



Request for Qualifications and Proposals for Preconstruction Services and Construction Management at Risk Services with a Guaranteed Maximum Price

Renovation and Addition to Willows Courthouse

Superior Court of California
County of Glenn

The Administrative Office of the Courts, Judicial Branch Capital Program Office (JBCP) seeks statements of qualifications and proposals from Construction Management firms qualified to provide services in all phases of design and construction of a new addition and renovation of the Superior Court of California, County of Glenn.



**ADMINISTRATIVE OFFICE
OF THE COURTS**

JUDICIAL AND COURT OPERATIONS
SERVICES DIVISION

JUDICIAL BRANCH CAPITAL PROGRAM OFFICE

Date:

October 4, 2013

To:

Interested Construction Management Firms

From:

Administrative Office of the Courts,
Judicial Branch Capital Program Office

Project Title:

Renovation and Addition to Willows Courthouse
RFQ/P Number: JBCP-2013-05-BR

Send SOQs and Proposals To:

Judicial Council of California
Administrative Office of the Courts
Attn: Ms. Nadine McFadden
Business Services, 6th Floor
455 Golden Gate Avenue
San Francisco, CA 94102

*(Indicate RFQ/P number and project name on lower
left corner of envelopes)*

Contact:

CapitalProgramsSolicitations@jud.ca.gov

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1.0 Introduction

THIS RFQ/P AND ITS ATTACHMENTS ARE CURRENT DRAFTS OF UPDATED FORMS THAT THE AOC IS FINALIZING. ALL DOCUMENTS ARE SUBJECT TO REVISION PRIOR TO THE CMR AND THE AOC FINALIZING THE GUARANTEED MAXIMUM PRICE FOR THIS PROJECT.

- a. This Request for Qualifications and Proposals (“RFQ/P”) is the means for interested construction manager at risk firms (“Firm(s)”) to submit their Statements of Qualifications (SOQ) and Fee Proposals (“Proposal(s)”) to the Administrative Office of the Courts (“AOC”) for the services described herein. The RFQ/P and all related documents and addenda are available in electronic form at www.courts.ca.gov.
- b. The Judicial Council of California, chaired by the Chief Justice of California, is the primary policy making body of the California judicial system. The AOC is the staff agency of the Judicial Council. The Judicial Branch Capital Program Office is the division of the AOC responsible for the planning, design, construction, real estate and asset management of facilities for the Superior and Appellate Courts of California.

2.0 Purpose of RFQ/P

- a. The AOC seeks to retain the services of a qualified Firm with expertise in all Phases of the above referenced project (“Project”) as described herein and in the Contract Documents. The Project phases are the Preliminary Plan Phase, the Working Drawing Phase and the Construction Phase. The AOC hereby solicits SOQs and Proposals to furnish Preconstruction Services and Construction Management Services for the Project, subject to the conditions prescribed by this RFQ/P.
- b. The selected Firm will apply its expertise to the Project in collaboration with other Project participants to construct a court building that provides significant value to the State judicial system.
- c. The AOC intends to award the Project and issue a Notice to Proceed in a timely manner following the selection process indicated herein.

3.0 Project Description and Site Information

- a. **Project Description.**
 - i. The Project is the renovation of the existing two-story 1895 courthouse (approximately 15,800sf), construction of a new addition (approximately 29,000sf), and site development for a trial court facility comprised of but not limited to all building structure, enclosure, interior improvements, mechanical, electrical, telecommunication, audio visual, and security systems.
 - ii. The site development includes but is not limited to site preparation, underground utilities, landscape, hardscape, vehicular drives, surface parking, security barriers, fencing, and gates. The approximately 0.85 acre site is to be cleared of site improvements and underground utilities shall be relocated (anticipated to be a separate preliminary construction phase) as part of this contract.
 - iii. The Project will be insured under an owner controlled insurance program (OCIP) provided by the AOC. A sample OCIP manual is included as an Attachment to this RFQ/P.
 - iv. **LEED.** The Project is being designed for sustainability and to the standards of LEED Silver rating including full participation in the formal LEED certification process from the Preliminary Plan Phase through the Construction Phase. CMR shall provide all required documentation to the Project Architect for LEED certification.
 - v. **Commissioning.** CMR shall perform specific Services during all Phases of the Project to assist,

review, coordinate, opine and cooperate with the AOC, the AOC's commissioning authority, other providers of commissioning services for the AOC, the Architect and all other design professional of the Project.

- vi. A detailed description of the Project is set forth in the CM-at-Risk Agreement form attached hereto, including descriptions of the scope of Work for each Phase of the Project.

- b. **Environmental.** A Phase I Environmental Site Assessment Report was completed for the Project and CEQA review is completed and documented by the Notice of Exemption /Categorical Exemption dated December 1, 2010, prepared by the Judicial Council of California's Administrative Office of the Courts. These documents are on the AOC web site, www.courts.ca.gov

- c. **Estimated Schedule of Work.** Estimated Project start and completion dates are set forth below and include time for AOC and regulatory reviews or approvals. Actual dates for each phase of the Work will be detailed in the final CM-at-Risk Agreement.
 - i. **Preliminary Plan Phase**
Start: The project is currently in Schematic Design and CM-at-Risk services will begin with activities related to the 100% Schematic documents (Constructability Review, Value Analysis, and Cost Control Management).
Complete: March 15, 2014

 - ii. **Working Drawings Phase**
Start: March 16, 2014
Complete: January 4, 2015

 - iii. **Construction Phase**
Start: (bidding of utility phase) August 1, 2014
Complete: April 1, 2015
State: (bidding of remainder) January 5, 2015
Complete: August 15, 2016

4.0 Pricing

- a. **Estimated Project Budget. The AOC's current estimates for the CMR costs of portions of the Project are as follows:**
 - i. Estimated Preliminary Plan Phase **\$75,000.**

 - ii. Estimated Working Drawing Phase..... **\$165,000.**

 - iii. Estimated Guaranteed Maximum Price (as of July 2013, CCC 5804, incl. 3% Contractor Contingency, General Conditions, Contractor's fee and initial Utility phase work; Direct Cost would be approximately \$20,000,000) **\$24,000,000 .**

- b. The Project includes both preconstruction services and construction services:
 - i. **Preconstruction Services.** The procurement method for the Preliminary Plan Phase and the Working Drawing Phase of this Project shall be a fixed price proposal for each phase.

 - ii. **Construction Services.** The procurement method for the Construction Phase of this Project is commonly known as "Construction Manager at Risk with Guaranteed Maximum Price".

- c. Proposals must include pricing for all Phases of the Project, as indicated in the Fee Proposal.

5.0 Response to RFQ/P

- a. SOQ and Proposals must conform to the AOC requirements provided herein.

- b. Interested Firms must hold and maintain a valid type B general contractor license from the State of California. Firm shall notify AOC in writing in the event Firm’s license expires, is suspended or has a change in signatory authority.
- c. The AOC will contract with one Firm and that Firm may not self-perform construction work or bid on subcontractor bid packages.
- d. In order to be considered, SOQs and Proposals must be submitted to the AOC in written form, no later than the time and date indicated in the Schedule of Events below for “SOQ & Proposal Due Date and Time.” Firms must ensure compliance with the dates, times and processes set forth in the Schedule of Events.

No.	Events	Dates (Calif. Times)
1	Pre-Proposal Teleconference. Telephone participants dial: 1-866-537-1632 Participant code: 7828925	2:00 to 3:00 pm on October 15, 2013
2	Deadline for submission of firm’s requests for clarifications re: the RFQ/P and non-binding email of intent to respond	5:00 pm on October 17, 2013
3	Clarifications, modifications and answers to questions posted at www.courts.ca.gov .	5:00 pm on October 21, 2013 (estimated)
4	SOQ and Proposal Due Date and Time	2:00 pm on October 29, 2013
5	Short listed Firms posted on www.courts.ca.gov	November 5, 2013 (estimated)
6	Interviews of short listed Firms at the AOC Sacramento office.	Week of November 11, 2013 (estimated) Times TBD
7	Posting of intent to award on www.courts.ca.gov	Week of November 18, 2013 (estimated)

- e. SOQs and Proposals must be received by the:

Judicial Council of California
 Administrative Office of the Courts
 Attn: Nadine McFadden
 455 Golden Gate Avenue, 6th Floor
 San Francisco, CA 94102

SOQs and Proposals submitted via email will NOT be considered.

- f. Firms assume all risk for ensuring receipt no later than the date and time specified in the Schedule of Events. The AOC is not responsible for the failure of a Firm’s choice of delivery service/method. The AOC will not open and will return any SOQ and Proposal received after the date and time specified in the Schedule of Events.
- g. **Changes to Process for Submitting SOQ and Proposal and Schedule of Events.** The RFQ/P and Schedule of Events are subject to change. The AOC does not send notifications of changes to this RFQ/P or the Schedule of Events to prospective Firms. The AOC is not responsible for failure of any Firm to receive notification of changes in a timely manner. Firms are advised to visit the AOC website (www.courts.ca.gov) frequently to check for changes and updates to the RFQ/P and the Schedule of Events.
- h. **Pre-Submittal Actions and Events.** Firms shall submit the following according to the specified timelines in order to participate in this process.
- i. **Optional: Submit Questions Prior to the Pre-Proposal Teleconference**

- A. Firms may submit questions to be answered at the Pre-Proposal Teleconference on the Form for Submission of Questions (Question Form) that is posted as Attachment 2 to RFQ/P. The Question Form must be emailed to: ["CapitalProgramsSolicitations@jud.ca.gov"](mailto:CapitalProgramsSolicitations@jud.ca.gov) and include the following e-mail subject line: "CM at Risk: RFQ/P Questions + (Firm Name)".
- B. Please complete all sections of the Question Form. Firms should specifically identify and cite to the particular section of the RFQ/P about which the Firm has questions. Firms' questions should be limited to the particulars of the RFQ/P process and general questions regarding the overall nature of the Project. Highly specific questions regarding the Project should be withheld until after the Pre-Proposal Teleconference.
- C. Please take notice that the Firm's name may appear on the AOC website when answers to questions submitted are posted. AOC will post answers to questions submitted after the Pre-Proposal Teleconference.

ii. Optional: Participate by Phone in the Pre-Proposal Teleconference

During the Pre-Proposal Teleconference, the AOC will provide an overview of the Project, introduce key AOC personnel, and briefly answer questions submitted prior to the Pre-Proposal Teleconference. If time allows, other questions may be asked and answered. Note: Although questions may be discussed during the Pre-Proposal Teleconference, the official and binding responses will be the posted to the AOC website.

iii. Optional: Submit Questions After the Pre-Proposal Teleconference

Firms may submit questions after the Pre-Proposal Teleconference and prior to submission of its SOQ and Proposal using the Question Form process indicated above. AOC's response to these questions will be to the AOC website.

iv. Optional: Send Email Intent to Respond

Firms that intend to respond to this RFQ/P may notify the AOC by sending an email to JBCP_Solicitations@jud.ca.gov with the RFQ/P number and Firm name in the subject line. Firm's Intent to Respond should include the name, address, telephone, fax number, and e-mail address and contact person for the Firm.

Firms are strongly encouraged to submit an Intent to Respond in order to assist the AOC in managing the RFQ/P process.

6.0 Preparing and Packaging SOQ and Proposal

- a. SOQs and Proposals should provide straightforward and concise information that fulfill the requirements of the RFQ/P. Emphasis should be placed on brevity, conformity to the AOC's instructions, RFQ/P selection criteria, and completeness and clarity of content.
- b. SOQs should be organized using tab dividers as indicated below.
- c. Expensive binding or elaborate displays are discouraged.
- d. Attachments, except as noted, will not be accepted.
- e. Firm shall submit the following in a sealed envelope clearly marked, "**SOQ & PROPOSAL – Firm Name, Project Name, RFQ/P Number**":
 - i. Five (5) copies, in paper form, of the Firm's Cover Letter and SOQ;

- ii. Two (2) copies, in paper form, of Firm's Price Proposal in a separately sealed smaller envelope clearly marked "PRICE PROPOSAL – Firm name, Project Name, RFQ/P Number";
- iii. One (1) original of the **Payee Data Record** form completed in the exact legal name of the firm's business, signed by an authorized representative of the firm (Do not bind Payee Data Record form into the SOQ booklet); and
- iv. One (1) compact disk containing the firm's complete SOQ, Price Proposal and Payee Data Record form.

f. **SOQ Form:**

- i. **GSA Standard Form 300.** The AOC requires all Firms to utilize the federal General Services Administration's (GSA) Standard Form 330 ("Architect-Engineer Qualifications") as the basis for its SOQ.

A. Form 330 may be obtained at:

[http://contacts.gsa.gov/webforms.nsf/0/21DBF5BF7E860FC185256E13005C6AA6/\\$file/sf330.doc](http://contacts.gsa.gov/webforms.nsf/0/21DBF5BF7E860FC185256E13005C6AA6/$file/sf330.doc).

B. Please take note that there are additional requirements and information required from each Firm in addition to the requirements of Form 330.

- ii. Bind the SOQ in an 8.5" x 11" booklet, divided into sections with the following entitled tabbed sections:

Tab 1. Cover Letter

- Indicate your Firm's ability to begin work in the Preliminary Plan Phase;
- Confirm your Firm read and understands the requirements of RFQ/P and agrees to all terms stated in the CM-at-Risk Agreement;
- State your Firm's legal name, address, telephone, fax numbers, and federal tax identification number (or social security number if the organization is a sole proprietorship);
- State the name, telephone, fax, address, and e-mail address of Firm's designated representative and, if different, the Firm's contact who will liaise with the AOC in contractual matters.

Tab 2. Form 330 Part I (A-D): Firm Identification

Provide the information required by Form 330 Part 1, Sections A through D. Not to exceed one (1) page per firm identified.

Tab 3. Form 330 Part I (E): Resumes of Key Personnel

Provide the information required by Form 330 Part 1, Section E.

Tab 4. Form 330 Part I (F): Example Projects

Provide the information required by Form 330 Part 1, Section F.

- Each example project listed must have been completed within the past five (5) years and have a construction cost over \$1,000,000. Example projects must be relevant to California courts or buildings of similar complexity and budget and demonstrate Firm's ability and experience to successfully plan and complete the Project.
- Do not exceed two (2) pages per example project. In addition, Firm may include one (1) page of photographs and graphics.

Tab 5. 330 Part I (G): Key Personnel

Provide the information required by Form 330 Part 1, Section G. Do not exceed one (1) page.

Tab 6. 330 Part I (H): Additional Information: Proposed Approach

Provide a Project Plan for performing the services and activities required for the Project. The Project Plan must not exceed ten (10) pages and must be signed by an authorized representative

of the Firm. The Firm must provide information on its proposed approach to the Project, including, Firm's strategies for feasibility studies, Project planning, quality control, anticipation and resolution of issues throughout the Project, Firm's methodology for coordination and issue tracking, as well as any other information the Firm feels is pertinent.

Tab 7. 330 Part II: General Qualifications

Provide the information required by Form 330 Part 11. Items 4, 5(b), 8(c) and 11 are not required. The Firm's authorized representative must verify and sign the information required by this Part.

Tab 8. Technical Qualifications Questionnaire

Provide a completed Technical Qualifications Questionnaire (Attachment hereto) bearing an original signature from an individual with a level of authority qualified to commit your Firm.

Tab 9. Supporting Documentation: Safety Record

Provide the following:

- Description of Firm's Project safety and security program. Firm's safety plan must be consistent with OCIP Safety Manual, and which is included as an Attachment to this RFP/Q, and Article 10 of the CM-at-Risk Agreement. Description of Firm's ability to comply with the safety requirements of the CM-at-Risk Agreement; and
- Explanation of Firm's experience in assisting an owner in the successful administration of an owner controlled insurance program.

Tab 10. Supporting Documentation: Litigation History

Provide a list of Firm's litigation(s) and resolution(s) within the past five (5) years. Include dispute(s) that were or were not resolved through mediation and/or arbitration.

Tab 11. Certifications

Certify and confirm, under penalty of perjury, the following:

- **NLRB Orders.** That no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against Firm within the immediately preceding two (2) year period because of Firm's failure to comply with an order of the National Labor Relations Board.
- **Brokerage or Contingent Fees.** No person or selling agency has been employed or retained to solicit or secure an agreement between Firm and the AOC upon an understanding or agreement for a commission, percentage, brokerage or contingent fee.
- **Prohibited Financial Conflict of Interest.** Firm has no interest and shall not acquire any interest which would present a conflict of interest with the AOC pursuant to California Government Code sections 1090 *et seq.* and 87100 *et seq.* Firm further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the AOC are now, nor in the future will they be, in any manner interested directly or indirectly in the CM-at-Risk Agreement, or in any profits expected to arise from CM-at-Risk Agreement, as set forth in California Government Code sections 1090 *et seq.* and 87100 *et seq.*
- **Covenant against Gratuities.** No gratuities, in the form of entertainment, gifts, or otherwise, were offered by Firm or any agent, director, or representative of Firm, to any officer, official, agent, or employee of the AOC with a view toward securing the CM-at-Risk Agreement or securing favorable treatment with respect to any determinations concerning the performance of the CM-at-Risk Agreement.

Tab 12. Outreach

Provide information about your Firm's plan to advertise and perform other outreach to encourage participation of local subcontractors and vendors on the Project, including the CMR's bids from qualified subcontractors.

Tab 13. Labor Compliance

Provide information concerning your Firms understanding and experience in complying with the provisions of the recently-enacted Department of Industrial Relations Compliance Monitoring Unit’s labor compliance program applicable to State of California bond funded public works projects.

Tab 14. General Contractor License

Provide a copy of Firm’s Type B general contractor license permitting Firm to perform construction work in the State of California.

Tab 15. Financial Information

Provide one original (preferred) or copy of Firm’s audited and already published financial statements for three (3) annual periods preceding the SOQ & Proposal Due Date. The statements shall be the Firm’s and in the same legal name as that in which Firm intends to do business with the AOC. The statements shall not be in the name of parent organizations. Do not include other subsidiaries.

7.0 AOC Selection Process

It is the intention of AOC that its selection of the firm to provide professional construction management services for this Project shall take into consideration both the quality of the firm, as demonstrated by their competence and experience and by the cost proposed to provide services.

a. SOQ and Proposal Evaluation Process

The evaluation team will first evaluate the SOQ to determine its responsiveness to the AOC’s expressed needs and score it as Total Quality Points. The Total Quality Points will be factored into a formula that computes the Cost per Unit of Quality. The firm with the lowest Cost per Unit of Quality will be awarded the contract for the Project.

i. SOQ Evaluation Process

The SOQs received will be analyzed and scored by members of an evaluation team which will be comprised of AOC staff and/or its designees. Each member of the evaluation team will assign a point score according to the following grading schedule. Points assigned by the individual team members will then be averaged to determine a Total Quality Points score for each firm.

Financial Strength, Safety Record, and Claims Avoidance: 20 points

The firm has verifiable financial strength, excellent safety program and record, has successfully avoided work related accidents, damage to property during the course of construction, and public liability claims and litigation on past projects, and has successfully worked with owners in the successful completion of owner controlled insurance programs.

Demonstrated Experience of the Firm: 30 points

Experience of the firm in relation to the work to be performed, including demonstrated ability to meet project budgets and schedules, demonstrated effectiveness of the quality assurance program and procedures being utilized by the firm in both Preconstruction and CM-at-risk services, and the nature and quality of recently completed work.

Demonstrated Experience and Training of Project Personnel: 30 points

Demonstrated experience and training of the principals and key personnel to be assigned to the Project; maintain continuity of firm’s proposed staff from Preconstruction and CM-at-risk services through the completion of the Project.

Project Plan/Approach: 20 points

The proposed Project Plan shall demonstrate the firm’s approach to this Project

indicating a clear understanding of the purpose, service, scope, and objectives of this RFQ/P, including methodology for coordination and issue tracking and quality control strategies. The Project Plan shall demonstrate the firm's approach to advertising and outreach to the local subcontractor and vendor community; this approach should clearly identify the firm's plan to encourage participation by local subcontractors and vendors (5 max. points out of 20).

Total Quality Points = 100 Points Max.

- ii. **Short List and Interviews.** The Total Quality Points will be used to create a short list of firms to be interviewed. It is intended that the short list will include at least three (3) firms. Firms not on the short list will not be eligible for further consideration for this Project. The interviews will be evaluated on the same criteria as the SOQs and Proposals. After the interviews the Total Quality Points previously assigned to a firm on the short list will be adjusted, if necessary, and the final score will be recalculated.
- iii. **Price Proposal Evaluation Process.** After the conclusion of the above tasks, the Price Proposals of the firms interviewed will be evaluated to derive a Cost per Unit of Quality ("CPQ"). The CPQ will be compared and the firm with the lowest CPQ shall be announced as the most responsive firm. The CPQ is the Total Price for Services (as indicated by the Firm on its Fee Proposal Form) divided by the Total Quality Points (as defined above in the SOQ Evaluation Process). For example, using the following hypothetical figures:

- Total Price for Services (from Fee Proposal) = \$8,500,000
- Total Quality Points (from above) = 89

The CPQ would be: $\$8,500,000 / 89 = \$95,505.62$

b. Execution of Agreement

- i. The firm awarded the contract shall be prepared to commence Work immediately following execution of the CM-at-Risk Agreement.
- ii. In the event an agreement cannot be reached with the selected firm after a reasonable amount of time in the AOC's determination, the AOC may choose to award the CM-at-Risk Agreement to the next-highest ranked firm.

8.0 Administrative Requirements

a. Disabled Veteran Participation Goals

- i. The AOC requires contract participation goals of a minimum of three percent (3%) for disabled veteran business enterprises (DVBEs). The AOC will require the selected firm to demonstrate DVBE compliance.
 - A. The selected firm may complete a DVBE Participation Form at any time to reflect any DVBEs that take part in any Phase of the Project.
 - B. In addition, the selected firm is required to complete a DVBE Participation Form when bidding the Project for the Construction Phase.
- ii. Information about DVBE resources can be found on the Executive Branch's internal website at <http://www.dgs.ca.gov/pd/Programs/OSDS/legislation.aspx> or by calling the Office of Small Business and DVBE Certification at 916-375-4940.
- iii. The DVBE Participation Form is attached as an Exhibit to the CM-at-Risk Agreement.

b. California Rules of Court, Rule 10.500 – Public Access to Judicial Administrative Records

Records created as part of Firm's Proposal and selection process are generally subject to California Rules of Court, Rule 10.500 and may be available to the public absent an exemption. If a firm's SOQ or Proposal contains material noted or marked as confidential and/or proprietary that, in the AOC's sole opinion, meets the disclosure exemption requirements of Rule 10.500, then that information will not be disclosed pursuant to a request for public documents. If the AOC does not consider such material to be exempt from disclosure under Rule 10.500, the material will be made available to the public, regardless of the notation or markings. If a firm is unsure if its confidential and/or proprietary material meets the disclosure exemption requirements of Rule 10.500, then it should not include such information in its SOQ and Proposal. A firm that indiscriminately identifies all or most of its SOQ or Proposal as exempt from disclosure without justification may be deemed non-responsive.

c. **Errors in the RFQ/P**

- i. If Firm discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFQ/P, Firm shall immediately provide the AOC with written notice of the problem and request that the RFQ/P be clarified or modified. Without disclosing the source of the request, the AOC may modify the RFQ/P prior to the date fixed for submission of SOQ by issuing an addendum.
- ii. If prior to the date fixed for submission of SOQs Firm knows of or should have known of an error in the RFQ/P, and fails to notify the AOC of the error, Firm shall submit its SOQ at its own risk, and if Firm is awarded the contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

- d. **Addenda.** The AOC may modify the RFQ/P prior to the date fixed for submission of proposals by posting an addendum on the AOC website. If Firm determines that an addendum unnecessarily restricts its ability to submit its proposal, it must notify the AOC no later than one (1) day following the posting of the addendum.

- e. **Withdrawal and Resubmission/Modification of Proposals.** Firm may withdraw its proposal at any time prior to the deadline for submitting proposals by notifying the AOC in writing of its withdrawal. The notice must be signed by Firm. Firm may thereafter submit a new or modified proposal, provided that it is received at the AOC no later than the proposal due date and time listed in this RFQ/P. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the proposal due date and time listed in this RFQ/P.

- f. **Rejection of SOQs.** The AOC may reject any or all proposals and may or may not waive an immaterial deviation or defect in a proposal. The AOC's waiver of an immaterial deviation or defect shall in no way modify the RFQ/P or excuse Firm from full compliance with the RFQ/P specifications. The AOC reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual Firm if it is deemed in the AOC's best interest. Moreover, the AOC reserves the right to make no selection if proposals are deemed to be outside the fiscal constraint or against the best interest of the State of California.

g. **Award of Contract**

- i. Award of contract, if made, will be in accordance with the RFQ/P to a responsible Firm submitting a proposal compliant with all the requirements of the RFQ/P and any addenda thereto, except for such immaterial defects as may be waived by the AOC.
- ii. The AOC reserves the right to determine the suitability of proposals for contracts on the basis of Firm meeting administrative requirements, technical requirements, its assessment of the quality of service and performance of items proposed, and cost.

h. **Protest Procedure**

- i. **General.** Failure of Firm to comply with the protest procedures set forth in this Section, will render a protest inadequate and non-responsive, and will result in rejection of the protest.

ii. **Prior to Submission of Proposal.** An interested party that is an actual or prospective firm with a direct economic interest in the RFQ/P may file a protest based on allegedly restrictive or defective specifications or other improprieties in the RFQ/P process that are apparent, or should have been reasonably discovered prior to the submission of a proposal. Such protest must be received prior to the Proposal Closing Time. The protestor shall have exhausted all administrative remedies discussed herein. A prior to submitting the protest. Failure to do so may be grounds for denying the protest.

iii. **After Award**

- A. A Firm submitting a proposal may protest the award based on allegations of improprieties occurring during the proposal evaluation or award period if it meets all of the following conditions:
1. The Firm has submitted a proposal that it believes to be responsive to the RFQ/P document;
 2. The Firm believes that its proposal meets the administrative and technical requirements of the RFQ/P, proposes services of proven quality and performance, and offers a competitive cost; and
 3. The Firm believes that the AOC has incorrectly selected another Firm submitting a proposal for an award.
- B. Protests must be received no later than five (5) business days after the protesting party receives notice that the AOC did not award it the Contract.

iv. **Form of Protest**

- A. The protest must be in writing and sent by certified, or registered mail, or overnight delivery service (with proof of delivery), or delivered personally to the address noted above. If the protest is hand-delivered, a receipt must be requested.
- B. The protest shall include the name, address, telephone and facsimile numbers, and email address of the party protesting or their representative.
- C. The title of the RFQ/P document under which the protest is submitted shall be included.
- D. A detailed description of the specific legal and factual grounds of protest and any supporting documentation shall be included.
- E. The specific ruling or relief requested must be stated.
- F. The AOC, at its discretion, may make a decision regarding the protest without requesting further information or documents from the protestor. Therefore, the initial protest submittal must include all grounds for the protest and all evidence available at the time the protest is submitted. If the protestor later raises new grounds or evidence that was not included in the initial protest but which could have been raised at that time, the AOC will not consider such new grounds or new evidence.
- v. **Determination of Protest Submitted Prior to Submission of Proposal.** Upon receipt of a timely and proper protest based on allegedly restrictive or defective specifications or other improprieties in the RFQ/P process that are apparent, or that should have been reasonably discovered prior to the submission of a proposal, the AOC will provide a written determination to the protestor prior to the Proposal Due Date. If required, the AOC may extend the Proposal Due Date to allow for a reasonable time to review the protest. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined below and the AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied, or proceed with the award and implementation of the contract.

vi. **Determination of Protest Submitted After Submission of Proposal.** Upon receipt of a timely and proper protest, the AOC will investigate the protest and will provide a written response to the firm within a reasonable time. If the AOC requires additional time to review the protest and is not able to provide a response within ten (10) business days, the AOC will notify the firm. If the protesting party elects to appeal the decision, the protesting party will follow the appeals process outlined

below. The AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied, or proceed with the award and implementation of the contract.

vii. Appeals Process

- A. The AOC's decision shall be considered the final action by the AOC unless the protesting party thereafter seeks an appeal of the decision by filing a request for appeal, within five (5) calendar days of the issuance of the AOC's decision.
- B. The justification for appeal is specifically limited to:
 - 1. Facts and/or information related to the protest, as previously submitted, that were not available at the time the protest was originally submitted;
 - 2. The AOC's decision contained errors of fact, and such errors of fact were significant and material factors in the AOC's decision; or
 - 3. The AOC's decision was in error of law or regulation.
- C. Firm's request for appeal shall include:
 - 1. The name, address telephone and facsimile numbers, and email address of the Firm filing the appeal or their representative;
 - 2. A copy of the AOC's decision;
 - 3. The legal and factual basis for the appeal; and
 - 4. The ruling or relief requested. Issues that could have been raised earlier will not be considered on appeal.
- D. Upon receipt of a request for appeal, the AOC will review the request and the decision and shall issue a final determination. The decision shall constitute the final action of the AOC.

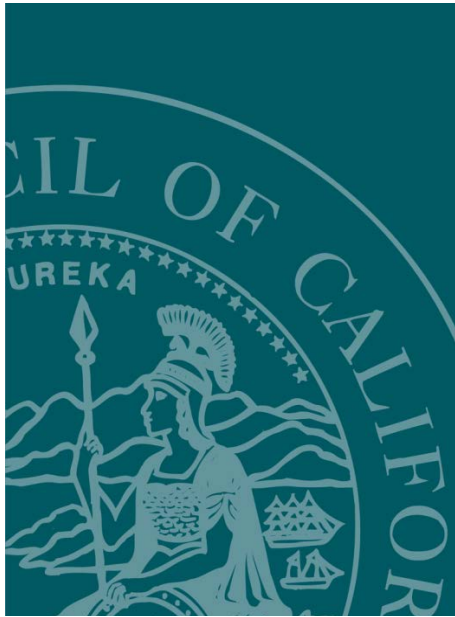
viii. Protest Remedies

- A. If the protest is upheld, the AOC will consider all circumstances surrounding the RFQ/P in its decision for a fair and reasonable remedy, including the seriousness of the RFQ/P deficiency, the degree of prejudice to the protesting party or to the integrity of the competitive process, the good faith efforts of the parties, the extent of performance, the cost to the AOC, the urgency of the procurement, and the impact of the recommendation(s) on the AOC. The AOC may recommend a combination of the following remedies:
 - 1. Terminate the contract for convenience;
 - 2. Re-solicit the requirement;
 - 3. Issue a new RFQ/P;
 - 4. Refrain from exercising options to extend the term under the contract, if applicable;
 - 5. Award a contract consistent with statute or regulation; or
 - 6. Other such remedies as may be required to promote compliance.
- i. **Disposition of Materials.** All materials submitted in response to this RFQ/P will become the property of the State of California and will be returned only at the AOC's option and at the expense of the Firm submitting the proposal. One copy of a submitted proposal will be retained for official files and become a public record. Any material that Firm considers as confidential but does not meet the disclosure exemption requirements of the California Rules of Court, Rule 10.500 should not be included in the Firm's proposal as it may be made available to the public.

