

**JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS**

AGREEMENT NUMBER @	AMENDMENT NUMBER @
FEDERAL EMPLOYER ID NUMBER @	

THIS AGREEMENT (the "Agreement") is made and entered into this @th day of @, 20@ ("Effective Date"), in the State of California, by and between the parties identified below.

WITNESSETH: That Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of Owner hereinafter expressed, does agree, when authorized in accordance with this Agreement, to furnish to Owner all Work, materials, and any services incidental to the provision of the Work, as specified and when authorized in accordance with this Agreement.

Incorporated into this Agreement herewith, and attached hereto or incorporated hereby, are the following: Exhibit A – General Conditions; Exhibit B – Price Adjustment Factors; Exhibit C –Owner Tool Handling Policy; ~~and~~ Exhibit D Badge, Escort, and Entry Policy; the Construction Task Catalog, and the Technical Specifications Document, herein referred to as the contract documents ("Contract Documents"), and any Service Work Orders subsequently authorized in accordance with this Agreement.

The purpose of this Agreement is to provide job order contracting services to Owner.



The Estimated Maximum Contract Value of this Agreement during the Initial Term is \$ @\_\_\_\_\_. (Estimated Maximum Contract Value specified in the RFP for the Primary JOC Zone being contracted for goes here).

The Minimum Contract Value during the Initial Term is \$25,000.00.

This Agreement commences upon the Effective Date and, unless otherwise extended as specified below, will expire after a period of two (2) years following the Effective Date ("Initial Term"), or upon the date of satisfaction of all obligations by both parties under any Service Work Orders authorized yet not completed within the Initial Term or any Subsequent Term, whichever event occurs last.

Service Work Orders may be authorized only during the Initial Term and any authorized Subsequent Term(s).

Owner shall have the option, exercisable upon written notice, to extend this Agreement for three additional periods of 1 year each ("Subsequent Term(s)"). Subsequent Term(s) shall be authorized by written Notice given by Owner.

AOC'S SIGNATURE "Owner"	CONTRACTOR'S SIGNATURE "Contractor"
<b>Judicial Council of California, Administrative Office of the Courts</b>	CONTRACTOR'S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)</i> @
	Contractor's License Number: _____ Expiration Date: @ _____ @ (Contractor's "B" License Number goes here)
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Grant Walker Senior Manager, Business Services</b>	PRINTED NAME AND TITLE OF PERSON SIGNING

ADDRESS


**455 Golden Gate Avenue  
San Francisco, CA 94102**

ADDRESS

**Attn: @**

DRAFT

**Administrative Office of the Courts Use Only**

Fund Title	Program / Category	Item	Chapter	Statute	Fiscal Year	Object of Expenditure	Amount
Amount Encumbered by this Document:			Prior Amount Encumbered for this Contract:			Total Amount Encumbered to Date:	
\$0.00			\$0.00			\$0.00	
I hereby certify upon my own personal knowledge that budgeted funds are available for the period of the expenditure stated above.							
SIGNATURE OF ACCOUNTING OFFICER 						DATE	

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**ARTICLE 1 — GENERAL PROVISIONS**

- 1.1 ABBREVIATIONS:** References in this Agreement are sometimes referred to only by corresponding abbreviation. Not all abbreviations are listed.
- 1.2 DEFINITIONS:** Wherever in this Agreement the following terms, or pronouns in place of them are used, the intent and meaning will be interpreted as follows. Additional definitions are made elsewhere in the text of the Agreement.
- 1.2.1 Acceptance of the Work or Acceptance** – For the purposes of this Agreement, acceptance of the Work of a Project, whether a partial or a complete acceptance, shall be made only in writing, and only by Owner Project Manager named in the Service Work Order authorizing the Work or their written designee.
- 1.2.2 Additional Detailed Instructions** - Detailed written and/or graphic instructions issued by the Owner to Contractor following authorization of a Service Work Order but before initiation of the Work to explain the Work more fully. Such instructions become part of the requirements of the final Detailed Statement of Work applicable to a Project.
- 1.2.3 Adjustment Factor(s):** Contractor's competitively bid numerical multipliers specified in this Agreement, that will serve as price adjustment multipliers to the Unit Prices published in the Construction Task Catalog® when establishing the price that Owner will be charged for a Task under this Agreement. Adjustment Factors are expressed as a multiplicative increase or decrease from the published prices in the Construction Task Catalog®. The Adjustment Factors that shall apply to the prices charged for the Work Task(s) to be provided under this Agreement are specified in Exhibit B – Price Adjustment Factors.
- 1.2.4 Approved, Directed, Ordered, or Required** - Whenever these words or their derivatives are used, it is the intent, unless otherwise clearly stated, that Acceptance, by the Owner's Project Manager is required.
- 1.2.5 Approved Equal** - Material, equipment, or method accepted by the Owner's Project Manager via a Submittal for use in the Work, as being acceptable as an equivalent in essential attributes to the material, equipment, or method specified in the Detailed Statement of Work.
- 1.2.6 As-Built Drawing(s) or As-Built(s)** – Drawings that document change(s) to the features of a Project and serve as a record demonstrating how the Project was actually constructed. As-Built(s) include information such as, but not limited to changes in dimensional information showing the actual locations of installed features of the Work that differ from the originally planned locations and which indicate conditions as actually encountered at the Project Site.
- 1.2.7 Bonds** - The Performance Bond and the Payment Bond that are required by this Agreement.
- 1.2.8 Claim** – An unresolved Dispute raised in a court of competent jurisdiction by either Party.
- 1.2.9 Complete Submittal** – A group of individual Submittals, encompassing all the Work related to the provision of a Definable Feature of Work specified in a Detailed Statement of Work.
- 1.2.10 Completion** – A total Acceptance of the Work.
- 1.2.11 Construction Project Manager (CM)** - A consultant firm or an individual that Owner may from time to time utilize to provide construction management services, or serve as a Project Manager if so specified in a Service Work Order or so delegated by the Owner's Project Manager.
- 1.2.12 Construction Task Catalog® or CTC:** A comprehensive listing of specific repair or refurbishment Work Tasks together with a specific Task description, unit of Work measurement, and a Unit Price.

- 1.2.13 **Consultants** - Architects, Engineers, Construction **Project Managers** and other professionals engaged by the Owner to provide the Owner with professional services for a **Project. Contractor** - The person or persons, firm, partnership, corporation, or combination thereof, private or municipal, or the legal representatives thereof, that has entered into this Agreement with Owner.
- 1.2.14 **Contractor's Project Manager** – Contractor's authorized representative named in a Service Work Order and who shall have all necessary authority to represent and act for Contractor with regard to the responsibilities specified for said individual under this Agreement.
- 1.2.15 **Court(s)** – The Superior and Appellate Courts of the State of California
- 1.2.16 **Critical Path** –All references in an authorized Service Work to the Critical Path mean the longest path of dependent activities within the current updated version of the Project Schedule that determine when the Work of the Project
- 1.2.17 **CTC Specified Cost(s)** – the cost(s) of Work Task(s) as given in the CTC. Excludes costs imposed by an Adjustment Factor.
- 1.2.18 **Day(s)** - Calendar day(s).
- 1.2.19 **Definable Feature of Work** - A Work task that is separate and distinct from other Work tasks and has common control requirements and work crews.
- 1.2.20 **Design Professional** - The term "Design Professional" means a person licensed in California; as an architect pursuant to Chapter 3 (commencing with §5500) of Division 3 of the Business and Professions Code, registered as a professional engineer pursuant to Chapter 7 (commencing with §6700) of Division 3 of the Business and Professions Code, or licensed as a land surveyor pursuant to Chapter 15 (commencing with §8700) of Division 3 of the Business and Professions Code. If a Design Professional other than one incidentally necessary to the provision of a Work Task is needed to provide a Project, the Owner shall, at Owner's choice, provide the Design Professional(s) necessary to provide the Project.
- 1.2.21 **Design Professional of Record** – The term "Design Professional of Record" means an Owner provided Design Professional.
- 1.2.22 **Detailed Statement of Work:** A written document describing the totality of the Work that the Contractor is obligated to complete for a particular Service Work Order.
- 1.2.23 **Dispute** - A disagreement between the Owner and Contractor with regard to the actions or obligations of either party under this Agreement.
- 1.2.24 **Drawings** – Includes both Shop Drawings and Owner Drawings.
- 1.2.25 **Emergency** – A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.
- 1.2.26 **Estimated Maximum Contract Value** – The estimated maximum aggregate dollar value of all SWOs to be authorized under this Agreement. The aggregate dollar value of all Service Work Order(s) actually issued under the Contract may be greater or less than the Estimated Maximum Contract Value.
- 1.2.27 **Fabricated** - Specifically assembled or made out of selected materials to meet Project specific design requirements.
- 1.2.28 **Field Modification** - A written instruction, clarification or additional information issued by the Owner's Project Manager to Contractor that does not change the Service Work Order Time or Service Work Order Sum but becomes part of the requirements of the authorized Service Work Order.

- 1.2.29 **Final Acceptance** – An Acceptance given in writing by Owner’s Project Manager indicating that the Owner agrees that the totality of the Work of a Project is completed and has been properly provided.
- 1.2.30 **Final Inspection** – The inspection performed by the Owner and its Consultants after Contractor has certified that the entire Work of the Project is complete.
- 1.2.31 **General Notes** - Written statements identified with the words “General Notes” which appear on Drawings that pertain to the attributes of a Project, that provide construction instructions, or that provide descriptions of other Project requirements such as quantities of materials to be installed.
- 1.2.32 **Inspector** - The person assigned by Owner to inspect the Work. (Also sometimes referred to as Project Inspector or Owner’s Inspector.)
- 1.2.33 **Install** - Synonymous with “Provide” for the purposes of this Agreement.
- 1.2.34 **Joint Scope Meeting** - Meeting at the project site, or as otherwise directed by the Owner, attended by Owner and Contractor to jointly scope the Work.
- 1.2.35 **Laboratory** - Any laboratory authorized or accepted by Owner to test materials and Work involved in a Project.
- 1.2.36 **Large Project** – A Service Work Order or a Service Work Order Group in which the total of the CTC Specified Cost(s) for all Work Task(s) is equal to or greater than \$35,000.00 when first authorized by Owner.
- 1.2.37 **Liquidated Damages or LDs**- The amount prescribed in an authorized Service Work Order to be paid to Owner or to be deducted from any payments due or to become due to Contractor for each Day’s delay in completing the whole or any specified portion of the Work of that Project later than the time(s) specified for completion in the authorized Service Work Order plus any time extensions approved in writing by the Owner’s Project Manager.
- 1.2.38 **Minimum Contract Value** - The minimum aggregate dollar value of all SWOs to be authorized via this Agreement.
- 1.2.39 **Named Products** – A specific material, process, or article requested by Owner according to grade, patent, proprietary, or manufacturer name.
- 1.2.40 **Non-Prepriced Task(s) or NPP:** Units of Work that are not included in the Construction Task Catalog® but which are within the general scope and intent of the activities contemplated under this Agreement.
- 1.2.41 **Normal Working Hours:** Work between the hours of 6:00 AM and 6:00 PM, Monday thru Friday, except State Holidays.
- 1.2.42 **Notice** - A written document provided by one party to the other as and when specified in this Agreement.
- 1.2.43 **Notice to Proceed** - A written notice issued by Owner’s Project Manager to Contractor whereby Contractor is notified of the official date upon which Contractor is authorized to and may proceed with the Work. Unless otherwise directed in writing by Owner’s Project Manager, Contractor must begin Work within ten (10) Days following the start date for the Work as stated in the Notice to Proceed. If a Notice to Proceed is not specified in writing as a requirement in an authorized SWO, Contractor must begin work upon the date specified in the authorized SWO, or if no date is specified in the authorized SWO, within ten (10) Days following the date of authorization of the SWO.
- 1.2.44 **Project Schedule** - A chronologically ordered list of all events necessary to complete the Work of a Project, including a critical path (if any), specified in an authorized SWO which clearly identifies and sets forth both Contractor’s and Owner’s individual dated responsibilities, as well as any assumptions upon which the schedule is based, including all revisions and updates thereto agreed to during the execution of the Project Work.

- 1.2.45 **Order** - Refer to Approved, Directed, Ordered, or Required
- 1.2.46 **Other than Normal Working Hours:** Hours outside Normal Working Hours including all day Saturday, Sunday and State Holidays.
- 1.2.47 **Owner Drawings** Graphic and pictorial renderings provided by the Owner or by Owner's Design Professional of Record as a component of a Detailed Statement of Work, illustrating the design, character, location, and dimensions of the Project that will be provided, generally including but not limited to, elevations, sections, details, and General Notes.
- 1.2.48 **Owner's Project Manager** - Owner's representative, as named in a Service Work Order.
- 1.2.49 **Preconstruction Submittals** - Submittals requiring Owner's acceptance before Contractor may proceed with the installation of Work or the procurement of the materials and/or equipment covered by the Submittal.
- 1.2.50 **Price Proposal** – A written document containing a list of all Task(s) necessary to provide and charge for the totality of the Work of a Project, along with Task quantities, prices, and a Service Work Order Sum. Task Descriptions, as given in the CTC and Technical Specifications, as given in the Technical Specifications Document applicable to the Tasks shall, if not detailed in the Price Proposal be considered incorporated by reference. A further description of the elements of a Price Proposal is given in Article 2.11.10.
- 1.2.51 **Product Data** - Manufacturer originated literature, illustrations, performance charts, instructions, diagrams or other information provided by Contractor via a Submittal to illustrate the characteristics of materials Contractor proposes to provide in the course of the execution of the construction Work to fulfill the requirements of the Detailed Statement of Work. Product Data shall not form part of the requirements of a Detailed Statement of Work of a Project until the Submittal in which they are provided has been accepted by Owner.
- 1.2.52 **Project** - The totality of the Work product that will be provided pursuant to an authorized SWO, a description of which is provided in the Detailed Statement of Work of that SWO.
- 1.2.53 **Project Documents** - Any documents that form part of or are referenced in an authorized Service Work Order, including but not limited to any Submittal(s) accepted by Owner via the Submittal process throughout the duration of the execution of the Project Work.
- 1.2.54 **Project Manager or PM** – An individual separately assigned by each respective party who **will serve as** that party's representative with regards to the Project.
- 1.2.55 **Project Site** – The physical location(s) at which the Work of a Project will be provided.
- 1.2.56 **Provide** - Synonymous with "Install" for the purposes of this Agreement: all labor, materials, equipment, supervision and whatever else is necessary to supply and incorporate a specified item into the Work in compliance with the requirements of an authorized Service Work Order.
- 1.2.57 **Punch List** - A written list of deficiencies in the completed Work.
- 1.2.58 **Request for Information or RFI** -A written request by Contractor for information or clarification regarding the requirements of an authorized Service Work Order. RFIs must be numbered sequentially and presented in a format furnished or acceptable to the Owner's Project Manager. Owner's response to an RFI is considered an Additional Detailed Instruction and does not change the requirements of an authorized Service Work Order, Service Work Order Time, or Service Work Order Sum.
- 1.2.59 **Request for Substitution** – Any request by Contractor, pursuant to Article 3.25 of this Agreement, to provide a substitute for a Named Product.
- 1.2.60 **Retention** - A defined percentage of the Service Work Order Sum held by the Owner pending Completion of the Work.

- 1.2.61 **Samples** - Physical examples that illustrate materials, equipment or workmanship and establish standards **by which** the Work will be evaluated.
- 1.2.62 **Schedule of Values or SOV** - A document jointly developed and approved by Contractor and the Owner reflecting the portions of the Service Work Order Sum allotted for payment upon completion of the performance of various parts of the Work.
- 1.2.63 **Service Work Order or SWO** –a written order requiring the Contractor to complete the Detailed Statement of Work within the specified Service Work Order Time and for the Service Work Order Sum.
- 1.2.64 **Service Work Order Group** – a grouping of individual Service Work Orders that are or will be authorized simultaneously via the issuance of a single Work Authorization.
- 1.2.65 **Service Work Order Proposal or SWOP:** A set of documents including at least: (1) Service Work Order Price Proposal, (2) a proposed project schedule, (3) a list of proposed Subcontractors, (4) sketches, Drawings, and/or layouts, and (5) technical data or information on proposed material or equipment.
- 1.2.66 **Service Work Order Sum or SWO Sum** -The total fixed price to be paid as compensation for the provision of the Project, as specified in the Price Proposal applicable to an SWO.
- 1.2.67 **Service Work Order Time(s)** - Service Work Order Time is the period of time, including authorized adjustments, identified in an authorized Service Work Order for Completion of the Work or a designated portion of the Work.
- 1.2.68 **Shop Drawing(s)** – Graphic and pictorial rendering(s) produced and provided by Contractor or obtained by Contractor from a Subcontractor, Supplier, manufacturer, or fabricator to demonstrate and/or illustrate the way Contractor intends to provide certain Work. Shop Drawings are not provided by architects or engineers and do not bear the stamp of a Design Professional.
- 1.2.69 **Small Project** - A Service Work Order or a Service Work Order Group in which the total of the CTC Specified Cost(s) for all Work Task(s) is less than \$35,000.00 when first authorized by Owner.
- 1.2.70 **Specific Notes** - Written statements identified with the words “Specific Notes” which appear on Drawings that pertain to the attributes of a Project, that provide construction instructions, or that provide descriptions of other Project requirements such as quantities of materials to be installed.
- 1.2.71 **Specifications** - The written directions, provisions and requirements pertaining to the materials to be provided and to the method and manner of performing the Work, including any Addenda and Approved revisions.
- 1.2.72 **State** - The State of California.
- 1.2.73 **State Holiday** means and includes New Year's Day, Martin Luther King Day, Lincoln's Birthday, Presidents Day, Cesar Chavez Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving, the day after Thanksgiving, and Christmas. If a State Holiday falls on a Saturday or Sunday, it may be observed on the prior Friday or subsequent Monday as directed by the State.
- 1.2.74 **Subcontractor** - An individual, partnership, corporation, association, joint venture, agent, or any combination thereof, who has a direct contract with Contractor or who has by any means been obligated by Contractor to perform Work or render service in pursuit of the fulfillment of Contractor's obligations with regard to provision of a Project. The term "Subcontractor" does not include those who supply materials only.
- 1.2.75 **Submittal** - Any written information or materials that are submitted by Contractor to the Owner during the course of execution of the construction Work that provide details of the method(s), material(s), or plan(s), Contractor is proposing to use in execution of the Work to conform to the requirements expressed in an already authorized Service Work Order.



Submittals may include but are not limited to Shop Drawings, Substitution requests, Samples, Product Data, maintenance, and operating data. Submittals may be planned or unplanned. A list of any planned Submittals shall be included in the Detailed Statement of Work. Submittals are not considered to form part of an authorized Service Work Order unless accepted by the Owner.

- 1.2.76 **Substitution** - A material and/or process offered by Contractor to Owner during the course of the construction Work via a Submittal in lieu of a material and/or process specified in a Service Work Order, and accepted by the Owner's Project Manager in writing as being equivalent (equal) to the specified material and/or process. (Also sometimes referred to as a **Product Substitution**)
- 1.2.77 **Supplemental Service Work Order or SSWO** - A type of Service Work Order authorized following the authorization a Service Work Order that alters or amends the already authorized Service Work Order. Supplemental Service Work Orders may add Work Tasks, or remove Work Tasks not yet performed, as deemed necessary by Owner. Authorization of Supplemental Service Work Orders that only seek to remove Work Tasks not yet performed are not subject to approval by Contractor and are binding upon Contractor upon authorization by Owner.
- 1.2.78 **Supplier** – Any third party that providing materials or equipment to Contractor and/or Subcontractors for their use in performing Work authorized under this Agreement.
- 1.2.79 **Surety - A company that provides Contractor's Bonds** for performance and payment and is admitted as a surety insurer as defined in §995.120(a) of the California Code of Civil Procedure.
- 1.2.80 **Task** – A unit of Work as specified by the Construction Task Catalog® or, for Non-Prepriced Task(s), as established via the Service Work Order Proposal Development process. Each Task in the CTC references a Work Task Description and an associated Technical Specification pertaining to the Task.
- 1.2.81 **Task Description – A printed summary of the Work that is to be provided** when a particular Task is authorized, as specified by or referenced in the CTC, **or in the case of Non-Prepriced Work**, as established via the Service Work Order Proposal Development process.
- 1.2.82 **Technical Specification** – A printed summary of the Specifications pertaining to each individual Task specified in the CTC, or, in the case of Non-Prepriced Work, as established in the as established via the Service Work Order Proposal development process.
- 1.2.83 **Technical Specifications Document** - A printed document which contains the Technical Specifications applicable to the Tasks listed in the CTC.
- 1.2.84 **Total Float Time** - Total Float Time is the difference between the amount of time available to accomplish an activity on the Critical Path and the time required for that activity (i.e. the number of days an activity may be delayed from its early dates without extending the completion date for the Project).
- 1.2.85 **Unit Price** - The price published in the Construction Task Catalog® applicable to a specific construction activity, as described in the catalog, including all labor and any equipment and materials necessary to provide that activity. The Unit Prices are fixed for the duration of the Agreement. Each Unit Price includes the separate Labor, Equipment and materials cost elements applicable to that specific task.
- 1.2.86 **Warranty** - Contractor's, Subcontractor's, Manufacturer's or material Supplier's promise or assurance, written or otherwise, that it's Products, materials and/or services meet industry (implied) or contractual (the requirements of this Agreement and its authorized Service Work Order's) standards of performance.

- 1.2.87 **Work - Construction** services specified in an authorized Service Work Order and provided or to be provided by Contactor and/or its Subcontractor(s), including but not limited to design services, labor, materials, equipment and other services as necessary.
- 1.2.88 **Work Authorization** – A written document provided by Owner via Owner’s CAFM software system, the issuance of which by that system will for the purposes of this Agreement serve to authorize an SWO.

### 1.3 EXECUTION AND CORRELATION

- 1.3.1 This Agreement will not be binding on the parties until fully executed by the appropriate authorized representatives of Contractor and Owner. The parties signing this Agreement certify that they have the proper authorization from their respective organizations to do so. Execution of this Agreement by Contractor is a representation that Contractor is familiar with the methodology under which the Work is to be performed and has correlated Contractor’s personal observations with requirements of this Agreement.
- 1.3.2 This Agreement and the Service Work Orders to be authorized under it are intended to be complementary to each other and it is the intent of the parties that they be interpreted in that manner.
- 1.3.3 Contractor is responsible for the complete and proper execution of the Work as described by and as reasonably implied by, the narrative description given in an authorized Service Work Order. Contractor is solely responsible for ensuring that all Subcontractors and Suppliers, providing Work are fully aware of any provisions of this Agreement that apply to their respective Work. By providing a Service Work Order Proposal, Contractor warrants that it has found the information supplied by Owner regarding that SWO to be sufficiently free of ambiguities and fit for the purposes of providing a Service Work Order Proposal in accordance with this Agreement, and that Contractor has satisfied itself as to all aspects of the Work to be provided, including but not limited to the character, quantities of materials and labor required, the difficulties likely to be encountered, and all other items that may affect Contractor’s performance.
- 1.3.4 Contractor understands that construction will likely involve some clarifications and changes to and modifications in Contractor’s planned work procedures. These are expected conditions of construction, and Contractor has anticipated them and taken them into consideration in formulating its Adjustment Factors.
- 1.3.5 Any Drawings, or other documents provided by Owner to Contractor with regards a SWO are solely for the use of Contractor and its Subcontractors and Suppliers, and solely with respect to fulfillment of their needs as necessary to provide the Work of a Project. Such documents are not to be used by Contractor, Subcontractor, or any Supplier for any other purpose without the explicit written consent of Owner. Contractor is hereby granted, and shall have the right to provide a grant identical to this one to its Subcontractors and Suppliers, a limited license to use and reproduce, in whole or part, the Drawings, and any other documents provided by Owner with regards to an SWO.
- 1.3.6 **Highlighted**, **emboldened**, *italicized*, or underlined text is not indented to imply special significance but serves merely as an aid to the reader to distinguish or quickly reference selected text.

