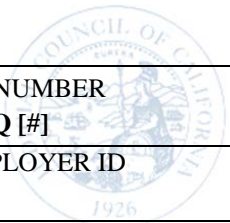


ATTACHMENT D

Judicial Council's Standard Terms and Conditions – Revision 1

JUDICIAL COUNCIL OF CALIFORNIA
STANDARD AGREEMENT COVERSHEET



	AGREEMENT NUMBER MA COM ID IQ [#]
	FEDERAL EMPLOYER ID [#]

1. This Agreement is between the Judicial Council of California (“Owner” or “Judicial Council”), and **[Consultant’s name]** (“Consultant” or “Service Provider”). Judicial Council and Consultant may be individually referred to herein as “Party” or collectively referred to herein as “Parties.”

2. The term of this Agreement shall commence **[Date]** (the “Effective Date”), and terminate on the later of either **[Date]** (“Initial Term”), or the dates of work pursuant to an authorized Service Work Order. Owner shall have the option, exercisable upon written notice, to extend this agreement for *one (1) additional period of two (2) years* (“Subsequent Term”). Subsequent Term shall be authorized by written Notice given by Owner. Service Work Orders must be authorized prior to the termination date of this Agreement and no new Service Work Orders shall be authorized after the termination date of this Agreement. The end date for services authorized in a Service Work Order may exceed the termination date of this Agreement; provided, however, that the terms and conditions of this Agreement shall remain in full force and effect with regard to any outstanding Service Work Order(s) after the termination date of this Agreement until the Work of said Service Work Order(s) is complete. **[Revised]**

3. The title of this Agreement is: Indefinite Delivery/Indefinite Quantity (“ID/IQ”) Building Commissioning Consulting Services. The number of this Agreement is: MA COM ID IQ [#]. The title and number listed is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.

4. The maximum amount payable to Consultant under this Agreement shall not at any time exceed the total of all of the Total Amount(s) Encumbered to Date.

5. This Agreement constitutes the entire agreement between the Parties with regard to its subject matter and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by an Amendment executed by both Parties. In the event of conflict in documents, the following order of precedence shall prevail: (1) the most recently executed Standard Agreement Coversheet pertaining to this Agreement; (2) Exhibits A, B, C, D, E, and F (in order of preference); (3) the most recently executed Service Work Order; and (4) documents referenced in authorized Service Work Orders, if any. As regards the subject matter they address, amended documents shall prevail over previous document(s). Work will be initiated via authorized Service Work Orders as specified in this Agreement.

6. The following documents are individually or collectively referred to as “Contract Documents”:
 - This signed Standard Agreement Coversheet;
 - Exhibit A, Standard Provisions;
 - Exhibit B, Special Provisions;
 - Exhibit C, Service Work Order Authorization Process, Invoicing and Payment Provisions;
 - Exhibit D, Services Types, Services Descriptions, Prices;
 - Exhibit E, Services Request Form; and
 - Exhibit F, Consultant Proposal Form

JUDICIAL COUNCIL’S SIGNATURE	CONSULTANT’S SIGNATURE
Judicial Council of California	Consultant’s Name (if Consultant is not an individual person, state whether Consultant is a corporation, partnership, etc.) [Consultant’s Name]
BY (Authorized Signature) <i>✍</i>	BY (Authorized Signature) <i>✍</i>
PRINTED NAME AND TITLE OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING
DATE EXECUTED [DATE]	DATE EXECUTED [DATE]
ADDRESS Branch Accounting and Procurement 455 Golden Gate Avenue, 6 th Floor San Francisco, CA 94102	ADDRESS [Consultant’s Address] License No.: [#]

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EXHIBIT A

STANDARD PROVISIONS

1. Definitions

- 1.1. Terms defined in the Contract Documents shall apply to this Agreement and to all authorized Service Work Orders. Term(s) defined in an authorized Service Work Order shall apply only to that particular Service Work Order.
 - 1.1.1. “Acceptance” means the written acceptance issued to Consultant by the Judicial Council’s Project Manager after Consultant has successfully provided the Work in accordance with this Agreement.
 - 1.1.2. “Agreement” refers to this Master Agreement and shall constitute the entire integrated agreement between the Judicial Council and Consultant, and includes the Contract Documents incorporated by reference in a fully executed Standard Agreement Coversheet. The term “Contract” may be used interchangeably with the term “Agreement”.
 - 1.1.3. “Amendment” means a Standard Agreement Form substantially in the format of the Standard Agreement Form used to enter into this Agreement and any documents it explicitly references that, when signed by the Parties, modifies the provisions of this Agreement or an authorized Service Work Order.
 - 1.1.4. “Authority Having Jurisdiction” means an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure.”
 - 1.1.5. “Business Day” means days of the week excluding Saturday and Sunday, and Judicial Council holidays.
 - 1.1.6. “CAFM” stands for Computer Aided Facilities Management. In the context of this Agreement and wherever used herein, the CAFM system is, and shall be construed to mean, the system currently used by the Judicial Council to issue Service Work Orders and track work progress, or any other such system subsequently implemented for those or similar purposes by the Judicial Council at the Judicial Council’s sole discretion.
 - 1.1.7. “Consultant” means the firm contracting with the Judicial Council.
 - 1.1.8. “Consultant Proposal” means a written document, substantially in the format of Exhibit F hereto that Consultant submits to the Judicial Council in response to a Services Request Form in accordance with the provisions of the Service Work Order process detailed in Exhibit C.
 - 1.1.9. “Confidential Information” means trade secrets, financial, statistical, personnel, technical, or any other data or information relating to the Judicial Council’s, the Courts’ or the State’s business, or the business of its constituents.
 - 1.1.10. “Court(s)” means one or more of the superior or appellate courts in the State’s court system.
 - 1.1.11. “Day” means calendar day.
 - 1.1.12. “Deliverable(s)” means and includes any Material(s) provided or to be provided under this Agreement that are explicitly designated as a Deliverable in an authorized Service Work Order.

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- 1.1.13. “Fixed Price” means the set price to be charged for a Service.
- 1.1.14. “Force Majeure” means a delay that impacts the timely performance of Work or otherwise delays the Project, for which neither Consultant, its Sub-Consultant(s) nor the Judicial Council are liable because such delay or the failure to perform was unforeseeable and beyond the control of the affected Party(ies). Acts of Force Majeure include, but are not limited to:
- 1.1.14.1. Acts of God or the public enemy;
 - 1.1.14.2. Acts or omissions of any government entity;
 - 1.1.14.3. Fire or other casualty for which a Party is not responsible;
 - 1.1.14.4. Quarantine or epidemic;
 - 1.1.14.5. Strike or defensive lockout; and
 - 1.1.14.6. Unusually severe weather conditions.
- Force Majeure does not include failures or delays caused by Consultant and/or its Sub-Consultant(s).
- 1.1.15. “GAAP” means Generally Accepted Accounting Principles.
- 1.1.16. “Hourly Rates Based Service(s)” means Service(s) that are provided or are to be provided at fixed hourly rates according to job description/classification, as specified in Exhibit D.
- 1.1.17. “Judicial Branch Entity” means the Supreme Court, each Court of Appeal, each superior court, and the Judicial Council.
- 1.1.18. “Key Personnel” refers to Consultant personnel or personnel of Sub-Consultant(s) that are designated as “Key Personnel” and identified by name in an authorized Service Work Order.
- 1.1.19. “Lump Sum Based Service(s)” mean pre-described Service(s) that is/are priced at a Lump Sum. The Service(s) must fall into a category listed in Exhibit D and shall be approved by the Judicial Council Project Manager for the SWO to be authorized.
- 1.1.20. “Material(s)” means any type of tangible item provided to the Judicial Council by Consultant and/or its Sub-Consultants, including but not limited to, written reports, goods, supplies, equipment, and other commodities. Material(s) exclude all software, services, and Reimbursable(s).
- 1.1.21. “Notice” means a written document provided in accordance with the provisions of the section entitled “Notice” set forth in Exhibit A.
- 1.1.22. “Prevailing Wage” means the prevailing wage for applicable craft and classification of a worker as determined by the California Department of Industrial Relations pursuant to Labor Code section 1770 and 1773. This amount includes the basic hourly rate for a worker along with any applicable “employer payments” including (i) health and welfare, (ii) pension, (iii) vacation/holiday, (iv) training, and (v) other payments. If applicable, this amount will include overtime and recognized holidays. Prevailing Wage as used herein does not include any costs associated with travel and/or subsistence payments pursuant to Labor Code sections 1773.1 and 1773.9, as such costs are governed by Exhibit C, Section 5 (“Travel and Living Expenses Guidelines”). Notwithstanding anything in this Agreement to the contrary, the Consultant shall be required to ensure its workers are paid all travel and/or subsistence payments as required under Labor Code sections 1773.1 and 1773.9 to the extent applicable.

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- 1.1.23. "Pricing Methodology" means the methodology for certain contractual terms and conditions. There are two (2) types of Pricing Methodology: Fixed Price Based and Time and Materials Based.
- 1.1.24. "Project" refers to the totality of work encompassed or contemplated under an individual authorized Service Work Order, and may also be referred to as "Service Work Order."
- 1.1.25. "Reimbursable Expense" means expense(s) incurred or to be incurred by Consultant and/or its Sub-Consultant(s) for Reimbursable Item(s).
- 1.1.26. "Reimbursable Item(s)" or "Reimbursable(s)" means tangible item(s) utilized by Consultant's or Sub-Consultant's employees in the performance of Service(s).
- 1.1.27. "Schedule of Values" or "SOV" means a document jointly developed and approved by Consultant and the Owner reflecting portions of the Service Work Order Sum allotted for payment upon completion of the performance of various parts of the Work.
- 1.1.28. "Service(s)" means and includes authorized action(s) that are performed by the Consultant or its Sub-Consultant(s). There are two types of Services to be provided under this Agreement, Fixed Price Service(s) and Hourly Rate Service(s).
- 1.1.29. "Service Type" means the particular type(s) of Service(s) Consultant is authorized to perform as detailed in Exhibit D hereto.
- 1.1.30. "Service Work Order" or "SWO" refers to a unique entry within Owner's CAFM system. Issuance of a SWO constitutes Work Authorization. The Consultant must login to Owner's CAFM system and "accept" the SWO issued prior to beginning Work. The SWO references and incorporates other documents such as the Services Request Form and Consultant Proposal Form as well as the Contract Documents.
- 1.1.31. "Service Work Order Proposal" means a set of documents including, but not limited to at least: (1) Consultant Proposal Form, (2) dates of performance, (3) a list of proposed Sub-Consultants, (4) payment schedule, (5) sketches, Drawings, and or layouts, and technical data or information.
- 1.1.32. "Service Work Order Sum" means the total or maximum price authorized for the services specified in the Service Work Order issued in accordance with the SWO authorization process detailed in Exhibit C.
- 1.1.33. "Service Work Order Time(s)" means the period of time, including authorized adjustments, identified in the authorized Service Work Order for completion of the Work or a designated portion of the Work.
- 1.1.34. "Services Request Form" refers to the form listed in this Contract as Exhibit E. Once a SWO is issued, this form serves as a summary of Services to be provided by the Consultant in the Project.
- 1.1.35. "Standard Agreement Form" means the printed form used by the Judicial Council to authorize any Service Work Orders or Amendments.
- 1.1.36. "State" refers to the State of California.
- 1.1.37. "Statement of Work" is the description of Work, as specified in Consultant's Proposal Form(s).

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- 1.1.38. “Sub-Consultant(s)” shall mean and include any individual, firm, partnership, agent, or corporation having a contract, purchase order, or agreement with the Consultant or with any Sub-Consultant of any tier for the performance of Service(s) or provision of Material(s), in whole or in part, relating to this Agreement. When reference is made to a Sub-Consultant(s) in this Agreement, it shall include every level and/or tier, of Consultant’s Sub-Consultants, agents, suppliers, and/or material men.
- 1.1.39. “Subsequent Term” shall mean an additional period of two (2) years. **[Revised]**
- 1.1.40. “Supplemental Service Work Order” or “SSWO” means a type of Service Work Order authorized following the authorization of a Service Work Order that alters or amends the already authorized Service Work Order. Supplemental Service Work Orders may add Work, or remove Work not yet performed, as deemed necessary by Owner. Authorization of Supplemental Service Work Orders that only seek to remove Work not yet performed are not subject to approval by Consultant and are binding upon Consultant upon authorization of Owner.
- 1.1.41. “Third Party” refers to any individual, organization, agent, or any Fcombination thereof that is not a party to this Agreement.
- 1.1.42. “Travel and Living Expense(s)” means expense(s) for travel and living costs actually incurred or that are expected to be incurred by Consultant’s or its Sub-Consultant’s employees in the course of performing the Services or providing the Reimbursable(s).
- 1.1.43. “Work” includes Services and/or Materials.
- 1.1.44. “Work Authorization” means permission to begin Work.

2. Relationship of Parties

- 2.1. Consultant and its employees and Sub-Consultants, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Judicial Council.
- 2.2. The Judicial Council has authority to enter into Agreements on behalf of Judicial Branch Entities. A Judicial Branch Entity may elect to utilize this Agreement by issuing Service Work Orders, as described in this Agreement, in which case the terms and conditions of this Agreement govern such orders. This Agreement or any Service Work Order does not, is not intended to, nor shall it be construed to create the relationship of agent, employee or joint venture between the Judicial Council or any other Judicial Branch Entity and Consultant or Sub-Consultant.

3. No Assignment

Consultant shall not voluntarily or involuntarily assign (e.g. assignment by operation of law), encumber, novate, or otherwise transfer or delegate (“Assign”) all or any interest in this Agreement (“Assignment”) without the prior advance written consent of the Judicial Council. Any request from Consultant to Assign this Agreement shall be provided to Judicial Council in the form of a Notice. The Judicial Council shall have the right to impose conditions upon any Assignment. The Judicial Council’s consent to Assignment shall be evidenced by a written agreement between the Parties. The Judicial Council shall consent to such Assignment only if assignee assumes in writing all of the Consultant’s obligations hereunder; provided, however, Consultant shall not be released from its obligations hereunder by reason of such assignment. Any voluntary Assignment by Consultant or Assignment by operation of law (e.g. involuntarily assignment) of all or any portion of Consultant’s interest in this Agreement shall be deemed a default allowing the Judicial Council to exercise all remedies available to it under this Agreement and applicable law.

