

**Attachment 2  
Form of Agreement**

**Supreme Court of California  
350 McAllister Street, San Francisco, CA 94102-3688**

**AGREEMENT FOR CONSTRUCTION PROJECT (Short Form)**

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ (“**Contract**”), by and between \_\_\_\_\_ (“**Contractor**”) and the Supreme Court of California (“**SCC**”).

1. The Contractor shall furnish to the SCC for a total price of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (“**Contract Price**”), the construction and services necessary or incidental to complete the scope of work set forth in Exhibit “A” which is attached hereto and incorporated herein (collectively the “**Project**”).

2. The Project is located at Room 295, 350 McAllister Street, San Francisco, CA 94101-3688 (“**Site**”).

3. The Contract includes this Contract, plans, specifications, addenda issued prior to the execution of this Contract, approved submittals, information furnished by the SCC, the documents listed in section 8 of this Contract, and any modifications issued after execution of this Contract in accordance with the terms of this Contract (collectively “**Contract Documents**”).

4. The Project shall be completed within \_\_\_\_\_ **consecutive** calendar days (“**Contract Time**”) from the date specified in the SCC’s Notice to Proceed. Contractor agrees that if the Project is not completed within the Contract Time and/or pursuant to the completion schedule, or construction schedule, it is understood, acknowledged, and agreed that the SCC will suffer damage. Pursuant to Government Code section 53069.85, Contractor shall pay to the SCC, as fixed and liquidated damages, and not as a penalty, the sum of \$\_\_\_\_\_ per day for each calendar day during which completion of the Project is delayed beyond the time specified for completion.

5. Contractor shall not commence the Project until the Contractor has submitted and the SCC has approved the performance bond, payment (labor and material) bond(s), the certificate(s) and affidavit(s), and the endorsement(s) of insurance required under the Terms and Conditions and the SCC has issued a Notice to Proceed.

6. Payment for the Project shall be made in accordance with the Terms and Conditions.

7. This Contract incorporates by this reference the Terms and Conditions attached

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hereto. The Contractor, by executing this Contract, agrees to comply with all the Terms and Conditions.

8. The Contract Documents include the following documents, as indicated:

- |   |  |
|---|--|
| <input checked="" type="checkbox"/> Notice to Proceed                   | <input checked="" type="checkbox"/> Asbestos, Lead-Based Paint & Other Hazardous Materials Certification |
| <input checked="" type="checkbox"/> Terms and Conditions                | <input checked="" type="checkbox"/> Insurance Certificates and Endorsements                              |
| <input checked="" type="checkbox"/> Prevailing Wage Certification       | <input checked="" type="checkbox"/> Performance Bond   |
| <input checked="" type="checkbox"/> Workers' Compensation Certification | <input checked="" type="checkbox"/> Payment Bond   |
| <input checked="" type="checkbox"/> Work Specifications                 | <input checked="" type="checkbox"/> Declaration of Non-Collusion   |
| <input checked="" type="checkbox"/> Exhibit "A" ("Scope of Work")       | <input checked="" type="checkbox"/> Subcontractor Listing  |
| <input checked="" type="checkbox"/> Exhibit "B" Insurance Provisions    | <input checked="" type="checkbox"/> Escrow In Lieu of Retention  |
| <input type="checkbox"/> Plans  |  |
| <input type="checkbox"/> _____[Other]                                   |  |
| <input type="checkbox"/> _____[Other]                                   |  |

9. The architect for this Project is \_\_\_\_\_ ("Architect") and the SCC's project manager for this Project is Bruce Newman ("Project Manager"). Inspection and acceptance of the Project shall be performed by the Project Manager /(insert name of inspector if applicable).

10. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct.

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11. Information regarding Contractor:

Type of Business Entity:

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

\_\_\_\_\_  
Employer Identification and/or Social Security  
Number

**NOTE: Federal Code of Regulations sections 6041 and 6209 require non-corporate recipients of \$600.00 or more to furnish their taxpayer identification number to the payer. The regulations also provide that a penalty may be imposed for failure to furnish the taxpayer identification number. In order to comply with these regulations, the SCC requires your federal tax identification number or Social Security number, whichever is applicable.**

12. California State Contractors License Number: \_\_\_\_\_

Contractor License Classification: \_\_\_\_\_

**[SIGNATURE PAGE TO IMMEDIATELY FOLLOW]**

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ACCEPTED AND AGREED on the date indicated below:

**SUPREME COURT OF CALIFORNIA**

By: \_\_\_\_\_

Name: Frank McGuire

Title: Court Administrator and Clerk of the  
Supreme Court of California

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

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

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

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

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

License No.: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

Facsimile: (\_\_\_\_) \_\_\_\_ - \_\_\_\_

E-Mail: \_\_\_\_\_

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**TERMS AND CONDITIONS TO CONTRACT**

