

ATTACHMENT D

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

SAMPLE DOCUMENT

AGREEMENT NUMBER

FEDERAL EMPLOYER ID NUMBER

1. In this Agreement, the term "Contractor" refers to **[Contractor name]**, and the term "AOC" refers to the Judicial Council of California, Administrative Office of the Courts.
2. This Agreement becomes effective as of **[Date]** (the "Effective Date")
3. The maximum amount that the AOC may pay Contractor under this Agreement is \$.
4. The purpose of this Agreement is:

The purpose listed above is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.

5. 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) contains the parties' entire understanding related to the subject matter of this Agreement. If there are any inconsistent terms in the exhibits, the following is the descending order of precedence: Exhibit A, B, C and G.

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| Exhibit A – Standard Provisions | Exhibit F – HKA Vertical Transportation Modernization |
| Exhibit B – General Terms and Conditions | Specifications |
| Exhibit C – Payment Provisions | Exhibit G – AOC Tool Control Policy |
| Exhibit D – Payment and Performance Bond | |
| Exhibit E– Certificate of Insurance | |

AOC'S SIGNATURE	CONTRACTOR'S SIGNATURE	
Judicial Council of California, Administrative Office of the Courts	CONTRACTOR'S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)</i> [Contractor name]	
	LICENSE NO.:	EXP. DATE:
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 	
PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title]	PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title]	
ADDRESS 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS [Address]	

Attachment D
STANDARD PROVISIONS
[Exhibit A]

1. Definitions

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.

- A. **Acceptance:** the written acceptance issued by the AOC after Contractor has completed a Deliverable, submittal, phase, or other contract requirement in compliance with this Agreement.
- B. **Agreement:** constitutes the entire integrated agreement between the AOC and Contractor, and includes the Contract Documents incorporated by reference into a fully executed Standard Agreement Coversheet. The term “**Contract**” may be used interchangeably with the term “**Agreement**.”
- C. **Amendment:** a written document issued by the AOC and signed by Contractor which alters the Agreement and which identifies the following: (1) a change in the Work; (2) a change in the “Total Amount Encumbered to Date”; or (3) an adjustment to the Agreement terms.
- D. **Business Day:** days of the week excluding Saturday and Sunday, as well as Contractor’s pre-established and published holidays applicable to its employees.
- E. **Confidential Information:** means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the AOC’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- F. **Contractor:** the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the AOC to do the Contract Work. Contractor is one of the parties to this Agreement.
- G. **Court(s) or Trial Court(s):** means one or more of the fifty-eight (58) superior courts in the California state trial court system.

- H. **Data:** all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- I. **Day:** means calendar day, unless otherwise specified.
- J. **Deliverable(s):** means and includes any tangible item provided or to be provided under this Agreement, including written reports. Services may be performed in pursuit of providing Deliverable(s) however, a Deliverable may not consist solely of the performance of Services.
- K. **Expenses:** means and includes both travel and living expenses and Reimbursable Expenses.
- L. **Firm Fixed Price:** means a single fixed amount or amounts designated as payment for a Deliverable or Deliverables.
- M. **Firm Fixed Price Basis:** means that the Contractor shall receive, as full and complete compensation for the provision of Deliverable(s), Firm Fixed Price(s), which shall constitute complete compensation for all costs, expenses, and efforts incurred by Contractor in provision of the Deliverable(s).
- N. **Force Majeure:** means a delay which impacts the timely performance of Work which neither Contractor nor the AOC are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- i. Acts of God, which are only earthquakes in excess of a magnitude of 3.5 on the Richter Scale and tidal waves.
 - ii. Acts of a public enemy;
 - iii. Acts or omissions of any government entity;
 - iv. Fire or other casualty for which a party is not responsible;
 - v. Quarantine or epidemic;
 - vi. Strike or defensive lockout; and,
 - vii. Unusually severe weather conditions.
- O. **Material:** means all types of tangible personal property, including but not limited to reports, goods, supplies, equipment, commodities, and information and telecommunication technology.
- P. **Notice:** means a written document as required by this Agreement and given by:
- i. Depositing 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.

- Q. **Project:** refers to and includes the Work specified in this Agreement as necessary to provide for the construction specified in Exhibit F.
- R. **Reimbursable Expenses:** means specific expense(s) incurred or to be incurred by Contractor and/or its Subcontractor(s) in pursuit of performance of the Work.
- S. **Service(s):** means and includes obligations that are performed or are to be performed under this Agreement. Services may or may not result in the provision of Deliverables.
- T. **State (AOC):** refers to the Judicial Council of California / Administrative Office of the Courts.
- U. **Stop Services Order:** is a written notice, delivered in accordance with this Agreement, by which the AOC may require the Contractor to stop all, or any part, of the Services under this Agreement, for the period set forth in the Stop Services Order.
- V. **Standard Agreement Coversheet or Standard Amendment Coversheet:** means the form used by the AOC to enter into agreements or amendments with other parties. Several originally signed, fully executed versions of the Standard Agreement Coversheet, together with the integrated Contract Documents shall constitute the Agreement.
- W. **Subcontractor:** shall mean and include any individual, firm, partnership, agent, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of this Agreement. When the AOC refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, agents, suppliers, and/or materialmen.
- X. **Third Party:** refers to any individual, association, partnership, firm, company, corporation, consultant, subcontractor, or combination thereof, including joint ventures, other than the AOC or the Contractor, which is not a party to this Agreement.
- Y. **Time and Materials Not to Exceed Basis:** means that the Contractor shall be compensated for Work actually performed on an Hourly Basis, and, if specified, compensated separately for Expenses.
- Z. **Work or Work to be Performed or Contract Work:** may be used interchangeably to refer to the provision of Services and/or Deliverables under this Agreement.

