

DOCUMENT 00 70 00

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1. CONTRACT TERMS AND DEFINITIONS

1.1. Definitions.

Wherever the following terms, titles, or phrases are used in the Contract Documents, the intent and meaning thereof will be as defined in this Article:

- 1.1.1. Acceptance. The terms “Acceptance of the Work,” “Acceptance,” or “Accept(s/ed)” mean written acceptance of the Work or a completed deliverable, submittal, phase, or other contractual requirement in compliance with the Agreement by Judicial Council staff member with authority to make that decision.
- 1.1.2. Addendum or Addenda. The term “Addendum(a)” means Written document(s) issued by Judicial Council before award of the Project, interpreting the Contract Documents or answering questions of intended bidders, which modifies, supersedes, or supplements portions of, and are part of, the Contract Documents.
- 1.1.3. Administrative Director. The terms “Administrative Director” or “Director” means the Administrative Director of Judicial Council.
- 1.1.4. Adverse Weather. The term “Adverse Weather” means weather that satisfies **all** the following conditions:
 - 1.1.4.1. 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 course mutually agreed to by Judicial Council and Contractor or, if none can be mutually agreed upon, as indicated by the United States National Climatic Data Center, National Oceanic and Atmospheric Administration at <https://www.ncdc.noaa.gov/>, or if the air quality index for the location of the Project exceeds 300 as indicated by AirNow at <https://www.airnow.gov/>; and
 - 1.1.4.2. Beyond the weather days allocated in the Construction Schedule; and
 - 1.1.4.3. Occurring at the Project Site.
- 1.1.5. Agreement. The term “Agreement” means Document 00 45 10 signed by the Parties that is part of the Contract Documents.
- 1.1.6. Allowance(s). The term “Allowance(s)” means amount(s) stated in the Agreement for specific scopes of work for which Contractor may bill its time and materials upon the Judicial Council’s issuance of Change Order therefor.
- 1.1.7. Approve. The terms “Approve,” “Approval,” and “Approved” mean written authorization by Judicial Council or its representative authorized by Judicial Council to give such authorization, unless stated otherwise.
- 1.1.8. Approved Person. The term “Approved Person(s)” means the person Approved by the Judicial Council pursuant to the Background Checks / Access to Restricted Areas Article of these General Conditions to wear an identification badge bearing that person’s name and picture and who may have access to Restricted Areas.
- 1.1.9. Application for Payment. The term “Application for Payment” shall refer to the payment application submitted by Contractor, consistent with the requirements of the Contract Documents, to Judicial Council requesting Judicial Council pay Contractor monthly progress payments.

- 1.1.10. Alternate Bid Item(s). The term “Alternate Bid Item(s)” refers to the alternate item(s) of Work and associated cost(s) identified in the Bid submitted by Contractor. Alternate Bid Item(s) are only part of the Work if identified in the Notice to Proceed, or added by Judicial Council, consistent with the requirements of the Contract Documents.
- 1.1.11. Architect. The term “Architect” means the individual, partnership, corporation, joint venture, or any combination thereof, named as Architect that has the rights and authority assigned to the Architect in the Contract Documents. The term Architect means Judicial Council's Architect on this Project or the Architect’s authorized representative. If no Architect is used on the Project, then all references in the Contract Documents to Architect shall be read to refer to Judicial Council.
- 1.1.12. As-Built Drawings. The term “As-Built” means reproducible, full-size sets of drawings to be prepared by Contractor as required by the Contract Documents, that reflect the actual construction of the Project, and record all differences between the original design of the Work and the Work as constructed.
- 1.1.13. Authorities Having Jurisdiction. The term “Authority(ies) Having Jurisdiction” means municipal, county, state, regional or federal public authorities responsible for enforcing requirements of applicable codes, performing inspections of the Work, reviewing applications, and/or that may provide approvals relating to the Project or the Work. These authorities include, without limitation, Judicial Council, the State Fire Marshal, DSA, Board of State and Community Corrections, and any other agency charged with regulatory compliance and/or oversight in connection with the Project, the Site, the Work or performance of the Work.
- 1.1.14. Background Check Policy. The term “Background Check Policy” means policy governing the Judicial Council screening and approving employees of Contractor and Subcontractors that have access to Restricted Areas pursuant to Judicial Council’s then-current background check policies and procedures.
- 1.1.15. Bid. The term “Bid” means the bid submitted by the Contractor on the Bid Form for the Project and formed the basis for Judicial Council’s award of the Project to Contractor.
- 1.1.16. Building Information Model. The term “Building Information Model” or “BIM” means parametric computable representation of the design of the Project including architectural, structural, mechanical, electrical, plumbing and information technology details. This also includes the primary design model or models and all linked, related, affiliated, or subsidiary models developed for design, detailing, fabrication, or construction of the Project.
- 1.1.17. CalOSHA. The term “CalOSHA” means the California Division of Occupational Safety and Health.
- 1.1.18. CEQA. The term “CEQA” means the California Environmental Quality Act (Public Resources Code, §§ 21000 et. seq.).
- 1.1.19. Certified Payroll Records (CPR). The term “CPR(s)” means the payroll records submitted by Contractor and Subcontractor to the DIR for Work performed on the Project as required by the Labor Code.
- 1.1.20. Change Order. The term “Change Order” means a written order to Contractor authorizing an addition to, deletion from, or revision in the Work, and/or authorizing an adjustment in the Contract Price or Contract Time.

- 1.1.21. Claims Resolution Process. The term “Claims Resolution Process” means the process for the resolution of a Claim(s) as set forth in the Claims Resolution Article of these General Conditions.
- 1.1.22. Claim. The term “Claim” means a written demand by Contractor (or by Contractor on behalf of a Subcontractor) for the following:
- 1.1.22.1. An extension to the Contract Time, including relief from damages or penalties assessed by Judicial Council for delay;
- 1.1.22.2. Payment of money or damages arising from Work done by, or on behalf of, Contractor pursuant to the Contract and payment that is not otherwise expressly provided for in the Contract Documents or Contractor is not otherwise entitled; or
- 1.1.22.3. Payment that is disputed by Judicial Council.
- 1.1.23. Commissioning. The term “Commissioning” means the process for achieving, validating and documenting that the facility and its systems are planned, designed, installed, tested, and capable of being operable and maintained to perform in conformity with the Contract Documents and to meet the sustainability requirements.
- 1.1.24. Completion. The terms “Completion,” “Complete,” or “Completes(d)” mean Contractor has completed the entire Work in accordance with the Contract Documents, including completion and acceptance of all final Punch List items by Judicial Council and all Work has been accepted by Administrative Director or designee consistent with the requirements of the Contract Documents.
- 1.1.25. Concurrent Delay. The term “Concurrent Delay” means a Contractor-caused delay event which covers the same time-period of an Excusable and Compensable Delay or Excusable Delay, each independently affecting the Completion date.
- 1.1.26. Construction Manager. The term “Construction Manager” means the individual, partnership, corporation, joint venture, or any combination thereof, or its authorized representative, named as such by Judicial Council. If no Construction Manager is used on the Project, then all references in the Contract Documents to Construction Manager will be read to refer to Judicial Council.
- 1.1.27. Construction Schedule. The term “Construction Schedule(s)” means the Judicial Council-Approved Project schedule that is compliant with the requirements of the Contract Documents, and that includes all activities and Project milestones, including durations, logic, resources and status for each activity, to complete the Project within the Contract Time.
- 1.1.28. Contract and Contract Documents. The terms “Contract” and “Contract Documents” means the following documents that comprise the agreement between the Judicial Council and the Contractor for the Completion of the Project:
- 1.1.28.1. Notice to Bidders / Invitation for Bid
- 1.1.28.2. Instructions to Bidders
- 1.1.28.3. Bid Form
- 1.1.28.4. Bid Bond

- 1.1.28.5. Designated Subcontractors List
- 1.1.28.6. Noncollusion Declaration
- 1.1.28.7. Iran Contracting Act Certification
- 1.1.28.8. Fair Chance Employment Act Certification (if applicable)
- 1.1.28.9. Darfur Contracting Act Certification (if applicable)
- 1.1.28.10. Certifications to be Completed by Contractor
- 1.1.28.11. Disabled Veteran's Business Enterprise Participation Certification
- 1.1.28.12. Notice of Award
- 1.1.28.13. Agreement
- 1.1.28.14. Escrow of Bid Documentation (if applicable)
- 1.1.28.15. Escrow Agreement for Security Deposits in Lieu of Retention
- 1.1.28.16. Storm Water Pollution Prevention Plan (if applicable)
- 1.1.28.17. Notice to Proceed
- 1.1.28.18. Performance Bond
- 1.1.28.19. Payment Bond (Contractor's Labor and Material Bond)
- 1.1.28.20. Judicial Council Contract Forms (if applicable)
- 1.1.28.21. Judicial Council Closeout Forms (if applicable)
- 1.1.28.22. Warranty and Guarantee Form
- 1.1.28.23. General Conditions
- 1.1.28.24. Special Conditions
- 1.1.28.25. State Contract Act Provisions (if applicable)
- 1.1.28.26. Project Plans, Specifications, Technical Specifications, and Drawings
- 1.1.28.27. Addenda to any of the above documents
- 1.1.28.28. Schedules if Approved by Judicial Council
- 1.1.28.29. Change Orders or written modifications to the above documents if Approved by Judicial Council

Without in any way limiting the foregoing, Document 00 31 19 titled Existing Information and Documentation Regarding Project Site **SHALL NOT** be a Contract Document.

- 1.1.29. Contract Price. The term “Contract Price” means the maximum amount payable to Contractor by the Judicial Council for the Work performed pursuant to the Agreement for the Work under the terms and conditions of the Contract Documents, as may adjusted as permitted herein.
- 1.1.30. Contract Time. The period of time stated in the Agreement for the Completion of the Work.
- 1.1.31. Contractor. The term “Contractor” means the corporation, limited liability company, partnership, joint venture, or other legal entity that is appropriately licensed and capable of providing, and has agreed to provide, all Work required to construct the Project consistent with the Contract Documents.
- 1.1.32. Court. The term “Court” means Court that is the subject of the Project
- 1.1.33. Daily Job Report(s). The term “Daily Job Report(s)” means the Project reports prepared by Contractor’s employee(s) who are present on Site consistent with the requirements of the Contract Documents.
- 1.1.34. Day(s). Unless otherwise designated, the term “Day(s)” means calendar day(s). “Business Day(s)” means days except Saturday, Sunday, a day that is a federally recognized holiday, or a day that is a California-recognized holiday.
- 1.1.35. Defective Work. The terms “Defective Work” and /or “Nonconforming Work” mean Work that is unsatisfactory, faulty, omitted, incomplete, deficient, or does not conform to, or deviates from, the requirements of the Contract Documents, directives of Judicial Council, Construction Manager and/or Project Inspector, or the requirements of any inspection, reference standard, test, or approval specified in the Contract Documents.
- 1.1.36. Department of Industrial Relations (DIR). The term “DIR” means the California Department of Industrial Relations.
- 1.1.37. Department of Justice (DOJ). The term “DOJ” means the California Department of Justice.
- 1.1.38. Department of Motor Vehicles (DMV). The term “DMV” means the California Department of Motor Vehicles.
- 1.1.39. Division of the State Architect (DSA). The term “DSA” means the Division of the State Architect, a component of the California Department of General Services.
- 1.1.40. Disabled Veteran Business Enterprise (DVBE). The term “DVBE” means Disabled Veteran’s Business Enterprise as set forth in Military and Veterans Code section 999, et seq.
- 1.1.41. Drawings. The terms “Drawings” or “Plans” mean the graphic and pictorial portions of the Contract Documents showing the design, location, scope, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, sequence of operation, and diagrams.
- 1.1.42. Excusable Delay. The terms “Excusable Delay” or “Excused Delay” mean a delay that entitles Contractor to an adjustment of the Contract Time to excuse Contractor from an assessment of Liquidated Damages for the specific delay period Approved by Judicial Council for Excusable Delay but **NOT** an adjustment of the Contract Price.

- 1.1.43. Excusable and Compensable Delay. The term “Excusable and Compensable Delay” means a delay that entitles Contractor to an adjustment of the Contract Price and an adjustment to the Contract Time, and excuses Contractor from an assessment of Liquidated Damages for the specific delay period Approved by Judicial Council for Excusable and Compensable Delay.
- 1.1.44. Field Orders. The term “Field Order(s)” means a process that may be used when Judicial Council and Contractor cannot agree on a price for a specific scope of work or before Contractor prepares a price for the scope of work and Contractor performs on a time and materials basis.
- 1.1.45. Float or Slack. The terms “Float” or “Slack” mean the amount of time between the early start date and the late start date, or the early finish date and the late finish date, of any of the activities in the Contract Schedule. Float or Slack is not for the exclusive use of or benefit of either Judicial Council or Contractor, but its use will be determined solely by Judicial Council.
- 1.1.46. Force Majeure.
- 1.1.46.1. The terms “Force Majeure” or “Force Majeure Event” mean one (1) or more of the following events that prevents Judicial Council’s or Contractor’s performance and is beyond the reasonable contemplation of the Parties at the time Judicial Council awarded the Contract: fires; floods; lightning; explosion; windstorms; tornadoes; earthquakes; other natural catastrophes which neither Party can prevent; acts of nature or public enemy (including acts of terrorism); war (declared or undeclared); riot or similar civil disturbance; blockade; insurrections; revolution; epidemics; pandemics; viral outbreaks; quarantine restrictions; strikes; lockouts and other labor disputes; fuel shortages; or freight embargoes. Force Majeure Events may include the actions or omissions of third parties not under control of Contractor or Judicial Council. Notwithstanding the preceding, Force Majeure Events will not include (a) strikes or lockouts involving Contractor or Contractor’s employees, (b) strikes or lockouts involving Contractor’s Subcontractors or Subcontractors’ employees unless Contractor has taken all diligent efforts to avoid or minimize the strikes or lockouts, (c) poor air quality, regardless of the cause.
- 1.1.46.2. Notwithstanding the foregoing, Contractor agrees that the Contract Price and Contract Time is based on Contractor’s full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with COVID-19 and/or any similar virus or derivative strain. Therefore, any delay associated with COVID-19, or any derivative or similar strain thereof, or any federal, state, or local order relating thereto, will not be considered a Force Majeure Event.
- 1.1.47. Hazardous Material. The term “Hazardous Material(s)” means without limitation: (i) any chemical, compound, or substance that is defined or listed in, or otherwise classified pursuant to, any federal or State law as a “hazardous substance”, “hazardous waste”, “hazardous material”, “radioactive waste”, “infectious waste”, “biohazardous waste”, “toxic substance, pollutant, or contaminant”; (ii) petroleum, natural gas, liquefied natural gas, synthetic gas usable as fuel; (iii) “hazardous substance” as defined in section 25281(h) of the California Health and Safety Code; (iv) “waste” as defined in section 13050(d) of the California Water Code; (f) asbestos containing materials; and (v) any other material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment if released into the workplace of the environment. “Hazardous Materials(s)” do not include the foregoing to the extent that they are (i) contained in products that are commercially

available in the United States of America; and (ii) used in quantities or concentrations that do not violate federal or State environmental law.

- 1.1.48. Indemnitees. The term “Indemnitees” means the State, Judicial Council, the State’s trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and all their officers, agents, contractors, representatives, volunteers, and employees.
- 1.1.49. Judicial Council. The term “Judicial Council” means the State of California acting through the Judicial Council of California, who is the owner of the Project.
- 1.1.50. Judicial Council Project Manager. The term “Judicial Council Project Manager” means the Judicial Council employee who is authorized to act as Judicial Council’s agent to oversee the construction of the Project. The Judicial Council Project Manager oversees the work of the third-party Construction Manager who is Judicial Council’s on-site construction management agent.
- 1.1.51. Liquidated Damages. The term “Liquidated Damages” shall be given the same definition as in the Agreement.
- 1.1.52. Logistics Plan. The term “Logistics Plan” shall refer to the plan for Contractor’s staging and coordination of delivery of materials and equipment specifically adapted and prepared by Contractor for the Project which complies with the requirements of the Contract Documents including, without limitation, the Logistics Plan Article of these General Conditions.
- 1.1.53. Monthly Progress Schedule. The term “Monthly Progress Schedule(s)” means the Contract Schedule that is updated on a monthly basis and provided to Judicial Council consistent with the requirements of the Contract Documents.
- 1.1.54. OSHA. The term “OSHA” means the United States Occupational Safety and Health Administration.
- 1.1.55. Owner Controlled Insurance Program (OCIP). RESERVED.
- 1.1.56. Party(ies). The terms “Party” or “Parties” mean Judicial Council and/or Contractor when referred to individually or collectively as set forth in the Agreement.
- 1.1.57. PPE. The term “PPE” means personal protective equipment.
- 1.1.58. Premises. The real property on which the Project Site is located.
- 1.1.59. Price Request. The term “Price Request” means a written request prepared by the Architect or Judicial Council, requesting Contractor to submit to Judicial Council and the Architect an estimate of the effect of a proposed change in the Work on the Contract Price and the Contract Time.
- 1.1.60. Product(s). New material, machinery, components, equipment, fixtures and systems forming the Work, including existing materials or components required and Approved by Judicial Council for reuse.
- 1.1.61. Product Data. The term “Product Data” means illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by Contractor to illustrate a material, product, or system for a scope of the Work.

- 1.1.62. Project. The term “Project” is given the same meaning as in the Agreement, which shall be constructed by Contractor consistent with the requirements of the Contract Documents.
- 1.1.63. Project Inspector. The “Project Inspector,” “Inspector of Record,” “IOR,” or “Inspector” mean the person or persons employed or engaged as an independent contractor(s) by Judicial Council to inspect the performance of the Work by Contractor for compliance with the Construction Documents. The authority of the Project Inspector to monitor the performance of the Work will be strictly limited to the authority specified in the Contract Documents and in Title 24 of the California Code of Regulations, and no additional authority has been granted nor should be inferred. If no Project Inspector is used on the Project, then all references in the Contract Documents to Project Inspector shall be read to refer to Judicial Council.
- 1.1.64. Proposed Change Order. The terms “Proposed Change Order” or “PCO” mean a written request by Contractor that Judicial Council issue a Change Order consistent with the requirements of the Contract Documents. Judicial Council will dictate the numbering and sequence of PCOs.
- 1.1.65. Punch List. The term “Punch List” means the list of minor corrective items prepared by Architect prior to Contractor’s Completion of the Work.
- 1.1.66. Request for Information. The terms “Request for Information” or “RFI” mean a written request by Contractor that the Architect provide additional information necessary to clarify an item in the Contract Documents, or to address issues that have arisen under field conditions.
- 1.1.67. Request for Substitution. The term “Request for Substitution” means a request by Contractor to substitute an equal or superior material, product, thing, or service for a specific material, product, thing, or service that has been designated in the Contract Documents by a specific brand or trade name.
- 1.1.68. Restricted Areas. The term “Restricted Area” means all areas within the Premises and/or Site that are not generally accessible to the public, including judges’ chambers, all non-public restrooms, elevators, break rooms, and corridors, and other non-public spaces that are dedicated for use only by judges or Court staff and employees, (ii) public areas of a Premises and/or Site during non-business hours that are subject to security screening during normal business hours, and (iii) the areas defined as Restricted Areas in the Background Check Policy.
- 1.1.69. Safety Orders. The term “Safety Order(s)” means written and/or verbal orders for construction issued by CalOSHA or by OSHA.
- 1.1.70. Safety Plan. The term “Safety Plan” means the plan for Project safety prepared and specifically adapted by the Contractor for the Project which complies with the requirements of the Contract Documents, including, without limitation, all provisions regarding Project safety in the Contract Documents.
- 1.1.71. Samples. The term “Sample(s)” means the physical examples that illustrate materials, products, equipment, finishes, colors, or workmanship and that, when Approved in accordance with the Contract Documents, establish standards by which portions of the Work will be judged.

- 1.1.72. Shop Drawing(s). The term “Shop Drawing(s)” means all drawings, prints, diagrams, illustrations, brochures, schedules, and other data that are prepared by Contractor, a subcontractor, manufacturer, supplier, or distributor, that illustrate how specific portions of the Work must be fabricated or installed.
- 1.1.73. Site. The term “Site” means the physical location where the Project is to be constructed, as well as adjacent property or facilities specifically identified for use in connection with the Project.
- 1.1.74. Specifications. The term “Specifications” means that portion of the Contract Documents, Division 1 through Division 49, and all technical sections, and addenda to all of these, if any, consisting of written descriptions and requirements of a technical nature of materials, equipment, construction methods and systems, standards, and workmanship.
- 1.1.75. State Fire Marshal. The term “State Fire Marshal” or “SFM” means the State Fire Marshal with jurisdiction over Fire, Life, and Safety in the design and construction of the Project. The State Fire Marshal is responsible to aid in the enforcement of all laws and ordinances, any rules and regulations adopted under the provisions of Division 11 (commencing with Section 12000) of, and Part 1 (commencing with Section 13000) and Part 2 (commencing with Section 13100) of Division 12 of, the Health and Safety Code, and building standards adopted by the State Fire Marshal and published in the State Building Standards Code relating to fires or to fire prevention and protection.
- 5.1.1. Stored Materials. The term “Stored Materials” means materials and/or equipment stored by Contractor off-site pursuant to Judicial Council’s consent consistent with the requirements of the Contract Documents.
- 1.1.76. Subcontractor. The term “Subcontractor(s)” means a contractor and/or supplier who is under contract with Contractor or with any other subcontractor, regardless of tier, to perform a portion of the Work.
- 1.1.77. Submittal Schedule. The term “Submittal Schedule” means the schedule of submittals prepared by Contractor consistent with the requirements of the Contract Documents and Approved by Judicial Council.
- 1.1.78. Surety. The term “Surety” means the person, firm, or corporation that executes as surety Contractor’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.
- 1.1.79. SWPPP. The term “SWPPP” means Judicial Council’s Storm Water Pollution Prevention Plan for the Project.
- 1.1.80. Unexcused Delay. The term “Unexcused Delay” means a delay that does not entitle Contractor to an adjustment of the Contract Price and/or to an adjustment of the Contract Time, and for which the Judicial Council may impose Liquidated Damages.
- 1.1.81. Unforeseen Site Conditions. The term “Unforeseen Site Condition(s)” means conditions actually encountered on the Site that were reasonably unforeseeable based on all the information available to Contractor prior to Judicial Council’s award of the Contract to Contractor, **and** that are one (1) **or more** of the following:
- 1.1.81.1. Subsurface or latent physical conditions at the Site differing materially from those indicated; or

1.1.81.2. Unknown physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents; or

1.1.81.3. Unknown Hazardous Materials on the Site.

1.1.82. Unilateral Change Order. The term “Unilateral Change Order” means a written order prepared and issued by Judicial Council, the Construction Manager, and/or the Architect and signed by Judicial Council and the Architect, directing a change in the Work.

1.1.83. Work. The term “Work” means all labor, materials, equipment, components, appliances, supervision, coordination, and services required by, or reasonably inferred from, the Contract Documents, that are necessary for the construction and Completion of the Project.

1.2. Terms in the Contract Documents.

The term “provide” means “provide complete in place” or to “furnish and install” such item. Unless otherwise specifically provided in the Contract Documents, the terms “approved;” “directed;” “satisfactory;” “accepted;” “acceptable;” “proper;” “required;” “necessary” and “equal” mean as approved, directed, satisfactory, accepted, acceptable, proper, required, necessary and equal, in the opinion of Judicial Council. The terms “shall”, “will”, or “must” are mandatory, and “may” is permissive.

1.3. Laws Concerning the Contract.

Contract is subject to all provisions of the Constitution and laws of California and the United States, governing, controlling, or affecting Judicial Council, or the property, funds, operations, or powers of Judicial Council, and such provisions are by this reference made a part hereof. Any provision required by law to be included in the Contract will be deemed to be inserted.

1.4. No Oral Agreements.

No oral agreement or conversation with any officer, agent, or employee of Judicial Council, either before or after execution of Contract, will affect or modify any of the terms or obligations contained in the Contract Documents.

1.5. Confidentiality.

1.5.1. Contractor understands and agrees that, in the performance of the Work under the Contract Documents or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, Judicial Council and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Judicial Council or compromise the safety of the Court. Contractor agrees that all information disclosed by Judicial Council to Contractor will be held in confidence and used only in the performance of the Work under the Contract Documents. Contractor must exercise the same standard of care to protect such information as Contractor 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.

1.5.2. It is understood, however, that Contractor may disclose Judicial Council’s confidential information on a “need to know” basis to Contractor’s employees, Contractor’s Subcontractors, and the Subcontractors’ employees, and as required by law. Contractor will execute written agreements with its Subcontractors that bind each Subcontractor and its employees to the confidentiality provisions set forth in this Contract.

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

1.6. No Waiver.

The failure of Judicial Council in any one or more instances to insist upon strict performance of any term of the Contract or to exercise any Judicial Council option will not be construed as a waiver or relinquishment of the right to assert or rely upon any such term or option on a future occasion. No action or failure to act by Judicial Council, Architect, or Construction Manager constitutes a waiver of any right or duty afforded Judicial Council under the Contract, nor will any action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

1.7. Substitutions for Specified Items.

- 1.7.1. Requests for substitutions prior to award of the Contract will be done within the time period indicated in the Instructions to Bidders.
- 1.7.2. Requests for substitutions after award of the Contract will be within **THIRTY-FIVE (35)** Days of the date of the Notice of Award. This time period can only be extended by Judicial Council in its sole discretion.
- 1.7.3. Whenever in the Specifications any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or by name of manufacturer, that Specification will be deemed to be followed by the words "or equal." Contractor may, unless otherwise stated, offer any material, process, or article that will be substantially equal or better in every respect to that so indicated or specified.
 - 1.7.3.1. If the material, process, or article offered by Contractor is not, in the opinion of Judicial Council, substantially equal or better in every respect to that specified, then Contractor must furnish the material, process, or article specified in the Specifications without any additional compensation or change order.
- 1.7.4. A request for a substitution must be in writing and must include:
 - 1.7.4.1. All variations of the proposed substitute from the material specified including, but not limited to, principles of operation, materials, or construction finish, thickness or gauge of materials, dimensions, weight, and tolerances;
 - 1.7.4.2. Available maintenance, repair or replacement services;
 - 1.7.4.3. Increases or decreases in operating, maintenance, repair, replacement, and spare parts costs;

- 1.7.4.4. Whether or not acceptance of the substitute will require other changes in the Work (or in work performed by Judicial Council or others under Contract with Judicial Council); and
- 1.7.4.5. The time impact on any part of the Work resulting directly or indirectly from acceptance of the proposed substitute.
- 1.7.5. No substitutions will be made until Approved by Judicial Council. The burden of proof as to equality of any material, process, or article will rest with Contractor. The Contractor warrants that if substitutes are Approved:
 - 1.7.5.1. The proposed substitute is equal or superior in all respects to that specified, and that such proposed substitute is suitable and fit for the intended purpose and will perform adequately the function and achieve the results called for by the general design and the Contract Documents;
 - 1.7.5.2. The Contractor provides the same warranties and guarantees for the substitute that would be provided for that specified;
 - 1.7.5.3. The Contractor will be fully responsible for the installation of the substitute and any changes in the Work required, either directly or indirectly, because of the acceptance of such substitute, with no increase in Contract Price or Contract Time. Incidental changes or extra component parts required to accommodate the substitute will be made by Contractor without a change in the Contract Price or Contract Time;
 - 1.7.5.4. The Contractor will be responsible for any re-design costs occasioned by Judicial Council's Approval of any substitute; and
 - 1.7.5.5. The Contractor will, in the event that a substitute costs less than a specified item, credit Judicial Council with one hundred percent (100%) of the net difference between the substitute and the originally specified material. In this event, Contractor agrees to execute a deductive Change Order to reflect that credit.
- 1.7.6. In the event Contractor furnishes a material, process, or article more expensive than that specified, the difference in the cost of that material, process, or article so furnished will be borne by Contractor.
- 1.7.7. In no event will Judicial Council be liable for any increase in Contract Price or Contract Time due to any claimed delay in the evaluation of any proposed substitute or in the acceptance or rejection of any proposed substitute.
- 1.7.8. If Judicial Council Approves a substitution after the award of the Contract, Judicial Council will memorialize that approval in a Change Order or other applicable Contract modification process.

1.8. Materials and Work.

- 1.8.1. Except as otherwise stated in the Contract, Contractor will provide and pay for all materials, labor, tools, equipment, transportation, supervision, temporary constructions of every nature, and all other services, management, and facilities of every nature whatsoever necessary to execute and complete the Contract within the Contract Time. Contractor's obligations hereunder will include, without limitation, providing PPE to its employees and that its subcontractors provide PPE to its employees to prevent the spread of COVID-19 or any other similar virus or derivative strain at the Site(s).