END OF RFQ/P FORM

**Attachment 1
to
RFQ/P for CM-at-Risk Firm**

**CM-AT-RISK AGREEMENT FOR PRECONSTRUCTION
AND CONSTRUCTION PHASE SERVICES**



CM-at-Risk Agreement for Preconstruction and Construction Phase Services

Renovation and Addition to Willows Courthouse

Superior Court of California

County of Glenn



ADMINISTRATIVE OFFICE
OF THE COURTS

JUDICIAL AND COURT OPERATIONS
SERVICES DIVISION

JUDICIAL BRANCH CAPITAL PROGRAM OFFICE

JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS
STANDARD AGREEMENT COVERSHEET

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

1. **Parties.** In this Agreement, the term “Contractor” or “CMR” refers to *[CONTRACTOR NAME]*, and the term “AOC” refers to the Judicial Council of California, Administrative Office of the Courts.

2. **Term.** The term of the performance of the Services of the Preliminary Plan Phase begins on _____, 20__ *[DATE]*. This is the “Effective Date”) and expires at the Completion of the Project, as indicated herein.

3. **Total Contract Amount.** The maximum amount that the AOC may pay CMR under this Agreement is \$_____ *[DOLLAR AMOUNT]* (“Total Contract Amount”). This amount is as indicated in Exhibit B herein.

4. **Purpose.** The purpose of this Agreement is as follows: The CMR for and in consideration of the covenants, conditions, agreements, and stipulations of the AOC hereinafter expressed and as further set forth herein and the Exhibits attached hereto, agrees to furnish to the AOC, as authorized, preconstruction services and construction management-at-risk services for the Total Contract Amount for the construction of the _____ Courthouse building in _____, California (the “Project”). This purpose listed above is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.

5. **Contract Documents.** The parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement (made up of this coversheet, the following exhibits, and any attachments (the “Contract Documents”)) contains the parties’ entire understanding related to the subject matter of this Agreement.
 - Exhibit A: Project Description/Information and Statement/Scope of Work
 - Exhibit B: Price and Payment Detail
 - Exhibit C: Project Cost Responsibility Matrix
 - Exhibit D: Acceptance and Signoff Form for All Phases Prior to Construction Phase
 - Exhibit E: Subcontractors to CMR
 - Exhibit F: CMR’s Key Personnel
 - Exhibit G: OCIP Insurance Manual
 - Exhibit H: General Conditions of the CMR Agreement for Preconstruction and Construction Phase Services (Document 00 70 00)
 - Exhibit I: Division 1 Documents (Document 00 10 00 through Document 01 91 13)
 - Exhibit J: Technical Specifications (Division 2 through Division 49)
 - Exhibit K: Design Documents, which become part of the Contract Documents once approved by the AOC.
 - Exhibit L: DVBE Participation Form

6. **Authorization.** The Work of this Agreement will be authorized in four (3) phases: Preliminary Plan Phase; Working Drawing Phase; Construction Phase.
 - By entering into this Agreement, the AOC authorizes the Preliminary Plan Phase (starting in Design Development).
 - The AOC has the sole and unilateral right to authorize the Working Drawing Phase and the Construction Phase, and said authorizations shall be made in the form of an Amendment to this Agreement, authorizing the appropriate Phase and funding specified herein, which shall be signed by the CMR.
 - Contractor is not authorized to begin any work or services marked “NYA” (Not Yet Authorized).

7. **Notices to the Parties.** All notices, requests, demands, and other communications hereunder must be in writing and will be deemed to have been duly given when hand delivered or five (5) days after being deposited in the United States mail, if mailed by certified or registered mail, return receipt requested, postage prepaid, to the contact information and addresses indicated above.

8. CMR shall hold and maintain a valid type B general contractor license from the State of California. CMR shall notify AOC in writing in the event CMR’s license expires, is suspended or has a change in signatory authority.

9. **Payment of Liquidated Damages.** The liquidated damages for the CMR’s failure to complete Work of the Construction Phase by the Completion Date finally agreed to by the Parties is \$2,000 per calendar day.

10. **Labor Code, Work Force, Apprenticeship, and Safety Provisions.** The CMR acknowledges the “Labor and Materials” provisions in Exhibit H.

11. **AOC’s Project Manager.** The AOC’s Project Manager for this Project shall be Steve Sundman.

12. The AOC has an annual Disabled Veterans Business Enterprise (DVBE) participation goal of not less than 3% (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 Participation Goal). The CMR must document its DVBE compliance with the DVBE Project Goal by completing the DVBE Participation Form set forth as Exhibit L.
 - The DVBE Project Goal and the AOC’s compliance requirements are subject to revision when the California Department of General Services adopts and implements new regulations regarding DVBE.

AOC’S SIGNATURE	CONTRACTOR’S SIGNATURE	
Judicial Council of California, Administrative Office of the Courts	CMR’S NAME <i>(if CMR is not an individual person, state whether CMR is a corporation, partnership, etc.)</i> [CMR name]	
	LICENSE NO.:	EXP. DATE:
BY <i>(Authorized Signature)</i> ✍	BY <i>(Authorized Signature)</i> ✍	

PRINTED NAME AND TITLE OF PERSON SIGNING <i>[Name and title]</i>	PRINTED NAME AND TITLE OF PERSON SIGNING
ADDRESS 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS <i>[Address]</i>

Administrative Office of the Courts Use Only

Fund Title	Program/Catego	Item	Chapter	Statute	Fiscal Year	Object of Expenditure	Amount
SIGNATURE OF ACCOUNTING OFFICER ✍							DATE <i>[Date]</i>

Exhibit A to the Agreement
Project Description/Information and Statement/Scope of Work

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

1. General Description of the Project:

1.1. The Project is the construction of a new building and site development for a trial court facility comprised of approximately 16,000 gross square feet (renovation) and 26,000 gross square feet (addition). The two story building includes but is not limited to all building structure, enclosure, interior improvements, mechanical, electrical, telecommunication, audio visual, and security systems.

1.2. The site development includes but is not limited to site preparation, underground utilities, landscape, hardscape, vehicular drives, surface parking, security barriers, fencing, and gates. The approximately one acre site is to be cleared of site improvements and underground utilities shall be relocated under this contract in an initial sitework/utility phase.

1.3. Furnishing and installation of interior furniture, furnishings, and fixtures may be a part of the scope of this Project, to be determined during the design phases.

1.4. Design.

1.4.1. CMR is not the architect of the Project, but as indicated further herein, CMR shall perform specific Services during all Phases of the Project to assist, review, coordinate, opine and cooperate with the Architect and all other design professional(s) of the Project.

1.4.2. The Project is currently at the Schematics stage of design.

1.4.3. The Project will be designed to be certified "Silver Enhanced" by the the [U.S. Green Building Council](#) (USGBC), who oversees in the Leadership in Energy and Environmental Design (LEED) Program.

1.5. **Commissioning.** Although CMR will not provide commissioning services on the Project, CMR shall perform specific Services during all Phases of the Project to assist, review, coordinate, opine and cooperate with the AOC, the AOC's commissioning authority, other providers of commissioning services for the AOC, the Architect and all other design professional(s) of the Project.

2. Project - Functional Area Summary

Please note the following:

2.1. Functional areas subject to change

2.2. Component gross square feet (CGSF) are the amount of area required by a department or component for its individual functions including internal circulation.

2.3. Building gross square feet (BGSF) is the amount of area for the entire enclosed building including general horizontal and vertical circulation; space required for mechanical, electrical, and structural systems.

Court Set	8,707 CGSF
3 Courtrooms (including 2 large courtrooms, and 1 small courtroom; 3 Judges chambers; Courtroom holding; Jury deliberation rooms; and Support spaces.	
Court Executive Office	1,088 CGSF
Offices, work areas and support spaces.	
Court Operations	435 CGSF
(Accounts Payable and Fiscal, Compliance Unit, Purchasing, Indigent Defense, Personnel/Payroll & Children’s Waiting) Offices, work areas and support spaces.	
Jury Assembly and Administration	1,197CGSF
Assembly space, offices, work areas, and queuing.	
Criminal-Traffic Division Administration	3,605 CGSF
Clerk’s offices and work areas; Public walk-up windows and queuing; Active and semi-active files; Evidence storage; and Support spaces.	
Family Law Division Administration	1,643 CGSF
Clerk’s offices and work areas; Public walk-up windows and queuing; Training, orientation, and mediation rooms; Active and semi-active files; Self-help area; and Support Spaces.	
Juvenile Division Administration	N.A.
Clerk’s offices and work areas; Public walk-up windows and queuing; Training, orientation, and mediation rooms; Active and semi-active files and Support Spaces.	
Appeals and Appellate Division Administration	N.A.
Offices, work areas and support spaces	
Probate Division Administration	N.A.
Offices, work areas and support spaces	
Sheriff Central Holding and Operations	284 CGSF
Adult and juvenile holding cells and support spaces	
Public Entry and Public Spaces	1,045 CGSF

Public entry and weapons screening; Public lobby; Security office; Public waiting at courtrooms; and Vending machine area.

Building Common Areas N.A.

Conference rooms; Mail rooms; Break rooms; and Building storage.

Building Support 4,971 CGSF

Mechanical, telephone, electrical and communications rooms; Maintenance offices; Custodial rooms; Public restrooms; Staff restrooms

Total Component Area: Gross Square Feet (CGSF) 22,975 CGSF

Sub-Total Building Gross Square Feet (BGSF)

As Drawn: 41,590 BGSF

Target: 41,867 BGSF

Total Building Gross Square Feet (BGSF)

As Drawn: 41,590 BGSF

Target: 41,867 BGSF

Not Included in CGSF:

Loading Dock, Mechanical Penthouse @ Roof, & Vehicular Sallyport

On-site Public Parking for 5 vehicles

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

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

- 3.1. **Design** – The Courthouse will function equally well as a setting for the delivery of justice, as a public services center, and as a community landmark.
- 3.2. **Schedule and Cost** – *The Project design and construction will be completed the within the approved schedule and within the authorized funds. Where possible, project tasks should be concurrent.*
- 3.3. **Courthouse Life Span** – *This facility should function effectively for several generations. The design shall support a logical and cost effective approach to incremental construction without undue disruption of court operations. The design shall accommodate change over time in court operations. Seismic design shall incorporate innovative and cost effective measures to ensure building stability and longevity.*

- 3.4. **Design Quality Assurance** – Periodic peer review shall be sought throughout the phases of the Project for enhanced quality assurance.
- 3.5. **Sustainable Design/LEED “Silver” Certification** -- The Project shall be designed for sustainability and to the standards of the United State Green Building Council’s (USGBC) LEED™ “Silver” rating. The project will receive certification by the USGBC as well as participate in the incentives/rewards program sponsored by the local utility company. The building shall consume 15% less energy or better than a code minimum facility by the use of energy efficient materials, equipment, and systems consistent with the project budget, including use of/connection to the County’s existing geothermal system or future co-generation system. Building orientation on the site should be chosen to optimize interior day lighting.
- 3.6. **Accessibility** – Design of building shall reflect Judicial Council’s mission to provide “access to justice” for all, including equal access and fairness with the highest quality of justice and service to the public. The building shall incorporate universal design concepts, to make the facility accessible to all users without treating persons with disabilities differently.
- 3.7. **Security** – The design will provide for efficient and safe court operations in a cost effective manner. Security measures for the building and site shall meet the requirements of the AOC and County’s Sheriff.
- 3.8. **Durability, Quality and Efficiency** – Materials and systems for the building and site should be chosen with regard to the amount of traffic, use and visibility of each space or area. Materials should be durable, operationally and energy efficient, easily cleaned/maintained, and environmentally friendly.
- 3.9. **Commissioning** – The AOC shall implement a total building commissioning program to ensure that the building systems perform interactively in accord with the design intent.

4. Project Funding

4.1. Funding

- 4.1.1. Funding of this Project for the Preliminary Plan Phase was included in the 2009 – 2010 State Budget Act.
- 4.1.2. Funding for the Working Drawings Phase will be included in the 2013 – 2014 State Budget Act.
- 4.1.3. Funding for the Construction Phase will be included in the 2014 - 2015 State Budget Act (anticipated).

5. Preliminary Project Schedule

5.1. Preliminary Plan Phase.

- 5.1.1. Start date for Design Development: October 15, 2013
- 5.1.2. Completion date: March 15, 2014

5.2. Working Drawings Phase - NYA

- 5.2.1. Estimated start date: March 15, 2014
- 5.2.2. Estimated completion date of 50% Construction Documents: July 15, 2014
- 5.2.3. Estimated completion date of 100% Construction Documents: January 15, 2015

5.3. Construction Phase - NYA

- 5.3.1. Estimated start date of Construction (sitework): Dec 15, 2014
- 5.3.2. Estimated start date of Construction (building): May 15, 2015
- 5.3.3. Estimated completion date of Construction: Not more than 440 calendar days from the start date of Construction (“Completion Date” or “Date of Completion”).

5.4. Master Project Schedule. **This Preliminary Project Schedule shall be the framework for the CMR’s Master Project Schedule and the CMR shall not provide a schedule that has later Completion Dates than indicated here, unless approved in writing by the AOC.**

6. Scope of Work

6.1. General

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

- 6.1.1. Provide sufficient number(s) of specialists and other workers with requisite skills and experience as appropriate for the successful completion of the Project.
- 6.1.2. Perform the Services in collaboration with the AOC, the Court, the AOC’s selected Architect(s) and/or Engineer(s), and other third parties as identified by the AOC.
- 6.1.3. Prepare, organize, and distribute monthly progress reports in a timely manner in a format acceptable to the AOC.
- 6.1.4. Conduct Project Status Meetings with the AOC, Court representatives, other third party professionals and consultants working with the AOC, and/or State or local agencies as needed and directed by the nature of the work or as directed by the AOC during the course of the Work. The frequency and location of the Project status meetings will be as agreed with the AOC, however, Project Status Meetings shall be held not less than on a monthly basis. The location of the meetings will typically be in the locale of the Project or at the AOC’s Bay Area Northern California Regional Offices unless otherwise agreed.
- 6.1.5. Review and analyze drawings and documents prepared by AOC consultants, and make recommendations to the AOC regarding such documents.
- 6.1.6. Review the geotechnical investigation and report on the selected site as directed by the AOC.
- 6.1.7. Provide all Deliverables and Project correspondence in Adobe Acrobat.pdf format, Microsoft Word.doc format, and AutoCAD.dwg format, as indicated in the Contract Documents, or as agreed upon with the AOC, throughout the term of this Agreement.
- 6.1.8. Provide estimated construction cost breakdowns of the Project at times indicated intervals consistent with the stage of development of the Architect’s drawings and specifications.
- 6.1.9. Attend milestone review meetings with the AOC and Project team immediately before commencing each Project phase. At the milestone review meetings, assist the AOC in identifying goals for the upcoming work, examine the performance of the Project team against the goals in the preceding phase, and propose corrective measures as necessary or appropriate.
- 6.1.10. Conduct value analysis, constructability reviews and review workshops, which shall include but shall not be limited to appropriate facilities, documentation of the findings and action items from each. CMR shall maintain a database of actions taken or resolution of each finding or action item.
- 6.1.11. Consult with the AOC if the CMR becomes aware of deficiencies, errors or omissions in the Contract Documents for the Project developed by the Architect or the AOC regardless of whether the deficiency became apparent before or after final approval of the Contract Documents by the AOC, Architect, and the CMR at the end of the Working Drawings Phase and suggest satisfactory methods for correction of such deficiencies.

- 6.1.12. Assist the Architect and the AOC in providing Contract Documents that, at a minimum, reflect compliance with AOC standards and the Project parameters. Assist the AOC by advising of any perceived non-conformance to applicable statutes, building codes, regulations, rules, guidelines, and requirements.
- 6.1.13. Monitor construction-related approvals, including, but not limited to, written approvals by the State Fire Marshal, the Corrections Standards Authority (“CSA”) and the Division of the State Architect (“DSA”) Access Compliance Unit.
- 6.1.14. Provide all necessary materials, facilities, and ancillary services (such as cleanup) necessary for provision of the Services not being provided by the Subcontractor(s) when necessary for the performance of the Services during construction and for completion of the construction.
- 6.1.15. Provide a written description of CMR’s quality assurance program (“QA Program”) commencing with the Preliminary Plan Phase and including the Working Drawing Phase. The QA Program shall be designed to advance the goal of achieving a quality Project, within schedule and budget, in compliance with the terms of the Contract Documents. Provide a written description of CMR’s quality control program (“QC Program”) for the Construction Phase. CMR shall submit the QA and QC Programs to the AOC within 20 days of commencement of each phase. The AOC shall have the right to review the QA and QC Program, and use of the QA and QC Program are subject to the AOC’s written approval. At a minimum the following shall apply:
 - 6.1.15.1. The QC Program shall cover all activities affecting quality performed by CMR and CMR’s Subcontractors.
 - 6.1.15.2. The CMR shall provide the AOC access to its records documenting implementation of the Programs (“QA Records and QC Records”). CMR shall retain and maintain identifiable, legible, and retrievable QA and QC Records for the duration of the Project. CMR shall submit QA and QC records to the AOC upon the completion of each phase of the work.
 - 6.1.15.3. As part of its QA Program, and at a minimum the CMR shall ensure that all drawings and specifications shall be reviewed and checked by at least one individual knowledgeable in the same discipline as the professional who prepared the drawings and specifications, with the goals of:
 - 6.1.15.3.1. Advising AOC of the completeness of the drawings and specifications;
 - 6.1.15.3.2. Assuring a high level of construction quality; and
 - 6.1.15.3.3. Avoiding change orders to construction contracts, which are caused by conflicts, ambiguities, inaccuracies, and deficiencies in the construction drawings and specifications.
 - 6.1.15.4. The QA Program will identify the specific methodology that will be used to cross-check drawings of the various disciplines for completeness and accuracy at each submittal stage.
- 6.1.16. **LEED.** The Project is being designed for sustainability and to the standards of LEED Silver rating including full participation in the formal LEED certification process from the Preliminary Plan Phase through the Construction Phase. CMR shall provide all required documentation to the Project Architect for LEED certification.
- 6.1.17. **Peer Review.** CMR shall perform specific Services during all Phases of the Project to assist, review, coordinate, opine and cooperate with the AOC, the AOC’s peer reviewers, other providers of peer review services for the AOC, the Architect and all other design professional(s) of the Project.
- 6.1.18. **Plan Review.** CMR shall perform specific Services during all Phases of the Project to assist, review coordinate, opine and cooperate with the AOC, the AOC’s plan reviewers verifying compliance with minimum applicable codes, other providers of plan review services for the AOC, the Architect and all other design professional(s) of the Project.
- 6.1.19. **Commissioning.** CMR shall perform specific Services during all Phases of the Project to assist,

review, coordinate, opine and cooperate with the AOC, the AOC's commissioning authority, other providers of commissioning services for the AOC, the Architect and all other design professional(s) of the Project.

6.2. Preliminary Plan Phase

- 6.2.1. During this phase, CMR shall work in coordination with the AOC, the Project Architect or Engineer, and other third parties (as necessary and authorized by the AOC), to provide the following:
- 6.2.1.1. **Constructability Reviews:** After reviewing all Design Documents for completeness and coordination, the CMR shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, phasing, to ensure efficient construction. Constructability Review shall be conducted on the 100% Design Development documents.
 - 6.2.1.2. **Value Analysis:** CMR shall conduct value analysis workshops when the Drawings are complete to:
 - 6.2.1.2.1. 100% Schematic Design,
 - 6.2.1.2.2. 100% Design Development, and
 - 6.2.1.2.3. 50% Construction Documents.

CMR is responsible for confirming, at the end of each stage, in writing to the AOC, that all Project and construction costs have been identified. CMR shall lead the activities of the AOC, Architect, and other project participants in a value analysis and verify the cost-effectiveness of the design. CMR shall demonstrate to the satisfaction of the AOC and shall certify in writing to the AOC, that the Design Documents and/or Contract Documents, at the end of each of these stages, are in conformance with the requirements of the Project and quality standards set by the AOC.

- 6.2.1.3. **Cost Control Management:** CMR shall prepare, based upon Design Documents prepared by the Architect or Engineer and identified by the AOC, its own cost estimate of the total construction cost of the Project at several times, as required in the Contract Documents. CMR shall compare their cost estimate with the cost estimate independently prepared by the Architect or Engineer for these same design documents and endeavor to resolve discrepancies in the estimates to the satisfaction of the AOC. CMR shall recommend, if necessary, appropriate modifications of the Design Documents to lower both the CMR's and the Architect or Engineer's independent estimates to amounts equal to or lower than the budget amount AOC provides to the CMR. CMR's cost estimates shall be provided according to Uniformat standards and as specified below, and shall be arranged in Uniformat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:
 - 6.2.1.3.1. 50% and 100% Design Development; Uniformat format elemental categories and detailed to Level 3;
 - 6.2.1.3.2. Each cost estimate shall:
 - 6.2.1.3.2.1. Reflect the best professional estimate of actual costs anticipated.
 - 6.2.1.3.2.2. Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phases gradually diminishing to zero at completion of final cost estimate.
 - 6.2.1.3.2.3. Adjust reported cost values to contract ENR CCCI value. Do not advance costs to the estimated start of construction, mid-point of construction or to present day values unless otherwise directed by the AOC. Questions regarding the calculation of ENR CCCI values shall be reviewed with the

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AOC Project Manager.

- 6.2.1.4. **Life Cycle Cost Analysis.** CMR shall perform a Life Cycle Cost Analysis on design alternatives for building enclosure, HVAC, and Electrical (normal and low-voltage) systems at 50% Design Development. Life Cycle Cost Analysis shall include, but is not limited to:
 - 6.2.1.4.1. Initial cost of system;
 - 6.2.1.4.2. Energy consumption costs, based on the energy analysis prepared by the Architect;
 - 6.2.1.4.3. Maintenance and custodial costs;
 - 6.2.1.4.4. Life expectancy (may require life expectancy of subsystems)
 - 6.2.1.4.5. Replacement costs (if applicable)
 - 6.2.1.4.6. Total cost of ownership over twenty-five (25) years.
- 6.2.2. Approvals: CMR shall monitor all regulatory approvals required during the Preliminary Plan Phase.
- 6.2.3. Authorization to proceed with each succeeding step in the design process is contingent upon the AOC's written acceptance of both the Architect's / Engineer's and CMR's independent cost estimates.
- 6.2.4. Upon successful completion of all Deliverables and Services of the Preliminary Plan Phase, The AOC will issue a written communication that the Preliminary Plan Phase is complete.

6.3. Working Drawing Phase. NYA

- 6.3.1. The AOC shall have the option of authorizing the Working Drawings Phase. If authorized, CMR shall work in coordination with the AOC, the Project Architect or Engineer, and other third parties (as necessary and authorized by the AOC), to provide the following:
 - 6.3.1.1. **Value Analysis:** Conduct value analysis workshops at 50% and 90% Working Drawing stages to confirm that all project and construction costs have been identified. Lead the activities of AOC, Architect, and other project participants in the value analysis and verify the cost-effectiveness of the design and the conformance of the design or construction documents budget amounts AOC provides to the CMR, and quality standards set by the AOC.
 - 6.3.1.2. **N.A.**
 - 6.3.1.3. **Constructability Reviews:** After reviewing all design documents for completeness and coordination, the CMR shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, and phasing, to ensure efficient construction. Constructability reviews shall be conducted on 50% and 90% Working Drawing documents.
 - 6.3.1.4. **Cost Control Management:** CMR shall prepare, based upon Design Documents prepared by the Architect or Engineer and identified by the AOC, its own cost estimate of the total construction cost of the Project at several times, as required in the Contract Documents. CMR shall compare their cost estimate with the cost estimate independently prepared by the Architect or Engineer for these same design documents and endeavor to resolve discrepancies in the estimates to the satisfaction of the AOC, and with the goal that both cost estimates are less than or equal to the budget amounts AOC provides to the CMR. CMR shall recommend, if necessary, appropriate modifications of the Design Documents to lower both the CMR's and the Architect or Engineer's independent estimates to amounts equal to or lower than the budget amounts AOC provides to the CMR. CMR's cost estimates shall be provided according to Unifomat standards and as specified below, and arranged in Unifomat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:
 - 6.3.1.4.1. **Working Drawings**

- 6.3.1.4.1.1. 50% milestone; Uniformat format elemental categories and detailed to Level 4; and
- 6.3.1.4.1.2. 90% milestone; Uniformat format elemental categories and detailed to Level 4 and additionally in CSI format.
- 6.3.1.4.2. Each cost estimate shall:
 - 6.3.1.4.2.1. Reflect the best professional estimate of actual costs anticipated.
 - 6.3.1.4.2.2. Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phases gradually diminishing to zero at completion of final cost estimate.
 - 6.3.1.4.2.3. Adjust reported cost values to contract ENR CCCI value. Do not advance costs to the estimated start of construction, mid-point of construction or to present day values unless otherwise directed by the AOC. Questions regarding the calculation of ENR CCCI values shall be reviewed with the AOC Project Manager.
- 6.3.1.5. If directed by the AOC, assist the Architect and the AOC in developing Supplemental Conditions that address unique Project conditions.
- 6.3.2. CMR shall provide the Master Schedule for Construction of the Project, which must, unless modified by a written amendment to this Agreement, and regardless of weather conditions, be completed on or before the date indicated in the Agreement.
- 6.3.3. **SWPPP:** CMR shall review the AOC's Storm Water Pollution Prevention Plan ("SWPPP") and shall ensure that it can before all of the duties of the Qualified SWPPP Practitioner ("QSP"). CMR shall perform all duties and responsibilities of the QSP for the Project, including without limitation, inspection and documentation of the Best Management Practices for the approved SWPPP.
- 6.3.4. **Approvals:** CMR shall monitor all regulatory approvals required during the Working Drawing Phase.
- 6.3.5. Authorization to proceed with each succeeding step in the design process is contingent upon the AOC's written Acceptance of both the Architect or Engineer's and CMR's independent cost estimates, which when evaluated separately, must both be equal to or less than the budget amounts AOC provides to the CMR.
- 6.3.6. Upon successful completion of all activities and the successful provision of all deliverables of the Working Drawings Phase specified above, the AOC, the Architect, and the CMR shall, in a written and signed document, designate the names, versions, and revision numbers of the final Contract Documents and Master Schedule for the Construction Phase of the Project.
- 6.3.7. Upon the AOC's written approval of the final Design Documents, the Design Documents are incorporated into and become an integral part of the Contract Documents, and upon approval of the Master Schedule applicable to the Construction Phase, the CMR is authorized to begin the activities of the preparation of subcontractor bid packages.
- 6.3.8. **Subcontractor Bidding.**
 - 6.3.8.1. CMR shall provide to the AOC a written plan for the division of the construction activities of the Construction Phase work into bid packages.
 - 6.3.8.2. Each bid package shall include a copy of **all** of the Contract Documents.
 - 6.3.8.3. CMR may include, in the bid packages, legal terms and conditions standard to the CMR for the type and duration of the Subcontractor engagements contemplated by this Agreement, however, such terms and conditions shall not be such that they shall be considered onerous and likely to result in higher bid prices.

- 6.3.8.4. Bid packages shall be logical, inclusive and distinct.
- 6.3.8.5. Bid packages shall include information concerning the labor compliance program administered by the Compliance Monitoring Unit of the Department of Industrial Relations and the AOC's OCIP program.
- 6.3.8.6. Notwithstanding AOC's review of the bid packages, CMR warrants the bid packages developed shall conform to the provisions of the Agreement. Any omissions, errors, or ambiguities in the bid packages shall be construed against the CMR and in favor of the AOC.
- 6.3.8.7. Each bid package shall include a statement of work specifying all work to be performed by that subcontractor for the portion of the work as shown in the Contract Documents to be solicited, and shall include a schedule or due dates that requires the performance of the work within the timeframe envisioned for such work in the Master Project Schedule for the Construction Phase of the Project. Bid packages shall only solicit fixed price bids or Time and Materials bids with a fixed not-to-exceed amount.
- 6.3.8.8. Bid packages shall be sufficiently comprehensive to secure competitive bids for provision of all of the Construction Phase work of the Project, as documented in the approved Contract Documents.
- 6.3.8.9. Individual packages shall, if the AOC so directs, include a number of additive or deductive alternates acceptable to the AOC. If the bid packages developed include alternates that require the selection and use of particular other alternate(s) in order to ensure the constructability of the Project, the CMR shall identify them, in writing, to the AOC.
 - 6.3.8.9.1. If appropriate, the Master Project Schedule will be provided in trade contractor bid package. The Trade bid package shall include sufficient information regarding the timing of work being bid to ensure that the Project can be constructed within the approved Master Schedule for the Construction Phase of the Work, and shall provide terms and conditions that will inform prospective Subcontractors that they will be bound to performance within such time periods.
- 6.3.8.10. All bid packages shall be provided to the AOC as a single deliverable, and are subject to review by the AOC.
- 6.3.8.11. Upon the AOC's written approval of the Subcontractor Bid Packages, the CMR is authorized to begin the activities Subcontractor bidding.
- 6.3.8.12. CMR shall competitively bid the subcontractor bid packages as required herein and in the other Contract Documents, including without limitation:
 - 6.3.8.12.1. **Subcontractor Bids.** CMR shall advertise in trade venues acceptable to the AOC and solicit qualifications from a sufficient number of subcontractors for each bid package to ensure at least three (3) qualified subcontractors result from this solicitation. CMR shall prequalify at least three (3) qualified subcontractors for each bid package, and present such evidence of prequalification to the AOC.
 - 6.3.8.12.2. **Furniture & Equipment Bids.** If requested by the AOC, CMR shall advertise in trade venues acceptable to the AOC and solicit qualifications from a sufficient number of vendors of furniture, fixtures and equipment to ensure that the CMR will be able conduct bids for procurement of modular and free-standing furniture, furnishings, and equipment to an adequate pool of prequalified vendors during the Construction Phase. This prequalified vendor pool should be adequate to ensure that these procurements will be conducted economically and expeditiously, under fair competition, and in accordance with sound procurement practice as further described herein and in the other Contract Documents. Regardless of whether CMR is procuring the furniture, fixtures and equipment, CMR shall coordinate all installations, powering, and commissioning of all

furniture, fixtures and equipment.