2. Indemnification

Contractor agrees, to the fullest extent permitted by law, to indemnify, defend (with counsel satisfactory to the AOC), and hold harmless (collectively, “Indemnify”) the State of California; the Judicial Council of California; the Administrative Office of the Courts; the Superior Court of California, County of San Francisco; the County of San Francisco, and any and all of their

officers, agents, contractors, consultants, representatives, volunteers and employees, including without limitation judges, subordinate judicial officers, court executive officers and court administrators (individually, an “Indemnified Party”) from any and all demands, claims, lawsuits, losses, actions, costs (including attorney fees and costs), liabilities, and damages directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising from, related to or in connection with, in whole or in part, any of the following:

- (a) Contractor or any of its employees’ or any Subcontractor’s negligent acts, omissions, or intentional misconduct;
- (b) Contractor’s breach of its obligations under this Agreement;
- (c) Contractor or any of its employees’ or any Subcontractor’s violation of any applicable law, rule, or regulation; and/or
- (d) Any claim or lawsuit by any third party, contractor, Subcontractor, supplier, worker, or any other person, firm, or corporation (i) furnishing or supplying Work, Services, Materials, or supplies in connection with the performance of this Agreement (e.g. stop notice actions); or (ii) who may be injured or damaged by the Contractor or any of its Subcontractors, or employees, when such claim arises from, is related to, or is in connection with Contractor’s performance under this Agreement.

This provision does not require the Contractor to Indemnify an Indemnified Party for such portion of any loss, cost, liability, or damage to the extent arising from the sole negligence or willful misconduct of the Indemnified Party.

3. Relationship of Parties

Contractor and its employees and any of Contractor’s subcontractors (“Subcontractors”), in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

4. Termination for Cause

If Contractor fails to perform the work for the Project to the satisfaction of the AOC, or if Contractor fails to fulfill in a timely and professional manner Contractor’s obligations under this Contract, or if Contractor violates any of the terms or provisions of this Contract, the AOC shall have the right to terminate this Contract effective immediately upon the AOC giving written notice thereof to the Contractor. If the Agreement is terminated, the State may proceed with the Work in any manner it deems proper. The cost of any Work already performed by the Contractor, or that is in the process of being performed based on instructions from the State, will be payable by the State upon the presentation of an appropriate invoice by the Contractor, and the approval of said invoice by the State, as provided for in Exhibit C, Payment Provisions.

5. No Assignment

Contractor shall not voluntarily or involuntarily assign (e.g. assignment by operation of law), encumber, or otherwise transfer or delegate all or any interest in this Agreement. Any voluntary assignment by Contractor or assignment by operation of law (e.g. involuntarily assignment) of any portion of Contractor's interest in this Agreement shall be deemed a default allowing the AOC to exercise all remedies available to it under applicable law.

6. Time of Essence

Time is of the essence in this Agreement.

7. Validity of Alterations

Alteration or variation of the terms of this Agreement 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.

8. Consideration

The consideration to be paid to Contractor under this Agreement shall in no event exceed the Contract Amount. Contractor shall be paid in accordance with the Payment Provisions set forth in Exhibit "C" of this Agreement. The State's payments to Contractor pursuant to this section shall constitute full compensation for all of Contractor's time, materials, costs and expenses incurred in the performance of this Agreement.

End of Exhibit A

Attachment D

GENERAL TERMS AND CONDITIONS

[Exhibit B]

1. **NOTICE TO PROCEED:** The Project Manager will provide a written notice to proceed to Contractor with respect to the Project at which time Contractor will proceed with the Work of the Project, however, Contractor shall not commence actual construction until the Contractor's performance and payment bonds and insurance certificates have been submitted to the AOC and approved by the AOC in accordance with the Contract Documents.

2. **CONTRACT TIME:** The Contractor shall complete the Work under this Contract (i.e. the Project), including satisfactory completion of all inspections, tests, documentation, punch list and clean up items, and full demobilization within 14 months of the Notice to Proceed ("Contract Time").

Notwithstanding the preceding, Contractor shall be responsible for all ongoing maintenance and repairs of all elevators for the duration of the warranty period.

Contractor 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 Contract Time, 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 Contractor shall forfeit to AOC as fixed and liquidated damages, and not as a penalty, the amount of \$TBD for each calendar day of delay in completion beyond the Contract Time.

Contractor and its Surety shall be liable for the amount thereof pursuant to Government Code section 53069.85. Notwithstanding the preceding, Contractor shall not be required to forfeit liquidated damages for an Excusable Delay or an Excusable and Compensable Delay pursuant to section 17 of Exhibit B.

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

4. **EQUIPMENT AND LABOR:** Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to provide the services herein described.

