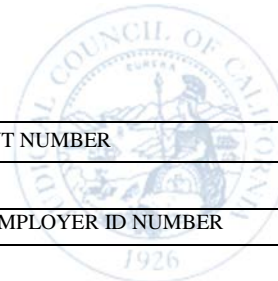


RFP Title: EIFS Exterior Wall Replacement

RFP Number: REFM-2016-27-BD

ATTACHMENT 3 – Revision 1

**JUDICIAL COUNCIL OF CALIFORNIA
AGREEMENT FOR EIFS EXTERIOR WALL REPLACEMENT**



AGREEMENT NUMBER
FEDERAL EMPLOYER ID NUMBER

1. THIS AGREEMENT, made and entered into as of the ___ day of _____ 2017, ("Effective Date"), between the Judicial Council of California ("Judicial Council") and _____ ("Contractor").

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the Judicial Council hereinafter expressed, does agree to furnish to the Judicial Council the services and materials set forth in the Scope of Work (see Exhibit C) pursuant to the Contract Documents (as defined in Exhibit A).

2. The purpose of this Agreement is to:

Implement Exterior Insulation and Finish System ("EIFS") exterior wall removal and replacement at the Edmund D. Edelman Children's Courthouse facility located at 201 Centre Plaza Drive, Monterey Park, CA 941754 ("Facility") including construction as set forth in the Contract Documents as further described in Exhibit C, Scope of Work ("Project").

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

3. This Agreement (the "**Contract**") includes this Agreement and the following documents: (1) Exhibit A, Agreement for EIFS Exterior Wall Replacement Project; (2) Exhibit B, Terms and Conditions to Contract; Payment Terms; (3) Exhibit C, Scope of Work, including Project Manual (Specifications) and Plan (Drawing) Index; (4) Exhibit D, Project Insurance Requirements; (5) Exhibit E, Prevailing Wage Certification; (6) Exhibit F, Workers Compensation Certification; (7) Exhibit G, Asbestos Lead-Based Paint and Other Hazardous Materials Certification; (8) Exhibit H, DVBE Form; (9) Exhibit I, Judicial Council Background Check Policy, and; (10) Exhibit J, Judicial Council Tool Control Policy, and any other documents specifically enumerated as incorporated elsewhere in the Contract.

4. The maximum amount that the Judicial Council may pay Contractor under this Agreement is \$0.00.

5. Contractor shall complete and sign Exhibits E, F, and H and return the originals of these documents to the Judicial Council prior to commencing any work on the Project (as those terms are defined in the Contract Documents). Contractor shall complete and sign Exhibit G upon completion of the Project and prior to final payment.

6. IN WITNESS WHEREOF, this Agreement has been entered into by the parties hereto, effective upon the Effective Date.

JUDICIAL COUNCIL'S SIGNATURE	CONTRACTOR'S SIGNATURE
Judicial Council of California	CONTRACTOR'S NAME (if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)
BY (Authorized Signature) ✍	BY (Authorized Signature) ✍
PRINTED NAME AND TITLE OF PERSON SIGNING Stephen Saddler, Manager, Contracts	PRINTED NAME AND TITLE OF PERSON SIGNING
DATE EXECUTED	DATE EXECUTED
ADDRESS Attn: Procurement 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS

EXHIBIT “A” *[Revised]*

AGREEMENT FOR EIFS EXTERIOR WALL REPLACEMENT PROJECT

1. Contractor shall furnish to the Judicial Council for a firm-fixed price of _____ Dollars (**\$00**) (“**Contract Price**”), for the construction, and other services necessary or incidental to complete the Project.
2. The Contract includes the Agreement for EIFS Exterior Wall Replacement Project and all of the Contract Documents listed in section 6 of this Exhibit, and any modifications issued after execution of this Contract in accordance with the terms of this Contract.
3. The Project shall be completed within **330** consecutive calendar days (“**Contract Time**”) from the date specified in the Judicial Council’s Notice to Proceed (Attachment 1 to Exhibit “A”). Contractor agrees that if the Project is not completed within the Contract Time and/or pursuant to the completion schedule, or construction schedule, it is understood, acknowledged, and agreed that the Judicial Council will suffer damage. Pursuant to Government Code section 53069.85, Contractor shall pay to the Judicial Council, as fixed and liquidated damages, and not as a penalty, the sum of **\$500.00** per day for each calendar day during which completion of the Project is delayed beyond the time specified for completion. *[Revised]*
4. Contractor shall not commence the Project until the Contractor has submitted and the Judicial Council has approved the performance bond, and payment bond (i.e. labor and material bond), the certificate(s) and affidavit(s), and the endorsement(s) of insurance required under the Terms and Conditions and the Project Manager has issued a written Notice to Proceed.
5. Payment for the Project shall be made in accordance with Exhibit B, the Terms and Conditions to Contract; Payment Terms.
6. The Contract Documents include the following documents, as indicated:

<input checked="" type="checkbox"/> Attachment 1 to Exhibit “A” (Notice to Proceed)	<input checked="" type="checkbox"/> Exhibit “H” (DVBE Participation Form)
<input checked="" type="checkbox"/> Exhibit “B” (Terms and Conditions of Contract; Payment Provisions)	<input checked="" type="checkbox"/> Exhibit “I” (Judicial Council Background Check Policy)
<input checked="" type="checkbox"/> Exhibit “C” (“Scope of Work”)	<input checked="" type="checkbox"/> Exhibit “J” Judicial Council Tool Control Policy
<input checked="" type="checkbox"/> Exhibit “D” (Insurance Provisions)	<input checked="" type="checkbox"/> Payment Bond
<input checked="" type="checkbox"/> Exhibit “E” (Prevailing Wage Certification)	<input checked="" type="checkbox"/> Performance Bond
<input checked="" type="checkbox"/> Exhibit “F” (Workers’ Compensation Certification)	<input checked="" type="checkbox"/> Insurance Certificates/Endorsements
<input checked="" type="checkbox"/> Exhibit “G” (Asbestos, Lead-Based Paint & Other Hazardous Materials Certification)	<input checked="" type="checkbox"/> Designated Subcontractors List

7. The Judicial Council's project manager for this Project is Timothy O'Connor ("**Project Manager**").
8. Inspection and acceptance of the Project shall be performed by the Project Manager.
9. By signing this Contract, Contractor certifies, under penalty of perjury, that all the information provided in the Contract Documents is true, complete, and correct.

EXHIBIT “B”

TERMS AND CONDITIONS TO CONTRACT; PAYMENT TERMS

- 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 Project. Prior to receiving the Notice to Proceed, Contractor must (a) post all payment and performance bonds; (b) provide evidence of insurance pursuant to Exhibit “D”; (c) complete the Prevailing Wage Certification attached hereto as Exhibit “E” and the Workers’ Compensation Certification attached hereto as Exhibit “F.”

- 2. EXAMINATION OF FACILITY:** Contractor has examined the Facility including the Project site and certifies that it accepts all measurements, specifications, and conditions affecting the Project. Contractor warrants that it has made all examination(s) that it deems necessary as to the condition of the Facility, its accessibility for materials, workers and utilities, and Contractor’s ability to protect existing surface and subsurface improvements.

- 3. EQUIPMENT AND LABOR:** Contractor shall furnish all tools, equipment, apparatus, facilities, transportation, labor, and material necessary to provide the services to complete the Project.

- 4. TERMINATION:** If Contractor fails to perform the work for the Project to the satisfaction of the Judicial Council, 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 Judicial Council shall have the right to terminate this Contract effective immediately upon the Judicial Council giving written notice thereof to the Contractor. Judicial Council shall also have the right in its sole discretion to terminate the Contract for its own convenience, in which case, the Judicial Council 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.

- 5. SAFETY PRECAUTIONS AND PROGRAMS:** Contractor is responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Project. Contractor must take all reasonable precautions and protections to ensure the safety of, and prevent damage, injury or loss to:
 - 5.1 Employees working on the Project and all other persons who may be affected by the Project;
 - 5.2 All the work and all materials and equipment to be incorporated therein, whether in storage on or off the Site, under the care custody or control of the Contractor or any of its subcontractors; and
 - 5.3 Any other property located at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation, or replacement in the course of the work.