### 1.4 CAPITALIZATION AND CAPTIONS

- 1.4.1 Terms capitalized in this Agreement include those that are:
- Specifically defined; or
  - Titles and captions of numbered Articles or
  - Titles of other documents or references to law.

- 1.4.2 The descriptions given by the titles and captions given to the, Articles and documents referred to in this Agreement are for convenience only and will not be deemed relevant in resolving any question of interpretation of this Agreement.

## 1.5 CONFLICTS IN DOCUMENTS

- 1.5.1 The following order of precedence shall govern the interpretation of the provisions of this Agreement and any Service Work Orders authorized under it.
- .a The Contract Documents, and subsequent modification(s) by any Amendment(s)
  - .b The Detailed Statement of Work and all its elements as provided in an authorized SWO
  - .c The Price Proposal and all its elements as provided in any authorized SWO
  - .d The Construction Task Catalog®
  - .e The Task Descriptions given in the CTC
  - .f The Technical Specification(s) given in the Technical Specifications Document
  - .g Any remaining documents present in a Service Work Order.
  - .h The Construction Task Catalog® Modifications last in time are first in precedence, in accordance with the governing order specified above.

- 1.5.2 Resolution of conflicts in other documents comprising an authorized Service Work Order:

In case of conflict in matters of quantity between the Drawings and the Technical Specifications, the Drawings will govern.

In the case of conflict within the Drawings, the following will govern:

- .a Schedules, when identified as such, will govern over all other portions of the Drawings.
- .b Specific Notes will govern over General Notes, all other notes, and all other portions of the Drawings, except schedules described in Article 1.5.2 a.
- .c Figured dimensions will have precedence over undimensioned items.
- .d Larger scale Drawings will govern over smaller scale Drawings (for example, ¼" = 1'-0" governs over 1/8" = 1'-0").
- .e Detail Drawings govern over standard plates.

- 1.5.3 Omissions

If the authorized Service Work Order applicable to a Project is not complete as to any minor detail or required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists an accepted trade standard for good and workmanlike construction as regards the same, such detail will be deemed to have been included in the requirements of the authorized Service Work Order in accordance with such standard.

## 1.6 REQUESTS FOR INFORMATION

- 1.6.1 Requests for Information (RFI): Should Contractor discover conflicts, omissions, or errors in an authorized Service Work Order, or have any questions concerning interpretation or clarification of the same, Contractor shall immediately submit to Owner in writing an RFI as follows and that complies with the following requirements:
- 1.6.2 All RFIs, whether they originate with Contractor, a Subcontractor, or a Supplier of any tier shall be submitted directly from Contractor to Owner.
- 1.6.3 All RFIs shall bear the CAFM generated SWO number of the SWO and shall be

numbered sequentially and presented in a format provided by or acceptable to Owner.

- 1.6.4 Contractor shall clearly and concisely set forth each issue for which interpretation or clarification is sought, and cite any applicable parts of the SWO that Contractor believes pertain to the issue being raised. Contractor must provide the reason(s) why Contractor believes a response is required from Owner.
- 1.6.5 Contractor shall in addition set forth its own interpretation or understanding of the applicable parts of the SWO that Contractor believes pertain to the issue being raised along with reasoning as to how Contractor has come to such an understanding. .
- 1.6.6 Should Contractor believe that a response to its RFI will involve an interpretation of or may necessitate a change to the terms and conditions of this Agreement, Contractor shall in addition provide a copy of the RFI via Notice to Owner. Contractor shall set forth its own interpretation or understanding of the applicable terms and conditions of the Agreement that Contractor believes pertain to the issue being raised along with reasoning as to how Contractor has come to such an understanding, along with Contractor's preferred solution to the issue.
- 1.6.7 RFIs shall be provided to Owner Project Manager assigned to the SWO the RFI regards.
- 1.6.8 Contractor shall endeavor to submit RFI(s) in a timely manner so that they may be adequately researched and answered before the response affects any critical activity of the Work.
- 1.6.9 Responses to RFIs will be made within no later than 14 days unless Owner notifies Contractor in writing that a response will take longer. The 14 days will begin when the RFI is received by Owner.
- 1.6.10 Responses from Owner regarding RFIs shall not act to modify an SWO or the Contract Documents of this Agreement and any response that purports to do so will be null and void, and without effect.
- 1.6.11 Responses from Owner regarding RFIs will not change any requirement of an SWO unless explicitly noted by Owner in the response to the RFI. If such requirement change necessitates a modification of the existing provisions of the SWO so that the SWO will reflect the requirements of this Agreement as regards the specifications necessary to specify the details applicable to a Project, such requirement change shall not become effective until codified in a Supplementary Service Work Order.
- 1.6.12 Should Contractor believe that a response to an RFI may require interpretation of, or may necessitate a change to the terms and conditions given in the Contract Documents of this Agreement, Contractor shall in addition provide the RFI via written Notice to Owner. Contractor shall set forth its own interpretation or understanding of the applicable terms and conditions of the Agreement that Contractor believes pertain to the issue being raised along with reasoning as to how Contractor has come to such an understanding, along with Contractor's preferred solution to the issue.
- 1.6.13 If Owner has not provided a response to an RFI in accordance with Article 1.6.9 above, Contractor shall provide written Notice to Owner of the same, and Owner shall have the right to seek additional time or cost under Article 6.

## **1.7 ADDITIONAL DETAILED INSTRUCTIONS**

- 1.7.1 Following authorization of a Service Work Order but before the initiation of Work on a Project, Owner may furnish additional detailed written and/or graphic instructions to explain the Work more fully, and such instructions become a part of the requirements of the authorized Service Work Order applicable to a Project. Should such Additional Detailed Instructions, in the opinion of Contractor, constitute Work in excess of the requirements of the authorized Service Work Order, Contractor must submit written Notice of the same to the Owner within seven (7) Days following receipt of such instructions, and

in any event no later than prior to commencement of the Work of the Project. If in the Owner's judgment the Additional Detailed Instructions do in fact constitute Work in excess of the requirements of the authorized Service Work Order of the Owner may, at Owner's option, either cancel its authorization of the SWO, withdraw the Additional Detailed Instructions, revise them to remove the source of the excess Work, or issue a Supplementary Service Work Order to account for the excess Work.

**END ARTICLE 1**

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**ARTICLE 2 — ADMINISTRATION OF THE CONTRACT**

**2.1 AUTHORITY AND RESPONSIBILITIES OF OWNER'S PROJECT MANAGER**

- 2.1.1 Except with regard to the interpretation and/or modification of the Contract Documents of this Agreement, Owner's Project Manager is responsible for and shall have all necessary authority required to fulfill all of Owner's responsibilities with regard to the development and authorization of SWO(s) and all of Owner's responsibilities related to the prosecution of the Work of the Project given in this Agreement.

**2.2 ADMINISTRATION OF THE CONTRACT DOCUMENTS**

- 2.2.1 Unless otherwise specified in the Contract Documents, any changes to Contract Documents will be made in the form of a written Amendment authorized by the parties in the same manner as this Agreement.
- 2.2.2 Any Contractor initiated requests for Amendments will be provided to Owner in writing and must be accompanied by a narrative description of the proposed change and the reasons for the request. Any such requests shall be directed to:

Senior Manager, Business Services  
Administrative Office of the Courts  
Business Services, Floor 7  
455 Golden Gate Avenue  
San Francisco, CA 94102

- 2.2.3 No Service Work Order shall act to modify the Contract Documents, and any SWO that purports to do so shall be null and void, and without effect.

**2.3 ADMINISTRATION OF SERVICE WORK ORDERS**

- 2.3.1 Service Work Orders shall be initiated, authorized, and modified in accordance with the procedures established in Article 2.11.

**2.4 BREACHES, DEFAULTS AND TERMINATION FOR CAUSE**

- 2.4.1 Termination of Individual SWOs:

If Owner deems that Contractor has failed in any respect to prosecute the Work of an SWO as specified by the Agreement, Owner shall provide written Notice to Contractor of the same, specifying the default(s) to be remedied. Contractor shall, unless a longer period is specified in the Notice, have five (5) days following the day of receipt of the Notice in which to remedy the default(s).

If Contractor has failed to remedy the default within the time allotted by the Notice, Owner shall have the right:

- .a to terminate the SWO immediately upon giving Notice and remedy the default by any means possible. Owner shall deduct any costs and/or expenses incurred in providing the remedy from any money due or to become due to Contractor under this Agreement; or
- .b without prejudice to any other rights or remedies of Owner and subject to any prior rights of the Surety, take possession of the Project Site and all materials and any equipment tools, appliances, and construction equipment and machinery owned by Contractor; accept assignment of any and all Subcontractor agreements pursuant to Article 2.7.2; and finish the Work by whatever reasonable method(s) Owner may deem expedient and appropriate; or
- .c if Owner considers that the default is sufficient ground for such action, contact Contractor's Surety(ies) and inform them that if the defaults are not remedied,

Contractor's control over the Work will be terminated.

2.4.2 Termination of the Agreement:

Notwithstanding the above, Owner shall have the right to terminate this Agreement and all SWOs not yet completed and accepted, for cause for any other material breach of this Agreement. Upon such termination, Owner shall have the same rights with regard to the treatment of individual SWOs as specified above.

**2.5 TERMINATION FOR OWNER'S CONVENIENCE**

2.5.1 Owner reserves the right to terminate this Agreement or any part thereof, due to an Act of God or for its sole convenience by providing written Notice to Contractor stating the effective date of the termination. In the event of such termination, Contractor shall immediately stop all Work hereunder and shall immediately cause any and all of its Subcontractors and material Suppliers at any tier, to immediately stop all Work, leaving the Project Site in a safe and secured condition. Contractor shall not be paid for any Work performed or costs incurred after the effective date of the termination that reasonably could have been avoided.

2.5.2 Contractor shall be paid in accordance with the provisions of Article 7 for all Work performed and any materials obtained prior to the effective date of termination but not used; except that the amount due Contractor shall be based upon Owner's final estimate of the Work completed to the date of suspension of the Work, less any amounts required to be withheld pursuant to Article 7, and less any prior payment(s) made to or on the account of Contractor.

**2.6 SUSPENSION BY OWNER FOR CONVENIENCE**

2.6.1 Owner may, by a Supplemental Service Work Order, suspend, delay or interrupt all or any part of the Work for such periods of time as Owner may determine to be appropriate for Owner's convenience or any other reason.

2.6.2 Contractor must immediately comply with Owner's written Order to suspend, delay or interrupt Work or any part thereof.

2.6.3 If it should become necessary to suspend Work for an indefinite period:

- .a Contractor must store all materials in such manner that they will not be or become an obstruction;
- .b Contractor must take every precaution to prevent damage or deterioration of the Work performed;
- .c Contractor must Provide suitable drainage and erect temporary structures where necessary to protect the Work;
- .d Contractor must take all prudent measures to mitigate costs associated with suspension of the Work.

**2.7 ASSIGNMENT**

2.7.1 Contractor shall not voluntarily or involuntarily assign (e.g. assignment by operation of law), encumber, or otherwise transfer or delegate all or any interest in this Agreement without the prior written consent of the AOC's Senior Manager of Business Services. Any voluntary assignment by Contractor or assignment by operation of law (e.g. involuntarily assignment) of any portion of Contractor's interest in this Agreement without such consent shall be deemed a default allowing Owner to exercise all remedies available to it under applicable law.

2.7.2 Contractor shall, ensure that all contracts, purchase orders, and rental agreements entered into by Contractor and/or its Subcontractors and/or Suppliers, of any tier, as a result of an SWO authorized under this Agreement, contain provisions providing for assignment without cost to Owner, as well as providing for any termination contemplated under the terms of this Agreement. To the extent that Owner elects to take assignment

pursuant to this Article 2.7.2, Contractor agrees that Contractor shall, free of any cost or charge to Owner, expeditiously take all such steps necessary to perfect such legal assignment and provide the assigned documents to Owner.

## 2.8 NOTICE

- 2.8.1 Notice(s) must be initiated by an authorized representative of either party to this Agreement and may be given by:
- .a Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or
  - .b Hand-delivery to the other party's authorized representative, which shall be effective on the date of service.
- 2.8.2 Notices to Owner shall be addressed to:
- Mr. Grant Walker  
Senior Manager, Business Services  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Ave., Floor 7  
San Francisco, CA 94102
- with a copy to Owner's Project Manager.
- 2.8.3 Notices to Contractor shall be addressed to:
- @
- 2.8.4 No notice is effective for any purpose unless served in the above manner:
- 2.8.5 If the notice is provided to the Surety or any other person, by personal delivery to such Surety or by depositing the same in the United States mail, enclosed in a sealed envelope, addressed to such Surety or person at the address of such Surety or person as stated in the Bond documents. Deposit of notice in the United States mail will be deemed the date of receipt thereof.

## 2.9 AUDITS AND ACCESS TO RECORDS

2.9.1 Contractor must retain and maintain easily available all Records pertaining to Contractor's performance of its obligations under this Agreement. Records ("Records") include but are not limited to any books, reports, accounts, estimates, documents, detailed financial information, certified payrolls, invoices, or any other documentation or evidence, as well as any documents utilized in the preparation of Proposals, Invoices, Disputes, litigation and any Claims. Records must be maintained in accordance with industry standards and generally accepted accounting principles and practices consistently applied.

2.9.1.2 The provisions of Article 2.9.1 above shall not apply to any work product that is the result of Contractor's collaboration with legal counsel or to any of Contractor's confidential or proprietary information that does not fall within the definition of a Record as given above.



~~2.9.22.9.3~~ Owner and/or its designated representative(s) will have access upon 24 hours advance written notice, at all times during Contractor's normal business hours, to all of Contractor's Records for the purposes of inspection, audit, and copying. Contractor will, at no cost to Owner, provide access and proper facilities for such purposes.

~~2.9.32.9.4~~ Contractor shall ensure that all Subcontractor(s) and Supplier(s), of all tiers, are bound to ~~the all~~ provisions of ~~Articles 2.9.1 and 2.9.2~~ this Article 2.9.

~~2.9.42.9.5~~ Records must be retained and maintained available throughout the period of the performance of the Work and for a period of five (5) years after all obligations of the parties under a Service Work Order have been met, or until 5 years after final settlement of all Disputes, Claims, or litigation to which the Records relate, whichever event occurs later.

~~2.9.52.9.6~~ The obligations of this Article 2.9 shall survive any expiration or termination of this Agreement.

## 2.10 GOVERNING LAW

2.10.1 This Agreement, and all of the rights and duties of Contractor and Owner arising out of or related to this Agreement or to the relationship of Contractor and Owner, are governed by the laws of the State of California without regard to its conflicts of law rules. This provision applies to all Claims and causes of action that Contractor has or may acquire against Owner, whether based on contract, tort, statute, or anything else.

2.10.2 Contractor agrees that any claims that it has or may acquire against Owner shall be commenced in and decided exclusively by a court of competent jurisdiction located in the State of California. Contractor agrees to submit to the personal and exclusive jurisdiction of courts located in the State of California. Contractor waives all defenses and arguments that the courts located in the State of California constitute an inconvenient forum based upon the residence or domicile of Contractor, the location of the project that is the subject of the litigation or the location of witnesses, the location of documents, or anything else.

## 2.11 PROCEDURE FOR AUTHORIZING WORK

2.11.1 Any Work to be provided under this Agreement will be set forth in a Detailed Statement of Work provided as a component of a Service Work Order Proposal authorized by Owner.

2.11.2 Contractor shall provide all Work as specified in the Service Work Orders authorized under this Agreement.

2.11.3 All of Contractor's costs and expenses incurred in the preparation of Service Work Order Proposals are the sole responsibility of Contractor.

2.11.4 Owner shall initiate the process of requesting Work by notifying the Contractor of his/her required attendance at a Joint Scope Meeting. The Owner will in addition set forth a mutually acceptable date and a time for a Joint Scope Meeting and request any particular Subcontractor trades and/or Suppliers whose presence Owner deems necessary.

2.11.5 Owner, Contractor, and any possible Subcontractor(s) or Supplier(s) that Owner has requested or Contractor deems necessary will participate in the Joint Scope Meeting. Joint Scope Meetings may be held in person at the Project Site for the Work.

2.11.6 The purpose of the Joint Scope Meeting is to provide Owner and Contractor with a mutually shared understanding of the Work that Owner contemplates Contractor may perform. A walk-through of the Project Site may be conducted as a part of the Joint Scope Meeting. The following will, if applicable, be discussed:

- .a Service Work Order number and title

- .b Project Site
- .c Names of the Project Managers of both parties to be assigned to the Project
- .d If applicable, the name of the individual to be designated by Owner as facility liaison at the Project Site
- .e Facility operations that impose limitations on the Work
- .f Existing Project Site conditions
- .g Staging areas and site access
- .h Security/Safety and Security Clearance requirements
- .i Presence of Hazardous materials
- .j Methods and alternatives for accomplishing the work
- .k Assumptions or qualifications that may apply to the work
- .l Testing and Inspection Plans for materials
- .m Whether Owner will provide Owner Drawings for the Project
- .n Whether Contractor will provide Shop Drawings for the Project
- .o Determination whether any permits must be acquired to perform the Work
- .p Whether the Owner will be self-supplying any of the materials and/or Equipment
- .q Whether other contractor(s) will participate in the Work
- .r Whether the Owner will require Liquidated Damages for this Project
- .s Any special safety requirements
- .t A Schedule of Values detailing the points at which percentage of completion payments are to be made and percentages owed.
- .u The Service Work Order Time, including Desired Project Schedule, or, if no Project Schedule, desired completion date
- .v Special insurance requirements
- .w Any other relevant topics
- .x Whether a Notice to Proceed must be issued by Owner Project Manager before the Project Work can begin.
- .y An agreed to date upon which Contractor will provide Owner with a Narrative Project Description
- .z The desired Service Work Order Proposal due date
- .aa The desired Warranty Plan for the Project, if any, including mutually acceptable communication procedures for notifying Contractor of defects found during the Warranty Period, setting priorities regarding the type of defect, time period(s) required for Contractor response, and other details deemed necessary by Owner for fulfillment of the Warranty.

2.11.7 Upon completion of the Joint Scope Meeting, the Owner will submit a Request for Service Work Order Proposal to the Contractor via the PROGEN software. At the Owner's discretion, the Contractor's PM or the Owner's PM will document in writing the Detailed Statement of Work in PROGEN for which the basis of the Service Work Order Proposal shall be based.

2.11.8 Upon agreement regarding the necessary content of the Detailed Statement of Work and when any other materials (Owner Drawings, etc.) necessary to provide a Service Work

Order Proposal have been received, Contractor's PM shall provide a Service Work Order Proposal to Owner's PM.

2.11.9 The Detailed Statement of Work will consist of and be prepared in accordance with the following :

- .a Service Work Order Number and Title
- .b The Service Work Order Time, including Desired Project Schedule, or, if no Project Schedule, desired completion date
- .c Liquidated Damages applicable to the Service Work Order, if any
- .d The cost data for any Non-Prepriced Items
- .e Stamped & unstamped design drawings, calculations, specifications
- .f Names of all designated Subcontractor(s) and material Supplier list
- .g Project Schedule
- .h Payment for Service Work Orders with a Service Work Order Sum of \$100,000 or less will be paid as a single lump sum following Final Acceptance and shall not be paid via progress payments. Specify the lump sum payment for such an SWO.
- .i Schedule of Values -If payment for the Project will be based on progress payments, a Schedule of Values for payment will be included. Owner's final progress payment due at Final Acceptance shall not be in an amount less than 15% of the Service Work Order Sum for the Project. Specify the Schedule of Values for such an SWO
- .j The text of the narrative Project description agreed to by the parties
- .k Any Drawings necessary to provide the Project
- .l A list of any Named Products that the parties have agreed are necessary to provide the Project
- .m A list of any other products that the Owner desires to be provided as materials
- .n A list of any planned Submittals to be provided for the Project
- .o If Owner will be self supplying any materials or equipment used in a Project, a list of the quantities and types of materials and/or equipment that will be self-supplied
- .p The Warranty Plan that will apply to the Project, if any.

2.11.10 The Price Proposal will consist of and be prepared in accordance with the following:

- .a Prepriced Tasks: Contractor will identify and list all Task(s) and the quantities of Task(s) that Contractor has determined are necessary to provide and charge for the totality of the Work of a Project, using the Construction Task Catalog® Task descriptions. It is Contractor's sole responsibility to include all necessary Tasks and determine the quantities of those Tasks in the Price Proposal.
- .b The Unit Prices set forth in the CTC establish the prices that Contractor will use to provide Price Proposals.
- .c If Owner will be self supplying any material or equipment that are included in the Technical Specification applicable to the Task, the element of cost applicable to the material or equipment, as quoted in the CTC, will be subtracted from the CTC Unit Price used in developing the Price Proposal.

- .d If a Prepriced Task is present in the CTC, it must be used in the formulation of the Service Work Order Proposal. Immaterial differences in the description of a Task shall not be a cause for classifying a Task as a Non-Prepriced Task. Owner's Project Manager's determination as to whether a task is a Prepriced Task or a Non-Prepriced Task is final and binding and conclusive upon Contractor
- .e If Contractor is submitting a Non-Prepriced Task as an element of a Price Proposal, the price to be provided shall be quoted as an installed Unit Price (or demolition price if appropriate). Non-Prepriced Tasks, if any, must be identified as such in the Price Proposal. Information pertaining to such Task(s) that must be provided by Contractor when submitting a Price Proposal that utilizes a Non-Prepriced Task shall include the following:
  - (i) Complete narrative description of the duties of the task and a technical specification indicating material provided with the task and equipment necessary to perform the task, with cost elements assigned to each, any support drawings, any quality control notes and any inspection requirements.
  - (ii) A cost analysis report, establishing the cost of the NPP. The cost analysis report submitted for any Non-Prepriced Task that is to be provided by Contractor's own personnel must be based on a task description and technical specification for the Work of the Task provided as specified above and acceptable to Owner's Project Manager.
  - (iii) If Contractor will be performing the a Non-Prepriced Task the Cost of the NPP will be based on the following:

Contractor's current actual:

A = Direct Labor Cost (Up through the foreman level and Fringe Benefits per Prevailing Wage Rates plus payroll taxes and insurance) of Contractor's own employee(s) who will actually perform the Task

or

A - If Contractor is utilizing a Subcontractor for the labor, the Subcontractor Labor Cost established according to the below.

B = Material Costs (established by the lowest of three actual quotes obtained and submitted with the cost analysis report submitted in the Price Proposal), and absent any Contractor markup or charge of any kind,

C = Equipment Costs (established by the lowest of three actual quotes obtained and submitted with the cost analysis report submitted in the Price Proposal), and absent any Contractor markup or charge of any kind,

The Total Cost for a Contractor provided Non-Prepriced Task = (A+B+C) x Non-Prepriced Work Task Adjustment Factor pertaining to the Zone in which the Task will be performed.

- (iv) If Contractor will be using a Subcontractor to provide a Non-Prepriced Task the Cost of the NPP will be based on the lowest of three written quotes form Subcontractors and based on:

Subcontractor's:

A = Labor Cost – Of Subcontractor's own employee(s) who will actually perform the Task

B = Material Costs - Absent any Subcontractor markup or charge of any kind,

C = Equipment Costs - Absent any Subcontractor markup or charge of any kind,

The Total Cost for a Subcontractor provided Non-Prepriced Task =  $(A+B+C) \times$  Non-Prepriced Work Task Adjustment Factor pertaining to the Zone in which the Task will be performed.