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4. Time of Essence

Time is of the essence in this Agreement and in all Service Work Orders thereunder.

5. Validity of Alterations

Alteration or variation of the terms of this Agreement or authorized Service Work Order shall not be valid unless made in writing and signed by the Parties in the form of an Amendment, and any oral understanding or agreement that is not incorporated herein shall not be binding on any of the Parties. No verbal agreements shall be honored.

6. Consideration

The consideration to be paid to Consultant under this Agreement shall in no event exceed the Contract Amount. The consideration to be paid to Consultant under an authorized Service Work Order shall in no event exceed the Service Work Order Grand Total specified on the most recently authorized Service Work Order and Contract Documents related to that Service Work Order. The Consultant shall be paid in accordance with the Payment Provisions set forth in Exhibit C. The Judicial Council's payments to Consultant pursuant to this Agreement shall constitute full compensation for all of Consultant's time, materials, efforts, costs and expenses incurred in the performance of any obligation(s) or any other activities undertaken pursuant to this Agreement.

7. Services to Be Provided and Manner of Performance of Work

Consultant shall provide Work specified in accordance with the provisions of authorized Service Work Order. Work shall be performed to the Judicial Council's satisfaction, in compliance with the specifications for the Work given in the Service Work Order and Contract Documents.

8. Standard of Care

- 8.1. The Consultant and its Sub-Consultant(s) shall provide the Work in accordance with the standards and criteria specified in this Agreement and any standards and criteria specified in an authorized Service Work Order, however, in no event shall the Work be performed in a manner that is less than the standard of care generally accepted in the industry pertaining to the applicable Service Type.
- 8.2. The Judicial Council shall have the right to establish specific standards and criteria, including acceptance criteria applicable to an individual Service Work Order by specifying such provisions in the Statement of Work.

9. Indemnification

- 9.1. The Consultant agrees to indemnify, defend, and hold harmless (collectively, "Indemnify") the State, the Judicial Council of California, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their directors, officers, agents, representatives, volunteers and employees (individually, an "Indemnified Party") from any and all claims, lawsuits, losses, costs, liabilities, and damages to the extent caused by any of the following:
 - 9.1.1. Consultant's or its employees' or Sub-Consultants' or Sub-Consultants' employees' negligent acts or omissions, or intentional misconduct;
 - 9.1.2. Consultant's breach of its obligations under this Agreement;
 - 9.1.3. Consultant's or its employees' or Sub-Consultants' or Sub-Consultants' employees' violation of any applicable law, rule, or regulation;

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- 9.1.4. Claims or lawsuits by a third party, Consultant, Sub-Consultant, supplier, worker, agent or any other person, firm, or corporation furnishing or supplying work, materials, or supplies who may be injured or damaged by the Consultant or any of its employees or Sub-Consultants when such claim arises from, is related to, or is in connection with the Consultant's operations under this Agreement; and
- 9.1.5. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., or failure to comply with any other Labor Code requirements.
- 9.2. The Consultant's defense obligation under this section is limited to reimbursement of any expenditure, including reasonable attorney fees and costs, incurred by an Indemnified Party in defending claims or lawsuits, ultimately determined to be due to negligent acts or omissions, or intentional misconduct of the Consultant or any of its employees or Sub-Consultants.
- 9.3. This section does not require the Consultant to Indemnify an Indemnified Party for such portion of any loss, cost, liability, or damage that arises solely from the negligence or intentional misconduct of an Indemnified Party.
- 9.4. This section shall not be construed to limit an Indemnified Party's rights as an additional insured under a policy of insurance furnished pursuant to Exhibit B.
- 9.5. This section shall not be construed to limit the defense obligations of any insurance company to an Indemnified Party named as an additional insured under any policy described in Exhibit B.

10. Work Guarantee

- 10.1. Consultant guarantees that the Work conforms to the standards and criteria established in this Agreement and its authorized Service Work Order(s). If the Judicial Council identifies defect(s) or deficiencies in the Work Consultant shall, at the Judicial Council's sole option, remedy the defect(s) and/or deficiencies to the satisfaction of the Judicial Council. Consultant shall have a period of ten (10) Business Days following receipt of a written communication from the Judicial Council's Project Manager informing Consultant of the existence of a defect or deficiency, in which to provide a cure. In no event shall the Judicial Council be responsible for any costs or expenses incurred by Consultant to remedy any such defect(s) or deficiency(ies).
- 10.2. Consultant guarantees that the Work will be performed / provided in accordance with the schedule or within the dates specified in Service Work Order(s).
- 10.3. Consultant guarantees that the Work will be performed in accordance with all applicable laws, codes, and rules as set forth by Authorities Having Jurisdiction. If a permit is to be procured for the Project, Consultant shall submit all required documentation to the satisfaction of the permitting agency.

11. Acceptance

- 11.1. In addition to any specific criteria specified in an authorized Service Work Order, the Judicial Council's Project Manager will apply the following criteria in determining whether to accept the Work:
 - 11.1.1. Timeliness: the Work was provided on time and according to schedule;
 - 11.1.2. Completeness: the Work contained all of the attributes and elements required by this Agreement and the Service Work Order; and

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- 11.1.3. Technical Accuracy: the Work complied with specific standards specified in this Agreement and the Service Work Order.
- 11.2. The Judicial Council's acceptance of a Service or Material shall be evidenced only by a written notice of Acceptance and no other act or communication, or absence of the same shall be construed as an Acceptance. Acceptance by the Judicial Council does not relieve Consultant of its guarantee obligations under this Agreement.
- 11.3. If the Judicial Council's Project Manager rejects Work, Consultant shall provide a cure in accordance with the provisions of this Agreement.
- 11.4. If the Judicial Council's Project Manager does not accept Work and Consultant disputes such action, the Parties agree to first attempt to settle their dispute according to the disputes process set forth below.

12. Disputes

- 12.1.1. Informal Negotiations. If the dispute does not involve an issue that requires submission of a Notice pursuant to the Section entitled "Notice" of this Agreement, the respective Parties' Project Managers shall make a good faith attempt to promptly resolve the dispute by informal negotiation.
- 12.1.2. Demand. If the dispute involves an issue that requires submission of a Notice pursuant to the Section entitled "Notice" herein, or if the dispute is not settled in a timely manner pursuant to informal negotiations between the Parties' Project Managers, either Party may issue a Demand to the other Party as follows. The Party submitting a Demand ("Submitting Party") must issue a written statement (the "Demand"), in the form of a Notice, to the other Party ("Receiving Party"). The Demand must be submitted in compliance with the provisions of the Section entitled "Notice" herein, and (i) be fully supported by detailed factual information and supporting documentation; (ii) state the specific Agreement provisions on which the Demand is based; (iii) if the Demand regards a cost adjustment, state the exact amount of the cost adjustment sought; and (iv) must be accompanied by pertinent records supporting the Demand. The Demand shall include a written statement signed by an authorized representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and provide reasoning to support their contention that the amount (if any) requested reflects an adjustment in payment the Submitting Party believes is equitable.
- 12.1.3. Response to Demand. The Receiving Party shall, within ten (10) Business Days, provide a final written response ("Final Response") or request additional information deemed necessary to prepare a Final Response. The Final Response shall state whether the Receiving Party accepts or rejects the Demand. The Final Response must be provided to the Submitting Party in the form required by the Section of this Agreement entitled "Notice". If the Receiving Party requests additional information to prepare the Final Response, the Submitting Party shall promptly comply with the Receiving Party's request for such information. Any delay caused by the Submitting Party's failure to respond to a request for additional information shall extend the ten (10) Business Day period within which the Receiving Party must provide a Final Response, however, unless otherwise agreed to by the Parties in writing, in no event shall the time period allowed for a Final Response be extended beyond twenty (20) Business Days following the date on which the Submitting Party issues the Demand. Regardless of any request(s) for additional information, a failure on the part of the Receiving Party to provide a Final Response within these twenty (20) Business Days shall be deemed a rejection of the Demand.

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- 12.1.4. Senior Level Negotiations. If the Demand is rejected and the Submitting Party provides written Notice that it will continue to pursue the Demand, or if the time period allowed for a Final Response to the Demand has expired without issuance of a Final Response, the Parties shall attempt to resolve the Demand by negotiations between assigned senior representatives of the Parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The senior representatives of the Parties shall make a good faith effort to resolve the Demand within thirty (30) Business Days (or such longer period as they may agree to in writing) following the date on which the Submitting Party provides written Notice that it will continue to pursue the Demand or the date on which the time period allowed for a Final Response to the Demand has expired without issuance of a Final Response.
- 12.1.5. Mediation. If the Demand is not resolved by negotiations of the Party's assigned representatives, the Parties shall submit the dispute to mediation prior to either Party initiating an action in court.
- 12.1.6. Litigation. If after mediation the Parties have not resolved the dispute, either Party may initiate an action in a court of competent jurisdiction. In the event of litigation of a dispute arising from or related to this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs.
- 12.1.7. Confidentiality. All discussions and negotiations conducted pursuant to this dispute resolution process prior to litigation are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code section 1152 applies. Mediation shall be confidential and shall be subject to the provisions of California Evidence Code sections 703.5 and 1115 through 1128.
- 12.2. Performance during Dispute and Claim Resolution Process. Unless otherwise directed in writing by the Judicial Council, Consultant shall diligently proceed with performance of the Services at the same time that a dispute is addressed via this dispute resolution process. Consultant's failure to diligently proceed with performance of the Services will be considered a material breach of this Agreement.

13. Termination

- 13.1. Termination for Cause.
- 13.1.1. If the Judicial Council determines that the Consultant has failed to perform Work in accordance with the provisions of this Agreement or any authorized Service Work Order or has otherwise materially failed to meet the obligations of this Agreement, the Judicial Council may terminate this Agreement and all authorized Service Work Orders in full, or may terminate any individual authorized Service Work Order, by providing Notice of termination specifying the reasons for Consultant's termination.
- 13.2. Termination for Non-Appropriation of Funds.
- 13.2.1. Funding for the Project(s) contemplated by this Agreement is conditioned upon appropriation by the California Legislature and allocation by the Judicial Council of California and/or sale of lease revenue or other bonds, of sufficient funds to support the Project.
- 13.2.2. By Notice to the Consultant the Judicial Council may terminate this Agreement and all Service Work Orders in full, or may terminate any individual authorized Service Work Order for lack of appropriation of funds, or any other withdrawal, reduction or limitation imposed by the Judicial Council's budget, funding or financial resources. Such termination for non-appropriation of funds or for lack of sufficient funds to continue with a Project shall not constitute a breach of the Agreement by Judicial Council.

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13.3. Termination for Convenience.

- 13.3.1. The Judicial Council shall have the option, at its sole discretion, to terminate this Agreement and all authorized Service Work Orders at any time during the term hereof, or terminate any individual authorized Service Work Order prior to its completion, for convenience and without cause, upon Notice to the Consultant.

14. **Actions of the Consultant upon Termination**

- 14.1. Immediately upon receipt of a Notice of termination, Consultant shall, unless otherwise instructed in writing by the Judicial Council, proceed with diligence to take all actions necessary to effect the rapid and economical termination of its obligations under this Agreement and to minimize any liability of the Consultant and/or the Judicial Council to any Third Party(ies) that could result from such termination.
- 14.2. The Judicial Council, at its sole discretion, may dictate when and how the termination will be effected. Such actions may include but are not limited to, the following:
- 14.2.1. When termination is effective.
- 14.2.2. When the termination of performance of certain Services and provision of Materials under this Agreement will be effected.
- 14.2.3. When Sub-Consultants are to be notified of the termination.
- 14.2.4. Whether the Judicial Council asserts an interest in any not yet complete Materials.
- 14.2.5. Consultant's schedule to provide the Judicial Council with Work or Material created in the course of the performance of Services hereunder.

15. **Effect of Termination**

15.1. Termination for Cause.

In addition to any other rights and remedies accorded it in this Agreement, if this Agreement or any authorized Service Work Order is terminated for cause, the Judicial Council may deduct from any payment(s) owed Consultant at the time of termination:

- 15.1.1. The undisputed amount owed the Judicial Council; and
- 15.1.2. The amount that Judicial Council reasonably determines necessary to remedy or obtain performance of the Services.
- 15.1.3. All costs, expenses, charges or damages incurred by the Judicial Council to obtain performance of the Work.

15.2. Termination for Non-Appropriation or Convenience.

In the event of a termination for non-appropriation of funds or a termination for convenience, the Judicial Council shall pay Consultant for:

- 15.2.1. Any accepted Work including allowable Reimbursable(s) and Travel and Living Expenses, incurred in accordance with the Service Work Order(s) or necessitated by the termination of Service Work Order; and

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- 15.2.2. The proportion of Work that Consultant has performed, but that Judicial Council has not yet accepted, including allowable Reimbursable(s) purchased prior to the effective date of the termination, and Travel and Living Expenses properly incurred prior to the effective date of termination.

16. Copyrights and Rights in Data, Material, and Deliverables

All copyrights and rights in any Data, or Materials, produced with funding from this Agreement that may presumptively vest in Consultant are hereby assigned to the Judicial Council.