- 1.8.2. Unless otherwise specified, all materials must be new and the best of their respective kinds and grades as noted or specified, and workmanship must be of good quality.
- 1.8.3. Materials must be furnished in sufficient quantities and at such times as to ensure uninterrupted progress of Work and must be stored properly and protected as required.
- 1.8.4. For all materials and equipment specified or indicated in the Drawings, Contractor must provide all labor, materials, equipment, and services necessary for complete assemblies and complete working systems, functioning as intended. Incidental items not indicated on Drawings, nor mentioned in the Specifications, that can legitimately and reasonably be inferred to belong to the Work described or be necessary in good practice to provide a complete assembly or system, will be furnished as though itemized here in every detail. In all instances, material and equipment will be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.
- 1.8.5. Contractor must, after award of Contract by Judicial Council and after relevant submittals have been Approved, place orders for materials and/or equipment as specified so that delivery of same may be made without delays to the Work. Contractor will, upon demand from Judicial Council, present documentary evidence showing that orders have been placed.
- 1.8.6. Judicial Council reserves the right but has no obligation, for any neglect in complying with the above instructions, to place orders for such materials and/or equipment as it may deem advisable in order that the Work may be completed at the date specified in the Contract Documents, and all expenses incidental to the procuring of said materials and/or equipment will be paid for by Contractor or withheld from payment(s) to Contractor.
- 1.8.7. Contractor warrants good title to all material, supplies, and equipment installed or incorporated in Work and agrees upon Completion of all Work to deliver the Site to Judicial Council, together with all improvements and appurtenances constructed or placed thereon by it, and free from any claims, liens, or charges. Contractor further agrees that neither it nor any person, firm, or corporation furnishing any materials or labor for any Work will have any right to lien any portion of the Premises or any improvement or appurtenance thereon, except that Contractor may install metering devices or other equipment of utility companies or of political subdivision, title to which is commonly retained by utility company or political subdivision. In the event of installation of any such metering device or equipment, Contractor will advise Judicial Council as to owner thereof.
- 1.8.8. Nothing contained in this Article, however, will defeat or impair the rights of persons furnishing materials or labor under any bond given by Contractor for their protection or any rights under law permitting such protection or any rights under law permitting such persons to look to funds due Contractor in hands of Judicial Council (e.g., stop payment notices). This Article must be inserted in all subcontracts and material contracts and notice of its provisions must be given to all persons furnishing material for work when no formal contract is entered into for such material.
- 1.8.9. Title to new materials and/or equipment for the Work and attendant liability for its protection and safety will remain with Contractor until incorporated in the Work of the Contract and accepted by Judicial Council. No part of any materials and/or equipment will be removed from its place of storage except for immediate installation in the Work. Contractor will keep an accurate inventory of all materials and/or equipment in a manner satisfactory to Judicial Council or its authorized representative and will, at Judicial Council's request, forward it to Judicial Council.

2. JUDICIAL COUNCIL RIGHTS AND RESPONSIBILITIES

2.1. **Judicial Council.**

The Judicial Council may, at any time:

- 2.1.1. Direct Contractor to communicate with or provide notice to the Construction Manager or the Architect on matters for which the Contract Documents indicate Contractor will communicate with or provide notice to Judicial Council; and/or
- 2.1.2. Direct the Construction Manager or the Architect to communicate with or direct Contractor on matters for which the Contract Documents indicate Judicial Council will communicate with or direct Contractor.

2.2. **Judicial Council Project Manager.**

Judicial Council will designate a Project Manager, who will function as the main point of contact on the Project. Judicial Council may, from time to time, substitute a new Project Manager to act on behalf of Judicial Council in the administration of the Contract. Unless otherwise specifically provided by the Contract Documents or delegated by the Project Manager in written notice to Contractor, Contractor may rely only upon the written directions and approvals given by the Project Manager. The Judicial Council Project Manager will facilitate all communication with the Court(s). Judicial Council may also employ a separate consultant such as Construction Manager to assist the Project Manager in administration of the Agreement. Judicial Council will also be represented by a Project Inspector, Architect and other representatives as needed.

2.3. **Judicial Council's Rights if Contractor Fails to Perform.**

If Judicial Council at any time believes that Contractor is behind schedule, is failing to construct the Project pursuant to the Contract Documents or is otherwise failing to perform any provisions of this Contract consistent with the requirements of the Contract Documents, Judicial Council, after **FORTY-EIGHT (48)** hours written notice to Contractor, may take any action necessary or beneficial to Judicial Council to complete the Project, takeover the Work of the Contract, terminate or suspend the Contract as indicated herein, or any combination or portion of those actions. The Contractor and the Surety will be liable to Judicial Council for any cost incurred by Judicial Council in those actions and Judicial Council has the right to deduct the cost thereof from any payment then or thereafter due Contractor or, if there is no payment from which to deduct the cost, to invoice Contractor for the cost.

3. ARCHITECT AUTHORITY AND RESPONSIBILITIES

- 3.1. Architect has the authority to act on behalf of Judicial Council to the extent expressly provided in the Contract Documents and to the extent determined by Judicial Council to, among other things, observe the progress and quality of the Work on behalf of Judicial Council.
- 3.2. Architect has the authority to reject materials, workmanship, and/or the Work whenever rejection may be necessary, in Architect's reasonable opinion, to ensure the proper execution of the Contract and if Work is defective or does not conform to the requirements of the Contract Documents. Whenever the Architect considers it necessary or advisable, for implementation of the intent of the Contract Documents, the Architect will have authority to require additional inspections or testing of the Work, whether such Work is fabricated, installed or completed. Neither this authority of the Architect nor a decision made in good faith by the Architect to exercise or not to exercise that authority will give rise to a duty or responsibility of the Architect to Contractor, Subcontractors, material suppliers, their agents or employees, or other persons performing portions of the Work.

- 3.3. Architect will, with Judicial Council and on behalf of Judicial Council, determine the amount, quality, acceptability, and fitness of all parts of the Work, and interpret the Specifications, Drawings, and will, with Judicial Council, interpret all other Contract Documents.
- 3.4. Architect has all authority and responsibility established by law, including the scope of authority and responsibilities set forth in Title 24 of the California Code of Regulations.
- 3.5. Contractor will provide Judicial Council and the Construction Manager with a copy of all written communication between Contractor and Architect at the same time as that communication is made to Architect, including, without limitation, all RFIs, correspondence, submittals, claims, and PCOs.

4. CONSTRUCTION MANAGER AUTHORITY AND RESPONSIBILITIES

- 4.1. If a Construction Manager is used on this Project, the Construction Manager will provide administration of the Contract on Judicial Council's behalf. After execution of the Contract and Notice to Proceed, all correspondence and/or instructions from Contractor and/or Judicial Council will be forwarded through the Construction Manager. The Construction Manager will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions in connection with the Work, which all remain Contractor's responsibility.
- 4.2. Construction Manager, however, will have authority to reject materials and/or workmanship not conforming to the Contract Documents, as determined by Judicial Council, the Architect, and/or the Project Inspector. Construction Manager also has the authority to require special inspection or testing of any portion of the Work (to the extent applicable), whether it has been fabricated, installed, or fully completed. Any decision made by Construction Manager, in good faith, will not give rise to any duty or responsibility of the Construction Manager to Contractor, any Subcontractor, their agents, employees, or other persons performing any of the Work. Construction Manager will have free access to all parts of Work at any time.
- 4.3. If Judicial Council does not use a Construction Manager on this Project, all references to Construction Manager will be read as referring to Judicial Council.

5. PROJECT INSPECTOR AUTHORITY AND RESPONSIBILITIES; TESTS AND INSPECTIONS

5.1. Project Inspector.

- 5.1.2. One or more Project Inspector(s), including special Project Inspector(s), as required, may be assigned to the Work by Judicial Council, in accordance with requirements of Title 24, Part 1, of the California Code of Regulations (to the extent applicable), to enforce the building code and monitor compliance with the Plans and Specifications for the Project. Project Inspector(s) will not be on-site full-time during construction.
 - 5.1.2.1. Notification Requirement for Inspection Request Cancellation or Delay: Contractor shall notify Judicial Council at least one (1) business day in advance if there is a need to delay or cancel any inspection request that has been issued. The Judicial Council may, in its sole and exclusive discretion, charge Contractor for costs of delayed or cancelled inspections if required notice is not provided.
- 5.1.3. The Project Inspector(s) will have free access to all parts of Work at any time. Contractor will furnish Project Inspector(s) reasonable opportunities for obtaining such information as may be necessary to keep Project Inspector(s) fully informed respecting progress and manner of work and character of materials. Inspection of Work will not relieve Contractor from the obligation to fulfill the Contract.

- 5.1.4. If Contractor and/or any Subcontractor requests that the Project Inspector(s) perform any inspection off-site, this will only be done if the Project Inspector(s) agree to do so, and at the expense of Contractor.
- 5.1.5. The Project Inspector does not have authority to interpret the Contract Documents or to modify the Work depicted in the Contract Documents. No Work inconsistent with the Contract Documents will be performed solely on the basis of the direction of the Project Inspector, and Contractor will be liable to Judicial Council for the consequences of all Work performed on such basis.

5.2. Tests and Inspections.

- 5.2.1. If the Contract Documents, laws, ordinances or any public Authority Having Jurisdiction over the Work requires the Work, or any portion thereof, to be specially tested, inspected or approved, Contractor will give the Architect, the Construction Manager and the Project Inspector (to the extent applicable) written notice of the readiness of such Work for observation, testing or inspection at least **SEVENTY-TWO (72)** hours prior to the time for the conducting of such test, inspection or observation. If inspection, testing or observation is by authority other than Judicial Council, Contractor will inform the Project Inspector (if applicable) and the Construction Manager not less than **SEVENTY-TWO (72)** hours prior to the date fixed for such inspection, test or observation. The Contractor will not cover up any portion of the Work subject to tests, inspections or observations prior to the completion and satisfaction of the requirements of such test, inspection or observation. In the event that any portion of the Work subject to tests, inspection or approval will be covered up by Contractor prior to completion and satisfaction of the requirements of such tests, inspection or approval, Contractor is responsible for the uncovering of such portion of the Work as is necessary for performing such tests, inspection or approval without adjustment of the Contract Price or the Contract Time on account thereof.
- 5.2.2. Judicial Council will select an independent testing laboratory to conduct the tests. Selection of the materials required to be tested will be by the laboratory or Judicial Council's representative and not by Contractor. The Contractor must notify Judicial Council's representative a sufficient time in advance of its readiness for required observation or inspection.
- 5.2.3. The Contractor must notify Judicial Council's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract Documents, that must by terms of the Contract Documents be tested, in order that Judicial Council may arrange for the testing of same at the source of supply. This notice will be, at a minimum, **SEVENTY-TWO (72)** hours prior to the manufacture of the material that must be tested.
- 5.2.4. Any material shipped by Contractor from the source of supply prior to having satisfactorily passed required testing and inspection or prior to the receipt of notice from the representative that testing and inspection will not be required, will not be incorporated into and/or onto the Project.
- 5.2.5. Judicial Council will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents will be paid for by Judicial Council and reimbursed by Contractor or deducted from the Contract Price.

5.3. Costs for After Hours and/or Off-Site Inspections.

If Contractor performs Work outside the Inspector's regular working hours, over a period of more than **EIGHT (8)** hours per day by any single person, on weekends/holidays or requests the Inspector to perform inspections off Site, then the costs of any inspections required outside regular working hours, over a period of more than **EIGHT (8)** hours per day by any single person, on weekends/holidays or off Site, will be borne by Contractor and may be invoiced to Contractor by Judicial Council or Judicial Council may deduct those expenses from the Contract Price and withhold those amounts from payment(s) due to Contractor.

- 5.3.1. Notification Requirement for Overtime: Contractor shall inform Judicial Council when overtime and afterhours inspection work is necessary, either on weekdays or weekends. This notification must be provided at least two (2) business days in advance and include justification for the overtime. The Judicial Council reserves the right to refuse to pay for unauthorized overtime and afterhours inspection work.

6. CONTRACTOR DUTIES AND RESPONSIBILITIES

Contractor will construct the Work for the Contract Price consistent with the standards and requirements set forth in the Contract Documents. Except as otherwise noted, Contractor will provide and pay for all labor, materials, equipment, permits, fees, licenses, facilities, transportation, taxes, and services necessary for the proper execution and Completion of the Work, except as indicated herein.

6.1. Status of Contractor.

- 6.1.1. Contractor is and will at all times be deemed to be an independent contractor and is wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained will be construed as creating the relationship of employer and employee, or principal and agent, between Judicial Council, or any of Judicial Council's employees or agents, and Contractor or any of Contractor's Subcontractors, agents or employees. Contractor assumes exclusively the responsibility for the acts of its employees as they relate to the services to be provided during the course and scope of their employment. Contractor, its Subcontractors, agents, and its employees will not be entitled to any rights or privileges of Judicial Council employees. Judicial Council will be permitted to monitor Contractor's activities to determine compliance with the terms of the Contract.

- 6.1.2. As required by law, Contractor and all Subcontractors must be properly licensed and regulated by Contractor's State License Board, located at 9821 Business Park Drive, Sacramento, California 95827, with a mailing address of Post Office Box 26000, Sacramento, California, and with a website at <http://www.cslb.ca.gov>.

6.2. Contractor's Supervision.

- 6.2.1. During progress of the Work, Contractor must keep on the Premises, and at all other locations where any Work related to the Contract is being performed, a competent project manager and construction superintendent who are employees of Contractor, to whom Judicial Council does not object and at least one of whom must be fluent in English, written and verbal.
- 6.2.2. The project manager and construction superintendent must also both speak fluently the predominant language of Contractor's employees.

- 6.2.3. Before commencing the Work, Contractor will give written notice to Judicial Council of the name of its project manager and construction superintendent. Neither Contractor's project manager nor construction superintendent will be changed except with prior written notice to Judicial Council, unless Contractor's project manager and/or construction superintendent proves to be unsatisfactory to Contractor, Judicial Council, any of Judicial Council's employees, agents, the Construction Manager, or the Architect, in which case, Contractor will notify Judicial Council in writing after the change has been made. Judicial Council retains the right to reasonably refuse Contractor's replacement personnel. The Contractor's project manager and construction superintendent will each represent Contractor, and all directions given to Contractor's project manager and/or construction superintendent by Judicial Council, the Construction Manager, or the Architect will be as binding as if given to Contractor.
- 6.2.4. Contractor will efficiently supervise the Work, using its best skill and attention. Contractor must carefully study and compare all Contract Documents, Drawings, Specifications, and other instructions and must at once report to Judicial Council, Construction Manager, and Architect any error, inconsistency, or omission that Contractor or its employees and Subcontractors may discover, in writing, with a copy to Judicial Council's Project Inspector(s). Contractor has the responsibility for discovery of errors, inconsistencies, or omissions.
- 6.2.5. Contractor's project manager must devote sufficient time to the Project on site, and in Contractor's home office to pre-plan activities to meet the Project schedule and fulfill all Contract obligations. This includes making timely submittals, issuing and disseminating necessary RFIs, promptly processing and distributing bulletins, change orders and payments, keeping required logs current, etc. If any of these activities fall behind contract requirements or dates necessary to complete the Project on time, Contractor must provide a full-time project manager on the Project Site dedicated solely to the Project, until the deficiencies are corrected.
- 6.2.6. The Contractor must verify all indicated dimensions before ordering materials or equipment, or before performing Work. The Contractor must take field measurements, verify field conditions, and must carefully compare such field measurements and conditions and other information known to Contractor with the Contract Documents before commencing work. Contractor must immediately report errors, inconsistencies or omissions discovered by Contractor to Judicial Council. Upon commencement of any item of Work, Contractor is responsible for dimensions related to the Work and must make any corrections necessary to make Work properly fit at no additional cost to Judicial Council. This responsibility for verification of dimensions is a non-delegable duty and may not be delegated to subcontractors or agents.
- 6.2.7. Omissions from the Drawings or Specifications, or the misdescription of details of Work which are manifestly necessary to carry out the intent of the Drawings and Specifications, or which are customarily performed, does not relieve Contractor from performing such omitted or misdescribed Work, but that Work must be performed as if fully and correctly set forth and described in the Drawings and Specifications.
- 6.2.8. The Contractor is solely responsible for the means, methods, techniques, sequences, and procedures of performing all Work. This includes, without limitation, exercising full control over the direction and compensation of all persons assisting Contractor in the performance of the Work. Contractor is solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding, all employee benefits, and all regulations governing such matters. The Contractor is responsible to see that the finished Work complies accurately with the Contract Documents.

6.3. Duty to Provide Fit Workers.

- 6.3.1. Contractor and Subcontractor(s) must at all times enforce strict discipline and good order among their employees and must not employ or work any unfit person or anyone not skilled in the work assigned to that person. Contractor is responsible to ensure compliance with this requirement. Judicial Council may require Contractor to permanently remove unfit persons from Project Site. Contractor must ensure that all its employees and employees of its subcontractors will comply with all applicable construction site safety requirements.
- 6.3.2. Any person in the employ of Contractor or Subcontractor(s) whom Judicial Council may deem incompetent or unfit will be excluded from working on the Project and will not again be employed on the Project except with the prior written consent of Judicial Council.
- 6.3.3. The Contractor will furnish labor that can work in harmony with all other elements of labor employed or to be employed in the Work.
- 6.3.4. If Contractor intends to make any change in the name or legal nature of Contractor's entity, Contractor must first notify Judicial Council of the exact nature of the proposed change and how the proposed change will not in any way cause Contractor to be out of compliance with any licensing or prevailing wage registration requirements at any time. Judicial Council will determine if Contractor's intended change is permissible while performing the Contract. If Judicial Council reasonably determines that the intended change will materially prejudice Judicial Council, or is unlawful, then Judicial Council may issue a written objection. Contractor must cure any issue identified by Judicial Council to Judicial Council's reasonable satisfaction. If Contractor fails to do so, then Judicial Council may terminate this Contract for cause.
- 6.3.5. As required by law, Contractor and all Subcontractors must employ individuals for the Work in conformity with the Immigration Reform and Control Act of 1986, 8 USC §§1101 et seq.

6.4. Personnel.

- 6.4.1. Contractor, Contractor's employees, Subcontractors, Subcontractors' employees, or any person associated with the Work will conduct themselves in a manner appropriate for a Court. Judicial Council will not permit any (1) verbal or physical contact with neighbors, Court staff, or members of the public; (2) profanity, or inappropriate attire or behavior; (3) photographing, videoing, or audio recording of any neighbors, the Site, Court staff, or members of the public or any posting of any photographs, videos, or audio recordings of any neighbors, the Site, Court staff, or members of the public on any internet site, social media platform of any kind, regardless of source of any photograph, video, or audio recording, except as expressly authorized in writing by the Judicial Council. Judicial Council may require Contractor to permanently remove noncomplying persons from the Premises.
- 6.4.2. The Contractor will employ a full-time superintendent and necessary assistant(s) who has complete authority to represent and act on behalf of Contractor on all matters pertaining to the Work. The superintendent must be competent and have a minimum of five (5) years' experience in construction supervision on projects of similar scale and complexity. The superintendent must be satisfactory to Judicial Council and, if not satisfactory, will be replaced by Contractor with one that is acceptable to Judicial Council. The superintendent will not be changed without the written consent of Judicial Council unless the superintendent ceases to be employed by Contractor.

- 6.4.3. The Contractor will employ a competent estimator and necessary assistant(s) or contract for sufficient services of an estimating consultant and to process PCOs. The estimator must have a minimum of five (5) years' experience in estimating. The estimator must be satisfactory to Judicial Council and, if not satisfactory, will be replaced by Contractor with one that is acceptable.
- 6.4.4. The Contractor will employ a competent scheduler and necessary assistant(s), or contract for sufficient services of a scheduling consultant. The scheduler must have a minimum of five (5) years' experience in construction scheduling. The scheduler must be satisfactory to Judicial Council and, if not satisfactory, will be replaced by Contractor with one that is acceptable.
- 6.4.5. Contractor must at all times enforce strict discipline and good order among Contractor's employees and will not employ on the Project any unfit person or anyone not skilled in the task assigned.
- 6.4.6. If Contractor or any Subcontractor on the Project site fails to comply with any provision herein, Judicial Council may have the offending person(s) immediately removed from the Site, and the person(s) will be replaced within **THREE (3) Days**, at no additional expense to Judicial Council. Contractor, on behalf of it and its Subcontractors, hereby waives any claim that the provisions of this paragraph or the enforcement thereof interferes, or has the potential to interfere, with its right to control the means and methods of its performance and duties under the Contract.
- 6.4.7. Contractor understands that the Site is located on property of the State of California and that the possession and/or consumption of alcohol and/or tobacco products, and the use or possession of weapons, or illegal controlled substances by Contractor, or is Subcontractors, suppliers, and other business invitees, is prohibited.
- 6.4.8. Background Checks / Access to Restricted Areas.
- 6.4.8.1. *Security Protocols and Tool Control Policy.* Contractor is responsible for Contractor's, Contractor's employees, Subcontractors', and Subcontractors' employees' knowledge and compliance with all Judicial Council and Court required security protocols in the performance of the Work. Such protocols include, but are not limited to, the then-current Judicial Council Tool Control Policy. Violation of Judicial Council's security protocols and policies is considered a material breach of the Contract Documents. The version of Judicial Council Tool Control Policy in effect is in the Judicial Council Provided Forms. The Judicial Council Tool Control Policy is subject to change at Judicial Council's sole discretion.
- 6.4.8.2. *Background Checks.* If Contractor assigns persons (whether employees, independent contractors, Subcontractors or agents) to perform work under on the Project that requires that the person have access to the systems (whether on-site or by remote access), any premises of Judicial Council or other judicial branch entity(ies), Judicial Council has the right, but not the obligation, to conduct a background check or to require Contractor to conduct a background check, as permitted by law, on all such persons before Judicial Council will grant to such persons access to Judicial Council's or other judicial branch entities' premises or systems. The Contractor will cooperate with Judicial Council in performing such background check(s) and will promptly notify Judicial Council of any such person refusing to undergo such background check and will reassign such person to perform other services. The Contractor must obtain all releases, waivers, or permissions required for the release of such information.

- 6.4.8.3. *Access to Site.* Only Approved Persons may have unescorted access to: (i) the Restricted Areas and (ii) any area of the Site and/or Premises during non-business hours when there is no security screening available. Contractor and Subcontractor employees who are not Approved Persons may access Restricted Areas only if they are escorted by an Approved Person at all times that they are in the Restricted Areas. Contractor may not rely upon an employee of the Court to escort or monitor these persons. Contractor must take all reasonable steps to ensure that its operations in any Restricted Area are at all times consistent with this section.
- 6.4.8.4. *Notification.* Contractor must notify all Subcontractors that: (i) Judicial Council requires a background check for personnel working in Restricted Areas without an escort pursuant to this provision; (ii) the Court may have supplemental screening procedures, criteria, and requirements; and (iii) Subcontractor employees must comply with both Judicial Council's and the Courts' checks and procedures.
- 6.4.8.5. *Judicial Council Screening and Approval Process.* The Judicial Council will conduct the screening and approval of employees of Contractor and Subcontractors pursuant to the Background Check Policy. Contractor agrees to cooperate with Judicial Council with respect to the screening of those employees. The version of Judicial Council Background Check Policy in effect is attached in Judicial Council Provided Forms. The Judicial Council may update and/or revise the Background Check Policy at any time, without notice to Contractor. Contractor acknowledges that the definition of Restricted Areas in the Contract Documents is broader and includes more areas than the definition of Restricted Areas in the Background Check Policy and the definition of Restricted Areas shall control as applied to the Premises and/or Site for the purposes of the Project. Contractor must comply with the Background Check Policy.
- 6.4.8.6. *Judicial Council Badges.* The Judicial Council will issue an identification badge to each Approved Person. The badge will indicate that the person is permitted to access the Restricted Areas. The Judicial Council will either (i) notify Contractor if an employee is approved, whereupon Judicial Council will issue an identification badge for that person, or (ii) provide an identification badge for the person to Contractor, and Contractor will be responsible for issuing the identification badge to that person. All such persons must wear their identification badges in a readily visible manner whenever they are in a Restricted Area of the Premises and/or Site. The Contractor will have a procedure in place to ensure that all badges are returned to Judicial Council upon termination of an employee.
- 6.4.8.7. *Court-Required Screening and Background Check Requirements.* Even if a Contractor or Subcontractor employee has a Judicial Council-issued badge, the Court has the ultimate decision as to whether a specific Contractor or Subcontractor employee may have unescorted access to any portion of the Premises and/or Site. The Court will have the right at any time to refuse Premises and/or Site access to any Contractor or Subcontractor employee (even if that employee has a Judicial Council-issued badge) if the Court determines, in its sole discretion, that such person poses a risk to the Court or any person, system, or asset associated with the Court. The Court may elect to perform supplemental screening on Contractor or Subcontractor employees who perform Work in that Court's Restricted Areas. Contractor agrees to cooperate with the Court with respect to the screening of those employees and will obtain at no additional cost to the Court all related releases, waivers, and permissions the Court requires. The Court may issue its own identification.

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

6.5. Prohibition of Harassment.

- 6.5.1. In addition to the non-discrimination requirements in these General Conditions, Contractor and all Subcontractors must comply with these provisions prohibiting harassment at the Site. Judicial Council is committed to providing a campus and workplace free of sexual harassment and harassment based on factors such as race, color, religion, national origin, ancestry, age, medical condition, marital status, disability or veteran status. Harassment includes without limitation, verbal, physical, or visual conduct which creates an intimidating, offensive or hostile environment such as racial slurs; ethnic jokes; posting of offensive statements, posters or cartoons or similar conduct. Sexual harassment includes without limitation the solicitation of sexual favors, unwelcome sexual advances, or other verbal, visual or physical conduct of a sexual nature.
- 6.5.2. Contractor must take all reasonable steps to prevent harassment from occurring, including without limitation affirmatively raising the subject of harassment among its employees, expressing strong disapproval of any form of harassment, developing appropriate sanctions, informing employees of their right to raise and how to raise the issue of harassment and informing complainants of the outcome of an investigation into a harassment claim.
- 6.5.3. Contractor shall prohibit any person, whether employed by Contractor or a Subcontractor or any other person or entity, performing any Work at or about the Site to engage in any prohibited form of harassment. Any person performing or providing Work on or about the Site engaging in a prohibited form of harassment directed to any judge, clerk, or staff of the Court or of Judicial Council or directed to any other person on or about the Site will be subject to immediate removal and will be prohibited thereafter from providing or performing any portion of the Work. Upon Judicial Council's receipt of any notice or complaint that any person employed directly or indirectly by Contractor on any Subcontractor in performing or providing the Work has engaged in a prohibited form of harassment, Judicial Council will promptly undertake an investigation of such notice or complaint. If Judicial Council, after such investigation, reasonably determines that a prohibited form of harassment has occurred, Judicial Council will promptly notify Contractor of the same and direct that the person engaging in such conduct be immediately removed from the Site. Unless Judicial Council's determination that a prohibited form of harassment has occurred is grossly negligent or without reasonable cause, Judicial Council has no liability for directing the removal of any person determined to have engaged in a prohibited form of harassment nor will the Contract Price or the Contract Time be adjusted on account thereof. The indemnity provisions of the Contract Documents apply to any assertion by any person dismissed from performing or providing work at the direction of Judicial Council pursuant to this provision, or the assertion by any person that any person directly or indirectly under the employment or direction of Contractor has engaged in a prohibited form of harassment directed to or affecting such person. The obligations of

Contractor and the Surety under the preceding sentence are in addition to, and not in lieu of, any other obligation of defense, indemnity and hold harmless whether arising under the Contract Documents, at law or otherwise; these obligations survive completion of the Work or the termination of the Contract.

6.6. Conferences and Meetings.

- 6.6.1. General Requirement. In addition to the conference and meeting requirements in the Specifications, Contractor's supervisory personnel for the Work and Contractor's management personnel must attend all required meetings as required by the Contract Documents or as requested by Judicial Council. The Contractor's personnel participating in conferences and meetings relating to the Work will be authorized to act on behalf of Contractor and to bind Contractor. The Contractor is solely responsible for arranging for the attendance by Subcontractors and Material Suppliers at meetings and conferences relating to the Work as necessary, appropriate or as requested by Judicial Council.
- 6.6.2. Preconstruction Conference. The Contractor's representatives (and representatives of Subcontractors as requested by Judicial Council) must attend a preconstruction conference at such time and place as designated by Judicial Council. The preconstruction conference will generally address the requirements of the Work and Contract Documents, and to establish construction procedures. Subject matters of the preconstruction conference will include as appropriate: (a) administrative matters, including an overview of the respective responsibilities of Judicial Council, Architect, Construction Manager, Contractor, Subcontractors, Project Inspector, and others performing any part of the Work or services relating to the Work; (b) Submittals; (c) Changes; (d) employment practices, including certified payroll preparation and submission and prevailing wage rate responsibilities of Contractor and Subcontractors; (e) Progress Schedule development and maintenance; (f) development of Schedule of Values and payment procedures; (g) implementation of BIM, if applicable; (h) communication procedures, including the handling of Requests for Information; (i) emergency and safety procedures; (j) Site visitor policies; (k) conduct of Contractor/Subcontractor personnel at the Site; and (l) Completion, Punch List and closeout procedures.
- 6.6.3. Progress Meetings. Progress meetings will be conducted on regular intervals (weekly unless otherwise expressly indicated elsewhere in the Contract Documents). The Contractor's representatives and representatives of Subcontractors (as requested by Judicial Council) must attend progress meetings. Progress Meetings will be chaired by Judicial Council or the Construction Manager and will generally include as agenda items: Site safety, field issues, coordination of Work, construction progress and impacts to timely Completion, if any. The purposes of the progress meetings include: a formal and regular forum for discussion of the status and progress of the Work by all Project participants, a review of progress or resolution of previously raised issues and action items assigned to the Project participants, and reviews of the Progress schedule and submittals.
- 6.6.4. Special Meetings. As deemed necessary or appropriate by Judicial Council, special meetings will be conducted with the participation of Contractor, Subcontractors and other Project participants as requested by Judicial Council.
- 6.6.5. Minutes of Meetings. Following conclusion of the preconstruction conference, progress meetings and special meetings, the Architect or the Construction Manager will prepare and distribute minutes reflecting the items addressed and actions taken at a meeting or conference. Unless Contractor notifies the Architect and the Construction Manager in writing of objections or corrections to minutes prepared hereunder within **FIVE (5) Days** of the date of distribution of the minutes, the minutes as distributed will constitute the official record of the meeting or conference. No objections or corrections of any Subcontractor or material supplier must be submitted directly to the Architect or the

Construction Manager; such objections or corrections must be submitted to the Architect and the Construction Manager through Contractor. If Contractor timely interposes objections or notes corrections, the resolution of such matters will be addressed at the next scheduled progress meeting.