1. **NOTICE TO PROCEED:** SCC will provide a notice to proceed to Contractor with respect to the Project at which time Contractor will proceed with the Project.
2. **SITE EXAMINATION:** Contractor has examined the Site and certifies that it accepts all measurements, specifications and conditions affecting the Project to be performed at the Site. By submitting its quote, Contractor warrants that it has made all Site examination(s) that it deems necessary as to the condition of the Site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements. No claim by Contractor for allowance of time or money will be allowed as to any undiscovered condition on the Site except as provided for in Government Code section 4215.
3. **EQUIPMENT AND LABOR:** Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to provide the services herein described.
4. **SUBCONTRACTORS:** Subcontractors, if any, engaged by the Contractor for any work required for the Project shall be subject to the approval of the SCC. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor subcontracts any part of this Contract, Contractor shall be fully responsible to the SCC for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the SCC.
  - 4.1 Within ten (10) days after the date of Notice to Proceed, the Contractor shall provide the District with the name, address, telephone number, facsimile number, California State Contractors License number, classification, and monetary value of all Subcontracts for parties furnishing labor, material, or equipment for completion of the Project
  - 4.2 Contractor is directed to familiarize itself with sections 4100 through 4114 of the Public Contract Code of the State of California, regarding subletting and subcontracting, and to comply with all applicable requirements therein.
  - 4.3 No Contractor whose Bid is accepted shall, without consent of the awarding authority and in full compliance with section 4100, et seq, of the Public Contract Code, including, without limitation, sections 4107, 4107.5, and 4109 of the Public Contract Code, either:

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4.3.1 Substitute any person as a Subcontractor in place of the Subcontractor designated in the original Bid; or

4.3.2 Permit any Subcontract to be assigned or transferred, or allow any portion of the Work to be performed by anyone other than the original Subcontractor listed in the Bid; or

4.3.3 Sublet or subcontract any portion of the Work in excess of one-half of one percent (1/2 of 1%) of the Contractor's total bid as to which his original bid did not designate a Subcontractor.

5. **TERMINATION:** If Contractor fails to perform the work for the Project to the satisfaction of the SCC, or if Contractor fails to fulfill in a timely and professional manner Contractor's obligations under this Contract, or if Contractor violates any of the terms or provisions of this Contract, the SCC shall have the right to terminate this Contract effective immediately upon the SCC giving written notice thereof to the Contractor. SCC shall also have the right in its sole discretion to terminate the Contract for its own convenience, in which case, the SCC will only be obligated to reimburse Contractor for the actual costs incurred by Contractor as of the date of termination, however, in no event, shall Contractor be entitled to be compensated for any loss of anticipated profits.

6. **SAFETY PRECAUTIONS AND PROGRAMS:** Contractor is responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Project. Contractor must take all reasonable precautions and protections to ensure the safety of, and prevent damage, injury or loss to:

- (a) all employees working on the Project and all other persons who may be affected by the Project;
- (b) all the work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care custody or control of the Contractor or any of its Subcontractors; and
- (c) any other property located at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of the work.

7. **PROTECTION OF PROJECT AND PROPERTY:** Contractor shall erect and properly maintain at all times, as required by conditions and progress of the work for the Project, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the work for the Project. In an emergency affecting life and safety of life or of

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work or of adjoining property, Contractor, without special instruction or authorization from SCC, is permitted to act at its discretion to prevent such threatened loss or injury. Contractor shall designate a superintendent, or some other responsible member of the Contractor's organization, who is at the Site, to be the person responsible for: (1) the prevention of accidents and the monitoring of the safety for the Project, and (2) the compliance with all applicable laws, ordinances, rules, regulations and lawful orders of the local public jurisdiction with authority on safety of persons or protection of property.

**8. CHANGE IN SCOPE OF WORK:** Any change in the scope of the work for the Project, method of performance, the type of materials, or any other matter materially affecting the performance or nature of the Project shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid change order executed by the SCC. Contractor specifically understands, acknowledges, and agrees that the SCC shall have the right to request any alterations, deviations, reductions, or additions to the Project, and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide the SCC with all information requested to substantiate the cost of the change order and to inform the SCC whether the work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Project. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

**9. TRENCH SHORING:** If this Contract is in excess of \$25,000 and is for the excavation of any trench deeper than five (5) feet, pursuant to Labor Code section 6705, Contractor must submit and obtain SCC acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.

**10. DISCOVERY OF HAZARDOUS WASTE OR UNUSUAL CONDITIONS:** Pursuant to Public Contract Code section 7104, if the Work involves digging trenches or other excavations that extend deeper than four feet below the Surface, the Contractor shall promptly, and before the following conditions are disturbed, notify the SCC, in writing, of any:

10.1 Material that the Contractor believes may be material that is hazardous waste, as defined in section 25117 of the Health and Safety Code, that is required to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

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10.2 Subsurface or latent physical conditions at the Site differing from those indicated.

10.3 Unknown physical conditions at the Site of any unusual nature, different materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract.

10.4 The SCC shall promptly investigate the conditions, and if it finds that the conditions do materially so differ, or do involve hazardous waste, and cause a decrease or increase in the Contractor's cost of, or the time required for, performance of any part of the Work, shall issue a Change Order under the procedures described herein.

10.5 In the event that a dispute arises between SCC and the Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the Work, the Contractor shall not be excused from any scheduled completion date provided for by the Contract, but shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by Contract or by law that pertain to the resolution of disputes and protests.

