



ATTACHMENT 7  
TO RFP FOR DESIGN BUILD ENTITY FIRM

SAMPLE AGREEMENT  
**ADDENDUM 2**



Courts of Appeal, New Sixth Appellate District  
Courthouse

## AGREEMENT FOR DESIGN BUILD SERVICES COVERSHEET

	AGREEMENT NUMBER [Insert]
	FEDERAL EMPLOYER ID NUMBER [Insert]

1. This Agreement for Design Build Services (“Agreement”) is between the Judicial Council of California (“Judicial Council”), and [Insert Name of Design Build Entity] (“Design Build Entity”). Judicial Council and Design Build Entity may be referred to herein individually as a “Party” or collectively as the “Parties.”
2. Design Build Services shall be provided for the [Insert Name of Project] Project.
3. The term of this Agreement shall commence on [Insert Start Date, 20 ] (the “Effective Date”) and shall expire on the Completion of the Work or upon the early termination by the Judicial Council, whichever occurs first.
4. The title of this Agreement is: Agreement for Design Build Services. The number of this Agreement is: [Insert Agreement Number]. **The title and number listed are for administrative reference only and do not define, limit, or construe the scope or extent of the Agreement.** This Agreement is issued pursuant to Judicial Council solicitation number: RFQ-FS-YYYY-##-XX.
5. The Parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement (including this coversheet, the Exhibits, and all other Contract Documents) contains the Parties’ entire understanding of the subject matter of this Agreement. The following Exhibits are incorporated into the Agreement: [STAFF TO ADJUST PER PROJECT]
  - **Exhibit A: General Conditions.** The general conditions applicable to all Work for the Project.
  - **Exhibit B: Supplementary Conditions.** The supplementary conditions designed to address specific conditions unique to the Project.
  - **Exhibit C: Preliminary Schedule.** Judicial Council’s preliminary Project schedule that includes milestones Design Build Entity will use to prepare the Contract Schedule.
  - **Exhibit D: Design Deliverable Requirements.** The matrix that explains the requirements for the development and submittal of Deliverables by Design Build Entity to Judicial Council during the Design Work.
  - **Exhibit E: Design Build General Conditions Matrix.** The form explaining what costs Design Build Entity will include in Design Build Entity’s General Conditions for the Construction Work.
  - **Exhibit F: RESERVED.**
  - **Exhibit G: List of Designated Subcontractors.** The list of Subcontractors that Design Build Entity has designated as performing Construction Work for the Project.
  - **Exhibit H: Key Personnel Schedule.** The list of Key Personnel that will perform Work during the Project.
  - **Exhibit I: Conditional Release on Progress Payment.** The form release that Design Build Entity and Subcontractors will submit with an Application for Payment where indicated in the Contract Documents.
  - **Exhibit J: Unconditional Release on Progress Payment.** The form release that Design Build Entity and Subcontractors will submit with an Application for Payment where indicated in the Contract Documents.
  - **Exhibit K: Conditional Release on Final Payment.** The form release that Design Build Entity will submit with its final Application for Payment as indicated in the Contract Documents.
  - **Exhibit L: Unconditional Release on Final Payment.** The form release that Design Build Entity will submit with its final Application for Payment as indicated in the Contract Documents.
  - **Exhibit M: Contractor Notice of Potential Change Form.** The form that Design Build Entity will utilize to advise Judicial Council of a potential cost impact to the Project.
  - **Exhibit N: Proposed Change Order Form.** The form that Design Build Entity will utilize to substantiate costs when it requests that Judicial Council issue a Change Order.

- **Exhibit O: Design Build Entity's Price Proposal.** Design Build Entity's Price Proposal for the Project, including the Proposer Information Form, Addenda Acknowledgement Form, Fee Proposal Form, Professional Billing Rate Sheet, as well as the accompanying Declaration.
- **Exhibit P: Design Build Entity Claim Certification.** The form that Design Build Entity must submit to certify a claim.
- **Exhibit Q: Subcontractor Claim Certification.** The form that a Subcontractor must submit to certify a claim if the Subcontractor is presenting a claim through the Design Build Entity.
- **Exhibit R: FF&E Responsibility Matrix.** The matrix indicating items of furniture, fixtures, and equipment that Design Build Entity is responsible for providing as part of the Project.
- **Exhibit S: Certificate of Acceptance.** The notice that Judicial Council will issue demonstrating the Project is Complete.
- **Exhibit T: Bonds.** The Performance Bond and Payment Bond that Design Build Entity must utilize when providing bonds for the Construction Work.
- **Exhibit U: DVBE Form.** The form that Design Build Entity must submit to demonstrate compliance with applicable Disabled Veteran Business Enterprise requirements for the Project.
- **Exhibit V: Prevailing Wage and Related Labor Requirements Certification.** The certification Design Build Entity and its Subcontractors must complete and submit to Judicial Council prior to commencement of any Work.
- **Exhibit W: Monthly Reporting Form for Skilled and Trained Workforce.** The monthly certification report Design Build Entity and its Subcontractors must complete demonstrating compliance regarding the use of workers in apprenticeable occupations.
- **Exhibit X: Internal Background Check Policy.** The Judicial Council's policy of conducting background checks applicable once the Project is deemed "Ready for Use."
- **Exhibit Y: Interview and Negotiation Notes.** Notes compiled by Judicial Council and reviewed by Design Build Entity memorializing the verbal discussions regarding the elements, attributes, and services to be provided by Design Build Entity under the executed Agreement.
- **Exhibit Z: California Air Resources Board In-Use Off-Road Diesel-Fueled Fleets Certification.** The certification Design Build Entity and its Subcontractors must complete and submit to Judicial Council prior to commencement of any Work.
- **Exhibit AA: Performance Criteria Documents.** *The documents referenced in Paragraph 1.105 of the General Conditions, the Performance Criteria identified therein, and any appendices thereto.*

JUDICIAL COUNCIL'S SIGNATURE	DESIGN BUILD ENTITY'S SIGNATURE
Judicial Council of California	(state whether a corporation, partnership, joint venture, limited liability company, or sole proprietorship) [Name of Design Build Entity], a [State] entity
BY (Authorized Signature) 	BY (Authorized Signature) 
PRINTED NAME AND TITLE OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING
DATE EXECUTED	DATE EXECUTED
ADDRESS Branch Accounting and Procurement 455 Golden Gate Avenue, 6 <sup>th</sup> Floor San Francisco, CA 94102	ADDRESS @Address @City, ST Zip   License No.: @

## AGREEMENT FOR DESIGN BUILD SERVICES

This Agreement for Design Build Services (“Agreement”) is entered into and effective on [REDACTED] 202[X] (“Effective Date”) by and between the Judicial Council of California, a judicial branch entity (“Judicial Council”), and [REDACTED] (“Design Build Entity”), a [Insert Name of Organizational Structure, e.g., a California corporation]. Judicial Council and Design Build Entity may be referred to herein individually as a “Party” or collectively as the “Parties.”

### **RECITALS**

**WHEREAS**, the Judicial Council is utilizing the design build procurement method authorized pursuant to Government Code section 70398, et seq. to obtain the services of a design build entity, as defined in Government Code section 70398(d), to design and construct the [REDACTED] Courthouse building in [REDACTED] County, California (“Project” as further defined in the Contract Documents); and

**WHEREAS**, after a competitive solicitation process involving a request for qualifications followed by a request for proposals, the Judicial Council determined that the Design Build Entity offered the best value to the Judicial Council to design and construct the Project; and

**WHEREAS** the Judicial Council desires that the Design Build Entity design and construct the Project consistent with the requirements of the Contract Documents and Government Code section 70398, et seq. and the Design Build Entity certifies and warrants that it has the experience, expertise, capability, training and all certification(s) and/or license(s) necessary to design and construct the Project consistent with the requirements of the Contract Documents and applicable law.

**NOW THEREFORE**, for and in consideration of the mutual covenants herein contained, the Parties agree as follows:

### **AGREEMENT**

1. **Defined Terms.** This Agreement shall be read in conjunction with all provisions of the Contract Documents (as defined below). Any capitalized term, title, or phrase used in this Agreement shall have the meaning provided in the Contract Documents, unless a specific meaning is contained in this Agreement.
2. **Purpose.** Design Build Entity shall furnish to Judicial Council, as authorized, architectural design and engineering, preconstruction, and construction services for the Project in an amount not to exceed the Total Contract Amount. The purpose described herein is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement, the Contract Documents, or the Work.
3. **Work.** Design Build Entity shall provide all Work for the Project required by, and consistent with, the Contract Documents, including, without limitation, the General Conditions (**Exhibit A**). Design Build Entity agrees to perform Change Work on the Project arising from changes ordered by Judicial Council pursuant to the Contract Documents. The Work will include:
  - 3.1. **Design Work.** This includes:
    - 3.1.1. Design Development Work
    - 3.1.2. Working Drawings Work
  - 3.2. **Construction Work.** This Includes:
    - 3.2.1. Construction Work
4. **Authorization to Perform Work.**
  - 4.1. Design Build Entity shall not commence Work until Judicial Council issues a Notice to Proceed. Judicial Council will not be obligated to compensate Design Build Entity for Work performed prior to Judicial Council’s issuance of a Notice to Proceed.
  - 4.2. Judicial Council retains the right to terminate this Agreement for convenience at any time, in accordance with the General Conditions.

5. **Licensing.** Design Build Entity shall, at all times during the performance of Work, hold and maintain a valid Type B general contractor license from the State of California, and shall be appropriately licensed by the laws of the State of California to perform contracting, architectural, and engineering services required by the Work. Design Build Entity shall immediately notify Judicial Council in writing in the event Design Build Entity's license(s) expires, is suspended, or has a change in signatory authority. Design Build Entity shall abide by all applicable licensing provisions of the Contract Documents and the State of California. Failure to comply with this provision shall be a material breach of the Agreement, permitting Judicial Council to immediately terminate Design Build Entity for cause.
6. **Contract Documents.**
- 6.1. **Intent.** The Contract Documents (as defined below) are intended to include all items necessary for Completion of the Work by Design Build Entity and shall be read cooperatively. What is required by one of the Contract Documents shall be as binding as if required by all. Design Build Entity shall be required to perform any Work to the extent consistent with, and reasonably inferable from, the Contract Documents and to the extent consistent therewith.
- 6.2. **Contract Documents and Interpretation (Order of Precedence).** The term "Contract Documents" shall mean the documents identified below as they may be defined in the Agreement, Agreement Coversheet, and/or the General Conditions (**Exhibit A**), and each may be amended or modified from time to time during the Project. The Contract Documents are listed below in order of precedence and if there is a conflict between terms of the Contract Documents, that order of precedence shall apply:
- 6.2.1. Amendment(s) and Change Order(s), the most recent taking priority
  - 6.2.2. Agreement
  - 6.2.3. Supplementary Conditions (**Exhibit B**)
  - 6.2.4. General Conditions (**Exhibit A**)
  - 6.2.5. Division 1 Sections
  - 6.2.6. Construction Documents
  - 6.2.7. Design Development Documents
  - 6.2.8. Performance Criteria Documents (**Exhibit AA**)
  - 6.2.9. Technical Specifications (Approved by Judicial Council)
  - 6.2.10. Drawings (Approved by Judicial Council), as follows: (i) figured dimensions; (ii) large-scale Drawings; (iii) small-scale Drawings
  - 6.2.11. All remaining Contract Documents (in no particular order):
    - 6.2.11.1. Contractor Notice of Potential Change Form (**Exhibit M**)
    - 6.2.11.2. Proposed Change Order Form (**Exhibit N**)
    - 6.2.11.3. List of Designated Subcontractors (**Exhibit G**)
    - 6.2.11.4. Key Personnel Schedule (**Exhibit H**)
    - 6.2.11.5. Preliminary Schedule (**Exhibit C**)
    - 6.2.11.6. Design Build Entity Claim Certification (**Exhibit P**)

- 6.2.11.7. Subcontractor Claim Certification (**Exhibit Q**)
- 6.2.11.8. Conditional Release on Progress Payment (**Exhibit I**)
- 6.2.11.9. Conditional Release on Final Payment (**Exhibit K**)
- 6.2.11.10. Unconditional Release on Progress Payment (**Exhibit J**)
- 6.2.11.11. Unconditional Release on Final Payment (**Exhibit L**)
- 6.2.11.12. Certificate of Acceptance (**Exhibit S**)
- 6.2.11.13. Bonds (**Exhibit T**)
- 6.2.11.14. Design Deliverable Requirements (**Exhibit D**)
- 6.2.11.15. Design Build General Conditions Matrix (**Exhibit E**)
- 6.2.11.16. DVBE Form (**Exhibit U**)
- 6.2.11.17. Contract Schedule (Approved by Judicial Council)
- 6.2.11.18. Notice of Completion (as recorded with County at Project completion)
- 6.2.11.19. Design Build Entity's Price Proposal (**Exhibit O**)
- 6.2.11.20. Schedule of Values (Approved by Judicial Council)
- 6.2.11.21. Furniture, Fixtures, and Equipment Responsibility Matrix (**Exhibit R**)
- 6.2.11.22. Prevailing Wage and Related Labor Requirements Certification (**Exhibit V**)
- 6.2.11.23. Monthly Reporting Form for Skilled and Trained Workforce (**Exhibit W**)
- 6.2.11.24. Internal Background Check Policy (**Exhibit X**)
- 6.2.11.25. Interview and Negotiation Notes (**Exhibit Y**)
- 6.2.11.26. California Air Resources Board In-Use Off-Road Diesel-Fueled Fleets Certification (**Exhibit Z**)
- 6.2.12. Technical Specifications and Drawings. With respect to the Technical Specifications and Drawings, the most recent, Judicial Council-approved shall take priority; provided, however, that the Construction Documents shall take priority over all other Drawings and Specifications. In case of approved Design Development Documents and Construction Documents, no reduction in quantity or quality from the Design Development Documents included in the Construction Documents will take precedence unless specifically identified and approved by Judicial Council.
- 6.2.13. No Order Indicated/Conflict. Where no order of precedence is stated, or in cases of conflict, the greater quantity and/or higher standard of workmanship shall apply unless Judicial Council expressly approves (in writing) a lesser quantity or lower quality of workmanship, and the Total Contract Amount is adjusted accordingly. The decision of Judicial Council in the matter shall be final. If it is not possible to determine the greater quantity and/or higher standard of

workmanship, the more expensive of the requirements shown or specified shall be controlling.

**6.3. Differences From Solicitation Documents.** The Parties acknowledge that the Contract Documents may differ in some respect(s) from the other documents included in the Request for Proposal upon which the Design Build Entity based its Proposal. Unless agreed to in writing by the Parties, the Proposal shall in no way prevail over any term of the Contract Documents.

**6.4. Interpretive Provisions.**

6.4.1. Unless otherwise stated in the Contract Documents, technical words and abbreviations are used in accordance with commonly understood design/engineering and construction industry meanings. Non-technical words and abbreviations are used in accordance with their commonly understood meanings.

6.4.2. When standards of the federal government, trade societies, or trade associations are referred to in the Contract Documents by specific date of issue, these shall be considered as part of the Contract Documents. When such references do not bear date of issue, current published edition at the date of the first solicitation shall be considered as part of the Contract Documents.

6.4.3. The Contract Documents may omit modifying words such as “all” and “any” and articles such as “the” and “an” but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement. The use of the word “including” when following any general statement, shall not be construed to limit such statement to specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as “without limitation,” or “but not limited to,” or words of similar import) is used, but shall instead be read as including non-limiting language and be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of that general statement.

6.4.4. The terms “shall,” or “will,” or “must” are mandatory and “may” is permissive.

6.4.5. Whenever the context so requires, the use of the singular number shall be deemed to include the plural and vice versa. The captions and headings of the various subdivisions of the Contract Documents are intended only for reference and convenience and in no way define, limit, or prescribe the scope or intent of the Contract Documents or any subdivision thereof.

**7. Total Contract Amount.** Subject to the provisions of the Contract Documents, and if authorized by the issuance of a Notice to Proceed, Judicial Council will pay to Design Build Entity, for satisfactory performance of the Work, [REDACTED] Dollars (\$[Insert Amount]), as set forth below (the “Total Contract Amount”):

**7.1. Design Work.** [REDACTED] Dollars (\$[Insert Amount])

**7.2. Construction Work** [REDACTED] Dollars (\$[Insert Amount])

**7.3. Limitations on Total Contract Amount on Effective Date.**

7.3.1. The Total Contract Amount as of the Effective Date includes the cost for Design Work and Construction Work payable by Judicial Council, provided the conditions precedent in the Contract Documents are satisfied.



- 7.3.2. The Total Contract Amount, also referred to herein as the “Stipulated Sum” may only be adjusted upon mutual agreement of the Parties, consistent with the Contract Documents.
- 7.3.3. Design Build Entity further warrants and represents that it fully understands that Judicial Council may terminate the Work at any time. In any such event, Judicial Council may obtain the Work from another entity in Judicial Council’s discretion.

8. **Contract Time.** The Contract Time shall be as follows:

- 8.1. **Contract Time.** Design Build Entity shall commence the Work (Design Work and Construction Work) on the date specified in the Notice to Proceed and fully complete all Work within \_\_\_\_\_ [Insert Number of Days] Days
- 8.2. By signing this Agreement, Design Build Entity represents to Judicial Council that Design Build Entity will complete the Work within the Contract Time.
- 8.3. **Design Build Entity shall not be entitled to an extension of the Contract Time, or any component thereof, unless Design Build Entity substantiates, and Judicial Council approves, a time extension pursuant to the requirements of the Contract Documents.**

9. **Liquidated Damages.** Time is of the essence for all Work performed under the Contract Documents. It is hereby understood and agreed that it is, and will be, difficult and/or impossible to ascertain and determine the actual damage that Judicial Council will sustain in the event of, and by reason of, Design Build Entity’s failure to adhere to the Contract Time. Therefore, Design Build Entity shall forfeit and pay to Judicial Council the following sum(s) as liquidated damages (“Liquidated Damages”):

- 9.1. **Contract Time.** Design Build Entity shall pay \_\_\_\_\_ Dollars (\$[Insert Amount]) per Day as Liquidated Damages for each Day’s delay beyond the Contract Time.
- 9.2. It is hereby understood and agreed that neither the total cumulative Liquidated Damages amount, nor any portion of the Liquidated Damages amount, are penalties.
- 9.3. Judicial Council may deduct Liquidated Damages from money due, or that may become due, from Design Build Entity, as indicated in the Contract Documents. Design Build Entity’s forfeiture of Liquidated Damages to Judicial Council, and Judicial Council’s right to retain Liquidated Damages, are as indicated in the Contract Documents.
- 9.4. Liquidated Damages are automatically (and without notice of any kind) forfeited and payable by Design Build Entity upon the accrual of each Day of delay beyond the time to complete the Work as identified herein. Neither Judicial Council’s failure nor delay in deducting Liquidated Damages from payments otherwise due Design Build Entity, nor Judicial Council’s failure or delay in notifying Design Build Entity of the forfeiture and payment of Liquidated Damages, shall be deemed a waiver of Judicial Council’s right to assess Liquidated Damages and/or Judicial Council’s right to withhold Liquidated Damages from any amounts that would otherwise be payable to Design Build Entity.
- 9.5. Design Build Entity and its Surety shall be liable for, and pay to Judicial Council, the entire amount of Liquidated Damages, including any portion that exceeds the amount of the Total Contract Amount then held, retained, or controlled by Judicial Council.
- 9.6. The remedy for Project delays caused by Design Build Entity shall be in the form of Liquidated Damages and this shall be the exclusive remedy for delay damages. The recovery of Liquidated Damages is limited to delay damages, and separate and apart from Judicial Council’s right to charge Design Build Entity for non-delay related damages, including, but not limited to, completing or correcting items of the Work.



**10.     Compensable Delay.**

**10.1.**     If Design Build Entity is entitled to an increase in the Total Contract Amount because of any Compensable Delay established pursuant to the General Conditions, the Total Contract Amount will be increased by the sum indicated below for each Day of Compensable Delay, approved in a Change Order issued by Judicial Council or approved as Compensable Delay during the resolution of any claim. This provision will apply only to Construction Work and only to the extent that Design Build Entity establishes its entitlement to Compensable Delay pursuant to the Contract Documents. The Compensable Delay daily rate will be calculated by: (i) dividing the total cost of Design Build Entity's General Conditions (B2 staff and B3 other costs per the Design Build Entity's Price Proposal, **Exhibit O**) on the Project by the total Days in the Construction Duration established in **Exhibit O**; and (ii) multiplying that daily rate by the number of Days of Judicial Council-approved Compensable Delay (e.g., Compensation for Compensable Delay = (Cost of Design Build Entity's General Conditions / Construction Time) x (Approved Days of Compensable Delay). Additional compensation for home office overhead and mark-up shall not be allowed. This formula shall not be adjusted during the performance of Work.

**10.2.**     After the building is approved as Ready for Use as outlined in the General Conditions, Design Build Entity must provide documentation of actual costs to receive extended general conditions. Notwithstanding the amounts set forth below, Design Build Entity must establish that it **sustained** such damages, up to the amount below, as it applies to each Day of delay consistent with the requirements of the Contract Documents. Design Build Entity shall mitigate damages because of the delay.

10.2.1. Compensable delay daily rate for Construction Work -                       
Dollars **(\$[Insert Amount])**

**10.3.**     Design Build Entity agrees that the above sums are adequate to compensate it for any and all extended general conditions damages in any way relating to, or arising from, any Compensable Delay. Design Build Entity further agrees that the above sums are the sole damages for extended general conditions to which Design Build Entity shall be entitled if it substantiates a Compensable Delay, and Design Build Entity shall not be entitled to substantiate or prove any other extended general conditions-related damages for Compensable Delay during any claim arising from this Agreement.

**11.     Non-Compensable Time Extensions.**

**11.1.**     *Subject to proof pursuant to other applicable provisions of the Contract Documents, Design Build Entity shall be entitled to adjustment in Contract Time only, without adjustment in Contract Sum, for*

*11.1.1. Periods of excusable delay caused solely by weather or Force Majeure events as provided in these General Conditions, or*

*11.1.2. Periods of concurrent delay, where delay results from two or more causes, one of which is compensable (resulting from Changes or Acts or Neglect as set forth above in this Article), and the other of which is non-compensable or unexcusable, such as: acts or neglect of Design Build Entity, Subcontractors or others for whom Design Build Entity is responsible; other acts, omissions and conditions which would not entitle Contractor to adjustment in Contract Time; adverse weather; and/or actions of Force Majeure as provided in these General Conditions.*

**12. Termination for Non-Appropriation.**

**12.1.** This “Termination for Non-Appropriation” provision is cumulative to the termination provisions in the General Conditions (**Exhibit A**).

**12.2.** Judicial Council’s obligations under the Agreement are subject to the availability of authorized funds. Judicial Council may terminate the Agreement, or any part of the Work, without prejudice to any right or remedy of Judicial Council, for a lack of appropriation of funds. If expected or actual funding for this Agreement or Project is withdrawn, reduced, or limited in any way prior to the Completion of the Work, Judicial Council may terminate the Agreement, in whole or in part, upon written notice to Design Build Entity.

**12.3.** Payment shall not exceed the amount allowable for appropriation by the Legislature. If the Agreement is terminated for non-appropriation:

12.3.1. Judicial Council will be liable only for payment in accordance with the terms of the Contract Documents for Work satisfactorily performed prior to the effective date of termination; and

12.3.2. Design Build Entity shall be released from any obligation to provide further Work pursuant to the Agreement that is affected by the termination.

**12.4.** Funding for the Agreement that is beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in the Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30<sup>th</sup> of each year.

**13. Assignment.** If this Agreement is terminated prior to the exercise of Judicial Council’s authorization for Construction Work, Design Build Entity shall, upon Judicial Council’s written request, execute an assignment to Judicial Council of all contracts with Design Professionals for Work completed and paid for by Judicial Council. Design Build Entity shall include an assignment provision in its contracts with all Design Professionals allowing this assignment to Judicial Council.

**14. Successors and Assigns.** Judicial Council and Design Build Entity respectively bind themselves and their successors, permitted assigns, and legal representatives to the other Party and to the successors, permitted assigns, and legal representatives of such other Party in respect to covenants, agreements, and obligations contained in the Contract Documents. Neither Party shall assign the Agreement, in whole or in part, without prior written consent of the other Party. Notwithstanding any such assignment, each original contracting Party shall remain legally responsible for all its obligations under the Contract Documents.

**15. Due Authorization.** The person or persons signing this Agreement on behalf of Design Build Entity hereby represent and warrant to Judicial Council that this Agreement is duly authorized, signed, and delivered by Design Build Entity.

**16. Design Build Entity’s Covenants and Representations.** Without superseding, limiting, or restricting any other representation or warranty set forth elsewhere in the Contract Documents, or implied by operation of law, Design Build Entity makes the following covenants and representations to Judicial Council:

**16.1. Licensing.** Design Build Entity and its Design Professionals and Subcontractors are properly certified, licensed, and qualified to perform the Work required by the Contract Documents and shall maintain all such licenses in force through the duration of the Project.

**16.2. Fiduciary Relationship.** Design Build Entity accepts the relationship of trust and confidence with Judicial Council established by the Contract Documents. Design Build Entity will cooperate with Judicial Council.

**16.3. Examination of Contract Documents.**

16.3.1. Design Build Entity, its Design Professionals, and its Subcontractors have carefully examined the Site and the adjacent areas, have suitably investigated the nature and location of the Construction Work, and have satisfied themselves as to the general and local conditions which will be applicable, including, but not limited to: (1) conditions related to Site access and to the transportation, disposal, handling, and storage of materials, including Hazardous Materials (if any); (2) the availability of labor, water, power, and roads; (3) normal weather conditions; (4) observable physical conditions at the Site and existing Site conditions, including size, utility capacities, and connection options of external utilities; (5) the surface conditions of the ground; (6) subsurface conditions based on reports provided by Judicial Council; and (7) the character and availability of the equipment and facilities which will be needed prior to, and during, the performance of Construction Work.

16.3.2. Design Build Entity and its Design Professionals have reviewed and evaluated all Contract Documents.

16.3.2.1. Design Build Entity, its Design Professionals, and its Subcontractors are familiar with the methodology under which the Work is to be performed and have correlated personal observations with requirements of the Contract Documents.

**17. Insurance/Bonds.**

**17.1. Design Work.** Design Build Entity shall not commence any Design Work until Design Build Entity has submitted, and Judicial Council has approved, (1) any required evidence of insurance consistent with the requirements of the Contract Documents; and (2) Judicial Council has issued a Notice to Proceed.

**17.2. Construction Work.** In addition to the evidence of insurance required under the Contract Documents for Construction Work, and Judicial Council's approval thereof, Design Build Entity shall submit the Performance Bond and Payment Bond in the forms set forth in **Exhibit T**, within seven (7) days of notice of award of the contract by Judicial Council.

**18. CEQA.** Judicial Council and Design Build Entity recognize that Project activities contemplated by this Agreement and the Contract Documents are subject to environmental review under CEQA, and that Judicial Council, as a lead agency for the Project and its future use, must comply with the CEQA requirements as set forth in CEQA and in 14 California Code of Regulations sections 15000, et seq. ("CEQA Guidelines"). Pursuant to CEQA Guidelines section 15004(b)(2)(A), the Parties acknowledge that: (i) approval and execution of this Agreement by the Parties does not constitute Judicial Council authorizing, approving, or awarding a "project" as defined by CEQA; and (ii) the Construction Work shall not commence until Judicial Council provides Design Build Entity with written authorization to proceed with Construction Work, or any portion thereof.

**19. Construction Management.** Design Build Entity acknowledges that Judicial Council reserves the right to obtain the services of a Construction Manager for this Project. The Construction Manager, if any, would be authorized to give Work authorizations and issue written approvals and Notices to Proceed on behalf of Judicial Council. Judicial Council reserves the right to designate a different Construction Manager at any time. Judicial Council shall provide forty-eight (48) hours' written notice to Design Build Entity if Judicial Council replaces the Construction Manager. Any task, including, but not limited to, reviews or approvals that Judicial Council may perform pursuant to

this Agreement or the Contract Documents may be performed by the Construction Manager, unless that task specifically indicates it shall be performed by Judicial Council or is otherwise limited by the Contract Documents.

20. **Ownership of Any Existing Equipment.** Ownership of any equipment and materials existing at the Site as of the Effective Date shall remain the property of Judicial Council even if they are replaced or their operation made unnecessary by Work performed by Design Build Entity. If applicable, Design Build Entity shall advise Judicial Council in writing of all equipment and materials that will be replaced at the Site and Judicial Council shall, within five (5) business days of Design Build Entity's notice, designate in writing to Design Build Entity which replaced equipment and materials should not be disposed of off-Site by Design Build Entity (the "Retained Items"). It is understood and agreed to by both Parties that Judicial Council shall be responsible for, and designate the location and storage for, the Retained Items. Design Build Entity shall be responsible for the disposal of replaced equipment and materials, except for the Retained Items. Design Build Entity shall use commercially reasonable efforts to remove the Retained Items in such a manner as to avoid damage thereto and/or the Site, or if it is unreasonable to avoid damage altogether, to minimize any damage.
21. **Conflict of Interest Policy for Design Build Projects.** Judicial Council adopted its "Conflict of Interest Policy for Design Build Projects" on November 19, 2021, in compliance with Government Code section 70398(b)(1) ("Conflict Policy"). By entering into the Agreement, Design Build Entity confirms that it reviewed the Conflict of Interest Policy for Design Build Projects and agrees that it has taken all steps required therein and obtained all necessary advice to satisfy the Design Build Entity that it can enter into this Agreement consistent with the Conflict of Interest Policy for Design Build Projects.
22. **Certification.** By signing this Agreement, Design Build Entity certifies that all representations made by, and all information provided by, Design Build Entity, in this Agreement and Contract Documents is true, complete, and correct, to the best of its knowledge as of the Effective Date. If, at any time after signing this Agreement, it becomes known that any representation or information in this Agreement is no longer true, complete, and correct, Design Build Entity shall immediately notify Judicial Council and provide updated or differing information.
23. **Notices.** All notices, requests, demands, and other communications required by the Contract Documents must be in writing and will be deemed to have been duly given when hand delivered, or five (5) Days after being deposited in the United States mail (if mailed by certified or registered mail, with return receipt requested, with postage prepaid), to the following addresses:

**Notice to Judicial Council:**

Judicial Council of California  
Facilities Services  
Attn: [REDACTED], Project Manager  
455 Golden Gate Avenue, 8<sup>th</sup> Floor  
San Francisco, CA 94102

A copy of all notices relating to  
termination or alleged breaches of the  
Agreement shall be directed to:

Judicial Council of California  
Branch Accounting and Procurement  
Attn: Manager, Contracts  
455 Golden Gate Avenue, 6<sup>th</sup> Floor  
San Francisco, CA 94102-3688

**Notice to Design Build Entity:**

[Design Build Entity Name]  
Attn: [Insert Name, Title]  
[Design Build Entity Street Address]  
[Design Build Entity City, State and ZIP  
Code]

24. **Governing Law.** The Contract Documents shall be governed by the laws of the State of California.

25. **Counterparts and Electronic Signatures.** This Agreement may be executed and delivered in any number of counterparts, each of which shall be deemed to be an original, and all of which shall constitute one and the same instrument. Facsimile, documents executed, scanned, and transmitted electronically, and electronic signatures shall be deemed original signatures for purposes of this Agreement and all matters related thereto, with such facsimile, scanned, and electronic signatures having the same legal effect as original signatures.
26. **Integration.** The Agreement, and all Contract Documents and attachments included herein, represent a complete and exclusive statement of the Parties' respective obligations and constitute the complete agreement between the Parties that supersedes any previous agreements or understandings, oral or written, with respect to any subject matter referenced herein. No extrinsic evidence whatsoever shall be admissible to interpret, add to, vary, supplement, or contradict the terms of this completely integrated written agreement.
27. **Modifications.** This Agreement may be amended or modified only by an Amendment executed by both Parties, or to the extent applicable, a Change Order.
28. **Incorporation of Recitals and Exhibits.** The above recitals and any document identified as an Exhibit are incorporated herein by reference into the Agreement and Contract Documents as though fully set forth herein.

**THIS AGREEMENT** is entered into by the Parties as of the Effective Date.

**JUDICIAL COUNCIL OF CALIFORNIA**

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

**DESIGN BUILD ENTITY**

\_\_\_\_\_  
(Name of Firm)

\_\_\_\_\_  
(Type of Entity)

By: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

**Design Build Entity's California Contractor  
License(s):**

\_\_\_\_\_  
(Name of Licensee)

\_\_\_\_\_  
(Classification and License Number)

\_\_\_\_\_  
(Expiration Date)

**Design Builder's Employer Identification No:**

\_\_\_\_\_  
(XX-XXXXXXX)

**Type of Business Entity:**

\_\_\_\_ Individual  
\_\_\_\_ Sole Proprietorship  
\_\_\_\_ Partnership  
\_\_\_\_ Limited Partnership  
\_\_\_\_ Corporation  
\_\_\_\_ Limited Liability Company  
\_\_\_\_ Other: \_\_\_\_\_

**GENERAL CONDITIONS  
(Design Build Contract Documents)  
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**EXHIBIT A**  
**GENERAL CONDITIONS**

## **DEFINITIONS**

The following defined terms shall have the same meaning as used throughout the Contract Documents, except where a separate and/or more specific definition is provided.

- 1.1. Acceptance.** The terms “Acceptance of the Work,” “Acceptance,” or “Accept(ed)” mean written acceptance of the Work in compliance with the Agreement by Judicial Council through Judicial Council Representative, Administrative Director, or the Administrative Director’s designee, whichever is applicable.
- 1.2. Administrative Director.** The term “Administrative Director” means the Administrative Director of Judicial Council.
- 1.3. Adverse Weather.** The term “Adverse Weather” means weather that satisfies all of the following conditions:
  - 1.3.1.** Unusually severe precipitation, sleet, snow, hail, heat, cold, wind, air quality, or fog conditions in excess of the norm for the location and time of year it occurred, as determined by sources mutually agreed to by Judicial Council and Design Build Entity, or, if none can be mutually agreed upon, as indicated by the National Oceanic and Atmospheric Administration (NOAA): <https://www.ncdc.noaa.gov/>; or the California Air Resources Board for air quality, as applicable.
  - 1.3.2.** Unanticipated and beyond what is considered as normal inclement weather at the Project location for the last 10 years and, if precipitation, where at a minimum the rainfall exceeds one-tenth (0.10) of an inch or more in a 24-hour period at the weather station closest to the Site, as measured by the National Oceanic and Atmospheric Administration, or if air quality, the Current AQI Category for PM<sub>2.5</sub> exceeds 300 for more than one hour during regular working hours.
  - 1.3.3.** Occurring at the Site.
- 1.4. AED.** The term “AED” means and refers to the Association of Equipment Distributors.
- 1.5. Agreement.** The “Agreement” is part of the Contract Documents and means the Agreement between Judicial Council and Design Build Entity for Design Build Entity’s Work on the Project to which these General Conditions are attached as **Exhibit A**.
- 1.6. Allowance(s).** The term “Allowance(s)” means an allocation(s) by Judicial Council of the Total Contract Amount to cover a scope(s) of Construction Work that is not known or could not be specified sufficiently at the time the Agreement is entered. Also referred to as “Judicial Council Allowance(s)”.
- 1.7. Allowance Work.** The term “Allowance Work” means Work performed by Design Build Entity and/or its Subcontractors (including Sub-Subcontractors) as part of the scope of a Judicial Council Allowance as defined in these General Conditions.
- 1.8. Amendment.** The term “Amendment” means a document executed by Judicial Council and Design Build Entity amending identified terms and conditions of the Agreement or providing for adjustments to the Total Contract Amount or Contract Time.
- 1.9. Applicable Code Requirements.** The term “Applicable Code Requirements” means all laws, statutes, most recent building codes, ordinances, rules, regulations, standards, and lawful orders of all Authorities Having Jurisdiction over Judicial Council, Design Build Entity, any Subcontractor, the Project, the Site, the Work, or the performance of the Work.
- 1.10. Application for Payment.** The term “Application(s) for Payment” means a submittal in a form acceptable to Judicial Council wherein Design Build Entity requests payment for

certain portions of completed Work, consistent with the requirements of these General Conditions.

- 1.11. **Approval.** The term “Approval” means Judicial Council’s written approval of Deliverables.
- 1.12. **Architect of Record.** The term “Architect of Record” means the professional architect who is a member of the Design Build Entity and is appropriately licensed by the State of California, whose stamp will appear on the Construction Drawings, and who will oversee the preparation and coordination of the Drawings for the Project and provide design and construction documentation, as well as construction administration services, for the Project.
- 1.13. **As-Built Drawings.** The term “As-Built” Drawings means any document prepared and submitted by Design Build Entity that details the actual construction performed during the Construction Work, including any significant changes or clarifications resulting from the Construction Work and Changed Work authorized by Change Order.
- 1.14. **Authorities Having Jurisdiction.** The terms “Authority(ies) Having Jurisdiction” or “AHJ(s)” means municipal, county, state, regional, or federal public authorities responsible for enforcing Applicable Code Requirements, performing inspections of the Work, which may require information or the filing of Drawings, Specifications, and applications, and/or that may provide approvals relating to the Project or the Work. These authorities include, without limitation, Judicial Council, the State Fire Marshal, DSA, Board of State and Community Corrections, and any other agency charged with regulatory compliance and/or oversight in connection with the Project, the Site, the Work, or performance of the Work.
- 1.15. **Beneficial Use.** The term “Beneficial Use” means Judicial Council’s occupancy or use of any part of the Work, when the Project in its entirety or partially, as applicable, is: (i) ready for use or occupancy for the purposes of normal courtroom and court office operations, except for Punch List items; and (ii) has met all the requirements outlined in the “Beneficial Use” section of these General Conditions.
- 1.16. **Best Value.** The term “Best Value” means a value determined through an objective evaluation of criteria relating to price, features, functions, life-cycle costs, experience, and past performance. A Best Value determination may not always be the lowest price, and may include, without any limitation, the lowest cost proposal meeting the interests of Judicial Council and the objectives of the Project; the best proposal for a stipulated sum established by Judicial Council; or the consideration of price and other specified factors.
- 1.17. **BMP.** The terms “Best Management Practices” or “BMPs” mean pollution control measures designed to prevent or reduce the effects of pollutants on state waters from industrial stormwater discharges in connection with the Site’s SWPPP. Silt fences, inlet protection, and site-stabilization techniques are typical BMPs on a construction site.
- 1.18. **Builder’s Risk Insurance.** The term “Builder’s Risk Insurance” means the insurance that will be initiated and administered by Judicial Council to provide coverage during Design Build Entity’s performance of Construction Work during the Project. The Builder’s Risk Insurance coverage applicable to the Project is included in the Performance Criteria Documents and is incorporated by reference into these General Conditions. It is a separate policy as part of the Owner-Controlled Insurance Program.
- 1.19. **Building Information Model.** The terms “Building Information Model,” or “BIM,” or “Model” mean a parametric computable representation of the design of the Project developed by Design Build Entity, including architectural, structural, mechanical, electrical, plumbing, and information technology details. These terms also include the primary design model or models and all linked, related, affiliated, or subsidiary models developed for design, detailing, fabrication, or construction of the Project.

- 1.20. Building Official.** The term “Building Official” means the Quality Compliance Manager appointed by Judicial Council who is charged with the administration and enforcement of the California Building Standards Code on Judicial Council projects.
- 1.21. Bulletin.** A written document issued by the Architect of Record to communicate important updates, design changes, or project safety information to all relevant stakeholders, including the project team, Subcontractors, and suppliers.
- 1.22. Certificate of Acceptance.** The term “Certificate of Acceptance” means the certificate in **Exhibit S** to the Agreement that Judicial Council issues to Design Build Entity to evidence that the Project has achieved Final Completion.
- 1.23. CEQA.** The term “CEQA” means the California Environmental Quality Act, Public Resources Code section 21000 et seq.
- 1.24. Change Order.** The term “Change Order” means a written order approved and signed by Judicial Council, on Judicial Council’s form, that adjusts the Total Contract Amount, Contract Time, or both, because of Change Work. A Change Order shall alter the Contract Documents as defined in the Change Order and shall be the method used to adjust the Contract Documents during Construction Work, but not during the Design Work.
- 1.25. Change Work.** The term “Change Work” means Work that satisfies one or more of the conditions for Change Work as set forth in these General Conditions.
- 1.26. Claim.** The term “Claim” means a written demand or assertion by Design Build Entity seeking either an adjustment or interpretation of the terms of the Contract Documents, a payment, an extension of time, or another relief with respect to the Contract Documents, including a determination of unresolved Disputes between Judicial Council and Design Build Entity arising out of, or related to, the Contract Documents or the performance of the Work.
- 1.27. Closeout Documentation.** The term “Closeout Documentation” shall include the following, without limitation:
- 1.27.1. A full set of Record Documents consistent with the General Conditions, Division 01 Sections, and Technical Specifications, which shall include, without limitation:
    - 1.27.1.1. Final As-Built;
    - 1.27.1.2. Final Record Model; and
    - 1.27.1.3. Final As-Built Schedule
  - 1.27.2. All Operations and Maintenance manuals and information as required herein;
  - 1.27.3. All Warranties, as further defined herein;
  - 1.27.4. All training documentation as required by Division 01 Sections and Technical Specifications; and
  - 1.27.5. All verified report(s) for all scope(s) of Work as required for Completion of the Project.
- 1.28. Code Analysis Package:** The term “Code Analysis Package” means a component of the Package 1 OSFM permit process submitted by Design Build Entity as part of the Package I Design – Code Analysis/Grading/Utilities submittal.

- 1.29. Code Compliance Review(s).** The term “Code Compliance Review(s)” means the review(s) of the Design Work performed by Authorities Having Jurisdiction to determine that the Design Work complies with Applicable Code Requirements.
- 1.30. Compensable Delay.** The term “Compensable Delay” means a delay that entitles Design Build Entity to an adjustment of the Total Contract Amount and an adjustment to the Contract Time pursuant to the Contract Documents, and excuses Design Build Entity from an assessment of Liquidated Damages for the specific delay period approved as Compensable Delay.
- 1.31. Commissioning.** The term “Commissioning” means a process for achieving, validating, and documenting that the Project and its systems are planned, designed, installed, tested, and capable of being operable and maintained to perform in conformity with the Contract Documents, and to meet the sustainability and code requirements set forth in the Contract Documents (including the Performance Criteria Documents). Design Build Entity’s obligations for Commissioning are set forth in these General Conditions and Division 01 Sections.
- 1.32. Confidential Administrative Records.** The term “Confidential Administrative Record(s)” means all Design Materials, Record Documents, notes, and Shop Drawings prepared by Design Build Entity, including those in electronic form, which are confidential Judicial Council Administrative Records exempt from public disclosure pursuant to California Rules of Court, Rule 10.500 (f)(6).
- 1.33. Construction Administration.** The term “Construction Administration” means all support services performed by Design Build Entity, the Architect of Record, Design Professionals, and consultants, and the employees and consultants of each, to administer the Project during the Construction Work to ensure that the Construction Work complies with the Construction Documents, including, without limitation, reviewing, pricing, and responding to change orders from Subcontractors; processing submittals; responding to requests for information from Subcontractors concerning the Construction Documents; price estimating; schedule reviews; delay analyses; quality control; coordination preparation and review of the Punch List; preparation and review of Record Documents and Closeout Documents; review of Subcontractor applications for payment; and meetings.
- 1.34. Construction Drawings.** The term “Construction Drawings” means the permitted Drawings for the Project that are prepared by Design Build Entity and approved by Judicial Council.
- 1.35. Construction Documents.** The term “Construction Documents” means the Construction Drawings and permitted Specifications, as well as Shop Drawings, reports, schedules, diagrams, and Samples, fully completed by Design Build Entity to perform the Construction Work for the Project, and that: (i) comply with all requirements of the Contract Documents; (ii) are approved by the Architect of Record and any applicable Design Professional; (iii) are approved by Judicial Council (as applicable); and (iv) have received all required approvals and permits from Authorities Having Jurisdiction (as applicable).
- 1.36. Construction Manager.** The term “Construction Manager” means Judicial Council’s on-Site construction management agent for the Project. The Construction Manager’s authority is limited to providing direction and making decisions with respect to the Project to the extent that such direction does not, without Judicial Council’s prior written authorization: (1) involve an adjustment to the Total Contract Amount or the Contract Time, except that Construction Manager may review, negotiate, and reject Proposed Change Orders on Judicial Council’s behalf; or (2) substantively change the scope or Work of the Project.



- 1.37. Construction Work.** The term “Construction Work” means the portion of the Work where Design Build Entity provides labor, materials, furnishings, fixtures, equipment, and services to physically construct the Project as set forth in the Contract Documents, which shall commence when Judicial Council provides written authorization for Design Build Entity to proceed with all, or a part, of any Construction Work. Construction Work performed by Design Build Entity’s own forces or employees may be referred to as “Self-Performed Construction Work” and Construction Work performed by Subcontractors’ employees or forces (including Sub-Subcontractors) may be referred to as “Subcontractor Performed Construction Work.”
- 1.38. Contract Documents.** The term “Contract Documents” shall have the same meaning as in the “Contract Documents” section of the Agreement.
- 1.39. Contract Schedule.** The term “Contract Schedule(s)” means the Judicial Council-approved Project schedule that is compliant with the requirements of the Contract Documents, and that includes all activities and Project milestones, including durations, logic, resources, and status for each activity as required for each phase, to complete the Project within the Contract Time. Design Build Entity must provide monthly updates to the Contract Schedule consistent with the requirements of the Contract Documents.
- 1.40. Contract Time.** The term “Contract Time” means the number of Days set forth in the Agreement within which Design Build Entity must achieve Final Completion of the Work, as adjusted by Change Order or Amendment (as applicable), if any.
- 1.41. Contingency.** The term “Contingency” means Judicial Council Contingency which may only be used pursuant to the requirements of the Contract Documents.
- 1.42. Corrective Work.** The term “Corrective Work” means all Work attributable to replacement, retrofitting, or other restorative or re-do Work required in order to bring any portion of the Work into compliance with the Contract Documents.
- 1.43. Court.** The term “Court” means the Superior Court that is the subject of the Project.
- 1.44. Criteria Architect.** The term “Criteria Architect” means the architectural firm engaged as an agent by Judicial Council to prepare the Performance Criteria Documents, and to review all Design Materials, including those prepared by Design Build Entity, to ensure compliance with the Performance Criteria Documents. The Criteria Architect’s team may include additional consultants to aid in review of the Design Materials for adherence to the Performance Criteria Documents.
- 1.45. Critical Path Method.** The terms “Critical Path Method” or “CPM” mean a process for building a construction project schedule and analyzing it to determine the most critical tasks that most affect the scheduled completion date. These critical tasks cannot be delayed without changing the overall schedule.
- 1.46. Current Air Quality Index (Current AQI).** The terms “Current Air Quality Index” or “Current AQI” mean the method used by the U.S. Environmental Protection Agency (U.S. EPA) to report air quality on a real-time basis. Air Quality Index (AQI) Category for PM<sub>2.5</sub> (fine, inhalable particles with diameters that are generally 2.5 micrometers and smaller), above 300.
- 1.47. Day.** The term “Day” means calendar Day, unless otherwise specifically provided.
- 1.48. Defective Work.** The term “Defective Work” means Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to, or deviates from, the requirements of the Contract Documents, directives of Judicial Council, Construction Manager and/or Project Inspector, or the requirements of any inspection, reference standard, test, or

approval specified in the Contract Documents, including those of any Authority Having Jurisdiction.

- 1.49. Deliverable.** The term “Deliverable” means any tangible item prepared and/or provided by Design Build Entity under the Contract Documents.
- 1.50. Design Build Entity.** The terms “Design Build Entity” or “DBE” mean the corporation, limited liability company, partnership, joint venture, or other legal entity that is appropriately licensed and capable of providing, and has agreed to provide, all contracting, architectural, and engineering Work required to design and construct the Project consistent with the Contract Documents.
- 1.51. Design Build Entity’s General Conditions.** The term “Design Build Entity’s General Conditions” means the costs for activities, facilities, and services required to support the Construction Work for the Project and manage the Site as identified in the Design Build Entity’s Price Proposal (**Exhibit O**), which shall include, at minimum, the items identified in the Design Build General Conditions Matrix, (**Exhibit E**), which is incorporated herein by reference.
- 1.52. Design Deliverable Requirements.** The term “Design Deliverable Requirements” mean the requirements set forth in **Exhibit D** to the Agreement that apply to all Deliverables (including, without limitation, Drawings and Specifications) produced by Design Build Entity during the Design Work.
- 1.53. Design Development.** The terms “Design Development” or “Design Development Work” means Design Build Entity’s Work for Design Development as set forth in these General Conditions, which shall commence with Judicial Council’s written authorization to begin preparation of Design Development Documents.
- 1.54. Design Development Documents.** The term “Design Development Documents” means all Deliverables that Design Build Entity is required to submit to Judicial Council as specifically identified in these General Conditions, and any other Deliverable required by the Contract Documents for Design Development Work.
- 1.55. Design Materials.** The term “Design Materials” means any and all documents, shop drawings, electronic information, including computer programs and computer generated materials, data, plans, Drawings, Specifications, sketches, illustrations, descriptions, models (including the BIM) and other information developed, prepared, furnished, delivered or required to be delivered by, or for, Design Build Entity to Judicial Council under the Contract Documents, or developed or prepared by, or for, Design Build Entity specifically to discharge its duties under the Contract Documents.
- 1.56. Design Professional.** The term “Design Professional” means individuals or entities that will provide Design Build Entity with architectural, engineering, and other professional services required for the coordinated design of the Project, and the administration of construction, which are independent consultants to Design Build Entity. Design Professionals include those Design Professionals designated by Design Build Entity as Key Personnel.
- 1.57. Design Work.** The term “Design Work” means the portion of the Work consisting of the design services performed by Design Build Entity during Design Development Work, and Working Drawings Work, including Preconstruction Services, in connection with the design of the Project as set forth in the Contract Documents.
- 1.58. Direct Labor Costs.** The term “Direct Labor Costs” means costs for Design Build Entity’s and/or Subcontractor(s)’ labor that includes the necessary payroll cost for labor, including first level supervision, directly engaged in performance of the changes in the categories listed in Proposed Change Order.

- 1.59. Disease.** The term “Disease” means infectious and communicable disease in any form, whether bacterial or viral, including, without limitation, MSRA, influenza, COVID-19, and/or any similar virus or derivative strain.
- 1.60. Dispute.** The term “Dispute” means a request, demand, or assertion by Design Build Entity during performance of the Work regarding money and/or time adjustments with which Judicial Council does not agree. A Dispute is not a claim.
- 1.61. Direct Cost of Work.** The term “Direct Cost of Work” means all of Design Build Entity’s actual and direct costs of any Work performed, without mark-up. The Direct Cost of Work includes, as applicable:
- 1.61.1. Total Subcontractor(s)’ costs, fees, and charges for Subcontractor Performed Construction Work, including Subcontractor non-OCIP insurance and bond costs (or Design Build Entity provided contractor default insurance protection in lieu of Subcontractor bonds), and all other costs necessary for Subcontractor(s) to perform Work pursuant to the Contract Documents; and
  - 1.61.2. Total Design Build Entity’s costs, fees, charges for Self-Performed Construction Work and all other costs necessary for Design Build Entity to Work pursuant to the Contract Documents; and
  - 1.61.3. Fees, permits, licenses, inspections, and costs for approvals of Authorities Having Jurisdiction that the Contract Documents identify as Design Build Entity’s responsibility.
- 1.62. Drawings.** The term “Drawings” means the graphic and pictorial portions of the Deliverables showing the design, location, and dimensions of the Work, generally including, without limitation, plans, elevations, sections, details, schedules, and diagrams.
- 1.63. DSA.** The term “DSA” refers to the Division of the State Architect.
- 1.64. DVBE.** The term “DVBE” means Disabled Veteran’s Business Enterprise as set forth in Military and Veterans Code section 999, et seq.
- 1.65. Effective Date.** The term “Effective Date” means the date on which the Agreement commences as specified on the Agreement Coversheet..
- 1.66. Emergency.** The term “Emergency” means 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.
- 1.67. Error(s) and Omission(s).** The term “Error(s) and Omission(s)” means negligent acts or omissions committed by Design Build Entity, or its Design Professionals, Subcontractors, and/or consultants in the performance of the Design Work.
- 1.68. Equal.** The terms “Equal,” “Approved Equal,” “Or Equal,” or “Equivalent” mean a material, equipment, or method approved by Judicial Council for use in the Work, as being acceptable as an equivalent alternative in essential attributes to the material, equipment, or method specified in the Contract Documents.
- 1.69. Excusable Delay.** The term “Excusable Delay” means a delay that entitles Design Build Entity to an adjustment of the Contract Time but not an adjustment of the Total Contract Amount, pursuant to the General Conditions.
- 1.70. Exhibit(s).** The term “Exhibit(s)” means the exhibits that are identified in, and are a part of, the Agreement.

- 1.71. Extra Work.** The term “Extra Work” means Work requested by Judicial Council that is beyond, or in addition to, the Work required by the Contract Documents. Extra Work related to Design Work shall be limited to revisions in the Design Development Documents, or Working Drawings, caused by: (i) Judicial Council direction that is inconsistent with prior approvals or instructions given by Judicial Council; (ii) Judicial Council-directed changes to the design or scope of Design Work, including costs for permits required by any change; (iii) Judicial Council-directed adjustments to the Stipulated Sum (if agreed to by the Parties) that require Design Build Entity to materially revise the scope of Construction Work for the Project; and/or (iv) material adjustments to the Performance Criteria. However, no Design Work shall be considered Extra Work if the Design Work is in any way caused by, or relates to, Errors or Omissions of Design Build Entity.
- 1.72. Field Directive.** The term “Field Directive” means a written order prepared and issued by Judicial Council Representative as necessary and appropriate under the circumstances, including, without limitation, when time is of the essence to direct an action in advance of finalizing a Change Order. A Field Directive shall be prepared on Judicial Council’s Field Directive form and signed by Judicial Council Representative and Design Build Entity, directing any Change Work. Field Directive(s) shall be finalized as a Change Order. Field Directives may be issued as set forth below:
- 1.72.1. “Lump-Sum Field Directive(s)” in which Judicial Council sets forth the Change Work and requests that Design Build Entity submit a Proposed Change Order for the Change Work proposing a lump-sum for the Change Work; or
- 1.72.2. “Time and Materials Field Directive(s)” in which Judicial Council directs Design Build Entity to perform the Change Work on a time and material basis consistent with the requirements of these General Conditions.
- 1.72.3. If Design Build Entity does not agree with the terms of a Field Directive, Judicial Council may issue a unilateral Field Directive as indicated in the “Field Directive” provisions of these General Conditions.
- 1.73. Final Completion.** The terms “Final Completion,” or “Finally Complete(d),” or “Completion,” or “Complete(d)” mean when Design Build Entity has completed all Work for the Project consistent with all requirements of the Contract Documents, including, without limitation, the requirements of Article 21.
- 1.74. Float.** The term “Float” means the amount of time that a non-critical Work activity can be delayed or extended without delaying a critical path activity or the Contract Time.
- 1.75. Force Account Work.** The term “Force Account Work” means Change Order Work for Time & Material (T&M) that occurs when the entire cost of the proposed change cannot be estimated. In this case, Design Build Entity is to track its time spent working on the change, as well as any costs associated with needed materials or equipment.
- 1.76. Force Majeure.** The terms “Force Majeure” or “Force Majeure Event” mean an event that prevents Judicial Council’s or Design Build Entity’s performance and is beyond the reasonable contemplation of the Parties as of the Effective Date, including but not limited to: fires; floods; lightning; explosion; windstorms; tornadoes; earthquakes; other natural catastrophes which neither party can prevent; acts of nature or public enemy (including acts of terrorism); war (declared or undeclared); riot or similar civil disturbance; tariffs, blockade; insurrections; revolution; epidemics; pandemics; viral outbreaks; quarantine restrictions; strikes; lockouts and other labor disputes; fuel shortages; or freight embargoes. Force Majeure may include the actions or omissions of third parties not under control of Design Build Entity or Judicial Council.

- 1.76.1. Notwithstanding the preceding, Force Majeure Events shall not include (a) strikes or lockouts involving Design Build Entity or Design Build Entity's employees, (b) strikes or lockouts involving Design Build Entity's Subcontractors or Subcontractors' employees unless Design Build Entity has taken all diligent efforts to avoid or minimize the strikes or lockouts.
- 1.76.2. Notwithstanding the foregoing, Design Build Entity agrees that the Total Contract Amount and Contract Time is based on Design Build Entity's full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction Site safety in connection with any Disease, or derivative strain thereof, known to the Parties as of the Effective Date. Therefore, any delay, including, but not limited to, supply chain delay, associated with any Disease or derivative strain thereof, known to the Parties as of the Effective Date, or any federal, state, or local order relating thereto, shall not be considered a Force Majeure Event.
- 1.77. Furniture, Fixtures, and Equipment.** The terms "Furniture, Fixtures, and Equipment" or "FF&E" mean movable property required for the Court's function which may be secured to the structure if required by code or has no permanent connection to the structure of the building. The following are non-exhaustive definitions of "Furniture," "Fixtures," and "Equipment":
- 1.77.1. "Furniture" includes freestanding and modular systems furniture (MSF), including, without limitation: desks, tables, chairs, shelving, storage and file cabinets, miscellaneous furniture for chambers and courtrooms, chairs and tables for conference, support, assembly areas, filing, clerical, and other functional spaces. Furniture **excludes** expendable items which may be required for day-to-day activities such as desk or chair pads, glass desk protectors, desk lamps, trash cans, office supplies, etc.
- 1.77.2. "Fixtures" includes any other non-furniture related items which are required for the functional use of the building but are neither "Furniture" nor "Equipment," including, without limitation: window treatments, marker boards, bulletin boards, shelving, mailbox cabinets in the mailroom, gun lockers, or lockers and benches.
- 1.77.3. "Equipment" includes building electronics and other mechanical or electrical items which are integral or essential to the operation of the building and the functioning of the Court, including, without limitation: automatic sliding gates, swing gates, and lifting arms at parking lot entrance(s), parking control equipment, technology, and security equipment.
- 1.78. Guarantee To Repair Period.** The term "Guarantee to Repair Period" shall have the same meaning as provided for in these General Conditions in the section entitled "Guarantee and Warranty for Construction Work."
- 1.79. Hazardous Material.** The term "Hazardous Material(s)" means without limitation: (i) 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," a "hazardous waste," a "hazardous material," a "radioactive waste," an "infectious waste," a "biohazardous waste," a "toxic substance, pollutant, or contaminant"; (ii) petroleum, natural gas, liquefied natural gas, synthetic gas usable as fuel; (iii) "hazardous substance" as defined in Section 25281(h) of the California Health and Safety Code; (iv) "waste" as defined in Section 13050(d) of the California Water Code; (v) asbestos containing materials; and (vi) 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(s)” does 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.

- 1.80. Indemnified Parties.** The term “Indemnified Parties” means the State, Judicial Council, the State’s trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and all of their officers, agents, contractors, representatives, volunteers, and employees.
- 1.81. Judicial Council.** The term “Judicial Council” means the State of California acting through Judicial Council of California, who is the owner of the Project.
- 1.82. Judicial Council Contingency.** The term “Judicial Council Contingency” means an amount set by Judicial Council that is not part of the Stipulated Sum and which Judicial Council may use to pay for Change Orders for Construction Work, in Judicial Council’s sole and absolute discretion. Judicial Council Contingency shall be for the sole and exclusive use and benefit of Judicial Council.
- 1.83. Judicial Council OSFM Code Analysis Checklist.** The term “OSFM Code Analysis Checklist” means the checklist included as a reference document, as part of the Judicial Council Provided Information in the Project Documents, that Design Build Entity may utilize to help ensure that the Deliverables prepared during Design Work comply with the OSFM Code Compliance Package and code requirements.
- 1.84. Judicial Council Provided Information.** The term “Judicial Council Provided Information” means the information provided for reference by Judicial Council to Design Build Entity which is not part of the Contract Documents, including, without limitation, reference information in the Project Documents issued with the RFP.
- 1.85. Judicial Council Representative.** The term “Judicial Council Representative” means the person authorized to act on behalf of Judicial Council during the Project as set forth in these General Conditions. Judicial Council Representative may also be the “Judicial Council Project Manager” who is a Judicial Council employee authorized to function as Judicial Council’s agent to oversee the design and construction of the Project. Judicial Council Project Manager oversees the work of the third-party Construction Manager, who is Judicial Council’s on-Site construction management agent. Judicial Council Representative may also refer to the Construction Manager.
- 1.86. Reserved.**
- 1.87. Key Personnel.** The term “Key Personnel” means the persons identified in **Exhibit H**.
- 1.88. Lean Construction Institute.** The term “Lean Construction Institute” means the member-based organization based in Virginia that assists members in delivering projects using Lean Project Delivery Methods.
- 1.89. Lean Project Delivery Methods.** The term “Lean Project Delivery Methods” means delivery methods, as defined by the Lean Construction Institute, that include, without limitation, the concepts of open communications, collaboration, commitment based (pull) scheduling, Target Value Design, and quality and reduction in rework.
- 1.90. LEED.** The term “LEED” means the Leadership in Energy and Environmental Design Green Building Rating System™ of the United States Green Building Council, a national benchmark for the design, construction, and operation of high-performance green buildings.
- 1.91. Life Cycle Cost Analysis.** The term “Life Cycle Cost Analysis(es)” means an economic

assessment of an item, system, or facility by considering all significant costs of ownership over an economic life, expressed in terms of equivalent costs.

