

**Judicial Council – Agreement for Elevator Modernization
For East County Regional Center**

Agreement Number
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER

THIS AGREEMENT, made and entered into as of the [**@Day**] day of [**@Month**] 2017, ("**Effective Date**"), between the Judicial Council of California ("**Judicial Council**") and [**@Name**] ("**Contractor**").

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the Judicial Council hereinafter expressed, does agree to furnish to the Judicial Council the services and materials set forth in the Scope of Work (see Exhibit C) pursuant to the Contract Documents (as defined in Exhibit A).

This Agreement (the "**Contract**") includes this Agreement and the following documents:

- (1) Exhibit A, Agreement for Elevator Modernization and Maintenance;
- (2) Exhibit B, Terms and Conditions to Contract; Payment Terms;
- (3) Exhibit C, Scope of Work;
- (4) Exhibit D, Insurance Requirements;
- (5) Exhibit E, Prevailing Wage Certification;
- (6) Exhibit F, Workers Compensation Certification;
- (7) Exhibit G, Asbestos Lead-Based Paint and Other Hazardous Materials Certification;
- (8) Exhibit H, DVBE Form;
- (9) Exhibit I, Judicial Council Background Check Policy;
- (10) Exhibit J, Judicial Council Tool Control Policy, and any other documents specifically enumerated as incorporated elsewhere in the Contract.
- (11) Exhibit K, Project Manual

The Contractor shall provide the following: the modernization of the existing elevators at the facility know as East County Regional Center located at 250 East Main Street, El Cajon, CA 92020 ("**Facility**"). The project includes the complete renovation of the nine (9) existing elevators located at the Facility ("**Site**") including, without limitation, car frames and platforms, buffers and safeties, hoist way entrance frames, doors and pit equipment, new AC gearless machines, micro-processor control systems, regenerative VVVF AC drives, fly ball governors, closed loop heavy duty high speed operators, current code required wiring, interior and lobby controlled panels, counterweights and roller guides and any upgrades to mechanical and electrical systems associated with the elevator work ("**Project**"). The Project includes any necessary design work and construction as set forth in the Contract Documents as further described in Exhibit C, Scope of Work. Project does not include any maintenance obligations that are required under this Agreement which are set forth in Exhibit C, Scope of Work. Notwithstanding the proceeding, Contractor shall be obligated to perform all maintenance obligations required under this Agreement which are set forth in Exhibit C, Scope of Work ("**Maintenance Services**") regardless of the status of the Project. The work required to complete the Project ("**Project Services**") and the Maintenance Services shall be collectively be referred to as the "**Services**".

Contractor shall complete and sign Exhibits E, F, and H and return the originals of these documents to the Judicial Council prior to commencing any Services (as those terms are defined in the Contract Documents). Contractor shall complete and sign Exhibit G upon completion of the Project and prior to final payment.

IN WITNESS WHEREOF, this Agreement has been entered into by the parties hereto, effective upon the Effective Date.



JUDICIAL COUNCIL'S SIGNATURE	CONTRACTOR'S SIGNATURE	
Judicial Council of California	<small>CONTRACTOR'S NAME (if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)</small> [@Contractor Name]	
	<small>LICENSE NO.:</small>	<small>EXP. DATE:</small>
<small>BY (Authorized Signature)</small> 	<small>BY (Authorized Signature)</small> 	
<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small> [@Manager Name]	<small>PRINTED NAME AND TITLE OF PERSON SIGNING</small>	
<small>DATE EXECICED</small>	<small>DATE EXECICED</small>	
<small>ADDRESS</small> Branch Accounting and Procurement 455 Golden Gate Avenue San Francisco, CA 94102	<small>ADDRESS</small> [@Address]	

EXHIBIT A

AGREEMENT FOR ELEVATOR MODERNIZATION PROJECT AND MAINTENANCE

1. Contractor shall furnish to the Judicial Council for a firm-fixed price of [**@Project Price**] Dollars (**\$0.00**) (“**Project Price**”), for the construction, and other services necessary or incidental to complete the Project. In addition, Contractor shall provide Maintenance Services for the following amounts:
 - Interim Maintenance Period – \$[**@Amount**] per month
 - Construction Maintenance Period – \$[**@Amount**] per month
 - Warranty Maintenance Period (if applicable) – \$[**@Amount**] per month
 - On-Going Maintenance Period (if applicable) – \$[**@Amount**] per month

For purposes of this Agreement, the maintenance periods shall be defined as follows:

Interim Maintenance Period: From the first day of the month following full execution of the Agreement until the first day when the first elevator is removed from service for modernization

Construction Maintenance Period: From the first day when the first elevator is removed from service for modernization until the date that the Project is complete and all elevators are available for use.

Warranty Maintenance Period: For a one-year maintenance period (i.e. during the warranty period) commencing upon the date that the Project is complete and all the elevators are available for use.

On-Going Maintenance Period: For an additional two-year maintenance period commencing upon the date following the termination of the Warranty Maintenance Period.

Compensation for any partial month of a maintenance period will be prorated based on the actual number of days of the month.

2. The Contract includes the Agreement for East County Regional Center Elevator (37-I1) Modernization Project and all of the Contract Documents listed in Section 6 of this Exhibit, and any modifications issued after execution of this Contract in accordance with the terms of this Contract.
3. The Project shall be completed within **450 days (15 months)** consecutive calendar days (“**Contract Time**”) from the date specified in the Judicial Council’s Notice to Proceed. Contractor agrees that if the Project is not completed within the Contract Time and/or pursuant to the completion schedule, or construction schedule, it is understood, acknowledged, and agreed that the Judicial Council will suffer damage. Pursuant to Government Code section 53069.85, Contractor shall pay to the Judicial Council, as fixed

and liquidated damages, and not as a penalty, the sum of \$1,000.00 per day for each calendar day during which completion of the Project is delayed beyond the time specified for completion.

4. Contractor shall not commence the Project until the Contractor has submitted and the Judicial Council has approved the performance bond, payment bond (i.e. labor and material bond), the certificate(s) and affidavit(s), and the endorsement(s) of insurance required under the Terms and Conditions and the Project Manager has issued a written Notice to Proceed.
5. Payment for the Project shall be made in accordance with Exhibit B, the Terms and Conditions to Contract; Payment Terms.
6. The Contract Documents include the following documents, as indicated:

<input checked="" type="checkbox"/> Exhibit B (Terms and Conditions of Contract; Payment Provisions)	<input checked="" type="checkbox"/> Exhibit H (DVBE Participation Form)
<input checked="" type="checkbox"/> Exhibit C (“Scope of Work”)	<input checked="" type="checkbox"/> Exhibit I (Judicial Council Background Check Policy)
<input checked="" type="checkbox"/> Exhibit D (Insurance Provisions)	<input checked="" type="checkbox"/> Exhibit J Judicial Council Tool Control Policy
<input checked="" type="checkbox"/> Exhibit E (Prevailing Wage Certification)	<input checked="" type="checkbox"/> Exhibit K Project Manual
<input checked="" type="checkbox"/> Exhibit F (Workers’ Compensation Certification)	<input checked="" type="checkbox"/> Payment Bond
<input checked="" type="checkbox"/> Exhibit G (Asbestos, Lead-Based Paint & Other Hazardous Materials Certification)	<input checked="" type="checkbox"/> Performance Bond
	<input checked="" type="checkbox"/> Insurance Certificates/Endorsements
	<input checked="" type="checkbox"/> Designated Subcontractors List
7. The Judicial Council’s project manager for this Project is Michael Robinson (“**Project Manager**”).
8. Inspection and acceptance of the Project shall be performed by the Judicial Council, State Fire Marshall, and any other authority having jurisdiction.
9. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct.