6. PROTECTION OF PROJECT AND PROPERTY: Contractor shall erect and properly maintain at all times, as required by conditions and progress of the work for the Project, all necessary safeguards, signs, barriers, lights, and security persons for protection of workers and the public, and shall post danger signs warning against hazards created by the work for the Project. In an emergency affecting life and safety of life or of work or of adjoining property, Contractor, without special instruction or authorization from Judicial Council, is permitted to act at its discretion to prevent such threatened loss or injury. Contractor shall designate a superintendent, or some other responsible member of the Contractor's organization, who is at the Site, to be the person responsible for: (1) the prevention of accidents and the monitoring of the safety for the Project, and (2) the compliance with all applicable laws, ordinances, rules, regulations and lawful orders of the local public jurisdiction with authority on safety of persons or protection of property.

7. 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 Contractor executed by the Judicial Council and Contractor. Contractor specifically understands, acknowledges, and agrees that the Judicial Council shall have the right to request any alterations, deviations, reductions, or additions to the Project via a written change order signed by both the Judicial Council and the Contractor, and the cost thereof shall be added to or deducted at the amount set forth in the written change order, or if not set forth in the written change order. Contractor also agrees to provide the Judicial Council with all information requested to substantiate any cost of the change order and to inform the Judicial Council whether the work will be done by the Contractor or a subcontractor. In addition to any other information requested, Contractor shall submit, prior to approval of the change order, its request for a time extension (if any), as well as all information necessary to substantiate its belief that such change will delay the completion of the Project. If Contractor fails to submit its request for a time extension or the necessary supporting information, it shall be deemed to have waived its right to request such extension.

8. OTHER CONTRACTS: Judicial Council reserves the right to let other construction contracts in connection with work involving the same or overlapping locations within the Facility. Contractor shall afford other contractors reasonable opportunity for introduction and storage of their materials and execution and completion of their work. Contractor shall coordinate with and order or sequence work with other contractor(s) in these areas in cooperation with Judicial Council overall work plan for projects in the facility.

- 8.1. If any part of Contractor's work depends for proper execution or results upon work of any other contractor, Contractor shall inspect and promptly report to the Judicial Council in writing before proceeding with its work any defects in any other contractor's work that render Contractor's work unsuitable for proper execution and results. Contractor shall be held accountable for damages to Judicial Council for any other contractor's work that Contractor failed to inspect or should have inspected. Contractor's failure to inspect and report shall constitute Contractor's acceptance of all other contractor's work as fit and proper for reception of Contractor's work, except as to defects that may develop in other contractor's work after execution of Contractor's work.

- 8.2. To ensure proper execution of its work, Contractor shall measure and inspect work already in place and shall at once report to the Judicial Council in writing any discrepancy between that executed work and the Contract Documents.
 - 8.3. Contractor shall ascertain to its own satisfaction the scope of the Project and nature of any other contracts that have been or may be awarded by Judicial Council within the Facility to the end that Contractor may perform this Contract in light of the other contracts, if any.
 - 8.4. Nothing herein shall be interpreted as an exclusive or priority access by Contractor to any work area within the Facility or at the Project site.
 - 8.5. Nothing herein contained shall be interpreted as granting to Contractor exclusive occupancy of the Project site or any portion of the Facility. Contractor shall not cause any unnecessary hindrance or delay to any other contractor working within the Facility. If simultaneous execution of any contract or school operation is likely to cause interference with performance of Contractor's work, Contractor shall coordinate with those contractor(s), person(s), and/or entity(s) and shall notify the Judicial Council of the resolution. Contractor shall review, coordinate, and include in its construction schedule other construction projects that are being conducted simultaneously within the Facility to ensure proper execution of its work.
- 9. TRENCH SHORING:** If this Contract is in excess of \$25,000 and includes the excavation of any trench deeper than five (5) feet, pursuant to Labor Code section 6705, Contractor must submit and obtain Judicial Council acceptance, in advance of excavation, of a detailed plan showing the design of shoring, bracing, sloping, or other provisions to be made for worker protection from the hazard of caving ground during the excavation of such trench or trenches. If the plan varies from the shoring system standards, the plan shall be prepared by a registered civil or structural engineer.
- 10. HAZARDOUS MATERIALS:** Contractor shall not use or incorporate any Hazardous Materials (as defined in Exhibit G) in the Project.
- 11. WORKERS:** Contractor shall at all times enforce strict discipline and good order among its employees and the employees of its subcontractors and shall not employ or work any unfit person or anyone not skilled in work assigned to him or her. Any person in the employ of the Contractor or a subcontractor whom the Judicial Council may deem incompetent or unfit shall be dismissed from the Project site and shall not again be employed at the Project site without written consent from the Judicial Council.
- 12. CORRECTION OF ERRORS:** Contractor shall perform, at its own cost and expense and without reimbursement from the Judicial Council any work necessary to correct errors or omissions that result from, or relate to, Contractor's failure to comply with the standard of care required for the work for the Project.
- 13. SUBSTITUTIONS AND APPROVED EQUALS.** Whenever in the Contract Documents any materials, process, or article is indicated or specified by grade, patent, or proprietary name, or

by name of manufacturer, those references shall be deemed to be used for the purpose of facilitating the description of that material, process, or article desired, and shall be deemed to be followed by the words “or equal,” except when the product is designated to match others in use on a particular public improvement whether completed or in the course of completion. Contractor may, unless otherwise stated, offer any material, process, or article that shall be substantially equal or better in every respect to that so indicated or specified. If the material, process, or article offered by Contractor is not, in the opinion of the Judicial Council, substantially equal or better in every respect to that specified, then Contractor shall furnish the material, process, or article specified in the Specification.

- 13.1. Contractor shall submit a proposal for a substitution request for alternative material(s), article(s), or equipment, in writing:
- 13.2. The Judicial Council 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 Judicial Council.
- 13.3. At the Judicial Council’s discretion, it may give written consent to a submittal or resubmittal received after expiration of the time limit designated.
- 13.4. 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 Judicial Council. Burden of proof as to comparative quality, suitability, and performance of offered material(s), article(s), or equipment shall be upon the Contractor. The Judicial Council will be the sole judge as to such matters. In the event the Judicial Council rejects the use of such alternative(s) submitted, then the particular product(s) originally specified in the Contract Documents shall be furnished.
- 13.5. 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, if any, and Specifications, such changes shall not be made without consent of the Judicial Council, and shall be made without additional cost to the Judicial Council.

14. CONTRACTOR SUPERVISION: Contractor shall provide competent supervision of personnel who are working at the Project site or on the Project.

15. SCHEDULE OF SUBMITTALS. Contractor shall provide a preliminary schedule of submittals, including all required Shop Drawings, Product Data, Samples, and a Schedule of Value. Once approved by the Judicial Council, this shall become the Submittal Schedule. All submittals shall be forwarded to the Judicial Council by the date indicated on the approved Submittal Schedule, unless an earlier date is necessary to maintain the Judicial Council, in which case those submittals shall be forwarded to the Judicial Council so as not to delay the Judicial Council.

16. CLEAN UP: Contractor must remove debris from the Project site on a weekly basis, as applicable. The Project site shall be in order at all times when work is not actually being performed and shall be maintained in a reasonably clean condition.

17. ASSIGNMENT OF CONTRACT: Contractor shall not assign any of its rights under this Contract, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, or otherwise transfer or delegate its duty or obligation to perform any work under the Contract without the prior written consent of the Judicial Council. Any assignment by Contractor, either voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or any other manner, without the prior written consent of the Judicial Council, shall be deemed a default allowing the Judicial Council to exercise all remedies available to it under applicable law. Consent will not be given to an assignment which would relieve the Contractor or the Contractor's surety of their responsibilities under this Contract. Any purported assignment of rights or delegation of performance in violation hereof shall be null and void.

18. 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.