6.7. Purchase of Materials and Equipment.

6.7.1. Ordering Materials. The Contractor is required to order and obtain materials and equipment sufficiently in advance of its Work at no additional cost or advance payment from Judicial Council to assure that there will be no delays. All materials and equipment shall be stored on-Site and secured by Contractor.

6.7.2. Off-Site Storage of Materials and Equipment Only Upon Judicial Council's Written Consent. Contractor will not store materials and/or equipment off site without first obtaining Judicial Council's express, written consent. If Contractor receives Judicial Council's consent for Stored Materials, Contractor must comply with all the following:

6.7.2.1. *Property of Others Insurance.* If this project is not enrolled into an Owner Controlled Insurance Program (OCIP), then the Contractor must procure and maintain, during the entire time Stored Materials are in off-site storage, insurance coverage acceptable to Judicial Council that protects Contractor and Judicial Council from all claims for Stored Materials that are lost, stolen, or damaged. Judicial Council must be named as a loss payee for this insurance coverage. The insurance coverage must include a "loss payable endorsement" stating that, in the event the Judicial Council has paid for Stored Materials that are lost, stolen, or damages, all amounts payable will be paid directly to the Judicial Council. If approved in advance by Judicial Council, this required insurance may be obtained by an "Employee Theft Protection Insurance Policy" or an "Employee Theft Protection Bond."

6.7.2.2. *Payment for Stored Materials.* Judicial Council will only make payment to Contractor for Stored Materials if agreed upon in advance, in writing, by Judicial Council and provided that Contractor submits an itemized list of all Stored Materials with Contractor's Application for Payment. Contractor's itemized list of all Stored Materials must be supported by all the following:

6.7.2.2.1. Itemized breakdown of the Stored Materials for the purpose of requesting partial payment, identifying the serial numbers and exact storage location of each piece of equipment and material; and

6.7.2.2.2. Verified invoices for the Stored Materials; and

6.7.2.2.3. Original copy of Property of Others Insurance, Employee Theft Protection Insurance Policy, or an Employee Theft Protection Bond based on the type of insurance required by Judicial Council. These documents must include certificates and endorsements stating the coverage and that Judicial Council is a loss payee or obligee, as appropriate.

6.7.2.2.4. An express, signed document from Contractor indicating that the Judicial Council may, at any time and at its sole discretion, have unhindered and unqualified access to all Stored Materials and to remove the Stored Materials.

6.8. Documents on Work Site.

Contractor must at all times keep on the Work Site, or at another location as Judicial Council may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, and Title 19 and Title 24 of the California Code of Regulations, the specified edition(s) of the Uniform Building Code (electronic versions are acceptable), all approved Drawings, Plans, Schedules, and Specifications, and all codes and documents referred to in the Specifications, and made part thereof. These documents will be kept in good order and available to Judicial Council, Construction Manager, Architect, Architect's representatives, the Project Inspector(s), and all Authorities Having Jurisdiction. Contractor must be acquainted with and comply with the provisions of these titles as they relate to this Project. (See particularly the duties of Contractor, Title 24, Part 1, California Code of Regulations, Section 4-343.) Contractor must also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly Title 8 and Title 17. Contractor will coordinate with Architect and Construction Manager and will submit its verified report(s) according to the requirements of Title 24.

6.9. Daily Job Reports.

6.9.1. Contractor must maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project. These must be prepared by Contractor's employee(s) who are present on Site, and must include, at a minimum, the following information:

6.9.1.1. A brief description of all Work performed on that day.

6.9.1.2. A summary of all other pertinent events and/or occurrences on that day.

6.9.1.3. The weather conditions on that day.

6.9.1.4. A list of all Subcontractor(s) working on that day.

6.9.1.5. A list of each Contractor employee working on that day and the total hours worked for each employee.

6.9.1.6. A complete list of all equipment on Site that day, whether in use or not.

6.9.1.7. A complete list of all materials, supplies, and equipment delivered on that day.

6.9.1.8. A complete list of all inspections and tests performed on that day.

6.9.1.9. Each day Contractor must provide a copy of the previous day's Daily Job Report to Judicial Council or Judicial Council's Construction Manager.

6.10. Preservation of Records.

Judicial Council or its designated representative shall have an absolute right of access to all of Contractor's records, files, documents, accounts, and financial affairs as deemed necessary for the purpose of conducting an audit to determine compliance with the terms and conditions of this contract. Without limitation, Judicial Council has the right to examine and audit all Daily Job Reports or other Project records of Contractor's project manager(s), project superintendent(s), and/or project foreperson(s), all certified payroll records and/or related documents including, without limitation, payroll, payment, timekeeping and tracking documents; all books, estimates, records, contracts, documents, bid documents, bid cost data, subcontract job cost reports, and other data of Contractor, any Subcontractor, and/or supplier, including computations and projections related to bidding, negotiating, pricing, or performing the Work or Contract modification, in order to evaluate the accuracy, completeness, and currency of the cost, manpower, coordination,

supervision, or pricing data at no additional cost to Judicial Council. These documents may be duplicative and/or be in addition to any Bid Documents held in escrow by Judicial Council. Upon reasonable notice, Contractor must make available at its office during normal business hours the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under the Contract. Notwithstanding the provisions above, Contractor must provide any records requested by any governmental agency or Authority Having Jurisdiction, if available, after the time set forth above.

6.11. Obtaining of Permits and Licenses.

Contractor must secure and pay for all permits, licenses, and certificates as indicated in the Special Conditions. Contractor must review the Special Conditions for any changes or exceptions to this provision.

6.12. Work to Comply with Standard of Care.

Contractor, its officers, agents, employees, Subcontractors, consultants and any persons or entities for whom Contractor is responsible, must provide all Work pursuant to and in accordance with the requirements of the Contract Documents 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, construction Work, or other work product of Contractor will not be construed as assent that Contractor has complied, nor in any way relieve Contractor of, compliance with (i) the applicable standard of care, (ii) applicable statutes, regulations, rules, guidelines, and requirements, and/or (iii) the Contract Documents.

6.13. Work to Comply with Applicable Laws and Regulations.

6.13.1. General Requirements. Contractor must give all notices and comply with all applicable laws, ordinances, rules, and regulations relating to the Work, including the specific laws, ordinances, rules, and regulations as indicated and specified in the Contract Documents and identified below, including but not limited to the appropriate statutes and administrative code sections. If Contractor observes that Drawings and Specifications are at variance therewith, or should Contractor become aware of the development of conditions not covered by Contract Documents that will result in finished Work being at variance therewith, Contractor will promptly notify Judicial Council in writing and any changes deemed necessary by Judicial Council must be made as provided in Contract for changes in Work.

6.13.1.1. California Art Preservation Act

6.13.1.2. California Code of Regulations, including, without limitation Title 24

6.13.1.3. Government Code (when applicable to the Project)

6.13.1.4. Industrial Accident Commission's Safety Orders, State of California

6.13.1.5. Labor Code of the State of California, division 2, part 7, Public Works and Public Agencies

6.13.1.6. Manual of Accident Prevention in Construction, latest edition, published by A.G.C. of America

6.13.1.7. National Electrical Safety Code, U. S. Department of Commerce

- 6.13.1.8. National Board of Fire Underwriters' Regulations
- 6.13.1.9. Public Contract Code (when applicable to the Project)
- 6.13.1.10. Regulations of the State Fire Marshal (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
- 6.13.1.11. Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments
- 6.13.1.12. U. S. Copyright Act
- 6.13.1.13. U. S. Visual Artists Rights Act
- 6.13.2. Americans with Disabilities Act. Contractor acknowledges and agrees to comply with the Americans with Disabilities Act.
- 6.13.3. CEQA Compliance. Contractor will comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to CEQA.
- 6.13.4. SWPPP Compliance. Contractor will comply with the SWPPP and, if indicated in the Special Conditions, will be Judicial Council's Qualified SWPPP Practitioner, at no additional cost to Judicial Council.
- 6.13.5. Air Pollution Compliance. Contractor and each Subcontractor will comply with all State and/or local air pollution control rules, regulations, ordinances, and statutes that apply to any Work performed under this Contract. If there is a conflict between the State and local air pollution control rules, regulations, ordinances, and statutes, the most stringent will govern.
- 6.13.6. Water Pollution Control. Contractor and each Subcontractor will comply with all State and/or local air pollution control rules, regulations, ordinances, and statutes that apply to any Work performed under this Contract. If there is a conflict between the State and local air pollution control rules, regulations, ordinances, and statutes, the most stringent will govern.
- 6.13.7. SFM Compliance. Contractor shall interact with the appointed SFM at regular intervals during construction as required. Contractor can only request SFM inspections after inspections by the IOR and Special Inspector of Materials Testing have passed. To the extent applicable, Contractor shall provide any construction details for which Contractor is responsible, which may include shop drawings, and/or installation details, using simple, proven and established approaches and UL listed assemblies which comply with applicable code requirements. Contractor shall avoid complex and unproven approaches to assemblies and fire life systems. Complex and unproven approaches shall be avoided as they can result in increased SFM review durations, including potential additional time related to resolution of SFM's code interpretations. If there is a delay in the SFM review time or other impacts and Judicial Council determines that Contractor did not follow this requirement, the responsibility for any increased SFM review durations or any other impact to the Contract Time and cost shall be the sole responsibility of Contractor. Where Specifications or Drawings state that materials, processes, or procedures must be approved by State Fire Marshal, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.

6.13.7.1. *SFM Code Interpretations.* Contractor is fully responsible to obtain SFM approval for any documents prepared by Contractor, to the extent applicable, and obtain a Certificate of Occupancy at Completion of the Project. Contractor shall complete construction in accordance with the SFM's interpretations of applicable codes, including previously published SFM interpretations of any code provisions. Such compliance shall also include any requirements of the Contract Documents that are more stringent than the applicable code's minimum requirements.

6.13.7.2. *Changes to Contract Price or Contract Time Resulting from SFM Interpretations.* Contractor may be entitled to a change in the Contract Price and/or Contract Time if Contractor can demonstrate that the SFM Code interpretations were more stringent than industry standards. Code interpretations by SFM during construction inspections are considered outside of industry standards, if documented by a preponderance of evidence from the following sources with previous SFM published interpretations being of primary significance:

6.13.7.2.1. SFM published interpretations, interpretations by qualified third-party reviewers;

6.13.7.2.2. ICC code interpretations; reference standards detailed in Chapter 35 of the California Building Code;

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

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

If so demonstrated, Contractor may be provided an appropriate adjustment in the Contract Time in accordance with these General Conditions. In all instances where an adjustment in the Contract Price is agreed to, Contractor will be compensated at fifty percent (50%) of the additional cost of the change resulting from the required modifications to comply with a specific SFM code interpretation issue.

6.13.7.3. *SFM Inspections.* Contractor shall cooperate with the State Fire Marshal during any inspection of the Work. All durations for such inspections by the State Fire Marshal must be included in Construction Schedule. If Contractor fails to timely make Work available to State Fire Marshal for inspection, fails to complete any Work in time for inspection by the State Fire Marshal, or if Contractor otherwise fails to cooperate with the State Fire Marshal during any such inspections, Contractor waives any entitlement to cost or time impacts arising therefrom.

6.13.8. Responsibility of Contractor for Non-Compliance. If Contractor performs any Work that it knew, or through exercise of reasonable care should have known, to be contrary to any applicable laws, ordinance, rules, or regulations, Contractor bears all costs arising therefrom.

6.14. Safety/Protection of Persons and Property.

6.14.1. Contractor will be solely and completely responsible for conditions of the Work Site, including safety of all persons and property during performance of the Work. This requirement will apply continuously and not be limited to normal working hours. Contractor is responsible for complying with, and the Contract Price includes the costs of compliance, all applicable federal, state, and/or local statutes, orders, rules, regulations,

ordinances, and/or directives or guidelines issued by Judicial Council or Court related to construction site safety in connection with COVID-19, and/or any similar virus or derivative strain.

- 6.14.2. Implementation and maintenance of safety programs is the sole responsibility of Contractor.
- 6.14.3. Contractor will furnish to Judicial Council a copy of Contractor's Site Specific Safety Plan within the time frame indicated in the Contract Documents and specifically adapted for the Project.
- 6.14.4. Contractor is responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the performance of the Contract and will take all necessary measures and be responsible for the proper care and completion and final Acceptance of the Work by Judicial Council.
- 6.14.5. Damage to the Site and/or Work of the Project must be promptly removed, repaired, or corrected by Contractor.
- 6.14.6. Contractor must take, and require Subcontractors to take, all necessary precautions for safety of workers on the Project and must comply with all applicable federal, state, local, and other safety laws, standards, orders, rules, regulations, and building codes to prevent accidents or injury to persons on, about, or adjacent to premises where Work is being performed and to provide a safe and healthful place of employment. Contractor will furnish, erect, and properly maintain at all times, all necessary safety devices, safeguards, construction canopies, signs, nets, barriers, lights, and watchmen for protection of workers and the public and post danger signs warning against hazards created by such features in the course of construction.
- 6.14.7. Contractor must store volatile wastes in covered metal containers and remove them from the Site daily. Contractor will prevent accumulation of wastes that create hazardous conditions. Contractor must provide adequate ventilation during use of volatile or noxious substances.
- 6.14.8. Contractor will designate a responsible member of its organization on the Project, whose duty is to post information regarding protection and obligations of workers and other notices required under occupational safety and health laws, to comply with reporting and other occupational safety requirements, and to protect the life, safety, and health of workers. Contractor must report the name and position of the person so designated to Judicial Council.
- 6.14.9. Contractor must notify the Judicial Council immediately of any violations of safety laws, rules, orders, standards or regulations. Contractor will correct any violations of safety laws, rules, orders, standards, or regulations. Upon the issuance of a citation or notice of violation by the Division of Occupational Safety and Health, Contractor will correct any such violations promptly.
- 6.14.10. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, will act, at its discretion, to prevent such threatened loss or injury. Any compensation claimed by Contractor on account of emergency work will be determined by agreement.

- 6.14.11. All salvaged materials will become the property of Contractor and will be removed from the Site unless otherwise called for in the Contract Documents. Judicial Council reserves the right to designate certain items of value that will be turned over to Judicial Council unless otherwise directed by Judicial Council.
- 6.14.12. All connections to public utilities and/or existing on-site services will be made and maintained in such a manner as to not interfere with the continuing use of same by Judicial Council or Court during the entire progress of the Work.
- 6.14.13. Contractor will provide such heat, covering, and enclosures as are necessary to protect all Work, materials, equipment, appliances, and tools against damage by weather conditions, such as extreme heat, cold, rain, snow, winds, flooding, or dampness.
- 6.14.14. Contractor will protect and preserve the Work from all damage or accident, providing temporary roofs, window and door coverings, boxing, or other construction as needed. Contractor is responsible for existing structures, walks, roads, trees, landscaping, materials, equipment, furnishings, and/or improvements in working areas; and provide adequate protection therefor. If temporary removal is necessary of any of the above items, or damage occurs due to the Work, Contractor will replace the same at its sole expense with same kind, quality, and size of Work or item damaged. This includes any adjoining property of Judicial Council and others.
- 6.14.15. Contractor must take adequate precautions to protect existing roads, sidewalks, curbs, pavements, utilities, adjoining property, and structures (including, without limitation, protection from settlement or loss of lateral support), and to avoid damage thereto, and repair any damage thereto caused by construction operations.
- 6.14.16. Contractor will confine apparatus, the storage of materials, and the operations of workers to limits indicated by law, ordinances, permits, or directions of Architect, and will not interfere with the Work or unreasonably encumber Premises or overload any structure with materials. Contractor will enforce all instructions of Judicial Council and Architect regarding signs, advertising, fires, and smoking, and require that all workers comply with all regulations while on Project Site.
- 6.14.17. Contractor must take care to prevent disturbing or covering any survey markers, monuments, or other devices marking property boundaries or corners. If such markers are disturbed, Contractor must have a civil engineer, registered as a professional engineer in California, replace them at no cost to Judicial Council.
- 6.14.18. In the event that Contractor enters into any agreement with owners of any adjacent property to enter upon the adjacent property for the purpose of performing the Work, Contractor shall fully indemnify, defend, and hold harmless each person, entity, firm, or agency that owns or has any interest in adjacent property. The form and content of the agreement of indemnification must be Approved by Judicial Council prior to entering the adjacent property. The Contractor shall also indemnify Judicial Council as provided in the indemnification provision herein. These provisions are in addition to any other requirements of the owners of the adjacent property.
- 6.14.19. Contractor must obtain written approval from the Judicial Council prior to engaging in any video documentation of the Project Site. Contractor may utilize drones or similar aerial equipment to monitor the progress of the Work and for security purposes, but Contractor must comply with all legal requirements of the Federal government, the State of California, and the County and City in which the Project is located, applicable to the use of drones or similar aerial equipment. In addition, Contractor must ensure that no photographs, videos or digital recordings of any kind are taken of judicial officers, Court staff, or Judicial Council staff. If Contractor utilizes drones or any other unmanned aircraft during

construction operations, Contractor must either ensure its insurance coverage includes unmanned aircraft operations or procure and maintain a separate aircraft liability policy to cover unmanned aircraft operations with limits and coverage equal to the General Liability limits identified in this Contract.

- 6.15.** Contractor must maintain emergency first aid treatment for Contractor's workers on the Project which complies with the Federal Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.) the California Occupational Safety and Health Act of 1973, and all related regulations, including without limitation section 330 et seq. of Title 8 of the California Code of Regulations.

6.16. Working Evenings and Weekends.

Contractor may be required to work evenings and/or weekends at no additional cost to Judicial Council. Unless otherwise provided in the Contract Documents, Contractor must provide Judicial Council **SEVENTY-TWO (72)** hours' notice prior to performing any evening and/or weekend work. Contractor must perform all evening and/or weekend work only upon Judicial Council's prior Approval and in compliance with all applicable rules, regulations, laws, and local ordinances including, without limitation, all noise and light limitations. If Contractor fails to obtain authorization from the Judicial Council prior to undertaking overtime or afterhours inspection work, Contractor will reimburse Judicial Council for any Inspector and custodial charges necessitated by Contractor's evening and/or weekend work, or any such charges may be withheld from any sum due to Contractor.

6.17. Demolition.

- 6.17.1. If the Work requires the demolition of existing structures, Contractor must perform all Work reasonably required for removal or demolition, whether or not structures are fully detailed in the Drawings and Specifications.
- 6.17.2. The demolition component of the Work may include the removal of existing materials and components which, depending on the age and design of the structures existing at the Site may contain Hazardous Materials, the full extent of which may not yet be determined. Judicial Council has provided Contractor for its reference Site information. Any additional information on Hazardous Materials, if applicable, may be provided in the Supplemental Conditions. Contractor shall plan for and execute the demolition, redesign, and reconstruction of the Work taking into account any uncertainty with respect to Hazardous Materials.

6.18. Noise and Dust Control.

- 6.18.1. General Obligations. In addition to the noise control, dust control and related requirements in the Specifications, Contractor will control the noise and dust at the Site as indicated here.
- 6.18.2. Noise Control. Contractor must comply with any city or county rules, regulations, or ordinances governing construction noise that are applicable to the Project. In the absence of any such rules, regulations and ordinances, Contractor must conduct its Work to minimize disruption to others due to sound and noise from the workers and will be responsive to Judicial Council's requests to reduce noise levels. Contractor must install noise reducing devices on construction equipment. Construction equipment noise at the Site will be limited as required by applicable law, rule or regulation. If Court operations are ongoing at a Site at any point during the progress of the Work, and, in Judicial Council's reasonable discretion, the noise from any Work disrupts or disturbs the normal Court operations at the Site, at Judicial Council's request, Contractor will schedule the performance of that Work around normal Court operating hours or make other

arrangements so that the Work does not cause disruption or disturbance. In no event will those arrangements result in adjustment of the Contract Price or the Contract Time.

6.18.2.1. Contractor will not cause or allow sounds to be produced more than 65 decibels measured at the jobsite between the hours of 7:00 PM and 7:00 AM PT or as dictated by local ordinances. Contractor will not cause or allow sounds to be produced more than 85 decibels measured at the jobsite between the hours of 7:00 AM and 7:00 PM PT without the consent of the Court and Judicial Council.

6.18.2.2. Each internal combustion engine, used for any purpose on the Project or related to the Project, must be equipped with a muffler of a type recommended by the manufacturer and comply with the applicable rules and regulations of the air quality control district in the county in which the Project is located. No internal combustion engine may be operated on the Project without a muffler.

6.18.2.3. Loading and unloading of construction materials will be scheduled to minimize disruptions to Court, Court users and/or Judicial Council activities. Construction activities will be scheduled to minimize disruption to the Court and to Court users.

6.18.3. Dust Control. The Contractor is fully and solely responsible for maintaining and upkeeping all areas of the Site and adjoining areas, outdoors and indoors, free from flying debris, grinding powder, sawdust, dirt and dust as well as any other product, product waste or work waste, that by becoming airborne may cause respiratory inconveniences to persons, particularly to Judicial Council personnel. Additionally, Contractor must take specific care to avoid deposits of airborne dust or airborne elements. The protection devices, systems or methods used by Contractor to control airborne dust must comply with the regulations set forth by the EPA and OSHA, and other applicable law, rule or regulation. Additionally, Contractor must regularly and routinely clean up and remove any and all deposits of dust and other elements. Damage and/or any liability derived from Contractor's failure to comply with these requirements are the exclusive cost of Contractor, including, without limitation, any and all penalties that may be incurred for violations of applicable law, rule or regulation, and any amounts expended by Judicial Council to pay such damages will be due and payable to Judicial Council on demand, or may be deducted from any sum due to Contractor, whichever the Judicial Council elects in its sole discretion. Contractor will replace any damaged property or part thereof and professionally clean any and all items that become covered or partially covered to any degree by dust or other airborne elements. If Court operations are ongoing at any point during the progress of Work, and, in Judicial Council's reasonable discretion, flying debris, grinding powder, sawdust, dirt or dust from any Work disrupts or disturbs the judicial officers, Court staff, or Judicial Council staff, or the normal operation of the Court, at Judicial Council's request, Contractor will schedule the performance of all that Work around normal Court hours and make other arrangements so that the Work does not cause disruption or disturbance. In no event will those arrangements result in adjustment of the Contract Price or the Contract Time.

6.18.4. Contractor Failure to Comply. If Contractor fails to comply with the requirements for dust control, noise control, or any other maintenance or clean up requirement of the Contract Documents, Judicial Council, Architect, Project Inspector, or Construction Manager will notify Contractor in writing and Contractor will take immediate action. Should Contractor fail to respond with immediate and responsive action and not later than **TWENTY-FOUR (24)** hours from that notification, Judicial Council will have the absolute right to proceed as it may deem necessary to remedy such matter. Any and all costs incurred by Judicial Council in connection with those actions are the sole responsibility of, and shall be borne

by, Contractor; Judicial Council may deduct those amounts from the Contract Price and withhold those amounts from payment(s) due to Contractor.

6.19. Archaeological Finds / Human Remains.

- 6.19.1. If Contractor discovers any archeological artifacts during excavation and/or construction, Contractor will immediately stop all affected Work and notify Judicial_Council, who will call in a qualified archaeologist to assess the discovery and suggest further mitigation, as necessary.
- 6.19.2. If Contractor discovers human remains, Contractor must notify Judicial Council who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, Judicial Council will contact the appropriate tribal representative.

6.20. Cleaning Up.

- 6.20.1. The Contractor must provide all services, labor, materials, and equipment necessary for protecting the Work, all Court occupants, furnishings, equipment, and building structure from damage until Completion and final Acceptance of the Work by Judicial Council. Dust barriers must be provided to isolate dust and dirt from construction operations. Contractor must perform all routine cleaning, operation, and maintenance on completed portions of the Work, including buildings, site utilities and all systems until Completion or unless otherwise directed by Judicial Council. At Completion of the Work and portions thereof, Contractor will clean to the original state any areas beyond the Work area that become dust laden as a result of the Work. The Contractor must erect the necessary warning signs and barricades to ensure the safety of all Court occupants. The Contractor at all times must maintain good housekeeping practices to reduce the risk of fire damage and must make a fire extinguisher, fire blanket, and/or fire watch, as applicable, available at each location where cutting, braising, soldering, and/or welding is being performed or where there is an increased risk of fire.
- 6.20.2. Contractor at all times will keep Premises free from debris such as waste, rubbish, and excess materials and equipment caused by the Work. Contractor will not leave debris under, in, or about the Premises, but promptly remove same from the Premises on a daily basis. If Contractor fails to clean up, Judicial Council may do so and the cost thereof will be charged to Contractor, or deducted from any sum due to Contractor, at Judicial Council's sole discretion. If the Project is for work on an existing facility, Contractor will also perform specific clean-up on or about the Premises upon request by Judicial Council as it deems necessary for the continuing judicial functions. Contractor must comply with all related provisions of the Specifications.
- 6.20.3. If the Construction Manager, Architect, or Judicial Council observes the accumulation of trash and debris, Judicial Council will give Contractor a **TWENTY-FOUR (24)** hour written notice to mitigate the condition.
- 6.20.4. Should Contractor fail to perform the required clean-up, or should the clean-up be deemed unsatisfactory by Judicial Council, Judicial Council will then perform the clean-up. All cost associated with the clean-up work (including all travel, payroll burden, and costs for supervision) will be deducted from the Contract Price and Judicial Council may withhold those amounts from payment(s) due to Contractor.

7. **SUBCONTRACTORS**

- 7.1. Contractor must provide Judicial Council with information for all Subcontracts as required in Contractor's Submittals and Schedules Section.
- 7.2. No contractual relationship exists between Judicial Council and any Subcontractor, supplier, or sub-subcontractor by reason of the Contract.
- 7.3. Contractor agrees to bind every Subcontractor by terms of the Contract as far as those terms are applicable to Subcontractor's work. If Contractor subcontracts any part of the Work for the Project, Contractor is fully responsible to Judicial Council for acts and omissions of any Subcontractor and of persons either directly or indirectly employed by Subcontractor, as it is for acts and omissions of persons directly employed by Contractor. The divisions or sections of the Specifications are not intended to control Contractor in dividing the Work among Subcontractors or limit the work performed by any trade.
- 7.4. Judicial Council's consent to, or Approval of, or failure to object to, any Subcontractor under the Contract does not in any way relieve Contractor of any obligations under the Contract and no such consent is a waiver of any provisions of the Contract.
- 7.5. Contractor will not, without consent of the Judicial Council 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:
- 7.5.1. Substitute any person as a Subcontractor in place of the Subcontractor designated in the original Bid; or
 - 7.5.2. 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
 - 7.5.3. Sublet or subcontract any portion of the Work in excess of one-half of one percent (0.5%) of Contractor's total bid as to which his original bid did not designate a Subcontractor.
- 7.6. The Contractor is responsible for the coordination of the trades, Subcontractors, sub-subcontractors, and material or equipment suppliers working on the Project.
- 7.7. Contractor is solely responsible for settling any differences between Contractor and its Subcontractor(s) or between Subcontractors.
- 7.8. Contractor must include in all subcontracts the assignment provisions as indicated in the Termination section of these General Conditions.
- 7.9. Each Subcontractor must provide upon Judicial Council's request and comply with the following requirements:
- 7.9.1. Its worker's compensation experience modifier rate(s) for the most recent **THREE (3)** year period, the average of which must be 1.00 or less; and
 - 7.9.2. Its average total recordable injury and illness rate(s) for the most recent three-year period, the average of which must not exceed the applicable statistical standards for its business category; and
 - 7.9.3. Its average lost work rate for the most recent three (3) year period,
 - 7.9.4. Its acknowledgements of its compliance with Safety Plan.

- 7.9.5. Should Subcontractor's workers compensation experience modifier for the most recent **THREE (3)** year period, or its average total recordable injury and illness rates for the most recent **THREE (3)** year period exceed the above requirements, then the Subcontractor may work at the Project Site upon approval by the Judicial Council and/or the provisions of the Judicial Council's OCIP (if applicable).