EXHIBIT B

TERMS AND CONDITIONS TO CONTRACT; PAYMENT TERMS

1. **NOTICE TO PROCEED:** The Project Manager will provide a written Notice to Proceed to Contractor with respect to the Project at which time Contractor will proceed with the Project. Prior to receiving the Notice to Proceed, Contractor must (a) post all payment and performance bonds; (b) provide evidence of insurance pursuant to Exhibit D; (c) complete the Prevailing Wage Certification attached hereto as Exhibit E and the Workers' Compensation Certification attached hereto as Exhibit F.
2. **EXAMINATION OF FACILITY:** Contractor has examined the Facility including the Site and certifies that it accepts all measurements, specifications, and conditions affecting the Project. Contractor warrants that it has made all examination(s) that it deems necessary as to the condition of the Facility and the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements.
3. **EQUIPMENT AND LABOR:** Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to provide the services to complete the Project and provide the Maintenance Services.
4. **TERMINATION:** If Contractor fails to perform any Services to the satisfaction of the Judicial Council, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates any of the terms or provisions of this Contract, the Judicial Council shall have the right to terminate this Contract effective immediately upon the Judicial Council giving written notice thereof to the Contractor. Judicial Council shall also have the right in its sole discretion to terminate the Contract for its own convenience, in which case, the Judicial Council will only be obligated to reimburse Contractor for the actual costs incurred by Contractor as of the date of termination, however, in no event, shall Contractor be entitled to be compensated for any loss of anticipated profits.
5. **SAFETY PRECAUTIONS AND PROGRAMS:** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. Contractor must have a safety plan and take all reasonable precautions and protections to ensure the safety of, and prevent damage, injury or loss to:
 - 5.1 employees working on the Project and/or providing Maintenance Services and all other persons who may be affected by the Project and/or the Maintenance Services;
 - 5.2 all the work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care custody or control of the Contractor or any of its subcontractors; and
 - 5.3 any other property located at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of the work.
6. **PROTECTION OF PROJECT AND PROPERTY:** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the work for the Project

and/or providing Maintenance Services, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created with respect to providing the Services. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from Judicial Council, is permitted to act at its discretion to prevent such threatened loss or injury. Contractor shall designate a superintendent, or some other responsible member of the Contractor's organization, who is at the Site, to be the person responsible for: (1) the prevention of accidents and the monitoring of the safety for the Project, and (2) the compliance with all applicable laws, ordinances, rules, regulations and lawful orders of the local public jurisdiction with authority on safety of persons or protection of property.

7. **CHANGE IN SCOPE OF WORK:** Any change in the scope of the work for the Project or phases the type of materials, or any other matter materially affecting the performance or nature of the Project shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid amendment to this Contractor executed by the Judicial Council and Contractor. Contractor specifically understands, acknowledges, and agrees that the Judicial Council shall have the right to request any alterations, deviations, reductions, or additions to the Project via a written change order signed by both the Judicial Council and the Contractor, and the cost thereof shall be added to or deducted at the amount set forth in the written change order, or if not set forth in the written change order. Contractor also agrees to provide the Judicial Council with all information requested to substantiate any cost of the change order and to inform the Judicial Council whether the work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Project. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.
8. **TRENCH SHORING:** If this Contract is in excess of \$25,000 and includes the excavation of any trench deeper than five (5) feet, pursuant to Labor Code section 6705, Contractor must submit and obtain Judicial Council acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
9. **HAZARDOUS MATERIALS:** Contractor shall not use or incorporate any Hazardous Materials (as defined in Exhibit G) with respect to providing the Services.
10. **WORKERS:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the Judicial Council may deem incompetent or unfit shall be dismissed from the Facility and shall not again be employed at the Facility without written consent from the Judicial Council.

- 11. CORRECTION OF ERRORS:** Contractor shall perform, at its own cost and expense and without reimbursement from the Judicial Council any work necessary to correct errors or omissions that result from, or relate to, Contractor's failure to comply with the standard of care required for the work for the Project and/or Maintenance Services.
- 12. SUBSTITUTIONS AND APPROVED EQUALS.** Whenever in the Contract Documents any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, those references shall be deemed to be used for the purpose of facilitating the description of that material, process, or article desired, and shall be deemed to be followed by the words "or equal," except when the product is designated to match others in use on a particular public improvement whether completed or in the course of completion. Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified. If the material, process, or article offered by Contractor is not, in the opinion of the Judicial Council, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specification.
 - 12.1 Contractor shall submit a proposal for a substitution request for alternative material(s), article(s), or equipment, in writing:
 - 12.2 The Judicial Council will consider requests for substitution only if received within thirty (30) days after Contract start date stated in the Notice to Proceed. Requests received after this timeframe may be rejected as untimely at the sole discretion of the Judicial Council.
 - 12.3 At the Judicial Council's discretion, it may give written consent to a submittal or resubmittal received after expiration of the time limit designated.
 - 12.4 The request will not be considered unless the submittal is accompanied by complete information and descriptive data necessary to determine equality of offered material(s), article(s), or equipment. Samples shall be provided when requested by the Judicial Council. Burden of proof as to comparative quality, suitability, and performance of offered material(s), article(s), or equipment shall be upon the Contractor. The Judicial Council will be the sole judge as to such matters. In the event the Judicial Council rejects the use of such alternative(s) submitted, then the particular product(s) originally specified in the Contract Documents shall be furnished.
 - 12.5 If mechanical, electrical, structural, or other changes are required for installation, fit of alternative materials, articles, or equipment, or because of deviations from contract drawings, if any, and Specifications, such changes shall not be made without consent of the Judicial Council, and shall be made without additional cost to the Judicial Council.
- 13. CONTRACTOR SUPERVISION:** Contractor shall provide competent supervision of personnel who are providing Services at the Site.
- 14. SCHEDULE OF SUBMITTALS.** Contractor shall provide a preliminary schedule of submittals, including all required Shop Drawings, Product Data, Samples, and a Schedule of Value. Once approved by the Judicial Council, this shall become the Submittal

Schedule. All submittals shall be forwarded to the Judicial Council by the date indicated on the approved Submittal Schedule, unless an earlier date is necessary to maintain the Judicial Council, in which case those submittals shall be forwarded to the Judicial Council so as not to delay the Judicial Council.

