

BID & CONTRACT DOCUMENTS

PROJECT: NORTH WOODRIDGE ROAD SIDEWALK PROJECT

OWNER: CITY OF MOUNTAIN BROOK, ALABAMA

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I. INVITATION FOR BIDS

Bid Submission Deadline & Bid Opening Time: May 21, 2024 – 2:00 P.M.
Pre-Bid Conference Not Applicable
Address for Bid Submission & City Hall - City of Mountain Brook
56 Church Street,
Mountain Brook, AL 35213-3700
ATTN: City Manager/Purchasing Agent

The City of Mountain Brook, Alabama (“City” or “Owner”) invites interested contractors to submit sealed bids to the above noted address for the award of a lump sum contract (“Contract”) to construct a concrete sidewalk of approximately 1,800 ft. between Robin Drive and Locksley Drive in Mountain Brook, AL (the “Work” or “Project”). Bids must be submitted by the time and date specified above, at which time those bids will be publicly opened and read as soon thereafter as practicable. Each bidder is responsible for mailing or delivering its bid so that it will be actually received at the above address and location at or before the time of the specified bid opening; bids received after that time will not be considered.

Interested contractors may obtain the Bid & Contract Documents by contacting Matt Stoops, P.E., Sain Associates, mstoops@sain.com, direct telephone # 205-263-2180 or accessing the City website. Technical questions about the Work or Project should be directed in writing to Mr. Stoops at his email address. Questions about purchasing or other matters related to transacting business with the City may be directed to Steven Boone, Finance Director, City of Mountain Brook, at boones@mtnbrook.org.

The City requires that the Work be substantially completed within 75 days from receiving a Notice to Proceed from it. The city will not conduct Pre-Bid Conference in connection with this Project.

Each bidder is required to furnish a cashier’s check, bid bond payable to the City of Mountain Brook or other similar type of bid security in an amount of five (5) percent of the amount of the bid (but not more than \$10,000.00) to secure its intent to perform the Work if it receives the award. Further, when selected, the successful contractor must provide a Performance Bond in the amount of the Contract Price and a Labor & Materials Bond in the amount of half that Price.

The award of the contemplated Contract will be made in compliance with Ala. Code §39-2-1 et. seq.(1975). The award will be made to a responsive contractor that meets minimum qualifications and submits the lowest responsible bid that, considering all pertinent factors, the City determines is most favorable to it.

s/ Sam S. Gaston _____, 2024
City Manager/Purchasing Agent

Advertised Apr 28, May 5, May 12, 2024

II. SPECIFICATIONS

The City of Mountain Brook (“City” or “Owner”) anticipates awarding a lump sum contract (“Contract”) to (“Contract”) to construct a concrete sidewalk of approximately 1,800 ft. between Robin Drive and Locksley Drive in Mountain Brook, AL (the “Work” or “Project”). The successful contractor (“Contractor”) shall be responsible to furnish all labor, supervision, equipment, materials, tools, fuel, power, equipment, incidentals and services required to complete the Project in conformity with the requirements in the Specifications and all other Contract Documents.

A. Project Specific Requirements

See the plans attached. Specifications shall use the ALDOT Standard Specifications for Highway Construction, 2024 Edition.

B. General Provisions and Requirements. In addition to the provisions, terms and understandings between the parties set forth in other Contract Documents (as defined below), the following general provisions and requirements also apply to the Contract.

1. Contract/Contract Documents/Intent of Documents. As used herein, the term “Contract” refers to the written agreement between the City and the successful Contractor for the performance of the Work. The Contract includes all the following documents and any approved addenda and change orders thereto: Invitation for Bids; Specifications (including the Specifications, Drawings, Supplementary Conditions and _____), and all other documents in this Project Manual (including the Contractor Qualifications/Requirements for Award; Contract Award Process, EXHIBITS A-G ely, the “Contract Documents”).

The intent of the Contract Documents is to prescribe the operations that the Contractor must undertake to fully comply with its obligations under the Contract. The Contractor shall do all work as provided in the Contract, and shall do such additional, extra and incidental work as may be reasonably necessary to complete the work in a satisfactory and acceptable manner. Any work or material not shown in the Specifications but which may be fairly implied as included in any item of the Contract shall be performed and/or furnished by the Contractor without additional charge thereof.

All Work shall conform to the Specifications for the Project. Any deviation from those Specifications which may be required by the exigencies of construction must be approved by the City Project Representative in writing. Work performed that is not in conformity with the Specifications will be removed and replaced at Contractor's risk and expense. Defective materials shall be removed immediately from the Work site.

2. Bidder’s Obligations to Examine Documents and Work Sites. Excepting Addenda, bidders are advised that the Contract Documents constitute all the information which the City will furnish and that is applicable to the Project. No other information furnished verbally or otherwise by the City (or any of its representatives) prior to the execution of the Contract shall become a part of or change the Contract. Prior to submitting their bid, bidders are presumed to have carefully (a) read the Contract Documents (including the Specifications); (b) visited the sites of the Work (“Work Site(s)”); (c) examined local conditions; and (d) determined for themselves by their independent research any difficulties that they may encounter relating to the accessibility of the Work locations, attending circumstances affecting the cost of performing it and the time required for completion of the Project, and also considered all information that it deems pertinent to calculating and making its proposal. Further, bidders shall rely exclusively upon their own estimates, investigations and other data which they deem necessary for submitting their

respective proposals. The City may assume that, by making a proposal, a bidder has made these examinations and investigations, and considered all factors pertinent to it.

3. Force Majeure. The City agrees that, if Contractor is unable to complete the Work by the Contract Time because of unforeseeable events or matters that are beyond its reasonable control (e.g., strikes, governmental preemption in connection with a national emergency and Acts of God) and that do not result from its negligence, the time for completing the Work may be extended by the length of time equal to the duration of any such events or matters. On this Project, shortages or unavailability of Equipment shall not be considered an Force Majeure event or matter beyond the control of Contractor. Such extensions shall be considered only when submitted to the City Project Representative in writing within ten (10) days from and after the time when any such alleged cause of delay shall occur.

4. Payment on Lump Sum Basis/Full Compensation.

- (i) Payment. Unless otherwise stipulated in the Construction Contract, payment for the Work will be made in one lump sum payment in the amount of the Contract Price within fifteen (15) days after Contractor successfully completes the Project in accordance with the Contract Documents.
- (ii) Total Compensation. The compensation paid by the City to Contractor for the Work is intended to constitute full payment to it for all of the following: it furnishing all labor, materials, tools, equipment and incidentals; for it performing all work and operations embraced under the Contract; for all loss or damage incurred by it that arise out of the nature of the Work; for any unforeseen defects or obstructions which may arise during the prosecution of the Work and before its final acceptance by the City; for all risks connected with the prosecution of the Work, submitting a bid or entering the Contract; for all expense incurred by or in consequence of suspension or discontinuance of such prosecution of the Work herein specified; and for completing the Work in an acceptable manner according to the Specifications.

5. Term. Unless otherwise extended by agreement, the term of this Contract shall commence on the date the Construction Contract is last executed by a party and thereafter continue in effect until either (a) the end of the Contract Time, or (b) City's Final Acceptance of the Work, whichever comes first (the "Term"). Notwithstanding the provision immediately above or any other provision in the Contract Documents, the Contract or Work on the Project may be terminated or suspended before the expiration of the Term on any of the conditions or circumstances that are set forth in Articles 26, 27 and 28 of the General Conditions of the Contract.

6. Project Representatives/Notices. Each party shall appoint a representative(s) who shall coordinate with the other party on matters pertinent to the performance of the Work, the Project and administration of the Contract (the "Project Representative(s)"). The names of these Representatives may be indicated on the Construction Contract. The designated Project Representatives shall have the authority to act on behalf of its respective organization to transmit instructions, receive information and administer the Contract consistent with its terms and conditions. Either party may designate a Project Representative other than the person initially designated by providing written notice thereof to the other.

Any notice required under the Contract shall be sufficiently given when given in writing and sent to the appropriate Project Representatives via United States certified mail, return receipt requested, or via overnight courier with receipt verification to the address set forth herein, or by personally delivering such notice to that party.

7. Contractor & Subcontractor Insurance Requirements. See Article 37 of the General Conditions of Contract.

8. Indemnification & Other Contractor Responsibilities for Claims Arising from Work. See Article 36 of the General Conditions of the Contract.

9. Clean Up. See also Article 48 of the General Conditions of the Contract.

(i) Throughout the progress of the Work, Contractor shall keep the respective Work Site(s) (including any storage areas used by it) free from accumulation of waste material or rubbish, and shall store its materials and equipment in a neat and orderly manner. Immediately upon completion of any section of the Work and before payment therefore has been made, Contractor shall remove from the site all construction equipment, temporary structures, and debris and shall restore the site to a neat, workmanlike condition. Further, Contractor shall dispose of waste material from each Work site at locations that are not at those sites, have been selected by the Contractor and have been determined by it to be proper and lawful for disposal of the type material being removed.

(ii) If the Contractor has performed operations on or has made use of private property for storage of materials or for other purposes, it shall obtain a satisfactory release from the owner of said property after completion of the Work and the removal of all materials and equipment therefrom.

(iii) After completion of operations contemplated hereunder at the site of each part of the Work, Contractor shall restore all surfaces and conditions there to a neat and orderly condition, and shall remove all construction equipment, tools and supplies therefrom.

10. Quality of Materials. Only Equipment and materials conforming to the requirements of the Specifications shall be used in the Work.

11. Storage of Materials. Materials intended for incorporation into the Work shall be stored in a manner that will insure preservation of their quality and fitness for that use. Storage facilities shall be provided at the expense of the Contractor. Unless otherwise agreed, the Contractor shall be responsible for any loss, damage or deterioration of materials it places at or near a Work site that is caused by improper protection from weather, vandalism, theft or other conditions.

12. Compliance with Laws. During the term of the Contract, Contractor shall observe and comply with all Federal and State laws and local ordinances and regulations which in any manner affect the conduct of the Work or any Work site (collectively "Laws"), including, but not limited to, Laws regarding the protection of the environment and those regarding protection and the safety of its workers. Further, Contractor shall observe and comply with all orders and decrees of any governmental agency, body or tribunal having jurisdiction or authority over the Work or operations at any Work site which may be in effect at the commencement of the Work or subsequently be enacted during the term of the Project.

13. Times of Work. Per City of Mountain Brook Ordinance No. 1234, Adopted August 12, 1996, Contractor work generally may be conducted in the City at the following hours: (i) Monday-Fridays: 7:00 a.m. – 8:00 p.m, except that work may commence at 6:30 a.m. on M-Fs on which Daylight Savings Time is observed; and (ii) Sat, Sun & Holidays: 8:00 a.m. – 8:00 p.m,

14. Permits. See Article 44 of the General Conditions of the Contract.

15. No Waiver by City. The City shall not waive any of its rights under the Contract or any Contract Document by occurrence of the following: any inspection of the Work by the City Project Representative (or by their duly authorized representatives); the issuance of any order, measurement or certificate following any such inspection; payment of money by the City for Work; the City's acceptance of any Work; or the City's grant of any extension of time to complete work.

Further, no forbearance or delay on the part of the City in enforcing any of its rights under the Contract shall not be construed as a waiver of those rights or a subsequent waiver of breach. No terms of the Contract shall be waived by the City unless expressly waived in writing.

16. No Assignment or Subcontracting without City's Consent. See Article 39 of the General Conditions of the Contract.

17. Prosecution of Work. In performing its Work and operations Contractor represents that it shall

(i) continuously and diligently prosecute the Work in such order and manner to complete it in a safe, workmanlike and timely manner consistent with the schedule for the Project;

(ii) exclusively be responsible for training and supervising all of its personnel, and take necessary actions to ensure that that its workmen have sufficient skill and experience to properly perform the work assigned to them; and

(iii) furnish an ample force of trained laborers, tools, supplies and equipment that that it considers necessary to complete the Work at a satisfactory rate of progress.

18. Water/Electricity/Gasoline/Supplies. Unless otherwise stipulated in the Construction Contract, Contractor, at its expense, is responsible to provide and maintain an adequate supply of water, electricity, gasoline or other incidental supplies required to prosecute the Work.

19. City's Rights to Suspend Work or Terminate Project & Contract for its Convenience. See Articles 26-27 of the General Conditions of the Contract.

