FACILITIES DIVISION

ACCS FORM 2-B

GENERAL CONDITIONS *of the* CONTRACT

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Article 1
DEFINITIONS

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

A **ACCS FACILITIES DIVISION:** The ACCS Facilities Division, which is responsible for oversight and management of all ACCS construction projects, pursuant to the policies and procedures adopted by the ACCS Board of Trustees.

B **ARCHITECT:** The Architect is the person or entity lawfully licensed to practice architecture in the State of Alabama, who is under contract with the Owner as the primary design professional for the Project and identified as the Architect in the Construction Contract. The term "Architect" means the Architect or the Architect's authorized representative. If the employment of the Architect is terminated, the Owner shall employ a new Architect whose status under the Contract Documents shall be that of the former Architect. If the primary design professional for the Project is a Professional Engineer, the term "Engineer" shall be substituted for the term "Architect" wherever it appears in this document.

C **CONTRACT:** The Contract is the embodiment of the Contract Documents. The Contract represents the entire and integrated agreement between the Owner and Contractor and supersedes any prior written or oral negotiations, representations or agreements that are not incorporated into the Contract Documents. The Contract may be amended only by a Contract Change Order or a Modification to the Construction Contract. The contractual relationship which the Contract creates between the Owner and the Contractor extends to no other persons or entities. The Contract consists of the following Contract Documents, including all additions, deletions, and modifications incorporated therein before the execution of the Construction Contract:

(1) Construction Contract
(2) Performance and Payment Bonds
(3) Conditions of the Contract (General, Supplemental, and other Conditions)
(4) Specifications
(5) Drawings
(6) Contract Change Orders
(7) Modifications to the Construction Contract (applicable to PSCA Projects)

D **CONTRACT SUM:** The Contract Sum is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents. The term "Contract Sum" means the Contract Sum stated in the Construction Contract as may have been increased or decreased by Change Order(s) in accordance with the Contract Documents.

E **CONTRACT TIME:** The Contract Time is the period of time in which the Contractor must achieve Substantial Completion of the Work. The date on which the Contract Time begins is specified in the written Notice To Proceed issued to the Contractor by the Owner. The Date of Substantial Completion is the date established in accordance with Article 32. The term "Contract Time" means the Contract Time stated in the Construction Contract as may have been extended by Change Order(s) in accordance with the Contract Documents. The term "day" as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

F **CONTRACTOR:** The Contractor is the person or persons, firm, partnership, joint venture, association, corporation, cooperative, limited liability company, or other legal entity, identified as such in the Construction Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

G **DEFECTIVE WORK:** The term "Defective Work" shall apply to: **(1)** any product, material, system, equipment, or service, or its installation or performance, which does not conform to the requirements of the Contract Documents, **(2)** in-progress or completed Work the workmanship of which does not conform to the quality specified or, if not specified, to the quality produced by skilled workers performing work of a similar nature on similar projects in the state, **(3)** substitutions and deviations not properly submitted and approved or otherwise authorized, **(4)** temporary supports, structures, or construction which will not produce the results required by the Contract Documents, and **(5)** materials or equipment rendered unsuitable for incorporation into the Work due to improper storage or protection.

H **CHIEF FACILITIES OFFICER:** The Director of the ACCS Facilities Division.

I **DRAWINGS:** The Drawings are the portions of the Contract Documents showing graphically the design, location, layout, and dimensions of the Work, in the form of plans, elevations, sections, details, schedules, and diagrams.

J **FINAL COMPLETION:** Stage in the project when all work specified in the contract has been completed and all contractual requirements have been satisfied.

K **NOTICE TO PROCEED:** A proceed order issued by the Owner, as applicable, fixing the date on which the Contractor shall begin the prosecution of the Work, which is also the date on which the Contract Time shall begin.

L **OWNER:** The Owner is the entity or entities identified as such in the Construction Contract and is referred to throughout the Contract Documents as if singular in number. The term "Owner" means the Owner or the Owner's authorized representative. The term "Owner" as used herein shall be synonymous with the term "Awarding Authority" as defined and used in Title 39 - Public Works, Code of Alabama, 1975, as amended.

M **THE PROJECT:** The Project is the total construction of which the Work required by these Contract Documents may be the entirety or only a part with other portions to be constructed by the Owner or separate contractors.

N **PRE-CLOSEOUT REVIEW:** Stage in the progress of the Work when the Work or designated portion of the Work is sufficiently complete and the remaining punch list items can be completed and reinspected within 30 days.

O **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.

P **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.

Q **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.

R **SUBSTANTIAL COMPLETION:** Stage in the progress of the Work or designated portion of the work that all punch list items are completed, all change orders are executed, the Owner can occupy or utilize the Work for its intended use, warranties commence, Contractor is no longer liable for Liquidated Damages, and the Owner becomes responsible for security, utilities, insurance and maintenance.

S **THE WORK:** The Work is the construction and services required by the Contract Documents and includes all labor, materials, supplies, equipment, and other items and services as are necessary to produce the required construction and to fulfill the Contractor's obligations under the Contract. The Work may constitute the entire Project or only a portion of it.

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 3
CONTRACTOR'S REPRESENTATION

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

A The Contractor has visited the site of the Work to become familiar with local conditions under which the Work is to be performed and to evaluate reasonably observable conditions as compared with requirements of the Contract Documents.

B The Contractor shall use its best skill and attention to perform the Work in an expeditious manner consistent with the Contract Documents.

C The Contractor is an independent contractor and in performance of the Contract remains and shall act as an independent contractor having no authority to represent or obligate the Owner in any manner unless authorized by the Owner in writing.

Article 4
DOCUMENTS FURNISHED *to* CONTRACTOR

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

Article 5
OWNERSHIP *of* DRAWINGS

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

Article 6
SUPERVISION, SUPERINTENDENT, *and* EMPLOYEES

A **SUPERVISION and CONSTRUCTION METHODS**

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

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

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

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

B **SUPERINTENDENT**

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

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

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

C **EMPLOYEES**

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

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

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

B If the Contractor discovers any errors, omissions, or inconsistencies in the Contract Documents, the Contractor shall promptly report them to the Architect as a written request for information that includes a detailed statement identifying the specific Drawings or Specifications that are in need of clarification and the error, omission, or inconsistency discovered in them.

(1) The Contractor shall not be expected to act as a licensed design professional and ascertain whether the Contract Documents comply with applicable laws, statutes, ordinances, building codes, and rules and regulations, but the Contractor shall be obligated to promptly notify the Architect of any such noncompliance discovered by or made known to the Contractor. If the Contractor performs Work without fulfilling this notification obligation, the Contractor shall pay the resulting costs and damages that would have been avoided by such notification.

(2) The Contractor shall not be liable to the Owner for errors, omissions, or inconsistencies that may exist in the Contract Documents, or between the Contract Documents and conditions at the site, unless the Contractor knowingly fails to report a discovered error, omission, or inconsistency to the Architect, in which case the Contractor shall pay the resulting costs and damages that would have been avoided by such notification.

C If the Contractor considers the Architect's response to a request for information to constitute a change to the Contract Documents involving additional costs and/or time, the Contractor shall follow the procedures of Article 20, Claims for Extra Cost or Extra Work.

D If, with undue frequency, the Contractor requests information that is obtainable through reasonable examination and comparison of the Contract Documents, site conditions, and previous correspondence, interpretations, or clarifications, the Contractor shall be liable to the Owner for reasonable charges from the Architect for the additional services required to review, research, and respond to such requests for information.

Article 8
SURVEYS *by* CONTRACTORS

A The Contractor shall provide competent engineering services to assure accurate execution of the Work in accordance with the Contract Documents. The Contractor shall verify the figures given for the contours, approaches and locations shown on the Drawings before starting any Work and be responsible for the accuracy of the finished Work. Without extra cost to the Owner, the Contractor shall engage a licensed surveyor if necessary to verify boundary lines, keep within property lines, and shall be responsible for encroachments on rights or property of public or surrounding property owners.

B The Contractor shall establish all base lines for the location of the principal components of the Work and make all detail surveys necessary for construction, including grade stakes, batter boards and other working points, lines and elevations. If the Work involves alteration of or addition to existing structures or improvements, the Contractor shall locate and measure elements of the existing conditions as is necessary to facilitate accurate fabrication, assembly, and installation of new Work in the relationship, alignment, and/or connection to the existing structure or improvement as is shown in the Contract Documents.

Article 9
SUBMITTALS

A Where required by the Contract Documents, the Contractor shall submit shop drawings, product data, samples and other information (hereinafter referred to as Submittals) to the Architect for the purpose of demonstrating the way by which the Contractor proposes to conform to the requirements of the Contract Documents. Submittals which are not required by the Contract Documents may be returned by the Architect without action.