19. NO INTERFERENCE WITH COURT OPERATIONS: Contractor acknowledges that the Project is located in a courthouse which is an operating courthouse that is open to the public. Access to the Facility, including mechanical rooms, electrical rooms, or other rooms must be coordinated with the Court through the Project Manager before work commences. Interruption and/or periods of shutdown of public access, electrical service, water service, lighting, or other utilities shall be only as arranged in advance with the Project Manager and shall be minimized to the greatest degree possible. Contractor shall provide temporary services to all facilities interrupted by Contractor's work. Contractor and its subcontractors shall not interfere with the transaction of Court business, including the public's access to and use of the Facility.

20. WORK HOURS: Since the Work will be taking place in an occupied court facility, the selected firm will be required to coordinate Work in such a way as to not disrupt court operations. Certain work will be required to be completed after hours or on weekends. It is estimated that approximately seventy percent (70%) of the performance of work may be completed during standard business hours, Monday to Friday, 7:00 am to 6 pm. However, when work will adversely affect Court proceedings, Judicial Council will require that that work be performed when the Court is not in session. The Firm should expect that approximately thirty percent (30%) of the work, but not limited to, will be required to be performed on a weekend (Saturdays and Sundays, 7 am to 6 pm) and/or after hours on business days (Monday to Friday, 6:00 pm to 1 am). The Project Manager will coordinate with the local jurisdiction and the selected Firm to establish the hours of work on a week to week basis. The Firm's Cost Proposal shall include all costs associated with limiting the work hours for the Project as set forth herein and the successful Firm will not be entitled to any additional compensation for performing work on the weekends, holidays or after-hours on business days.

21. BACKGROUND CHECKS:

- 21.1. Criminal Background Screening
Access to Facility. Only Approved Persons may have unescorted access to (1) the Restricted Areas of a Facility and (2) any area of the Facility, during non-business hours when there is no security screening available. Contractor and Subcontractor employees who are not Approved Persons may access Restricted Areas only if they are escorted by an Approved Person at all times that they are in the Restricted Areas. Contractor may not rely upon an employee of the Court to escort or monitor these persons. Contractor must take all reasonable steps to ensure that its operations in any Restricted Area are at all times consistent with this section (“Access to Restricted Areas”).
- 21.2. Notification. Contractor must notify all subcontractors that (i) the Judicial Council requires a background check for personnel working in Restricted Areas without an escort pursuant to this Background Checks provision, (ii) the Court may have supplemental screening procedures, criteria, and requirements, and (iii) subcontractor employees must comply with both the Judicial Council’s and the Courts’ checks and procedures.
- 21.3. Judicial Council Screening and Approval Process. The Judicial Council shall conduct the screening and approval of employees of Contractor and subcontractors that have access to the Restricted Areas pursuant to the Judicial Council’s then-current background check policies and procedures. Contractor agrees to cooperate with the Judicial Council with respect to the screening of those employees. A copy of the Judicial Council’s background check policy current as of the Effective Date is attached as Exhibit “I” for the Contractor’s reference (“Background Check Policy”). The Judicial Council may update the Background Check Policy at any time, without notice to the Contractor. Contractor acknowledges that the definition of Restricted Areas in this Agreement is broader and includes more areas than the definition of Restricted Areas in the Background Check Policy and that the definition of Restricted Areas in this Agreement shall control. Contractor must comply with the provisions of this Background Checks provision in this Agreement and with the Background Check Policy.
- 21.4. Judicial Council Badges. The Judicial Council will issue an identification badge to each person who is approved by the Judicial Council pursuant to this Background Checks provision 4.3 (“**Judicial Council Screening and Approval Process**”), bearing that person’s name and picture. The badge will indicate that the person is permitted to access the Restricted Areas. The Judicial Council will either (1) notify Contractor if an employee is approved, whereupon the Judicial Council will issue an identification badge for that person, or (2) provide an identification badge for the person to the Contractor, and Contractor will be responsible for issuing the identification badge to that person. All such persons must wear their identification badges in a readily-visible manner whenever they

are in a Restricted Area. The Contractor will have a procedure in place to ensure that all badges are returned to the Judicial Council upon termination of an employee.

21.5. Court-Required Screening and Background Check Requirements. Even if a Contractor or subcontractor employee has a Judicial Council-issued badge, the Court has the ultimate decision as to whether a specific Contractor or subcontractor employee may have unescorted access to its Facility. The Court shall have the right at any time to refuse Facility access to any Contractor or subcontractor employee (even if that employee has a Judicial Council-issued badge) if the Court determines, in its sole discretion, that such person poses a risk to the Court or any person, system, or asset associated with the Court. The Court may elect to perform supplemental screening on Contractor or Subcontractor employees who perform Work in that Court's Restricted Areas. Contractor agrees to cooperate with the Court with respect to the screening of those employees, and shall obtain at no additional cost to the Court all related releases, waivers and permissions the Court requires. The Court may issue its own identification badge or other credential to persons who have passed the applicable Court-required screening procedure.

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

21.7. Definitions.

- (a) "Approved Person" means any employee of Contractor or any subcontractor who (i) has been screened and approved by the Judicial Council pursuant to the Judicial Council Screening Process and (ii) when working in a the Facility, has passed any additional Court-required screening and background check requirements which that Court requires of contractors working in that Facility, as described in the above section relating to Court-required screening.

- (b) “Restricted Areas” means (i) all areas within the Facility that are not generally accessible to the public, including judges’ chambers, all non-public restrooms, elevators, break rooms, and corridors, and other non-public spaces that are dedicated for use only by judges or Court staff and employees, (ii) public areas of a Facility during non-business hours that are subject to security screening during normal business hours, and (iii) the areas defined as Restricted Areas in the Background Check Policy.

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

22. SECURITY PROTOCOLS AND TOOL CONTROL POLICY: Contractor personnel must comply with all Judicial Council- and Court-required security protocols in the performance of the work. Such protocols include, but are not limited to, the then-current Judicial Council Tool Control Policy. The version of the Judicial Council Tool Control Policy in effect as of the Effective Date is attached as Exhibit “J”.

23. FORCE MAJEURE CLAUSE: Contractor shall not be liable for any failure or delay in performance hereunder during the time and to the extent that it is prevented from obtaining delivery of goods or materials, or performing the work for the Project by:

- 23.1. An Act of God (e.g. flood, earthquake, fire due to lightning), strike or lock-out involving a supplier of material, commandeering of materials, product, plant, or facilities by the government, when satisfactory evidence thereof is presented to the Judicial Council, provided that it is satisfactorily established that the non-performance is not due to the fault, neglect or action of the Contractor.
- 23.2. Adverse weather that is (1) unusually severe precipitation, sleet, snow, hail, heat, or cold, wind or fog conditions in excess of the norm for the location and time of year it occurred as determined by a source mutually agreed to by the Judicial Council and the Contractor or, if none can be mutually agreed upon, as indicated at <http://countrystudies.us/united-states/weather/California>; (2) unanticipated; and (3) occurring at the site of the Project.

24. INDEMNIFICATION: To the furthest extent permitted by California law, Contractor shall defend, indemnify, and hold harmless the State of California; the Judicial Council of California; the Judicial Council; the County of Los Angeles; and the Superior Court of California County of Los Angeles, and their respective officers, consultants, representatives, agents and employees, (the “**Indemnified Parties**”) from any and all demands, losses, liabilities, claims, suits,

and actions (the “**Claims**”) of any kind, nature, and description, including, but not limited to, attorneys’ fees and costs, directly or indirectly arising from personal or bodily injuries, death, property damage, or otherwise arising out of, connected with, or resulting from the performance of this Contract unless the Claims are caused wholly by the sole negligence or willful misconduct of the Indemnified Parties. This indemnification, defense, and hold harmless obligation includes any failure or alleged failure by Contractor to comply with any provision of law or the Contract, including, without limitation, any stop notice action. The Judicial Council shall have the right to accept or reject any legal representation that Contractor proposes to defend the Judicial Council.