20. Close out of Contract. See Article 34 of the General Conditions of Contract.

21. Responsibility for Safety at Work Site. Contractor exclusively shall be responsible for the safety of its personnel (and that of any subcontractor or subcontractor personnel), to protect its equipment and to protect the Work while performing its operations on or about any Work Site. In addition, Contractor shall undertake reasonable precautions and practices that it determines are necessary to maintain a safe work environment at each Work Site, or that may be needed to protect the general public, City personnel and City property from injury, damage or loss in the course of its operations.

The City makes no representation and gives no warranty that the Work Sites (or any improvements thereon) are safe or fit for the performance of the Work. Prior to commencing its operations, Contractor (and its representatives) agree to thoroughly examine, inspect and become familiar with each Site, determine that the Work at each such Site can be completed there in an orderly and safe manner and implement whatever precautions, practices or actions that it deems are required to safely the Work in those locations.

22. Security at Work Site. Contractor, at its own expense, shall furnish and erect such barricades, fences, signs, lights and danger signals at Work Sites as are reasonably required to protect third persons, property in the area and the work from injury, damage or loss. Contractor shall be solely responsible for all damages to the third persons, property or the Work Site arising from its breach of this obligation. The Contractor's responsibility to protect the public, property and Work site shall not cease until the work has been finally accepted by the City.

23. Sales & Use Tax Exemption on Materials. See Article 44B of the General Conditions of the Contract.

24. Miscellaneous Other Contract Terms

(i) Independent Contractor. Contractor is an independent contractor of the City. The Contract does not create any partnership, joint venture or principal-agent relationship between the Contractor and the City. Further, Contractor (and its employees, representatives or subcontractors) exclusively controls the means and methods it uses or selects to perform the Work, and the City retains no control or authority with respect to those means and methods.

(ii) Immigration Law Compliance. See Article 44 of the General Conditions of the Contract.

(iii) Contractor Operations Related to or Affecting Use of City or Public Streets and Ways: If the Work encompasses or Contractor performs any operations that relate to, affect or impact the use of City or other public streets, alleys, ways or rights of way in any manner, the following understandings apply:

(a) License to Use City Streets. During the period of Contractor's Work at a site, Contractor has a license to occupy such portions of its streets, ways or public property as will not unduly restrict vehicular or pedestrian traffic or endanger the public.

(b) Traffic Control: The Contractor is exclusively responsible for all traffic control related to the performance of the Work. This responsibility includes, without limitation, determining and implementing all appropriate measures to place signs, warn drivers and others affected by the Work, and utilization of flag persons.

(c) Street Plans. If applicable to the Project, upon request by Contractor, the City or City of Birmingham may furnish any maps of streets that it maintains in areas where the Work will be performed. If those maps are supplied, Contractor acknowledges that the information and data furnished on them are not warranted by them for accuracy, completeness, or reliance by the Contractor in performing the Work, but instead are furnished as general information only. Further, Contractor agrees and understands that they do not warrant the locations of gas mains, water mains, conduits, sewers, or any other surface or subsurface improvements that may be indicated on any maps, that the neither of them assumes no responsibility for failing to depict any surface or subsurface improvements on those maps or failing to depict them in their exact location, that inaccuracies in these maps will not be considered sufficient basis for claims for extra work or for increasing its compensation for Work, and that neither of them is responsible for any deduction, interpretation, or conclusion that the Contractor may make or draw from any of them.

(d) Contractor shall store construction materials and equipment needed by it to perform the Work on or about public ways and property in such manner as will not unreasonably impair, block or restrict the convenience and access for the general public and others affected by its operations.

(e) No public street, road or alley shall be closed without the permission of the City Project Representative and its Fire Department. Where traffic is temporarily diverted from the area of a Work site, the Contractor shall provide all materials and perform all work needed to construct and maintain any required temporary roadways and structures.

(iv) Operations Affecting Utilities or Property Owned by Utilities & Other Governmental Entities. Contractor is exclusively responsible for determining the location of and protecting from damage any gas, water, power, sewer or other utility lines or facilities that are impacted by the Work. Further, if service connections or lines from utilities to a user's premises are disconnected, broken, damaged, or otherwise rendered inoperative for any reason by the contractor in prosecuting the Work, contractor, at its own expense, shall repair or replace same and restore service to the affected premises at the earliest possible time.

If prosecution of the Work requires that any property used by public utilities be cut, moved, relocated, rebuilt, or otherwise disturbed in any way, the contractor shall notify the utility to make the required changes, and, prior to making application to the utility, make all preliminary arrangements with the utility owner, including the scheduling of work. The City shall not be responsible for any delays in the accomplishment of the required changes on utility property by reason of the contractor's failure to schedule the work properly or otherwise, and in no case shall the contractor be allowed any claim for extension of time or additional compensation based on failure of the utility owner to make the needed changes within the stipulated period of time.

(v) Use, Restoration & Other Responsibilities Concerning Private Property. Contractor shall not enter upon or use private property adjacent to or near the Work Site for any purpose related to the Project without first obtaining permission from its owner. Contractor shall be responsible for the preservation of, and shall use every precaution necessary to prevent damage to, all trees, shrubbery, fences, culverts, bridges, pavement, driveways, sidewalks, etc. and to all water, sewer, gas, telephone, and electric lines thereof, and to all private property along or adjacent to the Work.

(vi) Sanitation. Contractor shall provide and maintain the necessary sanitary conveniences for use by its laborers at the Work sites, and these conveniences, if reasonably possible, shall be secluded from public observation. Sanitary conveniences and practices used by Contractor at a Work Site shall comply with state and local regulations.

(vii) Changes in Plans. See Article 19 of General Conditions of the Contract.

(viii) Samples and Tests of Materials. Where required by the Specifications, tests and/or inspection of materials shall be performed by commercial laboratories approved by that professional. Unless otherwise specified, those tests shall be made in accordance with the latest standard methods of the American Society for Testing Materials. Unless otherwise agreed, the costs of such tests, sampling and inspection shall be borne by the Contractor, and it shall furnish evidence satisfactory to the Architect (or Engineer) that the materials have passed the required tests and inspections prior to the incorporation of them into the Work.

(ix) Inspections of Work. See Article 16 of General Conditions of the Contract.

(x) City Audit Right/Contractor's Retention of Records. Upon reasonable advance notice from the City during the term of the Contract or in a periodic audit that follows the completion of part or all of that Work, Contractor, at its expense, agrees to produce for inspection those records maintained by it with respect to the Work for the City to evaluate whether it has properly completed, accounted and performed

the transactions that are contemplated hereunder. To facilitate any such inspection or audit, the Contractor agrees that, for a period of no less than (2) years following the performance of its Work or the expiration (or earlier termination) of this Contract, it will maintain its reports, logs and records concerning its performance of Work, and the accounting, billing or other financial records that the Contractor generates regarding same.

(xi) Additional Representations of Contractor. As further inducement to enter this Contract, the Contractor represents and warrants to the City that all actions required to be taken by it or on its behalf to execute the Contract, and to perform its obligations and agreements thereunder have been duly taken.

(xii) Entire Agreement. The Contract Documents comprise the entire agreement between the parties concerning the matters therein. These terms, provisions and conditions in the Contract supersede all prior negotiations, representations or agreements, either written or oral, concerning the subjects herein, and any such prior understandings concerning these matters are of no effect and are merged into this Contract.

(xiii) Ineffective Provisions in Contractor Documents. The parties agree that no terms, provisions or conditions that are stated in any Contractor work or purchase order, proposed invoice or other document generated by the Contractor in connection with the Work are incorporated into or form part of the Contract. Notwithstanding the existence of any such documents, the parties understand, agree and covenant as follows:

(a) The City shall not be liable to the Contractor for attorney's fees, court costs, litigation expenses, and like charges except and to the extent such fees, costs, and charges would be assessed against the City under applicable law in the absence of any contractual provision imposing or assigning liability therefor;

(b) The City shall not be liable for any late payment charges, interest, or fees on any delinquent billing for goods, materials, or services; provided that, in the event Contractor should successfully prosecute an action against the City to collect delinquent amounts owed hereunder, Contractor may be awarded pre-judgment interest related to that delinquency if that recovery is allowed under applicable law.

(c) The City will not indemnify, hold harmless, or release the Contractor or any other person, firm, or legal entity for, from, or with respect to any claim, cause of action, cost, charge, fee, expense, or liability whatsoever arising out of or relating to the subject matter of the Contract or the performance or nonperformance thereof; and

(d) Unless expressly stated in the Contract, the City does not waive its right to assert or pursue any remedy or claim for relief of any kind that it may have against the Contractor or any other person, firm, or entity for any actual or alleged default or other breach of legal duty on the part of the Contractor or any person, firm, or entity in privity therewith or acting on Contractor's behalf in connection with the performance of the Work. Any limitation or restriction regarding the type, nature, form, amount, or extent of any right, remedy, relief, or recovery that would otherwise be available to the City (or the City) is expressly disavowed, excluded from the Contract, and void.

(xiv) The Contract is made only for the benefit of the City and the Contractor. Unless otherwise provided in the Contract, it is not intended, nor shall it be construed, to grant or bestow any benefit, right or privilege to any third party.

(xv) The Contract may be amended or modified only by written instrument signed by both parties. Further, neither the scope of Work nor the time of completion of Work operations may be changed except in accordance with the terms of a written change order signed by City and Contractor.

(xvi) The Contract Documents may be executed in counterparts each of which when executed by the parties shall be deemed to be a complete original. Copies of any of them showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other means reproduction, may be used for all purposes as originals, and shall have the same legal force and effect as an original document.

(xvii) If any provision of this Contract is held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of it shall remain in full force and effect.

(xviii) Exclusion of Consequential Damages. NOTWITHSTANDING ANY OTHER PROVISION IN THE CONTRACT, THE CONTRACTOR AGREES THAT, IN THE EVENT IT MAKES OR ASSERTS ANY CLAIM, DEMAND OR ACTION OF ANY TYPE AGAINST THE CITY ARISING FROM ITS ALLEGED BREACH OF THE CONTRACT OR THE CITY'S FAILURE TO PERFORM ANY OF ITS OBLIGATIONS THEREUNDER, THE MAXIMUM AMOUNT THAT THE CONTRACTOR MAY RECOVER FROM THE CITY AS DAMAGES IN ANY SUCH ACTION IS LIMITED TO THE CONTRACTOR'S ACTUAL, DIRECT DAMAGES ARISING FROM THE CITY'S BREACH. THE CONTRACTOR AGREES AND ACKNOWLEDGES THAT THE TERMS IN THIS PROVISION WERE PROPOSED AND BASED ON THE ASSUMPTION THAT THIS SPECIFIC LIMITATION IS APPLICABLE, AND THAT THE CITY WOULD NOT HAVE ENTERED INTO THE CONTRACT WITHOUT THE INCLUSION OF THIS LIMITATION. IN NO EVENT WILL THE CITY BE LIABLE TO THE CONTRACTOR FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, RELIANCE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS, LOST ADVANTAGE, LOST OPPORTUNITY, LOSS OF SAVINGS OR REVENUES OR FOR INCREASED COST OF OPERATIONS) ARISING FROM ANY BREACH OR ALLEGED BREACH OF THIS AGREEMENT BY THE CITY.

(xix) Applicable Law. The meaning, legal effect, and enforcement of terms and provisions of the Contract and the resolution of any disputes arising thereunder or relating thereto shall be governed by the laws of the State of Alabama, except to the extent otherwise required by applicable conflict-of-law principles.

(xx) Construction of Contract. Except as expressly stated herein, nothing in this Contract shall be construed to create or impose any duty or liability on the City, to create a right or remedy in favor of the Contractor against the City, or to restrict or abrogate any right or remedy that is available to the City against the Contractor or any other person, firm, or entity. Furthermore, in the event that any ambiguity in the terms of this Contract is determined to exist, no presumption shall be made that either of the parties drafted the Contract.

(xxi) Defined Terms. The Defined Terms used in this Project Manual have the meaning set forth in the other General Conditions of the Contract, Construction Contract and other Contract Documents.

III. INSTRUCTIONS TO BIDDERS

1. Bids and associated completed forms should be placed in sealed envelope or container that is addressed to City of Mountain Brook, Alabama, Attention: City Manager, City Hall, 56 Church Street, Mountain Brook, AL 35213-3700, and delivered on or before the local time and date specified in the Invitation to Bid.

