

Attachment 1  
to  
RFQ/P for CMR Firm

# CMR AGREEMENT FOR PRECONSTRUCTION AND CONSTRUCTION PHASE SERVICES

New Indio Juvenile and Family  
Courthouse  
Superior Court of California,  
County of Riverside

**Revision 1 – August 16, 2016**



JUDICIAL COUNCIL  
OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION

JUDICIAL COUNCIL, FACILITIES SERVICES  
**STANDARD AGREEMENT COVERSHEET**

	AGREEMENT NUMBER <i>[Agreement Number]</i>
	FEDERAL EMPLOYER ID NUMBER <i>[Fed. Employer ID Number]</i>

- Parties.** In this Agreement, the term “Contractor” or “CMR” refers to [CONTRACTOR NAME], and the term “Judicial Council” refers to the Judicial Council of California.
- Term & Contract Time.** The term of the performance of the Services of the Working Drawing Phase begins in *[MONTH] [DAY]*, 2018. This is the “Effective Date” and expires at the Completion of the Project, as indicated herein. The Contract Time for this Project, by phase, is as indicated here. There is one Contract Time for the Working Drawings Phase and one Contract Time for the Construction Phase. Except for the uses of the term “Contract Time” that are clearly attributable to just one Phase, Contract Time is applicable to all Phases.

Phase	Contract Time for Phase
Construction Phase	713 Calendar Days

Any adjustments to these durations may, at the Judicial Council’s discretion, be revised during the Working Drawings Phase; any changes to the Contract Time duration for the Construction Phase may result in an equitable adjustment to the CMR’s Fee and/or General Conditions costs, at the Judicial Council’s discretion, at the time the GMP is finalized.

- Total Contract Amount.** The maximum amount that the Judicial Council may pay CMR under this Agreement is *[\$TOTAL CONTRACT AMOUNT]* (“Total Contract Amount”). This amount is as indicated in Exhibit B herein.
- Purpose:** The purpose of this Agreement is as follows: The CMR for and in consideration of the covenants, conditions, agreements, and stipulations of the Judicial Council hereinafter expressed and as further set forth herein and the Exhibits attached hereto, agrees to furnish to the Judicial Council, as authorized, preconstruction services and construction management-at-risk services for the Total Contract Amount for the construction of the New Indio Juvenile and Family Courthouse in Riverside County, California (the “Project”). This purpose listed above is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.
- Contract Documents.** The Parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement (made up of this coversheet, the following exhibits, and any attachments (the “Contract Documents”)) contains the Parties’ entire understanding related to the subject matter of this Agreement and that the following exhibits are incorporated into the Contract Documents.
  - Exhibit A: **Project Description/Information and Statement/Scope of Work**, which is attached hereto and incorporated herein.
  - Exhibit B: **Price and Payment Detail**, the form of which is attached hereto and incorporated herein.
    - The “Part A” portion of Exhibit B will be completed prior to execution of this Agreement and will include, based upon CMR’s Proposal, CMR’s fee for the Working Drawings Phase; CMR’s fee for the Construction Phase; and CMR’s general conditions costs during the Construction Phase.
    - The “Part B” portion of Exhibit B will be completed by the Parties and attached to this Agreement when the Parties amend this Agreement to authorize the CMR to proceed with the Construction Phase of the Project. The amounts in “Part B” of Exhibit B will be based upon the Initial Pricing information and updated based upon the amount of the Direct Cost of Work.

- Exhibit B-1: **CMR's General Conditions Table**, which is attached hereto and incorporated herein. This table can only be revised upon prior written approval of the Judicial Council.
  - Exhibit C: **Project Cost Responsibility Matrix**, which is attached hereto and incorporated herein.
  - Exhibit D: **Acceptance and Signoff Form** for All Phases Prior to Construction Phase, the form of which is attached hereto and which will be utilized for each Phase.
  - Exhibit E: **Subcontractors to CMR**, the form of which is attached hereto and which must be completed and provided by the CMR to the Judicial Council prior to commencement of the Construction Phase.
  - Exhibit F: **CMR's Key Personnel**, the form of which is attached hereto and which must be completed and provided by the CMR to the Judicial Council prior to execution of this Agreement.
  - Exhibit G: **Sample OCIP Project Safety Guidance Manual/Insurance Manual**.
  - Exhibit H: **General Conditions of the CMR Agreement** for Preconstruction and Construction Phase Services (Document 00 70 00), which are attached hereto and incorporated herein.
  - Exhibit I: **Division 1 Documents**, which will either be attached to this Agreement or incorporated by reference into this Agreement through an amendment to the Agreement no later than when the Parties amend this Agreement to authorize the CMR to proceed with the Construction Phase of the Project. In lieu of attaching this exhibit to the Agreement or incorporating this exhibit by reference into this Agreement through an amendment to the Agreement, the Parties may agree, in writing, to an alternative mechanism to incorporate this document into the Agreement.
  - Exhibit J: **Technical Specifications (Division 2 through Division 49)**, which will be either attached to this Agreement or incorporated by reference into this Agreement through an amendment to the Agreement no later than when the Parties amend this Agreement to authorize the CMR to proceed with the Construction Phase of the Project. In lieu of attaching this exhibit to the Agreement or incorporating this exhibit by reference into this Agreement through an amendment to the Agreement, the Parties may agree, in writing, to an alternative mechanism to incorporate this document into the Agreement.
  - Exhibit K: **Design Documents**, which will either be attached to this Agreement or incorporated by reference into this Agreement through an amendment to the Agreement no later than when the Parties amend this Agreement to authorize the CMR to proceed with the Construction Phase of the Project. In lieu of attaching this exhibit to the Agreement or incorporating this exhibit by reference into this Agreement through an amendment to the Agreement, the Parties may agree, in writing, to an alternative mechanism to incorporate this document into the Agreement.
  - Exhibit L: **DVBE Participation Form**, the form of which is attached hereto and which must be completed and provided by the CMR to the Judicial Council prior to commencement of the Construction Phase.
6. **Authorization.** The Work of this Agreement will be authorized in two (2) phases: The Working Drawings Phase, and the Construction Phase.
- By entering into this Agreement, the Judicial Council authorizes the Working Drawings Phase.
  - The Judicial Council has the sole and unilateral right to authorize the Working Drawings Phase and Construction Phase, and that authorization shall be made in the form of an Amendment to this Agreement, authorizing the appropriate Phase and funding specified herein, which shall be signed by the CMR.
  - CMR is not authorized to begin any work or services marked “NYA” (Not Yet Authorized).
  - Services for a particular Phase of the Work marked as “NIC” (Not in Contract) is for reference purposes only and as

such has not been authorized in the Agreement.

7. **Notices to the Parties.** All notices, requests, demands, and other communications hereunder 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, return receipt requested, postage prepaid, to the following addresses:

**Notice to Judicial Council:**

Judicial Council of California  
Facilities Services  
Attn: Greg Armev, Project Manager  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688

Any and all notices relating to termination or alleged breaches of the Agreement shall also be directed to:

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

**Notice to CMR:**

*[CONTRACTOR NAME]*  
Attn: *[CONTRACTOR'S PROJECT MANAGER, TITLE]*  
*[CONTRACTOR'S ADDRESS]*  
*[CONTRACTOR'S CITY, STATE, ZIP]*

8. CMR shall hold and maintain a valid type B general contractor license from the State of California. CMR shall notify Judicial Council in writing in the event CMR's license expires, is suspended or has a change in signatory authority.
9. **Payment of Liquidated Damages.** The liquidated damages for the CMR's failure to complete Work of the Construction Phase within the Contract Time for the Construction Phase as finally agreed to by the Parties, is **\$5,000** per Calendar Day.
10. **Payment of Prevailing Wages**
- The CMR and all Subcontractors under the CMR shall pay all workers on Work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by Director of the State of California Department of Industrial Relations, are on file at the Judicial Council's principal office. Prevailing wage rates are also available from the Judicial Council or on the internet at (<http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>).
  - CMR shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the Business and Professions Code or by section 10164 or 20103.5 of the

Public Contract Code, provided the contractor is registered to perform public work pursuant to section 1725.5 at the time the contract is awarded.”

- CMR shall, and shall ensure that all “subcontractors” (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. CMR represents to the Judicial Council that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. CMR acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies.
- The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. CMR shall post job site notices, as prescribed by regulation. CMR shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

11. **Project Manager.** The Judicial Council’s Project Manager for this Project shall be Greg Aremy.

12. **DVBE.** This Project has a DVBE participation goal of three percent (3%) (DVBE Participation Goal). The CMR must document its DVBE compliance with the DVBE Project Goal by completing the DVBE Participation Form set forth as Exhibit L.

JUDICIAL COUNCIL’S SIGNATURE	CONTRACTOR’S SIGNATURE	
<p style="text-align: center;"><b>Judicial Council of California</b></p>	<p>CMR’S NAME (if CMR is not an individual person, state whether CMR is a corporation, partnership, etc.)</p> <p style="text-align: center;"><b>[CONTRACTOR/CMR NAME]</b></p>	
	<p>LICENSE NO:</p>	<p>EXP DATE:</p>
<p>BY (Authorized Signature)</p> <p>☒</p>	<p>BY (Authorized Signature)</p> <p>☒</p>	
<p>PRINTED NAME AND TITLE OF PERSON SIGNING</p> <p>[Name and title]</p>	<p>PRINTED NAME AND TITLE OF PERSON SIGNING</p> <p>[Name and title]</p>	
<p>DATE EXECUTED</p>	<p>DATE EXECUTED</p>	
<p>ADDRESS</p> <p>Branch Accounting and Procurement 455 Golden Gate Avenue, 6<sup>th</sup> Floor San Francisco, CA 94102</p>	<p>ADDRESS</p> <p>[Address]</p>	

**Exhibit A  
to CMR Agreement**

**Project Description/Information and Statement/Scope of Work**

CMR shall, as authorized, provide the Services specified herein in connection with the public works Project for the judicial branch facility to be located in Riverside, California, in accordance with the scope of the Project, which is more particularly described herein.

1. General Description of the Project:

1.1. **General Scope of Work:**

- 1.1.1. The Project is the construction of a new building and site development for a trial court facility comprised of approximately 54,967 gross square feet. The two story building which includes but is not limited to all building structure, enclosure, interior improvements, mechanical, electrical, telecommunication, audio visual, and security systems.
- 1.1.2. The site development includes but is not limited to site preparation, underground utilities, landscape, hardscape, vehicular drives, surface parking, security barriers, fencing, and gates. The approximately 4.18 acre site is to be cleared of site improvements and underground utilities shall be relocated by others under the terms of a property agreement between the Judicial Council and the City of Riverside.
- 1.1.3. **FF&E.** Except for the listed equipment and items indicated in the Contract Documents (“CMR-Procured Equipment”) and the FF&E Option if chosen by the Judicial Council, the CMR is **not** responsible to assist in the procurement, purchase, construction or install furniture, fixtures and equipment. The Judicial Council will purchase, construct and install those items through other means with the exception of the CMR-Procured Equipment which will remain the responsibility of the CMR.

In addition, as part of its proposal, each CMR will provide the pricing for the FF&E Option (See Exhibit B, Part A to the CMR Agreement, which is Attachment 1 to the RFQ/P). If the Judicial Council chooses the FF&E Option, the the CMR will perform all services to solicit bids or proposals, procure, construct and install the furniture, fixtures and equipment, that are indicated in the FF&E Option.

Notwithstanding anything to the contract, the CMR will be responsible to coordinate its efforts with the Judicial Council's efforts during the installation, construction, powering and commissioning of **all** furniture, fixtures and equipment, including all items purchased by the Judicial Council, the CMR-Procured Equipment and all items within the FF&E Option, if applicable.

1.2. **Design and Construction Management:**

- 1.2.1. CMR is not the architect of the Project, but as indicated further herein, CMR shall perform specific Services during all Phases of the Project to assist, review, coordinate, opine and cooperate with other members of the “Project Team” which includes the Architect, the Judicial Council’s Construction Manager, the Judicial Council, the CMR, and all other design professional(s) of the Project.
  - 1.2.2. The Project is currently in the 98% Construction Documents stage of design.
  - 1.2.3. The Project will be designed to be certified “Silver” by the [U.S. Green Building Council](#) (USGBC), who oversees in the Leadership in Energy and Environmental Design (LEED) Program.
- 1.3. **Commissioning.** Although CMR will not provide commissioning services on the Project, CMR shall perform specific Services during all Phases of the Project to assist, review, coordinate, opine and cooperate with the Judicial Council, the Judicial Council’s commissioning authority, other providers of commissioning services for the Judicial Council, the Architect and all other design professional(s) of the Project.

2. **Project Goals.** The following goals are for the overall design, construction and commissioning of the new courthouse that is the subject of the Project. CMR's scope of Services is intended to further these goals, whether or not the CMR is primarily responsible for achieving all of these goals.

This Project will be consistent with the California Trial Court Facilities Standards, as adopted by the Judicial Council and in effect as of the Effective Date. The California Trial Court Facilities Standards is available at [www.courts.ca.gov](http://www.courts.ca.gov). The purpose of the standards is to produce high performing public buildings with a positive architectural legacy that reflects the Judicial Council's commitment to providing equal access to justice. These goals have been developed early in the Project process and will be reevaluated throughout the design and construction phases and at the completion of the Project to determine whether the Project goals were achieved. The specific goals for this Project, as determined by the Judicial Council, are:

- 2.1. **Design** – *The Courthouse will function equally well as a setting for the delivery of justice, as a public services center, and as a community landmark.*
- 2.2. **Schedule and Cost** – *The Project design and construction will be completed within the approved schedule and within the authorized funds. Where possible, project tasks should be concurrent.*
- 2.3. **Courthouse Life Span** – *This facility should function effectively for several generations. The design shall support a logical and cost effective approach to incremental construction without undue disruption of court operations. The design shall accommodate change over time in court operations. Seismic design shall incorporate innovative and cost effective measures to ensure building stability and longevity.*
- 2.4. **Design Quality Assurance** – *Periodic peer review shall be sought throughout the phases of the Project for enhanced quality assurance.*
- 2.5. **Sustainable Design/LEED “Silver” Certification** - *The Project shall be designed for sustainability and to the standards of the United State Green Building Council's (USGBC) LEED™ “Silver” rating. The project will receive certification by the USGBC as well as participate in the incentives/rewards program sponsored by the local utility company.*
- 2.6. **Accessibility** – *Design of building shall reflect Judicial Council's mission to provide “access to justice” for all, including equal access and fairness with the highest quality of justice and service to the public. The building shall incorporate universal design concepts, to make the facility accessible to all users without treating persons with disabilities differently.*
- 2.7. **Security** – *The design will provide for efficient and safe court operations in a cost effective manner. Security measures for the building and site shall meet the requirements of the Judicial Council and County's Sheriff.*
- 2.8. **Durability, Quality and Efficiency** – *Materials and systems for the building and site should be chosen with regard to the amount of traffic, use and visibility of each space or area. Materials should be durable, operationally and energy efficient, easily cleaned/maintained, and environmentally friendly.*
- 2.9. **Commissioning** – *The Judicial Council shall implement a total building commissioning program to ensure that the building systems perform interactively in accord with the design intent.*

### 3. **Project Funding**

#### 3.1. **Funding**

- 3.1.1. Funding for the Working Drawings Phase is anticipated to be within the 2014 to 2015 State Budget Act. (NIC)
- 3.1.2. Funding for the Construction Phase is included in the 2018/2019 State Budget Act.

### 4. **Preliminary Project Schedule**

- 4.1. Working Drawings Phase

4.1.1. Estimated completion date of value engineering Construction Documents: August 27, 2018

4.1.2. Estimated bidding period: September 2018 through November 2018

4.1.3. Estimated Award of Trade Contracts: November 2018

4.2. Construction Phase

4.2.1. Estimated start date of Construction: December 2018

4.2.2. Estimated completion date of Construction: November 2020

4.3. **Master Project Schedule.** The CMR's Master Project Schedule shall not provide a schedule that has a later Completion date for the Construction Phase than indicated herein, unless approved in writing by the Judicial Council.

5. **Scope of Work**

5.1. **General**

CMR agrees to provide or perform, the Services and tasks set forth herein and in the Contract Documents and any other Services that are necessary, normal, customary, or incidental to the performance of CMR's responsibilities for the Project and under any Phase. CMR shall:

- 5.1.1. Provide sufficient number(s) of specialists and other workers with requisite skills and experience as appropriate for the successful Completion of the Project.
- 5.1.2. Perform the Services in collaboration with the Judicial Council, the Court, the Judicial Council's selected Architect(s), Construction Manager(s) and/or Engineer(s), the Project Manager and other third parties as identified by the Judicial Council.
- 5.1.3. Prepare, organize, and distribute monthly progress reports in a timely manner in a format acceptable to the Judicial Council.
- 5.1.4. Become familiar with the Judicial Program Information and Controls system ("JPIC") which is the project management process utilized by the Judicial Council to review its projects, for all phases of a project (pre-design through construction Completion) for compliance with budgets and schedules. CMR will be required to ensure that its documents be compatible to download into the JPIC system. The Construction Manager and Project Manager will assist the CMR and coordinate with the CMR in this effort.
- 5.1.5. Conduct Project Status Meetings with the Judicial Council, Court representatives, the Project Team, other third party professionals and consultants working with the Judicial Council, and/or State or local agencies as needed and directed by the nature of the work or as directed by the Judicial Council during the course of the Work. The frequency and location of the Project status meetings will be as agreed with the Judicial Council, however, Project Status Meetings shall be held not less than on a monthly basis. The location of the meetings will typically be in the locale of the Project or at the Judicial Council's Bay Area Northern California Regional Offices unless otherwise agreed.
- 5.1.6. In addition to the Temporary Facility requirements found in Division 1 of the Contract Documents, the CMR shall provide, as part of the General Conditions costs, parking spaces and field offices on the Project Site (or at another nearby location which is acceptable to the Judicial Council at no additional cost to the Judicial Council beyond the amount set forth in Exhibit B for the General Conditions costs for Temporary Facilities) for the duration of the Project for use by Project Team including, without limitation, Judicial Council representatives, the Architect, the Construction Manager, the Construction Supervisor/Inspector, and administrative clerks and assistants. The field offices shall be insulated, heated, air conditioned, and shall include potable water, restrooms, chairs, desks, phones, data outlets, copier, fax line, laser printer, waste baskets file cabinets, and all utilities including electricity and an enhanced wi-fi connection to the internet.



- 5.1.7. Review and analyze drawings and documents prepared by Judicial Council consultants, and make recommendations to the Judicial Council regarding design errors and omissions, and constructability, of those documents.
- 5.1.8. Review the geotechnical investigation and report on the selected site as directed by the Judicial Council.
- 5.1.9. Provide all Deliverables and Project correspondence in Adobe Acrobat.pdf format, Microsoft Word.doc format, and AutoCAD.dwg format, as indicated in the Contract Documents, or as agreed upon with the Judicial Council, throughout the term of this Agreement.
- 5.1.10. Provide estimated construction cost breakdowns of the Project at times indicated intervals consistent with the stage of development of the Architect's drawings and specifications. The CMR shall also consult with the Construction Manager and Architect as directed by the Judicial Council.
- 5.1.11. Attend milestone review meetings with the Judicial Council and Project team immediately before commencing each Project phase. At the milestone review meetings, assist the Judicial Council in identifying goals for the upcoming work, examine the performance of the Project team against the goals in the preceding phase, and propose corrective measures as necessary or appropriate.
- 5.1.12. Conduct value analysis, constructability reviews and review workshops, in coordination with the Project Team, which shall include but shall not be limited to appropriate facilities, documentation of the findings and action items from each. CMR shall maintain a database of actions taken or resolution of each finding or action item.
- 5.1.13. Consult with the Judicial Council if the CMR becomes aware of deficiencies, errors or omissions in the Contract Documents for the Project developed by the Architect or the Judicial Council regardless of whether the deficiency became apparent before or after final approval of the Contract Documents by the Judicial Council, Architect, and the CMR at the end of the Working Drawings Phase and suggest satisfactory methods for correction of such deficiencies.
- 5.1.14. Assist the Architect and the Judicial Council in providing Contract Documents that, at a minimum, reflect compliance with Judicial Council standards and the Project parameters. Assist the Judicial Council by advising of any perceived non-conformance to applicable statutes, building codes, regulations, rules, guidelines, and requirements.
- 5.1.15. Monitor construction-related approvals, including, but not limited to, written approvals by the State Fire Marshal, the Corrections Standards Authority ("CSA") and the Division of the State Architect ("DSA") Access Compliance Unit. (NIC)
- 5.1.16. Provide all necessary materials, facilities, and ancillary services (such as cleanup) necessary for provision of the Services not being provided by the Subcontractor(s) when necessary for the performance of the Services during construction and for Completion of the construction.
- 5.1.17. Provide a written description of CMR's quality assurance program ("QA Program") commencing with the Working Drawings Phase. The QA Program shall be designed to advance the goal of achieving a quality Project, within schedule and budget, in compliance with the terms of the Contract Documents. Provide a written description of CMR's quality control program ("QC Program") for the Construction Phase. CMR shall submit the QA and QC Programs to the Judicial Council within twenty (20) days of commencement of each phase. The Judicial Council shall have the right to review the QA and QC Program, and use of the QA and QC Program are subject to the Judicial Council's written approval. At a minimum the following shall apply:
  - 5.1.17.1. The QC Program shall cover all activities affecting quality performed by CMR and CMR's Subcontractors.
  - 5.1.17.2. The CMR shall provide the Judicial Council access to its records documenting implementation of the Programs ("QA Records and QC Records"). CMR shall retain and maintain identifiable, legible, and retrievable QA and QC Records for the duration of the Project. CMR shall submit

QA and QC records to the Judicial Council upon the Completion of each phase of the work.

5.1.17.3. As part of its QA Program, and at a minimum the CMR shall ensure that all drawings and specifications shall be reviewed and checked by at least one individual knowledgeable in the same discipline as the professional who prepared the drawings and specifications, with the goals of:

5.1.17.3.1. Advising Judicial Council of the completeness of the drawings and specifications;

5.1.17.3.2. Assuring a high level of construction quality; and

5.1.17.3.3. Avoiding Change Orders which are caused by conflicts, ambiguities, inaccuracies, and deficiencies in the construction drawings and specifications.

5.1.17.4. The QA Program will identify the specific methodology that will be used to cross-check drawings of the various disciplines for completeness and accuracy at each submittal stage.

5.1.18. **LEED.** The Project is being designed for sustainability and to the standards of LEED Silver rating including full participation in the formal LEED certification process from the Working Drawings Phase through the Construction Phase. CMR shall provide all required documentation to the Project Architect for LEED certification.

5.1.19. **Peer Review.** Judicial Council may conduct peer reviews of the Design Documents during all design Phases of the Project. In the event that the Judicial Council conducts such peer reviews, CMR shall assist, review, coordinate, opine and cooperate with the Judicial Council, the Judicial Council's peer reviewers, the Construction Manager, the Project Manager, the Architect and all other design professional(s) of the Project with respect to responding to any comments, concerns or other issues raised in such peer reviews.

5.1.20. **Plan Review.** Judicial Council may conduct plan reviews of the Design Documents to verify compliance with minimum code requirements during all design Phases of the Project. In the event that the Judicial Council conducts such plan reviews, CMR shall assist, review coordinate, opine and cooperate with the Judicial Council, the Judicial Council's plan reviewers verifying compliance with minimum applicable codes, other providers of plan reviewers, the Architect and all other design professional(s) of the Project with respect to responding to any comments, concerns or other issues raised in such plan reviews.

5.1.21. **Commissioning.** CMR shall perform specific Services during all Phases of the Project to assist, review, coordinate, opine and cooperate with the Judicial Council's commissioning authority, other providers of commissioning services for the Judicial Council, the Construction Manager, the Project Manager, the Architect and all other design professional(s) of the Project.

## 5.2. Working Drawings Phase.

5.2.1. The Judicial Council authorizes the Working Drawings Phase. CMR shall work in coordination with the Judicial Council, the Project Architect or Engineer, the Construction Manager, and other third parties (as necessary and authorized by the Judicial Council), to provide the following:

5.2.1.1. **Value Analysis (NIC):** Conduct value analysis workshops at 50% and 90% Working Drawings stages to confirm that all project and construction costs have been identified. Lead the activities of Judicial Council, Architect, Construction Manager, the Project Manager, and other project participants in the value analysis and verify the cost-effectiveness of the design and the conformance of the design or construction documents budget amounts Judicial Council provides to the CMR, and quality standards set by the Judicial Council.

5.2.1.2. **Life Cycle Cost Analysis (NIC):** CMR shall perform/update a Life Cycle Cost Analysis on design alternatives for building enclosure, HVAC, and Electrical (normal and low-voltage) systems at 50% Working Drawings stage. Life Cycle Cost Analysis shall include, but is not limited to:

5.2.1.2.1. Initial cost of system;

- 5.2.1.2.2. Energy consumption costs, based on the energy analysis prepared by the Architect;
  - 5.2.1.2.3. Maintenance and custodial costs;
  - 5.2.1.2.4. Life expectancy (may require life expectancy of subsystems);
  - 5.2.1.2.5. Replacement costs (if applicable); and
  - 5.2.1.2.6. Total cost of ownership over twenty-five (25) years.
- 5.2.1.3. **Constructability Reviews (NIC):** CMR shall perform, without limitation, a review of all plans for fire and life safety, structural, mechanical, electrical, plumbing, telecommunications, data and security. In addition to this review, the CMR shall make recommendations regarding any items the CMR finds during that review including, without limitation and only by way of example, the location of fire and life safety devices, The CMR shall reconcile and coordinate those recommendations and other issues with the Project Team. After reviewing all design documents for completeness and constructability, the CMR shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, and phasing, to ensure efficient construction to the Project Team. Constructability reviews shall be conducted on 50% and 90% Working Drawings documents. These reviews shall be conducted with the Project Team and shall reconcile all recommendations.
- 5.2.1.4. **Cost Control Management (NIC):** CMR shall prepare, based upon Design Documents prepared by the Architect or Engineer and identified by the Judicial Council, its own cost estimate of the total construction cost of the Project at several times, as required in the Contract Documents. CMR shall compare their cost estimate with the cost estimate independently prepared by the Architect or Engineer for these same design documents and endeavor to resolve discrepancies in the estimates to the satisfaction of the Judicial Council, and with the goal that both cost estimates are less than or equal to the budget amounts Judicial Council provides to the CMR. CMR shall recommend, if necessary, appropriate modifications of the Design Documents to lower both the CMR's and the Architect or Engineer's independent estimates to amounts equal to or lower than the budget amounts Judicial Council provides to the CMR. CMR's cost estimates shall be provided according to Unifomat standards and as specified below, and arranged in Unifomat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:
- 5.2.1.4.1. **Working Drawings**
    - 5.2.1.4.1.1. 50% milestone; Unifomat format elemental categories and detailed to Level 4; and
    - 5.2.1.4.1.2. 90% milestone; Uniformed format elemental categories and detailed to Level 4 and additionally in CSI format.
    - 5.2.1.4.1.3. 100% milestone; Uniformed format elemental categories and detailed to Level 4 and additionally in CSI format.
  - 5.2.1.4.2. Each cost estimate shall:
    - 5.2.1.4.2.1. Reflect the best professional estimate of actual costs anticipated.
    - 5.2.1.4.2.2. Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phases gradually diminishing to zero at the completion of final cost estimate.
    - 5.2.1.4.2.3. Adjust reported cost values to contract Engineering News-Record City Construction Cost Index (ENR CCCI) value. Do not advance costs to

the estimated start of construction, mid-point of construction or to present day values unless otherwise directed by the Judicial Council. Questions regarding the calculation of ENR CCCI values shall be reviewed with the Project Manager.

- 5.2.1.5. If directed by the Judicial Council, assist the Architect, the Construction Manager and the Judicial Council in developing Supplemental Conditions that address unique Project conditions.
- 5.2.2. CMR shall provide the Master Schedule for Construction of the Project, which must, unless modified by a written amendment to this Agreement, and regardless of weather conditions, be completed on or before the date indicated in the Agreement. The Master Schedule for Construction of the Project, shall be submitted with the Guaranteed Maximum Price.
- 5.2.3. **SWPPP:** CMR shall review the Judicial Council’s Storm Water Pollution Prevention Plan (“SWPPP”) and shall ensure that it can perform all of the duties and responsibilities of the Qualified SWPPP Practitioner (“QSP”). CMR shall perform all duties and responsibilities of the QSP for the Project, including without limitation, inspection and documentation of the Best Management Practices for the approved SWPPP.
- 5.2.4. **Approvals (NIC):** CMR shall monitor all regulatory approvals required during the Working Drawings Phase.
- 5.2.5. Authorization to proceed with each succeeding step in the design process is contingent upon the Judicial Council’s written Acceptance of both the Architect or Engineer’s and CMR’s independent cost estimates, which when evaluated separately, must both be equal to or less than the budget amounts Judicial Council provides to the CMR. **(NIC)**
- 5.2.6. Upon successful completion of all activities and the successful provision of all deliverables of the Working Drawings Phase specified above, the Judicial Council, the Project Team, and the CMR shall, in a written and signed document, designate the names, versions, and revision numbers of the final Contract Documents and Master Schedule for the Construction Phase of the Project. **(NIC)**
- 5.2.7. Upon the Judicial Council’s written approval of the final Design Documents, the Design Documents are incorporated into and become an integral part of the Contract Documents, and upon approval of the Master Schedule applicable to the Construction Phase, the CMR is authorized to begin the activities of the preparation of subcontractor bid packages.
- 5.2.8. **Subcontractor Bidding.**
  - 5.2.8.1. CMR shall provide to the Judicial Council a written plan for the division of the construction activities of the Construction Phase work into bid packages.
  - 5.2.8.2. Each bid package shall include a copy of all of the Contract Documents.
  - 5.2.8.3. CMR may include, in the bid packages, legal terms and conditions standard to the CMR for the type and duration of the Subcontractor engagements contemplated by this Agreement, however, such terms and conditions shall not be such that they shall be considered onerous and likely to result in higher bid prices.
  - 5.2.8.4. Bid packages shall be logical, inclusive and distinct.
  - 5.2.8.5. Bid packages shall include information concerning the Judicial Council’s OCIP and the CMR’s Project site safety program.
  - 5.2.8.6. Notwithstanding Judicial Council’s review of the bid packages, CMR warrants the bid packages developed shall conform to the provisions of the Agreement. Any omissions, errors, or ambiguities in the bid packages shall be construed against the CMR and in favor of the Judicial Council.
  - 5.2.8.7. Each bid package shall include a statement of work specifying all work to be performed by that subcontractor for the portion of the work as shown in the Contract Documents to be solicited, and

shall include a schedule or due dates that requires the performance of the work within the timeframe established for such time in the Master Project Schedule for the Construction Phase of the Project. Bid packages shall only solicit fixed price bids or Time and Materials bids with a fixed not-to-exceed amount.