17. Ownership of Data

- 17.1. Everything created, developed or produced in the course of the Consultant's performance of the Work, including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and other Material(s) or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the Consultant for the Judicial Council and are the sole property of the Judicial Council without further employment or the payment of additional compensation to the Consultant.
- 17.2. The Judicial Council owns all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights").
- 17.3. To the extent that any of the Data or the Intellectual Property Rights are not works for hire, the Consultant hereby irrevocably assigns its entire right, title and interest in and to all such Data and the Intellectual Property Rights therein, to the Judicial Council.
- 17.4. At the Judicial Council's request, the Consultant will assist the Judicial Council in the Judicial Council's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. The Consultant irrevocably appoints the Judicial Council as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the Judicial Council deems necessary to perfect the Judicial Council's interest and Intellectual Property Rights in the Data as set forth herein.
- 17.5. The Judicial Council shall be entitled to access the Data in whatever form, including, without limitation CAD, at all times during the term of the Agreement. Any such Data in the possession of the Consultant or in the possession of any Sub-Consultant upon completion or termination of the Agreement or any authorized Service Work Order shall be immediately delivered to the Judicial Council. If any Data are lost, damaged or destroyed before final delivery to the Judicial Council, the Consultant shall replace them at its own expense and the Consultant assumes all risks of loss, damage or destruction of or to such Data.
- 17.6. The Judicial Council expressly acknowledges and agrees that the Data to be provided by Consultant under the Agreement may contain certain design details, features and concepts from the Consultant's best practices detail library, which collectively may form portions of the design for the Project, but which separately are, and shall remain, the sole and exclusive property of Consultant. Nothing herein shall be construed as a limitation on the Consultant's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.
- 17.7. The Judicial Council acknowledges the Consultant's work product, including electronic files, as instruments of professional service. If the Judicial Council reuses or makes any modification to the Consultant's work product without the prior written authorization of the Consultant, the Judicial Council agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the Consultant, and its officers, directors, employees and Sub-Consultants, against any damages, liabilities

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or costs, including reasonable attorney fees and defense costs, arising from or allegedly arising from or in any way connected with the reuse or modification of the Consultant's work product by the Judicial Council, or by any person or entity that lawfully acquires or obtains the Consultant's work product from or through the Judicial Council without the written authorization of the Consultant.

18. Limitation on Publication

- 18.1. The Consultant shall not publish or submit for publication any article, press release, or other writing relating to this Agreement or to the Consultant's Services being provided to the Judicial Council without prior review and written approval by the Judicial Council.
- 18.2. Any request for a review of any such article, press release, or other writing shall be made to the Judicial Council in the form of a Notice.
- 18.3. The Judicial Council will endeavor to complete its review within thirty (30) days of submission to the Judicial Council, and, if approval is denied, the Judicial Council will provide reasons for its denial.

19. Personnel

- 19.1. Consultant shall provide all personnel and obtain and provide all Sub-Consultant personnel necessary to provide the Work authorized under this Agreement.
- 19.2. Consultant shall designate certain personnel as Key Personnel on each authorized Service Work Order. The specific capacity, responsibilities, and Work to be performed by Key Personnel shall be fully detailed in the authorized Service Work Order.
- 19.3. Consultant shall designate a Project Manager for each authorized Service Work Order.
- 19.4. Replacement of Key Personnel.
 - 19.4.1. The Judicial Council reserves the right, in its sole discretion, to disapprove of, or request replacement of, any Key Personnel designated by Consultant.
 - 19.4.2. Judicial Council shall have the sole discretion to approve Consultant's replacement Key Personnel. Any such replacement shall be by written Amendment to the applicable Service Work Order.
 - 19.4.3. If, through no fault, action, or inaction of Consultant, a Key Personnel becomes incapacitated or is otherwise rendered unavailable to work during the period of performance of an authorized Service Work Order, Consultant shall promptly designate a replacement that possesses the equivalent experience and skills.
 - 19.4.4. If the Consultant cannot furnish a replacement acceptable to the Judicial Council, the Judicial Council may terminate the applicable Service Work Order.

20. Project Managers

- 20.1. The Project Managers assigned by the Judicial Council and Consultant shall act as their respective Party's authorized representatives and shall:
 - 20.1.1. Manage the day to day activities of the Work;
 - 20.1.2. Serve as the primary contact with the other Party's Project Manager assigned to the Service Work Order;

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- 20.1.3. Manage the day to day activities of their personnel;
 - 20.1.4. Cooperate with any Third Parties working on the Project when necessary to ensure successful completion of the Project;
 - 20.1.5. Plan and schedule the performance of the Services;
 - 20.1.6. Ensure that budget and schedule commitments are met; and
 - 20.1.7. Ensure the overall quality of the Work provided.
- 20.2. With the exception of the actions that require a Notice, the Project Managers are authorized to resolve issues and disputes relating to the performance of the Work.
- 20.3. Consultant's Project Manager shall, if the Judicial Council so specifies in the Service Work Order, be responsible for providing written progress reports in accordance with the requirements of the authorized Service Work Order.

21. Background Checks

- 21.1. If the Consultant assigns persons (whether employees or Sub-Consultant employees) to provide Services under this Agreement that require that person have access to the systems (whether on-site or by remote access) or access to the premises of the Judicial Council or other Judicial Branch entities, the Judicial Council shall have the right, but not the obligation, to conduct a background check or to require the Consultant to conduct a background check, as permitted by law, on all such persons before the Judicial Council will grant such persons access. Consultant will cooperate, and will ensure that its Sub-Consultant(s) cooperate with the Judicial Council in performing any background check, and will promptly notify the Judicial Council of any person that refuses to undergo a background check. If the Judicial Council requires a background check and the employee refuses to undergo or fails the check, Consultant shall not utilize that person to perform Work. Consultant shall obtain all releases, waivers, or permission so that the background information can be released to the Judicial Council. Any costs and expenses incurred to obtain background checks are the sole responsibility of the Consultant.

22. Agreement Term

- 22.1. At the sole discretion of the Judicial Council, a Subsequent Term may be utilized and an extension of the Initial Term shall be authorized by an Amendment.
- 22.2. Consultant assumes all liability and risks associated with commencing performance on a Service Work Order prior to authorization in accordance with the Service Work Order Authorization Process detailed in Exhibit C, including nonpayment for any Work performed, prior to Judicial Council authorizing the Work.
- 22.3. Work shall commence upon the date specified for the start of Work in the Service Work Order and shall be completed as indicated in the Service Work Order. If no completion date is specified on the Service Work Order, the date for the completion of the Work shall be the date Consultant completes the Work.

23. Judicial Council's Payment Obligations

- 23.1. The Judicial Council's payment obligations are contingent on the continued availability of authorized funds to pay for Work. The Judicial Council may terminate this Agreement or any Service Work Order(s) authorized hereunder, without prejudice to any right or remedy, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way the Judicial Council

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shall have the right to terminate any Service Work Order for convenience by providing Notice to Consultant.

- 23.2. If any Service Work Order(s) is/are terminated for non-appropriation, Consultant shall be subject to fulfillment of the terms of the termination Notice, and released from any obligation to provide further Work under that Service Work Order.
- 23.3. Payments to be made under this Agreement shall be paid by the State of California funds and are not made by the Judicial Council. Notwithstanding anything in this Agreement to the contrary, it shall not be deemed an event of default if the State is unable to make any payment(s) as a result of the State of California's failure to timely approve and adopt a state budget. Should the State fail to make any payment as a result of the State of California's failure to timely approve and adopt a state budget, Consultant shall continue to provide Work under already authorized Service Work Order(s) and the Judicial Council shall promptly make any payment(s) owed upon approval and adoption of a budget by the State of California.

24. Notice

- 24.1. Notice must be provided in any of the following events:
- 24.1.1. In the event of any need to assign, novate, or change the name of either party to this Agreement;
- 24.1.2. In the event of any replacement of Key Personnel;
- 24.1.3. In the event of any claim of any material breach of this Agreement;
- 24.1.4. In the event that a Third Party claim or dispute that alleges facts that would constitute a breach of this Agreement is brought or threatened against Consultant or its Sub-Consultant(s).
- 24.1.5. In the event of any change to the address of either Party or its representative.
- 24.2. The Notice must:
- 24.2.1. Be in writing;
- 24.2.2. Identify this Agreement, citing both the Agreement Title and Agreement Number given on the Standard Agreement Coversheet. If the Notice applies to a Service Work Order, the Number of the Service Work Order must also be cited;
- 24.2.3. Unambiguously be identified as a "Notice brought in accordance with the provisions of the Section Entitled "Notice" of Exhibit A of the Agreement;"
- 24.2.4. Delivered in person, pre-paid by a reputable express carrier, or by registered or certified mail (postage pre-paid). If delivered in person, the Notice must be delivered to the reception desk of the 6th Floor at 455 Golden Gate Ave, San Francisco, CA 94102; and
- 24.2.5. Addressed to the representative(s) of the Parties as follows:

If provided to the Judicial Council:

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

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455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102

And, if a Notice is with regard to Service Work Order(s), with a copy to:

The Judicial Council Project Manager(s) named in the Service Work Order(s) at the Project Manager's address specified in the Service Work Order(s).

If provided to the Consultant:

[Consultant's Designee / Address]

- 24.3. Notice is effective on the date of receipt; however, if the date of receipt does not occur upon a Business Day, Notice is effective on the first Business Day following the date of receipt.
- 24.4. Any correctly addressed Notice that is refused, lays unclaimed, or is not deliverable because of an act or omission of the Party to whom submitted will be deemed effective as of the date that the Notice was refused, unclaimed, or deemed undeliverable.

25. Subcontracting

- 25.1. Consultant shall be allowed to utilize Sub-Consultants of Consultant's choice provided Consultant identifies the Sub-Consultant and/or service provider to be used and their respective responsibilities in Consultant's Proposal Form (Exhibit F).
- 25.2. No Party to this Agreement shall in any way contract on behalf of or in the name of another Party to this Agreement.
- 25.3. Consultant is responsible for all aspects of the control and coordination of Sub-Consultants and shall ensure that their actions are coordinated in a manner to optimize the provision of the Project.
- 25.4. Consultant shall ensure that all Sub-Consultants comply with the provisions of this Agreement applicable to Sub-Consultants.
- 25.5. Consultant expressly acknowledges that its Sub-Consultants are not third party beneficiaries of this Agreement.
- 25.6. If approved by the Judicial Council's Project Manager, Consultant may, during the term of this Agreement, add Service Types and Sub-Consultants to provide such work, subject to the provisions of Exhibit D.

26. Changes and Amendments

- 26.1. Amendments to any of the Contract Documents can be made only with prior written approval from:

Judicial Council of California
Branch Accounting and Procurement
Attn: Manager, Contracts
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102

- 26.2. Any request for a change in the terms and conditions of this Agreement must be submitted to the other Party in writing in the form of a Notice and must be accompanied by a narrative description of the proposed change and the reasons for the change.

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- 26.3. After a review of the request, a written decision shall be provided to other Party.
- 26.4. Amendments to this Agreement shall be made only by bilateral execution of a Standard Agreement Coversheet.

27. Retention of Records and Audits

- 27.1. Consultant must retain and maintain easily available all Records pertaining to Consultant's performance of obligations undertaken under this Agreement.
- 27.2. Consultant shall ensure that its Sub-Consultant(s) retain and maintain easily available all Records pertaining to Sub-Consultants' performance of this Agreement.
- 27.3. Records ("Records") include but are not limited to any books, reports, accounts, estimates, documents, detailed financial information, certified payrolls, invoices, or any other documentation or evidence, as well as any documents utilized in the preparation of Proposals, invoices, disputes, litigation and any claims. Records must be maintained in accordance with industry standards and GAAP and practices, consistently applied.
- 27.4. The provisions of this Section shall not apply to any work product that is the result of Consultant's or Sub-Consultants' collaboration with legal counsel or to any of Consultant's or Sub-Consultants' confidential or proprietary information that does not fall within the definition of a Record as given above.
- 27.5. Consultant shall ensure that the Judicial Council and/or its designated representative(s) will have access upon twenty-four (24) hours' advance written notice, at all times during Consultant's or Sub-Consultants' normal business hours, to all Records for the purposes of inspection, audit, and copying. Consultant shall, and shall ensure that Sub-Consultant(s) shall, at no cost to Judicial Council, provide access and proper facilities for such purposes.
- 27.6. Consultant shall ensure that all Sub-Consultant(s) are bound to all provisions of this Section.
- 27.7. Records must be retained and available throughout the period of the term of this Agreement and for a period of five (5) years following the expiration date of this Agreement, or until five (5) years after final settlement of all disputes, claims, or litigation to which the Records relate, whichever date occurs later.
- 27.8. If an audit or Judicial Council internal review reveals that the Consultant and/or its Sub-Consultant(s) have overcharged the Judicial Council, Consultant will immediately pay to the Judicial Council the overcharged amount plus interest from the date of receipt of overpayment. The rate of interest will be equal to eighteen percent (18%) per year or the maximum rate permitted by applicable law, whichever is less. The audit or Judicial Council internal review will be conducted at the Judicial Council's expense, unless the audit or review reveals that the Consultant and/or its Sub-Consultant(s) has overcharged the Judicial Council by ten percent (10%) or more on any invoice, in which case the Consultant will reimburse the Judicial Council for all costs and expenses incurred by the Judicial Council in connection with such audit or review, including direct and indirect costs associated with Judicial Council representatives.
- 27.9. The obligations of this Section shall survive the expiration of and any termination of this Agreement.

28. Accounting System Requirements

Consultant shall maintain, and shall ensure that its Sub-Consultant(s) maintain, an adequate system of accounting and internal controls that meets GAAP.

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29. Judicial Council Court Representation

- 29.1. The Judicial Council has the authority to act on behalf of the Court(s) and to bind the Court(s) with regard to any matters relating to this Agreement.
- 29.2. Any Court designated by name in an authorized Service Work Order shall be an intended third party beneficiary of the Services provided under this Agreement. In the event the Court gives conflicting instructions or makes conflicting determinations with respect to any matter affecting Consultant's performance of its obligations, the Consultant shall notify the Judicial Council of the conflict and the Judicial Council shall resolve any such conflict.

