FACILITIES DIVISION

ACCS FORM 2-C

PERFORMANCE BOND

7 **SURETY'S BOND NUMBER:**	

1 The **PRINCIPAL** (Company name and address of Contractor as appears in the Construction Contract)

NAME:	
Address:	

2 The **SURETY** (Company name and primary place of business)

NAME:	
Address:	

3 The **OWNER:** THE ALABAMA COMMUNITY COLLEGE SYSTEM ON BEHALF OF:

Address:	

4 The **PENAL SUM** of this Bond (the Contract Sum):

5 **DATE** of the Construction Contract:

6 The **PROJECT:** (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 -Day- of -Month- -Year-

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.