- 5.2.8.8. Bid packages shall be sufficiently comprehensive to secure competitive bids for provision of all of the Construction Phase work of the Project, as documented in the approved Contract Documents.
- 5.2.8.9. Individual packages shall, if the Judicial Council so directs, include a number of additive or deductive alternates acceptable to the Judicial Council. If the bid packages developed include alternates that require the selection and use of particular other alternate(s) in order to ensure the constructability of the Project, the CMR shall identify them, in writing, to the Judicial Council.
  - 5.2.8.9.1. If appropriate, the Master Project Schedule will be provided in trade contractor bid packages. The trade contractor bid packages shall include sufficient information regarding the timing of work being bid to ensure that the Project can be constructed within the approved Master Project Schedule for the Construction Phase of the Work, and shall provide terms and conditions that will inform prospective Subcontractors that they will be bound to performance within the established Master Project Schedule.
- 5.2.8.10. All bid packages shall be provided to the Judicial Council as a single deliverable, and are subject to review by the Judicial Council.
- 5.2.8.11. Upon the Judicial Council's written review of the division of the construction activities into Subcontractor Bid Packages, the CMR is authorized to begin solicitations for Subcontractor bidding. Notwithstanding this review of the Subcontractor Bid Packages, it shall remain the CMR's obligation to ensure all scopes of Work for the Project are accounted for in the Subcontractor Bid Packages.
- 5.2.8.12. CMR shall competitively bid the subcontractor bid packages as required herein and in the other Contract Documents, including without limitation:
  - 5.2.8.12.1. **Subcontractor Bids.** CMR shall advertise in trade venues acceptable to the Judicial Council and solicit qualifications from a sufficient number of subcontractors for each bid package to ensure at least three (3) qualified subcontractors result from this solicitation. CMR shall prequalify at least three (3) qualified subcontractors for each bid package, and present such evidence of prequalification to the Judicial Council.
  - 5.2.8.12.2. When the Judicial Council has agreed in writing that at least three (3) Qualified Subcontractors for a bid package have been selected, CMR shall issue those bid packages to the identified Subcontractors.
  - 5.2.8.12.3. CMR shall receive Subcontractor bids for bid packages and shall verify:
    - 5.2.8.12.3.1. Completeness;
    - 5.2.8.12.3.2. That each Subcontractor has agreed to be bound by Contract Documents; and
    - 5.2.8.12.3.3. That each Subcontractor has agreed to perform within a period of time that will ensure completion of the Project in accordance with the Master Project Schedule.
  - 5.2.8.12.4. Provided that each Subcontractor bid complies with all of the above, the Subcontractor bid shall be considered a conforming bid unless otherwise directed in writing by the Judicial Council. If insufficient conforming Subcontractor bids are received, CMR shall repeat the above solicitation process until CMR receives at least three (3) conforming Subcontractor bids.

- 5.2.8.12.5. When sufficient conforming Subcontractor bids have been received, the CMR, under the observation of the Judicial Council and the Architect, shall identify that combination of bids and alternates as the Judicial Council may elect to accept that has the lowest cost while ensuring the timely construction of the Project and compliance with the DVBE Project Goal set forth in Section 12 of the Agreement.

### 5.2.9. Calculation of GMP.

- 5.2.9.1. Based on the GMP that the CMR provides to the Judicial Council, the Judicial Council shall have the option to take the following action:
  - 5.2.9.1.1. Proceed with the Construction Phase of the Project;
  - 5.2.9.1.2. Terminate this Agreement;
  - 5.2.9.1.3. Provide additional funds as required to authorize the Project; or
  - 5.2.9.1.4. At the Judicial Council's option and as a negotiated service, have the Architect or Engineer and CMR repeat the appropriate and necessary activities of the Working Drawings Phase, with the goal of modifying the Design Documents or period of proposed construction to reduce the total cost of the resultant combination of bids and alternate. CMR shall endeavor to mitigate any time lost due to re-bids or due to the time needed for the Judicial Council to obtain any additional funding when revising the Master Schedule for the Construction Phase of the Project. Until GMP acceptable to the Judicial Council is reached, this re-bidding process may be repeated a second time at the discretion of the Judicial Council, and the Judicial Council shall have the same options specified above.
  - 5.2.9.1.5. If the second re-bid fails to produce a total construction cost less than or equal to an amount acceptable to the Judicial Council, this Agreement may be terminated by the Judicial Council.
- 5.2.10. In the event of termination, CMR shall be paid in full for all Services provided through the end of the Working Drawings Phase, and neither Party shall have any further claims or liability for damages to the other with regard to the Services provided, on this Agreement.
- 5.2.11. CMR shall, upon authorization of the Construction Phase by the Judicial Council, provide the Construction Services. CMR shall warrant the Subcontractor bid packages against ambiguities, conflicts, or omissions.

### 5.3. Construction Phase.

- 5.3.1. Upon Judicial Council's authorization of the Construction Phase of this Agreement, CMR agrees to execute an Amendment to this Agreement with all of its exhibits and attachments completed in accordance with the approved Contract Documents and the Master Schedule.
- 5.3.2. CMR shall provide the Construction Services and shall be responsible for the construction of the Project pursuant to the Contract Documents.
- 5.3.3. CMR shall be paid not more than the GMP price for the Work. Payments will be made in accordance with the Contract Documents.
- 5.3.4. CMR shall enter into contracts with the Subcontractors responsible for the bid / alternates selection that resulted in the GMP price to perform the Construction work.
- 5.3.5. The CMR shall conduct a preconstruction conference with the Subcontractors, Architect, Project construction and safety inspector(s), Construction Manager, Project Manager and other appropriate persons. At this meeting the CMR shall prepare necessary documents or schedule appropriate persons to explain the specific Project requirements, as follows:
  - 5.3.5.1. The meeting agenda,
  - 5.3.5.2. A list of construction procedures for clarifications, Change Orders, shop drawings, progress payments, field testing and inspection,

- 5.3.5.3. The construction quality management program,
- 5.3.5.4. The safety program, and
- 5.3.5.5 The pre-construction conference notes.
- 5.3.6. Except for the CMR-Procured Equipment, the Judicial Council will purchase, construct and install furniture, fixtures and equipment through other means, but the Judicial Council requires the CMR to coordinate its efforts with the Judicial Council's efforts during the installation, construction, powering and commissioning of all furniture, fixtures and equipment, including the CMR-Procured Equipment.
- 5.3.7. The CMR will conduct bids for procurement of CMR-Procured Equipment. Those procurements will be conducted economically and expeditiously, under fair competition, and in accordance with best procurement practice. The process requires the solicitation of bids, quotes, or proposals (collectively, offers) from providers, the evaluation of responses against predetermined criteria and the award to the potential vendor that best satisfies the stated criteria. All procurements and awards of CMR-Procured Equipment are subject to Judicial Council approval. Notwithstanding Judicial Council's review of the bid packages, CMR warrants the bid packages developed shall conform to the provisions of the Contract Documents. Any omissions, errors, or ambiguities in the bid packages of CMR-Procured Equipment shall be construed against the CMR and in favor of the Judicial Council.
- 5.3.8. **SWPPP:** CMR shall be the Qualified SWPPP Practitioner ("QSP") and shall perform all duties and responsibilities of the QSP for the Project, including without limitation, inspection and documentation of the Best Management Practices for the approved SWPPP.
- 5.3.9. **Monthly Master Project Schedule Update:** CMR shall submit to the Judicial Council each month an updated cost-loaded Master Project Schedule. The CMR will be paid each month based upon its updated and approved cost-loaded Master Project Schedule. The updated cost-loaded Master Project Schedule shall be prepared by the CMR per the General Conditions and Division 1 Scheduling Specification.

## 6. Insurance.

6.1 **Working Drawings Phase.** During the Working Drawings Phase, CMR shall comply with the following insurance requirements:

- 6.1.1 **Insurance Required.** Without limiting the CMR's indemnification obligation and in addition thereto, CMR shall secure and maintain in force throughout the Working Drawings Phase the following types of insurance with limits as shown. By requiring such minimum insurance, the Judicial Council shall not be deemed or construed to have assessed the risks that may be applicable to the CMR under this Agreement. CMR shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each policy shall be written on an "occurrence" form.
  - 6.1.1.1 **Workers' Compensation Insurance:** At statutory minimums, including employers' liability coverage with limits not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease policy limit for each employee.
  - 6.1.1.2 **Commercial General Liability Insurance:** Covering liability arising from premises, operations, independent contractors, products and completed operations, personal injury and advertising injury, and liability assumed under contract. The policy shall provide limits of not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate. The insurance must apply separately to each insured against whom a claim is made or lawsuit is brought, subject only to the insurance policy's limit of liability.

6.1.1.3 Commercial or Business Automobile Liability Insurance: Covering liability arising out of a motor vehicle, including owned, non-owned, leased, and hired vehicles assigned to or used in connection with the Project. The policy shall provide combined single limits of not less than \$1,000,000 per accident or loss.

6.1.2 **General Requirements.**

6.1.2.1 CMR will maintain, or cause to be maintained, insurance issued by an insurance company or companies that are rated “**A-VII**” or higher by A. M. Best’s key rating guide, and are authorized to do business in the State of California.

6.1.2.2 For all insurance policies required during the Working Drawings Phase, CMR will declare any deductible or self-insured retention (SIR). CMR will be responsible for reimbursement of any deductible to its insurer. CMR will administer any self-insurance program in a commercially reasonable manner that ensures sufficient funds are available to cover all losses CMR must insure against under the terms of this section.

6.1.2.3 Before commencement of any services under the Working Drawings Phase, CMR will provide the Judicial Council with certificates of insurance, on forms acceptable to the Judicial Council, as evidence that all required insurance is in full force and effect. The dollar amount of any SIR or deductible will be specified on the applicable certificate of insurance. The certificates of insurance will be accompanied by the following endorsements:

6.1.2.3.1 For the Commercial General Liability Insurance and Commercial or Business Automobile Liability Insurance policies, an endorsement evidencing that the State of California; the Judicial Council of California; and the Superior Court of California, County of Riverside, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, have been added as additional insureds on the insurance policy being referenced; and

6.1.2.3.2 For all insurance an endorsement that the insurance will not be materially changed or cancelled without thirty (30) days’ notice to the Judicial Council; and

6.1.2.3.3 For the Commercial General Liability Insurance and Commercial or Business Automobile Liability Insurance policies, an endorsement evidencing that the insurance is primary and non-contributing with any insurance, self-insurance, or other risk management program maintained by the State of California; the Judicial Council of California; and the Superior Court of California, County of Riverside, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any.

6.1.2.4 If any of the required insurance policies expire or lapse during the Working Drawings Phase, CMR will immediately renew or replace the required insurance and provide a new certificate of insurance to the Judicial Council. CMR will ensure that any renewal insurance certificates are tendered to the Judicial Council at least ten (10) days after the expiration of the expiring insurance policy.

6.1.2.5 CMR waives any right of recovery or subrogation it may have against any of the State of California; the Judicial Council of California; or the Superior Court of California, County of Riverside, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents for loss or damage for any loss arising out of the services performed by CMR during the Working Drawings Phase, and the CMR will require any insurer providing insurance required under this section to



do the same.

- 6.1.2.6 CMR is responsible for and may not recover from the State of California; the Judicial Council of California; or the Superior Court of California, County of Riverside, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, any deductible or self-insured retention that is connected to the insurance required under this section.
- 6.1.2.7 If CMR fails to keep in effect at all times the specified insurance coverage, the Judicial Council may, in addition to any other remedies it may have, declare the Agreement to be in breach and withhold all progress payments and retentions until the breach is cured, or terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- 6.1.2.8 If at any time the specified insurance policies become unsatisfactory to the Judicial Council, the CMR shall, upon notice to that effect from the Judicial Council, promptly obtain a new policy, and shall submit the same to the Judicial Council, with the appropriate certificates and endorsements, for approval.
- 6.1.2.9 The Judicial Council reserves the right to request certified copies of any of the insurance policies required under this section.
- 6.1.2.10 The Certificates of Insurance required under this section and any advance written notice of any change or cancellation shall be mailed to the individuals at the following addresses:

Judicial Council of California  
Facilities Services  
Attn: Greg Arney, Project Manager  
2860 Gateway Oaks Drive, Suite 400  
Sacramento, CA 95833-3509

with a copy to the Manager, Contracts:

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

- 6.1.2.11 Joint Ventures. If CMR is an association, partnership, or other joint business venture, the insurance required in this section shall be provided by any one of the following methods, any of which shall be subject to all of the requirements stated herein:
  - 6.1.2.11.1 Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured.
  - 6.1.2.11.2 Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

- 6.2 **Construction Phase.** During the Construction Phase, CMR shall comply with the insurance requirements set forth in the General Conditions which are attached to this Agreement as Exhibit H.

**Exhibit B  
to CMR Agreement**

**Price and Payment Detail**

The “Part A” portion must be completed and approved by the Judicial Council prior to execution of this Agreement and must include, based upon CMR’s Proposal, CMR’s fee for the Working Drawings Phase; CMR’s fee for the Construction Phase; and CMR’s general conditions costs during the Construction Phase. The “Part B” portion must be completed and approved by the Judicial Council prior to commencement of the Construction Phase which amounts shall be based upon the Initial Pricing information and updated based upon the amount of the Direct Cost of Work.

**Part A**

1. **Required Pricing Prior to the Working Drawings Phase.** The following items shall be completed and agreed to at the execution of the CMR Agreement:

The <b><u>CMR’s total compensation</u></b> for its Services during the <b><u>Working Drawings Phase</u></b>	\$0.00
Total of <b><u>CMR’s general conditions</u></b> in its performance of the Work of the Construction Phase as a <b><u>total price</u></b> . See the requirements for the CMR’s general conditions herein below under the pricing for the “Construction Phase.” This <b><u>includes</u></b> , but is not limited to, subcontractor bidding, the fee and general conditions costs to coordinate with the Judicial Council in the Judicial Council’s procurement, construction or installation of furniture, fixtures and equipment	\$ _____
Total of <b><u>CMR’s Fee</u></b> (including all profit and overhead) for the Construction Phase, stated as a <b><u>percentage</u></b> of the Direct Cost of the Work.	_____ %
<b><u>FF&amp;E Option</u></b> : Total price to procure, construct and install furniture, fixtures and equipment. See the scope for the FF&E Option as indicated in the Fee Proposal Form.	\$ _____

1. **Method of Payment During Working Drawing Phase.**

The CMR shall submit an invoice for the Work successfully completed and approved for that month, billed as a percentage of the total fixed price for the Services of that Phase. Upon receipt of the invoice, Judicial Council will either approve the invoice for payment or give the CMR specific written reasons why part or all of the payment is being withheld and what remedial actions the CMR must take to receive the withheld amount. Such invoices shall clearly indicate:

- (i) The Contract number;
- (ii) A unique invoice number;
- (iii) The CMR’s name and address;
- (iv) Taxpayer identification number;
- (v) Name of the Phase of the Project being invoiced;
- (vi) Brief description of the Work performed in the billing period;
- (vii) Percentage of the Phase being billed in the invoice as a percent and in dollars;

- (viii) Amount of Retention to be withheld from the invoice
- (ix) Net amount to be paid for the invoice;
- (x) Percentage of the total Phase billed to date, expressed as a percent and in dollars;
- (xi) Total amount of Retention withheld to date.

**2. Retention Related to the Working Drawings Phase Payments**

The Judicial Council shall withhold payment of an amount equal to 10 percent from all payments made for invoices submitted as above and paid. Upon successful completion of all of the activities and provision of all deliverables of a Phase, CMR shall submit an Acceptance and Signoff Form (Exhibit D) detailing the amount of each individual retention, with a total of all retentions, to the Project Manager. The Judicial Council’s Project Manager shall review the Acceptance and Signoff Form, and, applying the Acceptance Criteria, will either approve the Form in full, or give the Contractor specific written reasons why approval is being withheld, and return to the CMR. Upon receipt of a Judicial Council signed Acceptance and Signoff form, the CMR shall submit an invoice for the retentions to the Project Manager.

**Part B**

<b>1.</b>	<b><u>Total Contract Amount</u></b>  <b>The total of the amounts in boxes 2 &amp; 3. (Fixed Price for Working Drawings Phase + GMP)</b>	\$ _____
<b>2.</b>	The CMR’s total compensation for its Services during the <b>Working Drawings Phase</b>  <b>(THIS WILL BE RE STATED AT THIS TIME BUT IS INTENDED TO EQUAL THE AMOUNT INDICATED ABOVE IN THE “WORKING DRAWING PHASE” OF THIS EXHIBIT B.)</b>	\$ _____
<b>3.</b>	The CMR’s total compensation for the Construction Phase is the <b>Guaranteed Maximum Price (GMP), which is the total of the sub-amounts (grey boxes) below</b>	\$ _____
	<b>Total Direct Cost of the Work</b> , which is the sum of: (1) all Subcontractor costs detailed below, <b>including</b> all Subcontractor bond costs or CMR-provided Subcontractor default insurance protection in lieu of Subcontractor bonds (e.g., SubGuard), if any. and (2) all Allowance(s) costs detailed below	\$ _____
	<b>Total Subcontractor costs</b> which is the sum of all Subcontractor costs detailed below	\$ _____
	Subcontractor: Scope:	\$ _____
	Subcontractor: Scope:	\$ _____
	Subcontractor: Scope:	\$ _____
	Subcontractor:	\$ _____

Scope:	
Subcontractor:	\$ _____
Scope:	
Subcontractor:	\$ _____
Scope:	
<b>Total Allowance(s)</b> which is the sum of all Allowances detailed below	\$ _____
Allowance – _____.	\$ _____
Allowance – _____.	\$ _____
Allowance – _____.	\$ _____

<b>CMR's Fee</b> (including all profit and overhead) during the Construction Phase, which is stated as a dollar amount, but which is determined as a percentage of the Direct Cost of the Work	\$ _____
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<b>Total of CMR's general conditions in its performance of the Work</b> , which is the sum of all items detailed below.  <b>(THE ITEMS THAT THE CMR SHALL INCLUDE AS CMR'S GENERAL CONDITIONS MUST COMPLY WITH THE JUDICIAL COUNCIL APPROVED "CMR'S GENERAL CONDITIONS TABLE" PURSUANT TO THE CMR'S PROPOSAL FOR THIS PROJECT, WHICH WILL BE ATTACHED AS EXHIBIT B-1 TO THE CMR AGREEMENT.)</b>	\$ _____
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Labor Costs	\$ _____
Materials	\$ _____
Equipment	\$ _____
Temporary Facilities	\$ _____
Insurance (non-OCIP)	\$ _____
Bonds, <u>not</u> including Subcontractor bond costs or CMR-provided subcontractor default insurance protection in lieu of Subcontractor bonds (e.g., SubGuard).	\$ _____
[Other] _____	\$ _____
[Other] _____	\$ _____

<b>Project Contingency</b> ( _____ % of _____ [Direct Cost of the Work]).	\$ _____
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**Exhibit B-1  
to CMR Agreement**

**CMR's General Conditions Table**

**[THIS TABLE CAN BE ONLY BE REVISED  
UPON PRIOR WRITTEN APPROVAL OF THE JUDICIAL COUNCIL.]**

- If CMR intends to include additional items or price items in a different category than indicated below, CMR must obtain Judicial Council's prior written approval.
- This table is not intended to be an exhaustive list of all components of the Project that the CMR must perform or provide to complete the Project

<b>Project (On Site Jobsite Staff)</b>	<b>CMR's General Conditions in its Performance of the Work</b>	<b>Direct Cost of Work</b>
Operations Manager	X	
Project Manager	X	
Project Superintendent	X	
Project Engineer	X	
Scheduling Engineer	X	
Field Engineer	X	
Draftsman/Detailer	X	
Record Drawings	X	
Field Accountant	X	
Time Keeper/Checker	X	
Secretarial/Clerk Typist	X	
Independent Surveyor		X
Safety & E.E.O. officer	X	
Runner/Water Boy	X	
<b>Temporary Utilities</b>		
Telephone Installation	X	
Telephone Monthly Charges	X	
Elect Power Installation	X	
Elect Power Dist Wiring	X	
Elect Power Monthly Charges	X	
Water Service - Installation	X	
Water Service - Monthly Costs	X	
Heating & Cooling Costs	X	
Light Bulbs & Misc. Supplies	X	
Clean-Up-Periodical		X
Clean-Up-Final		X
Dump Permits and Fees		X
Recycling/Trash Dumpster Removal/Hauling	X	
Flagger/Traffic Control		X
Dust Control		X
Trash Chute & Hopper	X	

<b>Temporary Facilities</b>	<b>CMR's General Conditions in its Performance of the Work</b>	<b>Direct Cost of Work</b>
Office Trailer/Rental	X	
Storage Trailer & Tool Shed Rental	X	
Office Furniture/Equip/Computers	X	
Xerox Copies/Misc Printing	X	
Postage/UPS/FedEx	X	
Project Photographs	X	
Temporary Toilets	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	
Fire Fighting Equipment	X	
Security Guards	X	
Temporary Parking	X	
Watchman Service	X	
<b>Miscellaneous Project Costs</b>		
Printing - Drawings & Specifications	X	
Facility Operator/Training	X	
<b>Hoisting</b>		
Hoist & Tower Rental		X
Hoist Landing & Fronts		X
Hoist Operator		X
Hoist Safety Inspections		X
Hoist Material Skips/Hoppers		X
Erect & Dismantle Hoists		X
Crane Rental		X
Crane Operators		X
Crane Safety Inspections		X
Erect & Dismantle Crane		X
Fuel, Repairs, Maintenance		X
Crane Raising/Jumping Costs		X
Temporary Elevator/Rental		X
Elevator Operation Costs		X
Elevator Repairs/Maintenance		X
Cage Rider at Elevator		X
Safety Inspections	X	
Forklift Rental		X
Forklift Operator		X
Forklift Safety Inspections		X
Fuel, Repairs, Maintenance		X
Elevator Service Costs		X

Exhibit C  
to CMR Agreement

PROJECT COST RESPONSIBILITY MATRIX

# Trial Court Capital Projects

## Project Cost Responsibility Matrix

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JUDICIAL COUNCIL  
OF CALIFORNIA

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OPERATIONS AND PROGRAMS DIVISION

**Exhibit C  
to CMR Agreement**

**PROJECT COST RESPONSIBILITY MATRIX**

**Exhibit C  
to CMR Agreement**

**PROJECT COST RESPONSIBILITY MATRIX**

**This Project Cost Responsibility Matrix determines items that are the CMR’s responsibility, but does not indicate whether each item is part of the CMR’s general conditions or the CMR’s Direct Cost of the Work. That determination is controlled by the Judicial Council approved “CMR’s General Conditions Table” which is attached to the CMR Agreement as Exhibit B-1.**

The **FF&E option** – if selected by Judicial Council during the Working Drawings phase – will generally include moveable elements such as loose furniture; office furniture and modular workstations.

CFCI            CMR Furnished and Installed  
 OFOI            Owner Furnished and Installed  
 OFCI            Owner Furnished Contractor Installed  
 CFCI FFE        CMR Furnished and Installed (FFE Option)  
 NA                Not Applicable

ITEM	CFCI	OFOI	OFCI	CFCI FFE	NA
<b>I. PROPERTY ACQUISITION / DEVELOPMENT</b>					
Removal of existing buildings and structures - grade level only		√			
On-Site Utilities Relocation and/or Removal		√			
Removal of existing below grade structures	√				
On-Site Utilities Relocation and/or Removal	√				
Off-Site Utilities Improvements		√			
Utility connection charges and fees		√			
Street/sidewalk improvements	√				
Security fencing and gates	√				
Surface parking, driveways (private areas), receiving area	√				
Site development, landscape, drawings, lighting	√				
New street trees	√				
Retaining walls, stairs, ramps, vehicle barriers	√				
Court building construction including MEP/FP systems	√				
<b>II. HAZARDOUS MATERIAL ABATEMENT</b>					
Building		√			
Site		√			
<b>III. PROFESSIONAL SERVICES</b>					



ITEM	CFCI	OFOI	OFCI	CFCI FFE	NA
Architecture and Engineering Design Fees		√			
Project Management Fees		√			
Geotechnical & Survey		√			
Materials Testing & Inspection		√			
Third Party Commissioning		√			
LEED Consultant & Certification Fees		√			
Plan Checking/CSFM and Peer Reviews		√			
Post Occupancy Evaluations		√			
Insurance		√			
CEQA / Due diligence management and mitigation		√			
<b>IV. SYSTEMS, FURNISHINGS &amp; EQUIPMENT<sup>1</sup></b>					
<b>A. BUILDING SYSTEMS</b>					
Uninterruptible Power Supplies (UPS)	√				
Security Cabling & Equipment (Building)	√				
Telecom / AV / Data Network; Routers, Switches		√			
Communication Cabling	√				
Audio-Visual System, Equipment & Infrastructure	√				
Audio Reinforcement System, Equipment & Infrastructure (assistive listening and language interpretation, speech and sound reinforcement, teleconferencing, public address, paging and other systems)	√				
Building Controls Systems	√				
Judicial Council TV Education Satellite Dish	√				
<b>B. FURNITURE</b>					
Courtroom Fixed Furniture (Judge, Clerk benches, attorney tables, witness stand, lectern, court reporter , Bailiff stations, spectator benches, Jury box chairs)	√				
Fixed Benches to Public Corridor	√				
Judges' Chambers Furniture (Fixed & Loose)		√		√	
Loose Furniture (Case goods, tables, chairs)		√		√	
Office Furniture (file cabinets, bookcases, shelving units)		√		√	
Modular Workstations / System Furniture		√		√	
Storage Racks, Shelving, High Density Files	√				
<b>C. FURNISHINGS</b>					
Window Treatments	√				
Markerboards and tack boards	√				
Lockers	√				
Site Furniture	√				

ITEM	CFCI	OFOI	OFCI	CFCI FFE	NA
<b>D. EQUIPMENT (see FF&amp;E Option)</b>					
Building Maintenance / Window Washing Equipment	√				
Residential Kitchen Appliances	√				
Parking Equipment	√				
Package Scanners and Magnetometers		√		√	
Wheelchair ramps, Evacuation Chairs	√				
Vending machines		√			
Loading dock equipment	√				
Cellular/Radio Frequency (RF) and IP wireless systems	√				
<b>E. SIGNAGE (static or dynamic)<sup>2</sup></b>					
Directional Signage	√				
Informational and Identification Signage	√				
Code Required Signage	√				
<b>F. OTHER ITEMS</b>					
Public Art		√			
Artwork in Non-Public Spaces		√			
Interior Plants		√	√		

**NOTES:**

1. **CFCI** items are to be procured and installed by CMR.  
**OFOI** items will be procured and installed by the Judicial Council, but the Judicial Council requires the CMR to coordinate its efforts with the Judicial Council's efforts during the installation, construction, powering and commissioning of all OFOI items.  
If the Judicial Council selects the **FF&E Option** (See Exhibit B, Part A) in the Contract, then the CMR will perform all services to solicit bids or proposals, purchase, construct and install these items as indicated in the **FF&E Option**. If the Judicial Council does not select the **FF&E Option**, then items in the FFE column will be OFOI items.
2. Judicial Council provides graphic of state and superior court seal for inclusion in Project.

**Exhibit D  
to CMR Agreement**

**ACCEPTANCE AND SIGN-OFF FORM  
FOR ALL PHASES PRIOR TO CONSTRUCTION PHASE**

Description of Deliverable provided by CMR:

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Work is:

1) Submitted on time:  yes  no. If no, please note length of delay and reasons.

---

---

2) Complete:  yes  no. If no, please identify incomplete aspects of the Work.

---

---

3) Technically accurate:  yes  no. If no, please note corrections required.