- 1.92. **Liquidated Damages.** The term “Liquidated Damages” means the damages to which Judicial Council shall be entitled, and which Design Build Entity agrees to forfeit, for each and every Day beyond the Contract Time allocated for the Project, consistent with the terms of the Agreement.
- 1.93. **Mark-Up.** The term “Mark-Up” means the full amount of compensation that Design Build Entity is entitled to for mark-up on Extra Work for overhead and profit, that is not included in the Direct Cost of Work of Extra Work. Mark-Up shall instead be calculated as set forth in the “Mark-Up for Direct Cost of Work for Extra Work” section in these General Conditions.
- 1.94. **Materials and Equipment Costs.** The term “Materials and Equipment Costs” means the costs identified in the “Materials and Equipment” section of these General Conditions.
- 1.95. **Monthly Compliance Report.** The term “Monthly Compliance Report” means the monthly report submitted to Judicial Council by Design Build Entity that must contain information demonstrating that Design Build Entity and its Subcontractors at every Tier have complied with all the requirements of Chapter 2.9 (Skilled and Trained Workforce Requirements) of Part 1 of Division 2 of the Public Contract Code (sections 2600 - 2603).
- 1.96. **Not Yet Authorized.** The terms “Not Yet Authorized” or “NYA” mean the Work for a phase, including the compensation for that phase, which may be included in the Agreement, but for which Judicial Council has not yet authorized Design Build Entity to begin performing. NYA items of Work, and associated compensation, are intended to be within the description of the scope of the Work but shall only become part of the Work if Judicial Council authorizes the phase, and compensation for that phase, in which the Not Yet Authorized item or Work is included.
- 1.97. **Notice to Proceed.** The term “Notice to Proceed” means a written notice issued by Judicial Council to Design Build Entity authorizing and directing Design Build Entity to begin the Work, or any phase(s) of the Work, to the extent described in the Notice to Proceed and pursuant to the time indicated in the Notice to Proceed. Judicial Council may issue separate Notices to Proceed for separate phases or portions of the Work.
- 1.98. **Office of the State Fire Marshal.** The terms “Office of the State Fire Marshal,” or “State Fire Marshal,” or “OSFM” shall refer to the Office of the State Fire Marshal, which is an Authority Having Jurisdiction over fire, life, and safety in the design and construction of the Project as set forth in Part 2, Chapter 1 (commencing with Section 13100) of Division 12 of the Health and Safety Code.
- 1.99. **Operations & Maintenance.** The terms “Operations & Maintenance” or “O&M” mean the functions, duties, and labor associated with the daily operations and normal repairs, replacement of parts and structural components, and other activities needed to preserve an asset so that it continues to provide acceptable services and achieves its expected life.
- 1.100. **Owner-Controlled Insurance Program.** The terms “Owner-Controlled Insurance Program” or “OCIP” mean a project-specific insurance program initiated and administered by Judicial Council, during the Construction Work, to provide any or all of the insurance requirements that will insure the interest and activities of Design Build Entity or any of its Subcontractor(s) or their Sub-Subcontractor(s) performing Work at, or incidental to, the Project Site. The OCIP applicable to the Project is included in the Performance Criteria Documents and is incorporated by reference into these General Conditions.



- 1.101. OCIP Safety Requirements Manual.** The term “OCIP Safety Requirements Manual” means the manual setting forth the minimum safety requirements of the OCIP applicable to the Project, with which Design Build Entity and all Subcontractors of every Tier must comply. The OCIP Safety Requirements Manual is included with the OCIP in the Performance Criteria Documents and is incorporated by reference into these General Conditions.
- 1.102. Party(ies).** The terms “Party” or “Parties” mean Judicial Council and/or Design Build Entity when referred to individually or collectively as set forth in the Agreement.
- 1.103. Peer Review(s) and Peer Reviewer(s).** The term “Peer Review(s)” means the independent review(s) of Design Build Entity’s Drawings and Specifications conducted for Judicial Council by individual(s) designated by Judicial Council, as specifically indicated in the Contract Documents. Peer Reviews may relate to a specific scope of Design Work or specific design discipline. The individual designated to perform the Peer Review shall be a “Peer Reviewer(s).”
- 1.104. Performance Criteria.** The term “Performance Criteria” means the requirements developed by or for Judicial Council to describe Judicial Council’s program requirements and objectives for the Project, including, as appropriate, use, space, price, durability, production standards, ingress and egress requirements, expandability requirements, or other criteria for the intended design and use of the Project. Performance Criteria may include 100% Schematic Design (Bridging) documents, performance-oriented preliminary drawings, design criteria, standards, performance-oriented specifications, and/or other documents provided to Design Build Entity by Judicial Council that establish the Project’s basic elements and scale and their relationship to the Site. The Performance Criteria is set forth in the Performance Criteria Documents.
- 1.105. Performance Criteria Documents.** The term “Performance Criteria Documents” means the following documents, and the Performance Criteria identified therein, and any appendices thereto, *which are provided to Design Build Entity as Exhibit AA (except for Division 01 Sections provided separately)*:
- 1.105.1. Architectural Program Narrative;
  - 1.105.2. Room Data Sheets;
  - 1.105.3. Building Area Calculations (2018 BOMA);
  - 1.105.4. Design Criteria Narratives;
  - 1.105.5. Site Plan including utility locations;
  - 1.105.6. 100% Schematic Design (Bridging) Documents;
  - 1.105.7. CEQA documentation;
  - 1.105.8. Judicial Council Security Design Requirements;
  - 1.105.9. Division 01 Sections;
  - 1.105.10. Technical Requirements and Guidelines for Building Systems;
  - 1.105.11. OCIP Manual and OCIP Safety Requirements Manual; and
  - 1.105.12. FF&E Responsibility Matrix.
- 1.106. Performance Criteria Review(s).** The term “Performance Criteria Review” means the review of the Design Work by Judicial Council’s designee to determine that Design Build

Entity's design complies with the Performance Criteria Documents and the overall design intent of Judicial Council.

**1.107. Reserved.**

**1.108. PPE.** The term "PPE" refers to personal protective equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses. These injuries and illnesses may result from contact with chemical, biological, physical, electrical, mechanical, or other workplace hazards.

**1.109. PM<sub>2.5</sub> Air Quality.** The term "PM<sub>2.5</sub> Air Quality" means fine particulate matter (PM<sub>2.5</sub>) that is an air pollutant, which is a concern for people's health when levels in air are high. PM<sub>2.5</sub> are tiny particles in the air that reduce visibility and cause the air to appear hazy when levels are elevated.

**1.110. Permit Abatement & Demolition (Optional per OSFM).** The terms "Permit Abatement & Demolition (Optional)" or "Abatement & Demolition Work" mean all Work related to the abatement and demolition of an existing structure that occur prior to Package I Work.

**1.111. Permit Package I.** The terms "Permit Package I" or "Package I Work" mean all Work for Design Development, including Code Analysis, performed by Design Build Entity to receive necessary permits to begin Site Work (Grading and Utility Work).

**1.112. Permit Package II.** The terms "Permit Package II" or "Package II Work" mean all Design Build Entity's Design Work to receive necessary permits to begin foundation/structural Work for the building.

**1.113. Permit Package III.** The terms "Permit Package III" or "Package III Work" mean all Design Build Entity's remaining Design Work to prepare final approved Working Drawings and Specifications, finalize Construction Documents, receive necessary permits to perform the Construction Work, perform the Construction Work, and achieve Final Completion.

**1.114. Preconstruction Services.** The term "Preconstruction Services" means the Work performed during the Design Work to refine Deliverables, review constructability and coordination of Design Materials, and to align Design Work with the Stipulated Sum, including, without limitation, value engineering, design compliance reviews, and procuring Subcontractors pursuant to the Contract Documents.

**1.115. Preliminary Schedule.** The term "Preliminary Schedule" means the preliminary Project schedule in **Exhibit C**. The Preliminary Schedule is provided by the Judicial Council for reference, to identify phasing and milestones.

**1.116. Product Data.** The term "Product Data" means illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Design Build Entity to illustrate or describe materials or equipment for some portion of the Work.

**1.117. Project.** The term "Project" means the total design and construction of the Project as set forth in the Agreement Coversheet.

**1.118. Project Inspector.** The terms "Project Inspector" or "IOR" mean the person or persons employed or engaged as an independent contractor(s) by Judicial Council to inspect the performance of the Work by Design Build Entity for compliance with the final, permitted Construction Drawings and Specifications that are part of the Construction Documents. The authority of the Project Inspector to monitor the performance of the Work will be

strictly limited to the authority specified in the Contract Documents and in Title 24 of the California Code of Regulations.

- 1.119. Project Management Information System (PMIS).** The term “Project Management Information System” and “PMIS” mean the web-based project management system, Procore, utilized by Judicial Council and the Design Build Entity for document control and management of its projects.
- 1.120. Project Manager.** The term “Project Manager” means the Design Build Entity’s full-time representative with authority to commit resources of Design Build Entity and the responsibility to monitor, manage, and administer all phases of the Project activities in support of completion of all construction. The Project Manager approved for the Project must be able to read, write, and verbally communicate in English. The Project Manager may not perform the Construction Work of any trade, pick up materials, or perform any Construction Work not directly related to the supervisions and coordination of the construction activities at the Project Site when the Construction Work is in progress.
- 1.121. Project Documents.** The term “Project Documents” means the documents issued by Judicial Council to Design Build Entity containing Judicial Council provided information and any other documents or information related to the Project.
- 1.122. Proposal.** The term “Proposal” means the document submitted to Judicial Council by Design Build Entity in response to the Request for Proposals for Design Build Services for the Project. The Proposal includes the “Design Build Entity’s Price Proposal,” attached hereto as **Exhibit O**.
- 1.123. Proposed Change Order.** The terms “Proposed Change Order” or “PCO” mean Design Build Entity’s submittal of all required information and documents necessary to support the issuance of a Change Order consistent with the “Changes of the Work” section of these General Conditions: (i) in response to Judicial Council’s proposed Change Work; or (ii) for Design Build Entity’s proposed Change Work. Judicial Council will dictate the numbering and sequence of PCOs.
- 1.124. Punch List.** The term “Punch List” means the list of items in need of correction or repair prepared by Design Build Entity in conjunction with the Construction Manager, Judicial Council, and Inspector of Record during the review of Construction Work that Design Build Entity considers complete.
- 1.125. Qualified SWPPP Developer (QSD).** The terms “Qualified SWPPP Developer” or “QSD” mean the individual who is authorized and certified to develop and revise SWPPPs.
- 1.126. Qualified SWPPP Practitioner (QSP).** The terms “Qualified SWPPP Practitioner” or “QSP” mean the individual assigned responsibility for non-stormwater and stormwater visual observations, sampling and analysis, and responsibility to ensure full compliance with the permit and implementation of all elements of the SWPPP, including the preparation of the annual compliance evaluation and the elimination of all unauthorized discharges.
- 1.127. Ready for Use.** The term “Ready for Use” means the Project in its entirety or partially, as applicable, is ready for use or occupancy for the purposes of normal courtroom and court office operations as set forth in the General Conditions, except for Punch List items, and all factors have been considered as outlined in the “Beneficial Use” section of these General Conditions.
- 1.128. Record Documents.** The term “Record Documents” means: (i) the final, permitted Working Drawings that were included in the Construction Documents; (ii) the As-Built Drawings; (iii) any annotated Performance Criteria Documents; and (iv) the Record Model.

- 1.129. Record Model.** The term “Record Model” means the version of the BIM that will be updated throughout Construction Work to reflect As-Built conditions of the Project.
- 1.130. Request for Information.** The terms “Request for Information” or “RFI” mean written request from Design Build Entity seeking clarification about the Performance Criteria Documents and/or Contract Documents.
- 1.131. Request for Proposals.** The term “Request for Proposal” means Judicial Council’s solicitation for the Project, to which Design Build Entity responded by submitting the Proposal.
- 1.132. Sample(s).** The term “Sample(s)” means physical examples that illustrate materials, equipment, or workmanship and establish standards by which the Work will be judged.
- 1.133. Schematic Design.** The terms “Schematic Design” or “Schematic Design Work” mean the scope of Work for Schematic Design as set forth in these General Conditions, which has been prepared by the Judicial Council’s Criteria Architect.
- 1.134. Schematic Design Documents.** The term “Schematic Design Documents” means all Deliverables that the Judicial Council’s Criteria Architect has prepared and included in the Performance Criteria as Bridging Documents.
- 1.135. Schedule of Values.** The term “Schedule of Values” means a document consistent with the Cost-Loaded Schedule furnished by Design Build Entity to Judicial Council reflecting the Total Contract Amount allotted for the various components of the Work consistent with the requirements of the Contract Documents and the Project’s specifications. The Schedule of Values shall be used as a basis for reviewing Design Build Entity’s Application(s) for Payment. The Schedule of Values shall be updated (to the extent applicable) by Design Build Entity, consistent with the requirements of the Contract Documents. Upon Judicial Council’s approval, the initial Schedule of Values submitted by Design Build Entity shall become incorporated into the Contract Documents.
- 1.136. Separate Contractor.** The term “Separate Contractor” means a person or firm under separate contract with Judicial Council, performing other work related to the Project.
- 1.137. Shop Drawings.** The term “Shop Drawings” means drawings, diagrams, schedules, and other data specifically prepared for the Work by Design Build Entity that show the details needed for fabrication, assembly, installation, and erection of materials or equipment. Shop Drawings may also be prepared by Design Build Entity’s Subcontractors, manufacturers, suppliers, or distributors; provided, however, that any Shop Drawing prepared by an entity other than Design Build Entity shall be deemed prepared by Design Build Entity if used in the performance of the Work.
- 1.138. Site.** The term “Site” means lands and facilities upon which the physical Construction Work for the Project is performed, including such access and other lands and facilities designated in the Contract Documents for use by Design Build Entity.
- 1.139. Skilled and Trained Workforce.** The term “Skilled and Trained Workforce” means a “skilled and trained workforce” as defined in Public Contract Code section 2601(d).
- 1.140. Specifications.** The term “Specifications” means the written requirements that complement the Construction Drawings for materials, equipment, systems, standards, execution, and workmanship for the Construction Work, and performance of related services. The Specifications include both the “Technical Specifications,” which means Divisions 2-49 of the Specifications, and the “Division 1 Sections,” commonly referred to as the General Requirements and issued by the Judicial Council. The Technical Specifications are included in the Construction Documents and prepared by Design Build Entity and approved by Judicial Council.

- 1.141. State Water Resources Control Board (SWRCB).** The term “State Water Resources Control Board” or “SWRCB” mean the State of California State Water Resources Control Board.
- 1.142. Stipulated Sum.** Refer to “Total Contract Amount”.
- 1.143. Reserved.**
- 1.144. Stop Work Order.** The term “Stop Work Order” means a written notice which may require Design Build Entity to stop all, or any part, of the Work under this Agreement, for the period set forth in the Stop Work Order.
- 1.145. Stored Materials.** The term “Stored Materials” means materials and/or equipment not yet incorporated in the Construction Work that are stored at the Site or off-Site by Design Build Entity or its Subcontractors.
- 1.146. Subcontractor.** The term “Subcontractor” means a person or firm that has a contract with Design Build Entity or with a Subcontractor of Design Build Entity to perform a portion of the Work. Unless otherwise specifically provided, the term Subcontractor includes Subcontractors of all Tiers.
- 1.147. Subcontractor Listing Law.** The term “Subcontractor Listing Law” means the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100 et seq.).
- 1.148. Subcontractor Procurement Process.** The term “Subcontractor Procurement Process” means the process that Design Build Entity must comply with when procuring Subcontractors, as set forth in these General Conditions.
- 1.149. Substantial Compliance Plan.** The term “Substantial Compliance Plan” means the plan the Design Build Entity or Subcontractor of any Tier must submit for Judicial Council to resume payments if Design Build Entity or Subcontractor of any Tier submits a Monthly Compliance Report that fails to demonstrate compliance with the Skilled and Trained Workforce Requirements of the Public Contract Code.
- 1.150. Substitution.** The term “Substitution” means a material and/or process offered by Design Build Entity in lieu of the specified material and/or process, and approved by Judicial Council in writing as being Equal to the specified material and/or process.
- 1.151. Superintendent.** The term “Superintendent” means the person designated by Design Build Entity to be Design Build Entity’s full-time representative at the Project Site when Work is in progress, in accordance with these General Conditions. The Superintendent is a Key Personnel and shall be identified in **Exhibit H** to the Agreement.
- 1.152. Surety.** The terms “Surety” or “Sureties” mean the person, firm, or corporation that executes as surety Design Build Entity’s Performance Bond and Payment Bond and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.
- 1.153. Suspension Order.** The term “Suspension Order” means a written directive provided by Judicial Council to Design Build Entity that suspends, delays, or interrupts the Work in whole or in part for such period of time consistent with the Contract Documents.
- 1.154. SWPPP.** The term “SWPPP” means Stormwater Pollution Prevention Plan that outlines how a construction project will minimize stormwater pollution. In California, SWPPPs are required to be prepared by a Qualified SWPPP Developer (QSD) and implemented by a Qualified SWPPP Practitioner (QSP).
- 1.155. Target Value Design.** The term “Target Value Design” means a design process that requires Design Build Entity to include project values, cost, schedule, and constructability

as basic components of the Design Work, using continuous cost targets to provide optimum value to Judicial Council and to ensure the Design Work is consistent with the Performance Criteria Documents, Stipulated Sum, and Contract Time. The “Target Value Design” process for the Project shall comply with the definition and requirements then in effect of the Lean Construction Institute, as may be amended during the Project.

- 1.156. Tier.** The term “Tier” means the contractual level of a Subcontractor, supplier, or consultant with respect to Design Build Entity. For example, a first-Tier Subcontractor is under subcontract with Design Build Entity, a second-Tier Subcontractor is under subcontract with a first-Tier Subcontractor.
- 1.157. Third-Party Claims.** The term “Third-Party Claim(s)” means demands, losses, liabilities, claims, suits, complaints, and actions suffered, or asserted against Judicial Council, by any party other than Design Build Entity.
- 1.158. Total Contract Amount.** The term “Total Contract Amount” or “Stipulated Sum” shall mean the maximum amount payable to Design Build Entity by Judicial Council for the Project pursuant to the Agreement, as may be adjusted by Amendment or Change Order.
- 1.159. Unexcused Delay.** The term “Unexcused Delay” means a delay that does not entitle Design Build Entity to an adjustment of the Total Contract Amount and/or to an adjustment of the Contract Time.
- 1.160. Unforeseen Site Conditions.** The term “Unforeseen Site Condition(s)” means conditions actually encountered on the Site that were reasonably unforeseeable based on all the information available to Design Build Entity prior to Judicial Council’s issuance of the Notice To Proceed, **and** that are one **or more** of the following:
- 1.160.1. Subsurface or latent physical conditions at the Site differing materially from those indicated; or
  - 1.160.2. Unknown physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents; or
  - 1.160.3. Unknown Hazardous Materials on the Site.
- 1.161. UniFormat.** The term “UniFormat” means a method of arranging construction cost information, including, without limitation, cost estimating and cost analysis based on functional elements, or parts of a facility, characterized by their functions, without reference to the materials and methods, pursuant to the publication(s) by the Construction Specifications Institute (CSI), known as UniFormat®. UniFormat elements may be referred to as systems or assemblies.
- 1.162. Unilateral Change Order.** The term “Unilateral Change Order” means a Change Order that may be issued by Judicial Council, without Design Build Entity’s signature, pursuant to the terms of the Contract Documents.
- 1.163. Warranty.** The term “Warranty” means assurance from Design Build Entity, Subcontractors, manufacturers, or material suppliers that products and services used in the Work meet the requirements of the Contract Documents.
- 1.164. Work.** The term “Work” means the design, engineering, construction, completion and commissioning labor, services, professional services, equipment, materials, tools, temporary facilities, temporary utilities, and all incidentals needed to completely design and construct the Project consistent with the requirements of the Contract Documents. The term “Work” may refer to the whole or a part of the Project, or any phase(s) of the Project or component thereof.

- 1.165. Working Drawings.** The term “Working Drawings” means the drawings that Design Build Entity is required to prepare during the Working Drawings Work as set forth in these General Conditions.
- 1.166. Working Drawings Documents.** The term “Working Drawings Documents” means all Deliverables that Design Build Entity is required to submit to Judicial Council as specifically identified in these General Conditions, and any other Deliverable required by the Contract Documents, for Working Drawings Work.
- 1.167. Working Drawings Work.** The terms “Working Drawing Work” means the Work to prepare the Working Drawings and Specifications, as well as Construction Documents, as described in these General Conditions for the period of time set forth in the Agreement, commencing with the issuance of the Notice to Proceed.

## **2. GENERAL PROVISIONS**

- 2.1. Exhibits.** All Exhibits to the Agreement are part of these General Conditions and are hereby incorporated by reference.
- 2.2. Ownership and Use of Contract Documents.** The Contract Documents, and all copies thereof, furnished to, or provided by, Judicial Council to Design Build Entity are the property of Judicial Council. Judicial Council and Design Build Entity explicitly agree that all materials and documents developed in the performance of the Work pursuant to the Contract Documents are the property of Judicial Council.
- 2.2.1. Judicial Council shall have the right to use all Drawings, designs, Specifications, notes and any other documentation and other work developed in the performance of the Work, whether draft or final form, including, without limitation, for future additions, alterations, connections, repairs, information, reference, use or occupancy and the right to re-use details of the design on any other Judicial Council work, all without Design Build Entity’s consent and at no additional cost to Judicial Council. Judicial Council further reserves the right to use any of the above-described documents for the construction of the Project utilizing a separate construction delivery method.
- 2.2.2. Judicial Council will defend, indemnify, and hold harmless Design Build Entity from any costs or claims for damages solely caused by Judicial Council’s use of the Design Materials on other projects.
- 2.2.3. Judicial Council’s obligation to indemnify Design Build Entity in the immediately preceding section shall in no way limit or reduce Design Build Entity’s liability, including the Architect of Record or any Design Professional, for Design Materials and Design Work performed on the Project, including, without limitation, the preparation of Drawings and Specifications, as provided by law and the Agreement.
- 2.2.4. Notwithstanding anything in this “Ownership and Use of Contract Documents” section, Judicial Council will not defend, indemnify, or hold harmless Design Build Entity from any costs or claims asserted or imposed by any third-party claiming that Judicial Council’s use of the Drawings and Specifications are contrary to or in violation of any copyright, patent, trade secret, trade name, trademark, or any proprietary, contractual, or legal right pertaining to their use.
- 2.2.5. If Judicial Council terminates the Work at any point, Judicial Council is entitled to obtain from Design Build Entity any and all materials prepared by Design Build Entity, including, without limitation Design Materials, whether in draft or final form, related to the Project (to the extent performed). Judicial Council may either elect to have another architect complete the design of the Project, or to



construct the Project using a different delivery method. In that event, Design Build Entity acknowledges that it shall only be entitled to compensation as set forth in the “Termination” Article herein.

- 2.3. Ownership of Certain Property Rights.** Judicial Council shall not, by virtue of the Contract Documents, acquire any interest in any formulas, patterns, devices, secret inventions or processes, copyrights, patents, other intellectual or proprietary rights, or similar items of property which are, or may be, used in connection with the Project. Design Build Entity shall grant to Judicial Council a perpetual, irrevocable royalty-free license for any and all software or other intellectual property rights necessary for Judicial Council to continue to operate, maintain, and repair all equipment that is part of the Project in a manner consistent with its continued use.
- 2.4. Confidentiality of Certain Materials.** Design Build Entity understands and agrees that, in the performance of the Work under the Contract Documents or in contemplation thereof, Design Build Entity may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, Judicial Council, and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Judicial Council or compromise the safety of the Court.
- 2.4.1. Design Build Entity agrees that all information disclosed by Judicial Council to Design Build Entity will be held in confidence and used only in the performance of the Work under the Contract Documents. Design Build Entity must exercise the same standard of care to protect such information as Design Build Entity uses to protect its own proprietary information and, in any case, no less than a reasonably prudent person or entity would use to protect its own proprietary data.
- 2.4.2. It is understood, however, that Design Build Entity may disclose Judicial Council’s confidential information on a “need to know” basis to Design Build Entity’s employees, Subcontractors, and the Subcontractors’ employees, and as required by law. Design Build Entity will execute written agreements with its Subcontractors that bind each Subcontractor and its employees to the confidentiality provisions set forth in this Agreement.
- 2.4.3. Design Build Entity will acquire no right or title to the confidential information. Design Build Entity agrees not to use the confidential information for any purpose except to provide the Work. Notwithstanding the foregoing, Design Build Entity may disclose the confidential information: (i) to the extent necessary to comply with any law, rule, regulation, or ruling applicable to it, or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that Design Build Entity first gives reasonable notice of its intention to disclose in order for Judicial Council to seek a protective order; or (ii) to the extent necessary to enforce its rights under this Agreement.
- 2.4.4. Design Build Entity agrees that monetary damages are inadequate to remedy any breach or threatened breach of this section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.
- 2.5. Limitation on Publication.** Design Build Entity shall not publish, or submit for publication, any article, press release, or other writing relating or referring to Work performed under the Contract Documents without the prior review and written permission by Judicial Council, which shall be at Judicial Council’s sole and absolute discretion.

### 3. WORK

**3.1. Phases of Work.** The Work will be administered through the Contract Documents and organized into the following two (2) distinct phases as further detailed in these Contract Documents:

3.1.1. Design Work (Design Development Work, and Working Drawings); and

3.1.2. Construction Work (Construction Work through Final Completion).

**3.2. Overview of Design Work.** Upon Judicial Council's issuance of a Notice to Proceed for Design Work, Design Build Entity shall perform Design Development Work, and Working Drawings to prepare Deliverables consistent with the Design Deliverable Requirements. These Deliverables shall consist of, without limitation, Drawings, Specifications, reports, and narratives necessary to establish and describe the size and character of the entire Project, allow Judicial Council and/or any other party to review the documents as necessary and required, and result in Design Development Documents of sufficient quality and finality to enable Design Build Entity to continue with the Design Work to prepare Construction Documents for the Completion of the Project.

**3.3. Overview of Construction Documents Work.** Design Build Entity shall prepare Construction Documents for approval and permitting by the Authorities Having Jurisdiction for completion of the Project construction. Work to prepare Deliverables shall be consistent with the Design Deliverable Requirements. These Deliverables shall consist of, without limitation, Drawings, Specifications, and/or any other documents necessary to enable Design Build Entity to perform the Construction Work and complete the Project, including any incidental design required to resolve constructability or design issues during Construction Work.

**3.4. Authorization of Work.**

3.4.1. The Design Work shall commence on the date set forth in the Notice to Proceed. Upon issuance of the Notice to Proceed, Design Build Entity shall perform Design Development Work to design the Project, consistent with the Stipulated Sum. After Design Build Entity completes the Design Development Documents, and upon Judicial Council's approval of Design Development Documents, Design Build Entity shall prepare Working Drawing Documents.

3.4.2. Reserved.

3.4.3. Any Work (including redesign or value engineering) performed by Design Build Entity to meet the Stipulated Sum shall be performed at Design Build Entity's sole cost and expense.

3.4.4. During Design Build Entity's performance of Design Work, Judicial Council may authorize the performance of Abatement & Demolition Work and/or Package I Construction Work prior to Judicial Council's approval of Construction Drawings and final Specifications for those portions of the Construction Work for which all necessary approval from Authorities Having Jurisdiction has been received. Design Build Entity shall not, however, perform any Construction Work until it receives prior written authorization from Judicial Council Representative.

**3.5. Judicial Council's Right to Change Work.** The Parties agree that Judicial Council has the right to order changes in the Work, regardless of the extent and number of changes, and that right is reasonable and within the contemplation of the Parties. Those changes include, without any limitation whatsoever:

- 3.5.1. Changes to correct any issues or inconsistencies in the Contract Documents, if any.
- 3.5.2. Changes resulting from Judicial Council's decision to change the Work after the Parties enter the Agreement.
- 3.5.3. Changes due to unforeseen conditions.
- 3.5.4. To suspend the Work or any part thereof.
- 3.5.5. To delay the Work for any reason.

#### 4. **TIME**

- 4.1. **Contract Time.** Design Build Entity shall complete the Work within the Contract Time, as stated in the Agreement, and as may be adjusted by Change Order or Amendment.
- 4.2. **Commencement of the Work.** Design Build Entity is not authorized to commence Work until Judicial Council delivers a Notice to Proceed to Design Build Entity. The date of commencement of Work shall be set forth in the Notice to Proceed. The date of commencement of the Work, shall not be postponed by the failure of Design Build Entity, Design Professionals, Subcontractors, or of persons or firms for whom Design Build Entity is responsible, to act.
- 4.3. **Risk for Early Commencement of Work.** If Design Build Entity begins any Work before delivery of the Notice to Proceed, that Work will be at Design Build Entity's sole risk and expense and subject to all terms and conditions of the Agreement except those terms and conditions inconsistent with Design Build Entity's assumption of that risk and expense. Judicial Council will not be obligated to accept or to pay for Work furnished by Design Build Entity prior to delivery of the Notice to Proceed, whether or not Judicial Council has knowledge of the furnishing of the Work. However, if a Notice to Proceed is ultimately delivered, then Work performed before delivery will be treated for all purposes as though it were performed after delivery.
- 4.4. **Progress and Completion.** Design Build Entity shall proceed expeditiously with adequate forces and shall achieve completion of the Design Work and Construction Work, and Final Completion within the time prescribed in the Contract Documents and any applicable Notice to Proceed. If Judicial Council determines and notifies Design Build Entity that Design Build Entity's progress is such that Design Build Entity will not achieve Final Completion of the Work within the Contract Time, Design Build Entity shall immediately and at no additional cost to Judicial Council, take all measures necessary, including, without limitation, working overtime, additional shifts, Sundays, or holidays, as may be required to ensure that Design Build Entity will achieve Final Completion of the Work within the Contract Time. Upon receipt of such notice from Judicial Council Representative, Design Build Entity shall immediately notify Judicial Council of all measures to be taken to ensure Final Completion of the Work within the Contract Time. Design Build Entity shall reimburse Judicial Council for any extra costs or expenses (including the reasonable value of any services provided by Judicial Council's employees or consultants, including the Construction Manager and/or Inspector of Record) incurred by Judicial Council resulting therefrom.

#### 5. **STIPULATED SUM**

- 5.1. **Stipulated Sum.** Includes the cost of Design Work and the following costs for Construction Work:
  - 5.1.1. Costs of Construction Administration. The costs of Construction Administration during the Construction Work shall be a not to exceed lump sum as calculated

by Design Build Entity and included in Design Build Entity's Price Proposal included in **Exhibit O** attached to the Agreement, without any mark-up.

- 5.1.2. Design Build Entity's General Conditions. Design Build Entity's General Conditions for the Construction Work, without any mark-up, are identified in Design Build Entity's Price Proposal included in **Exhibit O**. The items included in Design Build Entity's General Conditions shall be consistent with the Design Build General Conditions Matrix in **Exhibit E**.
- 5.1.3. Cost of Construction Work. The Direct Cost of Work for Construction Work.
- 5.1.4. Bonds. Performance Bond and Payment Bond costs, without any mark-up, as identified in the Design Build Entity's Price Proposal attached as **Exhibit O** to the Agreement.
- 5.1.5. Insurance (Non-OCIP). Costs for insurance required outside of the OCIP requirements, without any mark-up, are identified in the Design Build Entity's Price Proposal Form attached as **Exhibit O** to the Agreement. Judicial Council will not approve requests for costs of supplemental insurance for risks of the type intended to be covered by the OCIP or Builder's Risk Insurance unless such supplemental insurance coverage was identified in Design Build Entity's Price Proposal.
- 5.1.6. Stipulated Sum Net of OCIP & Builder's Risk Insurance Costs. Design Build Entity and all Subcontractors of every Tier must bid the Project 'net' of their insurance costs for insurance coverages provided under the OCIP and Builder's Risk policies. Design Build Entity and each Subcontractor must exclude OCIP & Builder's Risk costs from the Stipulated Sum.
- 5.1.7. Overhead and Profit. Design Build Entity's mark-up for overhead and profit, calculated as the product of the percentage identified for mark-up for overhead and profit applied to the Direct Cost of Work in Design Build Entity's Price Proposal, attached as **Exhibit O** to the Agreement. Overhead and profit shall be the full compensation owed to Design Build Entity for all mark-up for Direct Cost of Work. Design Build Entity shall not be entitled to apply mark-up for overhead and profit to any cost other than the Direct Cost of Work, unless otherwise specified in the Contract Documents.
- 5.1.8. Allowances. Judicial Council may direct that an Allowance(s) be included in the Stipulated Sum (Judicial Council Allowance) in its sole and absolute discretion and consistent with the Contract Documents. Design Build Entity shall be entitled to mark-up for bonds, non-OCIP insurance (excluding subcontractor default insurance), and overhead and profit on the Direct Cost of Work for Allowance(s). Such mark-up shall be at the percentages specified in Design Build Entity's Price Proposal Form attached as **Exhibit O** to the Agreement, up to and not to exceed, the total amount of the Allowance(s) approved by the Judicial Council.

- 5.2. **No Adjustment to Stipulated Sum and Limitations on Escalation**. Unless otherwise provided in the Contract Documents, Design Build Entity shall not be entitled, for any reason, to any increase or decrease in the Total Contract Amount for escalation or any other increased costs associated with the Construction Work, including, without limitation, an increase to Design Build Entity's General Conditions, increase in Subcontractor costs, or increased costs for materials due to tariffs, embargoes, and other governmental acts or regulations.

- 5.2.1. Escalation for General Conditions. If, and only if, Judicial Council delays the issuance of a Notice to Proceed, and such delay constitutes a Compensable Delay as set forth in these General Conditions, will Design Build Entity be entitled to additional payment for escalation of Design Build Entity's General Conditions. Design Build Entity must demonstrate, to the reasonable satisfaction of Judicial Council, that specific, individual costs in Design Build Entity's General Conditions have increased, and that those increases correspond to the change in the current Consumer Price Index of the Bureau of Labor Statistic (Construction) applicable to the geographic area in which the Project is located, for the time period in which the delay occurred. Design Build Entity shall only be entitled to the pro-rata difference between: (i) the price of each specific, individual cost of Design Build Entity's General Conditions that Design Build Entity demonstrated has escalated during the delay period; and (ii) the costs when the Construction Work started. Any additional compensation hereunder shall be conditioned upon Design Build Entity's compliance with the "Changes in the Work" and "Contract Time," and, if applicable, the "Claims Resolution" provisions of these General Conditions.
- 5.2.2. Subcontractor Escalation. Design Build Entity shall not be entitled to additional payment for Subcontractor-Performed Construction Work if the requested increase results from an escalation of Subcontractor costs compared to the Subcontractor's original bid. Design Build Entity shall be entitled to such escalation costs only if: (i) Judicial Council suspended the Work consistent with the provisions of these General Conditions.

## **6. ALLOWANCES**

- 6.1. Development of Allowances.** Judicial Council may direct that the Stipulated Sum include a Judicial Council Allowance(s) as set forth in the Contract Documents.
- 6.1.1. Other than those Allowances specified or authorized by Judicial Council in writing, a Design Build Entity Allowance(s) shall not be included in the Stipulated Sum.
- 6.1.2. Judicial Council may, in its sole discretion, require that Design Build Entity perform any of the following at its sole cost and expense before Judicial Council authorizes any Allowance: (i) bid or re-bid the Allowance Work; (ii) re-price the Allowance Work; or (iii) redesign or perform value engineering to reduce the price of the Allowance Work.
- 6.1.3. Design Build Entity and Judicial Council will work collaboratively to develop Construction Documents consistent with the Allowance Work.
- 6.1.4. An Allowance(s) shall not be approved for Design Work or Preconstruction Services.
- 6.2. Allowance Use and Approval Process.** An Allowance(s) may only be used for the specific and discrete scope(s) of Work for which it was established as set forth above. No part of an Allowance may be used to recover cost deficits arising from Design Build Entity's underpricing of other scope(s) of Work.
- 6.2.1. Design Build Entity shall only utilize an Allowance(s) upon prior written approval of Judicial Council. To receive Judicial Council written approval for use of an Allowance(s), Design Build Entity shall submit a written request to Judicial Council for use of the Allowance(s) that:

- 6.2.1.1. Includes a description of the requested use, including the description of the Allowance Work and why it is necessary to complete the Construction Work;
  - 6.2.1.2. Identifies which Allowance(s) the Allowance Work will be paid from and demonstrates that the proposed use falls within the specific and discrete scope of an Allowance(s); and
  - 6.2.1.3. Substantiates the costs of the Allowance Work in the same manner Design Build Entity would substantiate a Proposed Change Order; provided, however, Judicial Council may waive this requirement and instead direct that Design Build Entity perform the Allowance Work on a time and material basis that in no event shall exceed the amount identified for that Allowance(s) in the Stipulated Sum. In that event, the Parties shall comply with the procedures for establishing and pricing time and materials Change Work in the “Changes in the Work” section of these General Conditions.
- 6.2.2. After Judicial Council authorizes the use of an Allowance(s) and Design Build Entity performs the Allowance Work, Design Build Entity shall provide the following documentation with its next Application for Payment: (i) itemization for Design Build Entity’s use of the Allowance(s); and (ii) an updated Schedule of Values indicating the amount of the Allowance(s) used and the remaining balance for that Allowance(s), if any.
  - 6.2.3. If the Direct Costs of the Allowance Work for a Judicial Council Allowance exceed the amount specified for the Allowance(s) in the Stipulated Sum, the Stipulated Sum will be adjusted by an additive Change Order; provided, however, that Design Build Entity substantiates any costs by submitting a Proposed Change Order.
  - 6.2.4. If the actual cost of the Allowance Work is less than the cost authorized by Judicial Council, Judicial Council shall be entitled to issue a deductive Change Order crediting Judicial Council for unused portion of any Allowance(s), plus any mark-up.
  - 6.2.5. At Completion, Judicial Council shall retain any unused portion of any Allowance(s). If any unused Allowance(s) has not been credited to Judicial Council, Judicial Council shall issue a deductive Change Order crediting Judicial Council for the unused portion of the Allowance(s), plus any mark-up, from any amounts due to Design Build Entity.

## **7. CONTINGENCIES**

- 7.1. Judicial Council Contingency.** Judicial Council Contingency shall be for the sole use of Judicial Council in its absolute discretion and is not included in the Stipulated Sum. Judicial Council Contingency may be used for any changes directed by Judicial Council, including but not limited to, Change Work.
  - 7.1.1. If Judicial Council directs any Work to be paid for out of the Judicial Council Contingency, the Parties shall comply with the procedures for establishing and pricing time and materials Change Work in the “Changes in the Work” section of these General Conditions.
  - 7.1.2. Judicial Council shall authorize the use of Judicial Council Contingency by issuing a Change Order, and no payment shall be due to Design Build Entity from Judicial Council Contingency unless, and until, Judicial Council issues a Change Order.

## 8. PAYMENTS

**8.1. Schedule of Values.** As a condition for payment, Design Build Entity shall submit to Judicial Council, with every Application for Payment, an updated Schedule of Values reflecting the amount of Work performed.

### **8.2. Progress Payments.**

8.2.1. Payments for Design Work. With the exception of any amounts Judicial Council may withhold pursuant to these General Conditions and applicable retention, Judicial Council agrees to pay Design Build Entity for Design Work consistent with the amounts set forth for Design Development, and Working Drawings Work as identified in Design Build Entity's Price Proposal included in **Exhibit O**. Judicial Council shall pay Design Build Entity monthly, a uniform amount prorated, based on the Contract Time and Total Contract Amount associated with either Design Development, or Working Drawings Deliverables.

8.2.2. Payments for Construction Work and Construction Administration. With the exception of any amounts Judicial Council may withhold pursuant to these General Conditions and applicable retention, Judicial Council agrees to pay the following to Design Build Entity on a monthly basis:

8.2.2.1. Cost of Construction Administration for Construction Work performed in the preceding month based on a percentage of the progress of the Construction Work, which shall be paid to Design Build Entity in approved monthly progress installments.

8.2.2.2. Cost of the Construction Work in permanent place as agreed to and approved in the cost-loaded Contract Schedule as of the data date.

8.2.2.3. Cost of materials not yet incorporated in the Construction Work, in Judicial Council's discretion as set forth below.

8.2.3. After Final Completion and subject to any other requirement of these General Conditions, Judicial Council will make any of the remaining progress payments in full.

### **8.3. Application for Payment.**

8.3.1. Application for Payment for Design Work. For Design Work, on or before the fifth (5<sup>th</sup>) Day of the month or such other date as is established by the Contract Documents, Design Build Entity shall submit to Judicial Council Representative an itemized invoice. The invoice shall include the following:

8.3.1.1. The amount requested for the stage of Design Work performed in the preceding month.

8.3.1.2. If reasonably requested by Judicial Council as a precondition of payment, Design Build Entity shall submit to Judicial Council documentation showing proof that payments were made to Design Build Entity's Subconsultant(s).

8.3.1.3. Itemized list and explanations of the Design Work performed in the preceding month.

8.3.2. Applications for Payment for Construction Work and Construction Administration.

8.3.2.1. For Construction Work, on or before the fifth (5<sup>th</sup>) Day of the month or such other date as is established by the Contract Documents, Design Build Entity shall submit to Judicial Council Representative an itemized Application for Payment. The Application for Payment shall be prepared as follows and include the following:

- 8.3.2.1.1. Completed Application for Payment in format approved by Judicial Council.
- 8.3.2.1.2. Updated Schedule of Values consistent with the requirements of the Contract Documents.
- 8.3.2.1.3. A certification that the As-Built Drawings are current.
- 8.3.2.1.4. An updated Contract Schedule conforming with the requirements of the Contract Documents.
- 8.3.2.1.5. All data substantiating Design Build Entity's right to payment as Judicial Council Representative may reasonably require, such as invoices, certified payrolls, and daily time and material records.
- 8.3.2.1.6. Retention to be withheld.
- 8.3.2.1.7. Total retention withheld to date.
- 8.3.2.1.8. Net amount to be paid.
- 8.3.2.1.9. Original signature of a representative authorized to bind the Design Build Entity.
- 8.3.2.1.10. Preferred remittance address.
- 8.3.2.1.11. A full accounting to the Allowance(s) used to date, and the amounts remaining. If Design Build Entity is authorized to utilize any Allowance(s), Design Build Entity shall provide a description of such Work and substantiation of all costs.
- 8.3.2.1.12. A duly completed and executed conditional waiver and release upon progress payment compliant with Civil Code section 8132 in the form attached as **Exhibit I** to the Agreement, from Design Build Entity and each Subcontractor of any Tier and supplier to be paid from the current progress payment.
- 8.3.2.1.13. A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134 in the form attached as **Exhibit J** to the Agreement, from Design Build Entity and each Subcontractor of any Tier and supplier that was paid from the previous progress payment.

8.3.3. Excluded from Application for Payment. Applications for Payment shall not include requests for payment for: (i) Work performed before a Notice to Proceed has been issued therefor; (ii) changes not authorized by Amendment(s) and/or Change Order(s); (iii) amounts Design Build Entity does not intend to pay a



Subcontractor because of a dispute or other reason; (iv) any request for the use of any Allowance(s) not yet approved by Judicial Council.

- 8.3.4. Free of Liens. Design Build Entity warrants that, upon submittal of an Application for Payment, all Work, for which payment has been issued and received from Judicial Council, shall be free and clear of all claims, stop payment notices, security interests, and encumbrances in favor of Design Build Entity, Subcontractors, or other persons or firms entitled to make claims by reason of having provided labor, materials, or equipment relating to the Work.
- 8.3.5. Materials Not Yet Incorporated. In Judicial Council's sole discretion, Judicial Council may approve, for inclusion in the Application for Payment, the cost of materials not yet incorporated in the Construction Work but already delivered and suitably stored either at the Site or at some other appropriate location consistent with the terms of these General Conditions. In such case, Design Build Entity shall furnish evidence satisfactory to Judicial Council Representative of: (i) the cost of such materials; and (ii) that such materials are under the exclusive control of Design Build Entity. Only materials to be incorporated in the Work will be considered for payment. Any payment shall not be construed as approval of such materials, nor relieve Design Build Entity from: (i) sole responsibility for the care and protection of such materials; (ii) risk of loss to such materials from any cause whatsoever; (iii) its obligation to Complete the Work in accordance with the Contract Documents. Nothing contained herein shall require Judicial Council to agree to pay for any non-incorporated materials or any part thereof.

**8.4. Retention.** Judicial Council will retain five (5) percent of all sums due to Design Build Entity, which Design Build Entity shall deduct from each Application for Payment.

- 8.4.1. Judicial Council will permit the substitution of securities in accordance with the provisions of Public Contract Code section 10263.
- 8.4.2. No interest will be paid on any retention, or on any amounts withheld due to failure of Design Build Entity to perform in accordance with the terms and conditions of the Contract Documents, except as provided to the contrary in any Escrow Agreement between the Judicial Council and Design Build Entity pursuant to Public Contract Code section 22300.

**8.5. Release of Retention.**

- 8.5.1. Release of Retention from Design Work. Design Build Entity may request the release of retention withheld from payment for Design Work when the Construction Documents have received all necessary approvals and permits.
- 8.5.2. Release of Retention from Construction Work. Design Build Entity may request the release of retention withheld from payment for Construction Work only upon Final Completion of the Project, as determined by Judicial Council, less any amounts that Judicial Council is permitted or required to withhold pursuant to the Contract Documents and applicable law.
- 8.5.3. Early Retention Release. Notwithstanding the above, at any time after Design Work or Construction Work is fifty percent (50%) complete, as determined by Judicial Council, and if satisfactory progress is being made, upon the approval of the Administrative Director in his or her sole discretion, Judicial Council may: (i) reduce the retention of the applicable Work to as low as Two and One Half-Percent (2.5%) with respect to any remaining progress payments for that Work; and/or (ii) allow Design Build Entity to submit an invoice for the release of up

to one-half of the amount of existing retention as long as a minimum of Two and One Half-Percent (2.5%) is retained for that Work. Design Build Entity acknowledges that Judicial Council may seek the Surety's approval prior to reducing retention. In no event shall Judicial Council be obligated to the early release, or reduction of, retention pursuant to this section.

- 8.5.4. Notwithstanding the foregoing, at any time after ninety-five percent (95%) of the Work has been completed, Judicial Council may reduce the funds withheld to an amount not less than one hundred and twenty-five percent (125%) of the estimated value of the Work yet to be completed, as determined by Judicial Council. The reduction must be approved, in writing, by the Sureties for the Performance and Payment bonds.

## **8.6. Payment by Judicial Council.**

- 8.6.1. Judicial Council will pay Design Build Entity once each month, for Work completed during the prior calendar month, less Liquidated Damages and other amounts to be deducted, withheld, or retained under this Contract Document or as permitted by law.
- 8.6.2. If Judicial Council determines that any Application for Payment fails to comply with the requirements of the Contract Documents, Judicial Council will inform Design Build Entity as soon as practicable, but in no event later than any time prescribed by law, and return the Application for Payment to Design Build Entity to cure any deficiencies. Thereafter, Design Build Entity shall have three (3) Days to revise and resubmit the Application for Payment. If Design Build Entity fails to resubmit the Application for Payment, Judicial Council may issue a payment in an amount Judicial Council determines due to Design Build Entity.
- 8.6.3. Approval of all or any part of an Application for Payment may be withheld, or payment may be withheld on account of, any of the following:
  - 8.6.3.1. The Application for Payment fails to adequately demonstrate that the Work for which payment is requested has been performed in accordance with the Contract Documents and with required approvals.
  - 8.6.3.2. There is Defective Work that is not remedied (Judicial Council may withhold up to one hundred fifty percent (150%) of the value of the Defective Work).
  - 8.6.3.3. Judicial Council has received stop payment notices (Judicial Council may withhold up to one hundred fifty percent (150%) of the value of any stop payment notices).
  - 8.6.3.4. Deficient Design Work.
  - 8.6.3.5. Failure to keep the Site clean and safe to the satisfaction of Judicial Council.
  - 8.6.3.6. Failure to timely indemnify, defend, or hold harmless Judicial Council.
  - 8.6.3.7. Failure to pay any royalty, license, or similar fees.
  - 8.6.3.8. Design Build Entity is otherwise in breach, default, or in substantial violation of any provision of the Contract Documents.

- 8.6.3.9. Failure of Design Build Entity to make timely payments due Subcontractors.
- 8.6.3.10. Damage to Judicial Council or Separate Contractor for which Design Build Entity is responsible.
- 8.6.3.11. Reasonable evidence the Work will not be completed within the Contract Time; and/or the unpaid balance of the Total Contract Amount will not be adequate to cover Judicial Council's damages for the anticipated delay.
- 8.6.3.12. Failure of Design Build Entity to maintain and update As-Builts.
- 8.6.3.13. Failure of Design Build Entity to submit schedules or their updates as required by the Contract Documents.
- 8.6.3.14. Failure to provide conditional or unconditional releases from any Subcontractor or supplier.
- 8.6.3.15. Performance of Work by Design Build Entity without properly processed Shop Drawings.
- 8.6.3.16. Liquidated Damages assessed in accordance with the Contract Documents.
- 8.6.3.17. Failure to comply with any Labor Code provision, or the skilled and trained workforce requirements, applicable to the Project.
- 8.6.3.18. Failure of Design Build Entity to submit, on a timely basis, all Closeout Documentation in a manner and form that is proper, sufficient, and reasonably acceptable to Judicial Council, and to not cause a delay in the Final Completion of the Project.
- 8.6.3.19. Any other failure of Design Build Entity to perform its obligations under the Contract Documents.
- 8.6.4. In accordance with Public Contract Code section 10261.5(a), and subject to the above retention and withholding provisions, if Judicial Council fails to make any progress payment within **THIRTY (30)** Days after receipt of an undisputed and properly submitted Application for Payment, Judicial Council will pay Design Build Entity interest on the undisputed amount of such Application for Payment equal to the legal rate of interest set forth in California Code of Civil Procedure section 685.010(a).
- 8.6.5. Notwithstanding the foregoing, Judicial Council will not make progress payments in excess of one hundred percent (100%) of the percentage of actual Work completed, plus a like percentage of the value of material delivered on the ground or stored subject to or under the control of Judicial Council, less any applicable retention, unless otherwise provided by Public Contract Code section 10261.
- 8.6.6. Judicial Council will not have an obligation to pay, or ensure the payment of, money to a Subcontractor, except as may otherwise be required by law.
- 8.6.7. Judicial Council's issuance of any payment shall not constitute Acceptance of Work.

## 9. JUDICIAL COUNCIL RIGHTS AND RESPONSIBILITIES

- 9.1. Judicial Council's Right to Stop Work.** If Design Build Entity fails to correct Defective Work as required by these General Conditions, or fails to perform the Work in accordance with the Contract Documents, Judicial Council may issue a Stop Work Order until Design Build Entity remedies the cause for the Stop Work Order. Design Build Entity shall not be entitled to any adjustment to the Contract Time or Total Contract Amount resulting from a Stop Work Order. Judicial Council has no obligation to Design Build Entity or any other party to exercise its right to stop the Work.
- 9.2. Judicial Council's Right to Perform Work.** If Design Build Entity fails to perform the Work in accordance with the Contract Documents, fails to provide sufficient labor, materials, equipment, tools, and services, to maintain the Contract Schedule, or fails to comply with any material term of the Contract Documents, and, after receipt of written notice from Judicial Council, fails within seven (7) business days, or within such additional time as Judicial Council may specify in writing, to correct Design Build Entity's failure, Judicial Council may, in its sole and absolute discretion, and without prejudice to other remedies Judicial Council may have, correct Design Build Entity's failure at Design Build Entity's sole expense. Judicial Council shall be entitled to deduct from payments then or thereafter due Design Build Entity the cost to perform the Work, including, without limitation, compensation for the additional services and expenses of Judicial Council's consultants arising from Judicial Council's performance of the Work. If payments then or thereafter due Design Build Entity under the Agreement are not sufficient to cover the amounts due Judicial Council, Design Build Entity shall pay any additional amount to Judicial Council within thirty (30) Days of receipt of an invoice for those costs.
- 9.3. Access to Site.** During the Design Work, Judicial Council will provide, as reasonably requested, and required by the Design Work, access to the Site so that Design Build Entity may perform all necessary tests and inspections.
- 9.3.1. Judicial Council will provide, as reasonably required by the Work, but in no event later than the date designated in the Notice to Proceed, access to the Site, including access to other lands and facilities designated in the Performance Criteria Documents, for use by Design Build Entity in the performance of the Construction Work.
- 9.3.2. To the extent applicable, Design Build Entity understands that the Site may include the Court, which may be an active judicial branch facility. To the extent applicable, Design Build Entity's access to the Site shall in no way interfere with any Court operations or functions, and Design Build Entity shall at all times comply with the Site access requirements of Judicial Council and the Court.
- 9.4. Judicial Council's Responsibilities During Design Work.** This section sets forth the general review and approval obligations of Judicial Council during the Design Work.
- 9.4.1. Review and approval shall be limited to compliance with the Contract Documents. Review and approval of any Deliverable during Design Work, including, without limitation, Drawings, Specifications, or Contract Schedules, shall not function as a waiver of any Error or Omission or any deviation from the Performance Criteria Documents. Any review or approval herein shall not be deemed to transfer any design, engineering, or construction liability from Design Build Entity to Judicial Council, nor alter any obligation of Design Build Entity to re-design any portion of the Project when required by the Contract Documents. Judicial Council's review and/or approval does not in any way affect, reduce, or diminish Design Build Entity's sole and exclusive responsibility for the performance of the Design Work. Judicial Council shall be

entitled to rely on the accuracy of the information received from Design Build Entity.

- 9.4.2. If Judicial Council identifies any error in a Deliverable submitted by Design Build Entity during the Design Work, or any variance from a previous Deliverable approved by Judicial Council or included in Performance Criteria Documents, Judicial Council shall inform Design Build Entity of any error or variance. Design Build Entity shall revise the Deliverable at Design Build Entity's sole cost and expense. Design Build Entity will only be entitled to an adjustment of the Total Contract Amount or Contract Time related to any revision if: (i) the revision does not arise from, relate to, or pertain to the negligence of Design Build Entity; and (ii) the original Deliverable was accompanied by documentation and annotation illustrating the variance from the previously approved submittal. Judicial Council's failure to identify any error or variance shall not constitute a waiver of any of Judicial Council's rights or remedies under the Contract Documents, nor shall it in any way affect, reduce, or diminish Design Build Entity's sole and exclusive responsibility for the performance of the Design Work.

9.4.3. Design Work.

- 9.4.3.1. Design Reviews. Judicial Council shall provide timely review of Deliverables submitted during the Design Work as specified in the Design Review Table provided for reference by Judicial Council.
- 9.4.3.2. Code Compliance Reviews. Design Materials will be subject to Code Compliance Reviews by Authorities Having Jurisdiction.
- 9.4.3.3. Structural Peer Reviewer. Judicial Council will appoint a structural Peer Reviewer for the Project. Design Build Entity shall interact and cooperate with the appointed structural Peer Reviewer at the beginning of the Design Work, as required by Judicial Council, and continuing at regular intervals. Structural Peer Review comments made during any portion of the Design Work shall be resolved before the start of the next component of the Design Work (e.g., comments received during Design Development must be resolved prior to the start of Working Drawings), and all comments shall be resolved before the start of respective Construction Work utilizing those specific structural Drawings and Specifications.
- 9.4.3.4. Fire Protection Peer Review. Judicial Council will appoint a fire protection Peer Reviewer for the Project. Design Build Entity shall interact and cooperate with the appointed fire protection Peer Reviewer at the beginning of the Design Work, as required by Judicial Council, and continuing at regular intervals. Fire Protection Peer Review, including review of smoke control and rational analysis, made during any portion of the Design Work shall be resolved before the start of the next component of the Design Work (e.g., comments received during Design Development must be resolved prior to the start of Working Drawings), and all comments shall be resolved before the start of respective Construction Work utilizing those specific fire protection Drawings and Specifications.
- 9.4.3.5. Peer Reviews. Additional Peer Reviews may be conducted as required by Applicable Code Requirements, Authorities Having Jurisdiction, and/or as directed by Judicial Council for disciplines such as mechanical systems. Judicial Council shall be responsible

for the costs of any additional peer reviews. Judicial Council, in collaboration with Design Build Entity, shall use its best efforts to schedule the timing of these reviews within the parameters of the Contract Schedule.

- 9.4.3.6. Working Drawings Design Reviews. Judicial Council shall provide timely review of Deliverables submitted during the Working Drawings Work within reasonable time, consistent with the Design Review Table provided for reference by Judicial Council.
- 9.4.3.7. Peer Reviews and Certifications. Any Peer Review(s) required under the Contract Documents or pursuant to the Applicable Code Requirements shall be certified as completed prior to the submission of the Working Drawings and Specifications for permitting or approval from any Authority Having Jurisdiction.

## **9.5. Judicial Council's Responsibilities During Construction Work.**

- 9.5.1. General Obligations. Judicial Council, through Judicial Council Representative and/or Construction Manager (as applicable), shall take all reasonable steps to comply with the requirements of the Contract Documents to enable Design Build Entity to perform the Construction Work, which shall include, without limitation:
  - 9.5.1.1. Participate in progress meetings and coordinate with Design Build Entity as reasonably requested and required for the efficient management of Work.
  - 9.5.1.2. Timely review of all Design Build Entity submittals and Deliverables to avoid unreasonable delay in the performance of Work, including, but not limited to, Applications for Payment, Contract Schedules, requests for Amendments and/or Proposed Change Orders, RFIs, requests for Substitutions, and Closeout Documentation.
  - 9.5.1.3. Promptly advise Design Build Entity if Judicial Council becomes aware of any fault or defect in the Project, including any Errors or Omissions in the Design Materials. Failure to provide such notice shall not relieve Design Build Entity of its responsibility for Errors and Omissions. Any such notice by Judicial Council shall be made in writing, either by email or letter.
  - 9.5.1.4. Participate in the resolution of any Disputes or claims in accordance with the provisions of these General Conditions.
  - 9.5.1.5. If applicable, review skilled and trained workforce compliance, including, without limitation, review of Workforce Reports.
  - 9.5.1.6. Participate in inspections, as needed, and walkthroughs of Design Build Entity's Construction Work.
  - 9.5.1.7. Pay for inspections, permits, and fees, as provided in these General Conditions.
  - 9.5.1.8. Issue a Certificate of Acceptance and record the Notice of Completion upon Final Completion.

- 9.5.2. Material Testing and Inspection Services. Judicial Council shall retain, at its sole cost and expense, a firm(s) to provide full-time materials testing and inspection services, including special testing and inspections for the Project. The testing and inspection firm(s) is solely responsible to Judicial Council for observation of Construction Work, determination of adherence to the Construction Drawings, and compliance with Applicable Code Requirements and Performance Criteria Documents. The additional costs for special inspections for steel fabrication performed outside of the United States will be the responsibility of the Design Build Entity. This includes, without limitation, all travel and subsistence related costs and additional labor resulting from steel fabrication outside of the United States. The cost for off-site material testing and inspection services required by local jurisdictions will be the responsibility of Design Build Entity.
- 9.5.3. Commissioning. Commissioning of the Project will commence during Design Work and continue through Beneficial Use or Completion (whichever occurs first) as required by code to verify the new building and its systems are planned, designed, installed, tested, operated, and maintained in compliance with Judicial Council's requirements. Judicial Council may utilize a third-party Commissioning agent, paid for by Judicial Council, who will not be responsible to, or affiliated with, any member of Design Build Entity or Design Build Entity's Design Professionals, Subcontractors, consultants, agents, and/or employees of any of the foregoing. Design Build Entity shall assist, review, coordinate, collaborate, and cooperate with Judicial Council's Commissioning agent and other providers of Commissioning services to Judicial Council. This obligation shall not affect Design Build Entity's Commissioning obligations in the Contract Documents.
- 9.5.4. Occupancy. Judicial Council will prepare the building for occupancy. Judicial Council occupancy activities may include, without limitation, stocking, installing, and preparing Judicial Council-furnished equipment, training staff, and security searches, to prepare the Work for operation and Court occupation. Judicial Council will coordinate these occupancy activities with Design Build Entity.

