

RFQ No.: FSO-2017-12-RP  
 RFQ: Roof Construction Services

**JUDICIAL COUNCIL OF CALIFORNIA  
 MASTER CONTRACT FOR CONSTRUCTION SERVICES COVERSHEET**

CONTRACT NUMBER [ @# ]
FEDERAL EMPLOYER ID# [ @# ]

**MASTER CONTRACT FOR ROOF CONSTRUCTION SERVICES**

This Master Contract for Construction Services (“**Contract**”) is made as of \_\_\_\_\_, 20\_\_\_\_\_, between the Judicial Council of California (“**Judicial Council**”) and \_\_\_\_\_ (“**Contractor**”) (each individually a “**Party**” and collectively the “**Parties**”).

WITNESSETH, that for and in consideration of the mutual covenants herein contained, the Parties hereto agree as follows:

**1. Term.**

- 1.1. This Contract is effective as of [ @Date ] (“**Effective Date**”) and expires on [ @Date ] (“**Expiration Date**”). This is the Initial Term.
- 1.2. This Contract includes [ @number ] options of [ @number ] years each (“**Option Term(s)**” or “**Subsequent Term(s)**”), which shall be exercised and administered at the Judicial Council’s discretion and as indicated in the General Conditions to the Master Contract for Construction Services (“**General Conditions**”), which are attached hereto and incorporated herein as **Attachment A**. In no event shall the Initial Term plus all Option Term(s) cumulatively exceed five (5) years in length.

**2. Purpose/Scope.**

- 2.1. The purpose of this Contract is to establish a master contract for construction services related to roofing projects, including new roof construction, modifications, renovation, replacement and repairs for various courthouse roof facility projects throughout the State of California as specified in Service Work Order(s), that may be issued by the Judicial Council. **This purpose is for administrative reference only and does not define, limit, or construe the scope or extent of the Contract.**
- 2.2. The scope of Work that Contractor performs will only be as indicated in Service Work Order(s) which, if issued, will be processed after execution of this Contract pursuant to the Service Work Order Process provision as specifically stated in **Attachment A**. That process includes the Judicial Council’s request for services and the Contractor’s proposal to perform those services.

**3. Contract Documents.** The complete Contract consists of all Contract Documents as listed here. All obligations of the Judicial Council and Contractor are fully set forth and described in the

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Contract Documents. The Contract Documents are intended to operate mutually so that Work called for in one and not mentioned in the other or vice versa is to be performed the same as if mentioned in all Contract Documents.

This Cover Sheet & Its Master Contract for Construction Services	
<b>Attachment A:</b> General Conditions	
<b>Attachment B:</b> Services Request Form (CONSTRUCTION ONLY)	
<b>Attachment C:</b> Contractor Proposal Form (SWO)	
	Exhibit A: Project Scope of Work & Project Plans & Project Specifications
	Exhibit B: Payment Method
	Exhibit C: Payment Provisions
<b>Attachment D:</b> Judicial Council Tool Policy	
<b>Attachment E:</b> Judicial Council Background Check Policy	
Workers' Compensation Certification	
Prevailing Wage and Related Labor Requirements Certification	
Disabled Veteran's Business Enterprise Participation Certification	
Payment Bond	
Performance Bond	
Contractor's Insurance Documents	

4. **Project Price and Method of Payment.** Judicial Council shall pay Contractor for all Work contracted for under this Contract as indicated in a fully executed Service Work Order.
5. **Project Time.** As defined herein, this is the time within which the Contractor shall complete all Work contracted for under this Contract as indicated in a fully authorized Service Work Order pursuant to the Service Work Order Process provision set forth in this Contract.
6. **Insurance and Bonds.** Contractor shall provide all required certificates of insurance, and payment and performance bonds as set forth in the General Conditions.
7. **Classification of Contractor's License.** Contractor hereby acknowledges that it currently holds valid and active Type Class B General Contractor license or a C-39 Roofing license issued by the State of California, Contractor's State Licensing Board, and in the classification called for in the Contract Documents. In the event that the Contractor has a Class B General Contractor license, and does not also have the required specialty license, then one of its subcontractors must have a C-39 Roofing license.
8. **Authority of Contractor's Representative.** Contractor hereby certifies that its legal representative as defined in the General Conditions and the person(s) it employees on the Project at or above the level of project superintendent, each have the authority to legally bind the Contractor.
9. **Validity of Alterations.** Alteration or variation of the terms of this Contract shall not be valid unless made in writing and signed by the Parties, and an oral understanding or Contract that is not incorporated shall not be binding on any of the Parties.

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- 10. **Severability.** If any term, covenant, condition, or provision of the Contract Documents is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions in the Contract Documents shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby.
- 11. **Notice and Service Thereof.** Any notice required by the Contract shall be in writing, identify the Service Work Order, dated, and signed by the Party giving notice or by a duly authorized representative of that Party. Any Notice required by or with regard to this Contract shall be delivered as follows:

<p><b>Notice to the Judicial Council:</b></p> <p>Judicial Council of California                  Branch Accounting and Procurement                  Attn: Manager, Contracts                  455 Golden Gate Avenue, 6<sup>th</sup> Floor                  San Francisco, CA 94102-3688</p>	<p><b>Notice to Contractor:</b></p> <p>[@Contractor Name]                  Attn: [@Contact]                  [@Address]</p>
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Notice shall be served and considered effective if given in one of the following manners: By personal delivery, considered delivered on the day of delivery; by overnight delivery service, considered delivered one (1) day after date deposited, as indicated by the delivery service.

- 12. **Signature Authority.** The individuals executing this Contract on behalf of each respective Party, certify that they have proper authorization to do so and to bind their respective Party.
- 13. **Survival.** The termination or expiration of the Contract shall not relieve either Party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either Party arising under the Contract prior to or subsequent to such termination or expiration, except as expressly provided herein.
- 14. **Entire Contract.** This Contract, consisting of all Contract Documents as defined herein, constitutes the entire Contract between the Parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the Parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a written amendment to this Contract.

JUDICIAL COUNCIL’S SIGNATURE	CONTRACTOR’S SIGNATURE
Judicial Council of California	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)</i> [@CONTRACTOR NAME]

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	LICENSE NO.:	EXP. DATE.:
BY (Authorized Signature) ✍	BY (Authorized Signature) ✍	
PRINTED NAME AND TITLE OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING	
Date Executed	Date Executed	
ADDRESS  455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS  [@Contractor Address]	

**NOTE: If the Contractor is a corporation, Contractor must attach a certified copy of the corporation's by-laws, or of the resolution of the Board of Directors of the corporation, authorizing the above person to execute this Contract and the bonds required by the Contract Documents.**

[This page is reserved for internal Judicial Council funding summary.]

SAMPLE

## ATTACHMENT A

### GENERAL CONDITIONS TO THE MASTER CONTRACT FOR CONSTRUCTION SERVICES

1. **Definitions:** Terms defined below and elsewhere throughout the Contract Documents shall apply to the Contract as defined. Additional terms may be defined in authorized Service Work Orders, however, the definition of a term defined in a Service Work Order shall apply only within the Service Work Order in which it is defined.
  - 1.1. **“Acceptance”** means the written acceptance issued to Contractor by the Judicial Council’s Project Manager.
  - 1.2. **“Administrative Director”** refers to that individual or authorized designee, empowered by the Judicial Council to make final and binding executive decisions on behalf of the Judicial Council.
  - 1.3. **“Approved Person”** means any employee of Contractor or any Subcontractor who (i) has been screened and approved by the Judicial Council pursuant to the Judicial Council Screening Process and (ii) when working in at the Project site, has passed any additional Court-required screening and background check requirements which that Court requires of contractors working in that Project site, as described in the “Court-Required Screening and Background Check Requirements” section herein.
  - 1.4. **“Day”** unless otherwise specifically defined means calendar days including Saturday and Sunday, as well as Contractor’s pre-established and published holidays applicable to its employees.
  - 1.5. **“CAFM” or “Computer Aided Facilities Management.”** In the context of this Contract and wherever used herein, the CAFM system is, and shall be construed to mean, the system currently used by the Judicial Council to issue Service Work Orders and track work progress, or any other such system subsequently implemented for those or similar purposes by the Judicial Council at the Judicial Council’s sole discretion.
  - 1.6. **“Change Order.”** A written order approved by the Judicial Council signed by the Judicial Council and the Contractor that alters a specific Service Work Order.
  - 1.7. **“Claim”** means a Dispute (see definition below) that remains unresolved after conclusion of the Dispute Resolution Process identified below. Individual unresolved Disputes may be aggregated into one or more Claim(s).
  - 1.8. **“Confidential Information”** means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the Judicial Council’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Contract; (iii) information that is independently developed by the receiving party

without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.

- 1.9. **“Contract” or “Contract Documents.”** The Contract consists exclusively of the documents evidencing the Contract of the Judicial Council and Contractor, identified as the Contract Documents and are listed in the Cover Sheet.
- 1.10. **“Contractor.”** The individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the Judicial Council to do the Contract Work. Contractor is one of the parties to this Contract.
- 1.11. **“Contractor Proposal”** means the document, substantially in the format of **Attachment C** hereto, that Contractor submits to the Judicial Council in response to a Services Request Form in accordance with the Service Work Order Process provision herein. The Contractor Proposal Form should include the items listed on the Contractor Proposal Form including (1) the construction schedule, (2) a list of Subcontractors, (3) payment schedule, and (4) reference to applicable Project drawings and specifications, or layouts, and technical data or information for the applicable Project.
- 1.12. **“Court(s)”** means one or more of the fifty-eight (58) superior court entities in California, the California appellate courts, and the California Supreme Court.
- 1.13. **“Cover Sheet”** or **“Master Contract for Construction Services Cover Sheet”** means the form used by the Judicial Council to enter into agreements or amendments with other parties.
- 1.14. **“Dispute”** means a request, demand, or assertion by the Contractor during performance of the Work regarding money and/or time adjustments with which the Judicial Council does not agree. A Dispute is not a Claim.
- 1.15. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither Contractor nor the Judicial Council are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
  - 1.15.1. Acts of God, which are only floods, fire due to lightning, earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.
  - 1.15.2. Acts of a public enemy;
  - 1.15.3. Acts or omissions of any government entity;
  - 1.15.4. Fire or other casualty for which a party is not responsible;
  - 1.15.5. Quarantine or epidemic;
  - 1.15.6. Strike or defensive lockout; and

- 1.15.7. Adverse weather that is (1) unusually severe precipitation, sleet, snow, hail, heat, or cold, wind or fog conditions in excess of the norm for the location, and time of year it occurred as determined by a source mutually agreed to by the Judicial Council and the Contractor or, if none can be mutually agreed upon, as indicated at <http://countrystudies.us/united-states/weather/California>; (2) unanticipated; and (3) occurring at the site of the Project.
- 1.16. “**Hourly Rates**” include all costs including, but not limited to labor costs, applicable taxes, duties, wages, indirect costs, general and administrative expense, and profit.
- 1.17. “**Key Personnel**” or “**Personnel**” refers to Contractor’s personnel or personnel of Subcontractors that are named in Service Work Orders, whom the Judicial Council has approved to perform specific Work. Qualifications of Key Personnel are provided in any resumes set forth in or attached to Service Work Orders. Work and roles of Key Personnel are as set forth in this Contract and in Service Work Orders.
- 1.18. “**Material**” means all types of tangible personal property, including but not limited to reports, goods, supplies, equipment, commodities, and information and telecommunication technology.
- 1.19. “**Project**” refers to all activity relative to an individual Service Work Order, including the Work of Contractor and its Subcontractors.
- 1.20. “**Project Manager**” is the Judicial Council’s representative that manages the Contract and has authority to direct the Contractor in the performance of the Work. The Judicial Council may change the Project Manager, at its sole discretion, during the Contractor’s performance of the Work.
- 1.21. “**Project Price**” or “**Total Project Price.**” The amount indicated in a Service Work Order for all the Work of a particular Service Work Order and which is the amount the Judicial Council shall pay to the Contractor for successful completion of all the Work. The Total Project Price is the sum of all the Work, including all applicable taxes, fees, shipping costs, insurance, and bonds and shall not exceed this amount.
- 1.22. “**Project Time.**” The maximum time indicated in a Service Work Order for Contractor to complete all the Work of a particular Service Work Order.
- 1.23. “**Reimbursable Expenses**” means specific expense(s) incurred or to be incurred by Contractor and/or its Subcontractor(s) in pursuit of performance of the Work, as further specified in a Service Work Order.
- 1.24. “**Restricted Area(s)**” means (i) all areas within the Project 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 Project 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.



- 1.25. **“Services Request Form”** refers to the form listed in this Contract as **Attachment B**. Once a SWO is issued, this form serves as a summary of Work to be provided by the Contractor with respect to the Project for that SWO.
- 1.26. **“Service Work Order” or “SWO”** refers to a unique entry within Judicial Council’s CAFM system. Issuance of a SWO constitutes Work Authorization with respect for the Work relating to that SWO. Contractor must login to the CAFM system and “accept” the SWO issued prior to beginning Work. The SWO references and incorporates other documents such as the Services Request Form and Contractor Proposal applicable to that SWO as well as the Contract Documents.
- 1.27. **“State”** refers to the State of California.
- 1.28. **“Statement of Work”** means a description of Work to be provided according to Service Work Order authorized according to this Contract.
- 1.29. **“Subcontractor”** shall mean and include any individual, firm, partnership, agent, or corporation having a contract, purchase order, or Contract with the Contractor, or with any Subcontractor of any tier for the performance of any part of this Contract. When the Judicial Council refers to Subcontractor(s) in this document, for purposes of this Contract and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, agents, suppliers, and/or materialmen.
- 1.30. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the Judicial Council or the Contractor, which is not a party to this Contract.
- 1.31. **“Work” or “Work to be Performed” or “Contract Work” or “Scope of Work”** refers to 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.
- 1.32. **“Work Authorization”** means permission to begin Work for a particular SWO.