8. OTHER CONTRACTS/CONTRACTORS

- 8.1.** Judicial Council reserves the right to let other contracts, and/or to perform work with its own forces, in connection with other portions of the Project or other construction or operations at or about the Site. Contractor will afford other contractors reasonable opportunity for introduction and storage of their materials and execution of their work and properly coordinate and connect Contractor's Work with the work of other contractors.
- 8.2.** In addition to Contractor's obligation to protect its own Work, Contractor will protect the work of any other contractor that Contractor encounters while working on the Site.
- 8.3.** If any part of Contractor's Work depends for proper execution or results upon work of Judicial Council or any other contractor, Contractor will inspect and promptly report to Judicial Council in writing before proceeding with its Work any defects in Judicial Council's or any other contractor's work that render Contractor's Work unsuitable for proper execution and results. Contractor will be held responsible for any damages and costs to Judicial Council relating to Judicial Council's or any other contractor's work that Contractor failed to inspect or should have inspected. Contractor's failure to inspect and report will constitute Contractor's acceptance of all Judicial Council's or any other contractor's work as fit and proper for reception of Contractor's Work, except as to defects that may develop in Judicial Council's or any other contractor's work after execution of Contractor's Work.
- 8.4.** To ensure proper execution of its subsequent work, Contractor must measure and inspect work already in place and will at once report to Judicial Council in writing any discrepancy between that executed work and the Contract Documents.
- 8.5.** Contractor must ascertain to its own satisfaction the scope of the Project and nature of Judicial Council's or any other contracts that have been or may be awarded by Judicial Council in completion of the Project to the end that Contractor may perform the Contract in light of the other contracts, if any.
- 8.6.** Nothing herein contained will be interpreted as granting to Contractor exclusive occupancy of the Site, the Premises, or of the Project. Judicial Council will have complete access to the Project Site for any reasonable purpose at all times. Contractor will not cause any unnecessary hindrance or delay to the use and/or Court operation(s) of the Premises and/or to Judicial Council or any other contractor working on the Project. If simultaneous execution of any contract or Court operation is likely to cause interference with performance of Contractor's Contract, Contractor will coordinate with those contractor(s), person(s), and/or entity(s) and notify Judicial Council of the resolution.

9. DRAWINGS AND SPECIFICATIONS

- 9.1.** A complete list of all Drawings that form a part of the Contract is to be found as an index on the Drawings themselves, and/or may be provided to Contractor and/or in the Table of Contents.
- 9.2.** Materials or Work described in words that so applied have a well-known technical or trade meaning refers to recognized standards, unless noted otherwise.

- 9.3. It is not the intention of the Contract to go into detailed descriptions of any materials and/or methods commonly known to the trade under “trade name” or “trade term.” The mere mention or notation of “trade name” or “trade term” is sufficient notice to Contractor that it will be required to complete the work so named, complete, finished, and operable, with all its appurtenances, according to the best practices of the trade.
- 9.4. The naming of any material and/or equipment means furnishing and installing of same, including all incidental and accessory items thereto and/or labor therefor, as per best practices of the trade(s) involved, unless specifically noted otherwise.
- 9.5. Contract Documents are complementary, and what is called for by one is binding as if called for by all. As such, Drawings and Specifications are intended to be consistent with each other. However, if Contractor observes that Drawings and Specifications are in conflict, Contractor will promptly notify Judicial Council and Architect in writing, and any necessary changes will be made as provided in the Contract Documents.
- 9.6. In the case of discrepancy or ambiguity in the Contract Documents, the order of precedence in the Agreement will prevail. However, in the case of discrepancy or ambiguity solely between and among the Drawings and Specifications, the discrepancy or ambiguity will be resolved in favor of the interpretation that will provide Judicial Council with the functionally complete and operable Project described in the Drawings and Specifications. In case of ambiguity, conflict, or lack of information, Judicial Council will furnish clarifications with reasonable promptness.
- 9.7. Drawings and Specifications are intended to comply with all laws, ordinances, rules, and regulations of constituted Authorities Having Jurisdiction, and as referred to in the Contract Documents, the laws, ordinances, rules, and regulations are to be considered a part of the Contract within the limits specified. Contractor will be solely responsible for any expense of correcting work done contrary to said laws, ordinances, rules, and regulations.
- 9.8. All copies of the Drawings, Designs, Specifications, and copies of other incidental architectural and engineering work, or copies of other Contract Documents furnished by Judicial Council, are the property of Judicial Council. They are not to be used by Contractor in other work and, with the exception of signed sets of Contract Documents, are to be returned to Judicial Council on request at Completion of Work or may be used by Judicial Council as it may require without any additional costs to Judicial Council. Neither Contractor nor any Subcontractor, or material or equipment supplier will own or claim a copyright in the Drawings, Specifications, and other documents prepared by the Architect. Judicial Council hereby grants Contractor, Subcontractors, sub-subcontractors, and material or equipment suppliers a limited license to use applicable portions of the Drawings prepared for the Project in the execution of their Work under the Contract Documents.

10. **CONTRACTOR’S SUBMITTALS AND SCHEDULES**

10.1. **General Requirements.**

Contractor’s submittals must comply with the provisions and requirements of the Specifications including, without limitation Submittals. No Submittal, unless Approved in writing by Judicial Council as acceptable and complete, is a Contract Document.

10.2. **Schedules, Safety Plan and Complete Subcontractor List.**

10.2.1. Required Submittals. Within **TEN (10)** Days after the date of the Notice to Proceed (unless otherwise specified in the Notice to Proceed or in the Special Conditions), Contractor must prepare and submit to Judicial Council for review, in a form supported by sufficient data to substantiate its accuracy as Judicial Council may require:

10.2.1.1. *Schedule of Work*. Contractor must provide a preliminary schedule of construction indicating the starting and completion dates of the various stages of the Work, including any information and following any form as may be specified in the Specifications. Once Approved by Judicial Council, this will become the Construction Schedule. The preliminary schedule must include and identify all tasks that are on the Project's critical path with a specific determination of the start and completion of each critical path task, all contract milestones and each milestone's completion date(s) as may be required by Judicial Council, and the date of Project Completion.

10.2.1.1.1. Proposed Early Completion or Advanced Schedule. Judicial Council is not required to Accept an early completion or advanced schedule (i.e., one that shows early completion dates for the Contract completion or milestones). Contractor will not be entitled to extra compensation if Judicial Council allows Contractor to proceed performing the Contract on an earlier or advanced schedule and Contractor completes the Project, for whatever reason, beyond the date shown in that earlier or advanced schedule, but within the Time for Completion indicated in the Contract. A schedule showing the Work completed in less than the Contract Time indicated in the Contract, is considered to have Float.

10.2.1.2. *Schedule of Submittals*. The Contractor must provide a preliminary schedule of submittals, including Shop Drawings, Product Data, and Samples submittals. Once Approved by Judicial Council, this will become the Submittal Schedule. All submittals must be forwarded to Judicial Council by the date indicated on the Approved Submittal Schedule, unless an earlier date is necessary to maintain the Construction Schedule, in which case those submittals must be forwarded to Judicial Council so as not to delay the Construction Schedule.

10.2.1.3. *Schedule of Values*. The Contractor must provide a preliminary Schedule of Values for all component parts of the Work for which progress payments may be requested. The Schedule of Values must total the Contract Price and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. The preliminary Schedule of Values should include, at a minimum, the following information and the following structure:

10.2.1.3.1. Divided into at least the following categories:

- 10.2.1.3.1.1. Overhead and profit;
- 10.2.1.3.1.2. Supervision;
- 10.2.1.3.1.3. General conditions;
- 10.2.1.3.1.4. Layout;
- 10.2.1.3.1.5. Mobilization;
- 10.2.1.3.1.6. Submittals;
- 10.2.1.3.1.7. Bonds and insurance;
- 10.2.1.3.1.8. Closeout documentation;
- 10.2.1.3.1.9. Demolition;
- 10.2.1.3.1.10. Installation;
- 10.2.1.3.1.11. Rough-in;
- 10.2.1.3.1.12. Finishes;
- 10.2.1.3.1.13. Testing;
- 10.2.1.3.1.14. Punch List and acceptance.

- 10.2.1.3.2. Divided by each of the following areas:
- 10.2.1.3.2.1. Site work;
 - 10.2.1.3.2.2. By each building;
 - 10.2.1.3.2.3. By each floor.
- 10.2.1.3.3. The preliminary Schedule of Values will not provide for values any greater than the following percentages of the Contract Price:
- 10.2.1.3.3.1. Mobilization and layout combined to equal not more than one percent (1%);
 - 10.2.1.3.3.2. Bonds and insurance combined to equal not more than two percent (2%).
- 10.2.1.3.4. All items on the Schedule of Values must have a specific completion date on the Construction Schedule, or Judicial Council has Approved the Construction Schedule and the Construction Schedule is fully cost-loaded and resource-loaded, unless waived by Judicial Council in writing, and detailed as required by the Contract Documents.
- 10.2.1.3.5. Contractor must certify that the preliminary Schedule of Values as submitted to Judicial Council is accurate and reflects the costs as developed in preparing Contractor's bid. The preliminary Schedule of Values is subject to Judicial Council's review and approval of the form and content thereof. In the event that Judicial Council objects to any portion of the preliminary Schedule of Values, Judicial Council will notify Contractor, in writing, of Judicial Council's objection(s) to the preliminary Schedule of Values. Within **FIVE (5)** Days of the date of Judicial Council's written objection(s), Contractor will submit a revised preliminary Schedule of Values to Judicial Council for review and approval. The foregoing procedure for the preparation, review, and approval of the preliminary Schedule of Values will continue until Judicial Council has Approved the entirety of the preliminary Schedule of Values.
- 10.2.1.3.6. Once the preliminary Schedule of Values is Approved by Judicial Council, it will become the Schedule of Values. The Schedule of Values will not thereafter be modified or amended by Contractor without the prior consent and Approval of Judicial Council, which may be granted or withheld in the sole discretion of Judicial Council.
- 10.2.1.3.7. Notwithstanding any provision of the Contract Documents to the contrary, payment of Contractor's overhead, supervision, general conditions costs, and profit, as reflected in the Schedule of Values, will be paid by Judicial Council in installments, based on the percentage of the Project complete, with the disbursement of Progress Payments and the Final Payment.
- 10.2.1.3.8. The Contractor will not "front-load" the Schedule of Values with false dollar amounts for activities to be performed in the early stages of the Project. Judicial Council may, in its sole discretion, utilize the costs listed in the Schedule of Values as the true cost of items to be deducted from the Contract Price through credit or deductive Change Orders. The values for each line item will include the amount of overhead and profit applicable to each item of Work and

must include, at a minimum, a breakdown between rough and finish Work for the basic trades as well as individual dollar figures for large dollar equipment and materials to be installed or furnished for the Project. No individual line item or scope of Work in the Schedule of Values will exceed \$50,000, except with the express, written consent of Judicial Council. Exceptions will be given by Judicial Council for a single item of equipment for which the true cost exceeds \$50,000. The Schedule of Values is subject to Judicial Council's review and Approval of the form and content thereof. Upon request, Contractor must provide Judicial Council with data and documentation substantiating the accuracy of the proposed line items. In the event Judicial Council reasonably objects to any portion of the Schedule of Values, within **TEN (10)** Days of Judicial Council's receipt of the Schedule of Values, Judicial Council will notify Contractor, in writing of Judicial Council's objection(s) to the Schedule of Values together with any request for substantiating data or documentation. Within **FIVE (5)** Days of the date of Judicial Council's written objection(s) and request for substantiating data and documentation, Contractor must submit a revised Schedule of Values to Judicial Council for review and approval together with the requested data and documentation. The foregoing procedure for the preparation, review and approval of the Schedule of Values will continue until Judicial Council has Approved of the entirety of the Schedule of Values. Once the Schedule of Values is Approved by Judicial Council, the Schedule of Values will not be thereafter modified or amended by Contractor without the prior consent and Approval of Judicial Council, which may be granted or withheld in the sole reasonable discretion of Judicial Council.

10.2.1.4. *Safety Plan.* The Contractor must provide a preliminary Safety Plan specifically adapted for the Project. Safety Plan must comply with the Judicial Council's Construction Safety Manual and the following requirements:

10.2.1.4.1. All applicable requirements of CalOSHA and/or of OSHA.

10.2.1.4.2. All provisions regarding Project safety, including all applicable provisions in these General Conditions.

10.2.1.4.3. Safety Plan must be prepared in both English and in the predominant language(s) of Contractor's and its Subcontractors' employees.

10.2.1.5. *Complete Subcontractor List.* Contractor must provide a preliminary Subcontractor List stating the name, address, telephone number, email address, California State Contractors License number, DIR registration number, classification, and monetary value of all Subcontracts for parts, furnishing labor, material, or equipment for the Project.

10.2.2. Contractor must provide all schedules both in hard copy and electronically, in a format (e.g., Microsoft Project or Primavera, or substantially similar product) Approved in advance by Judicial Council.

10.2.3. Judicial Council will review the schedules submitted and Contractor will make changes and corrections in the schedules as requested by Judicial Council and resubmit the schedules until Approved by Judicial Council.

10.2.4. Judicial Council will have the right at any time to revise the Schedule of Values if, in Judicial Council's sole opinion, the Schedule of Values does not accurately reflect the value of the Work performed.

10.2.5. All submittals and schedules must be Approved by Judicial Council before Contractor can rely on them as a basis for payment.

10.3. Monthly Progress Schedule(s).

10.3.1. Contractor must provide monthly to Judicial Council an updated Monthly Progress Schedule. The first Monthly Progress Schedule shall be based on, and update, the Approved Construction Schedule. Thereafter, the Monthly Progress Schedule shall update the last Monthly Progress Schedule. A Monthly Progress Schedule must show all Work completed and to be completed by Contractor. The Monthly Progress Schedule must be sent to Judicial Council, in a format acceptable to Judicial Council, and contain a written narrative of the progress of Work that month and any changes, delays, or events that may affect the Work. The process for Judicial Council Approval of the Monthly Progress Schedule is the same as the process for Approval of the Construction Schedule.

10.3.2. Contractor must also submit Monthly Progress Schedule(s) with all Applications for Payment.

10.4. Safety Data Sheets (SDS).

Contractor is required to ensure Safety Data Sheets are available in a readily accessible place at the Work Site for any material requiring a Safety Data Sheet per the Federal "Hazard Communication" standard, or employees right to know law. The Contractor is also required to ensure proper labeling on substances brought onto the Project Site and that any person working with the material or within the general area of the material is informed of the hazards of the substance and follows proper handling and protection procedures. One electronic copy of the Safety Data Sheets must also be submitted directly to Judicial Council.

10.5. Logistic Plan.

Contractor must provide a staging and logistics plan identifying laydown areas, loading and unloading areas, crane locations, fence locations, temporary utility connections, trailer locations, and emergency evacuation meeting area. This Logistics Plan must be Approved by Judicial Council prior to Contractor mobilizing on the Site.

10.6. Information Included in Submittals.

All Submittals must be accompanied by a written transmittal and each set of plans must carry a "wet stamp" or other writing by Contractor providing an identification of the portion of the Drawings or the Specifications pertaining to the Submittal, with each Submittal numbered consecutively for ease of reference along with the following information: (i) date of submission; (ii) Project name; (iii) name of submitting Subcontractor; and (iv) if applicable, the revision number. The foregoing information is in addition to, and not in lieu of, any other information required for Judicial Council's review, evaluation, and Approval of Contractor's Submittals. Each Submittal must be complete with its required number of copies, no piecemeal documentation is allowed. Any Submittal not bearing the required wet stamp as stated herein, will be rejected until the appropriate wet stamp information is provided on each submittal.

10.7. Verification of Submittal Information.

By approving and submission of Submittals, Contractor represents to Judicial Council and Architect that Contractor has determined and verified materials, field measurements, field construction criteria, catalog numbers and similar data related thereto and has checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Contract Documents. Each Submittal must include the following certification duly executed by Contractor's Superintendent or Project Manager for the Work: "The Contractor has reviewed and approved the field dimensions and construction criteria of the attached Submittal. The Contractor has verified that the Submittal is complete and includes notations of any portion of the Work depicted in the Submittal which is not in strict conformity with the Contract Documents. The information in the attached Submittal has been reviewed and coordinated by Contractor with information included in other Submittals."

10.8. Contractor Responsibility for Deviations.

The Contractor will not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by Judicial Council's and Architect's review of Submittals unless Contractor has specifically informed Judicial Council in writing of such deviation at the time of submission of the Submittal and Judicial Council has given Approval to the specific deviation. The Contractor will not be relieved of responsibility for errors or omissions in Submittals by Judicial Council's and Architect's review or comments thereon.

10.9. No Performance of Work Without Architect Review.

The Contractor will perform no portion of the Work requiring Judicial Council's and Architect's review of Submittals until Judicial Council and Architect have completed their review and returned the Submittal to Contractor indicating "No Exception Taken" to that Submittal. The Contractor will not perform any portion of the Work forming a part of a Submittal or which is affected by a related Submittal until the entirety of the Submittal or other related Submittal has been fully processed. All Work must comply with the final action taken by Judicial Council and the Architect review of Submittals and other applicable portions of the Contract Documents.

10.10. Judicial Council and Architect Review of Submittals.

The purpose of Judicial Council's and Architect's review of Submittals and the time for Judicial Council's and Architect's return of Submittals to Contractor is as set forth elsewhere in the Contract Documents. If Judicial Council and/or Architect return a Submittal as rejected or requiring correction(s) with re-submission, Contractor, so as not to delay the progress of the Work, must promptly thereafter resubmit a Submittal conforming to the requirements of the Contract Documents; the resubmitted Submittal must indicate the portions thereof modified in accordance with Judicial Council's and Architect's direction. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, Judicial Council is entitled to rely upon the accuracy and completeness of Contractor's calculations and certifications accompanying Submittals. Judicial Council's and Architect's review of the Submittals is for the limited purposes described in the Contract Documents. Judicial Council and Architect will review each Submittal twice. Should additional Submittals be required due to Contractor's failure to address comments, Contractor will pay for the Architect's services on a time and material basis for each subsequent review.

10.11. Contractor Responsibility for Deviations.

Contractor will not be relieved of responsibility for correcting deviations from the requirements of the Contract Documents by Judicial Council's or Architect's review of Submittals unless Contractor has specifically informed Judicial Council and the Architect in writing of such deviation at the time

of submission of the Submittal and Judicial Council and the Architect have given Approval to the specific deviation. Contractor will not be relieved of responsibility for errors or omissions in Submittals by Judicial Council's or the Architect's review or comments thereon.

11. SITE ACCESS, CONDITIONS AND REQUIREMENTS

11.1. Site Investigation.

Before bidding on the Work, Contractor must fully investigate the Site to become familiar with all observable conditions and thoroughly familiarize itself with the requirements of the Contract. By submitting a bid for the Work, Contractor will be deemed to have made a complete study and investigation, and to be familiar with and accepted the existing conditions of the Site.

11.2. Geotechnical Investigation Report.

11.2.1. When a geotechnical report is available, Contractor must review all geotechnical data provided and determine whether additional data or services are necessary to complete the Work. Such services include, without limitation, test borings, test pits, soil bearing values, percolation tests, water pollution and other environmental tests, ground corrosion and resistivity tests, and other necessary operations determining subsoil, air, and water conditions with reports and appropriate professional interpretations and recommendations thereof. Any information obtained from the geotechnical report made available by Judicial Council is approximate only, is not guaranteed, does not form a part of the Contract, and Contractor may not rely thereon.

11.2.2. If additional services or investigations are deemed necessary by Contractor, Contractor must submit a request in writing to Judicial Council fully detailing the need for additional services. If Judicial Council Approves of the request, Contractor must coordinate directly with Judicial Council for performance of the requested services.

11.3. Soils Investigation Report.

11.3.1. When a soils investigation report obtained from test holes at the Site is available, that report will be available to Contractor but will not be a part of the Contract. Any information obtained from that report or any information given on Drawings as to subsurface soil condition or to elevations of existing grades or elevations of underlying rock is approximate only, is not guaranteed, does not form a part of the Contract, and Contractor may not rely thereon. By submitting its bid, Contractor acknowledges that it made visual examination of Site and made whatever tests Contractor deems appropriate to determine underground condition of soil.

11.3.2. If a soils report is identified in the Contract Documents, it is not a Contract Document. Further, no representation is made by Judicial Council that the information provided is adequate for purposes of construction of the Project. Judicial Council disclaims responsibility for any and all interpretations made by Contractor of any soil or subsurface condition for information, such as soil-bearing values, rock profiles, presence and scope of boulders and cobbles, soil stability and the presence or level and extent of underground water.

11.3.3. Contractor shall determine the means, methods, techniques, and sequences necessary to achieve required soil contours and characteristics of all completed Work.

11.3.4. If after execution of the Contract, Contractor encounters conditions at the Site that are materially different from those customarily encountered at or near the Premises, any request by Contractor for additional funds or additional time, shall be governed by provisions of the Contract Documents for Changes in the Work related to Unforeseen Site Conditions.

11.4. Above Ground Existing Conditions.

Under no circumstances will Judicial Council be deemed to make a warranty or representation of visible existing above-ground conditions, as-built conditions, or other above-ground actual conditions verifiable by Contractor by the performance of its own reasonable independent investigation, which Contractor was required to perform prior to submitting its bid. Contractor must not rely on the information supplied by Judicial Council regarding existing above-ground conditions.

11.5. Subsurface Investigations.

When Judicial Council has made investigations of subsurface conditions and has made that information available to Contractor, Contractor must verify the location and depth (elevation) of all existing utilities and existing service before performing any excavation Work.

11.6. Failure to Investigate.

Any failure by Contractor and Subcontractors to acquaint themselves with information that is provided, information that could reasonably be obtained, or conditions which could be identified with reasonable investigation, will not relieve Contractor from responsibility to properly estimate the difficulty or cost to perform the Work.

11.7. Contract Adjustments.

11.7.1. Contractor agrees that no claim against Judicial Council will be made by Contractor for damages, and hereby waives any rights to damages, if during the progress of Work, Contractor encounters subsurface or latent conditions at Site materially differing from those shown on Drawings or indicated in Specifications, or for Unforeseen Site Conditions, except as indicated in the provisions of these General Conditions regarding trenches, trenching, and/or existing utility lines.

11.7.2. As it relates to all other differing Site conditions, Contractor agrees that no claim against Judicial Council will be made by Contractor for damages and hereby waives any right to damages if, during progress of Work, Contractor encounters differing Site Conditions, unless Contractor establishes by satisfactory evidence that the conditions were reasonably unforeseeable based on all the information available to Contractor or that could have been reasonably ascertained by Contractor prior to submitting its bid for the Project.

11.8. No Warranty.

There is no guarantee or warranty, either expressed or implied that the Site conditions indicated in the information provided by Judicial Council are comprehensively representative of those existing throughout the Site, or that Unforeseen Site Conditions or developments may not occur. Making such information available to Contractor will not be construed to be a waiver of this provision.

11.9. Access to Work.

Judicial Council and its representatives will at all times have access to Work wherever it is in preparation or progress, including storage and fabrication. Contractor must provide safe and proper facilities for access so that Judicial Council's representatives may perform their functions.

11.10. Layout and Field Engineering.

11.10.1. All field engineering required for layout of this Work and establishing grades for earthwork operations will be furnished by Contractor at its expense. This Work must be performed by a qualified, California-registered civil engineer Approved by Judicial Council and Architect. Any required Record and/or As-Built Drawings of Site development must be prepared by the approved civil engineer.

11.10.2. Contractor is responsible for having ascertained pertinent local conditions such as location, accessibility, and general character of the Site and for having satisfied itself as to the conditions under which the Work is to be performed. Judicial Council will not be liable for any claim for allowances because of Contractor's error or negligence in acquainting itself with the conditions at the Site.

11.10.3. Contractor must protect and preserve established benchmarks and monuments and make no changes in locations without the prior Approval of Judicial Council. Contractor must replace any benchmarks or monuments that are lost or destroyed subsequent to notification of Judicial Council and with Judicial Council's Approval.

11.11. Utilities for Construction.

Utilities necessary to complete the Work and to completely perform Contractors' obligations hereunder will be obtained by Contractor without adjustment of the Contract Price. Contractor must furnish and install necessary or appropriate temporary distributions of utilities, including utilities furnished by Judicial Council. Any such temporary distributions must be removed by Contractor upon Completion of the Work. The costs of all such utility services, including the installation and removal of temporary distributions thereof, is the responsibility of Contractor and is included in the Contract Price. Also refer to other utility requirements as indicated in the Specifications.

11.12. Sanitary Facilities.

If required by the Site, Contractor must obtain and maintain temporary sanitary facilities in conformity with applicable law, rule, or regulation. Contractor must maintain temporary sanitary facilities in a neat and clean manner with sufficient toilet room supplies. Personnel engaged in the Work are not permitted to use any existing or constructed toilet facilities at the Site. Also refer to other sanitary facility requirements as indicated in the Specifications.

11.13. Surveys.

Contractor must provide surveys prepared by a California-licensed civil engineer surveyor to determine locations of construction, grading, and site work as required to perform the Work.

11.14. Regional Notification Center.

Contractor, except in an emergency, will 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 of the Site that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by Judicial Council, and obtain an inquiry identification number from the notification center. No excavation may be commenced and/or carried

out by Contractor unless an inquiry identification number has been assigned to Contractor or any Subcontractor and Contractor has provided the identification number to Judicial Council. Any damage arising from Contractor's failure to comply with these notification requirements will be the sole responsibility of Contractor. Any delay caused by Contractor's failure to comply with these notification requirements will be the sole responsibility of Contractor and will not be an allowable basis for an extension of the Contract time.

11.15. Existing Utility Lines.

11.15.1. Pursuant to Government Code section 4215, Judicial Council assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities that are not identified in the Plans and Specifications and which are located on the Site at the time of commencement of the Work. Contractor will not be assessed Liquidated Damages for delay in completion of the Project caused by failure of Judicial Council to provide for removal or relocation of such utility facilities.

11.15.2. Locations of existing utilities provided by Judicial Council will not be considered exact, but approximate, within a reasonable margin and will not relieve Contractor of responsibilities to exercise reasonable care, nor the costs of repair due to Contractor's failure to do so. Judicial Council will compensate Contractor for: (i) the costs of locating and repairing damage not due to the failure of Contractor to exercise reasonable care; (ii) removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy; and (iii) for equipment necessarily idle during such work.

11.15.3. No provision herein will be construed to preclude assessment against Contractor for any other delays in completion of the Work. Nothing in this section requires Judicial Council to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines, whenever the presence of these utilities on the Site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Site.

11.15.4. If Contractor, while performing Work, discovers utility facilities not identified by Judicial Council in the Contract Plans and Specifications, Contractor must immediately, but in no case longer than **TWO (2)** Business Days, notify Judicial Council and the utility provider in writing. The cost to repair damage to visible utility facilities without prior written notification to Judicial Council will be the sole responsibility of Contractor.

11.16. Utility Interruptions.

11.16.1. Notwithstanding the foregoing, Contractor must provide at least **FOURTEEN (14)** Business Days' written notice to Judicial Council and receive Judicial Council Approval before interrupting any utility service at the Project, and all emergency power, etc., must be in place prior to disruption of service.

11.16.2. Should Contractor disturb, damage, or disconnect any existing utilities or services during construction, Contractor is responsible, at no additional cost or time, to Judicial Council, for all expenses and consequential damages of every type arising from such disturbance or the replacement or repair thereof and must repair such items as required to maintain continuing service, including emergency repairs.

11.17. Notification.

Contractor understands, acknowledges and agrees that the purpose for prompt notification to Judicial Council pursuant to these provisions is to allow Judicial Council to investigate the Site condition(s) so that Judicial Council will have the opportunity to determine how to proceed as a

result of the condition(s). Accordingly, failure of Contractor to promptly notify Judicial Council in writing, pursuant to the applicable provisions of these General Conditions, will constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

11.18. Hazardous Materials.

- 11.18.1. Contractor must comply with all provisions and requirements of the Contract Documents related to Hazardous Materials, including, without limitation, those hereunder and the certifications related to Hazardous Materials included in the Document titled "Certifications to be Completed by Contractor."
- 11.18.2. Contractor must comply with the Judicial Council's Asbestos Management Plan and Hazardous Materials Management Process, as applicable. Contractor must review all test results prior to performing any Work. Contractor will be responsible for soliciting and contracting with a licensed abatement contractor to perform abatement of hazardous material present in accordance with all regulatory requirements.
- 11.18.3. Contractor shall not bring on the Site or use in the Work any Hazardous Materials unless Contractor first obtains Judicial Council's prior Approval. Contractor must comply with all Applicable Code Requirements concerning the use, storage, transportation and disposal of any Hazardous Materials on the Project and must obtain all permits and pay all fees and taxes related thereto.
- 11.18.4. Prior to starting Work on the Project, Contractor must submit to Judicial Council a list of all Hazardous Materials expected to be used on the Project in triplicate. Contractor must keep a copy of this list at the Site. This list must include, without limitation, any cleaner, solvent, paint or explosive charge used in the Work. Contractor must submit one (1) copy of the OSHA Safety Data Sheet for each Hazardous Material listed and must advise every person at or near the Site of these materials, of proper handling, and of proper action in the event of accidental exposure or emergency.
- 11.18.5. Contractor must safely contain and store all Hazardous Materials, and in the event of a spill or discharge, must immediately notify all required federal, State, county and local agencies including the fire department. Contractor must protect personnel from exposure and provide treatment as necessary.
- 11.18.6. Contractor must immediately advise Judicial Council of any potentially Hazardous Materials encountered at the Site and must take all necessary action to prevent exposure of personnel until the material is identified and proper action can be taken.
- 11.18.7. Contractor must not store or use any Hazardous Materials near air intakes or doors and windows serving persons on or off-Site without proper protection and safeguards to prevent exposure.
- 11.18.8. Contractor must exercise all required precautions and safeguards in the storage, use and disposal of Hazardous Materials. Nothing herein relieves Contractor of responsibility for compliance with all Applicable Code Requirements, or other provisions of this Agreement, particularly Contractor's responsibility for damage and preservation of life and property.