2. The following information should be clearly shown on the exterior of the sealed bid: (a) NORTH WOODRIDGE RD SIDEWALK PROJECT; (b) Date and Time of Bid Opening; (c) Name of Bidder; and (d) Bidder's State of Alabama General Contractor License number.

3. The completed Contractor Bid Response Form, completed Bidder Qualification Form, and Bid Bond Form (see **Exhibits A-C**) are due no later than **May 21, 2024 at 2:00 P.M.** The bidder shall be responsible for taking whatever measures are necessary to ensure that its response reaches the City at the designated address on or before the local time and date specified. The City shall not be responsible for, and may not consider, any proposal delayed in the postal or other delivery service, or in the City's internal mail system, nor any late proposal, amendment thereto, or request for withdrawal of proposal received after the time and date specified. Proposals received after the time and date specified on the bid submission deadline will not be opened and will not be considered for award.

4. Bids must be entered on the Contractor Bid Response Form that is provided herein. Each bidder shall fully complete all sections of this Form, and sign in the appropriate places thereon in the presence of a notary.

5. Bids that are completed in pencil or faxed to the City will not be accepted.

6. All questions and requests for clarifications regarding this Bid, Specifications or the Work must be submitted in writing by **May 16, 2024 at 2 p.m.** to the following persons:

Purchasing or Business Questions:

Steven Boone
Finance Director
City of Mountain Brook
boones@mtnbrook.org
(205) 802-3825

Technical Questions:

Matt Stoops, P.E. - Project Engineer
Sain Engineering
mstoops@sain.com
(205) 263-2180

The City will attempt to respond to such written questions by 5:00 p.m. on **May 16, 2024**. No oral answers or interpretations to such inquiries will be provided. The City's response to all questions will be e-mailed to all interested firms that have requested Contract Documents before that time and treated as an Addenda to the Specifications. All addenda issued shall become part of the Contract Documents for this Bid.

8. Each bidder is responsible for all costs related to the preparation of its Bid Response, its expense of evaluating the Project or Work site and its costs of determining whether to submit a bid.

IV. CONTRACTOR QUALIFICATIONS/REQUIREMENTS FOR AWARD

Interested contractors are required to meet all qualifications in this section to be considered for award of the contemplated Contract. Respondents should complete and return the enclosed **Exhibit B** – the Bidder Qualification Form - with their bid. If a respondent does not submit this documentation substantiating that they comply with these qualifications/ requirements in this Section, the City may disqualify them from an award or entering the Contract.

A. Licensing Requirements. To be eligible for the award, the successful Contractor must provide the City evidence that it has or will obtain the following licenses and attach copies thereof the Bidder Qualification Form:

1. State of Alabama General Contractor License.
2. City of Mountain Brook Business License (Note: If this license is not currently held, it must be obtained prior to commencing work.)

The interested contractor also shall attach any other state, county or local licenses and/or certificates held by it that evidence the contractor's qualifications to perform the Project.

B. Performance of Similar Projects/References. The successful contractor must have performed at least one (1) project that is comparable in scope to this Project for another governmental entity or commercial business in Alabama within the last five (5) years. References for each such entity served and project performed during this period shall be provided on **Exhibit B**. The City reserves the right to contact references as part of the evaluation and selection process. Information indicating compliance with this qualification shall be provided on Exhibit B.

C. Pre-Bid Conference. The City will not conduct a pre-bid conference.

D. Contractor Questions. Interested contractors may direct written inquiries concerning the Project or Contract Documents to the Representatives indicated above in the Instructions to Bidders.

E. Bid Bond Requirement. With its bid each bidder is required to furnish a bid bond, cashier's check or other similar form of bid security in the amount of five percent (5%) of its proposal (but not more than \$10,000) that is acceptable to the City to secure its intent to perform the Work if it receives the award.

F. Other Bonding Requirements. When selected, before commencing work the successful contractor must provide a Performance Bond in the amount of its bid and a Labor & Materials Bond in the amount of half that price. These bonds shall remain in effect for twelve (12) months after completion of the Work, shall be in a form satisfactory to the City, and the surety for them shall be a reputable bonding company authorized to transact business in Alabama and shall be acceptable to the City.

G. Insurance Requirements. Before commencing its work, Contractor must provide the types of insurance and comply with the insurance requirements set forth in Article 37 of the General Conditions of the Contract (which Conditions are included as **Exhibit G**).

V. CONTRACT AWARD PROCESS

1. Bidder's Intent. By submitting a bid, the bidder accepts and agrees to comply with the Specifications for the Work and obligations in other sections of the Contract Documents, unless otherwise stated in a bid exception that is accepted by the City.

2. Any exception taken by a bidder should be stated in detail, in writing, at the time of its submission. The City reserves the right to accept or reject any such exception taken by the bidder, and deviations from the Specifications or other obligations in the Contract Documents that are not accepted by the City may be grounds for rejecting and disqualifying the bid.

3. The City intends to notify the successful Contractor of the tentative award of the Contract within two (2) days after the bid opening. Following the award, the Contractor will enter the Contract and furnish the required construction bonds (Performance and Labor & Materials Payment) within three (3) days after the award.

4. In determining the entity to whom to make an award, the City reserves the right to:

(a) reject the proposal of any bidder who has previously failed to perform properly or timely complete contracts of a similar nature;

(b) reject the proposal of any bidder which, based on the City's investigation, is not in a position or does not have the resources to satisfactorily and timely perform the contract;

(c) reject the proposal of any bidder who is in arrears or in default to the City upon any debt or prior contract;

(d) reject the proposal of any bidder who has failed to faithfully perform work or services on any previous contract or project for the City that is similar to that contemplated in this bid;

(e) reject a bid if a bidder does not present evidence and assurances that it has the financial standing, can furnish necessary personnel, can timely obtain the materials and install them on the Project schedule and has other resources (including adequate insurance) to comply with the requirements of this bid. Evidence of these abilities and resources must be provided to the City when completing Exhibit B (the Bidder Qualification Form); and

(f) disqualify a bidder's response because it is not complete. the bidder failed to provide information requested in the bid materials or its bid is irregular (e.g. forms are altered or reflect additions or conditions not anticipated).

5. Contract. Following the award, the successful Contractor shall execute the Construction Contract in substantially the form of **Exhibit D** below.

6. Bids which have been opened and read may not be withdrawn for a period of 30 days after date of opening.

7. Before an award is made, the City reserves the right to investigate and request additional evidence of the previous experience, financial status, and general ability of the respective bidders to perform the Project.

8. As soon as the bids have been compared, the City may, at its discretion, return the bid guaranties accompanying those bids which in its judgment would not be considered for the award. After the award is made, only the successful bidder's bid guaranty will be retained until the required performance and construction bonds have been executed, after which it will be returned to the bidder.

9. The City reserves the right to accept or reject any or all bids.

10. The award will be made to a responsive contractor that meets minimum qualifications and submits the lowest responsible bid that, considering all pertinent factors, the City determines is most favorable to it. In making that determination, the City, in the exercise of its sole judgment, may consider factors other than just the price of installing the Equipment. These factors will include, but not be limited to, the Equipment warranty, the cost of Equipment maintenance, the bidder's experience in successfully completing similar projects, its Claims History, its financial and resources to perform the obligations under the Contract on an expedited basis and the training and experience of the Project Team that it will furnish to serve the City.

11. The City reserves the right to waive irregularities and technicalities in submitted bids and make the award to the bidder submitting the proposal that is most advantageous to it.

12. Should the bidder to whom the contract has been awarded fail to execute the Contract and furnish satisfactory performance and construction bonds (or other required deliverables) within ten (10) days after date of notice award, it shall be considered to have abandoned their proposal; its offer shall be withdrawn; and the amount of the bid guaranty shall be forfeited to the City as fixed and agreed damages. The submission of a bid by any bidder shall be considered as an acceptance by them of this provision.

Exhibit A – Contractor Bid Response Form

Below is the firm bid of the undersigned to construct the North Woodridge Road Sidewalk Project at the price indicated below. The undersigned submits this Form in response to the City’s Invitation for Bids for this Project. The City may use the address and contact information below for its communications with the undersigned bidder. By submitting a bid, the undersigned acknowledges that it has read and understands the Contract Documents that apply to the Project and conditions for the award of the contemplated Contract and, except as may be listed in any exception sheet, agrees to perform the Work in accordance with the requirements in the Contract Documents.

TOTAL LUMP SUM AMOUNT TO CONSTRUCT PROJECT \$ _____

Name of Firm or Company Submitting Bid

Date of Bid

Street Address

Tax Id # of Bidder

City State Zip

Web Site of Bidder

Signature of Bidder Representative

Office Ph. # Bidder

Printed Name Representative Executing for Bidder

Cell Ph. # Bidder Contact

Title

Email Address Bidder Rep.

Sworn to and subscribed before me on this _____ day of _____, 2024.

Notary Public

Commission Expire Date

SEAL

Notes:

1. Bidders also must complete, sign, notarize and return the Bidder Affidavit and Warranty below with their Responses

Exhibit A – Contractor Bid Response Form
BIDDER AFFIDAVIT AND WARRANTY

The undersigned warrants, represents and agrees that each of the following is true and correct in connection with its Contractor Bid Response for the Contract to be awarded for this Project:

- (a) it has not colluded with any other bidders;
- (b) it has not, directly or indirectly, induced any other bidder to submit a sham bid or to refrain from making a bid;
- (c) it has not paid or agreed to pay any party, either directly or indirectly, any money or other thing of value for assistance or aid rendered to or to be rendered in attempting to procure the contract contemplated in this bid;
- (d) if the subject contract is awarded to the bidder, no employee or officer of the City has an interest, either direct or indirect, in it or is a beneficiary of the contractual arrangement made the basis thereof.
- (e) all the information contained in the response to the bid is true and correct; and
- (f) the City may rely on information submitted in awarding the subject contract.

Name of Firm or Company Submitting Bid

By: _____
Signature of Bidder Representative

Printed Name: _____

Its: _____
Title

Date: _____

Sworn to and subscribed before me on this ____ day of _____, 2024.

Notary Public

Commission Expiration Date

SEAL

Exhibit B -Bidder Qualification Form

NOTE: THIS FORM MUST BE COMPLETED AND RETURNED WITH YOUR CONTRACTOR BID RESPONSE FORM. IF ADDITIONAL SPACE IS NEEDED, PLEASE STATE THAT INFORMATION ON ADDITIONAL SHEET(S) THAT YOU ATTACH TO THIS FORM AND INDICATE ON THEM THE NUMBER AND ITEM TO WHICH THE INFORMATION CORRESPONDS.

1. Name of Business: _____

Principal Business Address:

2. Business Contact(s)

(a) Primary Contact (Note: If a Pre-Bid Conference is held, the Primary Contact should attend that Conference.)

Name: _____

Title or Position with Company: _____

Day Phone: _____

Email: _____

Street Mailing Address of Contact:

(b) Other Business Contact(s)

List the name, position, telephone number, email and street addresses of persons on the bidder's staff other than the Primary Contact who can answer inquiries and who may attend the pre-bid conference (if any).

3. Business History

(a) How many years has your organization been in the general contracting business? _____

(b) State the facts and attach written documentation evidencing your organization's experience to successfully perform the Project.

(c) How many years has your organization operated under its present business name? _____

Exhibit B -Bidder Qualification Form

(d) Type of Organization:

(1) If your organization is a corporation, answer the following:

- (i) Date of incorporation: _____
- (ii) State of incorporation: _____
- (iii) President's name: _____
- (iv) Vice-President's name(s): _____
- (v) Secretary's name: _____
- (vi) Treasurer's name: _____

(2) If your organization is a partnership, answer the following:

- (i) Date of organization: _____
- (ii) Type of partnership (if applic.): _____
- (iii) Name(s) of general partner(s) _____

(3) If your organization is individually owned, answer the following:

- (i) Date of organization: _____
- (ii) Name of owner: _____

(e) Administration of Business.

Please describe in general how you operate and administer your business. In this description, please state each of the following:

- (i) the total number of employees;
- (ii) the number of workers who are dedicated to field operations;
- (iii) the name and title of your general supervisor of field service operations; and
- (iv) the number of employees dedicated to administrative and office matters.