5. **SUBCONTRACTORS:** Subcontractors, if any, engaged by the Contractor for any work required for the Project shall be subject to the written approval of the Project Manager. Contractor agrees to bind every subcontractor by the terms of the Contract as far as such terms are applicable to subcontractor's work, including, without limitation, all indemnification, insurance, bond, and warranty requirements. If Contractor subcontracts any part of this Contract, Contractor shall be fully responsible to the AOC for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself. Nothing contained in the Contract Documents shall create any contractual relations between any

subcontractor and the AOC.

6. **TERMINATION FOR CONVENIENCE:** AOC shall also have the right in its sole discretion to terminate the Contract for its own convenience, in which case, the AOC will only be obligated to reimburse Contractor for the actual costs incurred by Contractor as of the date of termination, however, in no event, shall Contractor be entitled to be compensated for any loss of anticipated profits.

7. **SAFETY PRECAUTIONS AND PROGRAMS:**

- 7.1 The Contractor shall initiate, maintain and supervise all safety precautions and programs in connection with the performance of the Work.
- 7.2 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on the safety of persons or property, or their protection from damage, injury or loss.
- 7.3 The Contractor shall designate the Work Superintendent, or some other responsible member of the Contractor's organization who is at the Site, to be the person responsible for the prevention of accidents and the monitoring of the safety of the Work
- 7.4 The Contractor shall take precautions for safety and provide protection to prevent damage, injury or loss to:
 1. Employees working under the Contract and other persons who may be affected thereby;
 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 Contractor or the Contractor's Subcontractors or Sub-subcontractors; and other property at the Project site, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities, except as otherwise noted or specified; and
 3. Other property at the Project site, or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities, except as otherwise noted or specified.
- 7.5 The Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying the AOC, other owners and users of adjacent sites and utilities.
- 7.6 The Contractor shall comply with all applicable laws, ordinances, rules, regulations and lawful orders of public authorities regarding the storage and/or use regulated materials or equipment necessary for execution of Work.
- 7.7 The Contractor shall remedy damage and loss to property referred to in Clauses 7.4.2 and 7.4.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Clauses 7.4.2 and

7.4.3. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 1 of Exhibit A.

7.8 The Contractor shall not permit any part of the Work or Project site to be loaded so as to endanger its safety.

7.9 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 Contractor, at the Contractor's sole expense, to close down the Work and not commence work again until all dangerous conditions are eliminated.

7.10 The Contractor, at the Contractor'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.

7.11 In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's sole discretion, to prevent any threatened damage, injury or loss.

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

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.
2. Establish a Drug-Free Awareness Program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) The person's or company's policy of maintaining a drug-free workplace;
 - (c) Any available counseling, rehabilitation, and employee assistance programs; and,
 - (d) penalties that may be imposed upon employees for drug abuse violations.
3. Provide, as required by Government Code, Section 8355(c), that every employee who works under the Contract will:
 - (a) receive a copy of the company's drug-free workplace policy statement; and
 - (b) agree to abide by the terms of the company's statement as a condition of employment.

8. **CHANGE IN SCOPE OF WORK:** Any change in the scope of the work for the Project, method of performance, the type of materials, or any other matter materially affecting the performance or nature of the Project shall not be paid for or accepted unless such change, addition, or deletion is approved in advance and in writing by a valid amendment to this Contract executed by the AOC. Contractor specifically understands, acknowledges, and agrees that the AOC shall have the right to request any

alterations, deviations, reductions, or additions to the Project and the cost thereof shall be added to or deducted from the amount of the Contract Price by fair and reasonable valuations. Contractor also agrees to provide the AOC with all information requested to substantiate any cost of the change order and to inform the AOC whether the work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Project. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

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

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

11. **SUBSTITUTIONS:** No substitutions of material from those specified in the Work Specifications shall be made without the prior written approval of the Project Manager.

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

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

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

15. **SHOP DRAWINGS, PRODUCT DATA AND SAMPLES (SUBMITTALS):**

- A. 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 Contractor 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.
- B. Contractor 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.
- C. 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.

- D. Submittals that are not required by the Contract Documents may be returned to the Contractor without action.
- E. Contractor 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.
- F. By submitting Shop Drawings, Product Data, Samples and similar submittals, the Contractor represents that the Contractor 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.
- G. Contractor 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 Contractor 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 Contractor of responsibility for errors or omissions in submittals.
- H. Contractor 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 Contractor will be charged all costs of submittal review. The charges will be deducted from the Contractor's next pay request.
- I. 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.
- J. 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.
- K. All submittals shall be in accordance with Exhibit H, HKA Vertical Transportation Modernization Specifications, including without limitation section 1.05 of Exhibit H, HKA Vertical Transportation Modernization Specifications.

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

17. **TIME EXTENSIONS AND DELAYS IN COMPLETION OF THE WORK**

- i. Force Majeure: The AOC and the Contractor shall be excused from performance if there is a force majeure event. A force majeure event is one or more of the following events that adversely impacts the AOC's or the Contractor'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.

ii. Contractor's Notice of Delay

In addition to the requirements indicated in this subsection, Contractor shall notify the AOC of any anticipated delay and its cause.

