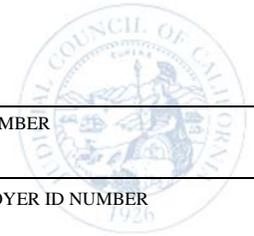


RFP Number: FS-2018-12-BD

RFP Title: Real Estate Appraisal Services **ATTACHMENT D**

JUDICIAL COUNCIL OF CALIFORNIA
STANDARD AGREEMENT rev July 2017



AGREEMENT NUMBER [#]
FEDERAL EMPLOYER ID NUMBER [#]

1. In this agreement (“Agreement”), the term “Service Provider” refers to **[Service Provider name]**, and the term “Judicial Council” refers to the **Judicial Council of California**.

2. This Agreement is effective as of **[Date]** (“Effective Date”) and expires on **[Date]** (“Expiration Date”).
This Agreement includes one (1) option to extend the Agreement for a two (2) year term (“**Option Term**”).

3. The purpose of this Agreement is to authorize the Service Provider to provide real estate appraisal and related services, to assist the Judicial Council in evaluating, acquiring and disposing of Judicial Council Properties.

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

4. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

- Appendix A – Special Provisions
- Appendix B – Payment Provisions
- Appendix C – General Provisions
- Appendix D – Defined Terms
- Appendix E – Work Authorization Form
- Appendix F – Statement of Work
- Appendix G – Pricing Schedule
- Appendix H – Service Provider’s Key Personnel
- Appendix I – Department of General Services (“DGS”) Appraisal Specifications, (Revised January 1, 2008)
- Appendix J – DGS Document Regarding Implied Dedication

JUDICIAL COUNCIL’S SIGNATURE	SERVICE PROVIDER’S SIGNATURE
Judicial Council of California	SERVICE PROVIDER’S NAME <i>(if Service Provider is not an individual person, state whether Service Provider is a corporation, partnership, etc., and the state or territory where Service Provider is organized)</i> [Service Provider’s name]
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</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 San Francisco, CA 94102	ADDRESS [Address]

APPENDIX A

SPECIAL PROVISIONS

1. Background and Purpose.

- 1.1** Service Provider to provide real estate appraisal and related services to assist the Judicial Council in evaluating, acquiring and disposing of Judicial Council Properties. Appraisal services shall be provided on an as-needed basis for an undetermined number of existing court facilities and prospective courthouse sites throughout the state of California.

2.0 Services.

- 2.1 Description of Services.** Service Provider shall perform the Services or Work specified in Appendix F, statement of work (“SOW”), and as further delineated in authorized Service Work Order(s) under this Agreement. The dates of performance and schedule of Services or Work will be issued on a Service Work Order by Service Work Order basis. Service Provider agrees to provide and perform the Services or Work set forth in this Agreement and authorized Service Work Order(s), as well as any other services that are necessary, normal, customary, or incidental to the performance of Service Provider’s responsibilities. Service Provider further agrees to complete certain types of Services or Work within the maximum number of Business Days specified in Appendix F, Sections 1.5 and 1.6(a)(b). The Service Work Order may contain additional terms and conditions regarding the Services or Work that are applicable to the authorized Service Work Order. However, no provision of any authorized Service Work Order may act to modify or shall conflict with the terms and conditions of this Agreement.

The general Services or Work performed by the Service Provider under this Agreement and any authorized Service Work Order includes, but is not limited to, real estate appraisal and related services, to assist the Judicial Council in evaluating, acquiring and disposing of Judicial Council properties.

- 2.2 Description of Deliverables.** Service Provider shall deliver to the Judicial Council all work products for real estate appraisal services (“Deliverables”) to be created, developed, produced, delivered, performed or provided by the Service Provider (or any agent, consultant or Subcontractor of Service Provider) to the Judicial Council in connection with Services or Work performed under the Agreement and in authorized Service Work Orders.
- 2.3 Acceptance Criteria.** The Services and Deliverables must meet the following acceptance criteria or the Judicial Council may reject the applicable Services or Deliverables. Subject to written approval, the Judicial Council’s Project Manager will notify Service Provider of the acceptance or rejection of the Services and Deliverables. Service Provider will not be paid for any rejected Services or Deliverables.
- A.** Timeliness: The Service or Work was delivered on time;
 - B.** Completeness: The Service or Work contained the Data, Materials, and features required in the authorized Service Work Order;
 - C.** Technical Accuracy: The Service or Work is accurate as measured against commonly accepted practices (i.e. a statistical formula, an industry standard, or de facto marketplace standard), and concepts are presented logically and clearly.
- 2.4 Project Managers.** The Judicial Council’s Project Manager is an assigned representative or designee of the Judicial Council. The Judicial Council may change its Project Manager at any time upon notice to Service Provider without need for an amendment to this Agreement. Service Provider’s Project Manager is an assigned representative or designee of the Service Provider. Subject to written approval by the Judicial Council, Service Provider may change its Project Manager without need for an amendment to this Agreement.

- 2.5 Service Warranties.** Service Provider warrants that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and (ii) Service Provider will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Service Provider warrants that each Deliverable will conform to and perform in accordance with the requirements of this Agreement and all applicable specifications and documentation. For each such Deliverable, the foregoing warranty shall commence for such Deliverable upon the Judicial Council’s acceptance of such Deliverable, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable does not conform to the foregoing warranty, Service Provider shall promptly correct all nonconformities to the satisfaction of the Judicial Council.
- 2.6 Resources.** Service Provider is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for performance of the Services and to meet Service Provider’s obligations under this Agreement.
- 2.7 Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and all Judicial Council-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Service Provider’s own risk.
- 2.8 Service Work Order Authorization Process.**
- A.** Proposal Process. When the Judicial Council requires appraisal services, Judicial Council’s Project Manager may request Proposals from one or more firms currently on contract with the Judicial Council. Service Provider(s) shall submit their completed Work Authorization Form (“WA” or “Proposal”), describing the Services or Work to be performed, to the Judicial Council’s Project Manager noted in part 1 of the WA.
 - B.** The Judicial Council will authorize the performance of Services or Work and spending of funds under this Agreement via Service Work Order(s) which shall be substantially in the format provided in Appendix E, and authorized in the Service Work Order process described herein.
 - C.** Service Work Order(s) will be issued through the Judicial Council’s Computer Aided Facility Management (“CAFM”) system. Service Work Orders must be “accepted” by the Service Provider within the CAFM system. This involves the Service Provider logging into CAFM, opening the SWO, and clicking the “accept” button. Acceptance of a Service Work Order in CAFM authorizes the commencement of Services or Work. A written document will be provided by the Judicial Council via CAFM software system that summarizes the Services details and references all other documents incorporated within the Project (“Project”). CAFM or Computer Aided Facility 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.
 - D.** The Judicial Council will complete Part 1 of the Proposal, “Request for Quote” as follows:
 - i.** Describe in full the Services or Work to be performed, including the Facility/Site Name, Type, Purpose, and Approach for appraisal report, and applicable attachments/background documents;
 - ii.** Requested start and completion dates in accordance with Appendix E, Work Authorization Form, for the Services or Work to be performed;
 - E.** Upon receipt, Service Provider will, based upon the Services or Work requested by the Judicial Council, complete Part 2 of the Proposal.
 - i.** Assign and Provide Name and Contact information of the Service Provider’s

Project Manager who will be assigned to the Service Work Order.

- ii. Provide the approaches to be used for the appraisal, in addition to any specified by the Judicial Council, including any assumptions and/or limiting conditions applicable to performance of the Service or Work. (Note: For Appraisal Reports, any request by Judicial Council for this information, does not in any way limit the requirement that Service Provider comply with Department of General Services (“DGS”) Requirement No. 19 included in Appendix I, DGS Appraisal Specifications);
 - iii. Indicate how the local appraiser requirement will be met by indicating the number of years of experience and/or listing of appraisal reports (including dates) previously prepared in the requested location;
 - iv. If requested by the Judicial Council, a detailed Work Plan and a schedule of critical path responsibilities, describing the Services or Work to be undertaken and identifying individuals and resources necessary for the performance of the Services or Work in accordance with the schedule (if applicable);
 - v. Provide the Turnaround Time, if different from the one specified by the Judicial Council in part 1, for the Services or Work. The required completion date must be in accordance with turnaround times specified herein Appendix F, Section 1.5, and 1.6(a)(b) for the requested services.
 - vi. Identify any personnel, and/or Subcontractors who will be assigned to perform the Services or Work, if applicable.
 - vii. Service Provider must set forth their price proposal for the requested Services in Part 2 of the Work Authorization Form, which must be consistent with or less than the agreed upon pricing in Appendix G, and also on the same basis as indicated in the Work Authorization Form.
 - viii. Upon completion, Service Provider shall submit the signed Proposal to the Judicial Council’s Project Manager via e-mail within two (2) Business Days, or a later date as specified in the Request for Quote, Part 1 of the Proposal.
- F.** Judicial Council will review the Proposals submitted by the Service Provider(s) and make a selection based on service area, cost and scope of work proposed.
- G.** Submission of Service Provider’s Proposal is available for acceptance and may not expire or be revoked for sixty (60) Business Days following the date submitted to Judicial Council’s Project Manager, and shall be submitted substantially in the form of Appendix E, Work Authorization Form, Part 2.
- H.** If the Judicial Council accepts the Service Provider’s cost and scope of work proposed in the Proposal, the Judicial Council will notify the Service Provider and authorize the issuance of a Service Work Order for the full amount specified in the Service Provider’s Price Proposal.
- I.** The acceptance of the Service Work Order by the Service Provider in the Judicial Council’s CAFM system shall authorize the Services or Work as specified. Any commencement of Work or any expenditure made prior to Service Provider’s receipt of an electronically approved Service Work Order issued through CAFM, shall be made at Service Provider’s sole risk.
- J.** The Judicial Council’s Project Manager named in the Service Work Order shall monitor and evaluate Service Provider’s performance. All requests and communications between Judicial

Council and the Service Provider regarding the Services or Work must be made through the Judicial Council's designated Project Manager.