25. PROGRESS PAYMENTS: Contractor shall submit to the Judicial Council 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 (90%) of the amount invoiced in the Application for Payment (as Judicial Council verified, as applicable, by the Project Manager, Judicial Council’s architect, and Judicial Council’s project inspector and certified by Contractor) The Judicial Council may deduct from any payment an amount necessary to protect the Judicial Council from loss because of: (1) any sums expended by the Judicial Council in performing any of Contractor’s obligations under the Contract 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 9358 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 Judicial Council during the prosecution of the work for the Project; (8) erroneous or false estimates by the Contractor of the value of the work performed; (9) any sums representing expenses, losses, or damages, as determined by the, incurred by the for which Contractor is liable under the Contract; and (10) any other sums which the Judicial Council is entitled to recover from Contractor under the terms of the Contract or pursuant to state law, including section 1727 of the California Labor Code. The failure by the Judicial Council to deduct any of these sums from a progress payment shall not constitute a waiver of the Judicial Council’s right to such sums. The Judicial Council will retain ten percent (10%) from all amounts owing as retention.

All Applications for Payment shall comply with the following:

- i. Each Application for Payment shall bear a unique invoice number, the Contract Number, the Contractor’s name and address, Contractor’s preferred remittance address, the Contractor’s Taxpayer identification number (FEIN)
- ii. Contractor shall submit each Application for Payment form with the invoice to the Project Manager.
- iii. Each Application for Payment must clearly specify:
 - Month and Year being invoiced;

- The portion of the total work being invoiced expressed as a percentage, the total price of the Work, and the total amount due that month.
 - The amount to be withheld by the Judicial Council that month
 - The amount to be paid that month
 - The total amount withheld to date
- iv. The final payment shall be invoiced in accordance with the Final Payment section of this Exhibit.

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

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

28. COMPLETION OF PROJECT: Contractor shall notify the Project Manager in writing when the Project is complete. The Judicial Council will accept completion of the Project and record the Notice of Completion when the entire Project had been completed to the satisfaction of the Judicial Council. The Judicial Council, at its sole option, may accept completion of the Project and have the Notice of Completion recorded when the Project has been completed to the satisfaction of the Judicial Council, except for minor corrective items ("**Punch List Items**"), as distinguished from incomplete items. In determining whether the Project is complete and acceptable to Judicial Council, the Project must conform with the following: (1) all of the work set forth in the Scope of Work, Exhibit C, along with any agreed upon Change Orders; and (2) the design work completed by Contractor pursuant this Contract. Contractor warrants and represents that the Project complies with all applicable State and Federal laws, building codes, regulations and ordinances in effect on the date of acceptance of the Project by Judicial Council.

29. FINAL PAYMENT:

The following conditions must be fulfilled prior to final payment:

- 29.1. The Judicial Council must have accepted the Project as complete in accordance with the Completion of Project section of this Exhibit;
- 29.2. A duly completed and executed waiver and release upon final payment compliant with Civil Code sections 8136 and 8138, as applicable, from the Contractor and each subcontractor and supplier;
- 29.3. Contractor shall have delivered to the Judicial Council all applicable written guarantees and warranties, including those of its subcontractors, if applicable;

- 29.4. Contractor shall have delivered to the Judicial Council all applicable manuals;
- 29.5. Contractor shall have executed the Asbestos Lead-Based Paint and Other Hazardous Materials Certification substantially in the same for as attached to this Agreement as Exhibit “G”; and
- 29.6. The Contractor shall have completed final clean-up of the Project site.

After 35 days have elapsed following the recordation of the Notice of Completion for the Project, the Judicial Council will commence processing the final payment, and provide the final payment to Contractor as expeditiously as possible. The final payment shall be the amount of retention, less the following: (i) any amounts reasonably disputed by the Judicial Council; (ii) 150 percent of the Judicial Council’s estimate of any amount necessary to complete any Punch List Items which are still not complete; (iii) any amounts attributable to stop payment notices which the Judicial Council is required to withhold pursuant to the Prevailing Wage Laws; (iv) any penalties pursuant to the Prevailing Wage Laws which Contractor failed to forfeit in accordance with the Prevailing Wage Laws; and (v) any assessments by the California Labor Commissioner pursuant to Labor Code section 1741.

30. NO LIENS: Contractor agrees that Contractor, and any person, firm, or corporation furnishing any materials or labor for any work covered by the Contract, has no rights to lien any portion of the Project site, including any improvement or appurtenance thereon (e.g. the Facility). Contractor specifically acknowledges, in accordance with Civil Code section 9350 et seq., that the Project, the Facility, and the Project 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, the Facility, and the Project site, as applicable.

31. 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.

32. PERMITS: Contractor will obtain all necessary Project specific permits (e.g. grading permits, transportation permits, building permits, etc.) which are required for the Project, and all fees for those permits will be paid directly by the Judicial Council to the entity issuing the permits with no mark-up by Contractor.

33. 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 Judicial Council. 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.

34. 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).

35. DISABLED VETERAN BUSINESS ENTERPRISES: This Project has a Disabled Veteran Business Enterprise (“**DVBE**”) participation requirement of three percent (3%). Contractor must document its DVBE compliance by completing the DVBE Participation Form set forth as Exhibit “H.”

36. PAYMENT BOND AND PERFORMANCE BOND: Contractor shall not commence the Project until it has provided to the Judicial Council in a form acceptable to the Judicial Council, a Payment (Labor and Material) Bond and a Performance Bond, each in an amount equivalent to 100 percent of the Contract Price issued by a surety admitted to issue bonds in the State of California and otherwise acceptable to the Judicial Council.

37. CONTRACTOR’S INSURANCE: Contractor shall, during the terms of this Contract, maintain insurance in accordance with the requirements of Exhibit “D” of this Contract which is attached hereto and incorporated herein, with insurance company or companies that are rated “A-VII” or higher by A. M. Best’s key rating guide, and are approved to do business in the State of California. If self-insured, Contractor 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 Contractor under the terms of this section and Exhibit “D.”

38. WARRANTY: 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 two years from the date of the Judicial Council’s recordation of a Notice of Completion for the Project, and at the Judicial Council’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 Judicial Council, 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 Judicial Council is authorized to proceed to have the work replaced or repaired and made good at expense of Contractor who hereby agrees to reimburse the Judicial Council for any costs incurred by the Judicial Council with respect to repairing or replacing the work.

39. SUBCONTRACTORS:

39.1. Although the Judicial Council is not bound by the Public Contract Code for trial court construction, the Judicial Council hereby specifically incorporates the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et seq.) (“**Subcontractor Listing Law**”) into this Contract. The Judicial Council intends to fully enforce the provisions of the Subcontractor Listing Law, including, specifically sections 4109 and 4110. Accordingly, Contractor Judicial Council 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 Subcontractor Listing Law. Violations of the Subcontractor Listing Law by the Contractor may subject the Contractor to

penalties and disciplinary action as provided by in the Subcontractor Listing Law. Contractor is prohibited from replacing or otherwise substituting subcontractors who were listed on the Designated Subcontractors List submitted with Contractor's proposal 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.

- 39.2. 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 Judicial Council for acts and omissions of its subcontractor and of persons either directly or indirectly employed by itself.
- 39.3. At the request of the Judicial Council, the Contractor shall provide documentation that its subcontractors meet the required qualifications set forth in the Contract with respect to that subcontractor's work. If requested by the Judicial Council, the Contractor shall provide copies of all Contractor's agreements with its subcontractors to the Judicial Council. The Judicial Council's review of subcontracts shall in no way relieve the Contractor of any of its responsibilities and obligations under this Contract.
- 39.4. Contractor shall, in the course of the work, engage only subcontractors and employees who possess, and will maintain in good standing during the performance of the Services, valid and applicable licenses where the State of California or this Contract requires that the work to be performed by that subcontractor or employee must be performed by a licensed person or entity
- 39.5. Contractor expressly acknowledges that its Subcontractors are not third party beneficiaries of this Contract. Nothing contained in the Contract Documents shall create any contractual relations between any subcontractor and the Judicial Council. No contractual relationship exists between the Judicial Council and any subcontractor, supplier, or sub-subcontractor by reason of this Contract.
- 39.6. Contractor shall be responsible for all work performed under the Contract. All persons engaged in the work of the Project are the responsibility and under the control of the Contractor. Contractor shall give personal attention to fulfillment of the Contract and shall keep the work under the Contractor's control.