15. **CLEAN UP:** Contractor must remove debris from the Site on a daily or weekly basis, as applicable. Contractor shall keep the Site in good order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.
16. **ASSIGNMENT OF CONTRACT:** Contractor shall not assign any of its rights under this Contract, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, or otherwise transfer or delegate its duty or obligation to perform any work under the Contract without the prior written consent of the Judicial Council. Any assignment by Contractor, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without the prior written consent of the Judicial Council, shall be deemed a default allowing the Judicial Council to exercise all remedies available to it under applicable law. Consent will not be given to an assignment which would relieve the Contractor or the Contractor's surety of their responsibilities under this Contract. Any purported assignment of rights or delegation of performance in violation hereof shall be null and void.
17. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.
18. **NO INTERFERENCE WITH COURT OPERATIONS:** Contractor acknowledges that the Project is located in a courthouse which is an operating courthouse that is open to the public. Access to the Facility, including mechanical rooms, electrical rooms, or other rooms must be coordinated with the Court through the Project Manager before work commences. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the Project Manager and shall be minimized to the greatest degree possible. Contractor shall provide temporary services to all facilities interrupted by Contractor's work. Contractor and its subcontractors shall not interfere with the transaction of Court business, including the public's access to and use of the Facility.
19. **BACKGROUND CHECKS:**
 - 19.1 Criminal Background Screening
 - 19.1.1 Access to Facility. Only Approved Persons may have unescorted access to (1) the Restricted Areas of a Facility and (2) any area of the Facility, during non-business hours when there is no security screening available. Contractor and Subcontractor employees who are not Approved Persons may access Restricted Areas only if they are escorted by an Approved Person at all times that they are in the Restricted Areas. 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 ("**Access to Restricted Areas**").

- 19.1.2 Notification. Contractor must notify all subcontractors that (i) the Judicial Council requires a background check for all personnel working on the Project and more specifically in Restricted Areas without an escort pursuant to this Background Checks provision, (ii) the Court may have supplemental screening procedures, criteria, and requirements, and (iii) subcontractor employees must comply with both the Judicial Council's and the Courts' checks and procedures.
- 19.1.3 Judicial Council Screening and Approval Process. The Judicial Council shall conduct the screening and approval of employees of Contractor and subcontractors that have access to the Restricted Areas pursuant to the Judicial Council's then-current background check policies and procedures. Contractor agrees to cooperate with the Judicial Council with respect to the screening of those employees. A copy of the Judicial Council's background check policy current as of the Effective Date is attached as Exhibit I for the Contractor's reference ("Background Check Policy"). The Judicial Council may update the Background Check Policy at any time, without notice to the Contractor. Contractor acknowledges that the definition of Restricted Areas in this Agreement is broader and includes more areas than the definition of Restricted Areas in the Background Check Policy and that the definition of Restricted Areas in this Agreement shall control. Contractor must comply with the provisions of this Background Checks provision in this Agreement and with the Background Check Policy.
- 19.1.4 Judicial Council Badges. The Judicial Council will issue an identification badge to each person who is approved by the Judicial Council pursuant to this Background Checks provision 4.3 ("**Judicial Council Screening and Approval Process**"), bearing that person's name and picture. The badge will indicate that the person is permitted to access the Restricted Areas. The Judicial Council will either (1) notify Contractor if an employee is approved, whereupon the Judicial Council will issue an identification badge for that person, or (2) provide an identification badge for the person to the 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. The Contractor will have a procedure in place to ensure that all badges are returned to the Judicial Council upon termination of an employee and completion of the Contract.
- 19.1.5 Court-Required Screening and Background Check Requirements. Even if a Contractor or subcontractor employee has a Judicial Council-issued badge, the Court has the ultimate decision as to whether a specific Contractor or subcontractor employee may have unescorted access to its Facility. The Court shall have the right at any time to refuse Facility access to any Contractor or subcontractor employee (even if that employee has a Judicial Council-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. The Court may elect to

perform supplemental screening on Contractor or Subcontractor employees who perform Work in that Court's Restricted Areas. Contractor agrees to cooperate with the Court 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.

19.1.6 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 the Judicial Council, Contractor must provide to either the Court or the Judicial Council 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.

19.1.7 Definitions.

19.1.7.1 "Approved Person" means any employee of Contractor or any subcontractor who (i) has been screened and approved by the Judicial Council pursuant to the Judicial Council Screening Process and (ii) when working in a the Facility, has passed any additional Court-required screening and background check requirements which that Court requires of contractors working in that Facility, as described in the above section relating to Court-required screening.

19.1.7.2 "Restricted Areas" means (i) all areas within the Facility 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, (ii) public areas of a Facility during non-business hours that are subject to security screening during normal business hours, and (iii) the areas defined as Restricted Areas in the Background Check Policy.

19.2 Costs. All costs associated with escorting an unscreened employee (i.e. any employee who is not an Approved Person) shall be included in the Project Price and the Maintenance Services compensation. Contractor will not receive additional compensation or reimbursement from the Judicial Council for any costs related to

escorting. The Contractor will pay for the cost of the background check (e.g. LiveScan), and the Contractor will be responsible for employee time, fingerprinting fees, local administrative or processing fees, or other costs.

- 20. SECURITY PROTOCOLS AND TOOL CONTROL POLICY:** Contractor personnel must comply with all Judicial Council and Court required security protocols in the performance of the work. Such protocols include, but are not limited to, the then-current Judicial Council Tool Control Policy. The version of the Judicial Council Tool Control Policy in effect as of the Effective Date is attached as Exhibit J.
- 21. FORCE MAJEURE CLAUSE:** Contractor shall not be liable for any failure or delay in performance hereunder during the time and to the extent that it is prevented from obtaining delivery of goods or materials, or performing the work for the Project by:
- 21.1 An Act of God (e.g. flood, earthquake, fire due to lightning), strike or lock-out involving a supplier of material, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the Judicial Council, provided that it is satisfactorily established that the non-performance is not due to the fault, neglect or action of the Contractor.
- 21.2 Adverse weather that is (1) unusually severe precipitation, sleet, snow, hail, heat, or cold, wind or fog conditions in excess of the norm for the location and time of year it occurred as determined by a source mutually agreed to by the Judicial Council and the Contractor or, if none can be mutually agreed upon, as indicated at <http://countrystudies.us/united-states/weather/California>; (2) unanticipated; and (3) occurring at the site of the Project.
- 22. INDEMNIFICATION:** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the State of California; the Judicial Council of California; the Judicial Council; the County of San Diego; and the Superior Court of California County of San Diego, and their respective officers, consultants, representatives, agents and employees, (the “**Indemnified Parties**”) from any and all demands, losses, liabilities, claims, suits, and actions (the “**Claims**”) of any kind, nature, and description, including, but not limited to, attorneys’ fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of this Contract unless the Claims are caused wholly by the sole negligence or willful misconduct of the Indemnified Parties. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law or the Contract, including, without limitation, any stop notice action. The Judicial Council shall have the right to accept or reject any legal representation that Contractor proposes to defend the Judicial Council.
- 23. PAYMENTS:**
- 23.1 **Progress Payments for Construction (i.e. Project):** Contractor shall submit to the Judicial Council an Application for Payment for the Project based upon the actual value for materials delivered or services performed in furtherance of the Project under the Contract up to the last day of the previous month (“**Application for**