**9.6. Construction by Judicial Council or Separate Contractors.**

- 9.6.1. Judicial Council's Right to Perform Construction and to Award Separate Contracts.
- 9.6.1.1. Judicial Council reserves the right to award separate contracts for, or to perform with its own forces, construction or operations related to the Work or other construction or operations at or affecting the Site, including portions of the Work which have been deleted by Change Order. Design Build Entity shall cooperate with Judicial Council's forces and Separate Contractors and shall not interfere with the Work of Separate Contractors.
- 9.6.1.2. Judicial Council will coordinate the activities of Judicial Council's forces and of each Separate Contractor with the Work of Design Build Entity. Design Build Entity shall participate with Judicial Council and Separate Contractors in joint review of construction schedules and Project requirements when directed to do so. Design Build Entity shall make necessary revisions to the Contract Schedule after such joint review, to the extent applicable, but with

no extension to the Contract Time unless otherwise permitted by these General Conditions.

9.6.2. Mutual Responsibility.

9.6.2.1. Design Build Entity shall connect, schedule, and coordinate its construction and operations with the construction and operations of Judicial Council and Separate Contractors as required by the Contract Documents.

9.6.2.2. If a portion of the Work is dependent upon the proper execution or results of other design, construction, or operations by Judicial Council or Separate Contractors, Design Build Entity shall inspect the other design, construction, or operations before proceeding with that portion of the Work. Design Build Entity shall promptly report to Judicial Council Representative apparent discrepancies or defects which render the other design, construction, or operations unsuitable to receive the Work. Unless otherwise directed by Judicial Council Representative, Design Build Entity shall not proceed with the portion of the impacted Work until discrepancies or defects have been reasonably corrected. Failure of Design Build Entity to comply with the above-reporting requirement within a reasonable time after discovery of discrepancies or defects shall constitute an acknowledgment that the other design, construction, or operations by Judicial Council or Separate Contractors is suitable to receive the Work, except as to defects that were not reasonably discoverable.

9.6.2.3. If a dispute arises between Design Build Entity and Separate Contractors as to the responsibility under their respective contracts for maintaining the Site and surrounding areas free from waste materials and rubbish, Judicial Council may clean-up the affected area and allocate the cost between those firms it determines to be responsible.

**9.7. No Impact on Design Build Entity Obligations.** Judicial Council's obligations herein shall in no way affect or limit Design Build Entity's responsibilities and obligations as it pertains to the Work. Design Build Entity shall diligently perform the Work to ensure Final Completion within the Contract Time.

**10. CONTRACT ADMINISTRATION BY JUDICIAL COUNCIL AND ITS REPRESENTATIVES**

**10.1. Judicial Council Representative and Construction Manager.** Judicial Council may designate, from time to time, one or more Judicial Council Representative(s) authorized to act on Judicial Council's behalf and within the scope of Judicial Council Representative's authority. Judicial Council may also, in its sole discretion, appoint a Construction Manager. Design Build Entity shall not be entitled to rely on directions from any person or entity outside the scope of that person's or entity's authority as set forth in the Contract Documents, or as directed by Judicial Council in writing.

10.1.1. Right to Interpret Contract Documents. Judicial Council Representative and/or Construction Manager, will be, in the first instance, the interpreter of the requirements of the Contract Documents and the judge of performance thereunder by Design Build Entity; except if an interpretation is the sole responsibility of the Project Inspector. This shall apply to any Work, including, Design Work. If Design Build Entity requests an interpretation of the Contract Documents and proceeds with any Work before receipt of a response from



Judicial Council Representative and/or Construction Manager, any portion of the Work which is not done in accordance with the subsequently provided interpretation(s), clarification(s), instruction(s), or decision(s) shall be removed, and, if applicable, replaced by Design Build Entity at its sole cost and expense. Any Corrective Work shall not result in any adjustment in the Contract Time or Total Contract Amount.

- 10.1.2. Right to Review Work. Judicial Council Representative and/or Construction Manager shall have the right to review Design Build Entity's Work at any interval(s) deemed appropriate by Judicial Council Representative and/or Construction Manager. No action(s) taken during that review or any Site visit by Judicial Council Representative and/or Construction Manager shall relieve Design Build Entity of any of its obligations of single-point responsibility for the design and construction of this Project. No action(s) taken by Judicial Council Representative and/or Construction Manager during any review shall form the basis for a claim if any action extends the date for Final Completion of the Project beyond the Contract Time, unless otherwise provided by the Contract Documents.
- 10.1.3. Right to Inspect Work and Order Corrections. Judicial Council Representative and/or Construction Manager have the authority to inspect the Construction Work and determine whether any Construction Work deviates from, or does not conform with, the Contract Documents, including identifying Defective Work. Judicial Council Representative and/or Construction Manager have the authority to direct Design Build Entity to correct any deviation, non-conformity, or Defective Work, and to determine whether the Corrective Work complies with the Contract Documents.
- 10.1.4. No Responsibility for Means and Methods of Construction. Judicial Council Representative and/or Construction Manager will not have control over, will not oversee, and will not be responsible for design or construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work; these are solely Design Build Entity's responsibility.
- 10.1.5. Point of Contact for Judicial Council. Except as otherwise provided in the Contract Documents, or when direct communications have been specifically authorized, Judicial Council and Design Build Entity shall communicate through Judicial Council Representative and/or Construction Manager.
- 10.1.6. Non-Reliance on Oral Directions. Design Build Entity shall not rely on oral or other non-written communications. If an action by Design Build Entity requires prior authorization by Judicial Council, any authorization or communication from Judicial Council Representative and/or Construction Manager must be in writing, clearly indicating that Design Build Entity is authorized to undertake that action. Design Build Entity may confirm in writing any oral direction to undertake any action provided to Design Build Entity by Judicial Council Representative and/or Construction Manager; provided, however, that no confirming correspondence from Design Build Entity shall be binding on Judicial Council unless Judicial Council Representative and/or Construction Manager directly respond in writing clearly indicating that Design Build Entity is authorized to undertake that action.
- 10.1.7. Other Authority to Act. Judicial Council Representative and/or Construction Manager will have the authority to conduct inspections as provided in the Contract Documents, to take Beneficial Use on behalf of Judicial Council, and to determine the dates of Final Completion. Judicial Council Representative

and/or Construction Manager shall also have the ability to review, negotiate, and price proposed Amendments, Proposed Change Orders, and/or claims, and assist Judicial Council in resolution thereof.

10.1.8. Judicial Council Representative Authority to Stop the Work. Judicial Council Representative shall have the authority to issue a Stop Work Order if, in its determination, any Construction Work deviates from the Contract Documents.

10.1.9. Judicial Council's Right to Replace. Judicial Council may at any time, in its sole and absolute discretion and for whatever reason, without prior notice to or consent of Design Build Entity, replace Judicial Council Representative and/or Construction Manager with a new Judicial Council Representative and/or Construction Manager. Upon receipt of notice from Judicial Council informing Design Build Entity of the replacement and identifying the new Judicial Council Representative and/or Construction Manager, Design Build Entity shall recognize that person or firm as Judicial Council Representative and/or Construction Manager for all purposes under the Contract Documents.

**10.2. Project Inspector.** The Project Inspector shall inspect Design Build Entity's performance of Construction Work, consistent with the requirements of the Contract Documents and Applicable Code Requirements.

10.2.1. Authority to Stop Work. The Project Inspector shall have the authority to issue a Stop Work Order if the Project Inspector determines that Design Build Entity's work violates the Construction Documents, any Applicable Code Requirements, any orders issued by Judicial Council, Judicial Council Representative, or Authority(ies) Having Jurisdiction, or any other provisions of the Contract Documents. The failure of the Project Inspector to issue a Stop Work Order does not excuse Design Build Entity from complying with the Construction Documents for that Construction Work, nor does it relieve Design Build Entity from the responsibility to correct the Work.

10.2.1.1. Upon issuing a Stop Work Order, the Project Inspector shall notify Judicial Council Representative, who, along with the Project Inspector, shall review the Construction Work to determine whether it deviates from, or does not conform with, the Construction Documents or constitutes Defective Work. If Judicial Council determines the Construction Work deviates from, or does not conform with, the Construction Documents or constitutes Defective Work, Design Build Entity shall comply with any instructions of Judicial Council (including any made through the Project Inspector and/or Judicial Council Representative) regarding work necessary to cure the deviation, nonconformance, or Defective Work. Once the deviation, nonconformance, or Defective Work is fixed, Design Build Entity may resume stopped Work. Design Build Entity shall not be entitled to an extension of the Contract Time or an increase in the Total Contract Amount arising hereunder, if Judicial Council, in its sole and absolute discretion, determines that reasonable facts support the issuance of the Stop Work Order.

## **11. FEE, LICENSES, AND PERMIT REQUIREMENTS**

**11.1. General Obligations.** Except as otherwise provided in the Contract Documents, Design Build Entity shall secure all permits, approvals, government fees, licenses, and inspections required to complete the Work consistent with the Contract Documents.

## **11.2. Judicial Council Paid Fees, Permits, & Authorizations.**

- 11.2.1. Fees. Judicial Council will pay the fees for the OSFM, Board of State and Community Corrections, and DSA directly.
- 11.2.2. Utility Assessments. Judicial Council will pay all final utility assessment and connection fees levied by the telephone/data or other local utility companies.
- 11.2.3. Inspection Fees. Judicial Council will be responsible for all inspection fees and other municipal charges for permanent utilities, including, but not limited, to sewer, electrical, phone, gas, water, and irrigation. If Design Build Entity pays for these fees, it may request reimbursement from Judicial Council.

## **11.3. Design Build Entity Paid Fees, Permits, & Authorizations.**

- 11.3.1. Design Build Entity Responsible for Other Fees. Except for the fees paid by Judicial Council enumerated above, Design Build Entity will be responsible for payment of all other Authority Having Jurisdiction fees. All costs relating to permits, approvals, fees, licenses, connections, and charges that are required by the State of California, the county, the city, or a governmental or quasi-governmental entity, that are the responsibility of Design Build Entity, shall be considered a Direct Cost of Work included in the Stipulated Sum unless otherwise indicated in the Contract Documents.
- 11.3.2. Design Build Entity Coordination. If Judicial Council must directly engage with an entity relating to the payment of any fee or charge, Design Build Entity shall be responsible to coordinate the communication and cooperation of the parties.
- 11.3.3. Subcontractor Permits. Design Build Entity shall procure and pay for any Subcontractor specialty permit(s) required for the Work as part of the Direct Cost of Work included in the Stipulated Sum.
- 11.3.4. Transitioning Permits. Design Build Entity shall be responsible for coordinating the transition of any operating permits to Judicial Council and Court at Completion or upon termination of the Agreement, whichever occurs earlier.

- 11.4. **Delivery of Originals**. Design Build Entity shall deliver to Judicial Council all original licenses, permits, and approvals obtained by Design Build Entity in connection with the Work prior to the final payment or upon termination of the Contract, whichever is earlier.

## **12. TESTS AND INSPECTIONS**

- 12.1. **General Responsibility**. Except for any item(s) identified in the Contract Documents as the responsibility of Design Build Entity, Judicial Council shall be responsible for testing and inspection of all the Work, consistent with the requirements of the Contract Documents.
- 12.2. **Coordination**. Project Inspector will not be on-Site full-time during construction. Design Build Entity will coordinate all inspections with the Project Inspector and Judicial Council Representative(s) and must provide them with a notice of when and where tests and inspections are to be made so that the appropriate parties may be present for the procedures.
  - 12.2.1. Notification Requirement for Inspection Request Cancellation or Delay: Design Build Entity shall notify Judicial Council at least one (1) business day in advance if there is a need to delay or cancel any inspection request that has been issued. Failure to provide such notice within this timeframe may result in a back charge.

- 12.2.2. **Work Scheduling for Inspections:** Design Build Entity is responsible for organizing the Work so that inspections can occur during contract working hours unless prior approval for overtime has been granted by Judicial Council.
- 12.2.3. **Notification Requirement for Overtime:** Design Build Entity shall inform Judicial Council when overtime work is necessary, either on weekdays or weekends. This notification must also be provided at least two (2) business days in advance and include justification for the overtime. Failure to provide such notice within this timeframe may result in a back charge.
- 12.2.4. **Quality Control:** Conduct quality control prior to requesting testing and inspection by IOR and Special Inspector for Materials Testing. Failure to conduct quality control review which results in failed inspections may be subject to back charge.
- 12.3. **Access to Inspected Work.** When the Contract Documents require a portion of the Work to be tested and/or inspected, that Work shall not be covered up until testing and/or inspection is complete and approved by Judicial Council. Should any Work be covered without the required testing, inspection, and approval, that Work shall be uncovered and recovered at Design Build Entity's sole cost and expense. Design Build Entity shall notify Judicial Council and the Project Inspector two (2) business days prior to covering any Work.
- 12.4. **Identification of Errors.** If procedures for testing, inspection or approval reveal failure of a portion(s) of the Work to comply with the Contract Documents, Design Build Entity shall bear all costs (including the Judicial Council's) arising from that failure(s), including, without limitation, costs of repeated procedures, tests, and inspections.
- 12.5. **Additional Testing Inspections.** If Judicial Council, or Judicial Council Representative and/or Project Inspector(s) determine that portions of the Work require additional testing, inspection, or approval not included in the Contract Documents, Judicial Council will instruct Design Build Entity, in writing, to make arrangements for additional testing, inspection, or approval by an entity acceptable to Judicial Council. Design Build Entity shall give forty-eight (48) hours written notice to Judicial Council, Judicial Council Representative, and/or Project Inspector, of where and when tests and inspections will be conducted so that Judicial Council, Judicial Council Representatives, and/or Project Inspector, may observe the procedures. Judicial Council will pay for these tests and/or inspections.
- 12.6. **Certification.** Required Design Build Entity certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by Design Build Entity and delivered to Judicial Council, Judicial Council Representative, and Project Inspector within fourteen (14) Days of the completion and approval of the test and/or inspection.

### **13. RESPONSIBILITIES OF DESIGN BUILD ENTITY**

- 13.1. **Materiality.** Design Build Entity's failure to abide by the provisions of this Article, excluding Sections 13.17.8, 13.17.21, and 13.18.1, shall be a material breach of the Agreement.
- 13.2. **Status of Design Build Entity.** Design Build Entity is, and shall at all times, be deemed to be an independent contractor and shall be wholly responsible for the manner in which it and its Design Professionals and Subcontractors perform the Work. Nothing in the Contract Documents shall be construed as creating the relationship of employer and employee, or principal and agent, between the Judicial Council, or any of the Judicial Council's employees or agents, and Design Build Entity or any of Design Build Entity's Design

Professionals, Subcontractors, agents, or employees. Design Build Entity assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Design Build Entity, its Design Professionals, Subcontractors, agents, and its employees shall not be entitled to any rights or privileges of Judicial Council employees.

- 13.3. Quality of Work/Performance Obligations.** All of Design Build Entity's Work will be completed in a good and workmanlike manner, free of defects, and will conform with the requirements of the Contract Documents. Work not conforming to the requirements of the Contract Documents, including substitutions in design or construction not specifically approved or authorized by Judicial Council in advance, may be considered Defective Work.
- 13.3.1. Design Build Entity agrees to: (i) use its best skill and judgment in the performance of the Work of the design, construction, and Commissioning of the Project; (ii) furnish effective and efficient design, construction administration, construction coordination and supervision; (iii) furnish at all times an adequate supply of skilled labor and materials; (iv) use its best skills and expertise to coordinate its Work on the Project; and (v) perform the Work of the Project in the most expeditious and economical manner consistent with Judicial Council's best interests and the Project's purpose and objective.
- 13.4. Standard of Care.** Design Build Entity, its officers, agents, employees, Subcontractors, consultants and any persons or entities for whom Design Build Entity is responsible, shall provide all Work pursuant to this Agreement in accordance with the requirements of this Agreement, and in a manner consistent with the standard of care under California law applicable to those who specialize in providing design and construction services for projects of the type, scope, and complexity of the Project.
- 13.4.1. For all non-Construction Work, including Design Work and Preconstruction Services, the standard of care of architects, professional engineers, or other professionals performing that scope of the Work.
- 13.4.2. For all Construction Work, the standard of care of licensed contractors.
- 13.4.3. The Judicial Council's approval of any submittals, Deliverables, or other work product of Design Build Entity shall not be construed as assent that Design Build Entity has complied, nor in any way relieve Design Build Entity of, compliance with (i) the applicable standard of care or (ii) applicable statutes, regulations, rules, guidelines, and requirements.
- 13.4.4. If Design Build Entity has not met this standard of care as applicable to the scope of Work identified above, Design Build Entity shall be liable directly to Judicial Council at law, equity, and under the Agreement, including, without limitation, pursuant to Design Build Entity's indemnity and defense obligation herein.
- 13.5. Design Build Entity Obligation for Contract Administration.** Design Build Entity is responsible for all areas of contract administration, including, without limitation, document controls, Project cost controls, scope control, schedules, communication, quality assurance and control, value engineering studies, and constructability reviews. All documents shall be available to Judicial Council in .pdf format, native format (upon request), or in another electronic format acceptable to, and accessible by, Judicial Council. Design Build Entity shall review on-going contract administration tasks and Deliverables with Judicial Council during the Work. Design Build Entity will provide Judicial Council with all software required to review its documentation and/or submittals.

- 13.6. Judicial Council Program Information and Controls System.** Design Build Entity, its officers, agents, employees, Subcontractors, consultants and any persons or entities for whom Design Build Entity is responsible, shall utilize Judicial Council's Project Management Information System (PMIS), Procore, to collaborate and communicate effectively with project stakeholders throughout all project phases. Use of the PMIS, specifically Procore, is critical for providing timely updates, sharing relevant information, and addressing any concerns or queries raised by the stakeholders. All project documents, including drawings, specifications, reports, and correspondence will be stored, maintained, and regularly updated in Procore, allowing for quick accessibility for authorized stakeholders. This commitment to collaboration, communication, and document management aims to foster transparency, efficiency, and accountability throughout the project lifecycle, promoting successful project delivery and stakeholder satisfaction.
- 13.7. Key Personnel.** The Design Build Entity has been selected to perform the Work herein because of its skills and expertise and those of the Key Personnel identified in **Exhibit H:**
- 13.7.1. Design Build Entity expressly agrees that Design Materials shall be prepared under the supervision of the Architect of Record, and the Architect of Record shall be the "responsible charge" of persons and observes any Construction Work. The Architect of Record and all Design Professionals and Subcontractors shall visit the Site at intervals appropriate and necessary based on the stage of design and construction, or as otherwise required by the Contract Documents, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner such that the Work, when fully Completed, will be in accordance with the Contract Documents.
  - 13.7.2. The Design Build Entity shall not change any of the Key Personnel without prior written consent by Judicial Council unless any personnel cease to be employed by Design Build Entity. In either case, Judicial Council shall be allowed to interview and approve replacement personnel. Such approval shall not be unreasonably withheld or delayed.
  - 13.7.3. If any Key Personnel fails to perform to the reasonable satisfaction of Judicial Council, then upon written notice, Design Build Entity shall have five (5) Days to remove that person from the Project and replace that person with someone reasonably acceptable to Judicial Council.
  - 13.7.4. Design Build Entity acknowledges and agrees that the performance of Key Personnel is integral to the completion of the Project, and that Judicial Council was required to select Design Build Entity, in part, based on the qualifications of the Key Personnel. Design Build Entity shall pay Judicial Council One Hundred Thousand Dollars (\$100,000) if Design Build Entity replaces any Key Personnel, or materially changes the duties of Key Personnel, without prior written consent of Judicial Council. Payment of the fee will be deducted from the monthly progress payment following the month the Key Personnel is replaced. This charge will not be applicable in the instance of death, disability, departure of person from employment, termination of employment, or injury/illness. Design Build Entity waives any claim that the payment is an unenforceable penalty.
- 13.8. Coordination.** Design Build Entity will coordinate the Project with the work of others, including Separate Contractors and Subconsultants, that may be retained by Judicial Council for the Project in order to maintain the Contract Schedule and in order to minimize delays to ensure the Completion of the Project within the Contract Time. The Work to be coordinated includes, but is not limited, to Site access, delivery of building materials,

storage of building materials, safety, clean-up, underground utilities installation, Site security, and low voltage utility systems, with others and with Judicial Council's existing, on-going operations. Design Build Entity will coordinate all shut-downs, traffic interruptions, detours, utility outages or cut-overs, and any other activity with the potential to interrupt daily operations of Judicial Council operations on the Site, to ensure on-going uninterrupted operations of on-Site or adjacent facilities. Design Build Entity agrees to coordinate its activities with the work of others at the Project to minimize potential disruptions to their work.

**13.9. Compliance with Contract Documents.** Design Build Entity shall not be relieved of its obligation to perform the Work in accordance with the Contract Documents either by acts or omissions of Judicial Council, Judicial Council Representative, Project Inspector, and/or Construction Manager in the administration of the Contract Documents, or by tests, inspections, or approvals required, or performed, by persons or firms other than Design Build Entity, including any Authorities Having Jurisdiction.

**13.10. Applicable Codes, Rules, Regulations, Standards, & Regulatory Agency Approvals.** Design Build Entity, and its Design Professionals and Architect of Record, shall design and construct the Project in compliance with all Applicable Code Requirements and shall coordinate reviews as required hereunder. Design Build Entity shall ensure that copies of applicable codes, regulations, and standards shall be readily available for reference by Design Build Entity, Design Professionals, consultants, and Subcontractors during the Work.

13.10.1. California Building Standards Code, Title 24, California Code of Regulations (CCR):

13.10.1.1. Part 1, Building Standards Administrative Code

13.10.1.2. Part 2, California Building Code

13.10.1.3. Part 3, California Electrical Code

13.10.1.4. Part 4, California Mechanical Code

13.10.1.5. Part 5, California Plumbing Code

13.10.1.6. Part 6, California Energy Code

13.10.1.7. Part 7, California Elevator Safety Construction Code

13.10.1.8. Part 8, California Historical Building Code

13.10.1.9. Part 9, California Fire Code

13.10.1.10. Part 12, California Reference Standards Code

13.10.2. California Building Standards Code, Title 19 – California Code of Regulations

13.10.3. Air Quality Management District regulations, if applicable

13.10.4. Americans with Disabilities Act (ADA)

13.10.5. California Coastal Commission Regulations, if applicable

13.10.6. Reserved.

13.10.7. Local Building Codes. Judicial Council is not subject to local jurisdictions' building codes, nor is it required to obtain building permits from local jurisdictions for construction on real estate owned or controlled by Judicial

Council. However, the design and construction of utility connections and fire-protection systems may require liaison with local jurisdictions. This liaison shall be coordinated by and through Design Build Entity. Further, Construction Work or encroachment upon city- or county-owned property is subject to local codes and permit requirements.

13.10.8. Federal Occupational Safety and Health Act and all other Applicable Code Requirements relating to safety

13.10.9. Cal-OSHA

13.10.10. Authorities Having Jurisdiction. Design Build Entity shall identify the Authorities Having Jurisdiction over essential building and design elements and coordinate with, and implement, the requirements of those authorities or their authorized agents, including Code Compliance Review(s). To the extent any local agency (e.g., city, county, etc.) approval is required for any component of the Project, for example, approval of the SWPPP, Design Build Entity shall coordinate such approval. Approval of the Working Drawings concludes with obtaining any permits required to obtain fully permitted Construction Documents sufficient to perform the Construction Work. At a minimum, the Authorities Having Jurisdiction below must review and approve the Design Work, but Design Build Entity is responsible for ensuring that all Authorities Having Jurisdiction required to approve or otherwise review the Work, including, without limitation, Design Work, perform any such reviews and provide all necessary approvals.

13.10.10.1. OSFM

13.10.10.2. DSA

13.10.10.3. Reserved

13.10.10.4. Judicial Council – Building Official

13.10.11. Peer Review(s). The following Peer Review(s) shall be performed by Peer Reviewer(s). Judicial Council Representative will direct Design Build Entity on how to coordinate with each Peer Reviewer consistent with the requirements of the General Conditions. Meetings may also be required of Design Build Entity with Peer Reviewers. Design Build Entity will incorporate revisions requested by Peer Reviewers, unless otherwise directed by Judicial Council in writing. Design Build Entity will coordinate with Judicial Council Representative prior to incorporating such revisions.

13.10.11.1. Structural Peer Review

13.10.11.2. Fire Protection Peer Review (including Smoke Control if applicable)

13.10.11.3. Any other necessary Peer Review(s) applicable to the Project by Applicable Code Requirements and/or Authorities Having Jurisdiction

13.10.11.4. Peer Review as identified by Judicial Council on selected building systems, such as mechanical or electrical systems

13.10.12. Energy Analysis Requirements. Design Build Entity shall design the Project consistent with applicable energy requirements and shall provide an energy analysis. This design and analysis shall comply with LEED Silver. Design Build



Entity shall submit specific certification to Judicial Council as required by California Code of Regulations, Title 24, Part 6, California Energy Code.

**13.11. OSFM Compliance.** Design Build Entity shall develop the design, engineering, and construction details (including, without limitation, Shop Drawings and installation details) using simple, proven, and established approaches and UL-tested and listed assemblies, which comply with Applicable Code Requirements. During all stages of the Work (as applicable), Design Build Entity shall interact with the appointed OSFM reviewer/inspector. If Design Build Entity chooses to use an untested UL assembly, then Design Build Entity assumes responsibility for all related costs and delays, including any UL-testing costs, caused by OSFM's approval process.

13.11.1. Approach to OSFM Elements. Design Build Entity shall avoid complex and unproven approaches to assemblies and fire life systems since those approaches can result in increased OSFM review durations, including potential additional time related to resolution of OSFM's code interpretations. If there is a delay in the OSFM review time or other impacts and Judicial Council determines that Design Build Entity did not follow this requirement, Design Build Entity shall be responsible at its sole expense for any increased OSFM review durations and all design costs to bring the design in compliance.

13.11.2. OSFM Approval. Design Build Entity is fully responsible for obtaining OSFM approval and permits for the final Drawings and Specifications and obtaining a certificate of occupancy for the Project. Design Build Entity shall prepare the Drawings and Specifications and complete Construction Work in accordance with the OSFM's interpretations of the Applicable Code Requirements, including previously published OSFM interpretations of the Applicable Code Requirements. Compliance shall also include any requirements of the Contract Documents that are more stringent than minimum requirements of Applicable Code Requirements.

13.11.3. Changes to Stipulated Sum or Contract Time Resulting from OSFM Interpretations. Design Build Entity may be entitled to an adjustment of the Total Contract Amount and/or Contract Time if Design Build Entity can demonstrate that the OSFM code interpretations were more stringent than industry standards. Code interpretations by OSFM during plan review or construction inspections may be considered outside of industry standards if Design Build Entity establishes, by a preponderance of evidence, that the OSFM interpretation is unreasonably stringent based on the following sources:

13.11.3.1. OSFM published interpretations or interpretations by qualified third-party reviewers

13.11.3.2. ICC code interpretations: reference standards detailed in Chapter 35 of the California Building Code

13.11.3.3. California Fire Code Chapter 80 reference standards; California Mechanical Code Chapter 17

13.11.3.4. California Electric Code, Annex A and B and interpretations from these sources

In making this determination, OSFM published interpretations are of primary significance. If demonstrated to the satisfaction of Judicial Council, Design Build Entity may be entitled to an adjustment in the Contract Time, if Design Build Entity demonstrates entitlement pursuant to the requirements of the Contract Documents. If a time extension is the result of a Compensable Delay, Design Build Entity will be compensated at fifty percent (50%) of the applicable

Compensable Delay rate set forth in the Agreement. Any adjustment in the Contract Time shall be through an Amendment or Change Order, as applicable.

- 13.11.4. OSFM Code Requirements. In addition to any other requirement of the Contract Documents, Design Build Entity shall ensure that the Design Materials address the requirements of the OSFM's current Partial Permitting Guidelines. Design Build Entity shall use Judicial Council's OSFM Code Analysis Checklist to assist in the preparation of the Code Analysis Package, which is a part of the Package I Work – Code Analysis/Grading/Utilities Package.
- 13.11.5. Notices. Design Build Entity shall comply with, and provide any, notice required by all Applicable Code Requirements and shall promptly notify Judicial Council Representative and/or Construction Manager in writing if Design Build Entity becomes aware during the performance of the Work that the Performance Criteria Documents provided by Judicial Council are at variance with any Applicable Code Requirements. Design Build Entity's failure to timely provide Judicial Council notice of any variance between the Performance Criteria Documents provided by Judicial Council and Applicable Code Requirements waives any claim for an adjustment to the Total Contract Amount and Contract Time, or any other claim for relief or damages.
- 13.11.6. If Design Build Entity performs Work which it knows, or should know, is contrary to Applicable Code Requirements, without prior notice to Judicial Council, Design Build Entity shall be responsible for such Work and any resulting damages including, without limitation, the costs of correcting Defective Work.

**13.12. Design Build Entity's Responsibility to Review Judicial Council Supplied Information and Conduct Site Investigations.**

- 13.12.1. No Warranty of Judicial Council Furnished Information. Judicial Council has furnished information to Design Build Entity related to the Project and Site during the Request for Proposal process, the Performance Criteria Documents, Judicial Council Provided Information, the Contract Documents, and in the Project Documents, including, without limitation: a geotechnical report (which includes supporting data, findings, and recommendations); hazardous materials report(s); preliminary title report; environmental report(s); engineering report(s); and a legal description and a project survey. There is no guarantee or warranty, either expressed or implied, that the Site conditions indicated in the information provided by Judicial Council are representative of those existing throughout the Site, or that unforeseen conditions or developments may not occur. Making the information available to Design Build Entity is not to be construed in any way as a waiver of this provision. Other components of the information, including, but not limited, to recommendations, may not be relied upon by Design Build Entity. Judicial Council shall not be responsible for any interpretation of, or conclusion drawn from, the other components of the information by Design Build Entity.
- 13.12.2. Geotechnical Information. The geotechnical studies and reports provided by Judicial Council to Design Build Entity have been prepared by Judicial Council's geotechnical engineer, are reference documents only, and are not Contract Documents. Design Build Entity shall retain the services of its own geotechnical engineer with experience performing geotechnical engineering work on similar Sites and projects of similar type, size, scope, and complexity. Design Build Entity's geotechnical engineer shall be considered the geotechnical engineer of record for the Project. Design Build Entity's geotechnical engineer must be a

professional engineer registered with the State of California as a geotechnical engineer. Design Build Entity may rely upon the geotechnical and existing conditions data provided by Judicial Council only to the extent Design Build Entity's geotechnical engineer deems appropriate in the exercise of its professional judgment. Design Build Entity's geotechnical engineer shall validate the data, recommendations, and conclusions outlined in the geotechnical studies and report provided by Judicial Council as necessary for the design and construction of the Project. Design Build Entity's geotechnical engineer shall determine in its professional judgment whether any other geotechnical investigations are necessary.

- 13.12.3. No Sole Reliance on Judicial Council Information. The Work shall not be developed, or performed, based solely upon the information provided by Judicial Council. Design Build Entity is responsible for obtaining and reviewing additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning all conditions (surface, subsurface, soil, and underground facilities) at or contiguous to the Site, as deemed necessary by Design Build Entity and its consultants, including the geotechnical engineer, that may affect: (i) structural, civil, architectural, landscape, or any other design disciplines; (ii) Project costs; and (iii) the progress, performance, or furnishing of Work. The foregoing considerations concerning further investigations and their effect on the Project apply to the extent those investigations in any way relate to the development and implementation of any of the means, methods, techniques, sequences, or procedures of construction Design Build Entity may employ on the Project, and the safety precautions and programs incident thereto.
- 13.12.4. Inspection of Visible Conditions. Design Build Entity shall be responsible for performing on-Site inspections of visible conditions necessary to perform or furnish the Work in accordance with the Contract Documents. Design Build Entity shall take field measurements, verify field conditions, and carefully compare those field measurements, conditions, and other information known to Design Build Entity with the Contract Documents before commencing any Work.
- 13.12.5. Examination and Investigation Representation. Design Build Entity, its Design Professionals, and its Subcontractors: (i) shall carefully examine and review all documents provided to Design Build Entity by Judicial Council; (ii) compare those documents with the Contract Documents, and each of the Contract Documents with the others and with the information furnished by Judicial Council; and (iii) compare and correlate the information obtained as a result of its own independent Site investigations to the information provided by Judicial Council and the Contract Documents. Design Build Entity shall be responsible for notifying Judicial Council upon discovering any error, inconsistency, or omission in the Contract Documents and/or information furnished by Judicial Council. Design Build Entity shall be responsible for identifying and correcting any error, inconsistency, or omission in the Contract Documents developed by Design Build Entity.
  - 13.12.5.1. Design Build Entity warrants and represents that it has performed all required Site investigations and inspections and has correlated the conditions of the Site with the Design Work for the Project. Design Build Entity further represents that it has reviewed all Contract Documents and information provided by Judicial Council for the Project and has correlated the information contained in those documents with each other and with the Design Work of the Project.

- 13.12.5.2. Design Build Entity represents that it has reviewed the geotechnical report and examined the Site for the presence of rock or other conditions, defined in the report, anticipated to be encountered during mass excavation operations that may be required to balance the Site. Design Build Entity represents that it has satisfied itself as to the conditions of the Site relating to the potential presence of rock, Site soil conditions, and other potential conditions anticipated to be encountered during the mass excavation operations, if any.
- 13.12.6. Obligation to Retain Professional Services. In addition to the geotechnical engineer, Design Build Entity shall retain other professionals to perform all services necessary to complete the Work for the Project. Such services shall include, without limitation, reports, test borings, test pits, soil bearing values, percolation tests, water pollution and other environmental tests, ground corrosion and resistivity tests, and other necessary operations for determining subsoil, air, and water conditions with reports and appropriate professional interpretations and recommendations thereof. All engineers and professionals shall be appropriately licensed under the laws of the State of California for the Work being performed.
- 13.12.7. Above-Ground Existing Conditions. Under no circumstances shall Judicial Council be deemed to make a warranty or representation of visible or actual existing above-ground conditions, as-built conditions, which are verifiable by reasonable independent investigation by Design Build Entity. Design Build Entity shall not rely on the information supplied by Judicial Council regarding existing above-ground conditions when it submits a proposal or performs Design Work or Construction Work.
- 13.12.8. Subsurface and Soil Investigations. If Judicial Council has made limited investigations of subsurface conditions and made that information available to Design Build Entity, the information is limited in scope to that which Judicial Council actually encountered in the investigations and is provided for reference only.
- 13.12.9. Notification of Errors and Waiver. If Design Build Entity discovers any error, inconsistency, or omission in the Contract Documents, or any information furnished by Judicial Council when performing its Site investigation, and review as herein provided, Design Build Entity shall promptly report in writing to Judicial Council Representative any errors, inconsistencies, or omissions in the Contract Documents or inconsistencies with Applicable Code Requirements observed by Design Build Entity. Any failure by Design Build Entity to promptly report any error, inconsistency, or omission in the Contract Documents, or to discover any error, inconsistency, or omission that should have reasonably been discovered by Design Build Entity, shall constitute a waiver thereof. Any failure by Design Build Entity and Subcontractors to acquaint themselves with information provided by Judicial Council, information that could reasonably be obtained, or conditions which could be identified with reasonable investigation, or failure to notify Judicial Council, will not relieve Design Build Entity from the responsibility to properly estimate the difficulty or cost to perform the Work.
- 13.12.9.1. Design Build Entity warrants that it has reported any inconsistency, error, or omission in the Contract Documents to Judicial Council, and, to the extent Judicial Council has responded, is satisfied with Judicial Council's response. Design Build Entity waives any adjustment to the Contract Time or Total Contract Amount in any

way related to Design Build Entity's failure to comply with this provision, including, without limitation:

- 13.12.9.1.1. Design Build Entity's failure to report any error, inconsistency, or omission in the Contract Documents that Judicial Council has responded to, and to which Design Build Entity failed to object, or from any error, inconsistency, or omission that Design Build Entity should have reasonably discovered through a diligent inspection of the Contract Documents.
- 13.12.9.1.2. Design Build's entity's failure to discover Site conditions for the Project that should have been discovered by a reasonable inspection or were not discovered because of an error or omission of Design Build Entity, or its Subcontractors.

**13.13. Meetings.** Design Build Entity shall organize weekly progress meetings between Design Build Entity and Judicial Council. All Key Personnel shall be present. Design Build Entity must invite the Judicial Council's Representative, Construction Manager, and Inspector of Record (if applicable), and, in addition to Key Personnel, will ensure the attendance of any Design Professional, consultant, or Subcontractor who is necessary to fully inform Judicial Council of the progress of the Work and to address issues raised by either Party. Meetings shall be scheduled at a time reasonably convenient for Judicial Council. Throughout the Project, and for each meeting, Design Build Entity shall prepare and submit meeting minutes to Judicial Council and Judicial Council Representative electronically within three (3) days of a completed meeting.

13.13.1. Design Build Entity shall organize quarterly progress meetings between Design Build Entity and Judicial Council to address LEED status, certification, and compliance. Key Personnel of Design Build Entity shall be present. Attendees representing Judicial Council shall be identified by the Judicial Council Quality Compliance Manager. These meetings shall be held separately from the weekly progress meetings.

13.13.2. During construction, Design Build Entity shall organize monthly progress meetings between Design Build Entity and Judicial Council to address quality compliance. Key Personnel of Design Build Entity shall be present. Attendees representing Judicial Council shall be identified by the Judicial Council Quality Compliance Manager. These meetings shall be held separately from the weekly progress meetings.

**13.14. Schedule Updates.** No later than the fifth (5<sup>th</sup>) Day of a month, Design Build Entity shall prepare and provide a monthly update to the Contract Schedule to confirm delivery of the Project within the Contract Time.

**13.15. Quality Control.** Design Build Entity shall prepare and utilize a Quality Control Plan addressing both Design Work and Construction Work to ensure that the Work complies with the Performance Criteria Documents. At all stages of the Work, Design Build Entity shall ensure coordination of the Design Work among all consultants and agents, including the Architect of Record, Design Consultants, and Subcontractors. The goal of such coordination shall be to ensure construction feasibility and that all Drawings and Specifications, including, without limitation, Construction Documents, are properly coordinated, to identify conflicts, missing information, or gaps in the planned scope of Construction Work, to ensure compliance with the Performance Criteria Documents, and to eliminate Errors or Omissions.

- 13.15.1. **Consistency of Deliverables.** Design Build Entity shall maintain consistency of formatting for all Deliverables during the Design Work and during the Construction Work for all design professionals, engineering disciplines, and Subcontractors.
- 13.16. Design Build Entity Responsibility for all Work and any Errors.** Design Build Entity is responsible for the design and construction of the Project and shall provide all labor, services, equipment, and materials necessary to perform and Complete the Work, any phase therein, pursuant to the Contract Documents, and directives of Judicial Council Representative or Project Inspector.
- 13.16.1. Design Build Entity shall be solely responsible for the means, methods, techniques, sequences, and procedures of construction. Design Build Entity shall be responsible to see that the finished Work complies accurately with the Contract Documents.
- 13.16.2. If Design Build Entity's Design Work involves Errors and Omissions, or if Design Build Entity's Preconstruction Services, and/or Construction Work involves an error(s), inconsistency(ies), omission(s), or deficiency(ies), including, without limitation, Errors and Omissions, Design Build Entity agrees to correct the same at no additional cost to Judicial Council consistent with the Contract Documents; provided, however, this provision in no way limits the liability of Design Build Entity, or any remedy available to Judicial Council, under the Contract Documents, the law, and in equity.
- 13.16.3. Design Build Entity shall be responsible for all plotting, printing, copying, and distribution cost of any and all documents required in connection with the Work, including Design Materials.
- 13.16.4. Any Errors and Omissions in the Construction Documents, or misdescription, pertaining to details of Construction Work which are manifestly necessary to conduct the intent of the Drawings and Specifications, or which are customarily performed, shall not relieve Design Build Entity from performing such omitted or misdescribed Construction Work. That Construction Work shall be performed as if fully and correctly set forth and described in the Construction Documents at Design Build Entity's sole cost and expense.
- 13.16.5. In addition to any other requirement in the Contract Documents, Design Build Entity shall be solely responsible for all Errors and Omissions and for the correction of same at no additional cost to Judicial Council, including, without limitation, Errors and Omissions in any Work performed by Design Build Entity.
- 13.17. Design Build Entity Design Work Responsibilities.** Design Build Entity is solely and exclusively responsible for all Design Work necessary to fully and completely design and entitle the Project through the completion of the Construction Documents. Design Build Entity shall review and evaluate the Performance Criteria, including 100% Schematic Design Bridging Documents, of the Project and perform full design and engineering services necessary to complete the Design Work. All structural calculations required for the Project shall be performed by a structural engineer licensed in the State of California. All Deliverables, including, without limitation, Design Materials, submitted to Judicial Council must provide information customarily necessary in documents for projects of similar type, size, complexity, and scope, and permittable by Authorities Having Jurisdiction. Design Build Entity shall specify all tests and inspections that are required by the Applicable Code Requirements, Performance Criteria Documents, Contract Documents, and those that are necessary to Complete the Project consistent with the requirements of the Contract Documents.

- 13.17.1. Complete Design. All Design Work will be complete, coordinated, and accurate, and shall enable Design Build Entity to achieve Final Completion of the Project for the Total Contract Amount. As a result, no “betterment” or “added value” defense shall apply to any claim by Judicial Council against Design Build Entity in any way related to Design Build Entity’s Work preparing Drawings or Technical Specifications. Design Build Entity shall at all times comply with the Contract Documents in the performance of the Design Work.
- 13.17.2. Collaborative Design. The Parties acknowledge that the design build delivery method involves the production and review of design and Construction Documents through a continuing and collaborative process with portions of the Work completed in multiple stages. Design Build Entity shall follow the review submissions procedures hereunder for 50% and 100% Design Development, and 95% and 100% Working Drawings consistent with the requirements of the Contract Documents.
- 13.17.3. Preconstruction Services at all Stages of Design Work. Design Build Entity shall perform all necessary Preconstruction Services to refine the Design Work and to ensure that the Project is constructable and consistent with the Performance Criteria, including, without limitation, designing the project utilizing a Target Value Design approach, and performing a Life Cycle Analysis(es), a value engineering analysis(es) on building components (to determine the best value based on initial cost, life expectancy, cost of operation, and maintenance), and a constructability review(s). All costs for Preconstruction Services are included in the Stipulated Sum.
- 13.17.4. Performance Criteria Documents & Design of Project. Design Build Entity shall use the Performance Criteria Documents as the basis for design and the development of all Drawings and Specifications. As the Design Materials are developed, Design Build Entity may identify issues in the Performance Criteria Documents, or Judicial Council may change the Performance Criteria Documents. Any alleged issues that are mutually resolved by Judicial Council and Design Build Entity that require a change or modification to the Performance Criteria Documents, or any Judicial Council-initiated change to the Performance Criteria Documents, shall be memorialized pursuant to an Amendment or Change Order.
- 13.17.4.1. The Performance Criteria Documents will always control over Design Materials prepared by Design Build Entity during the Design Work. Design Build Entity expressly acknowledges that the Performance Criteria Documents are material to the design of the Project and that Design Build Entity’s design of the Project shall at all times conform with the requirements of the Performance Criteria Documents. Design Build Entity expressly acknowledges and agrees that during any portion of the Work, Judicial Council’s approval of Design Materials that are inconsistent, or in conflict, with any requirement of the Performance Criteria Documents shall not result in Judicial Council’s waiver of any right or remedy hereunder. Design Build Entity may be relieved of the requirement to design the Project to meet all elements of the Performance Criteria Documents, only if:
- 13.17.4.1.1. Design Build Entity specifically notifies Judicial Council, in writing of, the inconsistency or conflicting element within five (5) Days of the date Design Build Entity discovers an inconsistency or

conflict, or within five (5) Days of the date that Design Build entity should have reasonably discovered it;

13.17.4.1.2. The inconsistency or conflict was approved by Judicial Council, in its sole and absolute discretion, in an Amendment or Change Order that specifically modifies the Performance Criteria Documents; and

13.17.4.1.3. The inconsistency or conflict was not caused by an Error or Omission of Design Build Entity.

13.17.4.2. All Design Materials must be developed in compliance with the Performance Criteria Documents. If Design Build Entity identifies a need to deviate from the Performance Criteria Documents, Design Build Entity must submit a written request for such deviation to Judicial Council. The request must specifically identify the deviation requested and the basis of the need for the deviation. Judicial Council's approval of various stages of Design Materials does not indicate approval of deviation from the Performance Criteria Documents unless such deviations are specifically identified and approved by Amendment or Change Order (as applicable).

13.17.5. Program Evaluation & Effect of Approved Deliverables.

13.17.5.1. During each stage of the Design Work (e.g., Design Development Work, and, Working Drawings Work), Design Build Entity shall review and evaluate programmatic requirements, including Performance Criteria, and call to the attention of Judicial Council Representative before proceeding to the next stage of the Design Work, any discrepancy contained therein, and request direction regarding any discrepancies.

13.17.5.2. Any item within any approved Design Work that Design Build Entity desires to subsequently change must be identified by Design Build Entity in writing, identifying and requesting that change. No change will be incorporated into approved Design Work until Judicial Council issues prior written approval.

13.17.6. Design Build Entity Design Towards the Stipulated Sum. Design Build Entity shall conform to, and shall not exceed, the Stipulated Sum in the design and construction of the Project. The Stipulated Sum may only be adjusted by Amendment or Change Order consistent with all requirements of the Contract Documents.

13.17.7. Lean Project Delivery. Design Build Entity shall design the Project utilizing Lean Project Delivery Methods, including, without limitation, the Target Value Design approach, to ensure the Project design is consistent with the Performance Criteria Documents and does not exceed the Stipulated Sum.

13.17.8. Reserved.

13.17.9. Life Cycle Cost Analysis. Design Build Entity shall perform Life Cycle Cost Analyses as set forth in the Performance Criteria Documents. Design Build Entity shall indicate in its submitted Work Plan when Life Cycle Cost Analyses shall be performed, as a means of supporting Judicial Council design decisions.



- 13.17.10. Coordination with Judicial Council. Design Build Entity shall schedule and coordinate the participation of Judicial Council, their consultants, representatives, and local representatives of the Court in the development and review of the Design Work and Design Materials.
- 13.17.11. Furniture, Fixtures, and Equipment. Design Build Entity must provide all preliminary FF&E planning, design, and coordination services necessary for the Project in accordance with Judicial Council furniture requirements included in the Performance Criteria Documents and the Furniture, Fixtures, and Equipment Responsibility Matrix, attached as **Exhibit R**. Design Build Entity shall coordinate with Judicial Council's furniture vendor to confirm requirements for all Judicial Council furnished FF&E, finalize the list, and incorporate the furniture requirements, as identified in the Performance Criteria and **Exhibit R**, into the Design Materials produced by Design Build Entity.
- 13.17.12. Centralized Office. Design Build Entity must establish and maintain a centralized office for the duration of the Project through Final Completion. Judicial Council, in its sole discretion, may provide prior written authorization to Design Build Entity for the use of a virtual office during the performance of Design Work.
- 13.17.13. Duty to Provide Design Materials. Design Build Entity is required to deliver to Judicial Council, upon request, any and all Design Materials, whether in draft or final form, including, without limitation, calculations, any Drawings, electronic media data, tenant improvement documents, sketches, illustrations, specifications, descriptions, models, mock-ups, and other information developed, prepared, furnished, or delivered in the execution of the Design Work. At the conclusion of the Construction Work, Design Build Entity shall provide Judicial Council with Closeout Documentation as set forth in the General Conditions.
- 13.17.14. OSFM Code Analysis.
- 13.17.14.1. During Design Development, Design Build Entity shall utilize Judicial Council's OSFM Code Analysis Checklist as a tool to assist in preparing an analysis of the Drawings and Specifications, to ensure that Drawings and Specifications comply with all requirements related to the OSFM's Code Analysis Package. The final analysis shall be included in the final Design Development Drawings and shall be of sufficient quality to ensure that those Drawings comply with the OSFM's Code Analysis Package and the Package 1 permit requirements of the OSFM's Partial Permitting Guidelines. Permit Package 1 approval will be required at the end of Design Development.
- 13.17.15. Work Plan for Design Stages. Design Build Entity shall prepare and review, with Judicial Council Representative, a scope of Work list and Work Plan for design of the Project that identifies specific tasks, including, without limitation: interviews, data collection, analysis, report preparation, planning, architectural design and engineering, Design Development preparation, including design options, and life cycle cost analysis(es), that are part of the Work of the Project. The Work Plan will also identify milestone activities and deadlines, specific task responsibilities of Design Build Entity, required completion times necessary for all reviews required by the Contract Documents, including, without limitation, the Design Review Table provided by Judicial Council, and additional development and refinement of Drawings and Specifications. Design Build

Entity shall review the developed Work Plan with Judicial Council Representative to familiarize Judicial Council Representative with the proposed tasks and schedule and develop necessary modifications.

13.17.16. Quality Control/Risk Management. Design Build Entity shall:

13.17.16.1. Prepare a Quality Control Plan for review and approval by Judicial Council.

13.17.16.2. Prepare and maintain an issues log.

13.17.16.3. Develop and prepare a Risk Management plan, as part of the Project Management Plan, that includes a Risk Matrix. The Risk Matrix shall be updated periodically throughout the duration of the Project.

13.17.17. Design Drawings. Design Build Entity shall prepare all necessary Drawings, including, without limitation, architectural, mechanical, plumbing, fire protection, low voltage, electrical, structural, civil, and landscape drawings, consistent with the Design Deliverable Requirements.

13.17.18. Specifications. Prepare Specifications for all proposed Construction Work, including, without limitation, architectural, structural, mechanical, plumbing, fire protection, low voltage, and electrical materials, systems, and equipment, and their criteria and quality standards.

13.17.18.1. Complete proposed revisions to the Specifications describing materials, systems and equipment, workmanship, quality, and Performance Criteria required for the Construction Work. Specifications shall include all information required by the building trades to complete the Construction Work, other than such details customarily developed by others during construction.

13.17.18.2. No part of the Specifications shall call for a designated material, product, thing, or service by specific brand or trade name unless Judicial Council has given prior approval.

13.17.19. Technology Backbone. Design Build Entity shall be responsible for the coordination of the design and the layout of the technology backbone system of the Work with Judicial Council's and/or Court's information technology department(s) and/or Judicial Council's technology consultant and lay out any included technology backbone system. The coordination effort shall include location and routing of raceways, conduits, and outlets, and the required spaces to accommodate electrical, data, and communication wiring. Design Build Entity shall prepare, and be responsible for, documents prepared by Design Build Entity based on the information provided by Judicial Council's technology consultant, as appropriate to the level of design completion.

13.17.20. Reserved.

13.17.21. Presentations. After submitting Deliverables for each stage of the Design Work, Design Build Entity shall: (i) present and review with Judicial Council the detailed Deliverables at that stage; (ii) present Project issues and risks associated with the Project as identified during that stage.

13.17.22. Meetings. Design Build Entity shall attend, take part in, and conduct meetings, Site visits, and workshops, as required, to develop the design consistent with the requirements of the Contract Documents.

- 13.17.23. Material Sample & Selection Boards. At the time of submission of final Deliverables for any stage of the Design Work, Design Build Entity shall provide materials and/or sample boards, including updates, to reflect Judicial Council review during the design process.
- 13.17.24. BIM for Design Documents.
- 13.17.24.1. As Design Build Entity prepares the Design Development Documents and Specifications, the BIM shall be developed as specified in Section 01 35 54 of the Division 01 Sections, Building Information Modeling. The BIM shall depict and represent the current configuration of the design and building systems during the development of the Project.
- 13.17.24.2. When Design Build Entity compiles the Construction Drawings and final Specifications in the Construction Documents, the Construction Documents shall also be provided in the format as specified in the Division 01 (Section 01 35 54). Design Build Entity may segregate portions of the BIM that illustrate means and methods for constructing, fabricating, or installing portions of the Work, which shall not be considered a part of the Contract Documents or Construction Documents.
- 13.17.25. Review of Design Materials. Deliverables produced during Design Work are subject to review and approval as outlined herein. The Project contemplates the following three (3) types of reviews: (i) Code Compliance Review(s); (ii) Performance Criteria Review(s); and (iii) Peer Review(s).
- 13.17.25.1. The Code Compliance Reviews are those reviews performed by Authorities Having Jurisdiction during the Design Work, as required by Applicable Code Requirements to obtain Construction Documents.
- 13.17.25.2. The Performance Criteria Review shall be performed by Judicial Council's designee, who may include, without limitation, the Criteria Architect, to confirm that the Project design has been developed consistent with the Performance Criteria.
- 13.17.25.3. Judicial Council may also require, in its sole discretion, Peer Review(s) of Design Work.
- 13.17.25.4. In addition to Judicial Council's review, and in Judicial Council's discretion, the Design Work herein is subject to Peer Review(s) and Performance Criteria Review(s). Design Build Entity shall reasonably cooperate with any applicable reviewer during any stage of the design so that the reviewer can review the Drawings and Specifications prepared by Design Build Entity. If Judicial Council Representative directs Design Build Entity to prepare revisions based on the reviewer's comments, Design Build Entity shall make any such revisions and resubmit the Drawings and Specifications to Judicial Council at Design Build Entity's sole cost and expense. If, for whatever reason, Design Build Entity believes that any requested revisions are improper, or that Design Build Entity is entitled to an adjustment to the Total Contract Amount or Contract Time, Design Build Entity shall submit a written objection to the revisions within five (5) Days of receipt of direction from Judicial Council to make the revisions. The objection shall set forth in detail the basis for the

objection and shall include all necessary documentary support. Judicial Council shall issue a written determination, which shall be final. If Design Build Entity disagrees, it shall proceed with the revisions and may proceed under the “Claims Resolution” section of the General Conditions, as necessary. Failure to comply with the written objection requirement is a waiver of any Claim or Dispute related thereto.

13.17.25.5. Consistent with other requirements of the Contract Documents, Design Build Entity shall, in the performance of Design Work, perform the Work leaving adequate time for Code Compliance Review(s), Performance Criteria Review(s), and Peer Review(s). Design Build Entity is responsible for including, in its Contract Schedule, time for all reviews required by the Contract Documents, including, without limitation, those in the Design Review Table.

13.17.26. Submission of Deliverables. Design Build Entity shall submit to Judicial Council one (1) electronic copy of the Deliverables produced at the design intervals below:

13.17.26.1. 50% Design Development

13.17.26.2. 100% Design Development

13.17.26.3. 95% Working Drawings

13.17.26.4. 100% Working Documents

13.17.27. Required Deliverables. In addition to any other Deliverable required herein, Design Build Entity shall submit the following Deliverables at each above interval:

13.17.27.1. Basis of Design reports;

13.17.27.2. Design Narratives including:

13.17.27.2.1. Any approved deviations from Performance Criteria;

13.17.27.2.2. Area Tabulations;

13.17.27.2.3. Key Building Parameter Reporting; and

13.17.27.2.4. Description of resolution for any outstanding revisions needed as a result of previous design reviews.

13.17.27.3. Judicial Council OSFM Code Analysis Checklist;

13.17.27.4. Drawings;

13.17.27.5. Technical Specifications;

13.17.27.6. Engineering Calculations;

13.17.27.7. Life Cycle Cost Analysis;

13.17.27.8. FF&E plans and lists, including FF&E provided and installed by the Judicial Council vendor;

- 13.17.27.9. Updated Contract Schedule, together with a statement indicating changes made to the Contract Schedule;
- 13.17.27.10. Reserved.
- 13.17.27.11. Updated Work Plan;
- 13.17.27.12. Updated Quality Control Plan;
- 13.17.27.13. Updated issues log;
- 13.17.27.14. Updated Risk Management plan and the then current Risk Matrix;  
and
- 13.17.27.15. Current LEED scorecard.
- 13.17.28. Review & Approval by Judicial Council.
  - 13.17.28.1. Consistent with the Contract Documents, Judicial Council will review and approve identified Deliverables, which may be a condition precedent to proceeding with the Work as set forth in the Contract Documents.
  - 13.17.28.2. For the design review intervals specified herein, Judicial Council shall review and provide comment on submitted Deliverables using Bluebeam Studio Session.
  - 13.17.28.3. With respect to submitted Design Materials, including, without limitation, Drawings and Specifications, Judicial Council shall review and approve submitted Design Materials, subject to the limitations on “approval” of those Deliverables in the General Conditions. Should Judicial Council reject any Deliverable(s), Design Build Entity shall modify the Deliverable(s) and resubmit it for approval. No adjustment to the Total Contract Amount or Contract Time will be granted for resubmittals to Judicial Council. Judicial Council’s review herein shall include any Peer Review(s), if required. Judicial Council approval shall not be provided until the Deliverables complete Code Compliance Review(s) (if applicable) to Judicial Council’s satisfaction.
- 13.17.29. Additional Requirements for Working Drawings. Design Build Entity shall prepare the Working Drawings and Specifications consistent with the requirements of the Contract Documents, including, without limitation, the Design Deliverable Requirements, and those Deliverables shall meet all requirements of the Performance Criteria Documents and be consistent with the approved Design Development Documents. The Working Drawings and Specifications shall include all information required by the building trades to complete the Construction Work, other than such details customarily developed by others during construction.
  - 13.17.29.1. Hazardous Materials. Working Drawings and Specifications for hazardous and/or toxic abatement efforts and demolition activity shall be of sufficient clarity and shall be fully detailed when submitted to Judicial Council for review. These Drawings and Specifications must be prepared consistent with all Applicable Code Requirements governing hazardous and/or toxic materials and/or abatement and must be prepared by a person licensed to perform that

Work who has performed similar work on public works projects of similar size, scope, and complexity.

- 13.17.29.2. Incorporation of Review Comments. Final Working Drawings and Specifications shall incorporate any changes or corrections required by any reviews, including, without any limitation, Code Compliance Review(s) of the 100% Working Drawings, or be accompanied by a written statement as to why such changes were not incorporated. Judicial Council Representative may reject Design Build Entity's explanation and require Design Build Entity to make the changes or corrections to the Working Drawings as previously requested by the appropriate reviewer. For Code Compliance Reviews, the applicable Authority Having Jurisdiction will have final authority of code interpretations and that authority's interpretation shall be binding on Design Build Entity.
- 13.17.29.3. Testing Inspection and Observation Plan. With the 100% Working Drawings and Specifications, list all requirements for special testing and inspections, such as soils and materials testing, welding inspections, etc. Design Build Entity shall comply with any Authority(ies) Having Jurisdiction requirements for additional testing based on their interpretation of Applicable Code Requirements. Judicial Council and the Peer Reviewers may all direct Design Build Entity to include reasonably necessary additional inspections in the Working Drawing Documents.
- 13.17.29.4. Quality Control Plan (100% Working Drawings). With the 100% Working Drawings and Specifications, submit any updates to the Quality Control Plan for activities during Construction Work consistent with the Division 01 Sections for Judicial Council's review and approval. No Construction Work shall be started until the updated Quality Control Plan has been reviewed and approved by Judicial Council. Design Build Entity shall provide reasonable time for Judicial Council to review the updated Quality Control Plan, and to allow for subsequent revisions by the Design Build Entity, without impacting the Contract Time. Revisions required by Judicial Council may include, without limitation, additional testing by either Judicial Council or Design Build Entity.
- 13.17.29.5. Statement of Authorized Changes. A statement indicating any authorized changes made to the design from Design Development. This statement should correspond with graphical indications of design revisions through revision clouds and update iterations listed in the drawings title blocks for all working drawings submissions.

**13.18. Reserved.**

**13.19. Design Build Entity's Responsibilities for Construction Work.** Design Build Entity shall perform the Construction Work in compliance with all requirements of the Contract Documents.

- 13.19.1. General Obligations. All Construction Work shall be performed consistent with the Construction Documents, and organization of the Specifications into various subdivisions and the arrangement of the Construction Drawings shall not control Design Build Entity's division of the Work among Subcontractors or in establishing the extent of Construction Work to be performed by any trade. Design Build Entity's Construction Work shall include meetings and discussions

as needed with Judicial Council and others, as needed, to achieve all necessary approvals.

