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# **CITY OF HOOVER, ALABAMA**

## **Sulphur Springs Rd Culvert Replacement**

### **Specifications for BID # 22-017**

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**City of Hoover, Alabama**

**Invitation to Bid #22-017**

**Project Title: Sulphur Springs Rd Culvert Replacement**



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## A. INSTRUCTIONS FOR SUBMITTAL OF BIDS

### 1. BID SUBMITTAL INSTRUCTIONS

- a. **Bid Forms:** All bidders must use the attached bid proposal forms (or copies thereof) to submit their bid. No alternate or substitute forms will be accepted. All bid responses must be typed or written in ink.
- b. **Submittal of Bids:** All bids, including all records required by these Bid Specifications, must be submitted in **sealed** envelopes that are clearly marked with the **Bid Number and Bid Title** as they appear in the Invitation to Bid. Bid/Proposals must be delivered, no later than the specified bid opening date and time, to the following address:  
**City Clerk  
Hoover City Hall  
100 Municipal Lane  
Hoover, AL 35216**
- c. **Electronic Transmittal of Bids is Unacceptable:** Bid submittals delivered by fax, electronic mail, or other electronic transmittal methods will **NOT** be accepted as qualified bids.
- d. **Late Bids are Not Acceptable:** Late bids will **NOT** be opened nor accepted as qualified bids.
- e. **No Bid:** If you choose not to bid yet desire to remain on the city's vendor/supplier list for future consideration, please submit an envelope by the bid deadline with "**NO BID**" clearly marked on the pricing submittal form and on the outside of the sealed envelope.
- f. **Submit Bids for All Items:** Each and every item listed must be bid/quoted or your bid may be disqualified.

### 2. BID SURETY (CERTIFIED CHECK OR BID BOND) MUST BE SUBMITTED WITH BID

- a. Each bid submitted must be accompanied by certified check of the Bidder or an **ORIGINAL** bid bond prepared on the Bid Bond Form attached hereto, duly executed by the Bidder as principal and having as surety thereon a surety company approved by the City, in the amount of 5% (not to exceed \$10,000.00) of the bid.
- b. Such cash, checks or bid bonds will be returned promptly after the City and the accepted Bidder have executed the contract, or if no award has been made within 30 days after the date of the opening of bids, upon demand of the Bidder at any time thereafter, so long as he/she has not been notified of the acceptance of his/her bid. :
- c. The successful Bidder, upon his/her failure or refusal to execute and deliver the contract and bonds required within 10 days after he/she has received notice of the acceptance of his/her bid, shall forfeit to the City, as liquidated damages for such failure or refusal, the security deposited with his/her bid.

### 3. BIDDER QUALIFICATIONS

- a. Contractor's License Requirements:
  - (1) All bidders submitting Bids in excess of \$50,000.00 must be properly licensed as a General Contractor under the provisions of Title 34, Chapter 8, Code of

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Alabama, 1975, and must show evidence of such license before bidding or the bid will not be considered to be responsive.

- (2) All bidders submitting Bids for this project must hold a current and valid license issued by the Alabama Licensure Board for General Contractors with a specialty construction classification in “Highways & Streets”, “Municipal & Utility”, “Heavy/Railroad”, or “Specialty Construction/Drainage and Culvert” under the appropriate major classification.
  - (3) The bidder shall show evidence of proper licensure by clearly displaying his or her current Contractor’s License Number on the outside of the sealed envelope in which the proposal is delivered. In addition, Bids shall be clearly identified on the exterior of the package with the bidder’s name, address, the Bid number, the name of the project being bid, and time and place of the bid opening. Furthermore, a copy of your license, indicating that you are qualified to bid on this work, must be submitted with your Bid Proposal.
- b. Experience Requirements:
- (1) The bidder must have a minimum of 5 years’ experience in construction of drainage and culvert projects of a similar size and scope as this project.
  - (2) Evidence of such experience must be delivered to the City, in writing, within 2 business days of the City’s request for such evidence.
- c. Resource Requirements:
- (1) The bidder must have the financial capability and resources available to meet the requirements of this Work.
  - (2) The bidder must have adequate equipment with which to perform the Work within the time specified.
  - (3) The bidder must have a competent and experienced workforce to perform the Work within the time specified.
  - (4) The bidder must have skilled and experience supervisory personnel to manage and direct the project and its resources.
  - (5) Evidence of such resources must be delivered to the City, in writing, within 2 business days of the City’s request for such evidence.

#### 4. REFERENCES

- a. Bidders who are not currently under contract to provide these services for the City of Hoover shall submit the names and appropriate contact information for a minimum of 3 current or previous clients/customers with whom the Bidder has performed similar work during the past 3 years.
- b. The references cited must be related to work performed for clients/customers of similar size and scope as the City of Hoover. References for work from dissimilar size/scope clients may not be accepted by the City of Hoover as being relevant to this Bid and, as such, may not be accepted by the City in meeting the minimum required number of references.

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## 5. CITY'S REVIEW OF BIDDER QUALIFICATIONS AND REFERENCES

- a. The City may make such investigations as it deems necessary to determine the ability of the Bidder to perform the work, and the Bidder shall furnish to the City all such information and data for this purpose as the City may request.
- b. The City, in its sole discretion, may reject any bid if any information submitted to the City or reasonable investigation of the validity of such information, fails to satisfy the City that the Bidder is properly qualified to carry out the obligations of the contract and to complete the work contemplated therein.

## 6. NON-COLLUSION CERTIFICATION

By submitting a Bid or Proposal, the Bidder certifies that:

- a. The price(s) and amount of this bid have been arrived at independently and without consultation, communication, or agreement with any other contractor, bidder, or potential bidder; and,
- b. Neither the price(s) nor the amount of this bid, and neither the approximate prices(s) nor approximate amount of this bid, have been disclosed to any other firm or person who is a bidder or potential bidder, and they will not be disclosed before bid opening; and,
- c. No attempt has been made or will be made to induce any firm or person to refrain from bidding on this contract, or to submit a bid higher than this bid, or to submit any intentionally high or noncompetitive bid or other form of complementary bid; and,
- d. The bid is made in good faith and has not been developed or submitted pursuant to any agreement or discussion with, or inducement from, any firm or person who has submitted or is/was known to be submitting a competing for these items to the City of Hoover.

## 7. BID RECORDS/DOCUMENTS

- a. **Public Records:** Records showing successful bidder and prices will be kept on file within the City Clerk's Office and may be examined upon request.
- b. **Bid/Contract Documents:** Bidders are asked to retain these instructions, conditions, and specifications for future reference. This document and its attachments will become your Contract, or a part thereof, with the City of Hoover if you are the successful bidder.

## 8. INQUIRIES ABOUT THESE BID SPECIFICATIONS OR THE BID PROCESS

- a. Technical questions about the items specified within this Invitation to Bid must be submitted no later than November 23, 2022.
- b. All inquiries regarding this bid should be directed to:

Mark E. Simpson, PE

(205) 313-1155

[msimpson@schoel.com](mailto:msimpson@schoel.com)

OR William R. Thomas, PE

(205) 313-1150

[wthomas@schoel.com](mailto:wthomas@schoel.com)

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**End of Instructions for Submittal of Bids Section**

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## **B. GENERAL INFORMATION ABOUT THE BID AWARD PROCESS**

### **1. RECEIPT AND OPENING OF BIDS**

- a. Bids will be received by the City at the office of The City Clerk of the City of Hoover, Alabama, 100 Municipal Lane, Hoover, AL 35216, on or before the Submittal Deadline given in the bid advertisement, and then, at said office, shall be publicly opened and read aloud.
- b. The City may consider informal any bid not prepared and submitted in accordance with the provisions hereof or may waive any informalities in such submittal.
- c. Any bid may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof. However, no Bidder may withdraw a bid within 90 days after the actual date of the opening thereof without forfeiture of Bid security or Bid Bond.
- d. Any bid received after the time and date specified shall not be opened nor considered to be eligible for award.

### **2. METHOD OF AWARD**

- a. While the bid award may be made to the bidder who submits the lowest responsible bid meeting all specifications, the City of Hoover may or may not award the bid to the bidder who submits the lowest price. Other factors including, but not limited to, qualifications, experience, conformity with specifications, and past service history are among the factors that may be considered in determining the lowest responsible bidder. If the contract is awarded to someone other than the lowest price bidder, a note of explanation will appear in the bid file.
- b. In the event the lowest responsible bidder refuses to accept all bid requirements without deviation, that bid will then be disqualified. After such refusal, the bid may be awarded to the next lowest responsible bidder meeting all specifications.
- c. The City of Hoover reserves the right to award the bid in any manner that is in the best interest of the City.

### **3. DISQUALIFICATION OF BIDS**

- a. Bids may be disqualified before the awarding of the contract for any reason including but not limited to the following:
  - (1) Failure to deliver the bid submittal as required;
  - (2) Failure to sign and/or notarize the bid documents;
  - (3) Failure to include requested information or other details of the bid;
  - (4) Excessive errors in calculating prices or total;
- b. Bids may be disqualified for any other reason that may be deemed appropriate by Hoover City officials.

### **4. PRICES AND QUANTITIES**

- a. This is a Lump Sum Base Bid Project. Contractor shall be paid as a percentage of work complete. The unit prices will be used to establish pricing for Contract Change Orders (additions and/or deletions), if any.

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- b. Bid prices are not to exceed two decimal places (i.e., \$1.25).
- c. Prices quoted must remain firm for the entire period of the contract including extensions and renewals.
- d. In the event of a delay in awarding the bid, bid prices shall remain firm for 90 days from date of bid opening.

#### **5. EXEMPTION FROM SALES TAXES**

- a. The City of Hoover is exempt from all sales taxes. This statement is in no way to be construed as relieving a seller or contractor of their obligation to pay appropriate taxes to each and every authorized taxing entity.
- b. A copy of Hoover's Sales Tax Exemption form/documentation may be provided to bidders upon request.
- c. Additional information about the process and procedures for obtaining a Sales and Use Tax Certificate of Exemption for this project may be provided within the General Conditions and/or Supplemental Conditions Section(s) of this Bid document.

#### **6. BIDS SHALL COMPLY WITH USDOT TITLE VI**

- a. The City of Hoover, Alabama, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, Disadvantaged Business Enterprises (DBEs) will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, gender, religion, age, disability, marital status or national origin in consideration for an award.

#### **7. CONDITIONS AND RESERVATION OF RIGHTS**

- a. Reservation of Rights – the City of Hoover expressly reserves the right to:
  - (1) Waive minor deviations from specifications that do not impair overall effectiveness of services or functionality of the products;
  - (2) Waive any defect, irregularity or informality in any bid procedure;
  - (3) Reject or cancel any or all bids;
  - (4) Reissue the bid invitation;
  - (5) Extend the bid opening time and date;
  - (6) Increase or decrease the quantity specified in the bid invitation;
  - (7) Consider and accept alternate bids when most advantageous to the City.
  - (8) Negotiate with any bidder after proposals have been made regarding price, warranty, or any other factor being considered in this proposal.
- b. The City of Hoover reserves the right to purchase any item from any supplier who has been awarded an Alabama State bid contract, a GSA contract, or other contracts made in accordance with and/or authorized by state bid laws.

**End of General Information about the Bid Award Process Section**



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## C. GENERAL CONDITIONS OF THE CONTRACT

### 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. CITY: The City of Hoover, Alabama, or any agency that may be designated by the Legislature as its successor. The CITY is the entity identified as such in the Contract and is referred to throughout the Bid and Contract Documents as if singular in number. The term "CITY" means the CITY or the CITY's authorized representative. The term "CITY" 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.
- b. CONTRACT: The Contract is the embodiment of the Contract Documents. The Contract represents the entire and integrated agreement between the CITY 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 Contract. The contractual relationship which the Contract creates between the CITY 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 Contract:
  - (1) Notice to Contractors
  - (2) Instructions to Bidders
  - (3) Conditions of the Contract (General, Supplemental, and Other Conditions)
  - (4) Specifications (including Plans, Drawings, Diagrams, Exhibits, and Addenda)
  - (5) Bid Proposal (including Pricing Sheet and Proposal Agreement)
  - (6) Bid Bond
  - (7) Performance Bond
  - (8) Payment Bond
  - (9) Contract
  - (10) Contract Change Orders
- c. CONTRACT SUM: The Contract Sum is the total amount payable by the CITY 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 of time in which the Contractor must achieve Substantial Completion of the Work. The date on which the Contract Time begins is specified in the written Notice to Proceed issued to the Contractor by the CITY or Director. 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)

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- 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 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. **DIRECTOR:** The Director of the Staff of the City of Hoover.
  - h. **DRAWINGS:** The Drawings are the portions of the Contract Documents showing graphically the design, location, layout, and dimensions of the Work, in the form of plans, elevations, sections, details, schedules, and diagrams.
  - i. **ENGINEER:** The Engineer is the person or entity lawfully licensed to practice engineering in the State of Alabama, who is under contract with the CITY as the primary design professional for the Project and identified as the Engineer in the Construction Contract. The term “Engineer” means the Engineer or the Engineer’s authorized representative. If the employment of the Engineer is terminated, the CITY shall employ a new Engineer whose status under the Contract Documents shall be that of the former Engineer. If the primary design professional for the Project is a Professional Engineer, the term “Engineer” shall be substituted for the term “Engineer” wherever it appears in this document.
  - j. **NOTICE TO PROCEED:** A proceed order issued by the CITY or Director, as applicable, fixing the date on which the Contractor shall begin the prosecution of the Work, which is also the date on which the Contract Time shall begin.
  - k. **PROJECT:** The Project is the total construction of which the Work required by these Contract Documents may be the entirety or only a part with other portions to be constructed by the CITY or separate contractors.
  - l. **PROJECT INSPECTOR:** The member of the Technical Staff of the City of Hoover or its Agent to whom the Project is assigned relative to executing the respective inspections and authorities described in Article 16, Inspection of the Work.
  - m. **PROJECT MANUAL:** The Project Manual is the volume usually assembled for the Work which may include the Advertisement for Bids, Instructions to Bidders, sample forms, General Conditions of the Contract, Supplementary Conditions, and Specifications of the Work.

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- n. **SPECIFICATIONS:** The Specifications are that portion of the Contract Documents which set forth in writing the standards of quality and performance of products, equipment, materials, systems, and services and workmanship required for acceptable performance of the Work.
- o. **SUBCONTRACTOR:** A Subcontractor is a person or entity who is undertaking the performance of any part of the Work by virtue of a contract with the Contractor. The term "Subcontractor" means a Subcontractor or its authorized representatives.
- p. **WORK:** The Work is the construction and services required by the Contract Documents and includes all labor, materials, supplies, equipment, and other items and services as are necessary to produce the required construction and to fulfill the Contractor's obligations under the Contract. The Work may constitute the entire Project or only a portion of it.