- (v) After a Non-Prepriced Task has been utilized in three separate Projects within a Primary JOC Zone, with the written approval of the director of Owner's Facilities Maintenance Unit Regional Manager said Non-Prepriced Task may be added to the CTC, but only for that JOC Zone, and from that point forward shall no longer require price justification.

2.11.11 Owner shall, during the Initial Term of this Agreement, authorize Service Work Orders the aggregate Service Work Order Sum(s) of which shall at least equal the Minimum Contract Value of this Agreement. This Minimum Contract Value shall only apply to the base term of the Agreement and not to the option years.

2.11.12 In its Service Work Order Proposals, when directed by Owner, Contractor will provide for incidental architectural or engineering design services in accordance with applicable State laws and Owner's licensing, insurance and indemnification requirements. Contractor's Service Work Order Proposal must include documentation including copies of any architectural plans and/or engineering calculations, and shall indicate that adequate engineering and planning for the Work has been done. Owner may require that design documents be prepared and provided in Computer Aided Design (CAD) format. Any cost for this work is included in Contractor's Adjustment Factors.

2.11.13 The time allowed for preparation of Contractor's Proposal will depend on the complexity and urgency of the Service Work Order. On complex Service Work Orders, such as Service Work Orders requiring engineering/architectural drawings and approvals and permits, adequate time will be provided for preparation and submittal of the necessary documents and the Proposal. In urgent situations and minor maintenance and repair Service Work Orders requiring immediate completion, the Proposal may be required quickly

2.11.14 Review of Service Work Order Proposal

- .a Owner has the right to accept, reject, or require modification of a Service Work Order Proposal. Owner has the right, without explanation, to not authorize a Service Work Order Proposal. Contractor has no entitlement to reimbursement for SWOP preparation costs and expenses. Owner may pursue the performance of the Work contemplated by other means.
- .b By submitting a Service Work Order Proposal to Owner, Contractor offers to accomplish the totality of the Work of Project, as stated in the narrative description of the Detailed Statement of Work for the fixed price of the Service Work Order Sum, and in accordance with the Project Schedule.

- .c Absent the authorization of a Supplementary Service Work Order by Owner that materially changes an already authorized SWO, or a change in status of a condition or assumption expressly stated in the same, the Service Work Order Sum provided in the authorized Service Work Order establishes a firm fixed price for the performance of all of the Work and provision of all of the services required to complete the Project and Contractor agrees to provide the same regardless of Contractor's actual costs and any expenses incurred in pursuit of performance of the Work.

2.11.15 Authorization of Service Work Orders:

- .a Owner will approve a SWOP by issuance by Owner of a Service Work Order number via Owner's CAFM system.
- .b Only the following Owner personnel are approved to authorize SWOs:
  - Senior Manager for Facility Management
  - Regional Manager for Facility Operations
  - Supervising Facility Administrator
  - Facility Administrator
  - AOC Customer Service Center Personnel
- .c Owner shall from time to time provide Contractor with the names of the persons filling each position. This letter will be updated from time to time as personnel change, and is effective upon receipt. These changes will not require that this Agreement be amended.
- .d A Service Work Order shall, for the purposes of this Agreement, be considered authorized by Owner and binding upon the parties when issued.
- .e Owner shall have the right to simultaneously issue authorizations for several SWOs. When authorizations for several SWOs are issued at the same time, the total of the CTC Specified Costs of all such SWOs so issued will be used to determine the Adjustment Factor that shall apply to all SWOs in the group. Following such authorization, individual SWOs in the group shall, for the purposes of this Agreement, be administered and changed in the same manner as an individually issued SWO.

2.11.16 Unilateral Service Work Orders.

- .a If Contractor fails to submit an SWOP in a timely manner or the parties fail to finalize all appropriate details of an SWOP, Owner has the right to issue a unilateral Service Work Order, which shall conform in all material respects to the requirements for SWOs as given in this Agreement.
- .b Compensation for any Work so authorized shall be in accordance with and the same terms and conditions that apply to authorized Service Work Orders under this Agreement.
- .c Contractor must commence any Work authorized under a unilateral Service Work Order at the time stated in said Service Work Order. The authorization of a unilateral Service Work Order will not act to prejudice any of Contractor's rights to raise Disputes or make Claims.

2.11.17 Emergency Service Work Orders

- .a In situations the Owner considers to be emergencies, Owner may direct Contractor to undertake urgent Work prior to the issuance/authorization of any Service Work Order.

- .b Contractor will be compensated in accordance with the provisions of this Agreement and in accordance with a Service Work Order to be issued and authorized as specified herein as soon as practicable.

## **2.12 ECONOMIC PRICE ADJUSTMENTS**

- 2.12.1 Beginning upon completion of the Initial Term of the Agreement, Contractor's Adjustment Factors shall be adjusted on each subsequent annual anniversary date of the Agreement to account for construction cost escalation or de-escalation according to the following:
  - .a A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the appropriate area (see below) published in the Engineering News Record ("ENR") for the 12 months immediately prior to the month of the Agreement Effective Date.
  - .b A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the appropriate area (see below) published in the ENR for the 12 months immediately prior to the month of the annual Agreement anniversary.
  - .c The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
  - .d Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain Contractor's new Adjustment Factors effective for the next 12 months.
  - .e Averages shall be obtained by summing the 12 month indices and dividing by 12.
- 2.12.2 All calculations in this Article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
  - .a The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.
  - .b The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).
- 2.12.3 ENR occasionally revises indices following their issuance. CCI's used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments shall be made as a result of any ENR revision to its published indices.
- 2.12.4 The economic price adjustment changes provided for above shall apply to both Primary and Alternate JOC Zones. For zones 1-9, the San Francisco CCI published in ENR shall be utilized as the basis for the adjustment. For zones 10-14, the Los Angeles CCI published in ENR shall be utilized as the basis for the adjustment.
- 2.12.5 The Progen software program will implement the changes to the Adjustment Factors.

**END ARTICLE 2**

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**ARTICLE 3 — CONTRACTOR'S RESPONSIBILITIES**

**3.1 GENERAL RESPONSIBILITIES**

- 3.1.1 Contractor shall, when authorized according to this Agreement, provide the Work, materials and services at designated Project Site(s) located in the Primary and Alternate JOC Zones specified in Exhibit B.
- 3.1.2 Contractor is responsible for the supervision and direction of the Work, including that of any of its Subcontractor(s) and its Suppliers, using its best skill and attention.
- 3.1.3 Contractor must at all times enforce good order and discipline among its employees and shall ensure that its Subcontractors and Suppliers do the same.
- 3.1.4 Owner will not control the construction means, methods, techniques, sequences, procedures, safety precautions and programs utilized in connection with the provision of the Work which shall remain Contractor's responsibility.
- 3.1.5 In addition to its obligations specified in Article 3.2, Licensing, Contractor will utilize, and will ensure that its Subcontractors shall utilize, individuals with the appropriate levels of education, skill, and experience with regard to the tasks assigned them.
- 3.1.6 Unless explicitly agreed to in an SWO, all materials to be provided pursuant to this Agreement are new and shall be supplied free from faults and defects and in conformance with the requirements of the authorized Service Work Order and this Agreement. Upon request at any time, Contractor must furnish evidence, satisfactory to Owner, demonstrating the quality of installed materials and equipment.
- 3.1.7 Unless otherwise explicitly provided for in an authorized Service Work Order, Contractor must provide all materials and any equipment, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work.
- 3.1.8 Contractor has charge and care of all Work and all materials until Use Before Acceptance or Final Acceptance, whichever event comes first. Contractor bears the risk of injury, loss, or damage to all material(s) and any part thereof by the action of the elements or from any other cause, whether arising from Contractor's performance or nonperformance of the Work.
- 3.1.9 Contractor must make good any loss of or damages to any portion of the Work or materials prior to Acceptance Before Use or Final Acceptance, whichever event comes first.
- 3.1.10 Contractor shall provide a contact that is available during Normal Working Hours and an alternate contact 24 hrs a Day, every Day.
- 3.1.11 Contractor shall accept Service Work Orders only as specified in this Agreement. Requests from other sources, except in an emergency which threatens the loss of life or property, or endangers the public safety, must be approved by an Owner Project Manager prior to the start of Work.
- 3.1.12 Contractor shall coordinate routine work with Owner designated facility liaison or occupant before Work is scheduled to begin, notify customer of any schedule changes, and provide Service Work Order (SWO) status to Owner's customers. Customers shall be notified of completion of work and invited to inspect work for their satisfaction prior to issuance of Final Acceptance of an SWO.
- 3.1.13 CAFM Responsibilities:
  - a. Contractor shall ensure that all Service Work Orders are recorded in Owner provided CAFM program.
  - b. Contractor shall track the status of all assigned Service Work Order in CAFM until the Work receives a Final Acceptance.



- c. Contractor shall functionally close out all completed Work within two (2) business days of completion in CAFM.
- d. Work will not be considered complete until all required data entry work and other administrative requirements are completed. These include: reporting all changes to fixed assets to the Plant Engineering staff, recording all costs in CAFM.
- e. Training, operating instructions, and operating manuals will be provided for all new equipment and systems installed as part of the work. When all tasks have been completed and verified, the will close the SWO in CAFM.

### **3.2 LICENSE RESPONSIBILITIES**

- 3.2.1 Contractor represents and warrants that Contractor has, and will continue to have during the term of this Agreement, a Class "B" Contractor's license issued by the California State Contractors License Board.
- 3.2.2 Contractor shall ensure that Subcontractor(s) providing any part of the Work will have, and continue to have, during their period of performance of the Work any license required by law to perform such Work, including but not limited to any Class "C" license (i.e. specialty license).
- 3.2.3 Contractor warrants and represents that Contractor shall ensure that its employees as well as the employees of its Subcontractors have and maintain throughout the period of their performance of Work, all license(s) necessary under law for such individuals to perform of such Work.
- 3.2.4 If the possession of a license(s) by an individual is required under law for the performance of Work Contractor warrants and represents that that Service(s) will either be performed by appropriately licensed individuals or under the direct supervision and subject to the review and approval of appropriately licensed individuals.

### **3.3 REVIEW OF FIELD CONDITIONS BY CONTRACTOR**

- 3.3.1 Contractor must satisfy themselves through their own investigations that the conditions encountered upon first arrival at a Project Site are corroborated with those provided in the SWO.
- 3.3.2 Before beginning Work on an authorized Project, Contractor must take field measurements and verify field conditions and must compare such field measurements, conditions and other related information provided to Contractor in the authorized SWO. Any discrepancies must be reported to Owner's PM in writing within 1 business day of discovery.
- 3.3.3 Subsurface Conditions:
  - a. Where investigation of subsurface conditions have been made by Owner in respect to foundation or other design, Contractor may inspect Owner's records of such investigation, including examination of samples and drill cores, if any.
  - b. When logs of test borings indicating a record of the data obtained by Owner's investigation of subsurface conditions are made available, said logs represent only the investigator's opinion as to the character of material encountered in test borings and are made available only for the convenience of Contractor.
  - c. Investigation of subsurface conditions is made for the purpose of design, and Owner assumes no responsibility, whatsoever, in respect to the sufficiency of test borings, accuracy of the log of test borings, of other preliminary investigations, or in the interpretation thereof. There is no warranty or guarantee, express or implied, that the conditions indicated are representative of those existing

throughout the Work, or any part of it, or that unforeseen conditions may not be encountered.

- 3.3.4 In accordance with Public Contract Code §7104, Public Work involving digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor must promptly, and before such conditions are disturbed, notify the Owner in writing of:
- a. Material that Contractor believes may constitute hazardous waste, as defined in §25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with applicable laws.
  - b. Subsurface or latent physical conditions at the site differing from those indicated.
  - c. Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the authorized Service Work Order.
- 3.3.5 In response to Contractor's written notice as required by Public Contract Code §7104:
- a. Owner will promptly investigate the conditions, and if Owner finds that such conditions materially differ from those expressly specified in the authorized Service Work Order, or involve hazardous waste, a Supplemental Service Work Order will be issued.
  - b. In the event that a Dispute arises between the Owner and Contractor whether the conditions materially differ, or involve hazardous waste, Contractor shall not be excused from any completion date(s) provided for by the authorized Service Work Order, but shall proceed with all Work to be performed under the SWO. Notwithstanding the foregoing, Contractor retains any and all rights provided either by this Agreement or under law that pertain to the resolution of Disputes and Claims between the parties.

### **3.4 PROJECT DOCUMENTS AND SAMPLES AT THE PROJECT SITE**

- 3.4.1 Contractor must maintain at the Project Site one (1) complete copy of originals of and all changes to the Project Documents including but not limited to any As-Builts, Shop Drawings, Owner Drawings, Requests for Information, Field Modifications, any Additional Detailed Instructions, any Submissions made and approved, and any Samples accepted during the performance of the Work. All Project Documents maintained at the Project Site shall be available during for inspection and use by Owner's Project Manager or their designee and Owner's Design Professional during Normal Working Hours,
- 3.4.2 The Contractor must maintain the Project Documents, including any As-Built(s), in good order and condition and post all changes and clarifications to the authorized Project Documents on a daily basis as they occur.
- 3.4.3 Contractor will prepare and maintain the As-Built(s) to record the actual field dimensions of the installed Work and to reflect ongoing changes to the Project while under construction. Upon completion of the Project, Contractor shall provide exact As-Built(s) to Owner. Contractor is liable and responsible for any and all inaccuracies in As-Built(s) even if inaccuracies become evident at a future date.
- 3.4.4 At least one (1) copy of all Owner approved Shop Drawings, Product Data, Samples and similar Submittals must be maintained at the Project Site in good and current condition and made available to Owner upon request.
- 3.4.5 Contractor must prepare and maintain, and shall ensure that all Subcontractors prepare and maintain daily reports to document the progress of the Work. Daily reports must be in a format provided by or approved by the Owner's Project Manager and completely filled out on a daily basis. One (1) copy of each daily report must be submitted

to Owner's Project Manager the following workday or as otherwise Directed by the Owner's Project Manager. If the Project Documents include a Project Schedule, corresponding activity numbers from the Project Schedule will be utilized to identify Work activities on the Daily Reports. It is the responsibility of Contractor to gather all daily reports and submit to Owner's Project Manager as one package.

- 3.4.6 Contractor must prepare and maintain, and shall ensure that all Subcontractors prepare and maintain incident reports to document unusual occurrences at the site of the Work, including but not limited to breaches of on-site security, altercations, vehicle or construction equipment accidents, and complaints from neighbors, etc. Incident reports must be in a format provided by or approved by the Owner's Project Manager, and must be completely filled out at or about the time of the occurrence of the incident. Three (3) copies of any incident report(s) must be submitted to Owner's Project Manager within 24 hours of occurrence of the incident. Information related to any follow-up investigation(s) of the incident must be submitted to the Owner's Project Manager upon request.
- 3.4.7 Contractor must prepare and maintain, and shall ensure that all Subcontractors prepare and maintain accident reports to document accidents at the Project Site. Accident reports must be in a format provided by or approved by the Owner's Project Manager, completely filled out at or about the time of the occurrence of the accident. Three (3) copies of any accident report(s) must be submitted to Owner's Project Manager within 24 hours of the accident. Information related to any follow-up investigation(s) of the accident must be submitted to the Owner's Project Manager upon request.
- 3.4.8 Contractor must arrange for the review or selection of any heavy or large material (or color) Samples to be made at vendor shops or facilities and, after being suitably tested and accepted, must arrange for Samples of the selected material (or colors) to be maintained at the job-site in a secure location for use during construction to verify the acceptability of materials and/or work.

### **3.5 ACCESS TO WORK**

Contractor must provide Owner's PM and their delegates with continuous access to the Work.

### **3.6 USE OF PROJECT SITE**

- 3.6.1 Contractor must confine operations at the Project Site to areas permitted by law, ordinances, permits and the authorized Service Work Order, and must not unreasonably encumber the Project Site with any materials, equipment, temporary structures, or temporary measures.
- 3.6.2 Contractor's employees, or others subject to Contractor's control, are not permitted to reside on the Project Site in temporary living facilities.

### **3.7 WORKPLACE ENVIRONMENT**

- 3.7.1 The use or possession of alcohol, weapons, or illegal controlled substances by Contractor, or others subject to Contractor's control, on any Job Site is prohibited.
- 3.7.2 Contractor must ensure and maintain a workplace environment free of personal harassment and intimidation.
- 3.7.3 Conduct that creates an intimidating, hostile, or offensive workplace environment is prohibited. Such conduct includes, but is not limited to, the following:
  - a. Verbal harassment, e.g., epithets, derogatory comments or slurs;
  - b. Physical harassment, e.g., assault, impeding or blocking movement, gestures, or any physical interference with normal work or movement;
  - c. Visual forms of harassment, e.g., derogatory posters, letters, poems, graffiti, cartoons, or drawings.

- 3.7.4 Unwelcome and unwanted sexual advances constitute sexual harassment that is prohibited. For example, requests for sexual favors and verbal or physical conduct of a sexual nature are prohibited.
- 3.7.5 It is the responsibility of Contractor to:
- a. Inform its employees and Subcontractors that behavior that creates an intimidating, hostile, or offensive workplace environment is prohibited;
  - b. Create a workplace environment that is free from harassment; and,
  - c. Take corrective action to stop prohibited behavior/conduct.
- 3.7.6 If in the opinion of the Owner's Project Manager, any employee of Contractor or Contractor's Subcontractors violate the prohibitions of this Article 3.7, "Workplace Environment", Contractor must immediately remove that person or Subcontractor from the Project upon Owner's request, and such person or Subcontractor must not be permitted to perform further Work on the Project Site.
- 3.7.7 All Contractor personnel who have unescorted access to court facilities will have a minimum of one hour of sexual harassment training each year. The training will be based on an Owner approved syllabus and format. Contractor will maintain records of all such training and will provide the records to Owner upon request.

### **3.8 SUPERVISION**

- 3.8.1 Prior to authorization of a Service Work Order the parties will designate their assigned PMs for the Project. Communications provided to Contractor's Project Manager will be as binding as if provided directly to Contractor.
- 3.8.2 When Contractor is comprised of two (2) or more persons, firms, partnerships, or corporations functioning as a joint venture, Contractor must submit a letter to the Owner, before starting Work, stating the name of one (1) authorized representative who has the authority to represent and act for Contractor. (only to be included in contracts where Owner contracts with a joint venture)
- 3.8.3 Contractor's Project Manager or their written designee must be present at the Work site at all times while any Work is in progress. When Work is not in progress and during periods when Work is suspended, Contractor's Project Manager must nevertheless provide the Owner's Project Manager with a contact method via which they can be reached at any time, as well as a contact method for reaching Contractor's site superintendent, if applicable.
- 3.8.4 Contractor will designate a single person as its environmental, health, and safety representative for any Work to be done at any Project Site. The Contractor's safety representative will be the person responsible for the implementation of all Project Site health and safety requirements and the prevention of accidents at any Project Site. The designated person shall have completed the OSHA 10 hour Construction Training Program and be currently certified. In the event it is necessary for Contractor's Project Manager and/or their site supervisor to be absent from the Project Site, Contractor's Project Manager will, except in the case of personal emergency, give written notice to the Owner's Project Manager designating an acting representative. The absence must not exceed 48 hours without the written approval of the Owner's Project Manager.
- 3.8.5 If any Contractor, Subcontractor, or Supplier employee or any agent working at the direction or subject to the control of Contractor refuses or fails to carry out a properly given order by the Owner's Project Manager or is, in the Owner Representative's opinion, incompetent, disorderly, or acting in an improper manner, Contractor must immediately remove that person or Subcontractor from the Project upon Owner's written request, and such person or Subcontractor must not be permitted to perform further Work on the Project.

### 3.9 DISRUPTION OF OWNER'S NORMAL OPERATIONS

- 3.9.1 The effects of disruption upon the Project Site will be established at the Joint Scoping Meeting and the Work will be planned to minimize such disruptions. Contractor must give timely advance notice to Owner of any Work that unexpectedly is likely to be disruptive to Owner's, and building occupants, normal operations at or near the Project Site. If Contractor does not so advise Owner, Owner has the right to temporarily suspend Contractor's Work or to require Contractor to modify its Work operations to eliminate any disruption, and Contractor is not entitled to any adjustment in the Service Work Order Sum or Service Work Order Time for any delay or additional costs associated therewith.
- 3.9.2 Any disruption of building services requires prior approval. Contractor shall coordinate scheduled outages with the regional staff, Facility Liaison, and affected customers prior to submitting the schedule for approval. Outages affecting five to ten (5 -10) persons require a minimum two (2) workday's notification prior to the outage. Outages affecting more than ten (10) persons require five (5) workdays notification. Such notification shall be made for disruptions of any services (such as utility outages, road or facility closures, etc.) or disruptions, loud noise, or strong odors caused by any maintenance or construction work (such as blocked access, pest or herbicide spraying, HVAC down for service, etc.).

### 3.10 LABOR AND MATERIALS

- 3.10.1 Unless otherwise provided in the authorized Service Work Order, Contractor shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.
- 3.10.2 Hours of Labor  
Workers are limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week except that pursuant to Labor Code Section 1815, any work performed in excess of 8 hours per day and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay. Contractor shall pay Owner \$25 as a penalty for each worker for each calendar day worked in violation of the above limitations and restrictions.
- 3.10.3 Prevailing Wage
- a. Contractor shall comply with Labor Code, Section 1775. In accordance with Section 1775, Contractor shall forfeit to Owner \$50 for each day, or portion thereof, for each worker paid less than the prevailing wage rates for the work or craft, in which the worker is employed for any work executed under this Agreement by Contractor or by any Subcontractor in violation of the provisions of the Labor Code; and, in particular, Labor Code, Sections 1770 to 1780, inclusive. In addition to such forfeiture, the difference between such stipulated prevailing wage rates and the amount paid to each worker for each day, or portion thereof, shall be paid to each underpaid worker by Contractor. This provision shall not apply to properly registered apprentices.
  - b. Pursuant to Labor Code, Section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and a general prevailing rate for legal holiday and overtime work for each craft required for execution of this Agreement. Contractor shall obtain from Owner a copy of such prevailing wage rates, which Contractor shall post at the Project site.

- c. Wage rates set forth are the minimum that may be paid by Contractor. Nothing herein shall be construed as preventing Contractor from paying more than the minimum rates set. No extra compensation whatsoever will be allowed by Owner due to the inability of Contractor to hire labor at minimum rates, nor for necessity for payment by Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements that were considered and ascertained to Contractor's own satisfaction in proposing the Adjustment Factors..
- d. If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate booklet, Contractor shall contact the Division of Labor Statistics and Research as listed inside the booklet or access on the Internet at [http://www.dir.ca.gov/DLSR/statistics\\_research.html](http://www.dir.ca.gov/DLSR/statistics_research.html). The rates thus determined shall be applicable as minimum from the time of initial employment.
- e. If Contractor uses a craft or classification not shown on the prevailing wage determinations, Contractor may be required to pay the wage rate of that craft or classification most closely related to it, shown in the general determinations in effect when the Bids were received. Pursuant to California Labor Code §1773.2, Contractor shall prominently post a copy of such prevailing wages at each job site.

#### 3.10.4 Apprentices

Properly registered apprentices may be employed in the execution of the Work. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. Contractor and each Subcontractor shall comply with the requirements of Labor Code, Section 1777.5, and any related regulations regarding the employment of registered apprentices.