B The Contractor shall be responsible to the Owner for the accuracy of its Submittals and the conformity of its submitted information to the requirements of the Contract Documents. Each Submittal shall bear the Contractor's approval, evidencing that the Contractor has reviewed and found the information to be in compliance with the requirements of the Contract Documents. Submittals which are not marked as reviewed and approved by the Contractor may be returned by the Architect without action.

C The Contractor shall prepare and deliver its submittals to the Architect sufficiently in advance of construction requirements and in a sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors. In coordinating the Submittal process with its construction schedule, the Contractor shall allow sufficient time to permit adequate review by the Architect. Within twenty-four (24) hours of the Bid Opening, the Contractor's Schedule of Values must be submitted to the Architect from the apparent low bidder

D By approving a Submittal the Contractor represents not only that the element of Work presented in the Submittal complies with the requirements of the Contract Documents, but also that the Contractor has:

(1) found the layout and/or dimensions in the Submittal to be comparable with those in the Contract Documents and other relevant Submittals and has made field measurements as necessary to verify their accuracy, and

(2) determined that products, materials, systems, equipment and/or procedures presented in the Submittal are compatible with those presented, or being presented, in other relevant Submittals and with the Contractor's intended Construction Methods.

E The Contractor shall not fabricate or perform any portion of the Work for which the Contract Documents require Submittals until the respective Submittals have been approved by the Architect.

F In the case of a resubmission, the Contractor shall direct specific attention to all revisions in a Submittal. The Architect's approval of a resubmission shall not apply to any revisions that were not brought to the Architect's attention.

G If the Contract Documents specify that a Submittal is to be prepared and sealed by a registered architect or licensed engineer retained by the Contractor, all drawings, calculations, specifications, and certifications of the Submittal shall bear the Alabama seal of registration and signature of the registered/licensed design professional who prepared them or under whose supervision they were prepared. The Owner and the Architect shall be entitled to rely upon the adequacy, accuracy and completeness of such a Submittal, provided that all performance and design criteria that such Submittal must satisfy are sufficiently specified in the Contract Documents. The Architect will review, approve or take other appropriate action on such a

Submittal only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Contractor shall not be responsible for the adequacy of the performance or design criteria specified in the Contract Documents.

H DEVIATIONS

(1) The Architect is authorized by the Owner to approve "minor" deviations from the requirements of the Contract Documents through the use of an Architect's Supplemental Instruction (ASI). These "minor" deviations, or ASIs, are defined as those which are in the interest of the Owner, do not materially alter the quality or performance of the finished Work, and do not affect the cost or time of performance of the Work. Deviations which are not "minor" may be authorized only by the Owner through the Change Order procedures of Article 19.

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

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

I ARCHITECT'S REVIEW *and* APPROVAL

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

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

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

J CONFORMANCE *with* SUBMITTALS

The Work shall be constructed in accordance with approved Submittals.

Article 10
DOCUMENTS *and* SAMPLES *at the* SITE

A **"CONFORMANCE DOCUMENTS" SET**

The Contractor will be provided a Conformance Documents issue set of Drawings and Project Manual that incorporates all addenda items and all accepted alternates. The Contractor shall maintain at the Project site, in good order, at least one set of the Conformance Documents Drawings and Project Manual.

The Contractor shall assure that all sets of the Drawings and Project Manuals being used by the Contractor, Subcontractors, and suppliers are "Conformance Documents" with the current information to insure that updated Contract Documents are used for performance of the Work.

B **RECORD SET**

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

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

Article 11
"AS-BUILT" DOCUMENTS

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

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

(1) Drawings

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

(b) Where a revised drawing has been furnished by the Architect, the drawing of latest date shall be bound into the Drawings in the place of the superseded drawing.

(c) Where a supplemental drawing has been furnished by the Architect, the supplemental drawing shall be bound into the Drawings in an appropriate location and referred to by notes added to the drawing being supplemented.

(d) Where the Architect has furnished details, partial plans, or lengthy notes of which it would be impractical for the Contractor to redraw or letter on a drawing, such information may be affixed to the appropriate drawing with transparent tape if space is available on the drawing.

(e) Any entry of information made in the Drawings that is the result of an Addendum or Change Order, shall identify the Addendum or Change Order from which it originated.

(2) Project Manual

(a) A copy of all Addenda and Change Orders, excluding drawings thereof, shall be bound in the front of the Project Manual.

(b) Where a document, form, or entire specification section is revised, the latest issue shall be bound into the Project Manual in the place of the superseded issue.

(c) Where information within a specification section is revised, the deleted or revised information shall be drawn through in ink and an adjacent note added identifying the Addendum or Change Order containing the revised information.

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

Article 12
PROGRESS SCHEDULE

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

A The Contractor shall within fifteen days after the date of commencement stated in the Notice to Proceed, or such other time as may be provided in the Contract Documents, prepare and submit to the Architect for review and approval a practicable construction schedule informing the Architect and Owner of the order in which the Contractor plans to carry on the Work within the Contract Time. The Architect's review and approval of the Contractor's construction schedule shall be only for compliance with the specified format, Contract Time, and suitability for monitoring progress of the Work and shall not be construed as a representation that the Architect has analyzed the schedule to form opinions of sequences or durations of time represented in the schedule.

B In conjunction with the construction schedule a progress schedule shall be prepared using ACCS Form 6-H "Progress Schedule and Report", (contained in the Project Manual) or similar format of suitable scale and detail to indicate the percentage of Work scheduled to be completed at the end of each month. ACCS Form 6-H shall not be used as the construction schedule. At the end of each month the Contractor shall enter the actual percentage of completion on the construction schedule submit two copies to the Architect, and attach one copy to each copy of the monthly Application for Payment. The construction schedule shall be revised to reflect any agreed extensions of the Contract Time or as required by conditions of the Work.

C The Contractor's construction schedule shall be used by the Contractor, Architect, and Owner to determine the adequacy of the Contractor's progress. The Contractor shall be responsible for maintaining progress in accordance with the currently approved construction schedule and shall increase the number of shifts, and/or overtime operations, days of work, and/or the amount of construction plant and equipment as may be necessary to do so. If the Contractor's progress falls materially behind the currently approved construction schedule, it is expected that the Architect formally notify the Contractor to produce a recovery schedule to meet the construction deadlines. If the Contractor is not taking sufficient steps to regain schedule, the Architect may, with the Owner's concurrence, issue the Contractor a Notice to Cure pursuant to Article 27. In such a Notice to Cure the Architect may require the Contractor to submit such supplementary or revised construction schedules as may be deemed necessary to demonstrate the manner in which schedule will be regained.

Article 13
EQUIPMENT, MATERIALS, *and* SUBSTITUTIONS

A Every part of the Work shall be executed in a workmanlike manner in accordance with the Contract Documents and approved Submittals. All materials used in the Work shall be furnished in sufficient quantities to facilitate the proper and expeditious execution of the Work and shall be new except such materials as may be expressly provided or allowed in the Contract Documents to be otherwise.

B Whenever a product, material, system, item of equipment, or service is identified in the Contract Documents by reference to a trade name, manufacturer's name, model number, etc.(hereinafter referred to as "source"), and only one or two sources are listed, or three or more sources are listed and followed by "or approved equal" or similar wording, it is intended to establish a required standard of performance, design, and quality, and the Contractor may submit, for the Architect's approval, products, materials, systems, equipment, or services of other sources which the Contractor can prove to the Architect's satisfaction are equal to, or exceed, the standard of performance, design and quality specified, unless the provisions of Paragraph D below apply. Such proposed substitutions are not to be purchased or installed without the Architect's written approval of the substitution.

C If the Contract Documents identify three or more sources for a product, material, system, item of equipment or service to be used and the list of sources is not followed by "or approved equal" or similar wording, the Contractor may make substitution only after evaluation by the Architect and execution of an appropriate Contract Change Order.

D If the Contract Documents identify only one source and expressly provide that it is an approved sole source for the product, material, system, item of equipment, or service, the Contractor must furnish the identified sole source.

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

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

B Where any of these are in conflict, the more stringent requirement shall be followed. Nothing contained in this Contract shall be construed to mean that the Owner has employed the Architect nor has the Architect employed its consultants to administer, supervise, inspect, or take action regarding safety programs or conditions at the Project site.

The Contractor shall employ Construction Methods, safety precautions, and protective measures that will reasonably prevent damage, injury or loss to:

(1) workers and other persons on the Project site and in adjacent and other areas that may be affected by the Contractor's operations;

(2) the Work and materials and equipment to be incorporated into the Work and stored by the Contractor on or off the Project site; and

(3) other property on, or adjacent to, the Project site, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities, and other improvements not designated in the Contract Documents to be removed, relocated, or replaced.

C The Contractor shall be responsible for the prompt remedy of damage and loss to property, including the filing of appropriate insurance claims, caused in whole or in part by the fault or negligence of the Contractor, a Subcontractor, or anyone for whose acts they may be liable.