11. **WORKERS:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the SCC may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the SCC.

12. **CORRECTION OF ERRORS:** Contractor shall perform, at its own cost and expense and without reimbursement from the SCC, any work necessary to correct errors or omissions that result from, or relate to, Contractor's failure to comply with the standard of care required for the work for the Project.

13. **MATERIAL SUBSTITUTIONS:** No substitutions of materials from those specified in the Work Specifications shall be made without the prior written approval of the SCC. In accordance with Public Contract Code Section 3400, when a Work Specification calls for a designated material, product, thing, or service by specific brand or trade name, the Work Specification shall be deemed to include the words "or equal" so that bidders may furnish any equal material, product, thing, or service. SCC requires a written request for substitution of "an equal" item to be submitted in writing not later than three business days after the Notice of Intent to Award is received.



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13. **CONTRACTOR SUPERVISION:** Contractor shall provide competent supervision of personnel who are working at the job Site and/or on the Project.

14. **CLEAN UP:** Contractor must remove debris from the Site on a weekly basis. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

15. **ACCESS TO PROJECT:** The SCC shall, at all times, have access to the Project while it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.

16. **ASSIGNMENT OF CONTRACT:** Contractor shall not assign or transfer in any way any or all of its rights, burdens, duties, or obligations under this Contract without the prior written consent of the SCC.

17. **TIME IS OF THE ESSENCE:** Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Contract.

18. **OCCUPANCY:** SCC reserves the right to occupy any buildings which are part of the Project at any time before formal Contract completion and such occupancy shall not constitute final acceptance or approval of any part of the Project covered by this Contract, nor shall such occupancy extend the date specified for completion of the Project.

19. **FORCE MAJEURE CLAUSE:** Contractor shall not be liable for any failure or delay in performance hereunder during the time and to the extent that it is prevented from obtaining delivery of goods or materials, or performing the work for the Project by an Act of God (e.g. flood, earthquake, fire due to lightning), strike, loss, or shortage of transportation facilities, lock-out, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the SCC, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Contractor.

20. **INDEMNIFICATION:** To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the State of California, the Supreme Court of California, the Judicial Council of California and their respective officers, consultants, representatives, agents and employees (the “**Indemnified Parties**”) from any and all demands, losses, liabilities, claims, suits, and actions (the “**Claims**”) of any kind, nature, and description, including, but not limited to, attorneys’ fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of this Contract unless the Claims are caused wholly by the sole negligence or willful misconduct of the Indemnified Parties. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any

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provision of law or the Contract, including, without limitation, any stop notice action. The SCC shall have the right to accept or reject any legal representation that Contractor proposes to defend the SCC.

**21. PROGRESS PAYMENTS:** On a monthly basis, Contractor shall submit to the Project Manager an application for payment based upon the actual value for materials delivered or services performed under the Contract as of the date of submission (“**Application for Payment**”). The Project Manager will review the Application for Payment and approve the Application for Payment if the Application for Payment is valid and correct. Within 30 days after the Project Manager’s approval of the Application for Payment, Contractor will be paid a sum equal to ninety percent of the value of the work performed on the Project (as verified, as applicable, by the Project Manager, Architect, and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and amount to be withheld. The SCC may deduct from any payment an amount necessary to protect the SCC from loss because of: (1) liquidated damages which have accrued as of the date of the application for payment; (2) any sums expended by the SCC in performing any of Contractor’s obligations under the Contract which Contractor has failed to perform or has performed inadequately; (3) defective work not remedied; (4) stop notices as required by California law (i.e. Civil Code sections 9350 et. seq.); (5) reasonable doubt that the Project can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (6) unsatisfactory prosecution of the work for the Project by Contractor; (7) unauthorized deviations from the Contract; (8) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by SCC during the prosecution of the work for the Project; (9) erroneous or false estimates by the Contractor of the value of the work performed; (10) any sums representing expenses, losses, or damages, as determined by the SCC, incurred by the SCC for which Contractor is liable under the Contract; and (11) any other sums which the SCC is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the SCC to deduct any of these sums from a progress payment shall not constitute a waiver of the SCC’s right to such sums. Any state agency which fails to make any progress payment within 30 days after receipt of the payment request from a contractor on a construction contract for an undisputed payment request, which was properly submitted by the contractor to the agency, shall pay interest to the contractor equivalent to the legal rate set forth in subdivision (a) of Section 685.010 of the Code of Civil Procedure. The SCC will retain 10 percent from all amounts owing as retention.

### **22. PAYMENT TO SUBCONTRACTORS:**

No later than seven (7) days after receipt, or pursuant to Business and Professions Code section 7108.5 and Public Contract Codes sections 7107, and 10262, 10262.5 upon receipt of payment from SCC, the Contractor shall pay to each Subcontractor, out of the amount paid to the Contractor on account of such Subcontractor’s portion of the Work, the amount to which said Subcontractor is entitled. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its Sub-subcontractors in a

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similar manner. Failure to make timely payments pursuant to this provision constitutes a diversion of funds which could result in an adverse action against the Contractor pursuant to Public Contract Code section 10262. Any contractor in violation of Public Contract Code section 10262.5 shall pay a penalty of 2 percent of the amount due per month for every month that payment is not made. In any action for the collection of funds wrongfully withheld under Public Contract Code section 10262.5, the prevailing party shall be entitled to his or her attorney's fees and costs.