40. ARCHITECT AUTHORITY. The Judicial Council's architect for the Project will have authority to order minor changes in the work not involving any adjustment in the Contract Price, or an extension of the Contract Time, or a change that is inconsistent with the intent of the Contract Documents. These changes shall be effected by written Change Order.

41. TESTING AND INSPECTIONS. The Judicial Council will select an independent testing laboratory to conduct the tests. The Contractor shall notify the Judicial Council's representative a sufficient time in advance of the manufacture of material to be supplied under the Contract

Documents, that must by terms of the Contract Documents be tested, in order that the Judicial Council may arrange for the testing of same at the source of supply. This notice shall be, at a minimum, seventy-two (72) hours prior to the manufacture of the material that must be tested. Any material shipped by the Contractor from the source of supply prior to having satisfactorily passed required testing and inspection or prior to the receipt of notice from the representative that testing and inspection will not be required, shall not be incorporated into and/or onto the Project. The Judicial Council will select and pay testing laboratory costs for all tests and inspections. Costs of tests of any materials found to be not in compliance with the Contract Documents shall be paid for by the Judicial Council and reimbursed by the Contractor or deducted from the Contract Price.

42. 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.

43. 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 Judicial Council, in writing, and, at the sole option of the Judicial Council, 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 Judicial Council. If Contractor performs any work that is in violation of any laws, ordinances, rules, or regulations, without first notifying the Judicial Council of the violation, Contractor shall bear all costs arising therefrom.

44. 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.

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

46. LABOR CODE REQUIREMENTS:

- 46.1. The Contractor shall comply with all applicable provisions of the California Labor Code, Division 2, Part 7, Chapter 1, Articles 1 - 5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000). Copies of the prevailing rate of per diem wages are on file with the Judicial Council. In addition, the Contractor and each subcontractor shall comply with Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with section 1720, and including section 1735 forbidding discrimination, section 1776 pertaining to payroll records, and sections 1777.5 and 1777.6 concerning the employment of apprentices by Contractor or subcontractors. Willful failure to comply may result in penalties, including loss of

the right to bid on or receive public works contracts.

- 46.2. The Contractor and all subcontractors shall pay all workers on work performed pursuant to this Agreement not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by Director of the State of California Department of Industrial Relations, are on file at the Judicial Council's principal office. Prevailing wage rates are also available from the Judicial Council or on the internet at (<http://www.dir.ca.gov>).
- 46.3. Contractor shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations. Labor Code section 1771.1(a) states the following:
- “A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by section 7029.1 of the Business and Professions Code or by section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.”
- 46.4. Contractor shall, and shall ensure that all “subcontractors” (as defined by Labor Code section 1722.1), comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. Contractor represents to the Judicial Council that all “subcontractors” (as defined by Labor Code section 1722.1) are registered pursuant to Labor Code section 1725.5. Contractor acknowledges that, for purposes of Labor Code section 1725.5, this work is a public work to which Labor Code section 1771 applies.
- 46.5. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Contractor shall post job site notices, as prescribed by regulation. Contractor shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the project.
- 46.6. Unless otherwise provided in this Agreement, 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 Agreement.

- 46.7. 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. Pursuant to Labor Code section 1813, the Contractor shall pay the Judicial Council Twenty-Five Dollars (\$25) as a penalty for each worker for each calendar day worked in violation of the above limitations and restrictions.
- 46.8. 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 Judicial Council 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 Judicial Council, 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.
- 46.9. 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 Judicial Council 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.

- 46.10. If it becomes necessary to employ a craft, classification or type of worker other than those listed on-line at www.dir.ca.gov/oprl/DPreWageDetermination.htm, the Contractor shall contact the Division of Labor Statistics and Research to find the appropriate prevailing wage determination. If the Division of Labor Statistics and Research is unable to identify a determination that is applicable, the Contractor shall notify the Court immediately, and the Court will request a special determination from the Division of Labor Statistics and Research. The rate thus determined shall be applicable from the commencement of the project.
- 46.11. 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 Judicial Council, the Contractor's and subcontractor's certified payroll records shall be furnished within ten (10) days. The Contractor's and subcontractor's certified payroll records shall be available for inspection at the principal office of the Contractor.
- 46.12. Contractor shall pay travel and subsistence payments to persons required to execute the work as 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.
- 46.13. Contractor acknowledges and agrees that, if this Agreement involves a dollar amount or any other threshold, if any, greater than those specified in Labor Code section 1777.5, then this Agreement is governed by the provisions of Labor Code section 1777.5. It shall be the responsibility of Contractor to ensure compliance with Labor Code section 1777.5 for all apprenticeship occupations. If Labor Code section 1777.5 applies, then:

Contractor shall only employ properly registered apprentices 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.

- 47. REGIONAL NOTIFICATION CENTER:** Pursuant to Government Code section 4216 et. seq., the Contractor, except in an emergency, shall contact the appropriate regional notification

center in accordance with the time provisions in the statute 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 Judicial Council, and obtain an inquiry identification number from that notification center. No excavation shall be commenced and/or carried out by the Contractor unless an inquiry identification number has been assigned to the Contractor or any subcontractor and the Contractor has given the Judicial Council the identification number. Any damages arising from Contractor's failure to make appropriate notification shall be at the sole risk and expense of the Contractor. Any delays caused by failure to make appropriate notification shall be at the sole risk of the Contractor and shall not be considered for an extension of the Contract time.

48. EXISTING UTILITY LINES: Pursuant to Government Code section 4215, Judicial Council assumes the responsibility for removal, relocation, and protection of main or trunk utility lines and facilities located on the construction Project site at the time of commencement of construction under this Contract with respect to any such utility facilities that are not identified in the plans and specifications. Contractor shall not be assessed for liquidated damages for delay in completion of the Project caused by failure of Judicial Council or the owner of a utility to provide for removal or relocation of such utility facilities.

Locations of existing utilities provided by Judicial Council shall not be considered exact, but approximate within reasonable margin and shall not relieve Contractor of responsibilities to exercise reasonable care nor costs of repair due to Contractor's failure to do so. Judicial Council shall compensate Contractor for the costs of locating, repairing damage not due to the failure of Contractor to exercise reasonable care, and removing or relocating such utility facilities not indicated in the plans and specifications with reasonable accuracy, and for equipment necessarily idle during such work.

No provision herein shall be construed to preclude assessment against Contractor for any other delays in completion of the work. Nothing in this provision shall be deemed to require Judicial Council to indicate the presence of existing service laterals, appurtenances, or other utility lines, within the exception of main or trunk utility lines. Whenever the presence of these utilities on the Project site can be inferred from the presence of other visible facilities, such as buildings, meter junction boxes, on or adjacent to the Project site.

If Contractor, while performing work under this Contract, discovers utility facilities not identified by Judicial Council in the plans and specifications, Contractor shall immediately notify the Judicial Council and the utility in writing. The cost of repair for damage to above-mentioned visible facilities without prior written notification to the Judicial Council shall be borne by the Contractor.

Contractor understands, acknowledges and agrees that the purpose for prompt notification to the Judicial Council pursuant to these provisions is to allow the Judicial Council an opportunity to investigate the condition(s) so that the Judicial Council shall have the opportunity to decide how the Judicial Council desires to proceed as a result of the condition(s). Accordingly, failure of Contractor to promptly notify the Judicial Council in writing, pursuant to these provisions, shall constitute Contractor's waiver of any claim for damages or delay incurred as a result of the condition(s).

49. NO SIGNS: Neither the Contractor nor any other person or entity shall display any signs not required by law or the Contract Documents at the Project site, fences trailers, offices, or elsewhere on the Project site without specific prior written approval of the Project Manager.

50. GOVERNING LAW: This Contract shall be governed by and construed in accordance with the laws of the State of California.

51. 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.

52. JUDICIAL COUNCIL: Judicial Council'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.

53. 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.

54. 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 hereto pertaining to the subject matter thereof. This Contract may be modified only by a writing upon mutual consent.

55. NOTICE:

All notices to the Judicial Council under this Contract shall be given as follows:
All notices and correspondence to the Judicial Council must reference the Contract number.