11.19. No Signs.

Neither Contractor, Contractor's employees, consultants, Subcontractors, nor Subcontractors' employees will display any signs not required by law or the Contract Documents at the Site, fences trailers, offices, or elsewhere on the Site without specific prior Approval of Judicial Council.

12. **INTEGRATION OF WORK, UNCOVERING WORK, CORRECTION OF WORK AND RIGHT TO TAKEOVER WORK**

12.1. Integration of Work.

- 12.1.1. Contractor must perform all cutting, fitting, patching, and preparation of Work as required to make its several parts come together properly, to fit it to receive or be received by work of other contractors, and to coordinate tolerances to various pieces of work, showing upon, or reasonably implied by, the Drawings and Specifications for the completed structure, and conform them as Judicial Council and/or Architect may direct.
- 12.1.2. All costs resulting from defective or ill-timed Work will be borne by Contractor, inclusive of repair work.
- 12.1.3. Contractor must not endanger any work performed by it or anyone else by cutting, excavating, or otherwise altering work and must not cut or alter work of any other contractor except with written consent of Judicial Council.
- 12.1.4. Prior to any cutting or removing of existing materials, Contractor must ensure that a Hazardous Material survey has been completed on all materials disturbed by cutting or removing activities. By starting cutting or patching operations, the Contractor acknowledges completion of Hazardous Material survey results, completion of abatement requirements prior to cutting or removing, acceptance of existing conditions, and the responsibility to restore the cut and patched area to match the original conditions.

12.2. Uncovering of Work.

Without in anyway limiting or affecting any other provision of the Contract Documents, if a portion of the Work is covered without Project Inspector (if applicable) or Architect approval or not in compliance with the Contract Documents, it must, if required in writing by Judicial Council, the Project Inspector (if applicable), or the Architect, be uncovered for the Project Inspector's (if applicable) or the Architect's observation and be replaced at Contractor's expense without change in the Contract Price or Contract Time.

12.3. Rejection of Work.

Prior to Judicial Council's Acceptance of the Work, any Work or materials or equipment forming a part of the Work or incorporated into the Work that is defective or not in conformity with the Contract Documents may be rejected by Judicial Council, the Architect or the Project Inspector (if applicable) and Contractor must correct all rejected Work without any adjustment to the Contract Price or the Contract Time, even if the Work, materials or equipment have been previously inspected by the Architect or the Project Inspector (if applicable) or even if they failed to observe the defective or non-conforming Work, materials or equipment.

12.4. Nonconforming Work.

- 12.4.1. Contractor must promptly remove from Premises all Work identified by Judicial Council as failing to conform to the Contract Documents, including Nonconforming Work, whether incorporated or not. Contractor must promptly replace and re-execute its own Work to comply with the Contract Documents without additional expense to Judicial Council and will bear the expense of making good all work of other contractors destroyed or damaged by any removal or replacement pursuant hereto and/or any delays to Judicial Council or other Contractors caused thereby.

12.4.2. If Contractor does not remove Work that Judicial Council has identified consistent with the above requirement within a reasonable time, not to exceed **FORTY-EIGHT (48)** hours, Judicial Council may remove it and may store any material at Contractor's expense. If Contractor does not pay expense(s) of that removal within **TEN (10)** Days' time thereafter, Judicial Council may, upon **TEN (10)** Days' written notice, sell any material at auction or at private sale and will apply the proceeds of that sale to any losses sustained by the Judicial Council as a result of the Contractor's Nonconforming Work, or any other Work covered by the preceding provision. In the event that the Judicial Council does not perform a sale, or the proceeds are inadequate to fully compensate the Judicial Council for its losses, the Judicial Council will deduct the outstanding amount of its losses from the Contract Price and Judicial Council may withhold those amounts from sums due to Contractor.

12.5. Correction of Work.

12.5.1. Pursuant to the notice provisions herein, Contractor must promptly correct the Work rejected by Judicial Council, the Architect, or the Project Inspector as failing to conform to the requirements of the Contract Documents, whether observed before or after Completion and whether or not fabricated, installed, or completed. The Contractor bears all costs of correcting the rejected Work, including additional testing, inspections, and compensation for the Inspector's or the Architect's services and expenses made necessary thereby.

12.5.2. If, within **ONE (1)** year after the date of Completion of the Work or a designated portion thereof, or after the date for commencement of warranties established hereunder, or by the terms of an applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, Contractor must correct it promptly after receipt of written notice from Judicial Council to do so. This **ONE (1)** year period will be extended, with respect to any portion of the Work performed after Completion, by the period of time between Completion and the Judicial Council's Acceptance of the post-Completion Work. This obligation hereunder will survive Acceptance of the Work under the Contract and termination of the Contract. Judicial Council will give such notice promptly after discovery of the condition.

12.6. Judicial Council's Right to Takeover Work.

12.6.1. If Contractor should neglect to perform the Work properly or fail to perform any provisions of the Contract, Judicial Council, after **FORTY-EIGHT (48)** hours written notice to Contractor, may, without prejudice to any other remedy it may have, make good such deficiencies and may deduct the cost thereof from the Contract Price and may withhold payment from payment(s) due to Contractor.

12.6.2. If it is found at any time, before or after Completion of the Work, that Contractor has varied from the Drawings and/or Specifications, including, but not limited to, variation in material, quality, form, or finish, or in the amount or value of the materials and labor used, Judicial Council may require at its option:

12.6.2.1. That all such nonconforming Work be removed, remade or replaced, and all work disturbed by these changes be repaired by Contractor at no additional cost to Judicial Council;

12.6.2.2. That Judicial Council deduct from any amount due Contractor the sum of money equivalent to the difference in value between the nonconforming work and that required by the Drawings and Specifications; or

12.6.2.3. That Judicial Council exercise any other remedy it may have at law or under the Contract Documents, including but not limited to Judicial Council hiring its own forces or another contractor to replace Contractor's nonconforming Work, in which case Judicial Council will either issue a deductive Change Order, a Unilateral Change Order, or invoice Contractor for the cost of that work. Contractor must pay any invoices within **THIRTY (30)** Days of receipt of same or Judicial Council may withhold those amounts from payment(s) to Contractor.

12.7. The Judicial Council may, in its sole and exclusive discretion, elect to accept the nonconforming Work and reduce the Contract Price as appropriate and equitable.

13. **TRENCHES**

13.1. **Trenches Greater Than Five Feet.**

If the Contract Price exceeds \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, Contractor must, in advance of excavation, promptly submit to Judicial Council and/or a registered civil or structural engineer employed by 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.

13.2. **Excavation Safety.**

If such plan varies from the Shoring System Standards established by the Construction Safety Orders, the plan must be prepared by a registered civil or structural engineer, but in no case will such plan be less effective than that required by the Construction Safety Orders. No excavation of such trench or trenches can commence until said plan has been accepted by Judicial Council or by the person to whom authority to accept has been delegated by Judicial Council.

13.3. **No Tort Liability of Judicial Council.**

Pursuant to Labor Code section 6705, nothing in this section imposes tort liability upon Judicial Council or any of its employees.

13.4. **No Excavation without Permits.**

Contractor must not commence any excavation Work until it has secured all necessary permits including the required CAL OSHA excavation/shoring permit. Any permit must be prominently displayed on the Site prior to the commencement of any excavation.

13.5. **Discovery of Hazardous Waste, Unusual Conditions and/or Unforeseen Site Conditions.**

13.5.1. If the Work involves digging trenches or other excavations that extend deeper than four (4) feet below the surface, Contractor must immediately, and before the following conditions are disturbed, notify Judicial Council, verbally and in writing, of any:

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

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

13.5.1.3. 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.

13.5.2. Judicial Council will 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 Contractor's cost of, or the time required for, performance of any part of the Work, will issue a Change Order under the procedures described herein.

13.5.3. In the event that a dispute arises between Judicial Council and Contractor whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in Contractor's cost of, or time required for, performance of any part of the Work, Contractor will not be excused from any scheduled Completion date provided for by the Contract but must proceed with all Work to be performed under the Contract Documents. The Contractor will retain any and all rights provided by the Contract Documents or by law that pertain to the resolution of disputes and protests, which include the requirement that Contractor complies with the notice and PCO provisions of the Contract Documents. Contractor's failure to submit a PCO pursuant to the terms of the Contract Documents is a waiver of Contractor's right to an adjustment of the Contract Price of Contract Time.

14. INSURANCE AND BONDS

14.1. Contractor's Insurance.

Unless the Special Conditions indicate that this Project is covered by a Judicial Council provided OCIP, Contractor shall comply with ALL requirements of this "Contractor's Insurance" Article. If the Special Conditions indicate that this Project is covered by a Judicial Council provided OCIP, all insurance required of Contractor and/or its Subcontractor(s) that is not provided by the OCIP must be in the amounts indicated herein and include the provisions set forth herein.

14.1.1. General Requirements.

14.1.1.1. Contractor 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.

14.1.1.2. For all insurance policies required herein, Contractor shall declare any deductible or self-insured retention (SIR). Any deductible or SIR must be clearly stated on the appropriate certificate of insurance.

14.1.1.3. If self-insured, Contractor agrees to administer its self-insurance program in a commercially reasonable manner to ensure the availability of funds to cover losses required to be insured against by Contractor under the terms herein.

14.1.1.4. Contractor, prior to commencement of the Work, shall provide Judicial Council with certificates of insurance and signed insurance policy endorsements, on forms acceptable to Judicial Council, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that the State of California, Judicial Council; the Court, and their respective elected and appointed officials, judicial officers, officers, and employees have been added as additional insureds on the insurance policy being referenced.

14.1.1.5. The Certificates of Insurance must be addressed as follows:

Alisha Dutta, Project Manager
[Contract Number]
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94012

14.1.1.6. All insurance policies required herein must remain in force until Completion of the Project and Contractor and Judicial Council have agreed in writing that the Work is covered under Judicial Council's programs of insurance or self-insurance designed for the purpose of providing coverage for the accepted Work once occupied.

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

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

14.1.1.9. The insurance required herein below, and any excess liability or umbrella liability insurance that Contractor maintains in compliance with the terms of this "General Requirements" subparagraph (with the exception of Professional Liability Insurance, if required) must be endorsed to include the State of California, Judicial Council; the Court, and their respective elected and appointed officials, judicial officers, officers, and employees as additional insureds, but only with respect to liability assumed by Contractor under the terms of this Contract or liability arising out of the performance of the Services.

14.1.1.10. Contractor, and any insurer providing insurance required hereunder shall waive any right of recovery or subrogation it may have against the State of California; Judicial Council; the Court, and their respective elected and appointed officials, judicial officers, officers, and employees for direct physical loss or damage to the Work, or for any liability arising out of the Work performed by Contractor under this Contract.

14.1.1.11. All insurance policies required hereunder shall contain a provision that coverage will not be materially changed or cancelled without **THIRTY (30)** Days prior written notice to Judicial Council.

14.1.1.12. Contractor is responsible for and may not recover from the State of California, Judicial Council; or the Court, any deductible or self-insured retention that is connected to the insurance required hereunder.

- 14.1.1.13. The insurance required hereunder must be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California; Judicial Council; or the Court, with the exception of coverage provided under the OCIP, which must be primary to coverage provided by Contractor where applicable. The Contractor's liabilities under this contract shall not be limited in any manner to the insurance coverage required.
- 14.1.1.14. Judicial Council reserves the right to request certified copies of any of the insurance policies required hereunder, which must be provided by Contractor within **TEN (10)** Business Days
- 14.1.1.15. following the request by Judicial Council.
- 14.1.1.16. The cost of all insurance required hereunder is the sole responsibility of Contractor and is a component part of the Contract Price.
- 14.1.1.17. Contractor shall require insurance from Subcontractors defined as "Excluded Parties" herein below with substantially the same terms and conditions as required of Contractor herein below and with limits of liability, which in the opinion of Contractor are sufficient to protect the interests of Contractor, State of California, Judicial Council, and Court. Should the Contractor elect to allow Insurance Requirements that are not in accordance with the limits, terms and conditions of the contract, the acceptance of those lower limits/coverage does not alleviate their responsibility to meet the contractual obligations of this section and they do so at their own risk.
- 14.1.1.18. Contractor shall procure and maintain the following policies of insurance at the limits listed below during the life of the Contract:
- 14.1.1.18.1. Commercial General Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) written on an occurrence form with limits of not less than \$5,000,000 per occurrence and 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.
- 14.1.1.18.2. 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.
- 14.1.1.18.3. Workers' Compensation. Statutory workers' compensation insurance for all of Contractor's employees, who are engaged in the performance of the work 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.

14.1.1.18.4. Contractor's Equipment Insurance. Contractor'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.

14.1.1.18.5. If indicated in the Special Conditions: Professional Liability Insurance. covering Contractor's acts, errors or omissions committed or alleged to have been committed which arise out of rendering or failure to render the Work provided under the terms of this Agreement. The policy shall provide limits of not less than \$2,000,000 per claim or per occurrence and \$4,000,000 annual aggregate. If the policy is written on a "claims made" form, Contractor shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which are the subject of this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that Work commences pursuant to the Agreement.

14.1.1.18.6. If indicated in the Special Conditions: Unmanned Aircraft Liability Insurance if Contractor utilizes drones or any other unmanned aircraft during construction operations, existing insurance coverage must include an endorsement for unmanned aircraft operations or maintain a separate aircraft liability policy to cover unmanned aircraft operations with limits and coverage equal to \$1,000,000 per claim or per occurrence and \$2,000,000 annual aggregate.

14.2. Contract Security – Bonds.

14.2.1. Prior to commencing Work pursuant to this Contract, Contractor shall furnish two surety bonds issued by a California admitted surety insurer as follows:

14.2.1.1. *Performance Bond.* A bond in an amount at least equal to one hundred percent (100%) of Contract Price as security for faithful performance of the Contract.

14.2.1.2. *Payment Bond.* A bond in an amount at least equal to one hundred percent (100%) of the Contract Price as security for payment of persons performing labor and/or furnishing materials in connection with the Contract.

14.2.2. Cost of bonds shall be included in the Contract Price.

14.2.3. All bonds related to the Project must be in the forms set forth in the Contract Documents and shall comply with all requirements of the Contract Documents, including, without limitation, the bond forms.

15. WARRANTY/GUARANTEE/INDEMNITY

15.1. Warranty/Guarantee.

15.1.1. Contractor must obtain and preserve for the benefit of Judicial Council, manufacturers' warranties on materials, fixtures, and equipment incorporated into the Work. Contractor shall ensure that all warranties are maintained for the benefit of Judicial Council, regardless of who the manufacturer is, who the installing Subcontractor was, if any, etc. While Judicial Council fully expects the Contractor to manage all warranty work through all

applicable warranty periods, Judicial Council must have the same ability if the Contractor fails to perform its warranty obligations as required.

15.1.2. In addition to guarantees required elsewhere, Contractor guarantees and warrants all Work against all defects for a period of **ONE (1)** year after the later of the following dates:

15.1.2.1. Within **SIXTY (60)** Days of Completion of the Project measured by the occurrence of any of the following:

15.1.2.1.1. The occupation, beneficial use, and enjoyment of the Project, excluding any operation only for testing, startup, or commissioning, by Judicial Council or its agent, accompanied by cessation of labor on the Project;

15.1.2.1.2. Acceptance of the Work;

15.1.2.1.3. A cessation of labor on the Project for a continuous period of **ONE HUNDRED (100)** Days or more, due to factors beyond the control of Contractor; provided, however, that a suspension as provided for in the Contract Documents will not constitute a cessation of labor; **or**

15.1.2.1.4. A cessation of labor on the Project for a continuous period of **THIRTY (30)** Days or more, if Judicial Council files for record a notice of cessation or a notice of completion.

15.1.2.2. The commissioning date for the Project, if any.

15.1.3. At Judicial Council's sole option, Contractor must repair or replace any and all of that Work, together with any other Work that may be displaced in so doing, that may prove defective in workmanship and/or materials within a **ONE (1)** year period from date of Completion as defined above without expense whatsoever to Judicial Council. In the event of failure of Contractor and/or Surety to commence and pursue with diligence said replacements or repairs within **TEN (10)** Days after being notified in writing, Contractor and Surety hereby acknowledge and agree that Judicial Council is authorized to proceed to have defects repaired and made good at expense of Contractor and/or Surety who hereby agree to pay costs and charges therefore immediately on demand.

15.1.4. If, in the opinion of Judicial Council, defective work creates a dangerous condition or requires immediate correction or attention to prevent further loss to Judicial Council or to prevent interruption of operations of Judicial Council, Judicial Council will attempt to give the notice required above. If Contractor or Surety cannot be contacted or neither complies with Judicial Council's request for correction within a reasonable time as determined by Judicial Council, Judicial Council may, notwithstanding the above provision, proceed to make all corrections and/or provide attentions Judicial Council believes are necessary. The costs of correction or attention will be charged against Contractor and Surety of the guarantees provided in this Article or elsewhere in the Contract Documents.

15.1.5. 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. Contractor must furnish to Judicial Council all appropriate guarantee or warranty certificates as indicated in the Specifications or upon request by Judicial Council.

15.1.6. Nothing herein limits any other rights or remedies available to Judicial Council.

15.2. Indemnity.

- 15.2.1. To the furthest extent permitted by California law, Contractor shall indemnify, defend with legal counsel reasonably acceptable to Judicial Council, keep and hold harmless the Indemnitees, 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 performance of the Work by Contractor, its Subcontractors, vendors, or suppliers, including, without limitation, any such suit, claim, damage, loss, or expense attributable to, without limitation, bodily injury, sickness, disease, death, alleged patent violation or copyright infringement, or to injury to or destruction of tangible property (including damage to the Work itself) including the loss of use resulting therefrom, except to the extent caused by the sole negligence, or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. This agreement and obligation of Contractor shall not be construed to negate, abridge, or otherwise reduce any right or obligation of indemnity that would otherwise exist as to any party or person described herein. Without in any way limiting the foregoing, this indemnification, defense, and hold harmless obligation includes:
- 15.2.1.1. Any failure or alleged failure by Contractor to comply with any provision of law and/or any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, which shall include, without limitation, any stop payment notice actions or liens, including liens by the California Department of Labor Standards Enforcement.
- 15.2.1.2. Any claim arising (including bid protests) from any errors or mistakes in Contractor's bid documents provided to Subcontractors.
- 15.2.2. Contractor shall give prompt notice to Judicial Council in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Contractor's agreement to indemnify, defend, and hold harmless the Indemnitees as provided herein against liability for damage arising out of bodily injury to persons or damage to property caused by or resulting from the negligence of any of the Indemnitees shall to any extent be or be determined to be void or unenforceable, it is the intention of the Parties that these circumstances shall not otherwise affect the validity or enforceability of Contractor's agreement to indemnify, defend, and hold harmless the rest of the Indemnitees, as provided herein, and in the case of any such suits, claims, damages, losses, or expenses caused in part by the default, negligence, or act or omission of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, and in part by any of the Indemnitees, Contractor is and will remain fully liable on its agreements and obligations herein to the full extent permitted by law.
- 15.2.3. In any and all claims against any of the Indemnitees by any employee of Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, Contractor's indemnification obligation herein shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for Contractor or any Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- 15.2.4. In addition to any remedy authorized by law, moneys due Contractor under this 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.

15.2.5. The defense and indemnification obligations hereunder shall survive the Completion of Work, including the warranty/guarantee period, and/or the termination of the Agreement.

15.3. No Personal Liability.

Neither Judicial Council, nor any other officer or employee of Judicial Council, will be personally responsible for liabilities arising under this Contract.

16. TIME

16.1. Notice to Proceed.

Judicial Council may issue a Notice to Proceed as indicated in the Instructions to Bidders or will otherwise instruct the Contractor to begin performing the Work of the Project.

16.2. Hours of Work.

Unless indicated otherwise in the Contract Documents, Work must be performed during regular working hours as permitted by the appropriate governmental agency except that in the event of an emergency, or when required to complete the Work in accordance with job Construction Schedule and within the Contract Time, Work may be performed on the weekends with the advance written consent of Judicial Council and approval of any required governmental agencies. Contractor and Subcontractors shall continuously furnish sufficient forces to ensure the performance of the Work in accordance with the Construction Schedule. In no event will Judicial Council be responsible for the costs of Work performed outside of regular working hours, including, without limitation, overtime or weekend Work, unless expressly agreed to by Judicial Council in writing and Approved in a Change Order.

16.3. Progress and Completion.

16.3.1. Time of the Essence. Time limits stated in the Contract Documents are of essence to the Contract. Contractor confirms that the Contract Time is a reasonable period for performing the Work.

16.3.2. No Commencement Without Insurance. Contractor must not commence Work on the Project or elsewhere prior to the effective date of insurance and bonds. The effective date of such insurance will neither effect date for the commencement of the Work as indicated in the Notice to Proceed and/or the Contract Time. If Contractor commences Work without insurance and bonds, all Work is performed at Contractor's peril and will not be compensable until and unless Contractor secures bonds and insurance pursuant to the terms of the Contract Documents and subject to any claim by Judicial Council for damages if such damages were incurred.

16.4. Schedule.

Contractor must provide to Judicial Council, Construction Manager, and Architect a Construction Schedule in conformance with the Contract Documents and as required in the Notice to Proceed and Contractor's Submittals and Schedules section of these General Conditions.

17. **EXTENSIONS OF TIME – LIQUIDATED DAMAGES**

17.1. Contractor’s Notice of Delay.

- 17.1.1. In addition to the requirements indicated in this subsection, Contractor must submit any request for an adjustment of the Contract Price or Contract Time through the Change Order provisions in these General Conditions.
- 17.1.2. Contractor must, within **FIVE (5)** Days 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.
- 17.1.3. Any request by Contractor for an adjustment of the Contract Price or the Contract Time for a delay must be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. Such justification must 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.
- 17.1.4. Any claim for delay must include the following information as support, without limitation:
 - 17.1.4.1. 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.
 - 17.1.4.2. Specific logical ties to the Construction Schedule for the proposed changes and/or delay showing the activity(ies) in the Construction Schedule that are affected by the change and/or delay. Include a “fragnet” analysis for the portion of the schedule and the activities Contractor contends are impacted by the delay.
 - 17.1.4.3. A recovery or updated Construction Schedule must be submitted.
- 17.1.5. Judicial Council will review the facts and extent of any noticed delay and may grant Contract Time extension(s) for Completion of the Work when, in Judicial Council’s judgment, the findings of fact justify an extension.
- 17.1.6. Contract Time extension(s) may be limited to only those portions of Work affected by delay and may not apply to other portions of Work not so affected, in the sole discretion of the Judicial Council.
- 17.1.7. There are three (3) types of delay, defined as follows:
 - 17.1.7.1. Excusable and Compensable Delay.
 - 17.1.7.2. Excusable Delay; and
 - 17.1.7.3. Unexcused Delay
- 17.1.8. Following submission of a notice of delay, Judicial Council may determine whether Contractor is entitled to an extension of the Contract Time, and, if applicable, an increase in the Contract Price arising from any properly noticed and substantiated delay. In making that determination, Judicial Council will consider the following, based on the evidence submitted by Contractor and any investigations performed by Judicial Council:

- 17.1.8.1. Whether the delay constitutes an Excusable and Compensable Delay, Excusable Delay, or Unexcused Delay;
 - 17.1.8.2. How long the delay continues; and
 - 17.1.8.3. To what extent the prosecution and Completion of the Work might be delayed thereby.
- 17.1.9. Contractor's failure to request adjustment(s) of the Contract Time in strict conformity with applicable provisions of the Contract Documents is a waiver of Contractor's right to assert a claim for a delay.
- 17.1.10. Delays from Force Majeure Events may constitute Excusable Delay, but **NOT** Excusable and Compensable Delay.
- 17.1.11. Any adjustment of the Contract Time on account of an Excusable Delay or a Compensable Delay is limited as set forth herein. No adjustment of the Contract Time will be made on account of any Excusable Delays or Compensable Delays unless those delay(s) actually and directly impact Work or Work activities on the critical path of the then current and updated Approved Construction Schedule as of the date on which a delay first occurs. Judicial Council will not be deemed in breach of, or otherwise in default of any obligation hereunder, if Judicial Council will deny a request by Contractor for an adjustment of the Contract Time for any delay that does not actually and directly impact Work on the then current and updated Approved Construction Schedule. In submitting a request for an adjustment of Contract Time, and as a condition precedent to Judicial Council's review of that request, Contractor must insert into the then current and updated Approved Construction Schedule a "fragnet" analysis representing the event that Contractor claims to result in delay to the critical path as depicted in the updated Approved Construction Schedule. If an Excusable Delay and a Compensable Delay occur concurrently, the maximum extension of the Contract Time is the number of Day from the commencement of the first delay to the cessation of the delay that ends last. If an Unexcused Delay occurs concurrently with either an Excusable Delay or a Compensable Delay, the maximum extension of the Contract Time is the number of Days, if any, which the Excusable Delay or the Compensable Delay exceeds the period of time of the Unexcused Delay.

17.2. Excusable and Compensable Delay(s).

- 17.2.1. A delay is not considered Excusable and Compensable Delay unless **all** the following conditions are met:
- 17.2.1.1. Judicial Council is responsible for the delay;
 - 17.2.1.2. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the most current Contract Completion date. A delay impacts the critical path of the Project if it delays a work activity that cannot be delayed without delaying Completion of the Work to a date that is beyond the Contract Time;
 - 17.2.1.3. The delay was not within the contemplation of Judicial Council and Contractor;
 - 17.2.1.4. Contractor complies with the Change Order procedures, and if necessary, the Claims procedures of the Contract Documents;
 - 17.2.1.5. The delay could not have been avoided or mitigated by Contractor's care, prudence, foresight, and diligence;

17.2.1.6. The delay extends the most current Contract Completion date; and

17.2.1.7. The delay is not concurrent with an Unexcused Delay or other Excusable Delay.

17.3. Excusable Delay(s).

17.3.1. To constitute Excusable Delay **all** the following conditions must be met:

17.3.1.1. The delay could not have been avoided by Contractor exercising care, prudence, foresight, and diligence, including, without limitation, Adverse Weather and/or a Force Majeure Event, and

17.3.1.2. The delay is beyond the reasonable control of the Contractor; and

17.3.1.3. The delay actually extends the most current Project Completion date.

17.3.2. The Contractor may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but Contractor will not be entitled to additional compensation for an Excusable Delay.

17.3.3. Contractor is aware that governmental agencies and utilities, including, without limitation, the DSA, the State Fire Marshal, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve Contractor-prepared drawings or approve a proposed installation. Contractor must include in its bid, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. Contractor is not entitled to make a claim for damages or delays, including Excusable Delay, arising from the review of Contractor's drawings or other approvals from the DSA, the State Fire Marshal, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies.

17.3.4. Neither the financial resources of Contractor or any person or entity directly or indirectly engaged by Contractor in performance of any portion of the Work will be deemed conditions beyond the control of Contractor.

17.3.5. Computation of Time / Adverse Weather.

17.3.5.1. The Contractor will only be allowed a time extension for Adverse Weather conditions if requested by Contractor within **FIVE (5)** Days of the Adverse Weather event, and only if **all** of the following conditions are met – thereby making the resulting delay an Excusable Delay.

17.3.5.1.1. The weather conditions constitute Adverse Weather, as defined herein and further specified in the Special Conditions;

17.3.5.1.2. Contractor can verify that the Adverse Weather caused delays in excess of **FIVE (5)** hours of the indicated labor required to complete the scheduled tasks of Work on the day affected by the Adverse Weather;

17.3.5.1.3. The Contractor's crew was dismissed as a result of the Adverse Weather; and

17.3.5.1.4. The number of Days of delay exceed those indicated in the Special Conditions.

17.3.5.2. A day-for-day extension will only be allowed for those Days in excess of those indicated in the Special Conditions and only if the tasks of Work on the day affected by the Adverse Weather were tasks required to be performed on that day to maintain the critical path of the Construction Schedule.

17.3.5.3. The Contractor will work SEVEN (7) Days per week, if necessary, irrespective of inclement weather, 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 Judicial Council.

17.3.5.4. 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.

17.4. Unexcused Delay(s) – Liquidated Damages.

17.4.1. Any delay that is neither an Excused and Compensable Delay or an Excused Delay is an Unexcused Delay. Neither the Contract Price nor the Contract Time will be adjusted on account of Unexcused Delay.