D The Contractor shall comply with and give notices required by applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety and protection of persons or property, including without limitation notices to adjoining property owners of excavation or other construction activities that potentially could cause damage or injury to adjoining property or persons thereon.

E The Contractor shall erect and maintain barriers, danger signs, and any other reasonable safeguards and warnings against hazards as may be required for safety and protection during performance of the Contract and shall notify owners and users of adjacent sites and utilities of conditions that may exist or arise which may jeopardize their safety.

F If use or storage of explosives or other hazardous materials or equipment or unusual Construction Methods are necessary for execution of the Work, the Contractor shall exercise commensurate care and employ supervisors and workers properly qualified to perform such activity.

G The Contractor shall furnish a qualified safety representative at the Project site whose duties shall include the prevention of accidents. The safety representative shall be the Contractor's superintendent, unless the Contractor assigns this duty to another responsible member of its on-site staff and notifies the Owner and Architect in writing of such assignment.

H The Contractor shall not permit a load to be applied, or forces introduced, to any part of the construction or site that may cause damage to the construction or site or endanger safety of the construction, site, or persons on or near the site.

I The Contractor shall have the right to act as it deems appropriate in emergency situations jeopardizing life or property. The Contractor shall be entitled to equitable adjustment of the Contract Sum or Contract Time for its efforts expended for the sole benefit of the Owner in an emergency. Such adjustment shall be determined as provided in Articles 19 and 20.

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

Article 15
HAZARDOUS MATERIALS

A A Hazardous Material is any substance or material identified as hazardous under any federal, state, or local law or regulation, or any other substance or material which may be considered hazardous or otherwise subject to statutory or regulatory requirements governing its handling, disposal, and/or clean-up. Existing Hazardous Materials are Hazardous Materials discovered at the Project site and not introduced to the Project site by the Contractor, a Subcontractor, or anyone for whose acts they may be liable.

B If, during the performance of the Work, the Contractor encounters a suspected Existing Hazardous Material, the Contractor shall immediately stop work in the affected area, take measures appropriate to the condition to keep people away from the suspected Existing Hazardous Material, and immediately notify the Architect and Owner of the condition in writing.

C The Owner shall obtain the services of an independent laboratory or professional consultant, appropriately licensed and qualified, to determine whether the suspected material is a Hazardous Material requiring abatement and, if so, to certify after its abatement that it has been rendered harmless. Any abatement of Existing Hazardous Materials will be the responsibility of the Owner. The Owner will advise the Contractor in writing of the persons or entities who will determine the nature of the suspected material and those who will, if necessary, perform the abatement. The Owner will not employ persons or entities to perform these services to whom the Contractor or Architect has reasonable objection.

D After certification by the Owner's independent laboratory or professional consultant that the material is harmless or has been rendered harmless, work in the affected area shall resume upon written agreement between the Owner and Contractor. If the material is found to be an Existing Hazardous Material and the Contractor incurs additional cost or delay due to the presence and abatement of the material, the Contract Sum and/or Contract Time shall be appropriately adjusted by a Contract Change Order pursuant to Article 19.

E The Owner shall not be responsible for Hazardous Materials introduced to the Project site by the Contractor, a Subcontractor, or anyone for whose acts they may be liable unless such Hazardous Materials were required by the Contract Documents.

Article 16
INSPECTION *of the* WORK

A **GENERAL**

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

jurisdiction, or their representatives shall relieve the Contractor of responsibility to inspect the Work, for responsibility for Construction Methods and safety precautions and programs in connection with the Work, or from any other requirement of the Contract Documents.

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

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

(4) The Contractor may be charged by the Owner for any extra cost of a failed inspection or reinspection incurred by the Owner or Architect on account of material and workmanship not being ready for inspection at the time of inspection set by the Contractor. This will be credited back to the Owner through a deductive change order.

(5) It is the Contractor's responsibility to communicate to the Design Team the date and time of requested inspection(s). It is the Design Team's responsibility to coordinate the date and time of the requested inspection with the Contractor, AHJ or ICC, Owner (ACCS) and College (college designated representative).

(6) The following are the minimum participation requirements for inspections:

(a) Required inspection without an AHJ or ICC - both the Contractor and Design Professional of record.
(b) Required inspection with an AHJ or ICC - both the Contractor and Design Professional of record.

B TYPES of INSPECTIONS

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

(a) Pre-construction Conference.
(b) Pre-roofing Conference (not applicable if the Contract involves no roofing work)
(c) Pre-Asphalt Paving Installation and Expectations Conference
(d) Pre-Landscape Sod Installation and Expectations Conference
(e) Pre-Flooring Installation and Expectations Conference
(f) Below Slab/Underground Utility Inspection
(g) Footings and Foundation Inspection
(h) Concrete Slab Inspection
(i) Waterproofing and Building Envelope Inspection
(j) In-Wall Inspection

(k) Gypsum Board Inspection

(l) Roofing Inspection

(m) Storm Shelter Inspection (if applicable)

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

(o) Elevator Inspection

(p) Fire Suppression Systems Inspection

(q) Fire Alarm System Inspection

(r) Emergency Lights and Exit Signs Inspection

(s) ADA Inspection

(t) Pre-Closeout Review

(u) Substantial Completion and Final Inspection(s): A Final Inspection shall establish that the Work, or a designated portion of the Work, as Substantially Complete in accordance with Article 32 and is accepted by the Architect, Owner, and AHJ or other reviewing entity as being ready for the Owner's occupancy or use. If closeout documents are not completed within 45 days of issuance of Certificate of Substantial Completion, a Notice to Cure may be issued. 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 Substantial Completion.

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

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

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

C INSPECTIONS *by the* ARCHITECT

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

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

(a) become generally familiar with the in-progress and completed Work and the quality of the Work,

(b) determine whether the Work is progressing in general accordance with the Contractor's schedule and is likely to be completed within the Contract Time,

(c) visually compare readily accessible elements of the Work to the requirements of the Contract Documents to determine, in general, if the Contractor's performance of the Work indicates that the Work will conform to the requirements of the Contract Documents when completed,

(d) endeavor to guard the Owner against Defective Work,

(e) review and address with the Contractor any problems in implementing the requirements of the Contract Documents that the Contractor may have encountered, and

(f) keep the Owner fully informed about the Project.

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

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

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

D INSPECTIONS BY THE LOCAL AHJ OR INDEPENDENT CODE CONSULTANTS

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

(a) participate in scheduled inspections and conferences as practicable,

(b) perform periodic inspections of in-progress and completed Work to ensure code compliance of the Project and general conformance of the Work with the Contract Documents, and

(c) monitor the Contractor's progress and performance of the Work.

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

(a) reject Work that is not in compliance with the State Building Code, unless the Work is in accordance with the Contract Documents in which case the Architect shall initiate appropriate corrective action, and

(b) notify the Architect, Owner, and Contractor of Defective Work recognized by the Local AHJ or Independent Code Consultant.

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

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

E UNCOVERING WORK

(1) If the Contractor covers a portion of the Work before it is examined by the Architect and this is contrary to the Architect's request or specific requirements in the Contract Documents, then, upon written request of the Architect, the Work must be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

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

F SPECIFIED INSPECTIONS *and* TESTS

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

(2) If the Architect, Owner, or public authority having jurisdiction determines that inspections, tests, demonstrations, or approvals in addition to Specified Inspections and Tests are required, the Contractor

shall, upon written instruction from the Architect, arrange for their performance by an entity acceptable to the Owner, giving timely notice to the architect of the time and place of their performance. Related costs shall be borne by the Owner unless the procedures reveal that Work is not in compliance with requirements of the Contract Documents, in which case the Contractor shall bear the costs of correction, repeating the procedures, and any related costs incurred by the Owner, including reasonable charges, if any, by the Architect for additional services.

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

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

Article 17
CORRECTION *of* DEFECTIVE WORK

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

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

C The Contractor shall bear all expenses related to the correction of Defective Work, including but not limited to: **(1)** additional testing and inspections, including repeating Specified Inspections and Tests,

(2) reasonable services and expenses of the Architect, and (3) the expense of making good all work of the Contractor, Owner, or separate contractors destroyed or damaged by the correction of Defective Work.

D All Defective Work, or Deficiencies, shall be tracked on a Project Deficiency Log that is reviewed and updated at least monthly at OAC meetings.

Article 18
DEDUCTIONS *for* UNCORRECTED WORK

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

Article 19
CHANGES *in* WORK

A **GENERAL**

(1) The Owner may at any time direct the Contractor to make changes in the Work which are within the general scope of the Contract, including changes in the Drawings, Specifications, or other portions of the Contract Documents to add, delete, or otherwise revise portions of the Work. The Architect is authorized by the Owner to direct "minor" changes in the Work by written order to the Contractor through the use of an

Architect's Supplemental Instruction (ASI). These "minor" changes, or ASIs, in the Work are defined as those which are in the interest of the Owner, do not materially alter the quality or performance of the finished Work, and do not affect the cost or time of performance of the Work. Changes in the Work which are not "minor" may be authorized only by the Owner.