**23. MANNER OF PAYMENT.** All payments by the SCC required by this Contract shall be payable by State of California warrants or any other warrant from any account utilized by the SCC.

**24. FAILURE TO ADOPT STATE BUDGET.** An event of default shall not occur if the SCC is unable to make any payment due hereunder because of the State of California's failure to timely approve and adopt a State budget. If the SCC fails to make any payment(s) as a result of the State of California's failure to timely approve and adopt a State budget, the SCC shall promptly pay any previously due and unpaid upon approval and adoption of the State budget.

**25. COMPLETION OF PROJECT:** Contractor shall notify the Project Manager when the Project is complete. The SCC will accept completion of the Project and record the Notice of Completion when the entire Project had been completed to the satisfaction of the SCC. The SCC, at its sole option, may accept completion of the Project and have the Notice of Completion recorded when the Project has been completed to the satisfaction of the SCC, except for minor corrective items ("**Punch List Items**"), as distinguished from incomplete items.

**26. FINAL PAYMENT.**

The following conditions must be fulfilled prior to final payment:

- The SCC must have accepted the Project as complete in accordance with section 24 of this Contract;
- A duly completed and executed waiver and release upon final payment compliant with Civil Code section 8136 from the Contractor and each subcontractor and supplier;
- Contractor shall have delivered to the SCC all applicable written guarantees and warranties, including those of its subcontractors, if applicable;
- The Contractor shall have delivered to the SCC all applicable manuals; and
- The Contractor shall have completed final clean-up of the Site.

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After 35 days have elapsed following the recordation of the Notice of Completion for the Project, the SCC will commence processing the final payment, and provide the final payment to Contractor as expeditiously as possible. The final payment shall be the amount of retention, less the following: (i) any amounts reasonably disputed by the SCC; (ii) 150 percent of the SCC's estimate of any amount necessary to complete any Punch List Items which are still not complete; (iii) any amounts attributable to stop notices which the SCC is required to withhold under California law (i.e. Civil Code sections 9350 et. seq.).

27. **RETENTION PAYMENTS.** The retention proceeds withheld from any payment by the public entity from the original contractor, or by the original contractor from any subcontractor, shall be subject to Public Contract Code section 7107.

28.1 Within 60 days after the date of completion of the work of improvement, the retention withheld by the public entity shall be released. In the event of a dispute between the public entity and the original contractor, the public entity may withhold from the final payment an amount not to exceed 150 percent of the disputed amount.

28.2 Within seven (7) days from the time that all or any portion of the retention proceeds are received by the original contractor, the original contractor shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received. However, if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor, if the payment is consistent with the terms of the subcontract. In accordance with Public Contract Code section 7107, the original contractor may withhold from a subcontractor a portion of the retention proceeds if a bona fide dispute exists between the subcontractor and the original contractor.

28.3 In the event that retention payments are not made within the time periods required by this section, the public entity or original contractor withholding the unpaid amounts shall be subject to a charge of 2 percent per month on the improperly withheld amount, in lieu of any interest otherwise due. Additionally, in any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to attorney's fees and costs.

28.4 If a state agency retains an amount greater than 125 percent of the estimated value of the work yet to be completed pursuant to Section 10261, the state agency shall distribute undisputed retention proceeds in accordance with Public Contract Code 7107 subdivision (c). However, notwithstanding subdivision (c), if a state agency retains an amount equal to or less than 125 percent of the estimated value of the work yet to be completed, the state

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agency shall have 90 days in which to release undisputed retentions. Any attempted waiver of the provisions of this section shall be void as against the public policy.

### **28. WITHHELED PAYMENTS, SUBSTITUTION OF SECURITIES FOR MONEYS, ESCROW, INTEREST.**

29.1 In accordance with Public Contract Code Section 10263, SCC shall permit substitution of securities for any moneys withheld by a public agency to ensure performance under a contract. Alternatively, in accordance with procedures set forth in Public Contract Code section 10263, a contractor may request and the SCC will permit payment of retentions earned directly to an escrow agent.

29.2 The SCC will permit the substitution of securities in accordance with Public Contract Code section 10263. The contractor shall be the beneficial owner of any securities substituted for moneys withheld and shall receive any interest thereon.

29.3 Any contractor who elects to receive interest on moneys withheld in retention by a public agency pursuant to Public Contract Code section 10263, shall at the request of any subcontractor, make that option available to the subcontractor regarding any moneys withheld in retention by the contractor from the subcontractor. If the contractor elects to receive interest on any moneys withheld in retention by a public agency, then the subcontractor shall receive the identical rate of interest received by the contractor on any retention moneys withheld from the subcontractor by the contractor, less any actual pro rata costs associated with administering and calculating that interest. This provision applies only to those subcontractors performing more than five percent of the contractor's total bid. No contractor shall require any subcontractor to waive this provision.