#### 3.10.5 Workers Travel & Subsistence Payments

Contractor shall pay travel and subsistence payments to persons required to execute the Work as such travel and subsistence payments are defined in applicable collective bargaining agreements filed with the Department of Industrial Relations, pursuant to Labor Code, Sections 1773.1 and 1773.9.

#### 3.10.6 Payroll Records

- a. Contractor shall and shall ensure that all Subcontractors keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor and/or Subcontractor in connection with the Work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms.
- b. Upon written request by Owner, Contractor's and Subcontractor's certified payroll records shall be furnished within 10 days. Contractor's and Subcontractor's certified payroll records shall be available for inspection at the principal office of Contractor. Pursuant to Labor Code section 1776, in the event that Contractor fails to comply with the ten (10) day period set forth in this section, Contractor shall, as a penalty to Owner, forfeit twenty-five dollars (\$25) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

- c. In addition, Contractor agrees that, if requested by a representative of Owner in writing, Contractor shall, within five (5) Days of receipt of the request, provide Owner with electronic or printed copies of payroll records pertaining to any Work provided under this Agreement in a format acceptable to Owner.
- d. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section Labor Code section 1776.
- e. Contractor acknowledges that Owner must comply with all applicable laws with respect to public disclosure of documents, including the possible disclosure of payroll records which are submitted to Owner by Contractor pursuant to this Agreement and applicable law.

### **3.11 SATURDAY, SUNDAY, HOLIDAY, AND OVERTIME WORK**

- 3.11.1 Unless otherwise specified in the Service Work Order no construction Work shall be done on Saturdays, Sundays or holidays recognized by the State government and no Work shall be performed outside of Normal Hours Of Work without the prior consent of the Owner's Project Manager, unless required in the authorized Service Work Order. Normal Working Hours are standard shift work between the hours of 6:00 A.M. – 6:00 P.M., Monday through Friday, excluding State holidays.
- 3.11.2 Whenever Contractor intends to perform overtime work or work on Saturday, Sunday, or a legal holiday recognized by the State, Contractor must request permission by giving written notice to the Owner's Project Manager at least 2 Owner business days prior to performing the Work.
- 3.11.3 Contractor shall receive no additional compensation for any overtime work (i.e., work in excess of: Eight (8) hours in any one Day; forty (40) hours in any one calendar week; or evening, night, legal holidays observed by Owner, or weekend work).
- 3.11.4 If required by the nature of the Work, Contractor must arrange with the Owner for the continuous or periodic inspection of the Work and tests of materials. If such activities are necessary to the Project, a plan for such inspection and testing will be included in the SWO for the Work.
- 3.11.5 Should Contractor find it necessary in order to complete the Work according to the Project Schedule to perform certain of Contractor's operations on Saturdays, Sundays, holidays or during other overtime hours, these operations will be performed as part of the Work included in the Service Work Order Sum and do not constitute a basis for additional compensation. At the Owner's option Contractor may be required to compensate the Owner for inspection, testing, security, or management costs during Work performed outside of Normal Hours Of Work. Owner has the right and authority to deduct the cost of all such inspections, testing, security, or management costs from any payments due or that become due Contractor.
- 3.11.6 Owner has the right to Order Contractor to perform Work outside Normal Hours of Work. Owner will issue such Order in writing. If the Owner Orders Contractor to perform Work outside Normal Hours Of Work, Contractor must make all arrangements to supply an adequate Work force for the task to be accomplished and will be compensated for the premium portion of the wages paid, plus labor burdens applicable to the premium portion only of the wages paid. Contractor must submit copies of Contractor's payrolls indicating the premium wages actually paid, and the Owner will issue a Change Order to reimburse Contractor for Contractor's actual costs only. Owner will pay all extra expense of Owner's inspection.
- 3.11.7 Contractor must follow any sequence of operations required by an authorized Service Work Order.

### **3.12 CLEANUP**

- 3.12.1 Contractor must continuously keep the Project Site and surrounding areas free from waste materials and/or rubbish caused by its operations or rubbish from any source that accumulates within the Project Site and any other area designated by the Owner's Project Manager for use by Contractor.
- 3.12.2 Certain types of cleanup are specifically designated as Tasks. When cleanup is specified by such a Task, payment for such cleanup is included in the Service Work Order Sum.
- 3.12.3 When there is no Task for cleanup specified in an SWO, compensation for cleanup was included in the calculation of the CTC Price applicable to the Task.
- 3.12.4 Contractor must, before certifying that the entire Work of the Project is complete and/or requesting Completion inspection, clean material storage sites and all ground occupied or affected in connection with the Work or designated portion of the Work, and must leave all parts of the Project in a neat and presentable condition satisfactory to Owner's Project Manager.
- 3.12.5 Upon completion of the Work or any designated part thereof, Contractor must promptly remove all its waste materials, rubbish and debris, and all its tools, construction equipment, machinery and surplus materials from the Project area or the completed part.
- 3.12.6 When work is to be performed over or near roadways, walkways or other areas used by the public, protection shall be provided to prevent material or any type of overspray from falling on workers, or the public. Employees will be instructed as to the proper methods to be used for discarding rubbish and debris
- 3.12.7 If Contractor fails to clean up as required by the authorized Service Work Order, Owner may do so and the cost thereof will be charged to Contractor and deducted from progress payments due or to become due to Contractor.

### **3.13 DISPOSAL OF MATERIAL OUTSIDE PROJECT AREA**

- 3.13.1 Contractor is responsible for making all arrangements and paying all costs for disposal of materials outside the Project area.
- 3.13.2 When any material is to be disposed of outside the Project area, at other than a public disposal site, Contractor must first obtain written permission from the property owner of the proposed disposal site. Before any material is disposed of on said site, Contractor must obtain written permission from the Owner to dispose of the material at the location designated in said permit.
- 3.13.3 Disposal of Hazardous materials must comply with all legal requirements, including but not limited to containerization, labeling, manifesting, transportation, disposal site, and use of properly trained personnel. No later than 15 Days after Contractor's request for Final Inspection, Contractor must submit copies of all Hazardous Waste Manifests signed by Toxic Substances Disposal Facilities ("TSDF's") and certificates of disposal, to prove that Contractor has legally disposed of such materials. Submit three (3) copies of each manifest.

### **3.14 HAZARDOUS MATERIALS**

- 3.14.1 Contractor must comply with all Federal, State, County and local laws, statutes, ordinances and other regulations covering the use, storage, transportation and disposal of any Hazardous materials on the Project. Contractor must obtain all permits and pay all fees and taxes for all services and materials required to perform the Project.
- 3.14.2 The term "Hazardous Materials" as used herein means without limitation: (a) any chemical, compound, or substance that is defined or listed in, or otherwise classified pursuant to, any federal, or State law as a "hazardous substance", "hazardous waste",



“hazardous material”, “radioactive waste”, “infectious waste”, “biohazardous waste”, “toxic substance”, “pollutant”, or “contaminant”; (b) petroleum, natural gas, liquefied natural gas, synthetic gas usable as fuel; (c) “hazardous substance as defined in section 25281(h) of the California Health and Safety Code; (e) “waste” as defined in section 13050(d) of the California Water Code; (f) asbestos containing materials; and (f) any other material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace of the environment. “Hazardous Materials” do not include the foregoing to the extent that they are (i) contained in products that are commercially available in the United States of America; and (ii) used in quantities or concentrations that do not violate federal or state environmental law.

- 3.14.3 Prior to starting Work on any Project, Contractor must submit to Owner three (3) copies of a list of all Hazardous Materials expected to be used on the Project. Contractor must keep a copy of the list at the Project Site. This list must include but not be limited to any cleaners, solvents, paints or explosive charges used in the Work. Contractor must submit one (1) copy of OSHA Form 20 – Material Safety Data Sheet (“MSDS”) for each material listed and must advise every person at or near the Project Site of these materials, of proper handling, and of proper action in case of accident or exposure.
- 3.14.4 Contractor must safely contain and store all its Hazardous Materials, and in the event of spill or discharge, must immediately notify all required Federal, State, County and local agencies including the fire department. Contractor must protect personnel from exposure and provide treatment as necessary.
- 3.14.5 Contractor must immediately advise Owner of any potentially Hazardous Materials encountered at the Project Site and must take all necessary action to prevent exposure of personnel until the material is identified and proper action can be taken.
- 3.14.6 Contractor must not store or use any Hazardous Materials near air intakes or doors and windows serving persons on or off the Project Site without proper protection and safeguards to prevent exposure.
- 3.14.7 Contractor must exercise all required precautions and safeguards in the storage, use and disposal of Hazardous Materials. Nothing in this Article 3.14, “Hazardous Materials”, relieves Contractor of responsibility for compliance with all applicable laws and statutes, or other provisions of this Agreement, particularly Contractor’s responsibility for damage and preservation of life and property.

### **3.15 SAFE USE OF PESTICIDES**

- 3.15.1 Contractor must comply with all Federal, State and County rules and regulations governing pesticides that are required or used in performing Work.
- 3.15.2 The term pesticide includes, but is not limited to: herbicides, insecticides, fungicides, rodenticides, germicides, nematocides, bactericides, inhibitors, fumigants, defoliant, desiccants, soil sterilants, repellents, and any substance or mixture of substances intended for preventing, repelling, mitigating, or destroying weeds, insects, diseases, rodents, or nematodes, and any substance or mixture of substances intended to use as a plant regulator, defoliant, or desiccant.

### **3.16 TRENCHING AND EXCAVATION**

- 3.16.1 Before any excavation, Contractor must, pursuant to California Government Code §4216 and Cal/OSHA 8CCR1540, outline the excavation in white paint (preferably chalk or water base), provide two workdays notice to Underground Service Alert (1-800-227-2600), obtain a locator number, and follow all necessary procedures to avoid underground facility damage.

3.16.2 Before any excavation five feet or more in depth:

- .a Contractors must, pursuant to California Labor Code §6705, submit to Owner specific plans showing details of provisions for worker protection from caving ground. This in no way relieves Contractor from the requirement of maintaining safety in all operations performed by Contractor or Subcontractors. Submit eight (8) copies of the plans.
- .b The detailed plans showing design of all shoring, bracing, sloping or other provisions shall be prepared at Contractor's sole expense by a California registered Civil or Structural Engineer. Owner's acceptance only constitutes acknowledgment of the submission and does not constitute review or approval of the designs, design assumptions, criteria, accuracy, completeness, suitability for use, implementation, or any other quality of the plans, which are solely the responsibility of Contractor and Contractor's engineer.

**3.17 AIR POLLUTION CONTROL**

- 3.17.1 Contractor and each Subcontractor must comply with all air pollution control rules, regulations, ordinances, statutes, and Project specific permit requirements of the Bay Area Air Pollution Control District and all other regulatory agencies that apply to any Work performed. If there is a conflict between the Bay Area Air Pollution Control District rules, regulations, ordinances, and statutes and the rules, regulations, ordinances, and statutes of other regulatory agencies, the most stringent shall govern.
- 3.17.2 Contractor must not discharge smoke, dust or any other air contaminants into the atmosphere in such quantity as will violate any regulations.
- 3.17.3 Contractor must minimize dust nuisances resulting from performance of the Work, both inside and outside the Project limits, by applying either water or dust palliative, or both.

**3.18 WATER POLLUTION CONTROL**

- 3.18.1 Contractor must comply with all Federal, State and local water pollution prevention and storm drain pollution prevention rules, regulations, ordinances, statutes, guidelines, and Project specific permit requirements.
- 3.18.2 If required by law, ordinance, regulation, code, permit or the requirements of the authorized Service Work Order, Contractor must prepare a Project Specific Storm Water Pollution Prevention Program (SWPPP).
- 3.18.3 Contractor must exercise every reasonable precaution to protect storm drains, channels and all bodies of water from pollution, and must conduct and schedule operations so as to avoid or minimize muddying and silting of any waters. Contractor must construct whatever facilities are necessary or requested by Owner to provide prevention, control and abatement of water pollution.
- 3.18.4 No provision of the authorized Service Work Order relieves Contractor of responsibility for compliance with California Fish and Game Code §5650 et seq, and §12015 et seq, and applicable regulations of the Regional Water Quality Control Board, flood control and water district requirements, or other applicable statutes relating to prevention and removal of water pollution.
- 3.18.5 Compliance with water pollution requirements does not relieve Contractor from responsibility to comply with all provisions of the authorized Service Work Order, particularly Contractor's responsibilities for damage and preservation of property.

**3.19 SOUND CONTROL**

- 3.19.1 Contractor must comply with all CAL OSHA requirements.
- 3.19.2 Contractor must comply with all local sound control and noise level rules, regulations, and ordinances that apply to any Work performed pursuant to the requirements of the authorized Service Work Order.
- 3.19.3 Each internal combustion engine, used for any purpose on the Project or related to the Project, must be equipped with a muffler of a type recommended by the Manufacturer. No internal combustion engine shall be operated on the Project without said muffler
- 3.19.4 Noise level from and hours of Contractor's operations, that are located within city limits, must comply with city ordinances or requirements. Contractor's operations in the County's unincorporated areas or areas which border a city, town or other county must comply with the noise level requirements per the County Ordinance Code or requirements adopted by other jurisdictions, whichever are more stringent.
- 3.19.5 Noise level requirements apply to all equipment used in the Project including, but not limited to, trucks, transit mixers, or equipment that may or may not be owned by Contractor. The use of loud sound signals must be avoided in favor of warning lights except when sound signals are required by safety code for the protection of personnel.

### **3.20 CUTTING AND PATCHING**

- 3.20.1 Contractor is responsible for all cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.
- 3.20.2 Contractor must not damage or endanger any portion of the Work, or the work of Owner or any separate contractors, by cutting, patching or otherwise altering any work.
- 3.20.3 Contractor must not cut or otherwise alter the work of Owner or any separate contractor except with the written consent of Owner and such separate contractor. Contractor must not unreasonably withhold from Owner or any separate contractor its consent to cutting or otherwise altering the Work.
- 3.20.4 Cutting and Patching by Others: Contractor is responsible for any and all cutting, fitting and patching required to complete Contractor's Work or join its Work with the work of others, except as otherwise specifically provided for in the authorized Service Work Order.

### **3.21 FIRE PREVENTION AND PROTECTION**

- 3.21.1 Contractor is responsible for all cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.
- 3.21.2 Contractor shall implement and enforce fire protection and prevention measures in accordance with all federal, state and local governmental agencies and in accordance with the following requirements:
  - .a Fire extinguishers, exits, hydrants, or other fire-fighting equipment shall not be blocked.
  - .b All flammable liquids and combustible material must be stored away from any open flame or spark in an appropriate container.
  - .c Trash, rubbish or debris shall not be stored in proximity to any heat source that could start a fire.
  - .d Combustible refuse from construction operations shall not be burned or dumped on the Project Site. Such refuse shall be removed per local, state or federal regulatory requirements.
  - .e Plan all burning and hot work operations carefully, and remove all combustible or flammable material from the area before starting the job.

- .f Fire extinguishers (rated not less than 10B) will be placed every 3,000 square feet of construction area, and will be inspected and tagged at the time they are first placed at the Project Site and then at least monthly thereafter.
- .g One portable fire extinguisher (rated not less than 10B) will be provided within twenty-five (25) feet of hot work,
- .h One portable fire extinguisher (rated not less than 10B) will be provided within twenty-five (25) feet of use of flammable liquids.
- .i In situations where the hot work operations are being performed off of aerial devices, elevated platforms or scaffolding a fire extinguisher (rated not less than 10B) shall be available at the elevated work area.
- .j One fire extinguisher (not rated less than 10B) will be provided within five (5) feet of gasoline operated equipment.
- .k Employees designated by Contractor shall be trained in the proper use of the fire extinguisher.
- .l Fire hose will be provided where directed or required.
- .m Emergency fire department phone numbers will be conspicuously posted.

**3.22**

- 3.22.1 Contractor is responsible for all cutting, fitting, or patching required to complete the Work or to make its parts fit together properly.
- 3.22.2 Contractor must not damage or endanger any portion of the Work, or the work of Owner or any separate contractors, by cutting, patching or otherwise altering any work.
- 3.22.3 Contractor must not cut or otherwise alter the work of Owner or any separate contractor except with the written consent of Owner and such separate contractor. Contractor must not unreasonably withhold from Owner or any separate contractor its consent to cutting or otherwise altering the Work.
- 3.22.4 Cutting and Patching by Others: Contractor is responsible for any and all cutting, fitting and patching required to complete Contractor's Work or join its Work with the work of others, except as otherwise specifically provided for in the authorized Service Work Order.

**3.23 TESTS AND INSPECTIONS**

- 3.23.1 Contractor must at all times permit Owner, its agents, officers, employees, Consultants and representatives to visit the Project Site and inspect the Work, including shops where Work is in preparation. This obligation includes maintaining proper facilities and safe access for such inspection. When the authorized Service Work Order requires a portion of the Work be tested, such portion of Work must not be covered up until inspected and accepted by Owner. Contractor is solely responsible for notifying Owner where and when the Work will be ready for inspection and testing. Should any Work be covered without the required testing and acceptance, such Work must be uncovered and recovered at Contractor's expense.
- 3.23.2 If Owner determines that portions of the Work require additional testing, inspection or acceptance not included in the requirements of the authorized Service Work Order, the Owner will authorize Tasks for such testing via a Supplemental SWO, and instruct Contractor, in writing, to make arrangements for additional testing, inspection or acceptance by an entity acceptable to the Owner, and Contractor must give 48 hours written notice to Owner of where and when tests and inspections will be conducted so that Owner may observe the procedures. Owner will bear the costs except as provided in Article 3.21.3.

- 3.23.3 If procedures for additional testing, inspection or acceptance required by Article 3.21.2 reveal failure of a portion(s) of the Work to comply with the requirements of the authorized Service Work Order, Contractor will bear all costs made necessary by such failure(s) including those of repeated procedures and compensation for Owner's services and expenses.
- 3.23.4 Certificates of testing, inspection, acceptance, or approval will, unless otherwise required by the authorized Service Work Order, be secured by Contractor and submitted to the Owner within two (2) Days after completion of each test, inspection, acceptance or approval.
- 3.23.5 Contractor will not be relieved of its obligations to perform the Work in accordance with the requirements of the authorized Service Work Order by tests, inspections, acceptance or approvals required or performed by persons other than Contractor.
- 3.23.6 Contractor is responsible for inspections of portions of its Work and the work of others already completed to determine that such portions are in proper condition to receive subsequent Work. If Contractor determines that completed work of others is not in proper condition to receive its Work, Contractor must immediately notify the Owner's PM in writing and must not proceed with the affected portion of its Work without Direction from the Owner's PM.

### **3.24 OFFICIAL PROJECT SCHEDULES**

Contractor and Owner will mutually agree to a Project Schedule or a final date of completion for each Service Work Order. Owner's review and acceptance of such Progress Schedules or date of completion is for assessment of suitability of scheduling to meet Owner's needs only, and review and authorization, via SWO, by the Owner of Contractor's Progress Schedule(s) or date of completion does not relieve Contractor of any of Contractor's responsibility for the accuracy or feasibility of the Project Schedule, or of Contractor's obligation to meet the date of final Project completion. Owner's review and acceptance of Contractor's Progress Schedule or date of completion does not expressly or impliedly warrant, acknowledge or admit the reasonableness of the logic, durations, cost, manpower or equipment loading indicated.

### **3.25 SUBMITTALS**

#### **3.25.1 General**

- .a The purpose of Submittals is to provide details of method(s), material(s), or plan(s) that Contractor is proposing to use or adhere to during the course of the execution of the construction Work to conform to the requirements expressed in the Detailed Statement of Work applicable to a Project, or to identify and obtain approval for deviations from those requirements.
- .b Submittals may be planned or unplanned. Any planned submittals are to be documented in a list provided in the Detailed Statement of Work applicable to a Project. Unplanned Submittals may be submitted by Contractor during the course of execution of the construction Work for the purpose of obtaining agreement by the Owner to deviations from the Detailed Statement of Work.
- .c All Submittals shall be provided to Owner directly by Contractor. Submittals received from sources other than through Contractor will be returned marked "Returned Without Action" or may be discarded.
- .d When provided to Owner, Submittals must be conspicuously labeled as "No Deviations" or "Contains Deviation(s)".
- .e Submittals without deviations from the Detailed Statement of Work shall be labeled "No Deviations". By providing a Submittal with the notation of "No Deviations", Contractor represents that Contractor has determined and verified

that the method(s), material(s) or plan(s) presented in the Submittal comply with the requirements of the Detailed Statement of Work.

- .f Any Submittal containing deviations from the Detailed Statement of Work shall bear the notation "Contains Deviation(s)". If a Submittal with deviations is approved by Owner, Contractor shall be relieved of the responsibility for that deviation from the requirements of a Detailed Statement of Work, however, the method(s), material(s) or plan(s) presented in the Submittal identifying the deviation shall comply with the requirements of the Detailed Statement of Work as modified by that Submittal.
- .g By providing any Submittal Contractor represents that execution of the Work as proposed in the Submittal will be properly coordinated with any Subcontractor(s) as well as with any other already agreed to Submittals.
- .h Owner's responsibility for review of a Submittals marked "No Deviations" is limited to assessment of whether the method(s), material(s) or plan(s) provided will in general comply with the requirements of the Detailed Statement of Work applicable to a Project, and Owner's approval of such a Submittal does not relieve Contractor of responsibility for any errors and omissions in the Submittal or from any responsibility for properly providing the Work, the Project, and any materials as specified by the Detailed Statement of Work. If Owner's Project Manager assesses such a Submittal and agrees that it is in that a Submittal marked "No Deviations" is in general compliant with the requirements of the Detailed Statement of Work applicable to a Project, Owner's Project Manager shall approve such Submittals in full and in writing. If Owner's Project Manager does not agree that the Submittal is in general complaint with the requirements of the Detailed Statement of Work applicable to the Project, the Owner's Project Manager shall notify Contractor's Project Manager in writing that the Submittal has been rejected.
- .i Any deviation proposed to a Detailed Statement of Work must be presented to Owner via a Submittal. Any Submittal containing deviation(s) from a Detailed Statement of Work for a Project must, if acceptable to Owner, be approved in full by the Owner's Project Manager. Each proposed deviation presented to Owner must be separately, expressly, and clearly identified and explained in writing on the Submittal, and, if acceptable to Owner, will be separately initialed by Owner's Project Manager. Deviations presented as general notations on a Submittal document are not sufficient to satisfy the above requirement and any deviations presented in this matter, even if accepted by Owner, shall be null and void, and without effect. Submittals containing deviations must provide the alternate method(s), material(s) or plan(s) being presented to ensure compliance with the requirements of the Detailed Statement of Work as modified by an accepted deviation.
- .j Owner's acceptance of Submittals shall not act to limit Owner's rights with regard to rejection of a Project that does not comply with the final Detailed Statement of Work as modified by the Submittals approved for that Project.
- .k Work requiring Submittals shall not be performed until Owner has accepted the pertinent Submittals. Where a Submittal is required, any related Work performed before the Owner's review and acceptance of the Submittal will be at Contractor's sole risk, expense and responsibility.
- .l Contractor shall endeavor to make Submittal(s) far enough in advance to avoid any Critical Path delay to the Project Schedule.
- .m Unless otherwise agreed to in writing by Owner's Project Manager, Submittals specified in a Detailed Statement of Work must be submitted at the time(s) specified in the Project Schedule, or if no time is stated, at least five (5) Owner business days prior to the state date for any Work to which the Submittal pertains.