2.9 Compensation shall be on a Firm Fixed Price ("Not to Exceed Amount") basis for Services or Work at the billing rates set forth in this Agreement, Appendix G, and in future cost and scope of work submitted by the Service Provider.

2.10 Stop Work Orders.

- A.** The Judicial Council may, at any time, by Notice to Service Provider, require Service Provider to stop all or any part of the Services for a period up to ninety (90) days after the Notice is delivered to Service Provider, and for any further period to which the parties may agree ("Stop Work Order"). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, Service Provider shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Services or Work covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Service Provider, or within any extension of that period to which the parties shall have agreed, the Judicial Council shall either (i) cancel the Stop Work Order; or (ii) terminate the Services or Work covered by the Stop Work Order as provided for in this Agreement.
- B.** If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Service Provider shall resume the performance of Services. The Judicial Council shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
 - i. The Stop Work Order results in an increase in the time required for, or in Service Provider's cost properly allocable to the performance of any part of this Agreement; and
 - ii. Service Provider requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the Judicial Council decides the facts justify the action, the Judicial Council may receive and act upon a proposal submitted at any time before final payment under this Agreement.
- C.** The Judicial Council shall not be liable to Service Provider for loss of profits because of a Stop Work Order issued under this provision.

2.11 Acceptance or Rejection. All Services and Deliverables are subject to acceptance by the Judicial Council. The Judicial Council may reject any Services or Deliverables that (i) fail to meet applicable acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the Judicial Council). If the Judicial Council rejects any Service or Deliverable (other than for late performance or delivery), Service Provider shall modify such rejected Service or Deliverable at no expense to the Judicial Council to correct the relevant deficiencies and shall redeliver such Service, or Deliverable to the Judicial Council within ten (10) business days after the Judicial Council's rejection, unless otherwise agreed in writing by the Judicial Council. Thereafter, the parties shall repeat the process set forth in this section until the Judicial Council accepts such corrected Service or Deliverable. The Judicial Council may terminate that portion of this Agreement which relates to a rejected Service or Deliverable at no expense to the Judicial Council if the Judicial Council rejects that Service or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

END OF APPENDIX A

APPENDIX B

PAYMENT PROVISIONS

1. **General.** Subject to the terms of this Agreement, Service Provider shall invoice the Judicial Council, and the Judicial Council shall compensate Service Provider, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Service Provider for its performance under this Agreement. Service Provider shall bear, and the Judicial Council shall have no obligation to pay or reimburse Service Provider for, any and all other fees, costs, travel costs, profits, taxes or expenses of any nature which Service Provider incurs.
2. **Compensation for Services.**
 - 2.1 **Payment.** The Judicial Council will pay each correct, itemized invoice received from Service Provider after acceptance of the applicable Services and Deliverables, in accordance with the terms of this Agreement and for authorized Service Work Orders. Notwithstanding any provision in this Agreement to the contrary, payments to the Service Provider are contingent upon the timely and satisfactory performance of Service Provider's obligations under this Agreement.
 - A. The total amount the Judicial Council may pay to Service Provider under this Agreement ("Contract Amount") shall not in any event exceed all Total Amounts Encumbered to Date on Service Work Orders authorized under this Agreement.
 - B. For performing the Services or Work under this Agreement, and in authorized Service Work Orders, the Judicial Council shall compensate the Service Provider for the actual cost at the Firm Fixed Price rates set forth in Appendix G, Pricing Schedule.
 - C. The Firm Fixed Price rates set forth in Appendix G are inclusive of all costs, including travel costs, benefits, expenses, fees, overhead, and profits payable to the Service Provider for Services or Work rendered to the Judicial Council.
 - D. The Service Provider shall not charge nor shall the Judicial Council pay any overtime rate.
 - E. Service Provider shall not invoice the Judicial Council, and the Judicial Council has no obligation to reimburse Service Provider for expenses of any type that exceed the aggregate amount for Services or Work contracted under this Agreement.
 - 2.2 **No Advance Payment.** The Judicial Council will not make any advance payment for Services.
3. **Expenses.** Except as set forth in this section, no expenses relating to the Services, and Deliverables shall be reimbursed by the Judicial Council.
 - 3.1 **Allowable Expenses.** Service Provider may submit for reimbursement, without mark-up, only the following categories of expense: N/A
 - 3.2 **Expense Limit.** Service Provider shall not invoice the Judicial Council, and the Judicial Council has no obligation to reimburse Service Provider, for expenses of any type that are not authorized under this Agreement.
 - 3.3 **Required Certification.** Service Provider must include with any request for reimbursement from the Judicial Council a certification that Service Provider is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Service Provider incurs costs or makes expenditures to assist, promote or deter union organizing, Service Provider will maintain records sufficient to show that no reimbursement from the Judicial Council was sought for these costs, and Service Provider will provide those records to the Attorney General upon request.
4. **Invoicing**
 - 4.1 Service Provider shall submit invoices to the Judicial Council upon final acceptance of Deliverable(s) by the Judicial Council's Project Manager. Service Provider's invoices must include information and supporting documentation acceptable to the Judicial Council. Service Provider shall adhere to reasonable billing guidelines issued by the Judicial Council from time to time. Invoices shall clearly indicate the following:

- i. The Service Work Order (“SWO”) number;
- ii. The Purchase Order number assigned by the Judicial Council’s Financial Information System for California (“FISCal”);
- iii. A unique invoice number;
- iv. The Service Provider’s name and address;
- v. Taxpayer identification number (the Title Company’s federal employer identification number);
- vi. Description of the completed Services or Work, including services rendered, and/or Deliverable(s) made, as appropriate;
- vii. The contractual charges, including the appropriate Firm Fixed Prices allowable under this Agreement and;
- viii. Preferred remittance address, if different from the mailing address.

Service Provider shall include a copy of the authorized Work Authorization Form and Service Work Order with all invoices.

4.2 No Implied Acceptance. Payment does not imply acceptance of Service Provider’s invoice for Services, or Deliverables. Service Provider shall immediately refund any payment made in error. The Judicial Council shall have the right at any time to set off any amount owing from Service Provider to the Judicial Council against any amount payable by the Judicial Council to Service Provider under this Agreement.

5. Taxes. Unless otherwise required by law, the Judicial Council is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Service Provider or on any taxes levied on employee wages. The Judicial Council shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the Judicial Council pursuant to this Agreement.

END OF APPENDIX B

APPENDIX C

GENERAL PROVISIONS

1. Provisions Applicable to Services

- 1.1 **Qualifications.** Service Provider shall assign only persons who have sufficient training, education, and experience to successfully perform Service Provider's duties. If the Judicial Council is dissatisfied with any of Service Provider's personnel, for any or no reason, Service Provider shall replace them with qualified personnel.
- 1.2 **Turnover.** Service Provider shall endeavor to minimize turnover of personnel Service Provider has assigned to perform Services or Work.
- 1.3 **Background Checks.** Service Provider shall cooperate with the Judicial Council if the Judicial Council wishes to perform any background checks on Service Provider's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the Judicial Council may require. Service Provider shall not assign personnel who refuse to undergo a background check. Service Provider shall provide prompt notice to the Judicial Council of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the Judicial Council and performed by Service Provider. Service Provider shall ensure that the following persons are not assigned to perform services for the Judicial Council: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Service Provider or that, after disclosure to the Judicial Council, the Judicial Council advises are unacceptable to the Judicial Council.

2. Service Provider Certification Clauses. Service Provider certifies that the following representations and warranties are true. Service Provider shall cause its representations and warranties to remain true during the Term. Service Provider shall promptly notify the Judicial Council if any representation and warranty becomes untrue. Service Provider represents and warrants as follows:

- 2.1 **Authority.** Service Provider has authority to enter into and perform its obligations under this Agreement, and Service Provider's signatory has authority to bind Service Provider to this Agreement.
- 2.2 **Not an Expatriate Corporation.** Service Provider is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Judicial Council.
- 2.3 **No Gratuities.** Service Provider has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- 2.4 **No Conflict of Interest.** Service Provider has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- 2.5 **No Interference with Other Contracts.** To the best of Service Provider's knowledge, this Agreement does not create a material conflict of interest or default under any of Service Provider's other contracts.
- 2.6 **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Service Provider's ability to perform the Services.
- 2.7 **Compliance with Laws Generally.** Service Provider complies in all material respects with all laws, rules, and regulations applicable to Service Provider's business and services.
- 2.8 **Drug Free Workplace.** Service Provider provides a drug free workplace as required by California Government Code sections 8355 through 8357.