To the Judicial Council:

Judicial Council of California
Attn: Tim O'Connor, Project Manager
Real Estate and Facilities Management
Operations and Programs Division
2860 Gateway Oaks Drive, Suite 400,
Sacramento, CA 95833-4336
Phone: (916) 263-6694

In addition, all notices relating to an alleged breach or default by the Judicial Council must also be sent to:

Judicial Council of California
Branch Accounting and Procurement
Attn: Manager, Contracts

RFP Number: REFM-2016-27-BD
Judicial Council Agreement No. [#] with [Contractor Name]

455 Golden Gate Avenue
San Francisco, CA 94102-3688
Phone: 415-865-7989

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

To the Contractor:

Attn: _____
_____, CA 9_____
Phone: _____

EXHIBIT “C”

SCOPE OF WORK

PROJECT DESCRIPTION:

Attached hereto are documents describing the “*Edmund D. Edelman Children’s Court, Monterey Park, CA – EIFS Exterior Wall Replacement – RFP Number: REFM-2016-27-BD;*” including the Project Manual which contains the plans and specifications, Attachment C-1. These documents describe the Scope of Work and the Project.

In addition, the following Plans and drawings, prepared by Simpson Gumpertz & Heger Inc., dated July 20, 2016, are incorporated herein by this reference:

<u>Sheet number</u>	<u>File number</u>	<u>Description</u>
A0.00	158008.01	Title Sheet and General Notes
A1.00	158008.01	Site Plan (For Reference Only)
A1.01	158008.01	Composite Plan
D2.01	158008.01	Demolition North Elevation
D2.02	158008.01	Demolition East Elevation
D2.03	158008.01	Demolition South Elevation
D2.04	158008.01	Demolition West Elevation
A2.01	158008.01	North Elevation
A2.02	158008.01	East Elevation
A2.03	158008.01	South Elevation
A2.04	158008.01	West Elevation
A2.11	158008.01	Partial Elevations
A2.12	158008.01	Partial Elevations
A2.13	158008.01	Partial Elevations
A3.01	158008.01	Exterior Wall Details
A3.02	158008.01	Exterior Wall Details
A3.03	158008.01	Exterior Wall Details
A3.04	158008.01	Exterior Wall Details
A3.05	158008.01	Exterior Wall Details
A3.06	158008.01	Exterior Wall Details

EXHIBIT “D”

PROJECT INSURANCE REQUIREMENTS

A.1 The Contractor shall, prior to commencement of any work on the Project, provide the Judicial Council certificates of insurance, on forms acceptable to the Judicial Council, as evidence that the required insurance, with specifications set forth in Section A.2, is in full force and effect. Where applicable, each certificate of insurance shall specifically provide verification that the Judicial Council has been added as an additional insured on the insurance policy being referenced, and must clearly indicate that the policy of insurance shall not be materially changed or cancelled without ninety (90) days prior notice to the Judicial Council. The originals of the Certificates of Insurance shall be addressed to the Judicial Council Contracting Official named in this Contract, with copies to the Project Manager.

All insurance policies required under this section A.1 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 A.2.1 shall extend for a period of three (3) years past the acceptance of the Project, 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 Judicial Council. Renewal insurance certificates must be tendered to the Judicial Council at least 10 days prior to the expiration of the previous insurance certificate.

A.1.1 The insurance required by sections A.2.1, A.2.2, and A.2.4 as well as any excess liability or umbrella liability insurance that the Contractor maintains in compliance with the terms of this section A.1 shall include the State of California; the Judicial Council of California; the County of Los Angeles; the Superior Court of California, County of Los Angeles; 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.

A.1.2 The Contractor, and any insurer providing insurance required under the terms of this section A.1 shall waive any right of recovery it may have against the State of California; the Judicial Council of California; the County of Los Angeles; and the Superior Court of California, County of Los Angeles; 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.

A.1.3 The insurance policies required under this section A.1 shall contain a provision that coverage will not be materially changed or cancelled without ninety (90) days prior written notice to the Judicial Council.

A.1.4 The Contractor shall be responsible for and may not recover from the Judicial Council any deductible or self-insured retention that is connected to the insurance required under this section A.1.

A.1.5 In the event the Contractor fails to keep in effect at all times the specified insurance coverage, the Judicial Council 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.

A.1.6 Any insurance required under this section A.1 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 County of County; and the Superior Court of California, County of County.

A.1.7 The Judicial Council reserves the right to request certified copies of any of the insurance policies required under this section A.1

A.2 Specific Insurance Requirements: Prior to the commencement of any work for the Project, Contractor shall furnish to the Judicial Council evidence of insurance as follows:

A.2.1 Commercial Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) written on an occurrence form covering the Contractor and the Judicial Council with limits of liability of not less than \$2,000,000 per occurrence combined single limit and a \$2,000,000 per location annual aggregate. 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. The products and completed operation liability coverage shall extent for a period of not less than three (3) 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.

A.2.2 Commercial Automobile Liability: If one or more automobiles is used in the performance of the Services, Commercial Automobile Liability insurance covering 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 Services, with limits of not less than \$1,000,000 combined single limit per accident.

A.2.3 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.

A.2.4 Builders Risk/Installation Coverage: Builder's Risk or Installation Insurance that covers the work to be performed under this Contract for direct physical loss or damage while in the course of transportation, erection, installation and completion with limits of liability equal to the final completed value of the Project.

EXHIBIT “E”

PREVAILING WAGE CERTIFICATION

Judicial Council Project Name/Number: EIFS Exterior Wall Replacement Project for Edmund D. Edelman Children’ Courthouse

I hereby certify that I will comply with all applicable provisions of the California Labor Code, Division 3, Part 7, Chapter 1, Articles 1-5, including, without limitation, the payment of the general prevailing per diem wage rates for public work projects of more than one thousand dollars (\$1,000) with respect to this Project, including, Chapter 1 of Division 2, Part 7 of the California Labor Code, beginning with section 1720, and including sections 1735, 1777.5 and 1777.6, forbidding discrimination, and sections 1776, 1777.5 and 1777.6 concerning the employment of apprentices by contractor or subcontractors.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT “F”

WORKERS’ COMPENSATION CERTIFICATION

Judicial Council Project Name/Number: EIFS Exterior Wall Replacement Project for Edmund Edelman Children’s Courthouse.

Labor Code section 3700 in relevant part provides:

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

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

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

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

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

EXHIBIT “G”

**ASBESTOS, LEAD-BASED PAINT AND OTHER HAZARDOUS MATERIALS
CERTIFICATION**

Judicial Council Project Name/Number: EIFS Exterior Wall Replacement Project for Edmund D. Edelman Children’s Courthouse.

Contractor hereby certifies that no asbestos, or asbestos-containing materials, polychlorinated biphenyl (PCB), lead-based paint or any material listed by the federal or state Environmental Protection Agency or federal or state health agencies as a hazardous material, or any other material defined as being hazardous under federal or state laws, rules, or regulations (“Hazardous Material”), was furnished, installed, or incorporated in any way into the work for the Project, or in any tools, devices, clothing, or equipment used to affect any portion of the Project.

Contractor further certifies that it instructed its employees with respect to the above-mentioned standards, hazards, risks, and liabilities prior to the commencement of work on the project.

Asbestos and/or asbestos-containing material shall be defined as all items containing but not limited to chrysotile, crocidolite, amosite, anthophyllite, tremolite, and actinolite. Any or all material containing greater than one-tenth of one percent (.1%) asbestos shall be defined as asbestos-containing material.

Any disputes involving the question of whether or not material is a Hazardous Material shall Judicial Council be settled by electron microscopy or other appropriate and recognized testing procedure, at the Judicial Council’s determination. The costs of any such tests shall be paid by Contractor if the material is found to be a Hazardous Material.

All work or materials found to be a Hazardous Material or work or material installed with equipment containing a Hazardous Material will be immediately rejected and this work will be removed at Contractor's expense at no additional cost to the Judicial Council.