---

---

Please note level of satisfaction:

Poor  Fair  Good  Very Good  Excellent

Comments, if any:

---

---

Work is accepted

Work is unacceptable as noted above

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

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

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





**Exhibit G to  
CMR Agreement**

**SAMPLE OCIP PROJECT SAFETY GUIDANCE MANUAL/INSURANCE MANUAL**

The actual OCIP that the Judicial Council will implement on the Project may vary from the attached sample

**Page intentionally left blank**

**Exhibit H  
to CMR Agreement**

**General Conditions of the CMR Agreement for Preconstruction and Construction Phase Services (Document 0700)**

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SAMPLE

Exhibit H  
to CM-at-Risk Agreement

**General Conditions  
of the CM-at-Risk  
Agreement for  
Preconstruction and  
Construction Phase  
Services**

Document 00700

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New Indio Juvenile and  
Family Courthouse  
Superior Court of California

County of Riverside



JUDICIAL COUNCIL  
OF CALIFORNIA

---

OPERATIONS AND PROGRAMS DIVISION  
CAPITAL PROGRAM



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**ARTICLE 1 GENERAL PROVISIONS:**

**1.1 DEFINITIONS.** If and when the following terms appear in the Contract, they shall have the following meaning:

- 1.1.1. Acceptance of the Work.** Written acceptance of the Work or a completed deliverable, submittal, phase, or other Contract requirement, in compliance with the Agreement by the Director or the Director’s designee.
- 1.1.2. Addendum (Addenda).** A document issued by the Judicial Council during the procurement period which modifies, supersedes or supplements the Contract Documents.
- 1.1.3. Adverse Weather.** Weather that satisfies all of the following conditions:
  - 1.1.3.1.** Unusually severe precipitation, sleet, snow, hail, heat, or cold, wind or fog conditions in excess of the norm for the location and time of year it occurred as determined by a source mutually agreed to by the Judicial Council and the CMR or, if none can be mutually agreed upon, as indicated at <http://countrystudies.us/united-states/weather/California>;
  - 1.1.3.2.** Unanticipated;
  - 1.1.3.3.** Occurring at the Project Site.
- 1.1.4. Allowance(s).** Amount(s) indicated in the Agreement as part of the Direct Cost of the Work for specific scopes of work for which the CMR may bill its time and materials. As a component of the Direct Cost of the Work, Allowance(s) amounts already include all Subcontractor bond costs or CMR-provided subcontractor default insurance protection in lieu of Subcontractor bonds (e.g., SubGuard), all Bonds and Insurance premium charges and all other mark-up(s). Unused portions of Allowances shall be retained by the Judicial Council at Completion.
- 1.1.5. Applicable Codes.** Include, but are not limited to, applicable laws, statutes, regulations, rules, building and other codes, ordinances, rulings, and lawful orders of all public authorities having jurisdiction over the Judicial Council, the CMR, Subcontractors, the Project, the Work, or the prosecution of the Work.
- 1.1.6. Architect or Engineer.** The architect(s), engineer(s) and other professional consultant(s) under contract to the Judicial Council as the designer of record responsible for the preparation and coordination of the Drawings and technical sections for the Project and to provide design and construction documentation, and construction administration services for the Project.
- 1.1.7. Change Order.** A written order approved by the Judicial Council on a Judicial Council agreed-upon form and reviewed by the Architect, the CMR and approved by the Judicial Council. The Change Order alters the Contract Documents and does not include Work that could be or should be paid out of Project Contingency. All Change Orders shall identify all of the following:
  - 1.1.7.1.** A change in the Work due to:
    - 1.1.7.1.1.** Additional scope of Work;
    - 1.1.7.1.2.** Changes mandated by agencies having authority over the Project;
    - 1.1.7.1.3.** Unforeseen Site Conditions;
  - 1.1.7.2.** A change in the GMP;
  - 1.1.7.3.** The extent of the adjustment in the Contract Time; and/or
  - 1.1.7.4.** An adjustment to the Contract terms.
- 1.1.8. Claim.** A Claim is a Dispute (see definition below) that remains unresolved after conclusion of the Dispute Resolution Process identified below. Individual unresolved Disputes may be aggregated into one or more Claim(s).

- 1.1.9. Closeout Documentation.** Closeout Documentation shall include the following, without limitation:
- 1.1.9.1.** A full set of final As-Built Drawings, as further defined herein;
  - 1.1.9.2.** All Operations & Maintenance Manuals and information, as further defined herein;
  - 1.1.9.3.** All Warranties, as further defined herein; and
  - 1.1.9.4.** All verified report(s) for all scope(s) of Work as required for final Completion of the Project.
- 1.1.10. CMR's General Conditions.** The support activities that must be in place to support the construction aspects of the Project, including without limitation, the categories and items set forth in the CMR's General Conditions Table attached to the Fee Proposal.
- 1.1.11. Completion.** When the entire Work is completed in accordance with all Contract requirements, as determined by the Judicial Council.
- 1.1.12. Construction Manager.** The Construction Manager is the 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 (1) involve an adjustment to the Contract Price or the Contract Time or (2) substantively change the scope of the Project, without the Judicial Council's prior written approval.
- 1.1.13. Construction Manager at Risk, "CMR," "Construction Manager at Risk" or "CM-at-Risk" or "Contractor".** The individual, partnership, corporation, association, joint venture, or any combination thereof, that has entered into the Agreement with the Judicial Council to do the Work, identified as such in the Agreement, and referred to throughout the Contract as if singular in number. CMR shall solicit trade bids from trade contractors (Subcontractors) on a competitive basis and enter into contracts with these trade contractors to perform their trade work.
- 1.1.14. Construction Supervisor/Inspector.** The person(s) authorized by the Judicial Council to provide inspection services, field coordination and quality assurance during construction.
- 1.1.15. Contract or "Agreement".** The written and fully executed Judicial Council Standard Agreement form, including all of its Exhibits. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all previous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties. The Contract may be amended or modified only by a Change Order executed by both parties. The Contract shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Judicial Council and the CMR.
- 1.1.16. Contract Documents.** The Contract Documents include the Agreement as well as any other documents incorporated therein, and also include any Payment and Performance Bonds; any Change Orders referred to herein that are authorized hereunder and any documents referred to under Change Orders; and any Judicial Council written response to an RFI; and all Design Documents.
- 1.1.17. Contract Time.** The Contract Time is the period of time, including authorized adjustments, allotted in the Contract for Completion of the Work. There is one Contract Time for the Working Drawings Phase and one Contract Time for the Construction Phase. Except for the uses of the term "Contract Time" that are clearly attributable to just one Phase, Contract Time is applicable to all Phases.
- 1.1.18. Cost-Loaded Schedule.** See definition for "Master Project Schedule."
- 1.1.19. Court.** The Superior Court that is the subject of the Project.
- 1.1.20. Day.** Calendar day, unless otherwise specifically defined.

- 1.1.21. Deliverable.** Any tangible item provided or to be provided by CMR under this Agreement. A Deliverable does not include Services.
- 1.1.22. Design Document(s).** Written documents including all Drawings and Specifications specifying the attributes, characteristics, and requirements of the building to be constructed, including its site, the Project Program and as further developed and elaborated upon by the Judicial Council’s Architect or Engineer throughout the design process described in this Agreement. Once approved by the Judicial Council to be used for the construction of the Project, all Design Document(s) and Specifications become part of the Contract Documents.
- 1.1.23. Direct Cost of the Work.** The total cost of the actual construction of the Project as may be revised throughout the Construction Phase via a Change Order and/or the use of the Project Contingency. The Direct Cost of the Work is further described in **Exhibit B** to the Agreement, is a component of the GMP and includes only
- 1.1.23.1.** The sum of all Subcontractor costs, fees and charges, including Subcontractor non-OCIP insurance and bond costs incurred during the Construction Phase (or CMR-provided contractor default insurance protection in lieu of Subcontractor bonds), but not any component of Work that is part of the CMR’s General Conditions;
- 1.1.23.2.** All Allowance(s).
- 1.1.24. Director.** The Director of Facilities Services of the Judicial Council, or the Director's designee.
- 1.1.25. Dispute.** A Dispute is a request, demand or assertion by CMR during performance of the Work regarding money and/or time adjustments with which the Judicial Council does not agree. A Dispute is not a Claim.
- 1.1.26. Drawings.** The graphic and pictorial portions of the Contract Documents, illustrating the design, location and dimensions of the Work, generally including but not limited to, plans, elevations, sections, details, schedules and diagrams.
- 1.1.27. Emergency.** A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.
- 1.1.28. Equal or “Approved Equal” or “Or Equal” or “Equivalent”.** Material, equipment, or method approved by the 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.
- 1.1.29. Float.** The measure of leeway in starting and completing an activity. Float or slack is not for the exclusive use of or benefit of either the Judicial Council or the CMR, but its use shall be determined solely by the Judicial Council. “Free Float” is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity. “Total Float” is the measure of leeway in starting or completing an activity without adversely affecting the planned Project Completion date.
- 1.1.30. Force Majeure.** A force majeure event is one or more of the following events that adversely impacts the Judicial Council’s or the CMR’s performance: acts of God, acts of a public enemy, fires, floods, windstorms, tornadoes, earthquakes, wars, riots, insurrections, epidemics, quarantine restrictions, strikes, lockouts, fuel shortages, or freight embargoes. Notwithstanding the preceding, Force Majeure events shall not include (a) strikes or lockouts involving the CMR or the CMR’s employees, and (b) strikes or lockouts involving the CMR’s Subcontractors or Subcontractors’ employees unless CMR has taken all diligent efforts to avoid or minimize the strikes or lockouts.
- 1.1.31. General Notes.** The written instructions, provisions, conditions or other requirements appearing on the Drawings, and so identified thereon, which pertain to the performance of the Work.



- 1.1.32. Guarantee.** The CMR's assurance that the Project complies with the requirements of the Contract Documents.
- 1.1.33. Guaranteed Maximum Price or "GMP".** The maximum price that the Judicial Council will pay CMR as payment for all Work of the Construction Phase of Project. The GMP is further described herein and in **Exhibit B** to the Agreement and includes only the sum of the following:
- 1.1.33.1.** Direct Cost of the Work (See definition herein), including all Allowance(s) (if any);
  - 1.1.33.2.** CMR's Construction Phase Services Fee;
  - 1.1.33.3.** CMR's General Conditions in its performance of the Work during the Construction Phase (e.g., labor costs, equipment costs, materials costs, non-OCIP insurance costs, bond costs, etc.); and
  - 1.1.33.4.** Project Contingency.
- 1.1.34. Judicial Council or "Owner" or State".** The State of California acting through the Judicial Council of California.
- 1.1.35. Judicial Council Contingency.** An amount set by the Judicial Council that is not part of the GMP and which the Judicial Council may use to pay Change Orders.
- 1.1.36. LEED.** The Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ of the United State Green Building Council (USGBC), a nationally accepted benchmark for the design, construction, and operation of high performance green buildings.
- 1.1.37. Master Project Schedule or "Master Schedule" or "Project Schedule" or "Cost-Loaded Schedule".** This schedule will be a Judicial Council-approved, fully cost-loaded schedule that must include a detailed summary of all activities and milestones, including costs, durations, logic, resources and status for each activity and which must equal the total Contract price. The CMR must provide monthly updates to the Master Project Schedule.
- 1.1.38. Not in Contract or "NIC".** The Services for a particular Phase of the Work that is mentioned in the Agreement for reference purposes only and as such has not been authorized in the Agreement.
- 1.1.39. Not Yet Authorized or "NYA".** The Services for a particular Phase of the Work that is within the Contract, but for which the Judicial Council has not yet authorized CMR to begin performing. NYA items or Services are intended to be within the scope of this Agreement, but shall only be so if Judicial Council authorizes the Phase in which the NYA item or Services is included.
- 1.1.40. Notice to Proceed.** A notice provided by the Judicial Council to the CMR, authorizing and directing the CMR to begin the Work, to the extent described in the Notice to Proceed and pursuant to the time frames indicated in the Notice to Proceed. The Judicial Council may issue separate Notices to Proceed for separate phases or portions of the Work.
- 1.1.41. OCIP.** A project specific insurance program that will be initiated and administered by the Judicial Council to provide many of the insurance requirements set forth herein during the Construction Phase that will insure the interest of the CMR, any Subcontractor or Sub-subcontractor performing Work at or incidental to the Project site. .
- 1.1.42. Phase(s).** Distinct portion(s) of the Work to be provided under this Agreement. The following Phases compose all the Phases in the Project:
- 1.1.42.1. Working Drawings Phase:** The phase that includes:

- 1.1.42.1.1. Preparation of Working Drawings, technical specifications, addenda, supplementary conditions, Subcontractor bidding requirements, and other documents to set forth in detail all aspects of the design, bidding, function and construction of the Project.
- 1.1.42.1.2. CMR's bidding of all of the Work to subcontractors.
- 1.1.42.1.3. CMR's preparation of its GMP.
  
- 1.1.42.2. **Construction Phase:** The entire construction period for the Project, which begins following completion of the Working Drawings Phase and after the Judicial Council's authorization to begin the Construction Phase. The Construction Phase will end upon Completion of the Project.
  
- 1.1.43. **Product Data.** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CMR to illustrate materials or equipment for some portion of the Work.
  
- 1.1.44. **Project.** The total construction of the Work performed under the Contract.
  
- 1.1.45. **Project Contingency.** The contingency identified in Exhibit "B" to the Agreement which is to be used by the CMR to pay for any changes or extra work, as detailed in the applicable subsection of the "Conflicts, Ambiguities, Errors and Omission in the Contract Documents" Section herein. The unused portion of the Project Contingency shall be retained by the Judicial Council at the end of the Project.
  
- 1.1.46. **Project Manager.** The Judicial Council employee who is the person authorized to act as the Judicial Council's agent to oversee the design and construction of the Project. The Project Manager oversees the work of the third-party Construction Manager who is the Judicial Council's on-site construction management agent.
  
- 1.1.47. **Proposed Change Order or "PCO".** A Proposed Change Order is a written request prepared by the CMR requesting that the Judicial Council and the Architect issue a Change Order based upon a proposed change to the Work.
  
- 1.1.48. **Record Documents.** The Drawings amended to show the Project as it was constructed. Record Documents include any significant changes or clarifications to the Drawings resulting from the construction process.
  
- 1.1.49. **Request for Information (RFI).** A written request by the CMR submitted in a Judicial Council provided format for information regarding Project specific issues.
  
- 1.1.50. **Retention.** A percentage of the GMP that the Judicial Council shall withhold until Completion of the Work.
  
- 1.1.51. **Samples.** Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
  
- 1.1.52. **Shop Drawings.** Drawings, diagrams, schedules, and other data specially issued for the Work by the CMR or a Subcontractor, Sub-subcontractor, and material suppliers to illustrate some portion of the Work.
  
- 1.1.53. **Site.** The Project site as shown on the Drawings.

- 1.1.54. Specifications or “Technical Specifications”.** That portion of the Contract Documents (Division 2 through Division 49) consisting of the written requirements for materials, standards, equipment, construction systems, and standards of workmanship for the Work, and performance of related services.
- 1.1.55. Stop Services Order.** A written notice, delivered in accordance with this Agreement, by which the Judicial Council may require the CMR to stop all, or any part, of the Services under this Agreement, for the period set forth in the Stop Services Order. The Stop Services Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Services provision herein.
- 1.1.56. Subcontractor.** An individual, partnership, corporation, association, joint venture, or any combination thereof, who has a direct contract with the CMR to perform work or labor or render service in or about the Work. The term "Subcontractor" is referred to as if singular in number and means a Subcontractor or a representative of the Subcontractor. The term "Subcontractor" shall not include those who supply materials only or a separate contractor or subcontractors of a separate contractor,
- 1.1.57. Sub-subcontractor.** A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the work. The term "Sub-subcontractor" is referred to as if singular in number and means a Sub-subcontractor or a representative of the Sub-subcontractor.
- 1.1.58. Substitution.** A material and/or process offered by the CMR in lieu of the specified material and/or process, and accepted by the Judicial Council in writing as being equivalent (equal) to the specified material and/or process.
- 1.1.59. Surety or Sureties.** The person, firm, or corporation that executes as surety the CMR’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.
- 1.1.60. SWPPP.** The Judicial Council’s Storm Water Pollution Prevention Plan.
- 1.1.61. Unforeseen Site Conditions.** Conditions actually encountered on the Project Site that were reasonably unforeseeable based on all the information available to the CMR prior to finalizing the GMP, that are one or more of the following:
- 1.1.61.1.** Subsurface or latent physical conditions at the Site differing materially from those indicated; or
  - 1.1.61.2.** 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 this Contract; or
  - 1.1.61.3.** Unknown hazardous materials on the Site.
- 1.1.62. Warranty.** A manufacturer's or material supplier's assurance that products and services provided meet the requirements of the Contract Documents.
- 1.1.63. Work or “Service(s)”.** Construction and services required by the Contract Documents, including all labor, materials, equipment and services provided, or to be provided, by the CMR to fulfill the CMR's obligations under the Contract.

## 1.2 EXECUTION, CORRELATION AND INTENT

- 1.2.1. The Contract will not be binding on the Judicial Council until fully executed by the appropriate authorized representatives of the CMR and the Judicial Council. The parties signing the Contract certify that they have the proper authorization to do so.
- 1.2.2. Execution of the Contract by the CMR is a representation that the CMR is familiar with the methodology under which the work is to be performed and has correlated personal observations with requirements of the Contract Documents.
- 1.2.3. The intent of the Contract Documents is to include all items necessary for Completion of the Work by the CMR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the CMR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.
- 1.2.4. Organization of the Specifications into Documents, Divisions, Sections and Articles, and arrangement of Drawings shall not control the CMR in dividing the Work among Subcontractors, nor in establishing the extent of work to be performed by any trade.
- 1.2.5. 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.
- 1.2.6. Unless otherwise stated in the Contract Documents, words and terms which have well-known or commonly accepted technical or construction industry meanings shall be used in the Contract Documents in accordance with such recognized meanings.
- 1.2.7. Every part of the Work shall be accomplished in workmanship-like manner by workers, laborers, or mechanics skilled in the class of work required. Any person the Judicial Council may deem incompetent or disorderly shall be promptly removed from the Project by the CMR upon written notice from the Judicial Council, and shall not be re-employed.

**1.3 USE OF THE JUDICIAL COUNCIL'S DRAWINGS AND OTHER DOCUMENTS.** The Drawings, Contract Documents and other documents issued by the Judicial Council, and copies furnished to the CMR, are for use solely with respect to this Project. They are not to be used by the CMR or any Subcontractor, Sub-subcontractor or material or equipment supplier on other projects, nor for additions to this Project outside the scope of the Work without the specific written consent of the Judicial Council. The CMR, Subcontractors, Sub-subcontractors and material or equipment suppliers are granted a limited license to use and reproduce applicable portions of the Drawings, Contract Documents and other documents issued by the Judicial Council appropriate to, and for use in, the execution of their work under the requirements of the Contract Documents.

#### **1.4 CAPITALIZATION**

1.4.1. Terms capitalized in these General Conditions include those which are:

- 1.4.1.1. Specifically defined; or
- 1.4.1.2. Titles of numbered Articles; or
- 1.4.1.3. References to Paragraphs, Subparagraphs and Clauses; or
- 1.4.1.4. Titles of other documents.

#### **1.5 CONFLICTS IN THE CONTRACT DOCUMENTS**

1.5.1. In the event of conflict in the Contract Documents, the following order of precedence shall prevail:

- 1.5.1.1. Judicial Council-approved modifications, beginning with the most recent (if any);
- 1.5.1.2. The Agreement;
- 1.5.1.3. The Special Conditions (if any);
- 1.5.1.4. Any Supplemental Conditions (if any);
- 1.5.1.5. These General Conditions;
- 1.5.1.6. The remaining Contract Documents;
- 1.5.1.7. The Specification Division 1 Documents;
- 1.5.1.8. The Technical Specifications (Division 02 through Division 49); and
- 1.5.1.9. The Drawings.

1.5.2. In the case of conflict within the Drawings, the following shall govern:

- 1.5.2.1. Schedules, when identified as such, shall govern over all other portions of the Drawings;
- 1.5.2.2. Specific notes shall govern over all other notes and all other portions of the Drawings, except schedules described in the preceding Clause;
- 1.5.2.3. Larger scale Drawings shall govern over smaller scale Drawings;
- 1.5.2.4. Detail Drawings shall govern over standard plates within the Contract Documents; and
- 1.5.2.5. Figured or numerical dimensions shall govern over dimensions obtained by scaling.

1.5.3. **Omissions.** If the Contract Documents are not complete as to any Detail or required construction system or with regard to the manner of combining or installing of parts, materials, or equipment, but there exists accepted trade standard for good and workmanlike construction, such detail shall be deemed to have been implied by the requirements of the Contract Documents in accordance with such standard. "Detail" shall include the concept of substantially identical components, where price of each such component is small even though aggregate cost or importance is substantial, and shall include a single component which is incidental, even though its cost or importance may be substantial. Quality and quantity of parts or material so supplied shall conform to trade standards and be compatible with type, composition, strength, size and profile of parts or materials otherwise set forth in the Contract Documents.

## 1.6 REQUESTS FOR INFORMATION, CLARIFICATION OR ADDITIONAL INSTRUCTIONS

1.6.1. **Requests for Information (RFI).** Should the CMR discover conflicts, omissions, or errors in the Contract Documents, or have any questions concerning interpretation or clarification of Contract Documents, the CMR shall immediately submit to the Judicial Council in writing an RFI that complies with the following requirements:

- 1.6.1.1. All RFIs, whether originated by the CMR, a Subcontractor or supplier at any tier, shall be submitted by the CMR to the Judicial Council.
- 1.6.1.2. RFIs shall be numbered sequentially and be presented in the format provided by the Judicial Council.
- 1.6.1.3. The CMR shall clearly and concisely set forth the single issue for which interpretation or clarification is sought, indicate Specification Section number, article and subarticle numbers, and Contract Drawing number, and detail, or other item involved and state why a response is required from the Judicial Council.
- 1.6.1.4. The CMR shall set forth its own interpretation or understanding of the requirements, along with reasons why it has reached such an understanding in each RFI.
- 1.6.1.5. 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.

- 1.6.1.6. Responses to RFIs will be made within fourteen (14) days unless the Judicial Council notifies the CMR in writing that a response will take longer. The fourteen (14) days will begin when the RFI is received and dated by the Judicial Council.
- 1.6.1.7. Responses from the Judicial Council will not change any requirement of the Contract unless so noted by the Judicial Council in the response to the RFI.
- 1.6.1.8. Should the CMR think that a response to an RFI causes a change to the Contract that requires a Change Order, the CMR shall, before proceeding, give written notice to the Judicial Council, indicating that the CMR considers the Judicial Council's response to the RFI to be a Change Order. Failure to give such written notice within fourteen (14) days of receipt of the Judicial Council's response to the RFI shall waive the CMR's right to seek additional time or cost herein or for a Change Order.

1.6.2. **Additional Detailed Instructions.** The Judicial Council may furnish additional detailed written and/or graphic instructions to explain the work more fully, and such instructions shall be a part of the Contract requirements. Should additional detailed instructions, in the opinion of the CMR, constitute work in excess of the scope of the Work, the CMR shall submit written notice to the Judicial Council within fourteen (14) days following receipt of such instructions, and in any event prior to commencement of the work thereon. The Judicial Council will then consider the notice; and, if in the Judicial Council's judgment it is justified, the Judicial Council's instructions will be revised or the extra work authorized as a Change Order.

## ARTICLE 2 ADMINISTRATION OF THE CONTRACT

### 2.1 INFORMATION AND/OR SERVICES REQUIRED OF THE JUDICIAL COUNCIL

- 2.1.1. Information and/or services under the Judicial Council's control shall be furnished by the Judicial Council within a mutually agreed upon response time so as to avoid delay in the orderly progress of the Work.
- 2.1.2. The Judicial Council shall furnish the CMR Drawings and Contract Documents as specified in the Agreement.

### 2.2 ADMINISTRATION OF THE CONTRACT

- 2.2.1. The Judicial Council will provide administration of the Contract as described in the Contract Documents during construction and through the guarantee period.
- 2.2.2. The Judicial Council, and its Construction Supervisor/Inspector, will visit the Project site as appropriate to the stage of construction to become familiar with the progress and quality of the completed work and to determine if the Work is in accordance with the Contract Documents.
- 2.2.3. **Independent Contractor.** CMR shall be, and is an independent contractor, is not an employee or agent of the Judicial Council, and is not covered by any employee benefit plans provided to the Judicial Council's employees. CMR is, and shall be, liable for its own acts and omissions as well as those of its employees, its Subcontractors and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the Judicial Council and the CMR.

- 2.2.3.1. The CMR will determine the method, details and means of performing its responsibilities with regard to the Services, including, without limitation, exercising full control over the direction and compensation of all persons assisting the CMR in the performance of the Services. The CMR shall be solely responsible for all matters relating to the payment of its employees,

including compliance with social security, withholding, any and all employee benefits, and all regulations governing such matters.

- 2.2.4.** Unless so specified in the Contract Documents, the Judicial Council, and its Construction Supervisor/Inspector, will not have control over construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work. The Judicial Council will not be responsible for the CMR's failure to carry out the Work in accordance with the requirements of the Contract Documents. The Judicial Council will not be responsible for acts, errors, or omissions of the CMR, a Subcontractor, or anyone directly or indirectly employed by any of them, or of any other persons performing portions of the Work.
- 2.2.5.** Communications by and with the Judicial Council's Construction Supervisor/Inspector, and consultants shall be through the Judicial Council, unless otherwise directed by the Judicial Council. Communications by and with Subcontractors, Sub-subcontractors and material suppliers shall be through the CMR. Communications by and with separate contractors shall be through the Judicial Council.
- 2.2.6. Judicial Council's Quality Assurance Plan.** The Judicial Council and its Construction Supervisor/Inspector may evaluate CMR's performance under this Contract. Such evaluation may include assessing CMR's compliance with all Contract terms and performance standards. Any deficiencies in the CMR's performance that the Judicial Council determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected, will be reported to the CMR's principal. The report may include recommended improvements and corrective measures to be taken by the CMR. If the CMR's performance remains unsatisfactory, the Judicial Council may, without limitation, terminate this Contract for cause or impose other penalties as specified in this Contract. Any evaluation of CMR's performance conducted by the Judicial Council shall not be construed as an Acceptance of the CMR's work product or methods of performance. CMR shall be solely responsible for the quality, completeness, and accuracy of the work product that CMR and its Subcontractors deliver under this Contract. CMR shall not rely on Judicial Council or its Construction Supervisor/Inspector to perform any quality control review of CMR's work product; as such review shall be conducted by CMR.
- 2.2.7.** If the Judicial Council or its Construction Supervisor/Inspector observes work that appears to not comply with the requirements of the Contract Documents, the Judicial Council will have the authority to reject the Work. Whenever the Judicial Council considers it necessary or advisable for implementation of the intent of the Contract Documents, the Judicial Council, or its Construction Supervisor/Inspector, will require additional inspection or testing of the Work, as indicated herein, whether or not such work is fabricated, installed or completed.
- 2.2.8.** The Judicial Council, and/or its Construction Supervisor/Inspector, will review and take action upon the CMR's submitted Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Judicial Council's action will be taken so as to cause no delay in the Work while allowing sufficient time to permit adequate review. Review of submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, nor for substantiating instructions for installation or performance of equipment or systems, which remain the responsibility of the CMR.
- 2.2.9.** The CMR may propose, but the Judicial Council is not obligated to accept, alternative material(s), article(s), or equipment that are of equal quality and of required characteristics for the purpose intended. The Judicial Council or the Judicial Council's Project Manager will examine any and all proposed alternatives for compliance with the Contract Documents. The proposed material(s), article(s), or equipment will be reviewed for comparative quality, suitability, and performance against

the product(s) specified in the Contract Documents consistent with the Substitution procedures in the Contract Documents.

- 2.2.10. The Judicial Council, and/or its Construction Supervisor/Inspector, will conduct inspections to determine the CMR's compliance with the Contract Documents. The Judicial Council will determine the date of final Completion; will receive, for review and record, written warranties and related documents required by the Contract Documents and assembled by the CMR; and will issue a final Payment Authorization upon compliance with the requirements of the Contract Documents and Acceptance of the Work.

## 2.3 TERMINATION FOR CAUSE

- 2.3.1. **Grounds for Termination.** The Judicial Council, in its sole discretion, may terminate the Contract and/or terminate the CMR's right to perform the work of the Contract based upon the following:

- 2.3.1.1. CMR refuses or fails to execute the Work or any separable part thereof with sufficient diligence as will ensure its completion within the time specified or any extension thereof, or
- 2.3.1.2. CMR fails to complete all or a portion of the Work within the time specified or any extension thereof, or
- 2.3.1.3. CMR persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents; or
- 2.3.1.4. CMR files a petition for relief as a debtor, or a petition is filed against the CMR without its consent, and the petition not dismissed within sixty (60) days; or
- 2.3.1.5. CMR makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- 2.3.1.6. CMR persistently or repeatedly refuses fails, except in cases for which extension of time is provided, to supply enough properly skilled workers or proper materials to complete the Work in the time specified; or
- 2.3.1.7. CMR fails to make prompt payment to Subcontractors, or for material, or for labor unless such payments or portions of payments are disputed in good faith by CMR; or
- 2.3.1.8. CMR persistently disregards laws, or ordinances, or instructions of Judicial Council; or
- 2.3.1.9. CMR fails to supply labor, including that of Subcontractors, that can work in harmony with all other elements of labor employed or to be employed on the Work; or
- 2.3.1.10. CMR or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

### 2.3.2. Notification of Termination.

- 2.3.2.1. Upon the occurrence at Judicial Council's sole determination of any of the above grounds, Judicial Council may, without prejudice to any other right or remedy, serve written notice upon CMR and its Surety of Judicial Council's termination of this Contract and/or the CMR's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory



to Judicial Council for the correction of the condition(s) and/or violation(s) be made, this Contract shall cease and terminate. Upon termination, CMR shall not be entitled to receive any further payment until the entire Work is finished.

**2.3.2.2.** Upon termination for cause, Judicial Council may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:

**2.3.2.2.1.** Within three (3) days after service upon it of the notice of tender, gives Judicial Council written notice of Surety's intention to take over and perform this Contract; and

**2.3.2.2.2.** Commences performance of this Contract within three (3) days from date of serving of its notice to Judicial Council.

**2.3.2.2.3.** If Surety fails to notify Judicial Council or begin performance as indicated herein, Judicial Council may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of CMR and/or its Surety. CMR and/or its Surety shall be liable to Judicial Council for any excess cost or other damages the Judicial Council incurs thereby. Time is of the essence in this Contract. If the Judicial Council takes over the Work as herein provided, Judicial Council may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to CMR as may be on the Site of the Work, in bonded storage, or previously paid for.

**2.3.3. Effect of Termination.**

**2.3.3.1.** CMR shall, only if ordered to do so by the Judicial Council, immediately remove from the Site all or any materials and personal property belonging to CMR that have not been incorporated in the construction of the Work, or which are not in place in the Work. The Judicial Council retains the right, but not the obligation, to keep and use any materials and personal property belonging to CMR that have not been incorporated in the construction of the Work, or which are not in place in the Work. The CMR and its Surety shall be liable upon the performance bond for all damages caused the Judicial Council by reason of the CMR's failure to complete the Contract.