(2) If the Owner directs a change in the Work, the change shall be incorporated into the Contract by a Contract Change Order prepared by the Architect and signed by the Contractor, Owner, and other signatories to the Construction Contract, stating their agreement upon the change or changes in the Work and the adjustments, if any, in the Contract Sum and the Contract Time.

(3) Subject to compliance with Alabama's Public Works Law, the Owner may, upon agreement by the Contractor, incorporate previously unawarded bid alternates into the Contract.

(4) In the event of a claim or dispute as to the appropriate adjustment to the Contract Sum or Contract Time due to a directive to make changes in the Work, the Work shall proceed as provided in this article subject to subsequent agreement of the parties or final resolution of the dispute pursuant to Article 24.

(5) Consent of surety will be obtained for all Contract Change Orders involving an increase in the Contract Sum.

(6) Changes in the Work shall be performed under applicable provisions of the Contract Documents and the Contractor shall proceed promptly to perform changes in the Work, unless otherwise directed by the Owner through the Architect.

(7) All change orders must be executed by ACCS prior to the issuance of the Certificate of Substantial Completion.

(8) Liquidated damages are routed as Change Orders for work that the Contractor has failed to substantially complete within the Contract Time. Before the process of applying liquidated damages begins, communication and approval is required from the ACCS Chief Facilities Officer.

(9) All change orders require completion of ACCS Form 2-F Contract Change Order and ACCS Form 2-G Contract Change Order Justification forms. Only Change Orders 10% or greater of the current contract amount require the Owner's legal advisor's signature on the Change Order Justification form.

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

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

(1) Lump Sum. By mutual agreement to a lump sum based on or negotiated from an itemized cost proposal from the Contractor. This amount shall be all-inclusive, covering direct costs, as well as any fees. Contractor shall furnish to the Owner an itemized breakdown of the quantities and prices to be used in estimating the value of any changes that might be ordered. For the purposes of this method, Contractor and Subcontractors, shall furnish, at a minimum, the following on their own letterhead; all material or vendor quotes (with quantities and unit cost), labor hours, labor rates, labor burdens, equipment, and any other relevant information necessary to analyze the quote. Changes which involve a net credit to the Owner shall include fair and reasonable credits for overhead and profit on the deducted work, in no case less than 5%. For the purposes of this method of determining an adjustment of the Contract Sum, "overhead" shall cover the Contractor's indirect costs of the change, such as the cost of bonds, superintendent and other job office

personnel, watchman, joboffice, job office supplies and expenses, temporary facilities and utilities, and home office expenses.

(a) For the Party performing the work, the cost of the work, less any credits, shall have a maximum markup for Overhead and Profit of 10%.

(b) The prime contractor or upper-tier subcontractor's markup on work performed by lower-tier subcontractors shall not exceed 10%. No more than 10% shall be added by each successive lower-tier subcontractor, if applicable, for a maximum of 20%.

(c) Article 19.B.1.a and 19.B.1.b shall also apply to Force Account changes.

(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. Each unit price is to include overhead, profit, and all other related costs.

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

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

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

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

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

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

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

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

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

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

(2) The Contract Time shall be extended only to the extent that the change affects the time required to complete the entire Work of the Contract, taking into account the concurrent performance of the changed and unchanged Work. All Contract Time extension requests will be considered in relation to the Critical Path of the Construction Schedule. For purposes of this section, the Critical Path of the Construction Schedule determines the sequence of dependent tasks for project completion and identifies the shortest possible duration for completing the project.

D CHANGE ORDER PROCEDURES

(1) If the Owner proposes to make a change in the Work, the Architect will request that the Contractor provide a cost proposal for making the change to the Work. The request shall be in writing and shall adequately describe the proposed change using drawings, specifications, narrative, or a combination thereof. Within 14 days after receiving such a request, or such other time as may be stated in the request, the Contractor shall prepare and submit a written proposal along with the Change Proposal Recap Sheet to the Architect, properly itemized and supported by sufficient substantiating data to facilitate evaluation. The stated time within which the Contractor must submit a proposal may be extended if, within that time, the Contractor makes a written request with reasonable justification thereof.

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

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

(4) In advance of delivery of a fully executed Contract Change Order, the Architect may furnish to the Contractor a written authorization to proceed with an agreed change utilizing the Change Order Justification (ACCS Form 2-G). However, such an authorization shall be effective only if it:

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

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

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

- **(a)** determine with the Contractor a sufficient maximum amount to be authorized for the change and

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

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

Article 20
CLAIMS *for* EXTRA COST *or* EXTRA WORK

A If the Contractor considers any instructions by the Architect, Owner, or public authority having jurisdiction or Independent Code Consultant, to be contrary to the requirements of the Contract Documents and will involve extra work and/or cost under the Contract, the Contractor shall give the Architect written notice thereof within ten days after receipt of such instructions, and in any event before proceeding to execute such work. As used in this Article, "instructions" shall include written or oral clarifications, directions, instructions, interpretations, or determinations.

B The Contractor's notification pursuant to Paragraph 20.A shall state: **(1)** the date, circumstances, and source of the instructions, **(2)** that the Contractor considers the instructions to constitute a change to the Contract Documents and why, and **(3)** an estimate of extra cost and time that may be involved to the extent an estimate may be reasonably made at that time.

C Except for claims relating to an emergency endangering life or property, no claim for extra cost or extra work shall be considered in the absence of prior notice required under Paragraph 20.A.

D Within ten days of receipt of a notice pursuant to Paragraph 20.A, the Architect will respond in writing to the Contractor, stating one of the following:

(1) The cited instruction is rescinded.

(2) The cited instruction is a change in the Work and in which manner the Contractor is to proceed with procedures of Article 19, Changes in the Work.

(3) The cited instruction is reconfirmed, is not considered by the Architect to be a change in the Contract Documents, and the Contractor is to proceed with Work as instructed.

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

Article 21
DIFFERING SITE CONDITIONS

A **DEFINITION**

"Differing Site Conditions" are:

(1) subsurface or otherwise concealed physical conditions at the Project site which differ materially from those indicated in the Contract Documents, or

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

B **PROCEDURES**

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

Article 22
CLAIMS *for* DAMAGES

If either party to the Contract suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time after the discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

Article 23
DELAYS

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

B Adverse weather conditions that are more severe than anticipated for the locality of the Work during any given month may entitle the Contractor to an extension of Contract Time provided, however;

(1) the weather conditions had an adverse effect on construction scheduled to be performed during the period in which the adverse weather occurred, which in reasonable sequence would have an effect on completion of the entire Work,

(2) the Contractor shall, within twenty-one days after the end of the month in which the delay occurs, give the Architect written notice of the delay that occurred during that month and its probable effect on progress of the Work, and

(3) within a reasonable time after giving notice of the delay, the Contractor provides the Architect with sufficient data to document that the weather conditions experienced were unusually severe for the locality of the Work during the month in question. Unless otherwise provided in the Contract Documents, data documenting unusually severe weather conditions shall compare actual weather conditions to the average weather conditions for the month in question during the previous five years as recorded by the National Oceanic and Atmospheric Administration (NOAA) or similar record-keeping entities.

C Adjustments, if any, of the Contract Time pursuant to this Article shall be incorporated into the Contract by a Contract Change Order prepared by the Architect and signed by the Contractor, Owner, and other signatories to the Construction Contract or, at closeout of the Contract, by mutual written agreement between the Contractor and Owner. The adjustment of the Contract Time shall not exceed the extent to which the delay extends the time required to complete the entire Work of the Contract.

D The Contractor shall not be entitled to any adjustment of the Contract Sum for damage due to delays claimed pursuant to this Article unless the delay was caused by the Owner or Architect and was either:

(1) the result of bad faith or active interference or

(2) beyond the contemplation of the parties and not remedied within a reasonable time after notification by the Contractor of its presence.

Article 24
RESOLUTION *of* CLAIMS *and* DISPUTES

A **APPLICABILITY *of* ARTICLE**

(1) As used in this Article, "Claims and Disputes" include claims or disputes asserted by the Contractor, its Surety, or Owner arising out of or related to the Contract, or its breach, including without limitation claims seeking, under the provisions of the Contract, equitable adjustment of the Contract Sum or Contract Time and claims and disputes arising between the Contractor (or its Surety) and Owner regarding interpretation of the Contract Documents, performance of the Work, or breach of or compliance with the terms of the Contract.

