

**DOCUMENT 00 75 00**

**STATE CONTRACT ACT PROVISIONS**

Pursuant to section 19204(b) of the Public Contract Code, the Project is subject to provisions of the Public Contract Code applicable to state agencies. The provisions hereunder are intended to revise the applicable document within the Contract Documents to conform with the requirements of the Public Contract Code.

**AGREEMENT (DOCUMENT 00 45 10)**

**The following is ADDED as section 7.d:**

- d. Contractor expressly acknowledges and agrees that Judicial Council may at any time make changes to the Drawings and Specifications pursuant to Public Contract Code section 10227. If Contractor believes that Contractor is entitled to an increase in the Contract Time or Contract Price as a result of any such change, Contractor must comply with the contractual provisions related to requesting an increase of the Contract Price and Contract Time. If Contractor fails to comply with any of those contractual provisions, Contractor waives any claim or entitlement to an increase to the Contract Time or Contract Price.

**GENERAL CONDITIONS (DOCUMENT 00 70 00)**

**The following is ADDED as section 1.7.3.2**

**1.7.3.2.** This provision will not be applicable with respect to any material, product, thing or service for which Judicial Council made findings and gave notice in accordance with Public Contract Code section 3400(b) and/or 10129(b); therefore, Contractor will not be entitled to request a substitution with respect to those materials, products or services.

**The following REPLACES section 2.3:**

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

**2.3.1.** If Judicial Council determines at any time that Contractor has failed to: (1) supply an adequate work force, (2) supply material of proper quality, (3) to promptly pay subcontractors as set forth in the Contract Documents, (4) in any respect to prosecute the Work with the diligence as specified by the Contract Documents, (5) adhere to the Project Schedule, (6) to construct the Project pursuant to the Contract Documents or (7) otherwise perform any provisions of the Contract, Judicial Council, after at least **FIVE (5)** Days written notice to Contractor specifying the issues Contractor must remedy, may:

**2.3.1.1.** Provide any laborers and materials and deduct the cost from any moneys due or may become due to Contractor, including retention; or

**2.3.1.2.** Terminate the Contract, provided that the written notice above warned of such termination and that same notice was also provided to Contractor's surety(ies).

**The following is ADDED as section 2.4:**

**2.4.** If any issue is not cured within the time specified in any notice, then the Contract will terminate, and Judicial Council will have available to it any remedies available in the Contract and at law, including, without limitation, Judicial Council's right to takeover work as set forth in these General Conditions.

**The following is ADDED as section 2.5:**

**2.5.** Notwithstanding the foregoing, Contractor and Surety will be liable to Judicial Council for any costs incurred by Judicial Council for any action taken hereunder.

**The following is ADDED as section 6.7.3:**

**6.7.3. Compost/Co-compost Materials.** Contractor must purchase and utilize compost and co-compost products and materials when those products and materials can be substituted for, and cost no more than, the cost of regular fertilizer or soil amendment products, or both, and if the co-compost products meet all applicable state standards and regulations, and the requirements of the Contract Documents, as determined by appropriate testing.

**The following REPLACES section 6.14.4:**

**6.13.6.** 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 must take all necessary measures and be responsible for the proper care and completion and final Acceptance of the Work by Judicial Council. All Work is performed solely at Contractor's risk with the exception of damage to the Work caused by "acts of God" as defined in Public Contract Code section 7105.

**The following REPLACES section 12.6:**

**12.6. Judicial Council's Right to Takeover Work.**

**12.6.1.** If Contractor should neglect to prosecute the Work properly or fail to perform any provisions of the Contract, Judicial Council, after **FIVE (5)** Days written notice to Contractor, may, without prejudice to any other remedy it may have:

**12.6.1.1.** Take possession of and use all or any part of Contractor's materials, tools, equipment, and appliances upon the Site to complete the Project.

**12.6.1.2.** Judicial Council may complete the Work by day's labor or by a contractor(s) selected by Judicial Council.

**12.6.1.3.** If Judicial Council terminates the Contract, and elects to have the Work be completed by either day's labor or a contractor(s) selected by Judicial Council, Contractor is not entitled to any payment hereunder until the Project is completed.

**12.6.1.4.** Upon Completion, and if any unpaid amount of the Contract Price exceeds the sum expended by Judicial Council to Complete the Project, plus any and all damages sustained by Judicial Council and any amounts required by law to be retained, the excess will be paid to Contractor.