- 2.9 No Harassment.** Service Provider does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Service Provider may interact in the performance of this Agreement, and Service Provider takes all reasonable steps to prevent harassment from occurring.
- 2.10 Noninfringement.** The Services, Deliverables, and Service Provider’s performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party’s intellectual property right.
- 2.11 Nondiscrimination.** Service Provider complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California’s Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Service Provider does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Service Provider will notify in writing each labor organization with which Service Provider has a collective bargaining or other agreement of Service Provider’s obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Service Provider within the immediately preceding two-year period because of Service Provider's failure to comply with an order of a federal court requiring Service Provider to comply with an order of the National Labor Relations Board. Service Provider swears under penalty of perjury that this representation is true.

3. Insurance

- 3.1 Basic Coverage.** Service Provider shall provide and maintain at the Judicial Council’s discretion and Service Provider’s expense the following insurance during the Term:
- A. Commercial General Liability.** The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability “occurrence” form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and \$2,000,000 per annual aggregate.
 - B. Workers Compensation and Employer’s Liability.** The policy is required only if Service Provider has employees. The policy must include workers’ compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer’s liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
 - C. Automobile Liability.** This policy is required only if Service Provider uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Service Provider’s performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.
 - D. Professional Liability.** This policy is required only if Service Provider performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Service Provider’s performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a “claims made” form, Service Provider shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that activities commence pursuant to this Agreement.
- 3.2 Umbrella Policies.** Service Provider may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.

- 3.3 Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 3.4 Deductibles and Self-Insured Retentions.** Service Provider shall declare to the Judicial Council all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the Judicial Council's approval. Deductibles and self-insured retentions do not limit Service Provider's liability.
- 3.5 Additional Insured Endorsements.** Service Provider's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Judicial Council, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, Service Provider(s), volunteers or employees.
- 3.6 Certificates of Insurance.** Before Service Provider begins performing Services, Service Provider shall give the Judicial Council certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days' prior written notice to the Judicial Council.
- 3.7 Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.
- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Judicial Council, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, Service Provider(s), volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Service Provider is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the Judicial Council is not required to process invoices after such lapse until Service Provider provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Service Provider will defend (with counsel satisfactory to the Judicial Council or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) a latent or patent defect in any Goods, (ii) an act or omission of Service Provider, its agents, employees, independent Service Provider, or Subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Services or Deliverables. Service Provider shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Judicial Council's prior written consent, which consent shall not be unreasonably withheld; and the Judicial Council shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Service Provider's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

5. **Option Term.** Unless Section 2 of the Coversheet indicates that an Option Term is not applicable, the Judicial Council may, at its sole option, extend this Agreement for a single two-year term, at the end of which Option Term this Agreement shall expire. In order to exercise this Option Term, the Judicial Council must send Notice to Service Provider at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Service Provider's signature.
6. **Tax Delinquency.** Service Provider must provide notice to the Judicial Council immediately if Service Provider has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Judicial Council may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below if (i) Service Provider fails to provide the notice required above, or (ii) Service Provider is included on either list mentioned above.
7. **Termination**
 - 7.1 **Termination for Convenience.** The Judicial Council may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Judicial Council, Service Provider shall immediately: (a) stop Services as specified in the Notice; and (b) stop the delivery or manufacture of Deliverables as specified in the Notice.
 - 7.2 **Termination for Cause.** The Judicial Council may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Service Provider fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the Judicial Council, is not capable of being cured within this cure period); (ii) Service Provider or Service Provider's creditors file a petition as to Service Provider's bankruptcy or insolvency, or Service Provider is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Service Provider makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
 - 7.3 **Termination upon Death.** The Judicial Council, at its sole option, may terminate the Agreement upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
 - 7.4 **Termination for Changes in Budget or Law.** The Judicial Council's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The Judicial Council may terminate this Agreement or limit Service Provider's Services (and reduce proportionately Service Provider's fees) upon Notice to Service Provider without prejudice to any right or remedy of the Judicial Council if: (i) expected or actual funding to compensate Service Provider is withdrawn, reduced or limited; or (ii) the Judicial Council determines that Service Provider's performance under this Agreement has become infeasible due to changes in applicable laws.
 - 7.5 **Rights and Remedies of the Judicial Council.**
 - A. *Nonexclusive Remedies.* All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Service Provider shall notify the Judicial Council immediately if Service Provider is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Service Provider is in default, the Judicial Council may do any of the following: (i) withhold all or any portion of a payment otherwise due to Service Provider, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Service Provider; (ii) require Service Provider to enter into nonbinding mediation; (iii) exercise, following Notice, the Judicial Council's right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.

- B. *Replacement.* If the Judicial Council terminates this Agreement in whole or in part for cause, the Judicial Council may acquire from third parties, under the terms and in the manner the Judicial Council considers appropriate, Services or Work equivalent to those terminated, and Service Provider shall be liable to the Judicial Council for any excess costs for those services or work. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Judicial Council for such Services or Work be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Judicial Council. Service Provider shall continue any Services not terminated hereunder.
 - C. *Delivery of Materials.* In the event of any expiration or termination of this Agreement, Service Provider shall promptly provide the Judicial Council with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any Judicial Council-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the Judicial Council shall not be liable to Service Provider for compensation or damages incurred as a result of such termination; provided that if the Judicial Council's termination is not for cause, the Judicial Council shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the Judicial Council's termination Notice.
- 7.6 **Survival.** Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.
8. **Assignment and Subcontracting.** Service Provider may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Judicial Council. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.
9. **Notices.** Notices must be sent to the following address and recipient:

If to Service Provider:	If to the Judicial Council:
<u>[name, title, address]</u>	<u>Attn: Manager, Contracts</u>
<u>With a copy to:</u>	<u>Branch Accounting and Procurement</u>
	<u>455 Golden Gate Avenue, 6th Floor</u>
	<u>San Francisco, CA 94102-3688</u>

Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

10. **Provisions Applicable to Certain Agreements.** The provisions in this section are *applicable only to the types of orders specified in the first sentence of each subsection*. If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.
- 10.1 **Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Service Provider agrees that no Judicial Council funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Service Provider incurs costs, or makes expenditures to assist, promote or deter union organizing, Service Provider will maintain records sufficient to show that no Judicial Council funds were used for those expenditures. Service Provider will provide those records to the Attorney General upon request.

- 10.2 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Service Provider is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3 which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.
- 10.3 Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Service Provider recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Service Provider provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 10.4 DVBE Commitment.** *This section is applicable if Service Provider received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement.* Service Provider's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Service Provider used DVBE subcontractor(s) in connection with this Agreement: (i) Service Provider must use the DVBE subcontractors identified in its bid or proposal, unless the Judicial Council approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Service Provider must within sixty (60) days of receiving final payment under this Agreement certify in a report to the Judicial Council: (1) the total amount of money Service Provider received under the Agreement; (2) the name and address of each DVBE subcontractor to which Service Provider subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Service Provider in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
- 10.5 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Service Provider shall assign to the Judicial Council all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Service Provider for sale to the Judicial Council. Such assignment shall be made and become effective at the time the Judicial Council tenders final payment to Service Provider. If the Judicial Council receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Service Provider shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Judicial Council any portion of the recovery, including treble damages, attributable to overcharges that were paid by Service Provider but were not paid by the Judicial Council as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Service Provider, the Judicial Council shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Service Provider has been or may have been injured by the violation of law for which the cause of action arose and (a) the Judicial Council has not been injured thereby, or (b) the Judicial Council declines to file a court action for the cause of action.
- 10.6 Good Standing.** *If Service Provider is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section is applicable.* Service Provider is, and will remain for the Term, qualified to do business and in good standing in California.

11. Miscellaneous Provisions.

- 11.1 Independent Service Provider.** Service Provider is an independent contractor to the Judicial Council. No employer-employee, partnership, joint venture, or agency relationship exists between Service Provider and the Judicial Council. Service Provider has no authority to bind or incur any obligation on behalf of the Judicial Council. If any governmental entity concludes that Service Provider is not an independent contractor, the Judicial Council may terminate this Agreement immediately upon Notice.