## 2. INTENT AND INTERPRETATION OF THE CONTRACT DOCUMENTS

- a. **INTENT:** It is the intent of the Contract Documents that the Contractor shall properly execute and complete the Work described by the Contract Documents, and unless otherwise provided in the Contract, the Contractor shall provide all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work, in full accordance with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
- b. **COMPLEMENTARY DOCUMENTS:** The Contract Documents are complementary. If Work is required by one Contract Document, the Contractor shall perform the Work as if it were required by all of the Contract Documents. However, the Contractor shall be required to perform Work only to the extent that is consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.
- c. **ORDER of PRECEDENCE:** Should any discrepancy arise between the various elements of the Contract Documents, precedence shall be given to them in the following order unless to do so would contravene the apparent Intent of the Contract Documents as stated in preceding Paragraph A:
  - (1) The Construction Contract.
  - (2) Addenda, with those of later date having precedence over those of earlier date.
  - (3) Supplementary Conditions (or other Conditions which modify the General Conditions of the Contract).
  - (4) General Conditions of the Contract.
  - (5) The Specifications.
  - (6) Details appearing on the Drawings; large scale details shall take precedence over smaller scale details.
  - (7) The Drawings; large scale drawings shall take precedence over smaller scale drawings.

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- d. ORGANIZATION: Except as may be specifically stated within the technical specifications, neither the organization of the Specifications into divisions, sections, or otherwise, nor any arrangement of the Drawings shall control how the Contractor subcontracts portions of the Work or assigns Work to any trade.
- e. INTERPRETATION:
  - (1) The Contract Documents shall be interpreted collectively, each part complementing the others and consistent with the Intent of the Contract Documents stated in preceding Paragraph A. Unless an item shown or described in the Contract Documents is specifically identified to be furnished or installed by the CITY 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 CITY or separate contractors. The omission of words or phrases, for brevity of the Contract Documents, the inadvertent omission of words or phrases, or obvious typographical or written errors shall not defeat such interpretation as long as it is reasonably inferable from the Contract Documents as a whole.
  - (2) Words or phrases used in the Contract Documents which have well-known technical or construction industry meanings are to be interpreted consistent with such recognized meanings unless otherwise indicated.
  - (3) Except as noted otherwise, references to standard specifications or publications of associations, bureaus, or organizations shall mean the latest edition of the referenced standard specification or publication as of the date of the Advertisement for Bids.
  - (4) In the case of inconsistency between Drawings and Specifications or within either document not clarified by addendum, the better quality or greater quantity of Work shall be provided in accordance with the Engineer's interpretation.
  - (5) Generally, portions of the Contract Documents written in longhand take precedence over typed portions, and typed portions take precedence over printed portions.
  - (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 Engineer 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.

### 3. CONTRACTOR'S REPRESENTATIONS

- By executing the Construction Contract the Contractor represents to the CITY:
- a. The Contractor has visited the site of the Work to become familiar with local conditions under which the Work is to be performed and to evaluate reasonably observable conditions as compared with requirements of the Contract Documents.

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- 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 CITY in any manner unless authorized by the CITY in writing.

#### **4. DOCUMENTS FURNISHED TO CONTRACTOR**

Unless otherwise provided in the Contract Documents, the CITY shall not produce bid documents in paper format. All bid documents and amendments thereto shall be made available via the CITY's website at [www.hooveralabama.gov](http://www.hooveralabama.gov).

#### **5. OWNERSHIP OF DRAWINGS**

All original or duplicated Drawings, Specifications, and other documents prepared by the Engineer, and furnished to the Contractor are the property of the 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, with the exception of the Contractor's record set, shall be returned or accounted for by the Contractor to the Engineer, on request.

#### **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 CITY for acts and omissions of not only the Contractor and its agents and employees, but all persons and entities, and their agents and employees, who are performing portions of the Work for or on behalf of the Contractor or any of its Subcontractors.
- (4) The Contractor shall be responsible to inspect the in-progress and completed Work to verify its compliance with the Contract Documents and to insure that any element or portion of the Work upon which subsequent Work is to be applied or performed is in proper condition to receive the subsequent Work.

##### **b. SUPERINTENDENT**

- (1) The Contractor shall employ and maintain a competent level of supervision for the performance of the Work at the Project site, including a superintendent who shall: have full authority to receive instructions from the Engineer or CITY and to act on those instructions and 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 Engineer in writing of the name and qualifications of its proposed

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superintendent so that the CITY may review the individual's qualifications. If, for reasonable cause, the CITY refuses to approve the individual, or withdraws its approval after once giving it, the Contractor shall name a different superintendent for the CITY's review and approval. Any disapproved superintendent will not perform in that capacity thereafter at the Project site.

c. EMPLOYEES

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

## 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 Engineer as a written request for information that includes a detailed statement identifying the specific Drawings or Specifications that are in need of clarification and the error, omission, or inconsistency discovered in them.
  - (1) The Contractor shall not be expected to act as a licensed design professional and ascertain whether the Contract Documents comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, but the Contractor shall be obligated to promptly notify the Engineer of any such noncompliance discovered by or made known to the Contractor. If the Contractor performs Work without fulfilling this notification obligation, the Contractor shall pay the resulting costs and damages that would have been avoided by such notification.
  - (2) The Contractor shall not be liable to the CITY for errors, omissions, or inconsistencies that may exist in the Contract Documents, or between the Contract Documents and conditions at the site, unless the Contractor knowingly fails to report a discovered error, omission, or inconsistency to the Engineer, in which case the Contractor shall pay the resulting costs and damages that would have been avoided by such notification.
- c. If the Contractor considers the Engineer's response to a request for information to constitute a change to the Contract Documents involving additional costs and/or

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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 CITY for reasonable charges from the Engineer for the additional services required to review, research, and respond to such requests for information.

#### **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. Without extra cost to the CITY, the Contractor shall engage a licensed surveyor if necessary to verify boundary lines, keep within property lines, and shall be responsible for encroachments on rights or property of public or surrounding property owners.
- b. The Contractor shall establish all base lines for the location of the principal components of the Work and make all detail surveys necessary for construction, including grade stakes, batter boards and other working points, lines and elevations. If the Work involves alteration of or addition to existing structures or improvements, the Contractor shall locate and measure elements of the existing conditions as is necessary to facilitate accurate fabrication, assembly, and installation of new Work in the relationship, alignment, and/or connection to the existing structure or improvement as is shown in the Contract Documents.

#### **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 Engineer 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 Engineer without action.
- b. The Contractor shall be responsible to the CITY for the accuracy of its Submittals and the conformity of its submitted information to the requirements of the Contract Documents. Each Submittal shall bear the Contractor's approval, evidencing that the Contractor has reviewed and found the information to be in compliance with the requirements of the Contract Documents. Submittals which are not marked as reviewed and approved by the Contractor may be returned by the Engineer without action.
- c. The Contractor shall prepare and deliver its submittals to the Engineer sufficiently in advance of construction requirements and in a sequence as to cause no delay in the Work or in the activities of the CITY or of separate contractors. In coordinating the

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- Submittal process with its construction schedule, the Contractor shall allow sufficient time to permit adequate review by the Engineer.
- 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 Engineer.
  - f. In the case of a resubmission, the Contractor shall direct specific attention to all revisions in a Submittal. The Engineer's approval of a resubmission shall not apply to any revisions that were not brought to the Engineer's attention.
  - g. If the Contract Documents specify that a Submittal is to be prepared and sealed by a registered engineer 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 CITY and the Engineer 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 Engineer 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 Engineer is authorized by the CITY to approve "minor" deviations from the requirements of the Contract Documents. "Minor" deviations are defined as those which are in the interest of the CITY, 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 CITY 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 Engineer, the Contractor shall direct the Engineer's attention to, and request specific approval of, the deviation.



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Otherwise, the Engineer'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 CITY or separate contractors, or additional services by the Engineer required to accommodate an approved deviation unless the Contractor has specifically informed the Engineer 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. **ENGINEER'S REVIEW and APPROVAL**
    - (1) The Engineer 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 Engineer shall advise the Contractor of any errors or omissions which the Engineer may detect during this review. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
    - (2) The Engineer will review and respond to all Submittals with reasonable promptness to avoid delay in the Work or in the activities of the CITY, Contractor or separate contractors, while allowing sufficient time to permit adequate review.
    - (3) No corrections or changes to Submittals indicated by the Engineer 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 Engineer 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.

## 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

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- information to insure that updated Contract Documents are used for performance of the Work.
- c. RECORD SET: One set of the Drawings and Project Manual described in Paragraph B shall be the Contractor's record set in which the Contractor shall record all field changes, corrections, selections, final locations, and other information as will be duplicated on the "As-built" documents required under Article 11. The Contractor shall record such "as-built" information in its record set as it becomes available through progress of the Work. The Contractor's performance of this requirement shall be subject to confirmation by the Engineer at any time as a prerequisite to approval of Progress Payments.
  - d. AVAILABILITY: The documents and samples required by this Article to be maintained at the Project site shall be readily available to the Engineer, CITY, Project Inspector, and their representatives.

## 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 Engineer for submission to the CITY upon completion of the Work. Each set of "As-built" documents shall consist of a copy of the Drawings and Project Manual, in like-new condition, into which the Contractor has neatly incorporated all Addenda, Change Orders, supplemental drawings, clarifications, field changes, corrections, selections, actual locations of underground utilities, and other information as required herein or specified elsewhere in the Contract Documents.
- b. The Contractor shall use the following methods for incorporating information into the "As-built" documents:
  - (1) Drawings
    - (a) To the greatest extent practicable, information shall be carefully drawn and lettered, in ink, on the Drawings in the form of sketches, details, plans, notes, and dimensions as required to provide a fully dimensioned record of the Work. When required for clarity, sketches, details, or partial plans shall be drawn on supplemental sheets and bound into the Drawings and referenced on the drawing being revised.
    - (b) Where a revised drawing has been furnished by the Engineer, 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 Engineer, 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 Engineer 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.

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- (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) 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 Engineer for approval. If the Engineer requires that any corrections be made, the documents will be returned in a reasonable time for correction and resubmission.

## 12. PROGRESS SCHEDULE

**(NOT APPLICABLE IF THE CONTRACT TIME IS 60 DAYS OR LESS.)**

- a. The Contractor shall within fifteen days after the date of commencement stated in the Notice to Proceed, or such other time as may be provided in the Contract Documents, prepare and submit to the Engineer for review and approval a practicable construction schedule informing the Engineer and CITY of the order in which the Contractor plans to carry on the Work within the Contract Time. The Engineer'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 Engineer 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 "Progress Schedule and Report" or similar format of suitable scale and detail to indicate the percentage of Work scheduled to be completed at the end of each month. At the end of each month the Contractor shall enter the actual percentage of completion on the construction schedule submit two copies to the Engineer, and attach one copy to each copy of the monthly Application for Payment. The construction schedule shall be revised to reflect any agreed extensions of the Contract Time or as required by conditions of the Work.
- c. If a more comprehensive schedule format is specified elsewhere in the Contract Documents or voluntarily employed by the Contractor, a detailed report shall also be prepared, updated, and submitted as described in preceding Paragraph B.
- d. The Contractor's construction schedule shall be used by the Contractor, Engineer, and CITY to determine the adequacy of the Contractor's progress. The Contractor

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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 Engineer or CITY, the Contractor is not taking sufficient steps to regain schedule, the Engineer may, with the CITY's concurrence, issue the Contractor a Notice to Cure pursuant to Article 27. In such a Notice to Cure the Engineer may require the Contractor to submit such supplementary or revised construction schedules as may be deemed necessary to demonstrate the manner in which schedule will be regained.

### **13. EQUIPMENT, MATERIALS, AND SUBSTITUTIONS**

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

### **14. SAFETY AND PROTECTION OF PERSONS AND PROPERTY**

- a. The Contractor shall be solely and completely responsible for conditions at the Project site, including safety of all persons (including employees) and property. The Contractor shall create, maintain, and supervise conditions and programs to facilitate and promote safe execution of the Work, and shall supervise the Work with the attention and skill required to assure its safe performance. Safety provisions shall conform to OSHA requirements and all other federal, state, county, and local laws, ordinances, codes, and regulations. Where any of these are in conflict, the more

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- stringent requirement shall be followed. Nothing contained in this Contract shall be construed to mean that the CITY has employed the Engineer nor has the Engineer employed its consultants to administer, supervise, inspect, or take action regarding safety programs or conditions at the Project site.
- b. The Contractor shall employ Construction Methods, safety precautions, and protective measures that will reasonably prevent damage, injury or loss to:
    - (1) workers and other persons on the Project site and in adjacent and other areas that may be affected by the Contractor's operations;
    - (2) the Work and materials and equipment to be incorporated into the Work and stored by the Contractor on or off the Project site; and
    - (3) other property on, or adjacent to, the Project site, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and other improvements not designated in the Contract Documents to be removed, relocated, or replaced.
  - c. The Contractor shall be responsible for the prompt remedy of damage and loss to property, including the filing of appropriate insurance claims, caused in whole or in part by the fault or negligence of the Contractor, a Subcontractor, or anyone for whose acts they may be liable.
  - d. The Contractor shall comply with and give notices required by applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety and protection of persons or property, including without limitation notices to adjoining property owners of excavation or other construction activities that potentially could cause damage or injury to adjoining property or persons thereon.
  - e. The Contractor shall erect and maintain barriers, danger signs, and any other reasonable safeguards and warnings against hazards as may be required for safety and protection during performance of the Contract and shall notify owners and users of adjacent sites and utilities of conditions that may exist or arise which may jeopardize their safety.
  - f. If use or storage of explosives or other hazardous materials or equipment or unusual Construction Methods are necessary for execution of the Work, the Contractor shall exercise commensurate care and employ supervisors and workers properly qualified to perform such activity.
  - g. The Contractor shall furnish a qualified safety representative at the Project site whose duties shall include the prevention of accidents. The safety representative shall be the Contractor's superintendent, unless the Contractor assigns this duty to another responsible member of its on-site staff and notifies the CITY and Engineer in writing of such assignment.
  - h. The Contractor shall not permit a load to be applied, or forces introduced, to any part of the construction or site that may cause damage to the construction or site or endanger safety of the construction, site, or persons on or near the site.
  - i. The Contractor shall have the right to act as it deems appropriate in emergency situations jeopardizing life or property. The Contractor shall be entitled to equitable adjustment of the Contract Sum or Contract Time for its efforts expended for the sole

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benefit of the CITY in an emergency. Such adjustment shall be determined as provided in Articles 19 and 20.