## 2. **Service Work Orders:**

### 2.1. **Maximum Service Work Order Amount and Contract Amount**

- 2.1.1. The maximum amount the Judicial Council shall be obligated to pay to Contractor under any individual Service Work Order authorized under this Contract shall not at any time exceed the Total Project Price specified on the face of the authorized Service Work Order which is applicable to that Work. No verbal agreements will be honored.
- 2.1.2. The maximum amount the Judicial Council shall be obligated to pay to Consultant under this Agreement (**“Contract Amount”**) shall not at any time exceed the total of all Total Project Price(s) Encumbered to Date. The

total amount that the Judicial Council may pay the Consultant under this Agreement shall not at any time exceed the total of the Service Work Order Sums of all Service Work Orders authorized for the performance through the current date.

## 2.2. Service Work Order Authorization

2.2.1. The Judicial Council will authorize the performance of Work and spending of funds under this Contract only via Service Work Order issued through Owner's CAFM system. Service Work Orders must be "accepted" by the Contractor within the CAFM system. This involves the Contractor logging into CAFM, opening the SWO, and clicking the "Accept" button. A written document will be provided by Judicial Council via CAFM software system that summarizes the Project details and references all other documents incorporated within the Project.

2.2.2. Service Work Orders may only be authorized only during the Term of this Agreement or any Subsequent Terms. Service Work Orders must be authorized prior to the expiration date of this Agreement. The end date for services authorized in a Service Work Order may exceed the expiration date of this Agreement but may not be extended once this Agreement (or applicable Subsequent Term) has expired.

2.2.3. Service Work Orders may only be authorized for the specific Work as described in Attachment B and Attachment C.

## 2.3. Service Work Order Process

### 2.3.1. Services Request Form.

2.3.1.1. The Judicial Council's Project Manager will provide Contractor with an unsigned Services Request Form (**Attachment B**), describing the Work the Judicial Council wants performed. The Judicial Council's Project Manager will complete the Services Request Form and send to Contractor electronically. The Judicial Council's Project Manager will inform the Contractor of the appropriate Pricing Methodology (i.e. Lump Sum Based Pricing or Time and Materials Pricing) for the Project.

2.3.1.2. Upon receipt of the Services Request Form, Contractor will, in coordination with the Judicial Council's Project Manager, edit the Services Request Form if necessary so that it appropriately describes, to the satisfaction of both Parties, the scope of Work to be provided. If the Services Request Form is revised during this coordination, then the Judicial Council's Project Manager will revise and re-submit the revised Services Request Form electronically to the Contractor.

### 2.3.2. Contractor Proposal.

- 2.3.2.1. Once the Judicial Council and the Contractor agree upon the scope of Work as set forth in a Services Request Form, Contractor will complete and submit electronically the Contractor Proposal, substantially in the format of **Attachment C**, to the Judicial Council's Project Manager in the form of a file in modifiable MS-Word processing format, based upon the description of the Work requested by the Services Request Form.
- 2.3.2.2. The Judicial Council's Project Manager shall review the Contractor Proposal separately or with the Contractor and may request changes to the Contractor Proposal submitted, in which event Contractor shall modify and resubmit the Contractor Proposal via CAFM.
- 2.3.2.3. Contractor acknowledges that the Judicial Council may seek proposals from other contractors for the same or similar work for which Judicial Council is seeking a proposal from Contractor. Contractor further acknowledges that Judicial Council is not obligated to accept a Contractor Proposal and that Judicial Council reserves the right to reject or not accept a Contractor Proposal for any reason.
- 2.3.2.4. Contractor Proposals submitted shall not expire or be revoked by the Contractor for a period of twenty (20) Days following the date submitted to the Judicial Council via CAFM.
- 2.3.2.5. If the Judicial Council intends to accept Contractor's Proposal and proceed with the Project, the Judicial Council's Project Manager will create a Service Work Order in the Judicial Council's CAFM system and create a unique SWO number for that Project. The Services Request Form and accepted Contractor's Proposal for the applicable Project will be uploaded to CAFM.
- 2.3.2.6. The Judicial Council's Project Manager will then notify the Contractor of its Contractor Proposal acceptance. The Judicial Council shall provide, via e-mail, a Service Work Order consisting of a cover page with a unique Service Work Order number, the accepted Services Request Form and Contractor's Proposal for that Service Work Order.
- 2.3.2.7. Contractor shall review all documents and, upon acceptance, log into Judicial Council's CAFM system, look up the corresponding Service Work Order, and click "Accept." By clicking "Accept," Contractor agrees to all the provisions of this Contract, the Contract Documents, the Contractor Proposal and the corresponding Service Work Order.

2.3.3. Authorization to Proceed with a Service Work Order.

- 2.3.3.1. Upon notification of Service Work Order acceptance in CAFM by the Contractor, the Judicial Council shall direct the Contractor to begin Work in writing according to the terms herein.
- 2.3.3.2. Following authorization of a Service Work Order, but before the initiation of Work on a Project, the Judicial Council may furnish additional detailed written and/or graphic instructions to explain the Work more fully, and such instructions become a part of the requirements of the authorized Service Work Order applicable to a Project. Should such additional detailed instructions, in the opinion of Contractor, constitute Work in excess of the requirements of the authorized Service Work Order, Contractor must submit written notice of the same to the Judicial Council within seven (7) Days following receipt of such instructions, and in any event no later than prior to commencement of the Work of the Project. If in the Judicial Council's judgment, the additional detailed instructions do in fact constitute Work in excess of the requirements of the authorized Service Work Order, the Judicial Council may, at Judicial Council's option, either close the authorized Service Work Order and create a new Service Work Order or issue a Change Order to account for the additional Work.
- 2.3.3.3. Only the following Judicial Council's personnel are approved to authorize a SWO(s): Senior Manager for Facility Management; Regional Manager for Facilities Operations; Project Managers; Supervising Facilities Management Administrators; Facilities Management Administrators; Judicial Council Customer Service Center Personnel.
- 2.3.4. Other Information Relating to Service Work Orders.
- 2.3.4.1. If the Parties agree to cancel an already authorized Service Work Order, the existing Service Work Order must be closed within Judicial Council's CAFM system and the Judicial Council may start a new Service Work Order process.
- 2.3.4.2. Judicial Council shall from time to time provide Contractor with the names and contact information of persons filling primary positions. This letter will be updated from time to time as personnel change, and is effective upon receipt. These changes will not require that this Contract be amended.
- 2.3.4.3. The Judicial Council reserves the right to modify the forms provided in the Contract, as it deems necessary or appropriate, in its sole discretion, and will notify Contractor of any modification to said form prior to implementing the modified form(s).

- 2.3.4.4. There is no limit on the number of Service Work Orders the Judicial Council may request or authorize under this Contract.
- 2.3.4.5. The Judicial Council does not guarantee that Contractor will receive any authorized Service Work Order(s) under this Contract.

3. **Notice to Proceed:** The Project Manager will provide a written notice to proceed to Contractor with respect to the Project at which time Contractor will proceed with the Project.

4. **Contract Term and Renewals:**

- 4.1. Unless the Coversheet indicates that an Option Term is not applicable, the Judicial Council may, at its sole discretion, elect to exercise an Option Term to extend this Contract. In order to exercise an Option Term, the Judicial Council must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term or Subsequent Term(s), as applicable. The exercise of an Option Term will be effective without Contractor's signature.
- 4.2. The Contract shall commence on the Effective Date and terminate on the Expiration Date as specified in the Coversheet, which is the Initial Term, unless otherwise set forth in writing, and in accordance with the terms and conditions of the Contract.
- 4.3. The Parties agree that the Judicial Council may elect to extend the Contract up to the total Option Terms, as indicated in the Cover Sheet and only if authorized in writing and in accordance with the terms and conditions of the Contract.
- 4.4. In the event the Judicial Council elects to exercise an Option Term, as set forth in this provision, the Parties will modify the Contract via bilateral execution of the Judicial Council's Standard Amendment Coversheet.
- 4.5. This Contract is of no force and effect until signed by both Parties. Any commencement of performance prior to execution of this Contract by Contractor shall be at Contractor's own risk.
- 4.6. Regardless of the expiration of this Contract, the terms and conditions of this Contract shall, unless otherwise terminated as specified herein, continue to be binding upon any Service Work Order executed under this Contract until the Work under said Service Work Order shall have been completed in full.

5. **Schedule of Values:** The Contractor shall, if required by the individual Service Work Order, submit to the Judicial Council's Project Manager a Schedule of Values allocated to portions of the Work, supported by such data to substantiate the accuracy of the values as the Judicial Council may require. This Schedule of Values, which is subject to the review, modification (if deemed necessary by the Judicial Council), approval, and written acceptance of the Judicial Council's Project Manager, shall be used as a basis for progress payments made to the Contractor. The Schedule of Values shall be based exclusively on the "payment in arrears" principle, as the Judicial Council is not allowed to make payments in advance. Contractor shall submit in writing a request to utilize contingency funding, which is subject to the Project Manager's approval. The total of all payments in the Schedule of Values must at all times be

equal to the Total Project Price.

6. **Failure to Adopt State Budget:** An event of default shall not occur if the Judicial Council is unable to make any payment due hereunder because of the State of California's failure to timely approve and adopt a State budget. If the Judicial Council fails to make any payment(s) as a result of the State of California's failure to timely approve and adopt a State budget, the Judicial Council shall promptly pay any previously due and unpaid amounts upon approval and adoption of the State budget.
7. **Relationship of Parties:** Contractor is and shall at all times be deemed to be an independent contractor and shall be wholly responsible for the manner in which it and its Subcontractors perform the services required of it by the Contract Documents. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the Judicial Council, or any of the Judicial Council's employees or agents, and 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 shall not be entitled to any rights or privileges of the Judicial Council's employees. Judicial Council shall be permitted to monitor the Contractor's activities to determine compliance with the terms of the Contract.
8. **Standard of Professionalism:** Contractor shall conduct all Work consistent with professional standards for the industry and type of work being performed under the Contract.
9. **Performance of Work:**
  - 9.1. Contractor shall provide, and shall act to ensure that Contractor, its employees, Subcontractors and consultants provide all Work specified in these Contract Documents to the Judicial Council's satisfaction, in compliance with the standards specified in the Contract Documents and in the authorized Service Work Order.
  - 9.2. If Contractor fails to perform the Work properly or fails to perform any provisions of this Contract, the Judicial Council, may, pursuant to the General Conditions and without prejudice to any other remedy it may have, cure the deficiencies and deduct the cost thereof from the payment then or thereafter due Contractor.
10. **Liquidated Damages:**
  - 10.1. Time is of the essence for all work Contractor must perform to obtain Project Completion. It is hereby understood and agreed that it is and will be difficult and/or impossible to ascertain and determine the actual damage that the Judicial Council will sustain in the event of and by reason of Contractor's delay; therefore, pursuant to Government Code section 53069.85, Contractor shall forfeit and pay to Judicial Council the sum(s) identified in a Service Work Order as liquidated damages ("**Liquidated Damages**") for each and every Day of delay beyond the agreed upon Project Time in a Service Work Order.
  - 10.2. It is hereby understood and agreed that neither the total cumulative Liquidated Damages amount nor any portion of the Liquidated Damage amount are penalties.

- 10.3. In the event any portion of the Liquidated Damages is not paid to the Judicial Council, the Judicial Council may deduct that amount from any money due or that may become due the Contractor under this Contract. The Judicial Council's right to assess Liquidated Damages is as indicated herein and in any Service Work Order. Contractor and Surety shall be liable for and pay to Judicial Council the entire amount of Liquidated Damages including any portion that exceeds the amount of the Project Price then held, retained or controlled by Judicial Council.
- 10.4. The time during which the construction of the Project is delayed for cause as hereinafter specified may extend the Project Time for a reasonable time as the Judicial Council may grant. This provision does not exclude the recovery of damages for delay by either Party under other provisions in this Contract.

**11. Site Examination:** Contractor has examined the Project site and certifies that it accepts all measurements, specifications, and conditions affecting the Project to be performed at the site. Contractor warrants that it has made all Project site examination(s) that it deems necessary as to the condition of the Project site, its accessibility for materials, workers and utilities, and Contractor's ability to protect existing surface and subsurface improvements.

**12. Materials and Work:**

- 12.1. Except as otherwise stated in the Contract, Contractor shall 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 Project Time.
- 12.1.1. Unless otherwise specified, all materials shall be new and the best of their respective kinds and grades as noted or specified, and workmanship shall be of good quality.
- 12.1.2. Materials shall be furnished in sufficient quantities and at such times as to insure uninterrupted progress of Work and shall be stored properly and protected as required.
- 12.1.3. For all materials and equipment specified or indicated in the Drawings, the Contractor shall 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, shall be furnished as though itemized here in every detail. In all instances, material and equipment shall be installed in strict accordance with each manufacturer's most recent published recommendations and specifications.
- 12.1.4. Contractor shall, 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 shall, upon demand from Judicial Council, present documentary evidence showing that orders have been placed.

- 12.1.5. 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, and all expenses incidental to the procuring of said materials and/or equipment shall be paid for by Contractor or withheld from payment(s) to Contractor.
- 12.1.6. 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 Project 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 shall 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 shall advise Judicial Council as to the owner thereof.
- 12.1.7. Nothing contained in this Article, however, shall 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 provision shall be inserted in all subcontracts and material contracts and notice of its provisions shall be given to all persons furnishing material for work when no formal contract is entered into for such material.
- 12.1.8. Title to new materials and/or equipment for the Work and attendant liability for its protection and safety shall remain with Contractor until incorporated in the Work of this Contract and accepted by Judicial Council. No part of any materials and/or equipment shall be removed from its place of storage except for immediate installation in the Work. Contractor shall keep an accurate inventory of all materials and/or equipment in a manner satisfactory to Judicial Council or its authorized representative and shall, at the Judicial Council's request, forward it to the Judicial Council.

### **13. Purchase of Materials and Equipment:**

- 13.1. 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.