- 11.2 GAAP Compliance.** Service Provider maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 11.3 Audit.** Service Provider must allow the Judicial Council or its designees to review and audit Service Provider's (and any subcontractors') documents and records relating to this Agreement, and Service Provider (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Service Provider (or any subcontractor) is not in compliance with this Agreement, Service Provider shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Service Provider has overcharged the Judicial Council five percent (5%) or more during the time period subject to audit, Service Provider must reimburse the Judicial Council in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.
- 11.4 Licenses and Permits.** Service Provider shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services. Service Provider will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law. Service Provider shall immediately notify the Judicial Council of any change in status of Service Provider's licenses, approvals, permits and authorizations as required under this section. Service Provider shall also require all Subcontractors to comply with the requirements of this section.
- 11.5 Confidential Information.** During the Term and at all times thereafter, Service Provider will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Judicial Council's express prior written consent on a case-by-case basis. Service Provider will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Service Provider at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Service Provider will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Service Provider protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The Judicial Council owns all right, title and interest in the Confidential Information. Service Provider will notify the Judicial Council promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Judicial Council to protect such Confidential Information. Upon the Judicial Council's request and upon any termination or expiration of this Agreement, Service Provider will promptly (a) return to the Judicial Council or, if so directed by the Judicial Council, destroy all Confidential Information (in every form and medium), and (b) certify to the Judicial Council in writing that Service Provider has fully complied with the foregoing obligations. Service Provider acknowledges that there can be no adequate remedy at law for any breach of Service Provider's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Judicial Council shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Service Provider hereby assigns to the Judicial Council ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Service Provider agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Service Provider shall not publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the Judicial Council.
- 11.7 Publicity.** Service Provider shall not make any public announcement or press release about this Agreement without the prior written approval of the Judicial Council.
- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute

that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.

- 11.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Judicial Council. A waiver of enforcement of any of this Agreement’s terms or conditions by the Judicial Council is effective only if expressly agreed in writing by a duly authorized officer of the Judicial Council. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.11 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 11.12 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 11.13 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.14 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word “including” means “including, without limitation.” Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 11.15 Time of the Essence.** Time is of the essence in Service Provider’s performance under this Agreement.
- 11.16 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

END OF APPENDIX C

APPENDIX D
DEFINED TERMS

As used in this Agreement, the following terms have the indicated meanings:

“Agreement” is defined on the Coversheet.

“Confidential Information” means: (i) any information related to the business or operations of the Judicial Council, including information relating to the Judicial Council’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the Judicial Council (and proprietary information of third parties provided to Service Provider) which is designated confidential or proprietary, or that Service Provider otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Service Provider demonstrates to the Judicial Council’s satisfaction that: (a) Service Provider lawfully knew prior to the Judicial Council’s first disclosure to Service Provider, (b) a third party rightfully disclosed to Service Provider free of any confidentiality duties or obligations, or (c) is, or through no fault of Service Provider has become, generally available to the public.

“Computer Aided Facilities Management” is defined in Appendix A, section 2.8.

“Consulting Services” refers to the services performed under “Consulting Services Agreements,” which are defined in PCC 10335.5, substantially, as contracts that: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (iv) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

“Contract Amount” is defined on the Coversheet.

“Coversheet” refers to the first page of this Agreement.

“Deliverables” is defined in Appendix A, Section 2.2.

“Department of General Services” or **“DGS”** is defined in Appendix A, Section 2.8(C)(ii).

“Department of General Services Appraisal Specifications” are defined in Appendix I.

“Department of General Services Document Regarding Implied Dedication” is defined in Appendix J.

“Effective Date” is defined on the Coversheet.

“Expiration Date” is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.

“Financial Information System for California” or **“FI\$Cal”** is defined in Appendix B, Section 4.1(ii).

“Initial Term” is the period commencing on the Effective Date and ending on the Expiration Date designated on the Coversheet.

“Judicial Council” is defined on the Coversheet.

“Judicial Branch Entity” or **“Judicial Branch Entities”** means any California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

“Judicial Branch Personnel” means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.

“Notice” means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Appendix C, Section 9.

“Option Term” means a period, if any, through which this Agreement may be or has been extended by the Judicial Council, as set forth in Appendix C, Section 5.

“**PCC**” refers to the California Public Contract Code.

“**Project**” is defined in Appendix A, section 2.8.2(A).

“**Project Manager**” is defined in Appendix A, section 2.4.

“**Services**” is defined in Appendix A.

“**Service Provider**” is defined on the Coversheet.

“**Service Work Order**” or “**SWO**” refers to a unique entry within Owner’s CAFM system. Issuance of a SWO constitutes Work Authorization. The SWO references and incorporates other documents such as the Work Authorization Form (Appendix E) which includes the Service Provider’s Proposal. See Appendix A, section 2.8, Service Work Order Authorization Process.

“**Stop Work Order**” is defined in Appendix A, Section 2.10.

“**Term**” comprises the Initial Term and any Option Terms.

“**Work**” or “**Work to be Performed**” may be used interchangeably to refer to Services, work, task, labor, Materials, Data, and other items necessary for the execution, completion and fulfillment of the Agreement by the Title Company to the satisfaction of the Judicial Council. Services or Work may be defined to include Tasks, Deliverables, and/or Submittals, as required by the Agreement.

END OF APPENDIX D

APPENDIX E
WORK AUTHORIZATION FORM

Part 1: Request for Quote

JCC Request No.

(To be completed by Judicial Council)

This Request for Quote is made by the Judicial Council of California ("JCC") under **Agreement No.** [] with:

Service Provider:

JCC Project Manager for this Request is:

[], Associate Facilities Analyst
455 Golden Gate Avenue, 8th Floor
San Francisco, CA 94102
[]@jud.ca.gov
Tel: 415-865-[]

Charge to *(to be completed by AFA):* []

Funding Type: SB1732 SB1407 Other

SB 1407 Group: 1 2A 2B 2C 3A 3B 3C 1-3C 3D
Other _____

Facility ID/Site Name *(Brief Description for reference purposes -1 Facility/Site per Request Form):*

[]

Request Date:

Proposal Needed By:

Report Needed By:

Submitted by:

JCC PM: []

JCC Requester (Name/ Tel #): []

Detailed Description if Applicable: []

Address: []

City, State, Zip: []

County: []

Assessor's Parcel Numbers: []

Facility Square Feet: []

Year Built: []

Contact for Access to Property if Applicable: []

The following documents are incorporated by reference into this Request for Quote: *(JCC to provide, if available, documents describing facility to be assessed, including, if available, legal description, sale/ownership history for last 3 yrs, construction details, copies of extant leases, site plans, operating statements, lists of major capital improvements made in last 3 yrs or currently planned (including associated costs), and names/contact information of individuals knowledgeable about the Facility.)*

- []
- []

Report Type: Restricted Appraisal Report Appraisal Report Commission Appraisal

Property Type: Land Only Land + Improvements

Purpose: Purchase Sale Valuation information for negotiation purposes
Other (TBD)

Order Type

1. New Report

2. New Report - JCC provides recent appraisal report from another firm

- 3. Multiple New Reports for properties in same vicinity, appraised concurrently, creating economies of scale.
- 4. Update of a previous Service Provider appraisal report to reflect current market conditions.
- 5. Update of a previous Service Provider appraisal report to reflect expanded scope.
- 6. Update of a previous Service Provider appraisal report to reflect reduced scope.
- 7. Update of a previous Service Provider appraisal report to change approach used.
- 8. New Commission appraisal report to determine brokerage market commission rates where a broker represents JCC to acquire a specific type of property.
- 9. Other (Describe):

Approach Requested by JCC: *To be used for the Appraisal in addition to any other approach Service Provider deems necessary in order to properly complete the appraisal. Any request for Approach by JCC in no way limits Service Provider's obligation to comply with any requirement to properly complete the appraisal including complying with DGS Appraisal Specifications for Appraisal Reports (Exhibit I in the Master Agreement), including without limitation Requirement No. 19.*

Check As Many As Apply

- Cost Valuation Income Capitalization Sales Comparison
- Alternative Approach for Special Use Properties: Use Value Going Concern Value
- Service Provider to Propose Other (Describe):

Basis of Pricing Requested by the Judicial Council for this Work Order:

Firm Fixed Price:

Number of hard-copy reports required:

Send hard-copy reports to:

Notes/Comments:

MUST USE LOCAL APPRAISER OR PROVIDE LIST OF PROPERTIES YOUR FIRM PREVIOUSLY HAS APPRAISED IN THIS GEOGRAPHIC AREA. PLEASE ADDRESS THIS REQUIREMENT IN YOUR PRICE QUOTE.

FOR APPRAISAL REPORTS (BUT NOT RESTRICTED USE REPORTS), MUST ADHERE TO DGS APPRAISAL SPECS (JAN. 2008) AND DGS IMPLIED DEDICATION REQUIREMENT PREVIOUSLY PROVIDED TO CONTRACTOR.

Part 2: Price Quote – NAME OF SERVICE PROVIDER

JCC Request No.

(To be completed by Service Provider)

Provide name / contact information of the Project Manager who will be assigned to this Service Work Order.

Project Manager Name:
Phone Number:
Email Address:
Mailing Address:

Submission of Service Provider’s Price Proposal:

The following Price Proposal shall be completed per the basis of pricing requested by the Judicial Council for this Work Order (as indicated above in part 1). The following proposal shall follow the rates included in Master Agreement [#], Section [], table 1, Firm Fixed Price (“Not to Exceed Amount(s)”). Service Provider may submit Price Quotes at reduced rates and prices, in order to remain competitive with other Service Providers.