CONTRACTOR:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT “H”

DVBE PARTICIPATION FORM

Firm Name: _____

RFP Project Title: **Ed Edelman Children’s Court – EIFS Exterior Wall Replacement**

RFP Number: **REFM-2016-27-BD**

This Project has a DVBE participation goal of three percent (3%) (DVBE Participation Goal). The CMR must document its DVBE compliance with the DVBE Project Goal by completing the DVBE Participation Form.

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 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</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

EXHIBIT ‘T’



JUDICIAL COUNCIL
OF CALIFORNIA



Internal Background Check Policy

Security Operations’ Contractor Clearance Program

Title: Background Checks for Contractors Working on the Judicial Council’s
Behalf in Restricted Areas

Contact: Security Operations (SO) unit

Policy Statement: Judicial Council staff must adhere to this policy and related procedures to comply with the Federal Bureau of Investigation (FBI) security policy for personnel who have access to criminal justice information and the California Department of Justice (CA DOJ) regulations for the California Law Enforcement Telecommunications System (CLETS).

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WHO MUST COMPLY WITH THIS POLICY?

This policy applies to:

- Judicial Council (council) divisions, offices, and/or units that contract for non-council employees to work on the council's behalf;
- Council staff who work with those individuals (for example, the project managers); and
- Council staff who work on any contracts or agreements that provide for non-council employees to perform work on the council's behalf.

WHAT IS THE POLICY?

Council staff must do all of the following:

1. Ensure that each "Contractor" is fingerprinted, evaluated, and badged *before* he or she is allowed unescorted access to a "Restricted Area." A person who has not met these requirements may only enter a Restricted Area during an "Emergency Situation" and:
 - a. must be escorted at ALL times by someone who has met these requirements; or
 - b. must be found suitable for unescorted access to Restricted Areas by the court, in compliance with FBI *Criminal Justice Information Services Security Policy* and CA DOJ regulations for CLETS found in *CLETS Policies, Practices and Procedures*.
2. Adhere to the SO procedure for background check services, which is referenced at the end of this policy under Additional Resources.
3. Ensure that contracts, agreements, and related documents do not contradict or counteract this policy or the related SO procedure.

Definition of Contractor

For the purposes of this policy and related SO services, any person who either contracts with the council or is employed through a third party who contracts with the council *who provides services* under that contract at a court or the California Court Technology Center (CCTC).

This excludes contractors and agencies who do not receive payment for services from the council. It also excludes employees of entities that are able to do fingerprint-based background checks that are submitted to the CA DOJ. Those entities are responsible for performing their own background checks of their employees. SO only provides background checks to employees of private contractors who cannot do fingerprint-based background checks that are submitted to the CA DOJ (as commercially-available searches will not suffice).

Definition of Restricted Area

For the purposes of this policy, any area of either the CCTC or a court facility which:

1. contains a means to connect to FBI and CA DOJ criminal databases via CLETS; *or*
2. contains any records or information (transported, processed, or stored in physical or electronic format) that were obtained via CLETS.

The definition of Restricted Area also applies to electronic access to network and computing components where CLETS data is transported or stored in a physical or electronic format.

Definition of Emergency Situation

For the purposes of this policy, any condition arising from a sudden or unexpected occurrence in which prompt services are needed to *avoid or minimize* the impact on the CCTC, court facility, or the council staff's ability to do the following:

- Ensure the safety and security of people occupying and visiting the facility;
- Conduct business in a timely manner in a safe and functional environment;
- Preserve the facility; and
- Protect files, records, and documents located in the facility.

Visitors to the CCTC or the non-public areas of a court facility are not required to undergo a background and fingerprint check. They must, however, be escorted at ALL times.

WHAT IS THE PURPOSE OF THIS POLICY?

The council retains contractors to do work on its behalf or on behalf of courts, and these contractors are often located in the courts. Many if not all courts subscribe to CLETS service from the CA DOJ and have CLETS terminals, records, and information in their facilities, as does the CCTC.¹

There are strict regulations regarding access to CLETS. Government Code sections 15150–15167 establish the CA DOJ's responsibility for maintenance of the system. The CA DOJ publishes a *CLETS Policies, Practices, and Procedures* document that specifies, among other things, the fingerprint and background check requirements for access to CLETS-provided information. Entities that subscribe to CLETS service from the CA DOJ are responsible for their compliance. Also, FBI security policy addresses personnel who have access to criminal justice information. Screening requirements are outlined in the FBI's *Criminal Justice Information Services Security Policy*.

As a service to the courts and as a precaution, council's staff have implemented a policy of conducting CLETS-level background checks for any of its contractors who would be working in Restricted Areas.² The council's Executive Office delegated to SO oversight of background checks for non-council employees working under contract with the council in Restricted Areas. SO worked with the CA DOJ and several council offices to define Restricted Areas, establish a

¹ Depending on the type and location of their work, contractors may be subject to additional requirements, which will be specified by the Judicial Council's Agency CLETS Coordinator (ACC) who can be reached at Nicole.Rosa@jud.ca.gov.

² The Court retains authority over access to its facility and this policy does not supersede the Court's responsibility, if a CLETS Subscribing Agency, to comply with FBI's *Criminal Justice Information Services Security Policy* and CA DOJ's *CLETS Policies, Practices and Procedures*.

procedure for providing related services, and identify the evaluation criteria that are listed in this policy.

WHAT IS THE APPLICATION PROCESS?

Council staff are responsible for requesting SO's services when needed. As part of the initial set-up process, they will be required to provide SO the following:

- A project code for chargeback of CA DOJ billing costs;
- A designated council contact; and
- A designated Contractor contact, as applicable.

SO and the council's Human Resources (HR) office share a single Originating Agency Identifier (ORI) number. HR receives the CA DOJ invoices and uses the project code that council staff provide to do chargebacks for the cost of the Contractor background checks.

SO will send the SO procedure to the designated council contact and Contractor contact, as applicable. The council contact and Contractor contact are responsible for explaining the restrictions to the "Applicants." They are also responsible for providing SO with the following.

- A background check authorization signed by the Applicant;
- A completed badge form, authorized by the council project manager; and
- A digital photograph of the Applicant that meets the requirements on the badge form.

SO will send the council contact or Contractor contact an "Applicant Packet" with the appropriate instructions and forms. The forms are prefilled with the council routing and billing information. The council contact or the Contractor contact gives the Applicant the paperwork so he or she can be fingerprinted. The Applicant should fingerprint within two weeks. It usually takes two weeks to three months for the CA DOJ to provide the background check results. Delays sometimes occur due to poor fingerprint quality, criminal information hits, or erroneous information submitted on the fingerprint transaction. SO will provide the council contact and Contractor contact with information about how Applicants can check the status of their submissions with the CA DOJ.

WHAT ARE THE EVALUATION CRITERIA?

SO will review the results using the following evaluation criteria, which comply with FBI and CA DOJ regulations. Applicants are not suitable for unescorted access to a Restricted Area if an Applicant's background check reveals any of the following:

1. A felony conviction of any kind or felony charge pending court disposition (that includes arrest warrant for a felony charge); or
2. Any misdemeanor conviction *or* charge pending court disposition involving violence, weapons, theft, robbery, burglary, embezzlement, dishonesty, gang activity, drugs (excluding certain misdemeanor marijuana convictions more than two years from the date

of such conviction, as specified in California Labor Code section 432.8), or moral turpitude.

Crimes of moral turpitude (that are not already described in the criteria above) include:

- Assaultive crimes involving false imprisonment, discharging a firearm, and shooting at an inhabited dwelling.
- Drug crimes involving maintaining a drug house, possessing heroin for sale, possessing marijuana for sale, selling drugs, and transporting a controlled substance.
- Escape crimes involving escape with or without violence and evading a peace officer.
- Property crimes involving arson, forgery, and receiving stolen property.
- Sex crimes involving indecent exposure, lewd acts on a child, pimping and pandering, and rape.
- Weapon crimes involving possessing or conspiring to possess an illegal firearm and possessing a deadly weapon with intent to assault.
- Other crimes involving bribery, extortion, kidnapping, perjury, and terrorist threat.