13.2. **Off-Site Storage of Materials and Equipment Only Upon Judicial Council’s Written Consent.** Contractor shall not store materials and/or equipment off site without first obtaining the Judicial Council’s express, written consent. If Contractor receives Judicial Council’s consent to store materials and/or equipment off site (“**Stored Materials**”), Contractor shall comply with all of the following:

13.2.1. **Property of Others Insurance.** Contractor shall procure and maintain, during the entire time Stored Materials are in off-site storage, insurance coverage acceptable to the Judicial Council that shall protect Contractor and Judicial Council from all claims for Stored Materials that are lost, stolen, or damaged. The Judicial Council shall be named as a loss payee for this insurance coverage. The insurance coverage shall include a “loss payable endorsement” stating that all amounts payable will be paid as a joint-check to the Contractor and 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.”

13.2.2. **Payment for Stored Materials.** Judicial Council shall only make payment to Contractor for Stored Materials if agreed upon in advance, in writing, by the 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 shall be supported by all of the following:

13.2.3. 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

13.2.3.1. Verified invoices for the Stored Materials; and

13.2.3.2. 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 the Judicial Council. These documents shall include certificates and endorsements stating the coverage and that the Judicial Council is a loss payee or obligee, as appropriate.

#### 14. **Ownership:**

14.1. Any interest of Contractor or any of its Subcontractors in any Data, Materials, and/or Deliverables in any form, or other documents and/or recordings prepared by Contractor or its Subcontractors in its performance of Work under this Contract shall become the property of the Judicial Council. Upon the Judicial Council’s written request, or upon any termination of this Contract or any Service Work Order Contractor shall assign and/or shall act to ensure that its Subcontractor’s assign any such interest to the Judicial Council and provide the Judicial Council with copies of all such Data, Materials, and/or Deliverables, within thirty (30) Days of the request.

14.2. Contractor agrees and shall ensure that its Subcontractors agree not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data, Materials, and/or Deliverables. Contractor shall not, and shall ensure that its Subcontractors shall not publish or reproduce such Data, Materials, and/or Deliverables in whole, or part, or any manner or form, or authorize others to do so without the written consent of the Judicial Council.

**15. Subcontracting:**

15.1. Contractor shall not subcontract the Work to be provided under this Contract unless Contractor has identified the Subcontractor in writing in a Proposal that is acceptable to and authorized by a Service Work Order. No party to this Contract shall in any way contract on behalf of or in the name of another party to this Contract.

15.2. At the request of the Judicial Council, the Contractor shall provide documentation that its Subcontractors meet the required qualifications set forth in the Contract Documents with respect to that Subcontractor's work. If requested by the Judicial Council, the Contractor shall provide copies of all Contractor's agreements with its Subcontractors to the Judicial Council. The Judicial Council's review of subcontracts shall in no way relieve the Contractor of any of its responsibilities and obligations under this Contract.

15.3. Contractor shall, in the course of the work, engage only Subcontractors and employees who possess, and will maintain in good standing during the performance of the Services, valid and applicable licenses where the State of California or this Contract requires that the work to be performed by that Subcontractor or employee must be performed by a licensed person or entity

15.4. Contractor expressly acknowledges that its Subcontractors are not third party beneficiaries of this Contract. No contractual relationship exists between the Judicial Council and any Subcontractor, supplier, or sub-Subcontractor by reason of this Contract.

15.5. Contractor shall be responsible for all Work performed under the Contract. All persons engaged in the Work of the Project are the responsibility and under the control of the Contractor. Contractor shall give personal attention to fulfillment of the Contract and shall keep the Work under the Contractor's control.

15.6. Although some of the Contract Documents may be arranged according to various trades or general grouping of work, the Contractor is not obligated to sublet work in any particular grouping or manner. The Contractor shall be responsible for the coordination of the trades, Subcontractors, sub-Subcontractors, and any material or equipment suppliers working on the Project.

15.7. The Judicial Council may not permit a contractor or Subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Labor Code section 1777.1 to propose on, bid on, be awarded, or perform work as a Subcontractor on a public works project.

- 15.8. Any contract on a public works project entered into between a contractor and a debarred Subcontractor is void as a matter of law. A debarred Subcontractor may not receive any public money for performing work as a Subcontractor on a public works contract, and any public money that may have been paid to a debarred Subcontractor by a contractor on the project shall be returned to the awarding body.
- 15.9. Contractor shall be responsible for the payment of wages to workers of a debarred Subcontractor who has been allowed to work on the Project.
- 15.10. Contractor shall ensure that all Contractor's Subcontractors execute the Prevailing Wage and Related Labor Requirements Certification attached hereto and incorporated herein.

**16. Work Warranties:**

- 16.1. Contractor warrants and represents that its employees and its Subcontractors' employees assigned to perform Work under this Contract have the appropriate required credentials in the specified area(s) of competence required by Contract Documents and/or an authorized Service Work Order.
- 16.2. Contractor warrants and represents that its employees and its Subcontractors' employees assigned to perform Work under this Contract have the appropriate skills, training, and background reasonably commensurate with his or her level of performance or responsibility so as to be able to perform in a competent and professional manner in accordance with generally accepted industry standards.
- 16.3. Contractor warrants that the Work provided hereunder will conform to the standards established by this Contract and its authorized Service Work Orders.
- 16.4. All warranties, including any special warranties specified elsewhere herein, shall inure to the Judicial Council, its successors, assigns, customer agencies, and any other recipients of the Work provided hereunder.
- 16.5. Contractor warrants that the Work will be performed on time and according to the applicable schedule or within the dates specified in a Service Work Order.
- 16.6. Contractor warrants that the Work to be provided hereunder will conform to the requirements of this Contract and as provided in a Service Work Order authorized hereunder. This warranty shall begin upon the date of the Judicial Council's final payment for the Work provided under a Service Work Order, and shall extend for a period of **one (1) year unless a Service Work Order extends that time period** ("Warranty Period"). If the Judicial Council identifies defect(s) in the Work provided during the Warranty Period, Contractor shall either re-perform the Work or otherwise remedy the defect to the satisfaction of the Judicial Council. Contractor shall (unless a longer period is agreed to in writing with the Judicial Council's Project Manager) have a period of **ten (10) Business Days** following receipt of Notice of the existence of a defect, in which to provide a cure. In no event shall the Judicial Council be responsible for any costs incurred by Contractor to remedy any deficiencies in the Work

16.7. All warranties, including any special warranties specified elsewhere herein, shall inure to the Judicial Council, its successors, assigns, the Court(s), the Counties and/or any other customer agencies or other beneficiaries of the Work provided hereunder.

**17. Contractor's Personnel:**

- 17.1. Contractor shall provide all personnel and Subcontractor personnel necessary to provide the Work authorized under this Contract.
- 17.2. Contractor and/or its Subcontractors shall provide certain Key Personnel, including Contractor's project manager(s), to perform certain Work set forth in this Contract and in Service Work Orders.
- 17.3. Contractor's project manager shall:
- 17.3.1. Serve as the primary contact with the Judicial Council's Project Manager and personnel;
  - 17.3.2. Manage the day to day activities of Contractor and its Subcontractor's personnel;
  - 17.3.3. Identify the appropriate resources needed;
  - 17.3.4. Plan and schedule the Work;
  - 17.3.5. Meet budget and schedule commitments;
  - 17.3.6. Provide Progress Reports in accordance with this Contract; and
  - 17.3.7. Act to ensure the overall quality of the Work performed.
- 17.4. The Judicial Council reserves the right to disapprove the continuing assignment of any Key Personnel provided under this Contract, if, in the Judicial Council's opinion, the performance of Key Personnel is unsatisfactory. The Judicial Council agrees to provide Notice to Contractor in the event it makes such a determination. If the Judicial Council exercises this right, Contractor shall immediately assign replacement Key Personnel, possessing equivalent or greater experience and skills.
- 17.5. If any of Key Personnel assigned to a Project, through no cause or fault of Contractor, become unavailable to perform Work, Contractor shall immediately provide replacement Key Personnel, possessing equivalent or greater experience and skills as required by this Contract and as further specified in any resumes referenced in Service Work Orders.
- 17.6. Contractor shall ensure that the same Key Personnel named in Service Work Orders are retained during the performance of the Work of that Service Work Order. However, Contractor may, with approval of the Judicial Council's Project Manager, introduce substitute Key Personnel with specific skill sets/qualifications, or release Key Personnel whose skill sets/qualifications are no longer needed, if advance approval in writing is received from the Judicial Council's Project Manager.

- 17.7. If any of the Key Personnel identified as specified in an authorized Service Work Order terminate their employment during the period of performance of a Service Work Order, Contractor will provide a substitute acceptable to the Judicial Council's Project Manager.
- 17.8. If any Key Personnel become unavailable or are disapproved and Contractor cannot furnish a replacement acceptable to the Judicial Council, the Judicial Council may terminate this Contract or the applicable Service Work Order for cause, pursuant to the Termination and Suspension provisions herein.

**18. Safety Plan/Procedures:**

- 18.1. The Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Work and shall take adequate precautions for safety of and shall provide adequate protection to prevent damage, injury, or loss to employees and other persons who may be affected thereby, the Work and materials to be incorporated therein, and property at the Project site and adjoining property.
- 18.2. Contractor shall prior to the start of construction submit to the Judicial Council a written plan for Project site safety that is compliant with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety and protection of persons and property from damage, injury, or loss.
- 18.3. The Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury, or loss.
- 18.4. The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the State, other owners, and users of adjacent sites and utilities.
- 18.5. The Contractor shall at all times conduct the construction of the Work to minimize inconvenience to the general public and to ensure the protection of persons and business adjacent to the Project site so as to minimize interference with their daily lives and operations.
- 18.6. The Contractor shall designate the Work Superintendent, or some other responsible member of the Contractor's organization who is at the Project site, to be the competent person responsible for the prevention of accidents and the monitoring of the safety of the Work.
- 18.7. The Contractor shall remedy damage and loss to property caused in whole or in part by the Contractor, a Subcontractor, a Sub-Subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible.
- 18.8. The Contractor shall not permit any part of the Work or Project site to be loaded so as to endanger its safety.

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

**19. Security Protocols and Tool Control Policy:** Contractor shall be responsible for Contractor's, Contractor's personnel's, Subcontractors', and Subcontractors' personnel's 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 the Judicial Council's security protocols and tool control policy shall be considered a material breach of this Contract. The version of the Judicial Council Tool Control Policy in effect as of the Effective Date is attached as **Attachment D**. The Judicial Council Tool Control Policy is subject to change.

**20. Prohibited Hazardous Substance or Materials:**

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

20.2. Should the Contractor be required to utilize hazardous materials in the performance of the Work it shall notify the Judicial Council of its need to do so, and the Contractor shall comply with all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of Work.

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

**21. Trench Shoring and Utilities:**

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

21.2. Pursuant to Government Code section 4215, The Judicial Council assumes the responsibility for removal, relocation, or protection of existing main or trunk-line utility facilities located on the site at the time of commencement of the Work with respect to any such utility facilities that are not identified in the Plans and Specifications. Contractor shall not be assessed for liquidated damages for delay in completion of the Work caused by failure of The Judicial Council or the owner of a utility to provide for removal or

relocation of such utility facilities.

- 21.3. Locations of existing utilities provided by The Judicial Council shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. The Judicial Council shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the Plans and Specifications with reasonable accuracy, and for equipment necessarily idle during such work.
- 21.4. No provision herein shall be construed to preclude assessment against Contractor for any other delays in completion of the Work. Nothing herein shall be deemed to require The Judicial Council to indicate the presence of existing service laterals, appurtenances, or other utility lines, with 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.
- 21.5. If Contractor, while performing the Work, discovers utility facilities not identified by the Judicial Council in the Plans and Specifications, Contractor shall immediately, but in no case longer than two (2) Business Days, notify the Judicial Council and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the Judicial Council shall be borne by the Contractor.

**22. Documents on Work:** Contractor shall at all times keep on the Project site, or at another location as the Judicial Council may authorize in writing, one legible copy of all Contract Documents, including Addenda and Change Orders, and titles 19 and 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 shall 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 shall 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 shall also be acquainted with and comply with all California Code of Regulations provisions relating to conditions on this Project, particularly titles 8 and 17. Contractor shall coordinate with Architect and Construction Manager and shall submit its verified report(s) according to the requirements of title 24.

22.1. **Daily Job Reports:** Contractor shall maintain, at a minimum, at least one (1) set of Daily Job Reports on the Project, in hard copy format. These must be prepared by the Contractor's employee(s) who are present on Project site, and must include, at a minimum, the following information. If no work is performed on a particular day or days, the Contractor shall instead provide to the Judicial Council within seven (7) days of request, a certification to that effect indicating what day(s) on which no work was performed.

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

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

- 22.1.3. The weather conditions on that day.
  - 22.1.4. A list of all Subcontractor(s) working on that day.
  - 22.1.5. A list of all employees, consultants and Subcontractors working on that day.
  - 22.1.6. A list of each Contractor employee working on that day and the total hours worked for each employee.
  - 22.1.7. A complete list of all equipment on Project site that day, whether in use or not.
  - 22.1.8. A complete list of all materials, supplies, and equipment delivered on that day.
  - 22.1.9. A complete list of all inspections and tests performed on that day.
  - 22.1.10. Each day Contractor shall provide a copy of the previous day's Daily Job Report to the Judicial Council or the Judicial Council's Construction Manager.
- 22.2. **Preservation of Records:** Judicial Council shall have 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/proposal documents, bid/proposal cost data, subcontract job cost reports, and other data of the Contractor, any Subcontractor, and/or supplier, including computations and projections related to bidding/proposing, 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 the Judicial Council. These documents may be duplicative and/or be in addition to any bid/proposal documents held in escrow by the Judicial Council. Contractor shall make available at its office at all reasonable times the materials described in this paragraph for the examination, audit, or reproduction until three (3) years after final payment under this Contract. Notwithstanding the provisions above, Contractor shall provide any records requested by any governmental agency, if available, after the time set forth above.