- .n Unplanned Submittals shall be submitted as soon as possible but not later than five (5) Owner business days prior to the state date for any Work to which the Submittal pertains.
- .o When a Project is so structured that the requirements of the Detailed Statement of Work have been provided by Owner's Design Professional(s), Owner shall be entitled to rely upon such Design Professionals in assessing the acceptability of Submittals presenting deviations to the Detailed Statement of Work. Any such Submissions accepted by Owner must bear an approval mark(s) indicating acceptance by the appropriate Design Professional.
- .p When a Project is so structured that the requirements of the Detailed Statement of Work have been provided by Contractor provided Design Professional(s), Contractor shall have such Design Professionals assess the acceptability of Submittals presenting deviations prior to presenting such Submittals for approval by Owner. Any such Submissions presented for approval to Owner must bear an approval mark(s) indicating acceptance by the appropriate Design Professional provided by Contractor.
- .q Contractor must provide all Submittals at the times specified above to allow for review and possible revisions, and to avoid delays in the Work. No extension of the Service Work Order Time will be authorized because of a failure on the part of Contractor to provide Submittals as required by this Agreement. Contractor is responsible for all costs of delays caused by failure to provide Submittals at the times required.
- .r Do not highlight pertinent Submittal information with markings that turn opaque when copied. Improperly highlighted Submittals may be returned to Contractor "Returned Without Action."

3.25.2 Additional Contractor Responsibilities regarding Submittals

- .a Before making a Submission, Contractor must, if appropriate:
  - (i) Determine and verify all field dimensions and conditions
  - (ii) Verify and correlate all dimensions in the Detailed Statement of Work with field dimensions and conditions
  - (iii) Verify materials, catalog numbers and similar data.
  - (iv) Plan the Work to be provided in regards to the Submission in such a way that Contractor's Work is coordinated with that of any Subcontractors
  - (v) Coordinate the Work of the Subcontractors with each other.
  - (vi) Review and coordinate any parts of a Submittal provided by Subcontractors' with the requirements of the Detailed Statement of Work
  - (vii) Examine and adjust the Submittals with regard to any Submittals previously accepted by the Owner
  - (viii) Coordinate as required with all public agencies involved.
  - (ix) Secure necessary approvals from public agencies and others and signify by stamp or other means that they have been secured.
  - (x) Verify the feasibility of the construction methods to be proposed
  - (xi) Modify the Work to be provided in regards to the Submission so that it complies with Construction safety precautions
  - (xii) Review and coordinate all Contractor's Submittals with the requirements of the authorized Service Work Order
- .b If it is specified in the Detailed Statement of Work that all Submittals pertaining to a Definable Feature of the Work must be provided as a Complete Submittal(s), all individual Submissions pertaining to the Definable Feature of Work so specified

must be submitted as a single Complete Submission, and must not be Submitted piecemeal. If a Submission must be provided as part of a Complete Submission, Owner has the right to withhold action until all Submittals are received, or return the partial Submittal to Contractor "Returned Without Action." Contractor shall endeavor to coordinate submission of Submittals for related parts of the Work so that the Submittals may be reviewed concurrently.

- .c If a planned Submittal is not approved by Owner, Contractor must resubmit such Submittals within the times required by this Agreement until Owner's approval is obtained.
- .d If a Submittal is not approved, when resubmitted, Contractor shall clearly indicate all changes to the originally provided Submittal. This includes directing specific attention, in writing, to any revisions other than those requested by the Owner to the previous Submittals.

### 3.25.3 Shop Drawings

- .a Contractor must furnish Shop Drawings for temporary work and methods of construction such as formwork, falsework, and for other temporary work and methods of construction Contractor proposes to use.
- .b Contractor must furnish scaled drawings showing how the Work of all trades (HVAC, plumbing, fire protection, electrical, etc.) will coordinate to form a complete Installation, and where Work affects existing buildings or parts thereof, and/or existing utilities.
- .c Present Shop Drawings in a clear and thorough manner. Identify details by reference to sheet and detail, schedule, and room numbers shown on Drawings.

### 3.25.4 Submittal Copies

Contractor shall submit 1 original and two (2) copies of any Submittal. Submittals shall be signed by Contractor's Project Manager.

### 3.25.5 Action & Distribution

- .a When a Submittal is approved, Contractor may proceed with the Work to which the Submittal pertains.
- .b Contractor must promptly distribute copies of the approved Submittals to its Subcontractors, Suppliers, vendors, Fabricators and/or Manufacturers as applicable.

### 3.25.6 Use in Construction

- .a Contractor agrees that if a Submittal contains deviations, Contractor shall use only accepted Submittals bearing mark(s) marks indicating acceptance by the Designer of Record in the performance of the construction Work.
- .b No portion of Work requiring acceptance of a Submittals shall commence until the Submittal has been accepted.
- .c Contractor must Fabricate, construct and furnish all Work in accordance with any accepted Submittals.
- .d Contractor must keep at least one (1) copy of each accepted Submittal at the job.

### 3.25.7 Owner's Review

Owner will review Contractor's submitted Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information provided and the design concept expressed in the authorized Service Work Order. Review of Submittals is not conducted for determining the accuracy and completeness of other details, such as dimensions and quantities, nor for substantiating instructions for



installation or performance of equipment or systems, all of which are and remain the responsibility of Contractor.

### 3.26 SAMPLES

- 3.26.1 Contractor must submit without charge such Samples as may be required by the authorized Service Work Order.
- 3.26.2 Unless a greater quantity is required elsewhere in the authorized Service Work Order, three (3) of each required Sample must be Submitted
- 3.26.3 Tags or labels shall be securely affixed to Samples and contain as a minimum, the following information: Project Name, Contractor's Name, Agreement Title and Number, Date, Transmittal Number, Product Manufacturer's or Fabricator's Name, trade name, lot style, color, model, etc., locations of use.
- 3.26.4 Owner will retain one of each Sample.
- 3.26.5 Contractor must not use any materials or equipment for which Samples are required to be submitted until Owner has performed such Submittal review, save only at Contractor's risk and expense.
- 3.26.6 Owner's review of any Sample is only for the characteristics thereof or for the uses named in such review and no other. Owner's acceptance of any Sample is not a modification or change of any requirements of the authorized Service Work Order. Upon Owner's acceptance of any Sample or material, no additional Sample of that material will be considered and no change in brand or make is permitted.
- 3.26.7 Where variation in color, pattern, texture or other characteristic is inherent in the material or product to be Provided, Contractor must submit at least 3 multiple units that show approximate limits of the variations. Installed items or materials exceeding the variation of the accepted Samples are considered defective Work.

### 3.27 SUBSTITUTIONS

- 3.27.1 Requests for Substitution Prior to Authorization of Service Work Order:
  - .a If at any time prior to the Contractor submitting a Service Work Order Proposal, Owner has indicated that a Named Product be incorporated into a Project, Contractor may, as part of its Service Work Order Proposal, and via a Request for Substitution, offer any material, process, or article that Contractor believes to be substantially equal or better in every respect to that so indicated or specified by Owner. Any Request for Substitution must be incorporated into Contractor's Service Work Order Proposal and shall include information regarding:
    - (i) All variations of the proposed substitute for the Named Product specified including, but not limited to, construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;
    - (ii) Available maintenance, repair or replacement services for the proposed substitute;
    - (iii) Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs for the proposed substitute;
    - (iv) Whether or not acceptance of the proposed substitute will require other changes in the Work; and,
    - (v) The time impact on any part of the Work that will result directly or indirectly from acceptance of the proposed substitute.
  - .b If the material offered by Contractor is not, in the opinion of Owner's PM, substantially equal or better in every respect to the Named Product specified by Owner, then Contractor shall furnish the Named Product specified by Owner. The

burden of proof is upon Contractor to establish the equality of any proposed substitution. Notwithstanding whether the proposed substitute is equal or better than the Named Product, Owner may still require the use of the Named Product if:

- (i) Owner desires to conduct a field test or experiment to determine the proposed substitute's suitability for future use by Owner in other projects;
  - (ii) the Named Product is necessary to match other products in use; or
  - (iii) the proposed substitute is only available from one source.
- .c Contractor's Service Work Order Proposal will not specify a proposed substitute for a Named Product unless Owner's Project Manager has approved such substitution in writing.
- .d Subsequent to the process as provided for above in this Article 3.25.1, if a Named Product is specified in a Service Work Order Proposal, by submitting such Service Work Order Proposal, Contractor represents to Owner that Contractor has investigated the availability of the Named Product(s) and determined that the Named Product(s) will in fact be available at the time(s) of use required by the Project.
- .e Following authorization of SWOs specifying Named Products, Owner does not expect to receive Requests for Substitution for such Named Products. If the Named Product cannot in fact be supplied, Owner shall have the option to accept a Request for Substitution subject to the complete provisions of Article 3.27.2 for "Or Approved Equals", or terminate the Service Work Order and recover any Owner costs and expenses incurred in regard thereto.

3.27.2 Substitution Following Authorization of Service Work Order:

- .a Whenever in an authorized SWO any material other than a Named Product is indicated, such specification shall be deemed to be followed by the term "Or Approved Equal"
- .b Contractor shall have the right to submit Requests for Substitution for such materials subject to the following:
- (i) Requests for Substitution of such material will be made via the Submittal process provided in Article 3.23.
  - (ii) The burden of proof as to the equality of any material, that Contractor substitutes is the responsibility of Contractor. Owner's will consider proposals for substitution of materials, products, things, or services only when such proposals are accompanied by full and complete technical data, and all other deemed necessary by the Owner's PM to evaluate the proposed substitute material. Owner may require substantiating documents to prove quality, delivery time, and costs, and other aspects of the proposed substitute material.
  - (iii) If any material provided by Contractor is not, in the opinion of the Owner's PM, substantially equal or better than that specified, Contractor must furnish that material, or one that in the opinion of the Owner's Authorized Representative is substantially equal or better in every respect.
  - (iv) Owner's Project Manager will review and respond in writing to any Request for Substitution Submittal within fourteen (14) Days after receipt of all information Owner requires to make a final determination. Owner's Project Manager will be the sole judge as to such matters. In the event Owner's Project Manager rejects the use of such alternative(s) submitted, then one of the particular materials, Named Products, things, or

services originally specified in the authorized Service Work Order must be provided.

- (v) Contractor shall be responsible for the payment of any costs or expenses of changes to the Work and/or any element of the Detailed Statement of Work necessitated by use of the substitute material, and for all costs and expenses incurred by Owner with regard to the evaluation or use of a substitute material, including but not limited to Design Professional and/or CM services.

3.27.3 Installation of substitute materials:

- (i) Contractor must replace any substitution(s) installed without Owner's consent with the specified item(s) at Contractor's expense.
- (ii) Contractor will not proceed with substitution of any material until Owner's Project Manager has completed all reviews, made recommendations and granted written consent.

**3.28 COMPLIANCE WITH LAWS AND REGULATIONS**

3.28.1 Contractor must keep informed of governmental regulations that may affect the Work. Contractor must observe and comply with, and must cause all agents, employees, Subcontractors and Suppliers to observe and comply with said regulations. Contractor shall hold harmless and indemnify Owner and all its officers, employees and Consultants against any liability or claim arising from or based upon the violation of any such regulations by Contractor, its agents, employees, representatives or Subcontractors and Suppliers.

3.28.2 Contractor must, during the term of this Agreement, comply with all applicable federal, state and local rules, regulations, and laws.

3.28.3 Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.

3.28.4 Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of Work. Contractor shall designate the Work superintendent, or some other responsible member of Contractor's organization who is at the Site, to be the person responsible for the prevention of accidents and the monitoring of the safety of the Work

**3.29 DRUG-FREE WORKPLACE**

3.29.1 Contractor hereby certifies, under penalty of perjury under the laws of the State of California, that Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.), and will provide a drug-free workplace by taking the following actions:

- .a Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- .b Establish a Drug-Free Awareness Program to inform employees about:
  - (i) The dangers of drug abuse in the workplace;
  - (ii) The person's or company's policy of maintaining a drug-free workplace;

- (iii) Any available counseling, rehabilitation, and employee assistance programs; and,
  - (iv) Penalties that may be imposed upon employees for drug abuse violations.
- .c Provide, as required by Government Code, Section 8355(c), that every employee who works under the Agreement will:
- (i) Receive a copy of the company's drug-free workplace policy statement; and
  - (ii) Agree to abide by the terms of the company's statement as a condition of employment.

**3.30 TAXES, PERMITS, AND FEES**

- 3.30.1 Taxes: Contractor must pay all taxes imposed on Contractor by Federal, State, or local governments, including but not limited to Federal excise tax and all State and local sales and use taxes. Owner will not furnish any tax exemption certificate or any document designed to exempt Contractor from payment of any tax on labor, services, materials, transportation, or any other items to be provided by Contractor pursuant to an authorized Service Work Order.
- 3.30.2 Permits & Fees: Contractor must obtain and pay for all building permits, encroachment permits, and all other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work, unless otherwise provided in the Service Work Order.
- (i) Contractors must give all necessary notices and comply with all laws, ordinances, rules, regulations and lawful Orders relating to the Work, and to the preservation of the public health and safety, unless otherwise directed by Owner's Project Manager.
  - (ii) If Contractor performs any work contrary to such laws, ordinances, Orders, rules and regulations, Contractor shall bear all costs attributable thereto.
  - (iii) Contractors will be reimbursed for the direct cost of any required permits through a Non-Prepriced item with no mark-up.
- 3.30.3 Royalties & License Fees: Contractor must pay all royalties and license fees, and must defend all suits or claims for infringement of any patent rights and save Owner and its Consultants on this Project harmless from loss on account thereof.

**3.31 EQUAL OPPORTUNITY REQUIREMENTS**

Owner is an equal opportunity employer. Contractor must comply with all applicable Federal, State, and local laws and regulations. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (§503 and 504); California Fair Employment and Housing Act (Government Code §12900 et seq.); California Labor Code §1101 and §1102. Contractor must not discriminate against any Subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff rates of pay or other forms of compensation.

**3.32 PATENTS**

- 3.32.1 Contractor must assume all costs arising from the use of patented materials, equipment, devices or processes used on or incorporated in the Work.

**3.33 NON-WAIVER**

- 3.33.1 No waiver of any breach of the Agreement will be held to be a waiver of any other or subsequent breach.
- 3.33.2 Conformance with any provisions in one part of the authorized Service Work Order will not relieve Contractor from any responsibilities as set forth elsewhere in the authorized Service Work Order.

**3.34 STANDARDS FOR WORK & MATERIALS**

- 3.34.1 Work: The Work must comply with all governing codes, including standards referred to by such codes and the authorized Service Work Order, except said requirements are considered as minimum. When the authorized Service Work Order call for materials of higher quality or performance, or larger sizes or capacity than required by said codes or standards, the requirements of the authorized Service Work Order take precedence. This requirement does not operate to allow deviations from minimum code requirements.
- 3.34.2 Material: Material specified by reference to the number, symbol or title or a specific standard, such as a commercial standard, a Federal specification, a trade association standard, or other similar standard, must comply with the requirements thereof.
- 3.34.3 References: Any standards referred to, except as modified in the authorized Service Work Order, have full force and effect as though printed in the authorized Service Work Order. Standards are not repeated, because Contractor and its Subcontractor and Suppliers are expected to be familiar with requirements governing or applicable to their work.
- 3.34.4 Work and materials must conform to the lines, grades, cross sections, dimensions and material requirements, including tolerances, shown on the Drawings or indicated in the Project Manual. Although measurement, sampling, and testing may be considered evidence as to such conformity, Owner's Project Manager is the sole judge as to whether the Work or materials deviate from the requirements of the authorized Service Work Order, and the decision of the Owner's Project Manager as to any allowable deviation therefrom is final.
- 3.34.5 Contractor must follow any required sequence of operations set forth in the authorized Service Work Order.

**3.35 CONFORMITY WITH CONTRACT DOCUMENTS & ALLOWABLE DEVIATIONS**

- 3.35.1 Authorized Service Work Orders show such information as reasonably needed to convey a comprehensive idea of the Work contemplated. All authorized alterations affecting the requirements and information in the authorized Service Work Order must be in writing in the form of a Supplemental Service Work Order.

**3.36 CONTROL OF MATERIALS**

- 3.36.1 General Requirements:
  - .a Contractor must not purchase any materials, supplies, or equipment for the Work subject to any security interest or subject to a conditional sale or other agreement by which any interest therein or in any part thereof is retained by the seller or the Supplier.
  - .b Contractor warrants free and clear title to all material, supplies, and equipment Installed or incorporated in the Work and agrees upon Completion of the Work to deliver the premises, together with all improvements and appurtenances

constructed or placed thereon by Contractor, to Owner free from any claims, liens or charges of any kind. Contractor nor any person, firm, or corporation furnishing materials, labor or services for any Work has the right to place a lien upon the premises or any improvement or appurtenances therein.

- .c Nothing contained herein shall defeat or impair the right of persons furnishing materials, labor or services covered by any Bond provided by Contractor for their protection, or any rights pursuant to any law permitting such persons to look to funds due Contractor held by Owner.

3.36.2 The provisions of Article 3.34.1 must be inserted in all Subcontracts and material contracts and notice of its provisions must be provided to all persons furnishing material for the Work when no formal contract is entered into for such material.

3.36.3 Source of Supply & Quality of Materials

- .a Contractor must furnish all materials required to complete the Work, except materials that are designated in the authorized Service Work Order to be furnished by Owner in the performance of the Work.
- .b Contractor must incorporate in the Work only materials conforming to the requirements of the authorized Service Work Order.
- .c All materials provided must be new, except as may be specifically provided in the authorized Service Work Order.
- .d Inspections and tests may be made by Owner or its designated representatives, but such inspections and tests shall not be considered as a guaranty of acceptance of such material nor of continued acceptance of material offered as similar to that which may have been inspected or tested.
- .e All Owner performed inspections and tests are for Owner's benefit and are not a substitute for Contractor's own quality control program.
- .f Owner, Owner's Consultants, and Inspector as appropriate, will conduct periodic quality assurance inspections to determine Contractor's compliance with Contractor's quality control program and with the requirements of the authorized Service Work Order.

3.36.4 Owner Furnished Items

- .a Owner Furnished Items will be available at the dates and at the locations designated in the authorized Service Work Order.
- .b Contractor is responsible for all items furnished by Owner once in Contractor's custody. Once Owner furnished Items are provided to Contractor, loss or damage from any cause whatsoever must be remedied by Contractor who will be liable for the cost and any expenses incurred by Owner to replacing such Owner furnished Items.

1.1.1 Foreign Materials & Assemblies

- .c Contractor must deliver materials or assemblies which are Manufactured or Fabricated outside of the United States ("Foreign Materials & Assemblies") to a location Directed in the authorized Service Work Order, where they must be retained for sufficient time to permit inspection, sampling, and testing.
- .d Contractor, at no cost to Owner, must supply all facilities and arrange for all testing required by Owner. All testing by Contractor is subject to witnessing by Owner.
- .e Contractor must furnish Owner a Certificate of Compliance from the Manufacturer or fabricator of any Foreign Materials or Assemblies in accordance with Article 3.34.7, "Certificate of Compliance." In addition, Contractor must furnish certified mill test reports clearly identifiable to the lot of material where required in the Project Manual or otherwise requested by Owner.

- .f Use of steel Manufactured outside the United States is restricted to steel which can be positively identified as having been rolled at the heat for which certified mill tests can be produced.
- .g Where Manufactured materials requiring mill test reports or Fabricated assemblies involving the welding of steel for structural steel members or the casting and prestressing of precast prestressed concrete members are to be performed outside the United States, such Manufactured materials or Fabricated structural members shall be provided only from those foreign Manufacturers and Fabricators who have previously established, to Owner's satisfaction, that they have the experience, knowledge, trained personnel, quality controls, equipment, and other facilities required to produce the quality and quantity of Work required.
- .h At Owner's option, prequalification of the plant and Manufacturer or Fabricator will be established either by the submission of detailed written proof thereof or through in-plant inspection by representatives of the Owner, or both.
- .i Contractor must make written application to Owner for approval for foreign Fabrication at the earliest possible time but in no case later than with Contractor's SWO Proposal. The application must list the specific units or portion of Work that will be fabricated outside of the United States.
- .j All documents pertaining to this Agreement, including but not limited to, correspondence, Shop Drawings, Product Data, Project Documents, Requests for Information, and all other Submittals and data must be written in the English language and all numerical data must use the foot-pound-second system of measurement.
- .k Attention is directed to Article 6.3, "Liquidated Damages." Contractor is not entitled to an extension of Service Work Order Time for acts or events occurring outside of the United States, and it is Contractor's responsibility to deliver Foreign Materials & Assemblies into the continental United States in sufficient time to permit timely receipt at the Project Site.

3.36.5 Defective Materials

- .a All materials that Owner has determined do not conform to the requirements of the authorized Service Work Order will be rejected whether in place or not. Contractor must remove all rejected materials immediately from the Project Site, unless otherwise permitted by Owner's Project Manager. No rejected material, or repaired defective material, shall be used in the Work, without Owner's PM written approval.
- .b Upon Contractor's failure to comply promptly with any Order of Owner made pursuant to the provisions in this Article 3.34.5 a, "Defective Materials", Owner has the right and authority to cause the removal and replacement of rejected material and to deduct the cost thereof from any monies due or to become due to Contractor

3.36.6 Inspection at Source of Supply

Owner may inspect the production of any material, or the Manufacture of any product at the source of supply. Such inspection, however, will not be undertaken until Owner is assured of the cooperation and assistance of both Contractor and producer. Owner's Project Manager or their designated representatives shall have free entry at all times to the parts of the plant Manufacturing or producing such materials. Adequate facilities must be provided free of charge to make the necessary inspections. Owner assumes no obligation to inspect materials at source of supply.

3.36.7 Certificate of Compliance

- .a Owner may permit the use by Contractor of certain materials or assemblies before sampling and testing if accompanied by a Certificate of Compliance stating that the materials comply in all respects with the requirements of the authorized

Service Work Order. The Manufacturer of the material or assembly must sign the Certificate of Compliance. Upon request by Contractor's PM, if Owner so agrees, Owner shall grant the right to such use by issuance of a written notice by Owner's PM. If Owner grants such permission, a Certificate of Compliance must be submitted with each lot of material delivered to the Project Site and the lot so certified must be clearly identified in the Certificate of Compliance.

- .b Owner may sample and test all materials used pursuant to a Certificate of Compliance at any time. The fact that material is used pursuant to a Certificate of Compliance does not relieve Contractor of responsibility for incorporating material in the Work which conforms to the requirements of the authorized Service Work Order; and any such material not conforming to such requirements will be subject to rejection whether in place or not.
- .c Owner reserves the unrestricted right to refuse to permit the use of material pursuant to a Certificate of Compliance.
- .d Owner will set the form of the Certificate of Compliance and its disposition.

#### 3.36.8 Testing

- .a Contractor must furnish without cost to Owner, adequate Samples of all materials necessary for testing.
- .b Tests must be by a Laboratory accepted by Owner and paid for by Contractor.
- .c Contractor must pay all costs of all tests.
- .d If a test fails, Contractor must pay for subsequent tests until passage.
- .e The Laboratory must submit certified copies of all test reports directly to Owner and Contractor by 10 a.m. of the second workday after performing each test.

#### 3.36.9 Property Rights in Materials

Nothing in this Agreement or any authorized Service Work Order shall be construed as vesting in Contractor any right of property ownership in the materials used in the Work after they have been attached or affixed to the Work or the soil, or after payment has been made in an amount equal or greater than ninety percent (90%) of the total value of all materials delivered to the Project Site, or stored subject to or within the control of Owner. All such materials become the property of Owner upon being so attached or affixed or upon such payment.