1. Contractor 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.
2. In the event the Contractor 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 Contractor 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.
3. Any claim for delay must include the following information as support, without limitation:
 - (a) 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.
4. 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.
5. 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.
6. An extension of time may only be granted if Contractor has timely submitted the Construction Schedule as required herein.
7. Following submission of a notice of delay, the AOC may determine whether the delay is to be considered:
 - (a) Excusable and Compensable, Excusable, or Unexcused;
 - (b) How long the delay continues; and
 - (c) To what extent the prosecution and Completion of the Work might be delayed thereby.

iii. Excusable and Compensable Delay(s)

- (i) Contractor is not entitled to additional compensation for any delay, even a delay caused by an Excusable Delay, unless all of the following conditions are met:
 - a. The AOC is responsible for the delay
 - b. The delay is not caused by conflicts, ambiguities or errors or omissions in the Contract Documents that could have been reasonably discovered by the Contractor;
 - c. The delay is unreasonable under the circumstances involved and impacts the critical path of the Work and extends the Contract Completion date;
 - d. The delay was not within the contemplation of AOC and Contractor;
 - e. The delay could not have been avoided or mitigated by the Contractor's care, prudence, foresight, and diligence.
 - f. The delay extends the contract completion date, however, the delay is concurrent with another Excusable Delay or a Contractor-caused unexcused delay.

iv. Excusable Delay(s)

- (i) An "Excusable Delay" shall mean an interruption of the Work beyond the reasonable control of the Contractor and that:
 - a. Could have not been avoided by the Contractor's exercising care, prudence, foresight, and diligence, and
 - b. Actually extended the Project completion date.
- (ii) Contractor may be entitled to an extension of the Project completion date if there is an Excusable Delay, but the Contractor shall not be entitled to additional compensation for an Excusable Delay.
- (iii) Excusable Delays are limited to force majeure that satisfies the requirements herein.
- (iv) Contractor 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, *Division of Occupational Safety and Health of the Department of Industrial Relations*, electrical utility companies, and other agencies may have to approve Contractor-prepared drawings or approve an installation. Contractor is not entitled to make a claim for damages or delays or an Excusable Delay arising from the review of Contractor's drawings or approval of an installation from the Corrections

Standards Authority, State Fire Marshall, Division of the State Architect of the Department of General Services, *Division* of Occupational Safety and Health of the *Department of Industrial Relations*, electrical utility companies, and other agencies.

v. Unexcused Delay(s).

Contractor 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 Contract Time, it is understood that the AOC will suffer damage and that Contractor shall pay liquidated damages as provided for under section 2 of Exhibit B.

vi. Delay and Maintenance Costs. Contractor shall only be entitled to additional compensation for costs associated with maintenance of the elevators in the event that the Project is an Excusable and Compensable Delay pursuant to this section of Exhibit B.

18. **OCCUPANCY:** The Building will be occupied throughout the Project by the Court and the County. Contractor shall take all reasonable steps to minimize interference or disruptions to either Court or County business.

19. **CRIMINAL BACKGROUND SCREENINGS:**

A. Definitions:

(i) “Approved Person” means a Contractor or a Subcontractor employee who has passed Court- required screening and background check requirements, if any, that the Court requires with respect to the Project (“Court Security Screening and Approval Process”).

B. “Secured Areas” means (i) all areas within the Building that are not generally accessible to the public, including judges’ chambers, all non-public restrooms, elevators, break rooms, and corridors, and other non-public spaces that are dedicated for use only by judges or Court staff and employees, (ii) in-custody areas of the Building, (iii) public areas of the Building during non-business hours that are subject to security screening during normal business hours, and (iv) any rooms in the Building that connect to Department of Justice criminal databases via California Law Enforcement Telecommunications System (CLETS) or contain any records or information (stored in physical or electronic format) that were obtained via CLETS.

C. Security Meeting. Within thirty (30) Days of the Effective Date, Contractor shall meet with representatives of the AOC and the Court to discuss security requirements of the Court relating to the Project, including, without limitation, Court Screening and Approval Process, if any. The Contractor shall ensure its employees and Subcontractor employees comply with any Court-specific security protocols, including the Court Screening and Approval Process, if any. Contractor agrees to cooperate with the Court with respect to

the screening and background checks of those employees, and shall obtain at no additional cost to the Court or the AOC all releases, waivers and permissions the Court requires with respect to such screenings and background checks. The Court reserves the right to either narrow or broaden the definition of Secured Areas as defined herein and to implement any security screening and approval process that the Court deems necessary with respect to the Project.

- D. Access to Secured Areas: In the event that the Court limits access to Secured Areas to Approved Persons, then only Approved Persons may have unescorted access to the Secured Areas of the Building, however, the Court may allow, in its sole discretion Contractor and Subcontractor employees who are not Approved Persons (“Unapproved Persons”) to access Secured Areas based upon any terms and conditions of the Court, including without limitation, requiring Unapproved Persons to be escorted by Approved Persons while in the Secured Areas. In no event shall Contractor rely upon an employee of the Court to escort or monitor Unapproved Persons unless the Court has notified Contractor that a Court employee will escort or monitor Unapproved Persons. Notification. Contractor must notify all Subcontractors that employees of the Subcontractors must comply with the Court Security Screening and Approval Process.
- E. Court Badges. If, as part of the Court Security Screening and Approval Process, the Court issues identification badges for Approved Persons, Approved Persons must wear their identification badges in a readily-visible manner whenever they are in a Secured Area. The Contractor will have a procedure in place to ensure that all issued badges are returned to the Court upon termination of an employee or upon completion of the Project.
- F. Restrictions on Access to the Building. The Court has the ultimate decision as to whether a specific Contractor or Subcontractor employee may have access to the Building, and to limit such access upon the terms and conditions of the Court. The Court shall have the right at any time to refuse Building access to any Contractor or Subcontractor employee if the Court determines, in its sole discretion, that such person poses a risk to the Court or any person, system, or asset associated with the Court.
- G. Costs. If the Court requires any background checks, the Court will pay for the actual cost of the background check (e.g. LiveScan), 1 administrative or processing fees, or other costs. Costs associated with escorting an Unapproved Person shall be included within the Contract Amount and Contractor will not receive any additional compensation or reimbursement from the AOC for any costs related to escorting Unapproved Persons.