(2) "Resolution" addressed in this Article applies only to Claims and Disputes arising between the Contractor (or its Surety) and Owner and asserted after execution of the Construction Contract and prior to the date upon which final payment is made. Upon making application for final payment the Contractor may reserve the right to subsequent Resolution of existing Claims by including a list of all Claims, in stated amounts, which remain to be resolved and specifically excluding them from any release of claims executed by the Contractor, and in that event Resolution may occur after final payment is made.

B **CONTINUANCE *of* PERFORMANCE**

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

C **GOOD FAITH EFFORT *to* SETTLE**

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

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

(1) If the good faith effort to resolve the Claim between the Architect and Contractor has not been reasonably satisfied, the Contractor may make a formal request to the ACCS Chief Facilities Officer to review the project and endeavor to resolve the Claim.

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

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

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

Article 25
OWNER'S RIGHT *to* CORRECT DEFECTIVE WORK

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

Article 26
OWNER'S RIGHT *to* STOP *and* SUSPEND *the* WORK

A **STOPPING *the* WORK *for* CAUSE**

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

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

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

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

Article 27
OWNER'S RIGHT *to* TERMINATE CONTRACT

A **TERMINATION *by the* OWNER *for* CAUSE**

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

(a) should be adjudged bankrupt, or should make a general assignment for the benefit of the Contractor's creditors, or if a receiver should be appointed on account of the Contractor's insolvency to the extent termination for these reasons is permissible under applicable law;

(b) refuses or fails to prosecute the Work, or any part of the Work, with the diligence that will insure its completion within the Contract Time, including any extensions, or fails to complete the Work within the Contract Time;

(c) refuses or fails to perform the Work, including prompt correction of Defective Work, in a manner that will insure that the Work, when fully completed, will be in accordance with the Contract Documents;

(d) fails to pay for labor or materials supplied for the Work or to pay Subcontractors in accordance with the respective Subcontract;

(e) persistently disregards laws, ordinances, or rules, regulations or orders of a public authority having jurisdiction, or the instructions of the Architect or Owner; or

(f) is otherwise guilty of a substantial breach of the Contract.

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

(a) Notice to Cure: In the presence of any of the above conditions the Architect may give the Contractor written notice to cure the condition within a reasonable, stated time, but not less than ten days after the Contractor receives the notice.

(b) Notice of Termination: If, at the expiration of the time stated in the Notice to Cure, the Contractor has not proceeded and satisfactorily continued to cure the condition or provided the Architect with written verification that satisfactory positive action is in process to cure the condition, the Owner may, without prejudice to any other rights or remedies of the Owner, give the Contractor written notice that the Contractor's right to complete the Work, or a designated portion of the Work, shall terminate seven days after the Contractor's receipt of the written Notice of Termination.

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

(d) At the expiration of the seven days of the termination notice, the Owner may:

.1 take possession of the site, of all materials and equipment stored on and off site, and of all Contractor-owned tools, construction equipment and machinery, and facilities located at the site, and

.2 finish the Work by whatever reasonable method the Owner may deem expedient.

(e) The Contractor shall not be entitled to receive further payment under the Contract until the Work is completed.

(f) If the Owner's cost of completing the Work, including correction of Defective Work, compensation for additional architectural, engineering, managerial, and administrative services, and reasonable attorneys' fees due to the default and termination, is less than the unpaid balance of the Contract Sum, the excess balance less liquidated damages for delay shall be paid to the Contractor. If such cost to the Owner including attorney's fees, plus liquidated damages, exceeds the unpaid balance of the Contract Sum, the Contractor shall pay the difference to the Owner. Final Resolution of any claim or Dispute involving the termination or any amount due any party as a result of the termination shall be pursuant to Article 24.

(g) Upon the Contractor's request, the Owner shall furnish to the Contractor a detailed accounting of the Owner's cost of completing the Work.

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

(a) Notice to Cure: In the presence of any of the above conditions the Architect may give the Contractor and its Surety written Notice to Cure the condition within a reasonable, stated time, but not less than ten days after the Contractor receives the notice.

(b) Notice of Termination: If, at the expiration of the time stated in the Notice to Cure, the Contractor has not proceeded and satisfactorily continued to cure the condition or provided the Architect with written verification that satisfactory positive action is in process to cure the condition, the Owner may, without prejudice to any other rights or remedies of the Owner, give the Contractor and its Surety written

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

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

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

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

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

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

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

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

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

(a) stop Work as specified in the notice;

(b) enter into no further subcontracts or purchase orders for materials, services, or facilities, except as may be necessary for Work directed to be performed prior to the effective date of the termination or to complete Work that is not terminated;

(c) terminate all existing subcontracts and purchase orders to the extent they relate to the terminated Work;

(d) take such actions as are necessary, or directed by the Architect or Owner, to protect, preserve, and make safe the terminated Work; and

(e) complete performance of the Work that is not terminated.

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

Article 28
CONTRACTOR'S RIGHT *to* SUSPEND *or* TERMINATE *the* CONTRACT

A SUSPENSION *by the* OWNER

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

B NONPAYMENT

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

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

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

Article 29
PROGRESS PAYMENTS

A FREQUENCY *of* PROGRESS PAYMENTS

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

B SCHEDULE *of* VALUES

Within twenty-four (24) hours after the Bid Opening, the Contractor shall submit to the Architect ACCS Form 6-E, Schedule of Values, which is a breakdown of the Contract Sum showing the value of the various parts of the Work for billing purposes. The Schedule of Values shall divide the Contract Sum into as many parts ("line items") as the Architect and Owner determine necessary to permit evaluation and to show amounts attributable to Subcontractors. The Contractor's overhead and profit are to be proportionately distributed throughout the line items of the Schedule of Values. Upon approval, the Schedule of Values shall be used as a basis for monthly Applications for Payment, unless it is later found to be in error. Approved change order amounts shall be added to or incorporated into the Schedule of Values as mutually agreed by the Contractor and Architect.

C APPLICATIONS *for* PAYMENTS

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

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

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

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

D MATERIALS STORED OFF SITE

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

(1) the contractor has received written approval from the Architect and Owner to store the materials or equipment off site in advance of delivering the materials to the off site location;

(2) a Certificate of Insurance is furnished to the Architect evidencing that a special insurance policy, or rider to an existing policy, has been obtained by the Contractor providing all-risk property insurance coverage, specifically naming the materials or equipment stored, and naming the Owner as an additionally insured party;

(3) the Architect is provided with a detailed inventory of the stored materials or equipment and the materials or equipment are clearly marked in correlation to the inventory to facilitate inspection and verification of the presence of the materials or equipment by the Architect or Owner;

(4) the materials or equipment are properly and safely stored in a bonded warehouse, or a facility otherwise approved in advance by the Architect and Owner; and

(5) compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest.

E RETAINAGE

(1) Retainage for ACCS Projects shall be governed by Title 39 of the Alabama Code.

(2) "Retainage" is defined as that money belonging to the contractor which has been retained by ACCS conditioned on final completion and acceptance of all work in connection with a project or projects by the contractor. Retainage will not be reduced. Full retainage will only be released with the final payment after completion of all punch list items, receipt of Certificate of Occupancy from AHJ, submittal of all warranties, releases of claims are received, surety consent to final payment received, submittal of record documents and all other closeout documents required by contract. Retainage shall not be relied upon by Contractor (or Surety) to cover or off-set unearned monies attributable to uncompleted or uncorrected Work.

(3) In making progress payments the Owner shall retain five percent of the estimated amount of work done and the value of materials stored on the site or suitably stored and insured off-site, and after 50 percent completion has been accomplished, no further retainage shall be withheld. The retainage as set out above shall be held until final completion and acceptance of all work covered by the contract.

F CONTRACTOR'S CERTIFICATION

(1) Each Application for Payment shall bear the Contractor's notarized certification that, to the best of the Contractor's knowledge, information, and belief, the Work covered by the Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payments were issued and payments received from the Owner and that the current payment shown in the Application for Payment has not yet been received.

(2) By making this certification the Contractor represents to the Architect and Owner that, upon receipt of previous progress payments from the Owner, the Contractor has promptly paid each Subcontractor, in accordance with the terms of its agreement with the Subcontractor, the amount due the Subcontractor from the amount included in the progress payment on account of the Subcontractor's Work and stored materials. The Architect and Owner may advise Subcontractors and suppliers regarding percentages of completion or amounts requested and/or approved in an Application for Payment on account of the Subcontractor's Work and stored materials.