- 6.3.8.12.3. When the AOC has agreed in writing that at least three (3) Qualified Subcontractors for a bid package have been selected, CMR shall issue those bid packages to the identified Subcontractors.
- 6.3.8.12.4. CMR shall receive Subcontractor bids for bid packages and shall verify:
 - 6.3.8.12.4.1. Completeness;
 - 6.3.8.12.4.2. That each Subcontractor has agreed to be bound by Contract Documents; and
 - 6.3.8.12.4.3. That each Subcontractor has agreed to perform with in a period of time that will allow Completion of the Project in accordance with the Master Schedule.
- 6.3.8.12.5. Provided that each Subcontractor bid complies with all of the above, the Subcontractor bid shall be considered a conforming Subcontractor bid. If insufficient conforming Subcontractor bids are received, unless otherwise directed in writing by the AOC, CMR shall repeat the above solicitation process until CMR receives three (3) conforming Subcontractor bids.
- 6.3.8.12.6. When sufficient conforming Subcontractor bids have been received, the CMR, under the observation of the AOC and the Architect, shall identify that combination of bids and alternates as the AOC may elect to accept that has the lowest cost while ensuring the timely construction of the Project and compliance with the DVBE Project Goal set forth in Section 12 of the Agreement.
- 6.3.8.12.7. CMR shall work with the AOC to establish an allowance for Furniture, Fixtures and Equipment.

6.3.9. Calculation of GMP.

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

6.4. Construction Phase. NYA

- 6.4.1. Upon AOC's decision to authorize the Construction Phase of this Agreement, CMR agrees to execute an Amendment to this Agreement with all of its exhibits and attachments completed in accordance with the approved Contract Documents and the Master Schedule.
- 6.4.2. CMR shall provide the Construction Services and shall be responsible for the construction of the Project pursuant to the Contract Documents.
- 6.4.3. CMR shall be paid not more than the GMP price for the Work. Payments will be made in accordance with the Contract Documents.
- 6.4.4. CMR shall enter into contracts with the Subcontractors responsible for the bid / alternates selection that resulted in the GMP price to perform the Construction work.
- 6.4.5. The CMR shall conduct a preconstruction conference with the Subcontractors, Architect, inspector(s), AOC Project Manager and other appropriate persons. The CMR shall prepare:
 - 6.4.5.1. The meeting agenda,
 - 6.4.5.2. A list of construction procedures for clarifications, change orders, shop drawings, progress payments, field testing and inspection,
 - 6.4.5.3. The safety program, and
 - 6.4.5.4. The preconstruction conference notes.
- 6.4.6. The CMR will conduct bids for procurement of modular and free-standing furniture, furnishings, and equipment to prequalified vendors. These procurements will be conducted economically and expeditiously, under fair competition, and in accordance with sound procurement practice. The process requires the solicitation of bids, quotes, or proposals (collectively, offers) from providers, the evaluation of responses against predetermined criteria and the award to the potential vendor that best satisfies the stated criteria. All procurements and awards are subject to AOC approval. Notwithstanding AOC's review of the bid packages, CMR warrants the bid packages developed shall conform to the provisions of the Contract Documents. Any omissions, errors, or ambiguities in the bid packages shall be construed against the CMR and in favor of the AOC.
- 6.4.7. **SWPPP:** CMR shall be the Qualified SWPPP Practitioner ("QSP") and shall perform all duties and responsibilities of the QSP for the Project, including without limitation, inspection and documentation of the Best Management Practices for the approved SWPPP.

**Exhibit B to
CM-at-Risk Agreement**

PRICE AND PAYMENT DETAIL

1	<u>Total Contract Amount</u> The total of the amounts in boxes 2, 3 & 4. (Fixed Price for Preliminary Plan Phase + Fixed Price for Working Drawing Phase + GMP)	\$ _____
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2	The CMR's total compensation for its Services during the Preliminary Plan Phase	\$ _____
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3	The CMR's total compensation for its Services during the Working Drawing Phase – NYA	\$ _____
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4	The CMR's total compensation for the Construction Phase is the Guaranteed Maximum Price (GMP), which is the total of the sub-amounts (grey boxes) below – NYA	\$ _____
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Total Direct Cost of the Work, which is the sum of all Subcontractor Costs detailed below, including all Subcontractor bond costs or CMR-provided "subguard" insurance protection in lieu of Subcontractor bonds.	\$ _____
--	----------

Subcontractor: _____	\$ _____
Scope: _____	
Subcontractor: _____	\$ _____
Scope: _____	
Subcontractor: _____	\$ _____
Scope: _____	
Subcontractor: _____	\$ _____
Scope: _____	
Subcontractor: _____	\$ _____
Scope: _____	
<i>Add additional Subcontractors and scope, as needed</i>	\$ _____

CMR's Fee (Including all profit and overhead), which is stated as a dollar amount but which is determined as a percentage of the Direct Cost of the Work.	\$ _____
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Total of CMR's general conditions in its performance of the Work, which is the sum of all items detailed below.		\$ _____
Labor Costs		\$ _____
Materials		\$ _____
Equipment		\$ _____
Temporary Facilities		\$ _____
Insurance (non-OCIP)		\$ _____
Bonds, <u>not</u> including subguard or Subcontractor bond costs.		\$ _____
[Other] _____		\$ _____
[Other] _____		\$ _____

Project Contingency (_____% of _____ [Direct Cost of the Work].	\$ _____
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Total Allowance(s) which is the sum of all Allowances detailed below.		\$ _____
Allowance – _____.		\$ _____
Allowance – _____.		\$ _____
Allowance – _____.		\$ _____



Trial Court Capital Projects

Project Cost Responsibility Matrix



ADMINISTRATIVE OFFICE
OF THE COURTS

JUDICIAL AND COURT OPERATIONS
SERVICES DIVISION

JUDICIAL BRANCH CAPITAL PROGRAM OFFICE

**Exhibit C to
CM at Risk Agreement**

	Cost Responsibility				Construction Scope		
	Project Capital Cost	Project Non-Capital Cost (Court Cost)		Provided by Others	OFOI	OFCI	CFCI
CONSTRUCTION COST							
On-Site Utilities Relocation And Removal, Off-Site Utilities Improvements				✓			
Site Demolition Of Improvements On New Site ,Provide Clean Site To AOC				✓			
Connection To Utilities	✓						✓
Demolition Of Existing Courthouse And Accessory Buildings	✓			✓ (optional)			✓
Security Fencing, And Gates	✓						✓
Surface Parking, Driveways (Private Areas), Receiving Area	✓						✓

**Exhibit C to
CM at Risk Agreement**

	Cost Responsibility				Construction Scope		
	Project Capital Cost	Project Non-Capital Cost (Court Cost)		Provided by Others	OFOI	OFCI	CFCI
Site Development, Landscape, Drainage, Lighting	✓						✓
New Street Trees	✓						✓
New Or Repaired Sidewalks On New Courthouse Site	✓			✓ (optional)			✓
Retaining Walls, Stairs, Ramps, Vehicle Barriers	✓						✓
Site Furnishings, Flag Poles, Etc.	✓						✓
Court Building Construction Including MEP/FP Systems	✓						✓
Freestanding Furniture (New, Refurbished or Re-Used) ³	✓				✓		
Modular Workstations ³	✓				✓		
Storage Racks, Shelving, High Density Files	✓						✓
Office Equipment and Supplies ²		✓			✓		
Vending Machines ²		✓			✓		
		✓			✓		

**Exhibit C to
CM at Risk Agreement**

	Cost Responsibility				Construction Scope		
	Project Capital Cost	Project Non-Capital Cost (Court Cost)		Provided by Others	OFOI	OFCI	CFCI
Graphics and Signage (Interior or Exterior, Code Required or Functional) ¹	✓						✓
Public Art	✓ (optional)			✓	✓	✓ (optional)	✓ (optional)
Artwork in Non-Public Spaces ²		✓			✓		
Interior Plants ⁴	✓ ⁴	✓			✓		✓ ⁴
Wheelchair Ramps, Evacuation Chairs	✓						✓
Window Treatments	✓						✓
Loading Dock Equipment	✓						✓
Building Maintenance Equipment and Window Washing Systems	✓						✓
Audio Reinforcement Systems, Equipment and Infrastructure (assistive listening and language interpretation, speech and sound reinforcement, teleconferencing, public address, paging and other	✓						✓

**Exhibit C to
CM at Risk Agreement**

	Cost Responsibility			Construction Scope			
	Project Capital Cost	Project Non-Capital Cost (Court Cost)		Provided by Others	OFOI	OFCI	CFCI
systems)							
Audio Visual System, Equipment and Infrastructure (projection, display, digital signage, media interface, video conferencing and other systems)	✓	✓ (5)					✓
AOC TV Education Satellite Dish				✓ (AOC)	✓		
Security Systems, Equipment and Infrastructure For Detention Areas (detention locking control, video surveillance, operations center, two-way radio and other systems)	✓			✓ (6)			✓
Security Systems, Equipment And Infrastructure For Building (duress alarm, video surveillance, intrusion, access control, security operations center, ballistic protection and other systems)	✓						✓
Package Scanners And Magnetometers				✓ (AOC)	✓		
Cellular/Radio Frequency (RF) and IP Wireless Systems	✓	✓ (5)					✓

**Exhibit C to
CM at Risk Agreement**

	Cost Responsibility				Construction Scope		
	Project Capital Cost	Project Non-Capital Cost (Court Cost)		Provided by Others	OFOI	OFCI	CFCI
Information Technology Systems, Equipment and Infrastructure (structured cable, UPS, telephony, Ethernet or Power over Ethernet, inter-building connectivity and other systems)	✓				✓ (selective)		✓
Shared Main and Distribution Frames (MDF/IDF rooms)	✓				✓		
Information Technology Network Integration, Installation and Programming	✓	✓			✓		
Telephone/Voicemail Equipment, Devices And Servers		✓			✓		
MEP/FP Low Voltage Controls and Systems (BMS)	✓						✓

Project Capital Cost **Project Non-Capital Cost** **Ongoing Cost** **Ongoing**
 Cost (Court Cost) (Court Cost) (AOC) **Construction Scope not applicable**

PROJECT DELIVERY COSTS

Architecture and Engineering Design	✓						
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**Exhibit C to
CM at Risk Agreement**

	Project Capital Cost Cost	Project Non- Capital Cost (Court Cost)	Ongoing Cost (Court Cost)	Ongoing (AOC)	Construction Scope not applicable		
PROJECT DELIVERY COSTS							
Furniture, Fixtures, Equipment Design	✓						
Construction Inspection	✓						
Bid Advertising, Printing and Mailing	✓						
Post-Occupancy Evaluations				✓			
Geotechnical & Survey	✓						
Materials Testing	✓						
Insurance	✓						
Construction Management	✓						
Construction Contingency	✓						
Site Acquisition and Property Purchase	✓						
CEQA/Due Diligence Management and Mitigation	✓						
Legal Services (Project related)	✓						
Plan Checking/CSFM and Peer Reviews	✓						
Utility Connections & Fees	✓						
Moving and Relocation Services		✓					

**Exhibit C to
CM at Risk Agreement**

	Project Capital Cost	Project Non- Capital Cost (Court Cost)	Ongoing Cost (Court Cost)	Ongoing (AOC)	Construction Scope not applicable		
PROJECT DELIVERY COSTS							
Building and Grounds Operations, and Maintenance				✓			
CEQA Ongoing Mitigation Monitoring (if required)				✓			
Janitorial Services			✓				
Utility or Energy				✓			
Security Personnel			✓				

NOTES:

AOC provides graphic of state and superior court seal for inclusion in Project.

² A/E Team coordinates for installation of AOC equipment in construction documents.

³ Interior team selects, designs layout, and provides A/E coordination for furniture (free standing and modular); installation drawings/specifications to be provided by separate installer.

⁴ Interior plants related to landscaping design by A/E team is in scope of Contract.

⁵ Court provides selective equipment/ active electronics

⁶ Sheriff provides two-way radio equipment/accessories

**Exhibit D
CM-at-Risk Agreement**

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

Description of Deliverable provided by CMR:

Date submitted: _____

Work is:

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

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

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

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

Work is accepted.

Work is unacceptable as noted above.

Name: _____

Title: _____

Date: _____

**Exhibit E to
CM-at-Risk Agreement**

SUBCONTRACTORS TO CONTRACTOR

For each Subcontractor, list the Subcontractor's legal name, location of Subcontractor's main office, and Contract work to be performed.

Subcontractor Legal Name	Location of Subcontractor's Main Office	Scope of work that Subcontractor will Perform

**Exhibit F to
CM-at-Risk Agreement**

CMR'S KEY PERSONNEL

Name	Title

**Exhibit G to
CM-at-Risk Agreement**

OCIP INSURANCE MANUAL

(Posted to RFQ/P as separate file.)



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

SAMPLE INSURANCE LANGUAGE

OCIP CLAIMS MANUAL

OCIP PROJECT SAFETY MANUAL

The OCIP Project Safety Manual (*Filename*) is considered part of this manual and by enrolling in the OCIP subcontractor agrees to abide by its instructions and recommendations.

(Posted to RFQ/P as separate file)

**Exhibit H to
CM-at-Risk Agreement**

THE GENERAL CONDITIONS OF THE CM-AT-RISK AGREEMENT FOR
PRECONSTRUCTION AND CONSTRUCTION PHASE SERVICES (DOCUMENT 0700)
IS INCORPORATED IN ITS ENTIRETY BY REFERENCE, AND IS ATTACHED TO THIS
AGREEMENT.

Exhibit H to CM-at-Risk Agreement

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

Document 00700

Renovation and Addition- Willows Courthouse

Superior Court of California

County of Glenn



ADMINISTRATIVE OFFICE
OF THE COURTS

JUDICIAL AND COURT OPERATIONS
SERVICES DIVISION



DOCUMENT 00700

GENERAL CONDITIONS OF THE CM-AT-RISK AGREEMENT FOR PRECONSTRUCTION AND CONSTRUCTION PHASE SERVICES

ARTICLE 1 GENERAL PROVISIONS:

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

1.1.1. Acceptance of the Work: Written acceptance of the Work or a completed deliverable, submittal, phase, or other Contract requirement, in compliance with the Agreement by the Director or the Director's designee.

1.1.2. Addendum (Addenda): A document issued by the AOC during the procurement period which modifies, supersedes or supplements the Contract Documents.

1.1.3. Adverse Weather: Weather that satisfies all of the following conditions:

1.1.3.1. Unusually severe precipitation, sleet, snow, hail, heat, or cold 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 AOC and the CMR or, if none can be mutually agreed upon, as indicated at <http://countrystudies.us/united-states/weather/California>;

1.1.3.2. Unanticipated; and

1.1.3.3. Occurring at the Project Site.

1.1.4. Allowance(s): Amount(s) indicated in the Agreement as part of the GMP for specific scopes of work for which the CMR may bill its time, materials, and other items in the identical structure as a Change Order.

1.1.5. AOC or "Owner" or State": The State of California acting through the Judicial Council of California/Administrative Office of the Courts.

1.1.6. AOC Contingency: An amount set by the AOC that is not part of the GMP and which the AOC may use to pay Change Orders.

1.1.7. Applicable Codes: Include, but are not limited to, applicable laws, statutes, regulations, rules, building and other codes, ordinances, rulings, and lawful orders of all public authorities having jurisdiction over the AOC, the CMR, Subcontractors, the Project, the Work, or the prosecution of the Work.

1.1.8. Architect or Engineer: The architect(s), engineer(s) and other professional consultant(s) under contract to the AOC as the designer of record responsible for the preparation and coordination of the Drawings and technical sections for the Project and to provide design and construction documentation, and construction administration services for the Project.

1.1.9. Change Order: A written order approved by the AOC on an AOC agreed-upon form and signed by the AOC, the Architect and the CMR that alters the Contract Documents and does not include Work that could be or should be paid out of Project Contingency. All Change Orders shall identify all of the following :

1.1.9.1. A change in the Work due to:

- 1.1.9.1.1. Additional scope of Work;
- 1.1.9.1.2. Changes mandated by agencies having authority over the Project;
- 1.1.9.1.3. Unforeseen Site Conditions;
- 1.1.9.2. A change in the GMP;
- 1.1.9.3. The extent of the adjustment in the Contract Time; and/or
- 1.1.9.4. An adjustment to the Contract terms.

- 1.1.10. **Claim:** A Claim is a Dispute (see definition below) that remains unresolved after conclusion of the Dispute Resolution Process identified below. Individual unresolved Disputes may be aggregated into one or more Claim(s).
- 1.1.11. **CMR’s General Conditions:** The support activities that must be in place to support the construction aspects of the Project, including without limitation, the categories and items set forth in the CMR’s General Conditions Table attached to the Fee Proposal.
- 1.1.12. **Completion:** When the entire Work is completed in accordance with all Contract requirements, as determined by the AOC.
- 1.1.13. **Construction Manager (CM) at Risk, “CMR,” “Construction Manager at Risk” or “CM-at-Risk”:** The individual, partnership, corporation, association, joint venture, or any combination thereof, that has entered into the Agreement with the AOC to do the Work, identified as such in the Agreement, and referred to throughout the Contract as if singular in number. CMR shall solicit trade bids from trade contractors (Subcontractors) on a competitive basis and enter into contracts with these trade contractors to perform their trade work.
- 1.1.14. **Construction Supervisor/Inspector:** The person(s) authorized by the AOC to provide inspection services, field coordination and quality control during construction.
- 1.1.15. **Contract or “Agreement”:** The written and fully executed AOC Standard Agreement form, including all of its Exhibits. The Contract represents the entire and integrated agreement between the parties hereto and supersedes all previous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties. The Contract may be amended or modified only by a Change Order executed by both parties. The Contract shall not be construed to create a contractual relationship of any kind between any persons or entities other than the AOC and the CMR.
- 1.1.16. **Contract Documents:** The Contract Documents include the Agreement as well as any other documents incorporated therein, and also include any Payment and Performance Bonds; any Change Orders referred to herein that are authorized hereunder and any documents referred to under such Change Orders; and all Design Documents.
- 1.1.17. **Contract Time:** The Contract Time is the period of time, including authorized adjustments, allotted in the Contract for Completion of the Work.
- 1.1.18. **Court:** The Superior Court that is the subject of the Project.
- 1.1.19. **Day:** Calendar day, unless otherwise specifically defined.
- 1.1.20. **Deliverable:** Any tangible item provided or to be provided by CMR under this Agreement. A Deliverable does not include Services.
- 1.1.21. **Design Document(s):** Written documents including all Drawings and Specifications specifying the attributes, characteristics, and requirements of the building to be constructed, including its site, the Project Program and as further developed and elaborated upon by the AOC’s Architect or Engineer throughout the design process described in this Agreement. Once approved by the AOC to be used for the construction of the Project, all Design Document(s) and Specifications become part of the Contract Documents.
- 1.1.22. **Direct Cost of the Work or “Direct Cost of Work”:** The total cost of the actual construction

of the Project as may be revised throughout the Construction Phase via Change Orders and/or the use of the Project Contingency. The Direct Cost of the Work is further described in **Exhibit B** to the Agreement, is a component of the GMP and includes only the sum of all Subcontractor costs, fees and charges, including non-OCIP Subcontractor insurance and bond costs incurred during the Construction Phase (or CMR-provided “subguard” insurance protection in lieu of Subcontractor bonds), and not any component of Work that is part of the CMR’s General Conditions.

- 1.1.23. Director:** The Director of the Judicial Branch Capital Program Office of the Judicial Council of California/Administrative Office of the Courts, or the Director's designee.
- 1.1.24. Dispute:** A Dispute is a request, demand or assertion by CMR during performance of the Work regarding money and/or time adjustments with which the AOC does not agree. A Dispute is not a Claim.
- 1.1.25. Drawings:** The graphic and pictorial portions of the Contract Documents, illustrating the design, location and dimensions of the Work, generally including but not limited to, plans, elevations, sections, details, schedules and diagrams.
- 1.1.26. Emergency:** A sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss or impairment of life, health, property, or essential public services.
- 1.1.27. Equal or “Approved Equal” or “Or Equal”:** Material, equipment, or method approved by the AOC for use in the Work, as being acceptable as an equivalent alternative in essential attributes to the material, equipment, or method specified in the Contract Documents.
- 1.1.28. Float:** The measure of leeway in starting and completing an activity. Float or slack is not for the exclusive use of or benefit of either the AOC or the CMR, but its use shall be determined solely by the AOC. “Free Float” is the amount of time an activity can be delayed without adversely affecting the early start of the successor activity. “Total Float” is the measure of leeway in starting or completing an activity without adversely affecting the planned Project Completion date.
- 1.1.29. Force Majeure:** A force majeure event is one or more of the following events that adversely impacts the AOC’s or the CMR’s performance: acts of God, acts of a public enemy, fires, floods, windstorms, tornadoes, earthquakes, wars, riots, insurrections, epidemics, quarantine restrictions, strikes, lockouts, fuel shortages, or freight embargoes.
- 1.1.30. General Notes:** The written instructions, provisions, conditions or other requirements appearing on the Drawings, and so identified thereon, which pertain to the performance of the Work.
- 1.1.31. Guarantee:** The CMR's assurance that the Project complies with the requirements of the Contract Documents.
- 1.1.32. Guaranteed Maximum Price or “GMP”:** The maximum price that the AOC will pay CMR as payment for all Work of the Construction Phase of Project. The GMP is further described herein and in **Exhibit B** to the Agreement and includes only the sum of the following:
 - 1.1.32.1.** Direct Cost of the Work (See definition herein);
 - 1.1.32.2.** CMR’s Fee, based on the Direct Cost of the Work;
 - 1.1.32.3.** CMR’s General Conditions in its performance of the Work (e.g., labor costs, equipment costs, materials costs, non-OCIP insurance costs, bond costs, etc.);
 - 1.1.32.4.** Project Contingency; and
 - 1.1.32.5.** Allowance(s) (if any).
- 1.1.33. LEED: The Leadership in Energy and Environmental Design (LEED) Green Building Rating System™** of the United State Green Building Council (USGBC), a nationally accepted

benchmark for the design, construction, and operation of high performance green buildings.

- 1.1.34. Not Yet Authorized or “NYA”:** The Services for a particular Phase of the Work that is within the Contract, but for which the AOC has not yet authorized CMR to begin performing. NYA items or Services are intended to be within the scope of this Agreement, but shall only be so if AOC authorizes the Phase in which the NYA item or Services is included.
- 1.1.35. Notice to Proceed:** A notice provided by the AOC to the CMR, authorizing and directing the CMR to begin the Work, to the extent described in the Notice to Proceed and pursuant to the time frames indicated in the Notice to Proceed. The AOC may issue separate Notices to Proceed for separate phases or portions of the Work.
- 1.1.36. OCIP.** A project specific insurance program initiated and administered by the AOC to provide any or all of the insurance requirements set forth herein that will insure the interest of the CMR, any Subcontractor or Sub-subcontractor performing Work at or incidental to the Project site.
- 1.1.37. Phase(s):** Distinct portion(s) of the Work to be provided under this Agreement. The following Phases compose all the Phases in the Project:
 - 1.1.37.1. Preliminary Plan Phase:** The initial design phase typically developed in two distinct stages, Schematic Design and Design Development.
 - 1.1.37.2. Working Drawing Phase:** The phase that includes:
 - 1.1.37.2.1.** Preparation of working drawings, technical specifications, addenda, supplementary conditions, Subcontractor bidding requirements, and other documents to set forth in detail all aspects of the design, bidding, function and construction of the Project.
 - 1.1.37.2.2.** CMR’s bidding of all of the Work to subcontractors.
 - 1.1.37.2.3.** CMR’s preparation of its GMP.
 - 1.1.37.3. Construction Phase:** The entire construction period for the Project, which begins at the first pre-construction-start meeting and ends with Completion.
- 1.1.38. Product Data:** Illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the CMR to illustrate materials or equipment for some portion of the Work.
- 1.1.39. Project:** The total construction of the Work performed under the Contract.
- 1.1.40. Project Contingency:** The contingency identified in Exhibit “B” to the Agreement which is to be used by the CMR to pay for any changes or extra work due only to conflicts, ambiguities or errors or omissions in the Contract Documents, if they could have been reasonably discovered by the CMR during CMR’s pre-construction phase services, not including Unforeseen Site Conditions. The unused portion of the Project Contingency shall be retained by the AOC at the end of the Project.
- 1.1.41. Project Manager:** Person(s) authorized by the AOC to oversee the design and construction of the Project.
- 1.1.42. Record Documents:** The Drawings amended to show the Project as it was constructed. Record Documents include any significant changes or clarifications to the Drawings resulting from the construction process.
- 1.1.43. Request for Information (RFI):** A written request by the CMR submitted in an AOC provided format for information regarding Project specific issues.
- 1.1.44. Retention:** A percentage of the GMP that the AOC shall withhold until Completion of the Work.

- 1.1.45. Samples:** Physical examples which illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.
- 1.1.46. Schedule or “Project Schedule” or “Master Project Schedule” or “Progress Schedule”:** A schedule document, an updated schedule document, or a progress schedule provided by the CMR as required by the Contract Documents and approved by the AOC.
- 1.1.47. Schedule of Values:** A document furnished by the CMR to the AOC reflecting the portions of the GMP allotted for the various parts of the Work, and used as the basis for reviewing the CMR's applications for progress payments.
- 1.1.48. Shop Drawings:** Drawings, diagrams, schedules, and other data specially issued for the Work by the CMR or a Subcontractor, Sub-subcontractor, and material suppliers to illustrate some portion of the Work.
- 1.1.49. Site:** The Project site as shown on the Drawings.
- 1.1.50. Specifications or “Technical Specifications”:** That portion of the Contract Documents (Division 2 through Division 49) consisting of the written requirements for materials, standards, equipment, construction systems, and standards of workmanship for the Work, and performance of related services.
- 1.1.51. Stop Services Order:** A written notice, delivered in accordance with this Agreement, by which the AOC may require the CMR to stop all, or any part, of the Services under this Agreement, for the period set forth in the Stop Services Order. The Stop Services Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Services provision herein.
- 1.1.52. Subcontractor:** An individual, partnership, corporation, association, joint venture, or any combination thereof, who has a direct contract with the CMR to perform work or labor or render service in or about the Work. The term "Subcontractor" is referred to as if singular in number and means a Subcontractor or a representative of the Subcontractor. The term "Subcontractor" shall not include those who supply materials only or a separate contractor or subcontractors of a separate contractor,
- 1.1.53. Sub-subcontractor:** A person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the work. The term "Sub-subcontractor" is referred to as if singular in number and means a Sub-subcontractor or a representative of the Sub-subcontractor.
- 1.1.54. Substitution:** A material and/or process offered by the CMR in lieu of the specified material and/or process, and accepted by the AOC in writing as being equivalent (equal) to the specified material and/or process.
- 1.1.55. Surety or Sureties:** The person, firm, or corporation that executes as surety the CMR's Performance Bond and Payment Bond, and must be a California admitted surety insurer as defined in the Code of Civil Procedure section 995.120.
- 1.1.56. SWPPP:** The AOC's Storm Water Pollution Prevention Plan.
- 1.1.57. Unforeseen Site Conditions:** Conditions actually encountered on the Project Site that were reasonably unforeseeable based on all the information available to the CMR prior to finalizing the GMP, that are one or more of the following:
- 1.1.57.1.** Subsurface or latent physical conditions at the Site differing materially from those indicated; or
 - 1.1.57.2.** Unknown physical conditions at the Site of an unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in Work of

the character provided for in this Contract; or

1.1.57.3. Unknown hazardous materials on the Site.

1.1.58. Warranty: A manufacturer's or material supplier's assurance that products and services provided meet the requirements of the Contract Documents.

1.1.59. Work or "Service(s)": Construction and services required by the Contract Documents, including all labor, materials, equipment and services provided, or to be provided, by the CMR to fulfill the CMR's obligations under the Contract.

1.2 EXECUTION, CORRELATION AND INTENT

1.2.1. The Contract will not be binding on the AOC until fully executed by the appropriate authorized representatives of the CMR and the AOC. The parties signing the Contract certify that they have the proper authorization to do so.

1.2.2. Execution of the Contract by the CMR is a representation that the CMR is familiar with the methodology under which the work is to be performed and has correlated personal observations with requirements of the Contract Documents.

1.2.3. The intent of the Contract Documents is to include all items necessary for completion of the Work by the CMR. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all. Performance by the CMR shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the intended results.

1.2.4. Organization of the Specifications into Documents, Divisions, Sections and Articles, and arrangement of Drawings shall not control the CMR in dividing the Work among Subcontractors, nor in establishing the extent of work to be performed by any trade.

1.2.5. When standards of the Federal Government, trade societies, or trade associations are referred to in the Contract Documents by specific date of issue, these shall be considered as part of the Contract Documents. When such references do not bear date of issue, current published edition at the date of the first solicitation shall be considered as part of the Contract Documents.

1.2.6. Unless otherwise stated in the Contract Documents, words and terms which have well-known or commonly accepted technical or construction industry meanings shall be used in the Contract Documents in accordance with such recognized meanings.

1.2.7. Every part of the Work shall be accomplished in workmanship-like manner by workers, laborers, or mechanics specially skilled in the class of work required. Any person the AOC may deem incompetent or disorderly shall be promptly removed from the Project by the CMR upon written notice from the AOC, and shall not be re-employed.