Progress Payment”). The Project Manager will review the Application for Progress Payment and approve the Application for Progress Payment if the Application for Progress Payment is valid and correct. Within 45 days after the Project Manager’s approval of the Application for Progress Payment, Contractor will be paid a sum equal to ninety percent (90%) of the amount invoiced in the Application for Progress Payment (as Judicial Council verified, as applicable, by the Project Manager, Judicial Council’s architect, and Judicial Council’s project inspector and certified by Contractor) The Judicial Council may deduct from any payment an amount necessary to protect the Judicial Council from loss because of: (1) any sums expended by the Judicial Council in performing any of Contractor’s obligations under the Contract which Contractor has failed to perform or has performed inadequately; (2) defective work not remedied; (3) stop payment notices as required by California law (i.e. Civil Code sections 9358 et seq.); (4) reasonable doubt that the Project can be completed for the unpaid balance of the Project Price or by the scheduled completion date; (5) unsatisfactory prosecution of the work for the Project by Contractor; (6) unauthorized deviations from the Contract; (7) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by Judicial Council during the prosecution of the work for the Project; (8) erroneous or false estimates by the Contractor of the value of the work performed; (9) any sums representing expenses, losses, or damages, as determined by the, incurred by the for which Contractor is liable under the Contract; and (10) any other sums which the Judicial Council is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the Judicial Council to deduct any of these sums from a progress payment shall not constitute a waiver of the Judicial Council’s right to such sums. The Judicial Council will retain ten percent (10%) from all amounts owing as retention.

23.2 **Payments for Maintenance:** Contractor shall submit invoices in arrears for maintenance work (“**Maintenance Invoices**”) to the Judicial Council on a monthly basis in the following amounts:

23.2.1 Interim Maintenance Period – \$[@Amount] per month

23.2.2 Construction Maintenance Period – \$[@Amount] per month

23.2.3 Warranty Maintenance Period (if applicable) – \$[@Amount] per month

23.2.4 On-Going Maintenance Period (if applicable) – \$[@Amount] per month

Compensation for any partial month of a maintenance period will be prorated based on the actual number of days of the month.

Within 45 days of receipt of a Maintenance Invoice, Contractor will be paid the invoiced amount minus any amounts that the Judicial Council may withhold due to the Contractor’s failure to properly perform the Maintenance Services and/or for any defective work which Contractor failed to adequately remedy.

23.3 All Applications for Payment and Maintenance Invoices shall comply with the

following:

- i. Each Application for Payment and Maintenance Invoices shall bear a unique invoice number, the Contract Number, the Contractor's name and address, Contractor's preferred remittance address, the Contractor's Taxpayer identification number (FEIN). The Contractor shall use the Judicial Council's Request for Payment for as the cover sheet for all invoices submitted.
 - ii. Contractor shall submit each Application for Payment form with the invoice to the Project Manager.
 - iii. Each Application for Payment must clearly specify:
 - Month and Year being invoiced;
 - The portion of the total work being invoiced expressed as a percentage, the total price of the Work, and the total amount due that month.
 - The amount to be withheld by the Judicial Council that month
 - The amount to be paid that month
 - The total amount withheld to date
 - iv. The final payment for the Project shall be invoiced in accordance with the Final Payment for Project section of this Exhibit.
- 24. MANNER OF PAYMENT:** All payments by the Judicial Council required by this Contract shall be payable by State of California warrants or any other warrant from any account utilized by the Judicial Council.
- 25. FAILURE TO ADOPT STATE BUDGET:** An event of default shall not occur if the Judicial Council is unable to make any payment due hereunder because of the State of California's failure to timely approve and adopt a State budget. If the Judicial Council fails to make any payment(s) as a result of the State of California's failure to timely approve and adopt a State budget, the Judicial Council shall promptly pay any previously due and unpaid upon approval and adoption of the State budget.
- 26. COMPLETION OF PROJECT:** Contractor shall notify the Project Manager in writing when the Project is complete. The Judicial Council will accept completion of the Project and record the Notice of Completion when the entire Project had been completed to the satisfaction of the Judicial Council. The Judicial Council, at its sole option, may accept completion of the Project and have the Notice of Completion recorded when the Project has been completed to the satisfaction of the Judicial Council, except for minor corrective items ("**Punch List Items**"), as distinguished from incomplete items. In determining whether the Project is complete and acceptable to Judicial Council, the Project must conform with the following: (1) all of the work for the Project set forth in the Scope of Work, Exhibit C (excluding Maintenance Services which is separate from the Project), along with any agreed upon Change Orders; and (2) the design work completed by Contractor pursuant this Contract. Contractor warrants and represents that the Project complies with all applicable State and Federal laws, building codes, regulations and ordinances in effect on the date of acceptance of the Project by Judicial Council.

27. FINAL PAYMENT FOR PROJECT:

The following conditions must be fulfilled prior to final payment for the Project:

- 27.1 Judicial Council and the State Fire Marshall must have accepted the Project as complete in accordance with the requirements of their building permit.
- 27.2 The Judicial Council must have accepted the Project as complete in accordance with the Completion of Project section of this Exhibit;
- 27.3 A duly completed and executed waiver and release upon final payment compliant with Civil Code sections 8136 and 8138, as applicable, from the Contractor and each subcontractor and supplier;
- 27.4 Contractor shall have delivered to the Judicial Council all applicable written guarantees and warranties, including those of its subcontractors, if applicable;
- 27.5 Contractor shall have delivered to the Judicial Council all applicable manuals and completed required staff training sessions;
- 27.6 Contractor shall have executed the Asbestos Lead-Based Paint and Other Hazardous Materials Certification substantially in the same for as attached to this Agreement as Exhibit G; and
- 27.7 The Contractor shall have completed final clean-up of the Project site.

After 35 days have elapsed following the recordation of the Notice of Completion for the Project, the Judicial Council will commence processing the final payment, and provide the final payment to Contractor as expeditiously as possible. The final payment shall be the amount of retention, less the following: (i) any amounts reasonably disputed by the Judicial Council; (ii) 150 percent of the Judicial Council's estimate of any amount necessary to complete any Punch List Items which are still not complete; (iii) any amounts attributable to stop payment notices which the Judicial Council is required to withhold pursuant to the Prevailing Wage Laws; (iv) any penalties pursuant to the Prevailing Wage Laws which Contractor failed to forfeit in accordance with the Prevailing Wage Laws; and (v) any assessments by the California Labor Commissioner pursuant to Labor Code section 1741.

- 28. **NO LIENS:** Contractor agrees that Contractor, and any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract, has no rights to lien any portion of the Facility, including any improvement or appurtenance thereon (e.g. the Facility). Contractor specifically acknowledges, in accordance with Civil Code section 9350 et seq., that the Facility is not subject to mechanics liens. In the event that any liens are recorded by Contractor or any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract, Contractor agrees to take whatever action is necessary to remove the lien against the Facility.
- 29. **LICENSES:** Contractor shall secure and maintain in force, at Contractor's sole cost and expense, all licenses required by law, in connection with the furnishing of materials,

supplies, or services herein listed.