- j. The duty of the Engineer and the Engineer's consultants to visit the Project site to conduct periodic inspections of the Work or for other purposes shall not give rise to a duty to review or approve the adequacy of the Contractor's safety program, safety supervisor, or any safety measure which Contractor takes or fails to take in, on, or near the Project site.

#### **15. HAZARDOUS MATERIALS**

- a. A Hazardous Material is any substance or material identified as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing its handling, disposal, and/or clean-up. Existing Hazardous Materials are Hazardous Materials discovered at the Project site and not introduced to the Project site by the Contractor, a Subcontractor, or anyone for whose acts they may be liable.
- b. If, during the performance of the Work, the Contractor encounters a suspected Existing Hazardous Material, the Contractor shall immediately stop work in the affected area, take measures appropriate to the condition to keep people away from the suspected Existing Hazardous Material, and immediately notify the Engineer and CITY of the condition in writing.
- c. The CITY shall obtain the services of an independent laboratory or professional consultant, appropriately licensed and qualified, to determine whether the suspected material is a Hazardous Material requiring abatement and, if so, to certify after its abatement that it has been rendered harmless. Any abatement of Existing Hazardous Materials will be the responsibility of the CITY. The CITY 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 CITY will not employ persons or entities to perform these services to whom the Contractor or Engineer has reasonable objection.
- d. After certification by the CITY'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 CITY 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 CITY 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.

#### **16. INSPECTION OF THE WORK**

- a. GENERAL
  - (1) The Contractor is solely responsible for the Work's compliance with the Contract Documents; therefore, the Contractor shall be responsible to inspect

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in-progress and completed Work, and shall verify its compliance with the Contract Documents and that any element or portion of the Work upon which subsequent Work is to be applied or performed is in proper condition to receive the subsequent Work. Neither the presence nor absence of inspections by the Engineer, CITY, Director, Project Inspector, any public authority having jurisdiction, or their representatives shall relieve the Contractor of responsibility to inspect the Work, for responsibility for Construction Methods and safety precautions and programs in connection with the Work, or from any other requirement of the Contract Documents.

- (2) The Engineer, CITY, Director, Project Inspector, any public authority having jurisdiction, and their representatives shall have access at all times to the Work for inspection whenever it is in preparation or progress, and the Contractor shall provide proper facilities for such access and inspection. All materials, workmanship, processes of manufacture, and methods of construction, if not otherwise stipulated in the Contract Documents, shall be subject to inspection, examination, and test at any and all places where such manufacture and/or construction are being carried on. Such inspections will not unreasonably interfere with the Contractor's operations.
  - (3) The Engineer will inspect the Work as a representative of the CITY. The Engineer's inspections may be supplemented by inspections by the Project Inspector as a representative of the CITY.
  - (4) The Contractor may be charged by the CITY for any extra cost of inspection incurred by the CITY or Engineer on account of material and workmanship not being ready at the time of inspection set by the Contractor.
- b. TYPES of INSPECTIONS
- (1) SCHEDULED INSPECTIONS and CONFERENCES. Scheduled Inspections and Conferences are conducted by the Engineer, scheduled by the Engineer in coordination with the Contractor and Project Inspector, and are attended by the Contractor and applicable Subcontractors, suppliers and manufacturers, and the Project Inspector. Scheduled Inspections and Conferences of this Contract include:
    - (a) Pre-construction Conference.
    - (b) 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 Engineer, CITY, and Project Inspector as being ready for the CITY's occupancy or use. At the conclusion of this inspection, items requiring correction or completion ("punch list" items) shall be minimal and require only a short period of time for accomplishment to establish Final Acceptance of the Work. If the Work, or designated portion of the Work, includes the installation, or modification, of a fire alarm system or other life safety systems essential to occupancy, such systems shall have been tested and appropriately certified before the Final Inspection.

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- (c) Year-end Inspection(s): An inspection of the Work or each separately completed portion thereof, is required near the end of the Contractor's one-year warranty period(s). The subsequent delivery of the Engineer's report of this inspection will serve as confirmation that the Contractor was notified of Defective Work found within the warranty period in accordance with Article 35.
  - (2) PERIODIC INSPECTIONS. Periodic Inspections are conducted throughout the course of the Work by the Engineer, the Engineer's consultants, their representatives, and the Project Inspector, 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 CITY).
- c. INSPECTIONS by the ENGINEER
- (1) The Engineer 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 CITY.
  - (2) The Engineer will visit the site at intervals appropriate to the stage of the Contractor's operations and as otherwise necessary to:
    - (a) become generally familiar with the in-progress and completed Work and the quality of the Work,
    - (b) determine whether the Work is progressing in general accordance with the Contractor's schedule and is likely to be completed within the Contract Time,
    - (c) visually compare readily accessible elements of the Work to the requirements of the Contract Documents to determine, in general, if the Contractor's performance of the Work indicates that the Work will conform to the requirements of the Contract Documents when completed,
    - (d) endeavor to guard the CITY 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 CITY fully informed about the Project.
  - (3) The Engineer shall have the authority to reject Defective Work or require its correction, but shall not be required to make exhaustive investigations or examinations of the in-progress or completed portions of the Work to expose the presence of Defective Work. However, it shall be an obligation of the



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Engineer to report in writing, to the CITY, Contractor, and Project Inspector, any Defective Work recognized by the Engineer.

- (4) The Engineer shall have the authority to require the Contractor to stop work only when, in the Engineer's reasonable opinion, such stoppage is necessary to avoid Defective Work. The Engineer shall not be liable to the Contractor or CITY for the consequences of any decisions made by the Engineer in good faith either to exercise or not to exercise this authority.
  - (5) "Inspections by the Engineer" includes appropriate inspections by the Engineer's consultants as dictated by their respective disciplines of design and the stage of the Contractor's operations.
- d. INSPECTIONS by the PROJECT INSPECTOR
- (1) The Project Inspector will:
    - (a) participate in scheduled inspections and conferences as practicable,
    - (b) perform periodic inspections of in-progress and completed Work to ensure code compliance of the Project and general conformance of the Work with the Contract Documents, and
    - (c) monitor the Contractor's progress and performance of the Work.
  - (2) The Project Inspector shall have the authority to:
    - (a) reject Work that is not in compliance with the State Building Code adopted by the Commission, unless the Work is in accordance with the Contract Documents in which case the Project Inspector will advise the Engineer to initiate appropriate corrective action, and
    - (b) Notify the Engineer, CITY, and Contractor of Defective Work recognized by the Project Inspector.
  - (3) The Project Inspector's periodic inspections will usually be scheduled around key stages of construction based upon information reported by the Engineer. As the Engineer or CITY deems appropriate, the Project Inspector, as well as other members of the Technical Staff, can be requested to schedule special inspections or meetings to address specific matters. The written findings of Project Inspector will be transmitted to the CITY, Contractor, and Engineer.
  - (4) The Project Inspector is not authorized to revoke, alter, relax, or waive any requirements of the Contract Documents, to finally approve or accept any portion of the Work or to issue instructions contrary to the Contract Documents without concurrence of the CITY. The Contractor shall not proceed with Work as a result of instructions or findings of the Project Inspector which the Contractor considers to be a change to the requirements of the Contract Documents without written authorization of the CITY through the Engineer.
- e. UNCOVERING WORK
- (1) If the Contractor covers a portion of the Work before it is examined by the Engineer and this is contrary to the Engineer's request or specific requirements in the Contract Documents, then, upon written request of the Engineer, the

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Work must be uncovered for the Engineer'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 Engineer before it is covered, the Engineer 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 CITY or a separate contractor in which event the CITY 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 CITY or separate contractors. If the Contract Documents require that a Specified Inspection or Test be witnessed or attended by the Engineer or Engineer's consultant, the Contractor shall give the Engineer 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 CITY, including reasonable charges, if any, by the Engineer for additional services. Through appropriate Contract Change Order the CITY shall bear costs of tests, inspections or approvals which become Contract requirements subsequent to the receipt of bids.
- (2) If the Engineer, CITY, or public authority having jurisdiction determines that inspections, tests, demonstrations, or approvals in addition to Specified Inspections and Tests are required, the Contractor shall, upon written instruction from the Engineer, arrange for their performance by an entity acceptable to the CITY, giving timely notice to the engineer of the time and place of their performance. Related costs shall be borne by the CITY 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 CITY, including reasonable charges, if any, by the Engineer 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 Engineer.
- (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.

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## 17. CORRECTION OF DEFECTIVE WORK

- a. The Contractor shall, at the Contractor's expense, promptly correct Defective Work rejected by the Engineer 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 CITY 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 Engineer, and (3) the expense of making good all work of the Contractor, CITY, or separate contractors destroyed or damaged by the correction of Defective Work.

## 18. DEDUCTIONS FOR UNCORRECTED WORK

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

## 19. CHANGES IN THE WORK

- a. GENERAL:
  - (1) The CITY may at any time direct the Contractor to make changes in the Work which are within the general scope of the Contract, including changes in the Drawings, Specifications, or other portions of the Contract Documents to add, delete, or otherwise revise portions of the Work. The Engineer is authorized by the CITY to direct "minor" changes in the Work by written order to the Contractor. "Minor" changes in the Work are defined as those which are in the interest of the CITY, do not materially alter the quality or performance of the finished Work, and do not affect the cost or time of performance of the Work. Changes in the Work which are not "minor" may be authorized only by the CITY.
  - (2) If the CITY directs a change in the Work, the change shall be incorporated into the Contract by a Contract Change Order prepared by the Engineer and signed by the Contractor, CITY, 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 CITY may, upon agreement by the Contractor, incorporate previously un-awarded 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.

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- (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 CITY through the Engineer.
- b. DETERMINATION of ADJUSTMENT of the CONTRACT SUM: The adjustment of the Contract Sum resulting from a change in the Work shall be determined by one of the following methods, or a combination thereof, as selected by the CITY:
  - (1) Lump Sum. By mutual agreement to a lump sum based on or negotiated from an itemized cost proposal from the Contractor. Additions to the Contract Sum shall include the Contractor's direct costs plus a maximum 15% markup for overhead and profit. Where subcontract work is involved the total mark-up for the Contractor and a Subcontractor shall not exceed 25%. Changes which involve a net credit to the CITY shall include credits for overhead and profit on the deducted work. Changes involving a net credit and that do not include overhead and profit shall be justified by the Engineer, approved by the CITY, and must also be approved by the Director. For the purposes of this method of determining an adjustment of the Contract Sum, "overhead" shall cover the Contractor's indirect costs of the change, such as the cost of bonds, superintendent and other job office personnel, watchman, job office, job office supplies and expenses, temporary facilities and utilities, and home office expenses.
  - (2) Unit Price. By application of Unit Prices included in the Contract or subsequently agreed to by the parties. However, if the character or quantity originally contemplated is materially changed so that application of such unit price to quantities of Work proposed will cause substantial inequity to either party, the applicable unit price shall be equitably adjusted.
  - (3) Force Account. By directing the Contractor to proceed with the change in the Work on a "force account" basis under which the Contractor shall be reimbursed for reasonable expenditures incurred by the Contractor and its Subcontractors in performing added Work and the CITY shall receive reasonable credit for any deleted Work. The Contractor shall keep and present, in such form as the CITY may prescribe, an itemized accounting of the cost of the change together with sufficient supporting data. Unless otherwise stated in the directive, the adjustment of the Contract Sum shall be limited to the following:
    - (a) costs of labor and supervision, including employee benefits, social security, retirement, unemployment and workers' compensation insurance required by law, agreement, or under Contractor's or Subcontractor's standard personnel policy;
    - (b) cost of materials, supplies and equipment, including cost of delivery, whether incorporated or consumed;
    - (c) rental cost of machinery and equipment, not to exceed prevailing local rates if contractor-owned;

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- (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 CITY for the value of deleted Work, without Contractor or Subcontractor mark-ups; and
  - (f) for additions to the Contract Sum, mark-up of the Contractor's direct costs for overhead and profit not exceeding 15% on Contractor's work nor exceeding 25% for Contractor and Subcontractor on a Subcontractor's work. Changes which involve a net credit to the CITY shall include credits for overhead and profit on the deducted work. Changes involving a net credit that do not include overhead and profit shall be justified by the Engineer, approved by the CITY, and must also be approved by the Director. For the purposes of this method of determining an adjustment of the Contract Sum, "overhead" shall cover the Contractor's indirect costs of the change, such as the cost of insurance other than mentioned above, bonds, superintendent and other job office personnel, watchman, use and rental of small tools, job office, job office supplies and expenses, temporary facilities and utilities, and home office expenses.
- c. ADJUSTMENT of the CONTRACT TIME due to CHANGES:
- (1) Unless otherwise provided in the Contract Documents, the Contract Time shall be equitably adjusted for the performance of a change provided that the Contractor notifies the Engineer in writing that the change will increase the time required to complete the Work. Such notice shall be provided no later than:
    - (a) with the Contractor's cost proposal stating the number of days of extension requested, or
    - (b) Within ten days after the Contractor receives a directive to proceed with a change in advance of submitting a cost proposal, in which case the notice should provide an estimated number of days of extension to be requested, which may be subject to adjustment in the cost proposal.
  - (2) The Contract Time shall be extended only to the extent that the change affects the time required to complete the entire Work of the Contract, taking into account the concurrent performance of the changed and unchanged Work.
- d. CHANGE ORDER PROCEDURES
- (1) If the CITY proposes to make a change in the Work, the Engineer will request that the Contractor provide a cost proposal for making the change to the Work. The request shall be in writing and shall adequately describe the proposed change using drawings, specifications, narrative, or a combination thereof. Within 21 days after receiving such a request, or such other time as may be stated in the request, the Contractor shall prepare and submit to the Engineer 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.

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- (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 CITY, through the Engineer, 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 CITY, or is negotiated to the mutual agreement of the Contractor and CITY, the Engineer 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 Engineer 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 CITY.
- (5) If the Contractor and CITY cannot agree on the amount of the adjustment in the Contract Sum for a change, the CITY, through the Engineer, may order the Contractor to proceed with the change on a Force Account basis, but the net cost to the CITY 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 CITY 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 CITY 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.