- 13.19.2. Verification of Lead Times. Design Build Entity shall verify lead times and availability of all Project materials, supplies, and FF&E and ensure that all of these will be available so that Design Build Entity can perform the Work pursuant to the Contract Time. Design Build Entity shall also provide other options to Judicial Council regarding other possible and more available equipment, materials, supplies, fixtures, or furnishings.
- 13.19.3. Approvals & Permits. Design Build Entity, its Design Professional, Subcontractors, consultants, and inspectors shall provide documentation required for all approvals by Authorities Having Jurisdiction.
  - 13.19.3.1. During Construction Work, the OSFM will conduct periodic field reviews of the Work. Notwithstanding OSFM stamped and approved plans, the OSFM has the authority to require revisions and/or corrections to secure code compliance based on its field review and inspection findings. These corrections, when ordered by the OSFM to achieve code compliance, shall be provided by Design Build Entity without any adjustment to the Contract Time or Total Contract Amount, unless otherwise permitted, consistent with the requirements of the Contract Documents.
  - 13.19.3.2. Design Build Entity shall notify Judicial Council and the Project Inspector of required inspections and shall provide reasonable access and accommodations for inspections, including not less than 48 hours' notice.
  - 13.19.3.3. Design Build Entity shall plan and anticipate for a typical duration of five (5) days from request to performance of OSFM inspections.
- 13.19.4. Discovery of Unforeseen Site Conditions. Design Build Entity shall immediately notify Judicial Council of any Unforeseen Site Conditions before the Site conditions are disturbed. The notice shall be in writing and shall provide Judicial Council with details of the suspected Unforeseen Site Condition. Judicial Council will promptly investigate the identified Unforeseen Site Condition, and if Judicial Council determines that the condition does constitute an Unforeseen Site Condition, and the Parties agree that the Unforeseen Site Condition will cause an increase or decrease in the Total Contract Amount or Contract Time, a Change Order will be issued consistent with these General Conditions; provided, however, that Design Build Entity complies with all requirements of the "Changes in the Work" section to submit a Proposed Change Order and substantiate any claimed costs.
- 13.19.5. Access to Work by Judicial Council. Judicial Council, Judicial Council Representative, Construction Manager, and/or Project Inspector, their consultants, and other persons authorized by Judicial Council will at all times have access to the Work while it is in progress, including shops where Work is in preparation. Design Build Entity shall provide safe and proper facilities for such access and inspection.
- 13.19.6. Field Engineering. Design Build Entity shall retain and pay expenses of a civil engineer or land surveyor to establish the required Site reference points and benchmarks, establish building lines and elevations, check for building framing, plumbness, and establish on building frame(s) the required basic grid lines. The engineer or land surveyor shall be licensed in the State of California.

- 13.19.6.1. Design Build Entity shall locate and protect control points prior to starting Work on the Site, preserve permanent reference points during the Construction Work, and shall require the engineer or surveyor to replace control points which become lost or destroyed.
- 13.19.6.2. Design Build Entity shall verify all indicated dimensions before ordering materials or equipment and before performing Construction Work. Design Build Entity shall take field measurements, verify field conditions, and shall carefully compare such field measurements and conditions and other information known to Design Build Entity with the Contract Documents before commencing Construction Work. Errors, inconsistencies, or omissions discovered shall be immediately reported to Judicial Council and Design Build Entity's Architect of Record. Upon commencement of any item of Construction Work, Design Build Entity shall be responsible for dimensions related to the Construction Work and shall make any corrections necessary to make Work properly fit at no additional cost to Judicial Council. Design Build Entity may delegate this responsibility to Subcontractors or agents but shall remain liable for associated errors and omissions.
- 13.19.7. Labor, Materials, Equipment, and Purchasing and Storing. Unless otherwise provided in the Contract Documents, Design Build Entity shall provide and pay for all professional services, other services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other things 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.
  - 13.19.7.1. Materials and equipment incorporated in the Work shall match the approved Samples within tolerances appropriate to the items, and as may be further described in the Contract Documents.
  - 13.19.7.2. Design Build Entity shall submit Shop Drawings approved by the Architect of Record and Samples of submittals that relate to finish materials and products.
  - 13.19.7.3. Any variation in quality in materials, equipment, or products must be approved by Judicial Council in writing.
  - 13.19.7.4. Design Build Entity is required to order and obtain materials and equipment sufficiently in advance of its Construction Work at no additional cost or advance payment from Judicial Council to assure that there will be no delays.
  - 13.19.7.5. Design Build Entity must purchase and use compost and co-compost products and materials when those products and materials can be substituted for, and cost no more than the cost of, regular fertilizer or soil amendment products, or both, and if the co-compost products meet all applicable state standards and regulations, and the requirements of the Criteria Documents, as determined by appropriate testing.
- 13.19.8. On-Site Storage of Materials and Equipment. Materials and equipment delivered and stored at the Site shall be limited to materials and equipment required to be incorporated into the Work, and then only to the extent that Site space restrictions



can accommodate such storage. Design Build Entity shall be responsible for proper storage and security and for any damage, defect, deficiency, vandalism, or theft of any material or equipment stored on the project.

13.19.9. Protection of Existing Structures and Utilities. Design Build Entity shall verify the location and depth (elevation) of all existing utilities and existing services before performing any excavation Work.

13.19.9.1. The Site may have above-grade and below-grade structures, utility lines, and other installations that are known or believed to exist around the Construction Work. Design Build Entity shall locate these existing installations before proceeding with demolition and other operations that could damage same; maintain them in service, where appropriate; and repair damage to them caused by the performance of the Construction Work. Should damage occur to this existing installation, then, to the furthest extent permitted by law, the costs of repair shall be at Design Build Entity's expense and made to Judicial Council's satisfaction.

13.19.9.2. Design Build Entity shall be alert to the possibility of the existence of additional structures and utilities. If Design Build Entity encounters additional structures and utilities, Design Build Entity will immediately report to Judicial Council for disposition of same, as indicated in the General Conditions to Agreement.

13.19.9.3. Design Build Entity shall conduct an engineering evaluation to determine whether there is potential for electrolytic corrosion of any other underground utilities. Where the potential for electrolytic corrosion exists, Design Build Entity shall also design and install a cathodic protection system to protect such utilities.

13.19.10. Testing And Inspection. Testing and inspection shall follow the approved Testing Inspection and Observation Plan and the Specifications.

13.19.10.1. Judicial Council will provide and pay for those special inspections and laboratory tests specified in the Contract Documents.

13.19.10.2. Except as specified in the Contract Documents, Design Build Entity shall provide and pay testing and inspection.

13.19.10.3. Design Build Entity shall:

13.19.10.3.1. Participate in all Punch List inspections, including without limitation, for Beneficial Use and Final Completion.

13.19.10.3.2. Conduct Quality Control prior to requesting testing and inspection. Design Build Entity can only request OSFM inspections after inspections by the IOR and Special Inspector of Materials Testing have passed.

13.19.10.3.3. Assist Judicial Council in reviewing test and inspection results.

13.19.10.3.4. Not authorize deviations from the Contract Documents.

- 13.19.10.3.5. Assure the Construction Work is in compliance with the Quality Control Plan and Specifications.
- 13.19.10.4. In addition to the requirements listed herein, Design Build Entity shall employ a qualified environmental consultant to perform a full interior building asbestos survey and provide laboratory analysis of materials that could potentially contain asbestos. Materials and testing protocol shall be in accordance with Capital Projects Asbestos Specifications included in the Project Documents.
- 13.19.11. Materials/Color Schedule and Materials Boards. Design Build Entity shall revise and update the materials/color schedule and materials boards, which were prepared during Design Work, as necessary to reflect the actual manufacturers' products that have been submitted by the Subcontractors and approved for use on the Project.
- 13.19.12. Documents and Samples at Site. Design Build Entity shall maintain the following documents at the Site. These documents shall be available to Judicial Council Representative and shall be delivered to Judicial Council Representative for submittal to Judicial Council upon the earlier of Final Completion or termination of the Contract.
- 13.19.12.1. One (1) copy of permitted Construction Documents.
- 13.19.12.2. One (1) copy of the full Contract Documents, including, without limitation, any Amendment(s) or Change Order(s).
- 13.19.12.3. Computer system providing electronic access to BIM.
- 13.19.12.4. One (1) copy of the As-Built, in good order and marked to record current changes and selections made during construction.
- 13.19.12.5. The current Contract Schedule.
- 13.19.12.6. Shop Drawings, Product Data, and Samples.
- 13.19.12.7. All other required submittals.
- 13.19.13. Design Build Entity Supervision and Personnel. During progress of the Work, Design Build Entity shall keep on the Site, its design office, and at all other locations where any Work related to the Project is performed, a competent Project Manager, Quality Control Manager, and Superintendent who are employees of Design Build Entity, to whom Judicial Council does not object. At least one shall be fluent in English, written and verbal, and all shall speak fluently the predominant language of Design Build Entity's employees. Design Build Entity's Project Manager and Superintendent shall each represent Design Build Entity, and all directions given to Design Build Entity's Project Manager and/or Superintendent shall be as binding as if given to Design Build Entity.
- 13.19.13.1. Superintendent Specific Provisions. The Superintendent need only be present at the Site at all times during the performance of Construction Work, and that obligation shall commence whenever Design Build Entity first mobilizes to the Site to perform Construction Work. The Superintendent shall be an employee of Design Build Entity who has complete authority to act on Design Build Entity's behalf.

- 13.19.13.2. Quality Control Manager Specific Provisions. The Quality Control Manager need only be present at the Site full-time during the performance of Construction Work. The Quality Control Manager shall be an employee of Design Build Entity who works in conjunction with the Superintendent and Project Manager. The Quality Control Manager shall serve as the main point of contact for the Inspector of Record and shall conduct pre-inspections prior to issuing inspection requests.
- 13.19.13.3. Project Manager Specific Provisions. Design Build Entity Project Manager shall be based at the Site during construction, and reachable and readily available at all times during the performance of any Work at the Site. Design Build Entity Project Manager shall also be present in Design Build Entity's home office when necessary to pre-plan Project activities to meet the Contract Schedule and fulfill all obligations under the Contract Documents. If one project manager is not sufficient to meet both the on-Site and home office requirements hereunder, then Design Build Entity shall employ as many project managers as necessary to adequately perform the obligations hereunder.
- 13.19.13.4. Scheduling Manager. Design Build Entity shall employ a competent scheduling manager (not the Project Manager, project engineer, foreman, or Superintendent), or contract for sufficient services of a scheduling consultant, fully qualified in critical path scheduling of projects of similar type, size, complexity, and scope for the entire duration of the Project. The scheduling manager shall: (i) have a minimum of ten (10) years' experience in scheduling; (ii) be the individual responsible for all scheduling requirements of the Contract Documents; and (iii) shall be satisfactory to Judicial Council and, if not satisfactory, shall be replaced by Design Build Entity with someone who is acceptable. The scheduling manager shall not be changed without the prior written consent of Judicial Council unless the scheduling manager ceases to be employed by Design Build Entity.
- 13.19.13.5. Notice of Change of Project Manager and/or Superintendent. Before commencing the Work, Design Build Entity shall give written notice to Judicial Council of the name of its Project Manager and Superintendent. The Project Manager and Superintendent shall be identified as Key Personnel in **Exhibit H** to the Agreement. Design Build Entity shall notify Judicial Council in writing of any replacement Project Manager or Superintendent. Judicial Council retains the right to reasonably refuse Design Build Entity's replacement personnel.
- 13.19.13.6. Estimator. Design Build Entity shall employ a competent estimator and necessary assistants, or contract for sufficient services of an estimating consultant, to evaluate and price Construction Work throughout the Project and to process proposed change orders. The estimator shall have a minimum of ten (10) years' experience in estimating. The estimator shall be satisfactory to Judicial Council and, if not satisfactory, shall be replaced by Design Build Entity with someone who is acceptable. The estimator shall not be changed without the prior written consent of Judicial Council unless the estimator ceases to be employed by Design Build Entity.

- 13.19.14. Duty to Provide Fit Workers. All persons working for Design Build Entity and Subcontractor(s) shall refrain from using profane or vulgar language, or any other language that is inappropriate, on the jobsite.
- 13.19.14.1. Design Build Entity and Subcontractor(s) shall at all times enforce strict discipline and good order among their employees and shall not employ any unfit person or anyone not skilled in Work assigned to that person. It shall be the responsibility of Design Build Entity to ensure compliance with this requirement. Judicial Council may require Design Build Entity to permanently remove unfit persons from Site.
- 13.19.14.2. Any person in the employ of Design Build Entity or Subcontractor(s) whom Judicial Council may deem incompetent or unfit shall be excluded from working on the Project and shall not again be employed on the Project except with the prior written consent of Judicial Council.
- 13.19.14.3. If Design Build Entity or any Subcontractor on the Site fail to comply with any of the above provisions, Judicial Council may have the offending person(s) immediately removed from the Site, and the person(s) shall be replaced within three (3) Days, at no additional expense to Judicial Council. Design Build Entity, on behalf of it and its Subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under the Contract Documents. If the removed party is a Key Personnel, Design Build Entity shall be subject to the One Hundred Thousand Dollars (\$100,000) payment in the “Key Personnel” section above.
- 13.19.14.4. Design Build Entity shall furnish labor that can work in harmony with all other elements of labor employed, or to be employed, in the Work.
- 13.19.14.5. As required by law, Design Build Entity and all Subcontractors shall employ individuals for the Work in conformity with the Immigration Reform and Control Act of 1986, 8 USC §§1101 et seq. Design Build Entity shall include this requirement in its subcontracts with Subcontractors.
- 13.19.14.6. Design Build Entity shall be responsible to Judicial Council for acts and omissions of Design Build Entity’s agents, employees, and Subcontractors, and their respective agents and employees.
- 13.19.15. Protection of Persons and Property. In addition to the safety requirements hereunder, Design Build Entity shall comply with all minimum safety requirements in the OCIP Safety Requirements Manual.
- 13.19.15.1. Design Build Entity shall submit to Judicial Council a Design Build Entity Safety Plan specifically adapted for the Project. That plan shall be submitted to Judicial Council before Design Build Entity commences any Construction Work, for Judicial Council’s prior written approval, and shall comply with the following requirements:

- 13.19.15.1.1. All applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety and protection of persons and property from damage and injury, including all requirements of Cal-OSHA, OSHA, and any other Applicable Code Requirements.  
  
All provisions regarding Project safety, including all applicable provisions in these General Conditions and the OCIP Safety Requirements Manual.
- 13.19.15.1.2. Project Site safety plans that address Construction Work, including, without limitation:
- 13.19.15.1.3. Stormwater Pollution Prevention Plan (SWPPP);
- 13.19.15.1.4. Water event and mold prevention plan;
- 13.19.15.1.5. Air and dust management plan;
- 13.19.15.1.6. Wildfire smoke management plan; and
- 13.19.15.1.7. If applicable, blasting and use of explosives plan.
- 13.19.15.1.8. Prepared in both English and in the predominant language(s) of Design Build Entity's and its Subcontractors' employees.
- 13.19.15.2. Design Build Entity shall not commence any Construction Work until Judicial Council provides prior written approval of Design Build Entity's Safety Plan.
- 13.19.15.3. Design Build Entity will be solely and completely responsible for the conditions of the Site, and for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work. This requirement will apply continuously and not be limited to normal working hours.
- 13.19.15.4. Design Build Entity shall take, and require Subcontractors to take, all necessary safety precautions and shall comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes, and the OCIP Safety Requirements Manual, when performing Work at the Site.
- 13.19.15.5. Design Build Entity shall take adequate precautions for safety and shall provide adequate protection to prevent accidents, injury, illness, damages, or loss to the following:
  - 13.19.15.5.1. Employees involved in the Construction Work and other persons present at the Site.
  - 13.19.15.5.2. The Construction Work taking place and materials and equipment to be incorporated therein, whether in storage on or off the Site, under care, custody, or control of Design Build Entity or Subcontractors.
  - 13.19.15.5.3. Other property at the Site and adjoining property.
- 13.19.15.6. When use or storage of explosives, other hazardous materials, equipment, or unusual methods are necessary for execution of the

Construction Work, Design Build Entity shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities and exercise the utmost care, and continue such activities only under the supervision of properly qualified personnel, and shall comply with any requirements of the OCIP Safety Requirements Manual.

13.19.15.7. Consistent with the requirements of the OCIP Safety Requirements Manual, Design Build Entity shall designate a “Project Safety Manager” and Subcontractor(s) shall designate a “Subcontractor Safety Representative” (if Subcontractor’s workforce, including any Tier of Subcontractor contracted under the other Subcontract, exceeds 50 Site personnel) that meet the following requirements, in addition to those in the OCIP Safety Requirements Manual:

13.19.15.7.1. Has five (5) years of safety experience on large-scale construction projects similar to the type, size, complexity, and scope of the Project.

13.19.15.7.2. Has OSHA 30-hour construction safety training or equivalent certification.

13.19.15.7.3. Demonstrates competency in fall protection, confined space, excavation, trenching, electrical, crane operations, pre-task planning, accident investigation, root cause analysis, and statistical analysis of injury trends.

13.19.15.7.4. Has a broad understanding and recall of federal, State, and local regulatory requirements as pertains to occupational health and safety and applicable labor laws.

13.19.15.7.5. Has current CPR and basic first aid certification.

13.19.15.8. Judicial Council’s review of Design Build Entity’s Project Safety Plan does not relieve Design Build Entity from its responsibilities and obligations under this section.

13.19.15.9. In an Emergency, Design Build Entity shall act to prevent or minimize damage, injury, or loss. Design Build Entity shall promptly notify Judicial Council Representative of any Emergency. Initial notice of an emergency may be oral. However, oral notice must be followed by written confirmation of the occurrence of an Emergency, including an explanation of Design Build Entity’s action, within twenty-four (24) hours.

13.19.16. When conditions of the Work, in the judgment of Judicial Council, present unreasonable risk of injury or death to persons or property damage, Judicial Council may direct Design Build Entity, at Design Build Entity’s sole expense, to close down the Work and not commence Work again until all dangerous conditions are eliminated.

13.19.17. Hazardous Materials. Design Build Entity, in addition to any other requirement of the Contract Documents, shall comply with the following when performing Work that involves Hazardous Materials:

- 13.19.17.1. Design Build Entity will be required to comply with Judicial Council's Asbestos Management Plan and Hazardous Materials Management Process, as applicable. Design Build Entity will review all test results prior to performing any Work. Design Build Entity will be responsible for soliciting and contracting with a licensed abatement contractor to perform abatement of hazardous material present in accordance with all regulatory requirements.
- 13.19.17.2. Design Build Entity shall not bring on the Site or use in the Work any Hazardous Materials unless Design Build Entity first obtains Judicial Council's prior written approval. Design Build Entity must comply with all Applicable Code Requirements concerning the use, storage, transportation, and disposal of any Hazardous Materials on the Project, and must obtain all permits and pay all fees and taxes related thereto.
- 13.19.17.3. Prior to starting Construction Work on the Project, Design Build Entity must submit to Judicial Council a list of all Hazardous Materials expected to be used on the Project as part of the Design Build Entity Safety Plan. Design Build Entity must keep a copy of this list at the Site. This list must include, without limitation, any cleaner, solvent, paint, or explosive charge used in the Work. Design Build Entity must submit one (1) copy of the OSHA Safety Data Sheet for each Hazardous Material listed and must advise every person at or near the Site of these materials, of proper handling, and of proper action in the event of accidental exposure or Emergency.
- 13.19.17.4. Design Build Entity must safely contain and store all Hazardous Materials, and in the event of a spill or discharge, must immediately notify all required federal, State, county, and local agencies, including the fire department. Design Build Entity must protect personnel from exposure and provide treatment, as necessary.
- 13.19.17.5. Design Build Entity must immediately advise Judicial Council of any potentially Hazardous Materials encountered at the Site and must take all necessary action to prevent exposure of personnel until the material is identified and proper action can be taken.
- 13.19.17.6. Design Build Entity must not store or use any Hazardous Materials near air intakes or doors and windows serving persons on or off-Site without proper protection and safeguards to prevent exposure.
- 13.19.17.7. Design Build Entity shall 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 and hazardous waste on the project. Design Build Entity shall complete all hazardous waste documentation and comply with the waste destination facility's manifesting requirements, including utilizing the Environmental Protection Agency's "E-Manifest" system in either a fully electronic or hybrid paper/electronic capacity. Design Build Entity shall ensure any of its delegates signing a manifest as an offeror "on behalf of the Judicial Council" is familiar with manifest requirements and receives appropriate training, as described in 40 CFR Part 262, and 49 CFR Part 172. By signing manifests on behalf of Judicial Council, all delegates represent and warrant to Judicial Council that the waste is properly

classified and described on the manifest, containerized, marked, and labelled in accordance with law.

13.19.17.7.1. Design Build Entity shall ensure a copy of the initial manifest, as signed by the Generator and Transporter, is provided to the appropriate Judicial Council Project Manager and is sent to [JCC-EHS@jud.ca.gov](mailto:JCC-EHS@jud.ca.gov) within twenty-four (24) hours after waste pick-up.

13.19.18. Use of Site and Clean Up. Design Build Entity shall confine operations at the Site to areas permitted by law, ordinances, permits, the Contract Documents, and, to the extent applicable, rules or regulations of the Court. Design Build Entity shall not unreasonably encumber the Site with materials or equipment.

13.19.18.1. The Site may be an active Court site. If it is, Design Build Entity and its performance of the Work shall not interfere with the operations of the Court. Design Build Entity is responsible for coordinating with Court administrative and maintenance staff for access to any portion of the Site, minimizing disruption to Court operations (if an active courthouse), and obtaining copies of any Site access and other rules applicable to Work at the Court. Design Build Entity's failure to comply with this section shall constitute a material breach of the Agreement.

13.19.18.2. Design Build Entity shall, during performance of the Work, keep the Site and surrounding area free from the accumulation of excess dirt, waste materials, and rubbish arising from the Work at the Site. Design Build Entity shall remove all excess dirt, waste material, and rubbish arising from the Work at the Site, and all tools, equipment, machinery, and surplus materials from the Site and surrounding area at the Final Completion of the Work.

13.19.18.3. Design Build Entity shall be responsible to maintain the Site, including access to Work areas during winter months. This may include any dewatering activities and soil stabilization needed to maintain a workable jobsite and allow adequate labor and equipment access to the areas of Construction Work.

13.19.18.4. Design Build Entity shall grade the Site to drain, maintain excavations free of water, protect the Site from puddling, and provide for drainage of stormwater and such water as may be applied or discharged on the Site in the performance of the Work. Drainage facilities shall be adequate to prevent damage to the Work, the Site, and adjacent property.

13.19.18.5. Personnel of Design Build Entity and Subcontractors shall not occupy, live upon, or otherwise make use of the Site at any time Work is not performed at the Site, except as otherwise provided in the Contract Documents.

13.19.18.6. Off-Site Storage of Materials and Equipment Only Upon Judicial Council's Written Consent. Design Build Entity shall not store materials and/or equipment off-Site without Judicial Council's express, prior written consent. If Design Build entity receives Judicial Council's consent to store Stored Materials, Design Build Entity shall comply with all of the following:



- 13.19.18.6.1. Judicial Council's Builder's Risk Insurance shall provide limited coverage for materials in transit, may provide full coverage for materials at the Project Site, and full coverage for materials stored off- Site; however, Design Build Entity is responsible for reviewing the summary of coverage and reporting values that exceed the limits provided within the summary of coverage. Notification to Judicial Council does not provide coverage. Value increases must be approved by the insurance carrier and Design Build Entity must have a Certificate of Insurance issued by the insurance carrier showing the increased values. Lacking confirmation from Judicial Council's insurance carrier that additional coverage was procured, Design Build Entity will be responsible for damages in excess of the coverage limits provided within the summary of coverage.
- 13.19.18.6.2. Property of Others Insurance. Design Build Entity and Subcontractors shall procure and maintain, during the entire time Stored Materials are in off-Site storage, insurance coverage, as needed, in excess of the coverage provided by Judicial Council's Builder's Risk Insurance, acceptable to Judicial Council, that shall protect Design Build Entity and Judicial Council from all claims for Stored Materials that are lost, stolen, or damaged. Judicial Council shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a "loss payable endorsement" stating that all amounts payable will be paid to either Design Build Entity or Judicial Council, dependent upon ownership of Stored Materials. This insurance shall provide all-risk coverage for all Stored Materials up to the full replacement value.
- 13.19.18.6.3. Storage Requirements. Stored Materials shall be: (i) stored in a bonded warehouse in a manner that is separate and identifiable from other Stored Materials; (ii) insured as required herein; and (iii) available and accessible to Judicial Council for inspection. Design Build Entity shall cooperate with Judicial Council and, upon Judicial Council's request, take such steps, at Design Build Entity's sole cost and expense, as Judicial Council deems are reasonably necessary to ensure and protect Judicial Council's interest in, and title to, any Stored Materials.
- 13.19.18.6.4. Payment for Stored Materials on-Site or off-Site. Judicial Council shall only make payment to Design Build Entity for Stored Materials if agreed upon in advance, in writing, by Judicial Council and provided that Design Build Entity submits an itemized list of all Stored Materials with Design Build Entity's Application for Payment. Design Build Entity's itemized list of all Stored Materials shall be supported by all of the following:

- 13.19.18.6.4.1. Itemized breakdown of the Stored Materials for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material;
  - 13.19.18.6.4.2. Verified invoices for the Stored Materials;
  - 13.19.18.6.4.3. Satisfactory evidence that Design Build Entity has acquired title to Stored Materials and that the Stored Materials will be utilized in the Work, and that they are satisfactorily stored, protected, and insured;
  - 13.19.18.6.4.4. Evidence that Stored Materials have been added to Judicial Council's Builder's Risk Insurance policy. Evidence shall include certificates and endorsements showing the coverage is sufficient for the full value of the Stored Materials; and
  - 13.19.18.6.4.5. Stored Materials are stored and meet all other requirements herein.
- 13.19.19. Owner Furnished Products. Design Build Entity shall provide the following for each item furnished by Judicial Council for installation by Design Build Entity, as identified in the Furniture, Fixtures, and Equipment Responsibility Matrix attached hereto as **Exhibit R**, and/or any other applicable Contract Documents:
- 13.19.19.1. Delivery to Site, unless specifically noted otherwise.
  - 13.19.19.2. Applicable taxes, permits, and fees.
  - 13.19.19.3. Handling and storage at Site, including unloading, uncrating, and protective measures.
  - 13.19.19.4. Protection from weather, soiling, and physical damage.
  - 13.19.19.5. Labor, equipment, and related consumable products required for application, installation and finishing of product into completed construction.
  - 13.19.19.6. Design Build Entity's and all Subcontractors' field and home office overhead expenses, bonds, insurance, and profit.
  - 13.19.19.7. All other costs attributable to incorporate installation into completed construction, such as design fees, coordination, and any reworking or patching of adjoining construction or finishes.
- 13.19.20. Signage. Design Build Entity shall place appropriate signage at the Site required for the Work by the Contract Documents, and signage required by law. Neither Design Build Entity nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, on fences, trailers, offices

at the Site, or elsewhere on the Site without the specific, prior written approval of Judicial Council.

- 13.19.21. Weekend/Holiday Work. Whenever Design Build Entity intends to perform work on Saturday, Sunday, or a legal holiday, Design Build Entity shall give written notice to Judicial Council, Judicial Council Representative, Construction Manager, and Project Inspector, at least two (2) business days before performing that Work, so that Judicial Council may make necessary arrangements.
- 13.19.22. Demolition. If the Work requires the demolition of existing structures, Design Build Entity shall perform all Work reasonably required for removal or demolition including hazardous material abatement, whether or not structures are fully detailed in the Performance Criteria Documents or Construction Documents.
- 13.19.22.1. The demolition component of the Work may include the removal of existing materials and components which, depending on the age and design of the structures existing at the Site, may contain Hazardous Materials, the full extent of which may not yet be determined. Judicial Council has provided Design Build Entity, for its reference, Site information and Performance Criteria Documents. Any additional information on Hazardous Materials, if applicable, may be provided in the Supplemental Conditions. Design Build Entity shall plan for, and execute, the demolition, redesign, and reconstruction of the Work, taking into account any uncertainty with respect to Hazardous Materials.
- 13.19.23. Photos, Videos, and Drones. Design Build Entity shall maintain adequate cameras to photograph or video the interior and exterior progress of the Work consistent with the requirements of the Division 01 Sections and shall provide photos and videos to Judicial Council at Judicial Council's request, but in no event later than the Completion of the Project. Design Build Entity may utilize drones or similar aerial equipment to photograph, video, or monitor the progress of the Work and for security purposes, but Design Build Entity must comply with all legal requirements of the federal government, the State of California, and the county and city in which the Project is located, applicable to the use of drones or similar aerial equipment. In addition, Design Build Entity shall ensure that no photographs, videos, or digital recordings of any kind are taken of Judicial Council employees and staff, or Court staff.
- 13.19.24. Shop Drawings, Product Data, Samples, Materials, and Equipment. Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how Design Build Entity proposes to conform to the information given and the design concept expressed in the Contract Documents into Construction Work for which submittals are required.
- 13.19.24.1. Design Build Entity shall review, approve, and submit to Judicial Council Representative, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, with reasonable promptness and in a sequence that does not cause delay in the Work or in the activities of Judicial Council (or of Separate Contractors). Submittals made by Design Build Entity that are not required by the Contract Documents may be returned without action by Judicial Council Representative or ignored.
- 13.19.24.2. Design Build Entity shall perform no portion of the Work requiring Judicial Council review of Shop Drawings, Product Data, Samples,

or similar submittals until the Judicial Council Representative reviews the respective submittal and the Judicial Council Representative provides written notice that there is no exception to the submittal. Work shall be in accordance with approved submittals and all requirements of the Contract Documents.

- 13.19.24.3. By approving and submitting Shop Drawings, Product Data, Samples, and similar submittals, Design Build Entity represents that it has determined or verified materials and field measurements and conditions related thereto, and that it has checked and coordinated the information contained within the submittals with the requirements of the Contract Documents and Shop Drawings for related Work.
- 13.19.24.4. If Design Build Entity discovers any conflicts, omissions, or errors in Shop Drawings or other submittals, Design Build Entity shall promptly correct such conflicts, omissions, or errors at its sole cost and expense before proceeding with the affected Work.
- 13.19.24.5. Design Build Entity shall not be relieved of responsibility for any errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals by Judicial Council Representative's review, comment, and approval thereof, to the extent provided for in the Contract Documents. Design Build Entity shall not be relieved of its sole responsibility for any deviations from requirements of the Contract Documents because of Judicial Council Representative's review of Shop Drawings, Product Data, Samples, or similar submittals, unless: (i) Design Build Entity has specifically informed Judicial Council Representative and Construction Manager in writing of a deviation at the time of submittal; and (ii) Judicial Council Representative has approved the specific deviation.
- 13.19.24.6. Design Build Entity shall direct specific attention, in writing accompanying resubmitted Shop Drawings, Product Data, Samples, or similar submittals to revisions other than those requested by Judicial Council Representative on previous submittals. Alternatively, Design Build entity can direct specific attention to any revisions by noting the specific revisions on the face of the resubmitted submittal.
- 13.19.24.7. Judicial Council will review the first resubmittal of any Shop Drawing(s) at its own cost. Judicial Council reserves the right to equitably reduce the Total Contract Amount by Unilateral Change Order for its cost for any subsequent reviews of Shop Drawing resubmittals.
- 13.19.25. Construction Reports. Design Build Entity will cooperate with Judicial Council in preparing, or causing to be prepared, all or part of, periodic project reports required by Judicial Council or local, State, or federal agencies.
  - 13.19.25.1 Daily Reports. Design Build Entity shall prepare and submit to Judicial Council Representative and Construction Manager during all portions of the Construction Work, daily reports on the Work accomplished during the preceding Day. The reports shall be prepared in a manner and in a format approved by Judicial Council. The report shall contain a one (1) week look ahead for the remaining Construction Work.

- 13.19.25.2 Monthly Reports. Design Build Entity shall support and submit project data to Judicial Council Representative and Construction Manager during all phases of the Work to support preparation of monthly reports on Work accomplished during the previous month. Monthly reports shall be prepared in a manner and in a format approved by Judicial Council and may include the Design Build Entity's projected progress for the forthcoming month. Any monthly report information shall include an updated copy of the then current Contract Schedule, including any adjustments to the Contract Time, to the extent approved by Judicial Council consistent with the Contract Documents.
- 13.19.26 Cutting, Fitting, & Patching. Design Build Entity shall do all cutting, fitting, or patching of the Work required to make all parts of the Work come together properly, and to allow Work to receive, or be received by, the work of Separate Contractors, to the extent shown upon, or reasonably implied by, the Contract Documents.
- 13.19.26.1 Prior to any cutting or removing of existing materials, Design Build Entity must ensure that a Hazardous Material survey has been completed on all materials disturbed by cutting or removing activities. By starting cutting or patching operations, Design Build Entity acknowledges completion of Hazardous Material survey results, completion of abatement requirements prior to cutting or removing, acceptance of existing conditions, and the responsibility to restore the cut and patched area to match the original conditions.
- 13.19.26.2 The cutting work shall be executed by methods that will avoid damage to surrounding areas and provide proper surface conditions to receive patching, repairing, and finish work.
- 13.19.26.3 Surfaces shall be refinished to match adjacent finishes. For continuous surfaces, refinish to nearest intersection; for an assembly, refinish entire unit.
- 13.19.26.4 Design Build Entity is responsible for providing supports to assure structural integrity of the surroundings, devices, and methods to protect other portions of the surroundings from damage.
- 13.19.26.5 Design Build Entity must not damage or endanger any portion of the Work, or the work of Judicial Council or any Separate Contractors, by cutting, patching, or otherwise altering any Work. Design Build Entity shall not endanger the Work, the Project, or adjacent property by cutting, patching, digging, or any adverse activity or action. Design Build Entity must not cut or otherwise alter the work of Judicial Council or any Separate Contractor except with the written consent of Judicial Council and such Separate Contractor. Design Build Entity must not unreasonably withhold from Judicial Council, or any Separate Contractors, its consent to cutting or otherwise altering the Work.
- 13.19.27 Environmental Requirements. Design Build Entity must adhere to the following environmental requirements:
- 13.19.27.1 CEQA Mitigation. Design Build Entity shall, at all times, perform Work to conform with any CEQA mitigation measures included in the Contract Documents.

- 13.19.27.2 Water Pollution Control. Design Build Entity shall comply with all water pollution control rules, regulations, ordinances, and statutes that apply to the Work, including the California General Permit (NPDES) 2009-009-DWQ for Stormwater Discharges Associated with Construction Activities issued by the California State Water Resources Control Board, as modified by order 2010-0014-DWQ, also issued by the same board.
- 13.19.27.3 Air Pollution Control. Design Build Entity and each Subcontractor shall comply with all State and local air pollution control rules, regulations, ordinances, and statutes that apply to any Work performed on the Project. If there is a conflict between the State and local air pollution control rules, regulations, ordinances, and statutes, the most stringent shall govern.
- 13.19.27.4 Stormwater Pollution Prevention Plan. Design Build Entity shall develop and implement the SWPPP that complies with the State of California Construction General Permit for Stormwater Discharges. Design Build Entity shall pay all costs associated with development and implementation of the SWPPP as provided hereunder, which shall be included in the Stipulated Sum.
- 13.19.27.4.1 Design Build Entity shall contract for, or have on payroll, a California Certified Qualified SWPPP Developer (“QSD”). Design Build Entity shall be responsible for hiring or contracting for the services of a California Certified Qualified SWPPP Practitioner (“QSP”).
- 13.19.27.4.2 As Judicial Council’s QSP, Design Build Entity shall be responsible for stormwater and non-stormwater visual observations, sampling, and analysis per the SWPPP.
- 13.19.27.4.3 Design Build Entity shall strictly follow the requirements to implement all the provisions of the SWPPP, including, without limitation, preparation of monitoring and recording reports.
- 13.19.27.4.4 Design Build Entity shall comply with the California General Permit for Waste Discharge Requirements for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s), Order Number 2013-0001-DWQ.
- 13.19.27.4.5 In the event that dewatering of excavations is required, Design Build Entity shall obtain the necessary permits for discharge of the dewatering effluent from the local jurisdiction. Design Entity shall be responsible for assuring that water quality of such discharge meets the appropriate permit requirements prior to any discharge.
- 13.19.27.4.6 BMP details shall be designed by a competent individual licensed to practice as a Civil Engineer in California.

- 13.19.27.4.7 Design Build Entity shall incorporate into the Project a maintenance program for post-construction BMPs that will be permanent components of the completed Project. The maintenance program shall be delivered in a bound manual. The manual shall meet the requirements described in the California Stormwater Quality Association's (<https://www.casqa.org/>) New Development & Redevelopment BMP Handbook.
- 13.19.27.4.8 Design Build Entity's indemnity obligations in the "Indemnification" section of these General Conditions are applicable to any damages, penalties, fees, charges, or related expenses assessed or charged to Judicial Council by any water boards or agencies with jurisdiction related to compliance with the Stormwater Permits.
- 13.19.27.5 Archaeological or Tribal Cultural Resources Finds. If Design Build Entity discovers any archeological artifacts or tribal cultural resources during excavation and construction, Design Build Entity shall stop all affected Work and notify Judicial Council, who will call in a qualified archaeologist or Native American tribal consultant to assess the discovery and suggest further mitigation, as necessary. Reference the California Archaeological Inventory (<https://ohp.parks.ca.gov/pages/1054/files/manual89.pdf>).
- 13.19.27.6 Human Remains. If Design Build Entity discovers human remains, Design Build Entity shall immediately stop work in the affected area and notify Judicial Council, who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, Judicial Council shall contact the appropriate tribal representatives.
- 13.19.28 Noise Control. Design Build Entity shall comply with all sound control and noise level rules, regulations, and ordinances which apply to the Work. In the absence of any such rules, regulations, and ordinances, Design Build Entity shall conduct its Work to minimize disruption to others due to sound and noise from the workers, and shall be responsive to Judicial Council's requests to reduce noise levels.
- 13.19.28.1 Evening Noise Level. Design Build Entity shall not cause, or allow sounds to be produced, more than 65 decibels measured at the Site between the hours of 7:00 p.m. and 7:00 a.m., and Design Build Entity shall comply with more restrictive requirements as dictated by local ordinances.
- 13.19.28.2 Working Noise Level. Design Build Entity shall not cause, or allow sounds to be produced, more than 85 decibels measured at the Site between the hours of 7:00 a.m. and 7:00 p.m. without the consent of the Court and Judicial Council.
- 13.19.28.3 Each internal combustion engine, used for any purpose on the Project or related to the Project, shall be equipped with a muffler of a type recommended by the manufacturer. No internal combustion engine shall be operated on the Site without a muffler.

- 13.19.28.4 Loading and unloading of materials to be used in the Construction Work must be scheduled to minimize disruptions to Judicial Council activities, the Court, and to Court users.
- 13.19.29 Dust Control. Design Build Entity shall be fully and solely responsible for maintaining and upkeeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt, and dust, as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to Court staff and Judicial Council personnel. Design Build Entity shall take specific care to avoid deposits of airborne dust or airborne elements. Design Build Entity shall employ protection devices, systems, or methods in accordance with the regulations set forth by the Environmental Protection Agency and OSHA, and other applicable laws, rules, or regulations. Design Build Entity shall be responsible to regularly and routinely clean up and remove all deposits of dust and other elements.
- 13.19.29.1 Damage and/or any liability arising from Design Build Entity's failure to comply with these requirements shall be at the sole cost and expense of Design Build Entity, including, without limitation, all penalties that may be incurred for violations of applicable law, rule, or regulation. Any amounts expended by Judicial Council to pay those damages shall be due and payable to Judicial Council on demand. Design Build Entity shall replace any damaged property or part thereof and professionally clean all items that become covered or partially covered to any degree by dust or other airborne elements. If Court operations are on-going at any point during the progress of Work, and if flying debris, grinding powder, sawdust, dirt, or dust from any Work disrupts or disturbs the normal operations of the Court, Judicial Council may, in its reasonable discretion, request that, and Design Build Entity shall comply, the performance of all Work be scheduled around Court hours and other reasonable arrangements be made so that the Work does not cause disruption or disturbance. In no event shall those arrangements result in an adjustment of the Total Contract Amount or the Contract Time.
- 13.19.30 Commissioning. Commissioning is a process for validating and documenting that the facility and its systems are constructed and perform in conformity with the Contract Documents.
- 13.19.30.1 The objective of the Commissioning process is to verify that the performance of the facility and its systems meet or exceed the design intent.
- 13.19.30.2 Commissioning includes special facility start-up processes used to bring the facility to a fully operational state, free of deficiencies, in an efficient and timely manner.
- 13.19.30.3 Training on related systems and equipment operation and maintenance shall be scheduled to commence only after start-up is complete and systems are verified to be 100% complete and functional.
- 13.19.30.4 In addition to these requirements, Design Build Entity shall comply with the Division 01 Sections, LEED, and any Applicable Code Requirements, including, without limitation, Title 24 of the California Code of Regulations.



- 13.19.30.5 Prior to Judicial Council’s approval of the Construction Work, Design Build Entity shall perform a program of activities, including starting, testing, inspecting, adjusting balancing, correcting deficiencies, and other similar activities, with its own forces or Subcontractors.
- 13.19.30.6 Design Build Entity shall also assist Judicial Council with Commissioning by coordinating with Judicial Council’s Commissioning agent, Judicial Council Representatives, Construction Manager, Inspector of Record, and any Court staff or maintenance personnel.
- 13.19.30.7 Judicial Council Representatives, Inspector of Record, and Construction Manager shall be present to observe, inspect, and identify deficiencies in building systems operations.
- 13.19.30.8 The completion of start-up means pre-functional and functional Commissioning has been performed to the requirements of the Contract Documents and is verified in writing by Judicial Council and the Project Inspector.
- 13.19.30.9 Fine Tuning. Functional Commissioning is the responsibility of Design Build Entity after Judicial Council Beneficial Use and after the issuance of the Certificate of Acceptance and ending one year after either. During this time, Design Build Entity is responsible for optimizing systems and correcting deficiencies arising under normal operating conditions. During this period, Design Build Entity will collaborate and assist Judicial Council’s Commissioning Agent in the correction of any deficiencies found as a result of seasonal commissioning efforts completed by the Commissioning Agent. Fine tuning includes a period after occupancy where systems are optimized under “live” operating conditions and any outstanding construction deficiencies are corrected. Fine tuning shall extend from date of Final Completion or Beneficial Use to one (1) year after occupancy.
- 13.19.30.10 During Commissioning, Design Build Entity shall:
  - 13.19.30.10.1 Assist, coordinate, and review and opine on the work of Judicial Council’s Commissioning Agent and any other consultants providing Commissioning services for the Project on Judicial Council’s behalf.
  - 13.19.30.10.2 Assure the participation and cooperation of its Subcontractors and suppliers as necessary to complete the Commissioning process.
  - 13.19.30.10.3 Provide reports that shall be complete and in an easily readable condition.
  - 13.19.30.10.4 Complete the respective start-up and check out procedures and ensure readiness of equipment and systems prior to the start of the functional performance testing. Design Build Entity shall provide Judicial Council written confirmation of system readiness for performance testing.

13.19.30.10.5 Provide qualified representatives for the functional performance Commissioning process.

13.19.30.10.6 Assure that all Subcontractors and suppliers include in their respective contracts all costs necessary to participate in, and complete, the Commissioning process.

13.19.30.10.7 Coordinate and assist with the participation of Judicial Council, Project Inspector, and Separate Contractors in the Commissioning process.

13.19.31 O&M Manuals/Warranties. Design Build Entity shall review equipment, operation and maintenance manuals, and a complete set of Warranty documents for all equipment and installed systems, to ensure they meet the requirements of the Contract Documents. Design Build Entity shall provide one (1) electronic .pdf set of O&M Manuals/Warranties to Judicial Council at completion of the Construction Work and it shall be a condition precedent to Judicial Council's approval of Design Build Entity's Application for Final Payment.

13.19.31.1 Training and videos shall be provided for all major equipment installation, including, without limitation, all equipment identified in Section 01 79 00 of the Division 01 Sections.

13.19.31.2 All products and equipment will include manufacturer's Warranty and labor installation Guarantee.

13.19.31.3 O&M Manuals and Warranties will be in .pdf digital format, packaged for the Project, with an outline of information included in the package and a schedule of Warranty periods for each product or equipment determined at Beneficial Use or the issuance of a Certificate of Acceptance.

13.19.32 Record Documents. Any revisions or changes that have been made during construction shall be incorporated in the Record Documents. During the Construction Work, Judicial Council shall have reviewed all revisions and changes and shall have approved the set of drawings and specifications maintained by Design Build Entity prior to Design Build Entity's preparation of the Record Documents. Design Build Entity shall provide reproducible Record Documents to Judicial Council in all the following formats: (1) hardcopy, (2) electronic copy.

13.19.33 Guarantee To Repair Period Inspections. In order to allow Design Build Entity time to identify deficiencies before the expiration of the Guarantee To Repair Period, Design Build Entity shall review the Construction Work no later than twenty-two (22) months after Final Completion and shall submit written recommendations to Judicial Council for the correction of any Deficiencies and, within a reasonable time, thereafter, shall diligently perform that Corrective Work as required by the guarantee requirements of the General Conditions. Design Build Entity shall be accompanied by Judicial Council Representative during these inspections. Dates for inspections shall be as mutually agreed by the Parties.

**13.20. Infectious Disease Compliance Provisions.** Design Build Entity and its Design Professionals, Subconsultants, consultants, and agents and employees thereof, are responsible for complying with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives in any way relating to

construction Site safety, the Work, the Project, and Site, in connection with any Disease. Design Build Entity shall ensure it has supervisors on-Site who are trained and knowledgeable of all these requirements to ensure full compliance on-Site and in the performance of Work. Design Build Entity's obligations hereunder shall include, without limitation, PPE to its employees and ensuring that all Subcontractors of every Tier provide PPE to their employees to prevent the spread of Disease at the Site. Any cost to comply with these "Infectious Disease Compliance Provisions" shall be included in the Stipulated Sum.

13.20.1 Infectious Disease and Contract Time. Design Build Entity agrees that the Contract Time is based on Design Build Entity's full compliance with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction Site safety, the Work, the Project, and the Site in connection with Disease. Any dispute concerning the Contract Time, in connection with any delay associated with Disease, shall be resolved pursuant to the Claims Resolution section in these General Conditions.

13.20.2 Infectious Disease & Extra Work. Design Build Entity agrees that its Proposal, the Total Contract Amount, and the Contract Time are based on Design Build Entity's full compliance with all applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety, the Work, the Project, and the Site in relation with Disease at the time the Parties executed the Agreement. Therefore, any Extra Cost associated with Disease, or any federal, State, or local order relating thereto, shall not be considered compensable unless:

13.20.2.1 It occurred after the date of the award of the Project to Design Build Entity;

13.20.2.2 It materially increases the Total Contract Amount or the Contract Time by imposing different, additional, or more stringent requirements; and

13.20.2.3 Design Build Entity notifies Judicial Council within ten (10) Days of notice of any new public health order(s), including the anticipated increase to the Total Contract Amount or Contract Time due to the new public health order(s), and Design Build Entity substantiates those costs with detailed supporting documentation as required by these General Conditions, including, without limitation, complying with the Proposed Change Orders and, to the extent applicable, claims provisions.

13.20.3 Changes in Applicable Health Orders. If, during the Work, the applicable and existing federal, State, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction Site safety, the Work, the Project, and/or the Site in connection with Disease, are changed or rescinded (e.g., by the reduction of potential exposure or risk due to vaccinations), the Parties agree to reduce the Total Contract Amount and the Contract Time due to the removal of the required efforts. If the Parties cannot mutually agree on the appropriate reduction, Judicial Council may issue a Unilateral Change Order for an amount of time and money it determines to be both reasonable and appropriate. Any dispute concerning the application of this procedure shall be resolved pursuant to the Claims Resolution section in these General Conditions.

### **13.21. Miscellaneous Responsibilities.**

- 13.21.1. Taxes. Design Build Entity shall pay all sales, consumer, use, income, payroll, and similar taxes for the Work, or portions thereof, performed by Design Build Entity.
- 13.21.2. Royalties and Patents. Design Build Entity shall pay all royalties and license fees required for the performance of the Work. Design Build Entity shall defend suits or claims resulting from Design Build Entity's or any Subcontractor's infringement of patent rights and shall indemnify, defend, and hold harmless Judicial Council and Judicial Council Representative from losses on account thereof.
- 13.21.3. Travel And Subsistence Payments. Design Build Entity and all Subcontractors 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.
- 13.21.4. Notice of Name Change. If Design Build Entity intends to make any change in its name or form of organization, Design Build Entity must first notify Judicial Council. Judicial Council shall determine if Design Build Entity's intended change is permissible while performing the Work under the Agreement.

## **14. SUBCONTRACTORS**

### **14.1. Subcontractor Procurement Process.**

#### **14.1.1. General Requirements.**

- 14.1.1.1. Design Build Entity's procurement/bidding for its Subcontractors shall comply with the requirements set forth in Government Code section 70398, et seq. and as required by the Judicial Council in the Contract Documents. Judicial Council has specifically incorporated the provisions of the Subcontractor Listing Law into the Agreement. Judicial Council intends to fully enforce the provisions of the Subcontractor Listing Law, including, specifically Sections 4109 and 4110. The Subcontractor procurement process for all Design Build Entity's Subcontractors performing Work valued in excess of ½ of 1% of the Direct Cost of Work of Construction Work and all other provisions of the Contract Documents.
- 14.1.1.2. Any Subcontractor designated in Design Build Entity's Proposal, or listed by Design Build Entity in the List of Designated Subcontractors (Exhibit G) after selection via the Subcontractor Procurement Process, shall be deemed a "listed" Subcontractor upon the Effective Date of the Agreement, and shall be afforded all protections of the Subletting and Subcontracting Fair Practices Act (Public Contract Code, § 4100, et seq.), and Design Build Entity is prohibited from replacing or otherwise substituting Subcontractors without following the procedures set forth in the Subcontractor Listing Law. Subcontractors designated in Design Build Entity's Proposal are not subject to the requirements of the Subcontractor Procurement Process.

14.1.2. Subcontractor Procurement Plan.

14.1.2.1. No later than ninety (90) Days after the Effective Date, Design Build Entity shall provide to Judicial Council a written plan for the division of the Construction Work into bid packages, if not already procured during the bidding process. This plan at a minimum shall:

14.1.2.1.1. Identify the proposed selection method of Subcontractors (e.g., low bid or Best Value).

14.1.2.1.2. Identify Subcontractors who will be selected during Design and during Construction.

14.1.2.1.3. Identify a proposed schedule for compliance that includes, without limitation: (i) date of publication of advertisement; and (ii) date for Subcontractor bid opening.

14.1.2.1.4. Provide a summary of Design Build Entity's plan to comply with its obligations under this subcontractor Procurement Process and Public Contract Code section 4100, et seq.

14.1.3. Prequalification. All Subcontractors shall be prequalified prior to submitting a bid. Design Build Entity shall prepare a prequalification questionnaire for use during Subcontractor bidding that establishes reasonable qualitative criteria and standards. Judicial Council may review the questionnaire, in its sole and absolute discretion. Judicial Council reserves the right to direct Design Build Entity to utilize Judicial Council's prequalification form, which shall utilize substantially similar questions to those in the Request for Qualifications.

14.1.4. Public Notice. When soliciting Subcontractors, Design Build Entity shall provide notice of bidding for Subcontractors "in accordance with the publication requirements applicable to the competitive bidding process of the Judicial Council to comply with the requirements of the statute and this process. (Gov. Code § 70398.5(b)(1)). If requested, Design Build Entity's Subcontractor advertisement must be approved by Judicial Council in writing prior to publication.

14.1.5. Subcontractor Bidding.

14.1.5.1. Copy of Notice. **At least** fourteen (14) Days prior to the bidding of Subcontractor bid packages, Design Build Entity shall provide Judicial Council with a copy of the written notice it will publish (including newspaper advertising) to solicit Subcontractors. Judicial Council reserves the right to request that Design Build Entity reasonably revise its proposed notice.

14.1.5.2. Bid Packages. At least fourteen (14) Days prior to the bidding of Subcontractor bid packages, Design Build Entity shall provide the Subcontractor bid packages to the Judicial Council as two (2) Deliverables, one for Design Work selection and one for Construction Work selection. Judicial Council reserves the right to request that Design Build Entity reasonably revise its bid packages.

14.1.5.3. Notwithstanding Judicial Council's review of the bid packages, Design Build Entity acknowledges that, and agrees that, it is fully responsible for compiling complete bid packages and any

omissions, errors, or ambiguities in the bid packages shall be construed against Design Build Entity and in favor of Judicial Council.

14.1.5.4. Design Build Entity shall inform Judicial Council of all bid opening(s) for the Project.

14.1.5.5. Design Build Entity shall provide copies of Subcontractor bids to the Judicial Council upon request.

14.1.6. Award/Selection of Subcontractors.

14.1.6.1. Design Build Entity may award subcontracts to prequalified Subcontractors based on Design Build Entity's determination of the Best Value or lowest responsive bid, as indicated by Design Build Entity in its advertisement.

14.1.6.2. Judicial Council shall have the right to review Subcontractors pursuant to the terms of the Contract Documents.

14.1.7. Self-Performed Construction Work.

14.1.7.1. Unless authorized by Judicial Council in writing, Design Build Entity may not proceed with any Self-Performed Construction Work. If Design Build Entity identifies Self-Performed Construction Work in the Proposal, Design Build Entity must still seek authorization in writing from Judicial Council to perform Self-Performed Construction Work as set forth below.

14.1.7.2. Design Build Entity shall not subcontract, or in any manner cause Construction Work to be performed by any Subcontractor, in which Design Build Entity, its parent, or associate companies, or any of Design Build Entity's owned or controlled subsidiaries, have a financial or other business interest, unless authorized by Judicial Council, in its sole and absolute discretion, consistent with the provisions herein.

14.1.7.3. If Design Build Entity intends to propose Self-Performed Construction Work, it must:

14.1.7.3.1. Notify Judicial Council of Design Build Entity's intent to self-perform each specific scope of Construction Work either in the Proposal or prior to soliciting Subcontractor bids and receive Judicial Council's prior written approval.

14.1.7.3.2. Provide its bid/proposal to Judicial Council forty-eight (48) hours prior to Design Build Entity's receipt of Subcontractor bid(s) for that scope(s) of the Construction Work.

14.1.7.3.3. Design Build Entity shall evaluate the bids of the Subcontractor(s) and provide:

14.1.7.3.3.1. Judicial Council with a copy of all Subcontractor bids for all scopes of Construction Work for which Design

Build Entity proposes Self-Performed Construction Work; and

14.1.7.3.3.2. Design Build Entity's written recommendation(s) of lowest cost to perform the scope(s) of Construction Work.

14.1.7.3.4. Judicial Council will evaluate and compare the proposal(s)/bid(s) submitted by Design Build Entity to the recommended Subcontractor(s) bid(s) and shall either:

14.1.7.3.4.1. Direct Design Build Entity to award the scope(s) of Construction Work to the Subcontractor(s); or

14.1.7.3.4.2. Approve Self-Performed Construction Work.

#### **14.2. Updating Designated Subcontractors.**

14.2.1. If, for any reason during the Work, including, without limitation, procuring Subcontractors (e.g., if Design Build Entity later bids Construction Work for Allowance(s)), Design Build Entity selects a new or replacement Subcontractor, Design Build Entity shall submit to Judicial Council a revised List of Designated Subcontractors in the form identical to Exhibit G.

14.2.2. If the updated List of Designated Subcontractors is submitted in connection with the Construction Work, Design Build Entity must submit the updated list reasonably in advance so that Judicial Council can review and approve any requested substitutions in accordance with the Subletting and Subcontracting Fair Practices Act and the Parties can replace the then current Exhibit G through the Amendment.

14.2.3. For any other update, an updated list shall be provided to Judicial Council Representative no later than two (2) weeks after Design Build Entity selects the Subcontractor to perform Construction Work. The Parties shall either: (i) execute an Amendment replacing Exhibit G; or (ii) Judicial Council will issue a Unilateral Change Order replacing Exhibit G.

**14.3. Costs Arising from Replacing a Subcontractor.** Any increase in the cost of the Construction Work resulting from the replacement or substitution of a Subcontractor, as provided for herein or as required by Judicial Council or Judicial Council Representative, shall be at Design Build Entity's sole cost and expense. Design Build Entity shall not be entitled to any increase in Total Contract Amount or an extension of Contract Time due to a Subcontractor replacement or substitution.

#### **14.4. Subcontractor Relations.**

14.4.1. Any part of the Construction Work performed for Design Build Entity by a first-Tier Subcontractor shall be pursuant to a written subcontract. Each such subcontract shall require the Subcontractor to: (i) be bound to Design Build Entity subject to the terms of the Contract Documents; (ii) assume toward Design Build Entity all the obligations and responsibilities which Design Build Entity assumes towards Judicial Council through the Contract Documents; and (iii) perform the portion of the Work in accordance with the Contract Documents.

- 14.4.2. Each subcontract shall preserve and protect the rights of Judicial Council under the Contract Documents with respect to the Work performed by the Subcontractor, so that the subcontract will not prejudice Judicial Council's rights. Design Build Entity shall cause each subcontract to expressly include the following requirements:
- 14.4.2.1. Subcontractor agrees to any and all indemnity and insurance requirements applicable to Design Build Entity and/or Subcontractors in the Contract Documents.
  - 14.4.2.2. Subcontractor waives all rights that Subcontractor may have against Judicial Council for damages caused by fire or other perils covered by Builder's Risk Insurance carried by either Party.
  - 14.4.2.3. Judicial Council, and entities and agencies designated by Judicial Council, will have access to, the right to audit, and the right to copy, at Judicial Council's cost, all of Subcontractor's books, records, contracts, correspondence, instructions, drawings, receipts, vouchers, purchase orders, and memoranda relating to the Work. Subcontractor shall preserve all records and other items for a period of at least three (3) years after Final Completion.
  - 14.4.2.4. Subcontractor recognizes the rights of Judicial Council regarding the "Contingent Assignment of Subcontracts" section below, and agrees, upon notice from Judicial Council, that Judicial Council has elected to accept the assignment and to retain Subcontractor pursuant to the terms of the subcontract, to complete the unperformed obligations under the subcontract and, if requested by Judicial Council, to execute a written agreement confirming that Subcontractor is bound to Judicial Council under the terms of the subcontract.
  - 14.4.2.5. Design Build Entity is responsible for reviewing and coordinating the Work of, and among its, Subcontractors and Design Professionals. This review and coordination includes, but is not limited to, resolution of any inconsistencies, and/or Errors and Omissions.
- 14.4.3. Upon the request of Judicial Council, Design Build Entity shall promptly furnish to Judicial Council a true, complete, and executed copy of any subcontract. This obligation shall survive the early termination or expiration of this Agreement for a period of time equivalent to the time for the preservation of Project records in these General Conditions.
- 14.4.4. Nothing contained in the Contract Documents shall create any contractual relationship between any Subcontractor and Judicial Council, except when, and only to the extent that, Judicial Council elects to approve the assignment of the subcontract with such Subcontractor consistent with the applicable provisions of the Contract Documents.

#### **14.5. Subcontractor Health and Safety Program.**

- 14.5.1. Each Subcontractor must demonstrate its compliance with the following requirements:
- 14.5.1.1. Its worker's compensation experience modifier rate(s) (EMR) for the most recent three-year period, the average of which must be 1.00 or less;



- 14.5.1.2. Its average total recordable injury and illness rate(s) for the most recent three-year period, the average of which must not exceed the applicable statistical standards for its business category;
  - 14.5.1.3. Its average lost work rate for the most recent three-year period; and
  - 14.5.1.4. Its acknowledgement of compliance with the Design Build Entity Safety Plan, required to be prepared by Design Build Entity as set forth above.
- 14.5.2. If any Subcontractor's workers compensation experience modifier for the most recent three-year period, or its average total recordable injury and illness rates for the most recent three-year period exceed the above requirements, then the Subcontractor may work at the Site if the Subcontractor is a party to an alternative dispute resolution system as provided for in Labor Code section 3201.5; and demonstrates that its Site safety program is compliant with the provisions of the California Division of Occupational Safety and Health regulations, Design Build Entity's Project safety program required hereunder, the safety requirements of these General Conditions, and the provisions of Judicial Council's OCIP.
- 14.5.3. Consistent with the OCIP Safety Requirements Manual, Subcontractors with an EMR greater than 1.0 shall submit:
- 14.5.3.1. A document outlining the reason for the current EMR;
  - 14.5.3.2. A Site-specific Safety Program (SSSP); and
  - 14.5.3.3. An EMR waiver request form (Appendix A of the OCIP Safety Requirements Manual).
- 14.5.4. If Design Build Entity intends to utilize a Subcontractor(s) with an EMR greater than 1.0, Design Build Entity shall prepare and provide to Judicial Council a safety action plan for monitoring the Subcontractor(s) consistent with the Requirements of the OCIP Safety Requirements Manual, and Judicial Council must obtain approval from the OCIP carrier prior to working at the jobsite.