20. **SECURITY PROTOCOLS:** Contractor personnel will comply with all AOC- and Court-required security protocols in the performance of Work. Such protocols shall include the then-current AOC Tool Control Policy. The version of the AOC Tool Control Policy in effect as of the Effective Date is attached as Exhibit J.

21. **PROGRESS PAYMENTS:** On a monthly basis, Contractor shall submit to the AOC an application for payment based upon the actual value for materials delivered or services performed under the Contract up to the last day of the previous month (“**Application for Payment**”). The Project Manager will review the Application for Payment and approve the Application for Payment if the Application for Payment is valid and correct. Within 45 days after the Project Manager’s approval of the

Application for Payment, Contractor will be paid a sum equal to ninety percent of the amount invoiced in the Application for Payment (as verified, as applicable, by the Project Manager, Architect, and Inspector and certified by Contractor) The AOC may deduct from any payment an amount necessary to protect the AOC from loss because of: (1) any sums expended by the AOC in performing any of Contractor's obligations under the Contract which Contractor has failed to perform or has performed inadequately; (2) defective work not remedied; (3) stop payment notices as required by California law (i.e. Civil Code sections 9100 et. seq.); (4) reasonable doubt that the Project can be completed for the unpaid balance of the Total Contract price or by the scheduled completion date; (5) unsatisfactory prosecution of the work for the Project by Contractor; (6) unauthorized deviations from the Contract; (7) failure of the Contractor to maintain or submit on a timely basis proper and sufficient documentation as required by the Contract or by AOC during the prosecution of the work for the Project; (8) erroneous or false estimates by the Contractor of the value of the work performed; (9) any sums representing expenses, losses, or damages, as determined by the AOC, incurred by the AOC for which Contractor is liable under the Contract; and (10) any other sums which the AOC is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the AOC to deduct any of these sums from a progress payment shall not constitute a waiver of the AOC's right to such sums. The AOC will retain 10 percent from all amounts owing as retention.

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

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

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

25. **FINAL PAYMENT:**

The following conditions must be fulfilled prior to final payment:

- a. The AOC must have accepted the Project as complete in accordance with section 24 of this Exhibit;
- b. A duly completed and executed waiver and release upon final payment compliant with Civil Code section 3262 from the Contractor and each subcontractor and supplier;
- c. Contractor shall have delivered to the AOC all applicable written guarantees and warranties, including those of its subcontractors, if applicable;

- d. The Contractor shall have delivered to the AOC all applicable manuals; and
- e. The Contractor shall have completed final clean-up of the Site.

After 35 days have elapsed following the recordation of the Notice of Completion for the Project, the AOC will commence processing the final payment, and provide the final payment to Contractor as expeditiously as possible. The final payment shall be the amount of retention, less the following: (i) any amounts reasonably disputed by the AOC; (ii) 150 percent of the AOC's estimate of any amount necessary to complete any Punch List Items which are still not complete; (iii) any amounts attributable to stop notices which the AOC is required to withhold under California law (i.e. Civil Code sections 9100 et. seq.).

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

27. **LICENSES:** Contractor shall secure and maintain in force, at Contractor's sole cost and expense, all licenses required by law, in connection with the furnishing of materials, supplies, or services herein listed, including without limitation, a C-11 contractor's license issued by the State Contractors License Board of the State of California.

28. **PERMITS:** Contractor will obtain all necessary permits applicable to the Project and all fees will be paid directly by AOC.

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

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

31. **DISABLED VETERAN BUSINESS ENTERPRISES:** Contractor shall comply with all Disabled Veteran Business Enterprise (DVBE) requirements including the AOC requirement that not less than three percent (3%) of all services, materials or supplies provided under this Contract be provided by certified DVBE's. Contractor agrees to provide the AOC with any requested relevant documents supporting compliance with the DVBE participation goal and to maintain such documents for a period of three (3) years after final payment under this Contract.

32. PAYMENT BOND AND PERFORMANCE BOND:

- A. Contractor shall not commence Work on the Project until it has provided to the AOC, in form acceptable to the AOC, the following surety bonds issued by a California admitted surety insurer:
- (i) Performance Bond: A bond in an amount at least equal to one hundred percent (100%) of the Project contract amount as security for faithful performance of this Contract; and
 - (ii) Payment Bond: A bond in an amount at least equal to one hundred percent (100%) of the Project contract amount for payment of persons performing labor and/or furnishing materials in connection with this Contract.
- B. The costs for these bonds are included in the Contract Amount and Contractor shall not be entitled to any additional compensation with respect to any costs associated with these bonds.