**20. CLAIMS FOR EXTRA COST OR EXTRA WORK**

- a. If the Contractor considers any instructions by the Engineer, CITY, Project Inspector, or public authority having jurisdiction to be contrary to the requirements of the Contract Documents and will involve extra work and/or cost under the Contract, the Contractor shall give the Engineer written notice thereof within ten days after receipt of such instructions, and in any event before proceeding to execute such work. As used in this Article, "instructions" shall include written or oral clarifications, directions, instructions, interpretations, or determinations.
- b. The Contractor's notification pursuant to Paragraph 20.A shall state: (1) the date, circumstances, and source of the instructions, (2) that the Contractor considers the instructions to constitute a change to the Contract Documents and why, and (3) an estimate of extra cost and time that may be involved to the extent an estimate may be reasonably made at that time.
- c. Except for claims relating to an emergency endangering life or property, no claim for extra cost or extra work shall be considered in the absence of prior notice required under Paragraph 20.A.
- d. Within ten days of receipt of a notice pursuant to Paragraph 20.A, the Engineer will respond in writing to the Contractor, stating one of the following:
  - (1) The cited instruction is rescinded.
  - (2) The cited instruction is a change in the Work and in which manner the Contractor is to proceed with procedures of Article 19, Changes in the Work.
  - (3) The cited instruction is reconfirmed, is not considered by the Engineer to be a change in the Contract Documents, and the Contractor is to proceed with Work as instructed.
- e. If the Engineer's response to the Contractor is as in Paragraph 20.D (3), the Contractor shall proceed with the Work as instructed. If the Contractor continues to consider the instructions to constitute a change in the Contract Documents, the Contractor shall, within ten days after receiving the Engineer's response, notify the Engineer in writing that the Contractor intends to submit a claim pursuant to Article 24, Resolution of Claims and Disputes

**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
  - (1) If Differing Site Conditions are encountered, then the party discovering the condition shall promptly notify the other party before the condition is disturbed and in no event later than ten days after discovering the condition.

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- (2) Upon such notice and verification that a Differing Site Condition exists, the Engineer will, with reasonable promptness and with the CITY's concurrence, make changes in the Drawings and/or Specifications as are deemed necessary to conform to the Differing Site Condition.
- (3) 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.
- (4) If the Engineer determines a Differing Site Condition has not been encountered, the Engineer shall notify the CITY and Contractor in writing, stating the reason for that determination.

## 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.

## 23. DELAYS

- a. A delay beyond the Contractor's control at any time in the commencement or progress of Work by an act or omission of the CITY, Engineer, or any separate contractor or by labor disputes, unusual delay in deliveries, unavoidable casualties, fires, abnormal floods, tornadoes, or other cataclysmic events of nature, may entitle the Contractor to an extension of the Contract Time provided, however, that the Contractor shall, within ten days after the delay first occurs, give written notice to the Engineer of the cause of the delay and its probable effect on progress of the entire Work.
- b. Adverse weather conditions that are more severe than anticipated for the locality of the Work during any given month may entitle the Contractor to an extension of Contract Time provided, however;
  - (1) the weather conditions had an adverse effect on construction scheduled to be performed during the period in which the adverse weather occurred, which in reasonable sequence would have an effect on completion of the entire Work,
  - (2) the Contractor shall, within twenty-one days after the end of the month in which the delay occurs, give the Engineer written notice of the delay that occurred during that month and its probable effect on progress of the Work, and
  - (3) Within a reasonable time after giving notice of the delay, the Contractor provides the Engineer 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.



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- 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 Engineer and signed by the Contractor, CITY, and other signatories to the Construction Contract or, at closeout of the Contract, by mutual written agreement between the Contractor and CITY. The adjustment of the Contract Time shall not exceed the extent to which the delay extends the time required to complete the entire Work of the Contract.
- d. The Contractor shall not be entitled to any adjustment of the Contract Sum for damage due to delays claimed pursuant to this Article unless the delay was caused by the CITY or Engineer and was either:
  - (1) the result of bad faith or active interference or
  - (2) Beyond the contemplation of the parties and not remedied within a reasonable time after notification by the Contractor of its presence.

## 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 CITY 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 CITY 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 CITY 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 CITY to fail or refuse to continue to make payments in accordance with the Contract Documents.
- c. GOOD FAITH EFFORT to SETTLE: The Contractor and CITY agree that, upon the assertion of a Claim by the other, they will make a good faith effort, with the Engineer's assistance and advice, to achieve mutual resolution of the Claim. If mutually agreed, the Contractor and CITY may endeavor to resolve a Claim through mediation. If efforts to settle are not successful, the Claim shall be resolved in accordance with paragraph D or E below, whichever applies.
- d. FINAL RESOLUTION for STATE-FUNDED CONTRACTS

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- (1) If the Contract is funded in whole or in part with state funds, the final Resolution of Claims and Disputes which cannot be resolved by the Contractor (or its Surety) and CITY shall be by the Director, whose decision shall be final, binding, and conclusive upon the Contractor, its Surety, and the CITY.
  - (2) When it becomes apparent to the party asserting a Claim (the Claimant) that an impasse to mutual resolution has been reached, the Claimant may request in writing to the Director that the Claim be resolved by decision of the Director. Such request by the Contractor (or its Surety) shall be submitted through the CITY. Should the CITY fail or refuse to submit the Contractor's request within ten days of receipt of same, the Contractor may forward such request directly to the Director. Upon receipt of a request to resolve a Claim, the Director will instruct the parties as to procedures to be initiated and followed.
  - (3) If the respondent to a Claim fails or refuses to participate or cooperate in the Resolution procedures to the extent that the Claimant is compelled to initiate legal proceedings to induce the Respondent to participate or cooperate, the Claimant will be entitled to recover, and may amend its Claim to include, the expense of reasonable attorney's fees so incurred.
- e. FINAL RESOLUTION for LOCALLY-FUNDED CONTRACTS: If the Contract is funded in whole with funds provided by a CITY or county board of education or other local governmental authority and the Contract Documents do not stipulate a binding alternative dispute resolution method, the final resolution of Claims and Disputes which cannot be resolved by the Contractor (or its Surety) and CITY may be by any legal remedy available to the parties. Alternatively, upon the written agreement of the Contractor (or its Surety) and the CITY, final Resolution of Claims and Disputes may be by submission to binding arbitration before a neutral arbitrator or panel or by submission to the Director in accordance with preceding Paragraph

## **25. CITY'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 CITY or separate contractors, the Engineer may give the Contractor written Notice to Cure the Defective Work within a reasonable, stated time. If within ten days after receipt of the Notice to Cure the Contractor has not proceeded and satisfactorily continued to cure the Defective Work or provided the Engineer with written verification that satisfactory positive action is in process to cure the Defective Work, the CITY may, without prejudice to any other remedy available to the CITY, correct the Defective Work and deduct the actual cost of the correction from payment then or thereafter due to the Contractor.

## **26. CITY'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 CITY may direct the Contractor in writing to stop the Work, or any part of the Work, until the cause for the CITY's directive has been eliminated; however, the CITY's right to stop the Work shall not be construed as a duty of the CITY to be exercised for the benefit of the Contractor or any other person or entity.

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b. **SUSPENSION** by the CITY for **CONVENIENCE**

- (1) The CITY may, at any time and without cause, direct the Contractor in writing to suspend, delay or interrupt the Work, or any part of the Work, for a period of time as the CITY may determine.
- (2) The Contract Sum and Contract Time shall be adjusted, pursuant to Article 19, for reasonable increases in the cost and time caused by a CITY-directed suspension, delay or interruption of Work for the CITY'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 CITY.

## **27. CITY'S RIGHT TO TERMINATE CONTRACT**

a. **TERMINATION** by the CITY for **CAUSE**

- (1) **Causes:** The CITY may terminate the Contractor's right to complete the Work, or any designated portion of the Work, if the Contractor:
  - (a) should be adjudged bankrupt, or should make a general assignment for the benefit of the Contractor's creditors, or if a receiver should be appointed on account of the Contractor's insolvency to the extent termination for these reasons is permissible under applicable law;
  - (b) refuses or fails to prosecute the Work, or any part of the Work, with the diligence that will insure its completion within the Contract Time, including any extensions, or fails to complete the Work within the Contract Time;
  - (c) refuses or fails to perform the Work, including prompt correction of Defective Work, in a manner that will insure that the Work, when fully completed, will be in accordance with the Contract Documents;
  - (d) fails to pay for labor or materials supplied for the Work or to pay Subcontractors in accordance with the respective Subcontract;
  - (e) persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or the instructions of the Engineer or CITY; or
  - (f) Is otherwise guilty of a substantial breach of the Contract.
- (2) **Procedure for Un-bonded Construction Contracts (Generally, contracts less than \$50,000):**
  - (a) **Notice to Cure:** In the presence of any of the above conditions the Engineer may give the Contractor written notice to cure the condition within a reasonable, stated time, but not less than ten days after the Contractor receives the notice.
  - (b) **Notice of Termination:** If, at the expiration of the time stated in the Notice to Cure, the Contractor has not proceeded and satisfactorily continued to cure the condition or provided the Engineer with written verification that satisfactory positive action is in process to cure the condition, the CITY may, without prejudice to any other rights or remedies of the CITY, give the Contractor written notice that the Contractor's right to complete the

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- Work, or a designated portion of the Work, shall terminate seven days after the Contractor's receipt of the written Notice of Termination.
- (c) If the Contractor satisfies a Notice to Cure, but the condition for which the notice was first given reoccurs, the CITY may give the Contractor a seven day Notice of Termination without giving the Contractor another Notice to Cure.
  - (d) At the expiration of the seven days of the termination notice, the CITY may: (1) take possession of the site, of all materials and equipment stored on and off site, and of all Contractor-owned tools, construction equipment and machinery, and facilities located at the site, and (2) finish the Work by whatever reasonable method the CITY may deem expedient.
  - (e) The Contractor shall not be entitled to receive further payment under the Contract until the Work is completed.
  - (f) If the CITY's cost of completing the Work, including correction of Defective Work, compensation for additional design, engineering, managerial, and administrative services, and reasonable attorneys' fees due to the default and termination, is less than the unpaid balance of the Contract Sum, the excess balance less liquidated damages for delay shall be paid to the Contractor. If such cost to the CITY including attorney's fees, plus liquidated damages, exceeds the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the CITY. Final Resolution of any claim or Dispute involving the termination or any amount due any party as a result of the termination shall be pursuant to Article 24.
  - (g) Upon the Contractor's request, the CITY shall furnish to the Contractor a detailed accounting of the CITY's cost of completing the Work.
- (3) Procedure for Bonded Construction Contracts (Generally, contracts over \$50,000):
- (a) Notice to Cure: In the presence of any of the above conditions the Engineer may give the Contractor and its Surety written Notice to Cure the condition within a reasonable, stated time, but not less than ten days after the Contractor receives the notice.
  - (b) Notice of Termination: If, at the expiration of the time stated in the Notice to Cure, the Contractor has not proceeded and satisfactorily continued to cure the condition or provided the Engineer with written verification that satisfactory positive action is in process to cure the condition, the CITY may, without prejudice to any other rights or remedies of the CITY, give the Contractor and its Surety written notice declaring the Contractor to be in default under the Contract and stating that the Contractor's right to complete the Work, or a designated portion of the Work, shall terminate seven days after the Contractor's receipt of the written Notice of Termination.

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- (c) If the Contractor satisfies a Notice to Cure, but the condition for which the notice was first given reoccurs, the CITY may give the Contractor a Notice of Termination without giving the Contractor another Notice to Cure.
  - (d) Demand on the Performance Bond: With the Notice of Termination the CITY shall give the Surety a written demand that, upon the effective date of the Notice of Termination, the Surety promptly fulfill its obligation to take charge of and complete the Work in accordance with the terms of the Performance Bond.
  - (e) Surety Claims: Upon receiving the CITY's demand on the Performance Bond, the Surety shall assume all rights and obligations of the Contractor under the Contract. However, the Surety shall also have the right to assert "Surety Claims" to the CITY, which are defined as claims relating to acts or omissions of the CITY or Engineer 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 CITY, through the Engineer, 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 CITY, through the Engineer, 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 CITY to fail or refuse to continue to make payments in accordance with the Contract Documents.
  - (f) Payments to Surety: The Surety shall be paid for completing the Work in accordance with the Contract Documents as if the Surety were the Contractor. The CITY shall have the right to deduct from payments to the Surety any reasonable costs incurred by the CITY, including compensation for additional design, engineering, managerial, and administrative services, and attorneys' fees as necessitated by termination of the Contractor and completion of the Work by the Surety. No further payments shall be made to the Contractor by the CITY. The Surety shall be solely responsible for any accounting to the Contractor for the portion of the Contract Sum paid to Surety by CITY or for the costs and expenses of completing the Work.
- (4) Wrongful Termination: If any notice of termination by the CITY for cause, made in good faith, is determined to have been wrongly given, such termination shall be effective and compensation therefore determined as if it had been a termination for convenience pursuant to Paragraph B below.
- b. TERMINATION by the CITY for CONVENIENCE

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- (1) The CITY may, without cause and at any time, terminate the performance of Work under the Contract in whole, or in part, upon determination by the CITY that such termination is in the CITY's best interest. Such termination is referred to herein as Termination for Convenience.
- (2) Upon receipt of a written notice of Termination for Convenience from the CITY, the Contractor shall:
  - (a) stop Work as specified in the notice;
  - (b) enter into no further subcontracts or purchase orders for materials, services, or facilities, except as may be necessary for Work directed to be performed prior to the effective date of the termination or to complete Work that is not terminated;
  - (c) terminate all existing subcontracts and purchase orders to the extent they relate to the terminated Work;
  - (d) take such actions as are necessary, or directed by the Engineer or CITY, to protect, preserve, and make safe the terminated Work; and
  - (e) Complete performance of the Work that is not terminated.
- (3) In the event of Termination for Convenience, the Contractor shall be entitled to receive payment for the Work performed prior to its termination, including materials and equipment purchased and delivered for incorporation into the terminated Work, and any reasonable costs incurred because of the termination. Such payment shall include reasonable mark-up of costs for overhead and profit, not to exceed the limits stated in Article 19, Changes in the Work. The Contractor shall be entitled to receive payment for reasonable anticipated overhead ("home office") and shall not be entitled to receive payment for any profits anticipated to have been gained from the terminated Work. A proposal for decreasing the Contract Sum shall be submitted to the Engineer by the Contractor in such time and detail, and with such supporting documentation, as is reasonably directed by the CITY. Final modification of the Contract shall be by Contract Change Order pursuant to Article 19. Any Claim or Dispute involving the termination or any amount due a party as a result shall be resolved pursuant to Article 24.