30. Confidentiality

- 30.1. Both the Judicial Council and Consultant acknowledge and agree that in the course of performing the Work under this Agreement, the Judicial Council may disclose Confidential Information to Consultant and/or its Sub-Consultants.
- 30.2. Consultant shall not disclose any Confidential Information to any Third Party and shall exercise reasonable care to prevent the disclosure of any Confidential Information.
- 30.3. In the event Consultant is required to disclose the Confidential Information to Consultant's employees, Sub-Consultants and their employees in order to perform the Services hereunder, Consultant shall execute a confidentiality agreement to require the same duty of nondisclosure and ensure Consultant's employees and sub-consultants shall not use Confidential Information for any purpose unrelated to performance of the Work relating to this Agreement and authorized Service Work Orders. Consultant may disclose Confidential Information to other Third Parties only upon prior written approval by the Judicial Council's Project Manager.
- 30.4. Neither Consultant nor its Sub-Consultants shall acquire a right or title in or to the Confidential Information as a result of any disclosure contemplated hereunder. Notwithstanding the foregoing, Consultant may disclose Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or applicable ruling; or (ii) as appropriate to respond to any summons or subpoena.
- 30.5. The Judicial Council reserves the right to disclose all Materials provided under this Agreement to Third Parties for the purpose of validation of the quality of Consultant's work and to use Materials for their intended purpose.
- 30.6. Consultant agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

31. Trade Secret, Patent and Copyright Indemnification

- 31.1. Consultant shall hold the Judicial Council, the Court(s), the State, and their officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, Article, or appliance furnished or used by Consultant or its Sub-Consultants in connection with this Agreement.
- 31.2. Consultant, at its own expense, shall defend any action brought against the Judicial Council, the Court(s) and/or the State, and their officers, agents, and employees, to the extent that such action is based upon a claim that any Data or Materials supplied by Consultant or its Sub-Consultants infringes a United States patent or copyright or violates a trade secret. Consultant shall pay those costs and

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damages finally awarded against the Judicial Council, the Courts, and/or the State and their officers, agents, and employees, in any such action. Such defense and payment shall be conditioned on the following:

- 31.2.1. That Consultant shall be notified within a reasonable time in writing by the Judicial Council of any Notice of such claim; and,
- 31.2.2. That Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the Judicial Council, the Court(s) and/or the State shall have the option to participate in such action at its own expense.
- 31.3. Should the Data or Materials, become the subject of a claim of infringement of a United States patent or copyright or a trade secret, the Judicial Council shall permit Consultant at its option and expense either to procure for the Judicial Council and/ or the Court(s) the right to continue using the Data or Materials, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or if the use of such Data or Materials by the Judicial Council and/or the Courts shall be prevented by injunction, Consultant agrees to take back such Data or Materials and make every reasonable effort to assist the Judicial Council and/or the Courts in procuring substitute Data or Materials. If, in the sole option of the Judicial Council, the return of such infringing Data or Materials makes the retention of other Data or Materials acquired from Consultant under this Agreement impractical, the Judicial Council shall then have the option of terminating the Service Work Order under which the Data or Materials were provided, in its entirety, without penalty or termination charge. Consultant agrees to take back said Data or Materials and refund any sums that the Judicial Council has paid Consultant less any reasonable amount for use or damage.

32. Conflict of Interest

- 32.1. Consultant shall ensure that its officers and employees and those of its Sub-Consultant(s) shall not participate in proceedings that will result in decision making regarding the use of State funds encumbered or that may be encumbered under this Agreement if that person's partner, family, or organization has a financial interest in the outcome of the proceedings.
- 32.2. Consultant shall ensure that its officers and employees and those of its Sub-Consultant(s) shall avoid actions resulting in or creating an the appearance that (1) an official position with the government was used for private gain; (2) preferential treatment was accorded to any particular person associated with this Agreement; (3) the independence or impartiality of the Judicial Council or the Courts has been compromised; (4) decisions are made outside official channels; or (5) that adversely affects the confidence of the public in the integrity of the Judicial Council or the Courts.
- 32.3. Consultant shall ensure and shall ensure that its Sub-Consultants will not, for a duration equivalent to two (2) years following the end of this Agreement, award a contract to any Judicial Council or Court officer or employee that had any role in the decision making process relevant to awarding this Agreement or any such individual involved in making decisions regarding the use of the State funds encumbered under this Agreement.

33. Covenant Against Gratuities

- 33.1. Consultant warrants that neither Consultant itself nor any of its employees nor Sub-Consultant(s) or their employees have provided or shall at any time provide any gratuity, in the form of money, tangible item(s), intangible benefit(s), or in any other form, to any officer, official, agent, or employee of the Judicial Council or of the Court(s) for the purpose of securing or having secured award of this Agreement or any Service Work Order to Consultant.

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- 33.2. Consultant warrants that neither Consultant itself nor any of its employees, nor Sub-Consultant(s) or their employees have provided or shall at any time provide any gratuity in the form of money, tangible item(s), intangible benefit(s), or in any other form, to any officer, official, agent, or employee of the Judicial Council or of the Court(s) for the purpose of securing an outcome favorable to the Consultant any of its Sub-Consultant(s) resulting from any decisions made regarding the use of the State funds encumbered or to be encumbered under this Agreement.
- 33.3. Consultant warrants that neither Consultant itself nor any of its employees nor Sub-Consultant(s) or their employees will, without immediate written Notice to the Judicial Council, knowingly allow any Third Party to provide any gratuity in the form of money, tangible item(s), intangible benefit(s), or in any other form to any officer, official, agent, or employee of the Judicial Council or of the Court(s) for the purpose of securing an outcome favorable to the Consultant any of its Sub-Consultant(s) resulting from any decisions made regarding the use of the State funds encumbered or to be encumbered under this Agreement.
- 33.4. For breach or violation of any of the aforesaid warranties, the Judicial Council will have the right to terminate this Agreement, and any loss or damage sustained by the Judicial Council in procuring, on the open market, any Work which the Consultant has agreed to supply, shall be borne and paid for by the Consultant. The rights and remedies of the Judicial Council provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

34. Submitting False Claims; Monetary Penalties

The Judicial Council shall be entitled to remedy any false claims, as defined in California Government Code section 12650 et seq., made to the Judicial Council by the Consultant or any Sub-Consultant under the standards set forth in Government Code section 12650 et seq. Any Consultant or Sub-Consultant who submits a false claim shall be liable to the Judicial Council for three times the amount of damages that the Judicial Council sustains because of the false claim. A Consultant or Sub-Consultant who submits a false claim shall also be liable to the Judicial Council for (a) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (b) a civil penalty of up to \$10,000 for each false claim.

35. Responsibility for Equipment, Real Property; Unused Reimbursable Item(s)

- 35.1. Neither the Judicial Council nor the Court(s) shall be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by the Consultant or its Sub-Consultant(s) employees even though such equipment is furnished, rented, or loaned to the Consultant by the Judicial Council or the Court(s).
- 35.2. Any Reimbursable Items purchased by Consultant that remain unused at the completion of the Work shall be returned to the Judicial Council Project Manager prior to submission of Consultant's final invoice pertaining to the Service Work Order under which said Reimbursable Items were purchased.

36. Independent Contractor

The Consultant shall be, and is, an independent contractor, is not an employee or agent of the Judicial Council, and is not covered by any employee benefit plans provided to the Judicial Council's employees. The Consultant is, and shall be, liable for its own acts and omissions as well as those of its employees and Sub-Consultants. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the Judicial Council and the Consultant. The Consultant will determine the method, details and means of performing its responsibilities with regard to provision of the Services, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons assisting the Consultant in the performance of the Services. The Consultant shall be solely responsible for all matters relating to the payment of its Sub-Consultants and employees, including compliance with social security, withholding, any and all employment benefits, and all regulations governing such matters.

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37. Payment of Income Taxes

- 37.1. If applicable, Consultant shall provide a written, executed document identifying, if at all, that Consultant is listed on either or both of the State of California Franchise Tax Board's "Top 500 Delinquent Taxpayers" (available at <https://www.ftb.ca.gov/aboutFTB/Delinquent-Taxpayers.shtml>) or the California State Board of Equalization's "Top 500 Sales & Use Tax Delinquencies in California" (available at <http://www.boe.ca.gov/sutax/top500.htm>).
- 37.2. The Consultant shall pay, when due, all applicable income taxes, including estimated taxes, incurred as a result of the compensation paid by the Judicial Council to the Consultant for the Work. The Judicial Council is exempt from federal excise taxes and no payment will be made for any taxes levied on the Consultant's or any Sub-Consultants' employees' wages. The Consultant agrees to indemnify, defend and hold the Judicial Council harmless for any claims, costs, losses, fees, penalties, interest or damages (including attorney fees and costs) suffered by the Judicial Council resulting from the Consultant's failure to comply with this provision. The Judicial Council may offset any taxes paid by the Judicial Council as a result of the Consultant's breach of this provision against any amounts owed Consultant.

38. Certifications

By executing this Agreement, Consultant certifies under penalty of perjury that the following are true at the time of execution of this Agreement and shall remain true during the performance of this Agreement:

- 38.1. Nondiscrimination. The Consultant and its Sub-Consultants shall not unlawfully discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, ancestry, physical or mental disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), medical condition, marital status, age (over 40), sex, sexual orientation, gender identity, or domestic partner status. The Consultant and its Sub-Consultant(s) shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 38.2. No Harassment. The Consultant and its Sub-Consultant(s) shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Consultant or its sub-consultants interact in the performance of this Agreement. The Consultant and its Sub-Consultants shall take all reasonable steps to prevent harassment from occurring.
- 38.3. FEHA. The Consultant shall comply with the provisions of the Fair Employment and Housing Act, California Government Code section 12900 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, section 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- 38.4. Compliance with Americans with Disabilities Act. The Consultant complies with applicable provisions of the Americans with Disabilities Act of 1990 ("ADA") (42 U.S.C. section 12101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.
- 38.5. Notice to Labor Organizations. The Consultant and any of its Sub-Consultant(s) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 38.6. Compliance. The Consultant shall include the nondiscrimination, no harassment, and compliance provisions of this Article in any and all subcontracts issued to perform Services under this Agreement. Consultant has, unless exempt, complied with the nondiscrimination program requirements.

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(Government Code section 12990(a)-(f) and California Code of Regulations, title 2, section 8103 et seq.)

- 38.7. Prohibited Financial Conflict of Interest. The Consultant and its sub-consultants presently have no interest and will not acquire any interest which would present a conflict of interest pursuant to California Government Code sections 1090 et seq. and 87100 et seq., during the performance of Services pursuant to this Agreement. The Consultant further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the Judicial Council are now, nor in the future will they be, in any manner interested directly or indirectly in this Agreement, or in any profits expected to arise from this Agreement, as set forth in California Government Code sections 1090 et seq. and 87100 et seq.
- 38.8. Drug-Free Workplace. The Consultant will provide a drug-free workplace as required by California Government Code sections 8355 through 8357.
- 38.9. National Labor Relations Board. No more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Consultant within the immediately preceding two (2) year period because of the Consultant's failure to comply with an order of the National Labor Relations Board.
- 38.10. Brokerage or Contingent Fees. No person or selling agency has been employed or retained to solicit or secure this Agreement upon an understanding or agreement for a commission, percentage, brokerage or contingent fee.
- 38.11. Computer Software Use. Consultant has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- 38.12. Public Works Provisions. Consultant warrants and certifies that it is aware of the provisions of California Labor Code section 1720 et seq. ("Prevailing Wage Laws") that require the payment of prevailing wage rates and the performance of other requirements on certain "public works" and "maintenance" projects, as set forth and defined therein. Since the Consultant may be performing Services as part of or in conjunction with an applicable "public works" or "maintenance" project, and since the total compensation is One Thousand Dollars (\$1,000) or more, the Consultant agrees to fully comply with, and to require its Sub-Consultant(s) to fully comply with, all applicable Prevailing Wage Laws including, without limitation, the terms of this Section.
- 38.12.1. Consultant shall ensure that it and its Sub-Consultants comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Department of Industrial Relations, and are registered pursuant to Labor Code section 1725.5.
- 38.12.2. Wage Rates. Pursuant to the provisions of the Prevailing Wage Laws, as set forth in article 2 (commencing at section 1770), chapter 1, part 7, division 2, of the Labor Code of California, the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality in which this public work is to be performed for each craft, classification, or type of worker needed to execute this Agreement are on file with Judicial Council's Facilities Services office in San Francisco and copies will be made available to any interested party on request. Consultant shall obtain and post a copy of these wage rates in accordance with applicable law.
- 38.12.3. Holiday and overtime work, which is subject to the Prevailing Wage Laws when permitted by law, shall be paid for at a rate of at least one and one-half times the basic hourly rate of the general prevailing rate of per diem wage, unless otherwise specified. The holidays upon which

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those rates shall be paid need not be specified by the Judicial Council, but shall be all holidays recognized in the applicable collective bargaining agreement. If the prevailing rate is not based on a collectively bargained rate, the holidays upon which the prevailing rate shall be paid shall be as provided in section 6700 of the Government Code.