30. **PERMITS:** Contractor will be responsible for payment of permit fees and issuance of the permit through the County of San Diego and all related County of San Diego requirements for issuance of the building permit. The plan check process has been completed and the plan check fee has been paid by the Judicial Council or its design team.
31. **INDEPENDENT CONTRACTOR STATUS:** While engaged in carrying out the Services, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the Judicial Council. Contractor shall be solely responsible for its own Workers' Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.
32. **ANTI-DISCRIMINATION:** Contractor agrees to comply with all applicable Federal and California laws relating to discrimination against employees because of race, color, ancestry, national origin, or religious creed including, but not limited to the California Fair Employment Practice Act beginning with Government Code section 12900 and Labor Code section 1735. In addition, Contractor agrees to require like compliance by all its subcontractor(s).
33. **DISABLED VETERAN BUSINESS ENTERPRISES:** This Project has a Disabled Veteran Business Enterprise (“DVBE”) participation requirement of three percent (3%). Contractor must document its DVBE compliance by completing the DVBE Participation Form set forth as Exhibit H.
34. **PAYMENT BOND AND PERFORMANCE BOND:** Contractor shall not commence providing the Services until it has provided to the Judicial Council in a form acceptable to the Judicial Council, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to 100 percent of the full value of the Project Price and the compensation for the Maintenance Services issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the Judicial Council. The Payment (Labor and Material) Bond shall stay in effect until Contractor has completed the Project Services and the Maintenance Services.
35. **CONTRACTOR’S INSURANCE:** Contractor shall, during the terms of this Contract, maintain insurance in accordance with the requirements of Exhibit D of this Contract which is attached hereto and incorporated herein, with insurance company or companies that are rated “A-VII” or higher by A. M. Best’s key rating guide, and are approved to do business in the State of California. 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 section and Exhibit D.
36. **WARRANTY:** In addition to any warranties provided by a manufacturer of any material or good supplied in furtherance of the Project, Contractor guarantees and warrants all labor and material used in the performance of this Contract for a period of one-year from the date of the Judicial Council’s recordation of a Notice of Completion for the Project, and at the Judicial Council’s sole option, Contractor shall either repair or replace any and all of that

work that may be defective in workmanship and/or materials, without expense whatsoever to the Judicial Council, together with any other work, that may be displaced in so doing. In the event of failure of Contractor to commence and pursue with diligence said replacements or repairs within 10 days after being notified in writing, Contractor hereby acknowledges and agrees that the Judicial Council is authorized to proceed to have the work replaced or repaired and made good at expense of Contractor who hereby agrees to reimburse the Judicial Council for any costs incurred by the Judicial Council with respect to repairing or replacing the work.

37. SUBCONTRACTORS:

- 37.1. Although the Judicial Council is not bound by the Public Contract Code for trial court construction, the Judicial Council hereby specifically incorporates the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et seq.) ("**Subcontractor Listing Law**") into this Contract with respect to the Project. The Judicial Council intends to fully enforce the provisions of the Subcontractor Listing Law, including, specifically sections 4109 and 4110. Accordingly, Contractor Judicial Council shall adhere to the rules governing subcontracting as set forth in Public Contract Code section 4100 et seq. Subcontractor substitutions shall be in accordance with provisions of the Subcontractor Listing Law. Violations of the Subcontractor Listing Law by the Contractor may subject the Contractor to penalties and disciplinary action as provided by in the Subcontractor Listing Law. Contractor is prohibited from replacing or otherwise substituting subcontractors who were listed on the Designated Subcontractors List submitted with Contractor's proposal without following the procedures set forth in the Subcontractor Listing Law. An agreement made in violation of this section shall confer no rights on any party and shall be null and void.
- 37.2. Contractor agrees to bind every subcontractor with respect to both Project Services and Maintenance Services by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor subcontracts any part of this Contract, Contractor shall be fully responsible to the Judicial Council for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself.
- 37.3. At the request of the Judicial Council, the Contractor shall provide documentation that its subcontractors meet the required qualifications set forth in the Contract with respect to that subcontractor's work. If requested by the Judicial Council, the Contractor shall provide copies of all Contractor's agreements with its subcontractors to the Judicial Council. The Judicial Council's review of subcontracts shall in no way relieve the Contractor of any of its responsibilities and obligations under this Contract.
- 37.4. Contractor shall, in the course of the work, engage only subcontractors and employees who possess, and will maintain in good standing during the performance of the services, valid and applicable licenses where the State of California or this

Contract requires that the work to be performed by that subcontractor or employee must be performed by a licensed person or entity

- 37.5. Contractor expressly acknowledges that its Subcontractors are not third party beneficiaries of this Contract. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the Judicial Council. No contractual relationship exists between the Judicial Council and any subcontractor, supplier, or sub-subcontractor by reason of this Contract.
- 37.6. Contractor shall be responsible for all work performed under the Contract. All persons engaged in the work of the Project are the responsibility and under the control of the Contractor. Contractor shall give personal attention to fulfillment of the Contract and shall keep the work under the Contractor's control.
- 38. ARCHITECT AUTHORITY.** The Judicial Council's architect for the Project will have authority to order minor changes in the work not involving any adjustment in the Project Price, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order.
- 39. TESTING AND INSPECTIONS.** The Judicial Council will select an independent testing laboratory to conduct the tests. The Contractor shall notify the Judicial Council's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that the Judicial Council may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that must be tested. Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed required testing and inspection or prior to the receipt of notice from the representative that testing and inspection will not be required, shall not be incorporated into and/or onto the Project. The Judicial Council will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the Contractor or deducted from the Project Price.
- 40. CONFIDENTIALITY:** The Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the Services except to the extent allowed by law.
- 41. COMPLIANCE WITH LAWS:** Contractor shall provide all notices and comply with all laws, ordinance, rules, and regulations bearing on conduct with respect to the Services. If Contractor observes that any of the work required by this Contract is at variance with any laws, ordinance, rules or regulations, Contractor must notify the Judicial Council, in writing, and, at the sole option of the Judicial Council, any necessary changes to the scope of the Project shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the Judicial Council. If Contractor performs any work that is in violation of any laws, ordinances, rules, or regulations, without first notifying the Judicial Council of the violation, Contractor shall bear all costs arising therefrom.
- 42. DISPUTES:** In the event of a dispute between the parties as to performance of Services,

the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the parties will attempt to resolve the dispute through mediation. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the work for the Project or the provision of any applicable Maintenance Services.

43. CERTIFIED PAYROLL RECORDS: Contractor and its subcontractor(s) must keep accurate certified payroll records of employees and make them available to the Judicial Council immediately upon request.

44. LABOR CODE REQUIREMENTS:

44.1 With respect to the provisions of the Services, Contractor shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 - 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the Judicial Council. In addition, the Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with section 1720, and including section 1735 forbidding discrimination, section 1776 pertaining to payroll records, and sections 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of the right to bid on or receive public works contracts.

44.2 The Contractor and all subcontractors shall pay all workers on work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by Director of the State of California Department of Industrial Relations, are on file at the Judicial Council's principal office. Prevailing wage rates are also available from the Judicial Council or on the internet at (<http://www.dir.ca.gov>).