## **28. CONTRACTOR'S RIGHT TO SUSPEND OR TERMINATE THE CONTRACT**

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

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- b. **NONPAYMENT:** The CITY's failure to pay the undisputed amount of an Application for Payment within sixty days after receiving it from the Engineer (Certified pursuant to Article 30) shall be just cause for the Contractor to give the CITY fourteen days' written notice that the Work will be suspended pending receipt of payment but that the Contract shall terminate if payment is not received within fourteen days (or a longer period stated by the Contractor) of the expiration of the fourteen day notice period.
- (1) If the Work is then suspended for nonpayment, but resumed upon receipt of payment, the Contractor will be entitled to compensation as if the suspension had been by the CITY pursuant to Article 26, Paragraph B.
  - (2) If the Contract is then terminated for nonpayment, the Contractor will be entitled to compensation as if the termination had been by the CITY pursuant to Article 27, Paragraph B.

## 29. PROGRESS PAYMENTS

- a. **FREQUENCY of PROGRESS PAYMENTS:** Unless otherwise provided in the Contract Documents, the CITY 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 Engineer, and approved by the CITY and other authorities whose approval is required.
- b. **SCHEDULE of VALUES:** Within ten days after receiving the Notice to Proceed the Contractor shall submit to the Engineer 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 be prepared on 8-1/2" x 11" paper in a format that is acceptable to the Engineer and CITY and shall divide the Contract Sum into as many parts ("line items") as the Engineer and CITY 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 Engineer.
- c. **APPLICATIONS for PAYMENTS**
  - (1) Based on the approved Schedule of Values, each monthly Application 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.
  - (2) The Contractor's estimate of the value of Work performed and stored materials must represent such reasonableness as to warrant certification by the Engineer to the CITY in accordance with Article 30. Each monthly Application for Payment shall be supported by such data as will substantiate the Contractor's

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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 monthly Application for Payment shall be submitted to the Engineer on or about the first day of each month and payment shall be issued to the Contractor within thirty days after an Application for Payment is Certified pursuant to Article 30 and delivered to the CITY.

#### d. MATERIALS STORED OFF SITE

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

- (1) the contractor has received written approval from the Engineer and CITY to store the materials or equipment off site in advance of delivering the materials to the off site location;
- (2) a Certificate of Insurance is furnished to the Engineer 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 CITY as an additionally insured party;
- (3) the Engineer 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 Engineer or CITY;
- (4) the materials or equipment are properly and safely stored in a bonded warehouse, or a facility otherwise approved in advance by the Engineer and CITY; and
- (5) Compliance by the Contractor with procedures satisfactory to the CITY to establish the CITY's title to such materials and equipment or otherwise protect the CITY'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) which has been retained by the CITY 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 the CITY shall retain five percent of the estimated value of Work performed and the value of the materials stored for the Work; but after retainage has been held upon fifty percent of the Contract Sum, no additional retainage will be withheld.
- (3) Additional information about the requirement of retainage will provided within the Supplemental Conditions Section of this Bid document.



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## f. CONTRACTOR'S CERTIFICATION

- (1) Each Application for Payment shall bear the Contractor's notarized certification that, to the best of the Contractor's knowledge, information, and belief, the Work covered by the Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payments were issued and payments received from the CITY 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 Engineer and CITY that, upon receipt of previous progress payments from the CITY, 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 Engineer and CITY may advise Subcontractors and suppliers regarding percentages of completion or amounts requested and/or approved in an Application for Payment on account of the Subcontractor's Work and stored materials.
- g. PAYMENT ESTABLISHES OWNERSHIP: All material and Work covered by progress payments shall become the sole property of the CITY, but the Contractor shall not be relieved from the sole responsibility for the care and protection of material and Work upon which payments have been made and for the restoration of any damaged material and Work.

## 30. CERTIFICATION AND APPROVALS FOR PAYMENT

- a. The Engineer's review, approval, and certification of Applications for Payment shall be based on the Engineer's general knowledge of the Work obtained through site visits and the information provided by the Contractor with the Application. The Engineer 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 Engineer shall have the authority to adjust the Contractor's estimate when, in the Engineer's reasonable opinion, such estimates are overstated or understated.
- b. Within seven days after receiving the Contractor's monthly Application for Payment, or such other time as may be stated in the Contract Documents, the Engineer will take one of the following actions:
  - (1) The Engineer will approve and certify the Application as submitted and forward it as a Certification for Payment for approval by the CITY (and other approving authorities, if any) and payment.
  - (2) If the Engineer takes exception to any amounts claimed by the Contractor and the Contractor and Engineer cannot agree on revised amounts, the Engineer will promptly issue a Certificate for Payment for the amount for which the Engineer is able to certify to the CITY, transmitting a copy of same to the Contractor.

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- (3) To the extent the Engineer determines may be necessary to protect the CITY from loss on account of any of the causes stated in Article 31, the Engineer may subtract from the Contractor's estimates and will issue a Certificate for Payment to the CITY, with a copy to the Contractor, for such amount as the Engineer determines is properly due and notify the Contractor and CITY in writing of the Engineer's reasons for withholding payment in whole or in part.
- c. Neither the Engineer's issuance of a Certificate for Payment nor the CITY'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 Engineer 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 Engineer 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.

## 31. PAYMENTS WITHHELD

- a. The Engineer may nullify or revise a previously issued Certificate for Payment prior to CITY's payment thereunder to the extent as may be necessary in the Engineer's opinion to protect the CITY from loss on account of any of the following causes not discovered or fully accounted for at the time of the certification or approval of the Application for Payment:
  - (1) Defective Work;
  - (2) filed, or reasonable evidence indicating probable filing of, claims arising out of the Contract by other parties against the Contractor;
  - (3) the Contractor's failure to pay for labor, materials or equipment or to pay Subcontractors;
  - (4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
  - (5) damage suffered by the CITY 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 CITY deems it necessary to withhold payment pursuant to preceding Paragraph A, the CITY will notify the Contractor and Engineer in writing of the amount to be withheld and the reason for same.
- c. The Engineer 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

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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 Engineer shall determine an appropriate amount that will protect the CITY's interest against the Defective Work.

- (1) If payment has not been made against the Application for Payment first including the Defective Work, the Engineer will notify the CITY 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 Engineer 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 CITY has withheld payment is removed or otherwise resolved to the CITY's satisfaction.
  - e. The CITY shall have the right to withhold from payments due the Contractor under this Contract an amount equal to any amount which the Contractor owes the CITY under another contract.

## **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 CITY can occupy or utilize the Work for its intended use without disruption or interference by the Contractor in completing or correcting any remaining unfinished Work ("punch list" items). Substantial Completion of the Work, or a designated portion of the Work, is not achieved until so agreed in a Certificate of Substantial Completion signed by the Contractor, Engineer, CITY, and Technical Staff of the CITY.
- b. The Contractor shall notify the Engineer in writing when it considers the Work, or a portion of the Work which the CITY has agreed to accept separately, to be substantially complete and ready for a Final Inspection pursuant to Article 16. In this notification the Contractor shall identify any items remaining to be completed or corrected for Final Acceptance prior to final payment.
- c. Substantial Completion is achieved and a Final Inspection is appropriate only when a minimal number of punch list items exists and only a short period of time will be required to correct or complete them. Upon receipt of the Contractor's notice for a Final Inspection, the Engineer will advise the Contractor in writing of any conditions of the Work which the Engineer or CITY is aware do not constitute Substantial Completion, otherwise, a Final Inspection will proceed within a reasonable time after the Contractor's notice is given. However, the Engineer 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 Engineer may discontinue or suspend the inspection until the Contractor does achieve Substantial Completion.

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- d. **CERTIFICATE of SUBSTANTIAL COMPLETION**
- (1) When the Work or a designated portion of the Work is substantially complete, the Engineer will prepare and sign a Certificate of Substantial Completion to be signed in order by the Contractor and CITY.
  - (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 Engineer and CITY as being ready for occupancy,
    - (b) the Contractor's one-year and special warranties for the Work covered by the Certificate commence, unless stated otherwise in the Certificate (the one-year warranty for punch list items completed or corrected after the period allowed in the Certificate shall commence on the date of their Final Acceptance) , and
    - (c) CITY 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, a 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. The CITY will not sign the Certificate of Substantial Completion in the absence of the roofing guarantees.
- e. The Date of Substantial Completion of the Work, as set in the Certificate of Substantial Completion of the Work or of the last completed portion of the Work, establishes the extent to which the Contractor is liable for Liquidated Damages, if any; however, should the Contractor fail to complete all punch list items within thirty days, or such other time as may be stated in the respective Certificate of Substantial Completion, the Contractor shall bear any expenses, including additional Engineering services and expenses, incurred by the CITY as a result of such failure to complete punch list items in a timely manner.

### **33. OCCUPANCY OR USE PRIOR TO COMPLETION**

- a. **OCCUPANCY OR USE UPON SUBSTANTIAL COMPLETION:** Prior to completion of the entire Work, the CITY 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. **OCCUPANCY OR USE BEFORE SUBSTANTIAL COMPLETION**
  - (1) The CITY shall not occupy or utilize any portion of the Work before Substantial Completion of that portion has been achieved.

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- (2) The CITY 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 CITY'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 CITY's planned action (such consent shall not be unreasonably withheld).
  - (c) The CITY shall be responsible for insurance coverage of the CITY's furniture and equipment, and the Contractor's liability shall not be increased.
  - (d) The Contractor, Engineer, and CITY will jointly inspect and record the condition of the Work in the area before the CITY delivers and stores or installs furniture and equipment; the CITY will equitably compensate the Contractor for making any repairs to the Work that may subsequently be required due to the CITY's delivery and storage or installation of furniture and equipment.
  - (e) The CITY'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.

## 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 Engineer and CITY, 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 CITY of a final Application for Payment prepared by the Contractor and approved and certified by the Engineer.
  - (5) Completion of an Advertisement for Completion pursuant to Paragraph C below.
  - (6) Delivery by the Contractor to the CITY through the Engineer of a Release of Claims and such other documents as may be required by CITY, satisfactory in form to the CITY pursuant to Paragraph D below.
  - (7) Consent of Surety, if any, to Final Payment to Contractor.
  - (8) Delivery by the Contractor to the Engineer and CITY of other documents, if any, required by the Contract Documents as prerequisites to Final Payment.
- b. FINAL ACCEPTANCE of the WORK: "Final Acceptance of the Work" shall be achieved when all "punch list" items recorded with the Certificate(s) of Substantial Completion are accounted for by either:

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- (1) their completion or correction by the Contractor and acceptance by the Engineer, CITY, and Project Inspector, or
  - (2) Their resolution under Article 18, Deductions for Uncorrected Work.
- c. **ADVERTISEMENT for COMPLETION**
- (1) If the Contract Sum is less than \$50,000: The CITY, immediately after being notified by the Engineer 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 one time in a newspaper of general circulation, published in the county in which the CITY is located and shall post notice of completion of the Contract on the CITY's bulletin board for one week, and shall require the Contractor to certify under oath that all bills have been paid in full. Final payment may be made at any time after the notice has been posted for one entire week.
  - (2) If the Contract Sum is more than \$50,000: The Contractor, immediately after being notified by the Engineer that all other requirements of the Contract have been completed, shall give public notice of completion of the Contract by having an Advertisement for Completion, similar to the sample contained in the Project Manual, published for a period of four successive weeks in some newspaper of general circulation published within the CITY or county where the Work was performed. Proof of publication of the Advertisement for Completion, in duplicate, shall be made by the Contractor to the Engineer by affidavit of the publisher 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 CITY 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 CITY or unpaid Contract funds held by the CITY 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 CITY to provide an

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unconditional obligation to defend, indemnify and hold harmless the CITY 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 CITY may make Final Payment notwithstanding such claims or claims of lien. If Contractor and Surety fail to fulfill their obligations to CITY under the bond, the CITY shall be entitled to recover damages as a result of such failure, including all costs and reasonable attorney's fees incurred to recover such damages.

e. EFFECT of FINAL PAYMENT

- (1) The making of Final Payment shall constitute a waiver of Claims by the CITY except those arising from:
  - (a) liens, claims, security interests or encumbrances arising out of the Contract and unsettled;
  - (b) failure of the Work to comply with the requirements of the Contract Documents;
  - (c) terms of warranties or indemnities required by the Contract Documents, or
  - (d) Latent defects.
- (2) Acceptance of Final Payment by the Contractor shall constitute a waiver of claims by Contractor except those previously made in writing, identified by Contractor as unsettled at the time of final Application for Payment, and specifically excepted from the release provided for in Paragraph D(1), above.

### 35. CONTRACTOR'S WARRANTY

- a. GENERAL WARRANTY: The Contractor warrants to the CITY and Engineer that all materials and equipment furnished under the Contract will be of good quality and new, except such materials as may be expressly provided or allowed in the Contract Documents to be otherwise, and that none of the Work will be Defective Work as defined in Article 1.
- b. ONE-YEAR WARRANTY
  - (1) If, within one year after the date of Substantial Completion of the Work or each designated portion of the Work (or otherwise as agreed upon in a mutually-executed Certificate of Substantial Completion), any of the Work is found to be Defective Work, the Contractor shall promptly upon receipt of written notice from the CITY or Engineer, and without expense to either, replace or correct the Defective Work to conform to the requirements of the Contract Documents, and repair all damage to the site, the building and its contents which is the result of Defective Work or its replacement or correction.
  - (2) The one-year warranty for punch list items shall begin on the Date of Substantial Completion if they are completed or corrected within the time period allowed in the Certificate of Substantial Completion in which they are recorded. The one-year warranty for punch list items that are not completed or corrected within the time period allowed in the Certificate of Substantial Completion, and other Work performed after Substantial Completion, shall begin on the date of Final Acceptance of the Work. The Contractor's correction of Work pursuant to

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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 CITY shall promptly notify the Contractor of the condition. If the condition is causing damage to the building, its contents, equipment, or site, the CITY 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 CITY with satisfactory written verification that positive action is in process, the CITY 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 subsequent delivery of the Engineer's report of a Year-end Inspection will serve as confirmation that the Contractor was notified of Defective Work found within the warranty period.
  - (5) The Contractor's warranty of one year is in addition to, and not a limitation of, any other remedy stated herein or available to the CITY under applicable law.
- c. SPECIAL WARRANTIES
- (1) The Contractor shall deliver to the CITY through the Engineer 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 CITY for such special warranties during the Contractor's one-year warranty; thereafter, the Contractor's obligations relative to such special warranties shall be to provide reasonable assistance to the CITY in their enforcement.
- d. ASSUMPTION of GUARANTEES of OTHERS: If the Contractor disturbs, alters, or damages any work guaranteed under a separate contract, thereby voiding the guarantee of that work, the Contractor shall restore the work to a condition satisfactory to the CITY and shall also guarantee it to the same extent that it was guaranteed under the separate contract.