Firm Fixed Price / Not-to-Exceed Amounts:

Report Type	Restricted Use Report		Appraisal Report	
	Land Only	Land + Improvements	Land Only	Land + Improvements
1. New Report				
2. New Report - JCC provides recent appraisal report from another firm.				
3. Multiple New Reports for properties in same vicinity, appraised concurrently, creating economies of scale.				
4. Update of a previous Service Provider appraisal report to reflect current market conditions.				
5. Update of a previous Service Provider appraisal report to reflect expanded scope.				
6. Update of a previous Service Provider appraisal report to reflect reduced scope.				
7. Update of a previous Service Provider appraisal report to change approach used.				
8. Commission appraisal to determine real estate brokerage market commission rates.	n/a	n/a		

Approach(es) to be used if different from that specified by JCC, or if JCC did not specify:

- Cost Valuation
 Income Capitalization
 Sales Comparison
 Alternative Approach for Special Use Properties:
 Use Value
 Going Concern Value

Proposed Delivery Date - Turnaround times must not exceed those specified in Master Agreement Appendix F, Section 1.5, and 1.6.

COMPLETE EITHER ITEM 1 OR ITEM 2:

- Report will be completed by _____, provided that the Judicial Council authorizes work no later than _____.
- Report will be completed _____ business days after receipt of Judicial Council Service Work Order.

Notes/Comments:

NAME OF SERVICE PROVIDER

BY: _____
 [Signature of Authorized Agent of Service Provider]

Name: _____

Title: _____

Date: _____

Part 3: Work Authorization *(To be completed by the Judicial Council)*

Judicial Council Request/ WA No.

JUDICIAL COUNCIL OF CALIFORNIA

BY:

[Signature of Judicial Council Project Manager]

Name:

Title:

Date:

END OF APPENDIX E

APPENDIX F

SCOPE OF SERVICES

1. Description of Required Appraisal Services. Service Provider shall perform the following services (“Services”):

1.1 General Report Requirements

- A.** Types of Properties
 - i) Land
 - ii) Land + Improvements
- B.** Types of Reports
 - i) Restricted Use Report;
 - ii) Appraisal Report;
- C.** Approaches required:
 - i) Sales Comparison
 - ii) Cost
 - iii) Income
 - iv) Combination of above
 - v) Alternative approach for Special Use properties
 - 1) Use Value
 - 2) Going Concern Value
 - 3) Combination of above
- D.** Types of Services
 - i) New appraisal report.
 - ii) New appraisal report – Judicial Council provides a recent appraisal report from another firm.
 - iii) Multiple new appraisal reports for properties in the same vicinity being appraised concurrently, thereby affording Service Provider certain economies of scale.
 - iv) Update of a previous Service Provider appraisal report to reflect current market conditions.
 - v) Update of a previous Service Provider appraisal report to reflect expanded scope.
 - vi) Update of a previous Service Provider appraisal report to reflect reduced scope.
 - vii) Update of a previous Service Provider appraisal report to change approach used.
 - viii) New Commission appraisal report to determine real estate brokerage market commission rates where a broker represents the Judicial Council.
 - ix) Other types of appraisal reports as specifically requested (e.g., partial interest valuation; valuation of a development restriction on an adjoining property, etc.).

1.2 State of California, Department of General Services Requirements. All existing and prospective court facility Appraisal Reports must conform to the requirements of the State of California, Department of General Services (“DGS”) Appraisal Review Unit. DGS reviews all Judicial Council appraisal reports commissioned in connection with the acquisition of real property and will reject any appraisal if it is non-conforming. Requirements (“DGS Requirements”) are as follows:

- A.** Each Appraisal Report must conform to the requirements contained in the DGS document entitled “Department of General Services Appraisal Specifications (DGS), (Revised January 1, 2008)” (“DGS Specifications”), as may be revised or updated from time to time. The current document is included as Appendix I to this Agreement.
- B.** Each Appraisal Report must include a statement regarding “Implied Dedication”. Please refer to the DGS document regarding Implied Dedication, included as Appendix J to this Agreement.

1.3 Additional Judicial Council Report Requirements.

- A. All depictions of the subject property and the comparable properties must be a minimum of 4” x 6” in size, including any photographs required by DGS Specifications.
- B. While not stated in the DGS Specifications, local appraisers with knowledge of the local real estate markets are preferred, therefore the Judicial Council requires that each appraisal be performed by, and signed by, a local licensed appraiser with minimum of five (5) years experience in the geographic market in which the subject property is located. In the event the Service Provider does not have a local licensed appraiser in the market where the appraisal work is to be performed, the Service Provider must sub-contract the appraisal work out to a qualified licensed appraiser who is located within that market. The Service Provider will remain responsible for overseeing the subcontractor’s work and for insuring that the work meets all contractual requirements between the Judicial Council and the Service Provider. Because the definition of “local” may vary depending on location, the Service Provider will need to indicate in its quote to the Judicial Council how it intends to meet this requirement.

1.4 Contract Administration Requirements and Service Work Order Authorization Process.

See Appendix A, Section 2.8 for information regarding contract administration requirements and the Service Work Order authorization process.

1.5 Delivery/Approval of Appraisal Reports by the Judicial Council.

Service Provider will e-mail an electronic version of the appraisal report to the Judicial Council for review and comment no later than the mutually agreed-upon due date for completion of the services or work. (If requested by the Judicial Council, Service Provider will provide the report in MS Word format to allow the Judicial Council to insert comments and/or questions into the document for Service Provider’s review.) The Judicial Council will provide comments and/or questions to the document and provide that document back to Service Provider. Once agreement has been reached on the final changes, Service Provider will provide to the Judicial Council within five (5) business days both an electronic PDF version of the final report (via e-mail) and hard copy, bound reports in the quantity requested and to the address or addresses specified.

1.6 Approval of Reports by DGS.

- A. If an Appraisal Report is rejected by DGS because the report does not conform to one or more of the DGS Requirements noted above, Service Provider will, at no additional charge to the Judicial Council, and within no more than five (5) business days after written request from Judicial Council, revise the report to conform to the DGS Requirements noted in Appendices I, and J. Service Provider also will provide a redlined document which shows the edits made, as compared to the original appraisal report.
- B. If an Appraisal Report is rejected by DGS for any other reason, the Judicial Council and Service Provider will negotiate a reasonable fee to cover the cost of revising the report to address DGS’s new requirements. Upon agreement by the Judicial Council and Service Provider, as to the fee to cover the cost of revising the report, Service Provider will, within no more than five (5) business days thereafter, revise the report to conform to the new requirements. Service Provider also will provide a redlined document which shows the edits made, as compared to the original appraisal report.
- C. Once changes have been accepted by the Judicial Council and finalized, Service Provider will provide the revised reports to the Judicial Council in accordance with Section 1.5 above (Delivery/Approval).

1.7 **The Judicial Council expects the following administrative services to be provided at no additional charge:**

- A. Status Reports: If requested by the Judicial Council, Service Provider will provide the Judicial Council with regular order status reports on a weekly, bi-weekly, or monthly basis, at Judicial Council's option.
- B. Copies of Reports/Delivery: Up to four (4) hard-copy, bound reports with original signatures, delivered via courier service or USPS to a Judicial Council specified address within California.

END OF APPENDIX F

SAMPLE

APPENDIX G

PRICING SCHEDULE

Firm Fixed Price submitted in Service Provider’s Proposal

Type of Report	LAND ONLY Not-to-Exceed Amount	LAND + IMPROVEMENTS Not-to-Exceed Amount
1. New Report		
Restricted Use Report	\$	\$
Appraisal Report	\$	\$
2. New Report - Judicial Council provides recent appraisal report from another firm		
Restricted Use Report	\$	\$
Appraisal Report	\$	\$
3. Multiple new appraisal reports for properties in same vicinity, appraised concurrently, creating economies of scale.		
Restricted Use Report	\$	\$
Appraisal Report	\$	\$
4. Update of a previous Service Provider appraisal report to reflect current market conditions.		
Restricted Use Report	\$	\$
Appraisal Report	\$	\$
5. Update of a previous Service Provider appraisal report to reflect expanded scope.		
Restricted Use Report	\$	\$
Appraisal Report	\$	\$
6. Update of a previous Service Provider appraisal report to reflect reduced scope.		
Restricted Use Report	\$	\$
Appraisal Report	\$	\$
7. Update of a previous Service Provider appraisal report to change approach used.		
Restricted Use Report	\$	\$
Appraisal Report	\$	\$
8. New Commission appraisal report to determine brokerage market commission rates where a broker represents Judicial Council to acquire a specific type of property.		
Commission Report	\$	\$

END OF APPENDIX G

APPENDIX H

SERVICE PROVIDER'S KEY PERSONNEL

[This space is reserved for Service Provider's Key Personnel]

END OF APPENDIX H

SAMPLE

APPENDIX I

Department of General Services (“DGS”) Appraisal Specifications (Revised January 1, 2008)

State of California • Department of General Services • Arnold Schwarzenegger, Governor

REAL ESTATE SERVICES DIVISION

P r o f e s s i o n a l S e r v i c e s B r a n c h

707 Third Street, 5th Floor • West Sacramento, California 95605

DEPARTMENT OF GENERAL SERVICES (DGS) APPRAISAL SPECIFICATIONS (Revised January 1, 2008)

All appraisals must be completed and signed by a State of California Certified Real Estate Appraiser, who certifies that the appraisal is in compliance with the Uniform Standards of Professional Appraisal Practice as currently adopted by the Appraisal Standards Board of the Appraisal Foundation.