17.4.2. Contractor 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 Judicial Council will suffer damage. It being impractical and unfeasible to determine the amount of actual damage, it is agreed Contractor will forfeit and pay 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. Contractor and its Surety are liable for the amount thereof.

17.4.3. Contractor will not forfeit or pay Liquidated Damages for an Excusable Delay or an Excusable and Compensable Delay.

17.5. Granting Time Extensions.

17.5.1. If and only if a delay meets all conditions above for either Excusable and Compensable Delay or Excusable Delay, will Judicial Council grant a time extension for each established day of delay, subject to the following:

17.5.1.1. When two (2) or more delays (each of which meet all conditions prescribed above) occur concurrently on the same day, and each delay by itself without consideration of the other delays would be critical, then all such delays will be considered critical. In the event that two (2) or more substantiated delays apply concurrently to the same day and extend the Construction Schedule, then that day of delay shall be treated as one (1) day of delay and not multiple days of delay when adjusting the Contract Time.

17.5.1.2. Any Concurrent Delay is considered an Unexcused Delay.

17.5.2. If for any reason one or more of the conditions above for Compensable Delay or Excusable Delay is held legally unenforceable, then all remaining conditions must be met as a condition to obtaining an extension of the Contract Time as herein provided.

18. CHANGES IN THE WORK

18.1. No Changes Without Authorization.

- 18.1.1. There will be no change whatsoever in the Drawings, Specifications, or in the Work without an executed Change Order, a written Unilateral Change Order, or a written Field Order authorized by Judicial Council as herein provided. Judicial Council will not be liable for the cost of any extra work, any changes to the Contract Time, or any substitutions, changes, additions, omissions, or deviations from the Drawings and Specifications unless Judicial Council has authorized the same and the cost thereof has been Approved by an executed Change Order, a written Unilateral Change Order, or a written Field Order.
- 18.1.2. The Surety, in executing and providing the Performance Bond and the Payment Bond, is deemed to have expressly agreed to any change to the Contract and to any extension of time made by reason thereof.
- 18.1.3. No extension of time for performance of the Work will be allowed hereunder unless a claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in writing in the Change Order, Unilateral Change Order, or Field Order. The provisions of the Contract Documents will apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.
- 18.1.4. Contractor must perform immediately all work that has been authorized by a fully executed Change Order, Unilateral Change Order, or Field Order. Contractor is fully responsible for any and all delays and/or expenses caused by Contractor's failure to expeditiously perform this Work and Contractor's failure or refusal to so proceed with that Work may be deemed to be Contractor's default of a material obligation of Contractor under the Contract Documents.
- 18.1.5. Should any Change Order result in an increase in the Contract Price, the cost of that Change Order must be agreed to, in writing, in advance by Contractor and Judicial Council. In the event that Contractor proceeds with any change in Work without a Change Order executed by Judicial Council, Unilateral Change Order, or Field Order, Contractor waives any claim of additional compensation or time for that additional work.
- 18.1.6. Contractor 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 Judicial Council will proceed with the Change Order or alter the Project so that a change in Work becomes unnecessary.
- 18.1.7. In an emergency affecting safety of life or of work or of adjoining property, Contractor, without special instruction or authorization, must act, at its discretion, to prevent all threatened loss or injury. Any compensation or time claimed by Contractor on account of emergency work will be determined as indicated herein as a PCO.
- 18.1.8. If applicable, no payments will be made, nor will Judicial Council accept PCOs until Contractor has complied with all the requirements of the Escrow of Bid Documentation document.

18.2. Architect Authority.

The Architect will have authority to order minor changes in the Work not involving any adjustment in the Contract Price, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes will be effected by written Architect's Supplemental Instruction, Change Order, or by Unilateral Change Order.

18.3. Change Orders.

18.3.1. A Change Order is a written instrument prepared and issued by Judicial Council and/or the Architect and signed by Judicial Council, Contractor, the Architect, and approved by the Project Inspector (if necessary), stating their agreement regarding all of the following:

18.3.1.1. A description of a change in the Work;

18.3.1.2. The amount of the adjustment in the Contract Price, if any; and

18.3.1.3. The extent of the adjustment in the Contract Time, if any.

18.3.2. If Judicial Council Approves a Change, Judicial Council or the Architect will provide a written Change Order to Contractor describing the Change and setting forth the adjustment to the Contract Time and the Contract Price, if any, on account of that Change. All Change Orders are full payment and final settlement of all rights for direct, indirect and consequential costs, including without limitation, costs of delays or impacts related to, or arising out of, items covered and affected by the Change Order, as well as any adjustments to the Contract Time. Contractor shall waive any demand or request for an adjustment to the Contract Time or the Contract Price relating to any changed Work which was not first presented by Contractor in a PCO for Approval as a Change Order. The Contractor must execute the Change Order prepared pursuant to the foregoing. After the Change Order has been prepared and forwarded to Contractor for execution, Contractor will not modify or amend the form or content of such Change Order, or any portion thereof.

18.4. Unilateral Change Orders.

18.4.1. A Unilateral Change Order is a written order prepared and issued by Judicial Council, the Construction Manager, and/or the Architect and signed by Judicial Council, directing a change in the Work. Judicial Council may issue a Unilateral Change Order to order changes in the Work consisting of additions, deletions, or other revisions. Any dispute as to the sum of the Unilateral Change Order or timing of payment will be resolved pursuant to the Payment provisions and the Claims provisions herein.

18.4.2. Judicial Council may issue a Unilateral Change Order in the absence of agreement on the terms of a Change Order.

18.5. Field Orders.

18.5.1. When Work, for which a definite price has not been agreed upon in advance, is to be paid on a force account basis, all direct costs necessarily incurred and paid by Contractor for labor, material, and equipment used in the performance of that Work, will be subject to the Approval of Judicial Council and compensation will be determined as set forth herein.

18.5.2. Judicial Council will issue a Field Order to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by Judicial Council.

- 18.5.3. All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section applies to Field Orders. However, Judicial Council will only pay for actual costs verified in the field by Judicial Council or its authorized representative(s) on a daily basis.
- 18.5.4. Contractor is responsible for all costs related to the administration of Field Orders. The markup for overhead and profit for Contractor modifications are full compensation to Contractor to administer Field Orders.
- 18.5.5. Contractor must notify Judicial Council or its authorized representative(s) at least **TWENTY-FOUR (24)** hours prior to proceeding with any of the force account work. Furthermore, Contractor must notify Judicial Council when it has consumed eighty percent (80%) of the budget and must not exceed the budget unless specifically authorized in writing by Judicial Council. Contractor will not be compensated for force account work if Contractor fails to timely notify Judicial Council regarding the commencement of force account work or exceeding the force account budget.
- 18.5.6. Contractor must diligently proceed with the work, and submit a daily force account report on a form supplied by Judicial Council no later than 5:00 PM PT each day. The report must 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 will be included on the daily force account reports. The type and model of equipment must be identified and listed. Judicial Council will review the information contained in the reports and sign the reports no later than the next workday and return a copy of the report to Contractor for its records. Judicial Council will not sign, nor will Contractor receive compensation for work Judicial Council cannot verify. Contractor will provide a weekly force account summary indicating the status of each Field Order in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the work.
- 18.5.7. In the event Contractor and Judicial Council reach a written agreement on a set cost for the work while the work is proceeding based on a Field Order, Contractor's signed daily force account reports will be discontinued, and all previously signed reports considered invalid.

18.6. Price Request.

- 18.6.1. Scope of Price Request. A Price Request must contain adequate information, including any necessary Drawings and Specifications, to enable Contractor to provide the cost breakdowns required herein. Contractor will not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.
- 18.6.2. Not Instructions. Contractor will not consider Price Requests to be instructions either to stop work in progress or to execute the proposed change.
- 18.6.3. Submission of Quote. Within the time specified in the Price Request, Contractor must submit a quotation estimating cost adjustments to the Contract Price and the Contract Time necessary to execute the change, with the following documentation and information:
- 18.6.3.1. Include a list of quantities of products required or eliminated and unit costs, with total amount of purchases and credits to be made. If requested, furnish survey data to substantiate quantities.
- 18.6.3.2. Indicate applicable taxes, delivery charges, equipment rental, and amounts of trade discounts.
- 18.6.3.3. Include costs of labor and supervision directly attributable to the change.

18.6.3.4. Include a revised Construction Schedule that reflects the change, showing for example, changes in activity duration, start and finish times, and activity relationship. Use available total Float before requesting an extension of the Contract Time.

18.7. Proposed Change Order.

- 18.7.1. Submittal of Proposed Change Orders. The Contractor may submit a PCO(s) to the Judicial Council and the Architect to request that Judicial Council issue a Change Order for a proposed change to the Work.
- 18.7.2. Changes in Contract Price. A PCO must include breakdowns pursuant to the provisions herein to validate any change in Contract Price and include all reasonable documentation as required herein.
- 18.7.3. Changes in Time. A PCO must also include any changes in time required to complete the Project. A PCO must also include a revised Construction Schedule that indicates the effect of the change, including, but not limited to, changes in activity duration, start and finish times, and activity relationships. Contractor must use available total Float before requesting an extension of the Contract Time. Any additional time requested must 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 Contractor fails to request a time extension in a PCO, then Contractor is thereafter precluded from requesting time and/or claiming a delay. If Contractor believes a delay constitutes an Excusable and Compensable Delay, then Contractor must provide detailed documentation that supports its position and that addresses all the components of the “Excusable and Compensable Delay(s)” section above.
- 18.7.4. Unforeseen Site Conditions. If Contractor submits a PCO requesting an increase in Contract Price and/or Contract Time that is based at least partially on Contractor’s assertion that Contractor has encountered Unforeseen Site Condition(s) on the Project, then Contractor must base the PCO on provable information that, beyond a reasonable doubt and to Judicial Council’s satisfaction, demonstrates that the Unforeseen Site Condition(s) were actually unknown and/or unforeseen and that the condition(s) were reasonably unknown and/or unforeseen. If not, Judicial Council will deny the PCO and Contractor must complete the Project without any increase in Contract Price and/or Contract Time based on that PCO.
- 18.7.5. Time to Submit PCO. Contractor must submit PCOs within **FIVE (5)** Days of the date Contractor discovers, or reasonably should discover, the circumstances giving rise to a PCO, unless additional time to submit a PCO is granted in writing by Judicial Council. Time is of the essence in Contractor's written notice pursuant to the preceding sentence so that Judicial Council can promptly investigate and consider alternative measures to address the basis for the PCO. Accordingly, Contractor acknowledges that its failure, for any reason, to give written notice (with Supporting Documentation to permit Judicial Council's review and evaluation) within this time frame is a waiver, release, discharge and relinquishment of Contractor’s right to assert or claim any entitlement to an adjustment of the Contract Time or the Contract Price on account of the circumstances giving rise to the PCO.

18.8. Format for Proposed Change Order.

The following “Format For Proposed Change For Subcontractor Performed Work” and “Format For Proposed Change For Contractor Performed Work” will be used as applicable by Judicial Council and Contractor (e.g. Change Orders, PCOs) to communicate proposed additions and deductions to the Contract, supported by attached documentation.

FORMAT FOR PROPOSED CHANGE FOR SUBCONTRACTOR PERFORMED WORK

	<u>SUBCONTRACTOR PERFORMED WORK</u>	<u>ADD</u>	<u>DEDUCT</u>
(A)	<u>Labor Charge</u> 1. Hours. Attach total itemized hours, by each Subcontractor at each tier. 2. Rate. This can be no more than the Straight-Time Total Hourly Rate as determined by the DIR for the applicable labor category.		
(B)	<u>Labor Burden & Worker's Compensation Charge</u> 1. This can be no more than twenty percent (20%) of item (A) , the Labor Charge. 2. This will be the total cumulative charge permitted for all Subcontractors or all labor performed by the Subcontractor or Subcontractor's Subcontractor(s) (i.e., all "lower-tier" Subcontractor(s)).		
(C)	<u>Subtotal (A+B)</u>		
(D)	<u>Material Charge</u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).		
(E)	<u>Equipment Charge</u> Attach invoice(s) from supplier(s).		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<u>Subcontractor's Overhead and Profit Charge</u> Calculated as indicated in the Mark-Up section below.		
(H)	<u>Subtotal (F+G)</u>		
(I)	<u>Contractor's Overhead, Profit, Bond and Insurance</u> 1. This will be no more than ten percent (10%) of Item (F) . 2. This will be the total mark-up permitted for Contractor.		
(J)	<u>TOTAL (H+I)</u>		
(K)	<u>Time</u>	<u>Days</u>	

FORMAT FOR PROPOSED CHANGE FOR CONTRACTOR PERFORMED WORK

	<u>CONTRACTOR PERFORMED WORK</u>	<u>ADD</u>	<u>DEDUCT</u>
(A)	<u>Labor Charge</u> 1. Hours. Attach total itemized hours. 2. Rate. This can be no more than the Straight-Time Total Hourly Rate as determined by the DIR for the applicable labor category.		
(B)	<u>Labor Burden & Worker's Compensation Charge</u> 1. This can be no more than twenty percent (20%) of item (A), the Labor Charge. 2. This will be the total cumulative charge permitted for all labor performed by Contractor.		
(C)	<u>Subtotal (A+B)</u>		
(D)	<u>Material Charge</u> Attach itemized quantity and unit cost plus sales tax and invoice(s) from vendor(s).		
(E)	<u>Equipment Charge</u> Attach invoice(s) from supplier(s).		
(F)	<u>Subtotal (C+D+E)</u>		
(G)	<u>Contractor's Overhead, Profit, Bond and Insurance</u> Calculated as indicated in the Mark-Up section below.		
(H)	<u>TOTAL (F+G)</u>		
(I)	<u>Time</u>	Days	

18.8.1. Required Information. All PCO requests by Contractor for a change must include a complete itemized breakdown with the following detail:

18.8.1.1. *Labor*. Labor breakdown by trade classification, wage rates, and estimated hours. Labor costs will only include fringe benefits indicated by governing trade organizations. Wages will not exceed current prevailing wages in the locality for performance of the changes.

18.8.1.1.1. The Contractor's or Subcontractors' labor burden and Workers' Compensation premium will only be charged as indicated herein. In no event will Contractor include any other charges than as indicated herein without the prior Approval of Judicial Council.

18.8.1.2. *Material*. Material quantities, and types of products, and transportation costs, if applicable.

18.8.1.3. *Equipment*. Equipment breakdown by make, type, size, rental rates (if not owned), equipment hours and transportation costs, if applicable.

18.8.1.3.1. The equipment costs will not exceed one hundred percent (100%) of the Association of Equipment Distributors (AED) rental rates and delay factors or Caltrans rates and delay factors, whichever is less. Hourly, daily, weekly, or monthly rates will be used, whichever is lower. Hourly rates including operator will not be used.

18.8.1.3.2. The time to be paid for equipment will be the actual time that the equipment (1) is in productive operation on the Work or (2) idled as a result of the event or circumstance giving rise to the PCO.

18.8.1.3.3. To calculate the costs of idle equipment, the Contractor must use the applicable idle equipment rate. For example, and clarification purposes only, if the rate for "X" piece of equipment is \$100 and the applicable delay factor is .20 for that piece of equipment, then the hourly rate for idle equipment will be \$20 (\$100 x .20), which will be applied against the number of hours idle. In no event will Contractor charge an amount greater than 50% of the applicable equipment rate for idle equipment.

18.8.1.3.4. In computing the hourly rental of equipment, any time less than **THIRTY (30)** minutes will be considered **ONE-HALF (1/2)** hour. No payment will be made for time while equipment is inoperative due to breakdown, or for non-workdays. In addition, the rental time will not include the time required to move the equipment to and from the Project Site. No mobilization or demobilization will be allowed for equipment already on site. If such equipment is not moved by its own power, then loading and transportation costs will be paid in lieu of rental time thereof. However, neither moving time nor loading and transportation costs will be paid if the equipment is used on the Project Site in any other way than upon the work directly related to the event or circumstance giving rise to the PCO.

- 18.8.1.3.5. Individual pieces of equipment having a replacement value of one thousand dollars (\$1,000) or less will be considered to be small tools or small equipment, and no payment will be made since the costs of these tools and equipment is included as part of the markup for overhead and profit defined herein.
- 18.8.1.3.6. Payment to Contractor for the use of equipment as set forth above will constitute full compensation to Contractor for the cost of fuel, power, oil, lubricants, supplies, small equipment, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor (except for equipment operators), and any and all costs to Contractor incidental to the use of the equipment.
- 18.8.1.3.7. Should Contractor, or any of its owners, officers, directors or agents, hold any ownership interest in any company, organization, association or corporation from whom rental equipment is secured. Contractor must immediately notify Judicial Council of such and the price set for any such rental will be agreed upon in advance by Contractor and Judicial Council.

18.8.1.4. *Overhead, Profit, Bond and Insurance Costs.* Markup for overhead and profit, which will be used to compensate Contractor for all costs for all administration, general conditions, and supervision, including, without limitation:

- 18.8.1.4.1. All home office overhead, field office overhead, field office personnel including, but not limited to, principals, project managers, superintendents, supervisory foremen, estimators, project engineers, detailers, draftsmen, schedulers, consultants, watchmen, payroll clerks, administrative assistants, labor compliance costs and secretaries.
- 18.8.1.4.2. All field and field office expenses including, but not limited to, field trailers, parking, storage sheds, office equipment and supplies, telephone service and long distance telephone calls, computers, fax machines, temporary utilities, sanitary facilities and services, janitorial services, small tools and equipment with a cost under \$1000 each, portable scaffolding, blocking, shores, appliances, job vehicles, security and fencing, conformance to regulatory requirements including compliance to safety regulations, safety programs and meetings, cartage, warranties, As-Built Drawings, as well as any related maintenance costs.
- 18.8.1.4.3. Administrative functions such as, but not limited to, reviewing, coordinating, distributing, processing, posting, recording, estimating, negotiating, expediting, engineering, drawing, detailing, revising shop drawings, carting, cleaning, protecting the work, and other incidental Work related to the change.
- 18.8.1.4.4. All other costs and taxes required to be paid, but not included under direct costs as defined above including, without limitation, payroll taxes, social security, etc.
- 18.8.1.4.5. All costs for Contractor's bonds and insurance.

18.8.1.4.6. Federal excise tax will not be included. Judicial Council will issue an exemption on request.

18.8.1.5. *Mark-Up*. The following amounts for mark-ups of any added Work will 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. Contractor is not permitted to add costs for additional items that are Contractor's General Conditions in its performance of the Work unless Approved in advance by Judicial Council.

18.8.1.5.1. Contractor's Mark-Up for Overhead, Profit, Bonds & Insurance. Contractor's fee for self-performed and/or Subcontractor-performed work will be ten percent (10%) of Item (F) (Labor, Materials, and Equipment) in the Format for Proposed Change Order above.

18.8.1.5.2. Subcontractor(s) Mark-Up for Overhead and Profit. The Subcontractor(s) will compute mark-up as follows:

18.8.1.5.2.1. Limitation on Subcontractors Mark-Up: The aggregate mark-ups of all tiers of Subcontractors for the Work required by the changes shall not exceed fifteen (15%) of the total of all Subcontractors' Direct Labor Costs and all Subcontractors' Direct Materials & Equipment Costs.

18.8.1.5.2.2. For mark-up for the aggregate of Items (D) (Material) and (E) (Equipment) in the Format for Proposed Change Order above:

18.8.1.5.2.2.1. If Materials and Equipment are procured by a Subcontractor, fifteen percent (15%) of the aggregate of Items (D) and (E).

18.8.1.5.2.3. Should be consistent Contractor's premium charges for Subcontractor bond costs or Contractor-provided subcontractor default insurance protection in lieu of Subcontractor bonds (e.g., Sub Guard), if any.

18.8.1.5.2.4. If additional Work is paid from Allowance(s), no mark-up is permitted.

18.8.1.5.3. *Material Escalation Costs*. Contractor will **NOT** be entitled to an increase in the Contract Price for material escalation costs unless **all** the following conditions are satisfied:

18.8.1.5.3.1. The actual increase in the cost of the materials in question exceeds ten percent (10%) of the **total** material costs on the Project.

18.8.1.5.3.2. The cost escalation is the result of unusual and unforeseeable market conditions not reasonably foreseeable at the time of award of the Contract and was not an escalated cost resulting from any action or inaction of Contractor.

18.8.1.5.3.3. Contractor timely ordered and/or purchased the materials at issue, based on (i) Contractor's constructive knowledge of the supply chain for required materials and (ii) Contractor's request to utilize the provisions in the Contract Documents related to Judicial Council's payment for materials and equipment purchased and stored on Site or off-Site.

18.8.1.5.3.4. Contractor's material costs were reasonable at the time of Contractor's bid for the Project.

18.8.1.5.3.5. Contractor demonstrates an actual increase in the cost of materials in its Contract Price at the time of award of the Contract and/or as reflected in Contractor's escrowed bid documents compared to Contractor's actual material payment cost paid either at time of purchase or delivery, whichever is earlier.

18.8.1.5.3.6. An actual year-to-date price increase has occurred and can be substantiated by the E.N.R. 20-City Average Material Cost Index for the material at issue that demonstrates the claim for an increase in price of the material at the time of delivery of the higher priced material to the Project.

18.8.1.6. *Contract Time.* Justification for any adjustment in Contract Time must include a schedule analysis identifying critical schedule activities delayed by the request. Contract Time will be extended or reduced by Change Orders, Unilateral Change Orders, or Field Orders for a period of time commensurate with the time reasonably necessary to perform a Change. Changes performed within available float will not justify an extension to the Contract Time. Judicial Council will make the final determination of the amount of Contract Time to allocate to any Change.

18.8.1.7. *Supporting Documentation.* Contractor must include with each PCO, along with the itemized breakdown as required herein, reasonable documentation substantiating the requested change in the Contract Price and Contract Time. If Judicial Council deems Contractor's supporting documentation incomplete or inadequate to substantiate the requested change to the Contract Price and Contract Time, Judicial Council may request that Contractor supplement the PCO with additional, reasonable supporting documentation.

18.9. Change Order Certification.

18.9.1. All Change Orders and PCOs must include the following certification by Contractor. The Parties acknowledged that if a Change Order is Approved and does not include this language, that Change Order will be deemed to include this certification language:

The Contractor approves the foregoing changes as stated herein to: (i) the Work, if any; (ii) changes to the Contract Price, if any, as specified for each item; and (iii) the extension of the Contract Time for Completion of the Project. Contractor agrees to furnish all labor, materials, and service, and perform all work necessary to complete all additional work specified for the consideration and time extension stated herein. Submission of sums that have no basis in fact or which Contractor knows are false are at the sole risk of Contractor and may be a violation of the False Claims Act

set forth under Government Code section 12650 et seq. It is understood that the changes herein to the Contract shall only be effective when approved by Judicial Council. It is expressly understood that the value of the extra Work or changes includes all of Contractor's costs, expenses, field overhead, home office overhead, profit, both direct and indirect, resulting from additional time required on the Project or resulting from delay to the Project. Any costs, expenses, damages, or time extensions not included are deemed waived.

18.10. Determination of Change Order Cost.

18.10.1. The amount of the increase or decrease in the Contract Price from a Change Order, if any, will be determined in one or more of the following ways as applicable to a specific situation and at Judicial Council's discretion:

18.10.1.1. Judicial Council acceptance of a PCO;

18.10.1.2. By agreement between Judicial Council and Contractor.

18.10.1.3. By unit prices or alternates contained in Contractor's original bid. If the Bid for the Work included proposal(s) for Alternate Bid Item(s), during Contractor's performance of the Work, Judicial Council may elect to add or delete any Alternate Bid Items. If Judicial Council elects to add or delete an Alternate Bid Item(s) pursuant to the foregoing, the cost or credit for that Alternate Bid Item(s) will be as set forth in Contractor's Bid, at Judicial Council's discretion. If any Alternate Bid Item is added or deleted from the Work pursuant to the foregoing, the Contract Time will be adjusted by the number of Days allocated for the added or deleted Alternate Bid Item in the Contract Documents; if Days are not allocated for any Alternate Bid Item added or deleted pursuant to the foregoing, the Contract Time will be equitably adjusted.

18.10.1.4. By Judicial Council, based upon actual and necessary costs incurred by Contractor as determined by Judicial Council on the basis of Contractor's records. Promptly upon determining the extent of adjustment to the Contract Price, Judicial Council will notify Contractor in writing of the same; Contractor will be deemed to have accepted Judicial Council's determination of the amount of adjustment to the Contract Price on account of a Change to the Work unless Contractor notifies Judicial Council, in writing, not more than **FIFTEEN (15)** Days from the date of Judicial Council's written notice, of any objection to Judicial Council's determination. Failure of Contractor to timely notify Judicial Council of Contractor's objections to Judicial Council's determination of the extent of adjustment to the Contract Price will be deemed Contractor's acceptance of Judicial Council's determination and a waiver of any right or basis of Contractor to thereafter protest or otherwise object to Judicial Council's determination. Notwithstanding any objection of Contractor to Judicial Council's determination of the extent of any adjustment to the Contract Price pursuant to this provision, Contractor must diligently proceed to perform and complete any such change.

18.11. Deductive Change Orders.

If Contractor offers a proposed amount for a deductive Change Order(s), Contractor will include a minimum of six percent (6%) total overhead and profit to be deducted with the amount of the work of the Change Order(s). If Subcontractor work is involved, Subcontractors will also include a

minimum of six percent (6%) overhead and profit to be deducted with the amount of its deducted work, for a total minimum of twelve percent (12%) total overhead and profit to be deducted. Any deviation from this provision will not be allowed. Any deductive Change Order will include all amounts related to the direct labor, Subcontractor insurance and bond costs or Contractor provided contractor default insurance protection in lieu of Subcontractor bonds, materials, and supervision.

18.12. Discounts, Rebates and Refunds.

For purposes of determining the cost, if any, of any change, addition, or omission to the Work hereunder, all trade discounts, rebates, refunds, and all returns from the sale of surplus materials and equipment will accrue and be credited to Contractor, and Contractor will make provisions so that such discounts, rebates, refunds, and returns may be secured, and the amount thereof will be allowed as a reduction of Contractor's cost in determining the actual cost of construction for purposes of any change, addition, or omission in the Work as provided herein.

18.13. Accounting Records.

With respect to portions of the Work performed by Change Orders, Unilateral Change Orders, or Field Orders, Contractor must keep and maintain cost-accounting records satisfactory to Judicial Council, which will be available to Judicial Council on the same terms as any other books and records Contractor is required to maintain pursuant to the Contract Documents.

18.14. Notice Required.

If Contractor is seeking an adjustment in the Contract Price, or any extension in the Contract Time for Completion, it must notify Judicial Council pursuant to the provisions of the Contract Documents. No adjustment in the Contract Price or Contract Time will be considered unless made in accordance with the Contract Documents. Contractor must proceed to execute the Work even though the adjustment may not have been agreed upon. Any change in the Contract Price or extension of the Contract Time resulting from such contract adjustment will only be authorized by a Change Order.

18.15. Applicability to Subcontractors.

All requirements under this Article are equally applicable to Change Orders, Unilateral Change Orders, or Field Orders issued to Subcontractors by Contractor to the extent required by the Contract Documents.

18.16. Alteration to Change Order Language.

Contractor shall not alter Change Orders or reserve time in Change Orders. Contractor shall execute finalized Change Orders and proceed under the provisions herein with proper notice.

18.17. Failure of Contractor to Execute Change Order.

It shall be a breach of the Contract if Contractor fails to execute a Change Order when Contractor agrees with the addition and/or deletion of the Work in that Change Order.

19. REQUEST FOR INFORMATION

19.1. Any Request for Information must reference all applicable Contract Document(s), including Specification section(s), detail(s), page number(s), drawing number(s), and sheet number(s), etc. Contractor shall make suggestions and interpretations of the issue raised by each RFI. An RFI cannot modify the Contract Price, Contract Time, or the Contract Documents.

- 19.2.** Contractor will be liable for all costs incurred by Judicial Council as a result of processing, reviewing, evaluating and responding to any RFI, including without limitation, fees of the Architect and any other design consultant to the Architect or Judicial Council, that Judicial Council reasonably determines:
- 19.2.1. Does not reflect adequate or competent supervision or coordination by Contractor or any Subcontractor;
 - 19.2.2. Does not reflect Contractor's adequate or competent knowledge of the requirements of the Work or the Contract;
 - 19.2.3. Requests an interpretation or decision of a matter where the information sought is equally available to Contractor; and/or
 - 19.2.4. Is not justified for any other reason.
- 19.3.** Prior to submitting the RFI, Contractor will diligently review the Contract Documents for information responsive to the RFI, including information incorporated by reference. Contractor should not issue an RFI regarding information contained in or inferable from the Contract Documents, including information incorporated by reference. An RFI is invalid if the RFI response is contained in or inferable from the Contract Documents.
- 19.4.** Contractor is responsible for preparing and submitting each RFI so as to not cause delay to the progress of the Work nor to cause any impact to Contractor's labor productivity. An RFI may be considered untimely if not submitted within **FORTY-EIGHT (48)** hours of receipt from a Contractor's subcontractor. Untimely submission of any RFI will preclude Contractor from asserting any claims for delay or for labor impact against Judicial Council.
- 19.5.** If Contractor fails to timely notify the Architect in writing of any conditions encountered and Contractor proceeds to perform any portion of the Work containing or affected by such conditions Contractor will bear all costs associated with or required to correct, remove, or otherwise remedy any portion of the Work affected thereby without adjustment of the Contract Time or the Contract Price. In requesting information of Judicial Council to address and resolve any conditions, Contractor must act with promptness in submitting any written request so as to allow Judicial Council a reasonable period of time to review, evaluate and respond to any request, taking into account the then current status of the progress and completion of the Work and the actual or potential impact of any conditions upon the completion of the Work within the Contract Time. The Contract Time will not be subject to adjustment in the event that Contractor fails to timely request information from Judicial Council.