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

1.4 CAPITALIZATION

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

1.4.1.1. Specifically defined; or

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

1.5 CONFLICTS IN THE CONTRACT DOCUMENTS

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

- 1.5.1.1. AOC-approved modifications, beginning with the most recent (if any);
- 1.5.1.2. The Agreement;
- 1.5.1.3. The Special Conditions (if any);
- 1.5.1.4. Any Supplemental Conditions (if any);
- 1.5.1.5. These General Conditions;
- 1.5.1.6. The remaining Contract Documents;
- 1.5.1.7. The Division 1 Documents (Document 00 10 00 through Document 01 91 13);
- 1.5.1.8. The Technical Specifications (Division 2 through Division 49);and
- 1.5.1.9. The Drawings.

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

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

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

1.6 REQUESTS FOR INFORMATION, CLARIFICATION OR ADDITIONAL INSTRUCTIONS

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

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

- RFI.
- 1.6.1.5.** RFIs shall be submitted in a timely manner in order that they may be adequately researched and answered before the response affects any critical activity of the Work.
 - 1.6.1.6.** Responses to RFIs will be made within fourteen (14) days unless the AOC notifies the CMR in writing that a response will take longer. The fourteen (14) days will begin when the RFI is received and dated by the AOC.
 - 1.6.1.7.** Responses from the AOC will not change any requirement of the Contract unless so noted by the AOC in the response to the RFI.
 - 1.6.1.8.** Should the CMR think that a response to an RFI causes a change to the Contract that requires a Change Order, the CMR shall, before proceeding, give written notice to the AOC, indicating that the CMR considers the AOC's response to the RFI to be a Change Order. Failure to give such written notice within fourteen (14) days of receipt of the AOC's response to the RFI shall waive the CMR's right to seek additional time or cost herein or for a Change Order.
- 1.6.2. Additional Detailed Instructions:** The AOC may furnish additional detailed written and/or graphic instructions to explain the work more fully, and such instructions shall be a part of the Contract requirements. Should additional detailed instructions, in the opinion of the CMR, constitute work in excess of the scope of the Work, the CMR shall submit written notice to the AOC within fourteen (14) days following receipt of such instructions, and in any event prior to commencement of the work thereon. The AOC will then consider the notice; and, if in the AOC's judgment it is justified, the AOC's instructions will be revised or the extra work authorized as a Change Order.

ARTICLE 2 ADMINISTRATION OF THE CONTRACT

2.1 INFORMATION AND/OR SERVICES REQUIRED OF THE AOC

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

2.2 ADMINISTRATION OF THE CONTRACT

- 2.2.1.** The AOC will provide administration of the Contract as described in the Contract Documents during construction and through the guarantee period.
- 2.2.2.** The AOC will visit the Project site as appropriate to the stage of construction to become familiar with the progress and quality of the completed work and to determine if the Work is in accordance with the Contract Documents.
- 2.2.3. Independent Contractor.** CMR shall be, and is, an independent contractor, is not an employee or agent of the AOC, and is not covered by any employee benefit plans provided to the AOC's employees. CMR is, and shall be, liable for its own acts and omissions as well as those of its employees, its Subcontractors and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the AOC and the CMR.
 - 2.2.3.1.** The CMR will determine the method, details and means of performing its responsibilities with regard to the Services, including, without limitation, exercising full control over the direction and compensation of all persons assisting the CMR in the performance of the Services. The CMR shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding, any and all employee benefits, and all regulations governing such matters.
- 2.2.4.** Unless so specified in the Contract Documents, the AOC will not have control over construction

means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work. The AOC will not be responsible for the CMR's failure to carry out the Work in accordance with the requirements of the Contract Documents. The AOC will not be responsible for acts, errors, or omissions of the CMR, a Subcontractor, or anyone directly or indirectly employed by any of them, or of any other persons performing portions of the Work.

- 2.2.5.** Communications by and with the AOC's consultants shall be through the AOC, unless otherwise directed by the AOC. Communications by and with Subcontractors, Sub-subcontractors and material suppliers shall be through the CMR. Communications by and with separate contractors shall be through the AOC.
- 2.2.6. AOC's Quality Assurance Plan.** The AOC or its agent may evaluate CMR's performance under this Contract. Such evaluation may include assessing CMR's compliance with all Contract terms and performance standards. Any deficiencies in the CMR's performance that the AOC determines are severe or continuing and that may place performance of the Contract in jeopardy if not corrected, will be reported to the CMR's principal. The report may include recommended improvements and corrective measures to be taken by the CMR. If the CMR's performance remains unsatisfactory, the AOC may, without limitation, terminate this Contract for cause or impose other penalties as specified in this Contract. Any evaluation of CMR's performance conducted by the AOC shall not be construed as an Acceptance of the CMR's work product or methods of performance. CMR shall be solely responsible for the quality, completeness, and accuracy of the work product that CMR and its Subcontractors deliver under this Contract. CMR shall not rely on AOC to perform any quality control review of CMR's work product; as such review shall be conducted by CMR.
- 2.2.7.** If the AOC observes work that appears to not comply with the requirements of the Contract Documents, the AOC will have the authority to reject the Work. Whenever the AOC considers it necessary or advisable for implementation of the intent of the Contract Documents, the AOC will require additional inspection or testing of the Work, as indicated herein, whether or not such work is fabricated, installed or completed.
- 2.2.8.** The AOC will review and take action upon the CMR's submitted Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The AOC's action will be taken so as to cause no delay in the Work while allowing sufficient time to permit adequate review. Review of submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, nor for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the CMR.
- 2.2.9.** The CMR may propose, but the AOC is not obligated to accept, alternative material(s), article(s), or equipment that are of equal quality and of required characteristics for the purpose intended. The AOC or the AOC's Project Manager will examine any and all proposed alternatives for compliance with the Contract Documents. The proposed material(s), article(s), or equipment, will be reviewed for comparative quality, suitability, and performance against the product(s) specified in the Contract Documents. Refer the Substitution procedures in the Contract Documents.
- 2.2.10.** The AOC will conduct inspections to determine the CMR's compliance with the Contract Documents and the date of final Completion; will receive, for review and record, written warranties and related documents required by the Contract Documents and assembled by the CMR; and will issue a final Payment Authorization upon compliance with the requirements of the Contract Documents and Acceptance of the Work.

2.3 TERMINATION FOR CAUSE

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

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

2.3.2. Notification of Termination.

- 2.3.2.1. Upon the occurrence at AOC's sole determination of any of the above grounds, AOC may, without prejudice to any other right or remedy, serve written notice upon CMR and its Surety of AOC's termination of this Contract and/or the CMR's right to perform the work of the Contract. This notice will contain the reasons for termination. Unless, within three (3) days after the service of the notice, any and all condition(s) shall cease, and any and all violation(s) shall cease, or arrangement satisfactory to AOC for the correction of the condition(s) and/or violation(s) be made, this Contract shall cease and terminate. Upon termination, CMR shall not be entitled to receive any further payment until the entire Work is finished.
- 2.3.2.2. Upon termination for cause, AOC may immediately serve written notice of tender upon Surety whereby Surety shall have the right to take over and perform this Contract only if Surety:
 - 2.3.2.2.1. Within three (3) days after service upon it of the notice of tender, gives AOC written notice of Surety's intention to take over and perform this Contract; and
 - 2.3.2.2.2. Commences performance of this Contract within three (3) days from date of serving of its notice to AOC.
- 2.3.2.3. If Surety fails to notify AOC or begin performance as indicated herein, AOC may take over the Work and execute the Work to completion by any method it may deem advisable at the expense of CMR and/or its Surety. CMR and/or its Surety shall be liable to AOC for any excess cost or other damages the AOC incurs

thereby. Time is of the essence in this Contract. If the AOC takes over the Work as herein provided, AOC may, without liability for so doing, take possession of and utilize in completing the Work such materials, appliances, plan, and other property belonging to CMR as may be on the Site of the Work, in bonded storage, or previously paid for.

2.3.3. Effect of Termination.

- 2.3.3.1.** CMR shall, only if ordered to do so by the AOC, immediately remove from the Site all or any materials and personal property belonging to CMR that have not been incorporated in the construction of the Work, or which are not in place in the Work. The AOC retains the right, but not the obligation, to keep and use any materials and personal property belonging to CMR that have not been incorporated in the construction of the Work, or which are not in place in the Work. The CMR and its Surety shall be liable upon the performance bond for all damages caused the AOC by reason of the CMR's failure to complete the Contract.
- 2.3.3.2.** In the event that the AOC shall perform any portion of, or the whole of the Work, pursuant to the provisions of the General Conditions, the AOC shall not be liable nor account to the CMR in any way for the time within which, or the manner in which, the Work is performed by the AOC or for any changes the AOC may make in the Work or for the money expended by the AOC in satisfying claims and/or suits and/or other obligations in connection with the Work.
- 2.3.3.3.** In the event that the Contract is terminated for cause, no allowances or compensation will be granted for the loss of any anticipated profit by the CMR or any impact or impairment of CMR's bonding capacity.
- 2.3.3.4.** If the expense to the AOC to finish the Work exceeds the unpaid GMP, CMR and Surety shall pay difference to AOC within twenty-one (21) days of AOC's request.
- 2.3.3.5.** The AOC shall have the right (but shall have no obligation) to assume and/or assign to a general contractor or construction manager or other third party who is qualified and has sufficient resources to complete the Work, the rights of the CMR under its subcontracts with any or all Subcontractors. In the event of an assumption or assignment by the AOC, no Subcontractor shall have any claim against the AOC or third party for Work performed by Subcontractor or other matters arising prior to termination of the Contract. The AOC or any third party, as the case may be, shall be liable only for obligations to the Subcontractor arising after assumption or assignment. Should the AOC so elect, the CMR shall execute and deliver all documents and take all steps, including the legal assignment of its contractual rights, as the AOC may require, for the purpose of fully vesting in the AOC the rights and benefits of its Subcontractor under Subcontracts or other obligations or commitments. All payments due the CMR hereunder shall be subject to a right of offset by the AOC for expenses and damages suffered by the AOC as a result of any default, acts, or omissions of the CMR. CMR must include this assignment provision in all of its contracts with its Subcontractors.
- 2.3.3.6.** The foregoing provisions are in addition to and not in limitation of any other rights or remedies available to AOC. In addition, all remedies provided for in this Contract are cumulative and may be exercised individually or in combination with any other remedy available hereunder.

2.4 TERMINATION FOR THE AOC'S CONVENIENCE

- 2.4.1.** The AOC reserves the right to terminate this Contract pursuant to this section, or any part thereof for its sole convenience. In the event of such termination, the CMR shall immediately stop all work hereunder and shall immediately cause any and all of its Subcontractors, Sub-subcontractors and material suppliers at any tier, to immediately stop all work, leaving the site in

a safe and secured condition.

2.4.2. In case of a termination for convenience, the CMR shall have no claims against the AOC except for the actual cost for labor, materials, and services performed that is unpaid and can be documented through timesheets, invoices, receipts, or otherwise, and

2.4.2.1. Was performed prior to the notice of termination;

2.4.2.2. Was necessary on the part of the CMR to effect the termination on the date specified by the AOC and to minimize the liability of the CMR and the AOC to third parties as a result of termination.

2.4.2.3. CMR shall not be paid for any work performed or costs incurred after the termination date that reasonably could have been avoided.

2.4.2.4. The amount due CMR shall be less any amounts required to be withheld as indicated herein, and less any prior payment(s) made to, or on the account of the CMR.

2.5 SUSPENSION FOR THE AOC'S CONVENIENCE

2.5.1. The AOC may, by written notice, order the CMR to suspend, delay or interrupt the Work, in whole or in part, for such period of time as the AOC may determine.

2.5.2. An adjustment will be made for increases in the cost of performance of the Work, including profit on the increased cost of performance caused by suspension, delay or interruption. No adjustment will be made to the extent:

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

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

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

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

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

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

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

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

ARTICLE 3 CONTRACTOR

3.1 REVIEW OF CONTRACT DOCUMENTS AND FIELD CONDITIONS BY THE CONTRACTOR

- 3.1.1.** The CMR shall carefully study and compare the Contract Documents with each other and shall report to the AOC, in writing, any errors, inconsistencies or omissions discovered. If the CMR performs any work knowing it involves a recognized error, inconsistency or omission in the Contract Documents, without such notice to the AOC the CMR shall assume responsibility for such performance and shall bear the cost for correction.
- 3.1.2.** The CMR shall take field measurements and verify field conditions and shall compare such field measurements, conditions and other related information known to the CMR with the Contract Documents before beginning the Work.
- 3.1.3. Unforeseen Site Conditions.** In the event CMR discovers an Unforeseen Site Condition, then CMR shall promptly, and before such conditions are disturbed, notify the AOC in writing with details of the Unforeseen Site Condition. The AOC will promptly investigate the Unforeseen Site Condition, and if the AOC finds that such condition materially differs and causes an increase or decrease in the CMR's cost of, or the time required for, performance of any part of the Work, whether or not changed as a result of such conditions, a Change Order will be issued in accordance with the applicable provisions herein.
- 3.1.4.** CMR shall inform itself fully and shall assume the risk as to the physical conditions at the worksite. CMR's lack of knowledge of existing conditions will not be accepted as an excuse for failure to perform the specified Work, nor shall such excuse be accepted as a basis for a Claim for additional compensation.

3.2 SUPERVISION AND CONSTRUCTION PROCEDURES

- 3.2.1.** The CMR shall supervise and direct the Work. The CMR shall be responsible for, and have control over, construction means, methods, techniques, sequences, procedures, safety precautions and programs in connection with the Work, and for coordinating the Work under the Contract; unless otherwise noted or specified in the Contract Documents.
- 3.2.2. Employees and Personnel**
 - 3.2.2.1.** The CMR shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Work. The CMR has been selected to perform the Work herein, in part, because of the skills and expertise of the key individuals and/or firms (collectively "CMR's Key Personnel") that are listed in the Contract Documents.
 - 3.2.2.1.1.** Substitution or replacement of CMR's Key Personnel, unless a person is no longer employed by CMR, is not allowed except with written approval of the AOC.
 - 3.2.2.1.2.** Prior to the authorization of any Phase of the project, the parties shall agree upon any Key Personnel applicable to that Phase.
 - 3.2.2.2.** If any person fails to perform to the satisfaction of the AOC, upon written notice the CMR will have fifteen (15) calendar days to remove that person from the Project and replace that person with one acceptable to the AOC. All lead or key personnel for any Subcontractor must also be designated by any Subcontractor and are subject to all conditions stated in this section.
 - 3.2.2.3.** The CMR shall be responsible for all costs associated with replacing any of CMR's Key Personnel, including the additional costs to familiarize replacement personnel with the Work. If the CMR does not furnish replacement personnel acceptable to the AOC, the AOC may terminate this Contract for cause.

- 3.2.3.** The CMR shall be responsible to the AOC for acts and omissions of the CMR's employees, Subcontractors, Sub-subcontractors or material suppliers and their agents and employees, and other persons performing portions of the Work under a contract with the CMR.
- 3.2.4.** The CMR shall be responsible in all respects for the actions or inaction of all Subcontractors, Sub-subcontractors or material suppliers, at all tiers, regardless of whether they are stipulated suppliers or sole sourced. The AOC shall not be responsible or liable for any action or inaction of any Subcontractor, Sub-subcontractor or material supplier, at any tier, except to the extent that the AOC is the direct cause of the change or delay.
- 3.2.5.** The CMR shall not be relieved of obligations to perform the Work in accordance with the Contract Documents, either by activities or duties of the AOC, the AOC's administration of the Contract, or by tests, inspections or approvals required or performed by persons other than the CMR.
- 3.2.6.** The CMR shall be responsible for inspections of portions of the Work already completed under the Contract to determine that such portions are in proper condition to receive subsequent work. If the CMR determines that some work performed on the Project does not comply with the requirements of the Contract Documents, the CMR shall repair or replace such defective work at the CMR's sole expense.
- 3.2.7.** Until Acceptance of the Work, the CMR shall have the charge and care thereof, and shall bear risk of injury or damage to any part of the Work by action of the elements (except for an Act of God, or natural disaster as proclaimed by the State or Federal Government), or from any other reason except for such damages as are directly caused by acts of the Federal or State Government and the public enemy.
- 3.2.8. Background Checks.** If the CMR assigns persons (whether employees, independent contractors, Subcontractors or agents) to perform work under this Contract that requires that the person have access to the systems (whether on-site or by remote access) or premises of the AOC or other Judicial Branch entities, the AOC shall have the right, but not the obligation, to conduct a background check or to require the CMR to conduct a background check, as permitted by law, on all such persons before the AOC will grant to such persons access to the AOC's or other judicial branch entities' premises or systems. The CMR will cooperate with the AOC in performing such background check, and will promptly notify the AOC of any such person refusing to undergo such background check, and will reassign such person to perform other services. The CMR shall obtain all releases, waivers, or permissions required for the release of such information to the AOC. Costs incident to background checks are the sole responsibility of the CMR.

3.3 LABOR AND MATERIALS

- 3.3.1.** Unless otherwise provided in the Contract Documents, the CMR shall provide and pay for all labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work. Materials, articles and equipment furnished by the CMR for incorporation into the Work shall be new unless otherwise specified in the Contract Documents.
- 3.3.2. Hours of Labor:** Workers are limited and restricted to 8 hours during any one calendar day, and 40 hours during any one calendar week except that pursuant to Labor Code Section 1815, any work performed in excess of 8 hours per day and 40 hours during any one week, shall be permitted upon compensation for all hours worked in excess of 8 hours per day at not less than 1-1/2 times the basic rate of pay. The CMR shall pay the AOC One Hundred Dollars (\$100) as a penalty for each worker for each calendar day worked in violation of the above limitations and restrictions.
- 3.3.3. Prevailing Wage:**

- 3.3.3.1.** The CMR shall comply with the provisions of the Labor Code including sections 1770 to 1780, inclusive and specifically Section 1775. In accordance with Section 1775, the CMR shall forfeit to the AOC the statutory amount, (currently not to exceed two hundred dollars (\$200) for each calendar day, or portion thereof), for each worker paid less than the prevailing rates, as determined by the AOC, for the work or craft in which that worker is employed for any work done under Contract by CMR or by any Subcontractor.
- 3.3.3.1.1.** The amount of the penalty shall not be less than forty dollars (\$40) for each calendar day, or portion thereof, unless the failure of CMR or Subcontractor was a good faith mistake and, if so, the error was promptly and voluntarily corrected when brought to the attention of CMR.
- 3.3.3.1.2.** The amount of the penalty shall not be less than eighty dollars (\$80) for each calendar day or portion thereof, if CMR or Subcontractor has been assessed penalties within the previous three (3) years for failing to meet its prevailing wage obligations on a separate contract, unless those penalties were subsequently withdrawn or overturned.
- 3.3.3.1.3.** The amount of the penalty may not be less than one hundred twenty dollars (\$120) for each calendar day, or portion thereof, if the Labor Commissioner determines the CMR or Subcontractor willfully violated Labor Code section 1775.
- 3.3.3.1.4.** The difference between such prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by CMR or Subcontractor.
- 3.3.3.2.** Pursuant to Labor Code, Section 1770, the Director of the Department of Industrial Relations has ascertained the general prevailing rate of per diem wages and a general prevailing rate for legal holiday and overtime work for each craft required for execution of the Contract. CMR shall pay and shall cause to be paid each worker engaged in Work on the Project not less than the general prevailing rate of diem wages determined by the Director of the Department of Industrial Relations, regardless of any contractual relationship which may be alleged to exist between CMR or any Subcontractor and such workers.
- 3.3.3.3.** Wage rates set forth are the minimum that may be paid by the CMR. Nothing herein shall be construed as preventing the CMR from paying more than the minimum rates set. No extra compensation whatsoever will be allowed by the AOC due to the inability of the CMR to hire labor at minimum rates, nor for necessity for payment by the CMR of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the CMR's own satisfaction in preparing its Proposal.
- 3.3.3.4.** If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate booklet, the CMR shall contact the Division of Labor Statistics and Research as listed inside the booklet or access on the Internet at http://www.dir.ca.gov/DLSR/statistics_research.html. The rates thus determined shall be applicable as minimum from the time of initial employment.
- 3.3.3.5.** The CMR and each Subcontractor shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the CMR and/or Subcontractor in connection with the Work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written request by the AOC, the CMR's and Subcontractor's certified payroll records shall be furnished within 10 days. The CMR's and Subcontractor's certified payroll

records shall be available for inspection at the principal office of the CMR.

3.3.4. Labor Compliance Program (Administered by the DIR's CMU): Effective January 1, 2012, the California Department of Industrial Relations (DIR) began operating a labor Compliance Monitoring Unit or "CMU" to monitor and enforce prevailing wage requirements on public works projects that receive state bond funding and on other projects that are legally required to use the CMU. The funding for this Project requires compliance with the CMU. The CMR shall ensure full compliance with all CMU requirements by all of CMR's Subcontractors and Sub-subcontractors. (More information available at: <https://www.dir.ca.gov/dlse/cmu/cmu.html>.)

3.3.4.1. To monitor prevailing wage requirements on AOC projects, the CMR and all Subcontractors and Sub-subcontractors must submit their certified payroll data directly to the DIR, via DIR's online system that will allow contracts to submit the certified payroll records (CPR's) in a PDF format.

3.3.4.2. In addition, CMR shall conduct a pre-job conference before commencement of the Work of the Construction Phase with the Subcontractors and the Sub-subcontractors. At the pre-job conference, CMR shall provide details of all applicable federal and state labor law requirements and provide directions and copies of CMU's required reporting process and forms. CMR shall also provide a checklist that shows which federal and state labor law requirements are applicable. A checklist in the format provided by the DIR presumptively meets this requirement.

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

3.3.6. Apprentices: Properly registered apprentices shall be employed in the execution of the Work. Every apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which the apprentice is employed, and shall be employed only at the work of the craft or trade to which the apprentice is registered. The CMR and each Subcontractor shall comply with the requirements of Labor Code, Section 1777.5, and any related regulations regarding the employment of registered apprentices.

3.3.6.1. Skilled Labor Force Availability – 5-Year Requirement: All contractors and subcontractors with a contract value on the Project of two hundred and fifty thousand dollars (\$250,000) or more, must employ workers in an apprenticeable craft and have agreements with registered apprenticeship programs, approved by the California Apprenticeship Council, that have graduated apprentices in that craft in each of the immediately preceding five (5) years. This graduation requirement does not apply to programs providing apprenticeship training for any craft that has not been deemed by the Department of Industrial Relations to be an apprenticeable craft for the five years prior.

3.3.7. Subcontractor Health and Safety Program:

3.3.7.1. Each Subcontractor and Sub-subcontractor can work at the Project Site if it can demonstrate its compliance with the following requirements and it can provide the following required written documentation:

3.3.7.1.1. Its worker's compensation experience modifier rate(s) for the most recent three-year period, the average of which must be 1.00 or less; and

3.3.7.1.2. Its average total recordable injury and illness rate(s) for the most recent three-year period, the average of which must not exceed the applicable statistical standards for its business category; and

- 3.3.7.1.3. Its average lost work rate for the most recent three-year period; and
 - 3.3.7.1.4. Its acknowledgement of its compliance with the CMR's site safety program.
- 3.3.7.2. Should the Subcontractor or Sub-subcontractor workers compensation experience modifier for the most recent three-year period, or its average total recordable injury and illness rates for the most recent three-year period exceed the above requirements, then the Subcontractor or Sub-subcontractor may work at the Project Site if the Subcontractor or Sub-subcontractor is:
- 3.3.7.2.1. A party to an alternative dispute resolution system as provided for in Labor Code section 3201.5; and
 - 3.3.7.2.2. Subcontractor or Sub-subcontractor demonstrates to the satisfaction of the CMR that its Project site safety program is compliant with the provisions of California Division of Occupational Safety and Health regulations and the CMR's Project site safety program required by the Article entitled "Protection of Persons and Property" set forth in this Agreement, and the provisions of the AOC OCIP Safety Manual.

3.4 NONDISCRIMINATION/NO HARASSMENT CLAUSE

- 3.4.1. **Nondiscrimination.** During the performance of this Contract, CMR and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), marital status, age (over 40), sex, or sexual orientation. CMR shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 3.4.2. **No Harassment.** During the performance of this Contract, the CMR and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the CMR or its Subcontractors interact in the performance of this Contract. CMR and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- 3.4.3. **FEHA.** CMR shall comply with applicable provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Contract by reference and made a part of it as if set forth in full.
- 3.4.4. CMR and 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. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the CMR has a collective bargaining agreement, to refer either minorities and/or women shall excuse the CMR's obligations under these specifications; Government Code, Section 12990; or the regulations promulgated pursuant thereto.
- 3.4.5. CMR shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Contract.
- 3.4.6. CMR shall not enter into any subcontract with any person or firm decertified from State contracts pursuant to Government Code, Section 12990.

3.5 GUARANTEE

- 3.5.1.** CMR unconditionally guarantees the Work will be completed in accordance with the requirements of the Contract Documents, and will remain free of defects in workmanship and materials for a period of one (1) year from the date of Acceptance of the Work, unless a longer Guarantee period is specifically called for in the Contract Documents. CMR shall repair or replace any and all work, together with any adjacent work that may have been damaged or displaced, which was not in accordance with the requirements of the Contract Documents, or that may be defective in its workmanship or material within the Guarantee period specified in the Contract Documents, without any expense whatsoever to the AOC; ordinary wear and tear and abuse excepted.
- 3.5.2.** CMR further agrees, within fourteen (14) days after being notified in writing by the AOC, of any work not in accordance with the requirements of the Contract Documents or any defects in the Work, that the CMR shall commence and execute, with due diligence, all work necessary to fulfill the terms of the Guarantee. If the AOC finds that the CMR fails to perform any of the work under the Guarantee, the AOC will proceed to have the work completed at the CMR's expense and the CMR will pay costs of the work upon demand. The AOC will be entitled to all costs, including reasonable attorney's fees necessarily incurred upon the CMR's refusal to pay the above costs.
- 3.5.3.** Notwithstanding the foregoing Subparagraph, in the event of an emergency constituting an immediate hazard to health or safety of AOC employees, property, or licensees, the AOC may undertake, at the CMR's expense and without prior notice, all work necessary to correct such hazardous condition(s) when it is caused by work of the CMR not being in accordance with the requirements of the Contract Documents.
- 3.6 TAXES** CMR shall pay, when due, all applicable income taxes, including estimated taxes, incurred as a result of the compensation paid by the AOC to the CMR for the Services. The AOC is exempt from federal excise taxes and no payment will be made for any taxes levied on the CMR's or any Subcontractor's employees' wages. CMR agrees to indemnify, defend and hold the AOC harmless for any claims, costs, losses, fees, penalties, interest or damages (including attorney fees and costs) suffered by the AOC resulting from the CMR's failure to comply with this provision. The AOC may offset any taxes paid by the AOC as a result of the CMR's breach of this provision.
- 3.7 PERMITS, FEES AND NOTICES**
- 3.7.1.** CMR shall secure and pay for all required permits, governmental fees, licenses and inspections necessary to complete the Work, unless otherwise provided in the Contract Documents. The AOC shall compensate the CMR for the permits, fees and services specified as an Allowance.
- 3.7.2.** CMR shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the performance of the Work.
- 3.7.3.** If the CMR observes that portions of the Contract Documents are at variance with applicable laws, statutes, ordinances, building codes, and rules and regulations, the CMR shall promptly notify the AOC in writing. If the CMR allows work to be performed known to be contrary, or should have known to be contrary to laws, statutes, ordinances, building codes, and rules and regulations without prior notice to the AOC, CMR shall assume full responsibility for the Work and shall bear the attributable costs.
- 3.7.4.** CMR is not subject to municipal, county, or city laws, rules, or regulations pertaining to building permits or regulating the design or construction of buildings upon AOC property, except as specified in the Contract Documents.
- 3.7.5.** All construction work shall comply with the Applicable Codes including, without limitation, the California Building Standards Code (CBSC), including the California Green Building Standards (CALGreen) Code current adopted edition, as of the proposal date.
- 3.7.6.** Pursuant to Labor Code section 6705, if the Contract Sum exceed \$25,000 and involves the excavation of any trench or trenches five (5) feet or more in depth, the CMR shall, in advance of

excavation, promptly submit to the AOC and/or a registered civil or structural engineer employed by the AOC or Architect, a detailed plan showing the design of shoring for protection from the hazard of caving around during the excavation of such trench or trenches.

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

Pursuant to Labor Code section 6705, nothing in this Article shall impose tort liability upon the AOC or any of its employees.

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

Except in an emergency, CMR shall contact the appropriate regional notification center at least two (2) days prior to commencing any excavation if the excavation will be conducted in an area or in a private easement that is known, or reasonably should be known, to contain subsurface installations other than the underground facilities owned or operated by the AOC, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out unless an inquiry identification number has been assigned to the CMR or any Subcontractor and the CMR has given the AOC the identification number. Any damages arising from CMR's failure to make appropriate notification shall be at the sole risk and expense of the CMR. Any delays caused by failure to make appropriate notification shall be at the sole risk of the CMR and shall not be considered for an extension of the Contract time.