44.3 Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an

unregistered contractor to submit a bid that is authorized by section 7029.1 of the Business and Professions Code or by section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

- 44.4 Contractor shall, and shall ensure that all “subcontractors” (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. Contractor represents to the Judicial Council that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. Contractor shall not permit any Subcontractor to perform any Services, without first verifying the Subcontractor is properly registered with the Department of Industrial Relations as required by law, and providing this information in writing to the Judicial Council. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies.
- 44.5 The Project and the Maintenance Services are subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the project.
- 44.6 Unless otherwise provided in this Agreement, the 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 Services, whether temporary or permanent and whether or not incorporated or to be incorporated in the work. Materials, articles, and equipment furnished by the Contractor for incorporation into the work shall be new unless otherwise specified in the Agreement.
- 44.7 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. Pursuant to Labor Code section 1813, the Contractor shall pay the Judicial Council Twenty-Five Dollars (\$25) as a penalty for each worker for each calendar day worked in violation of the above limitations and restrictions.
- 44.8 Contractor shall comply with the provisions of the Labor Code including sections 1770 to 1780, inclusive and specifically Section 1775. In accordance with Section 1775, the Contractor shall forfeit to the Judicial Council the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the Judicial Council, for the work or craft in which that worker is employed for any work done under contract by Contractor or by any subcontractor.

- (a) The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of Contractor or subcontractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of Contractor.
- (b) The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Contractor or subcontractor has been assessed penalties within the previous three (3) years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
- (c) The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Contractor or subcontractor willfully violated Labor Code section 1775.
- (d) The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor or subcontractor.

44.9 Wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein shall be construed as preventing the Contractor from paying more than the minimum rates set. No extra compensation whatsoever will be allowed by the Judicial Council due to the inability of the Contractor to hire labor at minimum rates, nor for necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing its proposal.

44.10 If it becomes necessary to employ a craft, classification or type of worker other than those listed on-line at www.dir.ca.gov/oprl/DPreWageDetermination.htm, the Contractor shall contact the Division of Labor Statistics and Research to find the appropriate prevailing wage determination. If the Division of Labor Statistics and Research is unable to identify a determination that is applicable, the Contractor shall notify the Court immediately, and the Court will request a special determination from the Division of Labor Statistics and Research. The rate thus determined shall be applicable from the commencement of the Project.

44.11 Contractor and each subcontractor shall 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 the 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. Upon written request by the Judicial Council, the Contractor's and subcontractor's certified payroll records shall be furnished within ten (10) days. The Contractor's and subcontractor's certified payroll records shall be available for inspection at the principal office of the Contractor.

44.12 Contractor shall pay travel and subsistence payments to persons required to execute the work as 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.

44.13 Contractor acknowledges and agrees that, if this Agreement involves a dollar amount or any other threshold, if any, greater than those specified in Labor Code section 1777.5, then this Agreement is governed by the provisions of Labor Code section 1777.5. It shall be the responsibility of Contractor to ensure compliance with Labor Code section 1777.5 for all apprenticeship occupations. If Labor Code section 1777.5 applies, then:

Contractor shall only employ properly registered apprentices 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.

45. REGIONAL NOTIFICATION CENTER: Pursuant to Government Code section 4216 et. seq., the Contractor, except in an emergency, shall contact the appropriate regional notification center in accordance with the time provisions in the statute prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the Judicial Council, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any subcontractor and the Contractor has given the Judicial Council the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract time.

46. EXISTING UTILITY LINES: Pursuant to Government Code section 4215, Judicial Council assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Project site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the plans and specifications. Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of Judicial Council or the owner of a utility to provide for removal or relocation of such utility facilities.

Locations of existing utilities provided by Judicial Council shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. Judicial Council shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment necessarily idle during such work.

No provision herein shall be construed to preclude assessment against Contractor for any

other delays in completion of the work. Nothing in this provision shall be deemed to require Judicial Council to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines. Whenever the presence of these utilities on the Project site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Project site.

If Contractor, while performing work under this Contract, discovers utility facilities not identified by Judicial Council in the plans and specifications, Contractor shall immediately notify the Judicial Council and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the Judicial Council shall be borne by the Contractor.

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the Judicial Council pursuant to these provisions is to allow the Judicial Council an opportunity to investigate the condition(s) so that the Judicial Council shall have the opportunity to decide how the Judicial Council desires to proceed as a result of the condition(s). Accordingly, failure of Contractor to promptly notify the Judicial Council in writing, pursuant to these provisions, shall constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

47. **NO SIGNS:** Neither the Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Facility, Site, fences trailers, offices, or elsewhere without specific prior written approval of the Project Manager.
48. **GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of California.
49. **BINDING CONTRACT:** This Contract shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.
50. **JUDICIAL COUNCIL:** Judicial Council's waiver of any term, condition, covenant or waiver of a breach of any term, condition, or covenant shall not constitute the waiver of any other term, condition, or covenant or the waiver of a breach of any other term, condition, or covenant.
51. **INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.
52. **ENTIRE CONTRACT:** This Contract sets forth the entire Contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing upon mutual consent.
53. **NOTICE:**

All notices to the Judicial Council under this Contract shall be given as follows:

All notices and correspondence to the Judicial Council must reference the Contract number.

To the Judicial Council:

Judicial Council of California
Attn: Michael Robinson, Project Manager
[@Judicial Council's San Diego Office Address]
San Diego, CA 92101
Phone: 858-226-7352

In addition, all notices relating to an alleged breach or default by the Judicial Council must also be sent to:

Judicial Council of California
Branch Accounting and Procurement
Attn: Manager, Contracts
455 Golden Gate Avenue
San Francisco, CA 94102-3688
Phone: 415-865-7989

All notices to the Contractor under this Contract shall be given as follows:

To the Contractor:

[@Contractor's Name]
Attn: [@Contractor's Project Manager]
[@Contractor's Address]
[@Contractor's City], CA [@Contractor's Zip]
Phone: [@Contractor Project Manager's Phone Number]

EXHIBIT C

SCOPE OF WORK

1. Project Description

The project is the modernization of the existing elevators at East County Regional Center. The project includes the complete renovation of the nine (9) existing elevators. Work will include, but not be limited to, car frames and platforms, buffers and safeties, hoist way entrance frames, doors and pit equipment, new AC gearless machines, micro-processor control systems, regenerative VVVF AC drives, fly ball governors, closed loop heavy duty high speed operators, current code required wiring, interior and lobby controlled panels, counterweights and roller guides. Upgrades to mechanical and electrical systems associated with the elevator work. Cab interiors in existing elevator cabs shall not decrease the size of the elevators. Fire alarm to be a deferred submittal to OSFM. Elevator replacement will be completed in Five Phases:

Phase 1 – Low Rise / High Rise Passenger Elevators No. 1 & No. 5

Phase 2 – Low Rise / High Rise Passenger Elevators No. 2 & No. 6

Phase 3 – Low Rise Passenger / Custody Elevators No 3. & No. 9

Phase 4 – Custody / Judge’s Elevators No. 7 & No. 8

Phase 5 – Service Elevator No. 10

The Project Manual, attached hereto as Exhibit K, and the following drawings for the Project are incorporated herein by this reference:

<u>Sheet number</u>	<u>Description</u>
A0.0	Title Sheet
A0.01	Guidelines For Passenger Elevators
A1.00	Site Plan
A2.01	Typical Floor Plan Floors 1,2,3,4,7,8
A2.01M	Typical Mezzanine Plan Floors GM,1M,2M,3M,4M
A2.06	Sixth Floor Plan
A2.09	Ninth Floor Plan
A2.10	Tenth Floor Plan
A4.10	Elevator Machine Room Plans
A5.01	Elevator Cab Interior Elevations
A5.02	Elevator Cab Interior Elevations
A7.01	Elevator Details
A7.02	Signage Details
E.001	Symbols List, Abbreviations, General Notes And Sheet Index
E.002	Electrical Specifications
E.003	Electrical Single Line Diagram
E.004	Fire Alarm General Notes
E.005	Fire Alarm Riser Diagram
E2.00	Ground Floor Electrical Plan
E2.05	Fifth Floor Electrical Plan

E2.06	Sixth Floor Electrical Plan
E2.09	Ninth Floor Electrical Plan
E2.10	Tenth Floor Electrical Plan
E5.01	Electrical Details
M0.01	Mechanical Symbols List, Abbreviations, And Sheet Index
M0.02	Mechanical General Notes
M0.03	Mechanical Specifications
M0.04	Mechanical Specifications
M0.05	Mechanical Specifications
M0.06	Mechanical Title 24 Energy Compliance Forms
M0.07	Mechanical Title 24 Energy Compliance Forms
M0.08	Mechanical Schedules
M2.06	Sixth Floor Mechanical Plan
M2.09	Ninth Floor Mechanical Plan
M2.10	Tenth Floor Mechanical Plan
M4.06	Enlarged Sixth Floor Mechanical Plan
M4.09	Enlarged Ninth Floor Mechanical Plan
M4.10	Enlarged Tenth Floor Mechanical Plan
M5.01	Mechanical Details
M5.02	Mechanical Details
M5.03	Mechanical Details
M5.04	Mechanical Details

2. Special Provisions for the Project

Contractor agrees to the following with respect to the Project and any other services that are necessary, normal, customary, or incidental to the performance of Contractor's responsibilities under this Agreement including Maintenance Services to the extent applicable.

Contractor agrees to:

1. Provide sufficient number(s) of specialists and other workers with requisite skills and experience as appropriate for the successful completion of the Project and provision of the Maintenance Services.
2. Perform all necessary work to complete the Project and provide the Maintenance Services in collaboration with the Judicial Council, the Court, the Judicial Council's selected Architect(s) and/or Engineer(s), and other third parties as identified by the Judicial Council.
3. Prepare, organize, and distribute monthly progress reports in a timely manner in a format acceptable to the Judicial Council.
4. Conduct Project Status Meetings with the Judicial Council, Court representatives, other third party professionals and consultants working with the Judicial Council, and/or State or local agencies as needed and directed by the nature of the work or as directed by the Judicial Council during the course of the Project. The frequency and

location of the Project status meetings will be as agreed with the Judicial Council, however, Project Status Meetings shall be held not less than on a monthly basis. The location of the meetings will typically be in the locale of the Project unless otherwise agreed.

5. Develop, maintain, and regularly update a master schedule of Project activities as applicable to the Project (“Master Schedule”). The Master Schedule shall include, but not be limited to: Construction activities; due dates of contractual obligations; Project meetings; dates for submission for required milestones; Notice to Proceed for Construction Phase; activities and milestones during construction; Commissioning Activities; punchlist preparation, punchlist work, and punchlist sign-off; and Project Closeout. This schedule shall be reviewed with the Judicial Council at all project meetings, must be approved by the Judicial Council, and shall be updated by Contractor at each submittal. The Master Schedule shall be in a Gantt chart format prepared using the latest version of Microsoft Project, unless otherwise agreed by the Judicial Council. The Contractor shall provide an updated Master Schedule to the Judicial Council ten (10) days prior to commencement of each Phase, in monthly updates and at other times when significant changes are made to the schedule or as requested by the Judicial Council.
6. Provide all Deliverables and Project correspondence in Adobe Acrobat.pdf format, Microsoft Word.doc format, and AutoCAD.dwg format, as indicated in this Agreement, or as agreed upon with the Judicial Council, throughout the term of this Agreement.
7. Document and Consult with the Judicial Council if the Contractor becomes aware of deficiencies, errors or omissions in the Construction Documents for the Project developed by the Architect or the Judicial Council regardless of whether the deficiency became apparent before or after final approval of the Construction Documents by the Judicial Council, Architect, and the Contractor at the end of the Working Drawings Phase and suggest satisfactory methods for correction of such deficiencies.
8. Monitor, and obtain where responsible, construction-related approvals, including, but not limited to, written approvals by the County of San Diego, Department of Building and Safety, State Fire Marshal, California Corrections Authority, and the Division of the State Architect (“DSA”) Access Compliance Unit. **DSA IS NOT REQUIRED FOR ANY APPROVAL.**
9. Provide all necessary materials, facilities, and ancillary services (such as cleanup) necessary for completion of the Project, when necessary for the performance of the work, during construction and for completion of the construction.
10. Contractor shall provide a written Project Safety Plan which shall describe how the Contractor will protect the building occupants at all times. Contractor shall submit the Project Safety Plan to the Judicial Council twenty (20) days before the commencement of work on the project and modified, if required for the five (5) phases as described in the RFP. The Judicial Council shall have the right to review

the Plan, and use of said program is subject to the Judicial Council's written approval.

The Project includes the modernization of the existing elevators at East County Regional Center. Elevator replacement will be completed in Five (5) Phases:

Phase 1 – Low Rise / High Rise Passenger Elevators No. 1 & No. 5

Phase 2 – Low Rise / High Rise Passenger Elevators No. 2 & No. 6

Phase 3 – Low Rise Passenger / Custody Elevators No 3. & No. 9

Phase 4 – Custody / Judge's Elevators No. 7 & No. 8

Phase 5 – Service Elevator No. 10

Contractor may only work on one phase at a time, and must complete the phase it is working on before proceeding to another phase.

The Contractor shall be responsible for coordinating the work with the Court and Judicial Council.

3. Construction

1. Contractor agrees that it shall provide all work necessary to complete the Project and shall be responsible for the construction of the Project, in accordance with this Agreement, according to the schedule specified in the Master Schedule. Payments will be made in accordance with Exhibit B.
2. THE GENERAL CONTRACTOR MUST HAVE A VALID "B" LICENSE AND ALL SUBCONTRACTORS MUST HAVE A VALID LICENSE FOR THEIR RESPECTIVE SUBCONTRACTOR TRADE.
3. The Contractor shall conduct a preconstruction conference with the subcontractors, Architect, Inspector of Record, Judicial Council Project Manager, and other appropriate persons. Services include preparation of meeting agenda, preparation of construction procedures for clarifications, change orders, shop drawings, progress payments, field testing and inspection, safety program, labor compliance program, and preparation and distribution of preconstruction conference notes.
4. Following each Project status meeting, Contractor shall prepare, organize, and distribute in a timely manner, meeting notes, schedule update and lists of accomplishments and action items for review, comment, and use.