4. Licensing. List and attach to this Form all licenses and certifications that your organization currently holds that authorize it to perform the required Work, including the following:

- a. State of Alabama General Contractor License – Please indicate this License No _____ .
- b. City of Mountain Brook Business License* (*Note: If not currently held, Contractor must acquire a City Business License prior to commencing work.)

5. Other Similar Projects Performed by Contractor for Governmental or Commercial Entities.

Below please provide information of all projects of a scope and type comparable to this Project that your organization has performed for governmental entities or commercial entities in the State of Alabama

Exhibit B -Bidder Qualification Form

within the last five (5) years. Please provide the following information as to each such project and contract:

Name Entity: _____
Contact at Entity: _____
Title of Contract: _____
Phone Number: _____
Type(s) of Contract (s): _____
Dates of Contract: _____
Location(s) of Service: _____

Name Entity: _____
Contact at Entity: _____
Title of Contract: _____
Phone Number: _____
Type(s) of Contract (s): _____
Dates of Contract: _____
Location(s) of Service: _____

Name Entity: _____
Contact at Entity: _____
Title of Contract: _____
Phone Number: _____
Type(s) of Contract (s): _____
Dates of Contract: _____
Location(s) of Service: _____

Name Entity: _____
Contact at Entity: _____
Title of Contract: _____
Phone Number: _____
Type(s) of Contract (s): _____
Dates of Contract: _____
Location(s) of Service: _____

6. List/Qualifications of Project Team.

On a separate page, please list and furnish the following information concerning each of the employees or other representatives whom you will appoint to perform the Project:

- name
- job title
- areas of experience and the length of time for each area
- special training, licensing, and certification for each employee

7. Assurances of Capability and Resources to Timely Complete Project. Please attach your firm's last financial statement (audited or un-audited). Also, please furnish below (or state on an attachment to this Exhibit) evidence indicating that it has the financial standing, personnel and other resources (including adequate insurance) to timely obtain the Equipment and install same on the expedited Project schedule and otherwise comply with the Project requirements.

Exhibit B -Bidder Qualification Form

8. Insurance. If available at this time, please attach a certificate issued by your current Insurance Carrier(s) indicating the existence and limits of your coverage required in Article 37 of the General Conditions of the Contract.

10. Claims History.

(a) Within the last five (5) years, has the bidder, or any officer, director, member or owner of it, been a party to any lawsuit, any arbitration or participated in any other type of alternative dispute resolution process with regard to a claim, dispute, or disagreement arising from the bidder's (or any officer's, director's, member's or such owner's) performance or failure to perform its obligations under an agreement to provide services and conduct operations? (For purposes of this question, an "owner" of the bidder is any person who holds 10% or more of the stock or interest in the bidder organization.) Yes ___ No ___. If yes, for each such contract or project, explain fully the nature of the project, location, circumstances, your role, and, if resolved, the way any such claim or dispute was resolved:

(b) Within the last five (5) years, has any owner, client or customer of your organization made, asserted or pursued a claim against a Surety that issued a Performance Bond on a contract that was being performed by the bidder and that arose from its performance or failure to perform obligations under an agreement with that customer to provide services? Yes ___ No ___. If yes, for each such project, explain fully the nature of the matter, location, circumstances, your role, and, if resolved, the manner in which any Performance Bond claim was resolved:

(c) Within the last five (5) years, have any of your clients or customers formally declared that the bidder is in default or has breached a material obligation in any agreement to provide services or operations? Yes ___ No ___. If yes, for each such project, explain fully the nature of the project, location, circumstances, your role, and, if resolved, the manner in which any such default or breach was resolved:

(d) Has your organization ever failed to complete any work, contract or project awarded to it? Yes ___ No ___. If yes, please provide all details related to such matter.

Exhibit B -Bidder Qualification Form

(e) Are there any judgments against your organization, or against any of your officers or owners individually, that arise from any litigation or arbitration that have been entered but are not satisfied?
Yes ___ No ___. If yes, please provide all details related to such matter:

(g) Within the last five years, has any officer, principal or owner of your organization ever been an officer or principal of another organization when it failed to complete a contract? (For purposes of this question, an “owner” of the bidder is any person who holds 10% or more of the stock or interest in the bidder.)
Yes ___ No ___. If yes, please provide all details related to such matter:

CERTIFICATION

The undersigned representative of the Bidder certifies that he/she is authorized to sign below and submit this Bidder Qualification Form on its behalf, and that the information submitted is current, accurate, true and sufficiently complete so as not to be misleading.

Name of Bidder

(Type or Print)

By: _____
Signature

Printed Name

Its: _____
Title of Representative

Sworn to and subscribed before me on this ____ day of _____ 2024.

Notary Public
SEAL

Commission Expiration Date

Exhibit C – Bid Bond Form

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the undersigned, _____, Principal; and _____, as Surety, are hereby held and firmly bound unto the City of Mountain Brook, as obligee, hereinafter called the City, in the sum of _____ Dollars (\$ _____) for the payment of which sum, well and truly to be made, the said Principal and Surety hereby jointly and severally bind ourselves, our heirs, executors, administrators, successors, and assigns.

The condition of the above obligation is such that whereas the Principal has submitted to the City a certain Bid (Proposal), attached hereto and made a part hereof, to enter into a contract in writing with the City, for the following project or portion thereof:

Project: North Woodridge Road Sidewalk Project
Location: Mountain Brook, Alabama
Engineer: Sain Associates

NOW, THEREFORE,

- (a) If said Bid shall be rejected, or in the alternate,
- (b) If said Bid shall be awarded and the Principal shall execute and deliver a contract in the Form of Agreement as included in the Contract Documents for the Project, and shall execute and deliver Performance Bond and Labor and Material Bond in the Forms as attached to the Contract Documents executed by a surety company authorized and qualified to make such bonds in the State of Alabama and in the amounts as required by the Instructions to Bidders and submit the insurance certifications as required by the bid document and fulfill all other qualifications and requirements of the Contract Documents and bid specifications (all properly completed in accordance with said Bid), and shall in all other respects perform the agreement created by the acceptance of said Bid within fifteen (15) days after the prescribed forms have been presented to Bidder for execution;

Then, this obligation shall be void, otherwise, the same shall remain in full force and effect; it being expressly understood and agreed that the liability of the Surety for any and all default of the Principal hereunder shall be the amount of this obligation as herein stated.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety and its bond shall in no way be impaired or affected by any extension of the time within which the City may accept such Bid; and said Surety does hereby waive notice of any such extension.

Exhibit C – Bid Bond Form

IN WITNESS WHEREOF, the above-bonded parties have executed this instrument under their several seals, this the _____ day of _____, 20____, the name and corporate seal of each corporate party being hereto affixed and these presents duly signed by its undersigned representative, pursuant to authority of its governing body.

CONTRACTOR (Sign & Print Full Name)

Business Name: _____

Signature: _____

Name and Title: _____

Address: _____

Witness: _____

SURETY (Sign & Print Full Name)

Company: _____

Agent: _____

Attorney-in-Fact: _____

(Attach certified copy of Power of Attorney)

Address: _____

Attest: _____

NOTE: Surety must be qualified and duly authorized to make bonds in the state. All Bonds and Sureties are subject to review and approval by the City Attorney. Valid current Power of Attorney for Corporate Surety must be attached.

Exhibit D – Construction Contract

CONSTRUCTION CONTRACT

This CONSTRUCTION CONTRACT is entered into this ____ day of _____, 2024 between the **OWNER(s)** (which also may be referenced as the City),

Entity Name(s): **CITY OF MOUNTAIN BROOK, ALABAMA**

Address(es): 56 Church Street
Mountain Brook, AL 35213

Email(s) & Phone #(s): City Manager: Sam Gaston
gastons@mtnbrook.org
205-802-3803

and the **CONTRACTOR**, _____

Company Name: _____

Address: _____

Email & Phone #: _____

for the **WORK** of the Project (identified as PROJECT):

North Woodridge Road Sidewalk Project

City Project No. _____

The **CONTRACT DOCUMENTS** for the PROJECT are as follows (*below list any Supplementary Conditions, Specifications of the Work, Drawings (if any) or other Documents that are incorporated into this CONTRACT*):

1. This CONSTRUCTION CONTRACT
2. The GENERAL CONDITIONS OF THE CONTRACT
3. DRAWINGS (Plans)
4. SPECIAL CONDITIONS
5. PERFORMANCE BOND
6. LABOR & MATERIALS BOND
7. OTHER DOCUMENTS IN PROJECT MANUAL
8. ADDENDA (if applicable)

Exhibit D – Construction Contract

LIQUIDATED DAMAGES. If Contractor does not substantially complete the Work on the PROJECT by the stated Contract Time, the 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 the dollar amount stipulated in the following space:

Five Hundred Dollars (\$500.00) per calendar day.

SPECIAL PROVISIONS

STATE GENERAL CONTRACTOR’S LICENSE: The Contractor hereby certifies that it is currently licensed by the Alabama State Licensing Board and that the certificate for such license bears the following:

License No(s): _____

Bid Limit: _____

WHEREAS, the undersigned, duly authorized representatives of the parties enter this CONSTRUCTION CONTRACT on behalf of their respective organization.

OWNER: CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Printed Name: Stewart H. Welch III

Its: Mayor

Date: _____

CONTRACTOR

By: _____

Printed Name: _____

Its: _____

Date: _____

Exhibit E – Performance Bond

PERFORMANCE BOND

BE IT KNOWN, that on this _____ day of the month of _____, in the year _____, before me, _____, a Notary Public, duly commissioned and qualified, in and for the County of Jefferson, State of Alabama, residing therein, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____ (“**Contractor**”), herein represented by _____, its _____, as Principal, and _____ (“**Surety**”), of the State of _____, herein represented by _____, its _____, who severally and mutually guarantee to the City of Mountain Brook, Alabama (“**Owner**”), as obligee, the faithful performance of the Contract the **Contractor** has entered into with the **Owner** for the North Woodridge Road Sidewalk Project, (“**Work**”), covered by the Contract Documents to which this Bond is attached by this reference, and do hereby bind the **Contractor** and **Surety**, its successors, legal representatives and assigns, in favor of the **Owner**, in the full and true sum of _____ (\$ _____) Dollars, payable on demand to the **Owner**.

NOW, THE CONDITION of this obligation is that if the **Contractor** (a) faithfully performs and fulfills all the undertakings, terms, conditions, warranties and guarantees, indemnifications and agreements of the Contract Documents within the Contract Time (including any authorized changes, with or without notice to the **Surety**) and during any correction period; (b) also performs and fulfills all the undertakings, terms, conditions, warranties and guarantees, indemnifications and agreements of any and all duly authorized modifications of the Contract Documents, notice of which modifications the **Surety** hereby expressly waives; (c) fully secures and protects the **Owner**, its legal successor and representative, from all liability in the premises, and from all loss or expense of any kind, including all costs of court and attorney’s fees made necessary or arising from the failure, refusal or neglect of the **Contractor**, to comply with the obligations assumed by **Contractor**; and (d) delivers all the **Work** to the **Owner** free from all claims, liens and expenses; then this obligation shall become null and void, otherwise, this obligation shall remain in full force and effect.

A. Section C part 27 of the Contract governing termination of the **Contractor** for convenience or cause and default of the **Surety** shall be binding on the **Surety** and **Contractor**.

B. No change in Contract Price or Contract Time, substitution, addition, deletion or revision in the requirements of the Contract Documents shall diminish, enlarge, release or otherwise modify the **Surety’s** obligations, under this Bond. The **Surety** hereby waives notice of any such change in Contract Price or Contract Time, substitution, addition, deletion or revision.

C. It is the intention of the **Contractor**, **Surety** and **Owner** that the **Surety** shall be bound by all terms and conditions of the Contract Documents and this Performance Bond. However, this Bond is executed pursuant to Ala. Code 1975, Title 39 and if any provision(s) of the bond is/are illegal, invalid or unenforceable, all other provisions of the Bond shall nevertheless remain in full force and effect, and the **Owner** shall be protected to the full extent provided by Ala. Code 1975, Title 39.