- 38.12.4. Consultant shall pay, or cause to be paid, each worker engaged in Work on any Project, who is subject to the Prevailing Wage Laws, not less than the general prevailing rate of per diem wages determined by the Director (“Director”) of the Department of Industrial Relations (“DIR”), regardless of any contractual relationship which may be alleged to exist between Consultant or any Sub-Consultant(s) and such workers to the extent applicable.
- 38.12.5. Pursuant to Labor Code section 1775, Consultant shall, as a penalty to the Judicial Council, forfeit the amount set forth in Labor Code section 1775 for each calendar day, or portion thereof, for each worker paid less than the prevailing rates, determined by the Judicial Council and/or the Director, for the work or craft in which that worker is employed for any public work done under contract by Consultant or by any Sub-Consultant under it. 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 Consultant.
- 38.12.6. Any worker subject to the Prevailing Wage Laws who is employed to perform Work on any Project, where that Work is not covered by a classification listed in the general prevailing wage rate of per diem wages determined by the Director, shall be paid not less than the minimum rate of wages specified therein for the classification which most nearly corresponds to Work to be performed by him, and such minimum wage rate shall be retroactive to time of initial employment of such person in such classification.
- 38.12.7. Pursuant to Labor Code section 1773.1, per diem wages are deemed to include employer payments for health and welfare, pension, vacation, and apprenticeship, training programs or other payments authorized by Labor Code section 3093.
- 38.12.8. Hours of Work. As provided in the Prevailing Wage Laws, in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code (“Hours of Work Provision”), eight (8) hours of labor shall constitute a legal day’s work. The time of service of any worker employed at any time by Consultant or by any Sub-Consultant on any subcontract under this Agreement upon the Work or upon any part of the Work contemplated by this Agreement which is subject to the Hours of Work Provision shall be limited and restricted by Consultant to eight (8) hours per day, and forty (40) hours during any one week except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Consultant who are subject to the Hours of Work Provision, in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work provided the employee is compensated for all hours worked in excess of eight (8) hours per day or forty (40) hours during any one week at not less than one and one-half times the basic hourly rate of the general prevailing rate of per diem wage.
- 38.12.9. Consultant shall keep, and shall cause each Sub-Consultant to keep, an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Consultant in connection with the Work or any part of the Work contemplated by this Agreement. The record shall be kept open at all reasonable hours to the inspection of the Judicial Council and to the Division of Labor Standards Enforcement of the DIR.
- 38.12.10. Pursuant to Labor Code section 1813, Consultant shall, as a penalty to the Judicial Council, forfeit the statutory amount for each worker employed in the execution of this Agreement by

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Consultant or by any Sub-Consultant for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day or forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

38.12.11. Consultant warrants and certifies that it is aware of the provisions of the California Labor Code that 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 it certifies that it will comply with those provisions before commencing the performance of the Services.

39. Force Majeure

Neither Party shall be liable for damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is due to an act of Force Majeure.

40. General

40.1. Survival. The termination or expiration of this Agreement or any authorized Service Work Order shall not relieve either Party of any obligation or liability accrued there under prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided for herein.

40.2. Remedies Cumulative. All remedies provided for in this Agreement are cumulative and may be exercised individually or in combination with any other remedy available hereunder.

40.3. Waiver.

40.3.1. Any waiver of any term or condition of this Agreement must be made in the form of an Amendment and executed by an authorized representative of the waiving party and any such waiver shall not be construed as a waiver of any succeeding breach of the same or other term or condition of this Agreement.

40.3.2. The omission by either Party at any time to remedy any default or enforce any right, or to require performance in accordance with the terms and conditions of this Agreement at the time designated shall not act as a waiver of the default or right, nor shall it affect the right of that party to enforce those provisions at a later date.

40.4. Severability. The provisions of this Agreement are separate and severable. Should any court hold that any provision of this Agreement is invalid, void or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the reasonable intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

40.5. Governing Law; Jurisdiction.

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

40.5.2. Consultant agrees that any claims that it has or may acquire against the Judicial Council shall be commenced in and decided exclusively by a court of competent jurisdiction located in the

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State of California. Consultant agrees to submit to the personal and exclusive jurisdiction of courts located in the State of California. Consultant waives all defenses and arguments that the courts located in the State of California constitute an inconvenient forum based upon the residence or domicile of Consultant, the location of the Project that is the subject of the litigation or the location of witnesses, the location of documents, or anything else.

- 40.6. Agreement Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.
- 40.7. Public Contract Code References. Public Contract Code references create duties of the Consultant under this Agreement; however, the references do not imply that the Judicial Council is subject to the Public Contract Code.
- 40.8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as regards its subject matter and supersedes all previous agreements, proposals, negotiations, representations and commitments, whether oral or written, with regard thereto.

END OF EXHIBIT

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EXHIBIT B

SPECIAL PROVISIONS

1. Insurance

- 1.1. Insurance Required. Without limiting the Consultant's indemnification obligation and in addition thereto, the Consultant shall secure and maintain in force throughout the term of this Agreement the following types of insurance with limits as shown. By requiring such minimum insurance, the Judicial Council shall not be deemed or construed to have assessed the risks that may be applicable to the Consultant under this Agreement. The Consultant shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each policy, other than the Professional Liability policy, shall be written on an "occurrence" form. The Professional Liability policy may be written on a "claims made" form.
 - 1.1.1. Workers' Compensation; Employer's Liability—Consultant shall maintain statutory workers' compensation coverage for all its employees who will be engaged in the performance of the Contract, and employer's liability with limits not less than \$1,000,000 for each accident \$1,000,000 disease policy limit, \$1,000,000 disease – each employee.
 - 1.1.2. Commercial General Liability Insurance—Covering liability arising from premises, operations, independent Consultants, products and completed operations, personal injury and advertising injury, and liability assumed under contract. The policy shall provide limits of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate. The insurance must apply separately to each insured against whom a claim is made or lawsuit is brought, subject only to the insurance policy's limit of liability.
 - 1.1.3. Commercial or Business Automobile Liability Insurance—Covering liability arising out of a motor vehicle, including owned, non-owned, leased, and hired vehicles assigned to or used in connection with the Project. The policy shall provide combined single limits of not less than \$1,000,000 per accident or loss.
 - 1.1.4. Professional Liability Insurance; Errors and Omissions—Covering the Consultant's acts, errors or omissions committed or alleged to have been committed which arise out of rendering or failure to render the Services provided under the terms of this Agreement. The policy shall provide limits of not less than \$1,000,000 per claim or per occurrence and \$1,000,000 annual aggregate. If the policy is written on a "claims made" form, the Consultant shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Services which are the subject of this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that Services commence pursuant to this Agreement.
- 1.2. Additional Insured Endorsements. All policies required in this Section, with the exception of Workers' Compensation and Professional Liability, must be endorsed to name the following as additional insureds with respect to liabilities arising out of the Consultant's Services for the Judicial Council under this Agreement: the State of California, the Judicial Council of California, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers and employees.
- 1.3. Required Policy Provisions. Each policy required herein this Agreement must provide that:

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- 1.3.1. The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by the State of California, the Judicial Council of California, State's trial courts, or appellate courts.
- 1.3.2. The policy shall apply separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer's liability.
- 1.3.3. The Consultant will provide the Judicial Council with thirty (30) days' advance written notice of any change or cancellation, mailed to the following address (with a copy to the Judicial Council Business Services and to all Judicial Council Project Managers named in authorized and active Service Work Orders):

Office – Risk Management
Judicial Council of California
455 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102

- 1.4. The insurer waives any and all rights of subrogation against the State of California, the Judicial Council of California, State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers or employees except for Professional Liability coverage.
- 1.5. Waiver of Claims. Consultant shall waive any right of recovery or subrogation it may have against any of the State of California, the Judicial Council of California, or the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers or employees for loss or damage for any loss arising out of the Services performed by Consultant under this Agreement, and the Consultant will require any insurer providing insurance required under this Section to do the same.
- 1.6. Qualifying Insurers. Consultant will maintain, or cause to be maintained, insurance issued by an insurance company or companies that are rated "**A-VII**" or higher by A. M. Best's key rating guide, and are authorized to do business in the State of California.
- 1.7. Deductibles and Self-Insured Retentions. For all insurance policies required by this Agreement, Consultant will declare any deductible or self-insured retention (SIR). Consultant will be responsible for reimbursement of any deductible to its insurer. Consultant will administer any self-insurance program in a commercially reasonable manner that ensures sufficient funds are available to cover all losses Consultant must insure against under the terms of this Section.
- 1.8. Consultant is responsible for and may not recover from the State of California, the Judicial Council of California, or any Superior Court of California, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, any deductible or self-insured retention that is connected to the insurance required under this Section.
- 1.9. If Consultant 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.
- 1.10. No Reduction or Limit of the Consultant's Obligation. Insurance affected or procured by the Consultant shall not reduce or limit the Consultant's contractual obligation to indemnify and defend the Judicial Council. Acceptance of the Consultant's insurance by the Judicial Council shall not relieve or decrease the liability of the Consultant hereunder.

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- 1.11. Joint Ventures. If the Consultant is an association, partnership, or other joint business venture, the insurance required in subsection (a) above shall be provided by any one of the following methods:
- 1.11.1. Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured.
 - 1.11.2. Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 1.12. Evidence of Coverage. Before commencing any Work under this Agreement, the Consultant must furnish to the Judicial Council certificates of insurance and applicable endorsements, in form and with insurers satisfactory to the Judicial Council, evidencing that all required insurance coverage is in effect. The Judicial Council reserves the right to require the Consultant to provide complete, certified copies of all required insurance policies. The required certificates and endorsements must be sent to (with a copy to the Judicial Council Project Manager):
- Manager, Contracts
Attn: Insurance Certificate, Contract [#]
Judicial Council of California
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102
- 1.13. Consequences of Lapse. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Judicial Council receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Judicial Council may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

2. Licenses

- 2.1. Consultant shall ensure that Consultant, its Sub-Consultant(s) and all their employees or agents providing Work under this Agreement shall have and shall at all times maintain throughout the duration of their performance of the Work all appropriate certificates(s) and/or license(s) required under law to provide the Work being performed. Consultant shall regularly monitor and ensure that its Sub-Consultant(s) monitor to ensure compliance with this provision of the Agreement.
- 2.2. If the possession of a certificate(s), including without limitation a valid Certified Commissioning Authority (CxA) certificate issued by the California Commissioning Collaborative or equal, is required for the performance of any Work, Consultant shall ensure that the Work will either be performed by an appropriately qualified individual or under the direct supervision and with the review and approval of an appropriately qualified individual.
- 2.3. If the possession of a license(s), including without limitation a valid California Contractor's license, is required under law for the performance of any Public Work, Consultant shall ensure that the Public Work will either be performed by an appropriately licensed entity "General Building Contractor – B License" or "Specialty Contractor – C License" as applicable to the specific Service Work Order.
- 2.4. Consultant shall provide immediate Notice to the Judicial Council in the event that any certificate and/or license required to be held by Consultant or any of its Sub-Consultant(s) or any of their employees or agents is suspended, cancelled, or expires during a period in which they are performing Work requiring a license.
- 2.5. Consultants and individuals required by law to be licensed are licensed and regulated by the California Consultants Board which has jurisdiction to investigate complaints if a complaint regarding a patent act

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or omission is filed within four years of the date of the alleged violation. Any questions concerning licensed individuals or organizations may be referred to the California Consultants Board.

- 2.6. If no license or certificate is required of an individual performing Services, Consultant shall ensure that such individuals possess the skills, training, and background reasonably commensurate with the responsibility assigned, so as to be able to perform in a competent and professional manner in accordance with generally accepted industry standards.

3. Reconciliation of Construction Budget for Design Work

- 3.1. In the event that a Service Work Order either includes a construction budget provided by the Judicial Council or requires Consultant to provide cost estimates that are approved by the Judicial Council as the Construction Budget (the “**Construction Budget**”) for the underlying work for which Consultant’s Services are being provided and which will be solicited via Third-Party bids or proposals (the “**Underlying Work**”), Consultant shall conform its Services to that Construction Budget and shall otherwise comply with the requirements of this section.

- 3.1.1. Consultant shall complete all Services described in a Service Work Order so that the cost to perform the Underlying Work will not exceed the agreed-upon Construction Budget.
- 3.1.2. If so instructed by the Judicial Council, Consultant shall be responsible for further developing, reviewing, and reconciling the Construction Budget for the Judicial Council at the beginning of the Underlying Work and at the completion of each of the phases that may be associated with Consultant’s Services and the Underlying Work.
- 3.1.3. In the event the Judicial Council, or a consultant thereof, reasonably determines the cost of the performance of the Underlying Work may exceed the approved Construction Budget, Consultant shall take, at Consultant’s sole cost and expense, all necessary steps and actions, including without limitation any required redesign work, to ensure the estimates of the Underlying Work are in conformance with the approved Construction Budget.
- 3.1.4. In the event that either of the following occur:
 - 3.1.4.1. The lowest bid or proposal, or a majority of the bids or proposals, received by the Judicial Council for the Underlying Work is in excess of 10% of the Construction Budget for the Underlying Work; or
 - 3.1.4.2. The combined total of the base bid or base proposals and all additive alternates received by the Judicial Council for the Underlying Work are 10% or more under the Construction Budget for the Underlying Work; or
 - 3.1.4.3. The Construction Budget increases in subsequent phases of Consultant’s Services for the Underlying Work due to reasonably foreseeable changes in the condition of the construction market in the county in which the Underlying Work will be performed, in so far as these increases have not been caused by acts of God, earthquakes, strikes, war, or energy shortages due to uncontrollable events in the world economy;

Then, in its sole discretion, the Judicial Council may, within three months’ time of receipt of the bids or proposals for the Underlying Work, instruct Consultant to revise and/or reconcile, at no additional cost or expense to the Judicial Council, the Construction Budget for the Underlying Work (in scope and quality as approved by the Judicial Council) for re-solicitation of the Underlying Work. Should Consultant be instructed to revise or reconcile the Construction Budget for the Underlying Work, Consultant shall take, at Consultant’s sole cost and expense, all necessary steps and actions, including without limitation any required

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redesign work, to ensure the estimates of the Underlying Work are in conformance with the approved Construction Budget.