33. CONTRACTOR'S INSURANCE:

AA. General Requirements:

- a. The Contractor shall, prior to commencement of any work on the Project, provide the AOC certificates of insurance, on forms acceptable to the AOC, as evidence that the required insurance, with specifications set forth in this section, is in full force and effect.
- b. All insurance policies required under this section shall be in force until the end of the term of this Contract or acceptance of the Project, whichever comes later. The completed operations insurance required under section B shall extend for a period of five (5) years past the acceptance of the Project or termination of the Contract, whichever is later. If the required insurance expires during the term of the Contract, the Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance to the AOC. Renewal insurance certificates must be tendered to the AOC at least 10 days following the expiration of the previous insurance certificate.
- c. The insurance required by sections B.1, B.2 and B.3 as well as any excess liability or umbrella liability insurance that the Contractor maintains in compliance with the terms of section B shall include the State of California; the Judicial Council of California; the Administrative Office of the Courts; County of San Francisco; and the Superior Court of California, County of San Francisco, and their respective officers, consultants, representatives, agents and employees as additional insureds, but only with respect to liability arising out of the work performed by the Contractor under this Contract.
- d. The Contractor, and any insurer providing insurance required under the terms of section B shall waive any right of recovery it may have against the State of

California; the Judicial Council of California; the Administrative Office of the Courts; the County of San Francisco; and the Superior Court of California, County of San Francisco, and their respective officers, consultants, representatives, agents and employees loss or damage to the work, or for any liability arising out of any work performed by the Contractor under this Contract.

- e. The insurance policies required under section B shall contain a provision that coverage will not be materially changed or cancelled without ninety (60) days prior written notice to the AOC.
- f. The Contractor shall be responsible for and may not recover from the AOC any deductible or self-insured retention that is connected to the insurance required under section B.
- g. In the event the Contractor fails to keep in effect at all times the specified insurance coverage, the AOC may, in addition to any other remedies it may have, declare the contract to be in breach and withhold all progress payments and retentions until the breach is cured, or terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- h. Any insurance required under section B 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; the County of San Francisco; and the Superior Court of California, County of San Francisco.
- i. The AOC reserves the right to request certified copies of any of the insurance policies required under section B.

B. Specific Insurance Requirements. Prior to the commencement of any work on the Project, Contractor shall furnish to the AOC evidence of insurance as follows:

- a. Commercial Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) written on an occurrence form covering the Contractor and the AOC with limits of liability of not less than \$5,000,000 per occurrence and a \$5,000,000 annual aggregate, applicable solely to the location at which the Project work is being performed. 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. The policy shall not include exclusion for property damage resulting from explosion, collapse or underground hazard, or inadvertent construction defects. The products and completed operation liability coverage shall extend for a period of not less than five (5) years past the acceptance of the Project, or termination of the Contract, whichever is later. 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.
- b. 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 a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the work to be performed under this Contract.

- c. **Workers' Compensation:** Statutory workers' compensation insurance for all of the Contractor's employees who will be engaged in the performance of any work under this Contract including special coverage extensions where applicable and employer's liability with limits not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, \$1,000,000 as the disease limit for each employee.
- d. **Builder's Risk or Installation Insurance:** Builders Risk or Installation Insurance covering direct physical loss or damage to the elevator equipment, materials, Contractor's property, and any portion of the Building damaged as a result of the elevator equipment being staged, installed, or tested until final acceptance of the entire Project. The policy shall also cover all temporary structures, cribbing, and scaffolding used during the course of installation, and will include coverage for debris removal, pollution cleanup resulting from hydraulics fluids and lubricants, expediting expense and extra expenses in an amount of not less than the Contract.

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

35. **CONFIDENTIALITY:** The Contractor shall maintain the confidentiality of all information, documents, programs, procedures, and all other items that Contractor encounters while performing the work for the Project except to the extent allowed by law. This requirement shall be ongoing and shall survive the expiration or termination of this Contract and specifically includes all student, parent, and disciplinary information.

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

37. **DISPUTES:** In the event of a dispute between the parties as to performance of the work for the Project, the interpretation of this Contract, or payment or nonpayment for work performed or not performed, the parties will attempt to resolve the dispute through mediation. Pending resolution of the dispute, Contractor agrees it will neither rescind the Contract nor stop the progress of the work for the Project.

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

39. **LABOR AND MATERIALS**

A. **Provision of Labor and Materials:** Unless otherwise provided in the Contract Documents, the Contractor 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 Contractor for incorporation into the Work shall be new unless otherwise specified in the Contract Documents.

B. **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 Contractor 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.

C. **Prevailing Wage:**

(i) The Contractor shall comply with the provisions of the Labor Code including sections 1770 to 1780, inclusive and specifically Section 1775. In accordance with Section 1775, the Contractor shall forfeit to the 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 Contractor or by any Subcontractor.

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

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

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

(d) The difference between such prevailing wage rates and the amount

paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate, shall be paid to each worker by Contractor or Subcontractor.