Exhibit E – Performance Bond

IMPORTANT: The **Surety** shall provide proof satisfactory to the **Owner** (a) that the **Surety** is currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies, and also meets the requirements of Ala. Code 1975, § 39-2-8 and (b) that this Performance Bond is not written in a sum in excess of the amount limitation designated in Ala. Code 1975 § 39-1-1.

Address and Telephone of the **Surety**:

Address & Telephone of agent who is licensed in Alabama:

Signed and sealed this ____ day of _____, 20__.

CONTRACTOR (Sign & Print Full Name)

By: _____

Name and Title: _____

SURETY (Sign & Print Full Name)

Agent: _____

Attorney-in-Fact: _____

(Attach certified copy of Power of Attorney)

NOTARY PUBLIC

My commission expires _____

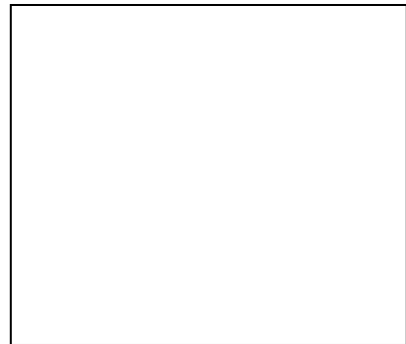


Exhibit F – Payment Bond

LABOR & MATERIAL PAYMENT BOND

BE IT KNOWN, that on this ____ day of the month of _____, in the year _____, before me, _____, a Notary Public, duly commissioned and qualified, in and for the County of Jefferson, State of Alabama, residing therein, and in the presence of the witnesses hereinafter named and undersigned, personally came and appeared _____ (“**Contractor**”), herein represented by _____, its _____, as Principal, and _____ (“**Surety**”), of the State of _____, herein represented by _____, its _____, who severally and mutually guarantee to the City of Mountain Brook, Alabama (“**Owner**”), as obligee, the faithful performance of the Contract the **Contractor** has entered into with the **Owner** for the North Woodridge Road Sidewalk Project, (“**Work**”), covered by the Contract Documents to which this Bond is attached by this reference, and do hereby bind the **Contractor** and **Surety**, its successors, legal representatives and assigns, in favor of the **Owner**, in the full and true sum of _____ (\$_____) Dollars, payable on demand to the **Owner**.

NOW, THE CONDITION of this obligation is that if the **Contractor** (a) faithfully and promptly pays all Claimants as provided by Law and pays all wages of laborers, workmen, or mechanics, to be employed by any Subcontractor, or by or to Subcontractors, and used in the construction, erection, alteration, installation, or repairs called for by the Contract; (b) promptly pays for all materials or supplies furnished to the **Contractor** or by or to any Subcontractor, for use in machines used by the **Contractor**, or any subcontractor, in the construction, erection, alteration, installation, or repair of the **Work**; (c) fully secures and protects the **Owner**, its legal successor and representative, from all liability in the premises, and from all loss or expense of any kind, including all costs of court and attorney’s fees made necessary or arising from the failure, refusal or neglect of the **Contractor**, to comply with the obligations assumed by **Contractor**; and (d) delivers all the **Work** to the **Owner** free from all claims, liens and expenses, then this obligation shall remain in full force and effect.

A. No change in Contract Price or Contract Time, substitution, addition, deletion or revision in the requirements of the Contract Documents shall diminish, enlarge, release or otherwise modify the **Surety’s** obligations, under this Bond. The **Surety** hereby waives notice of any such change in Contract Price or Contract Time, substitution, addition, deletion or revision.

B. It is the intention of the **Contractor, Surety** and **Owner** that the **Surety** shall be bound by all terms and conditions of the Contract Documents and this Labor and Material Payment Bond. However, this Bond is executed pursuant to Ala. Code 1975, Title 39 and if any provision(s) of the bond is/are illegal, invalid or unenforceable, all other provisions of the Bond shall nevertheless remain in full force and effect, and the **Owner** shall be protected to the full extent provided by Ala. Code 1975, Title 39. No action under this Bond may be commenced by any Claimant unless the Claimant asserts a claim and brings action against the **Surety** or **Contractor** or both as provided in Ala. Code 1975 Title 39.

Exhibit F – Payment Bond

IMPORTANT: The **Surety** shall provide proof satisfactory to the **Owner** (a) that the **Surety** is currently on the U.S. Department of the Treasury Financial Management Service list of approved bonding companies, and also meets the requirements of Ala. Code 1975, § 39-2-8 and (b) that this Performance Bond is not written in a sum in excess of the amount limitation designated in Ala. Code 1975 § 39-1-1.

Address and Telephone of the **Surety**:

Address & Telephone of agent who is licensed in Alabama:

Signed and sealed this ____ day of _____, 20____.

CONTRACTOR (Sign & Print Full Name)

By: _____

Name and Title: _____

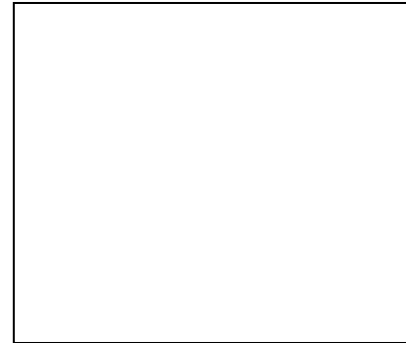
SURETY (Sign & Print Full Name)

Agent: _____

Attorney-in-Fact: _____
(Attach certified copy of Power of Attorney)

NOTARY PUBLIC

My commission expires _____



GENERAL CONDITIONS of the CONTRACT

CONTENTS

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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. ARCHITECT (OR ENGINEER): 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 or other Contract Documents.

Owner will not necessarily retain an Architect (or Engineer) or other professional to assist in the administration of every Project. In that event, the Owner’s Project Representative (as designated in the Construction Contract) will primarily interact with the Contractor on administration matters of the Contract, including, but not limited to, inspections of the Project site(s). change orders, scheduling, payment of compensation for Work and other administration of the Contract.

B. 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) Addenda or Modifications to the Construction Contract (if applicable)
- (3) Specifications in Project Manual
- (4) Drawings (Plans)
- (5) Supplementary Conditions
- (6) General Conditions of the Contract
- (7) Performance and Labor & Material Payment Bonds
- (8) Change Orders
- (9) Other Documents in Project Manual

C. 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.

D. CONTRACT TIME: The Contract Time is the period 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.

E. 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 Project Representative.

F. 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.

G. DRAWINGS: The Drawings (which may also be referenced as “Plans”) 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.

H. NOTICE TO PROCEED: A proceed order issued by the Owner 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.

I. OWNER: The Owner is the entity(ies) 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 Project 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.

J. THE PROJECT: The Project is the total construction of which the Work required by these Contract Documents, which operations may in their entirety be constructed by the Contractor, or only portions of which the Contractor may construct.

K. 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.

L. 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.

M. 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.

N. THE WORK: The Work is the construction and services required by the Contract Documents and includes all labor, materials, supplies, equipment, and other items, incidentals 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 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 or provisions in them, 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 or Modifications to Construction Contract (with those of later date having precedence over those of earlier date).
- (3) Drawings (or Plans); large scale details shall take precedence over smaller scale details.
- (4) Supplementary Conditions
- (5) Specifications in Project Manual
- (6) General Conditions of the Contract.
- (7) Other Documents in Project Manual

D. ORGANIZATION

Except as may be specifically stated within the technical specifications, neither the organization of the Specifications into divisions, sections, or otherwise shall control how the Contractor may subcontract 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 Invitation for Bids.
- (4) In the case of inconsistency between Specifications or within any document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the interpretation of the Owner's Project Representative.
- (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 Owner Project Representative 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 REPRESENTATIONS

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

- A. The Contractor has visited the sites 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, the Project Manual will be furnished to the Contractor without charge. Other copies requested will be furnished at reproduction cost.

ARTICLE 5
OWNERSHIP of ARCHITECT's INSTRUMENTS OF SERVICE

All original or duplicated Plans (or Drawings), Specifications, and other documents prepared by the Architect (or Engineer) and furnished to the Contractor for the Project (the “Instruments of Service”) are the property of the Architect (or Engineer) 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, except for the Contractor’s record set, shall be returned or accounted for by the Contractor to the Architect, on request. Notwithstanding, the Architect has granted Owner a perpetual license to use or reproduce the Instruments of Service for any purposes reasonably related to construction of the Project.

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 sites, including a superintendent who shall:

- (a) have full authority to receive instructions from the Owner Project Representative and to act on those instructions; and
- (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 Owner Project Representative 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 it furnishes to perform the Work. The Contractor will remove from its employment on the Project any person who deliberately or persistently produces non-conforming 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 Specifications that are in need of clarification and the error, omission, or inconsistency discovered in them.

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 that may be made it from the Architect for the additional services required to review, research, and respond to such requests for information.

ARTICLE 8
SURVEYS by CONTRACTOR

- 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. Unless furnished by the Owner or agreed by the parties, without extra cost to the Owner, the Contractor shall engage a licensed surveyor to identify boundary lines; in any event, Contractor shall be responsible to take necessary actions to verify that its operations are conducted within boundary and 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 comply 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 ensure 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 and their representatives.

ARTICLE 11
“AS-BUILT” DOCUMENTS

A. Unless otherwise provided in the Contract Documents, the Contractor shall deliver two (2) sets 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) Drawing

- (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

(This Article is 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 a customary 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. 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 the schedule will be regained.

ARTICLE 13
EQUIPMENT, MATERIALS, and SUBSTITUTIONS

Every part of the Work shall be executed in a workmanlike manner in accordance with the Contract Documents. 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, unused and of recent manufacture, except such materials as may be expressly provided or allowed in the Contract Documents to be otherwise.

ARTICLE 14
SAFETY and PROTECTION of PERSONS and PROPERTY

- A. The Contractor shall be solely and completely responsible for conditions at the Project sites, 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.
- 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 sites 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) if applicable, 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 sites 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 such an emergency. Such adjustment shall be determined as provided in Articles 19 and 20.
- J.** Any inspection or visit by the Owner or its Project Representative to 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 remediation. 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 Owner of the condition in writing.
- C. The Owner has multiple options upon receiving notice from the Contractor of the existence of Hazardous Materials at the Project site. First, it may 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 has reasonable objection.

Alternatively, the Owner, in the exercise of its discretion, may elect to terminate the Contract and not proceed with construction of the Project. If Owner elects such termination option, Contractor will be compensated for all work and reasonable expenses performed by it up the time of termination.

- 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; provided that, if such Hazardous Materials are required by the Contract Documents to be used by Contractor on the site, Contractor shall at all times exclusively be responsible to utilize practices and procedures required by applicable environmental laws and regulations for storage and maintenance of those Materials on the site during the Project and shall remove them therefrom following the completion of Work.

ARTICLE 16
INSPECTION of the WORK

A. GENERAL

(1) The Contractor is solely responsible for the Work's compliance with the Contract Documents. Accordingly, the Contractor shall inspect in-progress and completed Work and shall verify its compliance with those Documents and that any element or portion of the Work upon which subsequent Work is to be applied.

Neither the presence nor absence of inspections by the Architect, Owner or its Project Representative or any public authority having jurisdiction (or their representatives) shall relieve the Contractor of its responsibilities to inspect the Work and utilize appropriate 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 Project Representative or any public authority having jurisdiction shall have access at all times to the Work for inspection whenever it is in 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.

(4) The following understandings apply with respect to any inspections of the Work by the Architect (or Engineer) or Owner Project Representative:

(a) During the course of Contractor's operations, the Architect or Owner may, but is not obligated to, inspect phases of the Work in progress and provide input to the Contractor Project Representative on the following matters: the quality and acceptability of materials furnished; rate of progress of the work; sequence of construction; interpretation of Plans and Specifications; compensation; and suspension of Work if determined by the City representative to be required for public convenience. No such inspection by any of them or the provision of any such input will excuse Contractor from its failure to comply with the Contract, or relieve it from its responsibilities thereunder to supervise the Work, to fully supervise all its employees and representatives, or to perform the Work in compliance with the Specifications and other Contract Documents. Furthermore, no inspection by the Architect or Owner shall be construed to constitute the assumption by the Owner of any of Contractor's contractual duties.

(b) Contractor shall furnish the Architect (or Engineer) or Owner Project Representative with reasonable and access facility to ascertain whether the Work as performed is in accordance with the Specifications. Should any work be covered or hidden prior to the approval thereof, it shall be uncovered for examination at the Contractor's expense.