**14.6. Contingent Assignment of Subcontracts.**

- 14.6.1. Design Build Entity hereby assigns to Judicial Council all its interest in first-Tier subcontracts now, or hereafter, contracted by Design Build Entity for performance of any part of the Work. The assignment will be effective upon approval by Judicial Council in writing and only as to those subcontracts which Judicial Council designates in writing. Judicial Council may approve said assignment at any time during the course of the Work, and prior to Final Completion, in the event of a suspension or termination of Design Build Entity's rights under the Contract Documents. Such assignment is part of the consideration to Judicial Council for entering into the Agreement with Design Build Entity and may not be withdrawn prior to Final Completion.

**14.7. Materiality.** All provisions hereunder relating to Subcontractors are material provisions of the Contract Documents, the breach of which permits Judicial Council to terminate the Agreement for cause.

## **15. SCHEDULES/SUBMITTALS REQUIRED OF DESIGN BUILD ENTITY**

### **15.1. Contract Schedule.**

- 15.1.1. Design Build Entity Responsibility. Design Build Entity shall plan, develop, supervise, control, and coordinate the performance of the Work so that the progress, sequence, and timing of Work permits the completion of all Design Work and Construction Work, and Final Completion, within the Contract Time or any component thereof. Design Build Entity shall cooperate with Judicial Council Representative in the development of the Contract Schedule and updated Contract Schedule(s). All Work shall be planned, scheduled, executed, and reported using the precedence diagramming technique of the CPM.
- 15.1.2. Contract Schedule for Design Work. Design Build Entity shall submit an initial Contract Schedule to Judicial Council within fourteen (14) Days of the Effective Date. Upon Judicial Council's approval, the initial Contract Schedule shall become the Design Work baseline Contract Schedule for the Project. The initial Contract Schedule shall comply with all requirements in the Contract Documents pertaining to the Contract Schedule for Design Work. For the Construction Work, the initial Contract Schedule shall show, at a minimum, milestone dates for Construction Work.
- 15.1.3. Contract Schedule for Construction Work. Within ninety (90) Days of the Effective Date, Design Build Entity shall prepare an updated Contract Schedule consistent with the requirements of the Contract Documents that: (i) reflects the commencement of the Construction Work; (ii) includes detailed activities for the Construction Work, including all construction administration, and construction activities; and (iii) states the date of the final Completion of the Project.
- 15.1.4. Construction Work. Prior to performing any Construction Work, Design Build Entity shall provide Judicial Council an updated Contract Schedule with the updated Schedule of Values that meets the requirements of the Contract Documents and details all activities necessary to Complete the Construction Work within the Contract Time. If the Contract Schedule provided prior to the performance of Construction Work satisfies this requirement, Design Build Entity shall certify in writing to Judicial Council that the Contract Schedule updated includes all activities necessary to Complete the Construction Work within the Contract Time.
- 15.1.5. General Requirements.
  - 15.1.5.1. In addition to these Contract Schedule requirements, Design Build Entity shall comply with all requirements applicable to the Contract Schedule in the Division 01 Sections.
  - 15.1.5.2. Design Build Entity must use the current version of Primavera P6 Enterprise Project Portfolio Management for scheduling any Work. If Design Build Entity would prefer to use another system, it may request Judicial Council's permission to do so. Such request to utilize a different scheduling program must be submitted in writing to Judicial Council Representative and in advance of Design Build Entity's use of the system. Judicial Council may, in its sole discretion, provide its written approval of an alternate scheduling program. If Judicial Council provides such approval, Design Build Entity, at its sole cost and expense, shall provide Judicial Council with any license or software required to review any schedules utilizing that program.

- 15.1.5.3. The submitted Construction Work Contract Schedule shall be cost-loaded. The cost-loaded values of the Contract Schedule shall be basis for determining the amount of each progress payment and shall align with the Schedule of Values. Cost-loaded activities shall not exceed fifty thousand dollars (\$50,000) with the exception of major equipment.
- 15.1.5.4. The Preliminary Schedule provides Design Build Entity scheduling information to illustrate milestones and any anticipated overlap of phases. Design Build Entity shall develop its required Contract Schedule(s) for review and approval by Judicial Council based on, and consistent with, the Preliminary Schedule. If Design Build Entity's Contract Schedule deviates from the Preliminary Schedule milestones, Design Build Entity shall provide a written explanation for the deviation. Judicial Council may approve or reject that deviation, in its sole discretion, and may require that Design Build Entity resubmit the Contract Schedule, at its sole cost and expense, and without any adjustment to the Contract Time.
- 15.1.5.5. When preparing and updating the Contract Schedule, Design Build Entity shall obtain information and data from Subcontractors, Design Professionals, and consultants, as may be required to develop a reasonable and appropriate Contract Schedule for performance of the Work, and Design Build Entity shall provide that information and data to Judicial Council upon request. Design Build Entity shall continuously obtain, from its Subcontractors, information and data about the planning for, and progress of, the Work and the delivery of equipment. Design Build Entity shall coordinate and integrate the information and data into the Contract Schedule and updated Contract Schedules, as appropriate, and shall monitor the progress of the Work and the delivery of equipment.
- 15.1.5.6. The Contract Schedule shall represent a practical plan to complete the Work within the Contract Time and shall comply with all scheduling requirements of the Contract Documents, and shall, without limitation:
  - 15.1.5.6.1. Provide necessary data about the timing of Judicial Council decisions and Judicial Council furnished items.
  - 15.1.5.6.2. Include all appropriate review times required by the Contract Documents.
  - 15.1.5.6.3. The Contract Schedule shall be developed with sufficient detail to demonstrate adequate planning of the Work, and be adequate for progress monitoring and payment evaluation, as determined by Judicial Council. The total number of Construction Work activities will be subject to approval by Judicial Council. Construction Work activities must represent the continuous work of a single crew in a defined work area or location and have a duration of no longer than fourteen (14) Days, without prior approval of Judicial Council. Non-construction activities (such as design work, deliverables, reviews, procurement,

fabrication, etc.) may have durations more than fourteen (14) Days.

- 15.1.5.6.4. Include procurement process activities for long lead items and major items requiring a cycle of more than one hundred and twenty (120) Days as separate activities in the schedule. Procurement cycle activities include, without limitation, submittals, approvals, purchasing, fabrication, and delivery.
- 15.1.5.6.5. Treat each story or separate area as a separate numbered activity for each principal element of the Work.
- 15.1.5.6.6. Include adequate review and resubmittal times required for submittal procedures. Coordinate submittal review times in Contract Schedule with construction activities and submittals schedule.
- 15.1.5.6.7. All activity start and finish ends must be tied into the Contract Schedule by logical restraints. The Contract Schedule must only contain two (2) open-ended activities for each phase: 1) Design Work and 2) Construction Work): (i) Notice(s) to Proceed with no predecessor relationship for each phase; and (ii) the latest completion milestone with no successor relationship for each phase.
- 15.1.5.6.8. Not include any negative lags or finish-to-start relationships with positive lag. Lags in start-to-start or finish-to-finish relationships must not exceed the duration of the predecessor or successor activity, respectively.
- 15.1.5.6.9. Include logic restraints and work restrictions required in the Construction Documents (such as phasing, work by Judicial Council, products ordered in advance, Judicial Council-furnished products), and show how the sequence of the Work is affected.
- 15.1.5.6.10. Include not less than twenty-eight (28) Days for start-up and testing.
- 15.1.5.6.11. Include not less than thirty (30) days for administration procedures to allow Judicial Council to issue a Certificate of Acceptance.
- 15.1.5.7. Proposed durations assigned to each activity in the Contract Schedule must be Design Build Entity's best estimate of time required to complete the activity, considering the scope and resources planned for the activity; provided, however, resource availability should not be constrained to affect activity durations and/or dates must not be resource-driven. Resources and labor (manhours) allocated to each activity must be consistent with activity duration and supported by Design Build Entity's estimate and industry standard estimating/productivity guides, such as

RSMeans Construction Cost Data and/or Walker's Building Estimator's Reference.

15.1.5.8. The Contract Schedule's longest critical path must be comprised of the anticipated controlling operations which are most significant in nature and are key for completing the Work per the milestones in the Preliminary Schedule.

15.1.5.9. Weather Days/Delays.

15.1.5.9.1. Normal inclement weather conditions, also referred to as anticipated weather days, will be considered and included in the planning and scheduling of all Work influenced by high or low ambient temperatures, precipitation, and/or other conditions including, without limitation, wet conditions following rain, as well as conditions such as excessive heat, hazardous air quality, and excessive winds, to ensure Work is completed within the Contract Time.

15.1.5.9.2. Expected weather delays must be added as an activity to the back of the Contract Schedule prior to Final Completion, on the critical path, with no other concurrent activities, and treated as weather Float. The use of this weather Float must be requested by Design Build Entity and approved by Judicial Council in advance of adjusting the schedule. The duration of the weather Float activity will be based on the normal weather conditions as defined in herein.

15.1.5.9.3. Normal inclement weather conditions will be determined by Judicial Council by an assessment of average historical climatic conditions based upon the preceding ten (10) year records published for the locality, such as the National Ocean and Atmospheric Administration (NOAA). The total inclement weather allowance calculated by Judicial Council shall be from the start of Construction Work through Completion and identified in the Contract Documents.

15.1.5.9.4. Normal inclement weather conditions must include wet conditions following rain and conditions such as excessive heat, excessive winds, and air quality issues.

15.1.5.9.5. To qualify as a "weather day," the construction crews' ability to perform construction work on the Project must be prevented or substantially impeded for more than half of a normal workday, which is an 8-hour workday. No time extensions will be allowed due to inclement weather unless:

15.1.5.9.5.1. The weather is Adverse Weather;

15.1.5.9.5.2. The weather impacts the Contract Time;

- 15.1.5.9.5.3. All inclement weather allowance has been absorbed;
- 15.1.5.9.5.4. And the impact to the Contract Time is demonstrated through a time impact analysis, to Judicial Council's reasonable satisfaction.
- 15.1.5.9.6. When recording actual Project weather, a "weather day" for rain will only be a "weather day" where rain precipitation is greater than 0.10 inches within a 24-hour period, as measured at the nearest weather station and confirmed by NOAA data.
- 15.1.5.9.7. When recording actual Project weather, a "weather day" for wind or hazardous air quality will only be a "weather day" where the wind exceeds Cal-OSHA's wind speed restrictions during use of a tower crane, or the Current AQI Category for PM<sub>2.5</sub> exceeds 300 for more than one hour during regular working hours, as recorded by the California Air Resources Board for air quality, as applicable.
- 15.1.5.9.8. Work must be planned to minimize the impact of rain, excessive heat, excessive wind, and hazardous air quality and include the grading of the Construction Work area, installation of dewatering pumps, and provisions of covers. Design Build Entity shall implement high-heat procedures when the temperature equals or exceeds 95 degrees Fahrenheit, as required by Cal-OSHA, and shall monitor wildfire smoke and meet health and safety requirements under [Cal/OSHA's wildfire smoke regulations](#).
- 15.1.5.9.9. Design Build Entity shall take reasonable steps to mitigate potential weather delays, such as dewatering the Site and covering the Work and material that could be affected adversely by weather. Failure to take such reasonable steps permits Judicial Council to deny a time extension due to Adverse Weather if Design Build Entity could have reasonably avoided or mitigated the potential delay by exercising due care.
- 15.1.5.10. A schedule showing the Work completed in less than the Contract Time, as reflected in the Preliminary Schedule or Contract Schedule, may be acceptable if determined by Judicial Council to be practical and consistent with the requirements hereunder. Schedules showing the Work completed beyond the Contract Time will only be approved if accompanied by a Proposed Change Order seeking an adjustment of the Contract Time, consistent with the requirements of the Contract Documents for Adjustment of the Contract Time.
- 15.1.5.11. Contract Time milestone dates shall not be changed by submission of a Contract Schedule that shows earlier or later Completion dates, unless specifically authorized by a Change Order.

- 15.1.5.12. If Design Build Entity submits a schedule showing the Work completed in less than the Contract Time as reflected in the Preliminary Schedule or Contract Schedule, the days that any milestone was completed early will be aggregated and will be considered part of the available Float to be shared between Judicial Council and Design Build Entity on a first-come-first-served basis. Design Build Entity shall not be entitled to any Contract Time extensions or extended General Conditions costs on account of any delays to the Contract Schedule arising from early completion dates, unless all Float has been consumed and performance of the Work extends beyond the time to complete a phase or Complete the Project.
- 15.1.5.13. If Judicial Council approves a Contract Schedule showing the Work completed in less than the Contract Time, Design Build Entity shall not be entitled to extensions of the Contract Time for Excusable Delays or Compensable Delays or to adjustments of the Total Contract Amount for Compensable Delays until such delays extend the Final Completion of the Work beyond the expiration of the Contract Time.
- 15.1.6. Design and Authorities Having Jurisdiction Review Times.
- 15.1.6.1. Review Times in Contract Schedule. Design Build Entity shall include appropriate times for reviews of the Work in the Contract Schedule. These reviews shall include, without limitation, the reviews identified hereunder, Authorities Having Jurisdiction reviews, and design package reviews (including, without limitation, those identified in the Design Deliverable Requirements Matrix provided by the Judicial Council).
- 15.1.6.2. AHJ Review Time. Design Build Entity is aware that Authorities Having Jurisdiction and utilities, including, without limitation, the OSFM, Judicial Council Building Official, DSA, electrical utility companies, water districts, and other agencies may have to review and approve Design Build Entity-prepared Drawings and/or proposed installation/work, or issue permits for the Construction Work. Design Build Entity shall include in its Contract Schedule, time for Authorities Having Jurisdiction and utilities to review and approve Design Build Entity-prepared drawings and/or proposed installation/work, and/or time for the issuance of permits. Any reasonable delays by governmental agencies and utilities shall not constitute an Excusable Delay or Compensable Delay. Any unreasonable delays because of Authorities Having Jurisdiction and utilities hereunder shall constitute an Excusable Delay.
- 15.1.6.3. Judicial Council Internal Review Time. Design Build Entity shall include in its Contract Schedule appropriate review times required for any reviews performed by Judicial Council consistent with the Contract Documents.
- 15.1.7. Office of the State Fire Marshal Review.
- 15.1.7.1. Design Build Entity shall include the minimum review times in the Contract Schedule for OSFM permits in accordance with the following example:

Review/Back-check number	Total Review Time, including bin time (Days)
Plan Review Package I and Package II OSFM Permit	150
Plan Review Package III OSFM Permit	270

- 15.1.7.2. Prior to submitting Working Drawings to the SFM, Design Build Entity shall perform all necessary quality control reviews to ensure that Working Drawings are sufficiently complete such that the number of back-checks and the time required to obtain final OSFM approval is limited. It is the sole responsibility of Design Build Entity to obtain OSFM approval of the Working Drawings.
- 15.1.7.3. Design Build Entity shall not be entitled to an adjustment to the Contract Time for delay arising from OSFM review or additional back-checks to the extent caused by the submitted Working Drawings being insufficiently complete or below the quality necessary to receive OSFM approval, and/or Design Build Entity's Errors or Omissions.
- 15.1.7.4. Time associated with any improvement in OSFM estimated review and/or backcheck duration shall be considered Float.

15.1.8. Schedule Updates.

- 15.1.8.1. Monthly Progress Schedule. Design Build Entity shall submit an updated monthly Contract Schedule to Judicial Council with Design Build Entity's Application for Payment. If the Contract Schedule at any time indicates that Completion shall occur fourteen (14) Days or more after the then current date for Completion, Design Build Entity shall submit a recovery schedule prior to the next monthly schedule update.
- 15.1.8.2. General Requirements. During the Work, the current Contract Schedule shall be incrementally expanded to include detailed Construction Work activities. Design Build Entity must develop and maintain the Contract Schedule to reflect the scope of Work contained in the Contract Documents and the requirements for scheduling, any variations, revisions, or updates thereof. Schedule updates shall address actual progress of all activities and any revisions to logic, addition or deletion of activities, and any change of original activity durations.
  - 15.1.8.2.1. On a monthly basis, Design Build Entity must meet with Judicial Council for the purpose of updating the Contract Schedule. This updating process will be performed by Judicial Council and Design Build Entity assessing schedule activity progress during a joint jobsite walk through. Use of a schedule update report to log this activity progress is required and shall include the following:
    - 15.1.8.2.1.1. Actual start and actual finish dates, consistent with dates provided by Design Build Entity's daily report.



- Billing for stored materials and/or equipment must be shown as a separate activity;
- 15.1.8.2.1.2. Activity physical percent complete, based on actual progress of the activity through the update data date;
- 15.1.8.2.1.3. Activity remaining duration and duration percent complete;
- 15.1.8.2.1.4. Dollar amounts earned for each activity during the update period, which must be the product of the activity's budgeted cost and the physical percent complete through the update data date.
- 15.1.8.2.2. This data will be used as the basis for Design Build Entity's monthly Application for Payment. Allowable billing amounts for each activity will be the product of the activity's budgeted cost amount against the updated physical percent complete.
- 15.1.8.2.3. Upon finalization of the computerized schedule update, Design Build Entity must submit the required schedule reports to Judicial Council for the processing of the Design Build Entity's Application for Payment.
- 15.1.8.2.4. In addition to these monthly updates, interim Contract Schedule updates may be required by Judicial Council in its sole discretion. Design Build Entity will be expected to contribute update data to Judicial Council as required to complete these interim updates.
- 15.1.8.2.5. Logic relationships between out-of-sequence activities must be revised after their completion to reflect the actual sequence.
- 15.1.8.2.6. The schedule update calculations must meet all of the following requirements:
  - 15.1.8.2.6.1. Update the actual logic relationships when activities start or finish out-of-sequence. Use "Retained Logic" when calculating the schedule. The use of "progress override" is prohibited;
  - 15.1.8.2.6.2. Not be resource leveled. Activity dates and durations must not be driven by assigned resources; and
  - 15.1.8.2.6.3. Disassociate remaining duration from activity's physical percent complete.

- 15.1.8.2.7. Neither approval nor lack of Judicial Council's comments on a schedule update that shows a late Completion will modify the Contract Time or Project milestones.

15.1.9. Judicial Council Review and Approval.

- 15.1.9.1. Judicial Council Representative will timely review any Contract Schedule submitted by Design Build Entity. If Judicial Council Representative determines that any additional supporting data is necessary to fully evaluate the Contract Schedule, Judicial Council Representative will request such additional supporting data in writing. Such data shall be furnished no later than seven (7) Days after the date of such request. Judicial Council Representative will render a decision within a reasonable time, but not later than fourteen (14) Days. Failure of Judicial Council Representative to timely render a decision will be deemed a decision rejecting the Contract Schedule. If Judicial Council Representative rejects a Contract Schedule, Design Build Entity shall promptly resubmit for review.
- 15.1.9.2. Approval of any Contract Schedule showing completion beyond the Contract Time by Judicial Council Representative shall not change the Contract Time, unless accompanied by an executed Change Order reflecting that change to the Contract Time and is without prejudice to any right of Judicial Council. In the event of any conflict between the Contract Time and Contract Schedule, the Contract Time, and not the Contract Schedule, shall control in the determination of Liquidated Damages payable by Design Build Entity pursuant to the Agreement and in the determination of any delay under these General Conditions.
- 15.1.9.3. Judicial Council Representative's review of the form and general content of the Contract Schedule is for the purpose of determining if the submitted schedule complies with all requirements of the Contract Documents, including the requirements identified above. The Contract Schedule can only be deemed approved if Judicial Council Representative provides approval of the Contract Schedule.
- 15.1.9.4. Judicial Council Representative's approval of, or its review comments about any schedule or scheduling data shall not relieve Design Build Entity from its sole responsibility to plan for, perform, and complete the Work within the Contract Time. Approval of, or review comments about any schedule shall not transfer responsibility for any schedule to Judicial Council or Judicial Council Representative nor imply their agreement with (i) any assumption upon which such schedule is based or (ii) any matter underlying or contained in such schedule. Failure of Judicial Council Representative to discover errors or omissions in schedules that it has reviewed, or to inform Design Build Entity that Design Build Entity, Subcontractors, or others are behind schedule, or to direct or enforce procedures for complying with the Contract Schedule, shall not relieve Design Build Entity from its sole responsibility to perform and complete the Work within the Contract Time and shall not be a cause for an adjustment of the Contract Time or the Total Contract Amount.

## **15.2. Schedule of Values.**

- 15.2.1. Design Build Entity shall submit a preliminary Schedule of Values to Judicial Council for Design Work in the form consistent with the requirements of the Contract Documents within fourteen (14) Days of the Effective Date. The Schedule of Values shall be subject to Judicial Council's review and approval. The Schedule of Values will be updated to include Construction Work within ninety (90) Days of the Effective Date.
- 15.2.2. Upon request, Design Build Entity shall provide Judicial Council with data and documentation substantiating the accuracy of the proposed line items set forth in the Schedule of Values. Judicial Council will review and determine whether the Schedule of Values meets the requirements of the Contract Documents within a reasonable period of time for a public entity administering a contract on a project of similar type, size, complexity, and scope.
- 15.2.3. If Judicial Council deems the Schedule of Values unacceptable, it will specify in writing to Design Build Entity the basis for its objection. Design Build Entity shall promptly cure any deficiency noted by Judicial Council and resubmit the Schedule of Values for Judicial Council's approval.
- 15.2.4. Once Judicial Council approves the Schedule of Values, the Schedule of Values shall be the basis of the Schedule of Values that Design Build Entity shall submit when submitting an Application for Payment.
- 15.2.5. The Schedule of Values shall include categories with amounts attributable to each phase of the Work consistent with the schedule in the "Payments for Design Work" and "Payments for Construction Work and Construction Administration" sections above.
- 15.2.6. Judicial Council shall approve the cost-loaded Contract Schedule, from which the Schedule of Values activities shall be derived. The Schedule of Values shall be updated and consistent with each approved Contract Schedule update. The Schedule of Values must equal the Total Contract Amount and include the Design Work line items and the cost-loaded, Construction Work Contract Schedule line items.
- 15.2.7. The Schedule of Values should include, at a minimum, the following information and presented in the following structure:
  - 15.2.7.1. Divided into at least the following categories:
    - 15.2.7.1.1. Design Development Design Fees
    - 15.2.7.1.2. Design Development Design Management Fees
    - 15.2.7.1.3. Working Drawings Design Fees
    - 15.2.7.1.4. Working Drawings Design Management Fees
    - 15.2.7.1.5. Allowances;
    - 15.2.7.1.6. Construction Fee (Overhead and profit);
    - 15.2.7.1.7. Supervision;
    - 15.2.7.1.8. Design Build Entity's General Conditions;

- 15.2.7.1.9. Layout;
- 15.2.7.1.10. Mobilization;
- 15.2.7.1.11. Submittals;
- 15.2.7.1.12. Bonds and insurance (if any);
- 15.2.7.1.13. Closeout Documentation;
- 15.2.7.1.14. Abatement and Demolition;
- 15.2.7.1.15. Installation;
- 15.2.7.1.16. Rough-in per the Project's specifications;
- 15.2.7.1.17. Finishes per the Project's specifications;
- 15.2.7.1.18. Testing; and
- 15.2.7.1.19. Punch list and approval.
- 15.2.7.2. Divided by each of the following areas:
  - 15.2.7.2.1. Site work, on-site and off-site;
  - 15.2.7.2.2. By each building; and
  - 15.2.7.2.3. By each floor.
- 15.2.8. The Schedule of Values shall not provide for values any greater than the following percentages of the Construction Work portion of the Total Contract Amount:
  - 15.2.8.1. Mobilization and layout combined to equal not more than 1%;
  - 15.2.8.2. Submittals, Samples, and Shop Drawings combined to equal not more than 3%; and
  - 15.2.8.3. Bonds and insurance (non-OCIP costs only) not to exceed the percentages of the Direct Cost of Work identified in the Construction Cost.
- 15.2.9. Closeout Documentation shall have a value in the Schedule of Values of not less than two percent (2%). The value for Closeout Documentation shall be in addition to, and shall not be a part of, the Retention.
- 15.2.10. Judicial Council, in its sole and absolute discretion, and upon request by Design Build Entity, may provide prior written authorization to Design Build Entity to use an alternate Schedule of Values method not involving cost loading. Design Build Entity must make that request in writing within a reasonable time in advance of the Construction Work to permit Judicial Council to review and approve the request, and to enable Design Build Entity to prepare a Schedule of Values without impacting the progress of the Work. If Judicial Council provides prior written approval, Judicial Council will provide the requirements for the alternative Schedule of Values, which are not subject to negotiation, and which Design Build Entity must comply with when preparing the Schedule of Values.
- 15.2.11. All items on the Schedule of Values must have a specific completion date on the Contract Schedule.

- 15.2.12. Design Build Entity shall certify that the Schedule of Values, as submitted to Judicial Council, is accurate and reflects the Stipulated Sum, including cost of Work.
- 15.2.13. Notwithstanding any provision of the Contract Documents to the contrary, payment of mark-ups, supervision, management, and Design Build Entity's overhead, as reflected in the Schedule of Values, shall be paid by Judicial Council in equal installments, based on percentage complete, with the disbursement of progress payments and the final Application for Payment.
- 15.2.14. Design Build Entity shall not "front-load" the Schedule of Values with false dollar amounts for activities to be performed in the early stages of the Project, including, without limitation, activities for submittals and procurement of materials and equipment.
- 15.2.15. Judicial Council may, in its sole discretion, utilize the costs listed in the Schedule of Values as the true cost of the work for the items to be deducted from the Total Contract Amount through credit or deductive Change Orders or Unilateral Change Orders. Applicable overhead and profit shall be adjusted as described in the Contract Documents.
- 15.2.16. The values for each line item shall include, at a minimum, a breakdown between rough and finish Construction Work for the basic trades, as well as individual dollar figures for large dollar equipment and materials to be installed or furnished for the Project. No individual line item or scope of Work in the Schedule of Values shall exceed Fifty Thousand Dollars (\$50,000), except with the express, written consent of Judicial Council. Exceptions will be given by Judicial Council for a single item of equipment for which the true cost exceeds Fifty Thousand Dollars (\$50,000).

**15.3. Schedule of Submittals.**

- 15.3.1. Design Build Entity shall prepare and keep current, to the reasonable satisfaction of Judicial Council, a schedule of submittals, as required by the Division 01 Sections and/or Specifications, to the extent applicable, and that is coordinated with the Contract Schedule.
- 15.3.2. Design Build Entity shall coordinate all submittals, including, without limitation, Shop Drawings, and review them for accuracy, completeness, and compliance with the requirements of the Contract Documents and Design Build Entity's Working Drawings. Design Build Entity shall indicate its approval as evidence of such coordination and review.

**16. AS-BUILT DOCUMENTS**

- 16.1. Design Build Entity shall maintain one (1) set of As-Built Drawings, which shall be kept up-to-date during Work on the Project. All changes which are incorporated into the Work which differ from Construction Drawings shall be noted on the As-Built. Notations shall reflect the actual materials, equipment, and installation methods used for the Work; each revision shall be initialed and dated by Design Build Entity. As-Built shall be turned over to Judicial Council Representative and shall become part of the Record Documents.

**17. REQUESTS FOR INFORMATION, CLARIFICATION, OR ADDITIONAL INSTRUCTIONS**

- 17.1. Following the Office of the State Fire Marshal's approval of the Project Documents, if the Design Build Entity issues a design change Request for Information that modifies the

Project Documents, the Design Build Entity's Architect of Record or engineer of record (if applicable) shall create a Bulletin outlining the design changes before the changes are implemented on-Site. The Bulletin will be stamped, signed, and submitted first to Judicial Council and then to the Office of the State Fire Marshal for its approval. If requested by the Office of the State Fire Marshal, the Design Build Entity shall also prepare updated project documents that incorporate the latest design changes issued up to the date of the request.

- 17.2.** If Design Build Entity discovers conflicts, omissions, or errors in the Performance Criteria Documents, Contract Documents, or Construction Documents, or if it has any questions concerning interpretation or clarification of these documents, Design Build Entity shall immediately submit a written RFI to Judicial Council, for action or information purposes, that complies with the following requirements:
- 17.2.1. All RFIs, whether originated by Design Build Entity, a Subcontractor, or supplier at any Tier, Shall be submitted by Design Build Entity to Judicial Council.
  - 17.2.2. RFIs shall be numbered sequentially and be presented in the format provided by Judicial Council.
  - 17.2.3. Design Build Entity shall clearly and concisely set forth the single issue for which interpretation or clarification is sought and indicate number, article, sub-article, number, detail, and/or other item involved, and state why a response is required from Judicial Council.
  - 17.2.4. Design Build Entity shall set forth its own interpretation or understanding of the requirements, along with reasons why it has reached such an understanding in each RFI.
  - 17.2.5. RFIs shall be submitted in a timely manner in order that they may be adequately researched and answered before the response affects any critical activity of the Work.
  - 17.2.6. Responses to RFIs will be made within fourteen (14) Days unless Judicial Council notifies Design Build Entity in writing that a response will take longer. The fourteen (14) Days will begin when the RFI is received and dated by Judicial Council.
  - 17.2.7. Responses from Judicial Council will not change any requirement of the Agreement.
- 17.3.** Should Design Build Entity think that a response to a RFI causes a change to the Agreement that requires an Amendment, Design Build Entity shall, before proceeding, give written notice to Judicial Council indicating that Design Build Entity considers Judicial Council's response to the RFI to be a change in the Contract Documents. Failure to give such written notice within fourteen (14) Days of receipt of Judicial Council's response to the RFI shall waive Design Build Entity's right to seek an adjustment to the Total Contract Amount or Contract Time related thereto. Judicial Council shall issue a written determination to Design Build Entity within a reasonable time, considering the complexity of the RFI and the impact on the Project (including liability concerns). If Design Build Entity disagrees with the determination, and the determination has a material impact on the Total Contract Amount or Contract Time, Design Build Entity may treat that determination as a claim.

## **18. CHANGES IN THE WORK**

- 18.1. No Changes Without Authorization.** There shall be no change whatsoever in the Work without an executed Amendment, a Change Order, a Unilateral Change Order executed by

the authorized representative of Judicial Council, or a written Field Directive executed by an authorized representative of Judicial Council, as herein provided. Judicial Council shall not be liable for the cost of any change to the Work, including substitutions, additions, omissions, or deviations from the Contract Documents, or change to the Contract Time, unless Judicial Council authorizes and approves that change and any cost related thereto in writing by a fully executed Change Order or Unilateral Change Order.

- 18.2. Design Work Changes.** If either Party desires to change the scope of Design Work, or to adjust the Total Contract Amount or Contract Time attributable to the Design Work, or any component thereof, the Parties may only do so by written Amendment. If Design Build Entity seeks an Amendment, Design Build Entity shall substantiate any request for additional costs or time extension using the Proposed Change Order Procedures and Change Orders provisions.
- 18.3. Construction Work Changes.** Any change to the Construction Work that requires an adjustment to the Total Contract Amount or Contract Time shall be made through a Change Order, Unilateral Change Order, or Field Directive.
- 18.4. Requirements Applicable to All Changes.** All requirements under this section to price, substantiate, and give notice of any change in the Work shall be equally applicable to Amendments, Change Orders, Unilateral Change Orders, or Field Directives that involve Work performed by Subcontractors, and Design Build Entity shall bind all Subcontractors to these provisions in all Subcontractor contracts.
- 18.5. Conditions for Change Work.** Conditions for an Amendment and/or Change Order for Change Work shall be limited to the circumstances listed below. All costs of Change Work arising from the below circumstances shall all be considered Direct Cost of Work for Extra Work and priced as applicable herein.
- 18.5.1. Extra Work.
  - 18.5.2. Unforeseen Site Conditions.
  - 18.5.3. Delay.
  - 18.5.4. OSFM code interpretations that are proven to be more stringent than industry standards. Any such change shall be limited to fifty percent (50%) of the Direct Cost of Work for Extra Work, calculated as provided herein.
  - 18.5.5. Suspension of Work by Judicial Council, not caused by Design Build Entity or any of its Subcontractors, Design Professionals, suppliers, or equipment vendors.
- 18.6. No Compensation to Correct Defective Work.** Design Build Entity shall not be entitled to an adjustment in the Contract Time or Total Contract Amount resulting from activities to correct Defective Work.
- 18.7. Use of Allowance(s).** If Design Build Entity desires to use any Allowance(s), reasonable prior written notice of its intent to use these funds shall be provided to Judicial Council so that Judicial Council may review and approve Design Build Entity's cost request. Design Build Entity shall comply with the "Changes in the Work" section when substantiating the costs of the Allowance(s) use.
- 18.8. General Change Provisions.**
- 18.8.1. Surety Agreement. The Surety, in executing and providing the Performance Bond and the Payment Bond, shall be deemed to have expressly agreed to any change to the Total Contract Amount and Contract Time based on the provisions set forth herein.

- 18.8.2. Time Extension. No adjustment to the Contract Time shall be allowed hereunder unless: (i) Design Build Entity, in addition to these “Changes in the Work” provisions, initiates a claim for that extension; (ii) Design Build Entity complies with all requirements of the Contract Documents applicable to establishing delay; and (iii) the Contract Time is expressly adjusted in a fully executed Amendment, Change Order, or Unilateral Change Order.
- 18.8.3. Diligent Performance/Disagreements. Design Build Entity shall immediately perform all Work authorized by Judicial Council as set forth herein. If Judicial Council rejects a Proposed Change Order, in whole or part, Design Build Entity shall diligently perform the Work; provided, however, Design Build Entity may consider the Work performed under dispute and treat the rejection of the Proposed Change Order as the basis for a claim and proceed through the “Claims Resolution” provisions. Design Build Entity shall be fully responsible for any and all delays, expenses, and/or damages caused by Design Build Entity’s failure to expeditiously perform any Work, and Design Build Entity’s failure or refusal to proceed with any Work may be treated by Judicial Council as Design Build Entity’s default or breach of a material obligation of Design Build Entity under the Agreement.
- 18.8.4. No Compensation Without Authorization. If Design Build Entity proceeds with any change in the Work without an Amendment, Change Order, Unilateral Change Order, or Field Directive authorized under the Contract Documents, Design Build Entity waives any claim of additional compensation or time for that work.
- 18.8.5. Emergency. In an Emergency affecting safety of life, work, or adjoining property, Design Build Entity, without special instruction or authorization, shall act, at its discretion, to prevent all threatened loss or injury. Any compensation or time claimed by Design Build Entity on account of Emergency work shall be determined as indicated herein.

## **18.9. Waiver.**

- 18.9.1. Design Build Entity understands, acknowledges, and agrees that the reason for Judicial Council authorization for any Work that requires a Change Order or Amendment is so that Judicial Council may have an opportunity to analyze the work and decide whether Judicial Council shall proceed with any change or alter the Project so that a change in the Work becomes unnecessary. Design Build Entity’s failure to comply with any of the requirements in this “Changes in the Work” section relating to seeking an adjustment to the Total Contract Amount or Contract Time shall constitute a waiver of any entitlement to such an adjustment.
- 18.9.2. A waiver of, or failure by, Judicial Council or Judicial Council Representative to enforce any requirement of this “Changes in the Work” section will not constitute a waiver of, and will not preclude Judicial Council, or Judicial Council Representative, from enforcing those requirements in connection with any other adjustments of the Total Contract Amount or Contract Time.
- 18.9.3. Design Build Entity agrees and understands that no oral approval, either express or implied, of any adjustment of the Total Contract Amount or Contract Time by Judicial Council or Judicial Council Representative shall be binding upon Judicial Council unless and until such approval is ratified by execution of a written Change Order.



**18.10. Acceptance of Change a Waiver.** Execution and acceptance of an Amendment, Change Order, Unilateral Change Order, or Field Directive by Design Build Entity shall constitute a waiver of all Disputes or claims in connection therewith, whether direct, indirect, or consequential in nature.

**18.11. Amendments.**

- 18.11.1. Judicial Council may, at any time, by written Amendment, direct Design Build Entity to perform changes in the Work during the Design Work. Design Build Entity may propose an Amendment requesting that Judicial Council issue an Amendment for Design Build Entity's performance of Change Work; provided, however, that Design Build Entity shall not be entitled to seek an Amendment for Change Work that arises from Design Build Entity's Errors and Omissions.
- 18.11.2. If Design Build Entity proposes an Amendment, it shall comply with all requirements for submitting and substantiating a Proposed Change Order herein below, including, without limitation, timely submittal of an Amendment, notice of any Change Work, and adequate substantiation to support the Direct Cost of Work for Extra Work.
- 18.11.3. If Design Build Entity seeks an extension to the Contract Time through an Amendment, Design Build Entity shall comply with all requirements in this "Changes in the Work" section and the General Conditions to establish such an entitlement. Design Build Entity's failure to seek or substantiate any request for time extension shall constitute a waiver thereof.

**18.12. Change Orders.**

- 18.12.1. Contents of Change Order. A Change Order shall identify all of the following:
  - 18.12.1.1. A description of the Change Work;
  - 18.12.1.2. The amount of an adjustment of the Total Contract Amount, or any component thereof relating to a component of the Work, if any; and
  - 18.12.1.3. The amount of adjustment to the Contract Time, if any.
- 18.12.2. Conditions for Change Order. If Design Build Entity seeks an adjustment to the Total Contract Amount or Contract Time, it shall do so by seeking a Change Order. To obtain an adjustment of the Total Contract Amount and/or Contract Time, or any other additional compensation or relief for any other reason, Design Build Entity must:
  - 18.12.2.1. Timely submit a Proposed Change Order meeting the requirements of the Contract Documents;
  - 18.12.2.2. Timely submit any additional information requested by Judicial Council Representative; and
  - 18.12.2.3. If Judicial Council rejects any Proposed Change Order, treat the rejection as a claim and proceed through the "Claims Resolution" provisions of these General Conditions.
- 18.12.3. Lump Sum Pricing. Judicial Council and Design Build Entity may agree on the amount of the adjustment in the Total Contract Amount for Changed Work and the Change Order by utilizing a lump sum for the Direct Cost of Work for Extra Work, which shall specify the agreed upon amount of the adjustment in the Total Contract Amount for the Change Work and all other required components of a Change Order, including the description of the Change Work and the adjustment

in the Contract Time (if applicable). Design Build Entity shall comply with all other provisions applicable to Proposed Change Orders. Any agreement to a lump sum Change Order is subject to the “Basis for Computing Costs” section herein.

- 18.12.4. Time and Materials Pricing. Judicial Council may direct Design Build Entity to perform Change Work on a time and materials basis only if Judicial Council provides Design Build Entity prior written direction to perform that work that includes: (i) a not-to-exceed amount for the Extra Work, consistent with the established thresholds of authority set forth in the most recent version of the Judicial Council Branch Capital Program Management Policy approved by Judicial Council; and (ii) a description of the Change Work that Design Build Entity shall perform. If given that direction, Design Build Entity shall submit an initial, timely Proposed Change Order pursuant to the requirements hereunder, as set forth above. If Judicial Council approves the Proposed Change Order, Judicial Council will issue an initial Change Order that includes the not-to-exceed fee, conditioning any payment on Design Build Entity’s compliance with the provisions herein. Thereafter, the following conditions apply for a time and material Change Order:

- 18.12.4.1. Design Build Entity shall diligently proceed with the Work, and on a daily basis, submit: (i) a daily force account report on a form supplied by Judicial Council no later than 5:00 p.m. each day; and (ii) all cost records required by the “Cost Records and Substantiation” section below. The report shall contain a detailed itemization of the daily labor, material, and equipment used on the Force Account Work only. The names of the individuals performing the Force Account Work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. Judicial Council will review the information contained in the reports and sign the reports no later than the next workday and return a copy of the report to Design Build Entity for its records. Judicial Council will not sign, nor will Design Build Entity receive, compensation for work Judicial Council cannot verify or reasonably substantiate. Design Build Entity will provide a weekly force account summary indicating the status of the Change Order in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the Work.
- 18.12.4.2. Design Build Entity shall notify Judicial Council Representative at least twenty-four (24) hours prior to proceeding with any of the force account work. Design Build Entity shall also notify Judicial Council when it has consumed eighty percent (80%) of the not-to-exceed budget and shall not exceed the not-to-exceed budget unless specifically authorized in writing by Judicial Council. Design Build Entity will not be compensated for Force Account Work in the event that Design Build Entity fails to timely notify Judicial Council regarding the commencement of Force Account Work or exceeds the not-to-exceed budget.
- 18.12.4.3. Within a reasonable amount of time after the completion of the Change Work subject to the Change Order, in no event exceeding fourteen (14) Days, Design Build Entity shall submit a revised Proposed Change Order fully compliant with the “Format and Content of Proposed Change Order” requirements hereunder for the total Costs of the Extra Work, not to exceed the amount authorized

by Judicial Council in the initial Change Order, subject to any adjustments as herein provided.

- 18.12.4.4. All direct costs necessarily incurred and paid by Design Build Entity for labor, material, and equipment used in the performance of the Change Work, shall be subject to the approval of Judicial Council. Any dispute as to the sum of the Change Order or timing of payment shall be resolved pursuant to the “Claims Resolution” provisions of this Agreement.
  - 18.12.4.5. The “Allowable Direct Cost of Work for Extra Work” and “Mark-Ups for Change Work” shall apply to Change Work performed hereunder; provided, however, Judicial Council will only pay for actual costs verified by the Judicial Council Representative daily.
  - 18.12.4.6. Design Build Entity shall be responsible for all costs related to the administration of the Change Order. The mark-up for overhead and profit for Design Build Entity modifications shall be full compensation to the Design Build Entity to administer the Change Order.
  - 18.12.4.7. If Design Build Entity and Judicial Council reach a written agreement on a set cost for the Work while the Work is proceeding based on the Change Order, Design Build Entity’s signed daily force account reports shall be discontinued and all previously signed reports shall be invalid, and the Change Order shall proceed thereafter under the lump sum pricing option terms agreed to by Design Build Entity and Judicial Council for the Work of the Change Order.
- 18.12.5. Unilateral Change Orders. When Change Work is required and Judicial Council and Design Build Entity cannot agree as to the amount of the adjustment in the Total Contract Amount and/or the Contract Time, Judicial Council, at its sole discretion and without invalidating the Agreement, may issue a Unilateral Change Order either under lump sum pricing or a not-to-exceed time-and-materials pricing, consistent with the “Lump Sum Pricing” and “Time and Materials Pricing” sections above. A Unilateral Change Order shall not require Design Build Entity’s written approval. Design Build Entity shall diligently perform the work of a Unilateral Change Order regardless of any Dispute or Claim relating thereto and Design Build Entity may proceed under the “Claims Resolution” section in these General Conditions, if necessary.
- 18.12.6. Design Build Entity will not be entitled to request a substitution with respect to those specific materials, products, things, or services for which Judicial Council made findings and gave notice in accordance with Public Contract Code section 3400(b).

### **18.13. Field Directives.**

- 18.13.1. Content of Field Directive. A Field Directive shall include: (i) a description of the Change Work; (ii) any adjustment of the Contract Time (if any and known by Judicial Council); (iii) any adjustment of the Total Contract Amount (if any and known by Judicial Council); (iv) if the price is unknown, and at Judicial Council’s discretion, an estimate of the cost of the Change Work; and (v) if the Change Work is performed on a time and materials basis, a not-to-exceed amount for the Change Work.

- 18.13.2. Constrained by Thresholds. Field Directives shall only be issued within the established thresholds of authority set forth in the most recent version of the Judicial Council Branch Capital Program Management Policy approved by Judicial Council.
- 18.13.3. Method of Pricing.
- 18.13.3.1. Judicial Council may issue either a:
- 18.13.3.1.1. Lump Sum Field Directive; or
- 18.13.3.1.2. Time and Materials Field Directive.
- 18.13.3.2. Lump Sum Field Directive. The Proposed Change Order submitted by Design Build Entity shall comply with all requirements for pricing and substantiating Change Work as set forth in this “Changes in the Work” section. If the Judicial Council disagrees with the proposed pricing and the Parties cannot agree to the pricing for the Lump Sum Field Directive, Judicial Council may instead issue a unilateral Field Directive setting a lump sum for the adjustment to Total Contract Amount, and an adjustment to the Contract Time (if any), subject to the applicable authority thresholds. Alternatively, Judicial Council can instead reissue the Field Directive as a Time & Materials Field Directive.
- 18.13.3.3. Time and Materials Field Directive. Judicial Council and Design Build Entity shall comply with all the above requirements related to time and materials Change Work in this “Changes in the Work” section of the General Conditions. If Design Build Entity disputes the not-to-exceed amount proposed by Judicial Council, Design Build entity shall notify Judicial Council within five (5) Days of receipt of the Field Directive. If the Parties cannot resolve the Dispute, Judicial Council may do either of the following: (i) issue a unilateral Field Directive setting a not-to-exceed amount for the adjustment to Total Contract Amount, and an adjustment to the Contract Time (if any), subject to the applicable authority thresholds; **or** (ii) direct that Design Build Entity perform all the Change Work up to the not-to-exceed amount, to track its costs as set forth herein, and treat any alleged unpaid costs as a claim and proceed through the “Claims Resolution” section of these General Conditions.
- 18.13.3.4. If the Field Directive includes an estimate of the adjustment to the Total Contract Amount or Contract Time in addition to a not-to-exceed amount for the time and materials Change Work, Design Build Entity will not exceed either without written authorization by Judicial Council.
- 18.13.4. Diligent Performance. Upon receipt of a Field Directive, Design Build Entity shall promptly proceed to perform the Work as ordered in the Field Directive notwithstanding any disagreement by Design Build Entity concerning the Field Directive.
- 18.13.5. Unilateral Field Directives. Judicial Council may issue unilateral Field Directives as set forth above. Design Build Entity shall diligently perform the work of a unilateral Field Directive regardless of any pending Dispute or claim and Design Build Entity may maintain any rights available to it under the “Claims Resolution” Article herein.

- 18.13.6. Change Order. Field Directives shall be finalized as a Change Order subject to the provisions of this “Changes in the Work” section.
- 18.13.7. Strict Compliance and Waiver. Design Build Entity’s failure to strictly follow any procedures related to a Field Directive shall waive any claim for an adjustment of the Total Contract Amount or Contract Time arising from performance of the Change Work described in the Field Directive.

**18.14. Proposed Change Order Procedures.**

18.14.1. Time for Submission.

- 18.14.1.1. Design Build Entity must submit a Contractor Notice of Potential Change included in **Exhibit M** within seven (7) Days of the date Design Build Entity discovers, or reasonably should have discovered, the circumstances giving rise to the changed condition.
- 18.14.1.2. Design Build Entity shall submit a detailed cost proposal on the Proposed Change Order Forms included in **Exhibit N** within seven (7) Days of issuance of a request for proposal by Judicial Council. Adjustments of the Total Contract Amount or Contract Time resulting from Change Order Work and/or deductive Change Order Work shall be determined by using one of the methods in the “Basis for Computing Costs” section, in Judicial Council’s sole and absolute discretion. Adjustments of the Contract Time shall be subject to all provisions applicable to establishing and substantiating delay. Design Build Entity’s obligation to provide a Proposed Change Order shall not entitle Design Build Entity to an adjustment of the Total Contract Amount or Contract Time arising from work to prepare the Proposed Change Order.

18.14.2. Format and Content of Proposed Change Order. A Proposed Change Order must: (i) state that it is a Proposed Change Order, marked numerically as the next in order Proposed Change Order (e.g., if it is the second Proposed Change Order, marked “PCO #2”); (ii) state and justify in detail the reason for the request; and (iii) specify the amount of any requested adjustment of the Total Contract Amount and Contract Time consistent with the requirements of these General Conditions, as applicable; and (iv) give notice if the Change Work relates to materially differing or Unforeseen Site Conditions. Design Build Entity shall submit all of the following:

- 18.14.2.1. (i) A completed Proposed Change Order in the form contained in **Exhibit N** meeting the requirements the Contract Documents; or (ii) a partial Proposed Change Order and a declaration of what required information is not then known to Design Build Entity.
- 18.14.2.2. If Design Build Entity elects the latter, Design Build Entity shall submit a completed Proposed Change Order meeting the requirements of the Contract Documents no later than seven (7) Days after Design Build Entity submitted the Proposed Change Order, unless additional time is allowed by Judicial Council Representative in writing, in its sole and absolute discretion.
- 18.14.2.3. Design Build Entity must include all Direct Cost of Work for Extra Work for which it seeks a compensation in the Proposed Change Order and Design Build Entity shall comply with all instructions in the Proposed Change Order form related to substantiation for Direct

Cost of Work for Extra Work and cost breakdowns. Compensation for Direct Cost of Work for Extra Work shall be limited as set forth in the “Allowable Direct Costs for Work for Extra Work” section below. If Design Build Entity requests compensation for any other cost, that request shall be denied. Design Build Entity shall also include, in the Proposed Change Order, mark-up for insurance and bonds as set forth in the “Mark-Ups for Extra Work” section below.

18.14.2.4. Design Build Entity’s failure to timely submit a Proposed Change Order is a material breach of the Contract. Design Build Entity shall be responsible for any delay in implementing a change for which Design Build Entity failed to timely provide a Proposed Change Order.

18.14.2.5. Cost Records and Substantiation of Claim.

18.14.2.5.1. If Design Build Entity seeks an adjustment of the Total Contract Amount, Design Build Entity shall submit all reasonably necessary substantiation of the Costs of Extra Work (including without limitation, payroll records, material, and rental invoices) to Judicial Council Representative. Judicial Council Representative may set a deadline for the receipt of those records, but actual cost records must be submitted when Design Build Entity submits its Proposed Change Order. For a time and materials Change Order, Design Build Entity shall submit the above documentation daily to Judicial Council Representative.

18.14.2.5.2. If Judicial Council Representative deems Design Build Entity’s cost records or other substantiation incomplete or inadequate to substantiate the Costs of Extra Work, Judicial Council may request that Design Build Entity supplements the Proposed Change Order with additional, reasonable supporting documentation, consistent with any deadline set by Judicial Council Representative. If no deadline is set, Design Build Entity shall respond with additional supporting documentation no later than seven (7) Days after the Judicial Council Representative’s request.

18.14.2.6. Substantiation of Time Extension.

18.14.2.6.1. General Requirements. If Design Build Entity seeks an adjustment to the Contract Time, written documentation demonstrating Design Build Entity’s entitlement to a time extension compliant with all provisions of the Contract Documents shall be submitted with the Proposed Change Order, unless a longer time is provided for particular substantiation elsewhere in the Contract Documents or Judicial Council Representative grants additional time in writing, in Judicial Council Representative’s sole discretion.

18.14.2.6.2. Substantiation for Compensable Delay. If Design Build Entity seeks an adjustment of the Total Contract Amount for Compensable Delay, Design Build Entity shall submit written documentation demonstrating Design Build Entity's entitlement to the requested adjustment, consistent with the requirements of the Contract Documents, within fourteen (14) Days of the Proposed Change Order that seeks the adjustment of the Total Contract Amount, unless a longer time is provided for particular substantiation elsewhere in the Contract Documents. The Total Contract Amount shall be adjusted for a Compensable Delay if, and only if, Design Build Entity complies with all requirements for demonstrating and substantiating Compensable Delay as set forth in these General Conditions.

18.14.2.7. Unforeseen Site Condition(s). If Design Build Entity submits a Proposed Change Order that is based at least partially on Design Build Entity's assertion or a Field Directive stating that Design Build Entity has encountered an Unforeseen Site Condition on the Project, then Design Build Entity shall describe the Unforeseen Site Condition and provide evidence to Judicial Council's reasonable satisfaction, that demonstrates that the alleged condition was actually reasonably unforeseeable based on all of the information available to Design Build Entity. If Judicial Council denies the Proposed Change Order, Design Build Entity shall complete the Project without any increase in the Total Contract Amount and/or Contract Time without the costs associated with the condition identified in the Proposed Change Order.

18.14.3. Decision on Proposed Change Order. Judicial Council Representative will issue a written decision as to whether to approve or reject a Proposed Change Order within a reasonable time, taking into account the complexity of the Change Work and the volume, detail, and nature of any supporting documentation. If Judicial Council Representative rejects a Proposed Change Order in whole or in part, Design Build Entity may contest the decision by submitting a timely claim.

#### **18.15. Allowable Costs for Changed Work.**

18.15.1. Allowable Costs for Compensable Delay. For each day of Compensable Delay established and approved by Judicial Council, a Change Order shall include the adjustment of the Total Contract Amount for Compensable Delay calculated at the daily rate included in the Agreement. Any compensation in a resulting Change Order shall be Design Build Entity's sole and exclusive remedy for compensation for costs related to the Compensable Delay.

18.15.2. Allowable Costs for Extra Work. Design Build Entity shall only be entitled to include the following costs in a Proposed Change Order when seeking an adjustment to the Total Contract Amount for Direct Cost of Work for Extra Work:

18.15.2.1. Direct Labor Costs. Design Build Entity may seek compensation for Direct Labor Costs. Use of a classification which would increase labor costs will not be permitted. Exceptions will be permitted only when Design Build Entity establishes, to the satisfaction of Judicial

Council, the necessity for payment at higher rates or classifications. Direct Labor Costs shall not exceed:

- 18.15.2.1.1. Current prevailing wages in the locality for performance of the Change Work; and
  - 18.15.2.1.2. Labor burden or labor charges, which shall only include documented FICA, Medicare, unemployment, and Workers' Compensation charges and no other charges.
- 18.15.2.2. Materials and Equipment Compensation. Design Build Entity may seek compensation for Materials and Equipment Costs as set forth below:
- 18.15.2.2.1. Compensation for the necessary costs for materials and equipment directly required and used in the performance of the Change Work. If, in the opinion of Judicial Council, the cost of materials and equipment is excessive, or if Design Build Entity fails to furnish satisfactory evidence of costs from a supplier, the cost of materials and equipment shall be the lowest current wholesale price at which similar materials and equipment are available in the quantities required by Design Build Entity for the Project.
  - 18.15.2.2.2. Cost of materials and equipment may include the actual costs for transportation and delivery. If discounts by suppliers are available to Design Build Entity, discounts received by Design Build Entity shall be credited to Judicial Council. If materials and equipment are obtained from a supply or source owned by, or in part by, Design Build Entity, or if equipment is owned by Design Build Entity, payment will not exceed current wholesale prices for those materials, and in the event of equipment, shall not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates or Caltrans rates.
  - 18.15.2.2.3. If equipment is rented, the equipment costs shall not exceed one hundred percent (100%) of the AED rental rates or Caltrans rates, whichever is less. Hourly, daily, weekly, or monthly rates shall be used, whichever is lower. Hourly rates including operator shall not be used.
  - 18.15.2.2.4. In the event of idle equipment, the delay factor as indicated for the piece of equipment in the Caltrans rates shall apply, regardless of the rate applied (e.g., if AED rates are lower and apply, the delay factor as used in the Caltrans rate shall still be used). Before calculating the costs for idle equipment, Design Build Entity shall first calculate the applicable idle equipment rate by applying the Caltrans delay factor for the particular piece of equipment to the applicable



rate, the product of which shall be the hourly rate that Design Build Entity shall use to calculate charges for idle equipment. For example, and clarification purposes only, if the rate for “Z” piece of equipment is \$100 and the Caltrans delay factor is .20 for that piece of equipment, then the hourly rate for idle equipment shall be \$20 (\$100 x .20), which shall be applied against the number of hours idle. In no event shall Design Build Entity charge an amount greater than 50% of the applicable equipment rate for idle equipment.

- 18.15.2.2.5. The time to be paid for equipment shall be the actual time that the equipment is in productive operation on the Work or idled as a result of the event or circumstance giving rise to the Proposed Change Order. In computing the hourly rental of equipment, any time less than thirty (30) minutes shall be considered one-half (1/2) hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time shall not include the time required to move the equipment to and from the Project Site. No mobilization or demobilization will be allowed for equipment already on-Site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the Work directly related to the event or circumstance giving rise to the Proposed Change Order.
- 18.15.2.2.6. Individual pieces of equipment having a replacement value of One Thousand Dollars (\$1,000) or less shall be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the mark-up.
- 18.15.2.2.7. Payment to Design Build Entity for the use of equipment as set forth above shall constitute full compensation to Design Build Entity for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to the Design Build Entity incidental to the use of the equipment.
- 18.15.2.3. Design Work and Professional Services Charges. Any charges for Change Work performed by Design Professionals or other consultants shall be charged by Design Build Entity: (i) at the hourly rates in the Professional Billing Rate sheet in **Exhibit O** to the Agreement, or (ii) as a negotiated not-to-exceed lump sum,

whichever Judicial Council prefers in its sole and absolute discretion.

18.15.3. Mark-Ups for Change Work.

18.15.3.1. No Mark-Up for Compensable Delay. Design Build Entity shall not be entitled to any mark-up for Compensable Delay.

18.15.3.2. Mark-Up for Change Work. Mark-Up shall be the aggregated mark-ups for Design Build Entity-performed and Subcontractor-performed Change Work as set forth below. Mark-Up shall be applied to the identified components of the Extra Work only. Design Build Entity shall not be permitted to assess mark-up on any other costs related to the Extra Work, including, without limitations, Design Build Entity's General Conditions.

18.15.3.2.1. Design Build Entity's Mark-Up for Self-Performed Construction Work/Subcontractor-Performed Construction Work. Design Build Entity's mark-up for Self-Performed and Subcontractor-Performed Construction Work shall be six percent (6%) of:

18.15.3.2.6. Direct Costs of Labor; and

18.15.3.2.6. Materials & Equipment.

18.15.3.2.6. For Subcontractor-Performed Construction Work, Design Build Entity shall not be entitled to mark-up on top of Subcontractor's mark-up.

18.15.3.2.2. Subcontractor's Mark-Up for Subcontractor-Performed Construction Work. The Subcontractor's mark-up for Subcontractor-Performed Construction Work shall be as set forth below.

18.15.3.2.6. Aggregate Mark-Up means the sum of the mark-up percentages charged on each Tier of Subcontractor work.

18.15.3.2.6. Subcontractor's Direct Labor Costs for labor performed by:

18.15.3.2.2.1. First-Tier Subcontractor: Mark-up shall not exceed seven percent (7%) of the Direct Labor Costs.

18.15.3.2.2.2. Second-Tier Subcontractor: Aggregate mark-ups for both subcontract Tiers 1 + 2 shall not exceed fourteen percent (14%).

- 18.15.3.2.2.2.3. Third-Tier Subcontractor or lower: Aggregate mark-ups for all Tiers shall not exceed twenty percent (20%).
- 18.15.3.2.6. For Subcontractor's Materials & Equipment:
  - 18.15.3.2.2.3.1. First-Tier Subcontractor: Mark-up shall not exceed five percent (5%) of the Materials & Equipment.
  - 18.15.3.2.2.3.2. Second-Tier Subcontractor: Aggregate mark-ups for both subcontract Tiers 1+2 shall not exceed ten percent (10%).
  - 18.15.3.2.2.3.3. Third-Tier Subcontractor or lower: Aggregate mark-ups of all subcontract Tiers shall not exceed fifteen percent (15%).
- 18.15.3.2.6. Subcontractor Bond/Default Insurance Costs: Design Build Entity's premium charges for Subcontractor bond costs or Design Build Entity-provided Subcontractor default insurance protection in lieu of Subcontractor bonds (e.g., Sub Guard), if any.
- 18.15.3.2.3. Cap on Mark-up. The total mark-up of combined Design Build Entity- and Subcontractor-performed Change Work shall not exceed twenty percent (20%) of the Direct Cost of Work for Extra Work.
- 18.15.3.3. Design Work. There is no mark-up on Change Work that is Design Work. The rates in the Professional Billing Rate Sheet attached as **Exhibit O** to the Agreement are fully loaded, inclusive of mark-up.
- 18.15.3.4. Professional Services Mark-up. For professional services performed under contract to Design Build Entity or Subcontractors, excluding that of Design Work, mark-up shall not exceed five percent (5%) of all compensation for that service.

- 18.15.3.5. Mark-Up for Bonds and Insurance. Mark-up for bonds & insurance (other than OCIP Insurance) shall be the product of the percentage indicated for those mark-ups in Design Build Entity's Price Proposal attached as **Exhibit O** to the Agreement, applied to the Direct Cost of Work for Extra Work.
- 18.15.3.6. No Costs for Design Errors or Omissions. Design Build Entity shall not be entitled to any adjustment to the Total Contract Amount or Contract Time caused by any Error or Omission of Design Build Entity, or Design Build Entity's failure to properly coordinate with Authorities Having Jurisdiction.
- 18.15.3.7. Additional Allowance Mark-ups Prohibited. Design Build Entity is not entitled to any additional mark-up for Construction Work for any Allowance(s). Subcontractor mark-up is subject to the provisions of "Subcontractor's Mark-Up for Subcontractor Performed Construction Work."
- 18.15.3.8. Deleted Work. When Judicial Council is entitled to a credit for deleted Work, the credit shall include a return of all mark-ups for overhead and profit, insurance and bond costs, and Subcontractor default insurance and bonds (if applicable), to the extent that such items were calculated in the Stipulated Sum.