**2.3.3.2.** In the event that the Judicial Council shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the Judicial Council shall not be liable nor account to the CMR in any way for the time within which, or the manner in which, the Work is performed by the Judicial Council or for any changes the Judicial Council may make in the Work or for the money expended by the Judicial Council in satisfying claims and/or suits and/or other obligations in connection with the Work.

**2.3.3.3.** In the event that the Contract is terminated for cause, no allowances or compensation will be granted for the loss of any anticipated profit by the CMR or any impact or impairment of CMR's bonding capacity.

**2.3.3.4.** If the expense to the Judicial Council to finish the Work exceeds the unpaid GMP, CMR and Surety shall pay difference to Judicial Council within twenty-one (21) days of Judicial Council's request.

**2.3.3.5.** The Judicial Council shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified

and has sufficient resources to complete the Work, the rights of the CMR under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the Judicial Council, no Subcontractor shall have any claim against the Judicial Council or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The Judicial Council or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the Judicial Council so elect, the CMR shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the Judicial Council may require, for the purpose of fully vesting in the Judicial Council the rights and benefits of it Subcontractor under Subcontracts or other obligations or commitments. All payments due the CMR hereunder shall be subject to a right of offset by the Judicial Council for expenses and damages suffered by the Judicial Council as a result of any default, acts, or omissions of the CMR. CMR must include this assignment provision in all of its contracts with its Subcontractors.

- 2.3.3.6.** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to Judicial Council. In addition, all remedies provided for in this Contract are cumulative and may be exercised individually or in combination with any other remedy available hereunder.

## **2.4 TERMINATION FOR THE JUDICIAL COUNCIL'S CONVENIENCE**

- 2.4.1.** The Judicial Council reserves the right to terminate this Contract pursuant to this section, or any part thereof for its sole convenience. In the event of such termination, the CMR shall immediately stop all work hereunder and shall immediately cause any and all of its Subcontractors, Sub-subcontractors and material suppliers at any tier, to immediately stop all work, leaving the site in a safe and secured condition.
- 2.4.2.** If the Judicial Council terminates the Contract for convenience, CMR shall have no claims against the Judicial Council except for the actual cost of the components of the Guaranteed Maximum Price actually performed, that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and:
- 2.4.2.1.** Was performed prior to the notice of termination.
- 2.4.2.2.** Was necessary on the part of the CMR to effect the termination on the date specified by the Judicial Council and to minimize the liability of the CMR and the Judicial Council to third parties as a result of termination.
- 2.4.2.3.** CMR shall not be paid for any work performed or costs incurred after the termination date that reasonably could have been avoided.
- 2.4.2.4.** The amount due CMR shall be less any amounts required to be withheld as indicated herein, and less any prior payment(s) made to, or on the account of the CMR.

## **2.5 SUSPENSION FOR THE JUDICIAL COUNCIL'S CONVENIENCE**

- 2.5.1.** The Judicial Council may, by written notice, order the CMR to suspend, delay or interrupt the Work, in whole or in part, for such period of time as the Judicial Council may determine.
- 2.5.2.** An adjustment will be made for increases in the cost of performance of the Work, including profit on the increased cost of performance caused by suspension, delay or interruption. No adjustment will be made to the extent:

2.5.2.1. That performance is, was or would have been so suspended, delayed or interrupted by another cause for which the CMR is responsible; or

2.5.2.2. That an equitable adjustment is made or denied under another provision of the Contract.

## 2.6 TERMINATION BY JUDICIAL COUNCIL FOR NON-APPROPRIATION; JUDICIAL COUNCIL'S OBLIGATION SUBJECT TO AVAILABILITY OF FUNDS

2.6.1. The Judicial Council's obligation under this Contract is subject to the availability of authorized funds. The Judicial Council may terminate the Contract or any part of the Work, without prejudice to any right or remedy of the Judicial Council, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Contract, or in any amendment or Change Order hereto, the Judicial Council may terminate this Contract in whole or in part, upon written notice to the CMR.

2.6.2. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Contract is terminated for non-appropriation:

2.6.2.1. The Judicial Council will be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination; and

2.6.2.2. The CMR shall be released from any obligation to provide further services pursuant to the Contract as are affected by the termination.

2.6.3. Funding for this Contract beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

## ARTICLE 3 CONTRACTOR

### 3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR

3.1.1. The CMR shall carefully study and compare the Contract Documents and shall report to the Judicial Council, in writing, any errors, inconsistencies or omissions discovered. If the CMR performs any work knowing it involves a recognized error, inconsistency or omission in the Contract Documents, without notifying the Judicial Council of the error, inconsistency or omission, the CMR shall assume responsibility for the performance of that work and shall bear the cost for any necessary corrections.

3.1.2. The CMR shall take field measurements and verify field conditions and shall compare the field measurements, conditions and other related information known to the CMR with the Contract Documents before performing any Work.

3.1.3. **Unforeseen Site Conditions.** In the event CMR discovers an Unforeseen Site Condition, then CMR shall promptly, and before the Site conditions are disturbed, notify the Judicial Council in writing with details of the Unforeseen Site Condition. The Judicial Council will promptly investigate the Unforeseen Site Condition, and if the Judicial Council determines that the Site condition materially differs from the Contract Documents and will cause an increase or decrease in the CMR's cost of, or the time required for, performance of any part of the Work, whether or not changed as a result of the Unforeseen Site Condition, a Change Order will be issued in accordance with the applicable provisions herein.

- 3.1.4.** CMR shall inform itself fully and shall assume the risk as to the physical conditions at the Project Site. CMR's lack of knowledge of existing Site conditions will not be accepted as an excuse for failure to perform the specified Work, nor shall CMR's lack of knowledge of existing Site conditions be an acceptable basis for a Claim for additional compensation.

## **3.2 SUPERVISION AND CONSTRUCTION PROCEDURES**

- 3.2.1.** The CMR shall supervise and direct the Work. The CMR shall be responsible for, and have control over, construction means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the Work, and for coordinating the Work under the Contract; unless otherwise noted or specified in the Contract Documents.

### **3.2.2. Employees and Personnel**

- 3.2.2.1.** The CMR shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Work. The CMR has been selected to perform the Work herein, in part, because of the skills and expertise of the key individuals and/or firms (collectively "CMR's Key Personnel") that are listed in the Contract Documents.
- 3.2.2.1.1.** Substitution or replacement of CMR's Key Personnel, unless a person is no longer employed by CMR, is not allowed except with written approval of the Judicial Council.
- 3.2.2.1.2.** Prior to the authorization of any Phase of the Project, the Parties shall agree upon any Key Personnel applicable to that Phase.
- 3.2.2.2.** If any person fails to perform to the satisfaction of the Judicial Council, upon written notice the CMR will have fifteen (15) calendar days to remove that person from the Project and replace that person with one acceptable to the Judicial Council. All lead or key personnel for any Subcontractor must also be designated by any Subcontractor and are subject to all conditions stated in this section.
- 3.2.2.3.** The CMR shall be responsible for all costs associated with replacing any of CMR's Key Personnel, including the additional costs to familiarize replacement personnel with the Work. If the CMR does not furnish replacement personnel acceptable to the Judicial Council, the Judicial Council may terminate this Contract for cause.
- 3.2.3.** The CMR shall be responsible to the Judicial Council for acts and omissions of the CMR's employees, Subcontractors, Sub-subcontractors or material suppliers and their agents and employees, and other persons performing portions of the Work under a contract with the CMR.
- 3.2.4.** The CMR shall be responsible in all respects for the actions or inaction of all Subcontractors, Sub-subcontractors or material suppliers, at all tiers, regardless of whether they are stipulated suppliers or sole sourced. The Judicial Council shall not be responsible or liable for any action or inaction of any Subcontractor, Sub-subcontractor or material supplier, at any tier, except to the extent that the Judicial Council is the direct cause of the change or delay.
- 3.2.5.** The CMR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, either by activities or duties of the Judicial Council, the Judicial Council's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the CMR.

- 3.2.6. The CMR shall be responsible for inspections of portions of the Work already completed under the Contract to determine that those portions of Work are in proper condition to receive subsequent work. If the CMR determines that some work performed on the Project does not comply with the requirements of the Contract Documents, the CMR shall repair or replace the defective work at the CMR's sole expense.
- 3.2.7. Until Acceptance of the Work, the CMR shall have the charge and care thereof, and shall bear risk of injury or damage to any part of the Work by action of the elements (except for an Act of God, or natural disaster as proclaimed by the State or Federal Government), or from any other reason except for the damages as are directly caused by acts of the Federal or State Government and the public enemy.
- 3.2.8. **Background Checks.** If the CMR assigns persons (whether employees, independent contractors, Subcontractors or agents) to perform Work that requires that the person have access to the systems (whether on-Site or by remote access) or the premises of the Judicial Council or other Judicial Branch entities, the Judicial Council shall have the right, but not the obligation, to conduct a background check or to require the CMR to conduct a background check, as permitted by law, on those persons requiring access before the Judicial Council will grant access. The CMR will cooperate with the Judicial Council in performing any background check, and will promptly notify the Judicial Council of any person refusing to undergo a background check, and will reassign that person to perform other services that do not require access. The CMR shall obtain all releases, waivers, or permissions required for the release of the background check information to the Judicial Council. Costs incident to background checks are the sole responsibility of the CMR.

### 3.3 LABOR AND MATERIALS

- 3.3.1. Unless otherwise provided in the Contract Documents, the CMR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Materials, articles and equipment furnished by the CMR for incorporation into the Work shall be new unless otherwise specified in the Contract Documents.
- 3.3.2. **Hours of Labor.** Workers are limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week except that pursuant to Labor Code Section 1815, any work performed in excess of 8 hours per day and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay. Pursuant to Labor Code section 1813, the CMR shall pay the Judicial Council Twenty-Five Dollars (\$25) as a penalty for each worker for each calendar day worked in violation of the above limitations and restrictions.
- 3.3.3. **Prevailing Wage**
- 3.3.3.1. The CMR shall comply with the provisions of the Labor Code including sections 1770 to 1780, inclusive and specifically Section 1775. In accordance with Section 1775, the CMR shall forfeit to the Judicial Council the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the Judicial Council, for the work or craft in which that worker is employed for any work done under Contract by CMR or by any Subcontractor.
- 3.3.3.1.1. The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of CMR or Subcontractor was a good faith

mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of CMR.

- 3.3.3.1.2.** The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if CMR or Subcontractor has been assessed penalties within the previous three (3) years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
- 3.3.3.1.3.** The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the CMR or Subcontractor willfully violated Labor Code section 1775.
- 3.3.3.1.4.** The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by CMR or Subcontractor.
- 3.3.3.2.** Pursuant to Labor Code, Section 1770, the Director of the Department of Industrial Relations (DIR) has ascertained the general prevailing rate of per diem wages and a general prevailing rate for legal holiday and overtime work for each craft required for execution of the Contract. CMR shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of per diem wages determined by the Director of the Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between CMR or any Subcontractor and such workers. The general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Contract are on file at the Judicial Council's principal office and at the Project Site and copies will be made available to any interested party on request. Prevailing wage rates are also available on the internet at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>).
- 3.3.3.3.** Wage rates set forth are the minimum that may be paid by the CMR. Nothing herein shall be construed as preventing the CMR from paying more than the minimum rates set. No extra compensation whatsoever will be allowed by the Judicial Council due to the inability of the CMR to hire labor at minimum rates, nor for necessity for payment by the CMR of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the CMR's own satisfaction in preparing its Proposal.
- 3.3.3.4.** If it becomes necessary to employ a craft, classification or type of worker other than those listed on the internet at <http://www.dir.ca.gov/oprl/DPreWageDetermination.htm>, the CMR shall contact the Division of Labor Statistics and Research to find the appropriate prevailing wage determination. If the Division of Labor Statistics and Research is unable to identify a determination that is applicable, the Contractor shall notify the Judicial Council immediately, and the Judicial Council will request a special determination from the Division of Labor Statistics and Research. The rate thus determined shall be applicable from the commencement of the Project.
- 3.3.3.5.** CMR stipulates that it will comply with the provisions of Labor Code section 1776 with respect to payroll records. The CMR and each Subcontractor shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CMR and/or

Subcontractor in connection with the Work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written request by the Judicial Council, the CMR's and Subcontractor's certified payroll records shall be furnished within ten (10) days. The CMR's and Subcontractor's certified payroll records shall be available for inspection at the principal office of the CMR.

### **3.3.4. Registration.**

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

“A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

**3.3.4.2.** CMR shall, and shall ensure that all “subcontractors” (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. CMR represents to the Judicial Council that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. CMR acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies.

“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.”

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

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

CMR shall only employ properly registered apprentices in the execution of the Work. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered.

### 3.3.7. Subcontractor Health and Safety Program.

- 3.3.7.1. Each Subcontractor and Sub-subcontractor can work at the Project Site if it can demonstrate its compliance with the following requirements and it can provide the following required written documentation:
- 3.3.7.2. Its worker's compensation experience modifier rate(s) for the most recent three-year period, the average of which must be 1.00 or less; and
  - 3.3.7.2.1. 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; and
  - 3.3.7.2.2. Its average lost work rate for the most recent three-year period; and
  - 3.3.7.2.3. Its acknowledgement of its compliance with the CMR's site safety program.
- 3.3.7.3. Should the Subcontractor or Sub-subcontractor 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, but the Subcontractor or Sub-subcontractor workers compensation experience modifier at the time of the subcontractor bid packages is 1.50 or less, then the Subcontractor or Sub-subcontractor may work at the Project Site if the Subcontractor or Sub-subcontractor:
  - 3.3.7.3.1. Is a party to an alternative dispute resolution system as provided for in Labor Code section 3201.5; and
  - 3.3.7.3.2. Demonstrates that its Project site safety program is compliant with the provisions of the California Division of Occupational Safety and Health regulations, and the CMR's Project site safety program required by the Article entitled "Protection of Persons and Property" set forth in these General Conditions, and the provisions of the Judicial Council's OCIP.

### 3.4 NONDISCRIMINATION/NO HARASSMENT CLAUSE

- 3.4.1. **Nondiscrimination.** During the performance of this Contract, CMR 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. CMR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 3.4.2. **No Harassment.** During the performance of this Contract, the CMR and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the CMR or its Subcontractors interact in the performance of this Contract. CMR and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- 3.4.3. **FEHA.** CMR shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section



12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part of it as if set forth in full.

- 3.4.4. CMR and its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the CMR has a collective bargaining agreement, to refer either minorities and/or women shall excuse the CMR's obligations under these specifications; Government Code, Section 12990; or the regulations promulgated pursuant thereto.
- 3.4.5. CMR shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Contract.
- 3.4.6. CMR shall not enter into any subcontract with any person or firm decertified from State contracts pursuant to Government Code, Section 12990.

### 3.5 GUARANTEE AND WARRANTY

- 3.5.1. CMR guarantees that it will perform all Work for Project within the Contract Time for the GMP and in accordance with the Contract Documents, including without limitation, the drawings and specifications, and that the work as installed will fulfill the requirements included in the Contract Documents.
- 3.5.2. CMR also unconditionally guarantees and warrants that the Work will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of **one (1) year** from the date of recordation of the Notice of Completion for the Project, unless a longer warranty period is specifically called for in the Contract Documents. CMR shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the Guarantee period specified in the Contract Documents, without any expense whatsoever to the Judicial Council; ordinary wear and tear and abuse excepted. The warranty period(s) may be adjusted based on the provisions of the section herein entitled, "Occupancy by the Judicial Council Prior to Completion of the Work."
- 3.5.3. CMR shall obtain and preserve for the benefit of the Judicial Council, all manufacturer's warranties on materials, fixtures, and equipment incorporated into the Work and as indicated in the Contract Documents, and the warranty schedule (if any).
- 3.5.4. CMR further agrees, within fourteen (14) days after being notified in writing by the Judicial Council, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the CMR shall commence and execute, with due diligence, all work necessary to fulfill the terms of the Guarantee. If the Judicial Council finds that the CMR fails to perform any of the work under the Guarantee, the Judicial Council will proceed to have the work completed at the CMR's expense and the CMR will pay costs of the work upon demand. The Judicial Council will be entitled to all costs, including reasonable attorney's fees necessarily incurred upon the CMR's refusal to pay the above costs.
- 3.5.5. Notwithstanding the foregoing Subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of Judicial Council employees, property, or licensees, the Judicial Council may undertake, at the CMR's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the CMR not being in accordance with the requirements of the Contract Documents.

- 3.5.6.** The above provisions do not in any way limit the guarantees on any items for which a longer guarantee is specified or on any items for which a manufacturer gives a guarantee for a longer period. CMR shall furnish to the Judicial Council all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by the Judicial Council.

### **3.6 TAXES.**

- 3.6.1.** CMR shall also pay, when due, all applicable income taxes, including estimated taxes, incurred as a result of the compensation paid by the Judicial Council to the CMR for the Services. The Judicial Council is exempt from federal excise taxes and no payment will be made for any taxes levied on the CMR's or any Subcontractor's employees' wages. CMR agrees to indemnify, defend and hold the Judicial Council harmless for any claims, costs, losses, fees, penalties, interest or damages (including attorney fees and costs) suffered by the Judicial Council resulting from the CMR's failure to comply with this provision. The Judicial Council may offset any taxes paid by the Judicial Council as a result of the CMR's breach of this provision.
- 3.6.2.** CMR and/or its subcontractors, as required, shall pay, when due, all applicable sales taxes. The Direct Cost of Work component of the GMP shall include all applicable sales taxes or other taxes that may be due in accordance with section 7051 of the Revenue and Taxation Code, Regulation 1521 of the State Board of Equalization or any other tax code that may be applicable.

### **3.7 PERMITS, FEES AND NOTICES**

- 3.7.1.** CMR shall secure and pay for all required permits, governmental fees, licenses and inspections necessary to complete the Work, unless otherwise provided in the Contract Documents. The Judicial Council shall compensate the CMR for the permits, fees and services specified as an Allowance.
- 3.7.2.** CMR shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the Work.
- 3.7.3.** If the CMR observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the CMR shall promptly notify the Judicial Council in writing. If the CMR allows work to be performed known to be contrary, or should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without prior notice to the Judicial Council, CMR shall assume full responsibility for the Work and shall bear the attributable costs.
- 3.7.4.** CMR is not subject to municipal, county, or city laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon Judicial Council property, except as specified in the Contract Documents.
- 3.7.5.** All construction work shall comply with the Applicable Codes including, without limitation, the California Building Standards Code (CBSC), including the California Green Building Standards (CALGreen) Code current adopted edition, as of the proposal date.
- 3.7.6. Trenches.**
- 3.7.6.1.** Pursuant to Labor Code section 6705, if the Contract Sum exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the CMR shall, in advance of excavation, promptly submit to the Judicial Council, and/or its Construction Supervisor/Inspector, and a registered civil or structural engineer employed by the Judicial Council or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving ground during the excavation of such trench or trenches.

- 3.7.6.2. If CMR's shoring plan varies from the Shoring System Standards established by the CalOSHA State of California Construction Safety Orders, the plan shall be prepared by a registered civil or structural engineer, but in no case shall the shoring plan be less effective than that required by the CalOSHA State of California Construction Safety Orders. No excavation of any trench or trenches shall be commenced until CMR's shoring plan has been accepted by the Judicial Council or by the person to whom authority to accept has been delegated by the Judicial Council.
- 3.7.6.3. Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the Judicial Council or any of its employees.
- 3.7.6.4. CMR shall not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permits shall be prominently displayed at the Site prior to the commencement of any excavation work.
- 3.7.6.5. Except in an emergency, CMR shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the Judicial Council, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out unless an inquiry identification number has been assigned to the CMR or any Subcontractor and the CMR has given the Judicial Council the identification number. Any damages arising from CMR's failure to make appropriate notification shall be at the sole risk and expense of the CMR. Any delays caused by failure to make appropriate notification shall be at the sole risk of the CMR and shall not be considered as a basis for an extension of the Contract Time.

### 3.8 SUPERINTENDENT

- 3.8.1. CMR shall employ a competent Superintendent(s) and necessary assistants who shall be in attendance at the Project Site during performance of the Work. The Superintendent shall represent the CMR, and communications given to the Superintendent shall be as binding as if given directly to the CMR. All communications shall be confirmed in writing by the CMR. At any other time when the Superintendent is absent from the Project Site because no Work is being performed, the Superintendent shall nevertheless keep the Judicial Council advised of the Superintendent's whereabouts so that the Superintendent may readily be reached and available for consultation at the Project Site at any time.

### 3.9 PROJECT SCHEDULES AND NARRATIVE REPORT

- 3.9.1. **Master Project Schedule.** Within fourteen (14) calendar days after the starting date on the Notice to Proceed, the CMR shall prepare and submit to the Judicial Council for review and acceptance, with copy to the Architect, a detailed, fully cost-loaded, draft Master Project Schedule. This schedule, once accepted by the Judicial Council, will be the Master Project Schedule and must be a fully cost-loaded schedule, as defined herein and shall be used for determining progress payments.
- 3.9.1.1. The Master Project Schedule shall be comprised of a Critical Path Method network and shall be in a chart format acceptable to the Judicial Council. CMR shall input the critical path schedule using Primavera Project Planner, Primavera SureTrack, or Judicial Council-approved equal software. All programs shall be capable of converting the data to a format that is readable using Primavera SureTrack, version 3.0, unless another format is specified in the Contract Documents.

- 3.9.1.2. Requirements for a Fully Cost-Loaded Schedule.** In addition to the general requirements for the Master Project Schedule as indicated herein, the CMR must also comply with the following specific requirements to ensure its Master Project Schedule, and all monthly updates, are cost-loaded sufficiently for the Judicial Council’s approval and as a basis for CMR’s monthly progress payments.
- 3.9.1.2.1.** Schedule activities must be cost-loaded in whole dollars and the assigned dollar value of the schedule activities must cumulatively equal the total Contract Price.
  - 3.9.1.2.2.** The tasks and amounts in the cost-loaded schedule will be utilized as the basis for progress payment purposes.
  - 3.9.1.2.3.** Insurance and Bonds must be listed separately. Copies of paid invoices for bonds and insurance must be submitted with the first Master Project Schedule.
  - 3.9.1.2.4.** Activities must only be assigned their respective direct costs and must not include any CMR overhead and/or markups.
  - 3.9.1.2.5.** The Master Project Schedule must identify a separate activity running throughout the Project duration with the budgeted cost of all of the CMR’s time-related overhead including, but not limited to jobsite expenses and indirect cost, home office overhead, profit and contingency (if any).
  - 3.9.1.2.6.** Payment for overhead costs will be made on a time-related basis, where the percent earned through each monthly, updated Master Project Schedule will equal the percent of time lapsed from the applicable Notice to Proceed to Completion.
  - 3.9.1.2.7.** Master Project Schedule procurement activities must not be cost-loaded. Material and equipment costs must be included in their respective installation activity(s) and identified separately as a material type resource. Assigned material and equipment costs must not include any indirect costs. Any reimbursement of materials and equipment prior to their installation will be subject to the applicable provisions in the Contract Documents.
  - 3.9.1.2.8.** With the exception of Milestones and Submittal activities, any and all activities performed by the CMR or any of its Subcontractors, must be cost-loaded.
  - 3.9.1.2.9.** Excluding material and equipment costs, Schedule activities must not have individual dollar values in excess of \$100,000.
  - 3.9.1.2.10.** The cost-loading of activities must be commensurate with the true value of labor, equipment and material. Unbalanced, inconsistent, or front-end loaded cost allocation is prohibited and will be grounds for rejection of the CMR’s proposed Master Project Schedule or any monthly updates to the Master Project Schedule.
  - 3.9.1.2.11.** The sum of all assigned costs for each Subcontractor must be equal to the value of its subcontract with the CMR.
  - 3.9.1.2.12. Resource Loading:**
    - 3.9.1.2.12.1.** CMR will assign manpower-loading for each construction activity in the Master Project Schedule. Activities’ resource loading must be based on the CMR’s estimate used in pricing the Work.
    - 3.9.1.2.12.2.** Resources and labor (man-hours) allocated to each activity must be consistent with activity duration as well as scope and supported by the CMR’s estimate and industry standard estimating / productivity guides such as “Means” and/or “Walker’s”.

**3.9.1.2.12.3.** The schedule activities must not be resource leveled or resource constrained.

- 3.9.1.3.** CMR's Master Project Schedule shall show the dates on which each part or division of the Work is expected to be started and completed.
- 3.9.1.4.** The Work activities making up the Master Project Schedule shall be of sufficient detail to assure that adequate planning has been done for proper execution of the Work and such that, in the sole judgment of the Judicial Council, it provides an appropriate basis for monitoring and evaluating the progress of the Work. The schedule shall show the interdependence of each activity and a critical path. The Master Project Schedule shall include, but shall not be limited to, the following items:
- 3.9.1.4.1.** Project design and construction activities;
  - 3.9.1.4.2.** Due dates of contractual obligations;
  - 3.9.1.4.3.** Approximate cost and duration for each activity.
  - 3.9.1.4.4.** Procurement activities.
  - 3.9.1.4.5.** Project meetings;
  - 3.9.1.4.6.** Dates for submission for required milestones;
  - 3.9.1.4.7.** Notice to Proceed for Construction Phase;
  - 3.9.1.4.8.** Activities and milestones during construction;
  - 3.9.1.4.9.** Commissioning Activities;
  - 3.9.1.4.10.** Procurement, installation and construction of CMR-Procured Equipment
  - 3.9.1.4.11.** Procurement, installation and construction of furniture, fixtures and equipment if the Judicial Council selects the FF&E Option;
  - 3.9.1.4.12.** Coordination of the ordering, delivery, outfitting, and installation of furniture, fixtures and equipment, the purchase of which will be at the Judicial Council's expense;
  - 3.9.1.4.13.** Punch list preparation, punch list work, and punch list sign-off;
  - 3.9.1.4.14.** Move-in, occupancy, and initiation of Court operations;
  - 3.9.1.4.15.** Project Closeout; and
  - 3.9.1.4.16.** Closeout Documentation.
- 3.9.1.5.** CMR's Master Project Schedule shall show the sequence, duration in calendar or working days, and interdependence of activities required for the complete performance of all Work. The schedule shall show milestones, including milestones for Judicial Council-furnished information, and shall include activities for Judicial Council-furnished equipment and furniture when those activities are interrelated with the CMR's activities. The transmittal provided with the Master Project Schedule shall state whether the durations are in work days or calendar days.
- 3.9.1.6.** CMR's Master Project Schedule shall begin with the effective date of the Notice to Proceed and conclude with the date of final Completion.
- 3.9.1.7.** No more than twenty percent (20%) of the activities will have less than five (5) workdays of Float unless approved by the Judicial Council.
- 3.9.1.8.** The construction schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Work. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Service or other approved source.
- 3.9.1.9.** The schedule shall be developed using an appropriate work breakdown structure.

- 3.9.1.10.** CMR may submit a Master Project Schedule that shows the work completed in less time than the specified Contract Time – an early completion (“advanced”) schedule. However, the Judicial Council’s acceptance of such a schedule will not change the Contract Time. The Judicial Council is not required to accept an advanced schedule. CMR shall not be entitled to extra compensation if the Judicial Council allows the CMR to proceed performing the Work on an advanced schedule and CMR completes the Project, for whatever reason, beyond the date shown in that advanced schedule, but within the time for Completion indicated in the Contract. A schedule showing the work completed in less than the time for Completion indicated in the Contract, shall be considered to have Project Float.
- 3.9.1.11.** CMR shall not sequester Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Completion date. In addition, Judicial Council-caused delays on the Project may be offset by Judicial Council-caused time savings (i.e., critical path submittals returned in less time than allowed by the Contract, approval of substitution requests and credit changes which result in a savings of time to the CMR, etc.). In such an event, the CMR shall not be entitled to receive a time extension or delay damages until all Judicial Council-caused time savings are exceeded and the Contract Completion date is also exceeded.
- 3.9.2.** Time is of the essence in the Completion of the Work. CMR shall begin work by the start date stated in the Notice to Proceed. Work shall be executed to Completion in accordance with the approved Project Schedule, subject to adjustment in accordance with the requirements of the Contract Documents.
- 3.9.3.** CMR shall provide an adequate work force, materials of proper quality, and equipment to properly execute the Work and to ensure Completion of each part in accordance with the Project Schedule and within the Contract Time specified.
- 3.9.4.** The Judicial Council’s review and acceptance of the Master Project Schedule is for compliance with the requirements of the Contract Documents only. Review and acceptance by the Judicial Council of the Master Project Schedule only means that the Judicial Council acknowledges that the CMR believes the CMR can perform the Work as indicated in the Master Project Schedule and does not relieve the CMR of any of the CMR’s responsibility for the accuracy or feasibility of the Master Project Schedule, or of the CMR’s ability to meet the interim Project milestone dates and the date of Completion. The Judicial Council’s review and acceptance does not expressly or impliedly warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of the Master Project Schedule.
- 3.9.5. Schedule Updates.**
- 3.9.5.1.** CMR shall provide a monthly update to the Master Project Schedule to the Judicial Council for review and acceptance. The Judicial Council’s review and acceptance of CMR’s schedule update(s) does not expressly or impliedly warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of the schedule update(s).
- 3.9.5.2.** In addition, the CMR shall provide an update to the Master Project Schedule to the Judicial Council, and the Judicial Council’s Construction Supervisor/Inspector, within ten (10) days of commencement of each Phase and at other times when significant changes are made to the schedule or as requested by the Judicial Council.