### 3.37 DIFFERING SITE CONDITIONS

3.37.1 Contractor must immediately, and in any event no later than twenty-four (24) hours after discovery, and before such conditions are disturbed, notify Owner in writing of:

- .a Subsurface or latent physical conditions at the Project Site which Contractor asserts differ materially from those indicated in the authorized Service Work Order; or
- .b Unknown physical conditions at the Project Site, of an unusual nature, which Contractor asserts differ materially from those ordinarily encountered and generally recognized as inherent in the character of the work as specified in this Agreement.

3.37.2 Owner will promptly investigate the conditions. If Owner finds that such conditions do materially differ, issue a Supplementary SWO.

### 3.38 COOPERATION WITH OWNER AND OTHER CONTRACTORS

1.1.1 When Contractor and one or more other contractors are employed by Owner simultaneously on the same Project Site, Contractor will endeavor not to cause any



hindrance or delay the other contractors and Contractor will endeavor to cooperate fully with Owner and all such other contractors.

- 1.1.2 If the performance of Work authorized under this Agreement is interfered with by the simultaneous performance of work by other contractors, Owner will be responsible for resolving any disputes with regard thereto.
- 1.1.3 Unless otherwise specified in the Contract Documents, in an authorized Service Work Order, or in writing by the Owner's Project Manager, Contractor's communications with Owner's Consultants, Design Professionals and, if any Owner's other contractors, shall be through the Owner's Project Manager.
- 1.1.4 All communications with Owner that are desired by Contractor's Subcontractors and Suppliers will be provided to Owner directly from Contractor.

**END ARTICLE 3**

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**ARTICLE 4 — SUBCONTRACTORS**

**4.1 GENERAL PROVISIONS**

- 4.1.1 Contractor will set a goal that 50% of all Work that is subcontracted will be subcontracted to Subcontractors whose primary place of business is located within the JOC Zone where the Work is performed. The goal will be based on the current Estimated Maximum Contract Value. The Contractor will report to Owner's Regional Manager its progress toward this goal, and its efforts to reach this goal, each year on the anniversary date of the Effective Date of this Agreement.
- 4.1.2 Provided that Contractor's use of Subcontractors and Suppliers is done in conformance with the provisions of this Agreement, Contractor shall be allowed to utilize Subcontractors and Suppliers of Contractor's choice.
- 4.1.3 If Subcontractor(s) or Supplier(s) are to be used by Contractor, Contractor shall identify the Subcontractor(s) and/or Supplier(s) to be used, and their respective responsibility(ies), in Contractor's Service Work Order Proposal.
- 4.1.4 Contractor must adhere to the rules governing subcontracting as set forth in the Subletting and Subcontracting Fair Practices Act, commencing with Public Contract Code §4100 for Subcontractors listed as part of each authorized Service Work Order Subcontractor substitutions must be in accordance with provisions of the Subletting and Subcontracting Fair Practices Act, beginning with Public Contract Code §4100. Violations of this Act by Contractor may subject Contractor to penalties and disciplinary action pursuant to the Subletting and Subcontracting Fair Practices Act.

**4.2 SUBCONTRACT OBLIGATIONS**

- 4.2.1 Contractor shall ensure that all Subcontractor and Supplier are legally bound to Contractor to the extent necessary to ensure that that Subcontractor's Work or Supplier's materials will be provided as required in the authorized Service Work Order under which their performance will occur.
- 4.2.2 Contractor shall ensure that its legally binding agreements with Subcontractors and Suppliers(s) contain all appropriate provisions of this Agreement that flow down to said Subcontractors and Supplier(s), including but not limited to any provisions of this Agreement necessary to protect Owner's rights with respect to actions Owner may be entitled to take with regard to said Subcontractor(s) or Supplier(s).
- 4.2.3 Contractor shall ensure that the provisions of Article 4.2.2 are carried forward by its Subcontractors and Suppliers(s) of all tiers to all others that will provide any portion of the Work or materials of a Project.

**4.3 CONTROL OF SUBCONTRACTORS AND SUPPLIERS**

- 4.3.1 Contractor is responsible for all aspects of the control and coordination of Subcontractors and Suppliers and shall ensure that their actions are coordinated in a manner to optimize the provision of the Project.
- 4.3.2 Contractor is responsible for the inspection, review, and approval of all Subcontractor Work and shall ensure that all materials provided by Suppliers are in accordance with the provisions of this Agreement and the SWO authorizing the Project.

**4.4 SUBCONTRACTOR AND SUPPLIER DISPUTES**

- 4.4.1 Contractor is responsible for the settling of any disputes among Subcontractors or between Contractor and Subcontractor(s). Owner is not responsible for, and will not be involved in the settlement of such disputes.

**END ARTICLE 4**

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**ARTICLE 5 — CHANGES IN THE WORK**

**5.1 METHODS FOR AUTHORIZING CHANGES**

5.1.1 Owner may at any time make changes in the Work that will consist of additions or deletions, or changes to method and manner of performing the Work. Such changes will be authorized in either of two ways, by:

.a **Field Modification**, which is a written instruction, clarification or additional information communicated by Owner to Contractor directing or authorizing a minor adjustment in the Work or the requirements of the authorized Service Work Order that do not materially change the Work or materials to be provided. Field Modification(s) will not change the Service Work Order Sum or the Service Work Order Time. Field Modifications are subject to written approval by Contractor. If Contractor fails to approve a Field Modification but acts in accordance with it, Contractor shall be deemed to have approved the Field Modification;

or by:

.b **Supplemental Service Work Order**, which is a form of Service Work Order authorized in the same manner as the SWOs are authorized under this Agreement. A Supplemental Service Work Order may be additive or deductive, and any additions or deletions to the Work Tasks will be subject to the provisions of Article 2.11.

**5.2 EFFECTS OF CHANGES ON SERVICE WORK ORDER TIME**

Adjustment of Service Work Order Time: There will be no adjustment of the Service Work Order Time if changes made in accordance with the above do not impact the established Critical Path of the Project Schedule. If Contractor is of the opinion that a Field Modification impacts the Critical Path of a Project, Contractor must document for the Owner how the change affects the Critical Path how the change will increase(or decrease) the Service Work Order Time. If Owner accepts Contractor's analysis, Owner may continue with the Field Modification via a Supplemental Service Work Order.

**5.3 DELETED WORK TASK(S)**

When Work Task(s) are deleted, the Owner is entitled to a credit for the deleted Work Task equal in amount to the original contribution of that Work Task to the Service Work Order Sum, which shall be specified in the Supplementary Service Work Order authorizing the deletion but calculated with negative quantities.

**5.4 RETURN OF MATERIAL(S)**

5.4.1 If Contractor has ordered material for a deleted Work Task prior to the date of authorization of the SSWO authorizing the deletion, and if the order for such material cannot be canceled, or the material returned as provided for below, Owner will, upon provision of the material to Owner, reimburse Contractor for such material at Contractor's actual documented cost without markup or charge of any kind..

5.4.2 If material already ordered prior to the date of authorization of the SSWO authorizing the deletion has been or is subsequently delivered but is returnable, and if Owner's Project Manager so directs, Contractor will return the material. Owner will, upon verification of the return of the material to vendor, reimburse Contractor for any actual documented handling and restocking charges charged Contractor by vendor, without markup or charge of any kind.

**ARTICLE 6 — TIME**

**6.1 SERVICE WORK ORDER TIME**

- 6.1.1 Time is of the essence in the provision of Work and materials under this Agreement.
- 6.1.2 Contractor must complete the entire Work of a Project in accordance with the Project Schedule and within the Service Work Order Time or by the completion date specified in the authorized SWO

**6.2 NOTICE TO PROCEED**

- 6.2.1 The SWO authorized for a Project will specify whether Owner's Project Manager will issue a written notice to proceed applicable to that Project. If a written notice to proceed is not specified as a requirement by an authorized SWO, Contractor shall proceed upon the earlier of the date of authorization of the SWO or when specified to proceed by the Project Schedule of the authorized SWO.
- 6.2.2 Notwithstanding any provision of an authorized Service Work Order, Owner is not obligated to pay for any Work or materials provided by Contractor prior to the first day allowed for initiation of the Work or provision of such materials, even if Owner has knowledge of the furnishing of such Work.

**6.3 LIQUIDATED DAMAGES**

- 6.3.1 Owner shall have the right to require that Liquidated Damages provisions apply to any Service Work Order, and any Liquidated Damages applicable to a Project and so required will be specified in the SWOP provided to Owner.
- 6.3.2 If Liquidated Damages are applicable to a Project, the authorized SWO will specify the amount of Liquidated Damages and how the application of any Liquidated Damages will be assessed and calculated.
- 6.3.3 If Contractor fails to complete the Work or designated portions of the Work within the Service Work Order Time(s) applicable to any such SWO, or any authorized extension thereof, it is understood and agreed that Owner will suffer damage. The parties agree that it is impractical and extremely difficult to determine the amount of actual damage in such Projects. It is agreed that Contractor will pay as fixed and liquidated damages, and not as a penalty, the sums set forth in the Service Work Order for each and every calendar Day of delay until the Work is completed, and Contractor and its Sureties are liable for the amount thereof.
- 6.3.4 Contractor acknowledges that the Liquidated Damages amounts set forth in such Service Work Order constitute a reasonable estimate of the damages Owner will actually suffer every Day during which completion of the Work or designated portion of the Work is avoidably delayed beyond the expiration of the Service Work Order Time(s) designated in the authorized Service Work Order.
- 6.3.5 Owner may withhold Liquidated Damages from any payments due to Contractor, as such damages accrue, or, at Owner's discretion, withhold Liquidated Damages from any payments that may become due, including retention and Final Payment (pursuant to California Government Code §53069.85).
- 6.3.6 If Liquidated Damages are not specified in a Service Work Order, this shall not act to prohibit Owner from the collection of actual damages from Contractor for any late performance of the Work.

**6.4 ACCELERATION**

6.4.1 Owner reserves the right to direct Contractor to accelerate performance of the Work or any portion of the Work or provision of the materials by authorization of a Supplemental Service Work Order. No action or direction of Owner other than the foregoing shall be construed by Contractor to be direction to accelerate the Work.

6.4.2 Notwithstanding the above, if Contractor believes that some action or inaction on the part of Owner constitutes an acceleration directive, Contractor must immediately notify Owner's Project Manager in writing that Contractor considers the action or inaction an acceleration directive. This written notification must detail the circumstances of the acceleration directive. If Owner agrees, Owner will issue a Supplementary SWO.

6.4.3 If the Owner directs acceleration to an already authorized SWO, Owner will compensate Contractor for Contractor's reasonable, actual, documented costs and expenses experienced or incurred directly as a result of the acceleration of the work. Any such compensation due to the contractor shall be paid by authorization of a Supplemental SWO in accordance with the provisions of the Agreement.

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## 6.5 DELAY AND TIME EXTENSIONS

6.5.1 Extensions to the Service Work Order Time(s) will only be allowed for the following reasons and only insofar as they actually affect the Critical Path of the Project Schedule.

- .a Acts of God (as defined in Public Contract Code §7105(b)(2)), or of the public enemy, acts of Government, fires, floods, epidemics, quarantine restrictions, sanctioned strikes, freight embargoes.
- .b Delays of Subcontractors or Suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of both Contractor and such Subcontractors or Suppliers.
- .c Delays due to an act or neglect by Owner or other contractors where Owner or contractor performance is necessary to maintain the Critical Path of the Project Schedule.
- .d Delays due to weather will be allowed only for unusually severe weather resulting in Project Site conditions that materially affect the progress of the Project on the Critical Path of the Project Schedule.

6.5.2 Contractor's PM must notify Owner's PM in writing of the existence of any delay within twenty-four (24) hours following Contractor's first knowledge of the delay. Failure of Contractor to provide such notice within the time specified will constitute a waiver by Contractor of any claim that Contractor may raise with regard to the delay.

6.5.3 If Owner's PM and Contractor's PM agree that the cause of the delay is allowable in accordance with the above, Owner's PM and Contractor's PM shall proceed to adjust the Service Work Order Time(s).

6.5.4 If Owner's PM and Contractor's PM cannot reach an agreement regarding the allowability of a delay, the Dispute will be elevated via the Dispute Resolution Process provided in this Agreement.

6.5.5 Owner's PM will take all reasonable actions to remedy the cause of any delay which lies within Owner's responsibilities, however, Owner is not responsible for any constructive acceleration due to non-allowable delay(s) of Contractor.

6.5.6 Whenever Contractor foresees a possible delay that will impact the Project Schedule or Due Date of a Project, Contractor's PM must notify the Owner's PM in writing of the potential delay. Such notification must specify with detail the cause for the potential delay and provide a description of the anticipated effect of the potential delay on the most recent updated Project Schedule.

6.5.7 With the exception of suspensions or delays due to Force Majeure conditions, if there is a suspension or delay of the work through no fault of the Contractor, or if the Owner

suspends the work for convenience, Owner will compensate Contractor for Contractor's reasonable, actual, documented costs and expenses experienced or incurred directly as a result of the delay or suspension. Any such compensation due to the contractor shall be paid by authorization of a Supplemental SWO in accordance with the provisions of the Agreement.

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**END ARTICLE 6**

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**ARTICLE 7 — PAYMENTS**

**7.1 AGREEMENT AND SWO PAYMENT LIMITATIONS**

- 7.1.1 Following the authorization of Projects utilizing the initial \$25,000 (Minimum Contract Value) allocated for future Work at execution of this Agreement, the total amount that the State may pay to Contractor under this Agreement shall not at any time exceed the total of the Service Work Order Sums of all Service Work Orders authorized for performance through the then current date.
- 7.1.2 Contractor shall invoice, and the State agrees to pay on for all Work and any materials provided and accepted by the State in accordance with the terms of this Agreement that have been authorized by a Service Work Order, but not to exceed the Service Work Order Sum applicable to that Service Work Order.

**7.2 INVOICE TERMS AND CONDITIONS**

Contractor shall invoice Owner when and as follows, and subject to the following:

- 7.2.1 If an authorized SWO is subject to payment via a Schedule of Values with progress payments:
  - .a The progress payments specified in the Schedule of Values for the authorized SWO shall be invoiced only upon Owner's Project Manager's written certification to Contractor that all Work and materials required for completion for Work associated with that progress payment have in fact been provided, and in accordance with this Agreement and the authorized SWO.
  - .b Contractor's invoice shall specify that 10% of the progress payment invoiced is to be withheld as retention.
- 7.2.2 If an authorized SWO is subject to payment via a single lump sum payment based on occurrence of Final Acceptance:
  - .a The lump sum specified as the Service Work Order Sum shall be invoiced only upon Owner's Project Manager's written certification to Contractor that Owner agrees that a Final Acceptance of the Project has been achieved in accordance with this Agreement and the authorized SWO.
- 7.2.3 If invoicing for the payment of withheld retention:
  - .a Invoices for the payment of withheld retention shall be made only when Contractor has received a written notice of acceptance for all of the Work of a Project, as provided for in this Agreement.

7.2.4 If invoicing is for reimbursement for permits, special insurance, or for the payment of compensation related to suspension of the Work for convenience, acceleration of the Work, or delays compensatable and authorized by an SOW under this Agreement, Contractor shall invoice for such payments upon receipt of the authorized SOW or Supplemental SOW allowing the reimbursement. No retention shall be withheld from such invoices.

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### 7.3 INVOICING REQUIREMENTS

Contractor shall submit a separate invoice for each SWO under which a payment is due, as follows:

- 7.3.1 One original of the invoice, signed by an authorized representative of the Contactor shall be submitted to:

Judicial Council of California  
Administrative Office of the Courts  
c/o Finance Division, Accounts Payable  
455 Golden Gate Avenue, 7th Floor  
San Francisco, CA 94102-3660

- 1.1.1 Two (2) copies of the signed invoice and an electronic Excel file of the invoice to the shall be submitted to the designated Regional Manager for the region in which Work is performed:

:

M.R. Gafill  
Regional Manager (BANCRO), Facilities Operations  
Office of Court Construction and Management  
455 Golden Gate Avenue, 8th Floor  
San Francisco, CA 94102-3600

Nick Turner  
Regional Manager (NCRO), Facilities Operations  
Office of Court Construction and Management  
2860 Gateway Oaks Drive, Suite 400  
Sacramento, CA 95833

Ken Kachold  
Regional Manager (SRO), Facilities Operations  
Office of Court Construction and Management  
2255 North Ontario St., Suite 200  
Burbank, CA 91504-3188

- 1.1.2 The first section of the invoice submitted will contain the following basic identifying data:

- .a The contract number of this Agreement (from upper right of first page)
- .b Service Work Order Project Name;
- .c The SWO authorization number issued at time of SWO authorization
- .d A unique sequential invoice number assigned by Contractor;
- .e The Contactor's name and address;
- .f Contractor's Taxpayer Identification Number;
- .g Preferred remittance address;

- 1.1.3 If the invoice is for a progress payment the invoice will provide:

- .a A written description of the progress payment invoiced for, utilizing the exact same description given in the Schedule of Values of the applicable authorized SWO
- .b The percentage completion invoiced for, in %
- .c The payment amount invoiced for
- .d A total of all payments previously invoiced
- .e The Service Work Order Sum pertaining to that Service Work Order
- .f The remaining balance of payments to be invoiced

- .g The amount to be withheld from this payment as retention
- .h The total amount of all previous retentions
- .i The total amount of retention including the retention from this payment

1.1.4 If the invoice is for payment of a single lump sum payment based on occurrence of Final Acceptance:

- .a The Service Work Order Sum pertaining to that Service Work Order

1.1.5 If the invoice is for payment of retention based on occurrence of Final Acceptance:

- .a A listing of all progress payments already made
- .b The amount of the retention withheld with each progress payment
- .c The total amount of the retention due

1.1.6 If the invoice is for reimbursement for permits or special insurance

- .a A copy of the invoice for the charge for the permit or insurance.

1.1.7 If the invoice is for compensation for suspension, delays or acceleration of the Work

- .a A copy of the SWO authorizing the payment.

~~4.1.6~~1.1.8 Owner will make payment for all invoices properly submitted in accordance with this Agreement within sixty (60) days following the date of receipt of invoice. In no event shall Owner be liable for interest or late charges for any late payments. Payment shall be made by Owner to the Contactor at the remittance address specified on the face of Contactor's invoice.

~~4.1.7~~1.1.9 Owner may withhold full or partial payment from the Contactor in any instance in which the Contactor has failed to or refused to satisfy any material obligation provided for under this Agreement, or in the event of any Dispute or Claim made regarding the Project invoiced for.

## 1.2 DISALLOWANCE

If Contactor receives payment from Owner for Work that is later disallowed by Owner, the Contactor shall promptly refund the disallowed amount to Owner upon Owner's request. At its option, Owner may offset any amount disallowed from any other payment due or that may become due to the Contactor under this Agreement or any other agreement.

## 1.3 PAYMENT DOES NOT RELEASE CONTRACTOR

The granting of any payment by Owner to Contractor shall in no way lessen Contractor's obligation to remedy defective Work or materials provided under an SWO authorized under this Agreement.

## 1.4 RELEASE OF CLAIMS

Acceptance by the Contactor of the final payment due Contractor for a Project authorized under this Agreement shall operate as a release to the State, Owner, and the Courts from all claims and from all liability with regard to any obligation, liability, or responsibility arising out of or in relation to that Project, including every act and neglect.

## 1.5 REALLOCATION OF WITHHELD AMOUNTS

Owner may, at its discretion, apply any amount withheld hereunder to pay outstanding claims or obligations made by third parties as a result of their involvement in Projects authorized under this Agreement. In so doing, the Owner shall make such payments on behalf of Contractor. If any payment is so made by Owner, then that amount shall be considered a payment made under this Agreement by Owner to Contractor and Owner shall not be liable to Contractor for any such payment made in good faith. Such payments may be made without prior judicial determination of claim or obligation. Owner will render Contractor an accounting of any such funds disbursed on behalf of Contractor.

**1.6 REASONS TO WITHHOLD PAYMENT**

Owner may withhold payment, in whole, or in part, to such extent as may be necessary to protect the State from any loss experienced by the State due to Contractor's action or inaction with regard to its obligations under this Agreement, including but not limited to:

- .a Defective Work or materials not remedied as required hereby;
- .b Stop Notices or other liens served upon Owner, the State, or any Court as a result of Contractor's inaction in making payment to Subcontractor(s) and/or Supplier(s);
- .c Failure to properly pay prevailing wages as required by this Agreement
- .d Failure to comply with any other Labor Code requirements;
- .e Any Damage for which Contractor is responsible to the property of Owner, the State, the Courts, or other contractor(s);
- .f Failure to store and properly secure materials;
- .g Failure to properly maintain or clean up the Project Site;
- .h Any payments made by the State to indemnify, defend, or hold harmless Owner, the State or the Courts;
- .i Any payments made by the State for charges that are the responsibility of Contractor, such as permit(s);
- .j Any other breach, default, or in substantial violation of any provision of this Agreement.

**1.7 NO INTEREST OR PENALTIES**

No interest shall be paid on any retainage held or on any amounts withheld due to the failure of Contractor to perform in accordance with the terms and conditions of this Agreement, or on any amounts withheld to protect the State from loss as given immediately above.

**1.8 STATE BUDGET**

Payments to be made under this Agreement are from State of California funds and are made by the State. Notwithstanding anything in this Agreement to the contrary, it shall not be deemed an event of default if the State is unable to make any payment(s) as a result of the State of California's failure to timely approve and adopt a State Budget. Should the State fail to make any payment as a result of the State of California's failure to timely approve and adopt a State Budget, Contractor shall continue to provide Work and materials and the State shall promptly pay any previously due payment upon approval and adoption of a Budget by the State of California.

**END ARTICLE 7**

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**ARTICLE 2 — DISPUTE RESOLUTION PROCEDURE**

- 2.1.1 Project Managers Negotiations. The respective Project Managers of the parties shall attempt in good faith to informally and promptly resolve any disagreement that arises that can be settled within the limits of authority granted them under this Agreement.
- 2.1.2 Dispute Notice. If the settlement of a disagreement is beyond the authority allowed the Project Managers under this Agreement, or if a disagreement has in the opinion of either Party persisted for an undue length of time, either Party may submit a written Notice to the other Party that the Parties will commence the procedure set forth in this Article to resolve the Dispute (“**Dispute Notice**”). The Dispute Notice shall include: (i) detailed factual information in support of the submitting Party’s position; (ii) the specific Agreement provisions on which the Dispute is based; and (iii) if the Dispute involves a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the submitting Party’s position. The Dispute shall include a written statement signed by an authorized representative of the submitting Party indicating that the Dispute Notice is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested, if any, accurately reflects the adjustment for which the submitting Party believes the other Party is responsible. To assist the other Party in its review of the Dispute, the submitting Party shall promptly comply with reasonable requests for additional information.
- 2.1.3 Dispute Notice Response. Within fifteen (15) Days of receiving the Dispute Notice, the receiving Party shall provide a written response to the submitting Party’s Dispute Notice (“**Dispute Notice Response**”). The Dispute Notice Response shall include: (i) detailed factual information and supporting documentation in support of the receiving Party’s position; and (ii) if the Dispute involves a cost adjustment, state the exact amount that the receiving Party believes is at issue accompanied by all records supporting the receiving Party’s position.
- 2.1.4 Senior Level Negotiations. If after fifteen (15) Days of receipt of the Dispute Notice Response by the submitting Party, or in the event that the receiving Party fails to submit a Dispute Notice Response, either Party may, by providing written Notice to the other Party, request that the Dispute be resolved by direct negotiations between senior level negotiators of the Parties (“**Senior Level Negotiations Notice**”). The senior level negotiators shall meet in person or by phone as often as they deem reasonably necessary to exchange information and attempt to resolve the Dispute within thirty (30) days after the Senior Level Negotiations Notice requesting their involvement is given to the other Party.
- 2.1.5 Mediation/Litigation. If the senior level negotiations do not result in resolution of the Dispute, either Party may pursue any legally available remedy, however, nothing herein shall prohibit the Parties from mutually agreeing to resolve any Dispute through mediation.
- 2.1.6 Confidentiality. All negotiations conducted pursuant to this Article 8 are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code Section 1152 applies. The mediation shall be confidential and shall be subject to the provisions of California Evidence Code Sections 703.5 and 1115 through 1128.
- 2.1.7 Continuation of Work. Pending the final resolution of any Dispute arising under, related to, or involving this Agreement, Contractor agrees to diligently proceed with the performance any Work under Dispute in accordance with the provisions of this Agreement and Owner’s instructions. Contractor’s failure to diligently proceed with performance in this manner will be considered a material breach of this Agreement.