20. PAYMENTS

20.1. Contract Price.

The Contract Price is stated in the Agreement and, including authorized adjustments, is the total amount payable by Judicial Council to Contractor for performance of the Work pursuant to the Contract Documents.

20.2. Applications for Progress Payments.

20.2.1. Procedure for Applications for Progress Payments.

20.2.1.1. *Application for Progress Payment.*

- 20.2.1.1.1. Not before the **FIFTH (5TH)** day of each calendar month during the progress of the Work, Contractor must submit to Judicial Council and the Architect an itemized Application for Payment for Work completed in accordance with the Schedule of Values. The Application for Payment will be notarized, if required, and supported by the following or each portion thereof unless waived by Judicial Council in writing:
- 20.2.1.1.1.1. The amount paid to the date of the Application for Payment to Contractor, to all its Subcontractors, and all others furnishing labor, material, or equipment for its Contract;
 - 20.2.1.1.1.2. The amount being requested by the Application for Payment by Contractor on its own behalf and separately stating the amount requested on behalf of each of the Subcontractors and all others furnishing labor, material, and equipment under the Contract;
 - 20.2.1.1.1.3. The balance that will be due to each of the entities after payment is made;
 - 20.2.1.1.1.4. A certification that the As-Built Drawings and annotated Specifications are current;
 - 20.2.1.1.1.5. An itemized breakdown of Work performed;
 - 20.2.1.1.1.6. An updated and acceptable Construction Schedule in conformance with the provisions herein;
 - 20.2.1.1.1.7. The additions to and subtractions from the Contract Price and Contract Time;
 - 20.2.1.1.1.8. A total of the retention held;
 - 20.2.1.1.1.9. The material invoices, evidence of equipment purchases, rentals, and other support and details of cost as Judicial Council may require from time to time;
 - 20.2.1.1.1.10. The percentage of completion of Contractor's Work by line item;
 - 20.2.1.1.1.11. The Schedule of Values updated from the preceding Application for Payment;
 - 20.2.1.1.1.12. A duly completed and executed conditional waiver and release upon progress payment compliant with Civil Code section 8132 from each subcontractor of any tier and supplier to be paid from the current progress payment;

20.2.1.1.1.13. A duly completed and executed unconditional waiver and release upon progress payment compliant with Civil Code section 8134 from each subcontractor of any tier and supplier that was paid from the previous progress payment; and

20.2.1.1.1.14. A certification by Contractor of the following:

The Contractor warrants title to all Work performed as of the date of this payment application. The Contractor further warrants that all Work performed as of the date of this payment application is free and clear of liens, claims, security interests, or encumbrances in favor of Contractor, Subcontractors, material and equipment suppliers, workers, or other persons or entities making a claim by reason of having provided labor, materials, and equipment relating to the Work, except those of which Judicial Council has been informed.

20.2.1.1.1.15. If requested by Judicial Council, a third party, or as required by the California Department of Industrial Relations, all requested or required CPRs for each journeyman, apprentice, worker, or other employee employed by Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment.

20.2.1.1.2. Except as expressly provided for herein, no payments will be made by Judicial Council on account of any item of the Work, including without limitation, materials or equipment that, at the time of Contractor's submittal of an Application for Progress Payment, has/have not been incorporated into and made a part of the Work.

20.2.1.1.3. Contractor is subject to the False Claims Act set forth under Government Code section 12650 et seq., for information provided with any Application for Progress Payment.

20.2.2. Prerequisites for Progress Payments.

20.2.2.1. *First Payment Request.* The following items, if applicable, must be completed before Judicial Council will accept and/or process Contractor's first payment request:

20.2.2.1.1. Installation of the Project sign;

20.2.2.1.2. Installation of field office;

20.2.2.1.3. Installation of temporary facilities and fencing;

20.2.2.1.4. Schedule of Values;

20.2.2.1.5. Proposed Construction Schedule;

- 20.2.2.1.6. Schedule of unit prices, if applicable;
- 20.2.2.1.7. Submittal Schedule;
- 20.2.2.1.8. Receipt by Architect of all submittals due as of the date of the payment application;
- 20.2.2.1.9. Copies of necessary permits;
- 20.2.2.1.10. Copies of authorizations and licenses from governing authorities;
- 20.2.2.1.11. Initial progress report;
- 20.2.2.1.12. Surveyor qualifications;
- 20.2.2.1.13. Written acceptance of Judicial Council's survey of rough grading, if applicable;
- 20.2.2.1.14. List of all Subcontractors, with names, license numbers, telephone numbers, and Scope of Work;
- 20.2.2.1.15. All bonds and insurance endorsements; and
- 20.2.2.1.16. Resumes of Contractor's project manager, and if applicable, job site secretary, record documents recorder, and job site superintendent.

20.2.2.2. *Second Payment Request.* Judicial Council will not process the second payment request until and unless all submittals and Shop Drawings have been accepted for review by the Architect.

20.2.2.3. *No Waiver of Criteria.* Any payment made to Contractor where criteria set forth herein have not been met will not constitute a waiver of said criteria by Judicial Council. The approval of any Application for Progress Payment or the disbursement of any Progress Payment to Contractor will not be deemed nor constitute Acceptance of defective Work or Work not in conformity with the Contract Documents. Instead, such payment will be construed as a good faith effort by Judicial Council to resolve differences so Contractor may pay its Subcontractors and suppliers. Contractor agrees that failure to submit such items may constitute a material breach of the Contract by Contractor and may subject Contractor to termination.

20.3. Progress Payments.

20.3.1. Judicial Council's Approval of Application for Payment.

20.3.1.1. Upon receipt of an Application for Payment, Judicial Council will act in accordance with the following:

- 20.3.1.1.1. Each Application for Payment will be reviewed by Judicial Council as soon as practicable after receipt for the purpose of determining that the Application for Payment is a proper Application for Payment.

20.3.1.1.2. Any Application for Payment determined not to be a proper Application for Payment suitable for payment will be returned to Contractor as soon as practicable, but in no event later than any time prescribed by law, after receipt. An Application for Payment returned pursuant to this paragraph will be accompanied by a document setting forth in writing the reasons why the Application for Payment is rejected. Thereafter, Contractor shall have three (3) Days to revise and resubmit the Application for Payment. If Contractor fails to resubmit the Application for Payment, Judicial Council may issue a payment in an amount Judicial Council determines due to Contractor.

20.3.1.1.3. An approved Application for Payment will be considered payable if funds are available for payment after the deduction of amounts allowed by law and/or pursuant to the section herein entitled "Decisions to Withhold Payment."

20.3.1.2. Judicial Council's review of Contractor's Application for Payment will be based on Judicial Council's and the Architect's observations at the Site and the data comprising the Application for Payment that the Work has progressed to the point indicated and that, to the best of Judicial Council's and the Architect's knowledge, information, and belief, the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject to:

20.3.1.2.1. Observation of the Work for general conformance with the Contract Documents,

20.3.1.2.2. Results of subsequent tests and inspections,

20.3.1.2.3. Minor deviations from the Contract Documents correctable prior to Completion, and

20.3.1.2.4. Specific qualifications expressed by the Architect.

20.3.1.3. Judicial Council's approval of each Application for Payment will be based on Contractor complying with all requirements for a fully complete and valid Application for Payment.

20.3.2. Payments to Contractor.

20.3.2.1. After Judicial Council's receipt of each undisputed and properly submitted Application for Payment, Contractor will be paid a sum equal to ninety-five percent (95%) of the value of the Work performed (as verified by Architect and Inspector and certified by Contractor) up to the last day of the previous month, less the aggregate of previous payments and any amount to be withheld. The value of the Work completed must be Contractor's best estimate. No inaccuracy or error in Contractor's estimate will release Contractor, or any Surety upon any bond, from damages arising from such Work, or from Judicial Council's right to enforce each and every provision of the Contract, and Judicial Council will have the right subsequently to correct any error made in any estimate for payment.

20.3.2.2. Judicial Council will withhold five percent (5%) retention from all Progress Payments.

20.3.2.3. Judicial Council may withhold an amount in excess of five percent (5%) from all Progress Payments if the Project is determined to be “substantially complex.”

20.3.2.4. The Contractor will not be entitled to have any payment requests processed or be entitled to have any payment made for Work performed, so long as any lawful or proper direction given by Judicial Council concerning the Work, or any portion thereof, remains incomplete.

20.3.2.5. Judicial Council will accept a monthly progress payment for Work completed during the prior calendar month, less the deduction of amounts allowed by law and/or pursuant to the section herein entitled “Decisions to Withhold Payment.”

20.3.2.6. Payment will be made by Judicial Council to Contractor at the address specified on the invoice.

20.3.3. No Waiver. No payment by Judicial Council hereunder will imply that Judicial Council has inspected, approved, or accepted any part of the Work. Notwithstanding any payment, Judicial Council may enforce every provision of the Contract. Judicial Council may correct or require correction of any error subsequent to any payment.

20.3.4. Warranty of Title.

20.3.4.1. If a lien or a claim based on a stop notice or stop payment notice of any nature should at any time be filed against the Work or any Judicial Council property, by any entity that has supplied material or services at the request of Contractor, Contractor and Contractor’s Surety will promptly, on demand by Judicial Council and at Contractor’s and Surety’s own expense, take any and all action necessary to cause any such lien or a claim based on a stop notice or stop payment notice to be released or discharged immediately therefrom.

20.3.4.2. If Contractor fails to furnish to Judicial Council within **TEN (10)** Days after demand by Judicial Council, satisfactory evidence that a lien or a claim based on a stop notice or stop payment notice has been so released, discharged, or secured, Judicial Council may discharge such indebtedness and deduct the amount required therefore, together with any and all losses, costs, damages, and attorney’s fees and expense incurred or suffered by Judicial Council from any sum payable to Contractor pursuant to the Contract.

20.4. Decisions to Withhold Payment.

20.4.1. Reasons to Withhold Payment. Judicial Council may withhold payment in whole, or in part, to the extent reasonably necessary to protect Judicial Council from losses caused by Contractor or Subcontractors. Judicial Council may withhold payment for loss because of, but not limited to:

20.4.1.1. Defective Work not remedied within the time prescribed for cure or remedy as set forth in the Contract Documents upon written notice to Contractor;

20.4.1.2. Stop notices, stop payment notices or other liens served upon Judicial Council as a result of the Project;

20.4.1.3. Liquidated Damages assessed against Contractor;

- 20.4.1.4. The cost to complete the Work if there exists reasonable doubt that the Work can be completed for the unpaid balance of the Contract Price or by the Completion Date;
- 20.4.1.5. Damage to Judicial Council or other contractor(s);
- 20.4.1.6. Unsatisfactory performance of the Work by Contractor;
- 20.4.1.7. Failure to store and properly secure materials;
- 20.4.1.8. Failure of Contractor to submit, on a timely basis, proper, sufficient, and acceptable documentation required by the Contract Documents, including, without limitation, a Construction Schedule, Schedule of Submittals, Schedule of Values, Monthly Progress Schedules, Shop Drawings, Product Data and samples, Proposed product lists, executed Change Orders, and/or verified reports;
- 20.4.1.9. Failure of Contractor to maintain As-Built Drawings;
- 20.4.1.10. Erroneous estimates by Contractor of the value of the Work performed, or other false statements in an Application for Payment;
- 20.4.1.11. Unauthorized deviations from the Contract Documents;
- 20.4.1.12. Failure of Contractor to perform the Work in a timely manner in compliance with the Construction Schedule, established progress schedules, and/or completion dates;
- 20.4.1.13. The failure to provide to the DIR, or Judicial Council (if requested by Judicial Council), certified payroll records acceptable to either Party for each journeyman, apprentice, worker, or other employee employed by Contractor and/or each Subcontractor in connection with the Work for the period of the Application for Payment;
- 20.4.1.14. Failure to properly pay prevailing wages as defined in Labor Code sections 1720 et seq. and/or failure to comply with any other Labor Code requirements;
- 20.4.1.15. Failure to properly maintain or clean up the Site;
- 20.4.1.16. Failure to timely indemnify, defend or hold harmless Judicial Council;
- 20.4.1.17. Any payments due to Judicial Council, including but not limited to payments for failed tests, utilities changes, or permits;
- 20.4.1.18. Failure to pay Subcontractor(s) or supplier(s) as required by law and by the Contract Documents;
- 20.4.1.19. Failure to pay any royalty, license or similar fees;
- 20.4.1.20. Failure of Contractor to submit on a timely basis all Closeout Documentation in a manner and form that is proper, sufficient, and reasonably acceptable to Judicial Council, and to not cause a delay in the Completion or approval of the Project;

- 20.4.1.21. 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 Contractor or Judicial Council;
- 20.4.1.22. Failure to properly implement any CEQA mitigation measures as required by the Contract Documents;
- 20.4.1.23. Payment is delayed due to an audit inquiry by the State or any Authority Having Jurisdiction related to the Project;
- 20.4.1.24. Contractor is otherwise in breach, default or in substantial violation of any provision of the Contract;
- 20.4.1.25. For any other reason permitted by law or the Contract Documents.

20.4.2. Reallocation of Withheld Amounts.

20.4.2.1. Judicial Council may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, Judicial Council will make such payments on behalf of Contractor. If any payment is so made by Judicial Council, then that amount is considered a payment made pursuant to the Contract and Judicial Council will not be liable to Contractor for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. Judicial Council will render Contractor an accounting of funds disbursed on behalf of Contractor.

20.4.2.2. If Contractor defaults or neglects to perform the Work in accordance with the Contract Documents or fails to perform any provision thereof, Judicial Council may, after **FORTY-EIGHT (48)** hours written notice to Contractor and, without prejudice to any other remedy, make good such deficiencies. Judicial Council will reduce the Contract Price by the cost of making good such deficiencies and withhold those costs from any sum owed to Contractor, or invoice Contractor for any such costs if the remaining unpaid Contract Price is not sufficient to cover the cost of correction. If Judicial Council determines that it is inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract provisions, an equitable reduction in the Contract Price (of at least one hundred twenty-five percent (125%) of the estimated reasonable value of the nonconforming Work) will be made therefor.

20.4.3. Payment After Cure. When Contractor cures the grounds for declining approval, payment is made only for amounts so withheld. No interest will be paid on any retention or amounts withheld due to the failure of Contractor to perform in accordance with the terms and conditions of the Contract Documents.

20.5. Subcontractor Payments.

20.5.1. Payments to Subcontractors. No later than **SEVEN (7)** Days after receipt of payment from the Judicial Council, or as consistent with any statute applicable to the Work, Contractor must pay to each Subcontractor, out of the amount paid to Contractor on account of such Subcontractor's portion of the Work, the amount to which said Subcontractor is entitled. Contractor must, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to its sub-subcontractors in a similar manner.

- 20.5.2. No Obligation of Judicial Council for Subcontractor Payment. Judicial Council will have no obligation to pay, or to see to the payment of, money to a Subcontractor except as may otherwise be required by law.
- 20.5.3. Joint Checks. Judicial Council may, in its sole discretion, if necessary for the protection of Judicial Council, issue joint checks made payable to Contractor and Subcontractors and material or equipment suppliers. The joint check payees are responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event will any joint check payment be construed to create any contract between Judicial Council and a Subcontractor of any tier, any obligation from Judicial Council to such Subcontractor, or rights in such Subcontractor against Judicial Council.

21. COMPLETION OF THE WORK

21.1. **Completion.**

- 21.1.1. The Project may only be accepted through Judicial Council's Acceptance of the Work.
- 21.1.2. Judicial Council will provide Acceptance of the Project and may have a Notice of Completion recorded when Project Completion has been achieved in accordance with the Contract Documents and to the satisfaction of Judicial Council. For purposes of the timely filing of Stop Payment Notices, Completion is defined in California Civil Code section 9200, et seq.
- 21.1.3. There is no "substantial completion" for this Project. Notwithstanding, Judicial Council, at its sole option, may Accept the Project and record a Notice of Completion when Project Completion has been completed to the satisfaction of Judicial Council, except for minor corrective items, as distinguished from incomplete items. If Contractor fails to complete all minor corrective items within **THIRTY-FIVE (35)** Days after the date of Judicial Council's acceptance of the Project, Judicial Council will withhold from the final payment one hundred fifty percent (150%) of an estimate of the amount sufficient to complete the corrective items, as determined by Judicial Council, until the item(s) are completed.
- 21.1.4. At the end of the **THIRTY-FIVE (35)** Day period, if there are any items remaining to be corrected, Judicial Council may elect to proceed as provided herein related to adjustments to Contract Price, and/or Judicial Council's right to perform the Work of Contractor.

21.2. **Closeout Procedures.**

- 21.2.1. Punch List. Contractor will notify the Architect when Contractor considers the Work complete. Upon notification, Architect will prepare the Punch List. Contractor and/or its Subcontractors will proceed promptly to complete and correct items on the Punch List. Failure to include an item on Punch List does not alter the responsibility of Contractor to complete all Work in accordance with the Contract Documents.
- 21.2.2. Closeout Requirements.
- 21.2.2.1. *Utility Connections.* Buildings must be connected to water, gas, sewer, and electric services, complete and ready for use. Service connections must be made and existing services reconnected.

21.2.2.2. *As-Built Drawings.*

- 21.2.2.2.1. In addition to its requirement to provide monthly As-Built Drawings to Judicial Council, Contractor must also provide Judicial Council with a final set of As-Built Drawings, sometimes referred to as “Record Drawings,” showing all of the Work as actually constructed upon Completion of the Project as indicated in the Specifications.
- 21.2.2.2.2. Contractor is liable and responsible for any inaccuracy in the As-Built Drawings, even if an inaccuracy becomes evident after the Project is Complete.
- 21.2.2.2.3. Upon Completion of the Work and as a condition precedent to approval of final payment, Contractor must obtain the Inspector’s approval of the final set of As-Built Drawings.

21.2.2.3. *Operations & Maintenance Manuals.* Contractor must prepare, and deliver to Judicial Council, all operation and maintenance manuals and data as indicated in the Specifications.

21.2.2.4. *Closeout Documentation.* Contractor must provide Judicial Council with all Closeout Documentation. The term “Closeout Documentation” will include the following, without limitation:

- 21.2.2.4.1. A full set of final As-Built Drawings, as further defined herein.
- 21.2.2.4.2. A full set of Record Drawings provided in BIM and AutoCAD files generated from the as-built drawings.
- 21.2.2.4.3. All Operations & Maintenance Manuals and information, as further defined herein.
- 21.2.2.4.4. All Warranties, as further defined herein.
- 21.2.2.4.5. All verified report(s) for all scope(s) of Work as required for Completion of the Project.

21.3. Final Inspection.

- 21.3.1. Contractor must comply with Punch List procedures as provided herein and maintain the presence of Contractor’s superintendent and Judicial Council Project Manager until the Punch List is complete to ensure proper and timely completion of the Punch List. Under no circumstances will Contractor demobilize its forces prior to completion of the Punch List. Upon receipt of Contractor’s written notice that all of the Punch List items have been fully completed and the Work is ready for final inspection and acceptance, Architect and Project Inspector will inspect the Work and will submit to Contractor and Judicial Council a final inspection report noting the Work, if any, required in order to complete in accordance with the Contract Documents. Absent unusual circumstances, this report will consist of the Punch List items not yet satisfactorily completed.
- 21.3.2. Upon Contractor's completion of all items on the Punch List and any other uncompleted portions of the Work, Contractor must notify Judicial Council, Judicial Council Project Manager, and Architect, who will again inspect such Work. If the Architect finds the Work complete and acceptable under the Contract Documents, the Architect will notify

Contractor, who will then jointly submit to the Architect and Judicial Council its final Application for Payment.

21.3.3. Final Inspection Requirements.

21.3.3.1. Before calling for final inspection, Contractor must determine that the following have been performed consistent with the Contract Documents:

- 21.3.3.1.1. The Work has been completed.
- 21.3.3.1.2. All life safety items are completed and in working order.
- 21.3.3.1.3. Mechanical and electrical Work are complete and tested, fixtures are in place, connected, and ready for tryout.
- 21.3.3.1.4. Electrical circuits scheduled in panels and disconnect switches labeled.
- 21.3.3.1.5. Painting and special finishes complete.
- 21.3.3.1.6. Doors complete with hardware, cleaned of protective film, relieved of sticking or binding, and in working order.
- 21.3.3.1.7. Tops and bottoms of doors sealed.
- 21.3.3.1.8. Floors waxed and polished as specified.
- 21.3.3.1.9. Broken glass replaced and glass cleaned.
- 21.3.3.1.10. Grounds cleared of Contractor's equipment, raked clean of debris, and trash removed from Site.
- 21.3.3.1.11. Work cleaned, free of stains, scratches, and other foreign matter, all damaged and broken material replaced.
- 21.3.3.1.12. Finished and decorative work have marks, dirt, and superfluous labels removed.
- 21.3.3.1.13. Final cleanup.

21.4. Costs of Multiple Inspections / Early Retention Release.

More than two (2) requests of Judicial Council to make a final inspection will be considered an additional service of Judicial Council, Architect, Construction Manager, and/or Project Inspector, and all subsequent costs will be invoiced to Contractor and if funds are available, withheld from remaining payments. Notwithstanding anything herein, and upon the Director's Approval and the Surety's written consent, with respect to specific Punch List Items, Judicial Council may, prior to acceptance, direct Contractor to complete remaining Punch List items, pay the retention and withhold one hundred 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.

21.5. Partial Occupancy or Use Prior to Completion.

- 21.5.1. Judicial Council may occupy or use, or allow the Court to do the same, any completed or partially completed portion of the Work at any stage. Neither Judicial Council's final Acceptance of the Work for the Project, the making of Final Payment, any provision in Contract Documents, nor the use or occupancy of the Work, in whole or in part, by Judicial Council will constitute Acceptance of the Work not in accordance with the Contract Documents nor relieve Contractor or Contractor's Performance Bond Surety from liability with respect to any warranties or responsibility for faulty or defective Work or materials, equipment and workmanship incorporated therein. Judicial Council and Contractor will establish by Change Order, prior to occupancy, the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Work, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract Documents. Any dispute as to responsibilities will be resolved pursuant to the Claims provisions herein, with the added provision that during the dispute process, Judicial Council will have the right to occupy or use any portion of the Work that it needs or desires to use.
- 21.5.2. If Judicial Council chooses to take occupancy prior to Completion of the Work, the Guarantee and Warranty period will commence upon the date that Judicial Council occupies the Project **only** for system(s) and item(s) that were completed and fully operational in the portion of the Project occupied, at Judicial Council's reasonable determination and as set forth in writing by the Parties, 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 will continue to be the date indicated in the guarantee/Warranty section of these General Conditions.
- 21.5.3. The following conditions must be satisfied prior to Judicial Council and/or Court occupying all or any part of the Project prior to Completion of the Work:
- 21.5.3.1. 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;
- 21.5.3.2. Contractor has issued a letter of confirmation to 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 the Contract Documents;
- 21.5.3.3. There are no encumbrances registered or recorded on the Site or any part of the Project;
- 21.5.3.4. Contractor 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);
- 21.5.3.5. A temporary or final certificate of occupancy has been issued for the Project by the Authorities Having Jurisdiction;
- 21.5.3.6. The Project Inspector has issued their final verified report; and

- 21.5.3.7. All other Authorities 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.
- 21.5.4. For purposes of this section, in determining whether the Project or project equipment is “ready for use,” the following factors will be considered:
- 21.5.4.1. Requirements of the Contract Documents are satisfied;
- 21.5.4.2. Ability of public to access the Project, and mitigation of the risk of injury to members of the public and all Project users;
- 21.5.4.3. Security systems set forth in the Contract Documents are operational and commissioned;
- 21.5.4.4. Any apparent hazard or nuisance is mitigated;
- 21.5.4.5. The need to conduct Court operations in a reasonably quiet and stable environment free from dust, chemical, smoke, and other health, and safety concerns;
- 21.5.4.6. Proper installation and functionality of all Project equipment; and
- 21.5.4.7. 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.
- 21.5.5. Immediately prior to partial occupancy or use, Judicial Council, Contractor, and the Architect will jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.
- 21.5.6. Unless otherwise agreed upon, partial or entire occupancy or use of a portion or portions of the Work will not constitute beneficial occupancy or Acceptance of the Work not complying with the requirements of the Contract Documents.

22. FINAL PAYMENT AND RETENTION

22.1. Final Payment.

- 22.1.1. After Acceptance of the Work by Judicial Council, Contractor will submit a final Application for Payment to Judicial Council for any sum due to Contractor including retention. Upon receipt and Approval of a valid and final Application for Payment, the Architect will issue a final Certificate of Payment or similar document indicating Architect’s agreement that the Project has reached Completion. Judicial Council will thereupon jointly inspect the Work and either Accept the Work as complete or notify the Architect and Contractor in writing of reasons why the Work has not reached Completion to the satisfaction of Judicial Council.
- 22.1.2. Upon Acceptance of the Work by Judicial Council (that, absent unusual circumstances, will occur when the Punch List items have been satisfactorily completed), Judicial Council may record a Notice of Completion with the County Recorder, and Contractor will, upon receipt of final payment from Judicial Council, pay all the amount(s) due to its Subcontractors.

- 22.1.3. If Contractor owes any amount to Judicial Council, the Final Payment will serve as an invoice to Contractor.
- 22.1.4. If any Progress Payments were not authorized, Contractor will submit a final Application for Payment, and Judicial Council will pay Contractor, one hundred percent (100%) of the sum owing pursuant to the Contract after Acceptance of the Work and Contractor's compliance with the Prerequisites for Final Payment herein below.

22.2. Prerequisites for Final Payment.

The following conditions must be fulfilled prior to Final Payment:

- 22.2.1. A full and final waiver or release of all liens, stop notices and stop payment notices in connection with the Work will be submitted by Contractor, including a release of stop notice or stop payment notice in recordable form, together with (to the extent permitted by law) a copy of the full and final release of all stop notice or stop payment notice rights.
- 22.2.2. A duly completed and executed conditional waiver and release upon final payment compliant with Civil Code section 8136 from each subcontractor of any tier and supplier to be paid from the current progress payment.
- 22.2.3. A duly completed and executed unconditional waiver and release upon final payment compliant with Civil Code section 8138 from each subcontractor of any tier and supplier that was paid from the previous progress payment.
- 22.2.4. Contractor must have made all corrections to the Work that are required to remedy any defects therein, to obtain compliance with the Contract Documents or any requirements of applicable codes and ordinances, or to fulfill any of the orders or directions of Judicial Council required under the Contract Documents.
- 22.2.5. Each Subcontractor must have delivered to Contractor all written guarantees, warranties, applications, and bonds required by the Contract Documents for its portion of the Work.
- 22.2.6. Contractor must have completed all requirements set forth under "Closeout Procedures," including, without limitation, submission of an approved set of complete As-Built Drawings.
- 22.2.7. Architect must have issued its written approval that final payment can be made.
- 22.2.8. Contractor must have delivered to Judicial Council all manuals and materials required by the Contract Documents.
- 22.2.9. Contractor must have completed final clean up.

22.3. Retention.

- 22.3.1. The retention, less any amounts disputed by Judicial Council or that Judicial Council has the right to withhold pursuant to provisions herein, will be paid:
 - 22.3.1.1. After approval of Judicial Council by the Architect's Certificate of Payment;
 - 22.3.1.2. After the satisfaction of the conditions set forth herein;
 - 22.3.1.3. Within **SIXTY (60)** Days after Completion; and

22.3.1.4. No earlier than **THIRTY-FIVE (35)** Days of the recording of the Notice of Completion by Judicial Council, if a Notice of Completion is recorded by Judicial Council.

22.3.2. No interest will be paid on any retention, or on any amounts withheld due to a failure of Contractor to perform, in accordance with the terms and conditions of the Contract Documents.

22.4. Claims Asserted After Final Payment.

Any lien, stop payment notice or other claim filed or asserted after Contractor's acceptance of the Final Payment by any Subcontractor, of any tier, laborer, material supplier or others in connection with or for Work performed under the Contract Documents is the sole and exclusive responsibility of Contractor pursuant to the indemnification obligations of the Contract Documents. In the event any lien, stop payment notice or other claim of any Subcontractor, laborer, material supplier or others performing Work under the Contract Documents remain unsatisfied after Final Payment is made, Contractor will refund to Judicial Council all monies that Judicial Council may pay or be compelled to pay in discharging any lien, stop payment notice or other claim, including, without limitation all costs and reasonable attorneys' fees incurred by Judicial Council in connection therewith.