3.8 SUPERINTENDENT

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

3.9 PROJECT SCHEDULES AND NARRATIVE REPORT

- 3.9.1. Master Project Schedule.** Within thirty (30) calendar days after the starting date on the Notice to Proceed, the CMR shall prepare and submit to the AOC for review and acceptance, with copy to the Architect, a detailed update to the Estimated Schedule that was in the AOC's solicitation document. This schedule, once accepted by the AOC, shall be the CMR's Master Project Schedule.
 - 3.9.1.1.** The Master Project Schedule shall be comprised of a Critical Path Method network and shall be in a Gantt chart format. CMR shall input the critical path schedule using Primavera Project Planner, Primavera SureTrack, or AOC-approved equal software. All programs shall be capable of converting the data to a format that is readable using Primavera SureTrack, version 3.0, unless another format is specified in the Contract Documents.
 - 3.9.1.2.** CMR's Master Project Schedule shall show the dates on which each part or division of the Work is expected to be started and completed.
 - 3.9.1.3.** The Work activities making up the Master Project Schedule shall be of sufficient

detail to assure that adequate planning has been done for proper execution of the work and such that, in the sole judgment of the AOC, it provides an appropriate basis for monitoring and evaluating the progress of the Work. The schedule shall show the interdependence of each activity and a critical path. The Master Project Schedule shall include, but shall not be limited to, the following items:

- 3.9.1.3.1.** Project design and construction activities;
 - 3.9.1.3.2.** Due dates of contractual obligations;
 - 3.9.1.3.3.** Project meetings;
 - 3.9.1.3.4.** Dates for submission for required milestones;
 - 3.9.1.3.5.** CEQA mitigations, actions, and deadlines;
 - 3.9.1.3.6.** Peer and Constructability Reviews;
 - 3.9.1.3.7.** Review times assumptions;
 - 3.9.1.3.8.** Property acquisition, and escrow closing deadlines;
 - 3.9.1.3.9.** Dates for AOC or agency submittals, reviews, and/or approvals including the Interim Facilities Panel, Judicial Council, Department of Finance, and Public Works Board review and approval meetings;
 - 3.9.1.3.10.** Peer Reviews;
 - 3.9.1.3.11.** Access Compliance and State Fire Marshal review submittals and response to comments;
 - 3.9.1.3.12.** ‘Back-check’ submittals and approvals;
 - 3.9.1.3.13.** Subcontractor bidding activities and approvals and the development of the GMP;
 - 3.9.1.3.14.** Notice to Proceed for Construction Phase;
 - 3.9.1.3.15.** Activities and milestones during construction;
 - 3.9.1.3.16.** Commissioning Activities;
 - 3.9.1.3.17.** Furniture, Fixtures and Equipment ordering, delivery, outfitting, and installation;
 - 3.9.1.3.18.** Punchlist preparation, punchlist work, and punchlist sign-off;
 - 3.9.1.3.19.** Move-in, occupancy, and initiation of Court operations; and
 - 3.9.1.3.20.** Project Closeout.
- 3.9.1.4.** CMR’s Master Project Schedule shall show the sequence, duration in calendar or working days, and interdependence of activities required for the complete performance of all Work. The schedule shall show milestones, including milestones for AOC-furnished information, and shall include activities for AOC-furnished equipment and furniture when those activities are interrelated with the CMR’s activities. The transmittal provided with the Master Project Schedule shall state whether the durations are in work days or calendar days.
- 3.9.1.5.** CMR’s Master Project Schedule shall begin with the effective date of the Notice to Proceed and conclude with the date of final Completion.
- 3.9.1.6.** No more than twenty percent (20%) of the activities will have less than five (5) workdays of Float unless approved by the AOC.
- 3.9.1.7.** The construction schedule shall include a critical path activity that reflects anticipated rain delay during the performance of the Contract. The duration shall reflect the average climatic range and usual industrial conditions prevailing in the locality of the Site. Weather data shall be based on information provided by the National Weather Service or other approved source.
- 3.9.1.8.** The schedule shall be developed using an appropriate work breakdown structure.
- 3.9.1.9.** CMR may submit a Master Project Schedule that shows the work completed in less time than the specified Contract Time – an early completion (“advanced”) schedule. However, the AOC’s acceptance of such a schedule will not change the Contract Time. The AOC is not required to accept an advanced schedule. CMR shall not be entitled to extra compensation if the AOC allows the CMR to proceed

performing the Contract on an advanced schedule and CMR completes the Project, for whatever reason, beyond the date shown in that advanced schedule, but within the time for Completion indicated in the Contract. A schedule showing the work completed in less than the time for Completion indicated in the Contract, shall be considered to have Project Float.

3.9.1.10. CMR shall not sequester Float through such strategies as extending activity duration estimates to consume available Float, using preferential logic, or using extensive crew/resource sequencing, etc. No time extensions will be granted nor delay damages paid until a delay occurs which extends the Work beyond the Contract Completion date. In addition, AOC-caused delays on the Project may be offset by AOC-caused time savings (i.e., critical path submittals returned in less time than allowed by the contract, approval of substitution requests and credit changes which result in a savings of time to the CMR, etc.). In such an event, the CMR shall not be entitled to receive a time extension or delay damages until all AOC-caused time savings are exceeded and the Contract Completion date is also exceeded.

3.9.2. Time is of the essence in the completion of the Contract. CMR shall begin work by the start date stated in the Notice to Proceed. Work shall be executed to completion in accordance with the approved Project Schedule, subject to adjustment in accordance with the requirements of the Contract Documents.

3.9.3. CMR shall provide an adequate work force, materials of proper quality, and equipment to properly execute the Work and to ensure Completion of each part in accordance with the Project Schedule and within the Contract Time specified.

3.9.4. The AOC's review and acceptance of the Master Project Schedule is for compliance with the requirements of the Contract Documents only. Review and acceptance by the AOC of the Master Project Schedule only means that the AOC acknowledges that the CMR believes the CMR can perform the Work as indicated in the Master Project Schedule and does not relieve the CMR of any of the CMR's responsibility for the accuracy or feasibility of the Master Project Schedule, or of the CMR's ability to meet the interim Project milestone dates and the date of Completion. The AOC's review and acceptance does not expressly or impliedly warrant, acknowledge or admit the reasonableness of the logic, durations, manpower or equipment loading of the Master Project Schedule.

3.9.5. Schedule Updates.

3.9.5.1. CMR shall provide a monthly update to the Master Project Schedule to the AOC for approval.

3.9.5.2. In addition, the CMR shall provide an update to the Master Project Schedule to the AOC within ten (10) days of commencement of each Phase and at other times when significant changes are made to the schedule or as requested by the AOC.

3.9.5.3. CMR shall provide an update to the Master Project Schedule for the Construction Phase of the Project. Preparation of the Master Schedule for the Construction Phase will take into consideration sufficient time for the AOC to authorize that phase, including any time necessary for the AOC to obtain approval of funding.

3.9.5.4. CMR shall provide an update to the Master Project Schedule within three (3) days upon the reasonable request of the AOC.

3.9.6. Narrative. CMR shall include with its monthly update to the Master Project Schedule, a Schedule Narrative Report containing a narrative that includes the following:

3.9.6.1. CMR's transmittal letter

- 3.9.6.2. Description of problem tasks, referenced to field instructions, RFIs, change order numbers, or claim numbers as appropriate.
- 3.9.6.3. Current and anticipated delays not resolved by approved change order, including:
 - 3.9.6.3.1. CMR's reason for the cause of the delay;
 - 3.9.6.3.2. Corrective action and schedule adjustments to correct the delay;
 - 3.9.6.3.3. Known or potential impact of the delay on other activities, milestones, and project completion date.
- 3.9.6.4. Changes in construction sequence
- 3.9.6.5. Pending items and status thereof including but not limited to:
 - 3.9.6.5.1. Pending change orders
 - 3.9.6.5.2. Time extension requests
 - 3.9.6.5.3. Other items
- 3.9.6.6. Contract completion date status:
 - 3.9.6.6.1. If ahead of schedule, the number of calendar days ahead
 - 3.9.6.6.2. If behind schedule, the number of calendar days behind
- 3.9.6.7. Other project or scheduling concerns
- 3.9.6.8. Updated network diagram with target bars shown.
- 3.9.7. The Master Project Schedule shall also show all submittals associated with each work activity, allowing a minimum of fourteen (14) and a maximum of thirty (30) calendar days for the Architect's review of each submittal unless a longer period of time is specified in the Contract Documents.
 - 3.9.7.1. In addition, the CMR shall also submit a separate Submittal Schedule listing all submittals required under the contract and noting the anticipated date that each submittal will be submitted. All submittals precedent to critical construction activities shall be included in the construction schedule.

3.10 DOCUMENTS AND SAMPLES AT THE PROJECT SITE

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

3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES (SUBMITTALS)

- 3.11.1. Shop Drawings, Product Data, Samples and similar submittals are not Contract Documents. Their purpose is to demonstrate those portions of the work for which submittals are required and the way the CMR proposes to conform to the information given and the design concept expressed in the Contract Documents. Review by the AOC is subject to the limitations stated herein.
- 3.11.2. CMR shall review, approve and submit to the AOC all Shop Drawings, Product Data, Samples and similar submittals required by the Contract Documents within the number of days set forth in the Contract Documents.
- 3.11.3. Submittals for finishes shall be submitted in a sequence so as to cause no delay in the progress of the Work or in the activities of the AOC or separate contractors.
- 3.11.4. Submittals that are not required by the Contract Documents may be returned to the CMR without action.
- 3.11.5. CMR shall perform no portion of the Work requiring submittal(s) and review of Shop Drawings, Product Data, Samples or similar submittals until the respective submittal has been reviewed by the AOC. Such Work shall be in accordance with reviewed submittals.
- 3.11.6. By submitting Shop Drawings, Product Data, Samples and similar submittals, the CMR represents that the CMR has determined and verified materials, field measurements and related field construction criteria, and has checked and coordinated the information contained within the submittal(s) with the requirements of the Contract Documents.
- 3.11.7. CMR shall not be relieved of the responsibility for any deviation from the requirements of the Contract Documents by the AOC's review of submittals unless the CMR has specifically informed the AOC, in writing, of such deviation at the time of submittal, and the AOC has given written consent to the specific deviation. The AOC's review shall not relieve the CMR of responsibility for errors or omissions in submittals.
- 3.11.8. CMR shall respond per requirements of the Contract Documents, in writing or on resubmitted submittals, to revisions other than those requested by the AOC on previous submittals. After the second resubmittal of a specific item, that is still not accepted, the CMR will be charged all costs of submittal review. The charges will be deducted from the CMR's next pay request.
- 3.11.9. Informational submittals, on which the AOC is not expected to take action, may be identified in the Contract Documents.
- 3.11.10. When professional certification of performance criteria of materials, systems or equipment is required by the Contract Documents, the AOC will be entitled to rely upon the accuracy and completeness of such calculations and certifications.
- 3.11.11. When descriptive catalog designations, including manufacturer's name, product brand name, or model number(s) are referred to in the Contract Documents, such designations shall be considered as being those found in industry publications of current issue at date of AOC's solicitation document.
- 3.11.12. **Substitutions and Approved Equals:** Alternative material(s), article(s), or equipment that are of equal quality and of required characteristics for the purpose intended may be proposed by the CMR for use in the Work, provided the CMR complies with the Contract Documents and the following requirements:
 - 3.11.12.1. CMR shall submit any proposal for a substitution request for alternative material(s), article(s), or equipment, in writing to the AOC:

- 3.11.12.2. The AOC will consider requests for substitution only if received within thirty (30) days after Contract Start Date stated in the Notice to Proceed. Requests received after this timeframe may be rejected as untimely at the sole discretion of the AOC.
- 3.11.12.3. At the AOC's discretion, it may give written consent to a submittal or resubmittal received after expiration of the time limit designated.
- 3.11.12.4. The request will not be considered unless the submittal is accompanied by complete information and descriptive data necessary to determine equality of offered material(s), article(s), or equipment. Samples shall be provided when requested by the AOC. Burden of proof as to comparative quality, suitability, and performance of offered material(s), article(s), or equipment shall be upon the CMR. The AOC will be the sole judge as to such matters. In the event the AOC rejects the use of such alternative(s) submitted, then the particular product(s) originally specified in the Contract Documents shall be furnished.
- 3.11.12.5. If mechanical, electrical, structural, or other changes are required for installation, fit of alternative materials, articles, or equipment, or because of deviations from Contract Drawings and Specifications, such changes shall not be made without consent of the AOC, and shall be made without additional cost to the AOC.

3.12 TESTS AND INSPECTIONS

- 3.12.1. CMR shall at all times permit the AOC, its agents, officers, and employees to visit the Project site and inspect the Work, including shops where work is in preparation. This obligation shall include maintaining proper facilities and safe access for such inspection. The CMR shall be solely responsible for notifying the AOC where and when the work is ready for inspection and testing.
- 3.12.2. When the Contract Documents require a portion of the Work to be tested, such portion of work shall not be covered up until inspected and approved by the AOC. Should any work be covered without the required testing and approval, such work shall be uncovered and recovered at the CMR's expense.
- 3.12.3. Whenever the CMR intends to perform work on Saturday, Sunday, or a legal holiday, the CMR shall give written notice to the AOC of such intention at least 48 hours prior to performing the Work, so that the AOC may make necessary arrangements.
- 3.12.4. If procedures for testing, inspection or approval reveal failure of a portion(s) of the Work to comply with the Contract Documents, the CMR shall bear all costs made necessary by such failure(s) including those of repeated procedures, tests and inspections, including paying for AOC's costs and expenses associated therewith.
- 3.12.5. **Tests Not in Contract Documents.** If the AOC determines that portions of the Work require additional testing, inspection or approval not included in the Contract Documents, the AOC will instruct the CMR, in writing, to make arrangements for additional testing, inspection or approval by an entity acceptable to the AOC, and the CMR shall give 48 hours written notice to the AOC of where and when tests and inspections will be conducted so that the AOC may observe the procedures. The AOC will pay for these tests.
- 3.12.6. **Certification.** Required certificates of testing, inspection or approval shall, unless otherwise required by the Contract Documents, be secured by the CMR and delivered to the AOC within fourteen (14) days after each test.

3.13 USE OF PROJECT SITE

- 3.13.1. CMR shall confine operations at the Project site to areas permitted by law, ordinances, permits and the Contract Documents.

3.13.2. CMR shall perform no operations of any nature on or beyond the limits of Work or premises, except as such operations are authorized in the Contract Documents, or authorized by the AOC.

3.13.3. CMR shall ensure the limits of Work to be free of graffiti or other similar defacements during the time of the Contract.

3.13.3.1. If such defacement occurs, then the CMR shall promptly and properly remove, repair, or correct the affected area(s), or as otherwise directed by the AOC.

3.13.3.2. CMR shall protect all exposed surfaces within the limits of Work, with anti-graffiti coatings, and maintain such protection continuously effective during the time of the Contract.

3.13.4. Prohibitions:

3.13.4.1. The use or possession of alcohol, weapons, or illegal controlled substances by the CMR, or others under the CMR's control, on AOC property is not allowed.

3.13.4.2. Residing on site in temporary facilities by the CMR, or others under the CMR's control is not allowed.

3.14 CUTTING AND PATCHING

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

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

3.15 CLEANING UP

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

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

3.16 ACCESS TO WORK CMR shall provide the AOC continuous access to the Work.

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

3.18 INDEMNIFICATION

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

- 3.18.1.1. CMR's or any of its employees' or Subcontractors' negligent acts, omissions, or intentional misconduct;
 - 3.18.1.2. CMR's breach of its obligations under this Contract;
 - 3.18.1.3. CMR's or any of its employees' or Subcontractors' violation of any applicable law, rule, or regulation; and/or
 - 3.18.1.4. Any claim or lawsuit by a third party, contractor, subcontractor, supplier, worker, or any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of this Contract who may be injured or damaged by the CMR or any of its Subcontractors or employees.
- 3.18.2. CMR's obligation to Indemnity shall occur when the above claims, lawsuits, losses, costs, liabilities, and damages arise from, are related to, or are in connection with, the CMR's performance of this Agreement.
- 3.18.3. This article does not require the CMR to Indemnify an Indemnified Party for such portion of any loss, cost, liability, or damage that arises solely from the negligence or intentional misconduct of the Indemnified Party.
- 3.18.4. In addition to any remedy authorized by law, moneys due the CMR under the Contract, as considered necessary by the State, may be retained until disposition has been made of such claims, lawsuits, losses, costs, liabilities, and damages; however, this provision shall not be construed as precluding the State from enforcing any right of offset the State may have to any such moneys.
- 3.19 AIR POLLUTION** CMR and each Subcontractor shall comply with all State and/or local air pollution control rules, regulations, ordinances, and statutes that apply to any work performed under the Contract. If there is a conflict between the State and local air pollution control rules, regulations, ordinances and statutes, the most stringent shall govern.
- 3.20 SWPPP** CMR shall comply with the AOC's Storm Water Pollution Prevention Plan (SWPPP) and shall be the AOC's Qualified SWPPP Practitioner ("QSP"), at no additional cost to the AOC.
- 3.20.1. CMR shall strictly follow the requirements to implement all the provisions of the SWPPP including, without limitation, preparation of monitoring and recording reports and providing those to the AOC.
- 3.21 UNION ORGANIZING** CMR, by signing the Contract, hereby acknowledges the applicability of Government Code section 16645 through section 16649 to the Contract.
- 3.21.1. CMR will not assist, promote or deter union organizing by employees performing work on an AOC contract, including a public works contract.
 - 3.21.2. No AOC funds received under the Contract will be used to assist, promote or deter union organizing.
 - 3.21.3. CMR will not, for any business conducted under the Contract, use any AOC property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing, unless the AOC property is equally available to the general public for holding meetings.
 - 3.21.4. If CMR incurs costs, or makes expenditures to assist, promote or deter union organizing, CMR will maintain records sufficient to show that no reimbursement from AOC funds has been sought for these costs, and that CMR shall provide those records to the Attorney General upon request.

3.22 SELF PERFORMANCE

- 3.22.1. CMR shall not, without specific written approval in advance from the AOC in the form of an Amendment to this Contract, self-perform any construction work during the Construction Phase.
- 3.22.2. CMR shall not subcontract or in any manner cause said work to be done by any entity in which the CMR, its parent or associate companies, or any of CMR's owned or controlled subsidiaries have a financial or other business interest

ARTICLE 4 SUBCONTRACTORS

4.1 SUBLETTING AND SUBCONTRACTING

- 4.1.1. Although the AOC is not bound by the Public Contract Code for trial court construction, the AOC has specifically incorporated the provisions Subletting and Subcontracting Fair Practices Act, Public Contract Code section 4100, et seq. ("Subcontractor Listing Law") into the Contract. The AOC intends to fully enforce the provisions of the Subcontractor Listing Law, including, specifically sections 4109 and 4110. Accordingly, CMR and AOC shall adhere to the rules governing subcontracting as set forth in Public Contract Code section 4100 et seq. Subcontractor substitutions shall be in accordance with provisions of the Subletting and Subcontracting Fair Practices Act. Violations of this Act by the CMR may subject the CMR to penalties and disciplinary action as provided by the Subletting and Subcontracting Fair Practices Act.
- 4.1.2. CMR is prohibited from replacing or otherwise substituting subcontractors without following the procedures set forth in the Subcontractor Listing Law. An agreement made in violation of this section shall confer no rights on any party and shall be null and void.
- 4.1.3. At the request of the AOC, the CMR shall provide documentation that its Subcontractors meet the required qualifications set forth in the Contract Documents with respect to that Subcontractor's work. If requested by the AOC, the CMR shall provide copies of all CMR's agreements with its Subcontractors to the AOC.
- 4.1.4. CMR shall, in the course of the work, engage only Subcontractors and employees who possess, and will maintain in good standing during the performance of the Services, valid and applicable licenses where the State of California or this Contract requires that the work to be performed by that Subcontractor or employee must be performed by a licensed person or entity.
- 4.1.5. CMR expressly acknowledges that its Subcontractors are not third party beneficiaries of this Contract. No contractual relationship exists between the AOC and any Subcontractor, supplier, or sub-subcontractor by reason of this Contract.
- 4.1.6. CMR shall be responsible for all Work performed under the Contract. All persons engaged in the Work of the Project are the responsibility and under the control of the CMR. CMR shall give personal attention to fulfillment of the Contract and shall keep the Work under the CMR's control.
- 4.1.7. Although some of the Contract Documents may be arranged according to various trades or general grouping of work, the CMR is not obligated to sublet work in any particular grouping or manner. The CMR shall be responsible for the coordination of the trades. Subcontractors, sub-subcontractors, and material or equipment suppliers working on the project.
- 4.1.8. The AOC may not permit a contractor or subcontractor who is ineligible to bid or work on, or be awarded, a public works project pursuant to Sections 1777.1 or 1777.7 of the Labor Code to propose on, bid on, be awarded, or perform work as a subcontractor on a public works project.
 - 4.1.8.1. Any contract on a public works project entered into between a contractor and a debarred subcontractor is void as a matter of law. A debarred subcontractor may not receive any public money for performing work as a subcontractor on a public works contract, and any public money that may have been paid to a debarred

subcontractor by a contractor on the project shall be returned to the awarding body.

- 4.1.8.2. CMR shall be responsible for the payment of wages to workers of a debarred subcontractor who has been allowed to work on the Project.

4.2 SUBCONTRACTOR RELATIONS

- 4.2.1. CMR shall provide to each Subcontractor copies of the Contract Documents. CMR shall require all Subcontractors to comply with the terms and conditions of this Contract. CMR shall require Subcontractors to make copies of applicable portions of Contract Documents available to their respective Sub-subcontractors.
- 4.2.2. CMR shall pay its Subcontractors for work performed no later than ten (10) days after CMR's receipt of each progress payment from AOC. If there is a good faith dispute over all or any portion of the amount due a Subcontractor on a progress payment, the CMR may withhold no more than one hundred and fifty percent (150%) of the disputed amount. This provision shall also apply to Sub-subcontractors.
- 4.2.3. CMR is solely responsible for settling any differences between the CMR and its Subcontractor(s) or between Subcontractors.

ARTICLE 5 USE OF PROJECT CONTINGENCY

5.1 PROPOSED USE OF PROJECT CONTINGENCY

- 5.1.1. CMR may utilize the Project Contingency without the AOC's prior approval, but the use of the Project Contingency is subject to AOC's review to ensure that each use complies with the requirements of the Contract Documents. If the AOC determines that the use does not comply with the Contract Documents, the CMR cannot use the Project Contingency for that Work.
- 5.1.2. CMR's application for payment that includes Project Contingency use shall include documentation and information in the level of detail required in the section herein entitled, "Allowable Costs for Change Orders and Project Contingency Use."

ARTICLE 6 CHANGES IN THE WORK

6.1 NO CHANGES WITHOUT AUTHORIZATION

- 6.1.1. There shall be no change whatsoever in the Drawings, Specifications or in the Work without a fully executed Change Order. AOC shall not be liable for the cost of any extra work which should have been covered by a Change Order unless the AOC authorized the same and the cost thereof has been approved by the AOC in writing by an executed Change Order.
- 6.1.2. The Surety, in executing and providing the Performance Bond and the Payment Bond, shall be deemed to have expressly agreed to any change to the Contract and to any extension of time made by reason thereof.
- 6.1.3. No extension of time for performance of the Work shall be allowed hereunder unless Claim for such extension is made at the time changes in the Work are ordered, and such time duly adjusted in a fully executed Change Order. The provisions of the Contract Documents shall apply to all such changes, additions, and omissions with the same effect as if originally embodied in the Drawings and Specifications.
- 6.1.4. CMR shall perform immediately all Work that has been authorized by a fully executed Change Order. CMR shall be fully responsible for any and all delays and/or expenses caused by CMR's failure to expeditiously perform this Work.
- 6.1.5. Should any Change Order result in an increase in the GMP, the cost of that Change Order shall be agreed to, in writing, in advance by CMR and AOC. In the event that CMR proceeds with

any change in Work without a fully executed Change Order, CMR waives any Claim of additional compensation or time for that additional Work.

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

6.2 ARCHITECT AUTHORITY Notwithstanding the above, the Architect will have authority to order minor changes in the Work not involving any adjustment in the GMP, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Architect's response(s) to RFI(s).

6.3 CHANGE ORDERS

- 6.3.1. A Change Order is a written order approved by the AOC as defined herein. A Change Order shall include all of the following:

- 6.3.1.1. A description of a change in the Work;

- 6.3.1.2. The amount of the adjustment in the GMP, if any; and

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

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

- 6.3.3. **Force Account Pricing Option (Time & Materials Pricing).** When the AOC and the CMR cannot agree on an amount of the adjustment in the GMP, the following process may be followed, at the AOC's discretion:

- 6.3.3.1. All direct costs necessarily incurred and paid by the CMR for labor, material, and equipment used in the performance of that Work, shall be subject to the approval of the AOC and compensation will be determined as set forth herein.

- 6.3.3.2. The AOC will issue a Change Order to proceed with the Work on a force account basis, and a not-to-exceed budget will be established by the AOC.

- 6.3.3.3. All requirements regarding direct cost for labor, labor burden, material, equipment, and markups on direct costs for overhead and profit described in this section shall apply to the Change Order. However, the AOC will only pay for actual costs verified in the field by the AOC's Project Manager on a daily basis.

- 6.3.3.4. CMR shall be responsible for all cost related to the administration of the Change Order. The markup for overhead and profit for CMR modifications shall be full compensation to the CMR to administer the Change Order.

- 6.3.3.5. CMR shall notify the AOC's Project Manager at least twenty-four (24) hours prior to proceeding with any of the force account work. Furthermore, the CMR shall notify the AOC when it has consumed eighty percent (80%) of the not-to-exceed budget, and shall not exceed the not-to-exceed budget unless specifically authorized in writing by the AOC. CMR will not be compensated for force account work in the event that the CMR fails to timely notify the AOC regarding the commencement of force account work, or exceeding the not-to-exceed budget.

- 6.3.3.6. CMR shall diligently proceed with the Work, and on a daily basis, submit a daily force account report on a form supplied by the AOC no later than 5:00 p.m. each day. The report shall contain a detailed itemization of the daily labor, material,

and equipment used on the force account Work only. The names of the individuals performing the force account Work shall be included on the daily force account reports. The type and model of equipment shall be identified and listed. The AOC will review the information contained in the reports, and sign the reports no later than the next work day, and return a copy of the report to the CMR for their records. The AOC will not sign, nor will the CMR receive compensation for work the AOC cannot verify. CMR will provide a weekly force account summary indicating the status of the Change Order in terms of percent complete of the not-to-exceed budget and the estimated percent complete of the Work.

- 6.3.3.7.** In the event the CMR and the AOC reach a written agreement on a set cost for the Work while the Work is proceeding based on the Change Order, the CMR's signed daily force account reports shall be discontinued and all previously signed reports shall be invalid.

6.4 PRICE REQUEST

- 6.4.1. Definition of Price Request.** A Price Request is a written request prepared by the Architect or the AOC, requesting the CMR to submit to the AOC and the Architect an estimate of the effect of a proposed change in the Work on the GMP and the Contract Time.
- 6.4.2. Scope of Price Request.** A Price Request shall contain adequate information, including any necessary Drawings and Specifications, to enable CMR to provide the cost breakdowns required herein. CMR shall not be entitled to any additional compensation for preparing a response to a Price Request, whether ultimately accepted or not.
- 6.4.3. Response to Price Request.** Within fourteen (14) days, the CMR, shall submit to the AOC the CMR's proposed price to be added or deducted from the GMP due to the change, authenticated in full by completely detailed price estimates and other authenticators of the cost by the CMR, Subcontractors, Sub-subcontractors, vendors or material suppliers, and any adjustments of time for Completion of the entire Work that is directly attributable to the proposed change in the Work.

6.5 PROPOSED CHANGE ORDER

- 6.5.1. Definition of Proposed Change Order.** A Proposed Change Order ("PCO") is a written request prepared by the CMR requesting that the AOC and the Architect issue a Change Order based upon a proposed change to the Work.
- 6.5.2. Changes in GMP.** A PCO shall include breakdowns pursuant to the provisions herein to validate any change in the GMP.
- 6.5.3. Changes in Time.** A PCO shall also include any changes to the Contract Time. Any additional time requested shall not be the number of days to make the proposed change, but must be based upon the impact to the Construction Schedule as defined in the Contract Documents. If CMR fails to request a time extension in a PCO, then the CMR is thereafter precluded from requesting additional time and/or claiming a delay.
- 6.5.4. Unforeseen Site Condition(s).** If CMR submits a PCO requesting an increase in GMP and/or Contract Time that is based at least partially on CMR's assertion that CMR has encountered an Unforeseen Site Condition on the Project, then CMR shall base the PCO on provable information to the AOC's satisfaction, demonstrates that the Unforeseen Site Condition was actually unknown and/or unforeseen, and explaining why the CMR did not discover the Unforeseen Site Condition prior to finalizing the GMP. If AOC denies the PCO, CMR shall complete the Project without any increase in GMP and/or Contract Time based on that PCO.

- 6.6 ALLOWABLE COSTS FOR CHANGE ORDERS AND PROJECT CONTINGENCY USE:**
All proposed cost requests by CMR for a Change Order or for use of the Project Contingency shall include a complete itemized breakdown with the following detail, which are the only costs that will

be allowed for these items.

- 6.6.1. Subcontractor(s)' Labor.** Compensation for Subcontractor(s)' labor shall include the necessary payroll cost for labor, including first level supervision, directly engaged in performance of the changes. Wages shall not exceed current prevailing wages in the locality for performance of the changes. Use of a classification which would increase labor costs will not be permitted. Exceptions will be permitted only when the CMR establishes, to the satisfaction of the AOC, the necessity for payment at higher rates or classifications.
- 6.6.2. Materials and Equipment:** Compensation for materials and equipment shall include the necessary costs for materials and equipment directly required for performance of the changes. Cost of materials and equipment may include costs of transportation and delivery. If discounts by suppliers are available to the CMR, they shall be credited to the AOC. If materials and equipment are obtained from a supply or source owned by, or in part, by the CMR, payment therefore will not exceed current wholesale prices for such materials and equipment. If, in the opinion of the AOC, the cost of materials and equipment is excessive, or if the CMR fails to furnish satisfactory evidence of costs from supplier, the cost of materials and equipment shall be the lowest current wholesale price at which similar materials and equipment are available in quantities required. The AOC reserves the right to furnish materials and equipment required for performance of the changes, and the CMR shall have no Claim for costs or mark-ups on such materials and equipment.
- 6.6.3. Construction Equipment:**
- 6.6.3.1.** Compensation for construction equipment shall include the necessary costs for use of construction equipment directly required for performance of the changes. Any use for less than 30 minutes shall be considered one-half hour. No costs will be allowed for time while construction equipment is inoperative, idle, or on stand-by, for any reason, unless such times have been approved in advance by the AOC. Rental time for construction equipment moved by its own power shall include the time required to move construction equipment to the Work site from the nearest available source for rental of such equipment, and time required to return such equipment to the source. If construction equipment is not moved by its own power, loading and transportation costs will be paid in lieu of such rental time. Neither moving time nor loading and transportation costs will be allowed if the construction equipment is used for any work other than the changes. No allowance will be made for individual pieces of construction equipment and tools having a replacement value of \$500 or less. No construction equipment costs will be recognized in excess of rental rates established by distributors or equipment rental agencies in the locality for performance of the changes.
- 6.6.3.2.** Unless otherwise approved by the AOC, the allowable rate for use of construction equipment shall constitute full compensation to the CMR for cost of fuel, power, oil, lubrication, supplies, necessary attachments, repairs and maintenance of any kind, depreciation, storage, insurance, labor except for construction equipment operators and any and all costs to the CMR incidental to the use of such construction equipment.
- 6.6.4. Mark-Ups for Added Work:** The following amounts for mark-ups for performance of the changes shall constitute full compensation for all other costs not covered under the above-stated Allowable Costs, including additional field and home office overhead, profit, insurance (other than OCIP Insurance), taxes, and bonds. CMR is not permitted to add costs for additional items that are part of the CMR's General Conditions in its performance of the Work unless approved in advance by the AOC.
- 6.6.4.1.** CMR's fee for Subcontractor-performed work: Six percent (6%) of the Direct Cost of Work associated with the added work.
- 6.6.4.2. Subcontractors:** Actual cost to the CMR for work performed by the

Subcontractor. The Subcontractor shall compute mark ups as follows, except that the aggregate mark-ups made at all subcontract tiers shall not exceed Twenty percent (20%):

6.6.4.2.1. For Subcontractor's direct labor costs: Twenty percent (20%)

6.6.4.2.2. For Subcontractor's direct Materials & Equipment costs: Fifteen percent (15%)

6.6.5. Deleted Work: When the AOC is entitled to a credit for deleted work, the credit shall include direct labor, materials, and supervision plus overhead of the CMR or Subcontractor, as applicable for the deleted work. Deleted overhead shall be computed as ten percent (10%) of the direct labor, materials, and supervision. For example, if a \$10,000 item of work is deleted, the credit to the AOC would be \$11,000.