**END ARTICLE 8**

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**ARTICLE 3 — PROTECTION OF PERSONS AND PROPERTY**

**3.1 SAFETY OF PERSONS AND PROPERTY**

- 3.1.1 Contractor shall initiate, maintain and supervise all safety precautions and programs in connection with the performance of the Work and provision of the materials.
- 3.1.2 Contractor shall comply with the safety and security standards and provisions of all applicable local, state and federal laws and building and construction codes. Contractor shall comply with the provisions of the California Code of Regulations, Title 8 (T8 CCR), the California Construction Safety Orders, and, all revisions, amendments and regulations issued subsequent by the California State Department of Labor and the Division of Industrial Relations.
- 3.1.3 Contractor is responsible for accident prevention and site safety for all Work performed at the Project Site. Contractor shall implement measures that will create safety awareness, promote safe work practices at the Project Site and pursue the completion of its Work in the safest possible manner.
- 3.1.4 Contractor shall bear sole and exclusive responsibility for safety in all phases of the Work. Contractor shall be held responsible for the compliance of all Subcontractors of all tiers with the Project safety requirements and shall ensure that Subcontractors of all tiers provide a site safety plan for their Work at the Project Site.
- 3.1.5 Contractor shall provide a Project Site safety orientation program for its employees and Subcontractors that will, at a minimum: 1) provide a detailed overview of the Contractor's Project Safety program and safety policies, 2) identify primary site specific hazards present in the area in which Work will be performed, 3) specify personal protective equipment application and apparel the workers will be required to use or wear 4) provide security procedures for the Project Site, 5) provide pre-task assessment and hazard control requirements, 6) provide emergency service notification procedure for fire, medical emergencies, police problems or other emergency situations, and 8) provide accident reporting procedures.
- 3.1.6 Owner may provide minimum safety requirements for any or all of the Work to be performed under this Agreement, and if provided the Contractor shall ensure its safety program is in compliance with Owner's guidance.
- 3.1.7 Contractor shall ensure that prior to the use of any Contractor, Subcontractor, or Supplier employee(s) who may have a need to actually enter a Project Site said employee shall be in conformance with Exhibit D - Owner's Badge, Escort and Entry Policy, as it applies at that Project Site.
- 3.1.8 Contractor shall take precautions for safety and provide protection to prevent damage, injury or loss to:
  - .a All individuals providing Work and/or materials for Contractor;
  - .b All other persons at or near the Job Site;
  - .c The Work, materials and any equipment to be to be utilized in the Work, whether in storage on or off the Project Site, and whether under the care, custody or control of Contractor or Contractor's Subcontractor(s) and/or Supplier(s) of any tier; and
  - .d All other property at the Project Site, or adjacent thereto, including but not limited to trees, shrubs, lawns, walks, pavements, roadways, structures and utilities, except as otherwise noted or specified in an authorized SWO.
- 3.1.9 Contractor shall erect and maintain, as required by existing conditions and/or the applicable authorized SWO, physical barrier(s) as safeguards for safety and protection, post danger signs and other warnings against hazards, and promulgate safety regulations by notifying Owner, contractors, other owners of nearby properties, and users of adjacent sites and utilities of any dangerous Project Site conditions.

3.1.10 When the condition of a Project Site, in the judgment of Owner, presents an unreasonable risk of injury or death to persons, or risks property damage, Owner may direct Contractor to close down the Work and not commence Work again until all dangerous conditions are eliminated.

3.1.11 Contractor must exercise due diligence in protecting the Work and the Work site from the adverse impacts of weather by:

- .a taking appropriate preventative actions before anticipated inclement weather to protect the Work and Work site from the potential adverse affects of the weather;
- .b taking corrective action during the inclement weather to protect the Work and Work site from the actual and potential adverse affects of the inclement weather; and
- .c taking correction action after the inclement weather to remedy, prevent, and/or mitigate the negative impacts of the adverse weather on the Work and the Work site.

**3.2 EMERGENCIES:**

3.2.1 In an emergency affecting safety of persons or property, Contractor shall act, at Contractor's sole discretion, to prevent any loss of life, threatened damage, injury or other loss.

**END ARTICLE 9**

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**ARTICLE 4 — INSURANCE, INDEMNIFICATION, AND BONDS**

**4.1 INSURANCE REQUIREMENTS**

**4.1.1 General Requirements:**

- .a The insurance required under this Article ~~104~~ shall be in force prior to the start of any Work under the terms of this Agreement and shall remain in force until the Acceptance of all Work completed under the terms of this Agreement, and where required for the extended period as provided.
- .b By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risks that may be applicable to Contractor under this Agreement. Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage
- .c Contractor shall maintain insurance issued by an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide and that are authorized to do business in the State of California.
- .d For all insurance policies required by this Article ~~104~~.1, Contractor shall declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance.
- .e If self-insured, Contractor agrees to administer its self-insurance program in a commercially reasonable manner so as to ensure the availability of funds to cover losses required to be insured against by Contractor under the terms of this Article ~~104~~.1.
- .f Contractor shall, prior to commencement Work under this Agreement, provide to the Owner certificates of insurance, on forms acceptable to the Owner, as evidence that the required insurance is in full force and effect. For the insurance required under the terms of Articles ~~104~~.1.2(a) and ~~104~~.1.2(b) each certificate of insurance shall specifically provide verification that the State of California, Judicial Council of California, Administrative Office of the Courts, the State's trial courts, appellate courts, the counties located within JOC Zones subject to this Agreement, and the their respective elected and appointed officials, judges, officers, employees and agents have been added as additional insureds, but only as respects liability assumed by Contractor under the terms of this Agreement, or liability arising out of the performance of the Services.
- .g Documents must be provided in printed format (e-mail documents are not acceptable) and shall be sent to:

Contracts Specialist – Insurance Records  
"Agreement Number:" followed by # of this Agreement (from page 1, upper right)  
Administrative Office of the Courts  
Attn: Business Services, 7th Floor  
455 Golden Gate Ave  
San Francisco, CA 94102

Owner may from time to time revise the address to which these materials are sent and will provide a modified address to Contractor upon revision. Such revision will take effect upon receipt of the revised address and are not subject to an Amendment to be made to this Agreement.

- .h All insurance shall be in force throughout the terms of this Agreement. If any of the required insurance expires during the term of this Agreement, Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance or be declared in breach of this Agreement. Owner reserves the right to withhold all payments until the breach is cured to the

- satisfaction of the Owner. Renewal insurance certificates must be tendered to the Owner at least 10 **Days** following the expiration of the required insurance.
- .i Contractor, and any insurer providing insurance required under the terms of Articles **404.1.2.(a)**, **404.1.2.(b)** and **404.1.2.(c)** shall waive any right of recovery or subrogation it may have against the State of California, Judicial Council of California, Administrative Office of the Courts, the State's trial courts, appellate courts, the counties located within JOC Zones subject to this Agreement, and the their respective elected and appointed officials, judges, officers, employees and agents for loss or damage related to the Service, or for any liability arising out of the Services performed by Contractor under this Agreement.
  - .j All required insurance policies shall contain a provision that coverage will not be cancelled without 30 days prior written notice to the Owner.
  - .k Contractor shall be responsible for, and may not recover from the Owner, any deductible or self-insured retention contained within the insurance.
  - .l In the event Contractor fails to keep in effect at all times the specified insurance coverage, the Owner may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
  - .m Any insurance required under this Article **404** shall be endorsed to be primary and non-contributing to any insurance or programs of self-insurance maintained by the State of California, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, appellate courts, and the counties located within JOC Zones subject to this Agreement.
  - .n The Owner reserves the right to request certified copies of the insurance policies required under the terms of this Article **404**.

**4.1.2 Insurance Requirements:**

Prior to the execution of this Agreement Contractor shall furnish to the Owner with evidence that the following insurance is in force:

- .a **Commercial General Liability:** Commercial general liability insurance (and if required excess liability or umbrella liability insurance) written on an occurrence form with limits of not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate applicable solely for liability arising out of this Agreement. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury liability assumed under an insured contract, and professional services provided in connection with the. The policy shall not include exclusions for property damage resulting from explosion, collapse or underground hazard, or the inadvertent construction defects. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the insurance policy limit of liability. The completed operations coverage shall extend for not less than three (3) years past the Acceptance of the Work.
- .b **Commercial Automobile Liability:** Automobile Liability insurance with limits of not less than \$2,000,000 per accident. Such insurance shall cover liability arising out of the operation of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the performance of the Work.
- .c **Workers' Compensation:** Statutory workers' compensation insurance providing coverage for all its employees who will be engaged in the performance of the Services, including special coverage extensions where applicable, and employer's liability insurance with limits of liability of not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.



## 4.2 INDEMNIFICATION

4.2.1 Contractor agrees to the fullest extent permitted by law, to indemnify, defend (with counsel satisfactory to Owner), and hold harmless (collectively, "Indemnify") the State, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, appellate courts, the counties located within JOC Zones subject to this Agreement, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, Contractors, representatives, volunteers and employees (individually, an "Indemnified Party") from any and all claims, lawsuits, losses, costs (including attorney fees and costs), liabilities, and damages arising from, related to or in connection with, in whole or in part, any of the following:

- .a Contractor's or any of its employees' or Subcontractor's negligent acts or omissions, or intentional misconduct, including without limitation any criminal acts;
- .b Contractor's breach of its obligations under this Agreement;
- .c Contractor's or any of its employees' or Subcontractor's violation of any applicable law, rule, or regulation; and/or
- .d any claim or lawsuit by any third party, Contractor, Subcontractor, Supplier, or worker, or any other person, firm, or corporation, (i) furnishing or supplying Work, services, materials, or supplies in connection with the performance of this Agreement, or (ii) who may be injured or damaged by Contractor or any of its Subcontractors, agents, or employees when such claim arises from, is related to, or is in connection with, Contractor's performance under this Agreement.

This Section ~~4.2.1e~~ does not require Contractor to Indemnify an Indemnified Party for that portion of any loss, cost, liability, or damage to the extent that portion arises from the negligence or intentional misconduct of the Indemnified Party.

4.2.2 Contractor is responsible to Owner and to any third party contractors for all damage to such contractors' work, persons, or property caused by Contractor's operations, and for any loss suffered by such other contractor caused by Contractor's own unnecessary delays or failure to finish Work within the Service Work Order Time(s) specified. Contractor must indemnify and hold harmless Owner and any such third party contractors for any such damages and losses.

4.2.3 Should Contractor cause damage to the work or property of any separate contractor on the Project, Contractor must, upon due notice, resolve the claim directly with such other contractor. If such separate contractor initiates legal action or alternative dispute resolution (ADR) process against the Owner, Owner will notify Contractor who must defend Owner in such proceedings at Contractor's sole expense.

4.2.4 Contractor must promptly remedy damage wrongfully caused by Contractor to any completed or partially completed construction or to any property of Owner or third party contractors.

4.2.5 Contractor shall indemnify and hold harmless Owner and Owner's authorized representatives, the Courts, the State, and Consultants, from all suits at law, or actions of every nature for, or on account of the use of any patented materials, equipment, devices or processes.

~~4.2.5~~

**4.3 SPECIAL INSURANCE:**

4.3.1 Special insurance may be authorized by the AOC on an SWO by SWO basis. Subject to agreement by the AOC as to the cost of such insurance and authorization of purchase of the insurance via a SWO, the AOC will compensate Contractor for the actual cost of such insurance, without markup or charge of any kind.

**4.34.4 BONDS**

4.3.14.4.1 Contractor shall obtain and maintain as specified below, the following surety Bonds issued by a California admitted surety insurer as follows:

- .a Performance Bond: A Bond in an amount at least equal to one hundred percent (100%) of the construction Work in progress (i.e. the total of the Service Work Order Sum(s) of all authorized SWO(s)) whose Warranty Period has not yet expired) as security for faithful performance of this Agreement.
- .b Payment Bond: A Bond in an amount at least equal to one hundred percent (100%) of the construction Work in progress (i.e. the total of the Service Work Order Sum(s) of all authorized SWO(s)) whose Warranty Period has not yet expired) for payment of persons performing labor and/or furnishing materials in connection with this Agreement.

4.3.24.4.2 Alterations, extensions of time, extra and additional Work, and other changes may be made to Projects without Owner securing the consent of the Surety(ies).

4.3.34.4.3 Payment for the cost for these Bonds is covered in Contractor's Adjustment Factors.

4.3.44.4.4 Whenever a Bond obtained in accordance with this Agreement is issued, or the amount of the Bond changes, Contractor, or its Surety, shall provide Owner with a new Bond, or a rider to the existing Bond, as evidence of the Bond being compliant with the terms of this Agreement.

4.3.54.4.5 Documents must be provided in printed format (e-mail documents are not acceptable) and shall be sent to:

Contracts Specialist – Bond Records  
Agreement Number of this Agreement (from page 1, upper right)  
Administrative Office of the Courts  
Attn: Business Services, 7th Floor  
455 Golden Gate Ave  
San Francisco, CA 94102

Owner may from time to time revise the address to which these materials are sent and will provide a modified address to Contractor upon revision. Such revision will take effect upon receipt of the revised address and are not subject to an Amendment to be made to this Agreement.

4.3.64.4.6 All Bonds provided with regards to this Agreement shall be in a form acceptable to Owner.

4.3.74.4.7 Upon the request of any person or entity appearing to be a potential beneficiary of Bonds covering payment of obligations arising under this Agreement, Contractor shall promptly furnish a copy of the Bond(s) or permit a copy to be made.

**END ARTICLE 10**

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**ARTICLE 5 — INSPECTION; CORRECTION; ACCEPTANCE; INVOICING; WARRANTY**

**5.1 INSPECTION DURING THE WORK**

- 5.1.1 If a Project is to be paid for via progress payments, Owner's PM or their authorized representative shall, at the times specified in the Project Schedule, or at other times as agreed to by the PMs of the respective parties, inspect the Work to assess Contractor's progress.
- 5.1.2 Contractor's PM or their authorized representative shall accompany Owner's PM on a walk-through of the Project to assess Contractor progress toward fulfillment of the requirements for the progress payment as specified in the authorized SWO.
- 5.1.3 If Owner's PM has determined that Contractor has fulfilled the requirement(s) stated in the authorized SWO that are necessary to qualify for the making of a progress payment, Owner's PM will notify Contractor in writing of such determination, and Contractor may proceed to invoice for such progress payment.
- 5.1.4 If a Project is to be paid for via a single lump sum payment, Owner's PM or their authorized representative may at times as agreed to by the PMs of the respective parties, inspect the Work to assess Contractor's progress, however, inspection will usually be carried out only following Contractor's certification of the completion of all of the Work of the Project.
- 5.1.5 Owner, or its designated representative, may at any time inspect the Project Site in order to identify, and work with Contractor to correct any unsafe conditions or work practices.
- 5.1.6 Provided that it does not interfere with the execution of the Work according to the Project Schedule Owner has the right, whenever Owner deems necessary, to conduct additional inspection and/or testing of the Work or materials, and Contractor shall provide all necessary cooperation in such inspection or testing.

**5.2 COVERING AND UNCOVERING OF WORK**

- 5.2.1 The Contractor must notify the Owner two (2) days prior to covering any Work.
- 5.2.2 If a portion of the Work is covered prior to an Owner inspection, it must, if requested in writing by the Owner, be uncovered for Owner observation and replaced at the Contractor's expense without change in the Service Work Order Time.

**5.3 WARRANTY PROCEDURE(S) PLANNING**

If no Warranty Plan is specified in the authorized SWO for a Project, at a time mutually agreeable to the PMs of the respective parties Contractor's PM will meet with Owner's PM to establish written Warranty procedures for the Project. Owner's PM and Contractor's PM will establish mutually acceptable communication procedures for notifying Contractor of defects found during the Warranty Period, setting priorities regarding the type of defect, time period(s) required for Contractor response, and other details deemed necessary by Owner for fulfillment of the Warranty.

**5.4 USE BEFORE ACCEPTANCE**

- 5.4.1 Unless otherwise specified in an authorized SWO, Owner has the right to utilize or place into service any usable portion of the Work and/ or materials before Acceptance of the entire Project. When Owner plans to exercise said right, Owner's PM will notify Contractor in writing, identifying the portion(s) of the Work and/or materials to be so utilized or otherwise placed into service, hereinafter referred to as use before acceptance ("Use Before Acceptance").
- 5.4.2 Until Owner's PM issues such written notification, Contractor is responsible for all care, and maintenance of the Work and materials.
- 5.4.3 Upon Contractor's receipt of written notice of Use Before Acceptance, Owner assumes responsibility for the protection and maintenance of all such portions of the Work

described in the written notice

5.4.4 Use Before Acceptance does not constitute a Final Acceptance of the Work, or of any portion of the Work, by Owner, nor does it relieve Contractor of responsibility for correcting defects in the Work or materials found at any time prior to expiration of the Warranty Period.

5.4.5 Notwithstanding any Use Before Acceptance, Contractor shall retain full responsibility for fulfillment of all the obligations of the authorized Service Work Order and this Agreement.

## **5.5 CONTRACTOR'S CERTIFICATION OF COMPLETED WORK**

When all the Work of a Project is complete and after Contractor has performed the final cleaning, Contractor will so certify to Owner's Project Manager and request a Preliminary Walk-Through Inspection.

## **5.6 PRELIMINARY WALK-THROUGH INSPECTION**

5.6.1 Within seven (7) Days of receipt of Contractor's PM's written certification that all Work is complete, and at a mutually acceptable time to the PMs of the respective parties, the Project Managers of the respective parties or their delegated representatives will make a Preliminary Walkthrough Inspection to verify that the Project is complete and ready for Final Inspection.

5.6.2 If Owner's Project Manager determines that the Work is not complete, Contractor's PM will be notified in writing. Contractor will complete the Work and re-initiate procedures for another Preliminary Walk-Through Inspection in accordance with the above. At Owner's discretion, any costs or expenses to Owner incurred as a result of such additional Preliminary Walk-through Inspections may be charged to Contractor.

5.6.3 **If Owner's Project Manager determines that the Work is complete, Contractor will be notified in writing.**

## **5.7 FINAL INSPECTION**

5.7.1 The Final Inspection will occur via a walk-through at a mutually acceptable time to the PMs of the respective parties, but not later than seven (7) Days following Contractor's receipt of certification from Owner that the Work is complete.

5.7.2 Subsequent to the Final Inspection, if Owner's Project Manager determines the completed Work is deficient, Contractor will be furnished with a written Punch list identifying the observed deficiencies in the Work.

5.7.3 Contractor will remedy the deficiencies noted on the Punch list. After all deficiencies have been remedied, Contractor will initiate procedures for another Final Inspection. If more than two (2) Final Inspections are necessary, at Owner's discretion, any costs or expenses to Owner incurred as a result of such additional Final Inspection(s) may be charged to Contractor.

## **5.8 FINAL ACCEPTANCE**

5.8.1 After the Final Inspection walk-through, the Owner's Project Manager will issue a written Final Acceptance, provided that Contractor has satisfactorily:

- a Remedied all deficiencies observed during the Final Inspection and no new deficiencies have been observed
- b Provided the Owner's PM with all required Project Documents
- c Submitted to Owner's PM copies of all documents required by Article 3.13, "Disposal of Materials Outside Project Area" and Article 3.14, "Hazardous Materials"
- d Submitted to Owner's PM two (2) copies of satisfactory evidence to Owner that all payrolls, material bills and other indebtedness connected with said Work have been paid

- .e Provided Owner's PM with unconditional lien and stop notice releases pertaining to Contractor, all Subcontractors, and all Suppliers and covering all labor, materials, and equipment for which a lien or stop notice might be filed.
  - .f Fulfilled and/or submitted any other requirements specified in the authorized SWO.
- 5.8.2 Establishing that the Work and materials have in fact been properly provided is based upon Owner's Project Manager's reasonable opinion based on information known, however, no Final Acceptance or approval of a progress payment shall be construed to operate to release Contractor from its responsibility to provide the Work and materials as specified, or from the obligation to remedy any defect discovered during the Warranty Period, or from any damages arising from or related to the Work.
- 5.8.3 After the Owner's formal Acceptance of the Work, the Owner shall be responsible for the filing of record of Notice of Completion.
- 5.8.4 Determinations by Owner's Project Manager that the Work is complete or any acceptance evidenced by a recorded Notice of Completion does not bar any action by the Owner against Contractor pursuant to Contractor's Warranty.

### **5.9 ACCEPTANCE OF NONCONFORMING WORK**

If Owner prefers to accept any or all of the Work that is not in accordance with requirements of the authorized Service Work Order, Owner may do so instead of requiring its correction and/or removal, in which case the SWO Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment to Contractor has been made.

### **5.10 CORRECTION OF WORK PRIOR TO FINAL ACCEPTANCE**

- 5.10.1 The Contractor must promptly correct Work rejected by Owner or Work failing to conform to the requirements of the Service Work Order and/or this Agreement, whether or not already Fabricated, Installed or completed. Contractor shall bear all cost and expense of correcting such rejected Work, including any additional testing and inspection required and any costs and expenses incurred by Owner with regards thereto. In the event of receipt of a notice of nonconformance from Owner's PM, Contractor's PM must submit three (3) copies of a Corrective Action Plan acceptable to Owner's PM by 10 a.m. of the third work Day following receipt of said notice of non-conformance, and shall provide a remedy in accordance with the Corrective Action Plan.
- 5.10.2 Notwithstanding Article 11.10.1, in the event of an emergency constituting an immediate hazard to the health or safety of persons or property, Owner may undertake, at the Contractor's expense and without prior notice, all work necessary to correct any hazardous condition(s) when caused by action(s) of Contractor.
- 5.10.3 Contractor must promptly remove from the Project Site portions of the Work that are not in accordance with the requirements of the authorized SWO and/or this Agreement that have not been corrected by the Contractor.
- 5.10.4 If Contractor fails to correct nonconforming Work in accordance with Article 11.10.1, or fails to remove nonconforming work in accordance with Article 11.10.3, Owner may, at Owner's sole option, correct the Work, or remove the nonconforming Work per Article 11.10.5.
- 5.10.5 Owner may remove the non-conforming Work and store the salvable materials, articles and/or equipment at the Contractor's expense. If the Contractor does not pay all costs of such removal and storage within 14 Days after receipt of written notice of Owner's action, Owner may, 14 Days following additional written notice, sell such materials articles and/or equipment at an auction or private sale. Owner shall account for the proceeds derived therefrom. Owner may, after deducting any Owner costs and expenses incurred with regard thereto:
- .a Apply the positive balance against any damages claimed by Owner.

- .b If there is a positive balance and Owner claims no damages against Contractor, return the balance to Contractor.
- .c If there is a negative balance, apply that balance as an offset against any amounts due Contractor from Owner. If no amounts are due Contractor, Contractor shall, following receipt of written Notice from Owner with regard to the negative balance, make payment to Owner within thirty (30) Days.