The following will be reviewed on an individual basis to determine suitability for unescorted access to a Restricted Area:

1. Misdemeanor convictions greater than 10 years old;
2. Felony or misdemeanor arrests without conviction and/or misdemeanor convictions, within the last 10 years that, when taken in total, establish reasonable doubt about the Contractor's suitability for access; or
3. Outstanding arrest warrants indicating possible fugitive status.

WHAT IS THE EVALUATION PROCESS?

Because the council qualifies as an Applicant Agency under California law, it receives the criminal record results electronically from the CA DOJ. SO follows the CA DOJ instructions to keep the information secure. It cannot share the criminal record result information.

Applicants Suitable for Unescorted Access to Restricted Areas

If an Applicant is suitable for unescorted access per the evaluation criteria, SO will notify the council contact(s) and Contractor contact(s), as applicable. SO will delete the criminal record results.

If not already submitted, the council contact or Contractor contact must provide SO with the Applicant's completed badge form and digital photograph. These will be used for badge purposes only. The digital photograph must meet the requirements on the badge request. If not already submitted, SO must also have the council project manager's authorization for a badge, via a signed badge form or e-mail approval.

SO will forward the Contractor's badge to the council contact or Contractor contact for distribution. The Contractor must wear the badge in a visible location at all times while in a Restricted Area, as visual confirmation that he or she is suitable for unescorted access.

Applicants Not Suitable for Unescorted Access to Restricted Areas

If an Applicant is not suitable per the evaluation criteria, SO will notify the council contact(s) and Contractor contact(s), as applicable, that the Applicant is not suitable for unescorted access to a Restricted Area. SO will mail the relevant criminal record results to the Applicant at the address he or she listed on the Live Scan form, then delete the criminal record results.

If the Applicant believes that the criminal record results contained an error, he or she must contact the CA DOJ's California Justice Information Services Division at 916-227-3849 to obtain information on how to correct the record. Information on this process is also available at the Office of the Attorney General's website at http://oag.ca.gov/fingerprints/security_faq.

SO must submit a No Longer Interested (NLI) form to the CA DOJ so that it does not receive subsequent arrest notifications or dispositions on Applicants deemed not suitable. For this reason, if the Applicant's record is corrected and the council project manager wants SO to re-evaluate, the Applicant will have to be re-fingerprinted.

Subsequent Arrests

After SO receives criminal record results, it automatically gets subsequent arrest notifications and dispositions. SO will continue to get this information until it submits a NLI form to the CA DOJ.

If SO is notified of a Contractor's arrest, it may reevaluate the person's suitability for unescorted access to Restricted Areas. SO reserves the right to change its determination of a person's suitability for unescorted access to Restricted Areas based on a subsequent arrest. If this occurs, SO will notify the council contact(s) and Contractor contact(s), as applicable, and request that the Contractor's badge be returned, that unescorted access to a Restricted Area be discontinued, and that the Contractor's last-known address be provided. SO will mail the relevant criminal record results to the Contractor at that address, delete the criminal record results, and send an NLI.

Requests for Exceptions

Exceptions are rarely considered because the evaluation criteria implement mandatory FBI and CA DOJ regulations. If an Applicant receives notice that he or she is not suitable for access to Restricted Areas, the Contractor contact may ask the council project manager to request an exception from SO. The request must be in writing. It must include the Applicant's name and reason for the request. The Applicant will have to be re-fingerprinted. SO will send the Contractor contact a new Applicant Packet.

Before refingerprinting, the Applicant may want to consider options for cleaning up his or her criminal record. One resource is the Online Self-Help Center located on the California Judicial Branch's website at www.courts.ca.gov (specifically, the *Figuring out your options* section under *Cleaning Your Criminal Record*).

Once SO receives the criminal record results electronically from the CA DOJ, the SO supervisor will evaluate the results and notify the council project manager, council contact(s), and Contractor contact(s) of the decision.

WHAT IS THE BADGING PROCESS?

Badge Issuance

SO issues badges to Applicants suitable for unescorted access to restricted areas. These green badges help identify Contractors who have been deemed suitable by SO for unescorted access to Restricted Areas. The badges do not provide any special privileges to Contractors (for example, bypassing entrance security screening). They do not allow access to secured council facilities.

The badges that allow access to the council buildings are part of a separate SO program. Council building access is only granted to people who will work in the building regularly, and it must be applied for in person. The council contact or designee may escort the Contractor to the SO Badge Room to complete the required form and have a photograph taken.

Badge Replacement

SO replaces lost, stolen, and damaged badges. The council contact or Contractor contact must notify SO when a replacement is needed.

Badge Return

When an approved Applicant is no longer employed by the Contractor company or is reassigned so that he or she no longer needs unescorted access to a Restricted Area, the following must happen. The council contact or Contractor contact must promptly inform SO, collect the Contractor's badge, and return it to SO. SO must fax or mail an NLI form to the CA DOJ so that it does not receive subsequent arrest notifications or subsequent arrest dispositions.

QUESTIONS AND COMPLAINTS

SO communicates directly with the council contact or Contractor contact only. Any questions or complaints should be routed to the council contact or Contractor contact (for example, questions or complaints relating to the retention, day-to-day management, or termination of Contractors).

ADDITIONAL RESOURCES

Council staff may contact SO for current versions of the following documents:

- Memo to contacts summarizing SO procedure
- Contractor Background Check Authorization
- Contractor Badge Information/Authorization

REFERENCES

- California Government Code sections 15150–15167
- Federal Bureau of Investigation *Criminal Justice Information Services Security Policy*
- California Department of Justice *CLETS Policies, Practices, and Procedures*
- Office of the Attorney General's website at http://oag.ca.gov/fingerprints/security_faq

EXHIBIT “J”

Real Estate and Facilities Management
1400.00 Security

1403.00 Tool Control Policy
August 4, 2015



1403.00 Tool Control Policy

AUGUST 4, 2015



**JUDICIAL COUNCIL
OF CALIFORNIA**

ADMINISTRATIVE DIVISION
REAL ESTATE AND FACILITIES MANAGEMENT

AOC Tool Control Policy

Revision Management

Responsible Office: OCCM/FMU/Operations	File Location: G:\OCCM\OCCM Process Manual
Author: Ken Kachold	Approved by: Gerald Pfab, FMU Senior Manager
Process Owner: Regional Manager	
Review Cycle: Annually	
Pegasus Recommendation(s) or Procedure addressed: N/A	

Revision	Description	Date	Revised by:
1.0	Initial Draft	10/01/2009	Sharon Mackarness
1.1	Addition to "Policy" section	10/26/2009	K. Kachold/F. Stetson
1.2	Update w/OREFM, Annual Review completed	08/16/2013	K. Kachold/S. Mackarness
1.3	Reviewed: no changes	08/04/2015	K. Kachold

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AOC Tool Control Policy

1.0 Authority

The procedure supports the followings California law, administrative procedure, rule of court, or AOC 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

2.0 Scope

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.

3.0 Purpose

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.

4.0 Definitions

TERM	DEFINITION
AOC	Administrative Office of the Courts
In-Custody Holding Areas	Areas where people who are "in-custody" by authorities are kept prior to and following their court appearance

5.0 Process Steps

This section contains the description of the process steps in this procedure.

5.1 Procedure:

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

- 5.1.1 **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.
- 5.1.2 **In Place:** This phase includes activities carried out while inside the controlled In-Custody Holding areas. There shall be no intermediate exit/re-entry.
- 5.1.3 **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.

5.2 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:

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

5.3 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.

- 5.3.1 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.

- 5.3.2 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.
- 5.3.3 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.
- 5.3.4 Retain completed forms for at least 90 days at each site.

5.4 Compliance:

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

5.5 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.

5.6 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.

5.7 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.

5.8 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.

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6.0 Process Completion Steps and Next Steps

The completion of work and a reconciled inventory of tools used during work.

7.0 Non-Formalized Processes

None at this time

8.0 Decision Making Authority

Follows the FMU organizational hierarchy

9.0 Dispute Resolution

10.0 Follows the FMU organizational hierarchy

11.0 Process Performance Metrics

What is critical to the internal/external customer of this process, and how do you know?

What critical measurements define the quality of this process?

- Tool reconciliation on completion of work
- Accurate record keeping