- (ii) 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. The Contractor shall obtain from the AOC a copy of such prevailing wage rates, which the Contractor shall post at the Project site.
 - (iii) Wage rates set forth are the minimum that may be paid by the Contractor. Nothing herein shall be construed as preventing the Contractor from paying more than the minimum rates set. No extra compensation whatsoever will be allowed by the AOC due to the inability of the Contractor to hire labor at minimum rates, nor for necessity for payment by the Contractor of subsistence, travel time, overtime, or other added compensations, all of which possibilities are elements to be considered and ascertained to the Contractor's own satisfaction in preparing its Proposal.
 - (iv) If it becomes necessary to employ crafts other than those listed in the General Prevailing Wage Rate booklet, the Contractor shall contact the Division of Labor Statistics and Research as listed inside the booklet or access on the Internet 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.
 - (v) The Contractor and each Subcontractor shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Contractor and/or Subcontractor in connection with the Work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written request by the AOC, the Contractor's and Subcontractor's certified payroll records shall be furnished within 10 days. The Contractor's and Subcontractor's certified payroll records shall be available for inspection at the principal office of the Contractor.
- D. Travel and Subsistence Payments: The Contractor 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.
- E. 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 Contractor and each Subcontractor shall comply with the requirements of Labor Code, Section 1777.5, and any related regulations regarding the employment of registered apprentices.
- (i) 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.

39. **INTENTIONALLY OMITTED**

40. **GOVERNING LAW:** This 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. The Contractor irrevocably consents to personal jurisdiction in California.

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

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

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

44. **ENTIRE CONTRACT:** This Contract sets forth the entire Contract between the parties hereto and fully supersedes any and all prior agreements, understanding, written or oral, between the parties.

45. **NOTICE:** All notices to the AOC under this Contract shall be given as follows:

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

To the AOC: Office of Court Construction and Management
 Judicial Council of California
 Administrative Office of the Courts
 Attn: @, Project Manager
 2860 Gateway Oaks Drive
 Sacramento, CA 95833

With a copy to: Administrative Office of the Courts
 455 Golden Gate Avenue
 San Francisco, CA 94102-3688
 Attention: @, Senior Manager

Business Services Manager
Phone: 415-865-4090
Fax: 415-865-4326

All notices to the Contractor under this Contract shall be given as follows:

To the Contractor: **TBD**

46. ACCELERATION

- i.** 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. Contractor 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.
- ii.** In the event that the Contractor believes that some action or inaction on the part of the AOC constitutes an acceleration directive, the Contractor shall immediately notify the AOC in writing that the Contractor considers the actions an acceleration directive. This written notification shall detail the circumstances of the acceleration directive. Contractor 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 Contractor and provided to the AOC on a daily basis.
- iii.** In order to recover additional costs due to acceleration, the Contractor shall document that additional expenses were incurred and paid by the Contractor. 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.
- iv.** All changes to the Scope of the Work, the Contract Amount, or the Contract Time caused by any acceleration must be reflected by a written and executed Change Order.

END OF EXHIBIT B

Attachment D

PAYMENT PROVISIONS
[Exhibit C]

1. Contract Amount

The total amount owed by the State to Contractor under this Agreement for performing any and all Services authorized hereunder shall not in total exceed the Contract Amount as amended or the Total Amount Encumbered to Date.

2. Compensation

Contractor agrees to perform all Work for the Project, including performing all services and providing all material for the Project, for the Contract Amount.

3. Taxes

The State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the services rendered or equipment or parts supplied pursuant to this Agreement.

4. Method of Payment

- A. The Contractor shall submit an invoice monthly for the Work performed during the foregoing month. After receipt of invoice, AOC will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.
- B. The State will make payment in arrears within sixty (60) days after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate
 - i. The Contract number,
 - ii. A unique invoice number;
 - iii. The Contractor's name and address;
 - iv. Taxpayer identification number
 - v. Description of the completed Work, including services rendered, Task(s) performed, and/or Deliverable(s) made, as appropriate; and the name(s) of employee(s) evaluated.
 - vi. Preferred remittance address, if different from the mailing address.
- C. Contractor shall submit one (1) original invoice to:

Judicial Council of California
Administrative Office of the Courts

Office of Real Estate and Facilities Management
Project Manager (Name and address designated on Work
Order)

- C. The AOC may withhold full or partial payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

5. Retention

The AOC shall withhold payment of an amount equal to 10 percent from all payments made for invoices submitted as above and paid. Upon successful completion of all of the Services and, if applicable, successful provision of all Deliverables, Contractor shall invoice, and the AOC shall pay the total of all amounts retained.

6. Disallowance

If the Contractor claims or receives payment from the AOC that is later disallowed by the AOC, the Contractor 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 Contractor under this Agreement or any other agreement.

7. Payment Does Not Imply Acceptance of Work

The granting of any payment by the AOC, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct unsatisfactory work in connection with this Agreement.

8. Release of Claims

The acceptance by the Contractor 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 Contractor 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 Contractor as outstanding as of the date of Contractor's submission of Contractor's final invoice. Contractor's failure to identify any such claims shall operate as a release of all claims.

9. Payment

Payment for Work shall be made in accordance with this Exhibit C as well as Sections 21, 22, 23 and 25 of Exhibit B.