Summary of Mark-Ups. The following tables illustrate the allowable mark-ups and required credits for changes to the Stipulated Sum.

<b>Mark-Ups for Changed Work (as a percentage of the Direct Cost of Work for Extra Work)</b>			
<b>Allowable Mark-Ups on the Use of Specific Categories of Funds</b>	<b>Allowances (in Direct Cost of Work)</b>	<b>Changes in the Work (outside Stipulated Sum and/or original contract scope and Time)</b>	
Design Build Entity-Performed Change Work (see above)	n/a	6%	
Section 18.15.3.2.2. Mark-Up for Subcontractor Performed Change Work	Direct Labor Costs: Up to 7% for 1 <sup>st</sup> Tier, up to 14% for 2 <sup>nd</sup> Tier, and up to 20% total for Tiers 1 + 2 + 3  Materials & Equipment: Up to 5% for 1 <sup>st</sup> Tier, up to 10 % for 2 <sup>nd</sup> Tier, and up to 15% total for Tiers 1 + 2 + 3	Direct Labor Costs: Up to 7% for 1 <sup>st</sup> Tier, up to 14% for 2 <sup>nd</sup> Tier, and up to 20% total for Tiers 1 + 2 + 3  Materials & Equipment: Up to 5% for 1 <sup>st</sup> Tier, up to 10% for 2 <sup>nd</sup> Tier, and up to 15% total for Tiers 1 + 2 + 3	

<b>Mark-Ups for Changed Work (as a percentage of the Direct Cost of Work for Extra Work)</b>			
<b>Allowable Mark-Ups on the Use of Specific Categories of Funds</b>	<b>Allowances (in Direct Cost of Work)</b>	<b>Changes in the Work (outside Stipulated Sum and/or original contract scope and Time)</b>	
Subcontractor Bond/Default Insurance (e.g., Subguard) (non-OCIP)	n/a	Not Allowed. Included in Design Build Entity's Fee.	

<b>Credits for Deleted Work and Adjustments for Unused Allowance(s).</b> Credits are to be calculated as a percentage of the Direct Cost of Work and are to be deducted in addition to the amount of the Direct Cost of Work to perform the deleted Work.			
<b>Required Credits Back to Judicial Council</b>	<b>Allowances (in Direct Cost of Work)</b>	<b>Changes in the Work</b>	
Design Build Entity Construction Fee	Construction Fee %	n/a	
Subcontractor Bond/Default Insurance (e.g., Subguard) (non-OCIP)	___% (as proposed and agreed to by Judicial Council)	___% (as proposed and agreed to by Judicial Council)	

18.15.4. General Limitations. Costs to Design Build Entity for Change Work which exceed market values prevailing at the time of the performance of the Change Work will not be allowed unless Design Build Entity establishes that all reasonable means for performance of the changes at prevailing market values have been investigated and the excess cost could not be avoided. Notwithstanding actual charges to Design Build Entity on work performed or furnished by others, no mark-ups will be allowed in excess of those specified above.

18.15.5. Cost Disallowance. Funds from claim settlements will not expressly be allowed to cover costs of Field Directives, Change Orders, or Unilateral Change Orders made under the Contract Documents. This includes, but is not limited to: interest on cost of any type other than those mandated by statute; claim preparation or filing costs; legal expenses; the costs of preparing or reviewing Proposed Change Orders or Change Order proposals concerning Change Orders; lost revenues; lost profits; lost income or earnings; rescheduling costs; costs of idled equipment when such equipment is not yet at the Site or has not yet been employed on the Work; lost earnings or interest on unpaid retention; claim consulting costs; the costs of corporate officers or staff visiting the Site or participating in meetings with Judicial Council; any compensation due to the fluctuation of foreign currency conversions or exchange rates; or loss of other business. This section in no way limits Judicial Council's right to disallow other costs in a Proposed Change Order if Judicial Council determines the cost is not supported or not allowed as provided elsewhere in the Contract Documents.

- 18.16. Basis for Computing Direct Cost of Work for Extra Work.** Direct Cost of Work for Extra Work shall be computed based on one or more of the following, in Judicial Council's sole and absolute discretion:
- 18.16.1. For non-Design Work, by Judicial Council's approval of a Proposed Change Order or proposed Amendment as set forth above.
  - 18.16.2. For Design Work, when the proposed Change Work differs from approvals or instructions previously given by Judicial Council, including revisions made necessary by material adjustments in Judicial Council's program, Performance Criteria Documents, or Stipulated Sum, the hourly rates reflected in the Professional Billing Rate Sheet (Exhibit O to the Agreement) shall be used, as set forth above.
  - 18.16.3. Where none of the foregoing is applicable, a mutually agreed upon lump sum supported by a Proposed Change Order pursuant to the Contract Documents.
  - 18.16.4. If Judicial Council and Design Build Entity cannot agree upon a lump sum, Judicial Council shall provide written notice to Design Build Entity of Judicial Council's calculated cost of the Change Work and any time extension. Design Build Entity shall be deemed to have approved Judicial Council's determination of the amount of adjustment to the Total Contract Amount and/or Contract Time, unless Design Build Entity notifies Judicial Council of any objection to Judicial Council's determination, in writing, not more than fifteen (15) Days from the date that Judicial Council's written notice of the calculation of the Direct Cost of Work for Extra Work was issued to Design Build Entity. If Design Build Entity objects to the amount of adjustment, Judicial Council may issue a Unilateral Change Order. Design Build Entity shall diligently perform any Work in such Unilateral Change Order and, to the extent any Dispute over the adjustment remains, may treat the Dispute as a claim.
- 18.17. Maintenance of Cost Records.** As a condition to Design Build Entity's right to an adjustment of the Total Contract Amount, Design Build Entity must keep daily detailed and accurate records itemizing each element of the Direct Cost of Work for Extra Work and shall provide substantiating records and documentation, including timecards and invoices. These records and documentation shall be submitted to Judicial Council Representative as directed hereunder.
- 18.18. Deductive and Additive Change Orders.** If any single Change Order involves both Change Work and deleted Work in the same portion of the Work, a mark-up will not be allowed if the deductive cost exceeds the additive cost. If the additive cost exceeds the deductive cost, Design Build Entity may include mark-ups consistent with the "Mark-Up for Change Work" section above on the difference between the two amounts.
- 18.19. Delay.**
- 18.19.1. Unless expressly provided otherwise by these General Conditions, Design Build Entity agrees:
    - 18.19.1.1. To bear the risk of all Unexcused Delays to the Work; and
    - 18.19.1.2. That Design Build Entity's Proposal was made with full knowledge of this risk.
  - 18.19.2. In agreeing to bear the risk of Unexcused Delays to the Work, Design Build Entity understands that, except and only to the extent provided otherwise in these General Conditions, the occurrence of Unexcused Delays shall not excuse Design Build Entity from its obligation to achieve Final Completion of the Work

within the Contract Time and shall not entitle Design Build Entity to an adjustment of the Total Contract Amount.

**18.20. Waiver.**

- 18.20.1. Design Build Entity's failure to comply with any of the requirements herein for an extension to the Contract Time or establishing delay shall constitute a waiver of an entitlement to that adjustment.
- 18.20.2. The failure of Judicial Council or Judicial Council Representative to enforce any requirement in connection with any past delays shall not constitute a waiver of Judicial Council's rights and remedies as set forth in the Contract Documents and shall not preclude Judicial Council from enforcing any requirements in connection with any present or delays.
- 18.20.3. Design Build Entity agrees and understands that no oral approval, either express or implied, of any time extension by Judicial Council or Judicial Council Representative shall be binding upon Judicial Council unless and until such approval is ratified by execution of a written Amendment or Change Order.

**18.21. Adjustment of the Contract Time and/or Total Contract Amount for Delay.**

- 18.21.1. Compensable Delay. Subject to the requirements of this section, the Contract Time shall be extended, compensation provided to Design Build Entity, and Design Build Entity excused from Liquidated Damages, for each day of Compensable Delay for which Design Build Entity demonstrates that all below conditions have been met. A time extension for Compensable Delay may only be granted for day(s) of delay for which Design Build Entity demonstrates all of the following:
  - 18.21.1.1. Condition 1. The delay is not caused, in whole or in part, by Design Build Entity's performance of Work, is beyond the control of Design Build Entity, and could not have been avoided or mitigated by the actions of Design Build Entity.
  - 18.21.1.2. Condition 2. The delay results in an extension of the Contract Time beyond the then current date for Final Completion of the Project.
  - 18.21.1.3. Condition 3. The delay impacts the critical path of the Project. A delay impacts the critical path of the Project if it delays a work activity that delays Final Completion of the Work to a date that is beyond the Contract Time.
  - 18.21.1.4. Condition 4. In addition to any other requirement to give notice with respect to Unforeseen Site Conditions in these General Conditions, within seven (7) Days of the date Design Build Entity discovers, or reasonably should discover, an act, error, omission, Unforeseen Site Condition, or other event causing a delay that is likely to impact the critical path of the Project, Design Build Entity shall submit a notice of delay, and timely submit and complete a Proposed Change Order that meets the requirements of the "Proposed Change Order" section in these General Conditions. Design Build Entity's notice shall include the probability that the delay will impact the critical path of the Project and the cause of the delay so that Judicial Council may take immediate steps to mitigate the impact of, or prevent, any delay.
  - 18.21.1.5. Condition 5. The delay is not caused by:

- 18.21.1.5.1. The financial inability, misconduct, or default of Design Build Entity, a Subcontractor, or supplier;
- 18.21.1.5.2. The unavailability of labor, materials, parts, or equipment;
- 18.21.1.5.3. An Error or Omission in the Contract Documents caused by Design Build Entity or Design Build Entity's Design Consultants; or
- 18.21.1.6. Condition 6. The delay is caused by:
  - 18.21.1.6.1. An Unforeseen Site Condition; or
  - 18.21.1.6.2. An error or omission in the Contract Documents caused by Judicial Council; or
  - 18.21.1.6.3. Judicial Council's decision to change the scope of the Work, where such decision is not the result of any error, omission, default, or misconduct of Design Build Entity; or
  - 18.21.1.6.4. Judicial Council's decision to suspend the Work, where such decision is not the result of any default or misconduct of Design Build Entity, and not the result of a Force Majeure Event.
- 18.21.1.7. Condition 7. The delay was not in the contemplation of either Party.
- 18.21.1.8. Condition 8. The delay could not have been avoided or mitigated by Design Build Entity's care, prudence, foresight, and diligence.
- 18.21.1.9. Condition 9. Design Build Entity complies with the "Changes in the Work" procedures, and if necessary, the "claims" procedures of the Contract Documents.
- 18.21.1.10. Condition 10: The Delay is not concurrent to any delay caused by Design Build Entity or any other Excusable Delay.
- 18.21.2. Excusable Delay. Subject to the requirements of this section, the Contract Time shall be extended, but no compensation provided to Design Build Entity, for each day of Excusable Delay for which Design Build Entity demonstrates that all the following conditions have been met. An Excusable Delay shall excuse Design Build Entity from an assessment of liquidated damages only for the duration of approved Excusable Delay. A time extension for Excusable Delay may only be granted for day(s) of delay for which Design Build Entity demonstrates all of the following:
  - 18.21.2.1. Condition 1. The delay is beyond the control of Design Build Entity and could not have been avoided by Design Build Entity exercising care, prudence, foresight, and diligence, including without limitation, a Force Majeure Event or Adverse Weather.
  - 18.21.2.2. Condition 2. The delay extends the most current date for Completion of the Project.
  - 18.21.2.3. Condition 3. The delay is critical, on the same basis as set forth in the "Compensable Delay" section above.



Design Build Entity shall not be entitled to additional compensation for an Excusable Delay.

- 18.21.3. Unexcused Delay. Any delay that is neither a Compensable Delay nor Excusable Delay is an Unexcused Delay. For any Unexcused Delay, Judicial Council shall be entitled to assess Liquidated Damages as set forth in the Agreement for each day of delay beyond the date for Completion of the Project.
- 18.21.4. Submittal Requirements. Cumulative of any other requirements of the Contract Documents to substantiate a delay, and as a condition precedent to establishing any delay or granting a time extension, Design Build Entity shall submit all the following with any request for a time extension:
  - 18.21.4.1. Duration. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.
  - 18.21.4.2. Schedule Analysis. A detailed schedule analysis articulating the cause of any delay and explaining the delay's impact to the critical path and to each activity of the Project. This analysis may be in the form of a time impact analysis. The time impact analysis shall provide all documentation and justification necessary to substantiate the requested extension. All supporting documentation shall be based on the then current Contract Schedule. Notwithstanding anything to the contrary in the substantiation requirements for Proposed Change Orders which apply to an extension to the Contract Time arising from alleged delay, Design Build Entity may submit the time impact analysis within fourteen (14) Days of submitting the Proposed Change Order in which Design Build Entity sought an extension of the Contract Time for delay. If Design Build Entity fails to submit this documentation within fourteen (14) Days, Design Build Entity shall waive an extension to the Contract Time.
  - 18.21.4.3. Logical Ties/Fragnets. Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Contract Schedule that are affected by the change and/or delay. Include a "fragnet" analysis for the portion of the schedule and the activities Design Build Entity contends are impacted by the delay.
  - 18.21.4.4. Recovery Schedule. A recovery schedule in the form of a revised Construction Schedule that demonstrates how Design Build Entity shall recover time lost as a result of the delay.
- 18.21.5. Granting Extension. If, and only if, a delay meets all conditions above for either Compensable Delay or Excusable Delay, shall Judicial Council grant a time extension for each day so established, subject to the following:
  - 18.21.5.1. When two or more delays (each of which meet all conditions prescribed above) occur concurrently on the same day, and each such concurrent delay by itself without consideration of the other delays would be critical, then all such concurrent delays shall be considered critical. For the purpose of determining whether and to what extent the Contract Time should be adjusted, such concurrent critical delays shall be treated as a single delay for each such day.

- 18.21.5.2. A Compensable Delay that occurs concurrently with an Excusable Delay or a contractor-caused delay shall be considered an Excusable Delay.
- 18.21.6. Legally Unenforceable Delay. If for any reason one or more of the conditions above for a Compensable Delay or an Excusable Delay is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time as herein provided.
- 18.21.7. Acceleration.
- 18.21.7.1. Judicial Council reserves the right to accelerate the Work. Judicial Council shall provide prior written direction to Design Build Entity to accelerate the Work. If Judicial Council directs acceleration, the directive shall be in written form. Design Build Entity shall keep all records necessary to substantiate acceleration costs and expenses incurred by Design Build Entity for the accelerated Work separately from normal Project cost records, and shall provide to Judicial Council, on a daily basis, all documents necessary to substantiate acceleration costs, or at any other interval as directed by Judicial Council in writing.
- 18.21.7.2. Payment for accelerated Work shall be through the issuance of a Change Order.
- 18.21.7.3. If Design Build Entity interprets any written directive from Judicial Council as a notice to perform accelerated Work, Design Build Entity shall immediately provide written notice to Judicial Council that it considers the directive a directive to accelerate the Work. This written notification shall detail the circumstances of the acceleration directive. Design Build Entity shall not accelerate the Work unless Judicial Council provides written confirmation that it was directing Design Build Entity to accelerate the Work.
- 18.21.7.4. To recover costs for accelerated Work, Design Build Entity must submit and comply with all requirements for a Proposed Change Order, including, without limitation, submitting a Proposed Change Order within seven (7) Days of the completion of the accelerated Work. The only labor costs recoverable by Design Build Entity for accelerated Work shall be overtime or shift premium costs to complete the accelerated Work. The only costs recoverable by Design Build Entity for equipment used in performing the accelerated Work shall be the cost of mobilizing additional equipment to the Site necessary to complete the accelerated Work.
- 18.21.7.5. Judicial Council may request a revised Contract Schedule that identifies the accelerated Work activities prior to approval and commencement of the accelerated Work.

## **19. DISPUTE AND CLAIM RESOLUTION**

### **19.1. General.**

- 19.1.1. Exclusive Remedy. Compliance with the Dispute and Claim Resolution procedures described in this Article is a condition precedent to Design Build Entity's right to file a claim under the Government Code, or to commence any other legal action.

- 19.1.2. Continued Performance. Design Build Entity shall diligently proceed with the Work on the Project during the processing and resolution of any Dispute or Claim hereunder. Design Build Entity's failure to diligently proceed with the Work consistent with the Contract Documents during the processing and resolution of a Dispute or Claim will be considered a material breach of the Agreement.
- 19.1.3. Waiver.
- 19.1.3.1. If Design Build Entity fails to comply with any provisions of this section, including, without limitation, timely submittal of written notices, Design Build Entity waives further review of the Dispute or Claim, or a compensation related to that Dispute or Claim.
- 19.1.3.2. A failure of Judicial Council or Judicial Council Representative and/or Construction Manager to enforce any requirement in connection with any Dispute or Claim shall not constitute a waiver of, and shall not preclude Judicial Council or Judicial Council Representative from enforcing, such requirements in connection with any other Disputes or Claims.
- 19.1.4. Other Provisions. If portions of the Contract Documents, other than this Article, establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements. Otherwise, the provisions in this "Dispute and Claim Resolution" Article shall control the resolution of all Disputes and Claims.
- 19.1.5. Subcontractors. Design Build Entity is responsible for providing this Dispute and Claim Resolution Article to its Subcontractors. Design Build Entity shall ensure that all Subcontractors or others who may assert Disputes and Claims by and through Subcontractors and/or Design Build Entity review and understand this provision and agree to be bound by it. Any Dispute or Claim submitted by a party that fails to follow these Dispute and Claim Resolution provisions shall be rejected. Design Build Entity shall indemnify, keep, and hold harmless Judicial Council and its consultants, against all suits, claims, damages, losses, and expenses, including, but not limited to, attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Dispute and Claim Resolution section to its Subcontractors or others who may assert Disputes and Claims by and through Subcontractors and/or Design Build Entity.
- 19.1.6. Notwithstanding any provision herein, Judicial Council does not grant any Subcontractor or Sub-subcontractor any contractual, equitable, or other right that does not otherwise exist.

## **19.2. Dispute Resolution Process.**

- 19.2.1. Identifying, Presenting, Documenting, and Demanding Review of a Dispute.
- 19.2.1.1. Every Dispute shall be stated with specificity in writing and signed by Design Build Entity under penalty of perjury and presented to Judicial Council within thirty (30) calendar Days of the incidents giving rise to the Dispute. Information which is not known or available to Design Build Entity within the thirty (30) Day time period shall be provided to Judicial Council within a reasonable time of Design Build Entity receiving or becoming aware of the information. The Dispute shall:

- 19.2.1.1.1. Identify all of the issues, events, conditions, circumstances, and causes giving rise to the Dispute;
- 19.2.1.1.2. Identify all pertinent dates and durations and all actual and anticipated effects on the Stipulated Sum, milestones, and/or Contract Time adjustments; and
- 19.2.1.1.3. Identify, in detail, line-item costs if the Dispute seeks money.
- 19.2.1.2. The Dispute shall be accompanied by all documents substantiating Design Build Entity's position regarding the Dispute. A Dispute that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s), and/or Contract Time.
- 19.2.1.3. **Project Manager's Written Decision.** The Project Manager will review the Dispute and issue a written decision to Design Build Entity within thirty (30) calendar Days from the date the Dispute and supporting documentation are received. The Project Manager has the option to meet with Design Build Entity, or with Design Build Entity and any other party, before issuing a decision.
  - 19.2.1.3.1. Where There Is No Agreement: If the Dispute is not resolved by the Project Manager's written decision to the satisfaction of Design Build Entity, Design Build Entity must demand a meet and confer conference with the Project Manager within fourteen (14) calendar Days of the date of the Project Manager's written decision. A meet and confer conference with the Project Manager shall be a condition precedent to Design Build Entity seeking any further relief, including a mediation as indicated below.
  - 19.2.1.3.2. Where There Is Partial Agreement: If Design Build Entity and the Project Manager partially agree on a Dispute but do not reach complete agreement, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, Design Build Entity must submit a Claim as set forth below.

### 19.3. Claim Resolution Process.

- 19.3.1. Claim Submission. If a Dispute remains unresolved following the Dispute Resolution Process, Design Build Entity shall submit a Claim to Judicial Council along with the required supporting documentation within thirty (30) Days of issuance of the Project Manager's written decision made pursuant to Section 19.2.1.3.
  - 19.3.1.1. Content of Claim. Documentation supporting the Claim shall conform to the Financial Accounting Standards Board's generally accepted accounting principles commonly referred to as "GAAP," and shall be in the following format:
    - 19.3.1.1.1. General introduction.
    - 19.3.1.1.2. General background discussion.

- 19.3.1.1.3. Index of Issues (listed numerically).
- 19.3.1.1.4. For each issue, provide the following information and begin each issue on a new page:
  - 19.3.1.1.6. Background.
  - 19.3.1.1.6. Chronology.
  - 19.3.1.1.6. Design Build Entity's position, including all reason(s) for Judicial Council's potential liability.
  - 19.3.1.1.6. Supporting documentation of merit or entitlement.
  - 19.3.1.1.6. Supporting documentation of damages.
- 19.3.1.2. All Critical Path Method schedules, both as-planned, monthly updates and schedule revisions, and as-built, along with the computer disks of all schedules related to the Claim (if applicable).
- 19.3.1.3. Productivity exhibits (if appropriate).
- 19.3.1.4. Detailed explanation of damages for each issue.
- 19.3.1.5. Design Build Entity shall include, in its Claim documents, all issue items and information that Design Build Entity contends are part of its Claim. Issues not included in the Claim documents shall not be considered.
- 19.3.1.6. Any Claim for delay, or costs related thereto, shall include supporting documentation establishing any delay, consistent with the requirements of the "Changes in the Work" and "Contract Time" sections in these General Conditions.
- 19.3.1.7. Supporting documentation for each issue shall be cited by reference, or explanation. Supporting documentation may include, but shall not be limited to, the Proposal, Contract Documents; correspondence; conference notes; Shop Drawings and submittals; Shop Drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary schedules or time impact analyses; photographs; technical reports; Requests for Information; field instructions; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; job cost reports; Subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials; and all other related records necessary to support the Claim.
- 19.3.1.8. Design Build Entity shall furnish the required Claim documentation electronically, using a delivery method mutually agreed upon by the Parties. The Claim documentation shall be complete when furnished. The evaluation of Design Build Entity's Claim will be

based upon Judicial Council records and the Claim documents furnished by Design Build Entity. The Claim documentation shall be certified by an officer that is legally authorized to bind Design Build Entity and submitted with Design Build Entity Claim Certification, attached as **Exhibit P** to the Agreement. If a Claim is made or includes a Claim by a Subcontractor, each copy of the Claim documentation shall be certified by an officer that is legally authorized to bind the Subcontractor and submitted with the Subcontractor Claim Certification, attached as **Exhibit Q** to the Agreement.

- 19.3.2. Judicial Council's Written Decision. Judicial Council Representative, or any other party authorized by Judicial Council, will render a written decision on the Claim to Design Build Entity within forty-five (45) days of receipt of the Claim, unless the Parties mutually agree to an extension of time. Judicial Council's written decision shall be final and binding on the Party(ies) unless altered as a result of actions taken pursuant to further procedures set forth herein. The Judicial Council shall pay any undisputed portion of the Claim within sixty (60) days after the Judicial Council issues the written decision.
- 19.3.3. Meet and Confer Conference. If Design Build Entity disputes the Judicial Council's written decision, then Design Build Entity may demand a meet and confer conference with the Project Manager.
  - 19.3.3.1. The Project Manager and Design Build Entity shall schedule the meet and confer conference as soon as reasonably possible after Design Build Entity's written demand for a meet and confer conference, but in no case later than thirty (30) calendar days after Design Build Entity's demand.
  - 19.3.3.2. Within ten (10) business days of the meet and confer conference, the Judicial Council shall issue a written decision. If the Judicial Council fails to timely provide a written statement/decision after the meet and confer conference, all issues that were part of the meet and confer conference shall be deemed rejected in their entirety.
  - 19.3.3.3. If Judicial Council's written decision completely resolves the Claim, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to, and any payment due shall be made within sixty (60) calendar days after the Judicial Council issues the Project Manager's written decision.
  - 19.3.3.4. If Judicial Council rejects the Claim in whole or in part, or does not issue a timely written response, then Design Build Entity may proceed with a demand for mediation as set forth below.
- 19.3.4. Timely Payment on Claims. If Judicial Council fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, Design Build Entity is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with Public Contract Code section 7107, Judicial Council is entitled to withhold up to one hundred and fifty percent (150%) of disputed amounts and Judicial Council will not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.
- 19.3.5. Mediation. Within thirty (30) Days after Judicial Council renders its written decision pursuant to Section 19.3.2 or 19.3.3.2, if a meet and confer is requested,

Design Build Entity, and, if applicable, a Subcontractor, may request that the Parties submit the Claim to mediation. Absent a request for mediation, Judicial Council's written decision is final and binding on the Parties. Mediation is a condition precedent to pursue litigation of the Claim. The Parties shall equally bear the cost of the mediation and will in good faith cooperate to select a mediator within ten (10) business days after Design Build Entity's demand for mediation. If the parties cannot agree upon a mediator, each party shall select a mediator and those mediators shall select a qualified neutral third party to mediate with regard to the disputed portion of the Claim. Each party shall bears the fees and costs charges by tits respective mediator in connection with the selection of the neutral mediator. The mediation shall be conducted within thirty (30) Days from the date that a request for mediation is made, subject to an extension mutually agreed to by the Parties in writing.

19.3.6. Waiver of Meet and Confer Conference and/or Mediation. Pursuant to Public Contract Code section 9204(f), upon the receipt of a Claim, the parties may mutually agree to waive, in writing, mediation and proceed directly to the commencement of a civil action or binding arbitration, as applicable.

19.3.7. Government Code Claim. Design Build Entity shall not be required to file a claim pursuant to Government Code section 910, et seq., as a precedent to commencing arbitration to the extent such claims arise out of Contractor's Work under the Agreement; provided, however, Design Build Entity must timely seek arbitration pursuant to the "Arbitration of Claims" section hereunder. For any other claim, Design Build Entity is required to present claims to Judicial Council pursuant to Government Code section 910, et seq.

19.3.8. Arbitration of Claims.

19.3.8.1. Sole Remedy. If the Parties fail to resolve the Claim pursuant to the Claim Resolution Process, binding arbitration is the sole and exclusive remedy available to either Party as provided by Public Contract Code section 10240. Any, dispute, claim or controversy arising out of or relating to Design Build Entity's performance of Work on the Project under the Contract Documents, or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Arbitration of Claims provision, will be determined by arbitration in a location in California designated by Judicial Council in Judicial Council's sole and absolute discretion.

19.3.8.2. Arbitration Demand. Either Party may initiate arbitration by filing a demand for arbitration **no later than NINETY (90) Days** after the resolution of the mediation described above, unless otherwise extended by the Parties in writing. If, however, Design Build Entity has complied with the Claim Resolution Process, but the Claim Resolution Process has not been completed within **TWO-HUNDRED AND FORTY (240) Days** after Judicial Council's Acceptance of the Work, Design Build Entity may commence arbitration; provided, however, that if Design Build Entity fails to pursue arbitration within **THREE-HUNDRED AND THIRTY (330) Days** after Judicial Council's Acceptance of the Work, Design Build Entity waives its right to pursue arbitration.

19.3.8.3. Selection of Arbitrator. Unless otherwise agree to by the Parties, arbitration will be conducted by a single arbitrator mutually agreed

to by the Parties from the certified list created by the Public Works Contract Arbitration Committee. If the Parties cannot agree on the arbitrator, either Party may petition the superior court in the county in which the Project was constructed to appoint one from the panel of arbitrators certified by the Public Works Contract Arbitration Committee.

- 19.3.8.4. Judicial Council Decisions Not Binding. No decision made by Judicial Council will be conclusive on any issue in arbitration.
- 19.3.8.5. Choice of Law/Standard of Decision. Unless otherwise agreed to by the Parties in writing, the arbitration will be decided pursuant to the laws of the State of California, will be supported by substantial evidence and, in writing, contain the basis for the decision, and shall include findings of fact and conclusions of law.
- 19.3.8.6. Joinder of Parties. Either Party may join in the arbitration as a Party any supplier, Subcontractor, design professional, Surety or other person who has agreed in writing, and only if the joinder is necessary to prevent a substantial risk of the Party otherwise being subjected to inconsistent obligations or decisions.
- 19.3.8.7. Mutual Agreement for Court Jurisdiction. The Parties may agree in writing to forgo arbitration and instead litigate any dispute in the superior court in the county in which the Project was constructed.
- 19.3.8.8. Governing Regulations.
  - 19.3.8.8.1. Arbitration will be subject to, and conducted consistent with, applicable provisions of the California Code of Regulations, including, without limitation, Title 1, Division 2, Chapter 4.
  - 19.3.8.8.2. Unless otherwise provided by Public Contract Code section 10240, et seq. and the California Code of Regulations, all provisions of section 1283.05 of the Code of Civil Procedure, except subdivision (e) thereof, apply to the conduct of discovery for any arbitration.
  - 19.3.8.8.3. *Confirming, Correcting, or Vacating Award.* After the arbitrator issues its decision and award, either Party may, within the applicable time period provided in Article 1 (commencing with section 1285) of Chapter 4 of Title 9 of Part 3 of the Code of Civil Procedure, petition the superior court in the county in which the Project was constructed to confirm, correct, or vacate the award rendered by the arbitrator. Unless the Parties waive the Choice of Law/Standard of Decision section, or any part thereof, a court shall vacate the award, or part thereof, consistent with Public Contract Code section 1240.12.
- 19.3.8.9. Award/Costs.
  - 19.3.8.9.1. The Parties shall equally bear the costs of conducting the arbitration.



- 19.3.8.9.2. The filing fee, witness fees, costs of discovery, or any other costs necessarily incurred by any Party shall in no way be shared by the other Party.
- 19.3.8.9.3. The arbitrator may award to the prevailing Party its costs and necessary disbursements, other than attorney's fees, on the same basis as is allowed in civil actions, which will be taxed as in civil actions.
- 19.3.8.9.4. Interest may be recovered as part of an award as allowed in a civil action.
- 19.3.8.9.5. If a Party has made an offer of settlement and the arbitrators award is less favorable than the offer, then the Party who has received the offer shall not recover any interest accruing from and after the date on which the offer was made, nor costs of suit.
- 19.3.8.9.6. The arbitrator may only award attorney fees only on the occurrence of either:
  - 19.3.8.9.6. To a Party who has made an offer under the circumstances set forth above but only as to those fees incurred from and after the time of making the offer.
  - 19.3.8.9.6. Against a Party when substantial evidence establishes that the Party has acted frivolously or in bad faith in its demand for, or participation in, the arbitration.

**19.4. False Claims Act.** Judicial Council shall be entitled to remedy any false claims, as defined in Government Code section 12650 et seq., made to Judicial Council by Design Build Entity or any Subcontractor. If Design Build Entity or a Subcontractor submits a false claim, it shall be liable to Judicial Council as set forth in Government Code section 12650 et seq, in addition to any other damages to which Judicial Council may be entitled.

**19.5. Documentation of Resolution.** If a Claim is resolved, Judicial Council shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.

**19.6. Non-Applicable Claims.** Claims Resolution provisions herein shall not apply to:

- 19.6.1. Judicial Council's determination of what Work is or will be constructed, whether the Work complies with the Contract Documents for purposes of approval of the Work, and/or whether the Work is Defective Work.
- 19.6.2. Any legal right of Judicial Council, including, without limitation, the revocation of pre-qualified or qualified status, barring a contractor from Judicial Council contracts, and/or the imposition of penalties or forfeitures prescribed by statute or regulation.
- 19.6.3. Personal injury, wrongful death, or property damage claims.
- 19.6.4. Latent defect or breach of warranty or guarantee.
- 19.6.5. Stop payment notices.

- 19.7. Design Build Entity’s Disputes and Claims Costs.** Design Build Entity’s costs incurred in seeking relief under this Dispute and Claim Resolution Article are not recoverable from Judicial Council.
- 19.8. Public Contract Code section 9204.** To the extent any provisions of this Dispute and Claims Resolution section conflicts with Public Contract Code section 9204, the terms of that statute shall prevail.

**20. BENEFICIAL USE**

**20.1. Beneficial Use.**

- 20.1.1. Right to Beneficial Use. Judicial Council reserves the right, at its option and convenience, to occupy or otherwise make use of any part of the Construction Work at any time prior to Final Completion, upon written notice to Design Build Entity. Such occupancy or use is herein referred to as “Beneficial Use.”
- 20.1.2. Guarantee to Repair Period and Beneficial Use. If Judicial Council chooses to take occupancy prior to Final Completion of the Work, the warranty and Guarantee to Repair Period shall commence upon the date that Judicial Council occupies the Project only for system(s) and item(s) that were completed and fully operational, at Judicial Council’s reasonable determination, as of the date of the occupancy. Notwithstanding this early start of any warranty and Guarantee to Repair Period for those system(s) and item(s), the commencement of any warranty and Guarantee to Repair Period for all other systems or items, and the Project, shall continue to be the date indicated in the General Conditions.
- 20.1.3. Conditions for Beneficial Use. The following conditions shall be satisfied prior to Judicial Council and/or Court occupying all or any part of the Project, prior to Completion of the Work:
- 20.1.3.1. Ready for Use. The Project in its entirety or partially, as applicable, is ready for use for the purposes of normal courtroom and Court office operations, except for Punch List items. For purposes of this section, in determining whether the Project or project equipment is “ready for use,” the following factors shall be considered:
- 20.1.3.1.1. Requirements of the Contract Documents are satisfied.
- 20.1.3.1.2. Ability of public to access the Project, and mitigation of the risk of injury to members of the public and all Project users.
- 20.1.3.1.3. Security systems set forth in the Contract Documents are operational and commissioned.
- 20.1.3.1.4. Air testing and air clearance certification has been completed.
- 20.1.3.1.5. Any apparent hazard or nuisance is mitigated.
- 20.1.3.1.6. The need to conduct Court operations in a reasonably quiet and stable environment, free from dust, chemical, smoke, and other health and safety concerns.

- 20.1.3.1.7. Proper installation and functionality of all Project equipment required to be installed by Design Build Entity.
- 20.1.3.1.8. Such other functional requirements and considerations as a reasonable person of ordinary prudence would take into account if asked to decide whether the Project is suitable for the commencement of Court proceedings, all so that, subject to the Punch List items, the Project in its entirety is ready to use for the purposes of normal courtroom and Court office operations.
- 20.1.3.2. Architect Letter. Design Build Entity has issued a letter of confirmation to Judicial Council indicating that the building and systems at the Project are ready for use, except for Punch List items, and to the best of its knowledge have been built in accordance with this Agreement.
- 20.1.3.3. No Encumbrances. There are no encumbrances registered or recorded on the Site or any part of the Project.
- 20.1.3.4. Successful Commissioning. Design Build Entity has completed commissioning the Project in accordance with the commissioning plan, and the commissioning tests have been successfully performed and satisfied (subject to such commissioning which is identified in the commissioning plan to be conducted after occupancy).
- 20.1.3.5. Certificate of Occupancy. A temporary or final Certificate of Occupancy has been issued for the Project by the Authority Having Jurisdiction.
- 20.1.3.6. Verified Report. The Project Inspector has issued his/her final verified report.
- 20.1.3.7. Governmental Agency Confirmations. All other Authorities Having Jurisdiction have confirmed (and issued all pertinent approvals or other documents in respect thereof) that the building and structures on the Site are ready for occupancy.
- 20.1.4. Responsibility for Utility Services. Design Build Entity shall provide, in the areas to be occupied, and on a twenty-four (24) hour and seven (7) days a week basis, as required, utility services, heating, and cooling for systems in operable condition at the time of Beneficial Use. All responsibility for the operation and maintenance of equipment shall remain with Design Build Entity while the equipment is so operated. Design Build Entity shall submit to Judicial Council an itemized list of each piece of equipment so operated with the date operation commences.
- 20.1.5. Costs of Beneficial Use. If Judicial Council chooses to take occupancy, Judicial Council and Design Build Entity shall establish by Change Order, prior to taking occupancy, to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any Dispute as to responsibilities shall be resolved pursuant to the Disputes and claims provisions herein, with the added provision that during the Dispute process, Judicial Council shall have the right to

occupancy of any portion of the Project that it needs or intends to use. Immediately prior to any occupancy of the Project, Judicial Council and Design Build Entity shall jointly inspect the area to be occupied, or portion of the Project to be used, to determine and record the condition of the Work.

- 20.1.6. Occupancy Not Completion. Judicial Council's and/or Court's occupancy does not constitute Completion of the Work or Acceptance of the Work by Judicial Council, or any portion of the Work, nor will it relieve Design Build Entity of responsibility for correcting Defective Work or materials found at any time before Acceptance of the Work, as set forth herein, or during the Guarantee period after Judicial Council's Acceptance, as set forth in the Contract Documents. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by Judicial Council, then upon written request by Design Build Entity and by written consent from Judicial Council, the Guarantee to Repair Period will commence to run from the date of Judicial Council's occupancy of such building or buildings.
- 20.1.7. Limitation on Repair. Design Build Entity shall not be required to repair damage solely caused by Judicial Council in its Beneficial Use. Except as expressly provided for herein, there shall be no added cost to Judicial Council due to Beneficial Use. Design Build Entity shall continue to maintain all insurance required by the Contract Documents in full force and effect.

## **21. CLOSEOUT, FINAL COMPLETION, FINAL PAYMENT, AND RELEASE OF RETENTION**

### **21.1. Summary of Completion of the Work.**

- 21.1.1. Design Work. Design Work shall be completed upon Judicial Council's approval of the Construction Documents.
- 21.1.2. Construction Work/Final Completion. The Construction Work and the Project shall be Completed upon Design Build Entity satisfying the conditions precedent hereunder and Judicial Council issuing a Certificate of Acceptance.

### **21.2. Closeout Documentation.** As a condition precedent to Final Completion, Design Build Entity must submit all required Closeout Documentation completed to Judicial Council's satisfaction.

### **21.3. Commissioning.** Design Build Entity shall be responsible for all Commissioning for the Project as set forth in the Contract Documents, subject to the observation and verification of Judicial Council's commissioning agent. Design Build Entity shall ensure that it performs all Commissioning consistent with these General Conditions as a condition of Final Completion.

### **21.4. Walkthrough and Punch List.**

- 21.4.1. Punch List General Requirements. Design Build Entity shall maintain a rolling Punch List throughout the Project, visible to all stakeholders. Design Build Entity shall track the Punch List using construction management software or a cloud-based application from pre-construction through to Project closeout, providing real-time collaboration with Project stakeholders and automated updates.
- 21.4.2. Punch List. Design Build Entity's list of all corrective items will become the Punch List identified to Judicial Council in the initial walkthrough of the Project. Judicial Council and its representatives and consultants may add omitted or missing items to the Punch List, as necessary.

- 21.4.3. Walkthrough. When Design Build Entity believes that the Construction Work is largely complete, Design Build Entity shall present Judicial Council with its proposed Punch List and shall schedule an initial walkthrough with Judicial Council. The initial walkthrough of the Project will be attended by Design Build Entity, Judicial Council Representative(s), the Project Inspector, and others as needed, to determine whether and to what extent the Construction Work is complete and to collaboratively revise the Punch List. Any erroneous claims of completion by Design Build Entity resulting in a premature walkthrough where major project components remain incomplete shall be at Design Build Entity's sole cost and expense, and Judicial Council shall be entitled to reduce its payments to Design Build Entity under the Contract Documents by an amount equal to any costs incurred by Judicial Council due to the erroneous claims by Design Build Entity that the Project is complete.
- 21.4.4. Punch List Work. After the initial walkthrough, Design Build Entity shall promptly correct items on the Punch List. Failure to include an item on the Punch List does not alter the responsibility of Design Build Entity to complete all Construction Work in accordance with the Contract Documents. During the Punch List work, Design Build Entity shall comply with all requirements of the Contract Documents related to the performance of Construction Work. Design Builder's failure to complete a Punch List with diligence is an example of a failure to execute the Work with the diligence and force required by the Contract Documents.
- 21.4.5. Approval of Punch List Work. Judicial Council may: (i) direct Design Build Entity to continue to correct incomplete Punch List items at Design Build Entity's sole cost and expense prior to approval; (ii) treat incomplete Punch List items as Defective Work and correct those items with its own forces or a Separate Contractor; or (iii) approve Construction Work with incomplete Punch List items. If Judicial Council treats incomplete Punch List items as Defective Work and corrects them, Judicial Council may deduct those costs from any payment then due to Design Build Entity. If Judicial Council elects to approve Construction Work with incomplete Punch List items, and Design Build Entity fails to complete the Punch List items within thirty-five (35) Days of Final Completion hereunder, Judicial Council shall withhold from the final payment due Design Build Entity an amount equal to one hundred and fifty percent (150%) of the estimated cost, as reasonably determined by Judicial Council, of each Punch List item and all portions related thereto, until that item is complete, and may use such retained funds to pay for all Corrective Work.

## **21.5. Final Inspection.**

- 21.5.1. Notice of Final Inspection. When Design Build Entity determines that the Punch List work is complete, Design Build Entity shall notify Judicial Council and the Parties shall coordinate a final inspection.
- 21.5.2. Final Inspection. Upon receipt of Design Build Entity's written notice that all of the Punch List items have been fully completed and the Construction Work is ready for final inspection and approval, Judicial Council Representatives and/or Project Inspector, along with Design Build Entity's Superintendent and Project Manager, and such other individuals as the Parties deem appropriate, will inspect the Work and shall submit to Design Build Entity and Judicial Council a final inspection report noting the Work, if any, required in order to complete the Project in accordance with the Contract Documents. Absent unusual circumstances, this report shall consist of the Punch List items not yet satisfactorily completed.

- 21.5.3. Reinspection. Upon Design Build Entity's completion of all items on the Punch List and any other uncompleted portions of the Construction Work, Design Build Entity shall notify Judicial Council, who shall then inspect the Construction Work again. If Judicial Council Representative and/or Project Inspector finds the Construction Work complete and acceptable pursuant to the Contract Documents, they will notify Design Build Entity, who shall then submit the final Application for Payment.
- 21.5.4. Costs of Multiple Inspections. More than two (2) requests of Judicial Council to make a final inspection shall be considered an additional service of Judicial Council, Judicial Council Representative and/or Project Inspector, and all subsequent costs will be invoiced to Design Build Entity and if funds are available, withheld from remaining payments.

**21.6. Final Completion.** Final Completion shall be when:

- 21.6.1. Closeout Documentation. Design Build Entity has submitted all Closeout Documentation and Judicial Council reviews and approves the Closeout Documentation to determine whether it is completed to Judicial Council's satisfaction. Judicial Council shall review the Closeout Documentation within a reasonable time after receipt. If Judicial Council identifies any deficiency in any of the Closeout Documentation, Judicial Council shall issue a written notice to Design Build Entity to correct the defective document(s) and resubmit it. Design Build Entity shall promptly correct any deficiency and resubmit the document. This process may be repeated until Judicial Council approves all Closeout Documentation.
- 21.6.2. Commissioning. All Commissioning is complete and approved by Judicial Council.
- 21.6.3. Acceptance by Others. Project Acceptance has been received by DSA, and any other Authorities Having Jurisdiction as determined by Judicial Council.
- 21.6.4. Construction Work Completed. Judicial Council Representative and/or Project Inspector determine, in their sole and reasonable discretion, that the Construction Work is fully completed in accordance with all provisions of the Contract Documents, including without limitation, satisfaction of all Punch List items; and
- 21.6.5. Certificate of Occupancy. Judicial Council is provided notice that the OSFM has issued a Certificate of Occupancy. Design Build Entity is solely responsible for ensuring that the OSFM approves the Working Drawings and issues a Certificate of Occupancy.
- 21.6.6. LEED Certification. Judicial Council is provided notice that the final LEED documentation has been submitted to the United States Green Building Council and the Project has been certified as LEED Silver or better.
- 21.6.7. Certificate of Acceptance. Upon Judicial Council's determination that the Work is Completed, Judicial Council shall issue a Certificate of Acceptance to Design Build Entity. The Work shall be deemed to have achieved Final Completion on the date identified in the Certificate of Acceptance.
- 21.6.8. Notice of Completion. After Judicial Council's issuance of the Certificate of Acceptance, Judicial Council will file a Notice of Completion within a reasonable amount of time. Judicial Council's failure to file a Notice of Completion shall not affect Judicial Council's determination that the Work is Completed as memorialized in the Certificate of Acceptance.

- 21.6.9. OCIP Closeout. Judicial Council is provided notice that all Subcontractors of every Tier have submitted the Completion Form and final payroll to the OCIP carrier.

**21.7. Final Application for Payment.**

- 21.7.1. Final Application for Payment. Design Build Entity may submit the final Application for Payment after the Parties comply with the “Final Inspection” section above. Judicial Council may approve the Final Application for Payment only if the following conditions are satisfied:

- 21.7.1.1. Condition 1. Design Build Entity has submitted an Application for Payment that complies with the requirements of the Contract Documents, and includes:

21.7.1.1.1. A full and final waiver or release of all stop payment notices in connection with the Construction Work, including a release of stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all stop payment notice rights;

21.7.1.1.2. A completed and executed conditional waiver and release upon final payment, compliant with Civil Code section 8136, from Design Build Entity and each Subcontractor and supplier to be paid from the current progress payment; and

21.7.1.1.3. A completed and executed unconditional waiver and release upon final payment, compliant with Civil Code section 8138, from Design Build Entity and each Subcontractor of any Tier and supplier that was paid from the previous progress payment.

- 21.7.1.2. Condition 2. Design Build Entity has submitted all final submittals required by the Contract Documents, including, without limitation, the Closeout Documentation.

- 21.7.1.3. Condition 3. Judicial Council has approved: (1) the final Application for Payment, and (2) Closeout Documentation, both consistent with the requirements of the Contract Documents.

- 21.7.1.4. Condition 4. Judicial Council has determined that the Construction Work has achieved Final Completion and issued a Certificate of Acceptance.

- 21.7.2. Time for Final Payment and Release of Retention.

- 21.7.2.1. After Judicial Council determines that the conditions precedent for final payment have been satisfied, Judicial Council shall issue the final payment within the time prescribed by law.

- 21.7.2.2. Judicial Council shall release retention still held for any Phase of the Work, or component thereof, within the time prescribed by law and these General Conditions. Judicial Council shall be entitled to withhold from retention, without limitation:

- 21.7.2.2.1. Any amount Judicial Council is permitted to withhold pursuant to these Contract Documents, including, without limitation, Liquidated Damages, or costs to remediate Defective Work;
- 21.7.2.2.2. The amount(s) of assessments or penalties arising from violations of the Labor Code Violations and/or skilled and trained workforce requirements; and
- 21.7.2.2.3. Any amount Judicial Council is entitled to withhold to any applicable law.
- 21.7.2.3. If Judicial Council does not release retention with final payment, Judicial Council may, in its sole discretion, request an additional Application for Payment solely for the release or retention.
- 21.7.3. Release of Claims on Final Payment. To the furthest extent allowed by law, and subject to reservation of claims identified in waiver and releases submitted by Design Build Entity and Subcontractors with the final Application for Payment, pursuant to Civil Code section 8132 and Civil Code section 8134, Design Build Entity's acceptance of final payment shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by Design Build Entity as unsettled at the time of the final Application For Payment.
- 21.7.4. Claims Made Prior to Acceptance of Final Payment. Any claim or demand for money or damages made by Design Build Entity or a Subcontractor(s) prior to Design Build Entity's acceptance of the final payment, shall not be waived and shall be preserved; provided, however, that Design Build Entity shall still proceed through the "Claims Resolution" provisions hereunder as a condition precedent to an entitlement to compensation.

## **22. LIABILITY FOR, AND REPAIR OF, DAMAGED WORK**

- 22.1. Design Build Entity shall be liable to the furthest extent permitted by law for any and all damages and losses to the Project (whether by fire, theft, vandalism, earthquake, or otherwise) prior to Judicial Council's Acceptance of the Project as Complete, except to the extent caused by the sole or active negligence of Judicial Council. If Design Build Entity is ever determined not to be legally required to carry responsibility for such damage by a court of competent jurisdiction, Design Build Entity agrees that it shall still be responsible for any of the above damages if the damages or losses were caused in whole, or in part, by the negligent acts or omissions of Design Build Entity, its officers, agents, or employees (including all Subcontractors and suppliers of all Tiers).
- 22.2. Design Build Entity shall promptly repair and replace any Construction Work or materials damaged or destroyed for which Design Build Entity is liable herein above. If Design Build Entity fails to do so, Judicial Council may, in its sole and absolute discretion, repair and replace any such damaged Construction Work and deduct the cost thereof from any payment that is due, or may become due, to Design Build Entity hereunder.

## **23. GUARANTEE AND WARRANTY FOR CONSTRUCTION WORK**

- 23.1. **Design Build Entity's Warranty.** Design Build Entity warrants to Judicial Council that all labor, materials, equipment, and furnishings used in, or incorporated into, the Construction Work will be of good quality, new (unless otherwise required or permitted by the Contract Documents), and all Construction Work will be free of liens, claims, and security interests of third parties; and that the Construction Work will be of the highest quality and free from defects and that all Work will conform with the requirements of the



Contract Documents. If required by Judicial Council, Design Build Entity shall furnish satisfactory evidence of compliance with this warranty. Further, the type, quality, and quantum of such evidence shall be within the sole discretion of Judicial Council Representative. Construction Work not conforming to these requirements, including Substitutions not properly approved and authorized, may be considered defective.

### **23.2. Design Build Entity's Guarantee.**

- 23.2.1. Design Build Entity unconditionally guarantees all Construction Work will be completed in accordance with all requirements of the Contract Documents and will remain free of any defect in workmanship and materials for a period of two (2) years from the date of Judicial Council's issuance of a Certificate of Acceptance, unless a longer guarantee period is specifically called for in the Contract Documents. Without any expense whatsoever to Judicial Council, and within the Guarantee to Repair Period, Design Build Entity shall repair or replace any and all Construction Work together with any adjacent Construction Work that: (i) may have been damaged or displaced and was not in accordance with the requirements of the Contract Documents; or (ii) may be defective in its workmanship or material.
- 23.2.2. Design Build Entity further agrees that, within fourteen (14) Days, or as such shorter period as may be designated for Emergency repairs, after being notified in writing by Judicial Council of any Construction Work not in accordance with the requirements of the Contract Documents (including Defective Work), Design Build Entity shall diligently commence and perform all Construction Work necessary to fulfill the terms of the guarantee hereunder. If Judicial Council determines that Design Build Entity fails to perform any or a portion of the Construction Work under the guarantee, Judicial Council may elect to have that work completed at Design Build Entity's expense and Design Build Entity will pay costs of the work within thirty (30) Days of demand by Judicial Council. Judicial Council will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses, necessarily incurred upon Design Build Entity's refusal to pay the above costs.
- 23.2.3. Notwithstanding the foregoing, in the event of an Emergency constituting an immediate hazard to health or safety of Judicial Council employees, property, or licensees, Judicial Council may undertake, at Design Build Entity's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by Construction Work of Design Build Entity not being in accordance with the requirements of the Contract Documents. Design Build Entity will pay costs of the work within thirty (30) Days of demand by Judicial Council. Judicial Council will be entitled to all costs, including reasonable attorneys' fees and consultants' expenses, necessarily incurred upon Design Build Entity's refusal to pay the above costs.

### **23.3. Guarantee to Repair Period.**

- 23.3.1. Guarantee to Repair Period. The term "Guarantee to Repair Period" means a period of two (2) years, unless a longer period is specified, commencing as follows:
  - 23.3.1.1. For space subject to Beneficial Use or for separate systems fully utilized prior to Final Completion, from the first date of such Beneficial Use or actual use, as established in a certificate of Beneficial Use.

- 23.3.1.2. For all Construction Work, from the date of Judicial Council's issuance of the Certificate of Acceptance.
- 23.3.2. The Guarantee to Repair Period may be extended due to remedial work, including, without limitation, remedying Defective Work, by Design Build Entity.
- 23.4. Manufacturers' Warranties.** Design Build Entity shall obtain and preserve, for the benefit of Judicial Council, manufacturers' Warranties on materials, fixtures, and equipment incorporated into the Construction Work.
- 23.5. Correction of Defective Work.**
- 23.5.1. Design Build Entity shall: (i) correct Defective Work that becomes apparent during the progress of the Work or during the Guarantee to Repair Period; and (ii) replace, repair, or restore, to Judicial Council's satisfaction, any other parts of the Work and any other real or personal property which is damaged or destroyed because of Defective Work or the correction of Defective Work. Design Build Entity shall promptly commence such correction, replacement, repair, or restoration upon notice from Judicial Council Representative, but in no case later than ten (10) Days after receipt of such notice; (ii) and Design Build Entity shall diligently and continuously execute such correction to completion. Design Build Entity shall bear all costs of such correction, replacement, repair, or restoration, and all losses resulting from such Defective Work, including additional testing, inspection, and compensation for Judicial Council Representative's services and expenses. Design Build Entity shall perform Corrective Work at such times that are acceptable to Judicial Council and in such a manner as to avoid, to the extent practicable, disruption to Judicial Council's and the Court's activities (if applicable).
- 23.5.2. If immediate correction of Defective Work is required because of an Emergency, life safety, or the protection of property and is performed by Judicial Council or Separate Contractors, Design Build Entity shall pay to Judicial Council all reasonable costs of correcting such Defective Work. Design Build Entity shall replace, repair, or restore, to Judicial Council's satisfaction, any other parts of the Construction Work and any other real or personal property which is damaged or destroyed because of such Defective Work or the correction of such Defective Work.
- 23.5.3. Design Build Entity shall remove from the Site portions of the Construction Work and materials which are not in accordance with the Contract Documents, and which are neither corrected by Design Build Entity nor approved by Judicial Council.
- 23.5.4. If Design Build Entity fails to commence correction of Defective Work within ten (10) Days after notice from Judicial Council or Judicial Council Representative, or fails to diligently execute such correction to completion, Judicial Council may correct the Defective Work in accordance with the General Conditions; and Judicial Council may remove the Defective Work and store salvageable materials and equipment at Design Build Entity's expense.
- 23.5.5. If Design Build Entity fails to pay the costs of such removal and storage as required within thirty (30) Days after written demand, Judicial Council may, without prejudice to other remedies, sell such materials at auction or at private sale, or otherwise dispose of such material. Design Build Entity shall be entitled to the proceeds of such sale, if any, in excess of the costs and damages for which Design Build Entity is liable to Judicial Council, including compensation for

Judicial Council Representative's services and expenses. If such proceeds of sale do not cover costs and damages for which Design Build Entity is liable to Judicial Council, the Total Contract Amount shall be reduced by such deficiency. If there are no remaining payments due Design Build Entity or the remaining payments are insufficient to cover such deficiency, Design Build Entity shall promptly pay the difference to Judicial Council.

- 23.5.6. Design Build Entity's obligations hereunder are in addition to, and not in limitation of, its warranty as set forth in the General Conditions or any other obligation of Design Build Entity under the Contract Documents. Enforcement of Design Build Entity's express warranties and guarantees to repair contained in the Contract Documents shall be in addition to, and not in limitation of, any other rights or remedies Judicial Council may have under the Contract Documents or at law or in equity for Defective Work. Nothing contained herein shall be construed to establish a period of limitation with respect to other obligations of Design Build Entity under the Contract Documents. Establishment of the Guarantee to Repair Period relates only to the specific obligation of Design Build Entity to correct the Work and in no way limits either Design Build Entity's liability for Defective Work or the time within which proceedings may be commenced to enforce Design Build Entity's obligations under the Contract Documents.

## **24. INDEMNIFICATION**

- 24.1. Design Professional Indemnity.** Pursuant to Civil Code section 2782.8, Design Build Entity agrees to indemnify the Indemnified Parties from and against any and all claims, demands, costs, or liability that arise out of, or pertain to, or relate to the negligence, recklessness, or willful misconduct of Design Build Entity and its employees or agents in the performance of professional design services under this Agreement, but this indemnity does not apply to liability for damages arising from the sole negligence, active negligence, or willful acts of the Judicial Council. Design Build Entity shall be liable for the Indemnified Parties' defense costs related to any claims, demands, costs, or liability under this provision in an amount not to exceed its proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Design Build Entity shall meet and confer with other parties regarding unpaid defense costs.
- 24.2. General Indemnity.** Except for design work addressed above, to the furthest extent permitted by California law, Design Build Entity shall defend, indemnify, and hold harmless the Indemnified Parties from all demands, losses, liabilities, claims, suits, and actions of any kind, nature, and description whatsoever, including, without any limitation, reasonable attorneys' fees and costs, and consequential damages, directly or indirectly arising from or relating to performance of the Work, including, without any limitation, personal or bodily injuries, death, property damage, or any other type damage, to the extent any claim in any way arises out of, pertains to, or relates to the negligence, recklessness, or willful misconduct of Design Build Entity. Judicial Council shall have the right to accept or reject any legal representation that Design Build Entity proposes to defend Judicial Council. However, such acceptance shall not be unreasonably withheld. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Design Build Entity to: (1) comply with any provision of law, and (2) timely and properly fulfill all its obligations under the Contract Documents, including, without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.

- 24.3. Design Build Entity's duty to defend shall begin upon Judicial Council's notification to Design Build Entity of a claim. At that time, Design Build Entity shall pay for that defense at its sole cost.
- 24.4. Design Build Entity's duties herein shall apply during the Contract Time and shall survive any expiration or termination of the Agreement until any such claim(s) is barred by the applicable statute of limitations.
- 24.5. Nothing in these Contract Documents shall constitute a waiver or limitation of any rights which Judicial Council may have under applicable law, including without limitation, the right to implied (both contractual and equitable) indemnity.
- 24.6. Design Build Entity shall ensure that Design Professionals and Subcontractors agree to these indemnity provisions in any contract under which they perform Work on the Project.
- 24.7. Judicial Council recognizes that Design Build Entity may be a general contractor that employs the Architect of Record under separate contract, or Design Build Entity may be a joint venture between a general contractor and the Architect of Record. Irrespective of the structure, Design Build Entity shall ensure that the Architect of Record agrees to this "Indemnification" provision in a written agreement binding the Architect of Record to perform Work on the Project. Design Build Entity's failure to comply with this provision shall constitute a material breach of the Contract.

## 25. **INSURANCE AND BONDS**

**25.1. Commencement of Work.** Design Build Entity shall not, except by agreement or instruction of Judicial Council in writing, commence operations on the Site or elsewhere: (i) prior to the effective date of any insurance required by the General Conditions; and/or (ii) before Design Build Entity provides satisfactory evidence of insurance and required certificates of insurance. The Contract Time shall not be changed by the effective date of any insurance or Design Build Entity's failure to provide required evidence or certificates of insurance.

### **25.2. Design Build Entity's Insurance.**

25.2.1. Unless different provisions and/or limits are indicated in the Supplementary Conditions, all insurance required of Design Build Entity and/or its Subcontractor(s) that is not provided by the OCIP or Builder's Risk shall be in the amounts indicated herein and include the provisions set forth herein.

25.2.2. Any insurance or limits or coverage herein required or provided shall in no way limit the liability of Design Build Entity.

25.2.3. Design Build Entity shall only be entitled to compensation for non-OCIP insurance costs in the Stipulated Sum or for any Changed Work.

#### 25.2.4. General Requirements.

25.2.4.1. Design Build Entity shall maintain the required insurance for its operations not insured under the OCIP with an insurance company or companies that are rated "A-VII" or higher by AM Best's key rating guide and are authorized to do business in the State of California.

25.2.4.2. For all insurance policies required herein, Design Build Entity shall declare any deductible or self-insured retention (SIR). Any

deductible or SIR shall be clearly stated on the appropriate certificate of insurance.