## 23. Labor Code Provisions

### 23.1. Prevailing Wage:

- 23.1.1. 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>).

23.1.2. 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.

23.1.3. 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.

**23.2. Registration:**

23.2.1. 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.”

23.2.2. Contractor shall, and shall ensure that all “subcontractors” (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. 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.

**23.3. Hours of Work:**

- 23.3.1. 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.
- 23.3.2. 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 Judicial Council and to the Division of Labor Standards Enforcement of the DIR.
- 23.3.3. 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.
- 23.3.4. 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.
- 23.3.5. Project Work will typically take place in an occupied court facility; therefore, work hours may be restricted depending upon the Project. The individual Service Work Order will include any restrictions on hours of work. If the Service Work Order does not include a restriction on hours of work, then the work must take place during business hours.

**23.4. Payroll Records:**

- 23.4.1. 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 Judicial Council, Contractor shall provide to the Judicial Council and shall cause each Subcontractor performing any portion of the Work to provide the 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.

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

- 23.4.2.1. 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.
- 23.4.2.2. CPRs shall be made available for inspection or furnished upon request to a representative of Judicial Council, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.
- 23.4.2.3. 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 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.

23.4.3. 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)

23.4.4. 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.

23.4.5. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by Judicial Council, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's

name, address, and social security number. The name and address of Contractor awarded Contract or performing Contract shall not be marked or obliterated.

23.4.6. Contractor shall inform Judicial Council of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business Days, provide a notice of change of location and address.

23.4.7. 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 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.

23.4.8. It shall be the responsibility of Contractor to ensure compliance with the provisions of Labor Code section 1776.

**23.5. Apprentices:**

23.5.1. 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.

23.5.2. 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.

23.5.3. 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.

23.5.4. 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.

23.5.5. 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.

- 23.5.6. 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.
- 23.5.7. 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:
- 23.5.7.1. Be denied the right to bid or propose on any subsequent project for one (1) year from the date of such determination; and
  - 23.5.7.2. Forfeit as a penalty to Judicial Council the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
- 23.5.8. Contractor and all Subcontractors shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- 23.5.9. 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.
- 23.5.10 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.
- 24. Accounting System Requirement:** Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles or GAAP.
- 25. Retention of Records:** Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Contract for a period in accordance with California State and Federal law, a minimum retention period being no less than three (3) years. The retention period starts from the date of the submission of the final payment request. Contractor is also obligated to protect Data adequately against fire or other damage.
- 26. Permits and Licenses:** The Contractor shall observe and comply, and shall ensure that its Subcontractors observe and comply with all federal, state, city, and county laws, rules, and regulations affecting Contractor and its Subcontractor(s) performance of the Work provided under this Contract. The Contractor shall procure and keep in full force and effect, and shall ensure that its Subcontractors procure and keep in full force and effect, during the Term of this Contract, all permits, licenses, registrations and approvals necessary to accomplish the Work contemplated in this Contract. Contractor shall deliver to Judicial Council all original licenses,

permits, registrations and approvals obtained by Contractor in connection with the Work prior to the final payment or upon termination of the Contract, whichever is earlier.

- 27. Work to Comply with Applicable Laws and Regulations:** Contractor shall 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 shall promptly notify Judicial Council in writing and any changes deemed necessary by Judicial Council shall be made as provided in Contract for changes in Work.
- 27.1. National Electrical Safety Code, U. S. Department of Commerce
  - 27.2. National Board of Fire Underwriters' Regulations
  - 27.3. Uniform Building Code, latest addition, and the California Code of Regulations, title 24, including amendments
  - 27.4. Industrial Accident Commission's Safety Orders, State of California
  - 27.5. Regulations of the State Fire Marshall (title 19, California Code of Regulations) and Pertinent Local Fire Safety Codes
  - 27.6. Americans with Disabilities Act
  - 27.7. Contractor shall comply will all applicable mitigation measures, if any, adopted by any public agency with respect to this Project pursuant to the California Environmental Quality Act (Public Resources Code sections 21000 et seq.)
  - 27.8. 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 shall bear all costs arising therefrom.
  - 27.9. Where Specifications or Drawings state that materials, processes, or procedures must be approved by the DSA, State Fire Marshall, or other body or agency, Contractor shall be responsible for satisfying requirements of such bodies or agencies.
- 28. National Labor Relations Board:** By executing this Contract, Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) 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 the National Labor Relations Board.
- 29. Americans with Disabilities Act:** By signing this Contract, Contractor assures the Judicial Council that it complies with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Sections 12101 et seq.) and all amendments and updates thereto,

which prohibit discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

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

- 30.1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- 30.2. Establish a Drug-Free Awareness Program to inform employees about:
  - 30.2.1. The dangers of drug abuse in the workplace;
  - 30.2.2. The person's or company's policy of maintaining a drug-free workplace;
  - 30.2.3. Any available counseling, rehabilitation, and employee assistance programs; and
  - 30.2.4. Penalties that may be imposed upon employees for drug abuse violations.
- 30.3. Provide that every employee who works under the Contract will:
  - 30.3.1. Receive a copy of the company's drug-free workplace policy statement; and
  - 30.3.2. Agree to abide by the terms of the company's statement as a condition of employment.
- 30.4. Provide for reasonable cause testing as necessary, and post accident testing as necessary of workers performing work at the Project site.
- 30.5. In addition to the other indemnity requirements of the Contract, Contractor shall indemnify and hold harmless the State of California, the Judicial Council of California, the Appellate Courts of California, the Supreme Court of California, the Superior Court of California associated with the Project, and the county associated with the Project, including their respective elected and appointed officials, judges, officers, employees and agents against any loss, claim, damages or liability resulting from Contractor's failure to enforce and maintain a drug free workplace.

**31. Nondiscrimination/No Harassment Clause:**

- 31.1. During the performance of this Contract, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, sexual orientation, gender identification, or any other legally protected characteristics. Contractor shall ensure that the evaluation

and treatment of employees and applicants for employment are free of such discrimination.

- 31.2. During the performance of this Contract, Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor or its Subcontractors interact in the performance of this Contract. Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- 31.3. Contractor shall comply and shall ensure that its Subcontractors comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, sections 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, Section 11000 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, section 12990, set forth in chapter 5 of division 4.1 of title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part of it as if set forth in full.
- 31.4. Contractor and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Contract.
- 31.5. Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to its Subcontractors to perform Work under the Contract.

**32. Background Checks:** If the Contractor assigns persons (whether employees, independent contractors, Subcontractors or agents) to perform work under this Contract that requires that the person have access to the systems (whether on-site or by remote access) or premises of the Judicial Council or other Judicial Branch Entities, the Judicial Council shall have the right, but not the obligation, to conduct a background check or to require the Contractor to conduct a background check, as permitted by law, on all such persons before the Judicial Council will grant to such persons access to the Judicial Council's or other judicial branch entities' premises or systems. The Contractor will cooperate with the Judicial Council in performing such background check, and will promptly notify the Judicial Council of any such person refusing to undergo such background check, and will reassign such person to perform other services. The Contractor shall obtain all releases, waivers, or permissions required for the release of such information to the Judicial Council. Costs incident to background checks are the sole responsibility of the Contractor.

- 32.1. Access to Project site. Only Approved Persons may have unescorted access to (1) the Restricted Areas of a Project site and (2) any area of the Project site, 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 ("**Access to Restricted Areas**").



- 32.2. Notification. Contractor must notify all Subcontractors that (i) the Judicial Council requires a background check for personnel working in Restricted Areas without an escort pursuant to this Background Checks provision, (ii) the Court may have supplemental screening procedures, criteria, and requirements, and (iii) Subcontractor employees must comply with both the Judicial Council's and the Courts' checks and procedures.
- 32.3. Judicial Council Screening and Approval Process. The Judicial Council shall conduct the screening and approval of employees of Contractor and Subcontractors that have access to the Restricted Areas pursuant to the Judicial Council's then-current background check policies and procedures ("**Background Check Policy**"). Contractor agrees to cooperate with the Judicial Council with respect to the screening of those employees. The version of the Judicial Council Background Check Policy in effect as of the Effective Date is attached to the Contract as **Attachment E**. The Judicial Council may update and/or revise the Background Check Policy at any time, without notice to the Contractor. Contractor acknowledges that the definition of Restricted Areas in this Contract is broader and includes more areas than the definition of Restricted Areas in the Background Check Policy and that the definition of Restricted Areas that includes the most areas will control. Contractor must comply with the provisions of this Background Checks provision in this Contract and with the Background Check Policy.
- 32.4. Judicial Council Badges. The Judicial Council will issue an identification badge to each person who is approved by the Judicial Council pursuant to this Background Checks provision 4.3 ("**Judicial Council Screening and Approval Process**"), bearing that person's name and picture. The badge will indicate that the person is permitted to access the Restricted Areas. The Judicial Council will either (1) notify Contractor if an employee is approved, whereupon the Judicial Council will issue an identification badge for that person, or (2) provide an identification badge for the person to the 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. The Contractor will have a procedure in place to ensure that all badges are returned to the Judicial Council upon termination of an employee.
- 32.5. 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 the Project site. The Court shall have the right at any time to refuse Project 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 shall obtain at no additional cost to the Court all related releases, waivers and permissions the Court requires. The Court may issue its own identification badge or other credential to persons who have passed the applicable Court-required screening procedure.
- 32.6. 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: 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 the Judicial Council, Contractor must provide to either the Court or the 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.

32.7. Costs. All costs associated with escorting an unscreened employee (i.e. any employee who is not an Approved Person) shall be included in the Total Project Price. Contractor will not receive additional compensation or reimbursement from the Judicial Council for any costs related to escorting. The Judicial Council will pay for the cost of the background check (e.g. LiveScan), however, the Contractor will be responsible for employee time, fingerprinting fees, local administrative or processing fees, or other costs.

**33. No Interference with Court Operations.** Contractor acknowledges that the Project is located in a courthouse which is an operating courthouse that is open to the public. Access to the Project site, including mechanical rooms, electrical rooms, or other rooms must be coordinated with the Court through the Judicial Council's Project Manager before work commences. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the Judicial Council's Project Manager and shall be minimized to the greatest degree possible. Contractor shall provide temporary services to all facilities interrupted by Contractor's work. Contractor and its Subcontractors shall not interfere with the transaction of Court business, including the public's access to and use of the Project site. In the event that Contractor or any Subcontractor interferes with Court operations in violation of this provision, the Judicial Council, in its sole discretion, may be ordered to stop work at Contractor's own expense. Contractor shall be liable to Court for any damages resulting from Contractor or any Subcontractor interfering with the Court operations in violation of this provision.

**34. Disabled Veteran Business Enterprises:** If Contractor either (a) listed itself as a Disabled Veteran Business Enterprise (DVBE) on Contractor's proposal to the RFQ for this Contract, or (b) listed a DVBE as a subcontractor on the SWO for a Project, then Contractor shall comply with the requirements stated in Military and Veterans Code section 999 et seq. with respect to any work, services, materials or supplies provided under this Contract. Judicial Council DVBE resources can be found at: <http://www.dgs.ca.gov/pd/Programs/OSDS.aspx>. Contractor shall demonstrate DVBE compliance by completing the DVBE Participation Form attached to this Contract or to any Service Work Order. Contractor agrees to provide the Judicial Council with any requested relevant supporting documents and to maintain those documents for a period of three (3) years after final payment under this Contract.

**35. Judicial Council's Obligation Subject to Availability of Funds:**

35.1. The Judicial Council's obligation under this Contract is subject to the availability of authorized funds. The Judicial Council may terminate the Contract or any part of the Contract Work, without prejudice to any right or remedy of the Judicial Council, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited

in any way prior to the expiration date set forth in this Contract, or in any Amendment hereto, the Judicial Council may terminate this Contract in whole or in part, upon written Notice to Contractor. Such termination shall be in addition to the Judicial Council's rights to terminate for convenience or default.

- 35.2. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Contract is terminated for non-appropriation:
  - 35.2.1. The Judicial Council will be liable only for payment in accordance with the terms of this Contract for Work provided prior to the effective date of termination; and
  - 35.2.2. Contractor shall be released from any obligation to provide further services pursuant to the Contract as are affected by the termination.
- 35.3. Funding for this Contract beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Contract. Should such an appropriation not be approved, the Contract may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

## **36. Confidentiality:**

- 36.1. Both the Judicial Council and Contractor acknowledge and agree that in the course of performing the Work under this Contract, the Judicial Council may disclose Confidential Information to Contractor and/or its Subcontractors.
- 36.2. Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that Contractor may disclose the Judicial Council's Confidential Information on a "need to know" basis to Contractor's employees and Subcontractors and, as directed by the Project Manager, representatives of the Judicial Council that are performing Work authorized under this Contract. All such employees and Subcontractors of Contractor shall have executed a confidentiality Contract with Contractor requiring a promise of confidentiality concerning Contractor's clients and business.
- 36.3. Contractor shall acquire no right or title to the Confidential Information. Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Contract. 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; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Contract.
- 36.4. The Judicial Council reserves the right to disclose all Work provided under this Contract to third parties for the purpose of validation of the Work, and all documents that may be or are required to be disclosed pursuant to the California Rules of Court.