4. Consultant's Project Schedule

- 4.1. Project Schedule Submission. Within five (5) Business Days of the Judicial Council directing Consultant to begin Work on an authorized Service Work Order which Consultant previously accepted in CAFM pursuant to Section 3.11 of Exhibit C to this Agreement, Consultant shall submit to the Judicial Council a project schedule consistent with the Service Work Order Time indicated in the Service Work Order ("Project Schedule").
- 4.2. Project Milestones. The Project Schedule must include all key milestones relevant to the Project, including without limitation, the following:
 - 4.2.1. Site investigation;
 - 4.2.2. Design documents;
 - 4.2.3. Judicial Council design review;
 - 4.2.4. Construction documents;
 - 4.2.5. Applicable plan review approvals, such as:
 - 4.2.5.1. Judicial Council plan review;
 - 4.2.5.2. State Fire Marshal;
 - 4.2.5.3. Division of State Architect;
 - 4.2.5.4. Other authorities having jurisdiction;
 - 4.2.6. Bidding;
 - 4.2.7. Construction;
 - 4.2.8. Close out.
- 4.3. Scheduling Software. Consultant must create the Project Schedule utilizing a scheduling software program acceptable to Judicial Council, which at a minimum shall be Microsoft Project. Consultant acknowledges that Microsoft Excel is not an acceptable scheduling software.
- 4.4. Judicial Council Approval. Consultant must provide an acceptable Project Schedule for the Judicial Council's consideration and approval. If requested by the Judicial Council, Consultant shall make reasonable updates or revises to the Project Schedule as necessary prior to its approval. Work shall not proceed on the Service Work Order until the Judicial Council has approved the Project Schedule. Once approved, Judicial Council and Consultant may, if agreed to in writing, approve subsequent changes to the Project Schedule.

5. Disabled Veteran Business Enterprise Program

- 5.1. This section is applicable only if Consultant received a Disabled Veteran Business Enterprise ("DVBE") incentive in connection with this Agreement. Consultant's failure to meet the DVBE commitment set forth in its proposal constitutes a breach of the Agreement. If Consultant used DVBE

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Sub-Consultants in connection with this Agreement: (i) Consultant must use the DVBE Sub-Consultants identified in its bid or proposal, unless the Judicial Council approves in writing replacement by another DVBE Sub-Consultant in accordance with the terms of this Agreement; and (ii) Consultant must within sixty (60) days of receiving final payment under this Agreement certify in a report to the Judicial Council, on a form supplied by or satisfactory to the Judicial Council, the following: (1) the total amount of money Consultant received under the Agreement; (2) the name and address of each DVBE Sub-Consultant to which Consultant subcontracted Work in connection with the Agreement; (3) the amount each DVBE Sub-Consultant received from Consultant in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE Sub-Consultants. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

END OF EXHIBIT

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EXHIBIT C

SERVICE WORK ORDER AUTHORIZATION PROCESS

INVOICING AND PAYMENT PROVISIONS

1. **Maximum Service Work Order Amount and Contract Amount**
 - 1.1. The maximum amount the Judicial Council shall be obligated to pay to Consultant under any individual Service Work Order authorized under this Agreement for performing all Work, as well as payment for all Travel and Living Expense and/or any Reimbursable Expenses incurred, shall not at any time exceed the Total Amount specified on the face of the most recently authorized Service Work Order applicable. No verbal agreements will be honored.
 - 1.2. The maximum amount the Judicial Council shall be obligated to pay to Consultant under this Agreement (“Contract Amount”) shall not at any time exceed the total of all Total Amount(s) Encumbered to Date. The total amount that the Judicial Council may pay the Consultant under this Agreement shall not at any time exceed the total of the Service Work Order Sums of all Service Work Orders authorized for the performance through the current date.
2. **Service Work Order Authorization**
 - 2.1. The Judicial Council will authorize the performance of Work and spending of funds under this Agreement only via Service Work Order issued through Owner’s CAFM system. Service Work Orders must be “accepted” by the Consultant within the CAFM system. This involves the Consultant logging into CAFM, opening the SWO, and clicking the “Accept” button. A written document will be provided by Judicial Council (FMU) via CAFM software system that summarizes the Project details and references all other documents incorporated within the Project.
 - 2.2. Service Work Orders may only be authorized during the Initial Term of this Agreement or any Subsequent Term. Service Work Orders must be authorized prior to the expiration date of this Agreement. The end date for Services authorized in a Service Work Order may exceed the expiration date of this Agreement; provided, however, that the terms and conditions of this Agreement shall remain in full force and effect with regard to any outstanding Service Work Order(s) after the expiration of this Agreement until the Work of said Service Work Order(s) is complete.
 - 2.3. Service Work Orders may only be authorized for the specific Service Types and Services described in Exhibits D, E, and F.
3. **Service Work Order Process**
 - 3.1. The Judicial Council’s Project Manager will provide Consultant with an unsigned Services Request Form (Exhibit E), describing the Work the Judicial Council wants performed. The Judicial Council’s Project Manager will complete the Services Request Form and send to Consultant electronically. The Judicial Council Project Manager will inform the Consultant of the appropriate Pricing Methodology to be used in the Service Work Order.
 - 3.2. Pricing Methodologies. Two Pricing Methodologies are allowable under this Agreement. Pricing Methodology sets both the total amount of compensation that will be made under a Service Work Order, as well as terms and conditions that will apply to the Services to be provided. Only one type of Pricing Methodology may be used in any individual Service Work Order and that methodology will apply to all

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Services provided under that Service Work Order. If more than one methodology is necessary, the Services must be segregated into separate Service Work Orders.

3.2.1. Lump Sum Based Pricing

- 3.2.1.1. When a Service Work Order is authorized for performance on a lump sum basis (“Lump Sum Basis”), the prices for all expected Hourly and Fixed Price Services, the cost of any expected Travel and Living Expenses, and the cost of any expected Reimbursables will be added to calculate a lump sum price (“Lump Sum Price”) applicable to that Service Work Order. The applicable price(s) and costs and method to be used to calculate the Lump Sum Price are specified below.
- 3.2.1.2. Consultant will be compensated for Lump Sum Basis Service Work Orders according to a percentage of particular phases, deliverables, or schedule of fixed milestone amounts with each milestone amount associated with the provision and acceptance of individual designated Deliverable(s) as agreed to between the Judicial Council Project Manager and Consultant’s Project Manager. The total of the price(s) for all Deliverables must be equal the Lump Sum Price applicable to the Service Work Order.
- 3.2.1.3. In Service Work Orders authorized on Lump Sum Basis, Consultant is responsible for the provision in full of all of the Services and Materials specified in the Service Work Order as well as bearing all costs and expenses for any Travel and Living Expenses, any Reimbursables expenses, and any other costs and expenses incurred to provide the Services and Materials, regardless of the amount of Consultant’s actual costs and expenses incurred. Consultant shall be compensated solely by payment of a Lump Sum Price.

3.2.2. Time and Materials Based Pricing

- 3.2.2.1. When performing Services on a time and materials basis (“Time and Materials Basis”), the prices will be subject to Judicial Council agreement on a Service Work Order-by-Service Work Order basis, and shall only apply to the Service Work Order in which authorized. When a Service Work Order is authorized for performance on a Time and Materials Basis, the prices for all expected Hourly and Fixed Price Services, the cost of any expected Travel and Living Expenses, and the cost of any expected Reimbursables will be added to calculate a time and materials price (“Time and Materials Price”) applicable to that Service Work Order. The applicable price(s) and costs and method to be used to calculate the Time and Materials Price are specified below. The Judicial Council may, in its discretion, include a not-to-exceed amount in any Service Work Order on a Time and Materials Basis and Consultant shall not exceed said not-to-exceed amount.
- 3.2.2.2. Consultant will be compensated for Time and Materials Basis Service Work Orders in the form of monthly payments based upon: the hours of work actually expended in performing the Hourly Services; the price for any Fixed Price Service(s) actually performed; the actual cost for any allowed Travel and Living Expenses actually incurred (when incurred in accordance with, and in amounts not to exceed the maximum amounts specified as allowable in, the Judicial Council’s Travel and Living Expense Rules and Rates); and the actual cost of any allowed Reimbursables (in amounts at or below the Reimbursable(s) prices specified in the Service Work Order).
- 3.2.2.3. In Service Work Orders authorized on a Time and Materials Basis, Consultant is, subject to the limitation of the Time and Materials Price as further elucidated below, responsible for the provision of Services and Materials specified in a Service Work Order if authorized in accordance with the provisions of the Service Work Order, for

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paying for any Travel and Living Expenses and Reimbursable(s) necessary to provide those Services and Materials if authorized by the Judicial Council's Project Manager. Consultant shall be compensated solely in the form of payments for the Services, Materials, Travel and Living Expenses, and Reimbursables expenses which shall be made as specified above, however, Consultant shall not provide Services and/or Materials, incur Travel and Living Expenses, or purchase Reimbursable(s) past the point at which the total of such charges, if invoiced to the Judicial Council in accordance with this Agreement, would exceed the Time and Materials Price applicable to that Service Work Order.

- 3.3. Upon receipt, Consultant will, in coordination with the Judicial Council's Project Manager, edit the Services Request Form (Exhibit E) if necessary so that it appropriately describes, to the satisfaction of both parties, the various elements of the Work and Materials to be provided, and submit the revised version.
- 3.4. Consultant will fill out and submit electronically the Consultant Proposal Form (Exhibit F) based upon the description of the Services requested by the Services Request Form, providing the following:
 - 3.4.1. Service Work Order Subtotals and Service Work Order Grand Total: List the Service Types and the corresponding subtotals as applicable to the Project. If the Service is to be performed by a Sub-Consultant, include the name of the Sub-Consultant.
 - 3.4.2. Schedule of Deliverables and Milestone Payments: If Lump Sum Basis Pricing Methodology is used, after consultation with the Judicial Council Project Manager, provide a list of designated Deliverable(s) and the amount to be paid upon acceptance of each such Deliverable that has been agreed to by both Parties. The Judicial Council does not pay for Services in advance and no milestone payment will be tied to initiation of the Work. The individual Milestone Payments to be used shall be proportioned to correspond to the portion of the Project Services necessary to provide the Deliverable. Invoicing and Payments may only be made according to this Schedule of Deliverables and Milestone Payments. Deliverables must be tangible.
 - 3.4.3. Hourly Services: Provide the corresponding hourly rate (from Exhibit D of this Agreement), number of hours, and subtotal for the utilized job title. Note: Prevailing wage rates will and Public Works registration requirements apply to the General Contractor to the extent applicable.
 - 3.4.4. Fixed Price Services: If Fixed Price Services are to be provided, describe the service, the category of service it falls into (consult Exhibit D for approved Service Types), the price, quantity, and subtotal. Fixed Price Services are approved on a Project by Project basis by the Judicial Council Project Manager.
 - 3.4.5. Travel and Living Expenses: If performance of a Service will necessitate the expenditure of Travel and Living Expenses, describe the Travel and Living Expenses that are necessary to perform the Service. Provide the titles (and names if available) of individuals for whom the Travel and Living Expenses will be expended. Provide an explanation of the purpose for the expenditure(s) and the expected dates of the expenditure(s). All Travel and Living Expenditures must be costed out in accordance with the Judicial Council's Travel and Living Expense Rules and Guidelines, given in this Exhibit C (except in those instances subject to and governed by the Prevailing Wage Laws). Provide the information requested on the form, along with a subtotal for all Travel and Living Expenses. If no Travel and/or Living Expenses are to be incurred, leave this section blank.
 - 3.4.6. Reimbursable Items: If performance of a Service will necessitate Consultant's use of Reimbursable Items, provide a listing of the Reimbursable Items necessary to perform the Service, along with quantities necessary, price, extended price, and a subtotal for all Reimbursable Items. If no Reimbursable Items are to be purchased, leave this section blank.

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Reimbursable Items must be priced at Consultant's actual acquisition cost, net of any discounts or rebates allowed and are not subject to any markup, charge, add on, or pass through charge or fee of any type. Reimbursable Items are not services. The amounts listed here are allowances only and the individual Reimbursable Items to be invoiced may exceed the amounts listed in this section provided the total amount invoiced does not exceed the subtotal of all Reimbursable Items.

- 3.5. Upon completion of the above, Consultant's Project Manager shall submit Consultant's Proposal to the Judicial Council's Project Manager via e-mail in the form of a file in modifiable MS-Word processing format.
- 3.6. The Judicial Council's Project Manager shall review separately or with the Consultant and may request changes to the Proposal submitted, in which event Consultant shall modify and resubmit the Proposal, again in accordance with the provisions of this Exhibit C.
- 3.7. Consultant Proposals so submitted are available for acceptance and may not expire or be revoked for a period of twenty (20) Business Days following the date submitted to the Judicial Council's Project Manager, or until the date scheduled for the start of the Work in the applicable Service Work Order passes, whichever event occurs sooner.
- 3.8. If the Judicial Council intends to accept Consultant's Proposal and proceed with the Project, the Judicial Council Project Manager will create a Service Work Order in Owner's CAFM system and populate the Consultant Proposal Form (Exhibit F) with a unique SWO number. The Services Request Form (Exhibit E) and accepted Consultant Proposal Form (Exhibit F) will be uploaded to CAFM.
- 3.9. The Judicial Council Project Manager will then notify the Consultant of its Proposal acceptance. The Judicial Council shall provide, via e-mail, a Service Work Order consisting of a cover page with a unique Service Work Order number, the accepted Service Request Form (Exhibit E) and Consultant Proposal Form (Exhibit F).
- 3.10. Consultant shall review all documents and, upon acceptance, log in to Owner's CAFM system, look up the corresponding Service Work Order, and click "Accept". By clicking "Accept", Consultant agrees to all the provisions of this Agreement and the corresponding Service Work Order.
- 3.11. Upon notification of Service Work Order acceptance in CAFM by the Consultant, the Judicial Council shall direct the Consultant to begin Work in writing in conjunction with Section 3.12 below. Within five (5) Business Days of the Judicial Council's direction to Consultant to begin Work on the SWO, Consultant shall submit to the Judicial Council Consultant's Project Schedule in compliance with the requirements of Section 4 of Exhibit B of this Agreement.
- 3.12. Following authorization of a Service Work Order, but before the initiation of Work on a Project, Owner may furnish additional detailed written and/or graphic instructions to explain the Work more fully, and such instructions become a part of the requirements of the authorized Service Work Order applicable to a Project. Should such Additional Detailed Instructions, in the opinion of Consultant, constitute Work in excess of the requirements of the authorized Service Work Order, Consultant must submit written Notice of the same to the Owner within seven (7) Days following receipt of such instructions, and in any event no later than prior to commencement of the Work of the Project. If in the Owner's judgment, the Additional Detailed Instructions do in fact constitute Work in excess of the requirements of the authorized Service Work Order, the Owner may, at Owner's option, either close the authorized Service Work Order and create a new Service Work Order or issue a Supplementary Service Work Order to account for the excess Work.
- 3.13. If the Parties agree to cancel an already authorized Work Order, the existing SWO must be closed within Owner's CAFM system and a new SWO process started.