4. Construction Schedule

1. Estimated Start of Construction: February 2018
2. Estimated Completion of Construction: May 2019

EXHIBIT D

INSURANCE REQUIREMENTS

A.1 The Contractor shall, prior to commencement of any Services, provide the Judicial Council certificates of insurance, on forms acceptable to the Judicial Council, as evidence that the required insurance, with specifications set forth in Section A.2, is in full force and effect. Where applicable, each certificate of insurance shall specifically provide verification that the Judicial Council has been added as an additional insured on the insurance policy being referenced, and must clearly indicate that the policy of insurance shall not be materially changed or cancelled without ninety (90) days prior notice to the Judicial Council. The originals of the Certificates of Insurance shall be addressed to the Judicial Council Contracting Official named in this Contract, with copies to the Project Manager.

All insurance policies required under this section A.1 shall be in force until the end of the term of this Contract. The completed operations insurance required under section A.2.1 shall extend for a period of three (3) years past the acceptance of the Project, termination of the Contract, whichever is later. If the required insurance expires during the term of the Contract, Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance to the Judicial Council. Renewal insurance certificates must be tendered to the Judicial Council at least 10 days prior to the expiration of the previous insurance certificate.

A.1.1 The insurance required by sections A.2.1, A.2.2, and A.2.4 as well as any excess liability or umbrella liability insurance that the Contractor maintains in compliance with the terms of this section A.1 shall include the State of California; the Judicial Council of California; the County of San Diego; the Superior Court of California, County of San Diego; and their respective officers, consultants, representatives, agents and employees as additional insureds, but only with respect to liability arising out of the Work performed by the Contractor under this Contract.

A.1.2 Contractor, and any insurer providing insurance required under the terms of this section A.1 shall waive any right of recovery it may have against the State of California; the Judicial Council of California; the County of San Diego; and the Superior Court of California, County of San Diego; and their respective officers, consultants, representatives, agents and employees loss or damage to the Work, or for any liability arising out of any work performed by the Contractor under this Contract.

A.1.3 The insurance policies required under this section A.1 shall contain a provision that coverage will not be materially changed or cancelled without ninety (90) days prior written notice to the Judicial Council.

A.1.4 The Contractor shall be responsible for and may not recover from the Judicial Council any deductible or self-insured retention that is connected to the insurance required under this section A.1.

A.1.5 In the event the Contractor fails to keep in effect at all times the specified insurance coverage, the Judicial Council may, in addition to any other remedies it may have, declare the contract to be in breach and withhold all progress payments and retentions until the breach is cured, or terminate this Contract upon the occurrence

of such event, subject to the provisions of this Contract.

- A.1.6 Any insurance required under this section A.1 shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California; the Judicial Council of California; the County of San Diego; and the Superior Court of California, County of San Diego.
- A.1.7 The Judicial Council reserves the right to request certified copies of any of the insurance policies required under this section A.1
- A.2 Specific Insurance Requirements: Prior to the commencement of any Services, Contractor shall furnish to the Judicial Council evidence of insurance as follows:
 - A.2.1 Commercial Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) written on an occurrence form covering the Contractor and the Judicial Council with limits of liability of not less than \$2,000,000 per occurrence combined single limit and a \$2,000,000 per location annual aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall not include exclusion for property damage resulting from explosion, collapse, or underground hazard. The products and completed operation liability coverage shall extend for a period of not less than three (3) years past the acceptance of the Project, or termination of the Contract, whichever is later. This insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought subject to the insurance policy limit of liability.
 - A.2.2 Commercial Automobile Liability: If one or more automobiles is used in the performance of the Services, Commercial Automobile Liability insurance covering liability arising out of the operation, use, loading, or unloading of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the Services, with limits of not less than \$1 million combined single limit per accident.
 - A.2.3 Workers' Compensation: Statutory workers' compensation insurance for all of the Contractor's employees who will be engaged in the performance of any work under this Contract including special coverage extensions where applicable and employer's liability with limits not less than \$1,000,000 for each accident \$1,000,000 as the aggregate disease policy limit, \$1,000,000 as the disease limit for each employee.
 - A.2.4 Builders Risk/Installation Coverage: Builder's Risk or Installation Insurance that covers the work to be performed under this Contract for direct physical loss or damage while in the course of transportation, erection, installation and completion with limits of liability equal to the final completed value of the Project.

EXHIBIT E

PREVAILING WAGE CERTIFICATION

Judicial Council Project Name: East County Regional Center (37-I1) Elevator Modernization

I hereby certify that I will comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000) with respect to this Project, including, Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with section 1720, and including sections 1735, 1777.5 and 1777.6, forbidding discrimination, and sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by contractor or subcontractors.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT F

WORKERS' COMPENSATION CERTIFICATION

Judicial Council Project Name: East County Regional Center (37-I1) Elevator Modernization

Labor Code section 3700 in relevant part provides:

Every employer except the State shall secure the payment of compensation in one or more of the following ways:

- a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.
- b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

I am aware of the provisions of section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

(In accordance with Article 5 - commencing at section 1860, chapter 1, part 7, division 2 of the Labor Code, the above certificate must be signed and filed with the awarding body prior to performing any work under this Contract.)

EXHIBIT G

**ASBESTOS, LEAD-BASED PAINT AND OTHER HAZARDOUS MATERIALS
CERTIFICATION**

Judicial Council Project Name: East County Regional Center (37-II) Elevator Modernization

Contractor hereby certifies that no asbestos, or asbestos-containing materials, polychlorinated biphenyl (PCB), lead-based paint or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (“Hazardous Material”), was furnished, installed, or incorporated in any way into the work for the Project or with respect to providing maintenance services, or in any tools, devices, clothing, or equipment used to affect any portion of the Project or with respect to providing maintenance services.

Contractor further certifies that it instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities prior to the commencement of work on the project and/or the provision of maintenance services.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is a Hazardous Material shall Judicial Council be settled by electron microscopy or other appropriate and recognized testing procedure, at the Judicial Council’s determination. The costs of any such tests shall be paid by Contractor if the material is found to be a Hazardous Material.

All work or materials found to be a Hazardous Material or work or material installed with equipment containing a Hazardous Material will be immediately rejected and this work will be removed at Contractor's expense at no additional cost to the Judicial Council.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT H

DVBE FORM

[TO BE ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT

SEE ATTACHEMENTS 10 & 11 OF RFP]

SAMPLE

EXHIBIT I

JUDICIAL COUNCIL BACKGROUND CHECK POLICY

**[TO BE ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT
SEE ATTACHMENT 12 OF THIS RFP]**

SAMPLE

EXHIBIT J

JUDICIAL COUNCIL TOOL CONTROL POLICY

[TO BE ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT

SEE ATTACHMENT 13 OF THIS RFP)

SAMPLE

EXHIBIT K
PROJECT MANUAL

**[TO BE ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT
SEE ATTACHMENT 1 OF THIS RFP]**

SAMPLE