- 3.9.5.3. CMR shall provide an update to the Master Project Schedule for the Construction Phase of the Project. Preparation of the Master Schedule for the Construction Phase will take into consideration sufficient time for the Judicial Council to authorize that phase, including any time necessary for the Judicial Council to obtain approval of funding.
- 3.9.5.4. CMR shall provide an update to the Master Project Schedule within three (3) days upon the reasonable request of the Judicial Council.
- 3.9.6. **Narrative.** CMR shall include with its monthly update to the Master Project Schedule, a Schedule Narrative Report containing a narrative that includes the following:
  - 3.9.6.1. CMR's transmittal letter;
  - 3.9.6.2. Description of problem tasks, referenced to field instructions, RFIs, Change Order numbers, or claim numbers as appropriate;
  - 3.9.6.3. Current and anticipated delays not resolved by approved Change Order, including:
    - 3.9.6.3.1. CMR's reason for the cause of the delay;
    - 3.9.6.3.2. Corrective action and schedule adjustments to correct the delay including the use of Float; and
    - 3.9.6.3.3. Known or potential impact of the delay on other activities, milestones, and project completion date.
  - 3.9.6.4. Changes in construction sequence;
  - 3.9.6.5. Pending items and status thereof including but not limited to:
    - 3.9.6.5.1. Pending Change Orders;
    - 3.9.6.5.2. Time extension requests; and
    - 3.9.6.5.3. Other items.
  - 3.9.6.6. Contract completion date status:
    - 3.9.6.6.1. If ahead of schedule, the number of calendar days ahead; or
    - 3.9.6.6.2. If behind schedule, the number of calendar days behind.
  - 3.9.6.7. Other project or scheduling concerns; and
  - 3.9.6.8. Updated network diagram with target bars shown.
- 3.9.7. The Master Project Schedule shall also show all submittals associated with each work activity, allowing a minimum of fourteen (14) and a maximum of thirty (30) calendar days for the Architect's review of each submittal unless a longer period of time is specified in the Contract Documents.
  - 3.9.7.1. In addition, the CMR shall also submit a separate Submittal Schedule listing all submittals required by the Contract and noting the anticipated date that each submittal will be submitted.

All submittals precedent to critical construction activities shall be included in the construction schedule.

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

- 3.10.1.** CMR shall maintain at the Project site one record copy of the Drawings, Contract Documents (including these General Conditions), Addenda, Change Orders and other modifications, in good order and marked currently to record changes and selections made during construction; and in addition, Shop Drawings, Product Data, Samples and similar required submittals. These shall be available to the Judicial Council, and its Construction Supervisor/Inspector, and shall be delivered to the Judicial Council upon Completion of the Work.
- 3.10.2. Daily Records.** CMR shall prepare and maintain daily inspection records to document the progress of the Work on a daily basis. Daily Records shall include a daily accounting of all labor and all equipment on the site for the CMR and all Subcontractors, at any tier. Daily Records shall make a clear distinction between work being performed under Change Order, base scope Work, and/or disputed work. Daily Records shall be copied and provided to the Judicial Council, and the Construction Supervisor/Inspector, at the end of every week, unless otherwise agreed to in writing.

### **3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES (SUBMITTALS)**

- 3.11.1.** Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate those portions of the Work for which submittals are required and the way the CMR proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the Judicial Council is subject to the limitations stated herein.
- 3.11.2.** CMR shall review, approve and submit to the Judicial Council, and the Judicial Council's Construction Supervisor/Inspector, all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents within the number of days set forth in the Contract Documents.
- 3.11.3.** Submittals for finishes shall be submitted in a sequence so as to cause no delay in the progress of the Work or in the activities of the Judicial Council or separate contractors.
- 3.11.4.** Submittals that are not required by the Contract Documents may be returned to the CMR without action.
- 3.11.5.** CMR shall perform no portion of the Work requiring submittal(s) and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the Judicial Council. Such Work shall be in accordance with reviewed submittals.
- 3.11.6.** By submitting Shop Drawings, Product Data, Samples and similar submittals, the CMR represents that the CMR has determined and verified materials, field measurements and related field construction criteria, and has checked and coordinated the information contained within the submittal(s) with the requirements of the Contract Documents.
- 3.11.7.** CMR shall not be relieved of the responsibility for any deviation from the requirements of the Contract Documents by the Judicial Council's and its Construction Supervisor/Inspector review of submittals unless the CMR has specifically informed the Judicial Council, in writing, of such deviation at the time of submittal, and the Judicial Council has given written consent to the specific deviation. The Judicial Council's and its Construction Supervisor/Inspector review shall not relieve the CMR of responsibility for errors or omissions in submittals.



- 3.11.8.** CMR shall respond per requirements of the Contract Documents, in writing or on resubmitted submittals, to revisions other than those requested by the Judicial Council on previous submittals. After the second resubmittal of a specific item, that is still not accepted, the CMR will be charged all costs of submittal review. The charges will be deducted from the CMR's next pay request.
- 3.11.9.** Informational submittals, on which the Judicial Council is not expected to take action, may be identified in the Contract Documents.
- 3.11.10.** When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the Judicial Council will be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 3.11.11.** When descriptive catalog designations, including manufacturer's name, product brand name, or model number(s) are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications of current issue at date of Judicial Council's solicitation document.
- 3.11.12. Substitutions and Approved Equals.** Alternative material(s), article(s), or equipment that are of equal quality and of required characteristics for the purpose intended may be proposed by the CMR for use in the Work, provided the CMR complies with the Contract Documents and the following requirements:
- 3.11.12.1.** CMR shall submit a proposal for a substitution request for alternative material(s), article(s), or equipment, in writing:
- 3.11.12.1.1.** The Judicial Council will consider requests for substitution only if received within thirty (30) days after Contract start date stated in the Notice to Proceed. Requests received after this timeframe may be rejected as untimely at the sole discretion of the Judicial Council.
- 3.11.12.2.** At the Judicial Council's discretion, it may give written consent to a submittal or resubmittal received after expiration of the time limit designated.
- 3.11.12.3.** The request will not be considered unless the submittal is accompanied by complete information and descriptive data necessary to determine equality of offered material(s), article(s), or equipment. Samples shall be provided when requested by the Judicial Council. Burden of proof as to comparative quality, suitability, and performance of offered material(s), article(s), or equipment shall be upon the CMR. The Judicial Council will be the sole judge as to such matters. In the event the Judicial Council rejects the use of such alternative(s) submitted, then the particular product(s) originally specified in the Contract Documents shall be furnished.
- 3.11.12.4.** If mechanical, electrical, structural, or other changes are required for installation, fit of alternative materials, articles, or equipment, or because of deviations from Contract Drawings and Specifications, such changes shall not be made without consent of the Judicial Council, and shall be made without additional cost to the Judicial Council.

## **3.12 TESTS AND INSPECTIONS**

- 3.12.1.** CMR shall at all times permit the Judicial Council, and its Construction Supervisor/Inspector and its agents, officers, and employees to visit the Project site and inspect the Work, including shops where work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. The CMR shall be solely responsible for notifying the Judicial Council, and the

Judicial Council's Construction Supervisor/Inspector, where and when the work is ready for inspection and testing.

- 3.12.2. When the Contract Documents require a portion of the Work to be tested, such portion of work shall not be covered up until inspected and approved by the Judicial Council. Should any work be covered without the required testing and approval, such work shall be uncovered and recovered at the CMR's expense.
- 3.12.3. Whenever the CMR intends to perform work on Saturday, Sunday, or a legal holiday, the CMR shall give written notice to the Judicial Council, and the Judicial Council's Construction Supervisor/Inspector, of such intention at least 24 hours prior to performing the Work, so that the Judicial Council may make necessary arrangements.
- 3.12.4. If procedures for testing, inspection or approval reveal failure of a portion(s) of the Work to comply with the Contract Documents, the CMR shall bear all costs made necessary by such failure(s) including those of repeated procedures, tests and inspections, including paying for Judicial Council's costs and expenses associated therewith.
- 3.12.5. **Tests Not in Contract Documents.** If the Judicial Council, or its Construction Supervisor/Inspector, determines that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, the Judicial Council will instruct the CMR, in writing, to make arrangements for additional testing, inspection or approval by an entity acceptable to the Judicial Council, and the CMR shall give forty-eight (48) hours written notice to the Judicial Council, and its Construction Supervisor/Inspector, of where and when tests and inspections will be conducted so that the Judicial Council, and its Construction Supervisor/Inspector, may observe the procedures. The Judicial Council will pay for these tests.
- 3.12.6. **Certification.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the CMR and delivered to the Judicial Council, and the Judicial Council's Construction Supervisor/Inspector, within fourteen (14) days after each test.

### 3.13 USE OF PROJECT SITE

- 3.13.1. CMR shall confine operations at the Project Site to areas permitted by law, ordinances, permits and the Contract Documents.
- 3.13.2. CMR shall perform no operations of any nature on or beyond the limits of Work or Site, except as such operations are authorized in the Contract Documents, or authorized by the Judicial Council, in writing.
- 3.13.3. CMR shall ensure the limits of Work to be free of graffiti or other similar defacements during the time of the Contract.
  - 3.13.3.1. If defacement occurs, then the CMR shall promptly and properly remove, repair, or correct the affected area(s), or as otherwise directed by the Judicial Council.
  - 3.13.3.2. CMR shall protect all exposed surfaces within the limits of Work, with anti-graffiti coatings, and maintain adequate protection at all times during the Contract Time.
- 3.13.4. **Prohibitions.**
  - 3.13.4.1. The use or possession of alcohol, weapons, or illegal controlled substances by the CMR, or others under the CMR's control, on Judicial Council property or the Site is not allowed.

3.13.4.2. CMR, or others under CMR's control, shall not reside on the Site at any time during the Contract Time.

### 3.14 CUTTING AND PATCHING

3.14.1. CMR shall be responsible for cutting, fitting or patching as required to complete the Work.

3.14.2. CMR shall not damage nor endanger the Work by cutting, patching or otherwise altering the construction, of the Work and shall not cut nor otherwise alter the Work without prior written consent of the Judicial Council.

### 3.15 CLEANING UP

3.15.1. CMR shall keep the Project Site and surrounding areas free from waste materials and/or rubbish caused by operations under the Contract and at other times when directed by the Judicial Council or its Construction Supervisor/Inspector. At all times while finish work is being accomplished, floors shall be kept clean, free of dust, construction debris and trash. Upon Completion of the Work, the CMR shall remove from the Project Site the CMR's tools, construction equipment, machinery, and any waste materials not previously disposed of, leaving the Project Site thoroughly clean, and ready for final inspection.

3.15.2. If the CMR fails to clean up as provided in the Contract Documents, the Judicial Council may do so and charge the cost thereof to the CMR.

3.16 **ACCESS TO WORK.** CMR shall provide the Judicial Council, and its agents, Construction Supervisor/Inspector, continuous access to the Work.

3.17 **ROYALTIES AND PATENTS.** CMR shall pay all royalties and license fees. CMR shall defend suits or Claims for infringement of patent rights and hold the Judicial Council harmless.

### 3.18 INDEMNIFICATION

3.18.1. CMR shall, to the fullest extent permitted by law, indemnify, defend with counsel satisfactory to the Judicial Council, and hold harmless (collectively, "Indemnify") the State, the Judicial Council, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, contractors, representatives, volunteers and employees (individually, an "Indemnified Party") from any and all claims, lawsuits, losses, costs (including attorney fees and costs), liabilities, and damages arising from, related to or in connection with, in whole or in part, any of the following:

3.18.1.1. CMR's or any of its employees' or Subcontractors' negligent acts, omissions, or intentional misconduct;

3.18.1.2. CMR's breach of its obligations under this Contract;

3.18.1.3. CMR's or any of its employees' or Subcontractors' violation of any applicable law, rule, or regulation; and/or

3.18.1.4. Any claim or lawsuit by a third party, contractor, subcontractor, supplier, worker, or any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of this Contract who may be injured or damaged by the CMR or any of its Subcontractors or employees.

- 3.18.2.** CMR's obligation to Indemnity shall occur when the above claims, lawsuits, losses, costs, liabilities, and damages arise from, are related to, or are in connection with, the CMR's performance of this Agreement.
- 3.18.3.** This article does not require the CMR to Indemnify an Indemnified Party for any portion of any loss, cost, liability, or damage that arises from the active negligence or intentional misconduct of the Indemnified Party.
- 3.18.4.** In addition to any remedy authorized by law, moneys due the CMR under the Contract, as considered necessary by the State, may be retained until disposition has been made of any claims, lawsuits, losses, costs, liabilities, and damages; however, this provision shall not be construed as precluding the State from enforcing any right of offset the State may have to any moneys.
- 3.19 AIR POLLUTION.** CMR and each Subcontractor shall comply with all State and/or local air pollution control rules, regulations, ordinances, and statutes that apply to any work performed under the Contract. If there is a conflict between the State and local air pollution control rules, regulations, ordinances and statutes, the most stringent shall govern.
- 3.20 SWPPP.** CMR shall comply with the Judicial Council's Storm Water Pollution Prevention Plan (SWPPP) and shall be the Judicial Council's Qualified SWPPP Practitioner ("QSP"), at no additional cost to the Judicial Council.
- 3.20.1.** CMR shall strictly follow the requirements to implement all the provisions of the SWPPP including, without limitation, preparation of monitoring and recording reports and providing those to the Judicial Council.
- 3.21 UNION ORGANIZING.** CMR, by signing the Contract, hereby acknowledges the applicability of Government Code section 16645 through section 16649 to the Contract.
- 3.21.1.** CMR will not assist, promote or deter union organizing by employees performing work on a Judicial Council contract, including a public works contract.
- 3.21.2.** No Judicial Council funds received under the Contract will be used to assist, promote or deter union organizing.
- 3.21.3.** CMR will not, for any business conducted under the Contract, 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 the Judicial Council property is equally available to the general public for holding meetings.
- 3.21.4.** If CMR incurs costs, or makes expenditures to assist, promote or deter union organizing, CMR will maintain records sufficient to show that no reimbursement from Judicial Council funds has been sought for these costs, and that CMR shall provide those records to the Attorney General upon request.
- 3.22 SELF PERFORMANCE**
- 3.22.1.** CMR shall not, without specific written approval in advance from the Judicial Council in the form of an Amendment to this Contract, self-perform any construction work during the Construction Phase.
- 3.22.2.** CMR shall not, without specific written approval in advance from the Judicial Council in the form of an Amendment to this Contract, subcontract or in any manner cause work to be done by any entity in

which the CMR, its parent or associate companies, or any of CMR's owned or controlled subsidiaries have a financial or other business interest.

- 3.22.3.** If CMR requests and the Judicial Council approves that the CMR can submit a proposal to self-perform construction work, then the following process shall be followed:
- 3.22.3.1.** CMR shall request the Judicial Council's approval for the CMR to submit a proposal to self-perform specific construction work prior to requesting bid packages from Subcontractors. If the Judicial Council approves the request, the next steps shall be required.
  - 3.22.3.2.** All construction work self-performed by the CMR shall be subject to the terms and conditions of this Contract.
  - 3.22.3.3.** The CMR shall submit its bid to the Judicial Council for the authorized bid package(s) prior to receiving bids from any Subcontractor.
  - 3.22.3.4.** The CMR shall evaluate the bids of Subcontractors and provide the Judicial Council with (1) copies of ALL Subcontractors' proposals for bid package(s) for which CMR is also proposing and (2) CMR's recommendation of the lowest cost responsive proposals.
  - 3.22.3.5.** The Judicial Council shall then evaluate the proposal submitted by the CMR for the authorized bid package(s) and compare those to the recommended Subcontractor proposal(s), and shall either direct the CMR to award the bid package(s) to the Subcontractor(s) or shall approve the CMR's performance of those bid package(s).
  - 3.22.3.6.** Any deviation from this process must be pre-approved by the Director.
- 3.22.4.** Notwithstanding the above, the Parties agree that CMR may self-perform the concrete construction work, however, at the time of formalizing the GMP and prior to commencing with the construction of the Project, the Parties must agree upon a price to compensate CMR for that work, which approval the Judicial Council may withhold in its reasonable discretion. In determining the amount that CMR will be compensated for the concrete construction work, CMR must provide evidence that the price that CMR proposes for the concrete construction work is a fair, equitable and competitive price.

## **ARTICLE 4 SUBCONTRACTORS**

### **4.1 SUBLETTING AND SUBCONTRACTING**

- 4.1.1.** Although the Judicial Council is not bound by the Public Contract Code for trial court construction, the Judicial Council has specifically incorporated the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et seq.) ("Subcontractor Listing Law") into the Contract. The Judicial Council intends to fully enforce the provisions of the Subcontractor Listing Law, including, specifically sections 4109 and 4110. Accordingly, CMR and Judicial Council shall adhere to the rules governing subcontracting as set forth in Public Contract Code section 4100 et seq. Subcontractor substitutions shall be in accordance with provisions of the Subletting and Subcontracting Fair Practices Act. Violations of this Act by the CMR may subject the CMR to penalties and disciplinary action as provided by the Subletting and Subcontracting Fair Practices Act.
- 4.1.2.** CMR is prohibited from replacing or otherwise substituting subcontractors without following the procedures set forth in the Subcontractor Listing Law. An agreement made in violation of this section shall confer no rights on any party and shall be null and void.

- 4.1.3. At the request of the Judicial Council, the CMR shall provide documentation that its Subcontractors meet the required qualifications set forth in the Contract Documents with respect to that Subcontractor's work. If requested by the Judicial Council, the CMR shall provide copies of all CMR's agreements with its Subcontractors to the Judicial Council. The Judicial Council's review of subcontracts shall in no way relieve the CMR of any of its responsibilities and obligations under this Contract.
- 4.1.4. CMR shall, in the course of the work, engage only Subcontractors and employees who possess, and will maintain in good standing during the performance of the Services, valid and applicable licenses where the State of California or this Contract requires that the work to be performed by that Subcontractor or employee must be performed by a licensed person or entity
- 4.1.5. CMR expressly acknowledges that its Subcontractors are not third party beneficiaries of this Contract. No contractual relationship exists between the Judicial Council and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.
- 4.1.6. CMR shall be responsible for all Work performed under the Contract. All persons engaged in the Work of the Project are the responsibility and under the control of the CMR. CMR shall give personal attention to fulfillment of the Contract and shall keep the Work under the CMR's control.
- 4.1.7. Although some of the Contract Documents may be arranged according to various trades or general grouping of work, the CMR is not obligated to sublet work in any particular grouping or manner. The CMR shall be responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and any material or equipment suppliers working on the Project.
- 4.1.8. The Judicial Council may not permit a contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Sections 1777.1 or 1777.7 of the Labor Code to propose on, bid on, be awarded, or perform work as a subcontractor on a public works project.
- 4.1.8.1. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred subcontractor by a contractor on the project shall be returned to the awarding body.
- 4.1.8.2. CMR shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

## 4.2 SUBCONTRACTOR RELATIONS

- 4.2.1. CMR shall provide each Subcontractor copies of the Contract Documents to which the Subcontractor will be bound. CMR shall require all Subcontractors to comply with the terms and conditions of this Contract. CMR shall require Subcontractors to make copies of applicable portions of the Contract Documents available to their respective Sub-subcontractors.
- 4.2.2. Pursuant to Business and Professions Code section 7108.5, no later than seven (7) days after receipt, CMR shall pay to each Subcontractor, out of the amount paid to CMR on account of Subcontractor's portion of the Work, the amount to which that Subcontractor is entitled. CMR shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a similar manner.

- 4.2.3. If there is a good faith dispute over all or any portion of the amount due a Subcontractor on a progress payment, the CMR may withhold no more than one hundred and fifty percent (150%) of the disputed amount. This provision shall also apply to Sub-subcontractors.
- 4.2.4. CMR is solely responsible for settling any differences between CMR and its Subcontractor(s) or between Subcontractors.

## **ARTICLE 5 USE OF PROJECT CONTINGENCY**

- 5.1 In accordance with the Contract Documents, CMR shall provide the Judicial Council with reasonable prior written notice of its intent to use Project Contingency so that the Judicial Council may review and approve CMR's cost request.
- 5.2 In the event CMR is unable to provide prior written notice to the Judicial Council as required above, CMR may utilize the Project Contingency without the Judicial Council's prior approval, but the use of the Project Contingency shall be subject to Judicial Council's review and approval. If the Judicial Council determines that the CMR's use of Project Contingency, in whole or in part, does not comply with the Contract Documents, any disallowed amount already paid to CMR shall be promptly refunded. At its option, the Judicial Council may offset the amount disallowed from any payment due or that may become due to the CMR under this Agreement.
- 5.3 CMR's application for payment that includes Project Contingency use shall include documentation and information in the level of detail required by the Contract Documents.

## **ARTICLE 6 CHANGES IN THE WORK**

### **6.1 NO CHANGES WITHOUT AUTHORIZATION**

- 6.1.1. There shall be no change whatsoever in the Drawings, Specifications or in the Work without a properly issued or fully executed Change Order. Judicial Council shall not be liable for the cost of any extra work which should have been covered by a Change Order unless the Judicial Council authorized the same and the cost thereof has been approved by the Judicial Council in writing by a fully executed Change Order.
- 6.1.2. A Change Order that would result in a material change in the performance, useful life, or function of the Project must be approved by the Judicial Council's Court Facilities Advisory Committee.
- 6.1.3. 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 Contract and to any extension of time made by reason thereof.
- 6.1.4. No extension of time for performance of the Work shall be allowed hereunder unless Claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in a fully executed Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.
- 6.1.5. CMR shall perform immediately all Work that has been authorized by a fully executed Change Order. CMR shall be fully responsible for any and all delays and/or expenses caused by CMR's failure to expeditiously perform this Work.
- 6.1.6. Should any Change Order result in an increase in the GMP, the cost of that Change Order shall be agreed to, in writing, in advance by CMR and Judicial Council, unless issued unilaterally by the Judicial Council pursuant to the terms herein. In the event that CMR proceeds with any change in

Work without proper authorization to do so under a fully executed Change Order, CMR waives any Claim of additional compensation or time for that additional Work.

- 6.1.7. CMR understands, acknowledges, and agrees that the reason for Judicial Council authorization is so that Judicial Council may have an opportunity to analyze the Work and decide whether the Judicial Council shall proceed with the Change Order or shall alter the Project so that a change in Work becomes unnecessary.

6.2 **ARCHITECT AUTHORITY.** Notwithstanding the above, subject to the review and approval by the Judicial Council, the Architect will have authority to order minor changes in the Work that do not result in any adjustment in the GMP, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. All changes to the Work, including minor changes, must be approved in writing by the Project Manager. These changes shall be impacted by written Architect's response(s) to RFI(s).

### 6.3 CHANGE ORDERS

- 6.3.1. A Change Order is a written order, as defined herein, which is approved by the Judicial Council, as provided herein. A Change Order shall include all of the following:

- 6.3.1.1. A description of the change in the Work;
- 6.3.1.2. The extent of the adjustment in the Contract Time, if any; and
- 6.3.1.3. The amount of the adjustment in the GMP, if any.

- 6.3.2. CMR must comply with the Judicial Council's adopted Change Order Process and the only acceptable forms of Change Order are those prepared by the Judicial Council and may include, at the Judicial Council's discretion, the funding source and the CMR's waiver of claims related to the work of the change, and related terms.

- 6.3.3. **Lump-Sum Pricing Option.** When a change in the Work is required, and the Judicial Council and the CMR agree on the amount of the adjustment in the GMP for the change in the Work, then the Change Order shall utilize a lump-sum pricing option, which shall specify the agreed-upon amount of the adjustment in the GMP for the change in the Work and all other required components of a Change Order, including the description of the change in the Work and the adjustment in the Contract Time (if any). All Change Orders under a lump-sum pricing option shall be on the Judicial Council's form and be pursuant to the "Proposed Change Orders" and "Allowable Costs for Change Orders and Project Contingency Use" provisions herein.

- 6.3.4. **Time-and-Materials Pricing Option.** When a change in the Work is required, but is not to be based on a lump-sum pricing option, then the Change Order shall utilize a time-and-materials pricing option, which shall specify a not-to-exceed amount of the adjustment in the GMP for the change in the Work and all other required components of a Change Order, including the description of the change in the Work and the adjustment in the Contract Time (if any). All Change Orders under a time-and-materials pricing option shall be on the Judicial Council's form and be pursuant to the "Proposed Change Orders" and "Allowable Costs for Change Orders and Project Contingency Use" provisions herein. CMR's performance of a change in the Work under a time-and-materials pricing option shall be pursuant to the following process, which shall not apply to Change Order work performed by CMR under a lump-sum pricing option:

- 6.3.4.1. All direct costs necessarily incurred and paid by the CMR for labor, material, and equipment used in the performance of the change in the Work, shall be subject to the approval of the Judicial Council and compensation will be determined as set forth herein. Any dispute as to the sum of the Change Order or timing of payment shall be resolved pursuant to the "Price, Payments and Completion" and the "Disputes and Claims" provisions herein.



- 6.3.4.2. The Judicial Council will issue the Change Order to proceed with the work on the basis of a time-and-materials pricing option, and a not-to-exceed budget will be established by the Judicial Council.
- 6.3.4.3. All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to the Change Order. However, the Judicial Council will only pay for actual costs verified by the Judicial Council's Project Manager on a daily basis.
- 6.3.4.4. CMR shall be responsible for all costs related to the administration of the Change Order. The markup for overhead and profit for CMR modifications shall be full compensation to the CMR to administer the Change Order.
- 6.3.4.5. CMR shall notify the Judicial Council's Project Manager at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the CMR shall notify the 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 the Judicial Council. CMR will not be compensated for force account work in the event that the CMR fails to timely notify the Judicial Council regarding the commencement of force account work, or exceeding the not-to-exceed budget.
- 6.3.4.6. CMR shall diligently proceed with the Work, and on a daily basis, submit a daily force account report on a form supplied by the Judicial Council no later than 5:00 p.m. each day. 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. The Judicial Council will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the CMR for their records. The Judicial Council will not sign, nor will the CMR receive compensation for work the Judicial Council cannot verify. CMR 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.
- 6.3.4.7. In the event the CMR and the Judicial Council reach a written agreement on a set cost for the work while the work is proceeding based on the Change Order, the CMR'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 the CMR and the Judicial Council for the work of the Change Order.
- 6.3.4.8. The Change Order shall include the adjustment in the Contract Time (if any). This may be set as a not-to-exceed number of days.
- 6.3.5. **Unilateral Change Order.** When a change in the Work is required, and the Judicial Council and the CMR cannot agree as to the amount of the adjustment in the GMP and/or the extent of the adjustment in the Contract Time, the Judicial Council, at its sole discretion and without invalidating the Contract, may unilaterally issue a Change Order either under a lump-sum pricing option or a not-to-exceed time-and-materials pricing option, consistent with the "Lump-Sum Pricing Option" and "Time-and-Materials Pricing Option" provisions herein, for the change in the Work ("Unilateral Change Order"). A Unilateral Change Order shall not require CMR's written acceptance. CMR shall diligently perform the work of a Unilateral Change Order regardless of any pending dispute thereof and CMR may maintain any rights available to it under the "Disputes and Claims" provisions herein.

## 6.4 CONFLICTS, AMBIGUITIES, ERRORS AND OMISSION IN THE CONTRACT DOCUMENTS

6.4.1. The Judicial Council shall pay through a Change Order, or Unilateral Change Order, the costs for changes or extra work due to:

6.4.1.1. Conflicts, ambiguities or errors or omissions in the Contract Documents that **could not** have been reasonably discovered by the CMR during CMR's pre-construction phase services;

6.4.1.2. Conflicts, ambiguities or errors or omissions in the subcontractor bid packages and bids that **could not** have been reasonably discovered by the CMR; or

6.4.1.3. Unforeseen Site Conditions.

6.4.2. The Project Contingency may be utilized only to pay for the costs for changes or extra work due to:

6.4.2.1. Conflicts, ambiguities or errors or omissions in the Contract Documents that **could** have been reasonably discovered by the CMR during CMR's pre-construction phase services, not including Unforeseen Site Conditions; or

6.4.2.2. Conflicts, ambiguities or errors or omissions in the Subcontractor bid packages and bids that **could** have been reasonably discovered by the CMR, not including Unforeseen Site Conditions.

6.4.3. Once the Project Contingency has been fully depleted, any costs for items referenced in this subsection (i.e., conflicts, ambiguities or errors or omissions in the Contract Documents and/or subcontractor bid packages that could have been reasonably discovered by the CMR during CMR's pre-construction phase services) shall be at the CMR's expense.

6.4.4. In no event shall there be an adjustment to the GMP for any changes or extra work due to conflicts, ambiguities or errors or omissions in the Contract Documents and/or subcontractor bid packages that could have been reasonably discovered by the CMR during CMR's pre-construction phase services, not including Unforeseen Site Conditions.

## 6.5 PRICE REQUEST

6.5.1. **Definition of Price Request.** A Price Request is a written request prepared by the Architect or the Judicial Council, requesting the CMR to submit to the Judicial Council and the Architect an estimate of the effect of a proposed change in the Work on the GMP and the Contract Time.

6.5.2. **Scope of Price Request.** A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable CMR to provide the cost breakdowns required herein. CMR shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.

6.5.3. **Response to Price Request.** Within fourteen (14) days, the CMR, shall submit to the Judicial Council the CMR's proposed price to be added or deducted from the GMP due to the change, authenticated in full by completely detailed price estimates and other authenticators of the cost by the CMR, Subcontractors, Sub-subcontractors, vendors or material suppliers, and any adjustments of time for Completion of the entire Work that is directly attributable to the proposed change in the Work.