6.6.6. General Limitations: Costs to the CMR for changes which exceed market values prevailing at the time of the change will not be allowed unless the CMR establishes that all reasonable means for performance of the changes at prevailing market values have been investigated and the excess cost could not be avoided. Notwithstanding actual charges to the CMR on work performed or furnished by others, no mark-ups will be allowed in excess of those specified above.

6.6.7. Cost Disallowance: Costs which will not be allowed or paid in Change Orders, requests for use of Project Contingency or Claim settlements under this Contract include, but are not limited to: interest on cost of any type other than those mandated by statute; Dispute or Claim preparation or filing costs; legal expenses; the costs of preparing or reviewing proposed Change Orders or Change Order proposals concerning Change Orders which are not issued by the AOC; lost revenues; lost profits; lost income or earnings; rescheduling costs; costs of idled equipment when such equipment is not yet at the site or has not yet been employed on the Work; lost earnings or interest on unpaid retention; Dispute or Claim consulting costs; the costs of corporate officers or staff visiting the site or participating in meetings with the AOC; any compensation due to the fluctuation of foreign currency conversions or exchange rates; or loss of other business.

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

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

6.9 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 agreement that is not incorporated shall not be binding on any of the parties.

ARTICLE 7 TIME

7.1 NOTICE TO PROCEED

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

7.1.2. If the CMR begins work before delivery of the Notice to Proceed, that work will be at the CMR's risk and expense and subject to all terms and conditions of the Contract except those terms and conditions inconsistent with the CMR's assumption of that risk and expense.

7.1.3. The AOC will not be obligated to accept or to pay for work furnished by the CMR prior to

delivery of the Notice to Proceed whether or not the AOC has knowledge of the furnishing of such work.

- 7.1.4. If a Notice to Proceed is delivered, then work performed before delivery will be treated for all purposes as though it were performed after delivery.
- 7.1.5. Work under the Contract shall be conducted in accordance with the Contract Documents. The CMR shall not begin any Work until authorized in writing by the AOC.
- 7.1.6. CMR shall not be allowed on the site of the Work until the CMR's Contract bonds and certificates of insurance comply with requirements of the Contract.

7.2 **CONTRACT TIME:** The Contract Time is the period set forth in the Contract Documents for Completion of the Work. The Contract Time will be designated as either (1) a total number of days and a start date or (2) a start date and an end date. It is essential that the Project be completed within the time fixed for Completion. All portions of the Work shall be completed with necessary labor, equipment, procedures and overtime and shall be ready for full use by the AOC on, or prior to, the date indicated for Completion. The AOC may occupy or utilize areas as indicated herein.

7.3 TIME EXTENSIONS AND DELAYS IN COMPLETION OF THE WORK

- 7.3.1. **Force Majeure:** The AOC and the CMR shall be excused from performance to the extent that there is a force majeure event. CMR's obligations are as further indicated herein.
- 7.3.2. **CMR's Notice of Delay**
 - 7.3.2.1. In addition to the requirements indicated in this subsection, CMR shall notify the AOC pursuant to the Claims provisions in these General Conditions and the other Contract Documents of any anticipated delay and its cause.
 - 7.3.2.2. CMR shall, within seven (7) calendar days of any delay impacting the critical path in completing the Work, notify AOC in writing of the causes of the delay including documentation and facts explaining the delay.
 - 7.3.2.3. In the event the CMR requests an extension of Contract Time for a delay in this notice, that request shall be submitted in accordance with the provisions in the Contract Documents governing changes in Work. When requesting time, requests must be submitted with full justification and documentation. If the CMR fails to submit justification, it waives its right to a time extension at a later date. Such justification must be based on the official Construction Schedule as updated at the time of occurrence of the delay or execution of Work related to any changes to the Scope of Work.
 - 7.3.2.4. Any Claim for delay must include the following information as support, without limitation:
 - 7.3.2.4.1. The duration of the activity relating to the changes in the Work and the resources (manpower, equipment, material, etc.) required to perform the activities within the stated duration.
 - 7.3.2.4.2. Specific logical ties to the Contract Schedule for the proposed changes and/or delay showing the activity/activities in the Construction Schedule that are affected by the change and/or delay. (A portion of any delay of seven (7) days or more must be provided.)
 - 7.3.2.4.3. A recovery schedule must be submitted.
 - 7.3.2.5. AOC shall review the facts and extent of any noticed delay and shall grant Contract Time extension(s) of time for completing Work when, in the AOC's

judgment, the findings of fact justify an extension.

7.3.2.6. Any extension granted by the AOC shall be based on the Master Project Schedule as updated at the time of occurrence of the delay or execution of work related to any changes to the scope of the Work. Extension(s) of time shall apply only to that portion of Work affected by delay, and shall not apply to other portions of Work not so affected.

7.3.2.7. An extension of time may only be granted if CMR has timely submitted the Construction Schedule as required herein.

7.3.2.8. Following submission of a notice of delay, the AOC may determine whether the delay is to be considered:

7.3.2.8.1. Excusable and Compensable, Excusable, or Unexcused;

7.3.2.8.2. How long the delay continues; and

7.3.2.8.3. To what extent the prosecution and Completion of the Work might be delayed thereby.

7.3.3. Excusable and Compensable Delay(s)

7.3.3.1. CMR is **not** entitled to additional compensation for any delay, even a delay caused by Adverse Weather or an Excusable Delay, unless **all** of the following conditions are met:

7.3.3.1.1. The AOC is responsible for the delay

7.3.3.1.2. The delay is not caused by conflicts, ambiguities or errors or omissions in the Contract Documents that could have been reasonably discovered by the CMR prior to the Construction Phase;

7.3.3.1.3. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the Contract Completion date;

7.3.3.1.4. The delay was not within the contemplation of AOC and CMR;

7.3.3.1.5. CMR complies with the Disputes and Claims procedure of the Contract Documents.

7.3.3.1.6. The delay could **not** have been avoided or mitigated by the CMR's care, prudence, foresight, and diligence.

7.3.3.1.7. The delay extends the Contract Completion date, and is not concurrent with a CMR-caused delay or other type of Excusable Delay.

7.3.4. Excusable Delay(s)

7.3.4.1. An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the CMR and that:

7.3.4.1.1. Could have not been avoided by the CMR's exercising care, prudence, foresight, and diligence, and

7.3.4.1.2. Actually extended the Project Completion date.

7.3.4.2. CMR may be entitled to an extension of the Project Completion date if there is an Excusable Delay, but the CMR shall not be entitled to additional compensation for

an Excusable Delay.

7.3.4.3. Excusable Delays are limited to force majeure events and Adverse Weather that satisfies the requirements herein.

7.3.4.4. CMR is aware that governmental agencies and utilities, including, without limitation, the Corrections Standards Authority, State Fire Marshall, Division of the State Architect of the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies may have to approve CMR-prepared drawings or approve a proposed installation. CMR shall include in its proposal, time for possible review of its drawings and for reasonable delays and damages that may be caused by such agencies. CMR is not entitled to make a Claim for damages or delays or an Excusable Delay arising from the review of CMR's drawings or other approvals from the Division of the State Architect, the Department of General Services, gas companies, electrical utility companies, water districts, and other agencies.

7.3.4.5. Computation of Time / Adverse Weather

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

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

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

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

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

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

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

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

7.3.5. Unexcused Delay(s) – Liquidated Damages

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

Code section 53069.85.

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

7.4 ACCELERATION

- 7.4.1. The AOC reserves the right to accelerate the Work of the Contract. In the event that the AOC directs acceleration, such directive will be only in written form. CMR shall keep cost and other Project records related to the acceleration directive separately from normal Project costs and records, and shall provide a written record of acceleration cost to the AOC on a daily basis.
- 7.4.2. In the event that the CMR believes that some action or inaction on the part of the AOC constitutes an acceleration directive, the CMR shall immediately notify the AOC in writing that the CMR considers the actions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. CMR shall not accelerate work efforts until the AOC responds to the written notification. If acceleration is then directed or required by the AOC, all cost records referred to above shall be maintained by the CMR and provided to the AOC on a daily basis.
- 7.4.3. In order to recover additional costs due to acceleration, the CMR shall document that additional expenses were incurred and paid by the CMR. Labor costs recoverable will be only overtime or shift premium costs or the cost of additional laborers brought to the site to accomplish the accelerated work effort. Equipment costs recoverable will be only the cost of added equipment mobilized to the site to accomplish the accelerated work effort.
- 7.4.4. All changes to the Scope of the Work, the GMP or the Contract Time caused by any acceleration must be reflected by a written and executed Change Order.

ARTICLE 8 PRICE, PAYMENTS AND COMPLETION

- 8.1 **PRELIMINARY PLAN/WORKING DRAWING PHASES:** For all Phases prior to the Construction Phase, the AOC will make payment in arrears after receipt of the CMR's properly completed invoice or application for payment based on the amounts indicated in the Agreement for each Phase. Invoices shall indicate in detail all Work performed.
 - 8.1.1. CMR shall submit one (1) original and two (2) copies of invoices to the AOC's Project Manager, identified in the Agreement.
 - 8.1.2. Invoices not on printed bill heads shall be signed by the CMR.
 - 8.1.3. CMR acknowledges the complex payment approval process that the AOC must follow and agrees that the AOC will pay invoices that are approved, due and payable within forty-five (45) days after receipt of a correct, itemized invoice. In no event shall the AOC be liable for interest or late charges for any late payments.
 - 8.1.4. Payment shall be made by the AOC to the CMR at the address specified on the invoice.
 - 8.1.5. The AOC may withhold full or partial payment to the CMR in any instance in which the CMR has failed or refused to satisfy any material obligation provided for under this Contract.
- 8.2 **GMP** The Guaranteed Maximum Price (GMP) is as defined herein and is the maximum price that the AOC will pay CMR as payment for all Work of the Construction Phase of the Project and is guaranteed by the CMR to be the maximum it will charge to Complete the Construction Phase of the Project.
 - 8.2.1. The GMP shall only be subject to additions and deductions as indicated in the Contract Documents.

- 8.2.2. CMR acknowledges that it has reviewed and accepted the Contract Documents as complete and that it has no right for Change Orders or extra work due to conflicts, ambiguities or errors or omissions in the Contract Documents which could not have been reasonably discovered by the CMR during CMR's pre-construction phase services, or in the Subcontractor bid packages, or for any Construction Phase Change Orders arising from Subcontractors' performance.
- 8.2.3. If the cost of the Work, excluding AOC-requested changes and Unforeseen Site Conditions, exceeds the GMP, adjusted from time to time by Change Order, the CMR shall pay the overrun without reimbursement by the AOC.
- 8.2.4. If the actual cost of the Work, excluding AOC-requested changes, is less than the GMP, adjusted from time to time by Change Order, then the CMR shall credit the cost savings to the AOC in the final Change Order. CMR agrees to use all reasonable efforts to maximize cost savings for the benefit of the AOC.
- 8.2.5. The GMP shall include only the following items:
 - 8.2.5.1. **Direct Cost of the Work.** The CMR's Direct Cost of the Work is defined as the sum of all Subcontractor costs, fees and charges, including Subcontractor insurance (other than OCIP Insurance) and bond costs incurred during the Construction Phase.
 - 8.2.5.2. **CMR's Fee.** The CMR's Fee shall be a percentage of the Direct Cost of the Work that will include all of CMR's anticipated profit and all of CMR's home, office and other overhead.
 - 8.2.5.3. **CMR's General Conditions in its Performance of the Work.** The cost of CMR's General Conditions.
 - 8.2.5.4. **Project Contingency.** The contingency identified in the Agreement that is to be used by the CMR to pay for certain scopes of Work, as further defined herein.
 - 8.2.5.5. **Allowance(s).** The amount(s) indicated in the Agreement as part of GMP for specific scopes of work for which the CMR may bill its time, materials, and other items in the identical structure as a Change Order. The unused portion of each Allowance shall be retained by the AOC at the end of the Project.
- 8.2.6. **AOC's Contingency (if applicable).** A contingency identified in the Agreement which is to be used at the AOC's discretion to pay for Change Order work. The AOC's Contingency is not part of the GMP, but may be indicated in the Agreement for the AOC's use.
- 8.2.7. **Costs Not Reimbursed.** The CMR shall not seek reimbursement for the following:
 - 8.2.7.1. Salaries and other compensation of the CMR's personnel stationed at the CMR's principal office or offices other than the Site office, except as specifically provided herein.
 - 8.2.7.2. Payments to CMR's employees over and above their regular pay (bonuses, incentive pay, profit sharing, severance pay, etc.).
 - 8.2.7.3. Expenses of the CMR's principal office and offices other than the Site office.
 - 8.2.7.4. Overhead and general expenses, except as may be expressly included herein.
 - 8.2.7.5. CMR's capital expenses, including interest on the CMR's capital employed for the work.
 - 8.2.7.6. Rental costs of machinery and equipment, except as specifically provided herein.

- 8.2.7.7. Costs due to the fault or negligence of the CMR, subcontractors, anyone directly or indirectly employed by the CMR or subcontractors, or for whose acts the CMR or subcontractors may be liable, including but not limited to costs for the correction of damaged, defective or nonconforming work, disposal and replacement of materials and equipment incorrectly ordered or supplied, and making good damage to property not forming part of the Work.
- 8.2.7.8. Deductibles or self-insured retentions associated with the insurance required to be maintained by the CMR and the Subcontractors.
- 8.2.7.9. Electronic processing and personnel cost incurred by the CMR in preparing the Project schedule and schedule updates, payroll, project cost reports or project status reports and any other reports necessary to the progress of the Work.
- 8.2.7.10. Any costs based on percentages, rather than actual costs paid by the CMR, unless specific percentages are documented and approved by the AOC.
- 8.2.7.11. Any fees paid to design or construction manager industry organizations (e.g., AGC, ABC, AIA etc.)
- 8.2.7.12. Any licenses maintained by the CMR.
- 8.2.7.13. Any cost not specifically and expressly described herein.
- 8.2.7.14. Costs that would cause the GMP to be exceeded.

8.2.8. Discounts, Rebates and Refunds

- 8.2.8.1. Cash discounts obtained on payments made by the CMR shall accrue to the AOC if (1) before making the payment, the CMR included them in a payment request and received payment therefore from the AOC, or (2) the AOC has deposited funds with the CMR with which to make payments; otherwise, cash discounts shall accrue to the CMR.
- 8.2.8.2. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the AOC, and the CMR shall make provisions so that they can be secured. If a trade discount by the actual supplier is available to the CMR, it shall be credited to the AOC.
- 8.2.8.3. Amounts, which accrue to the AOC in accordance with the provisions of this subsection shall be credited to the AOC as a deduction from the cost of the Work.

8.3 SCHEDULE OF VALUES. Before submitting its first invoice to the AOC for the Construction Phase, the CMR shall provide a preliminary schedule of values for all of the Work of the Construction Phase consistent with the Master Project Schedule. This preliminary schedule of values shall include quantities and prices of items aggregating the GMP and must subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. This preliminary schedule of values shall include, at a minimum, the following information and, when possible, the following structure:

8.3.1. Divided into at least the following categories:

- 8.3.1.1. CMR Fee;
- 8.3.1.2. CMR's General Conditions in its performance of the Work ;
- 8.3.1.3. The premium for CMR-provided "subguard" insurance protection in lieu of Subcontractor bonds;
- 8.3.1.4. Layout;
- 8.3.1.5. Mobilization;
- 8.3.1.6. Submittals;

- 8.3.1.7. Closeout documentation;
- 8.3.1.8. Demolition;
- 8.3.1.9. Installation;
- 8.3.1.10. Rough-in;
- 8.3.1.11. Finishes;
- 8.3.1.12. Testing; and
- 8.3.1.13. Punchlist and acceptance.

8.3.2. Divided by each of the following areas:

- 8.3.2.1. Site work;
- 8.3.2.2. By each building; and
- 8.3.2.3. By each floor.

8.3.3. **Closeout Documentation.** Until the AOC's receives all required Closeout Documentation, the AOC may withhold a portion of the Retention in an amount as determined by the AOC to ensure the submittal of the Closeout Documentation. The AOC's receipt of the Closeout Documentation is separate from Completion. Closeout Documentation shall include the following, without limitation:

- 8.3.3.1. A full set of final As-Built Drawings, as further defined herein;
- 8.3.3.2. All Operations & Maintenance Manuals and information, as further defined herein;
- 8.3.3.3. All Warranties, as further defined herein;
- 8.3.3.4. All verified report(s) for all scope(s) of Work as required for final Completion of the Project.

8.3.4. CMR shall certify that the preliminary schedule of values as submitted to the AOC is accurate and reflects the costs as developed in preparing CMR's GMP. The preliminary schedule of values shall be subject to the AOC's review and approval of the form and content thereof. In the event that the AOC objects to any portion of the preliminary schedule of values, the AOC shall notify the CMR, in writing, of the AOC's objection(s) to the preliminary schedule of values. Within five (5) calendar days of the date of the AOC's written objection(s), CMR shall submit a revised preliminary schedule of values to the AOC for review and approval. The foregoing procedure for the preparation, review and approval of the preliminary schedule of values shall continue until the AOC has approved the entirety of the preliminary schedule of values.

8.3.5. Once the preliminary schedule of values is approved by the AOC, this shall become the Schedule of Values. The Schedule of Values shall not be thereafter modified or amended by the CMR without the prior consent and approval of the AOC, which may be granted or withheld in the sole discretion of the AOC. This Schedule of Values, once accepted by the AOC, shall be used as a basis for progress payments.

8.4 PROGRESS PAYMENTS DURING CONSTRUCTION PHASE

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

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

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

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

Documents.

8.5 RETENTION OF PAYMENTS

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

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

8.5.1.2. Due to many factors, including extensive coordination and security issues, AOC projects are substantially complex and the AOC shall retain not less than ten percent (10%) of the estimated value of Work completed.

8.5.2. Phases Prior to Construction Phase. For all phases prior to the Construction Phase, upon successful Completion of all of the activities and provision of all deliverables of a Phase, CMR shall submit an Acceptance and Signoff Form, the form of which is attached to the Agreement.

8.5.2.1. The AOC's Project Manager shall review the Acceptance and Signoff Form, and, applying the Acceptance Criteria, will either approve the Form in full, or give the CMR specific written reasons why approval is being withheld, and return to the CMR.

8.5.2.2. Upon receipt of an AOC signed Acceptance and Signoff Form, the CMR may submit and the AOC shall pay an invoice for the retention attributable to the Phase that is completed, less any amounts that the AOC is permitted or required to withhold as indicated herein and as permitted under applicable statute.

8.5.3. The AOC will release Retention proceeds to the CMR only upon Completion of the Work, less any amounts that the AOC is permitted or required to withhold as indicated herein and as permitted under applicable statute.

8.5.4. After the Project is fifty percent (50%) complete, the AOC may, at its sole discretion, reduce the Retention to as low as five percent (5%). CMR acknowledges that AOC may seek CMR's surety's approval prior to reducing the Retention.

8.6 METHOD OF PAYMENT

8.6.1. The AOC will make payment in arrears after receipt of the CMR's properly completed invoice or application for payment. Invoices shall clearly indicate the following information. Invoices furnished by the CMR must be in this form.

8.6.1.1. The Contract number;

8.6.1.2. A unique invoice number;

8.6.1.3. CMR's name and address;

8.6.1.4. Taxpayer identification number (CMR's federal employer identification number);

8.6.1.5. Description of the completed Work, in accordance with the CMR's updated Master Project Schedule;

8.6.1.6. Amount of Retention to be withheld from the invoice;

8.6.1.7. Net amount to be paid for the invoice;

- 8.6.1.8.** Total amount of Retention withheld to date;
 - 8.6.1.9.** The original signature of the authorized representative of the CMR;
 - 8.6.1.10.** The contractual charges, including the appropriate progress payment, if authorized; and
 - 8.6.1.11.** Preferred remittance address, if different from the mailing address.
- 8.6.2.** CMR shall submit one (1) original and two (2) copies of invoices to the AOC's Project Manager, identified in the Agreement.
- 8.6.3.** Invoices not on printed bill heads shall be signed by the CMR.
- 8.6.4.** CMR acknowledges the complex payment approval process that the AOC must follow and agrees that the AOC will pay invoices that are approved, due and payable within forty-five (45) days after receipt of a correct, itemized invoice. In no event shall the AOC be liable for interest or late charges for any late payments.
- 8.6.5.** Payment shall be made by the AOC to the CMR at the address specified on the invoice.
- 8.7** **DISALLOWANCE.** If the CMR claims or receives payment from the AOC that is later disallowed by the AOC, the CMR shall promptly refund the disallowed amount to the AOC upon the AOC's request. At its option, the AOC may offset the amount disallowed from any payment due or that may become due to the CMR under this Agreement or any other agreement.
- 8.8** **PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK.** The granting of any payment by the AOC, or the receipt thereof by the CMR, shall in no way lessen the liability of the CMR to correct unsatisfactory work in connection with this Agreement.
- 8.9** **RELEASE OF CLAIMS.** The acceptance by the CMR of its final payment due under this Agreement shall be and shall operate as a release to the State and the AOC of all claims and all liability to the CMR for everything done or furnished in connection with this Agreement (including every act and neglect of the AOC), with the exception of any claims that are expressly identified by the CMR as outstanding as of the date of CMR's submission of CMR's final application for payment. CMR's failure to identify any such claims shall operate as a release of all claims.
- 8.10** **STOP PAYMENT NOTICES.** If a stop payment notice or a Claim based on a stop payment notice or lien of any nature should at any time be filed against the Work or any AOC property, by any entity or person that has supplied material or services for a Project, or financing for any supplied materials, CMR and CMR's payment bond surety ("Payment Bond Surety"), at CMR's and/or Payment Bond Surety's own expense, shall promptly take any and all action necessary to cause any such stop payment notice or a Claim based on a lien or a stop payment notice to be released or discharged immediately. If the CMR fails to furnish to the AOC, within thirty (30) days after demand by the AOC, satisfactory evidence that a lien or a Claim based on a stop payment notice has been so released, discharged, or secured, the AOC may discharge such indebtedness and deduct the amount required therefore, together with any and all losses, costs, damages, and attorney fees and expense incurred or suffered by the AOC from any sum payable to CMR under the Contract.
- 8.11** **ASSIGNMENT OF CONTRACT FUNDS.** CMR may assign moneys due or to become due under the Contract, through an amendment to the Contract. Any assignment of moneys earned by the CMR shall be subject to proper retention in favor of the AOC and to all deductions provided for in the Contract. All moneys withheld, whether assigned or not, are subject to being used by the AOC to the extent permitted by law, for the Completion of the Work in the event that the CMR is in default of the Contract.
- 8.12** **JOINT CHECKS.** The AOC shall have the right in its sole discretion, if necessary for the protection of the AOC, to issue joint checks made payable to the CMR and any Subcontractor or

material or equipment supplier. The joint check payees shall be responsible for the allocation and disbursement of funds included as part of any such joint payment. In no event shall any joint check payment be construed to create any contract between the AOC and a Subcontractor of any tier, any obligation from the AOC to such Subcontractor, or rights in such Subcontractor against the AOC.

8.13 OCCUPANCY BY THE AOC PRIOR TO COMPLETION OF THE WORK

- 8.13.1.** The AOC reserves the right to occupy all or any part of the Project prior to Completion of the Work, upon written notice.
- 8.13.2.** If the AOC chooses to take occupancy, the AOC and the CMR shall agree in writing to the responsibilities assigned to each of them for payments, security, maintenance, heat, utilities, damage to the Project, insurance, the period for correction of the Work, and the commencement of warranties required by the Contract. Any Dispute as to responsibilities shall be resolved pursuant to the Disputes and Claims provisions herein, with the added provision that during the Dispute process, the AOC shall have the right to occupancy of any portion of the Project that it needs or desires to use. Immediately prior to partial occupancy of the Project, the AOC and the CMR shall jointly inspect the area to be occupied or portion of the Project to be used in order to determine and record the condition of the Work.
- 8.13.3.** The AOC's occupancy does not constitute Completion of the Work or Acceptance of the Work by the AOC, or any portion of the Work, nor will it relieve the CMR of responsibility for correcting defective Work or materials found at any time before Acceptance of the Work, as set forth herein, or during the Guarantee period after the AOC's acceptance, as set forth in the Contract Documents. However, when the Project includes separate buildings, and one or more of the buildings is entirely occupied by the AOC, then upon written request by the CMR and by written consent from the AOC, the Guarantee period will commence to run from the date of the AOC's occupancy of such building or buildings.

8.14 ACCEPTANCE OF THE WORK

- 8.14.1.** When the CMR considers the Work complete, the CMR shall request a final inspection by the AOC.
 - 8.14.1.1.** The AOC will conduct a final inspection within fourteen (14) days of receipt of written request from the CMR for final inspection.
 - 8.14.1.2.** If, after the inspection, the AOC determines that the Work is complete, the AOC will determine the date of the Completion of the Work and recommend that the Director accept the Work.
 - 8.14.1.3.** Upon Acceptance of the Work by the Director:
 - 8.14.1.3.1.** Upon acceptance of the Work as being complete by the Director, the Retention held by the AOC will be released less any amounts that the AOC is permitted or required to withhold as indicated herein and as permitted under applicable statute, and
 - 8.14.1.3.2.** CMR will be relieved of the duty of maintaining and protecting the Work.
 - 8.14.1.4.** If the AOC determines that the Work is not complete, the CMR will be notified in writing of deficiencies or any incomplete work, and a punch list of such items shall be prepared ("Punch List"). After completing the Punch List items, CMR shall again initiate the procedures for final inspection as set forth above and the Work shall be considered complete when the Punch List items have been completed to the satisfaction of the AOC, however, in the event of unusual circumstances with respect to specific withholds one hundred and fifty percent (150%) of the value of

the incomplete or deficient Punch List items.

8.14.1.5. Determination by the AOC that the Work is complete or Acceptance of the Work will not bar any Claim against the CMR as permitted herein and by law.

8.14.2. CMR has thirty (30) days after receipt of the final statement to file a Claim with the AOC.

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

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

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

8.15 FINAL PAYMENT

8.15.1. After Acceptance of the Work, and upon receipt of final statement from the AOC, CMR will invoice the AOC for any sum due the CMR including Retention.

8.15.2. CMR, if requested by the AOC, shall provide the AOC unconditional lien release for CMR, all Subcontractors and Sub-subcontractor covering all labor, materials, and equipment for which a lien or stop notice could be filed when submitting CMR's final statement invoice.

8.15.3. If there are any outstanding liens or stop payment notices filed with respect to the Project, the CMR shall provide the AOC an unconditional lien release for such liens or stop payment notices, as applicable when submitting CMR's final statement invoice.

8.15.4. If the CMR owes any amount to the AOC, the final statement shall serve as an invoice to the CMR.

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

8.16 DECISIONS TO WITHHOLD PAYMENT

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

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

8.16.1.2. One hundred and twenty five percent (125%) to one hundred and fifty percent (150%) of the claim stated in any stop payment notices or other liens served upon the AOC as a result of the Contract;

8.16.1.3. Liquidated damages assessed against the CMR;

8.16.1.4. The cost to complete the Work if there exists reasonable doubt that the Work can

be completed for the unpaid balance of the GMP or by the Completion Date;

- 8.16.1.5. Damage to the AOC or other contractor(s);
 - 8.16.1.6. Unsatisfactory performance of the Work by CMR;
 - 8.16.1.7. Failure of the CMR to maintain As-Built Drawings;
 - 8.16.1.8. Erroneous estimates by the CMR of the value of the Work performed, or other false statements in an application for payment;
 - 8.16.1.9. If there is an LCP in force on this Project, the failure to provide certified payroll records acceptable to the AOC and/or the LCP for each journeyman, apprentice, worker, or other employee employed by the CMR and/or each Subcontractor in connection with the Work for the period of the application for payment;
 - 8.16.1.10. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., failure to comply with any other Labor Code requirements, and/or failure to comply with the LCP, if one is in force on this Project;
 - 8.16.1.11. Failure to properly maintain or clean up the Site;
 - 8.16.1.12. Failure to timely indemnify, defend or hold harmless the AOC;
 - 8.16.1.13. Failure to pay any royalty, license or similar fees;
 - 8.16.1.14. CMR is otherwise in breach, default or in substantial violation of any provision of the Contract;
 - 8.16.1.15. Failure of the CMR to submit on a timely basis all Closeout Documentation in a manner and form that is proper, sufficient, and reasonably acceptable to the AOC, and to not cause a delay in the Completion of the Project;
 - 8.16.1.16. Failure to perform any implementation and/or monitoring required by any SWPPP for the Project and/or the imposition of any penalties or fines imposed therefore against CMR or AOC; and/or;
 - 8.16.1.17. Improper use of the Project Contingency.
- 8.16.2. **Reallocation of Withheld Amounts.** AOC may, in its discretion, apply any withheld amount to pay outstanding claims or obligations as defined herein. In so doing, AOC shall make such payments on behalf of CMR. If any payment is so made by AOC, then that amount shall be considered a payment made pursuant to the Contract and AOC shall not be liable to CMR for any payment made in good faith. These payments may be made without prior judicial determination of claim or obligation. AOC will render CMR an accounting of funds disbursed on behalf of CMR.
- 8.16.3. **Payment after Cure.** When CMR cures the grounds for declining approval, payment shall be made for amounts so withheld. No interest shall be paid on any retention or amounts withheld due to the failure of the CMR to perform in accordance with the terms and conditions of the Contract Documents.

