

Attachment 2

STANDARD AGREEMENT COVERSHEET

	AGREEMENT NUMBER _____
	FEDERAL EMPLOYER ID NUMBER _____

THIS AGREEMENT is made and entered into this _____ day of _____ 20_____ (“Effective Date”), in the State of California, by and between the parties identified below (“Parties”).

PARTIES: In this Agreement, the term “Construction Manager” or “CM” refers to [Construction Manager Name], and the term “Judicial Council” or “Council” refers to the Judicial Council of California.

TERM: This term of this Agreement commences upon the Effective Date and is complete upon final payment by the Judicial Council of California (“Term”).

WITNESSETH: That Construction Manager for and in consideration of the covenants, conditions, agreements, and stipulations of the Judicial Council of California (“Council” or “Judicial Council”) hereinafter expressed, does agree to furnish to the Judicial Council of California services and materials as indicated herein for the following project:

New Modesto Courthouse, County of Stanislaus, California (“Project”)

The Project may include multiple components necessary to achieve the objectives of the Capital Program. Any one of the components or combination thereof may be changed, including terminated, in the same manner as the Project, as indicated herein, without changing in any way the remaining component(s). The provisions of this Agreement shall apply to each component without regard to the status of the remaining component(s). Construction Manager shall invoice for each component separately and the Judicial Council shall compensate Construction Manager for each component separately on a proportionate basis based on the level and scope of work completed for each component.

Incorporated into this Agreement herewith, and attached hereto, are the following exhibits (cumulatively the “Contract Documents”):

- Exhibit A: Standard Provisions
- Exhibit B: Responsibilities and Services of Construction Manager
- Exhibit C: Criteria and Billing for Extra Services
- Exhibit D: Schedule of Work
- Exhibit E: Fee Schedule
- Exhibit F: Key Personnel
- Exhibit G: DVBE Certification
- Exhibit H: Owner’s Badge, Escort and Entry Policy

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

- (1) Executed amendment (s), beginning with the most recent (if any);
- (2) The Standard Agreement prepared for the Project;
- (3) Exhibit A;
- (4) Exhibit B; and then
- (5) The remaining Contract Documents.

Attachment 2

This Agreement has to date authorized the performance of the following Phases of Services in the following amounts:

\$ _____	Preliminary Plans / Design Development Phase
\$ _____	Working Drawings Phase - NYA
\$ _____	Construction Phase - NYA
\$ _____	Project Completion/Closeout Phase - NYA

The total Fee currently authorized for the provision of the Services authorized to date is \$_____.

JUDICIAL COUNCIL'S SIGNATURE	CONSTRUCTION MANAGER'S SIGNATURE
Judicial Council of California	NAME (if CM is not an individual person, state whether CM is a corporation, partnership, etc.) [Name]
BY (Authorized Signature) ✎	BY (Authorized Signature) ✎
DATE SIGNED	DATE SIGNED
SAMPLE ONLY – DO NOT SIGN	
ADDRESS 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS [Address]

Judicial Council of California Use Only

[This page is reserved for internal Funding Summary]

EXHIBIT A – STANDARD PROVISIONS

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Article 1. DEFINITIONS

- 1.1. The following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
- 1.1.1. **“Agreement”** or the **“Contract”** or the **“Contract Documents”**: The Judicial Council of California Standard Agreement prepared for the Project and all Exhibits thereto and Council approved modification(s) thereto.
 - 1.1.2. **“Architect”**: The architect(s) that the Council designates as being the architect(s) for all or a portion of the Project, including all consultants to the architect(s). The Architect is a member of the Design Team.
 - 1.1.3. **“Bid”**: As used herein, any procurement document that the Council utilizes to procure construction services from a Contractor, which may be a request for proposal, a request for qualifications, a formal bid, a solicitation or other method.
 - 1.1.4. **“Capital Program”**: As used herein, a group of related judicial branch courthouse construction, renovation, and facility modification projects, subprograms, and program activities for which the Judicial Council Capital Program office has responsibility to oversee and manage.