- 36.5. Contractor shall bind its Subcontractors to provisions of confidentiality with regard to the Confidential Information disclosed that are not less strict than those assumed by Contractor hereunder.
- 36.6. The Contractor's duty to hold Confidential Information in confidence and this Confidentiality provision shall survive the termination of this Contract.
- 36.7. A violation by the Contractor of these Confidentiality provisions could cause irreparable injury to the Judicial Council and as there is no adequate remedy at law for such violation, the Judicial Council may, in addition to any other remedies available to it at law or in equity, enjoin the Contractor in a court of equity for violating or threatening to violate this Confidentiality provision. In the event the Judicial Council is required to enforce this Confidentiality provision through legal action, then it will be entitled to recover from the Contractor all costs incurred thereby, including without limitation, reasonable attorney's fees.
- 37. Limitation on Publication:** Contractor shall not, and shall ensure that its Subcontractors shall not publish or submit for publication any article, press release, or other writing relating to Contractor's services for the Judicial Council without prior review and written permission by the Judicial Council. This provision shall apply to print, electronic writings, and all other forms of media, including social media.
- 38. Covenant Against Gratuities:** Contractor warrants by signing this Contract that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Contractor or any agent, director, Subcontractor or representative of Contractor, to any officer, official, agent, or employee of the Judicial Council with a view toward securing this Contract or securing favorable treatment with respect to any determinations concerning the performance of this Contract. For breach or violation of this warranty, the Judicial Council will have the right to terminate this Contract, either in whole or in part, and any loss or damage sustained by the Judicial Council in procuring, on the open market, any Work which Contractor agreed to supply, which shall be borne and paid for by Contractor. The rights and remedies of the Judicial Council provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.
- 39. Indemnification:**
- 39.1. Contractor agrees, to the fullest extent permitted by law, to indemnify, defend (with counsel satisfactory to the Judicial Council), and hold harmless (collectively, "**Indemnify**") the State, the Judicial Council of California, the State's Courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, contractors, representatives, volunteers, and employees, in both individual and official capacities ("**Indemnitees**"), against all suits, claims, damages, losses, and expenses, including but not limited to attorneys' 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, active negligence, or willful misconduct of the Indemnitees, and/or to any extent that would render these provisions void or unenforceable. This Contract 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. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law, any failure or alleged failure to timely and properly fulfill all of its obligations under the Contract Documents in strict accordance with their terms, and without limitation, any stop payment notice actions or liens, including assessments by the California Department of Labor Standards Enforcement.

- 39.2. Contractor shall give prompt notice to the Judicial Council in the event of any injury (including death), loss, or damage included herein. Without limitation of the provisions herein, if Contractor's Contract 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 Contract 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 shall be and remain fully liable on its agreements and obligations herein to the full extent permitted by law.
- 39.3. 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.
- 39.4. The defense and indemnification obligations hereunder shall survive the Completion of Work, including the warranty/guarantee period, and/or the termination of the Contract.

**40. Insurance:**

40.1. **Insurance:** Unless different provisions are indicated in Contractor's Proposal Form, all insurance policies required herein of Contractor and/or its Subcontractor(s) shall be maintained in force during the term of this Contract with the following minimum policy limits:

<b>Commercial General Liability</b>	Includes: Personal & Advertising Injury, Product Liability and Completed Operations	\$2,000,000 each occurrence; \$4,000,000 general aggregate
<b>Automobile Liability – Any</b>	Combined Single Limit	\$1,000,000 per

<b>Auto</b>		occurrence
<b>Workers Compensation</b>		Statutory limits pursuant to State law
<b>Employers' Liability</b>		\$1,000,000 each accident, each disease; \$1,000,000 policy limit

40.2. **The Service Work Order form includes detailed insurance provisions and requirements with which the Contractor shall comply.** The Contractor shall, prior to execution of this Contract, provide the Judicial Council certificates of insurance, on forms acceptable to the Judicial Council, as evidence that the required insurance is in full force and effect. Insurance requirements may be increased on a Project by Project basis, whereby Contractor must provide certificates of insurance prior to commencement of the Project.

**41. Contract Security – Bonds:**

41.1. **Bonding Certification:** Contractor shall provide the Judicial Council prior to executing the Contract a letter from a California admitted surety insurer on the surety's letterhead certifying the Contractor's bonding capacity. The letter must be signed by an authorized representative of the surety and notarized.

41.2. **Bond Requirements:** Contractor shall furnish with each Contractor Proposal Form for each Project two surety bonds issued by a California admitted surety insurer as follows:

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

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

**42. No Commencement without Insurance and Bonds:** The Contractor shall not commence Work on any Project prior to (a) providing the required insurance and bonds; and (b) the effective date of the required insurance and bonds. The date of commencement of the Work shall not be changed by the effective date of such insurance. If Contractor commences Work without insurance and bonds, it shall be considered a material breach of this Contract and all Work for the Service Work Order is performed at Contractor's peril and shall not be compensable until and unless Contractor secures bonds and insurance pursuant to the terms of the Contract Documents.

**43. Waiver of Claims:** The Judicial Council of California, State of California, the superior courts and appellate courts of the State of California, the Supreme Court of California, and any of their officers, employees, and agents (collectively, "**State Entities**") shall not be liable for any injury, loss, or damage to Contractor, Subcontractors, or their officers, employees, or agents including, without limitation, damage to the property of Contractor, Subcontractors or their officers, employees, and agents, by or from any cause whatsoever, except to the extent the injury, loss, or

damage was caused from the gross negligence or intentional misconduct of the State Entities. Contractor and Subcontractors hereby waive all claims and their respective insurers waive all rights of subrogation against the State Entities for any injury, loss, or damage to Contractor, Subcontractors, or their officers, employees, or agents including, without limitation, damage to the property of Contractor, Subcontractors or their officers, employees, and agents, in or about the Facilities, by or from any cause whatsoever, except to the extent the injury, loss, or damage was caused from the gross negligence or intentional misconduct of the State Entities. Neither the State, nor any officer or employee of the State, shall be liable for any loss or damage that may happen to the Work, or any part thereof; nor to any of the materials or other items used or employed in performing the Work.

**44. Termination and Suspension:**

**44.1. Judicial Council's Right to Terminate Contractor for Cause: Grounds for Termination.** The Judicial Council, in its sole discretion, may terminate the Contract and/or each Service Work Order upon any of the following:

- 44.1.1. 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.
- 44.1.2. Contractor fails to complete said Work within the time specified or any extension thereof.
- 44.1.3. Contractor persistently fails or refuses to perform Work or provide material of sufficient quality as to be in compliance with Contract Documents.
- 44.1.4. Contractor files a petition for relief as a debtor, or a petition is filed against the Contractor without its consent, and the petition is not dismissed within sixty (60) days.
- 44.1.5. Contractor makes a general assignment for the benefit of its creditors, or a receiver is appointed on account of its insolvency.
- 44.1.6. 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.
- 44.1.7. Contractor fails to make timely payment to Subcontractors, or for material, or for labor.
- 44.1.8. Contractor disregards laws, or ordinances, or instructions of Judicial Council.
- 44.1.9. 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.
- 44.1.10. Contractor or its Subcontractor(s) is/are otherwise in breach, default, or in substantial violation of any provision of this Contract.

#### 44.2. Notification of Termination:

- 44.2.1. Upon the occurrence at 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 this Contract, the Contractor's right to perform the work of the Contract, and/or Service Work Order under this Contract. The Judicial Council reserves the right to terminate specific Service Work Orders, without impact to this Contract or other Service Work Orders with Contractor under this Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to Judicial Council for the correction of the condition(s) and/or violation(s) be made, this Contract and/or the Contractor's right to perform the Work shall cease and terminate. Upon termination, Contractor shall not be entitled to receive any further payment until the entire Work is finished.
- 44.2.2. Upon termination, Judicial Council may immediately serve written notice of tender upon Surety whereby Surety shall have the right to takeover and perform this Contract only if Surety:
- 44.2.2.1. Within three (3) days after service upon it of the notice of tender, Surety gives Judicial Council written notice of Surety's intention to takeover and perform this Contract; and
- 44.2.2.2. Commences performance of the Contract within seven (7) days from date of serving of its notice to Judicial Council.
- 44.2.3. If Surety fails to notify Judicial Council or begins performance as indicated herein, Judicial Council may takeover 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 shall be liable to Judicial Council for any excess cost or other damages the Judicial Council incurs thereby. Time is of the essence in the Contract. If the Judicial Council takes over the Work as herein provided, Judicial Council may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to Contractor as may be on the Site of the Work, in bonded storage, or previously paid for.
- 44.3. **Conversion to Termination for Convenience:** In the event the Contract or a specific Service Work Order is terminated under this "Judicial Council's Right to Terminate Contractor for Cause" section and it is finally determined by an arbitrator, court, jury or other tribunal having jurisdiction, for any reason, that the Contractor was not in default under the provisions hereof or that the Judicial Council's exercise of its rights this section was defective, deficient, ineffective, invalid or improper for any reason, the termination shall be deemed a termination for convenience of the Judicial Council under the "Termination of Contractor for Convenience" section herein and thereupon, the rights



and obligations of the Judicial Council and the Contractor shall be determined in accordance with the “Termination of Contractor for Convenience” section herein.

**44.4. Effect of Termination:**

44.4.1. Contractor shall, only if ordered to do so by the Judicial Council, immediately remove from the Project site all 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 shall be liable upon the performance bond for all damages caused the Judicial Council by reason of the Contractor’s failure to complete the Contract.

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

44.4.3. In the event that the Contract is terminated for any reason, no allowances or compensation will be granted for the loss of any anticipated profit by the Contractor or any impact or impairment of Contractor’s bonding capacity.

44.4.4. If the expense to the Judicial Council to finish the Work exceeds the unpaid Project Price, Contractor and Surety shall pay difference to Judicial Council within twenty-one (21) days of demand for payment.

**44.5. Termination of Contractor for Convenience:**

44.5.1. Judicial Council in its sole discretion may terminate the Contract, or any Service Work Order, upon three (3) days written notice to the Contractor. Under a termination for convenience, the Judicial Council retains the right to all the options available to the Judicial Council if there is a termination for cause. In case of a termination for convenience, Contractor shall have no claims against the Judicial Council except:

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

44.5.1.2. 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 shall be full compensation for all Contractor’s and its Subcontractor(s)’ mobilization and/or demobilization costs and any

anticipated lost profits resulting from termination of the Contractor for convenience for the Service Work Order.

**44.6. Suspension of Work:**

44.6.1. 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 the Judicial Council resumes the Project, the Parties will attempt to negotiate an adjustment in the Project 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 Project Price, the Judicial Council may terminate the Contract as permitted herein.

44.6.2. In the event the Judicial Council shall order suspension of the Work, an adjustment shall be made to the Project 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 the Judicial Council; provided however that no adjustment of the Project Price shall be made to the extent: (i) that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the 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 Project Price shall not include any adjustment to increase the Contractor's overhead, general administrative costs or profit, all of which will remain as reflected in the Schedule of Values submitted by the Contractor pursuant to the Contract Documents. In the event of the Judicial Council's suspension of the Work, the Project Time shall be equitably adjusted.

44.7. **Scope Reduction:** In cases of suspension, partial or complete termination, or at the discretion of the Judicial Council, the 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.

**45. Disputes and Claims (Dispute Resolution Process):**

45.1. **Exclusive Remedy.** Compliance with the notice and claim submission procedures described in this Disputes and Claims section is an express condition precedent to the right to commence litigation, file a claim under the California Government Code, or commence any other legal action. Contractor cannot assert or bring any Government Code Claim or subsequent legal action until that Claim has gone through the Dispute and Claims Resolution Process. The Parties stipulate that this Dispute and Claims Resolution Process is the exclusive remedy for resolving claims and disputes under this Contract.

45.2. **Informal Negotiations.** The Judicial Council's Project Manager and Contractor's project manager shall make a good faith attempt to promptly resolve the dispute by informal negotiation.

- 45.3. **Demand.** If the dispute is not settled in a timely manner pursuant to informal negotiations between the Judicial Council’s Project Manager and Contractor’s project manager, either Party may issue a written statement (the “**Demand**”). The Party submitting a Demand (“**Submitting Party**”) must provide the following to the other Party (“**Receiving Party**”):
- 45.3.1. Detailed factual information and supporting documentation of their Demand;
  - 45.3.2. State the specific Contract provision(s) on which the Demand is based;
  - 45.3.3. If the Demand regards a cost adjustment, state the exact amount of the cost adjustment sought;
  - 45.3.4. Must be accompanied by pertinent supporting records;
  - 45.3.5. Include a written statement signed by an authorized representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and provide reasoning to support their contention that the amount (if any) requested reflects an adjustment in payment the Submitting Party believes is equitable.
- 45.4. **Response to Demand.** The Receiving Party shall, within ten (10) Days, provide a final written response (“**Final Response**”) or request additional information deemed necessary to prepare a Final Response. The Final Response shall state whether the Receiving Party accepts or rejects the Demand. If the Receiving Party requests additional information to prepare the Final Response, the Submitting Party shall promptly comply with the Receiving Party’s request for such information. Any delay caused by the Submitting Party’s failure to respond to a request for additional information shall extend the ten (10) Day period within which the Receiving Party must provide a Final Response, however, unless otherwise agreed to by the Parties in writing, in no event shall the time period allowed for a Final Response be extended beyond sixty (60) Days following the date on which the Submitting Party issues the Demand. Regardless of any request(s) for additional information, a failure on the part of the Receiving Party to provide a Final Response within these sixty (60) Days shall be deemed a rejection of the Demand.
- 45.5. **Senior Level Negotiations.** If the Demand is rejected and the Submitting Party provides written notice that it will continue to pursue the Demand, or if the time period allowed for a Final Response to the Demand has expired without issuance of a Final Response, the Parties shall attempt to resolve the Demand by negotiations between assigned senior representatives of the Parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The senior representatives of the Parties shall make a good faith effort to resolve the Demand within thirty (30) Days (or such longer period as they may agree to in writing) following the date on which the Submitting Party provides written notice that it will continue to pursue the Demand or the date on which the time period allowed for a Final Response to the Demand has expired without issuance of a Final Response.