29. **NO LIENS.** Contractor agrees that Contractor, and any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract, has no rights to lien any portion of the Site or any improvement or appurtenance thereon. Contractor specifically acknowledges, in accordance with Civil Code section 8136 et. seq. that the Project and the Site are not subject to mechanics liens. In the event that any liens are recorded by Contractor or any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract, Contractor agrees to take whatever action is necessary to remove the lien against the Project or the Site, applicable.

**30. PERMITS AND LICENSES:** Contractor and all of its employees, agents, and

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subcontractors shall secure and maintain in force, at Contractor's sole cost and expense, all licenses and permits as are required by law, in connection with the furnishing of materials, supplies, or services herein listed.

**31. INDEPENDENT CONTRACTOR STATUS:** While engaged in carrying out the work for the Project, the Contractor is an independent contractor, and not an officer, employee, agent, partner, or joint venture of the SCC. Contractor shall be solely responsible for its own Workers' Compensation insurance, taxes, and other similar charges or obligations. Contractor shall be liable for its own actions, including its negligence or gross negligence, and shall be liable for the acts, omissions, or errors of its agents or employees.

**ASSIGNMENT OF ANTI-TRUST ACTIONS:** Public Contract Code section 7103.5(b) states: In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the contractor, without further acknowledgment by the parties.

**32. ANTI-DISCRIMINATION:** Contractor agrees to comply with all applicable Federal and California laws relating to discrimination against employees because of race, color, ancestry, national origin, or religious creed including, but not limited to the California Fair Employment Practice Act beginning with Government Code section 12900 and Labor Code section 1735. In addition, Contractor agrees to require like compliance by all its subcontractor(s).

**33. DISABLED VETERAN BUSINESS ENTERPRISES:** To the extent required by law, Contractor shall comply with all Disabled Veteran Business Enterprise (DVBE) requirements including any participation goals or good faith efforts, as the case may be, as required by Military and Veterans Code section 999 et seq. with respect to any services, materials or supplies provided under this Contract. Contractor agrees to provide the SCC with any requested relevant supporting documents and to maintain such documents for a period of three (3) years after final payment under this Contract. DVBE resources can be found at: <http://www.pd.dgs.ca.gov/dvbe/default.htm>, or by calling the Office of Small Business and DVBE Services at (916) 375-4940.

**34. BID BOND:** The required bidder's security shall be in an amount equal to at least 10 percent of the amount bid. A bid shall not be considered unless one of the forms of bidder's

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security is enclosed with it. (c) All bids submitted pursuant to this section shall also comply with the provisions of Section 1601 of the Public Contract Code. All bids shall be presented under sealed cover and accompanied by one of the following forms of bidder's security:

- (1) An electronic bidder's bond by an admitted surety insurer submitted using an electronic registry service approved by the department advertising the contract,
- (2) A signed bidder's bond by an admitted surety insurer received by the department advertising the contract, or
- (3) Cash, a cashier's check, or certified check received by, and made payable to, the director of the department advertising the contract.

**35. PAYMENT BOND AND PERFORMANCE BOND:** Contractor shall not commence the Project until it has provided to the SCC, in a form acceptable to the SCC, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to 100 percent of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the SCC.

**36. CONTRACTOR'S INSURANCE:** Contractor shall, during the terms of this Contract, maintain insurance in accordance with the requirements of Exhibit "B" of this Contract which is attached hereto and incorporated herein, with insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide, and are approved to do business in the State of California. If self-insured, Contractor agrees to administer its self-insurance program in a commercially reasonable manner so as to ensure the availability of funds to cover losses required to be insured against by Contractor under the terms of this Section 32 and Exhibit "B."

**37. WARRANTY:** In addition to any warranties provided by a manufacturer of any material or good supplied in furtherance of the Project, Contractor guarantees and warrants all labor and material used in the performance of this Contract for a period of one year from the date of the SCC's recordation of a Notice of Completion for the Project, and at the SCC's sole option, Contractor shall either repair or replace any and all of that work that may be defective in workmanship and/or materials, without expense whatsoever to the SCC, together with any other work, that may be displaced in so doing. In the event of failure of Contractor to commence and pursue with diligence said replacements or repairs within 10 days after being notified in writing, Contractor hereby acknowledges and agrees that the SCC is authorized to proceed to have the work replaced or repaired and made good at expense of Contractor who hereby agrees to reimburse the SCC for any costs incurred by the SCC with respect to repairing or replacing the work.

**38. CONFIDENTIALITY:** The Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the work for the Project to the extent allowed by law. This

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requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

**39. COMPLIANCE WITH LAWS:** Contractor shall provide all notices and comply with all laws, ordinance, rules and regulations bearing on conduct of the work for the Project. If Contractor observes that any of the work required by this Contract is at variance with any laws, ordinance, rules or regulations, Contractor must notify the SCC, in writing, and, at the sole option of the SCC, any necessary changes to the scope of the Project shall be made and this Contract shall be appropriately amended in writing, or this Contract shall be terminated effective upon Contractor's receipt of a written termination notice from the SCC. If Contractor performs any work that is in violation of any laws, ordinances, rules or regulations, without first notifying the SCC of the violation, Contractor shall bear all costs arising therefrom.