End of Exhibit C

Attachment D
AOC TOOL CONTROL POLICY
(Effective October 1, 2009)
PROPERTY CONTROL IN-CUSTODY AREAS
[Exhibit G]

Background:

The Facilities Management Unit is responsible for Facilities Services throughout In-Custody Holding areas. Successful provision of services requires technical personnel to access and operate in these areas and to bring all the tools, supplies, materials, parts, and equipment necessary to complete their work. Due to the unique nature of the environment, there is an extremely high risk that any of these items, if not properly controlled, will result in property damage, and/or personal injury to those who operate and occupy the areas, and to others who may in the course of normal operations, enter these areas.

Policy:

In-Custody Holding Areas: It is the policy of the Facilities Management Unit to control all tools, supplies, materials, parts, and equipment necessary to complete Facilities Services work in In-Custody Holding areas. This control will be achieved through implementation of the procedures and documentation below and will be reinforced through periodic evaluation.

All other areas: This policy applies equally to all other areas in which Court or Court-related or supported functions are conducted. These areas include but are not limited to conference rooms, secured Court staff areas, parking lots, administrative areas, hallways, conveyances, restrooms, and building infrastructure control rooms. Control in these areas shall be achieved to the greatest extent possible through an emphasis on awareness, vigilance, and on-the-spot remediation of deficiencies in property control and accountability.

Acceptance of employment in the Court environment in general implies a thorough understanding of the physical security risks involved when tools, supplies, materials, parts, and equipment are not properly controlled. Facilities Management Unit staff and outsourced service providers at all levels are responsible to support this policy through education and direct action. Failure to apply the fundamentals of this policy through action or inaction can result in property damage, and/or personal injury to anyone in the Court environment and can lead to appropriate action, up to and including the suspension of granted access rights to state courts.

Goal:

Eliminate risks of property damage, and/or personal injury to those who operate and occupy In-Custody Holding areas, and to others who may in the course of normal operations, enter these areas.

Procedure:

There are three basic phases in the accomplishment of Facilities Services in In-Custody Holding areas.

- **Pre-entry:** The basic activities in this phase include planning, scheduling, and coordination with In-Custody operational personnel, and assembly of tools, supplies, materials, parts, and equipment necessary to complete the work. This includes travel to the job site, arrival, and formal notification to In-Custody operational personnel that all preparations for work are completed. Establishment of positive control of tools, supplies, materials, parts, and equipment is accomplished.
- **In Place:** This phase includes activities carried out while inside the controlled In-Custody Holding areas. There shall be no intermediate exit/re-entry.
- **Exit.** In this phase, technicians have completed all work and are outside the controlled In-Custody Holding areas. Technicians inform In-Custody operational personnel of the job status, report any unusual circumstances, and complete necessary documentation to validate and record control of tools, supplies, materials, parts, and equipment.

Minimal Operational Requirements:

Proper control of tools, supplies, materials, parts, and equipment is achieved through inventory and documentation activities at each of the three phases as described above. Personnel must be vigilant to ensure:

- Careful determination and inventory of what is needed in the Pre-entry phase.
- Strict limitation on what is brought into the In-Place phase, to the minimum required property as shown on the Pre-Entry inventory.
- Validating that the same property is removed during the Exit phase.
- Accuracy and thoroughness in completing required documentation.

Documentation:

In order to record the actions required in the Minimal Operational Requirements, a simple localized form shall be developed and used at each occurrence of the procedure above.

- The form shall allow for recording of the date, place, and time of the inventory of property in the Pre-entry Phase and shall have a place to record the signatures of both the technician, (or lead technician), and the In-Custody operational personnel.

- The form shall allow for recording of the inventory of property in the Exit Phase and shall have a place to record the date, place, and time, and signatures of both the technician, (or lead technician), and the In-Custody operational personnel.
- If, during the Exit phase, it is discovered that one or more items shown on the Pre-entry inventory are missing, Facilities Services personnel shall immediately report the condition to the In-Custody operational personnel, remain at the job site, and comply with all direction as provided by the In-Custody operational personnel to resolve the deficiency. Regardless of the results of the effort to reconcile “Pre-Entry property inventories” to “Exit property inventories”, Facilities Services personnel shall record the details of the event on the form.
- Retain completed forms for at least 90 Days at each site.

Compliance:

Compliance with this policy is demonstrated with existence of written site specific guides, and existence and proper use of the required inventory forms.

Site Specific Requirements:

Because there are a very wide range of physical layouts, sizes, assignment of In-Custody operational personnel, Facilities Services resources, and In-Custody operating schedules and procedures, local Facilities Services management shall establish written site specific guides and procedures, but at a minimum must include a form to record the date, place, and time of inventories and validation signatures as shown in the Documentation section above.

Site Specific Options:

Decisions on whether or not to establish dedicated tool cribs, shadow boards, containers, property marking, lost/found property guidance or other control measures for tools, supplies, materials, parts, and equipment in support of general Facilities Services operations are local, and as such are outside the provisions of this policy. Such provisions shall not in any way take precedence over, or in any other manner interfere with, the requirements of this policy.

Exemption:

The procedures and documentation in this policy is not required when Facilities Services personnel are sworn peace officers and also serve in the capacity of In-Custody operational personnel.

Periodic Evaluation:

AOC personnel shall evaluate compliance with this policy upon random inspection of completed forms and also through random observation of the full cycle of the Pre-entry, In Place, and Exit phases of an occurrence.

End of Exhibit G