G **PAYMENT ESTABLISHES OWNERSHIP**

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

Article 30
CERTIFICATION *and* APPROVALS *for* PAYMENT

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

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

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

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

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

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

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

Article 31
PAYMENTS WITHHELD

A The Architect may nullify or revise a previously issued Certificate for Payment prior to Owner's payment thereunder to the extent as may be necessary in the Architect's opinion to protect the Owner from loss on account of any of the following causes not discovered or fully accounted for at the time of the certification or approval of the Application for Payment:

(1) Defective Work;

(2) filed, or reasonable evidence indicating probable filing of, claims arising out of the Contract by other parties against the Contractor;

(3) the Contractor's failure to pay for labor, materials or equipment or to pay Subcontractors;

(4) reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;

(5) damage suffered by the Owner or another contractor caused by the Contractor, a Subcontractor, or anyone for whose acts they may be liable;

(6) reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance is insufficient to cover applicable liquidated damages; or

(7) the Contractor's persistent failure to conform to the requirements of the Contract Documents.

B If the Owner deems it necessary to withhold payment pursuant to preceding Paragraph A, the Owner will notify the Contractor and Architect in writing of the amount to be withheld and the reason for same.

C The Architect shall not be required to withhold payment for completed or partially completed Work for which compliance with the Contract Documents remains to be determined by Specified Inspections or Final Inspections to be performed in their proper sequence. However, if Work for which payment has been approved, certified, or made under an Application for Payment is subsequently determined to be Defective Work, the Architect shall determine an appropriate amount that will protect the Owner's interest against the Defective Work.

(1) If payment has not been made against the Application for Payment first including the Defective Work, the Architect will notify the Owner and Contractor of the amount to be withheld from the payment until the Defective Work is brought into compliance with the Contract Documents.

(2) If payment has been made against the Application for Payment first including the Defective Work, the Architect will withhold the appropriate amount from the next Application for Payment submitted after the determination of noncompliance, such amount to then be withheld until the Defective Work is brought into compliance with the Contract Documents.

D The amount withheld will be paid with the next Application for Payment certified and approved after the condition for which the Owner has withheld payment is removed or otherwise resolved to the Owner's satisfaction.

E The Owner shall have the right to withhold from payments due the Contractor under this Contract an amount equal to any amount which the Contractor owes the Owner under another contract.

Article 32
PRE-CLOSEOUT REVIEW *and* SUBSTANTIAL COMPLETION

A Pre-Closeout Review is the stage in the progress of the Work when the Work or designated portion of the Work is sufficiently complete and the remaining punch list items can be completed and reinspected within thirty (30) days.

B The Contractor shall notify the Architect in writing when the punch list is complete, and it considers the Work, or a portion of the Work which the Owner has agreed to accept separately, to be complete and ready for a Final Inspection pursuant to Article 16.

C Substantial Completion is achieved and a Final Inspection, as specified in Article 16, is appropriate only when all punch list items are completed and all change orders have been executed by ACCS. After the issuance of the Certificate of Substantial Completion, the Owner may occupy or utilize the Work or designated portion of the Work for its intended use. Upon receipt of the Contractor's notice for a Final Inspection, the Architect will advise the Contractor in writing of any conditions of the Work which the Architect or Owner is aware do not constitute Substantial Completion, otherwise, a Final Inspection will proceed within a reasonable time after the Contractor's notice is given.

D **CERTIFICATE of SUBSTANTIAL COMPLETION**

(1) When the Work or a designated portion of the Work is complete, the Architect will prepare and sign a Certificate of Substantial Completion to be signed in order by the Contractor and Owner.

(2) When signed by all parties, the Certificate of Substantial Completion shall establish the Date of Substantial Completion which is the date upon which:

(a) the Work, or designated portion of the Work, is accepted by the Architect and Owner,

(b) the Contractor's one-year and special warranties for the Work covered by the Certificate commence, unless stated otherwise in the Certificate (the one-year warranty for punch list items completed or corrected after the period allowed in the Certificate shall commence on the date of their Final Acceptance), and

(c) Owner becomes responsible for building security, maintenance, utility services, and insurance, unless stated otherwise in the Certificate.

(3) If the Work or designated portion covered by a ACCS Form 6-K, Certificate of Substantial Completion, includes roofing work, the General Contractor's (5-year) Roofing Guarantee form must be executed by the Contractor and attached to the Certificate of Substantial Completion. If the Contract Documents specify any other roofing warranties to be provided by the roofing manufacturer, Subcontractor, or Contractor, they must also be attached to the Certificate of Substantial Completion. Failure to do so voids any Certificate of Substantial Completion. This requirement cannot be waived.

(4) Other attachments to the Certificate of Substantial Completion shall include the completed Punch List, documentation from the AHJ of their review and approval, an executed Pre-Close out Meeting Checklist, and a Change Order log showing that there are no outstanding change orders.

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 closeout items within forty-five days, or such other time as may be stated in the respective Certificate of Substantial Completion, the Contractor shall bear any expenses, including additional Architectural services and expenses, incurred by the Owner as a result of such failure to complete closeout items in a timely manner.

F Nothing herein, including paragraph E above, shall limit or waive the Owner's rights under Article 27, including but not limited to issuance of Notices to Cure or Notice of Termination issued to Contractors and Sureties, to obtain completion, correction, or repair of any remaining unfinished Work ("punch list" items).

Article 33
OCCUPANCY *or* USE PRIOR *to* COMPLETION

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

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

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

(a) The Owner's storage or installation of furniture and equipment will not unreasonably disrupt or interfere with the Contractor's completion of the designated portion of the Work.

(b) The Contractor consents to the Owner's planned action (such consent shall not be unreasonably withheld).

(c) The Owner shall be responsible for insurance coverage of the Owner's furniture and equipment, and the Contractor's liability shall not be increased.

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

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

Article 34
FINAL PAYMENT *and* PROJECT CLOSEOUT

A PREREQUISITES *to* FINAL PAYMENT

The following requirements must be accomplished before Owner issues Final Payment:

(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) Final building cleaning completed and accepted by Architect and Owner.

(4) Final punch list completed, reinspected and accepted by Architect and Owner.

(5) The Contractor's completion, to the satisfaction of the Architect and Owner, of all documentary requirements of the Contract Documents; such as delivery of "as-built" documents, operating and maintenance manuals, owner training videos, warranties (Contractor's One-Year, General Contractor's Five-Year Roofing, etc.), schedule of attic stock including quantity, label, and storage location, etc.

(6) Delivery to the Owner of a final Application for Payment, prepared by the Contractor and approved and certified by the Architect. The Architect will prepare the Final Payment Checklist and forward it to the Owner along with the final Application for Payment.

(7) Completion of an Advertisement for Completion pursuant to Paragraph C below.

(8) Delivery by the Contractor to the Owner through the Architect of a Release of Claims and such other documents as may be required by Owner, satisfactory in form to the Owner pursuant to Paragraph D below

(9) Consent of Surety to Final Payment, if any, to Contractor. This Consent of Surety is required for projects which have Payment and Performance Bonds.

(10) Delivery by the Contractor to the Architect and Owner of other documents, if any, required by the Contract Documents as prerequisites to Final Payment.

B FINAL ACCEPTANCE *of the* WORK

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

C ADVERTISEMENT *for* COMPLETION

(1) If the Contract Sum is $100,000 or less, there is no requirement for Advertisement for Completion.

(2) If the Contract Sum is more than $100,000: The Contractor, immediately after being notified by the Architect that all other requirements of the Contract have been completed, shall give public notice of completion of the Contract by having an Advertisement for Completion, similar to the sample contained in the Project Manual, published for a period of three successive weeks in some newspaper of general circulation published within the city or county where the Work was performed. Proof of publication of the Advertisement for Completion shall be made by the Contractor to the Architect by affidavit of the publisher,

in duplicate, and a printed copy of the Advertisement for Completion published, in duplicate. If no newspaper is published in the county where the work was done, the notice may be given by posting at the Court House for thirty days and proof of same made by Probate Judge or Sheriff and the Contractor. Final payment shall not be due until thirty days after this public notice is completed.

D RELEASE *of* CLAIMS

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

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

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

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

E EFFECT *of* FINAL PAYMENT

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

(a) liens, claims, security interests or encumbrances arising out of the Contract and unsettled;

(b) failure of the Work to comply with the requirements of the Contract Documents;

(c) terms of warranties or indemnities required by the Contract Documents, or

(d) latent defects.

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

Article 35
CONTRACTOR'S WARRANTY

A GENERAL WARRANTY

The Contractor warrants to the Owner and Architect that all materials and equipment furnished under the Contract will be of good quality and new, except such materials as may be expressly provided or allowed in

the Contract Documents to be otherwise, and that none of the Work will be Defective Work as defined in Article 1.

B ONE-YEAR WARRANTY

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

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

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

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

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

C GENERAL CONTRACTOR'S ROOFING GUARANTEE

(1) In addition to any other roof related warranties or guarantees that may be specified in the Contract Documents, the roof and associated work shall be guaranteed by the General Contractor against leaks and defects of materials and workmanship for a period of five (5) years, starting on the Date of Substantial Completion of the Project as stated in the Certificate of Substantial Completion. This guarantee for punch list items shall begin on the Date of Substantial Completion if they are completed or corrected within the time period allowed in the Certificate of Substantial Completion in which they are recorded. The guarantee for punch list items that are not completed or corrected within the time period allowed in the Certificate of Substantial Completion shall begin on the date of Final Acceptance of the Work.