The principle appraiser who is responsible for developing the appraisal report must certify that they have inspected the subject property and comparable property data whenever physically possible. The following Supplemental Standards are required when applicable to the assignment:

1. Title page with sufficient identification of appraisal project.
2. Letter of transmittal summarizing important assumptions and conclusions, value estimate, date of value, date of report, etc.
3. Table of contents.
4. Assumptions and Limiting Conditions.
5. Description of the scope of work, including the extent of data collection and limitations, if any, in obtaining and analyzing relevant data.
6. Definition of Fair Market Value, as defined by California Code of Civil Procedures, Section 1263.320.
7. Photographs of subject property and comparable data, including significant physical features and the interior of structural improvements if applicable.
8. Copies of Assessor's plat maps with the subject parcels marked and an assemblage of all contiguous Assessors' parcels that depicts the ownership.
9. A legal description of the subject property if available.
10. For large, remote, or inaccessible parcels, provide aerial photographs or topographical maps depicting the subject boundaries
11. Three year subject property history, including sales, listings, leases, options, zoning, applications for permits, or other documents or facts that might indicate or affect use or value.
12. Discussion of any current Agreement of Sale, option, or listing of subject property. This issue requires increased diligence since state agencies often utilize non-profit organizations to quickly acquire sensitive-habitat parcels using Option Agreements. However, due to confidentiality clauses, the terms of the

Options are often not disclosed to the state. If the appraiser discovers evidence of an Option, or the possible existence of an Option, and the terms can not be disclosed due to a confidentiality clause, then the appraiser is to cease work and contact the client. Current DGS policy requires disclosure of any Option or Purchase Agreement. If the Agreement is not made available, DGS will not review the appraisal.

13. Regional, area, and neighborhood analyses.

14. Market conditions and trends including identification of the relevant market area, a discussion of supply and demand within the relevant market area (or other areas of competition), and a discussion of the relevant market factors impacting demand for site acquisition or leasing within the relevant market area.

15. Discussion of subject land/site characteristics (size, topography, current use, zoning and land use issues, development entitlements, General Plan designations, utilities, offsite improvements, access, easements and restrictions, flood and earthquake information, toxic hazards, taxes and assessments, etc.)

16. Description of subject improvements, including all structures, square footage, physical age, type of construction, quality of construction, condition, site improvements, etc.

17. Subject leasing and operating cost history.

18. Opinion of highest and best use for the subject property, based on an in depth analysis supporting the concluded use. Such support typically requires a discussion of the four criteria or tests utilized to determine the highest and best use of a property. If alternative feasible uses exist, explain and support market, development, cash flow, and risk factors leading to an ultimate highest and best use decision.

19. All approaches to market value applicable to the property type and in the subject market. Explain and support the exclusion of any usual approaches to value.

20. Map(s) showing all comparable properties in relation to subject property.

21. Photographs and plat maps of comparable properties.

22. In depth discussion of comparable properties, similarities and differences, and comparisons and adjustments to the comparable data, and discussion of the reliability and credibility of the data as it relates to the indicated subject property value.

23. Comparable data sheets: 1) For sales, include information on grantor/grantee, sale/recordation dates, listed or asking price as of date of sale, financing, conditions of sale, buyer motivation, sufficient location information (street address, post mile, and/or distance from local landmarks such as bridges, road intersections, structures, etc.), land/site characteristics, improvements, source of any allocation of sale price between land and improvement, and confirming source. 2). For listings, also include marketing time from list date to effective date of the appraisal, original list price, changes in list price, broker feedback, if available. 3). For leases, include significant information such as lessor/lessee, lease date and term, type of lease, rent and escalation, expenses, size of space leased, tenant improvement allowance, concessions, use restrictions, options, and confirming source.

24. Discussion of construction cost methodology, data source used, costs included and excluded, depreciation methodology, a discussion of accrued depreciation from all causes, and remaining economic life.
25. Copies of construction cost data including, section and pages of cost manual (date of estimate or date of publication of cost manual must be provided if not indicated on page), copies of cost estimate if provided from another source, and supporting calculations including worksheets or spreadsheets.
26. In part-take situations, a discussion of special benefit and severance damages.
27. Include a copy of a recent preliminary title report (within the past year) as an appraisal exhibit and discuss the effect of title exceptions on fair market value. If unavailable, the appraisal should be made contingent upon review of the preliminary title report and the assumption that there is no affect on value.
28. Implied dedication statement.
29. Reconciliation and final value estimate. Explain and support conclusions reached.
30. Signed Certification consistent with language found in USPAP
31. If applicable, in addition to the above, appraisals of telecommunication sites must also provide:
 - A discussion of market conditions and trends including identification of the relevant market, a discussion of supply and demand within the relevant market area and a discussion of the relevant market factors impacting demand for site acquisition and leasing within the relevant market area.
 - An analysis of other (ground and vault) leases comparable to subject property. Factors to be discussed in the analysis include the latitude, longitude, type of tower, tower height, number of rack spaces, number of racks occupied, placement of racks, power source and adequacy, back-up power, vault and site improvements description and location on site, other utilities; access, and road maintenance costs.
32. There are occasions where properties involve water rights, minerals, or merchantable timber that require separate valuations. If the Certified Real Estate Appraiser determines that there may be water rights, minerals, or merchantable timber that require separate valuations, the appraiser will notify his/her client. The client may choose to modify the scope of the appraisal assignment to include water rights, minerals, or timber valuation by a credentialed subject matter specialist. In such cases, the appraisal review package submitted to DGS will include the real estate appraisal, the appraisal of water rights, minerals, or merchantable timber by a credentialed subject matter specialist, and a review of the water rights, minerals, or merchantable timber appraisal by a second credentialed subject matter specialist.

If you have any questions, please call Thomas Crandall at 916-375-4008.

END OF APPENDIX I

APPENDIX J

DGS Document Regarding Implied Dedication

The following discussion of Implied Dedication was prepared by the California Department of General Services, which relates to Item 28 of the DGS Specifications.

PRESCRIPTIVE RIGHTS AND ADVERSE POSSESSION

Study of California Coastal Commission Work in the Area of Implied Dedication

1. The Gion v City of Santa Cruz case was a landmark implied dedication case for the California Coastal Commission.[321] The case has been superseded by statute in some instances, has been subject to fairly intense criticism and has been rejected by other state jurisdictions in the United States.[322] Thus, it is fair to say then the principles enunciated by Gion are controversial, even in the deeds context.
2. Notwithstanding its approach to application of the principles of implied dedication, Gion has been cited to stand for the time-tested proposition that land could be impliedly dedicated to the public in a number of forms: inland roads, public beaches, navigable waters such as the Colorado River, and inland access along irrigation canals.[323] Thus, the concept that areas used by the public as if it were private property is well-developed in California. These concepts seem comfortable in the setting offered by the Deeds System as the public demands for access to the heavily populated coastal areas of Southern California are as natural to apply as the doctrine of public trust to areas traditionally used by the public.[324]
3. The major criticism of Gion v City of Santa Cruz lies in the application of the reasoning and the elements of implied dedication.[325] Gion can be interpreted as suggesting that two alternative methods are available for a determination of whether an implied dedication has occurred.[326] The Gion decision suggests that the elements of implied dedication, namely intent and the adverse nature of the use, can be subsumed into one element, so that either of those components can be evinced to supply proof of an implied dedication.
4. A conservative approach to implied dedication in the Deeds System requires both intent and a showing that the use was adverse to the interests of the owner.[327] The question is raised, whether a more conservative approach taken to implied dedication in the Deeds System would surely be more consistent for application in the Torrens system, if appropriate for application in the Torrens System at all.

Facts of Gion/Dietz

5. Gion represented facts very common to implied dedication cases taken to maintain coastal access in California. The Gion case actually represented two cases, which were jointly heard by the Supreme Court of the State of California in order to consolidate and consistently apply the principles of implied dedication to both.[328] In each case the public had traversed

across land which adjoined a beach, where the public "proceeded toward the sea to fish, swim, picnic, and view the ocean." [329]

6. Mr Gion, a successor landowner, had occasionally posted no trespass signs but he had never required anyone to leave his property. The City of Santa Cruz had undertaken maintenance of the properties for erosion control, and instituted trash collection receptacles for the management of litter, assuming rightly there was public use being made of the property.