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- 3.14. Only the following Owner's personnel are approved to authorize a SWO(s): Senior Manager for Facility Management; Regional Manager for Facilities Operations; Project Managers; Supervising Facilities Management Administrators; Facilities Management Administrators; Judicial Council Customer Service Center Personnel.
 - 3.15. Owner shall from time to time provide Consultant with the names and contact information of persons filling primary positions. This letter will be updated from time to time as personnel change, and is effective upon receipt. These changes will not require that this Agreement be amended.
 - 3.16. The Judicial Council reserves the right to modify the forms provided in Exhibits E and F, as it deems necessary or appropriate, in its sole discretion, and will notify Consultant of any modification to said form prior to implementing the modified form(s). Modified forms will be substantially similar to Exhibits E and F in this Agreement.
 - 3.17. There is no limit on the number of Service Work Orders the Judicial Council may request or authorize under this Agreement.
 - 3.18. The Judicial Council does not guarantee that Consultant will receive any authorized Service Work Order(s) under this Agreement.
4. **Invoicing Instructions**
- 4.1. All invoices are to be provided to Judicial Council Project Manager. Invoices should be provided with the standard Request for Payment cover sheet provided by Judicial Council. All invoices must contain:
 - 4.1.1. The Agreement Title and Agreement Number from the Standard Agreement Coversheet to this Agreement;
 - 4.1.2. The Service Work Order Number provided on the Service Work Order;
 - 4.1.3. A unique invoice number;
 - 4.1.4. Consultant's name and address;
 - 4.1.5. Consultant's Taxpayer identification number (FEIN);
 - 4.1.6. The Pricing Methodology applicable to the Service Work Order (i.e. "Pricing Methodology – Lump Sum Price");
 - 4.1.7. Preferred remittance address if this address has changed at the time this Agreement was signed. In addition, Judicial Council must be notified of this change immediately. Changes to the remittance address made on an invoice without the Judicial Council being specifically notified will result in processing and payment delays;
 - 4.1.8. Date Range of Work performed; and
 - 4.1.9. Date of invoice.
 - 4.2. In addition, Consultant shall provide invoices in formats that correspond to the Pricing Methodology specified in the authorized Service Work Order, as follows:
 - 4.2.1. Lump Sum Based Service Work Orders:
Consultant shall, upon receipt and written acceptance by the Judicial Council's Project Manager of a Deliverable associated with a Payment Milestone but not more frequently than once monthly, submit an invoice for any Milestone Payments associated with any Deliverable(s) accepted by the Judicial Council during the previous calendar month. Deliverables shall not be invoiced to the Judicial Council in advance of receipt of written acceptance from the Judicial Council Project Manager.

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4.2.1.1. Consultant's invoice for such Service Work Orders must specify the following:

- 4.2.1.1.1. Name of the Deliverable, using the same words as specified in the Service Work Order description;
- 4.2.1.1.2. Amount of the milestone payment designated for the accepted Deliverable, as specified in the Service Work Order;
- 4.2.1.1.3. A line specifying the Service Work Order Grand Total (i.e. "Service Work Order Grand Total = \$") applicable to the Service Work Order.

4.2.2. Time and Materials Based Service Work Orders:

Consultant shall submit an invoice for time and materials for Services rendered during the previous calendar month, and not more frequently than once monthly.

4.2.2.1. Consultant's invoice for such Service Work Orders must specify the following:

- 4.2.2.1.1. Schedule of Values (listing appropriate phases or milestones) and extended subtotals; OR
- 4.2.2.1.2. Hourly Rates: A section with the applicable job title, number of hours invoiced, applicable hourly rate as specified in Exhibit D, and subtotal;
- 4.2.2.1.3. Fixed Price Services (if applicable) with the description, price, quantity, and subtotal using the same language as provided in the Service Work Order;
- 4.2.2.1.4. Travel and Living Expenses (if applicable) actually incurred with the name and job title of the individual claiming expenses, date, purpose, and subtotal. Cost of travel or living expense must not exceed the allowance specified in the Judicial Council Travel and Living Expense Guideline;
- 4.2.2.1.5. Reimbursable Items (if applicable) with the description, actual cost incurred, quantity, and subtotal using the same language as provided in the Service Work Order. Receipts must be provided as backup documentation;
- 4.2.2.1.6. Amount of retention (not to exceed 10% of amount invoiced);
- 4.2.2.1.7. Total invoice amount (minus retention, if applicable).

5. **Judicial Council Travel and Living Expenses Guidelines**

Any prices, rates, charges, fees, and any rules, terms, or conditions regarding Travel and Living Expenses specified in Exhibit D that conflict with the provisions of Exhibit E are null and void and without effect.

5.1. At Judicial Council's sole discretion, and only if expressly specified by the Judicial Council in a Service Work Order and so agreed to by Consultant prior to performance of the Work, the Judicial Council shall reimburse Consultant for actual and reasonable transportation, meals, and lodging expenses actually incurred by Consultant's and its Sub-Consultants' employees when actually incurred in the course of their performance of the Work, but subject to the following:

- 5.1.1. If air transportation is authorized, the Judicial Council will reimburse Consultant only at the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) Business Days prior to travel, unless the Project Manager agrees in writing to a shorter period in the Service Work Order.

ATTACHMENT D

- 5.1.2. If overnight lodging expense is authorized, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the Judicial Council will reimburse Consultant only (i) for hotel room rental at the actual cost, but not to exceed \$250.00 per Day in San Francisco County, plus occupancy tax and/or energy surcharge; \$125.00 per Day in Monterey and San Diego Counties, plus occupancy tax and/or energy surcharge; \$120.00 per Day in Los Angeles, Orange, and Ventura Counties, plus occupancy tax and/or energy surcharge; \$140.00 per Day in Alameda, San Mateo, and Santa Clara Counties, plus tax and energy surcharge; or \$110.00 in all other California counties, plus tax and energy surcharge; and (ii) for meals, at the actual cost but not to exceed the following maximum amounts per person per Day: breakfast \$8.00; lunch \$12.00; dinner \$20.00; and incidentals \$6.00. Reimbursement for Travel and Living Expenses is subject to the provisions of and must be charged in accordance with the Judicial Council's Guidelines for Travel and Living Expenses.
- 5.1.3. If private vehicle ground transportation expense is authorized, the Judicial Council will reimburse Consultant at the then published Federal cents per mile, pursuant to <https://www.irs.gov/tax-professionals/standard-mileage-rates>.
- 5.1.4. The Judicial Council is not obligated to pay for, and Consultant shall not invoice for any hours of non-production Work expended by the Consultant or its Sub-Consultants' employees that are spent traveling to or from the location where the Service(s) are performed.
- 5.1.5. Travel and Living Expenses shall be billed to the Judicial Council at Consultant's actual cost, including any discounts or rebates accorded to Consultant or its Sub-Consultants, and are not subject to any markup, fee, or other charge.
- 5.1.6. Notwithstanding the preceding, Consultant shall be required to ensure its workers are paid, and Judicial Council shall reimburse Consultant to the extent applicable for, all travel and/or subsistence payments pursuant to Labor Code sections 1773.1 and 1773.9 or as otherwise required by the Prevailing Wage Laws.

6. **Taxes**

The Judicial Council is exempt from federal excise taxes and no payment will be made for any taxes levied on Consultant's or any Sub-Consultants' employees' wages. The Judicial Council will pay for any applicable State of California or local sales or use taxes on any Materials provided or Services rendered pursuant to this Agreement.

7. **Invoice Submission**

- 7.1. Consultant shall submit one (1) original of invoices to the Judicial Council Project Manager for processing.

8. **Retention**

- 8.1. The Judicial Council shall withhold payment of an amount equal to ten percent (10%) from all payments made for invoices submitted. Upon successful completion of all Work under an individual Service Work Order, Consultant shall separately invoice, for the amounts retained, if applicable.

9. **Payment**

- 9.1. The Judicial Council will endeavor to pay invoices within sixty (60) days after receipt of a correct, itemized invoice. In no event shall the Judicial Council be liable for interest or late charges for any late payments.

ATTACHMENT D

- 9.2. Payment shall be made by the Judicial Council to the Consultant at the address specified when this Agreement was signed. Changes to this address can be made by notifying the Judicial Council in writing of the new remittance address, but should be done prior to invoice submission to avoid processing delays.
- 9.3. The Judicial Council may withhold full or partial payment to the Consultant in any instance in which the Consultant has failed or refused to satisfy any material obligation provided for under this Agreement or the Service Work Order.

10. **Disallowance**

If the Consultant claims or receives payment from the Judicial Council that is later disallowed by the Judicial Council, the Consultant shall promptly refund the disallowed amount to the Judicial Council upon the Judicial Council's request. At its option, the Judicial Council may offset the amount disallowed from any payment due or that may become due to the Consultant under this Agreement or any other agreement.

11. **Payment Does Not Imply Acceptance of Work**

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

12. **Release of Claims**

- 12.1. The acceptance by Consultant of its final payment due under an authorized Work Order shall be and shall operate as a release of the Judicial Council, the Court(s) and the State from all claims and all liability to the Consultant for everything done or furnished in connection with said Work Order, including every act and neglect of the Judicial Council and or the Court(s).
- 12.2. Consultant shall, on the face of Consultant's final invoice submitted for payment, expressly identify as outstanding any claim that it has. Consultant's failure to identify any such claims shall operate as a release of all claims.

END OF EXHIBIT

ATTACHMENT D

EXHIBIT D

SERVICE TYPES AND HOURLY RATES

1. Service Types and Hourly Rates

- 1.1. Consultant shall, when specified in an authorized Service Work Order, provide Services within the following Scopes. Additional detail regarding scope within a Service Work Order can be found on Exhibit E, “Services Request Form”, to be approved on a Service Work Order basis.
- 1.2. Service Types. The scope of Services requested under this Agreement includes professional consultant services of a building commissioning nature, as well as incidental services that members of those professions and those in their employ may logically or justifiably perform. Services requested under this Agreement require the Consultant’s expertise with the commissioning process, including verification techniques, functional performance testing, system equipment and Operations and Maintenance (“O&M”) knowledge. The Consultant may provide building commissioning services for a range of Projects to verify compliance that building systems, including, but not limited to, mechanical and electrical systems, are installed, integrated and operate according to best industry practices. The Consultant agrees to provide all necessary expertise and services to professionally and diligently prosecute the Work. Items listed herein Exhibit D, Section 1, may not all be applicable on each Project. The scope of Work includes, but is not limited to, the Services noted herein. The Judicial Council’s Project Manager will provide the Consultant with an unsigned Services Request Form (Exhibit E), describing the Work the Judicial Council may perform under a given Service Work Order. See Exhibit C, Section 3.1 – Service Work Order Authorization Process for additional detail on the issuance of Services under this Agreement.
- 1.3. Service Types include Pre-Design Phase, Design Phase, Construction Phase, and Warranty Phase Services, as further set forth herein. It is assumed by the Judicial Council that all of the tasks noted herein Exhibit D, Section 1, may be completed as required on a given Project(s). The Consultant shall be responsible for carrying out the tasks noted herein.
- 1.4. Pre-Design Phase:
 - 1.4.1. Assemble commissioning team, hold a scoping meeting and identify responsibilities.
 - 1.4.2. Develop a draft design-phase commissioning plan.
 - 1.4.3. Attend commissioning meetings as needed with Judicial Council Project Manager and design team.
 - 1.4.4. If not already completed, develop and review the design intent documentation for clarity and completeness, including language on the following features, without limitation: mechanical, electrical, plumbing, architectural, structural, lighting, energy consumption, commissioning, indoor environmental quality, environmental sustainability, siting, exteriors, landscaping, interiors, functionality for tenants, and budget. This will be accomplished by the Consultant by extracting salient concepts from the Owner’s existing programming report and/or conducting a focus group, and/or conducting interviews with Owner stakeholders. The Owner’s design intent requirements may be general or specific in nature and may include specific performance criteria for most concepts.
- 1.5. Design Phase:
 - 1.5.1. Coordinate the commissioning work during design.
 - 1.5.2. Develop or update the design phase commissioning plan.

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- 1.5.3. Perform focused reviews of the design, drawings and specifications at various stages of development (during schematic design, design development and contract document phases).
 - 1.5.4. Assist and review the development and updating of the Design Record documentation by design team members (Design Intent, Design Narrative, and Design Basis).
 - 1.5.5. Develop a draft construction phase commissioning plan using an Owner-approved outline.
 - 1.5.6. Develop full commissioning specifications for all commissioned equipment. Coordinate this with the architect and engineers and integrate the commissioning specifications into the overall project specification package. The commissioning specification will include a detailed description of the responsibilities of all parties, details of the commissioning process, reporting and documentation requirements including formats, alerts to coordination issues, deficiency resolution, construction checklist and startup requirements, the functional testing process, specific functional test requirements, including testing conditions and acceptance criteria for each piece of equipment being commissioned.
 - 1.5.7. Coordinate a controls integration meeting where the electrical and mechanical engineers, Owner's representative, and the Consultant discuss integration issues between equipment, systems and disciplines to ensure that integration issues and responsibilities are clearly described in the specifications.
- 1.6. Bid Phase
- 1.6.1. Attend pre-bid meeting(s) to answer commissioning related questions.
- 1.7. Construction Phase
- 1.7.1. Perform the tasks and functions in the specifications.
 - 1.7.2. Coordinate and direct the commissioning activities in a logical, sequential and efficient manner using consistent protocols and forms, centralized documentation, clear and regular communications and consultations with all necessary parties, including frequently updated timelines, schedules, and technical expertise.
 - 1.7.3. Coordinate the commissioning work with the contractor and construction manager to ensure that commissioning activities are being incorporated into the master schedule.
 - 1.7.4. Revise, as necessary, the construction phase commissioning plan developed during design, including scope and schedule.
 - 1.7.5. Plan and conduct commissioning meetings as needed and distribute minutes.
 - 1.7.6. Request and review additional information required to perform commissioning tasks, including O&M materials, and contractor start-up and checkout procedures. Before startup, gather and review the current control sequences and interlocks and work with contractors and design engineers until sufficient clarity has been obtained in writing, to be able to write detailed testing procedures.
 - 1.7.7. Review normal contractor submittals applicable to systems being commissioned for compliance with commissioning needs, concurrent with the Architecture and Engineering ("A/E") reviews.
 - 1.7.8. Review requests for information and change orders for impact on commissioning and Owner's objectives.
 - 1.7.9. Review coordination drawings to ensure that trades are making a reasonable effort to coordinate.
 - 1.7.10. Write and distribute construction checklists for commissioned equipment.
 - 1.7.11. Develop an enhanced start-up and initial systems checkout plan with contractors for selected equipment.