ARTICLE 9 DISPUTES AND CLAIMS

- 9.1 **PERFORMANCE DURING DISPUTE AND CLAIM RESOLUTION PROCESS** CMR shall diligently proceed with Work on the Project at the same time that Disputes and Claims are addressed under this Article. It is the intent of AOC to resolve Disputes with the CMR as close to the events giving rise to the Disputes as possible, and to avoid stale or late Claims and the late documenting of Claims. CMR's failure to diligently proceed in accordance with the AOC's instructions will be

considered a material breach of this Agreement.

- 9.2 WAIVER** If CMR fails to timely submit the written notices required by the provisions in this Disputes and Claims section, CMR hereby waives and releases its rights regarding further review of its Dispute or Claim, unless CMR and AOC mutually agree in writing to other time limits.
- 9.3 INTENTION** The Dispute and Claims Resolution Process required herein are intended to provide a concise mechanism for resolving Disputes as they arise during the Project, while requiring accurate documentation related to contested issues as to those Disputes that are not contemporaneously resolved.
- 9.4 EXCLUSIVE REMEDY** Compliance with the notice and claim submission procedures described in this Disputes and Claims section is an express condition precedent to the right to commence litigation, file a claim under the California Government Code, or commence any other legal action. CMR cannot bring assert or bring any Claim in any Government Code claim or subsequent legal action until that Claim has gone through the Dispute and Claims Resolution Process. The AOC hereby exercises the power conferred upon it by Government Code Sections 930.2 and 930.4 to augment claims presentation procedures and create its own Dispute and Claims Resolution Process as an exclusive remedy as indicated in this Disputes and Claims section.
- 9.5 OTHER PROVISIONS** If portions of the Contract, other than this Disputes and Claims section establish a specific process regarding a specific subject, then that process shall govern and control the resolutions of any disagreements. Otherwise, the provisions in this Disputes and Claims section shall control the resolution of all Disputes and Claims.
- 9.6 SUBCONTRACTORS** CMR is responsible for providing this Disputes and Claims section to its Subcontractors and for ensuring that all Subcontractors or others who may assert Claims by and through Subcontractors and/or the CMR are informed of the Dispute and Claims resolution process in this Disputes and Claims section. No Claim submitted by any party that fails to follow the provisions of this Disputes and Claims section will be considered. CMR shall indemnify, keep and hold harmless the AOC and its consultants, against all suits, claims, damages, losses, and expenses, including but not limited to attorney's fees, caused by, arising out of, resulting from, or incidental to, the failure to provide this Disputes and Claims section to its Subcontractors or others who may assert Claims by and through Subcontractors and/or the CMR.

9.7 DISPUTE AND CLAIM RESOLUTION PROCESS

- 9.7.1.** A "Dispute" is a request, demand or assertion by CMR as defined in the Definitions section herein.
- 9.7.2.** A "Claim" is a Dispute that remains unresolved as defined in the Definitions section herein.
- 9.7.3.** Notwithstanding any provision herein, the AOC is **not** granting to any Subcontractor or Sub-subcontractor any contractual, equitable, or other right that does not otherwise exist.

9.7.4. Dispute Resolution Process

9.7.4.1. Identifying, Presenting and Documenting a Dispute

9.7.4.1.1. Every Dispute shall be stated with specificity in writing and signed by CMR under penalty of perjury and presented to the AOC within thirty (30) calendar days of the incidents giving rise to the Dispute. The writing shall:

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

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

adjustments; and

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

9.7.4.1.2. The writing shall be accompanied by all documents substantiating CMR's position regarding the Dispute. A Dispute that asserts an effect on any schedule milestones and/or Contract Time shall include all pertinent scheduling data demonstrating the impact(s) on the critical path(s), milestone(s) and/or Contract Time.

9.7.4.1.3. Architect's Initial Decision. The AOC's Architect shall issue a written decision regarding the Dispute to the CMR within ten (10) calendar days of receipt of the written Dispute from the CMR.

9.7.4.2. Meet and Confer

9.7.4.2.1. Where There Is No Agreement: If there is no agreement between CMR and the Architect on a CMR's Dispute, including cases where a CMR's Proposed Change Order ("PCO") seeks money, time, and/or any other relief, then within ten (10) calendar days of the date stated on the AOC's written decision of CMR's Dispute or request for Proposed Change Order, CMR shall give written notice and demand a review as indicated below, if CMR ever intends to seek any relief in connection with the AOC's rejection.

9.7.4.2.2. Where There Is Partial Agreement: If CMR and the Architect partially agree on a CMR's Dispute but do not reach complete agreement, then the Architect shall issue a written decision or prepare a Change Order, if applicable, for the issues and/or amounts agreed to. CMR shall give written notice and demand for review as indicated below, if CMR ever intends to seek relief in connection with the portion of the Dispute rejected by the Architect.

9.7.4.3. CMR's Demand for Review of Dispute

9.7.4.3.1. CMR shall give in writing a demand for review to the AOC Project Manager with copy to the Architect, within ten (10) calendar days of receiving the Architect's rejection of CMR's Dispute. The written demand for review shall include copies of all documentation the CMR intends to rely upon in substantiating CMR's position regarding the Dispute, including any supplementary documentation the CMR deems appropriate for the AOC's consideration.

9.7.4.3.1.1. AOC Project Manager's Written Decision. The AOC Project Manager will review the Dispute and issue a written decision to CMR and Architect within thirty (30) calendar days from the date the demand for review and supporting documentation are received. The AOC Project Manager has the option to meet with CMR, or with CMR and any other party, before issuing a decision.

9.7.4.3.1.2. If no decision is issued within thirty (30) days after the demand for review, the AOC will be deemed to have rejected CMR's Dispute in its entirety, and CMR shall proceed with the Claim Resolution Process below.

9.7.4.3.1.3. If the AOC Project Manager's decision completely resolves the Dispute, the AOC will prepare and process a Change Order, if applicable, or proceed accordingly.

9.7.4.3.1.4. If the AOC Project Manager rejects the Dispute in whole or in part or does not issue a timely written response, and if CMR ever intends to seek relief regarding the unresolved issues of the Dispute, then CMR shall proceed with the Claim Resolution Process below.

9.7.4.3.1.5. CMR's costs incurred in seeking relief under this Disputes and Claims section are not recoverable from AOC.

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

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

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

9.7.5.2.1. General Introduction

9.7.5.2.2. General Background Discussion

9.7.5.2.3. Index of Issues (listed numerically)

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

9.7.5.2.4.1. Background

9.7.5.2.4.2. Chronology

9.7.5.2.4.3. CMR's position including all reason(s) for AOC's potential liability

9.7.5.2.4.4. Supporting documentation of merit or entitlement

9.7.5.2.4.5. Supporting documentation of damages

9.7.5.2.5. All critical path method schedules, both as-planned, monthly updates, schedule revisions, and as-build along with the computer disks of all schedules related to the Claim.

9.7.5.2.6. Productivity exhibits (if appropriate)

9.7.5.2.7. Summary of Damages for each issue

9.7.5.3. Supporting documentation of merit for each issue shall be cited by reference, photocopies, or explanation. Supporting documentation may include, but shall not be limited to the Contract Documents; correspondence; conference notes; shop drawings and submittals; shop drawing logs; survey books; inspection reports; delivery schedules; test reports; daily reports; subcontracts; fragmentary CPM schedules or time impact analyses; photographs; technical reports; requests for information; field instructions; and all other related records necessary to support the CMR's Claim.

- 9.7.5.4. Supporting documentation of damages for each issue shall be cited, photocopied, or explained. Supporting documentation may include, but shall not be limited to, any or all documents related to the preparation and submission of the proposal; certified, detailed labor records, including labor distribution reports; material and equipment procurement records; construction equipment ownership costs records or rental records; job cost reports; Subcontractor or vendor files and cost records; service cost records; purchase orders; invoices; Project as-planned and as-built cost records; general ledger records; variance reports; accounting adjustment records; and any other accounting materials necessary to support the CMR's Claim.
- 9.7.5.5. Each copy of the Claim documentation shall be certified by a responsible officer of the CMR in accordance with the requirements of the Contract Documents.
- 9.7.5.6. **AOC's Written Decision.** An AOC representative that is a supervisor of the AOC's Project Manager will render a written decision to the CMR relative to the Claim. The AOC's written decision shall be final and binding on the party(ies) but subject to mediation.
- 9.7.5.7. The AOC may withhold from a progress payment and/or the final payment an amount not to exceed 150 percent of the disputed amount. The AOC may, but is not obligated to, notify the Surety and request the Surety's assistance in resolving the controversy.
- 9.7.5.8. CMR shall include in its Claim documents all issue items and information that CMR contends are part of its Claim. Issues not included in the Claim documents shall not be considered.
- 9.7.5.9. **Mediation.** Within thirty (30) days after the AOC renders its written decision, the CMR may request that the parties submit the Dispute to mediation. Absent a request for mediation, the AOC's written decision is final and binding on the parties.
- 9.7.5.10. **Litigation.** If, after a mediation as indicated above, the parties have not resolved the Dispute, the receiving party's decision made pursuant to mediation will be conclusive and binding regarding the Dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later. In the event of litigation of a Dispute arising from or related to this Contract, the prevailing party shall be entitled to recover reasonable attorney fees and costs.
- 9.7.6. The AOC shall be entitled to remedy any false claims, as defined in California Government Code section 12650 *et seq.*, made to the AOC by the CMR or any Subcontractor under the standards set forth in Government Code section 12650 *et seq.* Any CMR or Subcontractor who submits a false claim shall be liable to the AOC for three times the amount of damages that the AOC sustains because of the false claim. A CMR or Subcontractor who submits a false claim shall also be liable to the AOC for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$10,000 for each false claim.
- 9.8. **DOCUMENTATION OF RESOLUTION.** If a Claim is resolved, the AOC shall determine if that resolution shall be documented in an Agreement and Release of Any and All Claims form or other document, as appropriate.
- 9.9. **NON-APPLICABILITY OF DISPUTE & CLAIM RESOLUTION PROCESS** The procedures and provisions in this Disputes and Claims section shall not apply to;
 - 9.9.1. AOC's determination of what Work is or will be constructed, or whether the Work complies with the Contract Documents for purposes of accepting the Work;

- 9.9.2. AOC's rights and obligations, such as, but without limitation, the revocation of pre-qualified or qualified status, barring a contractor from AOC contracts, the imposition of penalties or forfeitures prescribed by statute or regulation;
- 9.9.3. Personal injury, wrongful death or property damage claims;
- 9.9.4. Latent defect or breach of warranty or guarantee to repair;
- 9.9.5. Stop Payment notices;
- 9.9.6. Any other AOC rights as set forth herein; and
- 9.9.7. Disputes arising out of or pertaining to an LCP (if applicable).

9.10 AUDIT AND ACCESS TO RECORDS

- 9.10.1. CMR shall maintain all books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract, in accordance with generally accepted accounting principles and practices consistently applied. CMR shall also maintain all financial information and data used by the CMR in the preparation or support of any cost submission, including the CMR's original proposal required for this Contract, or any Change Order, Claim, or other request for equitable adjustment, and a copy of the cost summary or information submitted to the AOC.
- 9.10.2. The AOC's Project Manager shall have access upon twenty-four (24) hours advance written notice, at all times during normal business hours, to all such books, records, documents, financial information, and all other evidence for the purpose of inspection, audit, and copying. CMR shall, at no cost to the AOC, provide proper facilities for such access, inspection and copying purposes.
- 9.10.3. CMR agrees to make the audit and record provisions of this subsection applicable to this Contract, and all Change Orders, Claims, or other requests for Equitable Adjustment affecting the Contract Time or GMP. CMR agrees to include the audit and record provisions of this subsection in all subcontracts and sub-subcontracts or purchase orders, at any tier, and make the audit and record provisions of this subsection applicable to all subcontracts, at any tier, in excess of \$10,000, and to make the audit and record provisions of this subsection applicable to all Change Orders, Claims, and other requests for equitable adjustment related to Project performance.
- 9.10.4. Audits conducted under the audit and record provisions of this subsection shall be in accordance with general accepted auditing standards and established procedures and guidelines of the reviewing or audit agency.
- 9.10.5. CMR agrees to the disclosure of all information and reports resulting from access to records under the audit and record provisions of this subsection, to the AOC, and other affected agencies.
- 9.10.6. Records under the audit and record provisions of this subsection shall be maintained and made available during the performance of the Work under this Contract until three (3) years past final payment, and until final settlement of all Disputes, Claims, or litigation, whichever occurs later. In addition, those records which relate to any portion of this Contract, to any Change Order, to any Dispute, to any litigation, to the settlement of any Claim arising out of such performance, or to the cost or items to which an audit exception has been taken, shall be maintained and made available until final payment or final resolution of such Dispute, litigation, Claim, or exception, whichever occurs later.
- 9.10.7. The right of access within the audit and record provisions of this subsection applies to all financial records pertaining to this Contract and all Change Orders and Claims. In addition, this

right of access applies to all records pertaining to all contracts, Change Orders, and Contract Amendments:

- 9.10.7.1.** To the extent the records pertain directly to Contract performance;
- 9.10.7.2.** If there is any indication that fraud, gross abuse, or corrupt practices may be involved;
- 9.10.7.3.** If the Contract is terminated for default or convenience.
- 9.10.8.** Access to records is not limited to the required retention periods. The AOC shall have access to records at any reasonable time for as long as the records are maintained.
- 9.10.9.** Further, the CMR agrees to include a similar right of the AOC to audit records and interview staff in any subcontract related to performance of this Contract, in regards to the Disabled Veterans Business Enterprise (DVBE) Program.
- 9.10.10.** CMR shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles (GAAP).

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

10.1 SAFETY OF PERSONS AND PROPERTY

- 10.1.1.** CMR shall initiate, maintain and supervise all safety precautions and programs in connection with the performance of the Work, and shall make all employees engaged in the performance of the Work aware of all Project safety, fire, and health requirements and regulations including the appropriate use of personal protective equipment.
- 10.1.2.** CMR shall prior to the start of construction, submit to the AOC a written plan for Project site safety that is compliant with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety and protection of persons and property from damage, injury or loss, as well as the guidance found in the OCIP Safety Manual, and that will include:
 - 10.1.2.1.** CMR's program to require its Subcontractors, and their Sub-subcontractors to comply with the Project site safety plan and the OCIP Safety Manual;
 - 10.1.2.2.** CMR's storm water pollution prevention plan;
 - 10.1.2.3.** CMR's water event and mold prevention plan;
 - 10.1.2.4.** CMR's air and dust management plan; and
 - 10.1.2.5.** If applicable, CMR's blasting and use of explosives plan.
- 10.1.3.** CMR shall as part of its written plan for Project site safety plan appoint a dedicated member of the CMR's organization who by possession of a recognized college degree, certificate or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated the ability to solve or resolve problems related to the safety of the work and the Project, and when required is properly licensed in accordance with federal, state or local laws and regulations. The designated safety representative must be full time worker assigned solely to the Project site.
- 10.1.4. Prevention.** CMR shall take precautions for safety and provide protection to prevent damage, injury, or loss to:
 - 10.1.4.1.** Employees performing work at the Project Site and other persons who may be affected thereby;
 - 10.1.4.2.** The Work and materials and equipment to be incorporated therein, whether in storage on or off the Project site, under care, custody or control of the CMR or the CMR's Subcontractors or Sub-subcontractors; and

- 10.1.4.3.** Other property at the Project Site, or adjacent thereto, including, but not limited to, trees, shrubs, lawns, walks, pavements, stairways, passageways, roadways, structures, equipment, and utilities, not designated for removal, relocation, renovation, restoration, reconstruction, or replacement during the course of the completion of the Work or except as otherwise noted or specified.
- 10.1.5.** CMR shall at all times conduct the construction of the Work to minimize inconvenience to the general public and to ensure the protection of persons and business adjacent to the Project site so as to minimize interference with their daily lives and operations.
- 10.1.6.** If required by the local jurisdiction having authority, or by safe work practice, the CMR shall hire appropriate law enforcement personnel to control public vehicle traffic during periods of deliveries, construction vehicles leaving or entering the Project Site, and during periods of off loading on public roads, streets or through fares.
- 10.1.7.** CMR shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations, and notifying the AOC and other owners and users of adjacent sites and utilities of any unsafe condition resulting from the Work.
- 10.1.8.** CMR shall exercise appropriate care during the construction of the Work to prevent and eliminate excessive dust, silt, airborne particulates including paint overspray, and other nuisances related to the Work, from affecting workers providing work at the Project Site, or persons, property, and business adjacent to the Site.
- 10.1.9.** The CMR shall exercise appropriate care during the construction of the Work to avoid water intrusion events and subsequent mold growth.
- 10.1.10.** CMR shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use of explosives or other hazardous materials or equipment necessary for execution of Work.
- 10.1.11.** CMR shall remedy damage and loss to property referred to in the Subparagraphs herein above caused in whole or in part by the CMR, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the CMR is responsible under the Subparagraphs herein above. The foregoing obligations of the CMR are in addition to the CMR's obligations under the Contract.
- 10.1.12.** CMR shall not load, or permit its Subcontractor or their Sub-subcontractors to load, any part of the Work so as to endanger its safety.
- 10.1.13.** When conditions of the Work, in the judgment of the AOC, present unreasonable risk of injury or death to persons or property damage, the AOC, may direct the CMR, at the CMR's sole expense, to close down the Work and not commence work again until all dangerous conditions are eliminated.
- 10.1.14.** CMR, at the CMR's own cost, shall rebuild, repair, restore and make good any and all damages to any portion of the Work affected by such causes before its acceptance.

10.2 EMERGENCIES AND REPORTING OF ACCIDENTS OR CLAIMS

- 10.2.1.** In an emergency affecting safety of persons or property, the CMR shall act, at the CMR's sole discretion, to prevent any threatened damage, injury or loss. Additional compensation or extension of Contract Time claimed by the CMR because of an emergency will be reviewed as provided in herein.
- 10.2.2.** CMR will report to the AOC in writing, within twenty-four (24) hours of an occurrence, using forms provided by the AOC in its OCIP Manual, all accidents, injuries, property damage, or any significant event that may have resulted in injury or property damage. The written reports will

be sent to the AOC Project Manager and the AOC Senior Facilities Risk Manager, both of whom are identified in the OCIP Manual under the section titled "Accident Reporting".

- 10.2.3.** CMR shall cooperate with the AOC, and the OCIP insurers, and shall require its Subcontractors, and their Sub-subcontractors to cooperate with the AOC and the OCIP insurers, in the reporting, investigation, and resolution of claims for property damage, personal injury, or industrial injury that may arise from the construction of the Project.

10.3 PROHIBITED SUBSTANCE OR MATERIALS

- 10.3.1.** CMR is prohibited from, and will prohibit its Subcontractors, and their Sub-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").
- 10.3.2.** If the CMR encounters what would reasonably be believed to be Hazardous Materials the CMR will immediately inform the AOC and will stop work in the affected area until the possible Hazardous Materials have been identified, and if required removed or rendered harmless.

10.4 DRUG-FREE WORKPLACE

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

- 10.4.1.1.** Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- 10.4.1.2.** Establish a Drug-Free Awareness Program to inform employees about:
 - 10.4.1.2.1.** The dangers of drug abuse in the workplace;
 - 10.4.1.2.2.** The person's or company's policy of maintaining a drug-free workplace;
 - 10.4.1.2.3.** Any available counseling, rehabilitation, and employee assistance programs; and
 - 10.4.1.2.4.** Penalties that may be imposed upon employees for drug abuse violations.
- 10.4.1.3.** Provide that every employee who works under the Contract will:
 - 10.4.1.3.1.** Receive a copy of the company's drug-free workplace policy statement; and
 - 10.4.1.3.2.** Agree to abide by the terms of the company's statement as a condition of employment.
- 10.4.1.4.** Provide for random pre-assignment testing, reasonable cause testing as necessary, and post accident testing as necessary of workers performing work at the Project Site.
- 10.4.1.5.** In addition to the other indemnity requirements of the Contract, CMR shall indemnify and hold harmless the State of California, the Judicial Council of California, and the Administrative Office of the Courts, the Superior Court of California 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 CMR's failure to enforce and maintain a drug free workplace.

ARTICLE 11 INSURANCE AND BONDS

11.1 CMR'S INSURANCE

11.1.1. General Requirements. General Requirements for CMR's insurance that is not provided by the OCIP:

11.1.1.1. CMR shall maintain the required insurance for its operations not insured under the OCIP with an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide, and are authorized to do business in the State of California.

11.1.1.2. For all insurance policies required by this Article, the CMR shall declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance.

11.1.1.3. If self-insured, the CMR agrees to administer its self-insurance program in a commercially reasonable manner so as to ensure the availability of funds to cover losses required to be insured against by CMR under the terms of this Article.

11.1.1.4. CMR, prior to commencement of the Construction Phase of the Project, shall provide the AOC with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the AOC, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California associated with the Project, and their respective elected and appointed officials, judges, officers, and employees have been added as additional insureds on the insurance policy being referenced.

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

**(Name, Contract Specialist)
(Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94012-3688)**

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

11.1.1.7. If the insurance expires during the term of the Construction Phase of the Project, the CMR shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsements, or it may be declared in breach of Contract. The AOC reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the AOC. CMR must provide renewal insurance certificates and signed policy endorsements to the AOC at least ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements.

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

Contract.

- 11.1.1.9.** The insurance required by the “Insurance Requirements” herein below, as well as any excess liability or umbrella liability insurance that CMR maintains in compliance with the terms of this “General Requirements” subparagraph shall be endorsed to include the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California associated with the Project, and their respective elected and appointed officials, judges, officers, and employees as additional insureds, but only with respect to liability assumed by CMR under the terms of this Contract or liability arising out of the performance of the Services.
 - 11.1.1.10.** CMR, and any insurer providing insurance required under the terms of this “General Requirements” subparagraph shall waive any right of recovery or subrogation it may have against the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California associated with the Project, and their respective elected and appointed officials, judges, officers, and employees for direct physical loss or damage to the Work, or for any liability arising out of the Services performed by CMR under this Contract.
 - 11.1.1.11.** All insurance policies required under this “General Requirements” subparagraph shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days prior written notice to the AOC.
 - 11.1.1.12.** CMR shall be responsible for and may not recover from the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California associated with the Project any deductible or self-insured retention that is connected to the insurance required under this “General Requirements” subparagraph.
 - 11.1.1.13.** The insurance required under this “General Requirements” subparagraph shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California, the Judicial Council of California, the Administrative Office of the Courts, or the Superior Court of California associated with the Project with the exception of coverage provided under the OCIP, which shall be primary to coverage provided by the CMR where applicable.
 - 11.1.1.14.** The AOC reserves the right to request certified copies of any of the insurance policies required under this “General Requirements” subparagraph, which shall be provided by the CMR within ten (10) working days following the request by the AOC.
 - 11.1.1.15.** The cost of all insurance required by this “General Requirements” subparagraph is the sole cost of the CMR and is a component part of the CMR’s GMP.
 - 11.1.1.16.** CMR shall require insurance from Subcontractors and their Sub-subcontractors defined as “Excluded Parties” herein below with substantially the same terms and conditions as required of the CMR under “Insurance Requirements” herein below and with limits of liability, which in the opinion of the CMR are sufficient to protect the interests of the CMR, State of California, the Judicial Council of California, the Administrative Office of the Courts, and the Superior Court of California associated with the Project.
- 11.1.2. Pre-Construction Phase Insurance Requirements:** From the Effective Date of the Agreement until the beginning of the Construction Phase, CMR shall maintain at a minimum and in full force and effect, the following insurance:
- 11.1.2.1. Commercial General Liability:** Commercial General Liability insurance (and if

required excess liability or umbrella liability insurance) written on an occurrence form with limits of not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury liability assumed under an insured contract, and professional services provided in connection with the Preliminary Plan Phase and Working Drawing Phase Services. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the insurance policy limit of liability.

11.1.2.2. Commercial Automobile Liability: Automobile Liability insurance with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of the operation of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the performance of the Services.

11.1.2.3. Workers' Compensation: Statutory workers' compensation insurance providing coverage for all its employees who will be engaged in the performance of the Services, including special coverage extensions where applicable, and employer's liability insurance with limits of liability of not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.

11.1.2.4. Professional Liability: If Professional Liability insurance is not within the coverage provided by the CMR's Commercial General Liability policy, CMR shall provide separate Professional Liability insurance covering the CMR's acts, errors or omissions committed, or alleged to have been committed, which arise out of providing or failing to provide the Services required under the Agreement. The policy shall provide limits of liability of not less than \$2,000,000 per claim or per occurrence and \$2,000,000 annual aggregate. If the policy is written on a "claims made" form the CMR shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage period is available, for not less than three (3) years from the date of the completion of the Work, The retroactive date or the "prior acts date inclusion date" must be not later than the initial effective date of this Agreement.

11.1.3. Construction Phase Insurance Requirements: From the beginning of the Construction Phase, the CMR shall maintain at a minimum and in full force and effect, the following insurance:

11.1.3.1. Commercial General Liability for off Project site operations: Commercial General Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) for off Project site operations written on an occurrence form with limits of not less than \$5,000,000 per occurrence and a \$5,000,000 per location annual aggregate limit of liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract, This insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought subject to the insurance policy limit of liability. The completed operations liability shall extend for the period of time for which the CMR is legally liable for any actual or alleged defects in its off Project site work.

11.1.3.2. Commercial Automobile Liability: Automobile liability insurance with limits of not less than \$2,000,000 per accident. Such insurance shall cover liability arising out of the operation, use, loading or unloading of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the Work.

11.1.3.3. Workers' Compensation for off-Project site employees: Statutory workers'

compensation insurance for all of the CMR's off Project site employees who are not covered by OCIP workers compensation insurance including special coverage extensions where applicable and employer's liability insurance with limits not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.

- 11.1.3.4. **CMR's Equipment Insurance:** CMR's equipment insurance covering equipment and tools used in the performance of the Work at the project site that are not intended to become a permanent part of the Work.

11.2 OWNER CONTROLLED INSURANCE PROGRAM (OCIP)

- 11.2.1. General Requirements for the AOC provided Owner Controlled Insurance Program (OCIP) during the Construction Phase of the Project:

- 11.2.1.1. The AOC has elected to provide the types of insurance indicated in the Subparagraph "OCIP Insurance" herein below insuring the AOC, the CMR, Subcontractors, and Sub-subcontractors of every tier (other than Excluded Parties as defined herein), while performing Work at the Project site until final Completion of the Project.
- 11.2.1.2. The indemnified site is defined in the OCIP as the Project site designated in the Contract Documents that has been scheduled with the OCIP insurance companies, including operations necessary or incidental to the Project site that have been specifically added to the OCIP insurance program by specific agreement with the OCIP insurance companies.
- 11.2.1.3. The insurance shall be provided through an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide.
- 11.2.1.4. **Named Insured:** The State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California associated with the Project, the CMR, its Subcontractors, and their Sub-subcontractors of each and every tier.
- 11.2.1.5. **Additional Insureds:** As required by written contract.
- 11.2.1.6. **Excluded Parties:** Contract haulers or truckers (or others only making deliveries or pickups from the Project site), vendors, suppliers (who do not perform or subcontract installation work at the Project site), material dealers, manufacturing representatives, equipment rental companies who perform equipment maintenance (does not apply to equipment companies who provide operators); architects, surveyors, soil testing contractors, and their consultants; asbestos abatement or other hazardous waste removal contractors and their respective subcontractor of any tier (unless specifically enrolled in the OCIP); demolition and blasting contractors and their respective subcontractors of any tier (unless specifically enrolled in the OCIP), and others who do not perform any actual on Project site labor, and any other entity specifically determined by the AOC to be excluded, will not be covered by insurance purchased by the AOC under the OCIP.
- 11.2.1.7. **Term:** Any insurance policies provided within the OCIP shall be in force until the end of the term of this Contract or Completion of the Project, whichever comes later.
- 11.2.1.8. **Completed Operations:** The completed operations insurance provided under the commercial general liability, excess liability and contractor's pollution liability insurance provided under the OCIP Insurance shall extend for a period of ten (10) years past the Completion, termination or cancellation of the Project, but the aggregate limit of liability shall not reinstate each annual period following

Completion.

