Substantial Completion** of the Work covered by this certificate is established to be: \_\_\_\_\_

"Substantial Completion" means the designated Work is sufficiently complete, in accordance with the Contract Documents, such that the Owner may occupy or utilize the Work for its intended use without disruption or interference by the Contractor in completing or correcting any remaining unfinished Work. The Date of Substantial Completion is the date upon which all warranties for the designated Work commence, unless otherwise agreed and recorded herein.

**Punch List:** A \_\_\_\_\_ page list of items to be completed or corrected prior to the Owner's approval of Final Payment is attached hereto, but does not alter the Contractor's responsibility to complete or correct all Work in full compliance with the Contract Documents. The Contractor shall complete or correct all items on the attached list, ready for re-inspection for Final Acceptance, within 30 days after the above Date of Substantial Completion, unless another date is stated here: \_\_\_\_\_. If completed or corrected within this period, warranties of these items commence on the Date of Substantial Completion, otherwise such warranties commence on the date of Final Acceptance of each item. Failure to complete or correct any items of remaining Work ("punch list" items) within 60 days will result in all warranties commencing on the Date of Final Acceptance.

**Nothing herein shall limit or waive the Owner's rights under Article 27 of the General Conditions (ACCS Form 2-B), including but not limited to issuance of Notices to Cure or Notice of Termination issued to Contractors and Sureties, to obtain completion, correction, or repair of any remaining unfinished Work ("punch list" items).**

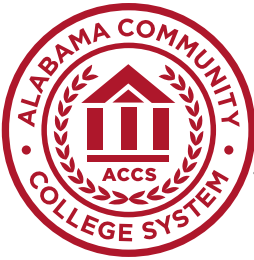
Only one (1) originally executed substantial completion form shall be routed for signature. ACCS Facilities Division office will mail the fully-executed original to the Owner and email copies to all parties.

VER: 09262024

<b>RECOMMENDED BY:</b>		<b>CONTRACTING PARTIES:</b>	
_____	_____	_____	_____
<b>ARCHITECT/ENGINEER</b>	<b>DATE</b>	<b>CONTRACTOR</b>	<b>DATE</b>
<b>APPROVALS:</b>		_____	_____
_____	_____	<b>ACCS CHIEF FACILITIES OFFICER</b>	<b>DATE</b>
<b>AHJ INSPECTOR (IF APPLICABLE)</b>	<b>DATE</b>		
_____	_____		
<b>*A/E PEER REVIEWER(IF APPLICABLE)</b>	<b>DATE</b>		
_____	_____		
<b>OWNER'S DESIGNATED REPRESENTATIVE</b>	<b>DATE</b>		
_____	_____		
<b>ACCS REGIONAL FACILITIES DIRECTOR</b>	<b>DATE</b>		

\*ACCS Colleges are required to provide an A/E Peer Reviewer to review the A/E of Record's project design and to perform construction inspections when AHJ is not present in city/town where project's work is taking place.

**Required Certification:** The Certification of Structural Observations (ACCS Form 6-J) shall be prepared by the Structural Engineer of Record for all projects containing classrooms or dorm rooms on the grounds of public institutions of higher education as required by ACT#2012-554. Where applicable to the project, the certification must be attached to the Certificate of Substantial Completion.



# FACILITIES DIVISION

## ACCS FORM 6-L

### GENERAL CONTRACTOR'S ROOFING GUARANTEE

• Do not staple this form and/or attachments; use clips. Print single-sided; do not submit double-side printed documents

<b>ACCS PROJECT#:</b>			
<b>PROJECT NAME:</b>			
Address:			
<b>PROJECT OWNER:</b>			
Address:			
<b>CONTRACTOR COMPANY:</b>			
Address:		Phone:	
		Email:	

#### EFFECTIVE DATES OF GUARANTEE

<b>DATE OF ACCEPTANCE:</b>		<b>DATE OF EXPIRATION:</b>	
----------------------------	--	----------------------------	--

**1.** The General Contractor does hereby certify that the roofing work included in this contract was installed in strict accordance with all requirements of the plans and specifications and in accordance with approved roofing manufacturers recommendations.

**2.** The General Contractor does hereby guarantee the roofing and associated work including but not limited to all flashing and counter flashing both composition and metal, roof decking and/or sheathing; all materials used as a roof substrate or insulation over which roof is applied; promenade decks or any other work on the surface of the roof; metal work; gravel stops and roof expansion joints to be absolutely watertight and free from all leaks, due to faulty or defective materials and workmanship for a period of five (5) years, starting on the date of substantial completion of the project. This guarantee does not include liability for damage to interior contents of building due to roof leaks, nor does it extend to any deficiency which was caused by the failure of work which the general contractor did not damage or did not accomplish or was not charged to accomplish.