## 36. PERFORMANCE AND PAYMENT BONDS GENERALLY

- a. GENERAL: Upon signing and returning the Construction Contract to the CITY for final approval and execution, the Contractor shall, at the Contractor's expense, furnish to the CITY a Performance Bond in an amount equal to 100% of the Contract Sum and a Payment Bond, in an amount equal to 50% of the Contract Sum. Each bond shall be on the form contained in the Project Manual, shall be executed by a surety company (Surety) acceptable to the CITY and duly authorized and qualified to make such bonds in the State of Alabama in the required amounts, shall be countersigned by an authorized, Alabama resident agent of the Surety who is qualified to execute such instruments, and shall have attached thereto a power of attorney of the signing official. The provisions of this Article are not applicable to this



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Contract if the Contract Sum is less than \$50,000, unless bonds are required for this Contract in the Supplemental General Conditions.

- b. **PERFORMANCE BOND:** Through the Performance Bond, the Surety's obligation to the CITY 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 CITY as a result of default on the part of the Contractor, including design, engineering, administrative, and legal services, shall be recoverable under the Performance Bond.
- c. **PAYMENT BOND:** Through the Payment Bond the Surety's obligation to the CITY shall be to guarantee that the Contractor and its Subcontractors shall promptly make payment to all persons supplying labor, materials, or supplies for, or in, the prosecution of the Work, including the payment of reasonable attorney's fees incurred by successful claimants or plaintiffs in civil actions on the Bond. Any person or entity indicating that they have a claim of nonpayment under the Bond shall, upon written request, be promptly furnished a certified copy of the Bond and Construction Contract by the Contractor, Engineer, or CITY, whoever is recipient of the request.
- d. **CHANGE ORDERS:** The Penal Sum shall remain equal to the Contract Sum as the Contract Sum is adjusted by Contract Change Orders. All Contract Change Orders involving an increase in the Contract Sum will require consent of Surety by endorsement of the Contract Change Order form. The Surety waives notification of any Contract Change Orders involving only extension of the Contract Time.
- e. **EXPIRATION:** The obligations of the Contractor's performance bond surety shall be coextensive with the contractor's performance obligations under the Contract Documents; provided, however, that the surety's obligation shall expire at the end of the one-year warranty period(s) of Article 35.

## **37. ASSIGNMENT**

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

## **38. CONSTRUCTION BY CITY OR SEPARATE CONTRACTORS**

### **a. CITY'S RESERVATION of RIGHT**

- (1) The CITY reserves the right to self-perform, or to award separate contracts for, other portions of the Project and other Project related construction and operations on the site. The contractual conditions of such separate contracts shall be substantially similar to those of this Contract, including insurance requirements and the provisions of this Article. If the Contractor considers such

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actions to involve delay or additional cost under this Contract, notifications and assertion of claims shall be as provided in Article 20 and Article 23.

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

#### b. COORDINATION

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

#### c. CONDITIONS APPLICABLE to WORK PERFORMED by CITY

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

#### d. MUTUAL RESPONSIBILITY

- (1) The Contractor shall reasonably accommodate the required introduction and storage of materials and equipment and performance of activities by the CITY and separate contractors and shall connect and coordinate the Contractor's Work with theirs as required by the Contract Documents.
- (2) By proceeding with an element or portion of the Work that is applied to or performed on construction by the CITY or a separate contractor, or which relies upon their operations, the Contractor accepts the condition of such construction or operations as being suitable for the Contractor's Work, except for conditions that are not reasonably discoverable by the Contractor. If the Contractor discovers any condition in such construction or operations that is not suitable for the proper performance of the Work, the Contractor shall not proceed, but shall instead promptly notify the Engineer in writing of the condition discovered.
- (3) The Contractor shall reimburse the CITY for any costs incurred by a separate contractor and payable by the CITY because of acts or omissions of the Contractor. Likewise, the CITY shall be responsible to the Contractor for any costs incurred by the Contractor because of the acts or omissions of a separate contractor.
- (4) The Contractor shall not cut or otherwise alter construction by the CITY or a separate contractor without the written consent of the CITY and separate contractor; such consent shall not be unreasonably withheld. Likewise, the Contractor shall not unreasonably withhold its consent allowing the CITY or a separate contractor to cut or otherwise alter the Work.
- (5) The Contractor shall promptly remedy any damage caused by the Contractor to the construction or property of the CITY or separate contractors.

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## 39. SUBCONTRACTS

- a. AWARD of SUBCONTRACTS and OTHER CONTRACTS for PORTIONS of the WORK
  - (1) Unless otherwise provided in the Contract Documents, when delivering the executed Construction Contract, bonds, and evidence of insurance to the Engineer, 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 Engineer will promptly reply to the Contractor in writing stating whether or not the CITY, 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 CITY 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 CITY 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 CITY may not restrict the Contractor's selection of Subcontractors, fabricators, or suppliers.
  - (3) Upon the CITY's reasonable objection to a proposed Subcontractor, fabricator, or supplier, the Contractor shall promptly propose another to whom the CITY has no reasonable objection. If the proposed Subcontractor, fabricator, or supplier to whom the CITY 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 Engineer and CITY in writing of proposed substitute Subcontractors, fabricators, or suppliers. If the CITY does not make a reasonable objection to a proposed substitute within three working days, the substitute shall be deemed approved.
- b. SUBCONTRACTUAL RELATIONS
  - (1) The Contractor agrees to bind every Subcontractor and material supplier (and require every Subcontractor to so bind its subcontractors and material suppliers) to all the provisions of the Contract Documents as they apply to the Subcontractor's and material supplier's portion of the Work.
  - (2) Nothing contained in the Contract Documents shall be construed as creating any contractual relationship between any Subcontractor and the CITY, nor to create a duty of the Engineer, CITY, or Director to resolve disputes between or among the Contractor or its Subcontractors and suppliers or any other duty to such Subcontractors or suppliers.



**40. ENGINEER'S STATUS**

- a. The Engineer is an independent contractor performing, with respect to this Contract, pursuant to an agreement executed between the CITY and the Engineer. The Engineer has prepared the Drawings and Specifications and assembled the Contract Document and is, therefore, charged with their interpretation and clarification as described in the Contract Documents. As a representative of the CITY, the Engineer will endeavor to guard the CITY against variances from the requirements of the Contract Documents by the Contractor. On behalf of the CITY, the Engineer will administer the Contract as described in the Contract Documents during construction and the Contractor's one-year warranty.
- b. So as to maintain continuity in administration of the Contract and performance of the Work, and to facilitate complete documentation of the project record, all communications between the Contractor and CITY regarding matters of or related to the Contract shall be directed through the Engineer, unless direct communication is otherwise required to provide a legal notification. Unless otherwise authorized by the Engineer, communications by and with the Engineer's consultants shall be through the Engineer. Unless otherwise authorized by the Contractor, communications by and with Subcontractors and material suppliers shall be through the Contractor.
- c. ENGINEER'S AUTHORITY
- d. Subject to other provisions of the Contract Documents, the following summarizes some of the authority vested in the Engineer by the CITY with respect to the Construction Contract and as further described or conditioned in other Articles of these General Conditions of the Contract.
  - (1) The Engineer 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 Engineer 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 CITY,
    - (b) finally approve or accept any portion of the Work without concurrence of the CITY,
    - (c) issue instructions contrary to the Contract Documents,
    - (d) issue Notice of Termination or otherwise terminate the Contract, or

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(e) Require the Contractor to stop the Work except only to avoid the performance of Defective Work.

e. LIMITATIONS of RESPONSIBILITIES

- (1) The Engineer shall not be responsible to Contractors or to others for supervising or coordinating the performance of the Work or for the Construction Methods or safety of the Work, unless the Contract Documents give other specific instructions concerning these matters.
  - (2) The Engineer will not be responsible to the Contractor (nor the CITY) 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 Engineer will report to the CITY and Contractor any Defective Work recognized by the Engineer.
  - (3) The Engineer will endeavor to secure faithful performance by CITY and Contractor, and the Engineer will not show partiality to either or be liable to either for results of interpretations or decisions rendered in good faith.
  - (4) The Contractor's remedies for additional time or expense arising out of or related to this Contract, or the breach thereof, shall be solely as provided for in the Contract Documents. The Contractor shall have no claim or cause of action against the CITY, Engineer, or its consultants for any actions or failures to act, whether such claim may be in contract, tort, strict liability, or otherwise, it being the agreement of the parties that the Contractor shall make no claim against the CITY or any agents of the CITY, including the Engineer or its consultants, except as may be provided for claims or disputes submitted in accordance with Article 24. The Engineer and Engineer's consultants shall be considered third party beneficiaries of this provision of the Contract and entitled to enforce same.
- f. ENGINEER'S DECISIONS: Decisions by the Engineer shall be in writing. The Engineer's decisions on matters relating to aesthetic effect will be final and binding if consistent with the intent expressed in the Contract Documents. The Engineer's decisions regarding disputes arising between the Contractor and CITY shall be advisory.

#### 41. CASH ALLOWANCES

- a. All allowances stated in the Contract Documents shall be included in the Contract Sum. Items covered by allowances shall be supplied by the Contractor as directed by the Engineer or CITY and the Contractor shall afford the CITY the economy of obtaining competitive pricing from responsible bidders for allowance items unless other purchasing procedures are specified in the Contract Documents.
- b. Unless otherwise provided in the Contract Documents:
  - (1) allowances shall cover the cost to the Contractor of materials and equipment delivered to the Project site and all applicable taxes, less applicable trade discounts;

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- (2) the Contractor's costs for unloading, storing, protecting, and handling at the site, labor, installation, overhead, profit and other expenses related to materials or equipment covered by an allowance shall be included in the Contract Sum but not in the allowances;
- (3) If required, the Contract Sum shall be adjusted by Change Order to reflect the actual costs of an allowance.
- c. Any selections of materials or equipment required of the Engineer or CITY under an allowance shall be made in sufficient time to avoid delay of the Work.

#### **42. PERMITS, LAWS, AND REGULATIONS**

##### a. PERMITS, FEES AND NOTICES

- (1) Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit and other permits and governmental fees, licenses, and inspections necessary for proper execution and completion of the Work which are customarily secured after award of the Construction Contract and which are in effect on the date of receipt of bids.
- (2) The Contractor shall comply with and give notices required by all laws, ordinances, rules, regulations, and lawful orders of public authorities applicable to performance of the Work.
- b. TAXES: Unless stated otherwise in the Contract Documents, materials incorporated into the Work are exempt from sales and use tax pursuant to Section 40-9-33, Code of Alabama, 1975 as amended. The Contractor and its subcontractors shall be responsible for complying with rules and regulations of the Sales, Use, & Business Tax Division of the Alabama Department of Revenue regarding certificates and other qualifications necessary to claim such exemption when making qualifying purchases from vendors. The Contractor shall pay all applicable taxes that are not covered by the exemption of Section 40-9-33 and which are imposed as of the date of receipt of bids, including those imposed as of the date of receipt of bids but scheduled to go into effect after that date.
- c. COMPENSATION for INCREASES: The Contractor shall be compensated for additional costs incurred because of increases in tax rates imposed after the date of receipt of bids.

#### **43. ROYALTIES, PATENTS, AND COPYRIGHTS**

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

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infringement of a patent or copyright, the Contractor shall be responsible for any resulting loss unless such information is promptly furnished to the Engineer.

#### **44. USE OF THE SITE**

- a. The Contractor shall confine its operations at the Project site to areas permitted by the CITY and by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials, equipment, employees' vehicles, or debris. The Contractor's operations at the site shall be restricted to the sole purpose of constructing the Work, use of the site as a staging, assembly, or storage area for other business which the Contractor may undertake shall not be permitted.
- b. Unless otherwise provided in the Contract Documents, temporary facilities, such as storage sheds, shops, and offices may be erected on the Project site with the approval of the Engineer and CITY. 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 CITY authorizes their abandonment without removal.

#### **45. CUTTING AND PATCHING**

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

#### **46. IN-PROGRESS AND FINAL CLEANUP**

##### **a. IN-PROGRESS CLEAN-UP**

- (1) The Contractor shall at all times during the progress of the Work keep the premises and surrounding area free from rubbish, scrap materials and debris resulting from the Work. Trash and combustible materials shall not be allowed to accumulate inside buildings or elsewhere on the premises. At no time shall any rubbish be thrown from window openings. Burning of trash and debris on site is not permitted.
- (2) The Contractor shall make provisions to minimize and confine dust and debris resulting from construction activities.

##### **b. FINAL CLEAN-UP**

- (1) Before Substantial Completion or Final Acceptance is achieved, the Contractor shall have removed from the CITY's property all construction equipment, tools, and machinery; temporary structures and/or utilities including the foundations thereof (except such as the CITY 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.

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- (2) In addition to the above, and unless otherwise provided in the Contract Documents, the Contractor shall be responsible for the following special cleaning for all trades as the Work is completed:
  - (a) Cleaning of all painted, enameled, stained, or baked enamel work: Removal of all marks, stains, finger prints and splatters from such surfaces.
  - (b) Cleaning and removing of all stickers, labels, stains, and paint from all interior and exterior surfaces as recommended by the manufacturer or required by the Engineer.
  - (c) 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 Engineer; 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. CITY'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 Engineer to clean-up the premises within a specified time, the Engineer or CITY may implement appropriate clean-up measures and the cost thereof shall be deducted from any amounts due or to become due the Contractor.

#### **47. LIQUIDATED DAMAGES GENERALLY**

- 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 CITY including but not limited to interest and additional administrative, design, engineering, inspection and supervision charges. By executing the Construction Contract, the Contractor agrees that the Contract Time is sufficient for the achievement of Substantial Completion.
- b. The Bid and Contract Documents may provide in the Construction Contract or elsewhere for a certain dollar amount for which the Contractor and its Surety (if any) will be liable to the CITY as liquidated damages for each calendar day after expiration of the Contract Time that the Contractor fails to achieve Substantial Completion of the Work. If such daily liquidated damages are provided for, CITY and Contractor, and its Surety, agree that such amount is reasonable and agree to be bound thereby.
- c. If a daily liquidated damage amount is not otherwise provided for in the Contract Documents, a time charge equal to six percent interest per annum on the total Contract Sum may be made against the Contractor for the entire period after expiration of the Contract Time that the Contractor fails to achieve Substantial Completion of the Work.