7. The Superior Court, as the trial court, held that an easement was appropriate across the property for use of the public for recreational purposes. The trial court reasoning was that an implied dedication of an easement for access to the coast had been intended based on facts which included the uninterrupted public use over a period exceeding five years, the assertion of control by the City of Santa Cruz, and a conclusion that this had occurred in conjunction with the plaintiff's full acknowledgment of the use, dominion and control by the public. [330]

8. The Dietz matter (the consolidated case) was initiated by a request for an injunction in the Superior Court to keep the public from interfering with the use of a stretch of coastline called Navarro Beach. Navarro Beach is located in Mendocino County, a fairly remote rural area of Northern California, and was solely accessible by an unimproved dirt road. The beach was characterised by a "small sandy peninsular jutting out into the Pacific Ocean." [331] In short, Navarro Beach and its peninsula was a stunning property very attractive to beachgoers located along the northern California coastline. Evidence was submitted at trial that "[t]he public has used the beach and road for at least 100 years". [332]

9. Evidence was produced that after 1950 the public use of the beach expanded exponentially and was accessible through use of the road by persons coming via automobiles, trucks, campers and trailers. Evidence was further produced that this beach was also frequented by commercial fisherman, "picnicking, hiking, swimming, fishing, skin-diving, camping, driftwood collecting, firewood collecting, and related activities." [333]

10. Although Navarro Beach Road was owned by a succession of companies and persons, no one had ever objected to the public use of Navarro Beach Road. One previous owner "testified by deposition that she and her husband encouraged the public to use the road. 'We intended,' she said, 'that the public would go through and enjoy that beach without any charge, and just for the fun of being out there.'" [334]

11. During World War II the United States Coast Guard had barred the public from their use of the beach for defence reasons. Successive owners attempted to obstruct the public access and placed 'no trespassing' signs across the entrance, however, the public removed those obstructions, including chains. The Mendocino County Superior Court ruled in favour of the landowners "concluding that there had been no dedication of the beach or of the road and, in particular, that widespread public use does not lead to imply dedication." [335]

Analysis and Reasoning of the Supreme Court in Gion/Dietz

12. The California Supreme Court began their decision on appeal by citing to the Court's "most recent discussion on common law dedication, Union Transport Co. v Sacramento County" [336] The principles outlined in Union Transport case were set out in full by the Gion Court:

"In common law dedication of property to the public can be proved either by showing acquiescence of the owner in use of the land under circumstances that negate the idea that the use

is under a licence or by establishing open and continuous use by the public for the prescriptive period. When dedication by acquiescence for a period of less than five years is claimed, the owners actual consent to the dedication must be proved. The owners intent is the crucial factor.

.... when, on the other hand, a litigant seeks to prove dedication by adverse use, the inquiry shifts from the intent inactivities of the owner to those of the public. The question then is whether the public has used the land 'for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so, and without objection being made by anyone.' as other cases have stated, the question is whether 'the public has engaged in long-continued adverse use' of the land sufficient to raise the 'conclusive and undisputable presumption of knowledge and acquiescence, while at the same time it negatives the idea of a mere licence.'"[337]

13. The California Supreme Court indicates that two tests are available for an analysis of whether there was an implied dedication to the public.[338] The first test requires acquiescence or an intention to dedicate. At trial, there was an inference raised that the landowners had acquiesced in the public use of the land, but the argument was not furthered on appeal. The second test related to whether there was an adverse use of the land consistent with the owners' acknowledgment of the adverse use, and actions which indicate no objection to the continuance of that use.[339] Notwithstanding that the California Supreme Court applied the tests relating to whether the use was adverse, the Court noted three questions which had been raised by lower courts struggling with the problem of whether a use could be considered to be adverse such that dedication was warranted. Those questions were:

- "(1) When is a public use deemed to be adverse?
- (2) Must a litigant representing the public prove that the owner did not grant a licence to the public?
- (3) Is there any difference between dedication of shoreline property and other property?"[340]

14. After setting out the above questions, the Court clearly notes that analogies drawn from the law of adverse possession and easement by prescription in implied dedication cases should be used with caution as they "can be misleading".[341] Differentiation in the reasoning of the law of adverse possession and prescription stems from the nature of the rights gained and identification of the person or user gaining those rights.

15. The Court does not go so far to say that the concepts underlying adverse possession and easements by prescription are so remote as to be distinctive and different at law. The concept of implied dedication still carries the burden of similarities associated with an adverse use, which is wholly overlooked by the High Court and rejected by the Court of Appeal in its effort to distinguish Section 64 of the Land Transfer Act 1952.

16. Simply put, adverse possession and easements by prescription are grounded in a person acting to gain a right to possess, or to use. The actual possession or use defines the nature of what is acquired. The difference with implied dedication is not related to an absence of an adverse use, instead, it is related to the fact that a sufficient group of undefined persons called "the public" must believe they have a right to use, or to possess. What follows is that no objection is taken by the owner to that use, or to possession, after an acknowledgment that the use is adverse to the owner's interests.[342]

17. The Court notes that "[t]his public use [in implied dedication cases] may not be 'adverse' to the interests of the owner in the sense that the word is used in adverse possession cases".^[343] The Gion Court explained that the element of adversity did not need to be shown by the litigants because the use was in excess of the statutory period of five years.^[344] The Gion Court goes on to explain that the litigants needed to show that "persons have used the land as they would have used public land.... if a road is involved, the litigants must show that it was used as if it were a public road".^[345] In other words, to establish dedication to the public an ill-defined limited number of persons cannot assert a public claim. To reach the threshold of being a public claim a litigant must present evidence showing the "scene of significance is that whoever wanted to use the land did so... when they wished to do so without asking permission and without protest from the landowners".^[346]

18. The California Supreme Court went on to address the second question which the lower courts had laboured with, namely, the question of whether a "use by the public is under a licence by the fee owner", and whether a presumption of a licence must be overcome by the public with presentation of evidence to the contrary.^[347] The California Supreme Court rejects that any presumptions in favour of a licence should be implied, and indicates that "[t]he question where the public use of privately owned land is under a licence of the owner is ordinarily one of fact."^[348] In fact, the California Supreme Court provides a legal test that could be used to negate a finding of intent to dedicate through adverse use, which was, that the landowner "must either affirmatively prove that he has granted the public a licence to use his property or demonstrate that he has made a bona fide attempt to prevent public use."^[349]

19. The California Supreme Court further indicated that an owner may denote an objection to the adverse use by erecting 'No Trespassing' signs or by other efforts which the Court described as making "more than minimal and ineffectual efforts to exclude the public".^[350]

20. The landmark holding by the Gion Court was based on the following text:

"the rules governing shoreline property [do not] differ from those governing other types of property, particularly roads. Most of the case law involving dedication in this State has concerned roads and land bordering roads. [Citations.] This emphasis on roadways arises from the ease with which one can define a road, the frequent need for roadways through private property, and perhaps also the relative frequency with which express dedications of roadways are made. The rules governing implied dedication apply with equal force, however, to land used by the public for purposes other than a roadway".^[351]

21. The public policy support for the application of the rules of common law implied dedication to the shoreline, were held to be in accordance with the strong policies expressed in the State of California constitution and statutes "encouraging public use of shoreline recreational areas".^[352] The Gion Court found further support for its decision in the United States constitution which the court stated "clearly indicates that we should encourage public use of shoreline areas whenever that can be done consistently with the Federal constitution".^[353]

22. The analogy the Court makes, therefore, had lasting implications for application of the principles of implied dedication as the areas now subject to those principles were expanded from well defined roadways to beaches following the "the increased urbanisation of this State".^[354] The reason which seemed most significant to the Court that implied dedication was warranted, was reiterated at the end of the Court's decision.^[355] The Court was persuaded that in "both

cases [Gion and Dietz] the public used the land in public ways, as if the land was owned by a government, as if the land were a public park".[\[356\]](#)

23. The Gion Court was also persuaded by evidence that the city's maintenance of the cliffs along the beach in association with the public use warranted a finding of implied dedication. The long period of time (100 years) was also instrumental in persuading the Court that use of the beach has been as if the public owned it. The Gion court also noted the public's freedom from interference regarding their use of the beach and prior owners had given casual permission to a few to use the beach, which the Gion court held would not "deprive the many, whose rights are claimed totally independent of any permission asked or received of their interest in the land".[\[357\]](#)

24. Unlike John Spencer, the property owners in Gion did not approve of the public's use of the property.[\[358\]](#) The Gion court recognised, however, that the widespread public use of the land prior to the current ownership had given effect to the implied dedication by the public.

25. Notwithstanding that an analysis of the interest in land that was acquired by the public was relegated to a final footnote by the Gion court, the footnote is significant in regard to a finding of what can actually be gained by the public in accordance with a common law implied dedication.[\[359\]](#) An important distinction was made by the Gion court in relation to the acquisition of public parks, as opposed to easements for general recreation. The California Supreme Court found that common law implied dedication principles will only extend a dedication over the scope of what use or possession the public actually acquired.