- 45.6. **Mediation.** If the Demand is not resolved by negotiations of the Party's assigned representatives, the Parties shall submit the dispute to mediation prior to either Party initiating an action in court.
- 45.7. **Litigation.** If after mediation the Parties have not resolved the dispute, either Party may initiate an action in a court of competent jurisdiction. In the event of litigation of a dispute arising from or related to this Contract, the prevailing party shall be entitled to recover reasonable attorney fees and costs.
- 45.8. **Confidentiality.** All discussions and negotiations conducted pursuant to this dispute resolution process prior to litigation are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code section 1152 applies. Mediation shall be confidential and shall be subject to the provisions of California Evidence Code sections 703.5 and 1115 through 1128 and Government Code section 6254.
- 45.9. **Performance during Dispute and Claim Resolution Process.** Unless otherwise directed in writing by the Judicial Council, Contractor shall diligently proceed with performance of the Work at the same time that a dispute is addressed via this dispute resolution process. Contractor's failure to diligently proceed with performance of the Work will be considered a material breach of this Contract.
46. **Conflict of Interest:** Contractor shall ensure that its officers and employees shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. Contractor and its officers and employees shall also avoid actions resulting in or creating the appearance of (1) use of an official position with the government for private gain; (2) preferential treatment to any particular person associated with this Contract or the Work of this Contract; (3) loss of independence or impartiality; (4) a decision made outside official channels; or (5) adverse effects on the confidence of the public in the integrity of the government or this Contract. Contractor agrees that it shall bind its Subcontractors to conflict of interest provisions not less strict than those provided here.
47. **No Personal Liability:** Neither the Judicial Council's officers, employees, nor independent contractors will be personally responsible for liabilities arising under the Contract.
48. **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 this Contract shall be deemed to be inserted.
49. **No Oral Agreements:** No oral agreement or conversation with any officer, agent, or employee of Judicial Council, either before or after execution of Contract, shall affect or modify any of the terms or obligations contained in the Contract Documents.
50. **No Assignment:** Contractor shall not voluntarily or involuntarily assign (e.g., assignment by operation of law) encumber, or otherwise transfer or delegate all or any interest in this Contract. Any voluntary assignment by Contractor or assignment by operation of law (e.g., involuntary

assignment) of any portion of Contractor's interest in this Contract shall be null and void and deemed a default allowing the Judicial Council to exercise all remedies available to it under applicable law. Contractor shall not assign or transfer in any manner to a Subcontractor or supplier the right to prosecute or maintain an action against the Judicial Council. Consent will not be given to an assignment that would relieve the Contractor or the Surety of their responsibilities under the Contract. Any assignment in violation hereof shall be null and void. Neither the Contract, nor any part thereof, nor any moneys due or to become due thereunder, may be assigned by Contractor without the written approval of Judicial Council, nor without the written consent of the Surety, unless the Surety has waived in writing its right to notice of assignment.

**51. 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 shall 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 the Judicial Council, Architect, or Construction Manager shall constitute a waiver of any right or duty afforded the Judicial Council under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

**52. Governing Law; Jurisdiction:**

52.1. This Contract, and all the rights and duties of Contractor and the Judicial Council arising out of or related to this Contract or to the relationship of Contractor and the Judicial Council, are governed by the laws of the State of California without regard to its conflicts of law rules. This Provision applies to all claims and causes of action that Contractor has or may acquire against the Judicial Council, whether based on contract, tort, statute or anything else.

52.2. Contractor agrees that any claims that it has or may acquire against the Judicial Council shall be commenced in and decided exclusively by a court of competent jurisdiction located in the State of California. Contractor agrees to submit to the personal and exclusive jurisdiction of courts located in the State of California. Contractor waives all defenses and arguments that the courts located in the State of California constitute an inconvenient forum based upon the residence or domicile of Contractor, the location of the Project that is subject to the litigation or the locations of witnesses, the location of documents, or anything else.

**53. Change in Scope of Work:** Any change in the scope of the work for the Project, method of performance, the type of materials, or any other matter materially affecting the performance or nature of the Project shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid Change Order to this Contract executed by the Judicial Council. Contractor specifically understands, acknowledges, and agrees that the Judicial Council shall have the right to request any alterations, deviations, reductions, or additions to the Project, and the cost thereof shall be added to or deducted from the amount of the Project Price by fair and reasonable valuations. Contractor also agrees to provide the Judicial Council with all information requested to substantiate any cost of the Change Order and to inform the Judicial Council whether the work will be done by the Contractor or a Subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the Change Order, its request for a time extension (if any), as well as all information necessary to substantiate its belief

that such change will delay the completion of the Project. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

53.1. **Allowable Costs for Change Orders.** All proposed cost requests by Contractor for a Change Order shall include a complete itemized breakdown with the following detail, which are the only costs that will be allowed for these items.

53.1.1. **Direct Labor Costs.** Compensation for Contractor's and/or Subcontractor(s)' labor shall include only the necessary payroll cost for labor, including first level supervision, directly engaged in performance of the work of the Change Order ("**Direct Labor Costs**").

53.1.1.1. Direct Labor Costs shall not exceed the current prevailing wages in the locality for performance of the changes; and the labor burden or labor charges, which shall only include documented FICA, Medicare, unemployment, and Workers' Compensation charges and no other charges.

53.1.1.2. Use of a classification which would increase labor costs will not be permitted. Exceptions will be permitted only when the Contractor establishes, to the satisfaction of the Judicial Council, the necessity for payment at higher rates or classifications.

53.1.2. **Materials and Equipment.** Compensation for materials and equipment shall include only the necessary costs for materials and equipment directly required for performance of the changes.

53.1.3. **Construction Equipment.** Compensation for construction equipment shall include only the necessary costs for use of construction equipment directly required for performance of the changes.

53.1.4. **Contractor Mark-Up for Contractor-Performed Work:** This mark-up, which shall include all overhead and profit, shall not exceed ten percent (10%) of Contractor's Direct Labor Costs and its direct Materials and Equipment and direct Construction Equipment costs (collectively "**Direct Materials & Equipment Costs**").

53.1.5. **Contractor Mark-Up for Subcontractor-Performed Work:** This mark-up, which shall include all overhead and profit, shall not exceed ten percent (10%) of the Subcontractor's Direct Labor Costs and the Subcontractor's Direct Materials & Equipment Costs.

53.1.6. **Limitation on Subcontractor(s) Mark-Up:** The aggregate mark-up(s) of all subcontract tiers shall not exceed fifteen (15%) of all Subcontractors' Direct Labor Costs and Subcontractors' Direct Materials & Equipment Costs.

53.1.7. **Deleted Work.** When the Judicial Council is entitled to a credit for deleted Work, the credit shall include all amounts related to the direct labor,

Subcontractor insurance and bond costs, or Contractor-provided contractor default insurance protection in lieu of Subcontractor bonds, materials, and supervision plus overhead of the Contractor or Subcontractor, for the deleted Work. Deleted Contractor fee shall be computed as five percent (5%) of the sum for amounts related to the direct labor, materials, and supervision for the deleted Work.

54. **Workers:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its Subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a Subcontractor whom the Judicial Council may deem incompetent or unfit shall be dismissed from the Site and shall not again be employed at Site without written consent from the Judicial Council.
55. **Correction of Errors:** Contractor shall perform, at its own cost and expense and without reimbursement from the Judicial Council, any work necessary to correct errors or omissions that result from, or relate to, Contractor's failure to comply with the standard of care required for the work for the Project.
56. **Substitutions:** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the Project Manager.
57. **Contractor Supervision:** Contractor shall provide competent supervision of personnel who are working at the job Site and/or on the Project.
58. **Cleanup:** Contractor must remove debris from the Site on a weekly basis. The Site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.
59. **Access to Project/Site:** The Judicial Council shall, at all times, have access to the Project while it is in preparation or in progress. Contractor shall provide safe and proper facilities for such access.
60. **Occupancy:** Unless specifically stated in a Work Order, the Judicial Council may use and occupy any buildings or facilities that are part of the Project during the Project Time and the Judicial Council's use or occupancy shall not constitute final acceptance or approval of any part of the Project covered by this Contract, nor shall the Judicial Council's use or occupancy extend the date specified for completion of the Project.
61. **Force Majeure Clause:** Contractor shall not be liable for any failure or delay in performance hereunder during the time and to the extent that it is prevented from obtaining delivery of goods or materials, or performing the work for the Project by a Force Majeure even, as defined herein, when satisfactory evidence thereof is presented to the Judicial Council, provided that it is satisfactorily established that the non-performance is not due to the fault or neglect of the Contractor.
62. **Completion of Project:** Contractor shall notify the Project Manager in writing when the Project is complete. The Judicial Council will accept completion of the Project when the entire Project had been completed to the satisfaction of the Judicial Council whereupon the Judicial Council may record a Notice of Completion. The Judicial Council, at its sole option, may accept completion of the Project and have the Notice of Completion recorded when the Project has been

completed to the satisfaction of the Judicial Council, except for minor corrective items (“**Punch List Items**”), as distinguished from incomplete items.

- 63. No Liens:** Contractor agrees that Contractor, and any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract, has no rights to lien any portion of the Project site or any improvement or appurtenance thereon. Contractor specifically acknowledges, in accordance with Civil Code section 8160, et seq., that the Project and the Site are not subject to mechanics liens. In the event that any liens are recorded by Contractor or any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract, Contractor agrees to take whatever action is necessary to remove the lien against the Project or the Project site, as applicable.

SAMPLE



**ATTACHMENT B**



JUDICIAL COUNCIL  
OF CALIFORNIA  
ADMINISTRATIVE DIVISION  
REAL ESTATE AND FACILITIES MANAGEMENT

**Services Request Form  
(CONSTRUCTION ONLY)**

---

**Date:** [@Date]  
**From:** [@Project Manager Name]  
[@Address]  
[@Phone/Fax]  
[@Email]  
**Project:** [@Project Title]  
**FM/SWO:** [@FM / SWO Numbers]

---

This Work must be performed according to the following as further indicated herein (check ONE):

- Lump Sum Basis       Time and Materials Basis
- 

The Judicial Council of California requests that you provide a project cost proposal for the work as described in Exhibit A, attached hereto and incorporated herein by this reference (“**Services**” or “**Work**”). The scope of Work will generally consist of the following:

**[@SERVICES DESCRIPTION]**

The work was discussed on [@Date] with the following individuals:

[List contact name, company, and email/phone number here]

[List contact name, company, and email/phone number here]

[List contact name, company, and email/phone number here]

**Your proposal is due on or before:** [Time and Date]

**Proposed Work Schedule:** [Start/End Dates]

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**EXHIBIT A  
TO SERVICES REQUEST FORM**

**PROJECT SCOPE OF WORK**

**[@SCOPE OF WORK]**

**PLANS (IF APPLICABLE)**

**[@PLANS]**

**WORK SPECIFICATIONS (IF APPLICABLE)**

**[@WORK SPECIFICATIONS]**

SAMPLE

ATTACHMENT C

Contractor Proposal Form (SWO)

Date: [ @Date ]

Judicial Council: [ @Project Manager Name ]  
[ @Address ]  
[ @Address ]  
[ @Phone/Fax ]  
[ @Email ]

Contractor: [ @Project Manager Name ]  
[ @Company ]  
[ @Address ]  
[ @Phone/Fax ]  
[ @Email ]

Project: [ @Project Title ]

FM/SWO: [ @FM / SWO Numbers ]

SWO Start/End Dates: [ @Start/End Dates ]

Master Contract: [ @Master Contract Number ]

Contract Expiration Date: [ @Expiration Date ]

This SWO Proposal is priced according to the following as further indicated herein (check ONE):

Lump Sum Basis                       Time and Materials Basis

This Contractor Proposal is made as of \_\_\_\_\_, 20\_\_\_\_\_, and, if accepted by the Judicial Council in accordance with the Service Work Order Process provision of the Contract, this Contractor Proposal will become an authorized Service Work Order and the Service Work Order will form a part of the Master Contract for Construction Services between the Judicial Council of California and Contractor. This Contractor Proposal shall only become effective when and if the Judicial Council authorizes the Service Work Order in accordance with the Service Work Order Process provision of the Contract. This Service Work Order incorporates the construction services to be performed by Contractor for the following project(s) (“**Project**”):

**[ @Project ], located at \_\_\_\_\_, as further described in the “Project Scope of Work” attached hereto and incorporated herein as Exhibit A to this Service Work Order (“Project”)**

**The “Project Scope of Work” may include, but is not limited to the following, plus the following assumptions:**

**This Service Work Order modifies the Contract as provided in this Service Work Order, however, all other terms and conditions of the Contract shall remain in full force and effect including without limitation the terms and conditions on the Master Contract for Construction Services Cover Sheet and the General Provisions which are set forth in Exhibit A of the Contract.**

**1. Project Price and Payment Provisions:**

1.1. In consideration of the foregoing covenants, promises, and agreements, Contractor offers, in the

amount stated below, to perform the Project Scope of Work according to the Contract Documents. Judicial Council covenants, promises, and agrees that it will pay and cause to be paid to Contractor in full, and as the Project Price the following amount(s):

Dollars

(@\$0.00), (“Total Project Price”)

- 1.2. The Judicial Council shall pay the Contractor the Total Project Price pursuant to the provisions herein and **Exhibit B (“Payment Method”)** which is attached hereto and incorporated herein.
  - 1.3. The Total Project Price set forth in this Service Work Order shall be full compensation for all of Contractor’s Work incurred in the performance of this Service Work Order as indicated in the Payment Provisions.
  - 1.4. Judicial Council shall pay Contractor the Total Project Price pursuant to the Payment Provisions, attached hereto and incorporated herein as **Exhibit C** to this Service Work Order (“**Payment Provisions**”). Contractor shall bill its work under this Service Work Order in accordance with the Payment Provisions.
  - 1.5. No increase in the Total Project Price will be due from change orders generated during the construction period to the extent caused by Contractor’s error or omission.
  - 1.6. Regardless of the structure of the Total Project Price and Method of Payment, the Project Price will be adjusted downward if the Scope of Work of this Project is reduced by the Judicial Council in accordance with the Contract. Judicial Council shall pay for Work authorized and performed prior to the notice to Contractor of a reduction as indicated here.
  - 1.7. The Judicial Council's payments to Contractor pursuant to this section shall constitute full compensation for all of Contractor's time, materials, costs and expenses incurred in the performance of the authorized Scope of Work.
2. **Project Time:** The Project shall be completed within \_\_\_\_\_  
\_\_\_\_\_ (@Number of Days) (“**Project Time**”). Within five (5) business days of approval of this Service Work Order by both Parties, Contractor shall submit a construction schedule to the Judicial Council that must be consistent with the Project Time (“**Construction Schedule**”). The Construction Schedule must include the key milestones relevant to the Project, including without limitation, the following:
- 2.1. Notice to proceed;
  - 2.2. Submittals (both initial submission dates and estimation of approval dates);
  - 2.3. Procurement of material;
  - 2.4. Mobilization;
  - 2.5. Other construction activities specific to this SWO including, without limitation, any critical path milestones;
  - 2.6. Any applicable inspections;
  - 2.7. Closeout;
  - 2.8. Final inspection;
  - 2.9. Final completion;

- 2.10. Commissioning; and
- 2.11. Warranty commencement.