(5) The Contractor may be charged by the Owner for any extra cost of inspection incurred by the Owner 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 shall be conducted by the Architect, scheduled by it in coordination with the Contractor Superintendent, and attended by the Contractor and applicable Subcontractors, suppliers and manufacturers. Scheduled Inspections and Conferences for this Contract may include:

- (a) Pre-Construction Conference.**
- (b) Pre-roofing Conference** (inapplicable if the Contract does not involve roofing work)
- (c) Above Ceiling Inspection(s)** (if applicable): 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 and Owner as being ready for the Owner's occupancy or use. At the conclusion of this Final 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) for the Work. The subsequent delivery of the Architect's report of this Year End 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 may be conducted throughout the course of the Work by the Architect, the Architect’s consultants, the Owner and their representatives, 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 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, and may, 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, the Architect shall report, in writing, to the Owner and Contractor 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.

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 Contractor 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 after the receipt of bids.

(2) If the Architect, Owner, or any other public authority having jurisdiction of the Project 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 of these additional tests 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 its 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 restoring 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 is advisable and in its interest to accept Defective Work, the Owner may allow part or all of such Work to remain in place, provided that Owner and Contractor agree on an amount equitable deduction from the Contract Sum related to that Defective Work.

ARTICLE 19
CHANGES in the WORK

A. GENERAL

- (1) The Owner reserves the right at any time to 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 may written order to the Contractor that “minor” changes in the Work be performed “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 or modify the Contract Sum or time of performance (i.e. Contract Time) of the Work. If the changes requested by Owner are not “minor” or materially affect the Specifications or general nature of the Work as whole, they may be the basis for an adjustment of the Contract Time or Contract Sum as provided in this Article.

- (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 will be documented on forms acceptable to the Contractor, Architect and Owner.

B. DETERMINATION of ADJUSTMENT of the CONTRACT SUM

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

- (1) **Lump Sum Method** - by mutual agreement on 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 10% markup for overhead and profit. Where the change order involves subcontract work is involved the total mark-up for the Contractor and a Subcontractor shall not exceed 15%. **Changes which involve a deductive change order shall include a net credit to the Owner 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) **Force Account Method** - 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, this method of 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 10% on Contractor's work nor exceeding 15% for Contractor and Subcontractor on a Subcontractor's work. **Changes which involve a deduction to the Contract sum and 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 for CHANGES REQUESTED BY OWNER

(1) Unless otherwise provided in the Contract Documents, excepting Minor changes within the meaning of Article 19, the Contract Time shall be equitably adjusted for the performance of a change in the requirements of the Project that is requested by Owner. If Contractor determines that implementation of that change will increase the time for performance of the entire Work, it shall notify Architect of that determination and provide the following in its notice to Architect:

- (a) the number of days of extension requested by Contractor;
- (b) any cost proposal of Contractor associated with the material requested change; and
- (c) if Contractor receives a directive to proceed with the change in advance of submitting a cost proposal, Contractor shall give the notice within 10 days after completing the change along with an estimated number of days of extension, which may be subject to adjustment in the cost proposal.

(2) The Contract Time shall be extended only to the extent that the change requested by the Owner 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 that affects the Contract Sum, the Architect will request that the Contractor provide a cost proposal for making that change. 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 WORK

- A. "Extra Work" means operations by Contractor that, in the exercise of the reasonable judgment of the Architect, do not reasonably fall within the scope of Work for the Project or constitute a material change in the Specifications. Extra Work excludes any operations by Contractor or costs incurred by it that result from its acts or omissions in performing its obligations under the Contract.
- B. If the Contractor considers that it has been instructed or asked by the Architect, Owner or any public authority having jurisdiction over the Project to perform Extra Work, the Contractor, before performing that Work, shall give a notice to the Architect that includes the following:
- (1) the date, circumstances, and source of the request; (2) the reasons why Contractor considers the request or instructions to perform operations to constitute a change to the Contract Documents; and (3) an estimate of extra cost and time that may be involved to fulfil the request.
- C. Within ten days of receipt of the Contractor's notice, the Architect will respond in writing to the notice by Contractor, stating one of the following:
- (1) The cited request or instruction is rescinded.
 - (2) The cited request or 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 request or instruction is reconfirmed, and not determined by the Architect to be Extra Work or a change in the Contract Documents. In that event, the Contractor shall proceed to perform the requested operation as instructed.

Except for claims relating to the performance by Contractor of operations on the Project to remedy emergency conditions that endanger life or property, no claim for Extra Work shall be considered or is payable by Owner in the absence of prior notice required in this Paragraph.

D. If the Contractor disputes the Architect's determination that the requested operation is not Extra Work, within ten days after receiving the Architect's response, notify the Architect in writing that the Contractor intends to submit a claim concerning said matter pursuant to Article 24, Resolution of Claims and Disputes.

E. If Contractor's claim for Extra Work is approved by Architect and Owner, it shall be authorized and paid at the lump sum and other rate set forth in a change order before that work is begun. The performance of any Extra Work by Contractor shall be subject to all other conditions of the Contract.

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 by a party at the Project site, the party discovering the condition shall promptly notify the other party before the condition is disturbed; such notice shall in no event be given more than ten days after discovery of the condition. Upon such notice and verification of the existence of a Differing Site Condition, 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. Contractor may be entitled to an extension of the Contract Time due to delays in the commencement or progress of Work that are result from circumstances that are beyond its reasonable control. Examples of such circumstances are material acts or omissions of the Owner in performing its responsibilities for the Project, acts or omissions of any separate contractor (other than a Subcontractor), or by labor disputes, unusual delay in deliveries, unavoidable casualties, fires, abnormal floods, tornadoes, or other cataclysmic events of nature. In the event Contractor reasonably considers grounds for an extension of time exists, it shall, within three days after the delay first occurs, give written notice to the Owner of the cause of the delay and its probable effect on progress of the entire Work.
- B. Adverse Weather Conditions. 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. The following understandings apply concerning any request for delay due to adverse weather:
- (1)the weather conditions must have had an adverse effect on construction scheduled to be performed during the period in which the adverse weather occurred, which in reasonable sequence would influence completion of the entire Work,
 - (2)the Contractor must, 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 must provide 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 allegedly caused by the acts or omissions of the Owner or Architect in failing to perform their responsibilities related to the Project unless that delay either (i) was the result of their bad faith, or (ii) beyond the contemplation of the parties and not remedied by the Owner or Architect within a reasonable time after notification by the Contractor of the act or omission.

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 CLAIMS & DISPUTES

The Contractor and Owner agree that, upon the assertion of a Claim by the other, their respective Project Representatives, with the Architect’s assistance and advice, will make a good faith effort to amicably resolve any Claim or dispute. If those Representatives are unable to amicably resolve a Claim or dispute, it will be escalated to the senior manager/official level of each party for consideration. If the Claim or dispute cannot be resolved at the senior official level, either party

may request that the Claim or dispute be mediated. If efforts to settle are not successful, the Claim shall be resolved in accordance with paragraph D below.

D FINAL DISPUTE RESOLUTION MECHANISM

If the parties are unable to amicably resolve any Claim or dispute, the dispute resolution mechanism for any Claim between them shall be litigation in a court that is in Jefferson County, Alabama. If (i) the Owner should employ attorneys or incur other expenses in any legal action regarding a Claim or dispute, and (ii) the Owner secures a final judgment before a court of competent jurisdiction or obtains other relief from an administrative body related thereto, the Contractor will reimburse the Owner for its reasonable attorneys' fees and other reasonable expenses that are incurred in that action.

E. CONTRACTOR'S EXCLUSIVE REMEDIES FOR BREACH BY OWNER

Contractor agrees and acknowledges that its sole and exclusive remedies arising out of or related to a breach of this Contract by the Owner (or its employees or representatives) are for Contractor to pursue claims for additional Contract Time or adjustment of the Contract Sum pursuant to the terms and principles herein, and to litigate those claims as provided in this Article if they are not amicably resolved by the parties. Contractor shall have no other claim, cause or right against the Owner (or its employees or representatives) related to any actions by them or their failures by them to perform their obligations under the Contract, whether any such claim may be in contract, tort, strict liability or otherwise.

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 Contractor's receipt of that Notice, the Contractor has not proceeded to satisfactorily cure the Defective Work or provided the Architect with written verification that satisfactory remedial action will be taken, 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 or 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 OWNER for CONVENIENCE

- (1) Notwithstanding any provision in the Contract, the Owner may, at any time and without cause and in the exercise of its sole discretion, 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. After the period of the temporary suspension expires, the Owner's Project Representative may give Contractor notice to promptly re-commence prosecution of the Work.
- (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 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.
- (3) Contractor agrees and acknowledges that, if Owner suspends the Work for its convenience, Contractor is not entitled to receive any type of compensation other than contemplated above in this Article.
- (4) Nothing in this provision or elsewhere in the Contract grants Contractor the right to suspend Work at a site without written authority from the Owner Project Representative.

ARTICLE 27

OWNER'S RIGHT to TERMINATE CONTRACT

A. TERMINATION by the OWNER for CAUSE

- (1) **Causes for Termination:** 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 ensure 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 ensure 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) breaches any other material obligation owed to Owner under the Contract.

(2) Procedure for Termination of Work and Contract on Construction Contracts Over \$50,000:

- (a) **Notice to Cure Default:** If any of the above conditions giving rise to termination occur, the Architect (or Owner) may give the Contractor and its Surety written Notice to Cure the subject condition(s) within a reasonable, stated time, but not less than ten days after the Contractor receives the notice (the “Notice to Cure Default”).
- (b) **Notice of Termination:** If, at the expiration of the time stated in the Notice to Cure Default, the Contractor has not proceeded to satisfactorily cure the subject condition(s) or provided the Architect with written verification that satisfactory remedial action will be taken, 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) and the Contract shall terminate seven days after the Owner issues a subsequent written Notice of Termination (the “Notice of Termination”). If the condition or circumstance for which a Notice to Cure Default has been given later reoccurs, the Owner subsequently may give the Contractor Notice of Termination without providing the Contractor another Notice to Cure default.
- (c) If the Contractor takes appropriate action to cure the circumstances set forth in Owner’s Notice to Cure Default, Contractor may continue operations on the Project; provided that, if Contractor so continues its operations on the Project, Owner will not waive any of its rights under the Contract associated with timely completion of the Project by consenting to that continuation.
- (d) If Owner issues a Notice to Cure Default and the Contract is later terminated, Contractor shall discontinue its performance of the Work.
- (e) **Demand on the Performance Bond:** With the Notice of Termination the Owner may give the Surety a written demand that, upon the effective date of the Notice of Termination, the Surety promptly fulfill its obligation to assume control of the Project and complete the Work in accordance with the terms of the Contract and Performance Bond. If such a demand be given to the Surety, the following understandings apply:

- (i) **Duty of Surety:** Upon receiving the Owner’s demand on the Performance Bond, the Surety shall assume all rights and obligations of the Contractor under the Contract.

- (ii) **Surety Claims:** The Surety shall 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; and

- (iii) **Payments to Surety:** If any amounts are payable to the Contractor under the Contract when it is terminated, no further payments shall be made to the Contractor by the Owner. The Surety shall stand in the shoes of the Contractor and be entitled to any such payments. Before making any such payments to Surety, the Owner shall have the right to deduct from them any reasonable costs incurred by the Owner, including compensation for additional architectural, engineering, managerial, and administrative services, attorneys’ fees as necessitated by termination of the Contractor and completion of the Work by the Surety, and any amounts chargeable against the Contractor’s account on the Project. The Surety shall be solely responsible for 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.

(3) Owner’s Remedy to Finish Work. In addition to making a demand on the Surety to complete the Project following termination of the Contract, Owner may, but is not obligated to undertake to perform operations on the Project that were not finished by Contractor through another contractor(s) retained by Owner or through Owner’s own forces. In such event, the Contractor shall be responsible for the difference, if any, between the amount paid by the Owner to another contractor or expenses attributable to the work of its own forces to complete and that provided for hereunder as the cost of the Work if it had been performed by the Contractor. No failure on the part of the Owner to exercise, and no delay in exercising, any right or remedy hereunder shall operate as a waiver thereof.