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

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

D **SPECIAL WARRANTIES**

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

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

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

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

Article 36
INDEMNIFICATION AGREEMENT

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

(1) 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.

(2) This indemnification does not extend to the liability of the Architect, or the Architect's Consultants,

agents, or employees, arising out of (1) the preparation or approval of maps, shop drawings, opinions, reports, surveys, field orders, Change Orders, drawings or specifications, or (2) the giving of or the failure to give directions or instructions, provided such giving or failure to give instructions is the primary cause of the injury or damage.

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

Article 37
CONTRACTOR'S *and* SUBCONTRACTORS' INSURANCE

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

A GENERAL

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

(2) PROOF OF INSURANCE. The Contractor shall be responsible for providing proof of the insurance coverage required in this Article. Failure to provide proof of the insurance required in this Article will prevent a construction contract from being executed and may result in the Contractor's bid being deemed non-responsive. After execution of a Construction Contract, failure to provide proof of insurance required in this Article will prevent payment of all pending pay applications, will immediately result in a Project wide stop work order, and will result in termination of the Construction Contract if proof is not timely provided. If ACCS cannot determine whether insurance requirements have been met through the Contractor's Certificate of Insurance submission, it shall be the Contractor's responsibility to provide additional documentation that shows these insurance requirements are satisfied.

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

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

(a.) If the Contractor's insurance carrier will not provide a 30 day cancellation notice for non-payment of premium, Contractor agrees that the following must be added to the Construction Contract:

.1 Contractor or its insurance broker or other insurance representative will provide ACCS 30 day written notice by certified mail as evidenced by return receipt of any reasonably expected or known failure to make any premium payment(s) that could result in cancellation of any policy for non-payment of premium.

.2 Contractor will provide proof of premium payment(s) with each Pay app submitted.

.3 Contractor will provide proof of premium payment(s) if ever requested by ACCS. Contractor also understands that failure to provide proof of premium payment will prevent payment of all pending pay apps, will immediately result in a Project wide stop work order, and will result in termination of the Construction contract if proof is not timely provided.

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

A replacement certificate must be provided to ACCS Facilities Division and the College accounting office at least 10 calendar days prior to the expiration of any policy. All renewed or replaced policies must meet the insurance requirements of ACCS.

The insurance certificate must provide the following:

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

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

B INSURANCE COVERAGES

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

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

(a) Workers' Compensation coverage shall be provided in accordance with the statutory coverage required in Alabama. A group insurer must submit a certificate of authority from the Alabama Department of Industrial Relations approving the group insurance plan. A self-insurer must submit a certificate from the Alabama Department of Industrial Relations stating the Contractor qualifies to pay its own workers' compensation claims.

(b) Employer's Liability Insurance limits shall be at least:
.1 Bodily Injury by Accident - $1,000,000 each accident
.2 Bodily Injury by Disease - $1,000,000 each employee

(2) **COMMERCIAL GENERAL LIABILITY INSURANCE**

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

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

(b) Additional Requirements for Commercial General Liability Insurance:

.1 The policy shall name the Owner, Architect, ACCS, and their agents, consultants and employees as additional insureds, state that this coverage shall be primary insurance for the additional insureds; and contain no exclusions of the additional insureds relative to job accidents.
.2 The policy must include separate per project aggregate limits.

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

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

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

(4) **COMMERCIAL UMBRELLA LIABILITY INSURANCE**

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

(b) Minimum Commercial/Excess Umbrella Limits of:
.1 $5,000,000 per Occurrence
.2 $5,000,000 Aggregate

(c) Additional Requirements for Commercial Umbrella Liability Insurance:
.1 The policy shall name the Owner, Architect, ACCS, and their agents, consultants, and employees as additional insureds.
.2 The policy must be on an "occurrence" basis.

(5) BUILDER'S RISK INSURANCE

(a) The general contractor is required to purchase builder's risk coverage. Coverage should be "all-risk" including, but not limited to, the following perils: fire, windstorm, hail, water damage, flood, mold, earth movement (also known as "earthquake"), vehicle or equipment collision, paint overspray, collapse, vandalism and lightning. Coverage must be on a replacement cost basis. The carrier must be A- rated or better by AM Best and admitted in the State of Alabama. The coverage period must start on the first day of construction and must extend a minimum of 30 days after receipt of the Certificate of Substantial Completion. Property must be insured while in transit, while stored at an off-site location, while on the construction site but not yet attached to the building and after being attached to the building. The general contractor is responsible for absorbing the deductible in the event of a loss, and the deductible cannot exceed $10,000. ACCS must be included on the policy as both an additional named insured and a loss payee. An Evidence of Property Insurance certificate must be provided showing both additional named insured and loss payee status, coverages and limits prior to the start of construction. Coverage limits must be as follows:

.1 Hard Costs: insured to full value
.2 Soft Costs: insured to full value
.3 Furniture and Fixtures: insured to the full value of items being purchased and/or installed by the contractor under the construction contract.
.4 Business Interruption: $100,000

(b) On information technology projects or any other project approved in writing by the ACCS Chief of Facilities, an Installation Floater policy may be approved in place of a Builder's Risk policy described above. Coverage should be "all-risk." The Installation Floater policy must have a minimum policy limit to cover all material, equipment, or other property for which the Contractor is legally liable. The presumed minimum policy limit shall be $2 Million unless a higher or lower limit is approved in writing prior to the opening of bids by the ACCS Facilities Division. With its COI, Contractor shall submit documentation from its insurance broker or agent confirming that ACCS's Installation Floater insurance requirements are met by Contractor's policy.

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 as described in preceding Paragraph B, or to be covered by the Contractor's Workers' Compensation and Employer's Liability Insurance while performing Work under the Contract.

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

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

D TERMINATION *of* OBLIGATION *to* INSURE

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

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

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

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

E WAIVERS *of* SUBROGATION

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

Article 38
PERFORMANCE *and* PAYMENT BONDS

A GENERAL

Upon signing and returning the Construction Contract to the Owner for final approval and execution, the Contractor shall, at the Contractor's expense, furnish to the Owner a Performance Bond and a Payment Bond (P&P Bonds), ACCS Form 2-C and 2-D, as contained in the Project Manual, each in a penal sum equal to 100% of the Contract Sum. Each bond shall be on the form contained in the Project Manual, shall be executed by a surety company (Surety) acceptable to the Owner and duly authorized and qualified to make such bonds in

the State of Alabama in the required amount. There shall be six original P&P Bonds submitted with original signatures for each of the six contracts required. The P&P bonds must be signed either on the same day or after the construction contract date. Each P&P Bond shall have attached thereto an original power of attorney (POA) of the signing official. The POA signature date must be the same day as the P&P Bond's signature date. All signatures must be present.

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

B PERFORMANCE BOND

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

C PAYMENT BOND

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

D CHANGE ORDERS

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

E EXPIRATION

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

Article 39
ASSIGNMENT

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

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

A OWNER'S RESERVATION *of* RIGHT

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

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

B COORDINATION

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

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

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

D MUTUAL RESPONSIBILITY

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

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

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

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

separate contractor to cut or otherwise alter the Work.

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

Article 41
SUBCONTRACTS

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

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

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

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

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

B SUBCONTRACTUAL RELATIONS

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

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

Article 42
ARCHITECT'S STATUS

A The Architect is an independent contractor performing, with respect to this Contract, pursuant to an agreement executed between the Owner and the Architect. The Architect has prepared the Drawings and Specifications and assembled the Contract Document and is, therefore, charged with their interpretation and clarification as described in the Contract Documents. As a representative of the Owner, the Architect will endeavor to guard the Owner against variances from the requirements of the Contract Documents by the Contractor. On behalf of the Owner, the Architect will administer the Contract as described in the Contract Documents during construction and the Contractor's one-year warranty.

So as to maintain continuity in administration of the Contract and performance of the Work, and to facilitate complete documentation of the project record, all communications between the Contractor and Owner regarding matters of or related to the Contract shall be directed through the Architect, unless direct communication is otherwise required to provide a legal notification. Unless otherwise authorized by the Architect, communications by and with the Architect's consultants shall be through the Architect. Unless otherwise authorized by the Contractor, communications by and with Subcontractors and material suppliers shall be through the Contractor.