- 11.2.1.9. Waiver of Subrogation:** Each OCIP insurer shall waive any right of recovery or subrogation it may have against the Named Insureds and the Additional Insureds for direct physical loss or damage to the Work, or for any liability arising out of the services performed in the completion of the Work.
- 11.2.1.10. CMR/Subcontractor waiver:** CMR shall waive and require its insurers, its Subcontractors and their Sub-subcontractors, and their respective insurers to waive any right of recovery or subrogation each may have against the State of California, the Judicial Council of California, the Administrative Office of the Courts, the Superior Court of California associated with the Project including their respective elected and appointed officials, judges, officers, employees arising out of the services performed at the Project site in the completion of the Construction Phase of the Project.
- 11.2.1.11. Cancellation:** All required insurance policies required under OCIP Insurance shall contain a provision that coverage will not be materially changed or cancelled without ninety (90) days prior written notice to the Named Insureds.
- 11.2.1.12. Loss Sharing:** All Subcontractors and Sub-subcontractors of every tier involved in a loss that would otherwise be insured under the terms and conditions of the OCIP commercial general liability and builder's risk insurance, which arises from the performance of the Work, as reasonably determined by the CMR, shall share equally in the first \$5,000 of such loss. Such obligation (or contribution by all Subcontractors and Sub-subcontractors of every tier) shall remain uninsured and will not be covered by the OCIP commercial general liability or builder's risk insurance policies.
- 11.2.1.13. Primary and non-contributory:** Any insurance provided under OCIP Insurance shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the Named Insureds or the Additional Insureds.
- 11.2.1.14. Limits Sharing:** The limits of liability provided under the commercial general liability insurance apply collectively for all Named Insureds and Additional Insureds.
- 11.2.1.15. Insurance Credits:** CMR will require that each prospective Subcontractor and each of their Sub-subcontractors prepare their bids and proposals for work on the Project to exclude the cost for any insurance that will be provided under OCIP Insurance. At the time of their bid each Subcontractor and their Sub-subcontractors shall be required to complete a warranty statement to certify that as a condition of its contract to perform work at the Project Site, and under penalty of having its contract to perform Work at the Project site terminated that it has removed the cost of any insurance that will be provided under the OCIP from its bid and that there is no duplication in insurance coverage for which reimbursement is being sought. Upon award the warranty statement will become a component part of any contract.
- 11.2.1.16. Contract Obligations:** Any OCIP insurance provided by the AOC is not intended to, and shall not qualify, limit or waive any liabilities or obligations of CMR, its Subcontractors, or their Sub-subcontractors have assumed under this Contract, or the contract between the CMR and Subcontractor, or the Subcontractor and its Sub-subcontractors.
- 11.2.1.17. CMR Insurance:** CMR shall continue to be responsible to provide any insurance required under "Contractor's Insurance" indicated herein above that is not provided by the AOC under the OCIP.

11.2.2. OCIP Insurance: Prior to the commencement of performance of the Construction Phase the AOC shall furnish the OCIP insurance for all contractors of every tier that are enrolled in the OCIP while performing Work at the Project site until final Completion of the Project (“OCIP Insurance”):

11.2.2.1. Commercial General Liability: Commercial General Liability Insurance written on an occurrence form with separate limits as follows:

- \$2,000,000 each occurrence,
- \$2,000,000 personal and advertising injury
- \$4,000,000 general annual aggregate
- \$4,000,000 products - completed operations aggregate
- \$500,000 damages to premises rented to an insured
- \$10,000 medical payments

All limits of liability are applicable solely to the Project. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products - completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall not include exclusions for property damage resulting from explosion, collapse or underground hazard, or the consequences of inadvertent construction defects.

11.2.2.2. Excess Liability: Excess Liability Insurance provided on a form following the commercial general liability insurance insuring against bodily injury, bodily injury, property damage, personal and advertising injury liability, products - completed operations, and employers liability on an occurrence form with limits as follows:

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

11.2.2.3. Contractor’s Pollution Liability Insurance: Contractor’s pollution liability insurance (and if required Excess Liability insurance) written on an occurrence form with limits of liability of not less than \$10,000,000 per occurrence and \$10,000,000 general aggregate applicable solely to the Project for third-party claims for bodily injury and/or property damage, and for remediation costs stemming from pollution incidents resulting from the contractor’s covered operations resulting from Work at the Project site.

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

11.2.2.5. Builders Risk: Builder’s Risk Insurance with limits of liability equal to the combined value of the building under course of construction and final completed value of the Work. The insurance shall apply to physical loss or damage to the insured property, including the cost of damage to that portion of the building not under construction, and shall include coverage for flood, water damage, and earthquake and earth movement. The coverage for flood, earthquake and earth movement shall be provided with sub-limits less than the final completed value of the Work at the sole determination of the AOC.

11.2.2.5.1. Builder’s Risk Insurance shall cover Work in the course of construction at the Project site, at any temporary off-site location, and while in transit.

Included within the terms of coverage shall be all buildings, materials, supplies scaffolding, falsework, and temporary structures located at the Project site that are to be used in or incidental to the fabrication, erection, testing, or completion of the Project. The Builder's Risk Insurance shall cover the cost of removing debris, including demolition as may be made necessary by the operations of any law, ordinance or regulation.

11.2.2.5.2. Builder's Risk Insurance may exclude loss resulting from, war and related causes, terrorism resulting from nuclear, biological or chemical materials, nuclear perils, dishonest acts of employees, mysterious disappearance, and ordinary wear and tear, and earthquake and earth movement excess of a primary limit of earthquake and earth movement insurance. The insurance policy may also exclude the cost of making good faulty workmanship or materials, but shall specifically cover loss or damage arising as a consequence of faulty workmanship or materials.

11.2.2.6. Equipment Breakdown: Equipment Breakdown Insurance (which may be provided separately or as part of the Builder's Risk Insurance) with limits of liability of not less than \$5,000,000 per accident. Coverage will be provided with coverage for damage to any object, or production machine, when connected and ready for use including coverage for damage during hydrostatic, pneumatic or gas pressure tests.

11.3 PERFORMANCE BOND AND PAYMENT BOND

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

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

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

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

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

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

11.3.5. All bonds related to this Contract shall be in a form acceptable to the AOC.

11.3.6. Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the CMR shall promptly furnish a

copy of the bond(s) or permit a copy to be made.

ARTICLE 12 UNCOVERING AND CORRECTION OF WORK

12.1 UNCOVERING AND CORRECTION OF WORK

- 12.1.1.** If a portion of the Work is covered prior to the AOC's review, it shall, if requested in writing by the AOC, be uncovered for the AOC's observation and replaced at the CMR's expense without change in the Contract Time.
- 12.1.2.** CMR shall notify the AOC two (2) working days prior to covering any work.

12.2 CORRECTION OF WORK

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

- 12.3 ACCEPTANCE OF NONCONFORMING WORK.** If the AOC prefers to accept any or all of the Work that is not in accordance with requirements of the Contract Documents, the AOC may do so

instead of requiring its correction and/or removal, in which case the GMP will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment to the CMR has been made.

ARTICLE 13 MISCELLANEOUS PROVISIONS

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

the specific prior written approval of the AOC.

13.9 OWNERSHIP OF DATA

- 13.9.1.** Everything created, developed or produced in the course of the CMR's performance of the Services, including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the CMR for the AOC and are the sole property of the AOC without further employment or the payment of additional compensation to the CMR. The AOC owns all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights"). To the extent that any of the Data or the Intellectual Property Rights therein are not works for hire, the CMR hereby irrevocably assigns its entire right, title and interest in and to all such Data and the Intellectual Property Rights therein, to the AOC. At the AOC's request, the CMR will assist the AOC in the AOC's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. CMR irrevocably appoints the AOC as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the AOC deems necessary to perfect the AOC's interest and Intellectual Property Rights in the Data as set forth herein.
- 13.9.2.** The AOC shall be entitled to access copies of the Data in whatever form, including, without limitation CAD, all times during the term of the Contract. Any such Data in the possession of the CMR or in the possession of any Subcontractor upon completion or termination of the Contract shall be immediately delivered to the AOC. If any Data are lost, damaged or destroyed before final delivery to the AOC, the CMR shall replace them at its own expense and the CMR assumes all risks of loss, damage or destruction of or to such Data.

13.10 PROPRIETARY OR CONFIDENTIAL INFORMATION OF AOC

- 13.10.1.** CMR understands and agrees that, in the performance of the Services under this Contract or in contemplation thereof, the CMR may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, the AOC and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the AOC. CMR agrees that all information disclosed by the AOC to the CMR shall be held in confidence and used only in the performance of the Contract. CMR shall exercise the same standard of care to protect such information as the CMR uses to protect its own proprietary information and in any case no less than a reasonably prudent person or entity would use to protect its own proprietary data.
- 13.10.2.** It is understood, however, that the CMR may disclose the AOC's confidential information on a "need to know" basis to the CMR's employees, the CMR's Subcontractors, and the Subcontractors' employees, and as required by law. CMR shall execute written agreements with its Subcontractors that bind each Subcontractor and its employees to the confidentiality provisions set forth in this Contract.
- 13.10.3.** CMR shall acquire no right or title to the confidential information. CMR agrees not to use the confidential information for any purpose except to provide the Services. Notwithstanding the foregoing, the CMR may disclose the confidential information: (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that the CMR first gives reasonable notice of its intention to disclose in order for the AOC to seek a protective order; or (ii) to the extent necessary to enforce its rights under this Contract.
- 13.10.4.** CMR agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

13.11 LIMITATION ON PUBLICATION. CMR shall not publish or submit for publication any article,

press release, or other writing relating to the CMR's Services for the AOC without prior review and written permission by the AOC. The AOC review shall be completed within thirty (30) days of submission to the Project Manager and, if permission is denied, the AOC shall provide its reasons for denial in writing.

13.12 WRITTEN NOTICE. Written notice shall be deposited in the U.S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or, hand-delivered to the other party's authorized representative, which shall be effective on the date of service.

13.13 CONTRACTOR'S USE OF COMPUTER SOFTWARE. By execution of the Contract, the CMR certifies that it has appropriate systems and controls in place to ensure that AOC funds will not be used in the performance of the Contract for the acquisition, operation or maintenance of computer software in violation of copyright laws.

13.14 RELATIONSHIP OF PARTIES. CMR and the agents and employees of the CMR, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the State of California.

13.15 CONFLICT OF INTEREST

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

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

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

13.15.3. Conflict of Interest for Former AOC Employees. CMR certifies and shall require any Subcontractor to certify to the following: Former AOC employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period after his or her employment with AOC.

13.16 COVENANT AGAINST GRATUITIES. No gratuities, in the form of entertainment, gifts, or otherwise, were offered by the CMR or any agent, director, or representative of the CMR, to any officer, official, agent, or employee of the AOC with a view toward securing this Contract or securing favorable treatment with respect to any determinations concerning the performance of this Contract. For breach or violation of this provision, the AOC will have the right to terminate this Contract, either in whole or in part, and any loss or damage sustained by the AOC in procuring, on the open market, any items which the CMR agreed to supply, shall be borne and paid for by the CMR. The rights and remedies of the AOC provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

13.17 WAIVER. The failure of AOC in any one or more instances to insist upon strict performance of any of the terms of this Contract or to exercise any option herein conferred shall not be construed as a waiver or relinquishment to any extent of the right to assert or rely upon any such terms or option on any future occasion. No action or failure to act by the AOC or Architect shall constitute a waiver of any right or duty afforded the AOC under the Contract, nor shall any action or failure to act constitute an approval of or acquiescence in any breach hereunder, except as may be specifically agreed in writing.

13.18 PUBLIC CONTRACT CODE REFERENCES. References to the Public Contract Code are provided for Contract's convenience only and shall not imply that the Public Contract Code applies to the AOC, but rather shall be used to define the CMR's obligations under the particular contract provision in which such code section is referenced. The AOC is not subject to the Public Contract Code.

END OF DOCUMENT 00700

Exhibit I
Division 1 Documents

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Exhibit J
Technical Specifications

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Exhibit K
Design Documents

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Exhibit L
CMR AGREEMENT
DVBE PARTICIPATION FORM

Firm Name: _____
RFQ/P Project Title: _____
RFQ/P Number: _____

The AOC 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 CMR must document its DVBE compliance with the DVBE Project Goal by completing this DVBE Participation Form.

The DVBE Project Goal and the AOC’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

DVBE PARTICIPATION FORM - PART A – COMPLIANCE WITH DVBE

INCOMPLETE DOCUMENTATION MAY RESULT IN DISQUALIFICATION FROM FURTHER PARTICIPATION IN SELECTION PROCESS FOR THIS RFQ/P

FIRM

Company Name: _____

Nature of Work: _____ Tier: _____

Claimed Value: DVBE \$ _____
 Percentage of Total Contract Amount: DVBE _____%

SUBCONTRACTORS/SUB-SUBCONTRACTORS/PROPOSERS/SUPPLIERS

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

Percentage of Total Contract Amount: DVBE _____%

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

Percentage of Total Contract Amount DVBE _____%

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

Percentage of Total Contract Amount DVBE _____%

GRAND TOTAL: DVBE _____%

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

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

DVBE PARTICIPATION FORM - PART B – CERTIFICATION

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

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

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

End of DVBE Participation Form

**Attachment 2
to
RFQ/P for CM-at-Risk Firm**

Form for Submission of Questions

Your Organization's Name			
#	RFQ Reference	Question	Answers
1			
2			
3			
4			
5			
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25			

Attachment 3
to
RFQ/P for CM-at-Risk Firm

Technical Qualifications Questionnaire

1. **REQUIRED QUALIFICATION INFORMATION:** The Administrative Office of the Courts, Judicial Branch Capital Program Office requires prospective contractors for the Project to answer all the questions contained in this standard form of questionnaire.
2. **AOC QUALIFICATION PROCEDURES:** Firm must complete this form and submit to the AOC as part of its Proposal.

The answers to the questions on the standard form of questionnaire shall reflect Firm's experience in performing similar projects. The document, when completed, shall be verified under oath by Firm.

Joint Venture: If two or more contractors wish to propose on the Project as a joint venture:

- a. All firms involved must submit separate questionnaires in the Technical Proposal.
 - b. The firms must also submit an Affidavit of Joint Venture.
 - c. The Joint Venture must have the required license in the name of the Joint Venture at the time of award.
3. **PERIOD OF QUALIFICATION:** This Technical Qualifications Questionnaire is valid only for this RFQ/P, and must be resubmitted for other projects.
 4. **AFFIDAVIT:** The affidavit on page 6 must be completely executed.

INSTRUCTIONS FOR COMPLETION:

1. **Name of Firm:** Use same name as licensed in California.
Contact Person: Name of person who completed the prequalification submittal.
2. **Address:** Use address appropriate for contracting purposes. If Firm contracts from more than one office in California, then attach the additional address (es).
3. **State of organization and date established:** Use appropriate information.
4. **Types of Licenses:** Include all valid California licenses and certifications.
5. **Provide name of bonding company, contact, telephone number, the bonding company rating, and the bonding capacity per project and overall or aggregate. Also indicate whether or not claims have ever been made against the surety, and explain these claims.**
6. **Officers or Principals of Firm:** List names of officers of the Firm. One of these persons must sign the affidavit on page 6.
- 7-8. **Suspension from Project:** If applicable, include brief explanation if a principal of your Firm has had license suspended, or if your Firm has ever been suspended from a project.
9. **Denied Prequalification or Disqualification from Bidding:** If applicable, include a brief explanation if your firm has ever been denied prequalification or was disqualified from bidding on a project.
10. **Claims and Litigation on Public Works:** If applicable, include a brief explanation and results of each claim and/or litigation your Firm, joint venture, Partnership, association or any combination thereof, brought against a project owner in the past five (5) years.

11. Claims and Litigation against firm: If applicable, include a brief explanation and results of each claim and/or litigation filed against your Firm, joint venture, Partnership, association or any combination thereof, on a project in the past five (5) years.
12. Experience record of staff: Indicate name, position and number of years' experience. Additional sheets/resumes may be attached.
13. Construction and cost of construction completed within the past five (5) years by Firm for all individual contracts (both public works and private sector) over \$1,000,000 (10 maximum); additional pages may be attached. Type, size, and reference are an important part of evaluation. For the references, include the contact person (must be current), and current phone and fax numbers. Highlight the largest individual project completed in the past five (5) years.
14. Safety Qualifications: Provide the Average Lost Workday Incident Rates and Average Recordable Incident Rates in the spaces provided, using data from the past three (3) years. Also provide the most recent Experience Modification Rate in the space provided. The minimum acceptable standard for these indices, as stated on page 5, must be met in order for a Firm to be judged to be qualified. Additionally, the Firm is required to submit copies of OSHA form no. 300, Log of Work-Related Injuries and Illnesses, and OSHA form no. 300A, Annual Summary of Work-Related Injuries and Illnesses, for the past three (3) years and to provide Firm's worker's compensation insurance carrier information under the provisions of this section. See page 5 for further information.

CONTRACTOR'S STATEMENT OF EXPERIENCE

1. Name of firm: _____
Contact Person: _____
2. Mailing address of firm: _____
Physical address of firm: _____
Telephone No. (area code) (_____) _____ Fax No. (area code) (_____) _____
Company Web Site URL: _____
3. State of organization: _____ Date established: _____
4. California state license no.: _____ Types of valid California contracting licenses: _____
5. Bonding company: _____
Contact: _____ Telephone No. (_____) _____
Current capacity: _____ Bonding Co. Rating: _____
Have claims ever been made against surety? _____ If Yes, attach statement of explanation.
6. Officers or Principals of firm: _____

7. Have Principals ever had licenses *suspended*? If Yes, attach explanation. _____
8. Has firm ever been *suspended* from a project? If Yes, attach explanation. _____
9. Has firm ever been denied prequalification or disqualified from bidding public works? ___ If Yes, attach explanation.
10. In the past five years, has your firm filed a claim on a public works project? Yes _____ No _____
Litigation? Yes _____ No _____ If Yes, attach a brief explanation and results of each claim and/or litigation.
11. In the past five years, has a claim been filed against your firm on a project? Yes _____
_____ No _____
Litigation? Yes _____ No _____ If Yes, attach a brief explanation and results of each claim and/or litigation.
12. Experience record of staff proposed for this project (include name, position, projects and roles therein, and years experience): _____

13. Provide the following information for all public works and private sector construction projects (10 maximum) completed within the past five (5) years for individual contracts over \$1,000,000, with emphasis on projects of similar scope and complexity to this project, and proposed staff's roles in those projects. Names and references must be current and verifiable. Attach additional sheets that contain all the information. List projects in chronological order, most recently completed project first. For each, list: Name of Project and Location, Owner of Project, Total Value of Construction (include contract award amount and total change orders), Completion Date, Owner Reference (include name, current phone no., and fax no.), project description.
 - List at least two (2) projects completed by Firm in the last five (5) years for which Firm provided pre-construction services and then constructed the project. For these projects, demonstrate experience in value engineering, construction estimating, constructability review during the design phase, and delineating subcontractor scopes of work with no overlap or gaps between bid packages.
 - List at least two (2) projects that demonstrate the Firm's key individuals' ability to act as a CMR with a GMP: soliciting bids, contracting with and managing multiple subcontractors consistent

with the type, size and complexity of this Project. Include samples of pre-bid and post-construction schedules prepared by Firm for those projects.

14. **SAFETY QUALIFICATION:** Provide the Average Lost Workday Incident Rates, Average Recordable Incident Rates and most recent Experience Modification Rate in the spaces provided on this page. In addition, the prospective contractor is required to submit complete copies of OSHA form no. 300 and form no. 300A under item 5 of this section.

The Average Lost Workday Incident Rate (LWIR) and the Average Recordable Incident Rate (RIR) are requested for evaluation of the safety history relating to the Firm’s construction operations only. Home office staff labor hours and the corresponding injury and illness figures for home office staff shall not be included in the calculation of these rates. Similar information for parent companies, subsidiaries, or other company divisions not directly engaging in construction activities shall not be considered in these rate calculations. All data used in the calculations shall be specific to the contracting entity listed on page 4; inclusion of data from major subcontractors or other sub-tier contractors is not acceptable.

The Experience Modification Rate (EMR) is established by the Contractor’s worker’s compensation insurance carrier, and is based on the Contractor’s loss history. Firms are to provide their Intrastate EMR, which is used for evaluation of contractors in the State of California. Provide all requested information in the spaces provided.

Important Note: Small firms that have less than ten employees and report an average Total Employee Hours Worked that is less than 20,000 hours, are not required to report recordable incidents and lost workday incidents for their firms herein. Instead, these firms shall submit their most current year of Intrastate EMR or a copy of their worker’s compensation insurance carrier’s documentation of their most current year of Intrastate EMR.

1. **Average Lost Workday Incident Rate (LWIR).** Calculate Firm’s LWIR for the past three (3) complete years. The lost workday information is listed on your OSHA forms no. 300 and 300A and is available from your worker’s comp. insurance carrier.

$$\text{LWIR} = \frac{\text{Total number of lost workday incidents} \times 200,000}{\text{Total employee hours worked}}$$

Year	Lost Workday Incidents	Total Employee Hours Worked	Lost Workday Incident Rate
1-20__			
2-20__			
3-20__			
Total			

2. **Average Recordable Incident Rate (RIR).** Calculate Firm’s RIR for the past three (3) complete years. The Incident Rate information is listed on your OSHA forms no. 300 and 300A and is available from Firm’s worker’s comp. insurance carrier.

$$\text{RIR} = \frac{\text{Total number of recordable incidents} \times 200,000}{\text{Total employee hours worked}}$$

Year	Recordable Incidents	Total Employee Hours Worked	Recordable Incident Rate
1-20__			
2-20__			
3-20__			
Total			

3. **Experience Modification Rate (EMR).**

Enter Firm’s EMR for the most recent year (this information is provided by Firm’s worker’s compensation insurance carrier).

Year	EMR
20____	

Is Your Firm Self-Insured in California?	
<input type="checkbox"/> No	
<input type="checkbox"/> Yes	Self-Insured No. _____

*Attach certification.

4. **Name of Worker's Comp. Insurance Carrier(s):** _____

Address: _____

Agent Name: _____ Telephone No.: _____

5. In addition to the information provided above, submit copies of Firm's OSHA No. 300, Log of Work-Related Injuries and Illnesses, and OSHA form no. 300A, Annual Summary of Work-Related Injuries and Illnesses, covering the past three (3) years.

AFFIDAVIT

The submitter of the foregoing statements contained on this Technical Qualifications Questionnaire has read the same, and it is true to the best of the submitter’s knowledge. Any reference named therein is hereby authorized to supply the AOC with any information necessary to verify the statements.

By signing below, Firm certifies and declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

SIGNATURE OF AN INDIVIDUAL

Executed this _____ day of _____, _____ in the
(Day) (Month) (Year)

City of _____, County of _____,
State of _____

Signature of Applicant _____
an individual, doing business as _____

SIGNATURE OF A PARTNER

Executed this _____ day of _____, _____ in the
(Day) (Month) (Year)

City of _____, County of _____,
State of _____

Signature of Applicant _____
a partner of _____
(Name of Firm)

SIGNATURE OF AN OFFICER OF A CORPORATION

Executed this _____ day of _____, _____ in the
(Day) (Month) (Year)

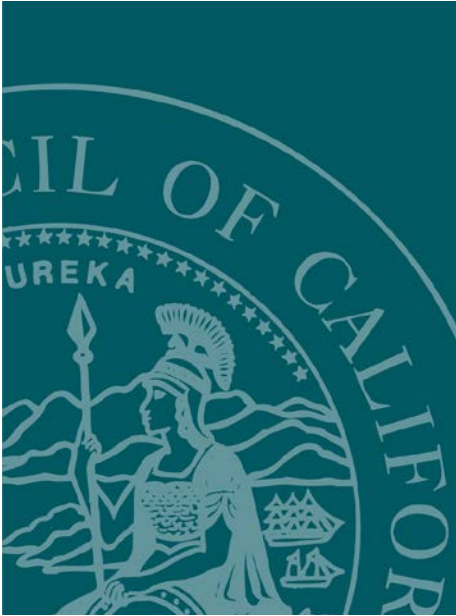
City of _____, County of _____,
State of _____

Signature of Applicant _____
an officer with the title of _____ of _____
(Title of Corporation Officer) (Corporation Name)

End of Technical Qualifications Questionnaire

Attachment 4
to
RFQ/P for CM-at-Risk Firm

Fee Proposal Form



Fee Proposal Form

Renovation and Addition-Willows Courthouse

Superior Court of California

County of Glenn



ADMINISTRATIVE OFFICE
OF THE COURTS

JUDICIAL AND COURT OPERATIONS
SERVICES DIVISION

JUDICIAL BRANCH CAPITAL PROGRAM OFFICE

Renovation & Addition-Willows Courthouse
RFQ/P number: JBCP-2013-05-BR
Project Number: TBA

To the Administrative Office of the Courts (AOC):

The undersigned construction manager at risk firm (“Firm”) hereby offers, in the amounts stated below, to furnish all services for Phases identified and to furnish the labor, materials, tools, equipment, apparatus, facilities, transportation, and permits for the construction of the above-referenced project (“Project”) in accordance with the provisions of the RFQ/P and its Attachments, the Agreement and Exhibits and appendices to these documents, and to the satisfaction of the AOC.

Firm shall complete the information in the following table.

Services	Pricing Basis	Price Submitted
Preliminary Plan Phase: Services provided during the Preliminary Plan Phase as specified in Exhibit A to the Agreement and as defined in Exhibit H to the Agreement.	FIXED PRICE TO COMPLETE THIS PHASE >	\$ _____ *
Working Drawing Phase: Services provided during the Working Drawing Phase as specified in Exhibit A to the Agreement and as defined in Exhibit H to the Agreement.	FIXED PRICE TO COMPLETE THIS PHASE >	\$ _____ *
CMR’s General Conditions: CMR’s General Conditions in its performance of the Work. <ul style="list-style-type: none"> • This includes labor costs, equipment costs, materials costs, non-OCIP insurance costs, bond costs, etc. • CMR must provide with its Fee Proposal a completed CMR’s General Conditions Table in the form included herein. 	FIXED PRICE FOR CMR’S GENERAL CONDITIONS >	\$ _____ *
Construction Phase: Services provided during the Construction Phase as specified in Exhibit A to the Agreement. <ul style="list-style-type: none"> • This does <u>not</u> include the direct cost of construction (Direct Cost of the Work), but shall cover all the CMR’s costs associated with providing its Services during the Construction Phase as specified in Exhibit A to the Agreement.** • The Direct Cost of the Work will be adjusted per the final total of direct costs as agreed by the AOC and the successful respondent prior to the Construction Phase. 	Price as percentage (Expressed as a percent of the Direct Cost of the Work.) _____%	Price in dollars (Multiply the percent at left by the AOC’s Estimated Direct Cost of the Work in the RFQ/P [\$20,000,000]) \$ _____
Total Price for Services (Sum of ALL dollar figures in last column)		\$ _____

* The price for the Preliminary Plan Phase, the Working Drawing Phase and for the CMR’s General Conditions in its performance of the Work shall be inclusive of all of CMR’s profit and all costs expended in pursuit of performing the Services applicable to the those Phases, including but not limited to any materials, payroll, overhead and administrative costs, travel and living expenses, licenses, insurance, incidentals, and any other fees or expenses expended or incurred when necessary for the performance of the Services specified in Exhibit A to the Agreement applicable to each item.

** CMR’s fee for the services during the Construction Phase shall be inclusive of all CMR’s profit, overhead, administrative costs and all price risk assumed in guaranteeing the GMP in pursuit of

performing the Construction Phase Services for the Project as specified in Exhibit A to the Agreement applicable to the Construction Phase and in the final approved Construction Documents.

- A. The above amounts are to be stated in figures only and are the total amounts proposed for the entire Contract Work. Any alteration, erasure, or change must be clearly indicated and initialed by Firm.
- B. In the event of any error in this Fee Proposal, the individual fee percentages will prevail.
- C. Firm agrees that the above fees will be held until award of the Construction Phase.
- D. A Project Contingency as a percentage of construction cost will be provided as indicated in the Contract Documents, but is not to be included in the Fee Proposal.
- E. The AOC estimated construction schedule is as indicated in Exhibit A to the Agreement. The liquidated damages for failure to complete construction, including occupancy of the entire Project within the Contract Time is as indicated in Exhibit A to the Agreement.
- F. This Fee Proposal is subject to the provisions of the RFQ/P and its Attachments, the Agreement and its Exhibits, and the appendices to these documents.
- G. It is anticipated that the successful Firm will be authorized to begin services within one (1) to two (2) weeks after selection.
- H. This Fee Proposal Form must be completely filled out and in a sealed envelope, and delivered to the location listed in RFQ/P, or it will be disregarded.
- I. No bid bond or other security is required for this Project. However, when awarded the construction phase portion of the Project, a 100% performance bond and a 100% payment bond will be required, the cost of which is to be included in the CMR's General Conditions in its performance of the Work.
- J. ACKNOWLEDGE EACH ADDENDUM RECEIVED: _____

Dated this _____ day of _____ 20 _____

Name of Firm: _____

Signed by: _____

Title of Person Signing: _____

CMR's General Conditions Table

- CMR shall only price the following items as indicated either as part of:
 - CMR's General Conditions in its performance of the Work
or
 - The Direct Cost of Work (i.e., within particular subcontract(s) costs)
- If CMR intends to include additional items or price items in a different category than indicated below, CMR shall get pre-approval from AOC to do so.
- This table is not intended to be an exhaustive list of all components of the Project that the CMR must perform to provide a complete Project to the AOC.

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

	CMR's General Conditions in its Performance of the Work	Direct Cost of Work
Storage Trailer & Tool Shed Rental	X	
Office Furniture/Equip/Computers	X	
Xerox Copies/Misc Printing	X	
Postage/UPS/FedEx	X	
Project Photographs	X	
Temporary Toilets	X	
Project Sign	X	
Temporary Fencing/Enclosures	X	
Covered Walkways	X	
Barricades	X	
Temporary Stairs		X
Opening Protection		X
Safety Railing & Nets		X
Drinking Water/Cooler/Cup		X
Safety/First Aid Supplies	X	
Fire Fighting Equipment	X	
Security Guards	X	
Watchman Service	X	
Miscellaneous Project Costs		
Printing - Drawings & Specifications	X	
Facility Operator/Training	X	
Hoisting		
Hoist & Tower Rental		X
Hoist Landing & Fronts		X
Hoist Operator		X
Hoist Safety Inspections		X
Hoist Material Skips/Hoppers		X
Erect & Dismantle Hoists		X
Crane Rental		X
Crane Operators		X
Crane Safety Inspections		X
Erect & Dismantle Crane		X
Fuel, Repairs, Maintenance		X
Crane Raising/Jumping Costs		X
Temporary Elevator/Rental		X
Elevator Operation Costs		X
Elevator Repairs/Maintenance		X
Cage Rider at Elevator		X
Safety Inspections	X	
Forklift Rental		X
Forklift Operator		X
Forklift Safety Inspections		X
Fuel, Repairs, Maintenance		X
Elevator Service Costs		X

End of Fee Proposal

**Attachment 5
to
RFQ/P for CM-at-Risk Firm
Payee Data Record Form**

(Posted to RFQ/P as separate file)