**40. DISPUTES:** In the event of a dispute between the parties as to performance of the work for the Project, the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the parties will attempt to resolve the dispute through mediation. Failing mediation, the remedy for the resolution of claims arising under contracts made under the provisions of this chapter shall be arbitration pursuant to Public Contract Code sections 10240 et.seq. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the work for the Project.

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

**42. LABOR CODE REQUIREMENTS:**

### **A. Prevailing Wage**

The Contractor shall comply with the provisions of the Labor Code including sections 1770 to 1780, inclusive and specifically Section 1775. In accordance with Section 1775, the Contractor shall forfeit to the SCC 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 SCC, for the work or craft in which that worker is employed for any work done under Contract by the Contractor or by any Subcontractor.

The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of Contractor or Subcontractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of the Contractor.

The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if Contractor or Subcontractor has



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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.

The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the Contractor or Subcontractor willfully violated Labor Code section 1775.

The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by Contractor or Subcontractor.

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. Contractor 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 Contractor 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 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/dprevwagedetermination.htm> ).

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

If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate booklet, the Contractor shall contact the Division of Labor Statistics and Research as listed inside the booklet or access on the Internet. The rates thus determined shall be applicable as minimum from the time of initial employment.

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The Contractor and each Subcontractor shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or Subcontractor in connection with the Work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written request by the SCC, the Contractor's and Subcontractor's certified payroll records shall be furnished within ten (10) days. The Contractor's and Subcontractor's certified payroll records shall be available for inspection at the principal office of the CMR.

### **43. JUDICIAL BRANCE CONTRACTING LAW PROVISIONS**

The Judicial Branch Contracting Law (JBCL) provisions are required for compliance with Public Contract Code ("PCC"), part 2.5, enacted under Senate Bill 78 (Stats. 2011, ch. 10), and the Judicial Branch Contracting Manual ("JBCM") adopted pursuant to that law.

- **Contractor Certification Clauses.** Contractor certifies that the following representations and warranties are true. Contractor shall cause these representations and warranties to remain true during the term of this Agreement, and Contractor shall promptly notify the JBE if any representation and warranty becomes untrue.
  - **Non-discrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.

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- **National Labor Relations Board.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
  
- **Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBE.
  
- **Provisions Applicable Only to Certain Agreements.** The provisions in this section are *applicable only to the types of agreements specified in the title of each subsection*. If the agreement is not of the type described in the title of a subsection, then that subsection does not apply to the Agreement.
  - **Agreements over \$10,000.** This Agreement is subject to examinations and audit by the State Auditor for a period of three years after final payment.
  
  - **Agreements over \$50,000.** No JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term).

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- **Agreements of \$100,000 or More.** Contractor certifies that it is, and will remain for the term of the Agreement, in compliance with: (i) PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provisions of benefits on the basis of an employee's or dependent's actual or perceived gender identity. Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
  
- **Agreements for Services over \$200,000 (Excluding consulting services).** Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
  
- **Agreements for the Purchase of Goods.** Contractor shall not sell or use any article or product as a "loss leader" as defined in Business and Professions Code section 17030.
  
- **Agreements for the Purchase of Certain Goods, and Printing, Parts Cleaning, Janitorial, and Building Maintenance Services Agreements.** If Contractor will sell to the JBE, or use in the performance of this Agreement, goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), then with respect to those goods: (i) Contractor shall use recycled products in the performance of this Agreement to the maximum extent doing so is economically feasible, and (ii) upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
  
- **Agreements for Furnishing Equipment, Materials, Supplies, or for Laundering Services.** Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished

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to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor adheres to the Sweat free Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and PCC 6108.

Contractor agrees to cooperate fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under this section and shall provide the same rights of access to the JBE.

- **Agreements for which Contractor Has Committed to Achieve DVBE Participation.** This section is applicable if Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement. Contractor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the JBE: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
  
- **Agreements Resulting from Competitive Solicitations.** Contractor shall assign to the JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Contractor. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Contractor shall be entitled to receive reimbursement for actual

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legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by the Contractor, the JBE shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action.

- **Agreements Allowing for Reimbursement of Contractor's Costs.** Contractor must include with any request for reimbursement from the JBE a certification that the Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request.
- **Agreements Performed in California by Contractors that are Corporations, LLCs, or LPs.** Contractor is, and will remain for the term of the Agreement, qualified to do business and in good standing in California.
- **Agreements that the Participating JBE Cannot Terminate for Convenience.** The JBE's obligations under this Agreement are subject to the availability of applicable funds. Funding beyond the initial appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. Upon notice, the JBE may terminate this Agreement in whole or in part, without prejudice to any right or remedy of the JBE, if expected or actual funding is withdrawn, reduced, or limited in any way. If this Agreement is terminated for nonavailability of funds, the JBE will pay Contractor for the fair value of work satisfactorily performed prior to the termination, not to exceed the total contract amount.
- **Agreements relating to small business preference.** This section is applicable if Contractor received a small business preference in connection with this Agreement. Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the JBE the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct

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labor required for the production of goods and the provision of services performed pursuant to this Agreement.