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- 1.7.12. Perform site visits, as necessary, to observe component and system installations. Attend selected planning and job-site meetings to obtain information on construction progress. Review construction meeting minutes for revisions/substitutions relating to the commissioning process. Assist in resolving any discrepancies.
- 1.7.13. Perform the following pre-functional tasks:
 - 1.7.13.1. Witness Heating, Ventilation, and Air Conditioning (“HVAC”) piping pressure test and flushing, sufficient to be confident that proper procedures were followed. Include testing documentation in the Commissioning Record.
 - 1.7.13.2. Witness any ductwork testing and cleaning sufficient to be confident that proper procedures were followed. Include documentation in the Commissioning Record.
 - 1.7.13.3. Document construction checklist completion by reviewing completed construction checklists and by selected site observation.
 - 1.7.13.4. Document systems startup by reviewing start-up reports and by selected site observation.
 - 1.7.13.5. Approve air and water systems balancing by spot testing and by reviewing completed reports and by selected site observation.
- 1.7.14. With necessary assistance and review from installing contractors, write the functional performance test procedures for equipment and systems. This will include manual functional testing, energy management control system trending and may include stand-alone data logger monitoring.
- 1.7.15. Coordinate, witness and document manual functional performance tests performed by installing contractors. Coordinate retesting as necessary until satisfactory performance is achieved. The functional testing shall include operating the system and components through each of the written sequences of operation, and other significant modes and sequences, including startup, shutdown, unoccupied mode, manual mode, staging, miscellaneous alarms, power failure, security alarm when impacted and interlocks with other systems or equipment. Sensors and actuators shall be calibrated during construction check listing by the installing contractors, and spot-checked by the Consultant during functional testing. Analyze functional performance trend logs and monitoring data to verify performance.
 - 1.7.15.1. Tests on respective HVAC equipment shall be executed, if possible, during both the heating and cooling season. However, some overwriting of control values to simulate conditions shall be allowed. Functional testing shall be done using conventional manual methods, control system trend logs, and read-outs or stand-alone data loggers, to provide a high level of confidence in proper system function, as deemed appropriate by the Consultant and the Owner.
- 1.7.16. Prepare test plans for, assist with execution of, and document tests of commissioned equipment overseen by regulatory authorities and ensure that such tests meet the testing rigor desired by the Owner.
- 1.7.17. Maintain a master issues log and a separate record of functional testing. Report all issues as they occur directly to the Owner’s Representative. Provide directly to the Owner’s Representative written progress reports and test results with recommended actions.
- 1.7.18. Review equipment warranties to ensure that the Owner’s responsibilities are clearly defined.
- 1.7.19. Oversee and review the training of the Owner’s operating personnel.
 - 1.7.19.1. Oversee the videotaping of this training.
 - 1.7.19.2. Develop an “Owner’s training manual” that is to be kept in the classroom.
 - 1.7.19.3. Review and Prepare the O&M manuals for commissioned equipment.
- 1.7.20. Compile a Commissioning Record, which shall include:

ATTACHMENT D

- 1.7.20.1. A brief summary report that includes a list of participants and roles, brief building description, overview of commissioning and testing scope, and a general description of testing and verification methods. For each piece of commissioned equipment, the report should contain the disposition of the Consultant regarding the adequacy of the equipment, documentation and training meeting the contract documents in the following areas:
 - 1.7.20.1.1. Equipment meeting the equipment specifications,
 - 1.7.20.1.2. Equipment installation,
 - 1.7.20.1.3. Functional performance and efficiency,
 - 1.7.20.1.4. Equipment documentation, and
 - 1.7.20.1.5. Operator training.
 - 1.7.20.2. All outstanding non-compliance items shall be specifically listed. Recommendations for improvement to equipment or operations, future actions, commissioning process changes, etc. shall also be listed. Each non-compliance issue shall be referenced to the specific functional test, inspection, trend log, etc. where the deficiency is documented
 - 1.7.20.3. Also included in the Commissioning Record shall be the issues log, commissioning plan, progress reports, submittal and O&M manual reviews, training record, test schedules, construction checklists, start-up reports, functional tests, and trend log analysis.
- 1.7.21. Compile a Systems Manual that consists of the following: Owner's Project Requirements (by Owner); Design Narrative; Performance Metrics, if completed during design; space and use descriptions, single line drawings and schematics for major systems (by designer); control drawings, sequences of control (by contractor); and a table of all setpoints and implications when changing them, schedules, instructions for operation of each piece of equipment for emergencies, seasonal adjustment, startup and shutdown, instructions for energy savings operations and descriptions of the energy savings strategies in the facility, recommendations for recommissioning frequency by equipment type, energy tracking recommendations, and recommended standard trend logs with a brief description of what to look for in them (all by Consultant).
- 1.8. Warranty Period
- 1.8.1. Coordinate and supervise required opposite season or deferred testing and deficiency corrections and provide the final testing documentation for the Commissioning Record and O&M manuals.
 - 1.8.2. Return to the site at 10 months into the 12 month warranty period and review with facility staff the current building operation and the condition of outstanding issues related to the original and seasonal commissioning. Also interview facility staff and identify problems or concerns they have with operating the building as originally intended. Make suggestions for improvements and for recording these changes in the O&M manuals. Identify areas that may come under warranty or under the original construction contract. Assist facility staff in developing reports and documents and requests for services to remedy outstanding problems.
- 1.9. Systems To Be Commissioned
- The following systems and assemblies may be included, without limitation, in the Service Work Order to be commissioned:
- 1.9.1. Central building automation system
 - 1.9.2. All equipment of the heating, ventilating and air conditioning systems

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- 1.9.3. Scheduled or occupancy sensor lighting controls
- 1.9.4. Daylight dimming controls
- 1.9.5. Emergency power generators and automatic transfer switching
- 1.9.6. Uninterruptible power supply systems
- 1.9.7. Life safety systems (fire alarm, egress pressurization, fire protection)
- 1.9.8. Electrical
- 1.9.9. Domestic and process water pumping and mixing systems
- 1.9.10. Data and communication
- 1.9.11. Security system
- 1.9.12. Plumbing and Irrigation
- 1.9.13. Vertical transport
- 1.9.14. Building envelope
- 1.9.15. Medical Gas
- 1.9.16. Refrigeration Systems

1.10. Hourly Rates

Hourly Rates	Job Title	Hourly Rate
Building Commissioning Services	Principal ('Commissioning Agent')	
	Senior Associate	
	Project Manager	
	Technical Staff	
	Analyst	
	Administrative Staff	

2. Consultant and Consultant’s Sub-Consultant Services and Pricing

- 2.1. All Services Types and descriptions that may be provided and all prices to be charged under this Agreement are specified in this Exhibit D.
- 2.2. All hourly rates of this Agreement shall remain firm and not subject to change throughout the term of this Agreement, with the exception of allowed CPI increases during a Subsequent Term.
- 2.3. With the exception of Fixed Price Services or Reimbursable Items(s) specified in an authorized Service Work Order, no other Services or Materials shall be provided or compensated for under this Agreement unless authorized in writing by the Judicial Council.
- 2.4. Hourly Rates Based Services - Addition of New Job Titles
 - 2.4.1. The addition of any such new job title of individual to Exhibit D of this Agreement is subject to execution of an Amendment to this Master Agreement.
- 2.5. Addition of New Service Types or Job Titles

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- 2.5.1. If Consultant and the Judicial Council's Project Manager so agree, the addition of any such new Service Type to Exhibit D is subject to execution of an Amendment to this Agreement and to the provisions of this Section.
- 2.5.2. Any such new Service Type or Job Title to be added shall be limited to professional services of a building commissioning nature, and to such other incidental Services that members of those professions and those in their employ may logically or justifiably perform.
- 2.5.3. If a new Service Type or Job Title is to be added, Consultant shall provide the following information:
 - 2.5.3.1. The pricing for new Service Type(s) and/or Job Title(s) must be provided in a format specifying the Service Type(s) and/or Job title(s) and their associated hourly rate(s). The hourly rates that will apply to any such Service Type are subject to negotiation and once approved and issued via Amendment to this Agreement, may not change with the exception of cost escalation as allowed in a "Subsequent Term." All hourly rates provided must be priced at a single price (i.e. \$60/hr.), not a range, and otherwise in accordance with the terms of this Agreement.
- 2.6. Upon addition of any new Job Title and corresponding hourly rate to this Agreement, that price will remain firm and not subject to change throughout the remaining term of this Agreement. CPI increases will only apply to the start of a Subsequent Term.
- 2.7. Regardless of anything that may be stated to the contrary in Exhibit D, Consultant is not entitled to and will not charge the Judicial Council for any servicing charge, processing, billing or any other type of fee, uppage, or charge of any type that is made upon the Fixed Price Services and/or Hourly Rates charged by its Sub-Consultants and billed to the Judicial Council for any Sub-Consultant provided Services, any Travel and Living Expenses incurred, or any Reimbursables provided as a result of this Agreement.
- 2.8. At the start of a Subsequent Term, hourly rates of this Agreement shall be adjusted by the Consumer Price Index (CPI), California, All Urban Consumers Series, for the previous 12 months. "CPI" means the unadjusted Consumer Price Index (above) as calculated by the California Bureau of Labor Statistics. The California Department of Finance posts CPI data on their website at the following link: <http://www.dof.ca.gov/Forecasting/Economics/Indicators/Inflation/>.
- 2.9. Revised hourly rates for the Agreement in a Subsequent Term shall not exceed the percentage difference of the most recently reported CPI for the previous 12 months; provided, however, that in no event shall the amount of the increase exceed five percent (5%) per year.
- 2.10. Upon execution of revised hourly rates for the Agreement in a Subsequent Term, all SWO Projects currently authorized shall remain unchanged for the balance of their stated scope and duration. For any SWO Projects currently authorized but delayed through no fault of the Consultant for ninety (90) calendar days past the effective date of new hourly rates, then Consultant may request a revised SWO valuation and reauthorization from the Judicial Council Project Manager so long as such changes do not exceed the limits stated above.

END OF EXHIBIT

ATTACHMENT D



JUDICIAL COUNCIL
OF CALIFORNIA
ADMINISTRATIVE DIVISION
REAL ESTATE AND FACILITIES MANAGEMENT

Exhibit E
Services Request Form

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

The Judicial Council of California requests that you provide a Proposal Package for the above referenced project as per the services requested below.

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

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

Your proposal is due on or before: [Time and Date]
Proposed Work Schedule: [Start/End Dates]

Instructions: Services Requested should be detailed below in collaboration with Consultant(s). In your description, specify the location(s) at which the Services will be provided and what documents (i.e. drawings, spec sheets, photos, etc.), if any, are being provided by the Judicial Council. Include all applicable phasing and schedule constraints. If detailed schedules and/or progress reports are required, include frequency, type(s) of information needed and, if applicable, any particular format to be used. Attach additional pages as needed.

Services Requested:

END OF EXHIBIT

ATTACHMENT D



JUDICIAL COUNCIL
OF CALIFORNIA
ADMINISTRATIVE DIVISION
REAL ESTATE AND FACILITIES MANAGEMENT

Exhibit F
Consultant Proposal Form

Date: [Date]

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

Consultant PM: [Project Manager Name]
[Company]
[Address]
[Phone/Fax]
[Email]

Project: [Project Title]
FM/SWO: [FM / SWO Numbers] SWO Start/End Dates: [Start/End Dates]
Master Contract: [Master Agreement Number] MA Expiration Date: [MA# Expiration Date]

This Service Work Order will be priced according to the following Pricing Methodology (check ONE):

Lump Sum Basis Time and Materials Basis

Does the Consultant agree to provide services as detailed in Exhibit E, Services Request Form? Yes No

Work Order Subtotals and Work Order Grand Total:

Service Type	Subtotal (breakout below)
<i>Consult Exhibit D to determine what Services are available under this particular Agreement.</i>	
General Building Commissioning Consulting Services	\$
[Service Type and name of Sub-Consultant]	\$
[Travel and Living Expenditures – if applicable and approved by Judicial Council PM]	
[Reimbursables – if applicable and approved by Judicial Council PM]	
Service Work Order Grand Total	\$

Schedule of Deliverables and Milestone Payments: (if applicable)

Description of Deliverable	Milestone Payment Amount
	\$
Service Work Order Grand Total	\$

ATTACHMENT D

EXHIBIT F (continued)

Hourly Services	Job Title	Hourly Rate	# of Hours	Subtotal
Building Commissioning Services	Principal ('Commissioning Agent')			
	Senior Associate			
	Project Manager			
	Technical Staff			
	Analyst			
	Administrative Staff			
Fixed Price Services		Price	Quantity	Subtotal
[Description]				
[Description]				
Travel and Living Expenditures		Purpose		Subtotal
[Job Title]	[Name, if known]			
Reimbursable Items (estimated)		Price	Quantity	Subtotal
[Description]				
[Description]				
SERVICE WORK ORDER GRAND TOTAL				

END OF EXHIBIT