5.10.6 Contractor bears the cost of correcting any damage and/or destruction, when such damage or destruction is caused by the Contractor's correction or removal of Work that is not in accordance with requirements of an authorized Service Work Order and/or this Agreement, including any damage or destruction caused to the property of any third party contractors.

5.10.7 Nothing contained in this Article 11.3 shall act to limit any other obligations that Contractor may have under this Agreement, or to limit the time within which enforcement may be sought, nor the time in which proceedings with regard thereto may be commenced. Contractor's obligations to provide remedies during the Warranty Period relates only to the specific obligations of Contractor during that period.

#### **5.11 INVOICING UPON ACCEPTANCE**

5.11.1 Following receipt of a notice of Final Acceptance from Owner, Contractor will, if the Project is subject to progress payments invoice Owner for any final progress payment due, and for all retention withheld.

5.11.2 Following receipt of a notice of Final Acceptance from Owner, Contractor will, if the Project is subject to a single lump sum, invoice Owner for the Service Work Order Sum.

#### **5.12 WARRANTY**

5.12.1 Contractor hereby guarantees that all labor and materials provided for any Project authorized under this Agreement shall, for a period of one year ("Warranty Period") following the date of issuance of the Final Acceptance by Owner, or, if no Final Acceptance was issued, the date of payment, comply with all requirements specified in the authorized SWO and in the Contract Documents.

5.12.2 Contractor shall, during this Warranty Period, repair or replace all defective Work and materials, at no cost or expense to Owner, and in accordance with the provisions of the Warranty Plan applicable to the Project. If there is no Warranty Plan applicable to a Project, in the event of receipt of a notice of nonconformance from Owner's PM, Contractor's PM must submit three (3) copies of a Corrective Action Plan acceptable to Owner's PM by 10 a.m. of the third work Day following receipt of said notice of nonconformance, and shall provide a remedy in accordance with the Corrective Action Plan.

5.12.3 Contractor shall in addition bears the costs and expense of any additional testing and inspections required by Owner, and will pay all of such Owner costs and expenses incurred immediately upon demand.

5.12.4 The aforesaid one-year Warranty Period does not in any way limit or waive Owner's rights to legal recourse for latent construction defects, pursuant to California Civil Code of Procedure §337.15 nor for patent construction defects pursuant to §337.1.

5.12.5 In the event of Contractor's failure to comply with the requirements of the Warranty Plan provided in the authorized Service Work Order, within three (3) calendar Days after being notified in writing, Owner may proceed to have the defects repaired and made good at the expense of Contractor who will pay all of Owner's costs and expenses incurred immediately upon demand.

**END ARTICLE 11**

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**ARTICLE 12 — MISCELLANEOUS PROVISIONS**

**12.1 CONTRACTOR'S USE OF GORDIAN GROUP SOFTWARE**

- 12.1.1 Contractor shall use both Owner and Contractor provided software programs for integration of facilities records, maintenance records, and workflow management. Where specified, Owner provided programs must be used. When Contractor uses a non-compatible program, it is Contractor's responsibility to ensure the data collected is transferred to Owner's software programs without any additional cost to Owner. Contractor will provide all computer hardware such as computers, monitors, printers, etc. for their personnel in quantities that will ensure timely completion of all tasks. The standard office software is Microsoft Office.
- 12.1.2 Contractor certifies that it has appropriate systems and controls in place to ensure that Owner funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- 12.1.3 Contractor will be provided access to the Job Order Contracting software, PROGEN<sup>®</sup>, under a license provided by The Gordian Group. PROGEN<sup>®</sup> is a Job Order Contracting management tool that expedites the ordering and execution of work. Contractor shall use PROGEN<sup>®</sup> to prepare and submit Price Proposals, Subcontractor lists, and other requirements as determined by the AOC. PROGEN<sup>®</sup> contains an electronic version of the Construction Task Catalog<sup>®</sup> for Contractor's use in preparation of Price Proposals.
- 12.1.4 PROGEN can be accessed via Contractor's computer system to locate and select desired Tasks from the CTC. Once all of the desired Tasks necessary to provide a Project are selected, the software allows Contractor to specify quantities, and, based on the selected quantities and Contractor's Adjustment Factors, extends and totals CTC<sup>®</sup> costs to provide a total of the CTC Specified Costs as well as the Service Work Order Sum for Contractor's Price Proposals. The software permits introduction of Non-Prepriced Tasks. The software will also interface with the Gordian 'Tools for Contractors and Subcontractors' website.
- 12.1.5 Use, in whole or in part, of PROGEN<sup>®</sup>, the Construction Task Catalog<sup>®</sup>, or any other Proprietary Information provided under the license from The Gordian Group for any purpose other than to order and execute work under this Agreement for the AOC is strictly prohibited unless otherwise stated in writing by The Gordian Group.
- .a The Gordian Group, subject to its agreement with the AOC, hereby grants to Contractor, and Contractor hereby accepts from The Gordian Group, during the term of this Agreement, a non-exclusive right, privilege, and license to utilize The Gordian Group's Job Order Contracting System and other related proprietary materials (collectively referred to as "Proprietary Information") to be used for the sole purpose of executing its responsibilities to the AOC under this Agreement. Contractor hereby agrees that The Gordian Group's Proprietary Information shall include, but is not limited to, the PROGEN<sup>®</sup> software and documentation, the Construction Task Catalog<sup>®</sup>, Training Manuals, additional training materials, and other proprietary materials provided to Contractor by Owner or The Gordian Group. In the event that this Agreement expires or terminates as provided herein, this Job Order Contracting System License shall terminate and Contractor shall return all Proprietary Information in its possession to The Gordian Group.
  - .b Contractor acknowledges that disclosure of Proprietary Information will result in irreparable harm to The Gordian Group for which monetary damages would be an inadequate remedy and agrees that no such disclosure shall be made to anyone without first receiving the written consent of The Gordian Group. Contractor further acknowledges and agrees to respect the copyrights, registrations, trade secrets, and other proprietary rights of The Gordian Group in the Proprietary Information during and after the term of this Agreement and shall at all times maintain

complete confidentiality with regard to the Proprietary Information provided to Contractor, subject to federal, state, and local laws related to public records disclosure.

- .c In the event of a conflict in terms and conditions between this Job Order Contracting System License and any other terms and conditions of this Agreement or any purchase order or similar purchasing document issued by the AOC, this Job Order Contracting System License shall take precedence.
- .d Contractor shall maintain in an operational condition, a computer system capable of operating the software supplied by Owner.

12.1.6 Contractor shall use the Computer Aided Facilities Management (CAFM) system provided by Owner to receive, review, approve, coordinate, and track, all work requests; log, schedule, and record all associated costs to each work request.

- .1 Owner will provide a one-time training class in the JOC Zone consisting of four (4) hours of hands-on training for up to five (5) Contractor employees on the use of the CAFM system. Additional training if needed will be conducted at Owner's discretion in San Francisco, Sacramento, and/or Burbank. All travel and other cost associated with the training is at Contractor's sole expense.

## 12.2 RELATIONSHIP OF THE PARTIES:

Contractor is an independent contractor and is not an employee or agent of Owner. Contractor is not covered by any employee benefit plans provided to Owner's employees. Contractor is, and shall be, liable for its own acts and omissions as well as those of its employees, Subcontractors Suppliers and agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Owner and Contractor. Contractor is solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding, any and all employee benefits, and all regulations governing such matters.

## 12.3 CONFLICT OF INTEREST

12.3.1 With the exception of their participation in the formulation of Projects as contemplated by this Agreement, Contractor agrees, and shall ensure that its employees and its Subcontractors Suppliers and agents and their employees agree not to participate in activities that influence the use of or disposition of State funds expended under this Agreement if any of the forgoing entities, or their employee(s) or their partner, family, or organization have a financial interest in the outcome of the proceedings.

12.3.2 Contractor agrees and shall ensure that its employees and those of all Subcontractors, Suppliers and agents shall avoid actions creating or resulting in the appearance

- .a of use of an official position with the government for private gain;
- .b of preferential treatment to any particular person associated with this Agreement or the Work of this Agreement;
- .c of loss of independence or impartiality on the part of Owner;
- .d of adverse effects on the confidence of the public in the integrity of the State, Courts, or Owner; or
- .e that decision(s) with regards to this Agreement are made outside official channels.
- .f Contractor shall ensure and shall require any Subcontractor(s) and Supplier(s) to ensure that they will not (employ or award a contract to former Owner or Court employees for two (2) years following their date of separation if that employee had any part in any decision making process pertaining to this Agreement, or for one (1) year following the date of separation if that employee was in a policy making position with authority as regards this Agreement at any time within the twelve (12) month period preceding of his or her separation from service.



**12.4 COVENANT AGAINST GRATUITIES:**

- 12.4.1 Contractor warrants that no gratuities, in the form of money, entertainment, gifts, or otherwise, were or will be offered by Contractor or by any agent, director, or representative of Contractor, to any officer, official, agent, or employee of Owner or the Courts with a view toward securing award of this Agreement or securing favorable treatment with respect to any decisions that may be made under the Agreement.
- 12.4.2 For breach or violation of the aforesaid warranty, Owner will have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by Owner in procuring, on the open market, any Work which Contractor has agreed to supply, shall be borne and paid for by Contractor. The rights and remedies of Owner provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

**12.5 NATIONAL LABOR RELATIONS BOARD:**

Contractor hereby certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two (2) year period because of Contractor's failure to comply with an order of the National Labor Relations Board.

**12.6 SEVERABILITY:**

If any term or provision of this Agreement is found to be illegal or unenforceable, this Agreement shall remain in full force and effect and that term or provision shall be deemed stricken.

**12.7 WAIVER:**

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of the default or right, nor shall it affect the right of that party to enforce those provisions later.

**12.8 PUBLIC CONTRACT CODE REFERENCES:**

- 12.8.1 Owner is not subject to the Public Contract Code.
- 12.8.2 References to the Public Contract Code provided in this Agreement are provided for Contractor's convenience only and shall not imply that the Public Contract Code applies to Owner, but rather shall be used to define Contractor's obligations under the particular contract provision in which such code section is referenced.

**12.9 ENTIRE AGREEMENT:**

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, as well as all negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed to as specified in this Agreement.

**END ARTICLE 12**

**Exhibit B: Price Adjustment Factors**

Primary JOC Zone # \_\_\_\_\_ (Enter JOC Zone Number from Attachment 9)

Project Description	Adjustment Factor
<p><b>(Large Projects ≥ \$35,000) Normal Working Hours:</b> Work valued at \$35,000 or greater performed during Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>(Large Projects ≥ \$35,000) Other than Normal Working Hours:</b> Work valued at \$35,000 or greater performed during Other Than Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>(Small Projects &lt; \$35,000) Normal Working Hours:</b> Work valued at less than \$35,000 performed during Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>(Small Projects &lt; \$35,000) Other than Normal Working Hours:</b> Work valued at less than \$35,000 performed during Other Than Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>Non-Prepriced:</b> Work performed that is not included in the Construction Task Catalog but which is within the general scope and intent of this Agreement in the quantities specified in individual Service Work Orders multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>

Name of Proposing Organization: \_\_\_\_\_

1st Alternate JOC Zone # \_\_\_\_\_ (Enter the appropriate JOC Zone Number required in Attachment 9)

Project Description	Adjustment Factor
<p><b>(Large Projects ≥ \$35,000) Normal Working Hours:</b> Work valued at \$35,000 or greater performed during Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>(Large Projects ≥ \$35,000) Other than Normal Working Hours:</b> Work valued at \$35,000 or greater performed during Other Than Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>(Small Projects &lt; \$35,000) Normal Working Hours:</b> Work valued at less than \$35,000 performed during Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>(Small Projects &lt; \$35,000) Other than Normal Working Hours:</b> Work valued at less than \$35,000 performed during Other Than Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>Non-Prepriced:</b> Work performed that is not included in the Construction Task Catalog but which is within the general scope and intent of this Agreement in the quantities specified in individual Service Work Orders multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>

Name of Proposing Organization: \_\_\_\_\_

2nd Alternate JOC Zone # \_\_\_\_\_ (Enter the appropriate JOC Zone Number required in Attachment 9)

Project Description	Adjustment Factor
<p><b>(Large Projects ≥ \$35,000) Normal Working Hours:</b> Work valued at \$35,000 or greater performed during Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>(Large Projects ≥ \$35,000) Other than Normal Working Hours:</b> Work valued at \$35,000 or greater performed during Other Than Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>(Small Projects &lt; \$35,000) Normal Working Hours:</b> Work valued at less than \$35,000 performed during Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>(Small Projects &lt; \$35,000) Other than Normal Working Hours:</b> Work valued at less than \$35,000 performed during Other Than Normal Working Hours in the quantities specified in individual Service Work Orders for the Unit Price sum specified in the Construction Task Catalog multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>
<p><b>Non-Prepriced:</b> Work performed that is not included in the Construction Task Catalog but which is within the general scope and intent of this Agreement in the quantities specified in individual Service Work Orders multiplied by the Adjustment Factor of (carry out to 4 decimal places):</p>	<p>_____</p>

**END EXHIBIT B**

**Exhibit C: AOC Tool Handling Policy**



## 2.9 AOC Tool Control Policy

OCTOBER 1, 2009



ADMINISTRATIVE OFFICE  
OF THE COURTS

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OFFICE OF COURT CONSTRUCTION  
AND MANAGEMENT



October 1, 2009

**AOC Tool Control Policy**

## Revision Management

<b>Responsible Office:</b> OCCM/FMU/Operations	<b>File Location:</b> G:\OCCM\FMU\FMU Administration\4 Policy & Directives\FMU Library
<b>Author:</b> Ken Kachold	<b>Approved by:</b> Fred Stetson
<b>Process Owner:</b> Regional Manager	

Revision	Description	Date	Revised by:
1.0	Initial Draft	10/01/2009	Sharon Mackarness
1.1	Addition to "Policy" section	10/26/2009	K. Kachold/F. Stetson



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## Property Control in In-Custody Holding Areas

### Background:

The Facilities Management Unit is responsible for Facilities Services throughout In-Custody Holding areas. Successful provision of services requires technical personnel to access and operate in these areas and to bring all the tools, supplies, materials, parts, and equipment necessary to complete their work. Due to the unique nature of the environment, there is an extremely high risk that any of these items, if not properly controlled, will result in property damage, and/or personal injury to those who operate and occupy the areas, and to others who may in the course of normal operations, enter these areas.

### Policy:

**In-Custody Holding Areas:** It is the policy of the Facilities Management Unit to control all tools, supplies, materials, parts, and equipment necessary to complete Facilities Services work in In-Custody Holding areas. This control will be achieved through implementation of the procedures and documentation below and will be reinforced through periodic evaluation.

**All other areas:** This policy applies equally to all other areas in which Court or Court-related or supported functions are conducted. These areas include but are not limited to conference rooms, secured Court staff areas, parking lots, administrative areas, hallways, conveyances, restrooms, and building infrastructure control rooms. Control in these areas shall be achieved to the greatest extent possible through an emphasis on awareness, vigilance, and on-the-spot remediation of deficiencies in property control and accountability.

Acceptance of employment in the Court environment in general implies a thorough understanding of the physical security risks involved when tools, supplies, materials, parts, and equipment are not properly controlled. Facilities Management Unit staff and outsourced service providers at all levels are responsible to support this policy through education and direct action. Failure to apply the fundamentals of this policy through action or inaction can result in property damage, and/or personal injury to anyone in the Court environment and can lead to appropriate action, up to and including the suspension of granted access rights to state courts.

### Goal:

Eliminate risks of property damage, and/or personal injury to those who operate and occupy In-Custody Holding areas, and to others who may in the course of normal operations, enter these areas.

### Procedure:

There are three basic phases in the accomplishment of Facilities Services in In-Custody Holding areas.

- **Pre-entry:** The basic activities in this phase include planning, scheduling, and coordination with In-Custody operational personnel, and assembly of tools, supplies, materials, parts, and equipment necessary to complete the work. This includes travel to the job site, arrival, and formal notification to In-Custody operational personnel that all preparations for work are completed. Establishment of positive control of tools, supplies, materials, parts, and equipment is accomplished.
- **In Place:** This phase includes activities carried out while inside the controlled In-Custody Holding areas. There shall be no intermediate exit/re-entry.

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- Exit. In this phase, technicians have completed all work and are outside the controlled In-Custody Holding areas. Technicians inform In-Custody operational personnel of the job status, report any unusual circumstances, and complete necessary documentation to validate and record control of tools, supplies, materials, parts, and equipment.

**Minimal Operational Requirements:**

Proper control of tools, supplies, materials, parts, and equipment is achieved through inventory and documentation activities at each of the three phases as described above. Personnel must be vigilant to ensure:

- Careful determination and inventory of what is needed in the Pre-entry phase.
- Strict limitation on what is brought into the In-Place phase, to the minimum required property as shown on the Pre-Entry inventory.
- Validating that the same property is removed during the Exit phase.
- Accuracy and thoroughness in completing required documentation.

**Documentation:**

In order to record the actions required in the Minimal Operational Requirements, a simple localized form shall be developed and used at each occurrence of the procedure above.

- The form shall allow for recording of the date, place, and time of the inventory of property in the Pre-entry Phase and shall have a place to record the signatures of both the technician, (or lead technician), and the In-Custody operational personnel.
- The form shall allow for recording of the inventory of property in the Exit Phase and shall have a place to record the date, place, and time, and signatures of both the technician, (or lead technician), and the In-Custody operational personnel.
- If, during the Exit phase, it is discovered that one or more items shown on the Pre-entry inventory are missing, Facilities Services personnel shall immediately report the condition to the In-Custody operational personnel, remain at the job site, and comply with all direction as provided by the In-Custody operational personnel to resolve the deficiency. Regardless of the results of the effort to reconcile "Pre-Entry property inventories" to "Exit property inventories", Facilities Services personnel shall record the details of the event on the form.
- Retain completed forms for at least 90 days at each site.

**Compliance:**

Compliance with this policy is demonstrated with existence of written site specific guides, and existence and proper use of the required inventory forms.

**Site Specific Requirements:**

Because there are a very wide range of physical layouts, sizes, assignment of In-Custody operational personnel, Facilities Services resources, and In-Custody operating schedules and procedures, local Facilities Services management shall establish written site specific guides and procedures, but at a minimum must include a form to record the date, place, and time of inventories and validation signatures as shown in the Documentation section above.

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**Site Specific Options:**

Decisions on whether or not to establish dedicated tool cribs, shadow boards, containers, property marking, lost/found property guidance or other control measures for tools, supplies, materials, parts, and equipment in support of general Facilities Services operations are local, and as such are outside the provisions of this policy. Such provisions shall not in any way take precedence over, or in any other manner interfere with, the requirements of this policy.

**Exemption:**

The procedures and documentation in this policy is not required when Facilities Services personnel are sworn peace officers and also serve in the capacity of In-Custody operational personnel.

**Periodic Evaluation:**

AOC personnel shall evaluate compliance with this policy upon random inspection of completed forms and also through random observation of the full cycle of the Pre-entry, In Place, and Exit phases of an occurrence.

**END EXHIBIT C**

## **Exhibit D Badge, Escort, and Entry Policy**

“Approved Person” means a Contractor or a Subcontractor employee who (i) has been screened and approved by Owner pursuant to Section 1.3 of this Exhibit D and (ii) when working at a specific Project Site, has passed any additional Court-required screening and background check requirements which that Court requires of contractors working at that Project Site, as described in Section 1.5 of this Exhibit D.

“DMV” means the California Department of Motor Vehicles.

“DOJ” means the California Department of Justice.

“OERS” means Owner’s Office of Emergency Response and Security.

“Escort” means to provide an Approved Person to escort and monitor any other Contractor or Subcontractor employee who is not an Approved Person .

“Restricted Areas” means (i) all areas within a Project Site that are not generally accessible to the public, including judges’ chambers, all non-public restrooms, elevators, break rooms, and corridors, and other non-public spaces that are dedicated for use only by judges or Court staff and employees, and (ii) public areas of a Project Site during non-business hours that are subject to security screening during normal business hours.

### **1 Criminal Background Screening.**

1.1 Access to Restricted Areas. Only Approved Persons may have unescorted access to the Restricted Areas of a Project Site. Contractor and Subcontractor employees who are not Approved Persons may access Restricted Areas only if they are Escorted by an Approved Person. Contractor may not rely upon an employee of the Court to escort or monitor these persons. Contractor must take all reasonable steps to ensure that its operations in any Restricted Area are at all times consistent with this Section 1.1.

1.2 Notification. Contractor must notify all Subcontractors that (i) Owner requires a background check for personnel working in Restricted Areas, (ii) individual Courts may have different or supplemental screening procedures, criteria, and requirements, and (iii) Subcontractor employees must comply with these checks and procedures.

1.3 AOC Screening and Approval Process. Owner shall conduct the screening and approval of employees of Contractor and Subcontractors that have access to the Restricted Areas pursuant to OERS’s then-current background check policies and procedures. Owner may from time to time revise its background check policy, and will provide a modified version to Contractor upon revision. Such revisions will take effect upon receipt of the revised policy and are not subject to an Amendment to be made to this Agreement. Contractor agrees to cooperate with Owner with respect to the screening of those employees.

1.4 AOC Badges. Owner will issue an identification badge to each person who is approved by Owner pursuant to Section 1.3 of the Exhibit D, bearing that person’s name and picture. The badge will indicate that the person is permitted to access the Restricted Areas. Owner will either (1) notify Contractor if an employee is approved, whereupon Owner will issue an identification badge for that person, or (2) provide an identification badge for the person to Contractor, and Contractor will be responsible for issuing the identification badge to that person. All such persons must wear their identification badges in a readily-visible manner whenever they are in a Restricted Area.

1.5 Court-Required Screening and Background Check Requirements. Even if a Contractor or Subcontractor employee has an AOC-issued badge, each individual Court has the ultimate decision as to whether a specific Contractor or Subcontractor employee may have unescorted access to its Project Site.

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Each Court shall have the right at any time to refuse Project Site access to any Contractor or Subcontractor employee (even if that employee has an AOC-issued badge) if the Court determines, in its sole discretion, that such person poses a risk to the Court or any person, system, or asset associated with the Court. Each Court may elect to perform different or supplemental screening on Contractor or Subcontractor employees who perform Work in that Court's Restricted Areas. Contractor agrees to cooperate with the individual Courts with respect to the screening of those employees, and shall obtain at no additional cost to the Court all related releases, waivers and permissions the Court requires. The Court may issue its own identification badge or other credential to persons who have passed the applicable Court-required screening procedure.

1.6 DOJ and DMV Requirements. Notwithstanding anything in this Agreement to the contrary, Contractor must comply with background check and clearance requirements of the DOJ and the DMV relating to any employee of either Contractor or Subcontractor who has physical access to any area which is either connected to, or contains records from the following databases: the DOJ criminal computer database, including the California Law Enforcement Telecommunications System (CLETS) and the Criminal Offender Record Information (CORI), and the DMV computer database. If requested by either the Court or Owner, Contractor must provide to either the Court or Owner suitable documentation evidencing Contractor's compliance with the policies, practices, and procedures of the DOJ and the DMV regarding background check and clearance requirements relating to access to these databases.

1.7 Costs. Escorting costs are included in the Contractor's Adjustment Factors; Contractor will not receive additional compensation or reimbursement from Owner for any costs related to Escorting. Owner will reimburse Contractor for the actual cost of the background check (e.g. LiveScan) without markup or fee of any type, however, Contractor will be responsible for employee time, fingerprinting fees, local administrative or processing fees, or any other costs.

**END EXHIBIT D**

**END OF AGREEMENT**