44. **GOVERNING LAW:** This Contract shall be governed by and construed in accordance with the laws of the State of California.

45. **BINDING CONTRACT:** This Contract shall be binding upon the parties hereto and upon their successors and assigns, and shall inure to the benefit of said parties and their successors and assigns.

46. **SCC WAIVER:** SCC's waiver of any term, condition, covenant or waiver of a breach of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant or the waiver of a breach of any other term, condition or covenant.

47. **INVALID TERM:** If any provision of this Contract is declared or determined by any court of competent jurisdiction to be illegal, invalid or unenforceable, the legality, validity or enforceability of the remaining parts, terms and provisions shall not be affected thereby, and said illegal, unenforceable or invalid part, term or provision will be deemed not to be a part of this Contract.

48. **ENTIRE CONTRACT:** This Contract sets forth the entire Contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing upon mutual consent.

49. **NOTICE:** All notices under this Contract shall be given as follows:

To the SCC:                    Supreme Court of California  
    Attn: Jorge E. Navarette  
    Assistant Clerk/Administrator  
    350 McAllister Street  
    San Francisco, CA 94102  
    Telephone: 415-865-7002

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

Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, CA 94102-3688  
Attention: Branch Accounting  
Phone: 415-865-4090  
Fax: 415-865-4326

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All notices and correspondence to the SCC must reference the Site, including the address of the Site.

To the Contractor: \_\_\_\_\_  
Attn: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, CA \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Fax: \_\_\_\_\_



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**EXHIBIT "A"**

**SCOPE OF WORK**

Supply and installation of a High Density Mechanical Assisted Mobile Shelving System (HDMAMSS) to be located in the Supreme Court of California, Room 295, 350 McAllister Street in San Francisco, California. The materials shall include the carriages, tracking, decking and the necessary hardware to provide storage capacity for 3,400 linear feet of letter sized paper documents. Installation of the HDMAMSS must comply with all building codes including but not limited to structural engineering and ADA. Delivery of the HDMAMSS to the installation location can be done during normal weekday business hours but execution of the system installation must be done before 8:00 AM and after 5:00 PM Monday thru Friday and anytime on Saturday and Sunday.

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EXHIBIT "B"**

**INSURANCE PROVISIONS**

**TBD**

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**EXHIBIT C**

**PREVAILING WAGE CERTIFICATION**

SCC Project Name: High Density File System, Room 295

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

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

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

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

Date:

\_\_\_\_\_

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**EXHIBIT D**

**WORKERS' COMPENSATION CERTIFICATION**

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

Labor Code section 3700 in relevant part provides:

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

a. By being insured against liability to pay compensation by one or more insurers duly authorized to write compensation insurance in this state.

b. By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to his employees.

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

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

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

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

Date:

\_\_\_\_\_

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

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**EXHIBIT E**

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

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

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

Contractor further certifies that it has instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities.

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

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

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

**CONTRACTOR:**

\_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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**EXHIBIT F**

**“NONCOLLUSION DECLARATION”**

I, the undersigned declares:

I am the \_\_\_\_\_ of \_\_\_\_\_, the party making the foregoing bid.

The bid is not made in the interest of, or on behalf of, any undisclosed person, partnership, company, association, organization, or corporation. The bid is genuine and not collusive or sham . The bidder has not directly or indirectly induced or solicited any other bidder to put in a false or sham bid. The bidder has not directly or indirectly colluded, conspired, connived, or agreed with any bidder or anyone else to put in a sham bid, or to refrain from bidding. The bidder has not in any manner, directly or indirectly, sought by agreement, communication, or conference with anyone to fix the bid price of the bidder or any other bidder, or to fix any overhead, profit, or cost element of the bid price, or of that of any other bidder. All statements contained in the bid are true. The bidder has not, directly or indirectly, submitted his or her bid price or any breakdown thereof, or the contents thereof, or divulged information or data relative thereto, to any corporation, partnership, company, association, organization, bid depository, or to any member or agent thereof, to effectuate a collusive or sham bid, and has not paid, and will not pay, any person or entity for such purpose.

Any person executing this declaration on behalf of a bidder that is a corporation, partnership, joint venture, limited liability company, limited liability partnership, or any other entity, hereby represents that he or she has full power to execute, and does execute, this declaration on behalf of the bidder.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on \_\_\_\_\_[date], at \_\_\_\_\_[city], \_\_\_\_\_[state].”

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**EXHIBIT G**

**DESIGNATED SUBCONTRACTORS LIST**

PROJECT: \_\_\_\_\_ (Project Name)

Bidder must list hereinafter the name and location of each subcontractor who will be employed, and the kind of Work that each will perform if the Contract is awarded to the Bidder. Bidder acknowledges and agrees that under Public Contract Code section 4100, et seq., it must clearly set forth below the name and location of each subcontractor who will perform work or labor or render service to the Bidder in or about the construction of the Work in an amount in excess of one-half of one percent (1/2 of 1%) of Bidder's total Bid, and that as to any Work that Bidder fails to list, Bidder agrees to perform that portion itself or be subjected to penalty under applicable law.