**12.6.1.5.** Upon Completion, and if the amount expended by Judicial Council to Complete the Project exceeds any unpaid amount of the Contract Price, Contractor and Surety will be liable to Judicial Council for, the excess amount Judicial Council expended to Complete the Project, plus any and all damages sustained or may be sustained by Judicial Council. Payment for the excess amount will be paid by Contractor and/or Surety within **TWENTY-ONE (21)** Days of an invoice from Judicial Council.

**12.6.1.6.** Upon Completion of the Project, Judicial Council shall return to Contractor all of Contractor's unused materials, and his equipment, tools, and appliances. Contractor agrees and acknowledges, consistent with Public Contract Code section 10259, that Contractor shall have no claim on the account of usual and ordinary depreciation, loss, and wear and tear relating to any materials, equipment, tools, and appliances, and waives any claim related thereto.

**12.6.2.** Judicial Council may, in its sole and exclusive discretion, elect to Accept Work that is defective or that is not in accordance with the requirements of the Contract Documents, instead of requiring its removal and correction, in which case the Contract Price will be reduced as appropriate and equitable.

**The following is ADDED as section 14.3.4:**

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

**The following is ADDED as section 17.2.2:**

**17.2.2.** In accordance with California Public Contract Code section 7102, if Contractor's progress is delayed by the events described in the preceding subsection, Contractor shall not be precluded from the recovery of damages directly and proximately resulting therefrom. In that event, Contractor's damages, if any, are limited to direct, actual and unavoidable additional costs of labor, materials or construction equipment directly resulting from that delay, and shall exclude special, indirect or consequential damages. In no event shall Contractor seek costs or damages for delays, interruptions, hindrances or disruptions to the Work for on-Site or off-Site costs or damages based upon formulas (e.g. Eichleay or other formula). Except as expressly provided for herein, Contractor shall not have any other claim, demand or right to adjustment of the Contract Price arising out of delay, interruption, hindrance or disruption to the progress of the Work. Adjustments to the Contract Price and the Contract Time, if any, on account of Changes to the Work or Suspension of the Work are governed by the applicable provisions of the Contract Documents, including without limitation, the "Changes in the Work" section and the percentages in the "Format for Proposed Change" section of these General Conditions.

**The following is ADDED as section 20.3.2.7 through 20.3.2.9:**

**20.3.2.7.** In accordance with Public Contract Code section 10261.5(a), if Judicial Council fails to make any Progress Payment within **THIRTY (30)** Days after receipt of an undisputed and properly submitted Application for Progress Payment, Judicial Council will pay Contractor interest on the undisputed amount of such Application for Progress Payment equal to the legal rate of interest set forth in California Code of Civil Procedure section 685.010(a).

**20.3.2.8.** Notwithstanding the foregoing, Judicial Council will not make progress payments in excess of one hundred percent (100%) of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to or under the control of Judicial Council, less any applicable retention, unless otherwise provided by Public Contract Code section 10261.

**20.3.2.9.** At any time after ninety-five percent (95%) of the Work has been completed, Judicial Council may reduce the funds withheld to an amount not less than one hundred and twenty-five percent (125%) of the estimated value of the Work yet to be completed, as determined by Judicial Council. The reduction must be approved, in writing, by the Sureties on the performance and payment bond.

**The following REPLACES section 20.4.2.2:**

**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 **FIVE (5)** Days written notice to Contractor and, without prejudice to any other remedy, make good such deficiencies consistent with Judicial Council's Rights if Contractor Fails to Perform, Uncovering Work, Correction of Work, and Right to Take Over Work sections of these General Conditions. In addition to Judicial Council's right to deduct the cost of correcting the Work in the previously mentioned sections if Judicial Council deems it inexpedient to correct Work that is damaged, defective, or not done in accordance with Contract Documents, Judicial Council may make 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.

**The following REPLACES section 22.3.2:**

**21.3.2.** 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, except as provided to the contrary in any Escrow Agreement between Judicial Council and Contractor pursuant to Public Contract Code section 22300.

**The following is ADDED as section 22.5:**

**22.5. Substitution of Securities.**

Judicial Council will permit the substitution of securities in accordance with the provisions of Public Contract Code section 10263.

**The following is ADDED as section 23.1.3.5:**

**23.1.3.5.** *Judicial Council's Rights to Take Over Work in the Event of Termination.* Cumulative of any other right under the Contract Documents, the law, and at equity, upon termination of the Contract, Judicial Council may take over and Complete the Work as set forth in Judicial Council's Right to Takeover Work section of these General Conditions.