The Construction Schedule must be created utilizing MS Project, or other similar scheduling software that is acceptable to the Judicial Council. Contractor acknowledges that Excel is not an acceptable scheduling software. The Contractor must provide an acceptable Construction Schedule for the Judicial Council’s consideration and approval, which approval is required prior to the Judicial Council providing the Notice to Proceed for the work relating to the Service Work Order. Judicial Council and Contractor may, if agreed to in writing, approve changes in the Construction Schedule.

3. **Liquidated Damages:** Contractor agrees that if the Project is not completed within the Project Time and/or pursuant to the completion schedule, construction schedule, or project milestones developed pursuant to provisions of the Contract, it is understood, acknowledged, and agreed that the Judicial Council will suffer damage which is not capable of being calculated. Pursuant to Government Code section 53069.85, Contractor shall pay to the Judicial Council, as fixed and liquidated damages for these incalculable damages, the sum of \_\_\_\_\_ Dollars (**@\$0.00**) per day for each and every calendar day of delay beyond the Project Time or beyond any completion schedule, construction schedule, or Project milestones established pursuant to the Contract.

4. **Restrictions on Hours of Work** (check ONE):

- The Project will have no restrictions on hours of Work:
- Contractor shall not work the following hours:

Monday to Friday: \_\_\_\_\_  
 Saturdays/Sundays: \_\_\_\_\_

Contractor shall not be entitled to any additional compensation for performing Work outside these hours. The Total Project Price includes all costs associated with limiting the work hours for the Project as set forth herein.

5. **Contractor’s Key Personnel:**

5.1. The Contractor agrees that the following key personnel in Contractor’s firm shall be associated with the Project in the following capacities:

- 5.1.1. Contractor’s Project Manager \_\_\_\_\_
- 5.1.2. Other: \_\_\_\_\_
- 5.1.3. Other: \_\_\_\_\_
- 5.1.4. Other: \_\_\_\_\_

5.2. All proposed key personnel are subject to review and acceptance by the Judicial Council prior to commencing work on the Project. The Judicial Council reserves the right to replace any individual or consultant in the best interest of the Project.

5.3. The Contractor shall not change any of the key personnel listed above without prior written approval by Judicial Council. The Judicial Council shall be allowed to interview and approve replacement personnel.

6. **Subcontractors:** Contractor will use the following Subcontractors for the Project (Use extra sheets/extra space as needed—fill in all the requested information)

Subcontractor Name	Location	CSLB Lic. #	DIR Reg. #	Type of Work	DVBE (Y/N)

Although the Judicial Council is not bound by the Public Contract Code for trial court construction, the Judicial Council hereby specifically incorporates the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et seq.) ("**Subcontractor Listing Law**") into this Service Work Order. Accordingly, the Judicial Council will fully enforce the provisions of the Subcontractor Listing Law, including, specifically Public Contract Code sections 4109 and 4110. Contractor shall adhere to the rules governing subcontracting as set forth in the Subcontractor Listing Law and all subcontractor substitutions shall be in accordance with provisions of the Subcontractor Listing Law. Violations of the Subcontractor Listing Law provisions by the Contractor may subject the Contractor to penalties and disciplinary action as provided for in the Subcontractor Listing Law.

Contractor shall ensure that each of these Subcontractors execute the Prevailing Wage and Related Labor Requirements Certification attached to the Contract and incorporated herein.

7. **Payment Bond & Performance Bond:** Contractor shall not commence the Work under this Service Work Order until it has provided to the Judicial Council, a Payment (Labor and Material) Bond and a Performance Bond each in an amount equivalent to one hundred percent (100%) of the Total Project Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the Judicial Council. Cost of bonds shall be included in any proposal and in the Total Project Price.

8. **Insurance:** The Contractor shall comply with the insurance requirements as indicated herein.

8.1. **Commercial General Liability and Automobile Liability Insurance:**

8.1.1. Contractor shall procure and maintain, Contractor shall procure and maintain, during the life of this Service Work Order, Commercial General Liability Insurance and Automobile Liability Insurance that shall protect Contractor, the State of California, the Judicial Council of California, the Court where the Project is located, and their respective officers, consultants, representatives, agents and employees from all claims for bodily injury, property damage, personal injury, death, advertising injury, and medical payments arising from operations under the Service Work Order. This coverage shall be provided in a form at least as broad as the Insurance Work Office

(ISO) standard form. Contractor shall ensure that Products Liability and Completed Operations coverage, Fire Damage Liability, and any Auto including owned, non-owned, and hired, are included within the above policies and at the required limits, or Contractor shall procure and maintain these coverages separately.

- 8.1.2. Contractor's deductible or self-insured retention for its Commercial General Liability Insurance policy shall not exceed \$25,000 unless approved in writing by Judicial Council.

## 8.2. Umbrella Liability Insurance:

Umbrella Liability Insurance (consult with Risk Management and check ONE)

- will be required.  
 will **not** be required.

In the event that Umbrella Liability Insurance is required for this Service Work Order, Contractor shall procure and maintain, during the life of this Service Work Order, Umbrella Liability Insurance as follows:

- 8.2.1. Contractor shall procure and maintain, during the life of this Service Work Order, an Excess Liability and/or Umbrella Liability Insurance Policy. Any Umbrella Liability Insurance Policy shall protect Contractor, the State of California, the Judicial Council of California, the Superior Court of California, and their respective officers, consultants, representatives, agents and employees in the amounts indicated herein, and shall comply with all requirements for Commercial General Liability and Automobile Liability and Employers' Liability Insurance. This coverage shall be provided in a form at least as broad as the Insurance Work Office (ISO) standard form.
- 8.2.2. There shall be no gap between the per occurrence amount of any underlying policy and the start of the coverage under the Umbrella Liability Insurance Policy.
- 8.2.3. Whether this Excess Liability and/or Umbrella Liability Insurance Policy is written on a "follow form" or "stand alone" form, the coverages shall be equal or greater than the Contractor's Commercial General Liability and Automobile Liability and Employers' Liability Insurance with no exclusions that reduce or eliminate coverage items.

## 8.3. Workers' Compensation and Employers' Liability Insurance:

- 8.3.1. In accordance with provisions of section 3700 of the California Labor Code, the Contractor and every Subcontractor shall be required to secure the payment of compensation to its employees.
- 8.3.2. Contractor shall procure and maintain, during the life of this Service Work Order, Workers' Compensation Insurance and Employers' Liability Insurance for all of its employees engaged in Work under this Service Work Order, on/or at the Site of the Project. This coverage shall cover, at a minimum, medical and surgical treatment, disability benefits, rehabilitation therapy, and survivors' death benefits. Contractor shall require its Subcontractor(s), if any, to procure and maintain Workers'

Compensation Insurance and Employers' Liability Insurance for all employees of Subcontractor(s). Any class of employee or employees not covered by a Subcontractor's insurance shall be covered by Contractor's insurance. If any class of employee or employees engaged in Work under this Service Work Order, on or at the Site of the Project, are not protected under the Workers' Compensation Insurance, Contractor shall provide, or shall cause a Subcontractor to provide, adequate insurance coverage for the protection of any employee(s) not otherwise protected before any of those employee(s) commence work.

**8.4. Builder's Risk Insurance: Builder's Risk "All Risk" Insurance:**

Builder's Risk "All Risk" Insurance (check ONE)

- will be required.  
 will **not** be required.

In the event that Builder's Risk "All Risk" Insurance is required for this Service Work Order, Contractor shall procure and maintain, during the life of this Service Work Order, Builder's Risk (Course of Construction), or similar first party property coverage acceptable to the Judicial Council, issued on a replacement cost value basis. The cost shall be consistent with the total replacement cost of all insurable Work included within the Service Work Order. Builder's Risk "All Risk" Insurance shall include direct physical loss or damage while in the course of transportation, erection, installation and completion. Contractor must review each Service Work Order to confirm the scope of this requirement and if the Judicial Council has modified this provision.

**8.5. Proof of Insurance and Other Requirements: Endorsements and Certificates:**

8.5.1. Endorsements, certificates, and insurance policies shall include the following:

8.5.2. A clause stating: *"This policy shall not be amended, canceled or modified and the coverage amounts shall not be reduced until notice has been mailed to the Judicial Council stating date of amendment, modification, cancellation or reduction. Date of amendment, modification, cancellation or reduction may not be less than sixty (60) days after date of mailing notice."*

8.5.3. In lieu of receiving an endorsement with this clause, the Judicial Council may, at its sole discretion, accept written notification from Contractor and its insurer to the Judicial Council of any amendments, modifications, cancellations or reduction in coverage, not less than sixty (60) days prior to the date such coverage changes occur.

8.5.4. Language stating in particular those insured, extent of insurance, location and operation to which insurance applies, expiration date, to whom cancellation and reduction notice will be sent, and length of notice period.

8.5.5. If the required insurance expires during the term of the Service Work Order, the Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance to the Judicial Council. Renewal insurance certificates must be tendered to the Judicial Council at least fourteen (14) days prior to



the expiration of the previous insurance certificate.

- 8.5.6. All endorsements, certificates, and insurance policies shall state that the State of California, the Judicial Council of California, the Superior Court of California associated with the Work, and the county associated with the Work and their respective officers, consultants, representatives, agents and employees are named additional insureds under all policies except Workers' Compensation Insurance and Employers' Liability Insurance.
- 8.5.7. The Contractor shall, prior to commencement of any work on the Project, provide the Judicial Council certificates of insurance, on forms acceptable to the Judicial Council, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance shall specifically provide verification that the Judicial Council has been added as an additional insured on the insurance policy being referenced. The originals of the Certificates of Insurance shall be addressed to the Judicial Council Contracting Official named in this Contract, with copies to the Project Manager.
- 8.5.8. Contractor's and Subcontractors' insurance policy(s) shall be primary and non-contributory to any insurance or self-insurance maintained by the State of California, the Judicial Council of California, the Superior Court of California, and their respective officers, consultants, representatives, agents and employees.
- 8.5.9. All required insurance policies required shall be in force until the end of the term of this Service Work Order or acceptance of the Project, whichever comes later. The completed operations insurance required under this Service Work Order shall extend for a period of three (3) years past the acceptance of the Project or termination of the Contract, whichever is later.
- 8.5.10. The Contractor, and any insurer providing the required insurance under this Contract shall waive any right of recovery it may have against the State of California and the Judicial Council of California and their respective officers, consultants, representatives, agents and employees for loss or damage to the Work, or for any liability arising out of any work performed by the Contractor under this Contract.
- 8.5.11. All endorsements shall waive any right to subrogation against any of the named additional insureds.
- 8.5.12. All policies shall be written on an occurrence form.
- 8.5.13. All of Contractor's insurance shall be placed with insurers ADMITTED in California with a current A.M. Best's rating of no less than A— or A:VII.
- 8.5.14. The insurance requirements set forth herein shall in no way limit the Contractor's liability arising out or relating to the performance of the Work or related activities.
- 8.5.15. Failure of Contractor and/or its Subcontractor(s) to comply with the insurance requirements herein shall be deemed a material breach of the Contract.

8.6. **Insurance Policy Limits:** The limits of insurance shall not be less than the following amounts:

<b>Commercial General Liability</b>	Includes: Personal & Advertising Injury, Product Liability and Completed Operations	\$2,000,000 each occurrence; \$4,000,000 general aggregate
<b>Automobile Liability – <u>Any</u> Auto</b>	Combined Single Limit	\$1,000,000 per occurrence
<b>Excess Liability (Umbrella)</b>		\$4,000,000 per occurrence; \$4,000,000 aggregate (if required)
<b>Workers Compensation</b>		Statutory limits pursuant to State law
<b>Employers’ Liability</b>		\$2,000,000 each accident, each disease; \$2,000,000 policy limit
<b>Builder’s Risk (Course of Construction)</b>		Issued for the value and scope of Work indicated herein.
<b>Property of Others</b>	Combined Single Limit General Aggregate	Issued for the value and scope of Work stored off-site.

**JUDICIAL COUNCIL MAY ADJUST THESE LIMITS, IN WRITING, AT THE JUDICIAL COUNCIL’S SOLE DISCRETION BASED ON SIZE AND SCOPE OF THE PROJECT**

8.7. **Subcontractor’s Insurance:** Contractor shall require its Subcontractor(s), if any, to procure and maintain Commercial General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance with minimum limits equal to at least fifty percent (50%) of the amounts required of the Contractor.

**EXHIBIT A  
TO SERVICE WORK ORDER  
("PROJECT SCOPE OF WORK")**

**[@SCOPE OF WORK]**

**PLANS**

**[@PLANS]**

**WORK SPECIFICATIONS**

**[@WORK SPECIFICATIONS]**

SAMPLE

**EXHIBIT B  
TO SERVICE WORK ORDER  
(PAYMENT METHOD)**

(Check ONE):

- 1. **Lump-Sum Total - Contract Price Breakdown (Schedule of Values)**
- 2. **Time and Materials Basis**

**1 Lump-Sum Total – Project Price Breakdown (Schedule of Values).** The Work shall be provided on a Lump-Sum Total with the following Schedules of Values, which is comprised of quantities and prices of items aggregating the Total Project Price and subdivided into component parts. The Schedule of Values or lump-sum price breakdown shall serve as the basis for progress payments.