- 25.2.4.3. If self-insured, Design Build Entity 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 Design Build Entity under the terms herein.
- 25.2.4.4. Design Build Entity, prior to commencement of the Work, shall provide Judicial Council with certificates of insurance and signed insurance policy endorsements on forms acceptable to Judicial Council, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that the State of California, the Judicial Council, the Court, and the Court's respective elected and appointed officials, judges, and employees have been added as additional insureds on the insurance policy being referenced.
- 25.2.4.5. The Certificates of Insurance must be addressed and mailed to:  
Judicial Council of California  
Contracts, Branch Accounting and Procurement  
Attn: Certificate of Insurance, Contract Number  
455 Golden Gate Avenue, 6th Floor  
San Francisco, CA 94102  
The Certificates of Insurance may also be emailed to:  
Contracts@jud.ca.gov
- 25.2.4.6. All insurance policies required herein shall be in force until Final Completion of the Project and Design Build Entity and Judicial Council have agreed in writing that the Work is covered under Judicial Council's programs of insurance designed for the purpose of providing coverage for the approved Work once occupied.
- 25.2.4.7. If the insurance expires prior to the Final Completion of the Project, Design Build Entity shall immediately renew or replace the required insurance and provide a new, current certificate of insurance and signed insurance policy endorsements, or it may be declared in breach of the Agreement. Judicial Council reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of Judicial Council. Design Build Entity must provide renewal insurance certificates and signed policy endorsements to Judicial Council at least ten (10) Days following the expiration of the previous insurance certificates and signed policy endorsements.
- 25.2.4.8. In the event Design Build Entity fails to keep in effect, at all times the specified insurance coverage, Judicial Council may, in addition to any other remedies it may have, terminate the Agreement upon the occurrence of such event, subject to the provisions of the Contract Documents.
- 25.2.4.9. The insurance required herein below, and any excess liability or umbrella liability insurance that Design Build Entity maintains in compliance with the terms of this "General Requirements" subparagraph (with the exception of Professional Liability

Insurance, if required), shall be endorsed to include the State of California, the Judicial Council, the Court, and the Court's respective elected and appointed officials, judicial officers, officers, and employees as additional insureds, but only with respect to liability assumed by Design Build Entity under the terms of the Contract Documents or liability arising out of the performance of the Services.

- 25.2.4.10. Design Build Entity, and any insurer providing insurance required hereunder, shall waive any right of recovery or subrogation it may have against the State of California, the Judicial Council, the Court, and the Court's respective elected and appointed officials, judicial officers, officers, and employees, for direct physical loss or damage to the Work, or for any liability arising out of the Work performed by Design Build Entity under this Contract.
- 25.2.4.11. All insurance policies required hereunder shall contain a provision that coverage will not be materially changed or canceled without thirty (30) Days prior written notice to Judicial Council.
- 25.2.4.12. Design Build Entity shall be responsible for, and may not recover from, the State of California, Judicial Council; or the Court, any deductible or self-insured retention that is connected to the insurance provided or required hereunder.
- 25.2.4.13. The insurance required hereunder shall be endorsed to be primary and non-contributing with any insurance maintained by the State of California, the Judicial Council, or the Court, with the exception of coverage provided under the OCIP, which shall be primary to coverage provided by Design Build Entity where applicable.
- 25.2.4.14. Judicial Council reserves the right to request certified copies of any of the insurance policies required hereunder, which shall be provided by Design Build Entity within ten (10) business days following the request by Judicial Council.
- 25.2.4.15. The cost of all non-OCIP insurance required hereunder is the responsibility of Design Build Entity and is a component of the Total Contract Amount.
- 25.2.4.16. Design Build Entity shall require insurance from Subcontractors defined as "Excluded Parties" herein below with substantially the same terms and conditions as required of Design Build Entity herein below and with limits of liability which meet the requirements and obligations under this "Insurance and Bonds" section. If Design Build Entity permits Subcontractors to carry insurance in any way varying from the requirements herein and the OCIP (to the extent applicable), Design Build Entity does so at its own risk and any such variance does not affect or diminish Design Build Entity's obligations or liability, including, without limitation, Design Build Entity's obligations under this "Insurance and Bonds" section.
- 25.2.4.17. Conflicts in Insurance Provisions. In the event of a conflict between the provisions of this Section 25, the Performance Criteria Documents, Supplementary Conditions, and the provisions of the OCIP or Builder's Risk Insurance, the terms of the OCIP or Builder's Risk Insurance shall govern, then the provisions of the

Performance Criteria, then the Supplementary Conditions, then the provisions of this Section.

- 25.2.5. Design Work and Preconstruction Services Insurance Requirements. From the Effective Date and prior to the commencement of any Design Work or Preconstruction Services, Design Build Entity shall maintain at a minimum, and in full force and effect, the following insurance:
- 25.2.5.1. Commercial General Liability. Commercial General Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) for Work done by or on behalf of Design Build Entity, written on an occurrence form with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and a Five Million Dollars (\$5,000,000) per location annual aggregate limit of liability. The policy shall include coverage for liabilities arising out of personal and advertising injury, and liability assumed under an insured contract. 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. The completed operations liability shall extend for the period for which Design Build Entity is legally liable for any actual or alleged defects in its Work.
  - 25.2.5.2. Commercial Automobile Liability. Automobile liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per accident. Such insurance shall cover 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 Work.
  - 25.2.5.3. Workers' Compensation. Statutory workers' compensation insurance for all of Design Build Entity Site employees who are not covered by OCIP workers compensation insurance, including special coverage extensions where applicable, and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) for each accident, One Million Dollars (\$1,000,000) as the aggregate disease policy limit, and One Million Dollars (\$1,000,000) as the disease limit for each employee.
  - 25.2.5.4. Design Build Entity's Equipment Insurance. Design Build Entity's equipment insurance covering its business property, equipment, and tools used in the performance of the Work at the Site that are not intended to become a permanent part of the Work.
  - 25.2.5.5. Professional Liability Insurance. Covering Design Build Entity and Design Consultants' negligent acts, errors, or omissions committed or alleged to have been committed which arise out of rendering or failure to render the Work provided under the terms of this Agreement. The policy shall provide limits of not less than Five Million Dollars (\$5,000,000) per claim or per occurrence and Five Million Dollars (\$5,000,000) annual aggregate. If the policy is written on a "claims made" form, Design Build Entity shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of Completion of the Work which is the subject of this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must

be no later than the date that Work commences pursuant to the Agreement.

25.2.6. Construction and Demolition Work Insurance Requirements. For any Construction and demolition Work, Design Build Entity shall maintain at a minimum and in full force and effect, the following insurance:

- 25.2.6.1. Commercial General Liability for Demolition Work and Off-Site Operations. Commercial General Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) for demolition Work and off-Site operations written on an occurrence form with limits of not less than Five Million Dollars (\$5,000,000) per occurrence and a Five Million Dollars (\$5,000,000) per location annual aggregate limit of liability. 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 include coverage for property damage resulting from explosion, collapse, or underground hazard. 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. The completed operations liability shall extend for the period for which Design Build Entity is legally liable for any actual or alleged defects in its demolition and off-Site Work.
- 25.2.6.2. Commercial Automobile Liability. Automobile liability insurance with limits of not less than Two Million Dollars (\$2,000,000) per accident. Such insurance shall cover 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 Work.
- 25.2.6.3. Workers' Compensation for Demolition and Off-Site Work Employees. Statutory workers' compensation insurance for all of Design Build Entity's demolition and off-Site Work employees who are not covered by OCIP workers compensation insurance, including special coverage extensions where applicable and employer's liability insurance with limits not less than One Million Dollars (\$1,000,000) for each accident, One Million Dollars (\$1,000,000) as the aggregate disease policy limit, and One Million Dollars (\$1,000,000) as the disease limit for each employee.
- 25.2.6.4. Design Build Entity's Equipment Insurance. Design Build Entity's equipment insurance covering its business property, equipment, and tools used in the performance of the Work at the Site that are not intended to become a permanent part of the Work.
- 25.2.6.5. Professional Liability Insurance. Covering Design Build Entity's negligent acts, errors, or omissions committed or alleged to have been committed, which arise out of rendering or failure to render the Work provided under the terms of this Agreement. The policy shall provide limits of not less than Five Million Dollars (\$5,000,000) per claim or per occurrence and Five Million Dollars (\$5,000,000) annual aggregate. If the policy is written on a "claims made" form, Design Build Entity shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if



such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that Work commences pursuant to the Agreement.

- 25.2.6.6. Contractor’s Pollution Liability Insurance. Contractor’s Pollution Liability Insurance shall have limits not less than Five Million Dollars (\$5,000,000) per occurrence or claim and Five Million Dollars (\$5,000,000) policy aggregate. This policy shall include coverage for bodily injury, property damage, and environmental damage resulting from pollution and all related cleanup costs incurred arising out of or in connection with the performance of Work at the site. Coverage shall be provided for both works performed on site as well as during the transport of hazardous materials.

### **25.3. Judicial Council OCIP and Builder’s Risk.**

- 25.3.1. General Requirements of OCIP. General Requirements for Judicial Council-provided, Owner-Controlled Insurance Program (OCIP) during Construction Work:

- 25.3.1.1. Judicial Council has elected to provide the types of insurance indicated in the Subparagraph “OCIP Insurance” herein below insuring Judicial Council, Design Build Entity, and Subcontractors of every Tier (other than Excluded Parties as defined herein), while performing Work at the Site until final Completion of the Project.
- 25.3.1.2. The indemnified site is defined in the OCIP as the Site designated in the Contract Documents that has been scheduled with the OCIP insurance companies, including operations necessary or incidental to the Site that have been specifically added to the OCIP insurance program by specific agreement with the OCIP insurance companies.
- 25.3.1.3. The insurance shall be provided through an insurance company or companies that are rated “A-VII” or higher by AM Best’s key rating guide.
- 25.3.1.4. Named Insured. The State of California; Judicial Council; the Superior Court of California in the County in which the Project is located; Design Build Entity; and its Subcontractors of every Tier.
- 25.3.1.5. Additional Insureds. As required by written contract.
- 25.3.1.6. Excluded Parties. Contract haulers or truckers (or others only making deliveries or pickups from the Site); vendors; suppliers (who do not perform or subcontract installation work at the Site); material dealers; manufacturing representatives; equipment rental companies who perform equipment maintenance (does not apply to equipment companies who provide operators); architects, surveyors, soil testing contractors, and their consultants; asbestos abatement or other hazardous waste removal contractors and their respective Subcontractor of any Tier (unless specifically enrolled in the OCIP); demolition and blasting contractors and their respective Subcontractors of any Tier (unless specifically enrolled in the OCIP), and others who do not perform any actual on-Site labor; and

any other entity specifically determined by Judicial Council to be excluded, will not be covered by insurance purchased by Judicial Council under the OCIP.

- 25.3.1.7. Term. Any insurance policies provided within the OCIP shall be in force until the end of the term of this Agreement or Completion of the Project, whichever comes later.
- 25.3.1.8. Completed Operations. The completed operations insurance provided under the commercial general liability, excess liability, and contractor's pollution liability insurance provided under the OCIP Insurance shall extend for a period of ten (10) years past the Completion, termination, or cancellation of the Project, but the aggregate limit of liability shall not reinstate each annual period following Completion.
- 25.3.1.9. Waiver of Subrogation. Each OCIP insurer shall waive any right of recovery or subrogation it may have against the Named Insureds and the Additional Insureds for direct physical loss or damage to the Work, or for any liability arising out of the Services performed in the completion of the Work.
- 25.3.1.10. Design Build Entity/Subcontractor Waiver. Design Build Entity shall waive and require its insurers, its Subcontractors, and their respective insurers to waive any right of recovery or subrogation each may have against the State of California; Judicial Council; the Court, including their respective elected and appointed officials, , , j, judges, officers, and employees, from a claim arising out of the Services performed at the Site in the completion of the Construction Work of the Project.
- 25.3.1.11. Cancellation. All required insurance policies required under OCIP Insurance shall contain a provision that coverage will not be materially changed or canceled without ninety (90) Days prior written notice to the Named Insureds.
- 25.3.1.12. Primary and Non-contributory. Any insurance provided under OCIP Insurance shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the Named Insureds or the Additional Insureds.
- 25.3.1.13. Limits Sharing. The limits of liability provided under the commercial general liability insurance apply collectively for all Named Insureds and Additional Insureds.
- 25.3.1.14. Insurance Credits. Design Build Entity will require that each prospective Subcontractor prepare their bids and proposals for work on the Project to exclude the cost for any insurance that will be provided under OCIP Insurance. At the time of their bid, each Subcontractor shall be required to complete a warranty statement to certify that as a condition of its contract to perform work at the Site, and under penalty of having its contract to perform Work at the Site terminated, that it has removed the cost of any insurance that will be provided under the OCIP from its bid and that there is no duplication in insurance coverage for which reimbursement is being sought. Upon award, the warranty statement will become a component of

any contract. Change Orders must also be priced to exclude the costs of OCIP coverage.

- 25.3.1.15. Contract Obligations. Any OCIP insurance provided by Judicial Council is not intended to, and shall not qualify, limit, or waive any liabilities or obligations that Design Build Entity and its Subcontractors of any Tier have assumed under this Agreement.
- 25.3.1.16. Design Build Entity Insurance. Design Build Entity shall continue to be responsible to provide any insurance required under “Contractor’s Insurance” indicated herein above that is not provided by Judicial Council under the OCIP.
- 25.3.1.17. The Design Build Entity and all Tiers of Subcontractors will be added as named insureds with waiver of subrogation to the Builder’s Risk policy carried by the Judicial Council.

25.3.2. OCIP and Builder’s Risk Insurance. Prior to the commencement of performance of any Construction Work, Judicial Council shall furnish the OCIP and Builder’s Risk insurance for all Subcontractors of every Tier that are enrolled in the OCIP while performing Work at the Site until Completion of the Project (“OCIP and Builder’s Risk Insurance”):

25.3.2.1. Commercial General Liability. Commercial General Liability Insurance written on an occurrence form with separate limits as follows:

- 25.3.2.1.1. Two Million Dollars (\$2,000,000) each occurrence
- 25.3.2.1.2. Two Million Dollars (\$2,000,000) personal and advertising injury
- 25.3.2.1.3. Four Million Dollars (\$4,000,000) general annual aggregate
- 25.3.2.1.4. Four Million Dollars (\$4,000,000) products - completed operations aggregate
- 25.3.2.1.5. One Hundred Thousand Dollars (\$100,000) damages to premises rented to an insured
- 25.3.2.1.6. Five Thousand Dollars (\$5,000) medical payments

All limits of liability are applicable solely to the Project. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products - completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall not include exclusions for property damage resulting from explosion, collapse, or underground hazard, or the consequences of inadvertent construction defects.

25.3.2.2. Excess Liability. Excess Liability Insurance provided on a form following the commercial general liability insurance, insuring against bodily injury, property damage, personal and advertising injury liability, products - completed operations, and employer’s liability on an occurrence form with limits as follows:

- 25.3.2.2.1. One Hundred Million Dollars (\$100,000,000) each occurrence
- 25.3.2.2.2. One Hundred Million Dollars (\$100,000,000) general annual aggregate
- 25.3.2.2.3. One Hundred Million Dollars (\$100,000,000) products and completed operations aggregate
- 25.3.2.3. Contractor's Pollution Liability Insurance. Design Build Entity's pollution liability insurance (and if required Excess Liability insurance) written on an occurrence form with limits of liability of not less than Twenty Five Million Dollars (\$25,000,000) per occurrence and Twenty Five Million Dollars (\$25,000,000) general aggregate applicable solely to the Project for third-party claims for bodily injury and/or property damage, and for remediation costs stemming from pollution incidents resulting from the contractor's covered operations resulting from Work at the Site.
- 25.3.2.4. Workers' Compensation. Statutory workers' compensation insurance for all of Design Build Entity's Subcontractors' employees who will be engaged in the performance of the Work at the Site, including special coverage extensions where applicable and employer's liability with limits of not less than One Million Dollars (\$1,000,000) for each accident, One Million Dollars (\$1,000,000) as the aggregate disease policy limit, and One Million Dollars (\$1,000,000) as the disease limit for each employee.
- 25.3.2.5. Builder's Risk. Builder's Risk Insurance with limits of liability equal to the combined value of the building under course of construction and final completed value of the Work. The insurance shall apply to physical loss or damage to the insured property, including the cost of damage to that portion of the building not under construction. Judicial Council further reserves the right to purchase and include coverage hereunder for flood, earthquake, and earth movement at the sole determination of Judicial Council. If Judicial Council purchases this coverage, Judicial Council will notify Design Build Entity in writing.
  - 25.3.2.5.1. Judicial Council's Builder's Risk Insurance shall provide limited coverage for materials in transit, may provide full coverage for materials at the Project Site, and may provide full coverage for materials stored off- Site; however, Design Build Entity is responsible for reviewing the summary of coverage and reporting values that exceed the limits provided within the summary of coverage. Notification to Judicial Council does not provide coverage. Value increases must be approved by the insurance carrier and Design Build Entity must have a Certificate of Insurance issued by the insurance carrier showing the increased values. Lacking confirmation from Judicial Council's insurance carrier that additional coverage was procured, Design Build Entity will be responsible for damages in excess of the coverage limits provided within the summary of coverage.

25.3.2.5.2. Unless otherwise required by Judicial Council, claims under Builder's Risk insurance provided hereunder are subject to a claim deductible as specified in the Builder's Risk insurance policy. Design Build Entity or Subcontractor shall be responsible for paying the full deductible amount specified in the policy in the event of a loss. All Builder's Risk losses will be adjusted with, and payable to, Judicial Council or designee for the benefit of all parties as their interests may appear. Judicial Council shall not be responsible for loss or damage to or obtaining and/or maintaining in force insurance on, temporary structures, construction equipment, tools, or personal effects, owned or rented to, or in the care, custody, and control of Design Build Entity or Subcontractor of any Tier.

#### **25.4. Bonds.**

- 25.4.1. Design Build Entity shall furnish bonds covering the faithful performance of the Work pursuant to the Contract Documents (Performance Bond) and payment of obligations arising thereunder (Payment Bond) on the forms identical to those in **Exhibit T**, at the award of the contract .
- 25.4.2. The Payment Bond and Performance Bond shall each be in the amount of one hundred percent (100%) of the Construction Work cost and shall be provided to Judicial Council prior to Design Build Entity's award of contract.
- 25.4.3. Design Build Entity shall promptly furnish such additional security, as may be required by Judicial Council, to protect its interests and those interests of Subcontractors supplying labor or materials to the Work. Design Build Entity shall furnish a supplemental Payment Bond and Performance Bond each in the amount of the current Construction Work cost, at the request of Judicial Council.
- 25.4.4. Surety companies used by Design Build Entity shall be, on the Effective Date of the Agreement, an admitted surety in the State of California.
- 25.4.5. The premiums for the Payment Bond and Performance Bond shall be paid by Design Build Entity.
- 25.4.6. The costs for these bonds is included in the Stipulated Sum and based on the amount as indicated in Design Build Entity's Price Proposal, attached to the Agreement as **Exhibit O**, and Design Build Entity shall not be entitled to any additional compensation for bond costs.
- 25.4.7. Design Build Entity shall furnish the quotes for the actual bond costs to Judicial Council Representative. If the actual bond costs exceed the amount included in the Construction Work code based on the applicable percentage in Design Build Entity's Price Proposal, Design Build Entity shall bear that cost at its sole expense. If the bond cost is less than the Construction Work cost, as calculated by applying the applicable percentage in Design Build Entity's Price Proposal against the Direct Cost of Work, Judicial Council shall be entitled to have those costs returned as a credit by way of a deductive Change Order.
- 25.4.8. In lieu of requiring some or all its Subcontractors of any Tier to provide a Payment Bond and Performance Bond, Design Build Entity may utilize a form of contractor default insurance as a substitute for a Subcontractor(s)'s bonds.

That insurance must be provided by an insurance company or companies that are rated “A VII” or higher by AM Best’s key rating guide and are authorized to do business in the State of California.

- 25.4.9. If, for any reason, Design Build Entity assigns the Contract, or, if for any reason, the surety for either the Performance Bond or the Payment Bond must be substituted, including, without limitation, if the current surety cancels the bond(s), Judicial Council will not make any payment to Design Build Entity, or to any assignee of the Design Build Entity until Judicial Council approves, in its sole discretion, a sufficient substitute surety for either bond, or, upon Judicial Council’s request, Design Build Entity or assignee of the Design Build Entity provides a new, additional, or supplemental bond to the Judicial Council in a form provided by Judicial Council.

## **26. TERMINATION OR SUSPENSION OF THE CONTRACT**

### **26.1. Termination By Judicial Council for Cause.**

- 26.1.1. Judicial Council will have the right to terminate the Agreement for cause at any time after the occurrence of any of the following events:
- 26.1.1.1. Design Build Entity becomes insolvent or files for relief under the bankruptcy laws of the United States.
  - 26.1.1.2. Design Build Entity makes a general assignment for the benefit of its creditors or fails to pay its debts as the same become due.
  - 26.1.1.3. A receiver is appointed to take charge of Design Build Entity's property.
  - 26.1.1.4. The commencement or completion of any Work activity on the critical path is more than thirty (30) Days behind the date set of the Work activity in the Contract Schedule as a result of an Unexcused Delay. For an Agreement with a Contract Time of less than three hundred (300) Days, the thirty (30) Day period shall be reduced to the number of Days commensurate with ten percent (10%) of the Contract Time.
  - 26.1.1.5. Design Build Entity abandons the Work.
- 26.1.2. Upon the occurrence of any of the following events, Judicial Council will have the right to terminate the Agreement for cause if Design Build Entity fails to promptly commence to cure such default and diligently execute such cure within five (5) Days after notice from Judicial Council, or within such longer period of time as is reasonably necessary to complete such cure, but in no event longer than thirty (30) Days:
- 26.1.2.1. Design Build Entity persistently or repeatedly refuses or fails to supply skilled supervisory personnel, an adequate number of properly skilled workers, proper materials, or necessary equipment to execute the Work in accordance with the Contract Documents.
  - 26.1.2.2. Design Build Entity fails to make prompt payment of amounts properly due Subcontractors after receiving payment from Judicial Council.
  - 26.1.2.3. Design Build Entity disregards Applicable Code Requirements.

- 26.1.2.4. Design Build Entity persistently or materially fails to execute the Work in accordance with the Contract Documents.
- 26.1.2.5. Design Build Entity is in default of any other material obligation under the Contract Documents.
- 26.1.2.6. Design Build Entity persistently or materially fails to comply with the Design Build Entity Safety Plan, and any Applicable Code Requirements related to construction Site safety.
- 26.1.3. Upon any of the occurrences above, Judicial Council may, at its election and by written notice to Design Build Entity, terminate the Agreement and take possession of the Site and all materials, supplies, equipment, tools, and construction equipment and machinery thereon owned by Design Build Entity and not incorporated into the Work; accept the assignment of any or all of the subcontracts; and then complete the Work by any method Judicial Council may deem expedient. If requested by Judicial Council, Design Build Entity shall remove any part or all of Design Build Entity's materials, supplies, equipment, tools, and machinery from the Site within seven (7) Days of such request; and if Design Build Entity fails to do so, Judicial Council may remove or store, and after ninety (90) Days sell, any of the same at Design Build Entity's expense.
- 26.1.4. If the Agreement is terminated by Judicial Council as provided herein, Design Build Entity shall not be entitled to receive any further payment until the expiration of thirty-five (35) Days after Final Completion and Acceptance of all Work by Judicial Council, subject to any applicable withholds for costs incurred by Judicial Council as allowed by these General Conditions.
- 26.1.5. If the unpaid balance of the Total Contract Amount exceeds the cost of completing the Work, including all additional costs and expenses made necessary thereby, including costs for Judicial Council staff time, plus all losses sustained, including any Liquidated Damages provided under the Contract Documents, such excess shall be paid to Design Build Entity. If such costs, expenses, losses, and liquidated damages exceed the unpaid balance of the Total Contract Amount, Design Build Entity shall pay such excess to Judicial Council.
- 26.1.6. Upon a termination herein, Design Build Entity and its Surety shall be liable upon the Performance Bond for all damages caused Judicial Council by reason of Design Build Entity's failure to Complete this Contract. Judicial Council may tender the Work to the Surety to complete the Project. Design Build Entity and its Surety shall be liable upon the Performance Bond for all damages caused Judicial Council by reason of Design Build Entity's failure to complete this Project.
- 26.1.7. No termination or action taken by Judicial Council after termination shall prejudice any other rights or remedies of Judicial Council provided by law or by the Contract Documents upon such termination; and Judicial Council may proceed against Design Build Entity to recover all losses suffered by Judicial Council.

## **26.2. Suspension By Judicial Council for Convenience.**

- 26.2.1. Judicial Council may, at any time and from time to time, without cause, issue a Suspension Order to suspend, delay, or interrupt the Work in whole or in part for such period of time, up to ninety (90) Days, as Judicial Council may determine, with such period of suspension to be computed from the date of delivery of the written directive. The Work may be stopped for such further period as the Parties

may agree. Upon receipt of a Suspension Order, Design Build Entity shall comply with its terms and take all reasonable steps to minimize costs allocable to the Work covered by the Suspension Order during the period of Work stoppage. Within ninety (90) Days after the issuance of the Suspension Order, or such extension to that period as is agreed upon by Design Build Entity and Judicial Council, Judicial Council shall either cancel the Suspension Order or delete the Work covered by such Suspension Order by issuing a Change Order.

- 26.2.2. If a Suspension Order is canceled or expires, Design Build Entity shall continue with the Work. A Unilateral Change Order will be issued to cover any adjustments of the Total Contract Amount, or the Contract Time necessarily caused by the suspension. Any claim by Design Build Entity for an adjustment of the Total Contract Amount or the Contract Time shall be made within twenty-one (21) Days after the Suspension Order is canceled or expires. Design Build Entity agrees that submission of its claim within said twenty-one (21) Days is an express condition precedent to its right to litigate any claim.
- 26.2.3. If, after the ninety (90) Day period, Judicial Council does not cancel the Suspension Order or otherwise permit Design Build Entity to continue the Work, Design Build Entity shall be entitled to terminate this Agreement. Upon that termination, Judicial Council shall pay Design Build Entity for all Work satisfactorily performed and completed up to and until the date of the suspension. Design Build Entity may submit a claim to Judicial Council pursuant to the Contract Documents seeking any additional compensation arising from the suspension. In Judicial Council's sole discretion, Judicial Council may issue a Unilateral Change Order reflecting an equitable adjustment to the Total Contract Amount in an amount Judicial Council deems reasonable for costs incurred by Design Build Entity during the suspension.
- 26.2.4. The provisions herein shall not apply if a suspension order is not issued by Judicial Council, or if any suspension is the direct result of a Force Majeure Event. A Suspension Order shall not be required to stop the Work as permitted or required under any other provision of the Contract Documents.

### **26.3. Termination by Judicial Council for Convenience.**

- 26.3.1. Judicial Council may, at its option, terminate the Contract, in whole or in part, at any time by giving written notice to Design Build Entity. Upon such termination, Design Build Entity agrees to waive any claims for damages, including, without limitation, all consequential damages, loss of anticipated profits, on account thereof; and, as the sole right and remedy of Design Build Entity, Judicial Council shall pay Design Build Entity in accordance with this "Termination by Judicial Council for Convenience" section.
- 26.3.2. Upon receipt of notice of termination for convenience, Design Build Entity shall, unless the notice directs otherwise, do the following:
  - 26.3.2.1. Immediately discontinue the Work to the extent specified in the notice.
  - 26.3.2.2. Place no further orders or subcontracts for materials, equipment, services, or facilities, except as may be necessary for completion of such portion of the Work that is not discontinued.
  - 26.3.2.3. Promptly cancel all subcontracts to the extent they relate to the performance of the discontinued portion of the Work.



- 26.3.2.4. Thereafter, perform only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plants, and equipment on the Site or in transit thereto.
- 26.3.3. Upon termination, the obligations of the Agreement, or those assumed by Design Build Entity, shall survive and continue as to portions of the Work already performed.
- 26.3.4. Upon termination, Judicial Council shall pay to Design Build Entity the sum of the following, subject to Design Build Entity's substantiation of any such costs consistent with the requirements of the General Conditions, applicable to Change Orders:
  - 26.3.4.1. Any unpaid portion of the Total Contract Amount for Work actually and satisfactorily performed by Design Build Entity as of the date of termination.
  - 26.3.4.2. Any proven losses with respect to materials and equipment directly resulting from the termination.
  - 26.3.4.3. Reasonable demobilization costs.
  - 26.3.4.4. Reasonable costs of preparing a statement of the costs, expenses, and losses in connection with such termination.
- 26.3.5. This termination payment shall be the sole and exclusive remedy to which Design Build Entity is entitled in the event of termination of the Agreement by Judicial Council pursuant to this provision. Design Build Entity will be entitled to no other compensation or damages and expressly waives same to the furthest extent allowed by law, except for those claims identified in any conditional and unconditional releases pursuant to the Civil Code.

## **27. STATUTORY AND OTHER REQUIREMENTS**

- 27.1. **Nondiscrimination.** During the performance of this Contract, Design Build Entity and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), marital status, age (over 40), sex, or sexual orientation, or any other classification against which state or federal proscribes discrimination. Design Build Entity shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
  - 27.1.1. Design Build Entity agrees not to discriminate: (1) between employees with spouses and employees with domestic partners; (2) between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex; (3) between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees; and/or (4) between employees on the basis of an employee's or dependent's actual or perceived gender identity, including, but not limited to, the employee's or dependent's identification as transgender.
  - 27.1.2. Pursuant to subdivision (b) of Public Contract Code sections 10295.3 and 10295.3, Design Build Entity will treat as confidential, to the maximum extent permissible by law or the requirement of Design Build Entity's insurance provider, any request by an employee or applicant for employee for domestic partner or spousal benefit, or any documentation or eligibility for domestic partner or spousal benefits, submitted by an employee or applicant.

- 27.1.3. Judicial Council, in its sole discretion, may waive any of these requirements if the requirements of subdivision (c) of public Contract Code sections 10295.3 and 10295.3, to the extent applicable, are met.
- 27.1.4. This provision will be interpreted and applied pursuant to Public Contract Code sections 10295.3 and 10295.35.
- 27.2. Preventing Harassment.** During the performance of Work, Design Build Entity and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons who Design Build Entity or its Subcontractors interact with in the performance of Work. Design Build Entity and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- 27.3. Unfair Business Practices.** Design Build Entity shall require its Subcontractors and suppliers to agree to assign to Judicial Council all rights, title, and interest in and to all causes of action they may have under Section 4 of the Clayton Act (15 U.S.C. Section 15), or under the Cartwright Act (commencing with Section 16700 of the Business and Professions Code), arising from the purchase of goods, services, or materials, pursuant to the Contract Documents or any subcontract thereunder. An assignment made by Design Build Entity, and all additional assignments made by Subcontractors and suppliers, will be deemed to have been made and will become effective at the time Judicial Council tenders final payment to Design Build Entity, without further demand or acknowledgment of the Parties.
- 27.4. DVBE Participation Goal.**
- 27.4.1. This Project has a Disabled Veteran Business Enterprise (“DVBE”) participation goal of three percent (3%). The Design Build Entity must document its DVBE compliance by completing the DVBE Participation Form set forth as **Exhibit U**. Information about DVBE resources can be found on the Department of General Services’ website at <http://www.dgs.ca.gov>, or by emailing [OSDSHelp@dgs.ca.gov](mailto:OSDSHelp@dgs.ca.gov) or calling the Office of Small Business and DVBE Services at 916-375-4940.
- 27.4.2. In addition, Design Build Entity is required to complete a DVBE Participation Form attached as **Exhibit U** to the Agreement prior to Construction Work.
- 27.5. Drug-Free Workplace.**
- 27.5.1. Design Build Entity shall comply with the “Substance Abuse Policy” of the OCIP Safety Requirements Manual, which is incorporated herein by reference as though fully set forth herein.
- 27.5.2. Design Build Entity shall certify under penalty of perjury under the laws of the State of California, that Design Build Entity will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.) and the Federal Controlled Substances Act (21 U.S.C. Par. 812), and will provide a drug-free workplace by taking the following actions:
- 27.5.2.1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions will be taken against employees for violations.
- 27.5.2.2. Establish a Drug-Free Awareness Program to inform employees about:
- 27.5.2.2.1. The dangers of drug abuse in the workplace;

- 27.5.2.2.2. The company's policy of maintaining a drug-free workplace;
- 27.5.2.2.3. Any available counseling, rehabilitation, and employee assistance programs; and
- 27.5.2.2.4. Penalties that may be imposed upon employees for drug abuse violations.
- 27.5.2.3. Provide that every employee who works under this Agreement will:
  - 27.5.2.3.1. Receive a copy of Design Build Entity's drug-free workplace policy statement; and
  - 27.5.2.3.2. Agree to abide by the terms of Design Build Entity's statement as a condition of employment.
- 27.5.2.4. Provide for random pre-assignment testing, reasonable cause testing as necessary, and post-accident testing as necessary, of workers performing work at the Site.
- 27.5.2.5. In addition to the other indemnity requirements of this Agreement, Design Build Entity shall indemnify and hold harmless the State of California, the Judicial Council, the Court, and their respective elected and appointed officials, , judges, officers, employees, and agents against any loss, claim, damages, or liability resulting from Design Build Entity's failure to enforce and maintain a drug-free workplace.

## **27.6. Notices of Labor Dispute.**

- 27.6.1. If Design Build Entity has knowledge that any actual or potential labor dispute is delaying, or threatens to delay, the timely performance of the Work, Design Build Entity shall immediately provide written notice to Judicial Council that includes all relevant information concerning the dispute.
- 27.6.2. Design Build Entity agrees to insert the substance of this section in any subcontract for the performance of any Work on the Project, except that each subcontract shall provide that in the event its timely performance is delayed or threatened by delay by any actual or potential labor dispute, the Subcontractor shall immediately notify the next higher Tier Subcontractor or Design Build Entity, as the case may be.
- 27.6.3. Failure of Design Build Entity or any Subcontractor to comply with the notice requirements of this provision waives any claim for an adjustment in the Contract Time and Total Contract Amount arising from work stoppages described herein, to the extent that the Contract Documents would otherwise permit an adjustment to the Contract Time and Total Contract Amount.

## **27.7. Union Organizing.**

- 27.7.1. Design Build Entity agrees and acknowledges that Government Code section 16645 through section 16649 apply to this Agreement.
  - 27.7.1.1. Design Build Entity will not assist, promote, or deter union organizing by employees performing work on a Judicial Council project pursuant to this Agreement.

- 27.7.1.2. No Judicial Council funds received under this Agreement will be used to assist, promote, or deter union organizing.
- 27.7.1.3. Design Build Entity will not, for any business conducted under this Agreement, use any Judicial Council property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless Judicial Council property is equally available to the general public for holding meetings.
- 27.7.1.4. If Design Build Entity incurs costs, or makes expenditures to assist, promote, or deter union organizing, Design Build Entity will maintain records sufficient to show that no reimbursement from Judicial Council funds has been sought for these costs, and Design Build Entity shall provide those records to the Attorney General upon request.

## **27.8. Labor Compliance Provisions.**

### **27.8.1. Prevailing Wage.**

- 27.8.1.1. Design Build Entity, and all Subcontractors under Design Build Entity, shall pay all workers on Work performed pursuant to the Contract Documents not less than the general prevailing rate of per diem wages and the general prevailing rate for holidays 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 Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at Judicial Council's principal office. Prevailing wage rates are also available from Judicial Council or on the internet at (<http://www.dir.ca.gov>).
- 27.8.1.2. Design Build Entity shall ensure that Design Build Entity, and all of Design Build Entity's Subcontractors, execute the Prevailing Wage and Related Labor Requirements Certification attached to the Contract Documents and incorporated herein.
- 27.8.1.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Design Build Entity shall post jobsite notices, as prescribed by regulation. Design Build Entity shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

### **27.8.2. Registration.**

- 27.8.2.1. Design Build Entity shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records ("CPR(s)") to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations ("DIR"). 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.”

27.8.2.2. Design Build Entity 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 DIR that are set forth in Labor Code section 1725.5. Design Build Entity represents to Judicial Council that all “Subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. Design Build Entity shall not permit any Subcontractor to perform Work on the Project, without first verifying the Subcontractor is properly registered with the DIR, as required by law, and providing this information in writing to Judicial Council. Judicial Council acknowledges that, for purposes of Labor Code section 1725.5, this Work is public work to which Labor Code section 1771 applies.

27.8.3. Hours of Work.

27.8.3.1. Notwithstanding the timing and duration of the Work under the Contract Documents, which is subject to Judicial Council and Court activities and other coordination required for occupied facilities, as provided in Article 3 (commencing at Section 1810), chapter 1, part 7, division 2 of the Labor Code, eight (8) hours of labor shall constitute a legal day’s work. The time of service of any worker employed at any time by Design Build Entity or by any Subcontractor on any subcontract performing Work under the Contract Documents, or upon any part of the Work contemplated by the Contract Documents, shall be limited and restricted by Design Build Entity to eight (8) hours per Day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Design Build Entity in excess of eight (8) hours per Day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per Day at not less than one and one-half times the basic rate of pay.

27.8.3.2. Design Build Entity shall keep, and shall cause each Subcontractor to keep, an accurate record showing the name of, and actual hours worked, each Day and each calendar week, by each worker employed by Design Build Entity in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of Judicial Council and to the Division of Labor Standards Enforcement of the DIR.

- 27.8.3.3. Pursuant to Labor Code section 1813, Design Build Entity shall as a penalty to Judicial Council forfeit the statutory amount for each worker employed in the execution of the Agreement by Design Build Entity, or by any Subcontractor, for each Day during which such worker is required or permitted to work more than eight (8) hours in any one Day and forty (40) hours in any one calendar week, in violation of the provisions of Article 3 (commencing at Section 1810), chapter 1, part 7, division 2, of the Labor Code.
- 27.8.3.4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to Judicial Council.
- 27.8.3.5. Work may take place in an occupied Court facility; therefore, work hours may be restricted, as specified by the Court and Judicial Council.

27.8.4. Payroll Records.

- 27.8.4.1. Design Build Entity and all Subcontractors shall comply with the compliance monitoring provisions of Labor Code section 1771.4, including furnishing its Certified Payroll Records (CPRs) to the Labor Commissioner of California and complying with any applicable enforcement by the DIR. Labor Code section 1771.4 requires Design Build Entity and Subcontractors to provide electronic copies of CPRs to the Labor Commissioner of California at least once every thirty (30) Days, and within 30 Days of project completion. The failure to timely provide the CPRs could result in penalties of up to five thousand dollars (\$5,000), or as otherwise determined by Labor Code section 1771.4, applicable laws, and regulations.
- 27.8.4.2. In addition to submitting CPR(s) to the Labor Commissioner of California pursuant to Labor Code section 1771.4 or any other applicable law, if requested by Judicial Council, Design Build Entity shall provide to Judicial Council, and shall cause each Subcontractor performing any portion of the Work to provide to Judicial Council, CPR(s) showing the name, address, social security number, work classification, 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 Design Build Entity and/or each Subcontractor in connection with the Work.
- 27.8.4.3. All CPRs shall be available for inspection at all reasonable hours at the principal office of Design Build Entity on the following basis:
  - 27.8.4.3.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.
  - 27.8.4.3.2. CPRs shall be made available for inspection or furnished upon request to a representative of Judicial Council, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

- 27.8.4.3.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either Judicial Council, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Design Build Entity, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Design Build Entity.
- 27.8.4.4. The form of certification for the CPRs shall be as follows:
- I, \_\_\_\_\_ (Name-Print), the undersigned, am the \_\_\_\_\_ (Position in business) with the authority to act for and on behalf of \_\_\_\_\_ (Name of business and/or Design Build Entity), certify under penalty of perjury that the records or copies thereof submitted and consisting of \_\_\_\_\_ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of Sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.*
- Date: \_\_\_\_\_ Signature: \_\_\_\_\_*  
(Section 16401 of Title 8 of the California Code of Regulations)
- 27.8.4.5. Design Build Entity and all Subcontractors of any Tier shall file a certified copy of the CPRs with the entity that requested the records within ten (10) Days after receipt of a written request.
- 27.8.4.6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by Judicial Council, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of the Design Build Entity awarded this Agreement or performing work under the Contract Documents shall not be marked or obliterated.
- 27.8.4.7. Design Build Entity shall inform Judicial Council of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) business days, provide a notice of change of location and address.
- 27.8.4.8. In the event of noncompliance with the requirements of this section, Design Build Entity shall have ten (10) Days in which to comply subsequent to receipt of written notice specifying in what respects Design Build Entity must comply with this section. Should noncompliance still be evident after the ten (10) Day period, Design Build Entity shall, as a penalty to Judicial Council, forfeit One Hundred Dollars (\$100) for each 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.

- 27.8.4.9. It shall be the responsibility of Design Build Entity to ensure compliance with the provisions of Labor Code section 1776.

27.8.5. Apprentices.

- 27.8.5.1. Design Build Entity acknowledges and agrees that if this Project involves a dollar amount greater than, or a number of business days greater than that specified in Labor Code section 1777.5, then the Project is governed by the provisions of Labor Code section 1777.5. It shall be the responsibility of Design Build Entity to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.
- 27.8.5.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed, provided they are properly registered in full compliance with the provisions of the Labor Code.
- 27.8.5.3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.
- 27.8.5.4. Only apprentices, as defined in Section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under Chapter 4 (commencing at Section 3070), division 3 of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.
- 27.8.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Project as indicated above, Design Build Entity and any Subcontractors employing workers in any apprenticeable craft or trade, in performing any Work under this Project, shall apply to the applicable joint apprenticeship committee for a certificate approving Design Build Entity or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.
- 27.8.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Project as indicated above, Design Build Entity and any Subcontractor may be required to make contributions to the apprenticeship program.
- 27.8.5.7. If Design Build Entity or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
- 27.8.5.7.1. Be denied the right to bid or propose on any subsequent project for one (1) year from the date of such determination; and



- 27.8.5.7.2. Forfeit as a penalty to Judicial Council the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
- 27.8.5.8. Design Build Entity and all Subcontractors shall comply with Labor Code section 1777.6, which forbids certain discriminatory practices in the employment of apprentices.
- 27.8.5.9. Design Build Entity shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to Sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.
- 27.8.5.10. Design Build Entity shall ensure compliance with all certification requirements for all workers on the Project, including, without limitation, the requirements for electrician certification in Labor Code sections 108 et seq.

## **27.9. Skilled and Trained Workforce Provisions.**

- 27.9.1. Design Build Entity is familiar with the hiring requirements set forth in Public Contract Code section 2601, et. seq., and as a condition of entering into this Contract, Design Build Entity understands and agrees that Design Build Entity and its Subcontractors at every Tier will use a Skilled and Trained Workforce to perform all Work on the Project that falls within an apprenticeable occupation in the building and construction trades. If this Project is subject to a project labor agreement compliant with Public Contract Code section 2500, et seq., Design Build Entity shall provide a Skilled and Trained Workforce to perform all Work on the Project, but shall not be subject to any of the reporting requirements below.
- 27.9.2. Monthly Compliance Report. Design Build Entity will provide to Judicial Council, on a monthly basis, a Monthly Compliance Report containing information demonstrating that Design Build Entity and its Subcontractors at every Tier have complied with Skilled and Trained Workforce requirements.
- 27.9.3. Content of Monthly Compliance Report(s). The Monthly Compliance Reports must, at minimum, include the following:
  - 27.9.3.1. Each Subcontractor's name and license number, or list Design Build Entity if Design Build Entity is self-performing the applicable scope of Work;
  - 27.9.3.2. That each worker is either a registered apprentice in an apprenticeship program approved by the State, or is a skilled journeyman;
  - 27.9.3.3. Of the skilled journeymen for Design Build Entity and each Subcontractor, which are graduates of an approved apprenticeship program, it shall be sufficient for Design Build Entity to state the number of workers in each applicable category. Design Build Entity

is not required to identify each individual worker who performed work on the Project in Design Build Entity's monthly report;

- 27.9.3.4. The monthly and cumulative percentages that entity has achieved of those graduates. If Design Build Entity (or a Subcontractor) is meeting the percentage cumulatively, Judicial Council may utilize that information when it determines whether the report is sufficient.
- 27.9.4. Time to Submit. Each monthly Workforce Report must include all work performed during the preceding month and must be submitted to Judicial Council no later than thirty (30) Days after the end of the preceding month (i.e., the monthly Workforce Report for activity during March must be submitted no later than April 30).
- 27.9.5. No Report or Incomplete Report. If Design Build Entity fails to provide a Monthly Compliance Report or provides a Monthly Compliance Report that is incomplete, the following shall apply:
  - 27.9.5.1. Judicial Council shall withhold further payments until Design Build Entity provides a complete Monthly Compliance Report for that month. Judicial Council shall withhold from Design Build Entity an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the relevant Subcontractor(s), which Design Build Entity shall be entitled to withhold from the Subcontractor(s).
  - 27.9.5.2. If Design Build Entity submits to Judicial Council a plan to achieve substantial compliance with Public Contract Code section 2601, et seq., Judicial Council shall resume making payments to Design Build Entity, including all previously withheld payments, unless, within a reasonable time, Judicial Council rejects the plan as insufficient. In the event that Judicial Council rejects Design Build Entity's plan as insufficient, Judicial Council shall provide an explanation in writing of the basis for Judicial Council's rejection of Design Build Entity's plan.
  - 27.9.5.3. If the Monthly Compliance Report is incomplete due to the failure of a Subcontractor to timely submit to Design Build Entity information demonstrating compliance at every Tier with the skilled workforce requirements, Judicial Council shall only withhold from Design Build Entity an amount equal to one hundred and fifty percent (150%) of the value of the monthly billing for the Subcontractor that failed to submit the required information to Design Build Entity.
  - 27.9.5.4. Judicial Council shall forward to the Labor Commissioner a copy of a Monthly Compliance Report submitted to Judicial Council that fails to comply with Public Contract Code section 2602, et seq. In the event that Design Build Entity submits a plan to Judicial Council to achieve substantial compliance with Public Contract Code 2601 et. seq., Judicial Council shall forward a copy of that Substantial Compliance Plan to the Labor Commissioner, and the response to that plan, if any, by Judicial Council.
- 27.9.6. End-of-Project Reconciliation.

- 27.9.6.1. At the end of the Project, if Design Build Entity cannot demonstrate that it has met the applicable participation level for all work that falls within an apprenticeable occupation, as defined in Public Contract Code section 2600, et seq., Design Build Entity may remedy its failure by paying to the appropriate trade apprenticeship fund(s), an amount equal to the number of additional hours required to meet the percentage, multiplied by the “Training” amount for that trade, at the basic hourly rate. Design Build Entity must provide documentation to Judicial Council reasonably sufficient to demonstrate this payment to the trade apprenticeship fund.
- 27.9.6.2. If payment(s) to the applicable trade apprenticeship fund(s) is not made, then Judicial Council shall have the right to permanently retain ten percent (10%) of the price for the out-of-compliance apprenticeable occupation’s Work, per month, as reflected in the Project’s schedule of values, not to exceed the monthly amounts for first-time violations indicated in Public Contract Code 2603(a). Judicial Council shall withhold those funds until the Labor Commissioner makes its determination of violations pursuant to Public Contract Code section 2603. At that time, Judicial Council will distribute those funds as directed by the Labor Commissioner, or if the Labor Commissioner determines that no violation was made or the penalty(ies) is less than the amount Judicial Council is withholding, Judicial Council shall pay the applicable withheld amounts to Design Build Entity, with no interest or penalty.
- 27.9.6.3. The Parties agree that these end-of-Project remedies are reasonable and sufficient, subject to a determination made by the Department of Industrial Relations or a court of competent jurisdiction that one or both of these remedies is insufficient.
- 27.9.6.4. Any payments Judicial Council withholds from Design Build Entity for noncompliance will be reflective only of the trade(s) or Subcontractor(s) out of compliance and will be paid once the Subcontractor(s) and/or trade(s) are cumulatively compliant, subject to the End-of-Project Reconciliation process indicated herein above.

**27.10. National Labor Relation Board Order Compliance.** By entering into the Agreement, Design Build Entity swears under penalty of perjury that no more than one final, unappealable finding of contempt of court by a federal court has been issued against Design Build Entity within the immediately preceding **TWO (2)** year period because of Design Build Entity's failure to comply with an order of a federal court which orders Design Build Entity to comply with an order of the National Labor Relations Board. A finding of contempt does not include any finding which has been vacated, dismissed, or otherwise removed by the court because Design Build Entity has complied with the order which was the basis for the finding. If Judicial Council determines at any time that Contractor’s statement herein is false, Judicial Council may rescind, and/or terminate the Agreement. In the event of termination hereunder, Judicial Council reserves the right to treat the termination as a termination for cause under the “Termination and Suspension” provisions, and reserves the right to seek any remedies available to it under the Agreement, the law, and at equity.

**27.11. California Air Resources Board.**

- 27.11.1. Design Build Entity agrees and acknowledges that the California Air Resources Board (“CARB”) In-Use Off-Road Diesel-Fueled Fleets regulations (Title 13

CCR sections 2449, 2449.1 and 2449.2) apply to this Agreement. Design Build Entity shall comply and shall require Subcontractors to comply with the CARB In-Use Off-Road Diesel-Fueled Fleets regulations.

27.11.1.1. Design Build Entity shall ensure that Design Build Entity and all Subcontractors execute the CARB In-Use Off-Road Diesel-Fueled Fleets Certification attached to the Contract Documents and incorporated herein.

27.11.1.2. As applicable, Design Build Entity and Subcontractors must provide a current Certificate of Reported Compliance for fleets subject to the CARB In-Use Off-Road Diesel-Fueled Fleets regulations.

## **28. ACCESS TO RECORDS AND JUDICIAL COUNCIL RIGHT TO AUDIT**

**28.1.** Design Build Entity shall maintain all books, records, documents, and other evidence directly pertinent to the performance of the Work, in accordance with generally-accepted accounting principles and practices. Design Build Entity shall also maintain all financial information and data used by Design Build Entity in the preparation or support of any cost submission, including Design Build Entity's Proposal, or any Amendment, Change Order, Field Directive, claim, or other request for equitable adjustment, and a copy of the cost summary or information submitted to Judicial Council. These audit provisions shall apply to all records in any way related to the Project, Work, or the Contract.

**28.2.** Judicial Council shall have access upon twenty-four (24) hours' advance written notice, at all times during normal business hours, to all such books, records, documents, financial information, Design Materials (including Drawings and Specifications, calculations, and all other technical data), and all other evidence for the purpose of inspection, audit, and copying. Design Build Entity shall, at no cost to Judicial Council, provide proper facilities for such access, inspection, and copying purposes.

**28.3.** Design Build Entity agrees to include the audit and record provisions of this subsection in all Subcontractors' subcontracts or purchase orders, at any Tier, and make the audit and record provisions of this subsection applicable to all Subcontracts, at any Tier, in excess of Ten Thousand Dollars (\$10,000), and to make the audit and record provisions of this subsection applicable to all Subcontractor Change Orders, claims, and other requests for equitable adjustment related to Project performance.

**28.4.** Design Build Entity agrees to the disclosure of all information and reports resulting from access to records under the audit and record provisions of this subsection, to Judicial Council, and other affected agencies, including applicable agencies of the State of California.

**28.5.** Records subject to this provision shall be maintained and made available during the performance of the Work under this Agreement and for three (3) years past final payment or any settlement of claims or litigation; provided, however, Judicial Council shall have access to records at any reasonable time for as long as the records are maintained, even if such period exceeds the above retention period.

## **29. MISCELLANEOUS PROVISIONS**

### **29.1. Rights And Remedies.**

29.1.1. All Judicial Council's rights and remedies under the Contract Documents will be cumulative and in addition to, and not in limitation of, all other rights and remedies of Judicial Council under the Contract Documents or otherwise available at law or in equity.

- 29.1.2. No action or failure to act by Judicial Council or Judicial Council Representative will constitute a waiver of a right afforded them under the Contract, nor will such action or failure to act constitute approval of, or acquiescence in a condition or breach thereunder, except as may be specifically agreed in writing. No waiver by Judicial Council or Judicial Council Representative of any condition, breach, or default will constitute a waiver of any other condition, breach, or default; nor will any such waiver constitute a continuing waiver.
- 29.1.3. No provision contained in the Contract Documents shall create, or give to third parties, any claim or right of action against Judicial Council, Judicial Council Representative, or Design Build Entity.
- 29.2. Survival.** The provisions of the Contract Documents, which by their nature survive termination of the Agreement or Final Completion, including, but not limited to, all warranties, indemnities, payment obligations, and Judicial Council's right to audit Design Build Entity's books and records, shall remain in full force and effect after Final Completion or any termination of the Contract.
- 29.3. Severability of Provisions.** If any one or more of the provisions contained in the Contract Documents should be invalid, illegal, or unenforceable in any respect, the validity, legality, and enforceability of the Agreement and any other remaining provisions contained herein shall not in any way be affected or impaired thereby.
- 29.4. Conflicts of Interest.**
- 29.4.1. Unauthorized Activities. Design Build Entity and employees of Design Build Entity shall not participate in proceedings that involve the use of Judicial Council funds or that are sponsored by Judicial Council if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. Design Build Entity and employees of Design Build Entity shall also avoid actions resulting in, or creating the appearance of:
- 29.4.1.1. Use of an official position with the government for private gain;
- 29.4.1.2. Preferential treatment to any person associated with this Agreement or the Work required herein;
- 29.4.1.3. Loss of independence or impartiality;
- 29.4.1.4. A decision made outside official channels; or
- 29.4.1.5. Adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- 29.4.2. Prohibited Financial Conflict of Interest. Design Build Entity and its Subcontractors presently have no interest, and shall not acquire any interest, which would present a conflict of interest pursuant to California Government Code sections 1090 et seq. and 87100 et seq., during the performance of Work pursuant to the Contract Documents. Design Build Entity further certifies that, to the best of its knowledge after due inquiry, no employees or agents of Judicial Council are now, nor in the future will they be, in any manner interested directly or indirectly in the Agreement, or in any profits expected to arise from the Agreement, as set forth in California Government Code sections 1090 et seq. and 87100 et seq.
- 29.4.3. Conflict of Interest for Former Judicial Council Employees. Design Build Entity certifies, and shall require any Subcontractor to certify to the following: Former Judicial Council employees will not be awarded a contract for two (2) years from

the date of separation if that employee had any part of the decision making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed Agreement within the twelve (12) month period after that employee's employment with Judicial Council.

29.4.4. Design Build Conflict of Interest Policy. Consistent with Judicial Council's obligation pursuant to Government Code section 70398.1(b), Judicial Council has adopted a conflict of interest policy. Design Build Entity shall comply with Judicial Council's Conflict of Interest Policy, which is available at: <https://www.courts.ca.gov/documents/design-build-conflict-of-interest-policy.pdf>.

**29.5. Covenant Against Gratuities.** No gratuities, in the form of entertainment, gifts, or otherwise, were offered by Design Build Entity or any agent, director, or representative of Design Build Entity, to any officer, official, agent, or employee of Judicial Council with a view toward securing the Agreement or securing favorable treatment with respect to any determinations concerning the performance of the Agreement. For breach or violation of this provision, Judicial Council will have the right to terminate the Agreement, either in whole or in part, and any loss or damage sustained by Judicial Council in procuring, on the open market, any items which Design Build Entity agreed to supply, shall be borne, and paid for by Design Build Entity. The rights and remedies of Judicial Council provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

**29.6. Liability of Judicial Council.**

29.6.1. Other than as provided in the Contract, Judicial Council's financial obligations under the Contract Documents shall be limited to the payment of the Total Contract Amount. In no event shall Judicial Council be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with the Agreement for the Work.

29.6.2. Judicial Council shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Design Build Entity, or by its employees, even equipment furnished or loaned to Design Build Entity by Judicial Council.

**29.7. Reserved.**

**29.8. Methods of Delivery for Specified Documents.** Any notice or document required hereunder shall be submitted by a Party to the other Party as set forth in the Agreement.

**29.9. Time is of the Essence.** Time limits and requirements stated in the Contract Documents are of the essence.

**29.10. Mutual Duty to Mitigate.** Judicial Council and Design Build Entity shall use all reasonable and economically practicable efforts to mitigate delays and damages to the Project and to one another with respect to the Project, regardless of the cause of such delay or damage.

**29.11. Child Support Obligation Acknowledgment.** Design Build Entity acknowledges that Public Contract Code section 7110 provides the following:

*It is the policy of this state that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal*

*laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.*

Design Build Entity agrees and acknowledges that, to the best of its knowledge, it is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the Employment Development Department.

**END OF EXHIBIT**

**EXHIBIT B**  
**SUPPLEMENTARY CONDITIONS**

**1. GENERAL**

- 1.1.** The Supplementary Conditions shall provide a means of specifying varying project-specific requirements and/or conditions without revising the text of the General Conditions. This may be done by specifying an adjustment to those terms set forth in the General Conditions (Modification) or through defining requirements in addition to those listed in the General Conditions. The Supplementary Conditions may also amend elements of the Performance Criteria, such as identifying project-specific requirements not otherwise addressed in the Performance Criteria.
- 1.2.** Design Build Entity shall immediately notify Judicial Council and identify any terms or requirements that have not been identified as a Modification and that are in conflict with the Agreement, General Conditions, or Performance Criteria.

- 2.** No supplementary conditions are included for this Project.

**END OF EXHIBIT**



**EXHIBIT C**  
**PRELIMINARY SCHEDULE**

This Exhibit includes the Preliminary Contract Schedule for the Project. The time for Completion includes time for Judicial Council's and Authorities Having Jurisdiction's review and approval consistent with the review durations in the General Conditions (**Exhibit A** to the Agreement). The Contract Time shall be set forth in the Agreement:

Work	Contract Time
Contract Time / Completion of Work	<b>XXX</b> Calendar Days

Design Build Entity's Contract Schedule submitted in its Proposal shall be based on the information contained herein and the review durations in the General Conditions (**Exhibit A** to the Agreement). The anticipated start dates for each Phase, and milestones therein, shall be determined after DBE selection and memorialized in the Agreement as follows: **[Exemplar only. May be adjusted with key dates, anticipated submittal dates, other deadlines.]**

Phase	Date
<b>Design Work</b>	
Contract Award/NTP	<b>XXXXXX</b> , 20 <b>XX</b>
Design Development Work Complete	<b>XXXXXX</b> , 20 <b>XX</b>
Judicial Council Review/Approval of Design Development Documents	<b>XXXXXX</b> , 20 <b>XX</b>
Working Drawings Work Complete	<b>XXXXXX</b> , 20 <b>XX</b>
Judicial Council Review/Approval of Working Drawings Documents	<b>XXXXXX</b> , 20 <b>XX</b>
<b>Construction Work</b>	
Mobilization for Site Construction Work	<b>XXXXXX</b> , 20 <b>XX</b>
Abatement and Demolition	<b>XXXXXX</b> , 20 <b>XX</b>
Mobilization for Building Construction Work	<b>XXXXXX</b> , 20 <b>XX</b>
Commissioning of the Project	<b>XXXXXX</b> , 20 <b>XX</b>
Project Ready for Use	<b>XXXXXX</b> , 20 <b>XX</b>
<b>Final Completion of the Project</b>	<b>XXXXXX</b> , 20 <b>XX</b>

**END OF EXHIBIT**

**EXHIBIT D**  
**DESIGN DELIVERABLE REQUIREMENTS**

[Placeholder- PM to insert Design Deliverable Requirements after editing footer for project]

**EXHIBIT E**  
**DESIGN BUILD GENERAL CONDITIONS MATRIX**

<b>Jobsite Staffing</b>	<b>DBE General Conditions</b>	<b>Direct Cost of the Work included in Subcontractor/Trade</b>
All Staff Required in Management of the Work	X	
<b>Temporary Utilities</b>		
Phone/Internet Service and Installation	X	
Temp Elect Power Service, Installation, Distribution	X	
Water - Installation, Service, Monthly Charges (for Jobsite Office)	X	
Sewer Connection/Installation	X	
<b>Temporary Facilities</b>		
Office Trailer/Rental	X	
Storage Trailer & Tool Shed Rental	X	
Office Furniture/Equip/Computers	X	
Copies/Misc. Printing	X	
Postage/UPS/FedEx	X	
Project Photographs	X	
Temporary Toilets/Handwashes	X	
Holding Tank/Service Costs	X	
Project Sign	X	
Temporary Fencing/Enclosures	X	
Covered Walkways	X	
Barricades	X	
Temporary Stairs	X	
Opening Protection	X	
Safety Railing & Nets	X	
Drinking Water/Cooler/Cup	X	
Safety/First Aid Supplies	X	
Firefighting Equipment	X	
Security Guards/Watchman Service	X	
Temporary Parking	X	
Surveillance Equipment, Webcam, and Services	X	
<b>Miscellaneous Project Costs</b>		
Printing - Drawings & Specifications	X	
Project Controls Software	X	
Facility Operator/Turn-over Training		X
Light Bulbs & Misc. Supplies	X	
Temperature & Humidity Conditioning during Construction		X

<b>Jobsite Staffing</b>	<b>DBE General Conditions</b>	<b>Direct Cost of the Work included in Subcontractor/Trade</b>
Temp Lighting		X
Temp Power Distribution		X
Clean-Up-Periodical	X	
Clean-Up-Final		X
Dump Permits and Fees	X	
Recycling/Trash Dumpster Removal/Hauling	X	
Flagger/Traffic Control		X
Site Maintenance	X	
Dust Control	X	-
Dewatering		X
Weather Protection/Winterization	X	
Trash Chute & Hopper	X	
SWPPP (BMPs, Monitoring, Testing)	-	X
Equipment Fuel, Repairs, Maintenance	X	
<b>Hoisting, Shoring, Conveyance</b>		
Hoist Operations		X
Crane Operations		X
Temporary Elevator Operations (During Construction)		X
Shoring Operations		X
Forklift Operations		X

**END OF EXHIBIT**

**EXHIBIT F**  
**RESERVED**

**EXHIBIT G**  
**LIST OF DESIGNATED SUBCONTRACTORS**

**This document shall be submitted: (i) as indicated in the Request for Proposal; and (ii) when each Subcontractor is selected. Refer to the General Conditions (Exhibit A) for further information.**

For or each Subcontractor: (i) that performs Construction Work, or is (ii) licensed by the State of California and who, under subcontract to the Design Build Entity, specifically fabricates and installs a portion of the Construction Work, each in an amount in excess of 1/2 of 1 percent of the Construction Work cost. Pursuant to the Agreement at the time that the Subcontractor is listed, provide the following information:

- (a) The portion of the Construction Work that will be performed by the Subcontractor. Design Build Entity shall list only one Subcontractor for each such portion of the Construction Work. To the extent that multiple Subcontractors perform similar **types** of Construction Work, please identify Construction Work by reference to the Specifications to differentiate.
- (b) The name of the Subcontractor.
- (c) Type of license(s) held by the Subcontractor.
- (d) License number(s).
- (e) Department of Industrial Relation Registration Number.
- (f) Location of the place of business (full street address, city, state, and zip code).