**3.** Subject to the terms and conditions listed below, the General Contractor also guarantees that during the Guarantee Period he will, at his own cost and expense, make or cause to be made such repairs to, or replacements of said work, in accordance with the roofing manufacturers standards as are necessary to correct faulty and defective work and/or materials which may develop in the work including, but not limited to: blisters, delamination, exposed felts, ridges, wrinkles, splits, warped insulation and/or loose flashings, etc. in a manner pursuant to the total anticipated life of the roofing system and the best standards applicable to the particular roof type in value and in accordance with construction documents as are necessary to maintain said work in satisfactory condition, and further, to respond on or within three (3) calendar days upon proper notification or leaks or defects by the Owner or Architect.

**(a)** Specifically excluded from this Guarantee are damages to the work, other parts of the building and building contents caused by: (1) lightning, windstorm, hailstorm and other unusual phenomena of the elements; and (2) fire. When the work has been damaged by any of the foregoing causes, the Guarantee shall be null and void until such damage has been repaired by the General Contractor, and until the cost and expense thereof has been paid by the Owner or by the responsible party so designated.

**(b)** During the Guarantee Period, if the Owner allows alteration of the work by anyone other than the General Contractor, including cutting, patching and maintenance in connection with penetrations, and positioning of anything on the roof, this Guarantee shall become null and void upon the date of said alterations. If the owner engages the General Contractor to perform said alterations, the Guarantee shall not become null and void, unless the General Contractor, prior to proceeding with the said work, shall have notified the Owner in writing, showing reasonable cause for claim that said alterations would likely damage or deteriorate the work, thereby reasonably justifying a termination of this Guarantee.

**(c)** Future building additions will not void this guarantee, except for that portion of the future addition that might affect the work under this contract at the point of connection of the roof areas, and any damage caused by such addition. If this contract is for roofing of an addition to an existing building, then this guarantee covers the work involved at the point of connection with the existing roof.

**(d)** During the Guarantee period, if the original use of the roof is changed and it becomes used for, but was not originally specified for, a promenade, work deck, spray cooled surface, flooded basin, or other use of service more severe than originally specified, this Guarantee shall become null and void upon the date of said change.

**(e)** The Owner shall promptly notify the General Contractor of observed, known or suspected leaks, defects or deterioration, and shall afford reasonable opportunity for the General Contractor to inspect the work, and to examine the evidence of such leaks, defects or deterioration.

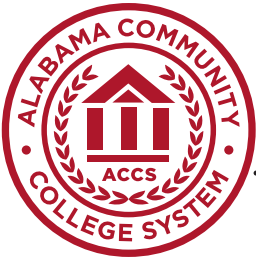
**IN WITNESS THEREOF**, this instrument has been duly executed this \_\_\_\_\_  
day of \_\_\_\_\_

\_\_\_\_\_  
GENERAL CONTRACTOR'S AUTHORIZED SIGNATURE

**BY:** \_\_\_\_\_  
SIGNEE'S PRINTED NAME

**TITLE:** \_\_\_\_\_  
SIGNEE'S TITLE





# FACILITIES DIVISION

**ACCS FORM 6-M**

## SAMPLE FORM OF ADVERTISEMENT FOR COMPLETION

### LEGAL NOTICE

In accordance with Chapter 1, Title 39, Code of Alabama, 1975, as amended, notice is hereby given that:

\_\_\_\_\_  
(Contractor Company Name)

Contractor, has completed the Contract for:

**CONSTRUCTION**

**RENOVATION**

**ALTERATION**

**EQUIPMENT**

**IMPROVEMENT**

of:

at:

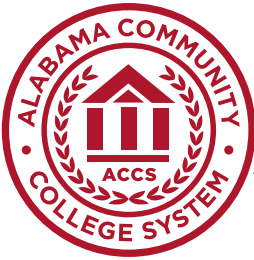
for the State of Alabama and the (County) (City) of: \_\_\_\_\_,  
Owner(s), and have made request for final settlement of said Contract. All persons having any claim for  
labor, materials, or otherwise in connection with this project should immediately notify:

\_\_\_\_\_  
(Architect/Engineer)

### **BUSINESS ADDRESS:**

\_\_\_\_\_  
(Contractor)

**NOTE:** This notice must be run once a week for three successive weeks for projects exceeding \$100,000. For projects of \$100,000 or less, there is no requirement for Advertisement for Completion. A copy of the publisher's affidavit of publication (including a copy of the advertisement) shall be submitted by the Contractor to the Design Professional.



# FACILITIES DIVISION

## ACCS FORM 6-N

### CONTRACTOR'S AFFIDAVIT OF PAYMENT OF DEBTS AND CLAIMS

<b>ACCS PROJECT#:</b>			
<b>DATE OF THE CONSTRUCTION CONTRACT:</b>			
<b>PROJECT</b> (SAME AS APPEARS IN THE CONSTRUCTION CONTRACT):			
<b>STATE OF:</b>		<b>COUNTY OF:</b>	

The undersigned hereby certifies that, except as listed below, payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Construction Contract referenced above for which the Owner or Owner's property might in any way be held responsible or encumbered.