In case more than one subcontractor is named for the same kind of Work, state the portion that each will perform. Vendors or suppliers of materials only do not need to be listed.

If further space is required for the list of proposed subcontractors, additional sheets showing the required information, as indicated below, shall be attached hereto and made a part of this document.

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

**Portion of Work:** \_\_\_\_\_ **Lic. No.:** \_\_\_\_\_

**Amount:** \_\_\_\_\_ **Classification:** \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

**Portion of Work:** \_\_\_\_\_ **Lic. No.:** \_\_\_\_\_

**Amount:** \_\_\_\_\_ **Classification:** \_\_\_\_\_

**Subcontractor Name:** \_\_\_\_\_ **Location:** \_\_\_\_\_

**Portion of Work:** \_\_\_\_\_ **Lic. No.:** \_\_\_\_\_

**Amount:** \_\_\_\_\_ **Classification:** \_\_\_\_\_

**Contractor:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

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

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**EXHIBIT H**

**ESCROW AGREEMENT FOR  
SECURITY DEPOSITS IN LIEU OF RETENTION**

This Escrow Agreement is made and entered into by and between

whose address is

hereinafter called "owner,"

whose address is

hereinafter called "contractor," and

whose address is

hereinafter called "escrow agent."

For the consideration hereinafter set forth, the owner, contractor, and escrow agent agree as follows:

(1) Pursuant to Section 10263 of the Public Contract Code of the State of California, the Contractor has the option to deposit securities with the Escrow Agent as a substitute for retention earnings required to be withheld by the Owner pursuant to the Construction Contract entered into between the Owner and Contractor for \_\_\_\_\_ in the amount of \_\_\_\_\_ dated \_\_\_\_\_ (hereafter referred to as the "Contract"). Alternatively, on written request of the Contractor, the Owner shall make payments of the retention earnings directly to the Escrow Agent. When the Contractor deposits the securities as a substitute for the Contract earnings, the Escrow Agent shall notify the Owner within 10 days of the deposit. The market value of the securities at the time of the substitution shall be at least equal to the cash amount then required to be withheld as retention under the terms of the Contract between the Owner and Contractor. Securities shall be held in the name of the \_\_\_\_\_, and shall designate the Contractor as the beneficial Owner.

(2) The Owner shall make progress payments to the Contractor for those funds which otherwise would be withheld from progress payments pursuant to the Contract provision, provided that the Escrow Agent holds securities in the form and amount specified above.

(3) When the Owner makes payment of retentions earned directly to the Escrow Agent, the Escrow Agent shall hold them for the benefit of the Contractor until such time as the escrow created under this contract is terminated. The Contractor may direct the investment of the payments into securities. All terms and conditions of this agreement and the rights and responsibilities of the parties shall be equally applicable and binding when the Owner pays the Escrow Agent directly.

(4) The Contractor shall be responsible for paying all fees for the expenses incurred by the Escrow Agent in administering the Escrow Account. These expenses and payment terms shall be determined by the Contractor and Escrow Agent.



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- (5) The interest earned on the securities or the money market accounts held in escrow and all interest earned on the interest shall be for the sole account of Contractor and shall be subject to withdrawal by Contractor at any time and from time to time without notice to the Owner.
- (6) Contractor shall have the right to withdraw all or any part of the principal in the Escrow Account only by written notice to the Escrow Agent accompanied by written authorization from the Owner to the Escrow Agent that the Owner consents to the withdrawal of the amount sought to be withdrawn by Contractor.
- (7) The Owner shall have a right to draw upon the securities in the event of default by the Contractor. Upon seven days' written notice to the Escrow Agent from the owner of the default, the Escrow Agent shall immediately convert the securities to cash and shall distribute the cash as instructed by the Owner.
- (8) Upon receipt of written notification from the Owner certifying that the Contract is final and complete, and that the Contractor has complied with all requirements and procedures applicable to the Contract, the Escrow Agent shall release to the Contractor all securities and interest on deposit less escrow fees and charges of the Escrow Account. The escrow shall be closed immediately upon disbursement of all moneys and securities on deposit and payments of fees and charges.
- (9) The Escrow Agent shall rely on the written notifications from the Owner and the Contractor pursuant to Sections (1) to (8), inclusive, of this agreement and the Owner and Contractor shall hold the Escrow Agent harmless from the Escrow Agent's release, conversion, and disbursement of the securities and interest as set forth above.
- (10) The names of the persons who are authorized to give written notice or to receive written notice on behalf of the Owner and on behalf of the Contractor in connection with the foregoing, and exemplars of their respective signatures are as follows:

On behalf of the owner:

On behalf of the contractor:

Title

Title

Name

Name

Signature

Signature

Address

Address

On behalf of the escrow agent:

Title

Name

Signature

Address

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At the time the Escrow Account is opened, the Owner and Contractor shall deliver to the Escrow Agent a fully executed counterpart of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their proper officers on the date first set forth above.

Owner

Contractor

Title

Title

Name

Name

Signature

Signature