(4) Wrongful Termination: If any termination of the Contract by Owner is wrongly given, that termination nonetheless shall continue to be effective. Further, in such event, Contractor

agrees that, as its sole and exclusive remedy for any wrongful termination, the Owner shall pay Contractor the amount contemplated in Paragraph B of this Article below that Owner would have paid Contractor had Owner terminated the Contract for its Convenience.

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 its 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 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 at the home office level, but shall not be entitled to receive payment for any profits anticipated to have been gained from the terminated Work. Contractor agrees and acknowledges that no other compensation is payable to Contractor in connection with a Termination for Convenience by Owner.

Documentation related to any decreases in the Contract Sum related to a Termination for Convenience by Owner shall be submitted to the Architect by the Contractor in such time and detail, and with such supporting documentation.

Final modification of the Contract related to a Termination for Convenience 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 thereof 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 a period of sixty days for the Owner’s convenience or under an order of any court, or other public authority through no act or fault of the Contractor or a Subcontractor (or any other party for whose acts they may be liable), then the Contractor may give the Owner a written Notice of Termination stating that Owner has fourteen days after receiving that Notice to authorize Contractor to resume the Work. Absent the Contractor’s receipt of authorization to resume the Work during that fourteen day period, the Contract shall terminate upon expiration of that 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 (Termination for Convenience by Owner).

B. NONPAYMENT

If (i) the Owner fails to pay the undisputed amount of an application for payment within sixty days after receiving same. and (ii) Contractor gives the Owner written notice that the Work will be suspended pending payment of undisputed amount within fourteen days (or such specified longer period) from such notice, Contractor may terminate the Contract at the end of that cure period if payment is not received during that period. 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 (Suspension for Convenience by Owner).

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

ARTICLE 29
PROGRESS PAYMENTS/ RETAINAGE

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. Unless the preparation and use of a Schedule of Values is waived by the Architect or Owner for the Project, within ten days after receiving the Notice to Proceed the Contractor shall submit to the Architect a commercially acceptable form of a 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.
- (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 by the Architect pursuant to Article 30 and delivered to the Owner.

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 if all of the following conditions exist:

- (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 Project 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
- (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" is defined as the money earned, and, therefore, belonging to the Contractor (subject to final settlement of the Contract and resolution of all outstanding claims) that has been retained by the Owner conditioned on final completion and acceptance of all Work required by the Contract Documents. Retainage shall not be relied upon by Contractor (or Surety) to cover or off-set unearned monies attributable to uncompleted or uncorrected Work.
- (2) In making progress payments for Work completed, the Owner will remit payment with respect to the undisputed portion of the Applications for Payment certified by the Architect, less 5% amount as authorized by the Public Works law to be retained and less any previous payments. If, upon completion of fifty (50%) percent of the value of the Total Contract and the Owner determining that satisfactory progress on the Project is being made, retainage will not be withheld on subsequent partial payments. For purposes of calculating the amount of the Total Contract, Materials Stored Off Site that satisfy the conditions set forth above may be included in that calculation.
- (3) The retained amounts shall be held by the Owner until final completion and acceptance of all Work contemplated under the Contract, at which time any retained amounts and other amounts then due Contractor shall be paid in full or otherwise applied by the Owner as is contemplated in the Contract. Retainage shall be released upon completion of all close-out requirements per Article 34 and the review, approval and processing of Contractor's final Application for Payment.

F. CONTRACTOR'S CERTIFICATION OF APPLICATIONS FOR PAYMENT

- (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

Upon payment by the Owner for materials or Work covered by partial estimates, that material and Work shall become the property of the Owner; provided, however, that any such payment (a) shall not relieve the Contractor from its sole responsibilities to care and protect material and Work upon which payments have been made and restore any damaged material and Work until Final Acceptance occurs; (b) shall in no way constitute acceptance of the associated Work, and (c) shall in no way limit or affect the obligation of the Contractor, at its expense, to repair, correct, renew or replace any defective materials or workmanship.

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 otherwise inaccurate.
- 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 decline to approve an Application for Payment, or nullify or revise a previously issued Certificate for Payment to the extent as, in the Architect's opinion, is necessary to protect the Owner from loss on account of any of the following causes or conditions that were 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 Architect or Owner deems it necessary to withhold payment pursuant to existence of the conditions set forth in Paragraph A above, 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. Contractor agrees and acknowledges that the Owner shall have the right to withhold from payments due the Contractor under the Contract for the Project 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).
- B. The Contractor shall notify the Owner Project Representative 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. 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 request for a final inspection, the Owner

Project Representative will advise the Contractor in writing of any conditions of the Work which the Owner is aware do not constitute Substantial Completion, and final inspection will proceed within a reasonable time after the Contractor's notice is given. However, the Owner Project Representative 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 Owner Project Representative may discontinue or suspend that 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 Owner Project Representative 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 Owner as being ready for occupancy or use;
 - (b) the Contractor's one-year and special warranties for the Work or Equipment covered by the Certificate commence, unless stated otherwise in the Certificate: 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 Certificate of Substantial Completion includes roofing work, the General Contractor's (5-year) Roofing Guarantee 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.
- 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 charges for additional professional services and expenses that the Owner may incur and Owner's cost to correct the punch list items, that are incurred by the Owner as a result of such failure to complete punch list items in a timely manner.

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) If applicable on a Project involving construction or improvement of a building, the Owner shall not occupy or utilize any portion of the Work before Substantial Completion of that portion has been achieved.
- (2) If applicable on a Project involving construction or improvement of a building, 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 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 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.
- (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 Owner of other documents, if any, required by the Contract Documents as prerequisites to Final Payment.

Excluding Contractor's obligations related to punch list items, the Contract shall not be considered to have been fulfilled until Contractor has satisfied each of the above conditions. Notwithstanding, Contractor's fulfillment of the above conditions shall not be construed to waive, modify, limit or affect any of the Owner's rights hereunder related to the Contractor's Warranties of Work, any of the Owner's rights under any bonds or any of its rights or remedies under law.

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 Owner, or (2) their resolution under Article 18, Deductions for Uncorrected Work.

Except for any part of the Work that Owner occupies or use after Substantial Completion, Contractor shall remain responsible for its Work until it is finally accepted by the Owner Project Representative. All Work shall remain under the charge and care of the Contractor, and it shall take every necessary precaution to prevent injury or damage to any person related to that work site from any other cause whatsoever until that acceptance occurs. Further, except if otherwise

provided in the Contract, Contractor, at its own expense, shall rebuild, repair, and remedy any damage to any portion of the Work that is occasioned by any cause before final acceptance.

C. ADVERTISEMENT for COMPLETION

If the Contract Sum is more than \$50,000, the Contractor, immediately after being notified 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 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 Owner 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 because of such failure, including all costs and reasonable attorney's fees incurred to recover such damages.

E. EFFECT of FINAL PAYMENT

- A. The making of Final Payment shall constitute a waiver of Claims by the Owner except those arising from:
- (1) liens, claims, security interests or encumbrances arising out of the Contract that are then not settled;
 - (2) failure of the Work to comply with the requirements of the Contract Documents;
 - (3) warranties or indemnities required by the Contract Documents which by their nature survive Final Payment or termination of the Contract; or
 - (4) latent defects.
- B. Acceptance of Final Payment by the Contractor shall constitute a waiver of claims by Contractor against the Owner for all matters or claims arising out of the Project or Contract, 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 above.

ARTICLE 35
CONTRACTOR’S WARRANTIES of WORK

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) Contractor also warrants the fitness and soundness of all workmanship and materials for a period of one year after Substantial Completion of its Work. If, within one year after the date of Substantial Completion of the Work or a 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, at its expense, shall promptly upon receipt of written notice from the Owner, 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.

None of the following shall relieve the Contractor of liability or responsibility with respect to this warranty or responsibility for to replace or repair faulty materials or workmanship:

- (a) final payment or the issuance of a certificate of Final Acceptance for part or all the Project,

- (b) any provision in the Contract Documents, or
 - (c) the City's partial or entire use of any Work site.
- (2) Contractor also gives a one-year warranty for Work performed to complete punch list items. That warranty shall begin on the Date of Substantial Completion if those items are completed or corrected within the 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. The subsequent delivery of a 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 ROOF GUARANTEE (if Project Includes Roofing)

- (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 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 allowed in the Certificate of Substantial Completion shall begin on the date of Final Acceptance of the Work.
- (2) 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.

(3) **D. SPECIAL WARRANTIES**

(1) The Contractor shall deliver to the Owner 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 period; 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 to the extent that those operates void any guarantee for 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 and the City of Birmingham, Alabama, and their respective agents, employees, and officials (hereinafter collectively referred to as the “Indemnitees”) from and against all claims, damages, losses and expenses (including but not limited to attorneys' fees) asserted by third parties (including any employee, Subcontractor or representative of the Contractor) against the Indemnitees or incurred by them arising out of, related to, or resulting from Contractor’s performance of the Work or the Contract, provided that such claim, damage, loss or expense is (i) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (including loss of use resulting therefrom) and caused by or results in whole 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 (collectively, a “Contractor Representative”), 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, or (ii) attributable to the failure of the Contractor or a Contractor Representative to perform its or their responsibilities under the Contract.

Additionally, Contractor shall indemnify and hold harmless the Indemnitees from claims, damages, losses and expenses (including reasonable attorneys’ fees) arising from the following:

- (i) any violation by of law, ordinance, regulation, order or decree applicable to the Project that is committed by Contractor or a Contractor Representative in the course of performing the Work;
- (ii) claims made by any Contractor Representative against Owner on account of any conditions at a Work site or amount arising or recovered under the Workmen's Compensation Law;
- (iii) just claims for materials, supplies, tools, equipment or labor supplied or performed on the Project by any Subcontractor or supplier;
- (iv) if any damage or injury is caused to private property or public property on account of any act, omission, neglect or misconduct by Contractor or Contractor Representative in performing the Work, Contractor, at its sole expense, shall restore such property to a condition similar or equal to that existing before the damage occurred and duly compensate the owner of that property for any resulting damage or injury; and
- (v) all claims, demands, royalties or fees related to alleged infringement of patents or other intellectual property rights as provided in Article 45 herein.

The scope of Contractor's indemnification obligation under this Article does not extend to claims, demands or expenses resulting from the following:

- (i) actions of the Architect, or the Architect's Consultants, agents, or employees in (1) preparing or approving 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; or
- (ii) a claim, damage, loss or expense resulting from the sole negligence of an Indemnitee.

ARTICLE 37 **CONTRACTOR'S and SUBCONTRACTORS' INSURANCE**

A. INSURANCE REQUIREMENTS OF CONTRACTOR. Unless otherwise provided in the Contract Documents, the Contractor shall purchase and maintain throughout the Contract the following types of insurance coverage with liability limits not less than stated below:

(1) Worker's Compensation & Employer's Liability

- (a) Workers' Compensation coverage as statutorily required in Alabama.
- (b) Employer's Liability Insurance limits shall be at least:
 - For Bodily Injury by Accident - \$1,000,000 each accident
 - For Bodily Injury by Disease - \$1,000,000 each employee

(2) Commercial General Liability Insurance

- (a) This Insurance, written on an ISO Occurrence Form (current edition as of the date of Invitation 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 Insurance also shall provide at minimum the following limits:

<u>Coverage</u>	<u>Limit</u>
1. General Aggregate	\$ 1,000,000.00 per Project
2. Products, Completed Operations Aggregate	\$ 1,000,000.00 per Project
3. Personal and Advertising Injury	\$ 1,000,000.00 per Occur
4. Each Occurrence	\$ 1,000,000.00

- (b) Additional Requirements for Commercial General Liability Insurance:

1. The policy shall name the Owner and City of Birmingham, Alabama as additional insured, state that this coverage shall be primary insurance for the additional insured; 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) This Insurance shall include coverage for bodily injury and property damage arising from the operation of any owned, non-owned or hired automobile, and shall provide not less than \$1,000,000 Combined Single Limits for each occurrence.
- (b) The policy shall name the Owner and City of Birmingham, Alabama as additional insured.

(4) Commercial Umbrella Liability Insurance.

- (a) This Insurance will provide excess coverage above the Commercial General Liability and Commercial Business Automobile Liability to satisfy the minimum limits set forth herein.

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

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

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

1. The policy shall name the Owner and City of Birmingham as additional insured.
2. The policy must be on an "occurrence" basis.