## 6.6 PROPOSED CHANGE ORDERS

- 6.6.1.** A Proposed Change Order is a written request, as defined herein, which is prepared by the CMR requesting that the Judicial Council and the Architect issue a Change Order based upon a proposed change to the Work.
- 6.6.2. Changes in GMP.** A Proposed Change Order shall include breakdowns pursuant to the provisions herein to validate any change in the GMP.
- 6.6.3. Changes in Time.** A Proposed Change Order shall also include any changes to the Contract Time. Any additional time requested, if at all, shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If CMR fails to request a time extension in a Proposed Change Order, then the CMR is thereafter precluded from requesting additional time and/or claiming a delay.
- 6.6.4. Unforeseen Site Condition(s).** If CMR submits a Proposed Change Order requesting an increase in GMP and/or Contract Time that is based at least partially on CMR's assertion stating that CMR has encountered an Unforeseen Site Condition on the Project, then CMR shall base the Proposed Change Order on evidence to the Judicial Council's reasonable satisfaction, that demonstrates that the Unforeseen Site Condition was actually unknown and/or unforeseen, and explaining why the CMR did not discover the Unforeseen Site Condition prior to finalizing the GMP. If Judicial Council denies the Proposed Change Order, CMR shall complete the Project without any increase in GMP and/or Contract Time based on that Proposed Change Order.
- 6.7 ALLOWABLE COSTS FOR CHANGE ORDERS AND PROJECT CONTINGENCY USE.** All proposed cost requests by CMR for a Change Order or for use of the Project Contingency shall include a complete itemized breakdown with the following detail, which are the only costs that will be allowed for these items.
- 6.7.1. Subcontractor(s)' Direct Labor Costs.** Compensation for Subcontractor(s)' labor shall include the necessary payroll cost for labor, including first level supervision, directly engaged in performance of the changes ("Direct Labor Costs").
- 6.7.1.1.** Direct Labor Costs shall not exceed:
- 6.7.1.1.1.** Current prevailing wages in the locality for performance of the changes; and
- 6.7.1.1.2.** Labor burden or labor charges, which shall only include documented FICA, Medicare, unemployment, and Workers' Compensation charges and no other charges.
- 6.7.1.2.** Use of a classification which would increase labor costs will not be permitted. Exceptions will be permitted only when the CMR establishes, to the satisfaction of the Judicial Council, the necessity for payment at higher rates or classifications.
- 6.7.2. Materials and Equipment.** Compensation for materials and equipment shall include the necessary costs for materials and equipment directly required for performance of the changes. Cost of materials and equipment may include costs of transportation and delivery. If discounts by suppliers are available to the CMR, they shall be credited to the Judicial Council. If materials and equipment are obtained from a supply or source owned by, or in part, by the CMR, payment therefore will not exceed current wholesale prices for such materials and equipment. If, in the opinion of the Judicial Council, the cost of materials and equipment is excessive, or if the CMR fails to furnish satisfactory evidence of costs from supplier, the cost of materials and equipment shall be the lowest current wholesale price at which similar materials and equipment are available in quantities required. The

Judicial Council reserves the right to furnish materials and equipment required for performance of the changes, and the CMR shall have no Claim for costs or mark-ups on such materials and equipment.

**6.7.3. Construction Equipment.**

**6.7.3.1.** Compensation for construction equipment shall include the necessary costs for use of construction equipment directly required for performance of the changes. Any use for less than 30 minutes shall be considered one-half hour. No costs will be allowed for time while construction equipment is inoperative, idle, or on stand-by, for any reason, unless such times have been approved in advance by the Judicial Council. Rental time for construction equipment moved by its own power shall include the time required to move construction equipment to the Work site from the nearest available source for rental of such equipment, and time required to return such equipment to the source. If construction equipment is not moved by its own power, loading and transportation costs will be paid in lieu of such rental time. Neither moving time nor loading and transportation costs will be allowed if the construction equipment is used for any work other than the changes. No allowance will be made for individual pieces of construction equipment and tools having a replacement value of \$500 or less. No construction equipment costs will be recognized in excess of rental rates established by distributors or equipment rental agencies in the locality for performance of the changes.

**6.7.3.2.** Unless otherwise approved by the Judicial Council, the allowable rate for use of construction equipment shall constitute full compensation to the CMR for cost of fuel, power, oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor except for construction equipment operators and any and all costs to the CMR incidental to the use of such construction equipment.

**6.7.4. Mark-Ups for Added Work.** The following amounts for mark-ups for performance of the added work shall constitute full compensation for all other costs not covered under the above-stated Allowable Costs, and includes compensation for all additional field and home office overhead, profit, insurance, taxes, and bonds. CMR is not permitted to add costs for additional items that are part of the CMR's General Conditions in its performance of the Work unless approved in advance by the Judicial Council.

**6.7.4.1. CMR Mark-Up:** CMR's fee for Subcontractor-performed work: Six percent (6%) of:

**6.7.4.1.1.** The Direct Labor Costs, and

**6.7.4.1.2.** The Subcontractor's direct Materials and Equipment and direct Construction Equipment costs (collectively "Direct Materials & Equipment Costs").

**6.7.4.2. Subcontractor(s) Mark-Up:** The Subcontractor(s) shall compute mark ups as follows:

**6.7.4.2.1.** For Subcontractor's Direct Labor Costs:

**6.7.4.2.1.1.** If the labor is performed by a first-tier subcontractor: Seven percent (7%) of the Direct Labor Costs.

**6.7.4.2.1.2.** If the labor is performed by a second-tier subcontractor: The aggregate mark-ups for both subcontract tiers shall not exceed fourteen percent (14%) of the Direct Labor Costs.

**6.7.4.2.1.3.** If the labor is performed by a third-tier or lower subcontractor: The aggregate mark-ups of all subcontract tiers shall not exceed twenty percent (20%) of the Direct Labor Costs.

**6.7.4.2.2.** For Subcontractor’s Direct Materials & Equipment Costs:

- 6.7.4.2.2.1.** If the Materials & Equipment are procured by a first-tier subcontractor: Five percent (5%) of the Direct Materials & Equipment Costs.
- 6.7.4.2.2.2.** If the Materials & Equipment are procured by a second-tier subcontractor: The aggregate mark-ups for both subcontract tiers shall not exceed ten percent (10%) of the Direct Materials & Equipment Costs.
- 6.7.4.2.2.3.** If the Materials & Equipment are procured by a third-tier or lower subcontractor: The aggregate mark-ups of all subcontract tiers shall not exceed fifteen percent (15%) of the Direct Materials & Equipment Costs.

**6.7.4.3. Subcontractor bond / default insurance costs:** CMR’s premium charges for Subcontractor bond costs or CMR-provided subcontractor default insurance protection in lieu of Subcontractor bonds (e.g., SubGuard), if any.

**6.7.4.4.** If the added Work is paid for from Allowance(s), then no mark-up is permitted.

**6.7.5.** CMR may self-perform work only upon prior written approval of the Judicial Council as required by the Contract Documents.

**6.7.6. Deleted Work.** When the Judicial Council is entitled to a credit for deleted Work, the credit shall include all amounts related to the direct labor, Subcontractor insurance and bond costs, or CMR-provided contractor default insurance protection in lieu of Subcontractor bonds, materials, and supervision plus overhead of the CMR or Subcontractor, for the deleted Work. Deleted CMR fee shall be computed as six percent (6%) of the sum for amounts related to the direct labor, materials, and supervision for the deleted Work.

**6.7.7. Summary of Mark-Up Amounts and Credits.** Mark-Up Amounts and Credits shall be processed based upon the percentages set forth in this section only, and not based upon the fee percentages used in the Fee Proposal Form. The following tables shall be used to calculate the allowable mark-ups and required credits for changes to the GMP.

<b>Mark-Ups for Added Work, as a percentage of the Direct Cost of the Work</b>			
<b>Allowable Mark-Ups on the Use of Specific Categories of Funds</b>	<b>Allowances (in Direct Cost of the Work)</b>	<b>Project Contingency (Not in Direct Cost of the Work; in GMP)</b>	<b>Judicial Council Contingency (not in GMP)</b>
CMR Mark-Up (see above)	n/a	6.00%	6.00%
Subcontractor(s) Mark-Up (see above)	n/a	Labor: 7 to 20% M&E: 5 to 15% depending upon tier	Labor: 7 to 20% M&E: 5 to 15% depending upon tier
Subcontractor Bond/Default Insurance (e.g. Subguard)	n/a	___% (as proposed and agreed to by the Judicial Council)	___% (as proposed and agreed to by the Judicial Council)

<b>Credits for Deleted Work and Adjustments for Unused Allowance(s) and Unused Project Contingency</b> , as a percentage of the Direct Cost of the Work and to be deducted in addition to the amount of the Direct Cost of the Work to perform the deleted Work.			
Required Credits Back to the Judicial Council on the Use of Specific Categories of Funds	<b>Direct Cost of the Work</b> (including Allowances)	<b>Project Contingency</b> (Not in Direct Cost of the Work; in GMP)	<b>Judicial Council Contingency</b> (not in GMP)
CMR Mark-Up (see above)	6.00%	n/a	n/a
Subcontractor Bond/Default Insurance (e.g. Subguard)	___% (as proposed and agreed to by the Judicial Council)	n/a	n/a

**6.7.8. General Limitations.** Costs to the CMR for changes which exceed market values prevailing at the time of the change will not be allowed unless the CMR 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 the CMR on work performed or furnished by others, no mark-ups will be allowed in excess of those specified above.

**6.7.9. Cost Disallowance.** Costs which will not be allowed or paid in Change Orders, requests for use of Project Contingency or Claim settlements under this Contract include, but are not limited to: interest on cost of any type other than those mandated by statute; Dispute or Claim preparation or filing costs; legal expenses; the costs of preparing or reviewing PCOs or Change Order proposals concerning Change Orders which are not issued by the Judicial Council; 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; Dispute or Claim consulting costs; the costs of corporate officers or staff visiting the site or participating in meetings with the Judicial Council; any compensation due to the fluctuation of foreign currency conversions or exchange rates; or loss of other business.

**6.8 ACCEPTANCE OF CHANGE ORDERS.** CMR's written acceptance of a Change Order shall constitute final and binding agreement to the provisions thereof and a waiver of all Disputes or Claims in connection therewith, whether direct, indirect, or consequential in nature.

**6.9 EFFECT ON SURETIES.** All alterations, extensions of time, extra and additional work, and other changes authorized by the Contract Documents may be made without securing consent of Surety(s) on Contract Bonds.

**6.10 VALIDITY OF ALTERATIONS.** Alteration or variation of the terms of this Contract shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

## ARTICLE 7 TIME

### 7.1 NOTICE TO PROCEED

**7.1.1.** The Contract is effective on the date that the Agreement is fully executed ("Effective Date"); however, the CMR is not authorized to begin work on any phase until the Judicial Council delivers a written "Notice to Proceed" to the CMR.

- 7.1.2. If the CMR begins work before delivery of the Notice to Proceed, that work will be at the CMR's risk and expense and subject to all terms and conditions of the Contract except those terms and conditions inconsistent with the CMR's assumption of that risk and expense.
- 7.1.3. The Judicial Council will not be obligated to accept or to pay for work furnished by the CMR prior to delivery of the Notice to Proceed whether or not the Judicial Council has knowledge of the furnishing of such work.
- 7.1.4. If a Notice to Proceed is delivered, then work performed before delivery will be treated for all purposes as though it were performed after delivery.
- 7.1.5. Work under the Contract shall be conducted in accordance with the Contract Documents. The CMR shall not begin any Work until authorized in writing by the Judicial Council.
- 7.1.6. CMR shall not be allowed on the site of the Work until the CMR's Performance and Payment bonds and certificates of insurance comply with requirements of the Contract.

7.2 **CONTRACT TIME.** The Contract Time is the period set forth in the Contract Documents for Completion of the Work. There is one Contract Time for the Working Drawings Phase and one Contract Time for the Construction Phase. Except for the uses of the term "Contract Time" that are clearly attributable to just one Phase, Contract Time is applicable to all Phases. The Contract Time will be designated as either (1) a total number of days and a start date or (2) a start date and end date. It is essential that the Project be completed within the time fixed for Completion. All portions of the Work shall be completed with necessary labor, equipment, procedures and overtime and shall be ready for full use by the Judicial Council on, or prior to, the date indicated for Completion, or the CMR shall forfeit liquidated damages as indicated the Contract Documents. The Judicial Council may occupy or utilize areas as indicated herein.

### 7.3 **TIME EXTENSIONS AND DELAYS IN COMPLETION OF THE WORK**

7.3.1. **Force Majeure.** The Judicial Council and the CMR shall be excused from performance to the extent that there is a Force Majeure event. CMR shall notify the Judicial Council of the Force Majeure event in accordance with the section below entitled "CMR's Notice of Delay."

#### 7.3.2. **CMR's Notice of Delay.**

7.3.2.1. In addition to the requirements indicated in this subsection, CMR shall notify the Judicial Council pursuant to the Claims provisions in these General Conditions and the other Contract Documents of any anticipated delay and the specific cause of delay.

7.3.2.2. CMR shall, within seven (7) calendar days of the date that CMR becomes aware of any delay impacting the critical path in completing the Work, notify Judicial Council in writing of the causes of the delay including documentation and facts explaining the delay ("Notice of Delay").

7.3.2.3. In the event the CMR requests an extension of Contract Time for a delay in this notice, that request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting an extension of Contract Time, CMR must provide all justification and documentation supporting the requested extension. If the CMR fails to submit this documentation within thirty (30) days of the date the Notice of Delay was required to be provided the Judicial Council, CMR shall have waived any right to an extension of the Contract Time. Any documentation supporting a requested extension of Contract Time, shall be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work.

- 7.3.2.4.** Any Claim for delay must include the following information as support, without limitation:
- 7.3.2.4.1.** 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.
  - 7.3.2.4.2.** Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)
  - 7.3.2.4.3.** A recovery schedule must be submitted.
- 7.3.2.5.** Judicial Council shall review the facts and extent of the delay and shall grant Contract Time extension(s) for completing the Work when, in the Judicial Council's judgment, the findings of fact justify an extension.
- 7.3.2.6.** Any extension granted by the Judicial Council shall be based on the Master Project Schedule as updated at the time of occurrence of the delay or performance of work related to any changes to the scope of the Work. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.
- 7.3.2.7.** An extension of time may only be granted if CMR has timely submitted the Construction Schedule as required herein.
- 7.3.2.8.** Following submission of a Notice of Delay, the Judicial Council will determine:
- 7.3.2.8.1.** Whether the delay is to be considered Excusable and Compensable, Excusable, or Unexcused; and
  - 7.3.2.8.2.** The duration of the delay; and
  - 7.3.2.8.3.** The extent of delay to the performance and Completion of the Work.
- 7.3.3. Excusable, Compensable Delay(s).**
- 7.3.3.1.** An "Excusable, Compensable Delay" shall mean an interruption or delay of the Work that:
- 7.3.3.1.1.** The CMR did not cause;
  - 7.3.3.1.2.** Is not caused by conflicts, ambiguities or errors or omissions in the Contract Documents that could have been reasonably discovered by the CMR during the CMR's preconstruction services;
  - 7.3.3.1.3.** Impacts the critical path of the Work and extends the Contract Completion date;
  - 7.3.3.1.4.** Was not within the contemplation of Judicial Council and CMR;
  - 7.3.3.1.5.** Could **not** have been avoided or mitigated by the CMR's care, prudence, foresight, and diligence; and



7.3.3.1.6. Extends the Contract Completion date, and is not concurrent with a CMR-caused delay or other type of Excusable, Non-Compensable Delay.

7.3.3.2. CMR is **not** entitled to additional compensation for any Excusable, Compensable Delay, **unless** all of the above conditions are met **and** CMR complies with the Disputes and Claims procedure of the Contract Documents.

**7.3.4. Excusable, Non-Compensable Delay(s).**

7.3.4.1. An "Excusable, Non-Compensable Delay" shall mean an interruption of the Work that relates to any of the following:

7.3.4.1.1. Force Majeure events;

7.3.4.1.2. Adverse Weather; or

7.3.4.1.3. Changes or revisions to statutory or regulatory enactments that apply to the Project.

7.3.4.2. CMR is not entitled to an Excusable, Non-Compensable Delay **unless** all of the following conditions are met:

7.3.4.2.1. The delay is beyond the reasonable control of the CMR;

7.3.4.2.2. The delay could not have been avoided by the CMR's exercising care, prudence, foresight, and diligence; and

7.3.4.2.3. The delay actually extended the Contract Completion date.

7.3.4.3. CMR may be entitled to an extension of the Contract Completion date if there is an Excusable, Non-Compensable Delay, but the CMR shall not be entitled to additional compensation for an Excusable, Non-Compensable Delay.

7.3.4.4. In the event of a Concurrent Delay, CMR shall be entitled to an Excusable, Non-Compensable Delay, but the CMR shall not be entitled to additional compensation. Concurrent Delay is a CMR-caused delay event which occurs within the same time period as a Judicial Council-caused delay event, each independently affecting the Completion date.

7.3.4.5. Excusable, Non-Compensable Delays are limited to events that meet the conditions for Excusable, Non-Compensable Delays set forth herein.

7.3.4.6. CMR is aware that governmental agencies and utilities, including, without limitation, the Board of State and Community Corrections, State Fire Marshal, Division of the State Architect of the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to review and approve CMR-prepared drawings; approve a proposed installation/work; or issue permits in conjunction with the construction of the Project. CMR shall include in its Schedule, time for governmental agencies and utilities to review and approve CMR-prepared drawings; approve a proposed installation/work; and/or issuance of permits, including time for reasonable delays and damages that may be caused by such governmental agencies and utilities. Any reasonable delays by governmental agencies and utilities shall not constitute an Excusable, Non-Compensable Delay nor an Excusable, Compensable Delay. Any unreasonable delays as a result of governmental agencies and utilities under this provision shall constitute an Excusable, Non-Compensable Delay, and CMR shall not be entitled to additional compensation for an Excusable, Non-Compensable Delay.

**7.3.4.7. Computation of Time / Adverse Weather.**

**7.3.4.7.1.** CMR will only be allowed a time extension for weather conditions if requested by CMR and only if **all** of the following conditions are met – thereby making the resulting delay an Excusable Delay.

**7.3.4.7.1.1.** The weather conditions constitute Adverse Weather, as defined herein;

**7.3.4.7.1.2.** CMR can verify that the Adverse Weather caused delays in excess of five hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

**7.3.4.7.1.3.** CMR's crew is dismissed as a result of the Adverse Weather; and

**7.3.4.7.1.4.** The precipitation, sleet, snow, or hail for the month exceeds those for the norm for the location and time of year.

**7.3.4.7.2.** A day-for-day extension will only be allowed for those days supported by the above determinations.

**7.3.4.7.3.** CMR shall work seven (7) days per week, if necessary, irrespective of weather conditions, to maintain access and the Construction Schedule, and to protect the Work under construction from the effects of Adverse Weather, all at no further cost to the Judicial Council.

**7.3.4.7.4.** The Contract Time has been determined with consideration given to the average climate weather conditions prevailing in the County in which the Project is located.

**7.3.5. Unexcused Delay(s) – Liquidated Damages**

**7.3.5.1.** CMR and Judicial Council hereby agree that the exact amount of damages for failure to complete the Work within the time specified is extremely difficult or impossible to determine. If the Work is not completed within the time specified in the Contract Documents, it is understood that the Judicial Council will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed the CMR shall forfeit to Judicial Council as fixed and liquidated damages, and not as a penalty, the amount set forth in the Agreement for each calendar day of delay in Completion. CMR and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85.

**7.3.5.2.** CMR shall not forfeit liquidated damages for an Excusable Delay or an Excusable and Compensable Delay.

**7.4 ACCELERATION**

**7.4.1.** The Judicial Council reserves the right to accelerate the Work of the Contract. In the event that the Judicial Council directs acceleration, the directive shall be in written form. CMR shall keep cost and other Project records related to the acceleration directive separately from normal Project costs and records, and shall provide a written record of acceleration cost to the Judicial Council on a daily basis.

**7.4.2.** In the event that the CMR believes that some action or inaction on the part of the Judicial Council constitutes an acceleration directive, the CMR shall immediately notify the Judicial Council in writing that the CMR considers the actions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. CMR shall not accelerate work efforts until the Judicial

Council responds in writing to the written notification. If acceleration is then directed or required by the Judicial Council, all cost records referred to above shall be maintained by the CMR and provided to the Judicial Council on a daily basis.

- 7.4.3. In order to recover additional costs due to acceleration, the CMR shall document that additional expenses were incurred and paid by the CMR. Labor costs recoverable will be only overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will be only the cost of added equipment mobilized to the site to accomplish the accelerated work effort.
- 7.4.4. All changes to the Scope of the Work, the GMP or the Contract Time caused by any acceleration must be reflected by a written and executed Change Order.

## ARTICLE 8 PRICE, PAYMENTS AND COMPLETION

- 8.1 **GMP.** The Guaranteed Maximum Price (GMP) is as defined herein and is the maximum price that the Judicial Council will pay CMR as payment for all Work of the Construction Phase of the Project and is guaranteed by the CMR to be the maximum price it will charge to Complete the Construction Phase of the Project.
  - 8.1.1. The GMP shall only be subject to additions and deductions as indicated in the Contract Documents.
  - 8.1.2. CMR acknowledges that it has reviewed and accepted the Contract Documents as complete and that CMR has no right for Change Orders or extra work due to conflicts, ambiguities or errors or omissions in the Contract Documents, if they could have been reasonably discovered by CMR during CMR's pre-construction phase services, or in the Subcontractor bid packages, or for any Construction Phase Change Orders arising from Subcontractors' performance.
  - 8.1.3. If the cost of the Work, excluding Judicial Council-requested changes and Unforeseen Site Conditions, exceeds the GMP, adjusted from time to time by Change Order, the CMR shall pay the overrun without reimbursement by the Judicial Council.
  - 8.1.4. If the actual cost of the Work, excluding Judicial Council-requested changes, is less than the GMP, adjusted from time to time by Change Order, then the CMR shall credit the cost savings to the Judicial Council in the final Change Order. CMR agrees to use all reasonable efforts to maximize cost savings for the benefit of the Judicial Council.
  - 8.1.5. The GMP shall include only the following items:
    - 8.1.5.1. **Direct Cost of the Work.** The CMR's Direct Cost of the Work is defined as the sum of all Subcontractor costs, Allowances, fees and charges, including Subcontractor insurance (other than OCIP Insurance) and Subcontractor bond costs incurred during the Construction Phase.
      - 8.1.5.1.1. **Allowance(s).** The Allowance(s) amount(s) are amounts for which the CMR may bill its time and materials, but no other amounts including no Subcontractor bond costs or CMR-provided subcontractor default insurance protection in lieu of Subcontractor bonds (e.g., SubGuard), all Bonds and Insurance premium charges or other mark-up(s). The unused portion of each Allowance shall be retained by the Judicial Council at the end of the Project, including retaining all associated Subcontractor bond costs or CMR-provided subcontractor default insurance protection in lieu of Subcontractor bonds (e.g., SubGuard), all Bonds and Insurance premium charges and other mark-up(s).

- 8.1.5.2. CMR's Fee.** The CMR's Fee shall be a percentage of the Direct Cost of the Work that will include all of CMR's anticipated profit and all of CMR's home, office and other overhead.
- 8.1.5.3. CMR's General Conditions in its Performance of the Work.** The cost of CMR's General Conditions.
- 8.1.5.3.1.** The CMR's General Conditions **include** the CMR's premium for insurance not provided by the OCIP but required by the Contract Documents, and premium for CMR's Payment and Performance Bonds.
- 8.1.5.4. Project Contingency.** The contingency identified in the Agreement that is to be used by the CMR to pay for certain scopes of Work, as further defined herein.
- 8.1.6. Judicial Council's Contingency (if applicable).** A contingency identified in the Agreement which is to be used at the Judicial Council's discretion to pay for Change Order work. The Judicial Council's Contingency is not part of the GMP, but may be indicated in the Agreement for the Judicial Council's use.
- 8.1.7. Costs Not Reimbursed.** The CMR shall not seek reimbursement for the following:
- 8.1.7.1.** Salaries and other compensation of the CMR's personnel stationed at the CMR's principal office or offices other than the Site office, except as specifically provided herein.
- 8.1.7.2.** Payments to CMR's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.).
- 8.1.7.3.** Expenses of the CMR's principal office and offices other than the Site office.
- 8.1.7.4.** Overhead and general expenses, except as may be expressly included herein.
- 8.1.7.5.** CMR's capital expenses, including interest on the CMR's capital employed for the work.
- 8.1.7.6.** Rental costs of machinery and equipment, except as specifically provided herein.
- 8.1.7.7.** Costs due to the fault or negligence of the CMR, subcontractors, anyone directly or indirectly employed by the CMR or subcontractors, or for whose acts the CMR or subcontractors may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 8.1.7.8.** Deductibles or self-insured retentions associated with the insurance required to be maintained by the CMR and the Subcontractors.
- 8.1.7.9.** Electronic processing and personnel cost incurred by the CMR in preparing the Project schedule and schedule updates, payroll, project cost reports or project status reports and any other reports necessary to the progress of the Work.
- 8.1.7.10.** Any costs based on percentages, rather than actual costs paid by the CMR, unless specific percentages are documented and approved by the Judicial Council.
- 8.1.7.11.** Any fees paid to design or construction industry organizations (e.g., AGC, ABC, AIA etc.)
- 8.1.7.12.** Any licenses maintained by the CMR.

8.1.7.13. Any cost not specifically and expressly described herein.

8.1.7.14. Costs that would cause the GMP to be exceeded.

**8.1.8. Discounts, Rebates and Refunds.**

8.1.8.1. Cash discounts obtained on payments made by the CMR shall accrue to the Judicial Council if (1) before making the payment, the CMR included them in a payment request and received payment therefore from the Judicial Council, or (2) the Judicial Council has deposited funds with the CMR with which to make payments; otherwise, cash discounts shall accrue to the CMR.

8.1.8.2. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Judicial Council, and the CMR shall make provisions so that they can be secured. If a trade discount by the actual supplier is available to the CMR, it shall be credited to the Judicial Council.

8.1.8.3. Amounts, which accrue to the Judicial Council in accordance with the provisions of this subsection shall be credited to the Judicial Council as a deduction from the cost of the Work.

**8.2 [RESERVED]**

**8.3 PROGRESS PAYMENTS DURING CONSTRUCTION PHASE**

8.3.1. Upon Judicial Council's receipt of an invoice with updated Master Project Schedule from the CMR, the Judicial Council will review same to determine if it is a proper invoice based on the most recent, Judicial Council-approved Master Project Schedule. Any invoice determined by the Judicial Council to be improper shall be returned to CMR and CMR shall modify it in accordance with the Judicial Council's assessment and provide it again to the Judicial Council.

8.3.2. Progress payments (less Retention) will only be authorized by the Judicial Council where the Work requires more than six (6) weeks to complete. Actual progress payment submittal dates shall be established by the Judicial Council. CMR shall submit invoice(s) for allowable progress payments in accordance with the established submittal dates.

8.3.3. CMR shall provide conditional lien releases for CMR, all Subcontractors and Sub-subcontractors with each progress payment invoice totaling the amount requested in the progress payment and covering the same time period as the progress payment time period.

8.3.4. CMR shall submit invoices for progress payments as set forth herein below and in the Contract Documents.

**8.4 RETENTION OF PAYMENTS**

8.4.1. **Construction Phase:** For the Construction Phase, upon submittal and receipt of a monthly progress payment in accordance with the requirements herein, the following shall apply:

8.4.1.1. CMR's invoice shall include the total amount of Work completed to date, including materials furnished and delivered on the Project site, not used, or fully insured with the Judicial Council's prior approval and stored in a secure warehouse, and the value of the materials to date. CMR shall furnish evidence showing the value of such materials when requested by the Judicial Council.

- 8.4.1.2. Due to many factors, including extensive coordination and security issues, Judicial Council projects are substantially complex and therefore, the Judicial Council shall retain ten percent (10%) of the estimated value of Work completed. However, this provision is subject to the reduction and release of retention section below.

#### **8.4.2. Release of Retention**

- 8.4.2.1. Subject to the reduction and release of retention section below, Judicial Council will release Retention proceeds to the CMR only upon Completion of the Work as determined by the Director of Facilities Services, less any amounts that the Judicial Council is permitted or required to withhold as indicated herein and as permitted under applicable statute.
- 8.4.2.2. Notwithstanding the above, at any time after the Project is fifty percent (50%) complete and if satisfactory progress is being made, upon the approval of the Director in his or her sole discretion, the Judicial Council may: (i) reduce the Retention to as low as five percent (5%) with respect to any remaining progress payments, and/or (ii) allow the CMR to submit an invoice for the release of up to one-half of the amount of previously retained Retention as long as a minimum of 5% in retention is retained. CMR acknowledges that Judicial Council may seek CMR's surety's approval prior to reducing future Retention and/or releasing any previously retained Retention. In no event shall the Judicial Council be obligated to the early release or reduction of Retention pursuant to this section.

### **8.5 METHOD OF PAYMENT**

- 8.5.1. The Judicial Council will make payment in arrears after receipt of the CMR's properly completed invoice or application for payment. Invoices shall clearly indicate the following information. Invoices furnished by the CMR must be in this form.
  - 8.5.1.1. The Contract number;
  - 8.5.1.2. A unique invoice number;
  - 8.5.1.3. CMR's name and address;
  - 8.5.1.4. Taxpayer identification number ( CMR's federal employer identification number);
  - 8.5.1.5. Description of the completed Work, in accordance with the CMR's updated Master Project Schedule;
  - 8.5.1.6. Amount of Retention to be withheld from the invoice;
  - 8.5.1.7. Net amount to be paid for the invoice;
  - 8.5.1.8. Total amount of Retention withheld to date;
  - 8.5.1.9. The original signature of the authorized representative of the CMR;
  - 8.5.1.10. The contractual charges, including the appropriate progress payment, if authorized; and
  - 8.5.1.11. Preferred remittance address, if different from the mailing address.
- 8.5.2. CMR shall submit one (1) original and one (1) copy of invoices to the Judicial Council's Project

Manager, identified in the Agreement.