23. TERMINATION AND SUSPENSION

23.1. Judicial Council's Right to Terminate for Cause.

23.1.1. Grounds for Termination. Judicial Council, in its sole discretion, may terminate the Contract based upon the following:

- 23.1.1.1. Contractor 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
- 23.1.1.2. Contractor fails to complete said Work within the time specified or any extension thereof, or
- 23.1.1.3. Contractor persistently fails or refuses to perform Work or provide material of sufficient quality that complies with the Contract Documents; or
- 23.1.1.4. Contractor files a petition for relief as a debtor, or a petition is filed against Contractor without its consent, and the petition is not dismissed within **SIXTY (60)** Days; or
- 23.1.1.5. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency; or
- 23.1.1.6. Contractor persistently or repeatedly refuses or 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
- 23.1.1.7. Contractor fails to make prompt payment to Subcontractors, or for material, or for labor; or
- 23.1.1.8. Contractor persistently disregards laws, or ordinances, or instructions of Judicial Council; or

23.1.1.9. Contractor 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

23.1.1.10. Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of the Contract.

23.1.2. Notification of Termination.

23.1.2.1. Upon the occurrence, in Judicial Council's sole determination, of any of the above conditions, Judicial Council may, without prejudice to any other right or remedy, serve written notice upon Contractor and its Surety of Judicial Council's termination of the Contract and/or Contractor's right to perform the Work of the Contract. This notice will contain the reasons for termination. Unless, within **FIVE (5)** Days after the service of the notice, any and all grounds for termination cease, or arrangement satisfactory to Judicial Council for the correction of the grounds for termination are made, the Contract and/or Contractor's right to perform the Work will cease and terminate. Upon termination, Contractor will not be entitled to receive any further payment until the entire Work is finished.

23.1.2.2. Upon termination, Judicial Council may immediately serve written notice of tender upon Surety whereby Surety will have the right to takeover and perform the Work only if Surety:

23.1.2.2.1. Within **THREE (3)** Days after service upon it of the notice of tender, gives Judicial Council written notice of Surety's intention to takeover and perform the Work; and

23.1.2.2.2. Commences performance of the Work within **SEVEN (7)** Days from date of serving of its notice to Judicial Council.

23.1.2.2.3. 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 Contractor and/or its Surety. Contractor and/or its Surety will be liable to Judicial Council for any excess cost or other damages Judicial Council incurs thereby. Time is of the essence in the Contract. If 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, plans, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.

23.1.2.2.4. If Surety Completes the Project, the Surety will be subrogated to money due under the Contract and to money which will become due in the course of completing the Project by the Surety, to the extent provided by law.

23.1.2.3. *Conversion to Termination for Convenience.* In the event the Contract is terminated under this "Judicial Council's Right to Terminate Contract for Cause" section and it is finally determined by an arbitrator, court, jury or other tribunal having jurisdiction, for any reason, that Contractor was not in default under the provisions hereof or that Judicial Council's exercise of its rights under this section was defective, deficient, ineffective, invalid or improper for any reason, the

termination will be deemed a termination for convenience of Judicial Council under the “Termination of Contractor for Convenience” section herein and thereupon, the rights and obligations of Judicial Council and Contractor will be determined in accordance with the “Termination of Contractor for Convenience” section herein.

23.1.3. Effect of Termination.

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

23.1.3.2. *No Allowances or Compensation for Loss of Anticipated Profit.* If the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by Contractor or any impact or impairment of Contractor’s bonding capacity.

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

23.1.3.4. *Cumulative Remedies.* The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to Judicial Council.

23.2. Emergency Termination of Public Contracts Act of 1949.

23.2.1. The Contract is subject to termination as provided by Government Code sections 4410 and 4411, being a portion of the Emergency Termination of Public Contracts Act of 1949.

23.2.1.1. Government Code section 4410 states:

In the event a national emergency occurs, and public work, being performed by contract, is stopped, directly or indirectly, because of the freezing or diversion of materials, equipment or labor, as the result of an order or a proclamation of the

President of the United States, or of an order of any federal authority, and the circumstances or conditions are such that it is impracticable within a reasonable time to proceed with a substantial portion of the work, then the public agency and the contractor may, by written agreement, terminate said contract.

23.2.1.2. Government Code section 4411 states:

Such an agreement shall include the terms and conditions of the termination of the contract and provision for the payment of compensation or money, if any, which either Party shall pay to the other or any other person, under the facts and circumstances in the case.

23.2.2. Compensation to Contractor will be determined at the sole discretion of Judicial Council on the basis of the reasonable value of the Work done, including preparatory work. As an exception to the foregoing and at Judicial Council's discretion, in the case of any fully completed separate item or portion of the Work for which there is a separate previously submitted unit price or item on the accepted Schedule of Values, that price will control. Judicial Council, in its sole discretion, may adopt the Contract Price as the reasonable value of the Work performed or any portion thereof.

23.3. Termination of Contract for Convenience.

23.3.1. Judicial Council in its sole discretion may terminate the Contract upon **FIVE (5)** Days written notice to Contractor. Under a termination for convenience, Judicial Council retains the right to all the options available to Judicial Council if there is a termination for cause. In case of a termination for convenience, Contractor will have no claims against Judicial Council except:

23.3.1.1. The actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and

23.3.1.2. Five percent (5%) of the total cost of work performed as of the date of termination, or five percent (5%) of the value of the Work yet to be performed, whichever is less. This five percent (5%) amount is full compensation for all Contractor's and its Subcontractor(s)' mobilization and/or demobilization costs and any anticipated lost profits resulting from termination of Contractor for convenience.

23.4. Termination for Lack of Funding.

23.4.1. Judicial Council's obligations under the Contract are subject to the availability of authorized funds. Funding beyond the initial appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in the Contract. Immediately upon written notice, Judicial Council may terminate the Contract in whole or in part, without prejudice to any right or remedy of Judicial Council, if expected or actual funding is withdrawn, reduced, or limited in any way.

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

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

23.4.2.2. Contractor is released from any obligation to provide further Work as affected by the termination.

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

23.5. Suspension of Work.

23.5.1. Judicial Council may, without cause, order Contractor in writing to suspend, delay or interrupt the Project in whole or in part for such period of time as Judicial Council may determine. When Judicial Council resumes the Project, the Parties will attempt to negotiate an adjustment in the Contract Price for increases or decreases in the cost of performance of the Project caused by suspense, delay or interruption. If the Parties cannot agree on an adjusted Contract Price, Judicial Council may terminate the Contract as permitted herein.

23.5.2. In the event Judicial Council orders suspension of the Work, an adjustment will be made to the Contract Price for increases in the direct cost of performance of the Work of the Contract Documents, actually caused by suspension, delay or interruption ordered by Judicial Council; provided however that no adjustment of the Contract Price will be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which Contractor is responsible under the Contract Documents; or (ii) that an equitable adjustment is made or denied under another provision of the Contract Documents. The foregoing notwithstanding, any adjustment of the Contract Price will not include any adjustment to increase Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Schedule of Values submitted by Contractor pursuant to the Contract Documents. In the event of Judicial Council's suspension of the Work, the Contract Time will be equitably adjusted.

23.6. Scope Reduction.

In cases of suspension, partial or complete termination, or at the discretion of Judicial Council, Judicial Council reserves the right to unilaterally approve a deductive Change Order to reduce scope of Work or perform Work with other forces or its own forces.

24. CLAIMS RESOLUTION

24.1. Exclusive Remedy.

24.1.1. Compliance with the Claims Resolution Process and timelines described in this Claims Resolution Process, as well as the notice provisions of the Contract Documents, is an express condition precedent to Contractor's right to pursue any litigation or otherwise pursue a Claim beyond this Claims Resolution Process.

24.1.2. Contractor acknowledges that its failure, for any reason, to provide written notice and all required supporting documentation to permit Judicial Council's review and evaluation within the time frame required by this Claims Resolution Process, is a waiver, release, discharge and relinquishment of Contractor's right to assert, request, or demand any entitlement to an adjustment of the Contract Time or the contract Price on account of any instruction, request, drawings, specifications, action, condition, omission, default or other situation.

24.2. Performance During Claim Resolution Process.

The Contractor must diligently proceed with Work on the Project while Claims are addressed under the Claims Resolution Process. It is the intent of Judicial Council to resolve Claims with Contractor as close to the events giving rise to the Claims as possible, and to avoid stale or late Claims and the late documenting of Claims. Contractor's failure to diligently proceed in accordance with Judicial Council's instructions or the Contract terms will be considered a material breach of the Contract and a waiver of Contractor's rights under the Contract.

24.3. Waiver.

If Contractor fails to timely submit any written notices required under the terms of the Contract or in this Claims Resolution section, Contractor waives and releases its rights regarding further review of its Claim, unless Contractor and Judicial Council mutually agree in writing to other time limits.

24.4. Intention.

The Claims Resolution Process required herein is intended to provide a concise mechanism for resolving Claims as they arise during the Project, while requiring accurate documentation related to contested issues as to those Claims that are not contemporaneously resolved.

24.5. Other Provisions.

If portions of the Contract, other than this Claims Resolution Process, establish a specific process regarding a specific subject, then that process will govern and control the resolutions of any disagreements thereunder. Otherwise, the provisions in this Claims Resolution Process will control the resolution of all Claims.

24.6. Claim Presentation.

24.6.1. PCO(s) as a Claim. A PCO may be a Claim **only if** either of the following conditions are satisfied:

24.6.1.1. Judicial Council states in writing that it disagrees with the terms of a PCO and directs Contractor to utilize the Claim Resolution Process; or

24.6.1.2. Judicial Council rejects in whole or in part a PCO and Contractor states in writing that it is utilizing the Claim Resolution Process for the portion of the PCO that Judicial Council rejected.

24.6.2. Contractor. Contractor must submit a Claim by registered mail or certified mail, return receipt requested consistent with the requirements hereunder.

24.6.3. Subcontractors.

24.6.3.1. The Contractor may present to Judicial Council a Claim on behalf of a Subcontractor or lower tier Subcontractor. A Subcontractor may request in writing, either on his or her own behalf or on behalf of a lower tier Subcontractor, that Contractor present a claim for Work which was performed by the Subcontractor or by a lower tier Subcontractor on behalf of the Subcontractor. The Subcontractor requesting that the Claim be presented to Judicial Council must furnish reasonable documentation to support the Claim. Within **FORTY-FIVE (45)** Days of receipt of this written request, Contractor must notify the Subcontractor in writing as to whether Contractor presented the Claim to Judicial

Council and, if Contractor did not present the Claim, provide the Subcontractor with a statement of the reasons for not having done so.

24.6.3.2. Contractor is responsible for providing this Claims Resolution Process to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or Contractor are informed of this Claims Resolution Process. No Claim submitted by any party that fails to follow the provisions of this Claims Resolution Process will be considered. Contractor shall indemnify, keep and hold harmless Judicial Council and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Claims Resolution Process to its Subcontractors or others who may assert Claims by and through Subcontractors and/or Contractor.

24.6.4. Contractor Must Timely Identify, Present and Document Any Claim.

24.6.4.1. Every Claim must be stated with specificity, in writing, and be signed by Contractor under penalty of perjury.

24.6.4.2. Every Claim shall be presented to Judicial Council within **TEN (10)** Days: (i) of the Judicial Council's rejection of a PCO; (ii) of Judicial Council's issuance of a Change Order or Unilateral Change Order which Contractor and/or Subcontractor disputes from the date Contractor discovers; or (iii) if neither of the foregoing apply, of when the Contractor reasonably should have discovered, that an act, error or omission of Judicial Council, its agents or employees, or action, condition or other situation has occurred that may entitle Contractor to make a Claim.

With respect to (iii):

- (a) This will include Contractor's actual or constructive knowledge of any instruction, request, drawings, specifications, action, condition, omission, default or other situation for which the contractor believes there should an adjustment of the Contract Price or Contract Time.
- (b) Contractor will provide this writing even if Contractor has not yet been damaged, delayed, or incurred extra cost when Contractor discovers, or reasonably should discover, the act, error, omission, action, condition or situation giving rise to the incidents giving rise to the Claim.

24.6.4.3. **CONTRACTOR'S FAILURE TO TIMELY GIVE NOTICE TO JUDICIAL COUNCIL OF A CLAIM AS REQUIRED IN THIS SECTION WAIVES CONTRACTOR'S RIGHT TO RECOVER FOR ANY DAMAGES RELATED TO THE CLAIM.**

24.6.4.4. The writing described above must comply with all the following:

- 24.6.4.4.1. Identify all the issues, events, conditions, circumstances and/or causes giving rise to the Claim;
- 24.6.4.4.2. Identify all pertinent dates and/or durations and all actual and/or anticipated effects on the Contract Price, milestones and/or Contract Time adjustments; and
- 24.6.4.4.3. Identify in detail line-item costs if the Claim seeks money.

- 24.6.4.4.4. If the Claim involves extra work, a detailed cost breakdown of the amounts Contractor is seeking, including actual cost records (including without limitation, payroll records, material and rental invoices and the like) demonstrating that those costs have actually been incurred. To the extent costs have not yet been incurred at the time the Claim is submitted, actual cost records must be submitted on a current basis not less than once a week during any period costs are incurred. A cost record will be considered current if submitted within **SEVEN (7)** Days of the date the cost reflected in the record is incurred. At the request of Judicial Council, extra costs may be subject to further verification procedures (such as having an inspector verify the performance of alleged extra work on a daily basis).
- 24.6.4.4.5. If the Claim involves an error or omission in the Contract Documents:
- 24.6.4.4.5.1. An affirmative representation under penalty of perjury by Contractor and any affected Subcontractors and suppliers that the error or omission was not discovered prior to submitting a proposal for the Work, and
- 24.6.4.4.5.2. A detailed statement demonstrating that the error or omission reasonably should not have been discovered, by Contractor, its Subcontractors and suppliers, prior to submitting a proposal for the Work.
- 24.6.4.4.6. If the Claim involves a request for additional compensation for escalation of materials costs, Contractor must submit **all** information required in the Material Escalation Costs section of these General Conditions with its Claim.
- 24.6.4.5. The writing must be accompanied by all documents substantiating Contractor's position regarding the Claim.
- 24.6.4.6. A Claim that asserts an effect on any schedule milestones and/or Contract Time must include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.
- 24.6.4.7. Contractor agrees that it will not base its damages, its calculations or its Claim on a "total cost" approach, a "modified total cost" approach or a "jury verdict method" approach.
- 24.6.5. **Certification.** Each copy of the Claim Documentation must be certified by a responsible officer of Contractor in accordance with the requirements of the Contract Documents. This certification must be under penalty of perjury and must include the following language immediately above or before Contractor's signature: "***I declare under penalty of perjury under the laws of the State of California that the information provided and statements made in this Claim are true and correct, substantiated and of merit.***" The Contractor acknowledges that this requirement is not a mere formality but is intended to ensure that Contractor only submits Claims that it believes are true and correct, substantiated and have merit. Should Contractor fail to submit the foregoing written statement signed under penalty of perjury, Contractor waives and releases its Claim, including all rights and remedies in connection therewith. This certification must include a certification of any portion of the Claim from Subcontractor(s) or others who are asserting Claims by and through Subcontractors and/or Contractor

24.6.6. Judicial Council's Written Statement/Decision on Claim. Judicial Council will issue a written statement/decision regarding the Claim to Contractor within **FORTY-FIVE (45)** Days of receipt of the written Claim from Contractor. If Judicial Council fails to timely provide a written statement/decision regarding the Claim, the Claim will be deemed rejected in its entirety.

24.6.7. Contractor Must Demand an Informal Meet and Confer Conference if Contractor Pursues Any Claim.

24.6.7.1. **FAILURE OF A CONTRACTOR TO TIMELY DEMAND A MEET AND CONFER CONFERENCE IS A WAIVER OF ITS RIGHT TO PURSUE ALL OR A PORTION OF ITS CLAIM.**

24.6.7.2. *Where There Is No Agreement.* If there is no agreement between Contractor and Judicial Council on a Claim, then within **TEN (10)** Days of the date of Judicial Council's written statement/decision in response to a Claim or PCO, if Contractor pursues that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with Judicial Council staff. A meet and confer conference with Judicial Council staff is a condition precedent to Contractor seeking any further relief, including a mediation as indicated below.

24.6.7.3. *Where There Is Partial Agreement.* If Contractor and Judicial Council partially agree on a Claim but do not reach complete agreement, then the Parties will complete a Change Order, if applicable, for the issues and/or amounts agreed to. For those issues not agreed to, if Contractor pursues those issues from that Claim, then Contractor must demand, by **registered mail or certified mail return receipt requested**, a meet and confer conference with Judicial Council staff regarding those issues. A meet and confer conference with Judicial Council staff is a condition precedent to Contractor seeking any further relief, including a mediation as indicated below, in connection with Judicial Council's rejection.

24.6.7.4. *Meet and Confer Conference.* Judicial Council and Contractor will schedule the meet and confer conference as soon as reasonably possible after Contractor's written demand for a meet and confer conference, but in no case later than **THIRTY (30)** Days after Contractor's demand.

24.6.7.5. *Judicial Council's Written Decision.* Within **TEN (10)** Business Days of the meet and confer conference, Judicial Council will issue a written decision. If Judicial Council fails to timely provide a written statement/decision after the meet and confer conference, all Claim issues that were part of the meet and confer conference will be deemed rejected in their entirety.

24.6.7.5.1. If Judicial Council's decision completely resolves the Claim, then the Parties will complete a Change Order, if applicable, for the issues and/or amounts agreed to.

24.6.7.5.2. If Judicial Council rejects Contractor's Claim in whole or in part or does not issue a timely written response, then the Parties will mediate the remaining issues of the Claim.

24.6.7.5.3. Contractor's costs incurred in seeking relief for Claims are not recoverable from Judicial Council.

24.6.8. Mediation.

24.6.8.1. At Judicial Council's sole discretion, this mediation may be a multiple-party mediation with the Architect, the Construction Manager, the Inspector, and/or other party deemed necessary by Judicial Council.

24.6.8.2. Judicial Council and Contractor will mutually agree to a mediator within **TEN (10)** Business Days after the disputed portion of the Claim has been identified in writing. If the Parties cannot agree upon a mediator, each Party will select a mediator and those mediators will select a qualified neutral third Party to mediate with regard to the disputed portion of the Claim. Each Party will bear the fees and costs charged by its respective mediator in connection with the selection of the neutral mediator.

24.6.9. Post-Mediation.

24.6.9.1. *Litigation.* If, after a mediation as indicated above, Judicial Council and Contractor have not resolved the Claim, either Party may commence an action in a court of competent jurisdiction to contest that decision within **NINETY (90)** Days following the conclusion of that mediation or **ONE (1)** year following the accrual of the cause of action, whichever is later. By mutual agreement, the Parties can agree to instead resolve the Claim through arbitration.

24.6.9.2. *Government Code Claim Required.* Nothing in the Contract Documents, including this Claims Resolution Process, waives, modifies or tolls Contractor's obligation to present a timely claim under Government Code section 910, et seq. Therefore, in addition to complying with this Claims Resolution Process, Contractor is required to present claims to Judicial Council pursuant to Government Code section 910, et seq. If after the requirements of this Claims Resolution Process are satisfied, and all or a portion of the Claim remains unresolved, and if the Government Code claim is rejected by Judicial Council, Contractor may proceed under this post-mediation provisions of this Claims Resolution Process.

24.7. Judicial Council Remedies for False Claims.

Judicial Council is entitled to remedy any false claims, as defined in Government Code section 12650 *et seq.*, made to Judicial Council by Contractor or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any Contractor or Subcontractor who submits a false claim will be liable to Judicial Council for three times the amount of damages that Judicial Council sustains because of the false claim. A Contractor or Subcontractor who submits a false claim will also be liable to 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 \$11,000 for each false claim. In addition, Contractor may be subject to criminal prosecution under California Penal Code section 72 and/or civil liability under the False Claims Act. If so, Judicial Council may be entitled to recover its costs incurred to investigate any False Claim, including but not limited to attorneys' fees and expert fees incurred in connection with that investigation.

24.8. Documentation of Resolution.

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

24.9. Claim Resolution Process – Non-Applicability.

The procedures and provisions in this Claims Resolution section will **not** apply to Judicial Council's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of Judicial Council's Acceptance of the Work.

24.10. Denial of Claim.

Judicial Council's failure to respond to a Claim from Contractor within the time periods described herein or otherwise comply with any provision of law applicable to the Project will automatically result in the Claim being deemed rejected in its entirety as of the deadline for the Judicial Council to act in response to the Claim, with no admission by Judicial Council as to the merits of the Claim.

24.11. Judicial Council Right to Withhold.

Judicial Council is entitled to withhold up to one hundred fifty percent (150%) of disputed amounts and Judicial Council will not be liable for payment of interest on such disputed amounts pending final adjudication of such disputes.

25. LABOR, WAGE AND HOUR; APPRENTICE AND RELATED PROVISIONS

25.1. Prevailing Wage:

25.1.1. The Contractor and all Subcontractors under the Contractor shall pay all workers on Work performed pursuant to this Contract 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 Contract, 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>).

25.1.2. Contractor shall ensure that Contractor and all of Contractor's Subcontractors execute the Prevailing Wage and Related Labor Requirements Certification attached to the Contract and incorporated herein.

25.1.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

25.2. Registration:

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

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

to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”

- 25.2.2. Contractor shall ensure that Contractor and all “subcontractors” (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. Contractor represents to the Judicial Council that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. Contractor shall not permit any Subcontractor to perform Work on the Project, without first verifying the Subcontractor is properly registered with the DIR as required by law and providing this information in writing to the Judicial Council. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this Work is public work to which Labor Code section 1771 applies.

25.3. Hours of Work:

- 25.3.1. Notwithstanding the timing and duration of the Work under the Contract which is subject to court activities and other coordination required for occupied facilities, as provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal day’s work. The time of service of any worker employed at any time by Contractor or by any Subcontractor on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Contractor to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Contractor in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.
- 25.3.2. Contractor shall keep and shall cause each Subcontractor to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Contractor in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of the Court, the Judicial Council, and to the Division of Labor Standards Enforcement of the DIR.
- 25.3.3. Pursuant to Labor Code section 1813, Contractor shall as a penalty to the Judicial Council forfeit the statutory amount (believed by the Judicial Council to be currently twenty five dollars (\$25)) for each worker employed in the execution of this Contract by Contractor or by any Subcontractor for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.
- 25.3.4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the Judicial Council.
- 25.3.5. Project Work will typically take place in an occupied court facility; therefore, work hours may be restricted depending upon the Project.

25.4. Payroll Records:

25.4.1. Contractor and all subcontractors shall comply with the 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 DIR. Labor Code section 1771.4 requires Contractor and subcontractors to provide electronic copies of CPRs to the Labor Commissioner of California at least once every 30 days, and within 30 days of project completion. Failure to timely provide the CPRs could result in penalties of up to \$5,000, or as otherwise determined by Labor Code section 1771.4, applicable laws, and regulations.

25.4.2. In addition to submitting CPR(s) to the Labor Commissioner of California pursuant to Labor Code section 1771.4 or any other applicable law, if requested by the Court or Judicial Council, Contractor shall provide, and shall cause each Subcontractor performing any portion of the Work to provide the Court or Judicial Council CPR(s), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or each Subcontractor in connection with the Work.

25.4.3. All CPRs shall be available for inspection at all reasonable hours at the principal office of Contractor on the following basis:

25.4.3.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

25.4.3.2. CPRs shall be made available for inspection or furnished upon request to a representative of the Court, the Judicial Council, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.

25.4.3.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the Court, the Judicial Council, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Contractor, Subcontractors, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Contractor.

25.4.4. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Contractor), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ Signature: _____

(Section 16401 of Title 8 of the California Code of Regulations)

- 25.4.5. Each Contractor shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.
- 25.4.6. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Court, the Judicial Council, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.
- 25.4.7. Contractor shall inform the Judicial Council of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business Days, provide a notice of change of location and address.
- 25.4.8. In the event of noncompliance with the requirements of this section, Contractor shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Contractor must comply with this section. Should noncompliance still be evident after the ten (10) day period, Contractor shall, as a penalty to the Court or Judicial Council forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- 25.4.9. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

25.5. Apprentices:

- 25.5.1. Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that 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 this Article and with Labor Code section 1777.5 for all apprenticeship occupations.
- 25.5.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.
- 25.5.3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed only at the work of the craft or trade to which she/he is registered.
- 25.5.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.
- 25.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractors employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or Subcontractor under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

- 25.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Contractor and any Subcontractor may be required to make contributions to the apprenticeship program.
- 25.5.7. If Contractor or Subcontractor willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
 - 25.5.7.1. Be denied the right to bid or propose on any subsequent project for one (1) year from the date of such determination; and
 - 25.5.7.2. Forfeit as a penalty to the Judicial Council the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
- 25.5.8. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- 25.5.9. Contractor shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.
- 25.5.10. Contractor shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code sections 108 et seq.

25.6. Non-Discrimination.

- 25.6.1. Contractor herein agrees not to discriminate in its recruiting, hiring, promotion, demotion, or termination practices on the basis of race, religious creed, national origin, ancestry, sex, age, or physical handicap in the performance of the Contract and to comply with the provisions of the California Fair Employment and Housing Act as set forth in part 2.8 of division 3 of the Government Code, commencing at section 12900; the Federal Civil Rights Act of 1964, as set forth in Public Law 88-352, and all amendments thereto; Executive Order 11246, and all administrative rules and regulations found to be applicable to Contractor and Subcontractor.
- 25.6.2. Contractors must include the non-discrimination and compliance provisions of this clause in all subcontracts to perform Work for the Project.
- 25.6.3. To the extent applicable, during the performance of the Contract, Contractor agrees to incorporate in all subcontracts the provisions set forth in Chapter 60-1.4(b) of Title 41 published in Volume 33 No. 104 of the Federal Register dated May 28, 1968.

26. **MISCELLANEOUS**

26.1. DVBE Compliance.

The Project is subject to a DVBE participation goal of at least three percent (3%). Contractor must document its DVBE compliance by completing the Document titled DVBE Participation Certification / Report in the Contract Documents. Contractor shall also submit this Document with its bid as set forth in the Instruction to Bidders.

26.2. Conflict of Interest.

26.2.1. General Requirements. Contractor and employees of Contractor will not participate in proceedings that involve the use of Judicial Council funds or that are sponsored by Judicial Council if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. Contractor and employees of Contractor must also avoid actions resulting in or creating the appearance of:

26.2.1.1. Use of an official position with the government for private gain;

26.2.1.2. Preferential treatment to any person associated with this Contract or the Work required herein;

26.2.1.3. Loss of independence or impartiality;

26.2.1.4. A decision made outside official channels; or

26.2.1.5. Adverse effects on the confidence of the public in the integrity of the government or this Agreement.

26.2.2. Prohibited Financial Conflict of Interest. Contractor and its Subcontractors presently have no interest and will not acquire any interest which would present a conflict of interest pursuant to Government Code sections 1090 *et seq.* and 87100 *et seq.*, during the performance of Work pursuant to this Contract. Contractor further certifies that, to the best of its knowledge after due inquiry, no employees or agents of Judicial Council are now, nor in the future will they be, in any manner interested directly or indirectly in this Contract, or in any profits expected to arise from this Contract, as set forth in Government Code sections 1090 *et seq.* and 87100 *et seq.*

26.2.3. Conflict of Interest for Former Judicial Council Employees. Contractor certifies and must 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 (1)** 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.

26.3. Covenant Against Gratuities.

No gratuities, in the form of entertainment, gifts, or otherwise, were offered by Contractor or any agent, director, or representative of Contractor, to any officer, official, agent, or employee of Judicial Council with a view toward securing this Contract or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this provision, Judicial Council will have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by Judicial Council in procuring, on the open market, any items which Contractor agreed to supply, will be borne and paid for by. The rights and remedies

of Judicial Council provided in this provision will not be exclusive and are in addition to any other rights and remedies provided by law under this Contract.

26.4. Assignment of Antitrust Actions.

26.4.1. Section 4552 of the Government Code states:

In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing 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, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder.

26.4.2. Section 4553 of the Government Code states:

If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery.

26.4.3. Section 4554 of the Government Code states:

Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action.

26.4.4. Under this section, “public purchasing body” is Judicial Council and “bidder” is Contractor.

26.5. Excise Taxes.

If, under Federal Excise Tax Law, any transaction hereunder constitutes a sale on which a Federal Excise Tax is imposed and the sale is exempt from such Federal Excise Tax because it is a sale to a state or local Government for its exclusive use, Judicial Council, upon request, will execute documents necessary to show (i) Judicial Council is an agency of the State of California for the purposes of the exemption, and (ii) the sale is for the exclusive use of Judicial Council. No Federal Excise Tax for the materials will be included in the Contract Price.

26.6. Taxes.

Contract Price is to include any 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.

26.7. Shipments.

All shipments must be F.O.B. destination to Site or sites, as indicated in the Contract Documents. There must be no charge for containers, packing, unpacking, drayage, or insurance. The total Contract Price is all inclusive (including sales tax) and no additional costs of any type will be considered.

26.8. Compliance with Government Reporting Requirements.

If the Contract is subject to federal or other governmental reporting requirements because of federal or other governmental financing in whole or in part for the Project which it is part, or for any other reason, Contactor must comply with those reporting requirements at the request of Judicial Council at no additional cost.

26.9. No Personal Liability.

Neither Judicial Council, nor any other officer or employee of Judicial Council will be personally responsible for liabilities arising under the Contract.

END OF DOCUMENT