#### EXCEPTIONS:

--

#### SUPPORTING DOCUMENTS ATTACHED HERETO

**1.** Consent of Surety to Final Payment. Whenever Surety is involved, a Consent of Surety form is required.

**INDICATE ATTACHMENT:**                      YES                      NO

**THE FOLLOWING SUPPORTING DOCUMENT SHOULD BE ATTACHED HERETO IF REQUIRED BY THE OWNER:**

- 1.** Contractor's Release of Waiver of Liens
- 2.** Separate Releases or Waivers of Liens from Subcontractors and material and equipment supplies, to the extent required by the Owner, accompanied by the list thereof
- 3.** Contractor's Affidavit of Release of Liens

#### CONTRACTOR

**NAME :**

**ADDRESS :**

SIGNATURE OF AUTHORIZED REPRESENTATIVE

**BY:** \_\_\_\_\_

SIGNEE'S PRINTED NAME

**TITLE:** \_\_\_\_\_

SIGNEE'S TITLE

Sworn to and subscribed before me this

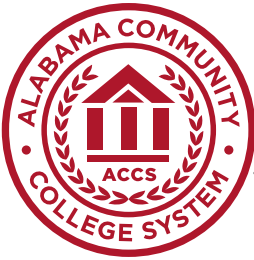
\_\_\_\_\_ day of \_\_\_\_\_ ,

\_\_\_\_\_ .

NOTARY PUBLIC'S SIGNATURE

My commission expires: \_\_\_\_\_

SEAL



# FACILITIES DIVISION

**ACCS FORM 6-P**

## CONTRACTOR'S AFFIDAVIT OF RELEASE OF LIENS

<b>ACCS PROJECT#:</b>			
<b>DATE OF THE CONSTRUCTION CONTRACT:</b>			
<b>PROJECT</b> (SAME AS APPEARS IN THE CONSTRUCTION CONTRACT):			
<b>STATE OF:</b>		<b>COUNTY OF:</b>	

The undersigned hereby certifies that, except as listed below, payment has been made in full and all obligations have otherwise been satisfied for all materials and equipment furnished, for all work, labor and services performed, and for all known indebtedness and claims against the Contractor for damages arising in any manner in connection with the performance of the Construction Contract referenced above for which the Owner or Owner's property might in any way be held responsible or encumbered.

**EXCEPTIONS:****SUPPORTING DOCUMENTS ATTACHED HERETO**

1. Contractor's Release of Waiver of Liens
2. Separate Releases or Waivers of Liens from Subcontractors and material and equipment supplies, to the extent required by the Owner, accompanied by the list thereof

**CONTRACTOR****NAME :****ADDRESS :**\_\_\_\_\_  
SIGNATURE OF AUTHORIZED REPRESENTATIVE**BY:** \_\_\_\_\_

SIGNEE'S PRINTED NAME

**TITLE:** \_\_\_\_\_

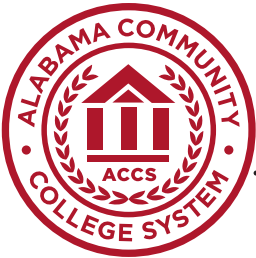
SIGNEE'S TITLE

Sworn to and subscribed before me this

\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_.\_\_\_\_\_  
NOTARY PUBLIC'S SIGNATURE

My commission expires: \_\_\_\_\_

SEAL



# FACILITIES MANAGEMENT

**ACCS FORM 6-Q**

## CONSENT OF SURETY TO FINAL PAYMENT

<b>ACCS PROJECT#:</b>			
<b>DATE OF THE CONSTRUCTION CONTRACT:</b>			
<b>SURETY'S BOND NUMBER:</b>			
<b>TO: OWNER</b> (THE ALABAMA COMMUNITY COLLEGE SYSTEM)			
<b>PROJECT:</b> (SAME AS APPEARS IN THE CONSTRUCTION CONTRACT)			
<p>In accordance with the provisions of the Contract between the Owner and the Contractor as indicated above, the <b>SURETY:</b></p> <p>on bond of <b>CONTRACTOR:</b></p> <p>hereby approves of the final payment to the Contractor, and agrees that final payment to the Contractor shall not relieve the Surety of any of its obligations to the Owner.</p> <p>as set forth in said Surety's bond.</p> <p><b>SIGNED AND SEALED</b> this _____ day of _____.</p> <p><b>SURETY:</b> _____ COMPANY NAME</p> <p><b>SEAL:</b></p> <p><b>BY:</b> _____ SIGNATURE OF AUTHORIZED REPRESENTATIVE</p> <p>_____ PRINTED NAME AND TITLE</p> <p><b>Note:</b> Original Power of Attorney for the Surety's signatory shall be furnished with each original form.</p>			