- 8.5.3.** CMR acknowledges the complex payment approval process that the Judicial Council must follow and agrees that the Judicial Council will pay invoices that are approved, due and payable within forty-five (45) days after receipt of a correct, itemized invoice. In no event shall the Judicial Council be liable for interest or late charges for any late payments.
- 8.5.4.** Payment shall be made by the Judicial Council to the CMR at the address specified on the invoice.
- 8.6 DISALLOWANCE.** If the CMR claims or receives payment from the Judicial Council that is later disallowed by the Judicial Council, the CMR shall promptly refund the disallowed amount to the Judicial Council upon the Judicial Council's request. At its option, the Judicial Council may offset the amount disallowed from any payment due or that may become due to the CMR under this Agreement or any other agreement.
- 8.7 PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK.** The granting of any payment by the Judicial Council, or the receipt thereof by the CMR, shall in no way lessen the liability of the CMR to correct unsatisfactory work in connection with this Agreement.
- 8.8 RELEASE OF CLAIMS.** The acceptance by the CMR of its final payment due under this Agreement shall be and shall operate as a release to the State and the Judicial Council of all claims and all liability to the CMR for everything done or furnished in connection with this Agreement (including every act and neglect of the Judicial Council), with the exception of any claims that are expressly identified by the CMR as outstanding as of the date of CMR's submission of CMR's final application for payment. CMR's failure to identify any such claims shall operate as a release of all claims.
- 8.9 STOP PAYMENT NOTICES.** If a stop payment notice or a Claim based on a stop payment notice or lien of any nature should at any time be filed against the Work or any Judicial Council property, by any entity or person that has supplied material or services for a Project, or financing for any supplied materials, CMR and CMR's payment bond surety ("Payment Bond Surety"), at CMR's and/or Payment Bond Surety's own expense, shall promptly take any and all action necessary to cause any such stop payment notice or a Claim based on a lien or a stop payment notice to be released or discharged immediately. If the CMR fails to furnish to the Judicial Council, within thirty (30) days after demand by the Judicial Council, satisfactory evidence that a lien or a Claim based on a stop payment notice has been so released, discharged, or secured, the Judicial Council may discharge such indebtedness and deduct the amount required therefore, together with any and all losses, costs, damages, and attorney fees and expense incurred or suffered by the Judicial Council from any sum payable to CMR under the Contract.
- 8.10 ASSIGNMENT OF CONTRACT FUNDS.** CMR may assign moneys due or to become due under the Contract, through an amendment to the Contract. Any assignment of moneys earned by the CMR shall be subject to proper retention in favor of the Judicial Council and to all deductions provided for in the Contract. All moneys withheld, whether assigned or not, are subject to being used by the Judicial Council to the extent permitted by law, for the Completion of the Work in the event that the CMR is in default of the Contract.
- 8.11 OCCUPANCY BY THE JUDICIAL COUNCIL PRIOR TO COMPLETION OF THE WORK**
- 8.11.1.** The Judicial Council reserves the right to occupy and allow the Court to occupy all or any part of the Project prior to Completion of the Work, upon written notice.
- 8.11.2.** The following conditions shall be satisfied prior to the Judicial Council and/or Court occupying all or any part of the Project prior to Completion of the Work:
- 8.11.2.1. 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;

- 8.11.2.2. **Architect Letter.** The Architect has issued a letter of confirmation to the Judicial Council indicating that 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;
  - 8.11.2.3. **No Encumbrances.** There are no encumbrances registered or recorded on the Site or any part of the Project;
  - 8.11.2.4. **Successful Commissioning.** The CMR 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);
  - 8.11.2.5. **Certificate of Occupancy.** A temporary or final certificate of occupancy has been issued for the Project by the California State Fire Marshal;
  - 8.11.2.6. **Construction Supervisor/Inspector.** The Construction Supervisor/Inspector has issued its final verified report.
  - 8.11.2.7. **Governmental Agency Confirmations.** All other governmental agencies having jurisdiction have confirmed (and issued all pertinent governmental approvals or other documents in respect thereof) that the building and structures on the site are ready for occupancy;
- 8.11.3. **“Ready for Use”.** For purposes of this section, in determining whether the Project or project equipment are “ready for use,” the following factors shall be taken into account:
- 8.11.3.1. requirements of this Agreement;
  - 8.11.3.2. ability of public to access the Project, and the risk of injury to members of the public and all project users;
  - 8.11.3.3. security systems set forth in the Contract Documents are operational;
  - 8.11.3.4. Any apparent hazard or nuisance;
  - 8.11.3.5. The need to conduct court operations in a reasonably quiet and stable environment free from, dust, chemical, smoke and other health and safety concerns;
  - 8.11.3.6. proper installation and functionality of all project equipment; and
  - 8.11.3.7. 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.
- 8.11.4. If the Judicial Council chooses to take occupancy prior to completion of the Work, the Judicial Council and the CMR 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, and the period for correction of the Work. 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, the 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, the Judicial Council and the CMR shall jointly inspect the area to be occupied or portion of the Project to



be used in order to determine and record the condition of the Work.

- 8.11.5.** If the Judicial Council chooses to take occupancy prior to completion of the Work, the guarantee and warranty period shall commence upon the date that the Judicial Council occupies the Project only for system(s) and item(s) that were completed and fully operational, at the Judicial Council's reasonable determination, as of the date of the occupancy. Notwithstanding this early start of the guarantee and warranty period for those system(s) and item(s), the commencement of the guarantee and warranty period for all other systems or items and the Project shall continue to be the date indicated in the Guarantee and Warranty section herein.
- 8.11.6.** The Judicial Council's and/or Court's occupancy does not constitute Completion of the Work or Acceptance of the Work by the Judicial Council, or any portion of the Work, nor will it relieve the CMR 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 the 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 the Judicial Council, then upon written request by the CMR and by written consent from the Judicial Council, the Guarantee period will commence to run from the date of the Judicial Council's occupancy of such building or buildings.

## **8.12 ACCEPTANCE OF THE WORK**

- 8.12.1.** When the CMR considers the Work complete, the CMR shall request a final inspection by the Judicial Council.
- 8.12.1.1.** The Judicial Council will conduct a final inspection within fourteen (14) days of receipt of written request from the CMR for final inspection.
- 8.12.1.2.** If, after the inspection, the Judicial Council determines that the Work is complete, the Judicial Council will recommend that the Director accept the Work.
- 8.12.1.3.** Upon Acceptance of the Work by the Director:
- 8.12.1.3.1.** The Retention held by the Judicial Council will be released as provided herein, less any amounts that the Judicial Council is permitted or required to withhold, and as permitted under applicable statute, and
- 8.12.1.3.2.** CMR will be relieved of the duty of maintaining and protecting the Work, and
- 8.12.1.3.3.** The Director will execute and authorize the recording of a Notice of Completion in the County in which the Project is constructed.
- 8.12.1.4.** If the Judicial Council determines that the Work is not Complete, the CMR will be notified in writing of deficiencies or any incomplete work, and a punch list of such items shall be prepared ("Punch List"). After completing all possible Punch List items, CMR shall again initiate the procedures for final inspection as set forth above for any completed Punch List items and the Work shall be considered complete when the Punch List items have been completed to the satisfaction of the Judicial Council. However, upon the Director's approval and the Surety's written consent, with respect to specific Punch List items, the Judicial Council may, prior to Acceptance, direct the CMR to complete the remaining Punch List items, pay the Retention and withhold one hundred and fifty percent (150%) of the value of the incomplete or deficient Punch List items and any statutory requirements for withholding (e.g. outstanding stop payment notices) and release the remainder of the Retention upon

Acceptance.

**8.12.1.5.** Determination by the Judicial Council that the Work is Complete or Acceptance of the Work will not bar any Claim against the CMR as permitted herein and by law.

**8.12.2.** CMR has thirty (30) days after receipt of the final statement to file a Claim with the Judicial Council.

**8.12.2.1.** All Claims shall comply with the requirements of the Disputes and Claims provisions herein.

**8.12.2.2.** Failure to file a Claim within the thirty (30) day period constitutes a failure to diligently pursue and exhaust the required administrative procedures set forth in the Contract. Such failure shall constitute waiver of additional rights to compensation under the Contract or the right to request Equitable Adjustment.

**8.12.2.3.** If the CMR does not file a Claim within the thirty (30) day period, the final payment issued by the Judicial Council will be a complete and final settlement between the Judicial Council and the CMR.

### **8.13 FINAL PAYMENT**

**8.13.1.** After Acceptance of the Work, and upon receipt of final statement from the Judicial Council, CMR will invoice the Judicial Council for any sum due the CMR including Retention.

**8.13.2.** CMR, if requested by the Judicial Council, shall provide the Judicial Council an unconditional lien release for CMR, all Subcontractors and Sub-subcontractor covering all labor, materials, and equipment when submitting CMR's final statement invoice.

**8.13.3.** If there are any outstanding liens or stop payment notices filed with respect to the Project, the CMR shall provide the Judicial Council unconditional lien releases for such liens or stop payment notice releases, as applicable, when submitting CMR's final statement invoice.

**8.13.4.** If the CMR owes any amount to the Judicial Council, the final statement shall serve as an invoice to the CMR.

**8.13.5.** If progress payments are not authorized, CMR will invoice the Judicial Council, and the Judicial Council will pay the CMR One Hundred Percent (100%) of the sum owing pursuant to the contract after Acceptance of the Work and receipt by the Judicial Council of unconditional lien and stop payment notices release for CMR, all Subcontractors and Sub-subcontractor covering all labor, materials, and equipment for which a lien or stop payment notice could be filed.

### **8.14 DECISIONS TO WITHHOLD PAYMENT**

**8.14.1. Reasons to Withhold Payment.** Judicial Council may withhold payment in whole, or in part, to the extent reasonably necessary to protect the Judicial Council if, in the Judicial Council's opinion, the representations to the Judicial Council required herein cannot be made. Judicial Council may withhold payment, in whole or in part, to such extent as may be necessary to protect the Judicial Council from loss because of, but not limited to:

**8.14.1.1.** Up to one hundred and fifty percent (150%) of the value of any Defective Work not remedied within the time frames required herein, including without limitation any Punch List item not satisfactorily completed;

**8.14.1.2.** One hundred and twenty-five percent (125%) to one hundred and fifty percent (150%) of the

claim stated in any stop payment notices or other liens served upon the Judicial Council as a result of the Contract;

- 8.14.1.3. Liquidated damages assessed against the CMR;
  - 8.14.1.4. The cost to complete the Work if there exists reasonable doubt that the Work can be completed for the unpaid balance of the GMP or by the Completion date;
  - 8.14.1.5. Damage to the Judicial Council or other contractor(s);
  - 8.14.1.6. Unsatisfactory performance of the Work by CMR;
  - 8.14.1.7. Failure of the CMR to maintain As-Built Drawings;
  - 8.14.1.8. Erroneous estimates by the CMR of the value of the Work performed, or other false statements in an application for payment;
  - 8.14.1.9. If certified payroll records are requested, the failure to provide certified payroll records acceptable for each journeyman, apprentice, worker, or other employee employed by the CMR and/or each Subcontractor in connection with the Work for the period of the application for payment;
  - 8.14.1.10. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., and/or failure to comply with any other Labor Code requirements;
  - 8.14.1.11. Failure to properly maintain or clean up the Site;
  - 8.14.1.12. Failure to timely indemnify, defend or hold harmless the Judicial Council;
  - 8.14.1.13. Failure to pay any royalty, license or similar fees;
  - 8.14.1.14. CMR is otherwise in breach, default or in substantial violation of any provision of the Contract;
  - 8.14.1.15. Failure of the CMR to submit on a timely basis all Closeout Documentation in a manner and form that is proper, sufficient, and reasonably acceptable to the Judicial Council, and to not cause a delay in the Completion of the Project;
  - 8.14.1.16. Failure to perform any implementation and/or monitoring required by any SWPPP for the Project and/or the imposition of any penalties or fines imposed therefore against CMR or Judicial Council; and/or;
  - 8.14.1.17. Improper use of the Project Contingency.
- 8.14.2. Reallocation of Withheld Amounts.** Judicial Council may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, Judicial Council shall make such payments on behalf of CMR. If any payment is so made by Judicial Council, then that amount shall be considered a payment made pursuant to the Contract and Judicial Council shall not be liable to CMR for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. Judicial Council will render CMR an accounting of funds disbursed on behalf of CMR.
- 8.14.3. Payment after Cure.** When CMR cures the grounds for declining approval, payment shall be made for amounts so withheld. No interest shall be paid on any retention or amounts withheld due to the

failure of the CMR to perform in accordance with the terms and conditions of the Contract Documents.

**8.14.4. Joint Checks.** The Judicial Council shall have the right in its sole discretion to issue joint checks made payable to the CMR and any Subcontractor or material or equipment supplier. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the Judicial Council and a Subcontractor of any tier, any obligation from the Judicial Council to such Subcontractor, or rights in such Subcontractor against the Judicial Council.

## **ARTICLE 9 DISPUTES AND CLAIMS**

- 9.1 PERFORMANCE DURING DISPUTE AND CLAIM RESOLUTION PROCESS.** CMR shall diligently proceed with Work on the Project at the same time that Disputes and Claims are addressed under this Article. It is the intent of Judicial Council to resolve Disputes with the CMR as close to the events giving rise to the Disputes as possible, and to avoid stale or late Claims and the late documenting of Claims. CMR's failure to diligently proceed in accordance with the Judicial Council's instructions will be considered a material breach of this Agreement.
- 9.2 WAIVER.** If CMR fails to timely submit the written notices required by the provisions in this Disputes and Claims section, CMR hereby waives and releases its rights regarding further review of its Dispute or Claim, unless CMR and Judicial Council mutually agree in writing to other time limits.
- 9.3 INTENTION.** The Dispute and Claims Resolution Process required herein are intended to provide a concise mechanism for resolving Disputes as they arise during the Project, while requiring accurate documentation related to contested issues as to those Disputes that are not contemporaneously resolved.
- 9.4 EXCLUSIVE REMEDY.** Compliance with the notice and claim submission procedures described in this Disputes and Claims section is an express condition precedent to the right to commence litigation, file a claim under the California Government Code, or commence any other legal action. CMR cannot bring assert or bring any Claim in any Government Code claim or subsequent legal action until that Claim has gone through the Dispute and Claims Resolution Process. The Judicial Council hereby exercises the power conferred upon it by Government Code Sections 930.2 and 930.4 to augment claims presentation procedures and create its own Dispute and Claims Resolution Process as an exclusive remedy as indicated in this Disputes and Claims section.
- 9.5 OTHER PROVISIONS.** If portions of the Contract, other than this Disputes and Claims section 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 Disputes and Claims section shall control the resolution of all Disputes and Claims.
- 9.6 SUBCONTRACTORS.** CMR is responsible for providing this Disputes and Claims section to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the CMR are informed of the Dispute and Claims resolution process in this Disputes and Claims section. No Claim submitted by any party that fails to follow the provisions of this Disputes and Claims section will be considered. CMR shall indemnify, keep and hold harmless the 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 Disputes and Claims section to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the CMR.
- 9.7 DISPUTE AND CLAIM RESOLUTION PROCESS**
- 9.7.1.** A "Dispute" is a request, demand or assertion by CMR as defined in the Definitions section herein.

9.7.2. A “Claim” is a Dispute that remains unresolved as defined in the Definitions section herein.

9.7.3. Notwithstanding any provision herein, the Judicial Council is **not** granting to any Subcontractor or Sub-subcontractor any contractual, equitable, or other right that does not otherwise exist.

**9.7.4. Dispute Resolution Process.**

**9.7.4.1. Identifying, Presenting, Documenting and Demanding Review of a Dispute.**

9.7.4.1.1. Every Dispute shall be stated with specificity in writing and signed by CMR under penalty of perjury and presented to the Judicial Council within thirty (30) calendar days of the incidents giving rise to the Dispute. Information which is not known or available to CMR within the thirty (30) day time period shall be provided to Judicial Council within a reasonable time of CMR receiving or becoming aware of the information. The writing shall:

9.7.4.1.1.1. Identify all of the issues, events, conditions, circumstances and/or causes giving rise to the Dispute;

9.7.4.1.1.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the GMP, milestones and/or Contract Time adjustments; and

9.7.4.1.1.3. Identify in detail line-item costs if the Dispute seeks money.

9.7.4.1.2. The writing shall be accompanied by all documents substantiating CMR’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.

9.7.4.1.3. **Project Manager’s Written Decision.** The Project Manager will review the Dispute and issue a written decision to CMR and Architect within thirty (30) calendar days from the date the demand for review and supporting documentation are received. The Project Manager has the option to meet with CMR, or with CMR and any other party, before issuing a decision. For Disputes related to design issues or claims of design failures, the Judicial Council may request that its Architect first issue a written decision regarding the Dispute to the CMR within twenty (20) calendar days of receipt of the written Dispute from the CMR

9.7.4.1.3.1. Where There Is No Agreement: If there is no agreement between CMR and the Project Manager on a Dispute, then within fourteen (14) calendar days of the date of the Project Manager’s written statement/decision in response to a Dispute, if CMR pursues that Dispute, then CMR must demand a meet and confer conference with Project Manager. A meet and confer conference with Project Manager shall be a condition precedent to CMR seeking any further relief, including a mediation as indicated below.

9.7.4.1.3.2. Where There Is Partial Agreement: If CMR 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, if CMR pursues those issues from that Dispute, then CMR must demand a meet and confer conference with Project Manager regarding those issues. A meet and confer conference with Judicial Council staff shall be a condition precedent to

CMR seeking any further relief, including a mediation as indicated below, in connection with the Project Manager's rejection.

**9.7.4.1.4. Meet and Confer Conference.** Project Manager and CMR shall schedule the meet and confer conference as soon as reasonably possible after CMR's written demand for a meet and confer conference, but in no case later than thirty (30) calendar days after CMR's demand.

**9.7.4.1.4.1. Project Manager's Written Decision.** Within fourteen (14) calendar days of the meet and confer conference, the Project Manager shall issue a written decision. If the Project Manager fails to timely provide a written statement/decision after the meet and confer conference, all Dispute issues that were part of the meet and confer conference shall be deemed rejected in their entirety.

**9.7.4.1.4.1.1.** If the Project Manager's decision completely resolves the Dispute, then the Parties shall complete a Change Order, if applicable, for the issues and/or amounts agreed to.

**9.7.4.1.4.1.2.** If the Project Manager rejects the CMR's Dispute in whole or in part or does not issue a timely written response, then the CMR shall proceed with the Claim Resolution Process below.

**9.7.4.2.** CMR's costs incurred in seeking relief under this Disputes and Claims section are not recoverable from Judicial Council.

**9.7.5. Claim Resolution Process.** If a Dispute has not been resolved during the Dispute Resolution Process, the CMR shall submit within thirty (30) calendar days a Claim along with the required detailed documentation for the Judicial Council's consideration.

**9.7.5.1.** CMR shall furnish three (3) certified copies of the required Claim documentation. The Claim documentation shall be complete when furnished. The evaluation of the CMR's Claim will be based upon Judicial Council records and the Claim documents furnished by the CMR.

**9.7.5.2.** Claim documentation shall conform to generally accepted accounting principles and shall be in the following format:

**9.7.5.2.1.** General Introduction

**9.7.5.2.2.** General Background Discussion

**9.7.5.2.3.** Index of Issues (listed numerically)

**9.7.5.2.4.** For each issue, provide the following information and begin each issue on a new page:

**9.7.5.2.4.1.** Background

**9.7.5.2.4.2.** Chronology

**9.7.5.2.4.3.** CMR's position including all reason(s) for Judicial Council's potential liability

**9.7.5.2.4.4.** Supporting documentation of merit or entitlement

**9.7.5.2.4.5.** Supporting documentation of damages

**9.7.5.2.5.** All critical path method schedules, both as-planned, monthly updates, schedule

revisions, and as-build along with the computer disks of all schedules related to the Claim.

9.7.5.2.6. Productivity exhibits (if appropriate)

9.7.5.2.7. Summary of Damages for each issue

- 9.7.5.3. Supporting documentation of merit for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to the Contract Documents; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the CMR's Claim.
- 9.7.5.4. Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the proposal; 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 necessary to support the CMR's Claim.
- 9.7.5.5. Each copy of the Claim documentation shall be certified by a responsible officer of the CMR in accordance with the requirements of the Contract Documents.
- 9.7.5.6. **Judicial Council's Written Decision.** A Judicial Council representative that is a supervisor of the Judicial Council's Project Manager will render a written decision to the CMR relative to the Claim. The Judicial Council's written decision shall be final and binding on the party(ies) but subject to mediation.
- 9.7.5.7. The Judicial Council may withhold from a progress payment and/or the final payment an amount not to exceed 150 percent of the disputed amount. The Judicial Council may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.
- 9.7.5.8. CMR shall include in its Claim documents all issue items and information that CMR contends are part of its Claim. Issues not included in the Claim documents shall not be considered.
- 9.7.5.9. **Mediation.** Within thirty (30) days after the Judicial Council renders its written decision, the CMR may request that the parties submit the Dispute to mediation. Absent a request for mediation, the Judicial Council's written decision is final and binding on the parties.
- 9.7.5.10. **Litigation.** If, after a mediation as indicated above, the parties have not resolved the Dispute, the receiving party's decision made pursuant to mediation will be conclusive and binding regarding the Dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later. In the event of litigation of a Dispute arising from or related to this Contract, the prevailing party shall be entitled to recover reasonable attorney fees and costs.

- 9.7.6. False Claims Act.** The Judicial Council shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, (“False Claims Act”) made to the Judicial Council by the CMR or any Subcontractor pursuant to the standards set forth in the False Claims Act. Any CMR or Subcontractor who submits a false claim shall be liable to the Judicial Council for three times the amount of damages that the Judicial Council sustains because of the false claim. A CMR or Subcontractor who submits a false claim shall also be liable to the Judicial Council for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$10,000 for each false claim.
- 9.8 DOCUMENTATION OF RESOLUTION.** If a Claim is resolved, the 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.
- 9.9 NON-APPLICABILITY OF DISPUTE & CLAIM RESOLUTION PROCESS.** The procedures and provisions in this Disputes and Claims section shall not apply to;
- 9.9.1.** Judicial Council’s determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;
  - 9.9.2.** Judicial Council’s rights and obligations, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from Judicial Council contracts, the imposition of penalties or forfeitures prescribed by statute or regulation;
  - 9.9.3.** Personal injury, wrongful death or property damage claims;
  - 9.9.4.** Latent defect or breach of warranty or guarantee to repair;
  - 9.9.5.** Stop payment notices; and
  - 9.9.6.** Any other Judicial Council rights as set forth herein.
- 9.10 AUDIT AND ACCESS TO RECORDS**
- 9.10.1.** CMR shall maintain all books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract, in accordance with generally accepted accounting principles and practices consistently applied. CMR shall also maintain all financial information and data used by the CMR in the preparation or support of any cost submission, including the CMR’s original proposal required for this Contract, or any Change Order, Claim, or other request for equitable adjustment, and a copy of the cost summary or information submitted to the Judicial Council.
  - 9.10.2.** The 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, and all other evidence for the purpose of inspection, audit, and copying. CMR shall, at no cost to the Judicial Council, provide proper facilities for such access, inspection and copying purposes.
  - 9.10.3.** CMR agrees to make the audit and record provisions of this subsection applicable to this Contract, and all Change Orders, Claims, or other requests for Equitable Adjustment affecting the Contract Time or GMP. CMR agrees to include the audit and record provisions of this subsection in all subcontracts and sub-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 \$10,000, and to make the audit and record provisions of this subsection applicable to all Change Orders, Claims, and other requests for equitable adjustment related to Project performance.



- 9.10.4.** Audits conducted under the audit and record provisions of this subsection shall be in accordance with general accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.
- 9.10.5.** CMR agrees to the disclosure of all information and reports resulting from access to records under the audit and record provisions of this subsection, to the Judicial Council, and other affected agencies.
- 9.10.6.** Records under the audit and record provisions of this subsection shall be maintained and made available during the performance of the Work under this Contract until three (3) years past final payment, and until final settlement of all Disputes, Claims, or litigation, whichever occurs later. In addition, those records which relate to any portion of this Contract, to any Change Order, to any Dispute, to any litigation, to the settlement of any Claim arising out of such performance, or to the cost or items to which an audit exception has been taken, shall be maintained and made available until final payment or final resolution of such Dispute, litigation, Claim, or exception, whichever occurs later.
- 9.10.7.** The right of access within the audit and record provisions of this subsection applies to all financial records pertaining to this Contract and all Change Orders and Claims. In addition, this right of access applies to all records pertaining to all contracts, Change Orders, and Contract Amendments:
- 9.10.7.1.** To the extent the records pertain directly to Contract performance;
- 9.10.7.2.** If there is any indication that fraud, gross abuse, or corrupt practices may be involved;
- 9.10.7.3.** If the Contract is terminated for default or convenience.
- 9.10.8.** Access to records is not limited to the required retention periods. The Judicial Council shall have access to records at any reasonable time for as long as the records are maintained.
- 9.10.9.** Further, the CMR agrees to include a similar right of the Judicial Council to audit records and interview staff in any subcontract related to performance of this Contract, in regard to the Disabled Veterans Business Enterprise (DVBE) Program.
- 9.10.10.** CMR shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles (GAAP).

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **10.1 SAFETY OF PERSONS AND PROPERTY**

- 10.1.1.** CMR shall initiate, maintain and supervise all safety precautions and programs in connection with the performance of the Work, and shall make all employees engaged in the performance of the Work aware of all Project safety, fire, and health requirements and regulations including the appropriate use of personal protective equipment.
- 10.1.2.** CMR shall prior to the start of construction, submit to the Judicial Council a written plan for Project site safety that is compliant with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety and protection of persons and property from damage, injury or loss, as well as the guidance found in the OCIP requirements, and that will include:
- 10.1.2.1.** CMR's program to require its Subcontractors, and their Sub-subcontractors to comply with the Project site safety plan and the OCIP requirements;

- 10.1.2.2. CMR's storm water pollution prevention plan (SWPPP);
  - 10.1.2.3. CMR's water event and mold prevention plan;
  - 10.1.2.4. CMR's air and dust management plan; and
  - 10.1.2.5. If applicable, CMR's blasting and use of explosives plan.
- 10.1.3. CMR shall as part of its written plan for Project site safety plan appoint a dedicated member of the CMR's organization who by possession of a recognized college degree, certificate or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems related to the safety of the work and the Project, and when required is properly licensed in accordance with federal, state or local laws and regulations. The designated safety representative must be an employee assigned in a full-time capacity to the Project site, and must have successfully completed an approved OSHA 30-hour Construction Industry Outreach Training course within the prior three years.
- 10.1.4. **Prevention.** CMR shall take precautions for safety and provide protection to prevent damage, injury, or loss to:
- 10.1.4.1. Employees performing work at the Project Site and other persons who may be affected thereby;
  - 10.1.4.2. The Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody or control of the CMR or the CMR's Subcontractors or Sub-subcontractors; and
  - 10.1.4.3. Other property at the Project Site, or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, stairways, passageways, roadways, structures, equipment, and utilities, not designated for removal, relocation, renovation, restoration, reconstruction, or replacement during the course of the completion of the Work or except as otherwise noted or specified.
- 10.1.5. CMR shall at all times conduct the construction of the Work to minimize inconvenience to the general public and to ensure the protection of persons and business adjacent to the Project site so as to minimize interference with their daily lives and operations.
- 10.1.6. If required by the local jurisdiction having authority, or by safe work practice, the CMR shall hire appropriate law enforcement personnel to control public vehicle traffic during periods of deliveries, construction vehicles leaving or entering the Project Site, and during periods of off-loading on public roads, streets or through fares.
- 10.1.7. CMR shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying the Judicial Council and other owners and users of adjacent sites and utilities of any unsafe condition resulting from the Work.
- 10.1.8. CMR shall exercise appropriate care during the construction of the Work to prevent and eliminate excessive dust, silt, airborne particulates including paint overspray, and other nuisances related to the Work, from affecting workers providing work at the Project Site, or persons, property, and business adjacent to the Site.
- 10.1.9. The CMR shall exercise appropriate care during the construction of the Work to avoid water intrusion events and subsequent mold growth.
- 10.1.10. CMR shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of Work.

- 10.1.11.** CMR shall remedy damage and loss to property referred to in the Subparagraphs herein above caused in whole or in part by the CMR, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the CMR is responsible under the Subparagraphs herein above. The foregoing obligations of the CMR are in addition to the CMR's obligations under the Contract.
- 10.1.12.** CMR shall not load, or permit its Subcontractor or their Sub-subcontractors to load, any part of the Work so as to endanger its safety.
- 10.1.13.** When conditions of the Work, in the judgment of the Judicial Council, present unreasonable risk of injury or death to persons or property damage, the Judicial Council, may direct the CMR, at the CMR's sole expense, to close down the Work and not commence work again until all dangerous conditions are eliminated.
- 10.1.14.** CMR, at the CMR's own cost, shall rebuild, repair, restore and make good any and all damages to any portion of the Work affected by such causes before its acceptance.

## **10.2 EMERGENCIES AND REPORTING OF ACCIDENTS OR CLAIMS**

- 10.2.1.** In an emergency affecting safety of persons or property, the CMR shall act, at the CMR's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the CMR because of an emergency will be reviewed as provided in herein.
- 10.2.2.** CMR will report to the Judicial Council in writing, within twenty-four (24) hours of an occurrence all accidents, injuries, property damage, or any significant event that may have resulted in injury or property damage. The written reports will be sent to the Project Manager and the Judicial Council Senior Facilities Risk Manager. The CMR shall use all applicable forms in the OCIP documentation for this purpose and shall notify all individuals and entities that the OCIP documentation requires be notified.
- 10.2.3.** CMR shall cooperate with the Judicial Council and the OCIP insurers, and shall require its Subcontractors, and their Sub-subcontractors to cooperate with the Judicial Council and the OCIP insurers, in the reporting, investigation, and resolution of claims for property damage, personal injury, or industrial injury that may arise from the construction of the Project.

## **10.3 PROHIBITED SUBSTANCE OR MATERIALS**

- 10.4** CMR is prohibited from, and will prohibit its Subcontractors, and their Sub-subcontractors from bring onto the Project site or using in the performance of the Work, any toxic material including, but not limited to, asbestos, asbestos containing material or product, polychlorinated bi-phenyls (PCB), lead contaminated material, or any substances that are regulated by any governmental entity ( "Hazardous Materials").