**APPROVED DETAILED SCHEDULE OF VALUES FOR THE PROJECT.**


**2 Time and Materials Basis.**

**2.1** The Total Project Price for this Project is the sum of all the Work, including all applicable taxes, fees, shipping costs, insurance, and bonds and shall not exceed this amount. Contractor will monitor and account for all costs of the Work performed under this Project. Contractor shall notify the Judicial Council at least thirty (30) days in advance if it anticipates that the Work performed under this Project shall reach the Total Project Price.

**2.2** The Judicial Council will compensate the Contractor for actual hours worked in performance of the Project at the hourly rates for the named individuals or various individuals working the labor/trade classifications as set forth below:

Name/Title or Labor/Trade Classification	Regular Time Rate	Overtime Rate

**2.3** The hourly rates include all costs including, but not limited to applicable taxes, duties, wages, indirect costs, general and administrative expense, and profit. The hourly rate will be calculated in tenth-of-an-hour increments for each full six minutes beginning with the designated actual starting time. Overtime rates will not be paid unless overtime

work is specifically authorized in advance and in writing by the Judicial Council Project Manager.

**2.4** The hourly rates are subject to revisions only by written, mutual agreement of Judicial Council and the Contractor. For invoices, compensation shall be computed by multiplying the appropriate hourly rate prescribed in this Service Work Order by the number of direct labor hours performed.

**2.5** All equipment, materials, supplies, and other items that are not part of the hourly rates above must be identified and documented with sufficient detail for review by the Judicial Council. The following items will be priced as follows:


**2.6** Contractor must clearly indicate all work that is performed for this Project as a separate line item on the invoice. With respect to transactions for which Contractor may be exempt from any tax or duty, Contractor will indicate its exemption claim within its invoice. Contractor is responsible for accurately tracking and recording the hours and days of the workweek that are worked.

**2.7** Contractor's percentage mark up for the Work Performed, and the portion of the Work that is attributable to Subcontractors shall be billed as follows:

**2.7.1 Contractor Mark-Up for Contractor-Performed Work:** This mark-up, which shall include all overhead and profit, shall not exceed ten (10%) of Contractor's Direct Labor Costs and its Direct Materials & Equipment Costs.

**2.7.2 Contractor Mark-Up for Subcontractor-Performed Work:** This mark-up, which shall include all overhead and profit, shall not exceed ten percent (10%) of the Subcontractor's Direct Labor Costs and the Subcontractor's Direct Materials & Equipment Costs.

**2.7.3 Limitation on Subcontractor(s) Mark-Up:** The aggregate mark-up(s) of all subcontract tiers shall not exceed fifteen (15%) of all Subcontractors' Direct Labor Costs and Subcontractors' Direct Materials & Equipment Costs.

**2.8** Each invoice shall be submitted according to the payment provisions set forth in **Exhibit C**.

## EXHIBIT C

### PAYMENT PROVISIONS

#### 1. Service Work Order and Total Project Price:

- 1.1. The total amount that the Judicial Council may pay to Contractor under any authorized individual Service Work Order shall remain firm and fixed for the Term of the Contract (“**Total Project Price**”) specified therein. The Total Project Price shall not in any event exceed the Total Project Price indicated on the face of the applicable Service Work Order.
- 1.2. The Total Project Price shall be fully burdened and inclusive of all costs, benefits, expenses, fees, overhead, and profits payable to the Contractor for Work rendered to the Judicial Council.

#### 2. Taxes: The Judicial Council is exempt from federal excise taxes and no payment will be made for any taxes levied on Contractor’s or any Subcontractor’s employees’ wages. The Judicial Council will pay for any applicable State of California or local sales or use taxes on the Deliverables provided or Work rendered pursuant to this Contract.

#### 3. Invoicing Requirement: Contractor shall invoice the Judicial Council once monthly, with a separate invoice for each Service Work Order summarizing all payments due under that Service Work Order in the previous calendar month. The Judicial Council may its discretion, require Contractor to submit invoice(s) on Judicial Council forms and to follow Judicial Council processes related to invoicing and payment.

##### 3.1. Contractor shall submit one (1) original to:

Judicial Council of California  
c/o Accounts Payable  
455 Golden Gate Avenue, 6<sup>th</sup> Floor  
San Francisco, CA 94102-3688

##### 3.2. For Service Work Orders provided on a deliverables basis, Contractor shall invoice on successful acceptance of a deliverable. Contractor’s invoice(s) shall clearly specify:

- 3.2.1. The Contract number;
- 3.2.2. The Service Work Order Number provided on the Service Work Order;
- 3.2.3. A unique invoice number;
- 3.2.4. Contractor’s name and address;
- 3.2.5. Contractor’s Taxpayer identification number (FEIN);
- 3.2.6. Description of the deliverable as specified in the Service Work Order;
- 3.2.7. The price of the deliverable;

3.2.8. Preferred remittance address, if different from the mailing address; and

3.2.9. The DVBE dollars expended, if DVBE commitments were made.

#### **4. Progress Payments:**

- 4.1 On a monthly basis, Contractor shall submit to the Judicial Council an application for payment based upon the actual value for materials delivered or services performed under the Service Work Order, up to the last day of the previous month (“**Application for Payment**”). The Project Manager will review the Application for Payment and approve the Application for Payment if the Application for Payment is valid and correct.
- 4.2 The Judicial Council will endeavor to pay invoices within forty-five (45) days after Project Manager’s approval of the Application for Payment.
- 4.3 The Judicial Council shall withhold payment of an amount equal to ten percent (10%) from all payments made for invoices submitted as above and paid. Upon successful completion of all of the Work and, if applicable, successful provision of all deliverables under a Service Work Order, if applicable, Contractor shall invoice, and the Judicial Council shall pay the total of all amounts retained within the time frames indicated herein. The Judicial Council reserves the right to reduce retention to 5% of the Project Price after the Contractor has successfully completed fifty percent (50%) of the Work of a Service Work Order.
- 4.4 The Judicial Council may deduct from any payment an amount necessary to protect the Judicial Council from loss because of: (1) any sums expended by the Judicial Council in performing any of Contractor’s obligations under the Contract that Contractor has failed to perform or has performed inadequately; (2) defective work not remedied; (3) stop payment notices as required by California law (i.e. Civil Code sections 9350 et. seq.); (4) reasonable doubt that the Project can be completed for the unpaid balance of the Total Project Price or by the scheduled completion date; (5) unsatisfactory prosecution of the work for the Project by Contractor; (6) unauthorized deviations from the Contract; (7) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by Judicial Council during the prosecution of the work for the Project; (8) erroneous or false estimates by the Contractor of the value of the work performed; (9) any sums representing expenses, losses, or damages, as determined by the Judicial Council, incurred by the Judicial Council for which Contractor is liable under the Contract; (10) damage by Contractor or its Subcontractors to the Judicial Council, the Court or to any third parties; and (11) any other sums which the Judicial Council is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the Judicial Council to deduct any of these sums from a progress payment shall not constitute a waiver of the Judicial Council’s right to such sums.

#### **5. Final Payment:**

- 5.1. The following conditions must be fulfilled prior to final payment:
  - 5.1.1. The Judicial Council must have accepted the Project as complete in accordance with the Contract Documents;
  - 5.1.2. A duly completed and executed waiver and release upon final payment compliant with

the Civil Code from each Subcontractor and supplier;

5.1.3. Contractor shall have delivered to the Judicial Council all applicable written guarantees and warranties, including those of its Subcontractors, if applicable;

5.1.4. The Contractor shall have delivered to the Judicial Council all applicable manuals; and

5.1.5. The Contractor shall have completed final clean-up of the Site.

5.2. After 35 days have elapsed following the filing of a Notice of Completion for the Project, the Judicial Council will commence processing the final payment, and provide the final payment to Contractor as expeditiously as possible. The final payment shall be the amount of retention, less the following: (i) any amounts reasonably disputed by the Judicial Council; (ii) 150 percent of the Judicial Council's estimate of any amount necessary to complete any Punch List Items which are still not complete; (iii) any amounts attributable to stop notices which the Judicial Council is required to withhold under California law (i.e. Civil Code sections 3181 et. seq.). Acceptance of final payment by Contractor shall constitute a waiver of all claims, except claims for retention and claims previously made in writing and identified by Contractor as unsettled at the time of the final application for payment.

- 6. Disallowance:** If the Contractor claims or receives payment from the Judicial Council that is later disallowed by the Judicial Council, the Contractor shall promptly refund the disallowed amount to the Judicial Council upon the Judicial Council's request. At its option, the Judicial Council may offset the amount disallowed from any payment due or that may become due to the Contractor under this Contract or any other contract.
- 7. Payment Does Not Imply Acceptance of Work:** The granting of any payment by the Judicial Council, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct unsatisfactory work in connection with this Contract.
- 8. Release of Claims:** The acceptance by the Contractor of its final payment due under this Contract shall be and shall operate as a release to the State and the Judicial Council of all claims and all liability to the Contractor for everything done or furnished in connection with this Contract (including every act and neglect of the Judicial Council), with the exception of any claims that are expressly identified by the Contractor as outstanding as of the date of Contractor's submission of Contractor's final application for payment. Contractor's failure to identify any such claims shall operate as a release of all claims.

*END OF EXHIBIT*



**ATTACHMENT D**  
**JUDICIAL COUNCIL TOOL POLICY**

SAMPLE

**ATTACHMENT E**

**JUDICIAL COUNCIL BACKGROUND CHECK POLICY**

SAMPLE

**WORKERS' COMPENSATION CERTIFICATION**

**PROJECT/CONTRACT NO.:** [@PROJECT NUMBER] between Judicial Council of California (“Judicial Council”) and \_\_\_\_\_ (the “Contractor”) (the “Contract” or the “Project”).

Labor Code section 3700 in relevant part provides:

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

- 1 By being insured against liability to pay compensation by one or more insurers duly authorized to write workers’ compensation insurance in this state.
- 2 By securing from the Director of Industrial Relations a certificate of consent to self-insure, which may be given upon furnishing proof satisfactory to the Director of Industrial Relations of ability to self-insure and to pay any compensation that may become due to its employees.

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

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

Proper Name of Contractor: \_\_\_\_\_

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

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

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

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

END OF DOCUMENT

**PREVAILING WAGE AND  
RELATED LABOR REQUIREMENTS CERTIFICATION**

**PROJECT/CONTRACT NO.:** [@PROJECT NUMBER] between Judicial Council of California (the “Judicial Council”) and \_\_\_\_\_ (the “Contractor”) (the “Contract” or the “Project”).

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours’ notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project including, without limitation, the requirement that it and all of its Subcontractors are registered pursuant to Labor Code section 1771, et seq.

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

Proper Name of Contractor: \_\_\_\_\_  
/ Subcontractor

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

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

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

THIS FORM MUST BE COMPLETED BY THE CONTRACTOR AND ALL SUBCONTRACTORS

END OF DOCUMENT

**DVBE PARTICIPATION FORM**

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

RFP Project Title: \_\_\_\_\_

RFP Number: \_\_\_\_\_

The Judicial Council has an annual Disabled Veterans Business Enterprise (DVBE) participation goal of not less than three percent (3%), however, each specific project may have a DVBE participation goal of less than or greater than 3%, or no DVBE participation goal at all. This Project has a DVBE participation goal of 3% (“DVBE Project Goal”). The Contractor must document its DVBE compliance with the DVBE Project Goal by completing this DVBE Participation Form when requested by the Judicial Council.

The DVBE Project Goal and the Judicial Council’s compliance requirements are subject to revision when the California Department of General Services adopts and implements new regulations regarding DVBEs.

***Complete Parts A & B***

*“Contractor’s Tier” is referred to several times below; use the following definitions for tier:*

- 0 = Prime or Joint Contractor;
- 1 = Prime subcontractor/supplier;
- 2 = Subcontractor/supplier of level 1 subcontractor/supplier

**PART A – COMPLIANCE WITH DVBE GOALS**

**FIRM**

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

Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_

Claimed Value: DVBE \$ \_\_\_\_\_

Percentage of Total Project Price: DVBE \_\_\_\_\_%

**SUBCONTRACTORS/SUB-SUBCONTRACTORS/PROPOSERS/SUPPLIERS**

1. Company Name: \_\_\_\_\_  
 Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
 Claimed Value: DVBE \$ \_\_\_\_\_

Percentage of Total Project Price: DVBE \_\_\_\_\_%

2. Company Name: \_\_\_\_\_  
 Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
 Claimed Value: DVBE \$ \_\_\_\_\_

Percentage of Total Project Price: DVBE \_\_\_\_\_%

3. Company Name: \_\_\_\_\_  
 Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
 Claimed Value: DVBE \$ \_\_\_\_\_

Percentage of Total Project Price: DVBE \_\_\_\_\_%

**GRAND TOTAL: DVBE \_\_\_\_\_%**

I hereby certify that the “Project Price,” as defined herein, is the amount of \$\_\_\_\_\_. I understand that the “Project Price” is the total dollar figure against which the DVBE participation requirements will be evaluated.

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

**PART B – CERTIFICATION**

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representations made herein and, to the best of my knowledge and belief, each firm set forth in this bid/proposal as a Disabled Veterans Business Enterprise complies with the relevant definition set forth in California Code of Regulations. Title 2, section 1896.61, Military and Veterans Code, section 999.

IT IS MANDATORY THAT THE FOLLOWING BE COMPLETED ENTIRELY; FAILURE TO DO SO WILL RESULT IN IMMEDIATE REJECTION.

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

End of DVBE Participation Form

**Payment Bond**

**[@CONTRACTOR'S CURRENT PAYMENT BOND]**

**Performance Bond**

**[@CONTRACTOR'S CURRENT PERFORMANCE BOND]**

**Contractor's Insurance Documents**

**[@CONTRACTOR'S INSURANCE DOCUMENTS]**

SAMPLE