(5) Builder's Risk Insurance

If the Project pertains to the construction or improvement of a building or structure that is intended to be occupied, this 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 Invitation for Bids), or its equivalent. All deductibles shall be the sole responsibility of the Contractor.

All required insurance coverage shall be provided by a policy(ies) issued by a company(ies) qualified to engage in the insurance business in the State of Alabama with a rating reasonably acceptable to the Owner. These insurance requirements are in addition to and do not affect any indemnification obligation of the Contractor herein.

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. Before the commencement of the Work hereunder, the Contractor shall provide the Owner a certificate(s) of insurance and endorsements (including the additional insured endorsements) evidencing compliance with the requirements in this section.

B. SUBCONTRACTORS' INSURANCE

(1) Worker's Compensation & 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 A, or to be covered by the Contractor's Workers' Compensation and Employer's Liability Insurance while performing Work under the Contract.

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

(3) Responsibility for Enforcement. The Contractor shall have responsibility to enforce its Subcontractors' compliance with these or similar insurance requirements. Upon request

from the Architect or Owner, Contractor shall provide reasonable evidence that any of its Subcontractors is carrying acceptable insurance.

C. TERMINATION of OBLIGATION to INSURE

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

- (1) **Builder's Risk Insurance.** If the Project pertains to the construction or improvement of a building or structure that is intended to be occupied, the obligation to insure under Subparagraph A(5) shall remain in effect until the Date of Substantial Completion as shall be established in the Certificate of Substantial Completion.
- (2) **Products and Completed Operations.** The obligation to carry Products and Completed Operations coverage specified under Subparagraph A (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 A(1) through A(4) and Paragraph B 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.

ARTICLE 38
PERFORMANCE and PAYMENT BONDS

(This Article is not applicable if the Contract Sum for the Project is less than \$50,000.)

A. GENERAL

When signing and returning the Construction Contract to the Owner for execution, the Contractor, at its expense, shall also furnish a Performance Bond for the Project in favor of the Owner for the Penal Sum of 100% of the Contract Sum, and a Labor & Materials Payment Bond for the Project for 50% of the Contract Sum. Each bond 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.

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 because of default on the part of the Contractor, including architectural, engineering, administrative, and legal services, shall be recoverable by Owner under the Performance Bond.

C. LABOR & MATERIALS PAYMENT BOND

With this Labor & Materials 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 any reasonable attorneys' fees incurred by successful claimants or plaintiffs in civil actions related to that Bond. Any person or entity indicating that they have a claim of nonpayment under this Payment Bond shall, upon written request, be promptly furnished a copy of the Bond and Construction Contract.

D. CHANGE ORDERS

The Penal Sum shall remain equal to the Contract Sum as that 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 Surety for the Performance Bond shall be coextensive with the Contractor's performance obligations under the Contract Documents; provided, however, that the Surety's obligation under that Bond shall expire at the end of the one-year warranty period(s) in Article 35.

ARTICLE 39

NO ASSIGNMENT WITHOUT OWNER CONSENT

The Contractor shall not assign any benefit, monies due, obligation, responsibility, or right under the Contract, or subcontract any part of the Work to a Subcontractor, in whole or part, without prior written consent of the City, which consent may be withheld for any reason. Any authorized Subcontractors shall comply with the applicable provisions of the principal Contract, and the Contractor shall be fully responsible for the acts and omissions of its Subcontractors. In no event may Contractor assign its benefits or responsibilities of the Contract to an interested contractor who was determined by the Owner to not be a responsible bidder in the competitive bidding process for the Project.

ARTICLE 40

CONSTRUCTION by OWNER or SEPARATE CONTRACTORS

A. OWNER'S RESERVATION of RIGHT

The Owner reserves the right to self-perform operations or construction work through its own forces as may be needed for the Project, or to award separate contracts to third parties for that work for portions of the Project. The contractual conditions of any separate contracts with third parties for

those operations shall be substantially like those in this Contract. If the Contractor has good reason to contend that any actions or operations of the Owner or contractors operating under separate contracts result in delay or additional cost under this Contract, it may provide notification and assert such claims as provided in Article 20 and Article 23.

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 in a manner that will not interfere with the operations of the Contractor under this Contract. 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.

ARTICLE 41
SUBCONTRACTS

A. APPROVAL 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 Owner will promptly reply to the Contractor in writing stating whether 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 seven 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 their 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 for the Owner to interject itself into dealings between or among the Contractor or its Subcontractors and suppliers or resolve any disputes between them.

ARTICLE 42 **ARCHITECT'S STATUS**

- A. The Architect is an independent contractor of the Owner performing that, with respect to the Project, is performing professional design services pursuant to an agreement between the Owner and the Architect. The Architect has prepared the Drawings and Specifications and assembled the Contract Documents, and therefore is charged with their interpretation and clarification as described in those Documents. Generally, the Architect will endeavor to ensure that the Contractor complies with the requirements of the Contract Documents, and on behalf of the Owner, administer the Contract as described in those Documents during construction and the Contractor's one-year warranty period.
- B. To maintain continuity in administration of the Contract and to facilitate complete documentation of the Project record, all communications between the Contractor and Owner regarding matters of or related to the performance of the Work 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 between the Contractor with the Architect's consultants shall be through the Architect. Unless otherwise authorized by the Contractor, communications between the Contractor and its 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 specific 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 the Contractor or others for supervising or coordinating the performance of the Work, for the Construction Methods or for the 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 of the Contract 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 agrees that the Architect and its consultants are not employed or retained by or in a contractual relationship with the Contractor. Consequently, the Contractor’s sole remedies arising from actions of the Architect (or its employees or consultants) are its rights to claim additional Contract Time or adjust the Contract Sum as provided hereunder and pursue those claims in accordance with Article 24. The Contractor shall have no claim or cause of action against the Architect (or its consultants) for any actions or failures to act by them related to the Project or Contract, whether such claim may be in contract, tort, strict liability, or otherwise.

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 and claims arising between the Contractor and Owner shall be advisory.

ARTICLE 43
CASH ALLOWANCES

- A. The Project may provide for cash allowances to fund unforeseen contingencies or expenses on the Project. All allowances stated in the Contract Documents shall be included in the Contract Sum and are the property of Owner. Items of work covered by allowances may be supplied by the Contractor as directed by the Architect or Owner, or Owner, at its election, may obtain competitive pricing from responsible bidders or other contractors for allowance items.
- B. Unless otherwise agreed or provided in the Contract, the following understandings apply concerning the use of allowances:
 - (1) allowances may be used cover the cost to Contractor of materials and equipment delivered to the Project site and all applicable taxes, less applicable trade discounts;
 - (2) costs for unloading, storing, protecting, and handling materials at the site, labor, installation, overhead, profit and other expenses related to materials or equipment covered by an allowance typically shall be included in the Contract Sum but not funded by an allowance;
 - (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, SALES TAX EXEMPTION

A. PERMITS, FEES AND NOTICES

- (1) Unless otherwise provided in the Contract Documents, the Contractor, at its expense, shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections 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 the lawful performance of the Work.

B. SALES & USE TAX EXEMPTION.

Contractor understands that the Owner is exempt from sales and use taxes for goods that are directly purchased by it. Contractor acknowledges and agrees that, unless otherwise agreed or stated in the Contract Documents, the materials, equipment and goods (“Materials”) that are incorporated into the Work on the Project shall be procured in a manner that Owner receives the benefit of such sales and use tax exemption. Accordingly, prior to procuring Materials for the Project, Contractor agrees to consult with Owner and agree on an approach for Owner to receive such tax-exempt treatment by (i) Contractor securing a tax exempt certificate for its procurement of Materials as contemplated in Section 40-9-14.1, Code of Alabama, 1975 as amended, (ii) Owner supplying purchase orders to Contractor for use on the Project, or (iii) any other mutually agreed method. The 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 obtaining any certificates and other qualifications necessary to claim such exemption when making qualifying purchases from vendors, or reach agreement on an Sales & Use Tax Agency or other arrangement that will secure the benefit of this exemption for the Project. If those certificates or arrangements for tax exempt purchases are not made, the Contractor shall pay all applicable taxes that are not covered by the exemption 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. COMPLIANCE WITH IMMIGRATION LAW

Contractor represents and warrants that (a) it does not knowingly employ, hire for employment, or continue to employ an “unauthorized alien,” as defined by the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, Act No. 2011-535 (H. B. 56), as amended from time to time (the “Act”) and that, during the performance of this Agreement, it shall participate in the E-Verify program as required under the terms of the Act; (b) it will comply with all applicable provisions of the Act with respect to its contractors by entering into an agreement with or by obtaining an affidavit from such contractors providing that such contractors are in compliance with the Act with respect to their participation in the E-verify program; and (c) it shall not hire, retain or contract with any contractor that it knows is not in compliance with the Act. The Contractor further agrees and warrants that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, in its hiring and employment practices, and that if it receives actual knowledge of the unauthorized status of one of its employees in the State of Alabama, it will remove that employee from the Project, jobsite or premises of the City and shall require each of its subcontractors, or other parties with whom it has a contract, to act in a similar fashion. If the Contractor violates any term of this paragraph, this Contract will be subject to

immediate termination by the City. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless the City from any and all losses, consequential damages, expenses (including, but not limited to, attorneys' fees), claims, suits, liabilities, fines, penalties, and any other costs arising out of or in any way related to Contractor's failure to fulfill its obligations contained in this paragraph.

D. ALABAMA BOYCOTT LAW

Contractor makes the following representations pursuant to Act 2016-312 as codified in Title 41, Chapter 16, Article 1, of the Code of Alabama, 1975, as amended:

The Contractor affirms that it is not currently engaged in, and for the duration of the Contract 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.

ARTICLE 45
ROYALTIES, PATENTS, and COPYRIGHTS

The Contractor shall pay all royalties and license fees related to equipment, devices and Materials that are utilized on or incorporated into the Project. The Contractor shall defend, indemnify and hold harmless the Owner and its agents, employees, and officials 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(s) 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, 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 properly integrate its parts and components.
- 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

During the progress of the Work Contractor shall 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 of any building or structure. Burning of trash and debris on site is not permitted. The Contractor also shall 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, unless otherwise provided in the Contract Documents, the Contractor shall be responsible for the following special cleaning operations for all trades as the Work is completed that are applicable to the Project:
 - (a) Cleaning of all painted, enameled, stained, or baked enamel work: Removal of all marks, stains, fingerprints 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.
- (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 Owner.
- (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 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 charges for administration, supervision, architectural, engineering and inspection which is required because the Project is not completed at the contemplated time. By executing the Construction Contract, the Contractor agrees that the Contract Time is sufficient for the achievement of Substantial Completion.
- B. The Construction Contract may provide 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 those daily liquidated damages are provided for, Owner and Contractor, and its Surety, agree as follows: The actual damages that will flow from Contractor’s failure to timely complete the Work would be difficult to estimate or prove. Therefore, the parties agree that the stipulated Liquidated Damages amounts (i) are reasonable, (ii) are designed to compensate the Owner for the Contractor’s failure to timely perform the Project, (iii) are not penalties or intended as punishment, and (iv) are intended to

Exhibit G – General Conditions

compensate the City for the above noted inconvenience, loss and damage. Moreover, if the City permits the Contractor to continue and finish the Work (or any part of it) after the time for performance has expired, the performance of that delayed work will not waive, diminish or impact the City's rights to assess Liquidated Damages.

- C. The amount of liquidated damages assessable on the Project may be deducted by the Owner from the monies otherwise due the Contractor in the Final Payment, and that 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.

END of
GENERAL CONDITIONS of the CONTRACT

[Type here]

VII. ANTICIPATED BID/AWARD/PROJECT SCHEDULE

1. **4/28/24** – Advertisement for Bids & Issuance of Bid Documents by City
2. **5/21/24 at 2:00 p.m.** - Bids & Other Completed Documents Due & Bid Opening
3. **6/4/24** - Award of Contract by City Council/Deliverables (Bonds & Proof of Insurance) Due from Successful Contractor/Contract Executed
4. **6/18/24** - Expected Time Frame for City to issue Notice to Proceed for Contractor to commence Work.
5. **9/20/24** - Project to be Substantially Completed

VIII. Special Conditions

None

IX. Drawings (or Plans)

See attached plans.