- 10.4.1.** If the CMR encounters what is reasonably believed to be Hazardous Materials the CMR will immediately inform the Judicial Council and will stop work in the affected area until the possible Hazardous Materials have been identified, and if required removed or rendered harmless.

## **10.5 DRUG-FREE WORKPLACE**

- 10.5.1.** By signing the Contract, the CMR certifies, under penalty of perjury under the laws of the Judicial Council of California, that the CMR will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.), and will provide a drug-free workplace by taking the following actions:

- 10.5.1.1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- 10.5.1.2. Establish a Drug-Free Awareness Program to inform employees about:
  - 10.5.1.2.1. The dangers of drug abuse in the workplace;
  - 10.5.1.2.2. The person's or company's policy of maintaining a drug-free workplace;
  - 10.5.1.2.3. Any available counseling, rehabilitation, and employee assistance programs; and
  - 10.5.1.2.4. Penalties that may be imposed upon employees for drug abuse violations.
- 10.5.1.3. Provide that every employee who works under the Contract will:
  - 10.5.1.3.1. Receive a copy of the company's drug-free workplace policy statement; and
  - 10.5.1.3.2. Agree to abide by the terms of the company's statement as a condition of employment.
- 10.5.1.4. Provide for random pre-assignment testing, reasonable cause testing as necessary, and post-accident testing as necessary of workers performing work at the Project Site.
- 10.5.1.5. In addition to the other indemnity requirements of the Contract, CMR shall indemnify and hold harmless the State of California; the Judicial Council; the and the Superior Court of California in the County in which the Project is located, including their respective elected and appointed officials, judges, officers, employees and agents against any loss, claim, damages or liability resulting from CMR's failure to enforce and maintain a drug free workplace.

## ARTICLE 11 INSURANCE AND BONDS

### 11.1 CMR INSURANCE DURING THE CONSTRUCTION PHASE

- 11.1.1. **General Requirements.** This Article sets forth the General Requirements for CMR's insurance during the Construction Phase that is not required by the OCIP:
  - 11.1.1.1. CMR 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 A. M. Best's key rating guide, and are authorized to do business in the State of California.
  - 11.1.1.2. For all insurance policies required by this Article, the CMR shall declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance.
  - 11.1.1.3. If self-insured, the CMR 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 CMR under the terms of this Article.
  - 11.1.1.4. CMR, prior to commencement of the any work under the Construction Phase, shall provide the Judicial Council with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the 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 Superior Court of California in the County in which the Project is located, and their respective elected and appointed officials, judges, officers, and employees have been added as additional insureds on the insurance policy being referenced.

**11.1.1.5.** The Certificates of Insurance shall be addressed as follows:

Judicial Council of California  
Attention: Risk Manager  
2860 Gateway Oaks, Suite 400  
Sacramento, CA 95833

**11.1.1.6.** All insurance policies required under this Article shall be in force until the end of the term of this Contract or Completion, whichever comes later and the CMR and the Judicial Council have agreed in writing that the Work is covered under the Judicial Council's programs of insurance or self-insurance designed for the purpose of providing coverage for the accepted Work once occupied.

**11.1.1.7.** If the insurance expires prior to the completion of the Project, the CMR 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 Contract. The Judicial Council reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the Judicial Council. CMR must provide renewal insurance certificates and signed policy endorsements to the Judicial Council at least ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements.

**11.1.1.8.** In the event CMR fails to keep in effect at all times the specified insurance coverage, the Judicial Council may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.

**11.1.1.9.** The insurance required by the "Construction Phase Insurance Requirements" herein below, and any excess liability or umbrella liability insurance that CMR 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 Superior Court of California in the County in which the Project is located, and their respective elected and appointed officials, judges, officers, and employees as additional insureds, but only with respect to liability assumed by CMR under the terms of this Contract or liability arising out of the performance of the Services.

**11.1.1.10.** CMR, and any insurer providing insurance required under the terms of this "General Requirements" subparagraph shall waive any right of recovery or subrogation it may have against the State of California; the Judicial Council; the Superior Court of California in the County in which the Project is located, and their respective elected and appointed officials, judges, officers, and employees for direct physical loss or damage to the Work, or for any liability arising out of the Services performed by CMR under this Contract.

**11.1.1.11.** All insurance policies required under this "General Requirements" subparagraph shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days prior written notice to the Judicial Council.

**11.1.1.12.** CMR shall be responsible for and may not recover from the State of California, the Judicial Council; or the Superior Court of California in the County in which the Project is located, any

deductible or self-insured retention that is connected to the insurance required under this “General Requirements” subparagraph.

- 11.1.1.13. The insurance required under this “General Requirements” subparagraph shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California; the Judicial Council; or the Superior Court of California in the County in which the Project is located, with the exception of coverage provided under the OCIP, which shall be primary to coverage provided by the CMR where applicable.
  - 11.1.1.14. The Judicial Council reserves the right to request certified copies of any of the insurance policies required under this “General Requirements” subparagraph, which shall be provided by the CMR within ten (10) working days following the request by the Judicial Council.
  - 11.1.1.15. The cost of all insurance required by this “General Requirements” subparagraph is the sole cost of the CMR and is a component part of the CMR’s GMP.
  - 11.1.1.16. CMR shall require insurance from Subcontractors and their Sub-subcontractors defined as “Excluded Parties” herein below with substantially the same terms and conditions as required of the CMR under “Insurance Requirements” herein below and with limits of liability, which in the opinion of the CMR are sufficient to protect the interests of the CMR, State of California, the Judicial Council, and the Superior Court of California in the County in which the Project is located.
- 11.1.2. **Construction Phase Insurance Requirements.** From the beginning of the Construction Phase, CMR shall maintain at a minimum and in full force and effect, the following insurance:
- 11.1.2.1. **Commercial General Liability for off Project site operations.** Commercial General Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) for **off-site operations** written on an occurrence form with limits of not less than \$5,000,000 per occurrence and a \$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. 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 of time for which the CMR is legally liable for any actual or alleged defects in its off-Project site work.
  - 11.1.2.2. **Commercial Automobile Liability.** Automobile liability insurance with limits of not less than \$2,000,000 per accident. Such insurance shall cover liability arising out of the operation, 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.
  - 11.1.2.3. **Workers' Compensation for Off-Site Employees.** Statutory workers' compensation insurance for all of the CMR’s off Project 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 \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.
  - 11.1.2.4. **Builder’s Risk / Installation Floater (Deductible).** The Judicial Council is providing this coverage (see herein below), but the CMR shall be responsible for paying all deductibles not to exceed \$50,000 per occurrence in the event of loss due to water damage and not to exceed \$25,000 per occurrence in the event of loss due to all other perils.

**11.1.2.5. CMR's Equipment Insurance.** CMR's equipment insurance covering its business property, equipment and tools used in the performance of the Work at the Project site that are not intended to become a permanent part of the Work.

**11.2 OWNER CONTROLLED INSURANCE PROGRAM (OCIP).** Notwithstanding the insurance requirements stated herein above in the "CMR Insurance During the Construction Phase" section, the Judicial Council is utilizing an Owner Controlled Insurance Program (OCIP) during the Construction Phase of the Project. CMR has confirmed that its General Conditions costs do not include any amounts for insurance coverages that are within the OCIP.

- 11.2.1.** The Judicial Council has elected to provide the types of insurance indicated in the Subparagraph "OCIP Insurance" herein below insuring the Judicial Council, the CMR, Subcontractors, and Sub-subcontractors of every tier (other than Excluded Parties as defined herein), while performing Work at the Project site until final Completion of the Project.
- 11.2.2.** The indemnified site is defined in the OCIP as the Project site designated in the Contract Documents that has been scheduled with the OCIP insurance companies, including operations necessary or incidental to the Project site that have been specifically added to the OCIP insurance program by specific agreement with the OCIP insurance companies.
- 11.2.3.** The insurance shall be provided through an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide.
- 11.2.4. Named Insured.** The State of California; the Judicial Council; the Superior Court of California in the County in which the Project is located, the CMR, its Subcontractors, and their Sub-subcontractors of each and every tier.
- 11.2.5. Additional Insureds.** As required by written contract.
- 11.2.6. Excluded Parties.** Contract haulers or truckers (or others only making deliveries or pickups from the Project site), vendors, suppliers (who do not perform or subcontract installation work at the Project 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 Project site labor, and any other entity specifically determined by the Judicial Council to be excluded, will not be covered by insurance purchased by the Judicial Council under the OCIP.
- 11.2.7. Term.** Any insurance policies provided within the OCIP shall be in force until the end of the term of this Contract or Completion of the Project, whichever comes later.
- 11.2.8. 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.
- 11.2.9. 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.

- 11.2.10. CMR/Subcontractor Waiver.** CMR shall waive and require its insurers, its Subcontractors and their Sub-subcontractors, and their respective insurers to waive any right of recovery or subrogation each may have against the State of California; the Judicial Council; the Superior Court of California in the County in which the Project is located, including their respective elected and appointed officials, judges, officers, employees arising out of the services performed at the Project site in the completion of the Construction Phase of the Project.
- 11.2.11. Cancellation.** All required insurance policies required under OCIP Insurance shall contain a provision that coverage will not be materially changed or cancelled without ninety (90) days prior written notice to the Named Insureds.
- 11.2.12. Loss Sharing.** All Subcontractors and Sub-subcontractors of every tier involved in a loss that would otherwise be insured under the terms and conditions of the OCIP commercial general liability and builder's risk insurance, which arises from the performance of the Work, as reasonably determined by the CMR, shall share equally in the first \$25,000 of such loss. This obligation (or contribution by all Subcontractors and Sub-subcontractors of every tier) shall remain uninsured and will not be covered by the OCIP commercial general liability or builder's risk insurance policies.
- 11.2.13. 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.
- 11.2.14. Limits Sharing.** The limits of liability provided under the commercial general liability insurance apply collectively for all Named Insureds and Additional Insureds.
- 11.2.15. Insurance Credits.** CMR will require that each prospective Subcontractor and each of their Sub-subcontractors 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 and their Sub-subcontractors shall be required to complete a warranty statement to certify that as a condition of its contract to perform work at the Project Site, and under penalty of having its contract to perform Work at the Project 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 part of any contract.
- 11.2.16. Contract Obligations.** Any OCIP insurance provided by the Judicial Council is not intended to, and shall not qualify, limit or waive any liabilities or obligations of CMR, its Subcontractors, or their Sub-subcontractors have assumed under this Contract, or the contract between the CMR and Subcontractor, or the Subcontractor and its Sub-subcontractors.
- 11.2.17. CMR Insurance.** CMR shall continue to be responsible to provide any insurance required under "CMR's Insurance During the Construction Phase" indicated herein above that is not provided by the Judicial Council under the OCIP.
- 11.2.18. OCIP Insurance.** Prior to the commencement of performance of the Construction Phase the Judicial Council shall furnish the OCIP insurance for all contractors of every tier that are enrolled in the OCIP while performing Work at the Project site until final Completion of the Project ("OCIP Insurance") :
- 11.2.19. Commercial General Liability.** Commercial General Liability Insurance written on an occurrence form with separate limits as follows:
- \$2,000,000 each occurrence,
  - \$2,000,000 personal and advertising injury
  - \$4,000,000 general annual aggregate
  - \$4,000,000 products - completed operations aggregate
  - \$500,000 damages to premises rented to an insured



- \$10,000 medical payments

**11.2.20.** 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.

**11.2.21. 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:

- \$75,000,000 each occurrence
- \$75,000,000 general annual aggregate
- \$75,000,000 products and completed operations aggregate

**11.2.22. Pollution Liability Insurance.** Pollution liability insurance (and if required Excess Liability insurance) written on an occurrence form with limits of liability of not less than \$10,000,000 per occurrence and \$10,000,000 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 Project site.

**11.2.23. Workers' Compensation.** Statutory workers' compensation insurance for all of the CMRs, Subcontractors, and Sub-subcontractors employees who will be engaged in the performance of the Work at the Project site including special coverage extensions where applicable and employer's liability with limits of not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.

**11.3 JUDICIAL COUNCIL INSURANCE DURING THE CONSTRUCTION PHASE: Builder's Risk / Installation Floater.** The Judicial Council shall insure all Work while in the course of construction, reconstruction, remodeling or alteration, including materials incorporated in the Work, against physical loss or damage resulting from the perils normally insured under an All Risk Builders Risk/Installation Floater policy, including, but not limited to theft, fire and vandalism. The Judicial Council will self-insure against Acts of God and natural disasters proclaimed by the Judicial Council or Federal Government. The Judicial Council will issue to the CMR a "Summary of Coverage" and a Certificate of Insurance will be provided to CMR.

**11.3.1.** CMR shall be responsible for paying all deductibles not to exceed \$50,000 per occurrence in the event of loss due to water damage and not to exceed \$25,000 per occurrence in the event of loss due to all other perils.

**11.3.2.** The proceeds under the Builder's Risk/Installation Floater Insurance procured by the Judicial Council will be payable to the Judicial Council and CMR as their respective interests, from time to time, may appear.

**11.3.3.** The Judicial Council's Builders Risk/Installation Floater Insurance shall provide limited coverage for materials in transit, and full coverage for materials at the Project site and full coverage for materials stored off site; however, the CMR is responsible for reviewing the "Summary of Coverage" and reporting values that exceed the limits provided within the Summary of Coverage. Notification to the Judicial Council does not provide coverage. Value increases must be approved by the insurance carrier and contractor must have a Certificate of Insurance issued by the insurance carrier showing the increased values. Lacking confirmation from the Judicial Council's insurance carrier that additional coverage was procured, CMR will be responsible for damages in excess of the coverage limits provided within the Summary of Coverage.

11.3.4. Insurance policies referred to in this Clause shall provide the following:

11.3.4.1. That the policies are primary and do not participate with nor are excess over any other valid collectible insurance carried by the CMR.

11.3.4.2. That the Judicial Council's insurer waives the right of subrogation against the CMR.

#### 11.4 PERFORMANCE BOND AND PAYMENT BOND

11.4.1. Prior to commencing any Work pursuant to this Contract, CMR shall furnish the following surety bonds issued by a California admitted surety insurer as follows:

11.4.1.1. Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of the Project as security for faithful performance of this Contract; and

11.4.1.2. Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Project for payment of persons performing labor and/or furnishing materials in connection with this Contract.

11.4.2. The costs for these bonds are included in the CMR's General Conditions in its performance of the Work and shall not be a reimbursable expense. The cost of the bonds can be specified on the first payment request. Prior to obtaining these bonds, CMR shall provide the Project Manager with quotes from the proposed sureties for such bonds for approval by the Judicial Council. Any cost of bonds in excess of the quotes approved by the Judicial Council shall be at the sole expense of CMR.

11.4.3. If the cost of the performance and payment bonds is requested on the first application for payment, then the CMR shall apportion the remaining amount of CMR's General Conditions fee over its remaining payment requests.

11.4.4. In lieu of requiring some or all of its Subcontractors and their Sub-subcontractors to provide payment and performance bonds the CMR may utilize a form of contractor default insurance as a substitute for a Subcontractor performance bond. Such insurance must be provided by an insurance company or companies that are rated "A VII" or higher by A. M. Best's key rating guide, and are authorized to do business in the State of California. If the CMR is utilizing contractor default insurance then prior to the start of the Work, the CMR shall provide the Judicial Council with quotes from the proposed insurance company for such insurance for approval by the Judicial Council. Unless pre-approved by Judicial Council as an allowable costs for added or deleted work, any cost for contractor default insurance in excess of the quotes approved by the Judicial Council shall be at the sole expense of CMR.

11.4.5. All bonds related to this Contract shall be in a form acceptable to the Judicial Council.

11.4.6. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the CMR shall promptly furnish a copy of the bond(s) or permit a copy to be made.

### ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

#### 12.1 UNCOVERING WORK

12.1.1. If a portion of the Work is covered prior to the Judicial Council's inspection, it shall, if requested in writing by the Judicial Council or its Construction Supervisor/Inspector be uncovered for the Judicial

Council's observation and replaced at the CMR's expense without change in the Contract Time.

- 12.1.2.** CMR shall notify the Judicial Council and its Construction Supervisor/Inspector two (2) working days prior to covering any work.

## **12.2 CORRECTION OF WORK**

- 12.2.1.** CMR shall promptly correct work rejected by the Judicial Council or its Construction Supervisor/Inspector or Work failing to conform to the requirements of the Contract Documents, whether or not fabricated, installed or completed. CMR shall bear the costs of correcting such rejected work, including additional testing and inspections required and compensation for the Judicial Council's services and expenses made necessary thereby.
- 12.2.2.** Notwithstanding any provision to the contrary, in the event of an emergency constituting an immediate hazard to the health or safety of Judicial Council employees, property, or licensees, the Judicial Council may undertake, at the CMR's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it was caused by work of the CMR not being in accordance with requirements of the Contract Documents.
- 12.2.3.** CMR shall remove from the Project site portions of the Work that are not in accordance with the requirements of the Contract Documents, and are neither corrected by the CMR nor accepted by the Judicial Council.
- 12.2.4.** If the CMR fails to correct nonconforming work as required herein either during Contract performance or during the period of the Guarantee, the Judicial Council may correct the nonconforming work as permitted herein. If the CMR does not proceed with correction of such nonconforming work, within such time fixed by written notice from the Judicial Council, the Judicial Council may remove and store the salvable materials articles and/or equipment at the CMR's expense. If the CMR does not pay all costs of such removal and storage within fourteen (14) days after written notice, the Judicial Council may, upon fourteen (14) additional calendar days written notice, sell such materials articles and/or equipment at an auction or private sale, and shall account for the proceeds thereof, after deducting costs and damages that would have been borne by the CMR, including compensation for the Judicial Council's services and expenses made necessary thereby. If the proceeds of a sale do not cover all costs that the CMR would have borne, the GMP shall be reduced by the deficiency. If payments then or thereafter due the CMR are not sufficient to cover such amount, the CMR shall pay the difference to the Judicial Council.
- 12.2.5.** CMR shall bear the cost of correcting destroyed or damaged Work executed by the Judicial Council or separate contractors, whether fully completed or partially completed, which is caused by the CMR's correction or removal of Work that is not in accordance with requirements of the Contract Documents.
- 12.2.6.** Nothing contained in this Article shall be construed to establish a period of limitation with respect to other obligations that the CMR might have in the Contract Documents. Establishment of the time period of the Guarantee as indicated herein, relates only to the specific obligation of the CMR to correct the Work, and has no relationship to the time within which the obligation to comply with requirements of the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the CMR's liability with respect to the CMR's obligations other than specifically to correct the Work.

- 12.3 ACCEPTANCE OF NONCONFORMING WORK.** If the Judicial Council prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the Judicial Council may do so instead of requiring its correction and/or removal, in which case the GMP will be reduced as appropriate and

equitable. Such adjustment shall be effected whether or not final payment to the CMR has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

- 13.1 GOVERNING LAW.** The Contract shall be governed by California law without regard to any conflict of law rules that would direct the application of the laws of any other jurisdiction. CMR irrevocably consents to personal jurisdiction in California.
- 13.2 CONTRACT CONSTRUCTION.** Headings or captions to the provisions of this Contract are solely for the convenience of the parties, are not part of this Contract, and shall not be used to interpret or determine the validity of this Contract. Any ambiguity in this Contract shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.
- 13.3 SEVERABILITY.** If any term or provision of this Contract is found to be illegal or unenforceable, this Contract shall remain in full force and effect and that term or provision shall be deemed stricken.
- 13.4 SUCCESSORS AND ASSIGNS.** CMR binds the CMR, the CMR's partners, successors, permitted assigns and legal representatives to the Judicial Council in respect to covenants, agreements and obligations contained in the Contract Documents. CMR shall not voluntarily or involuntarily assign (e.g. assignment by operation of law), encumber, or otherwise transfer or delegate its duty or obligation to perform any Work under the Contract without the prior written consent of the Judicial Council. Any voluntary assignment by CMR or assignment by operation of law (e.g. involuntarily assignment) of any portion of CMR's duty or obligation to perform any Work under the Contract shall be deemed a default allowing the Judicial Council to exercise all remedies available to it under applicable law. Consent will not be given to an assignment which would relieve the CMR or the CMR's Surety of their responsibilities under the Contract. Any assignment in violation hereof shall be null and void.
- 13.5 STANDARD OF CARE.** CMR, its officers, agents, employees, Subcontractors, consultants and any persons or entities for whom CMR is responsible, shall provide all Services pursuant to this Contract in accordance with the requirements of this Contract and in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project. The Judicial Council's Acceptance of any submittals, deliverables, or other work product of the CMR shall not be construed as assent that CMR has complied, nor in any way relieve the CMR of, compliance with (i) the applicable standard of care or (ii) applicable statutes, regulations, rules, guidelines, and requirements.
- 13.6 NO PERSONAL LIABILITY.** Neither the Judicial Council, nor any other officer or employee of the Judicial Council will be personally responsible for liabilities arising under the Contract.
- 13.7 USE OF PROJECT PLANS AND DRAWINGS**
- 13.7.1.** All Design Documents, Record Documents, General Notes and Shop Drawings ("Plans") prepared by the Architect, including those in electronic form, provided to CMR, are confidential Judicial Administrative Records exempt from public disclosure pursuant to California Rules of Court, Rule 10.500 (f)(6). CMR acknowledges that disclosing Plans for purposes other than those relating to the Project, could compromise the safety of the Court.
- 13.7.2.** CMR shall use the Plans solely with respect to Project Work. Plans shall not be used by CMR, or any Subcontractors, Sub-Subcontractors or material or equipment supplier on other projects or for any use outside the scope of the Project, without the specific written consent of the Judicial Council.
- 13.7.3.** Any copies of Plans made by CMR, pursuant to Judicial Council prior authorization, shall bear a confidentiality notice.

**13.8 SIGNAGE.** Neither the CMR nor any other person or entity shall display any signs not required by law or the Contract Documents at the Site, fences, trailers, offices, or elsewhere on the Site without the specific prior written approval of the Judicial Council.

### **13.9 OWNERSHIP OF DATA**

**13.9.1.** Everything created, developed or produced in the course of the CMR's performance of the Services, including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the CMR for the Judicial Council and are the sole property of the Judicial Council without further employment or the payment of additional compensation to the CMR. The Judicial Council owns all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights"). To the extent that any of the Data or the Intellectual Property Rights therein are not works for hire, the CMR hereby irrevocably assigns its entire right, title and interest in and to all such Data and the Intellectual Property Rights therein, to the Judicial Council. At the Judicial Council's request, the CMR will assist the Judicial Council in the Judicial Council's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. CMR irrevocably appoints the Judicial Council as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the Judicial Council deems necessary to perfect the Judicial Council's interest and Intellectual Property Rights in the Data as set forth herein.

**13.9.2.** The Judicial Council, and its Construction Supervisor/Inspector, shall be entitled to access copies of the Data in whatever form, including, without limitation CAD, all times during the term of the Contract. Any such Data in the possession of the CMR or in the possession of any Subcontractor upon completion or termination of the Contract shall be immediately delivered to the Judicial Council. If any Data are lost, damaged or destroyed before final delivery to the Judicial Council, the CMR shall replace them at its own expense and the CMR assumes all risks of loss, damage or destruction of or to such Data.

### **13.10 JUDICIAL COUNCIL PROPRIETARY OR CONFIDENTIAL INFORMATION**

**13.10.1.** CMR understands and agrees that, in the performance of the Services under this Contract or in contemplation thereof, the CMR may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, the Judicial Council and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Judicial Council. CMR agrees that all information disclosed by the Judicial Council to the CMR shall be held in confidence and used only in the performance of the Contract. CMR shall exercise the same standard of care to protect such information as the CMR 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.

**13.10.2.** It is understood, however, that the CMR may disclose the Judicial Council's confidential information on a "need to know" basis to the CMR's employees, the CMR's Subcontractors, and the Subcontractors' employees, and as required by law. CMR shall execute written agreements with its Subcontractors that bind each Subcontractor and its employees to the confidentiality provisions set forth in this Contract.

**13.10.3.** CMR shall acquire no right or title to the confidential information. CMR agrees not to use the confidential information for any purpose except to provide the Services. Notwithstanding the foregoing, the CMR 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 the CMR first gives reasonable notice of its intention to disclose in order for the Judicial Council to seek a protective order; or (ii) to the extent necessary to enforce its rights under this Contract.

**13.10.4.** CMR 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.

- 13.11 LIMITATION ON PUBLICATION.** CMR shall not publish or submit for publication any article, press release, or other writing relating to the CMR's Services for the Judicial Council without prior review and written permission by the Judicial Council. The Judicial Council review shall be completed within thirty (30) days of submission to the Project Manager and, if permission is denied, the Judicial Council shall provide its reasons for denial in writing.
- 13.12 WRITTEN NOTICE.** Written notice shall be deposited in the U.S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or, hand-delivered to the other party's authorized representative, which shall be effective on the date of service.
- 13.13 CONTRACTOR'S USE OF COMPUTER SOFTWARE.** By execution of the Contract, the CMR certifies that it has appropriate systems and controls in place to ensure that Judicial Council funds will not be used in the performance of the Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- 13.14 RELATIONSHIP OF PARTIES.** CMR and the agents and employees of the CMR, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State of California.
- 13.15 CONFLICT OF INTEREST**

**13.15.1.** CMR and employees of the CMR shall not participate in proceedings that involve the use of Judicial Council funds or that are sponsored by the Judicial Council if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. CMR and employees of the CMR shall also avoid actions resulting in or creating the appearance of:

- 13.15.1.1.** Use of an official position with the government for private gain;
- 13.15.1.2.** Preferential treatment to any particular person associated with this Contract or the Work of this Contract;
- 13.15.1.3.** Loss of independence or impartiality;
- 13.15.1.4.** A decision made outside official channels; or
- 13.15.1.5.** Adverse effects on the confidence of the public in the integrity of the government or this Contract.

**13.15.2. Prohibited Financial Conflict of Interest.** CMR 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 Services pursuant to this Contract. CMR further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the Judicial Council are now, nor in the future will they be, in any manner interested directly or indirectly in this Contract, or in any profits expected to arise from this Contract, as set forth in California Government Code sections 1090 *et seq.* and 87100 *et seq.*

**13.15.3. Conflict of Interest for Former Judicial Council Employees.** CMR 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 contract, 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 contract within the twelve (12) month period after his or her employment with Judicial Council.

- 13.16 COVENANT AGAINST GRATUITIES.** No gratuities, in the form of entertainment, gifts, or otherwise, were offered by the CMR or any agent, director, or representative of the CMR, to any officer, official, agent, or employee of the Judicial Council with a view toward securing this Contract or securing favorable treatment with respect to any determinations concerning the performance of this Contract. For breach or violation of this provision, the Judicial Council will have the right to terminate this Contract, either in whole or in part, and any loss or damage sustained by the Judicial Council in procuring, on the open market, any items which the CMR agreed to supply, shall be borne and paid for by the CMR. The rights and remedies of the 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 this Contract.
- 13.17 WAIVER.** The failure of Judicial Council in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the Judicial Council or Architect shall constitute a waiver of any right or duty afforded the Judicial Council under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.
- 13.18 PUBLIC CONTRACT CODE REFERENCES.** References to the Public Contract Code are provided for Contract's convenience only and shall not imply that the Public Contract Code applies to the Judicial Council, but rather shall be used to define the CMR's obligations under the particular contract provision in which such code section is referenced. The Judicial Council is not subject to the Public Contract Code.

END OF DOCUMENT 00700

**Exhibit I  
to CMR Agreement**

**Division 1 Documents**

**[DIVISION 1 DOCUMENTS will be either attached to this Agreement or incorporated by reference into this Agreement through an amendment to the Agreement no later than when the Parties amend this Agreement to authorize the CMR to proceed with the Construction Phase of the Project. In lieu of attaching this exhibit to the Agreement or incorporating this exhibit by reference into this Agreement through an amendment to the Agreement, the Parties may agree, in writing, to an alternative mechanism to incorporate this document into the Agreement.]**

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SAMPLE



**Exhibit J  
to CMR Agreement**

**Technical Specifications (Division 2 through Division 49)**

**[THE TECHNICAL SPECIFICATIONS will be either attached to this Agreement or incorporated by reference into this Agreement through an amendment to the Agreement no later than when the Parties amend this Agreement to authorize the CMR to proceed with the Construction Phase of the Project. In lieu of attaching this exhibit to the Agreement or incorporating this exhibit by reference into this Agreement through an amendment to the Agreement, the Parties may agree, in writing, to an alternative mechanism to incorporate this document into the Agreement.]**

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**Exhibit K  
to CMR Agreement**

**Design Documents**

**[THE DESIGN DOCUMENTS will be either attached to this Agreement or incorporated by reference into this Agreement through an amendment to the Agreement no later than when the Parties amend this Agreement to authorize the CMR to proceed with the Construction Phase of the Project. In lieu of attaching this exhibit to the Agreement or incorporating this exhibit by reference into this Agreement through an amendment to the Agreement, the Parties may agree, in writing, to an alternative mechanism to incorporate this document into the Agreement..]**

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**Exhibit L  
to CMR Agreement**

**DVBE Participation Form**

Firm Name: \_\_\_\_\_  
RFQ/P Project Title: \_\_\_\_\_  
RFQ/P Number: \_\_\_\_\_

This Project has a DVBE participation goal of three percent (3%) (DVBE Participation Goal). The CMR 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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**DVBE PARTICIPATION FORM - 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.

<i>Name of Firm</i>	
<i>Signature of Person Signing for Firm</i>	
<i>Name (printed) of Person Signing for Firm</i>	
<i>Title of Above-Named Person</i>	
<i>Date</i>	

**DVBE PARTICIPATION FORM - 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.

<i>Name of Firm:</i>	
<i>Signature of Person Signing for Firm</i>	
<i>Name (printed) of Person Signing for Firm</i>	
<i>Title of Above-Named Person</i>	
<i>Date</i>	

**End of DVBE Participation Form**