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- d. The amount of liquidated damages due under either paragraph B or C, above, may be deducted by the CITY from the moneys otherwise due the Contractor in the Final Payment, not as a penalty, but as liquidated damages sustained, or the amount may be recovered from Contractor or its Surety. If part of the Work is substantially completed within the Contract Time and part is not, the stated charge for liquidated damages shall be equitably prorated to that portion of the Work that the Contractor fails to substantially complete within the Contract Time. It is mutually understood and agreed between the parties hereto that such amount is reasonable as liquidated damages.

#### **48. USE OF FOREIGN MATERIALS**

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

#### **49. SPECIAL REQUIREMENTS FOR NON-RESIDENT BIDDERS**

- a. The attention of non-resident bidders is called to the provisions of Section 39-2-14, Code of Alabama, 1975, as amended, that requires every non-resident contractor to register with the Alabama Department of Revenue prior to beginning work on a project and to deposit with the Department of Revenue an amount, or an approved corporate surety bond in lieu thereof, equal to five percent (5%) of the contract amount, such amount or bond to be held pending completion of the contract and payment of all taxes due the State of Alabama and other governmental bodies.
- b. The attention of non-resident bidders is called to the provisions of Section 39-3-5, Code of Alabama, 1975, as amended, related to preferences given to resident Alabama contractors over non-resident contractors in the award of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of a non-resident bidder. In accordance therewith, all non-resident bidders must include, with their Bid submittal, a written opinion of an attorney-at-law, who is licensed to practice law in such non-resident bidder's state of domicile, as to the preferences, if any or none, which are granted by the law of that state to its own

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resident contractors whose principal places of business are in that state in the letting of any or all public contracts.

**END of GENERAL CONDITIONS of the CONTRACT SECTION**

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## D. SUPPLEMENTAL CONDITIONS OF THE CONTRACT

### 1. CONTRACTOR'S LICENSE REQUIREMENTS

- a. All bidders submitting Bids in excess of \$50,000.00 must be properly licensed as a General Contractor under the provisions of Title 34, Chapter 8, Code of Alabama, 1975, and must show evidence of such license before bidding or the bid will not be considered to be responsive.
- b. All bidders submitting Bids for this project must hold a current and valid license issued by the Alabama Licensure Board for General Contractors with a specialty construction classification in either Highways & Streets, Concrete, or Municipal & Utility, or Specialty Construction/Drainage and Culvert under the appropriate major classification.
- c. The bidder shall show evidence of such licensure by clearly displaying his or her current license number on the outside of the sealed envelope in which the proposal is delivered. In addition, Bids shall be clearly identified on the exterior of the package with the bidder's name, address, the Bid number, the name of the project being bid, and time and place of the bid opening. Furthermore, a copy of your license, indicating that you are qualified to bid on this work, must be submitted with your Bid Proposal.

### 2. BID BOND REQUIREMENTS AND LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

- a. Each bid must be accompanied by cash, certified check of the Bidder, or a bid bond prepared on the Bid Bond Form attached hereto, duly executed by the Bidder as principal and having as surety thereon a surety company approved by the City, in the amount of 5% (not to exceed \$10,000.00) of the bid.
- b. Such cash, checks or bid bonds will be returned promptly after the City and the accepted Bidder have executed the contract, or if no award has been made within 30 days after the date of the opening of bids, upon demand of the Bidder at any time thereafter, so long as he/she has not been notified of the acceptance of his/her bid. :
- c. The successful Bidder, upon his/her failure or refusal to execute and deliver the contract and bonds required within ten (10) days after he/she has received notice of the acceptance of his/her bid, shall forfeit to the City, as liquidated damages for such failure or refusal, the security deposited with his/her bid.

### 3. PERFORMANCE AND PAYMENT BONDS REQUIREMENTS

The Contractor whose Bid is selected must furnish a Performance Bond for one hundred percent (100%) of the Bid amount and a payment bond for fifty percent (50%) of the Bid amount. Bonds must be secured from a bonding company's representative agent authorized and licensed to do business in the state of Alabama. Each bond shall be countersigned by an agent of the Surety having residence in the state of Alabama, and is authorized and licensed to do business in the state of Alabama and each bond shall depict the complete address of said agent. Additional Terms and Conditions related to this matter are described within the "General Conditions of the Contract" section of these

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Bid Specifications. A Notice to Proceed shall not be issued prior to receipt and acceptance of such documentation.

#### 4. RETAINAGE

Retainage is not required on this contract.

#### 5. INDEMNIFICATION REQUIREMENTS

- a. To the fullest extent permitted by law, the Contractor shall defend, indemnify, and hold harmless the CITY, the Project Manager (engineer or engineers), and collectively their agents, elected officials, boards, employees, and consultants (hereinafter collectively referred to as the "Indemnitees") from and against all claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of, related to, or resulting from performance of the Work, provided that such claim, damage, loss or expense:
  - (1) Is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use, and
  - (2) Was caused in whole or in part by negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts they may be liable, regardless of whether or not it is caused in part, or is alleged but not legally established to have been caused in part, by a party indemnified under this contract.
- b. This indemnification shall extend to all claims, damages, losses and expenses for injury or damage to adjacent or neighboring property, or persons injured thereon, that arise out of, relate to, or result from performance of the Work.
- c. This indemnification does not extend to the liability of the Project Manager or their consultants, agents, or employees, arising out of:
  - (1) the preparation or approval of maps, opinions, reports, surveys, field orders, Change Orders, 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.
- d. This indemnification does not apply to the extent of the sole negligence of the Indemnitees.

#### 6. INSURANCE REQUIREMENTS

##### a. GENERAL

- (1) **RESPONSIBILITY.** The Contractor shall be responsible to the CITY from the time of the signing of the Contract or from the beginning of the first work, whichever shall be earlier, for all injury or damage of any kind resulting from any negligent act or omission or breach, failure or other default regarding the work by the Contractor, a Subcontractor, anyone directly employed by them or anyone for whose acts they may be liable, regardless of who may be the CITY of the property.
- (2) **INSURANCE PROVIDERS.** Each of the insurance coverages required below shall be issued by an insurer licensed by the Insurance Commissioner to transact the business of insurance in the state of Alabama for the applicable

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line of insurance, and such insurer (or, for qualified self-insureds or group self-insureds, a specific excess insurer providing statutory limits) must have a Best Policyholders Rating of "A-" or better and financial size rating of Class V or larger.

- (3) NOTIFICATION ENDORSEMENT. Each policy shall be endorsed to provide that the insurance company agrees that the policy shall not be canceled, changed, allowed to lapse or allowed to expire for any reason until **thirty** days after the CITY 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 CITY. Such notice shall be valid only as to the Project as shall have been designated by Project Name in said notice.
- (4) INSURANCE CERTIFICATES. The Contractor shall procure the insurance coverages identified below, or as otherwise required in the Contract Documents, at the Contractor's own expense, and to evidence that such insurance coverages are in effect, the Contractor shall furnish the CITY an insurance certificate(s) acceptable to the CITY and listing the CITY as the certificate holder. The insurance certificate(s) must be delivered with the Contract and Bonds for final approval and execution of the Contract. Copies of the insurance certificates and attachments should also be sent to: (1) The Project Manager (engineer or engineer) and (2) Risk and Legal Manager, City of Hoover, 100 Municipal Lane, Hoover, AL 35216; The insurance certificate must provide the following:
  - (a) Name and address of authorized agent of the insurance company
  - (b) Name and address of insured
  - (c) Name of insurance company or companies
  - (d) Description of policies
  - (e) Policy Number(s)
  - (f) Policy Period(s)
  - (g) Limits of liability
  - (h) Name and address of CITY as certificate holder
  - (i) Project Name and Number, if any
  - (j) Signature of authorized agent of the insurance company
  - (k) Telephone number of authorized agent of the insurance company
  - (l) Mandatory thirty day notice of cancellation / non-renewal / change
  - (m) Special attachments or endorsements to meet the requirements of the insurance coverages specified should be attached.
- (5) DEDUCTIBLES AND SELF-INSURED RETENTIONS. The Contractor will be responsible for deductibles and self-insured retentions for claims made under its policies.

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- (6) **ADDITIONAL INSURED and CONTRACTOR'S INSURANCE AS PRIMARY.**  
The Contractor's insurance policies shall name the City of Hoover, and its agents elected officials, boards, and employees, as Additional Insureds; state that this coverage shall be primary insurance for Additional Insureds and shall be Non-Contributory with regard to any insurance carried by the CITY and shall contain no exclusions of the Additional Insured(s) relative to job related injuries or illness.
  - (7) **COMBINATION OF COVERAGES.** Any combination of primary and umbrella/excess coverage is acceptable as long as it satisfies the combined minimum coverage limits of each line.
- b. **INSURANCE COVERAGES**  
The Contractor shall possess the types of insurance coverages with liability limits not less than as follows:
- (1) **WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE**
    - (a) Workers' Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating the Contractor qualifies to pay its own workers' compensation claims.
    - (b) Employer's Liability Insurance limits shall be at least:
      - (1) Each Accident - \$1,000,000
      - (2) Disease – each employee - \$1,000,000
      - (3) Disease – policy limit - \$1,000,000
    - (c) No Proprietor/Partner/Executive Officer/Member of the Contractor shall be excluded.
    - (d) The Contractor's worker's compensation policy shall contain a waiver of Subrogation Clause in favor of the CITY.
  - (2) **COMMERCIAL GENERAL LIABILITY INSURANCE** Commercial General Liability Insurance, written on an ISO Occurrence Form (current edition as of the date of Advertisement for Bids) or equivalent. The Commercial General Liability Insurance shall provide at minimum the following limits:
    - (a) \$1,000,000 per occurrence
    - (b) \$2,000,000 general aggregate with dedicated limits per project
    - (c) \$2,000,000 completed operations aggregate limits per project
    - (d) Additional insured endorsements:
      - (1) Blanket contractual liability
      - (2) Blasting and explosion, collapse of structure and underground damage (XCU) shall not be excluded
      - (3) Bodily Injury and broad form property damage arising from premises operation liability
      - (4) Contractor's Liability

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- (5) Personal Injury liability
  - (6) Products & Completed Operations Liability, maintained for at least two years after completion of project
  - (7) Punitive damages shall not be excluded
  - (8) Severability of interests
- (3) **COMMERCIAL AUTOMOBILE LIABILITY INSURANCE**  
Commercial Automobile Liability Insurance which shall include coverage for bodily injury and property damage arising from the operation of any **owned, non-owned, or hired** automobile. The Commercial Automobile Liability Policy shall provide not less than \$1,000,000 Combined Single Limit for each occurrence.
- (4) **COMMERCIAL UMBRELLA OR EXCESS LIABILITY INSURANCE**
- (a) Commercial Umbrella or Excess Liability Insurance to provide excess coverage above the Commercial General Liability, Commercial Automobile Liability and the Employer's Liability coverage of Workers' Compensation.
  - (b) Excess Umbrella Limits of:
    - (9) \$4,000,000 per Occurrence
    - (10) \$4,000,000 Aggregate
    - (11) The policy must be on an "occurrence" basis.
- c. **SUBCONTRACTORS' INSURANCE**
- (1) **WORKERS' COMPENSATION and EMPLOYER'S LIABILITY INSURANCE.**  
The Contractor shall require each Subcontractor to obtain and maintain Workers' Compensation and Employer's Liability Insurance coverages or to be covered by the Contractor's Workers' Compensation and Employer's Liability Insurance while performing Work under the Contract.
  - (2) **LIABILITY INSURANCE.** The Contractor shall cover their subcontractor's liabilities using their own judgment to either cover these liabilities as their own or require their Subcontractor to obtain and maintain coverage. However the Contractor chooses to cover the Subcontractor's liability, such coverage shall be in effect at all times that a Subcontractor is performing Work under the Contract.
- d. **TERMINATION of OBLIGATION to INSURE:** Unless otherwise expressly provided in the Contract Documents, the obligation to carry insurance coverages 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 preform warranty or maintenance work pursuant to the terms of the Contract Documents.
- e. **WAIVERS of SUBROGATION:** The Contractor waives all subrogation rights against the CITY for all claims or actions covered by the Contractor's insurance.



## **7. IMMIGRATION COMPLIANCE REQUIREMENTS**

Prior to issuance of a Notice to Proceed, the Contractor whose Bid is selected must furnish appropriate documentation of compliance with Federal and State Immigration Laws in the manner described within the “General Conditions of the Contract” section of these Bid Specifications. A Notice to Proceed shall not be issued prior to receipt and acceptance of such documentation.

- a. The Bidder/Contractor agrees that it will fully comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, as amended, which makes it unlawful for an employer in Alabama to knowingly hire or continue to employ an alien who is or has become unauthorized with respect to such employment or to fail to comply with the I-9 requirements or fails to use E-Verify to verify the eligibility to legally work in the United States for all of its new hires who are employed to work in the State of Alabama. Without limiting the foregoing, Vendor shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien.
- b. The Bidder/Contractor shall also enroll in the E-Verify Program prior to performing any work, or continuing to perform any ongoing work, shall remain enrolled throughout the entire course of its performance hereunder, shall supply to the CITY a copy of its E-Verify Memorandum of Understanding and such other documentation as CITY may require to confirm Vendor’s enrollment in the E-Verify Program and shall allow the CITY to inspect its records to confirm such compliance.
- c. The Bidder/Contractor agrees that it shall, not knowingly, allow any of its suppliers, or any other party with whom it has a contract, to employ in the State of Alabama any illegal or undocumented aliens to perform any work in connection with the Project, and shall include in all of its contracts a provision substantially similar to this paragraph. If Vendor 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 CITY and shall comply with the Immigration Reform and Control Act of 1986, as amended by the Immigration Act of 1990, and the Beason-Hammon Alabama Taxpayer and Citizen Protection Act, as amended. Bidder/Vendor shall require each of its suppliers, or other parties with whom it has a contract, to act in a similar fashion. If Vendor violates any term of this provision, this Agreement will be subject to immediate termination by CITY.
- d. To the fullest extent permitted by law, The Bidder/Contractor shall defend, indemnify and hold harmless 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 Vendor’s failure to fulfill its obligations contained in this paragraph.
- e. The following language is required by § 31-13-9 (k) Code of Alabama 1975 to be placed in all contracts covered by the Act: “By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the state of Alabama. Furthermore, a contracting party



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found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.” If there is no formal written contract between CITY and the Bidder/Vendor, such as where business is conducted by purchase order, this document shall serve as the Alabama Immigration Compliance Contract. If you have received a copy of this Proposal Document and choose to do business with the CITY, it will be deemed that you have accepted the terms even if you fail to sign and return the Agreement.