26. Another argument made by the appellants was that notwithstanding that section 802 of the Civil Code in California only granted easements, that this statute did not restrict the Court's ability to assess the nature of the public's acquisition as a park, which would in turn allow a fee simple ownership to be impliedly dedicated (a possessory use is associated with a park in contrast to a use associated with access). This argument, even in the context somewhat controversial reasoning by the California Supreme Court in Gion, was rejected.[\[360\]](#)

27. The footnote, however, makes a very important point which distinguishes the rights granted by the High Court and Court of Appeal in the Stony Batter Decisions: the New Zealand lower courts arguably go beyond even that provided by Deeds System cases by granting fee simple ownership. No detailed examination was given of any evidence in either Stony Batter Decision that described the nature of the use, the scope of the users (aside from a generalised description of the public) and the character of their use and following from this, what property right may have been acquired. In essence a possessory estate was assumed.

Guidance or Aftermath - History in Accordance with Gion

28. Directly after the Gion decision, the California legislature amended California Civil Code section 813.[\[361\]](#) California Civil Code section 813 is entitled "Recordation of Notice of Consent to Use Land; Effect; Revocation; Mailing Notice; Restriction in Notice". Although this Civil Code section was added in 1963, the 1971 amendment is considered to be a direct reaction to the Gion decision.[\[362\]](#) Section 813 was understood to authorise notices that could be posted offering permission to the public which could be conditioned in the notice to restrict time, place, and the manner of the public use. The California legislature also enacted California Civil Code section 1009 at the same time of the amendment of section 813. California Civil Code section 1009 "prospectively imposes restrictions on the acquisition of the public's right an easement".[\[363\]](#)

29. The legislative changes in California in 1971 made it eminently clear that such a notice providing permission of the public for use of private property would be construed conclusively as a licence to use, as follows:

"a notice of consent to the use of land, or any portion thereof, for the purpose described in the notice [would be construed as] conclusive... of consent... during the time such use is in effect by the public or any user for any purpose... in any judicial proceeding involving the issue as to whether all or any portion of such land has been dedicated to the public use or whether any user has a prescriptive right in such land or any portion thereof.... and no use in violation of such restriction shall be considered public use for purposes of a finding of implied dedication".[\[364\]](#)

30. This amendment was significant for landowners faced with the possibility that the public may be using property owed in remote areas that would be difficult to police for trespass, particularly where neither the means or the inclination to undertake a physical confrontation to exclude the public looked available and attractive. This California Civil Code section provides an alternative: property owners can provide clear notice of a licence for the public to use property at the discretion of a landowner in a manner which will not ripen into a finding of implied dedication.

31. Notwithstanding that the 23 September 1970 Letter could surely have been construed as a permission in the nature of a license, consistent with the evidence, it seems harsh to have expected Arthur Hooks to take measures equivalent to physical confrontation to exclude the public from his property when the evidence at trial clearly illustrated his absence from the island, his disabled state in a nursing home, with a partially absentee son for a farm manager, with no clear indication of what Arthur Hooks was being told about events (particularly use of the formed road).

Other cases following Gion/Dietz

32. Friends of the Trails v Blasius is a recent California Court of Appeal case involving acquisition of a public easement by implied dedication through a property which had an irrigation "ditch ... used to convey water for purposes of the Nevada Irrigation District (NID)".[\[365\]](#) Nevada Irrigation District already had an easement on title for the conveyance of water through related infrastructure. The property through which the infrastructure ditch traverse was owned by various persons over time.

33. Upon acquiring the property in 1996 the successor landowners attempted to block the canal road adjacent to the ditch with a locked gate, and continued to deny passage through the gate to members of the public and adjoining neighbours. Friends of the Trails instituted an action seeking injunctive and declaratory relief, as well as a claim "to quiet title to a public easement for recreational purposes".[\[366\]](#)

34. Friends of the Trails argued that the public had acquired an easement for recreational purposes prior to the legislative change which followed the Gion California Supreme Court decision. Friends of the Trails argued that the public had by implication been granted the use of a non-motorised right-of-way in spite of the vehicular road having existed along the canal that was undoubtedly used in conjunction with the irrigation district.[\[367\]](#)

35. The California Court of Appeal in Friends of the Trails restates the law in relation to implied dedication, 30 years after Gion and following a change in legislation there was no real change to the analysis:

Dedications may occur pursuant to statute or the common law.

Dedication has been defined as an appropriation of land for some public use, made by the fee owner, and accepted by the public. By virtue of this offer which the fee owner has made, he is precluded from reasserting an exclusive right over the land now used for public purposes. American courts have freely applied this common law doctrine, not only to streets, parks, squares, and commons, but to other places subject to public use. California has been no exception to the general approach of wide application of the doctrine. [Citations.]. "[368]

36. The Friends of the Trails court relies heavily on the reasoning and application of the principles as they are founded in Gion, although it notes that these principles will only be good to public acquisitions prior to the legislative change. The landowners in Friends of the Trails argued vigorously against the holding in Gion that the legislative change made in reaction to Gion signalled a dissatisfaction from the reasoning of the Supreme Court. The landowners alleged that Gion marked "a departure from settled approaches to the law of dedication" and "that it was a troubling holding" that should not be "exacerbate[d] and extend[ed]" due to its "malignant effects". [369]

37. The California Court of Appeal declined to "ignore a settled precedent". [370] The Friends of the Trails court disagreed with the landowners argument that Gion is a "departure from settled approaches to the doctrine of implied dedication.... [and is] a sudden unpredictable change in legal norms governing property rights and public dedication" [371]

38. The road used by NID was obviously present on the property in Friends of the Trails, and an easement was registered and actively used by the Irrigation District in conjunction with the canal conveying water. This is closely analogous to the situation in Stony Batter when John Spencer may have been cognisant of roads present on the Hooks property, which could have been taken to be crude farm tracks. There would be no reason at all to question the Old Army Road as an easement was clearly defined in favour of the Crown. [372]

39. It is not clear how a subsequent bona fide purchaser for value, even looking beyond the title, would be able to make a subtle distinctions between the nature of the user for purposes of challenging a right to access. For example, would the landowner ask: was this a water irrigation user or someone else who should be ejected? Similarly, is this a hiker seeking access to the Stony Batter historic reserve via the Lands & Survey easement from Man O' War Bay or is this someone who should be challenged? Users in Friends of the Trails, as in the Man O' War Bay Old Army Road easement would be partaking in the rights clearly associated with and existing easement.

40. It seems unreasonable to expect a prospective property owner to split hair over distinctions as subtle as those in Friends of the Trails. The Court in Friends of the Trails indicated they felt the distinction was justified by an examination of facts "often imbued with overtones of local norms, customs, and expectations generally warrant[ing a] difference to the local finder of fact." [373] The court accepted evidence presented at trial which clearly indicated that previous owners knew the uses being undertaken were recreational in nature and not associated with the irrigation canal easement. [374] No in depth analysis of this kind made its

way into the Stony Batter High Court or Court of Appeal Decision that delineated between the existing easement users and any user from the public.[375]

41. The Court of Appeal in *Redwood Empire v Gombos* upheld previous rulings that the "changes [by the California legislature] operated prospectively only" so that any implied dedication, allegedly occurring before the legislative changes in 1971, would still be at issue.[376] *Redwood Empire* was a forestry company which used forestry roads to access remote areas of commercial forests consistent with its business. The lower courts in New Zealand seemed to somewhat unfairly dismiss the appellant's concerns about the implications for effectively "backdating": we don't know how rare implied dedication really is because we don't know how many claims have accrued over the years. It is not as if a ledger balance is being kept on titles, unlike a registrable interest.

42. Following *Gion*, the *Redwood Empire* court held unequivocally that "the public's rights are limited to those consistent with the types of public uses upon which implied dedication was based".[377] The *Redwood Empire* Court referred to the more recent case *Friends Of The Trails v Blasius*[378] and noted that the California Supreme Court in that case had specifically restrained its holding to the grant of an easement under the principles of implied dedication (not fee simple ownership).[379] The *Redwood Empire* Court cites a number of authorities acknowledging that the rights gained by prescriptive easements govern the scope of what should be granted by implied dedication, then summarized the principles gleaned from each of them as follows:

"[i]t is settled law that the scope of a prescriptive easement is determined by the use through which it is acquired. A person using the land of another for the prescriptive period may acquire the right to such use, but does not acquire the right to make other uses of it. [Citations.] The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired. We see no reason the same rule should not apply to a public easement that has arisen through implied dedication." [380]

43. The *Redwood Empire* Court clarifies the statements made in *Gion* regarding the use of caution in relation to analogies made to prescriptive easements: application of the component of adversity in implied dedication should differ in principle only as to the use that can be gained, which would be personal to the adverse user or possessor as opposed to the use acquired by the public.[381]

44. The Court of Appeal in California states that:

"[w]hen it comes to the issue of whether an impliedly dedicated public easement should be limited to the use that gave rise to it, prescriptive rights appear fully analogous [Citations.]. A dedication is legally equivalent to the granting of an easement".[382]

45. The guidance provided by the *Redwood Empire* decision in relation to licences is also valuable, in that the scope of what was once a licence could incorporate foreseeable developments in relation to uses undertaken, on the other hand, could simply define the scope of what was acquired.[383]

**END OF APPENDIX J
END OF AGREEMENT**