**The following is ADDED as section 24.1.3:**

**24.1.3.** To the extent any provision(s) of this Claims Resolution Process conflict with or otherwise impair the timeframes and procedures of Public Contract Code section 9204, the provisions of section 9204 shall control. If provisions of this Claims Resolution Process are supplementary and/or in addition to the requirements of Section 9204, but do not conflict with or otherwise impair the timeframes and procedures of Section 9204, the provisions of this Claims Resolution Process and the Contract shall control.

**The following REPLACES section 24.6.9:**

**24.6.9. Arbitration of Claims.**

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

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

**24.6.9.3. *Selection of Arbitrator.*** Unless otherwise agree to by the Parties, arbitration will be conducted by a single arbitrator mutually agreed to by the Parties from the certified list created by the Public Works Contract Arbitration Committee. If the Parties cannot agree on the arbitrator, either Party may petition the superior court in the county in which the Project was constructed to appoint one from the panel of arbitrators certified by the Public Works Contract Arbitration Committee.

**24.6.9.4. *Judicial Council Decisions Not Binding.*** No decision made by Judicial Council will be conclusive on any issue in arbitration.

**24.6.9.5. *Choice of Law/Standard of Decision.*** Unless otherwise agreed to by the Parties in writing, the arbitration will be decided pursuant to the laws of the State of California, will be supported by substantial evidence and, in writing, contain the basis for the decision, and shall include findings of fact and conclusions of law.

**24.6.9.6. *Joinder of Parties.*** Either Party may join in the arbitration as a Party any supplier, subcontractor, design professional, surety or other person who has agreed in writing, and only if the joinder is necessary to prevent a substantial risk of the Party otherwise being subjected to inconsistent obligations or decisions.

**24.6.9.7. *Mutual Agreement for Court Jurisdiction.*** The Parties may agree in writing to forgo arbitration and instead litigate any dispute in the superior court in the county in which the Project was constructed.

**24.6.9.8. *Governing Regulations.***

**24.6.9.8.1.** Arbitration will be subject to, and conducted consistent with, applicable provisions of the California Code of Regulations, including, without limitation, Title 1, Division 2, Chapter 4.

**24.6.9.8.2.** Unless otherwise provided by Public Contract Code section 10240, et seq. and the California Code of Regulations, all provisions of section 1283.05 of the Code of Civil Procedure, except subdivision (e) thereof, apply to the conduct of discovery for any arbitration.

**24.6.9.8.3. *Confirming, Correcting, or Vacating Award.*** After the arbitrator issues its decision and award, either party may, within the applicable time period provided in Article 1 (commencing with section 1285) of Chapter 4 of Title 9 of Part 3 of the Code of Civil Procedure, petition the superior court in the county in which the Project was constructed to confirm, correct, or vacate the award rendered by the arbitrator. Unless the Parties waive the Choice of Law/Standard of Decision section, or any part thereof, a court shall vacate the award, or part thereof, consistent with Public Contract Code section 1240.12.

**24.6.9.9. *Award/Costs.***

**24.6.9.9.1.** The Parties shall equally bear the costs of conducting the arbitration.

**24.6.9.9.2.** The filing fee, witness fees, costs of discovery, or any other costs necessarily incurred by any Party shall in no way be shared by the other Party.

**24.6.9.9.3.** The arbitrator may award to the prevailing Party its costs and necessary disbursements, other than attorney's fees, on the same basis as is allowed in civil actions, which will be taxed as in civil actions.

**24.6.9.9.4.** Interest may be recovered as part of an award as allowed in a civil action.

**24.6.9.9.5.** If a Party has made an offer of settlement and the arbitrator's award is less favorable than the offer, then the Party who has received the offer shall not recover any interest accruing from and after the date on which the offer was made, nor costs of suit.

**24.6.9.9.6.** The arbitrator may only award attorney fees only on the occurrence of either:

**24.6.9.9.6.1.** To a Party who has made an offer under the circumstances set forth above but only as to those fees incurred from and after the time of making the offer.

**24.6.9.9.6.2.** Against a Party when substantial evidence establishes that the Party has acted frivolously or in bad faith in its demand for, or participation in, the arbitration.

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

**The following REPLACES section 24.11:**

**24.11.** If Judicial Council fails to timely issue payment for any Claim or portion of a Claim as required pursuant to these Claim Resolution Procedures, Contractor is permitted to assess interest indicated in Public Contract Code section 9204. Notwithstanding this provision, and in accordance with Public Contract Code section 7107, Judicial Council is entitled to withhold up to one hundred 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.