B **ARCHITECT'S AUTHORITY**

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

(1) The Architect is authorized to:

(a) approve "minor" deviations through the use of Architect's Supplemental Instruction (ASI), as defined in Article 9, Submittals,

(b) make "minor" changes, through the use of Architect's Supplemental Instruction (ASI), in the Work as defined in Article 19, Changes in the Work,

(c) reject or require the correction of Defective Work,

(d) require the Contractor to stop the performance of Defective Work,

(e) adjust an Application for Payment by the Contractor pursuant to Article 30, Certification and Approval of payments, and

(f) issue Notices to Cure pursuant to Article 27.

(2) The Architect is not authorized to:

(a) revoke, alter, relax, or waive any requirements of the Contract Documents (other than "minor" deviations and changes) without concurrence of the Owner,

(b) finally approve or accept any portion of the Work without concurrence of the Owner,

(c) issue instructions contrary to the Contract Documents,

(d) issue Notice of Termination or otherwise terminate the Contract, or

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

C **LIMITATIONS *of* RESPONSIBILITIES**

(1) The Architect shall not be responsible to Contractors or to others for supervising or coordinating the performance of the Work or for the Construction Methods or safety of the Work, unless the Contract Documents give other specific instructions concerning these matters.

(2) The Architect will not be responsible to the Contractor (nor the Owner) for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents or for acts or omissions of the Contractor, a Subcontractor, or anyone for whose acts they may be liable. However, the Architect will report to the Owner and Contractor any Defective Work recognized by the Architect.

(3) The Architect will endeavor to secure faithful performance by Owner and Contractor, and the Architect will not show partiality to either or be liable to either for results of interpretations or decisions rendered in good faith.

(4) The Contractor's remedies for additional time or expense arising out of or related to this Contract, or the breach thereof, shall be solely as provided for in the Contract Documents. The Contractor shall have no claim or cause of action against the Owner, Architect, or its consultants for any actions or failures to act, whether such claim may be in contract, tort, strict liability, or otherwise, it being the agreement of the parties that the Contractor shall make no claim against the Owner or any agents of the Owner, including the Architect or its consultants, except as may be provided for claims or disputes submitted in accordance with Article 24. The Architect and Architect's consultants shall be considered third party beneficiaries of this provision of the Contract and entitled to enforce same.

D **ARCHITECT'S DECISIONS**

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

Article 43
CASH ALLOWANCES

A All allowances stated in the Contract Documents shall be included in the Contract Sum. Items covered by allowances shall be supplied by the Contractor as directed by the Architect or Owner and the Contractor shall afford the Owner the economy of obtaining competitive pricing from responsible bidders for allowance items unless other purchasing procedures are specified in the Contract Documents.

B Unless otherwise provided in the Supplementary Conditions of the Contract Documents:

(1) allowances shall cover the cost to the Contractor of materials and equipment delivered to the Project site and all applicable taxes, less applicable trade discounts;

(2) the Contractor's costs for unloading, storing, protecting, and handling at the site, labor, installation, overhead, profit, subcontractor overhead and profit, and other expenses related to materials or equipment covered by an allowance shall be included in the Contract Sum but not in the allowances;

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

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

Article 44
PERMITS, LAWS, *and* REGULATIONS

A **PERMITS, FEES AND NOTICES**

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

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

B **TAXES**

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

C **COMPENSATION *for* INCREASES**

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

D **ALABAMA IMMIGRATION LAW**

Per ACT 2011-535 as codified in Title 31, Chapter 13 of the Code of Alabama, 1975, as amended:
The contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

E **ALABAMA BOYCOTT LAW**

Per Act 2016-312as codified in Title 41, Chapter 16, Article 1, of the Code of Alabama, 1975, as amended:
The contracting parties affirm, for the duration of the agreement, that they are not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which this state can enjoy open trade.

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

Per Act 2013-205 as codified in Title 40, Chapter 9, Article 1, of the Code of Alabama, 1975, as amended:
In bidding the work on a tax exempt project, the bid form shall provide an accounting for the tax savings.

Article 45
ROYALTIES, PATENTS, *and* COPYRIGHTS

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

Article 46
USE *of the* SITE

A The Contractor shall confine its operations at the Project site to areas permitted by the Owner and by law, ordinances, permits and the Contract Documents and shall not unreasonably encumber the site with materials, equipment, employees' vehicles, or debris. The Contractor's operations at the site shall be restricted to the sole purpose of constructing the Work, use of the site as a staging, assembly, or storage area for other business which the Contractor may undertake shall not be permitted.

B Unless otherwise provided in the Contract Documents, temporary facilities, such as storage sheds, shops, and offices may be erected on the Project site with the approval of the Architect and Owner. Such temporary buildings and/or utilities shall remain the property of the Contractor, and be removed at the Contractor's expense upon completion of the Work, unless the Owner authorizes their abandonment without removal.

Article 47
CUTTING *and* PATCHING

A The Contractor shall be responsible for all cutting, fitting, or patching that may be required to execute the Work to the results indicated in the Contract Documents or to make its parts fit together properly.

B Any cutting, patching, or excavation by the Contractor shall be supervised and performed in a manner that will not endanger persons nor damage or endanger the Work or any fully or partially completed construction of the Owner or separate contractors.

Article 48
IN-PROGRESS *and* FINAL CLEANUP

A **IN-PROGRESS CLEAN-UP**

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

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

B **FINAL CLEAN-UP**

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

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

(a) Cleaning of all painted, enameled, stained, or baked enamel work: Removal of all marks, stains, finger prints and splatters from such surfaces.

(b) Cleaning of all glass: Cleaning and removing of all stickers, labels, stains, and paint from all glass, and the washing and polishing of same on interior and exterior.

(c) Cleaning or polishing of all hardware: Cleaning and polishing of all hardware.

(d) Cleaning all tile, floor finish of all kinds: Removal of all splatters, stains, paint, dirt, and dust, the washing and polishing of all floors as recommended by the manufacturer or required by the Architect.

(e) Cleaning of all manufactured articles, materials, fixtures, appliances, and equipment: Removal of all stickers, rust stains, labels, and temporary covers, and cleaning and conditioning of all manufactured articles, material, fixtures, appliances, and electrical, heating, and air conditioning equipment as recommended or directed by the manufacturers, unless otherwise required by the Architect; blowing out or flushing out of all foreign matter from all equipment, piping, tanks, pumps, fans, motors, devices, switches, panels, fixtures, boilers, sanitizing potable water systems; and freeing identification plates on all equipment of excess paint and the polishing thereof.

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

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

Article 49
LIQUIDATED DAMAGES

A Time is the essence of the Contract. Any delay in the completion of the Work required by the Contract Documents may cause inconvenience to the public and loss and damage to the Owner including but not limited to interest and additional administrative, architectural, inspection and supervision charges. By executing the Construction Contract, the Contractor agrees that the Contract Time is sufficient for the achievement of Substantial Completion.

B The Contract Documents may provide in the Construction Contract or elsewhere for a certain dollar amount for which the Contractor and its Surety (if any) will be liable to the Owner as liquidated damages for each calendar day after expiration of the Contract Time that the Contractor fails to achieve Substantial

Completion of the Work. If such daily liquidated damages are provided for, Owner and Contractor, and its Surety, agree that such amount is reasonable and agree to be bound thereby.

C If a daily liquidated damage amount is not otherwise provided for in the Contract Documents, a time charge equal to six percent interest per annum on the total Contract Sum may be made against the Contractor for the entire period after expiration of the Contract Time that the Contractor fails to achieve Substantial Completion of the Work.

D In addition to the amount of liquidated damages under either paragraph B or C above, additional liquidated damages for days beginning at ten (10) days thereafter shall be an additional $200/day for the Owner's nominal reimbursement to the Architect for continued work on the project.

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

F Liquidated Damages use ACCS Form 2-F and are routed as Change Orders for work that the contractor has failed to substantially complete within the Contract Time. Before the process of applying liquidated damages begins, communication and approval is required from the ACCS Chief Facilities Officer. The Contractor's signature is not required for Liquidated Damages using ACCS Form 2-F.

Article 50
USE *of* FOREIGN MATERIALS

A In the performance of the Work the Contractor agrees to use materials, supplies, and products manufactured, mined, processed or otherwise produced in the United States or its territories, if same are available at reasonable and competitive prices and are not contrary to any sole source specification implemented under the Public Works Law.

B In the performance of the Work the Contractor agrees to use steel produced in the United States if the Contract Documents require the use of steel and do not limit its supply to a sole source pursuant to the Public Works Law. If the Owner decides that the procurement of domestic steel products becomes impractical as a result of national emergency, national strike, or other cause, the Owner shall waive this restriction.

C If domestic steel or other domestic materials, supplies, and products are not used in accordance with preceding Paragraphs A and B, the Contract Sum shall be reduced by an amount equal to any savings or benefits realized by the Contractor.

D This Article applies only to Public Works projects financed entirely by the State of Alabama or any political subdivision of the state.

Article 51
PROJECT SIGN

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

END OF GENERAL CONDITIONS OF THE CONTRACT