**Information/Instructions:**

As soon as Design Build Entity selects each Subcontractor whose work is valued in an amount in excess of 1/2 of 1 percent of the Direct Cost of Work of Construction Work, Design Build Entity shall complete or update this Exhibit. No previously listed Subcontractor shall be deleted by use of this form, unless otherwise permitted by the Contract Documents or applicable law. Design Build Entity shall verify all listed Subcontractors' Contractor State License Board-issued license(s) and number(s) and Department of Industrial Relations, Public Works Registration number(s).

Version No.: \_\_\_\_\_

Date: \_\_\_\_\_

Subcontractor Information					
Portion of the Work Activity (a)	Full Name (b)	Type of License (c)	Verified License No. (d)	DIR Registration No. (e)	Full Address (f)

(Note: Add additional pages if required.)

**END OF EXHIBIT**

**EXHIBIT H**  
**KEY PERSONNEL SCHEDULE**

The following personnel shall perform services for the Project in connection with Phases, or components thereof, identified below:

<b>Firm &amp; Person</b>	<b>Role</b>	<b>Scope of Work/ Discipline</b>	<b>Phase</b>
[Insert Name/Firm]	[Insert Role]	[Insert Scope/ Discipline, e.g., Cost Estimation, Structural Engineer]	[Insert Phase]
[Insert Name/Firm]	[Insert Role]	[Insert Scope/ Discipline, e.g., Cost Estimation, Structural Engineer]	[Insert Phase]
[Insert Name/Firm]	[Insert Role]	[Insert Scope/ Discipline, e.g., Cost Estimation, Structural Engineer]	[Insert Phase]
[Insert Name/Firm]	[Insert Role]	[Insert Scope/ Discipline, e.g., Cost Estimation, Structural Engineer]	[Insert Phase]
[Insert Name/Firm]	[Insert Role]	[Insert Scope/ Discipline, e.g., Cost Estimation, Structural Engineer]	[Insert Phase]
[Insert Name/Firm]	[Insert Role]	[Insert Scope/ Discipline, e.g., Cost Estimation, Structural Engineer]	[Insert Phase]

(Note: Add additional pages if required.)

**END OF EXHIBIT**

**EXHIBIT I**  
**CONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

**NOTICE TO CLAIMANT:** THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

**IDENTIFYING INFORMATION**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

Through Date: \_\_\_\_\_

**CONDITIONAL WAIVER AND RELEASE:** This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job through the Through Date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived, and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \$ \_\_\_\_\_

Check Payable To: \_\_\_\_\_

**EXCEPTIONS:** This document does not affect any of the following:

(1) Retentions.

(2) Extras work for which the claimant has not received payment.

(3) The following progress payments for which the claimant has previously given a conditional waiver and release but has not received payment:

Date(s) of waiver and release: \_\_\_\_\_

Amount(s) of unpaid progress payment(s): \$ \_\_\_\_\_

(4) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

**SIGNATURE**

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_



**EXHIBIT J**  
**UNCONDITIONAL WAIVER AND RELEASE ON PROGRESS PAYMENT**

**NOTICE TO CLAIMANT:** THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

**IDENTIFYING INFORMATION**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE:** This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this Project through the date of this document. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived, and released by this document, unless listed as an Exception below. The claimant has received the following progress payments: \$ \_\_\_\_\_

**EXCEPTIONS:** This document does not affect any of the following:

- (1) Retentions.
- (2) Extra work for which the claimant has not received payment.
- (3) Contract rights, including (A) a right based on rescission, abandonment, or breach of contract, and (B) the right to recover compensation for work not compensated by the payment.

**SIGNATURE**

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**EXHIBIT K**  
**CONDITIONAL WAIVER RELEASE ON FINAL PAYMENT**

**NOTICE TO CLAIMANT:** THIS DOCUMENT WAIVES THE CLAIMANT'S LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS EFFECTIVE ON RECEIPT OF PAYMENT. A PERSON SHOULD NOT RELY ON THIS DOCUMENT UNLESS SATISFIED THAT THE CLAIMANT HAS RECEIVED PAYMENT.

**IDENTIFYING INFORMATION**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

**CONDITIONAL WAIVER AND RELEASE:** This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived, and released by this document, unless listed as an Exception below. This document is effective only on the claimant's receipt of payment from the financial institution on which the following check is drawn:

Maker of Check: \_\_\_\_\_

Amount of Check: \$ \_\_\_\_\_

Check Payable To: \_\_\_\_\_

**EXCEPTIONS:** This document does not affect the following:

Disputed claims for extra work in the amount of: \$ \_\_\_\_\_

**SIGNATURE**

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**EXHIBIT L**  
**UNCONDITIONAL RELEASE ON FINAL PAYMENT**

**NOTICE TO CLAIMANT:** THIS DOCUMENT WAIVES AND RELEASES LIEN, STOP PAYMENT NOTICE, AND PAYMENT BOND RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID AND ARE GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL WAIVER AND RELEASE FORM.

**IDENTIFYING INFORMATION**

Name of Claimant: \_\_\_\_\_

Name of Customer: \_\_\_\_\_

Job Location: \_\_\_\_\_

Owner: \_\_\_\_\_

**UNCONDITIONAL WAIVER AND RELEASE:** This document waives and releases lien, stop payment notice, and payment bond rights the claimant has for all labor and service provided, and equipment and material delivered, to the customer on this job. Rights based upon labor or service provided, or equipment or material delivered, pursuant to a written change order that has been fully executed by the parties prior to the date that this document is signed by the claimant, are waived, and released by this document, unless listed as an Exception below. The claimant has been paid in full.

**EXCEPTIONS:** This document does not affect the following:

Disputed claims for extra work in the amount of: \$ \_\_\_\_\_


**SIGNATURE**

Claimant's Signature: \_\_\_\_\_

Claimant's Title: \_\_\_\_\_

Date of Signature: \_\_\_\_\_

**EXHIBIT M**  
**CONTRACTOR NOTICE OF POTENTIAL CHANGE FORM**

	<p><b>JUDICIAL COUNCIL OF CALIFORNIA</b></p> <p>ADMINISTRATIVE DIVISION FACILITIES SERVICES</p>	<b>CONTRACTOR NOTICE OF POTENTIAL CHANGE</b>								
<table style="width: 100%;"><tr><td style="width: 50%; vertical-align: top;">Project Name: <input style="width: 90%;" type="text"/></td><td style="width: 50%; vertical-align: top;">JC Contract No.: <input style="width: 90%;" type="text"/></td></tr><tr><td>JC Project Manager: <input style="width: 90%;" type="text"/></td><td>Date of Request: <input style="width: 90%;" type="text"/></td></tr><tr><td>Contractor: <input style="width: 90%;" type="text"/></td><td>Name of Initiator: <input style="width: 90%;" type="text"/></td></tr><tr><td>PCO No: <input style="width: 90%;" type="text"/></td><td></td></tr></table>			Project Name: <input style="width: 90%;" type="text"/>	JC Contract No.: <input style="width: 90%;" type="text"/>	JC Project Manager: <input style="width: 90%;" type="text"/>	Date of Request: <input style="width: 90%;" type="text"/>	Contractor: <input style="width: 90%;" type="text"/>	Name of Initiator: <input style="width: 90%;" type="text"/>	PCO No: <input style="width: 90%;" type="text"/>	
Project Name: <input style="width: 90%;" type="text"/>	JC Contract No.: <input style="width: 90%;" type="text"/>									
JC Project Manager: <input style="width: 90%;" type="text"/>	Date of Request: <input style="width: 90%;" type="text"/>									
Contractor: <input style="width: 90%;" type="text"/>	Name of Initiator: <input style="width: 90%;" type="text"/>									
PCO No: <input style="width: 90%;" type="text"/>										
<b>Contractor Description of Change Request &amp; Reference Documents</b>										
<b>Change Category (Select all that apply)</b>										
<table style="width: 100%;"><tr><td><input type="checkbox"/> Potential Design Error</td><td><input type="checkbox"/> Contractor's Request</td><td><input type="checkbox"/> Field Condition</td></tr><tr><td><input type="checkbox"/> Potential Design Omission</td><td><input type="checkbox"/> Other (Describe) <input style="width: 150px;" type="text"/></td><td></td></tr></table>			<input type="checkbox"/> Potential Design Error	<input type="checkbox"/> Contractor's Request	<input type="checkbox"/> Field Condition	<input type="checkbox"/> Potential Design Omission	<input type="checkbox"/> Other (Describe) <input style="width: 150px;" type="text"/>			
<input type="checkbox"/> Potential Design Error	<input type="checkbox"/> Contractor's Request	<input type="checkbox"/> Field Condition								
<input type="checkbox"/> Potential Design Omission	<input type="checkbox"/> Other (Describe) <input style="width: 150px;" type="text"/>									
<b>Contractor Proposal</b>										
<p>Cost for this change (if available): <input style="width: 150px;" type="text"/></p> <p>Additional days required (if available): <input style="width: 150px;" type="text"/></p> <p>I certify that this change is beyond the requirements of the contract.</p> <p><b>SIGNATURE:</b> _____ <b>DATE:</b> _____</p> <p style="text-align: center;">CONTRACTOR'S AUTHORIZED REPRESENTATIVE</p>										
<b>Justification of Approval, Rejection or Deferral (To be Completed by Owner):</b>										
<p>Select Approval Status... <input style="width: 150px;" type="text"/></p> <p>List Reasons for Rejection or Deferral:</p> <div style="border: 1px solid black; height: 100px; width: 100%;"></div>										

**EXHIBIT N**  
**PROPOSED CHANGE ORDER FORM**

Date: \_\_\_\_\_ Proposed Change Order No.: \_\_\_\_\_

Judicial Council of California

Scope of Change:

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Instructions:

1. Complete this form by providing, to the extent applicable as required by the Contract Documents: (a) all information required above, (b) the amount and justification based upon the Contract Schedule for any proposed adjustment of Contract Time, (c) the proposed adjustment of the Total Contract Amount, (d) the attached "Proposed Change Order Summary," (e) the attached form titled "Cost Breakdown for Supporting Documentation," and (f) the attached form titled "Labor Breakdown for Supporting Documentation." Items (e) and (f) listed above are optional and shall be completed as required by the type of request or the Contract Documents.
2. To the extent required, attach the forms titled "Cost Breakdown for Supporting Documentation," and "Labor Breakdown for Supporting Documentation," for Design Build Entity **and each** Subcontractor, Design Professional, and/or consultant involved in the Change Work. Each form shall be completed and signed by Design Build Entity, Subcontractor, Design Professional, and/or consultant actually performing the Work activity identified on the form. Attach supporting data to each form to substantiate each individual cost. The costs provided on these forms shall be used to substantiate the costs shown on the Proposed Change Order Summary.
3. All mark-ups shall be calculated pursuant to the Contract Documents. **Only mark-ups permitted pursuant to the Contract Documents shall be approved.** The compensation requested herein shall constitute full compensation for all costs and expenses related to the subject change, including all mark-ups.
4. Refer to the General Conditions for the method of computing mark-ups. Refer to the General Conditions for documentation required to substantiate a request for time extension and/or delay.

Adjustment of the Contract Time (Include justification based upon the Contract Schedule): \_\_\_\_\_ (Days)

Adjustment of the Total Contract Amount (Total from line 11, col. 5 of Proposed Change Order Summary): \$ \_\_\_\_\_

Submitted:

Received:

\_\_\_\_\_  
(Design Build Entity)

\_\_\_\_\_  
(Judicial Council)

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## PROPOSED CHANGE ORDER SUMMARY

Proposed Change Order No: \_\_\_\_\_

Design Build Entity Name: \_\_\_\_\_

		(A) Design Build Entity	(B) 1st Tier Subs /Design Personnel or Other Consultants	(C) 2nd Tier	(D) 3rd & Lower Tier Subs	(E) Total
DESIGN SERVICES	1. Design Work Fees (Calculated Based on the Professional Rate Sheet ( <b>Exhibit O</b> ))					
PROFESSIONAL SERVICES	2. Professional Services Fees					
DIRECT COST OF WORK FOR EXTRA WORK	3. Labor					
	4. Materials and Equipment					
TOTAL DIRECT COST OF WORK	5. <b>Sum of Lines 3 and 4</b>					
MARK-UPS	6. Insurance & Bonds (= Cell 5(E) x % identified for Insurance & Bonds in the Price Proposal ( <b>Exhibit O</b> ))					
	7. Professional Services (= Cell 2(E) x % identified for Professional Services in the General Conditions ( <b>Exhibit A</b> ))					
	8. Self-Performed Labor (= Cell 3(A) x % for Labor as set forth in the General Conditions ( <b>Exhibit A</b> ))					
	9. Subcontractor Labor (Calculated by multiplying the % for each Tier of Labor as set forth in the General Conditions ( <b>Exhibit A</b> ) against Cells 3(B) through 3(D))					

		(A) Design Build Entity	(B) 1st Tier Subs /Design Personnel or Other Consultants	(C) 2nd Tier	(D) 3rd & Lower Tier Subs	(E) Total
	10. Self-Performed Materials and Equipment (= Cell 4(A) x % for Materials and Equipment as set forth in the General Conditions ( <b>Exhibit A</b> ))					
	11. Subcontractor Materials and Equipment (Calculated by multiplying the % for each Tier of Materials and Equipment as set forth in the General Conditions ( <b>Exhibit A</b> ) against Cells 4(B) through 4(D))					
	12. Design Build Entity Mark-Up (Calculated by multiplying the % as set forth in the General Conditions ( <b>Exhibit A</b> ) against Cell 5(E))					
<b>TOTAL MARK-UP</b>	<b>13. Sums of Cells 6(E) through 12(E).</b>					
<b>TOTAL</b>	<b>14. Sums of Cells 1(E), 2(E), 5(E), and 13(E)</b>					

*Shaded cells are not permissible or applicable to line item. Do not enter any values in these areas.*

# PROPOSED CHANGE ORDER SUMMARY - SAMPLE

Proposed Change Order No: **139**

Design Build Entity Name: **Sample**

		(A)	(B)	(C)	(D)	(E)
		Design Build Entity	1st Tier Subs / Design Personal or other consultants	2nd Tier	3rd & Lower Tier Subs	Total
DESIGN SERVICES	1. Design Work Fees (Calculated Based on the Professional Rate Sheet ( <b>Exhibit O</b> ))	\$360	\$748			<b>\$1,108</b>
PROFESSIONAL SERVICES	2. Professional Services Fees				\$358	<b>\$358</b>
DIRECT COST OF WORK FOR EXTRA WORK	3. Labor	\$1,775	\$358	\$1,255	\$5	
	4. Materials and Equipment	\$895	\$775		\$99	
TOTAL DIRECT COST OF WORK	5. <b>Sum of Lines 3 and 4</b>	<b>\$2,670</b>	<b>\$1,133</b>	<b>\$1,255</b>	<b>\$104</b>	<b>\$5,162</b>
MARK-UPS	6. Insurance & Bonds (= Cell 5(E) x % identified for Insurance & Bonds in the Price Proposal ( <b>Exhibit O</b> ))	(\$5,162) * 1.5% = \$77				\$77
	7. Professional Services (= Cell 2(E) x % identified for Professional Services in the General Conditions ( <b>Exhibit A</b> ))				(358.00) * 5% = \$18	\$18
	8. Self-Performed Labor (= Cell 3(A) x % for Labor as set forth in the General Conditions ( <b>Exhibit A</b> ))	(\$1,775) *6% = \$107				\$107
	9. Subcontractor Labor (Calculated by multiplying the % for each Tier of Labor as set forth in the General Conditions ( <b>Exhibit A</b> ) against Cells 3(B) through 3(D))		\$358 *7% =\$25	\$1,255 *7% = \$88	\$5.00 *6% = \$0 Note: Cannot exceed 20% aggregate mark up	\$113
	10. Self-Performed Materials and Equipment (= Cell 4(A) x % for Materials and Equipment as set forth in the General Conditions ( <b>Exhibit A</b> ))	\$895 *6% = \$54				\$54



		(A) Design Build Entity	(B) 1st Tier Subs / Design Personal or other consultants	(C) 2nd Tier	(D) 3rd & Lower Tier Subs	(E) Total
<b>TOTAL MARK-UP</b>	11. Subcontractor Materials and Equipment (Calculated by multiplying the % for each Tier of Materials and Equipment as set forth in the General Conditions ( <b>Exhibit A</b> ) against Cells 4(B) through 4(D))		(\$775) * 5% = \$39		(\$99) *10% = \$10 Cannot exceed 15%	\$49
	12. Design Build Entity Mark-Up (Calculated by multiplying the % as set forth in the General Conditions ( <b>Exhibit A</b> ) against Cell 5(E))	(\$5,162) * 6% = \$310				\$310
	13. Sums of Cells 6(E) through 12(E)					\$728
	14. Sums of Cells 1(E), 2(E), 5(E), and 13(E)					<b>\$7,356</b>

*Shaded cells are not permissible or applicable to line item. Do not enter any values in these areas.*



**LABOR RATE BREAKDOWN for SUPPORTING DOCUMENTATION**

DESIGN BUILD ENTITY/SUBCONTRACTOR \_\_\_\_\_ Date: \_\_\_\_\_

(1)\$ \_\_\_\_\_ BASIC HOURLY RATE for \_\_\_\_\_ CRAFT

*Prevailing Wage Employer Payments*

\_\_\_\_\_ HEALTH AND WELFARE

\_\_\_\_\_ PENSION

\_\_\_\_\_ VACATION/HOLIDAY

\_\_\_\_\_ TRAINING

(2)\$ \_\_\_\_\_ Subtotal - Employer Payments

*Labor Burden paid by Employer*

\_\_\_\_\_ WORKERS COMP INSURANCE

\_\_\_\_\_ STATE UNEMPLOYMENT (SUI)

\_\_\_\_\_ FED UNEMPLOYMENT (FUI)

\_\_\_\_\_ SOCIAL SECURITY (FICA)

\_\_\_\_\_ MEDICARE (FMI)

(3)\$ \_\_\_\_\_ Subtotal - Burden

\$ \_\_\_\_\_ TOTAL LINES 1 +2 +3

*I certify the above information is true and correct*

*Signed:* \_\_\_\_\_

**EXHIBIT O**  
**DESIGN BUILD ENTITY'S PRICE PROPOSAL**  
**(FEE PROPOSAL AND PROFESSIONAL BILLING RATE SHEET)**

<b>Design Build Entity's Fee Proposal</b> (Shall be submitted separately from Technical Proposal)				
Judicial Council Stipulated Sum: <span style="background-color: yellow;">\$[Insert Amount]</span>				
Judicial Council Contract Time: <span style="background-color: yellow;">XXX</span> Calendar Days (Design Time: <span style="background-color: yellow;">XXX</span> Calendar Days) (Construction Time: <span style="background-color: yellow;">XXX</span> Calendar Days)				
Judicial Council Construction Duration: _____mo. (for use in calculating GC's only)				
For General Conditions (lines B2 & B3) use Judicial Council Construction Duration				
<b>Design Work Costs</b>				
A1	DD (A-E)	LS		\$
A2	DD Management (DBE)	LS		\$
A3	WD (A-E)	LS		\$
A4	WD Management (DBE)	LS		\$
<b>Design Fee Total</b>				<b>\$0</b>
<b>Construction Work Costs</b>				
B1	Construction Admin (A-E)		LS	\$
B2	General Conditions - Staffing	\$/mo	mo	\$
B3	General Conditions - Other	\$/mo	mo	\$
B4	Bonds		%	\$
B5	Insurance (non-OCIP/Builder's Risk)		%	\$
B6	Construction Fee (OH&P)		%	\$
<b>Construction Fee Total</b>				<b>\$0</b>
<b>TOTAL FEES</b>				<b>\$0</b>

Professional Billing Rate Sheet		
Service Type	Job Title	Proposed Billing Rate
General Architectural Services	Principal	
	Senior Manager	
	Project Manager	
	Architect	
	Construction Administrator	
	Modeler/BIM Staff	
	Administrative Staff	
Civil Engineering	Principal	
	Senior Engineer	
	Engineer/Designer	
	Project Manager	
	Drafter/CAD Staff	
Structural Engineering	Principal	
	Senior Engineer	
	Engineer/Designer	
	Project Manager	
	CAD Drafter/Modeler/BIM Staff	
Electrical Engineer	Senior Engineer	
	Engineer/Designer	
	Modeler/BIM Staff	
Fire Protection Engineering	Project Manager	
	Designer	
Landscape Architect	Designer	
	Project Manager	
Security/Low Voltage Specialist	Engineer/Designer	
	Project Manager	
Vertical Transportation Specialist	Engineer/Designer	
	Project Manager	
Building Envelope Specialist	Envelope Engineer	
	Project Manager	
Sustainability/LEED Consultant	Engineer/Architect	
	Project Manager	
Geotechnical Engineer	Engineer	

**EXHIBIT P**  
**DESIGN BUILD ENTITY CLAIM CERTIFICATION**

Pursuant to the General Conditions of the Contract Documents, I certify as follows:

1. The Claim to which this certification is attached is made in good faith.
2. Amounts claimed for costs, expenses, and damages incurred by Design Build Entity are accurate and complete. Supporting data for amounts incurred by Design Build Entity is accurate and complete. Any such supporting data, including any such new amounts, submitted after the execution of this certification, will be accurate and complete.
3. To the best of my knowledge and belief, amounts claimed, and supporting data submitted by Design Build Entity on behalf of any Subcontractor or supplier, of any Tiers, or any person or entity under Design Build Entity, are accurate and complete. Design Build Entity will not submit, after the date of execution of this certification, any such supporting data, including any such new amounts that, to the best of my knowledge and belief, are not accurate and complete.
4. The amount requested accurately reflects the adjustment of the Total Contract Amount for which Design Build Entity believes Judicial Council is liable.
5. The time requested accurately reflects the adjustment of the Contact Time to which Design Build Entity believes it is entitled.
6. I am legally authorized to sign and to certify this Claim on behalf of Design Build Entity.
7. I acknowledge and agree, and by this representation Design Build Entity agrees, that this Claim, and any demand for compensation, are governed by the False Claims Act (Gov. Code, § 12650, et seq.) and that if any of the information constitutes a False Claim, Design Build Entity shall be liable to Judicial Council for damages, which include, without limitation, treble damages and attorney's fees.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at: \_\_\_\_\_ (Name of City if within a City, otherwise Name of County), in the State of \_\_\_\_\_, on \_\_\_\_\_.  
(State) (Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of Design Build Entity)

**EXHIBIT Q**  
**SUBCONTRACTOR CLAIM CERTIFICATION**

Pursuant the General Conditions of the Contract Documents, I certify as follows:

1. The portion of the Claim made on behalf of the Subcontractor to which this certification is attached is made in good faith.
2. Amounts claimed for costs, expenses, and damages incurred by the Subcontractor are accurate and complete. Supporting data for amounts incurred by the Subcontractor is accurate and complete. Any such supporting data, including any such new amounts, submitted to Design Build Entity after the execution of this certification, will be accurate and complete.
3. To the best of my knowledge and belief, amounts claimed, and supporting data submitted to Design Build Entity by the Subcontractor on behalf of any Subcontractor or supplier to Subcontractor, of all Tiers, or any person or entity under Subcontractor, are accurate and complete. Subcontractor will not submit, after the date of execution of this certification, any such supporting data, including any new amount that, to the best of my knowledge and belief, is not accurate and complete.
4. The amount requested accurately reflects the amount for which the Subcontractor believes Judicial Council is liable to Design Build Entity.
5. I am legally authorized to sign and to certify this Claim on behalf of the Subcontractor.
6. I acknowledge and agree, and by this representation the Subcontractor agrees, that this Claim, and any demand for compensation, are governed by the False Claims Act (Gov. Code, § 12650, et seq.) and that if any of the information constitutes a False Claim, the Subcontractor shall be liable to Judicial Council for damages, which include, without limitation, treble damages and attorney's fees.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed at: \_\_\_\_\_ (Name of City if within a City, otherwise Name of County), in the State of \_\_\_\_\_, on \_\_\_\_\_.  
(State) (Date)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of Subcontractor)

**EXHIBIT R**  
**FF&E RESPONSIBILITY MATRIX**



**EXHIBIT S**  
**CERTIFICATE OF ACCEPTANCE**

Project Name/Number: \_\_\_\_\_

Design Build Entity: \_\_\_\_\_

Date of Issuance: \_\_\_\_\_

The Construction Work has been reviewed and the date of Final Completion is hereby established as of the date of issuance above.

In accordance with the Contract Documents, Design Build Entity is notified as follows:

1. All Punch List Work is completed.
2. Judicial Council has completed all inspections and approved all Work as complete and in accordance with the Contract Documents, except, **if applicable**, the following Item(s) of Work, which is(are) the subject of a Proposed Change Order or Claim and not yet resolved:

Item(s) of Work	Description

If applicable, the Parties agree that the foregoing list includes Work that the Parties are still processing and resolving, and that to the extent that any Corrective Work is required, including the correction of any claimed Defective Work, Design Build Entity shall perform that work upon satisfactory resolution by the Parties. Neither Party waives any claim or defense with respect to the items identified above, and the intent of issuing this Certificate of Acceptance is to mutually agree to stop the accrual of Liquidated Damages, if applicable, and to expedite the release of retention and final payment.

3. Judicial Council is in receipt of all Closeout Documentation as identified in the Contract Documents.
4. All Commissioning has been completed by Design Build Entity.
5. The Office of the State Fire Marshal has issued a Certificate of Occupancy for the Project.

**THE JUDICIAL COUNCIL OF CALIFORNIA**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Typed or Printed Name/Title)

\_\_\_\_\_  
(Date)

**EXHIBIT T**  
**BONDS**

## PERFORMANCE BOND

(Note: Design Build Entity must use this form, NOT a surety company form.)

### KNOW ALL PERSONS BY THESE PRESENTS:

**WHEREAS** the Judicial Council of California (“Judicial Council”) and \_\_\_\_\_, (“Principal”) have entered into a contract for the furnishing of all design, materials, and labor, services, and transportation, necessary, convenient, and proper to perform the following project:

**[Insert Name of Project]** (“Project” or “Contract”)

which Agreement dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Agreement, are hereby referred to and made a part hereof, and

**WHEREAS**, said Principal is required under the terms of the Agreement and Contract Documents to furnish a bond for the faithful performance of the Agreement.

**NOW, THEREFORE**, the Principal and \_\_\_\_\_ (“Surety”) are held and firmly bound unto the Judicial Council in the penal sum of:

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), lawful money of the United States, for the payment of which sum well and truly to be made we bind ourselves, our heirs, executors, administrators, successors, and assigns jointly and severally, firmly by these presents, to:

- Perform all the work required to complete the Project; and
- Pay to the Judicial Council all damages the Judicial Council incurs as a result of the Principal’s failure to perform all the Work required to complete the Project.

In the event the Principal is declared by the Judicial Council to be in breach or default in the performance of the Agreement, then, after written notice from the Judicial Council to the Surety, as provided for herein, the Surety shall either remedy the default or breach of the Principal or shall take charge of the Work of the Contract Documents and complete the Agreement with a contractor other than the Principal at its own expense; provided, however, that the procedure by which the Surety undertakes to discharge its obligations under this Bond shall be subject to the advance written approval of the Judicial Council.

The condition of the obligation is such that, if the above bounden Principal, or its heirs, executors, administrators, successors, or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, and agreements in the Contract Documents and any alteration thereof made as therein provided, on Principal’s part to be kept and performed at the time and in the intent and meaning, including all contractual guarantees and warranties of materials and workmanship, and shall indemnify and save harmless the State of California, the Judicial Council, and its officers and agents, as therein stipulated, then this obligation shall become null and void, otherwise it shall be and remain in full force and virtue.

As a condition precedent to the satisfactory completion of the Agreement, the above obligation shall hold good for a period equal to the warranty and/or guarantee period of the Contract Documents, during which time Surety’s obligation shall continue if the Principal shall fail to make full, complete, and satisfactory repair, replace, and totally protect the Judicial Council from loss or damage resulting from or caused by defective materials or faulty workmanship. The obligations of Surety hereunder shall continue so long as any obligation of Principal remains. Nothing herein shall limit the Judicial Council’s rights or the Principal’s or Surety’s obligations under the Agreement, Contract Documents, law, or equity, including, but not limited to, California Code of Civil Procedure section 337.15.

The Surety, for value received, hereby stipulates, and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, Contract Documents, or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Agreement, Contract Documents or to the Work.

**Any claim under this bond may be addressed to the Surety at the following address. This cannot be the**

**Principal's broker for this bond, but must be an employee of the Surety or the Surety's legal counsel:**

\_\_\_\_\_

**Attention:** \_\_\_\_\_

**Telephone No.:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

**Fax No.:** (\_\_\_\_) \_\_\_\_ - \_\_\_\_\_

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

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

**Principal**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

**Surety**

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

**Design Build Entity must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

## PAYMENT BOND

(Note: Design Build Entity must use this form, NOT a surety company form.)

### KNOW ALL PERSONS BY THESE PRESENTS:

**WHEREAS**, Judicial Council of California (“Judicial Council”) and \_\_\_\_\_, (“Principal”) have entered into a contract for the furnishing of all materials and labor, services and transportation, necessary, convenient, and proper to perform the following project:

[Insert Project Name] (“Project” or “Contract”)

which Agreement dated \_\_\_\_\_, 20\_\_\_\_, and all of the Contract Documents attached to or forming a part of the Agreement, are hereby referred to and made a part hereof, and

**WHEREAS**, pursuant to law and the Agreement, the Principal is required, before entering upon the performance of the work, to file a good and sufficient bond with the body by which the Agreement is awarded in an amount equal to one hundred percent (100%) of the Total Contract Amount, to secure the claims to which reference is made in the Civil Code of California, including section 9100, and the Labor Code of California, including section 1741.

**NOW, THEREFORE**, the Principal and \_\_\_\_\_, (“Surety”) are held and firmly bound unto all laborers, material men, and other persons referred to in said statutes in the penal sum of:

\_\_\_\_\_ DOLLARS

(\$ \_\_\_\_\_), lawful money of the United States, being a sum not less than the total amount payable by the terms of Agreement, for the payment of which sum well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, or assigns, jointly and severally, by these presents.

The condition of this obligation is that if the Principal or any of its subcontractors, of the heirs, executors, administrators, successors, or assigns of any, all, or either of them shall fail to pay for any labor, materials, provisions, provender, or other supplies, used in, upon, for or about the performance of the work contracted to be done, or for any work or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that the Surety will pay the same in an amount not exceeding the amount herein above set forth, and also in case suit is brought upon this bond, will pay a reasonable attorney’s fee to be awarded and fixed by the Court, and to be taxed as costs and to be included in the judgment therein rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under sections 9000 through 9566 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

Should the condition of this bond be fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and affect.

The Surety, for value received, hereby stipulates, and agrees that no change, extension of time, alteration, or addition to the terms of the Agreement, Contract Documents or to the Work to be performed thereunder shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration, or addition to the Agreement, Contract Documents or to the Work.

IN WITNESS WHEREOF, two (2) identical counterparts of this instrument, each of which shall for all purposes be deemed an original thereof, have been duly executed by the Principal and Surety above named, on the \_\_\_\_\_ Day of \_\_\_\_\_, 20\_\_.

**Principal**

\_\_\_\_\_  
(Name of Principal)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

**Surety**

\_\_\_\_\_  
(Name of Surety)

\_\_\_\_\_  
(Signature of Person with Authority)

\_\_\_\_\_  
(Print Name)

\_\_\_\_\_  
(Name of California Agent of Surety)

\_\_\_\_\_  
(Address of California Agent of Surety)

\_\_\_\_\_  
(Telephone Number of California Agent of Surety)

**Design Build Entity must attach a Notarial Acknowledgment for all Surety's signatures and a Power of Attorney and Certificate of Authority for Surety. The California Department of Insurance must authorize the Surety to be an admitted surety insurer.**

**EXHIBIT U**  
**DVBE FORM**

Firm Name: \_\_\_\_\_  
RFP Project Title: \_\_\_\_\_  
RFP Number: \_\_\_\_\_

This Project has a DVBE participation goal of three percent (3%) ("DVBE Participation Goal"). The Design Build Entity must document its DVBE compliance with the DVBE Project Goal by completing the DVBE Participation Form.

**Complete Parts A & B**

"Contractor's Tier" is referred to several times below; use the following definitions for tier:

- 0 = Prime or Joint Contractor;  
1 = Prime subcontractor/supplier;  
2 = Subcontractor/supplier of level 1 subcontractor/supplier

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**PART A – COMPLIANCE WITH DVBE**

**FIRM**

Company Name: \_\_\_\_\_  
Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
Claimed Value: \_\_\_\_\_ DVBE \$ \_\_\_\_\_  
Percentage of Total Contract Amount: \_\_\_\_\_ DVBE \_\_\_\_\_ %

**SUBCONTRACTORS/SUB-SUBCONTRACTORS/PROPOSERS/SUPPLIERS**

1. Company Name: \_\_\_\_\_  
Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
Claimed Value: \_\_\_\_\_ DVBE \$ \_\_\_\_\_  
Percentage of Total Contract Amount: \_\_\_\_\_ DVBE \_\_\_\_\_ %
2. Company Name: \_\_\_\_\_  
Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
Claimed Value: \_\_\_\_\_ DVBE \$ \_\_\_\_\_  
Percentage of Total Contract Amount: \_\_\_\_\_ DVBE \_\_\_\_\_ %
3. Company Name: \_\_\_\_\_  
Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
Claimed Value: \_\_\_\_\_ DVBE \$ \_\_\_\_\_  
Percentage of Total Contract Amount: \_\_\_\_\_ DVBE \_\_\_\_\_ %
- 
- GRAND TOTAL: \_\_\_\_\_ DVBE \_\_\_\_\_ %

I hereby certify that the Contract Price, as defined herein, is the amount of \$\_\_\_\_\_. I understand that the Contract Price is the total dollar figure against which the DVBE participation requirements will be evaluated.

NAME OF FIRM

\_\_\_\_\_

SIGNATURE OF PERSON SIGNING FOR FIRM

\_\_\_\_\_

NAME (PRINTED) OF PERSON SIGNING FOR FIRM

\_\_\_\_\_

TITLE OF ABOVE-NAMED PERSON

\_\_\_\_\_

DATE

\_\_\_\_\_

## **PART B – CERTIFICATION**

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representations made herein and, to the best of my knowledge and belief, each firm set forth in this bid as a Disabled Veterans Business Enterprise complies with the relevant definition set forth in California Code of Regulations, Title 2, section 1896.61, and Military and Veterans Code, section 999.

**IT IS MANDATORY THAT THE FOLLOWING BE COMPLETED ENTIRELY; FAILURE TO DO SO WILL RESULT IN IMMEDIATE REJECTION.**

NAME OF FIRM

\_\_\_\_\_

SIGNATURE OF PERSON SIGNING FOR FIRM

\_\_\_\_\_

NAME (PRINTED) OF PERSON SIGNING FOR FIRM

\_\_\_\_\_

TITLE OF ABOVE-NAMED PERSON

\_\_\_\_\_

DATE

\_\_\_\_\_

**END OF EXHIBIT**



**EXHIBIT V**

**PREVAILING WAGE AND RELATED LABOR REQUIREMENTS CERTIFICATION**

PROJECT/CONTRACT NO.: [PROJECT NUMBER] between the Superior Court of California, County of \_\_\_\_\_ (the “Court”) and \_\_\_\_\_ (the “Design Build Entity”) (the “Contract” or the “Project”).

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours’ notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project including, without limitation, the requirement that Design Build Entity and all of its Subcontractors are registered pursuant to Labor Code section 1771, et seq.

DATE

PROPER NAME OF CONSTRUCTION  
MANAGER / SUBCONTRACTOR

SIGNATURE

NAME (PRINTED) OF PERSON SIGNING  
FOR FIRM

TITLE OF ABOVE-NAMED PERSON

THIS FORM MUST BE COMPLETED BY THE DESIGN BUILD ENTITY AND ALL  
SUBCONTRACTORS.

**END OF EXHIBIT**

## EXHIBIT W

### **MONTHLY REPORTING FORM FOR SKILLED AND TRAINED WORKFORCE**

**(Government Code section 70398.3 and Public Contract Code sections 2600 et seq.)**

***(For Use on Design Build Projects)***

Contractor/Subcontractor understands that the Work requires compliance with Public Contract Code section 2600 et. seq., as applicable, regarding the use of workers in apprenticeable occupations. Contractor/Subcontractor shall provide workers to the project that are skilled journeypersons and graduates of approved apprenticeship programs in the required percentage as set forth in the Public Contract Code. Contractor/Subcontractor agrees to comply with the requirements in effect during performance of the Subcontract Work on the project with respect to all of Contractor/Subcontractor's workers. Contractor/Subcontractor shall provide a completed report demonstrating its compliance with these requirements on a monthly basis. The report shall be in the form below.

Month/Year: \_\_\_\_\_

In accordance with Public Contract Code section 2600 et seq., all the workers of ***[INSERT NAME OF CONTRACTOR/SUBCONTRACTOR]*** performing work in an apprenticeable occupation in the building and construction trades on the project known as ***[INSERT PROJECT NAME AND LOCATION]*** are either skilled journeypersons or apprentices registered in an apprenticeship program approved by the Chief of the Division of Apprenticeship Standards of the California Department of Industrial Relations (the "Chief"). "Skilled journeyperson" means a worker who either:

- (1) Graduated from an apprenticeship program for the applicable occupation that was approved by the Chief or located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the Federal Secretary of Labor, or
- (2) Has at least as many hours of on-the-job-experience in the applicable occupation as would be required to graduate from an apprenticeship program for the applicable occupation that is approved by the Chief.

In addition, the required percentage of the skilled journeypersons employed by ***[INSERT NAME OF CONTRACTOR/SUBCONTRACTOR]*** to perform work on the project are graduates of an apprenticeship program for the applicable occupation.<sup>1</sup> A graduate of an apprenticeship program means either of the following:

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<sup>1</sup> Skilled journeypersons employed to perform work on the project by Contractor or its subcontractors at every tier must be graduates of an apprenticeship program at certain minimum percentages per Section 2601. 60% for apprenticeable occupations. Except, Minimum Percentage Graduation Requirements are fixed at 30% for the following: acoustical installers; bricklayers; carpenters; cement masons; drywall installers or lathers; marble masons, finishers, or setters; modular furniture or systems installers; operating engineers; pile drivers; plasterers; roofers or water-proofers; stone masons; surveyors; terrazzo workers or finishers; and tile layers, setters, or finishers. Minimum Percentage Graduation Requirements do not apply to teamsters.

- (1) An individual that has been issued a certificate of completion under authority of the California Apprenticeship Council for completing an apprenticeship program approved by the Chief pursuant to Section 3075 of the Labor Code; or
- (2) An individual that has completed an apprenticeship program located outside California and approved for federal purposes pursuant to the apprenticeship regulations adopted by the federal Secretary of Labor.

Attachment A shall be utilized to demonstrate that all workers are either skilled journeypersons or apprentices registered in an apprenticeship program, pursuant to Public Contract Code Section 2601, subdivision (d)(1). Either Attachment B or C must be completed to demonstrate compliance with Skilled and Trained Workforce “graduate” requirements, pursuant to Public Contract Code Section 2601, subdivision (d)(2). Attachments are to be completed for each trade utilized by Contractor/Subcontractor.

Contractor/Subcontractor declares under penalty of perjury the information provided in Attachments A – C is true and correct. Contractor/Subcontractor additionally declares under penalty of perjury that any and all documentary proof supporting the information provided in Attachments A – C is in Contractor/Subcontractor’s possession and will be supplied upon request.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Contractor/Subcontractor: \_\_\_\_\_

Date: \_\_\_\_\_

ATTACHMENT A

*[Insert Month]*

REQUIREMENT OF SKILLED JOURNEYPERSONS OR APPRENTICES

[Identify each **worker** as one of the following]

Name of Employee	Journey person who Graduated from Apprentice Program (Yes/No)	Journey person with Sufficient On-The-Job Experience (Yes/No)	Apprentice Registered in Approved Program (Yes/No)

**Note:** If more space is needed, please include additional information on separate signed sheets.

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and complies with Public Contract Code Section 2601, subdivisions (d)(1) and (e).

Signature:\_\_\_\_\_

Print Name:\_\_\_\_\_

Contractor/Subcontractor:\_\_\_\_\_

Date:\_\_\_\_\_

***[Insert Month]***

## HEADCOUNT OF APPRENTICESHIP GRADUATES

List all Skilled Journeypersons in *[applicable occupation/trade]* Classification[illegible]

**Note: If more space is needed, please include additional information on separate signed sheets.**

$$\frac{\text{Total Number of Apprenticeship Graduates Worked in } \underline{\hspace{2cm}} [\text{applicable occupation}]}{\text{Classification} \div \text{Total Number of Skilled Journeypersons Worked in } \underline{\hspace{2cm}} [\text{applicable occupation}]}$$

= \_\_\_\_\_ %

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and complies with Public Contract Code Sections 2601(d)(2) – (4).

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Contractor/Subcontractor:\_\_\_\_\_

Date:

\*\* See attached plan to achieve substantial compliance per PCC § 2602 if Contractor/Subcontractor falls short of required percentage of participation.

***[Insert Month]***

List all Skilled Journeypersons in *[applicable occupation/trade]* Classification[illegible]

**Note: If more space is needed, please include additional information on separate signed sheets.**

$$\frac{\text{Total Hours of Apprenticeship Graduates Worked in [applicable occupation] Classification}}{\text{Total Hours of Skilled Journeypersons Worked in [applicable occupation] Classification}} = \text{ } \%$$

I declare, under penalty of perjury under the laws of the State of California, that the foregoing is true and correct and complies with Public Contract Code Section 2601, subdivisions (d)(2) – (4).

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Contractor/Subcontractor:\_\_\_\_\_

Date: \_\_\_\_\_

\*\* See attached plan to achieve substantial compliance per PCC § 2602 if Contractor/Subcontractor falls short of required percentage of participation.

**EXHIBIT X**  
**INTERNAL BACKGROUND CHECK POLICY**

**Internal Background Check Policy**

**Facilities Services’ Contractor Clearance Program**

Title:	Background Checks for Contractors Working on the Judicial Council’s Behalf in Restricted Areas
Contact:	Facilities Services office’s Emergency Planning and Security Coordination Unit (EPSCU)
Policy Statement:	Judicial Council staff must adhere to this policy and related procedures to comply with the Federal Bureau of Investigation (FBI) security policy for personnel who have access to criminal justice information and the California Department of Justice (CA DOJ) regulations for the California Law Enforcement Telecommunications System (CLETS). In addition, access to other restricted areas as defined in this policy require adherence to this policy.
Contents:	Who must comply with this policy?.....2 What is the policy? .....2 Definition of Contractor .....2 Definition of Restricted Area.....2 Definition of Emergency Situation .....3 What is the purpose of this policy? .....3 What is the application process? .....4 What are the evaluation criteria?.....5 What is the evaluation process? .....5 Applicants Suitable for Unescorted Access to Restricted Areas.....6 Applicants Not Suitable for Unescorted Access to Restricted Areas.....6 Subsequent Arrests.....6 Requests for Exceptions.....7 What is the badging process? .....7 Badge Issuance .....7 Badge Replacement .....7 Badge Return .....8 Questions and Complaints.....8 Additional Resources .....8 References .....8

## WHO MUST COMPLY WITH THIS POLICY?

This policy applies to:

- Judicial Council (council) divisions, offices, and/or units that contract for non-council employees to work on the council's behalf;
- Council staff who work with those individuals (for example, the project managers); and
- Council staff who work on any contracts or agreements that provide for non-council employees to perform work on the council's behalf.

## WHAT IS THE POLICY?

Council staff must do all of the following:

1. Ensure that each "Contractor" is fingerprinted, evaluated, and badged *before* he or she is allowed unescorted access to a "Restricted Area." A person who has not met these requirements may only enter a Restricted Area during an "Emergency Situation" and:
  - a. must be escorted at ALL times by someone who has met these requirements; or
  - b. must be found suitable for unescorted access to Restricted Areas by the court, in compliance with FBI *Criminal Justice Information Services Security Policy* and CA DOJ regulations for CLETS found in *CLETS Policies, Practices and Procedures*.
2. Adhere to the EPSCU procedure for background check services, which is referenced at the end of this policy under Additional Resources.
3. Ensure that contracts, agreements, and related documents do not contradict or counteract this policy or the related EPSCU procedure.

### Definition of Contractor

For the purposes of this policy and related EPSCU services, any person who either contracts with the council or is employed through a third party who contracts with the council *who provides services* under that contract at a court or the California Court Technology Center (CCTC).

This excludes contractors and agencies who do not receive payment for services from the council. It also excludes employees of entities that are able to do fingerprint-based background checks that are submitted to the CA DOJ. Those entities are responsible for performing their own background checks of their employees. EPSCU only provides background checks to employees of private contractors who cannot do fingerprint-based background checks that are submitted to the CA DOJ (as commercially-available searches will not suffice).

### Definition of Restricted Area

For the purposes of this policy, any area of either the CCTC or a court facility which:

1. contains a means to connect to FBI and CA DOJ criminal databases via CLETS; *or*
2. contains any records or information (transported, processed, or stored in physical or electronic format) that were obtained via CLETS.
3. are areas within the Facility that are not generally accessible to the public, including (i) 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 Facility during non-business hours that are subject to security screening during normal business hours.



The definition of Restricted Area also applies to areas where CLETS information can be discussed, or electronic access to network and computing components where CLETS data is transported or stored in a physical or electronic format.

### **Definition of Emergency Situation**

For the purposes of this policy, any condition arising from a sudden or unexpected occurrence in which prompt services are needed *to avoid or minimize* the impact on the CCTC, court facility, or the council staff's ability to do the following:

- Ensure the safety and security of people occupying and visiting the facility;
- Conduct business in a timely manner in a safe and functional environment;
- Preserve the facility; and
- Protect files, records, and documents located in the facility.

Visitors to the CCTC or the non-public areas of a court facility are not required to undergo a background and fingerprint check. They must, however, be escorted at ALL times.

### **WHAT IS THE PURPOSE OF THIS POLICY?**

The council retains contractors to do work on its behalf or on behalf of courts, and these contractors are often located in the courts. Many if not all courts subscribe to CLETS service from the CA DOJ and have CLETS terminals, records, and information in their facilities, as does the CCTC.<sup>1</sup>

There are strict regulations regarding access to CLETS. Government Code sections 15150–15167 establish the CA DOJ's responsibility for maintenance of the system. The CA DOJ publishes a *CLETS Policies, Practices, and Procedures* document that specifies, among other things, the fingerprint and background check requirements for access to CLETS-provided information. Entities that subscribe to CLETS service from the CA DOJ are responsible for their compliance. Also, FBI security policy addresses personnel who have access to criminal justice information. Screening requirements are outlined in the FBI's *Criminal Justice Information Services Security Policy*.

As a service to the courts and as a precaution, council's staff have implemented a policy of conducting CLETS-level background checks for any of its contractors who would be working in Restricted Areas.<sup>2</sup> The council's Executive Office delegated to EPSCU oversight of background checks for non-council employees working under contract with the council in Restricted Areas. EPSCU worked with the CA DOJ and several council offices to define Restricted Areas, establish a procedure for providing related services, and identify the evaluation criteria that are listed in this policy.

### **WHAT IS THE APPLICATION PROCESS?**

Council staff are responsible for requesting EPSCU's services when needed. As part of the initial set-up process, they will be required to provide EPSCU the following:

- A project code for chargeback of CA DOJ billing costs;
- A designated council contact or Contractor contact; and

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<sup>1</sup> Depending on the type and location of their work, contractors may be subject to additional requirements, which will be specified by the Judicial Council's Agency CLETS Coordinator (ACC) who can be reached at [Nicole.Rosa@jud.ca.gov](mailto:Nicole.Rosa@jud.ca.gov).

<sup>2</sup> The Court retains authority over access to its facility and this policy does not supersede the Court's responsibility, if a CLETS Subscribing Agency, to comply with FBI's *Criminal Justice Information Services Security Policy* and CA DOJ's *CLETS Policies, Practices and Procedures*.

- A designated council authorizer (ideally a manager or supervisor).

EPSCU and the council's Human Resources (HR) office share a single Originating Agency Identifier (ORI) number. HR receives the CA DOJ invoices and uses the project code that council staff provide to do chargebacks for the cost of the Contractor background checks.

EPSCU will send the EPSCU program procedure to the designated council contact and Contractor contact, as applicable. The council contact and Contractor contact are responsible for explaining the restrictions to the "Applicants." They are also responsible for providing EPSCU with the following:

- A background check authorization signed by the Applicant;
- A completed badge form, authorized by the council authorizer; and
- A digital photograph of the Applicant that meets the requirements on the badge form.

EPSCU will send the council contact or Contractor contact an "Applicant Packet" with the appropriate instructions and forms. The forms are prefilled with the council routing and billing information. The council contact or the Contractor contact gives the Applicant the paperwork so he or she can be fingerprinted. The Applicant should fingerprint within two weeks. It usually takes two weeks to three months for the CA DOJ to provide the background check results. Delays sometimes occur due to poor fingerprint quality, criminal information hits, or erroneous information submitted on the fingerprint transaction. EPSCU will provide the council contact and Contractor contact with information about how Applicants can check the status of their submissions with the CA DOJ.

## WHAT ARE THE EVALUATION CRITERIA?

EPSCU will review the results using the following evaluation criteria, which comply with FBI and CA DOJ regulations. Applicants are not suitable for unescorted access to a Restricted Area if an Applicant's background check reveals any of the following:

1. A felony conviction of any kind or felony charge pending court disposition (that includes arrest warrant for a felony charge); or
2. Any misdemeanor conviction *or* charge pending court disposition involving violence, weapons, theft, robbery, burglary, embezzlement, dishonesty, gang activity, drugs (excluding certain misdemeanor marijuana convictions more than two years from the date of such conviction, as specified in California Labor Code section 432.8), or moral turpitude.

Crimes of moral turpitude (that are not already described in the criteria above) include:

- Assaultive crimes involving false imprisonment, discharging a firearm, and shooting at an inhabited dwelling.
- Drug crimes involving maintaining a drug house, possessing heroin for sale, possessing marijuana for sale, selling drugs, and transporting a controlled substance.
- Escape crimes involving escape with or without violence and evading a peace officer.
- Property crimes involving arson, forgery, and receiving stolen property.
- Sex crimes involving indecent exposure, lewd acts on a child, pimping and pandering, and rape.
- Weapon crimes involving possessing or conspiring to possess an illegal firearm and possessing a deadly weapon with intent to assault.
- Other crimes involving bribery, extortion, kidnapping, perjury, and terrorist threat.

The following will be reviewed on an individual basis to determine suitability for unescorted access to a Restricted Area:

1. Misdemeanor convictions greater than 10 years old;

2. Felony or misdemeanor arrests without conviction and/or misdemeanor convictions, within the last 10 years that, when taken in total, establish reasonable doubt about the Contractor's suitability for access; or
3. Outstanding arrest warrants indicating possible fugitive status.

## **WHAT IS THE EVALUATION PROCESS?**

Because the council qualifies as an Applicant Agency under California law, it receives the criminal record results electronically from the CA DOJ. EPSCU follows the CA DOJ instructions to keep the information secure. It cannot share the criminal record result information.

### **Applicants Suitable for Unescorted Access to Restricted Areas**

If an Applicant is suitable for unescorted access per the evaluation criteria, EPSCU will notify the council contact(s) and Contractor contact(s), as applicable. EPSCU will delete the criminal record results.

If not already submitted, the council contact or Contractor contact must provide EPSCU with the Applicant's completed badge form and digital photograph. These will be used for badge purposes only. The digital photograph must meet the requirements on the badge request. If not already submitted, EPSCU must also have the council authorizer's approval for a badge, via a signed badge form or e-mail approval.

EPSCU will forward the Contractor's badge to the council contact or Contractor contact for distribution. The Contractor must wear the badge in a visible location at all times while in a Restricted Area, as visual confirmation that he or she is suitable for unescorted access.

### **Applicants Not Suitable for Unescorted Access to Restricted Areas**

If an Applicant is not suitable per the evaluation criteria, EPSCU will notify the council contact(s) and Contractor contact(s), as applicable, that the Applicant is not suitable for unescorted access to a Restricted Area. EPSCU will mail the relevant criminal record results to the Applicant at the address he or she listed on the Live Scan form, then delete the criminal record results.

If the Applicant believes that the criminal record results contained an error, he or she must contact the CA DOJ's California Justice Information Services Division at 916-227-3849 to obtain information on how to correct the record. Information on this process is also available at the Office of the Attorney General's website at [http://oag.ca.gov/fingerprints/security\\_faq](http://oag.ca.gov/fingerprints/security_faq).

EPSCU must submit a No Longer Interested (NLI) form to the CA DOJ so that it does not receive subsequent arrest notifications or dispositions on Applicants deemed not suitable. For this reason, if the Applicant's record is corrected and the council authorizer wants EPSCU to re-evaluate, the Applicant will have to be refingerprinted.

### **Subsequent Arrests**

After EPSCU receives criminal record results, it automatically gets subsequent arrest notifications and dispositions. EPSCU will continue to get this information until it submits a NLI form to the CA DOJ.

If EPSCU is notified of a Contractor's arrest, it may reevaluate the person's suitability for unescorted access to Restricted Areas. EPSCU reserves the right to change its determination of a person's suitability for unescorted access to Restricted Areas based on a subsequent arrest. If this occurs, EPSCU will notify the council contact(s) and Contractor contact(s), as applicable, and request that the Contractor's badge be returned, that unescorted access to a Restricted Area be discontinued, and that the Contractor's last-known address be provided. EPSCU will mail the relevant criminal record results to the Contractor at that address, delete the criminal record results, and send an NLI.

## **Requests for Exceptions**

Exceptions are rarely considered because the evaluation criteria implement mandatory FBI and CA DOJ regulations. If an Applicant receives notice that he or she is not suitable for access to Restricted Areas, the council contact or Contractor contact may ask the council authorizer to request an exception from EPSCU. The request must be in writing. It must include the Applicant's name and reason for the request. The Applicant will have to be re-fingerprinted. EPSCU will send the council contact or Contractor contact a new Applicant Packet.

Before re-fingerprinting, the Applicant may want to consider options for cleaning up his or her criminal record. One resource is the Online Self-Help Center located on the California Judicial Branch's website at [www.courts.ca.gov](http://www.courts.ca.gov) (specifically, the *Figuring out your options* section under *Cleaning Your Criminal Record*).

Once EPSCU receives the criminal record results electronically from the CA DOJ, the EPSCU supervisor will evaluate the results and notify the council authorizer, council contact(s), and Contractor contact(s) of the decision.

## **WHAT IS THE BADGING PROCESS?**

### **Badge Issuance**

EPSCU issues badges to Applicants suitable for unescorted access to restricted areas. These green badges help identify Contractors who have been deemed suitable by EPSCU for unescorted access to Restricted Areas. The badges do not provide any special privileges to Contractors (for example, bypassing entrance security screening). They do not allow access to secured council facilities.

The badges that allow access to the council buildings are part of a separate EPSCU program. Council building access is only granted to people who will work in the building regularly, and it must be applied for in person. The council contact or designee may escort the Contractor to the EPSCU Badge Room to complete the required form and have a photograph taken.

### **Badge Replacement**

EPSCU replaces lost, stolen, and damaged badges. The council contact or Contractor contact must notify EPSCU when a replacement badge is necessary.

### **Badge Return**

When an approved Applicant is no longer employed by the Contractor company or is reassigned so that he or she no longer needs unescorted access to a Restricted Area, the following must happen. The council contact or Contractor contact must promptly inform EPSCU, collect the Contractor's badge, and return it to EPSCU. EPSCU must fax or mail an NLI form to the CA DOJ so that it does not receive subsequent arrest notifications or subsequent arrest dispositions.

## **QUESTIONS AND COMPLAINTS**

EPSCU communicates directly with the council contact or Contractor contact only. Any questions or complaints should be routed to the council contact or Contractor contact (for example, questions or complaints relating to the retention, day-to-day management, or termination of Contractors).

## **ADDITIONAL RESOURCES**

Council staff may contact EPSCU for current versions of the following documents:

- Memo to contacts summarizing EPSCU program procedure
- Contractor Background Check Authorization
- Contractor Badge Information/Authorization

#### **REFERENCES**

- California Government Code sections 15150–15167
- Federal Bureau of Investigation *Criminal Justice Information Services Security Policy*
- California Department of Justice *CLETS Policies, Practices, and Procedures*
- Office of the Attorney General’s website at [http://oag.ca.gov/fingerprints/security\\_faq](http://oag.ca.gov/fingerprints/security_faq)

**END OF EXHIBIT**

**EXHIBIT Y**  
**INTERVIEW AND NEGOTIATION NOTES**

**[TO BE INSERTED UPON ISSUANCE OF CONTRACT]**

**EXHIBIT Z**  
**CALIFORNIA AIR RESOURCES BOARD**  
**IN-USE OFF-ROAD DIESEL-FUELED FLEETS CERTIFICATION**

Design Build Entity: INSERT DESIGN BUILD ENTITY NAME (“DBE”)

Contract No.: INSERT CONTRACT NUMBER

Subcontractor: INSERT SUBCONTRACTOR NAME AS APPLICABLE

Project: INSERT PROJECT NAME

1. **Instructions:** Check the box below and sign this attachment.

- ☐ I hereby acknowledge and certify that I will conform to the CARB In-Use Off-Road Diesel-Fueled Fleets requirements (Title 13 CCR sections 2449, 2449.1 and 2449.2) for all Work on the Project involving the use of vehicles subject to the regulations, including, without limitation, the Contracting Requirements in Title 13 CCR section 2449, subdivision (i), subparts (1) – (4) and as applicable, the Prime Contractor Requirements in Title 13 CCR section 2449, subdivision (j), subparts (1) – (5).

2. **Instructions:** Check one (1) box below.

- ☐ DBE/Subcontractor’s current CARB issued Certificate of Reported Compliance is provided with this Certification.
- ☐ DBE/Subcontractor certifies that its Work on the Project does not involve the use of vehicles subject to the CARB In-Use Off-Road Diesel-Fueled Fleets requirements.

I, the official named below certify that I am duly authorized to legally bind the Design Build Entity or the Subcontractor to the certifications made in this document. This certification is made under the laws of the State of California.

PROPER NAME OF DBE / SUBCONTRACTOR (Printed)	FEDERAL ID NUMBER
BY (Authorized Signature)	
PRINTED NAME AND TITLE OF PERSON SIGNING	DATE EXECUTED

**END OF EXHIBIT**

**EXHIBIT AA**  
**PERFORMANCE CRITERIA DOCUMENTS**

**[TO BE INSERTED UPON ISSUANCE OF CONTRACT]**

**END OF AGREEMENT**