**The following is ADDED as section 25.7:**

**25.7. Public Contract Code Section 10295.3 / 10295.35 Compliance.**

**25.7.1.** This section only applies if the Contract Price at any time exceeds One Hundred Thousand Dollars (\$100,000).

**25.7.2.** Contractor agrees not to discriminate: (1) between employees with spouses and employees with domestic partners; (2) between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex; (3) between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees; and/or (4) between employees on the basis of an employee's or dependent's actual or perceived gender identity, including, but not limited to, the employee's or dependent's identification as transgender.

**25.7.3.** Pursuant to subdivision (b) of Public Contract Code sections 10295.3 and 10295.3, Contractor will treat as confidential, to the maximum extent permissible by law or the requirement of Contractor's insurance provider, any request by an employee or applicant for employee for domestic partner or spousal benefit, or any documentation or eligibility for domestic partner or spousal benefits, submitted by an employee or applicant.

**25.7.4.** Judicial Council, in its sole discretion, may waive any of these requirements if the requirements of subdivision (c) of public Contract Code sections 10295.3 and 10295.3, to the extent applicable, are met.

**25.7.5.** This provision will be interpreted and applied pursuant to Public Contract Code sections 10295.3 and 10295.35.

**The following is ADDED as section 25.8:**

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

**The following is ADDED as section 25.9:**

**25.9. Child Support Obligation Acknowledgment.** This section will only apply if the Contract Price at any time exceeds One Hundred Thousand Dollars (\$100,000). Contractor acknowledges that Public Contract Code section 7110 provides the following:

*It is the policy of this state that anyone who enters into a contract with a state agency shall recognize the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the Family Code.*

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

**The following REPLACES section 26.1:**

**26.1. DVBE Compliance.** The Project has a Disabled Veteran Business Enterprise (“DVBE”) participation goal of at least three percent (3%). The Contractor must document its DVBE compliance with the DVBE Project Goal by completing the DVBE Certification Form. In addition to any requirements of the Contract Documents, Contractor will comply with the rules, regulations, ordinances, and statutes that apply to the California Disabled Veteran Business Enterprise Program as defined in section 999 of the Military Code, including, but not limited to, the requirements of subdivision (d) of section 999.5 of the Military and Veterans Code.

**The following is ADDED as 26.4.5:**

**26.4.4.** Section 7103.5(b) of the Public Contract Code states:

In entering into a public works contract or subcontract to supply goods, services, or materials pursuant to a public works contract, Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, made and become effective at the time the awarding body tenders final payment to Contractor, without further acknowledgment by the Parties.

**The following is ADDED as section 26.10:**

**26.9. Buy Clean California Act (Public Contract Code § 3500, et seq.).**

**26.9.1.** The Buy Clean California Act (Public Contract Code § 3500 et seq.) (“Act”) provides that the Department of General Services is required to publish maximum Global Warming Potential (“GWP”) for select construction materials. The following materials or products are subject to the Act for this Project (“Applicable Materials”):

| <b>Material or Product</b>    | <b>Material Specifications: CSI Unifomat</b>   |
|-------------------------------|--|
| Structural Steel              | Section 05 12 00, “Structural Steel”           |
| Carbon Steel Rebar            | Section 03 20 00, “Bar Reinforcement           |
| Flat Glass                    | Section 08 80 00 “Glazing”                     |
| Mineral Wool Board Insulation | Section 07 21 13.19 “Mineral Board Insulation” |

**26.9.2.** As used herein, “EPD” will mean and independently verified document created and verified in accordance with International Organization for Standardization (ISO) 14025 for Type III environmental declarations that identifies the GWP emissions of the facility-specific material or product through a product stage life cycle assessment.

**26.9.3.** Prior to July 1, 2021, Contractor will submit any existing environmental product declarations from Contractors for the Applicable Materials.

**26.9.4.** Contractor will submit EPDs for the Applicable Products to Judicial Council as part of Contractors’ submittal process.

**26.9.5.** Judicial Council will compile EPDs for Project closeout.

**26.9.6.** Contractor should go to the following website for information regarding compliance with the Act: <https://www.dgs.ca.gov/PD/Resources/Page-Content/Procurement-Division-Resources-List-Folder/Buy-Clean-California-Act>.

END DOCUMENT