## **8. NPDES PERMIT(S) IS NOT REQUIRED**

- a. N/A

## **9. PERMIT(S) NOT REQUIRED**

- a. N/A.

## **10. LIQUIDATED DAMAGES FOR FAILURE TO PERFORM WORK IN TIMELY MANNER**

- a. Time is of the essence for 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 CITY including but not limited to interest and additional administrative, design, engineering, inspection and supervision charges.
- b. By submitting a Bid, the Bidder agrees that the Contract Time is sufficient for the achievement of Substantial Completion within 60 Calendar days of the starting date given in the Notice to Proceed which will be issued and received by the successful bidder, agrees that such amount is reasonable, and further agrees to be bound thereby.
- c. Liquidated damages shall be provided for within the Contract Documents, in the amount of Seven Hundred and Fifty dollars (\$ 750) per day for which the Contractor and its Surety (if any) will be liable to the CITY for each calendar day after expiration of the Contract Time that the Contractor fails to achieve Substantial Completion of the Work subject to such extensions of time which may be granted in accordance with the terms and conditions within the Contract documents.
- d. Additional Terms and Conditions related to this matter are described within the “General Conditions of the Contract” section of these Bid Specifications.

## **11. SALES & USE TAX EXEMPTION**

Section 40-23-4(a)(11), Code of Alabama, 1975, and Alabama Department of Revenue Sales and Use Tax Division, Administrative Code, Chapter 810-6-3, provide for exemption of certain payments of state, county, and municipal sales and use taxes by the contractor or subcontractor on the gross proceeds of sales of tangible personal property to incorporated municipalities of the State of Alabama.

Accordingly, all bidders shall bid in a manner and agree to perform the work of the project in a manner that shall eliminate the payment of sales and use taxes to the maximum extent allowed by laws and regulations.

All tax exempt purchases shall be made in accordance with the laws of the State of Alabama and the rules established by Alabama Department of Revenue. It is the sole responsibility of the successful contractor to make the necessary inquiries and

# City of Hoover, Alabama

Invitation to Bid #22-017

Project Title: Sulphur Springs Rd Culvert Replacement

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determinations as to what materials or items qualify as tax exempt in the opinion of the Alabama Department of Revenue.

In the event the City elects to utilize the Sales and Use Tax Certificate of Exemption For Government Entity Projects, all successful contractors and subcontractors of bidders shall be required to apply for such exemption by completing, executing, and submitting Alabama Form ST:EXC-01 to the Alabama Department of Revenue and shall perform in accordance with State Department of Revenue Rule 810-6-3-.77.

In the event the City elects to utilize a Purchasing Agent Appointment agreement in conjunction with this contract, all successful contractors and subcontractors of bidders shall be required to execute such an agreement (Alabama Department of Revenue Form ST:PAA1) and shall perform in accordance with State Department of Revenue Rule 810-6-3-.69.02.

**END of SUPPLEMENTAL CONDITIONS SECTION**

# City of Hoover, Alabama

Invitation to Bid #22-017

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## E. SPECIAL PROVISIONS

The successful bidder shall be required to perform all work in compliance with all Contract Documents, including these Bid Specifications as well as all of the Special Provisions listed below. Copies of these Special Provisions are attached hereto in the Appendices Section.

1. N/A

# City of Hoover, Alabama

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## F. SPECIFICATIONS

### 1. TECHNICAL SPECIFICATIONS

This project and plans follow the attached Technical Specifications in Section H-Appendices. Reference is made to the ALDOT 2018 Standard Specifications for Highway Construction for certain construction items called out on the construction plans.

### 2. PROXIMITY OF WORK

The Work to be performed under this contract is located within the City of Hoover on Sulphur Springs Rd between Pineway Dr and Pine Forest Dr, Jefferson County, Alabama.

### 3. ALTERNATE BID ITEMS

The City of Hoover, at its sole discretion, may elect to exclude the alternate bid items. The alternate bid items are for  N/A . These items of work may include but are not limited to all labor, materials, and services required to:  N/A .

### 4. WORK SCHEDULE

The Contractor is to provide the Project Engineer with a contact person that will be responsible for all questions or problems that might arise during the construction of this project. The Project Manager must be able to meet or communicate daily with the Project Engineer once the Notice to Proceed has been issued. Allocated project time is set at  60  Calendar Days with a \$  750  per day penalty to be imposed if project is not completed within this time frame.

### 5. ENGINEERING CONTROL

The Contractor will be responsible for all engineering controls.

### 6. EROSION CONTROL

The Contractor is responsible for installation and maintenance for all erosion control items. Erosion Control devices shall be installed as shown on the Construction Drawings and as deemed necessary by the Project Engineer. All debris from excavating operations shall be removed from the job site immediately. The Contractor will be responsible for ensuring that all roadways affected by this project remain as clean as possible.

### 7. TRAFFIC CONTROL

All temporary traffic control devices are to be installed prior to any construction activity. All driveways adjacent to this construction project are to remain open and passable during all construction activities.

### 8. UTILITY LOCATION

Location of all utilities is the responsibility of the Contractor. The Contractor will be held liable for any damage incurred to utilities not properly located during the construction of this project. The City of Hoover  WILL NOT  reimburse the Contractor for damages to existing utilities during construction of this project.

**END of SPECIFICATIONS SECTION**

# City of Hoover, Alabama

Invitation to Bid #22-017

Project Title: Sulphur Springs Rd Culvert Replacement

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## G. FORMS

### 1. BID SUBMITTAL FORMS

- a. Bid Bond Form
- b. Lump Sum Bid Form and Unit Price Schedule
- c. Lump Sum Price Base Bid Form
- d. Unit Price Schedule

### 2. CONTRACT EXECUTION FORMS

- a. Contract
- b. Performance Bond
- c. Payment Bond

### 3. BID SUBMISSION CHECKLIST

- \_\_\_ Bid submitted to Hoover City Clerk in clearly marked **sealed** envelope
- \_\_\_ Copy of contractor's license included with bid
- \_\_\_ Completed Bid Bond Form (Pages 69-70)
- \_\_\_ Completed Lump Sum Bid Form and Unit Price Schedule (Pages 71-72)
- \_\_\_ Completed Lump Sum Price Base Bid Form (Page 73)
- \_\_\_ Completed Unit Price Schedule (Pages 74-75)

# City of Hoover, Alabama

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## 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 Hoover, 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:** Sulphur Springs Rd Culvert Replacement  
**Location:** Hoover, Alabama  
**Engineer:** Schoel Engineering Co. Inc.

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.

# City of Hoover, Alabama

Invitation to Bid #22-017

Project Title: Sulphur Springs Rd Culvert Replacement

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**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.

# City of Hoover, Alabama

Invitation to Bid #22-017

Project Title: Sulphur Springs Rd Culvert Replacement



**NOTE:** Bidder may submit a cashier's check drawn on an Alabama bank to the order of the City of Hoover equal to 5% of the amount bid (maximum amount - \$10,000.00), in lieu of a Corporate Surety, under the same terms.

### Lump Sum Bid Form and Unit Price Schedule

**To:** City of Hoover

**Address:** 100 Municipal Lane, Hoover, AL 35216

**Project Title:** Sulphur Springs Rd Culvert Replacement

**Project No.:** #22-017

Submission of this Bid constitutes a binding representation by the Bidder that the Bidder will perform the following obligations within the times and in the manner specified: (a) the Bidder will deliver to the Owner acceptable evidence of insurance; and, (b) the Bidder and its surety will appear before the Owner and sign the Agreement, Performance Bond and Labor and Material Payment Bond, as specified in section C part 35 and section D part 3 of this Invitation to Bid.

### BIDDER

The name of the Bidder submitting this Proposal is \_\_\_\_\_  
\_\_\_\_\_ doing business at \_\_\_\_\_  
\_\_\_\_\_ which is the address to which all communications concerned with this Proposal and with the Contract shall be sent.

Licensed, Class \_\_\_\_\_, Alabama General Contractor No.: \_\_\_\_\_ (Attach copy)

Alabama General Contractor Specialty \_\_\_\_\_

Alabama General Contractor License Major Categories:

(1) \_\_\_\_\_ (3) \_\_\_\_\_

(2) \_\_\_\_\_ (4) \_\_\_\_\_

Bidder's contact person for additional information on this Proposal:

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

**Telephone:** \_\_\_\_\_

**E-mail:** \_\_\_\_\_

### ADDENDA

The Bidder hereby acknowledges that he has received Addenda No's. \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (Bidder shall Insert No. of each Addendum received) and agrees that all addenda issued are hereby made part of the Contract Documents, and the Bidder further agrees that his Proposal(s) includes all impacts resulting from said addenda and that the Bidder



# City of Hoover, Alabama

Invitation to Bid #22-017

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has attended the pre-bid conference, if held, and examined the bidding documents including the above acknowledged addenda.

# City of Hoover, Alabama

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## LUMP SUM PRICE BASE BID

The Bidder agrees to accept as full payment of the work proposed under this project (including the alternate bid items), as herein specified and as shown on the Contract Documents, upon the undersigned's own estimate of quantities and costs, the following total base bid of:

\_\_\_\_\_ Dollars and \_\_\_\_\_ cents  
\$ \_\_\_\_\_ (Amount written in words has precedence)

## TIME OF COMPLETION

The Contract Times are specified in section D part 9 and section F part 4 of these bid documents. The Bidder has carefully correlated the provisions with the other terms and conditions of the bidding and Contract Documents and unequivocally accepts the Contract Times for the Work, and any other designated parts of the Work, as specified.

The Bidder unequivocally accepts the liquidated damage provisions specified in section D part 9 in the event of failure, neglect or refusal to complete the Work, or any designated part of the Work, within the corresponding Contract Times.

## UNIT PRICE SCHEDULE

\_\_\_\_\_ (Legal Name of Bidder)

Hereby proposes to furnish all labor, materials, equipment, services, supervision, tools, scaffolding, hoisting, transportation, storage, fees, bonds, licenses, (all sales tax must be included in the bid price), insurance, layout and all incidental items necessary to provide a complete turnkey package Scope of Work for the bid package in accordance with the Contract Documents and specifically including, but not limited to, the following primary sections for the Sulphur Springs Rd Culvert Replacement.

Contractor agrees that unit prices listed below are to be used as a basis for any changes to the items of work to add or deduct. Unit prices shall be mutually agreed upon by Contractor, Engineer, and Owner prior to execution of the project contract between the Contractor and Owner. Quantities for any changes or revisions during construction shall be agreed upon by the Owner prior to executing the change or revision.

# City of Hoover, Alabama

Invitation to Bid #22-017

Project Title: Sulphur Springs Rd Culvert Replacement



The Bidder's unit price for materials listed is as follows:

**CITY OF HOOVER**  
**SULPHUR SPRINGS RD CULVERT REPLACEMENT**  
**Unit Price Schedule**

ITEM #	Description	Unit	Qty	Unit Price	Cost
1	Mobilization	LS	1		
2	Clearing & Grubbing (Maximum Allowable Bid \$8000.00 Per Acre)	LS	1		
3	Demo Existing Storm Pipe & Structures	LS	1		
4	Traffic Control	LS	1		
5	42" Storm Sewer Pipe (CL 3 RCP), Includes Stone Bedding	LF	300		
6	ALDOT 825 Type "A" Stone Trench Backfill in Roadway	CY	30		
7	42" Concrete Headwall, Upstream	EA	1		
8	42" Concrete Headwall, Downstream, with Concrete Apron Tie-In to Existing Flume	EA	1		
9	Inlets, Type S4 Single Wing, Including Structure Base	EA	1		
10	Inlets, Type S4 Double Wing, Including Structure Base	EA	1		
11	Inlet-Gutter Transition	EA	1		
12	Silt Fence, Type A	LF	585		
13	Inlet Protection, Straw Wattles	LF	60		
14	Tack Coat	GAL	21		

# City of Hoover, Alabama

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15	Bituminous Concrete Wearing Layer, 110lb/sy	TON	5		
16	Bituminous Concrete Binder Layer, 250lb/sy	TON	10		
17	Crushed Aggregate Base- ALDOT Type "B"	TON	30		
18	Solid Sod (Match Existing)	SY	490		
	Total Bid Amount:				

## **NOTES:**

1. The unit prices shown include all labor and material necessary to complete the item in place as depicted in the Drawing and Specifications.
2. Any work called for in the plans for which no item is shown shall be subsidiary to various items.

# City of Hoover, Alabama

Invitation to Bid #22-017

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## Contract

This agreement is made this day of \_\_\_\_\_ (date) between the Owner,

**City of Hoover**  
**100 Municipal Lane**  
**Hoover, AL 35216**

and the Contractor,

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

For the following Project:

**Sulphur Springs Rd Culvert Replacement**

The contract documents include:

- 1) Construction Plans prepared by Mark E. Simpson, PE, Schoel Engineering.
- 2) The Invitation to Bid Package which includes:
  - a. Instructions for submittal of bids
  - b. General information about the bid award process
  - c. General conditions of the contract
  - d. Supplemental conditions of the contract
  - e. Special provisions
  - f. Specifications
  - g. Forms
  - h. Appendices

Payment for work shall be as described in Section C Parts 29-34 for the bid amount of

\$ \_\_\_\_\_

This agreement is entered into as of the day and year first written above.

\_\_\_\_\_  
Owner (signature)

\_\_\_\_\_  
Contractor (signature)

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Printed name and title)

# City of Hoover, Alabama

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Project Title: Sulphur Springs Rd Culvert Replacement



## PERFORMANCE BOND

Sulphur Springs Rd Culvert Replacement

**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 Hoover, Alabama ("**Owner**"), as obligee, the faithful performance of the Contract the **Contractor** has entered into with the **Owner** for the \_\_\_\_\_, ("**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.

# City of Hoover, Alabama

Invitation to Bid #22-017

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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.

**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 \_\_\_\_\_

# City of Hoover, Alabama

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## LABOR & MATERIAL PAYMENT BOND

Sulphur Springs Rd Culvert Replacement

**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 Hoover, Alabama (**Owner**), as obligee, the faithful performance of the Contract the **Contractor** has entered into with the **Owner** for the \_\_\_\_\_ Sulphur Springs Rd Culvert Replacement, (**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.

Stoop

**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



# City of Hoover, Alabama

Invitation to Bid #22-017

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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.

**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 \_\_\_\_\_

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## **H. APPENDICES**

### **1. CONTENTS OF APPENDICES SECTION**

- a. Construction Plans and Technical Specifications prepared by Schoel Engineering, Mark E. Simpson, PE, dated June 24, 2022.