- 1.1.5. **“Construction Cost”**: The total cost to the Council of all elements of the Project construction which is designed or specified by the Design Team.
 - 1.1.5.1. The Construction Cost does not include the compensation of the Design Team, the Construction Manager, the cost of the land, rights-of-way, OCIP insurance, financing or other costs which are the responsibility of the Council.
 - 1.1.5.2. The Construction Cost amount may be identified as the “Guaranteed Maximum Price” in a CMR’s contract or the “Total Contract Amount” in a design-bid-build Contractor’s contract.
- 1.1.6. **“Construction Manager”** or **“Consultant”** The individual, partnership, corporation, association, joint venture, or any combination thereof, that has entered into the Agreement with the Judicial Council to do the Work, identified as such in the Agreement, and referred to throughout the Agreement as if singular in number, including all Subconsultant(s) to the Construction Manager.
- 1.1.7. **“Contractor”**: The entity, including its subcontractors, and their sub-subcontractors that the Council designates as being the entity that will construct the Project., The Parties acknowledge that this entity may be contracted to the Council through varied project delivery methods including, without limitation, design-bid-build, construction manager-at-risk, or design-build.
 - 1.1.7.1. **“Construction Manager-at-Risk”** or **“CMR(s)”**: If the Project is procured through a construction manager-at-risk delivery method, then Contractor is read in this Agreement to be the successful CMR that contracts with the Council to construct the Project.
 - 1.1.7.2. **“Design/Build”**: If the Project is procured through a design-build delivery method, then Contractor is read in this Agreement to be the successful Design/Build contractor that contracts with the Council to design and construct the Project.
 - 1.1.7.3. **“Design-Bid-Build”**: If the Project is procured through a design-bid-build delivery method, then Contractor is read in this Agreement to be the successful bidder that contracts with the Council to construct the Project.
- 1.1.8. **“Council”**: The Judicial Council of California.
- 1.1.9. **“Court Cost Reduction Report”**: The April 20, 2012 “Court Facilities: Recommendations on Reducing Costs of SB 1407 Projects” prepared by the Court Facilities Working Group to the Council and adopted by the Council on April 24, 2012.
- 1.1.10. **“Day(s)”**: Unless otherwise designated, “day(s)” means calendar day(s).
- 1.1.11. **“Director”**: The Director of the Council’s Judicial Branch Capital Program Office.
- 1.1.12. **“Design Team”**: The architect(s), engineer(s), and other designer(s) that the Council designates as designing all or a portion of the Project, including a Design/Build contractor, if applicable, along with all consultants to the architect(s), engineer(s) or other designer(s), who have a responsibility to the Council to design all or a portion of the Project either directly or as a Subconsultant or Subcontractor.
- 1.1.13. **“Extra Services”**: Council-authorized services, Council-authorized deliverables and Council-authorized reimbursables as identified in **Exhibit “C.”**
- 1.1.14. **“Fee”**: The Construction Manager’s Fee is the amount as stated in the Agreement, as further defined herein, and is payable as set forth herein and in **Exhibit “E.”**
- ~~1.1.15.~~ **“NIC”**: Not In Contract. Any work which is marked as NIC is not included in the contract. An amendment to the Contract is required to proceed with any work identified as NIC.
- 1.1.16. **NYA**: Not Yet Authorized. The Construction Manager is required to obtain authorization from the Judicial Council prior to performing any work or services marked “NYA.”
- 1.1.17. **“OCIP”**: A project specific insurance program initiated and administered by the Council, during the Construction Phase, to provide any or all of the insurance requirements that will insure the interest and activities of the Contractor, any of its subcontractor(s) or their sub-subcontractor(s) performing Work at or incidental to the Project site.
- 1.1.18. **“Phase(s)”**: One or more of the time frames within which the Services may be authorized and performed. The potential Phases of this Project are as follows: Study and Acquisition Phase; Preliminary

Plans/Schematic Design Phase; Preliminary Plans/Design Development Phase, Working Drawings Phase, Construction Phase, and Project Completion/Closeout Phase.

- 1.1.19. **“Project Budget”**: The total amount indicated by the Council for the Project including design, construction management, construction, administration, financing, and all other costs. The Construction Cost is a component of the Project Budget.
- 1.1.20. **“Project Manager”**: The Council’s project manager and authorized representative for this Project. The Project Manager is the point of contact for the Construction Manager in its communications with the Council. The Council’s initial Project Manager for this Project is Deepika Padam.
- 1.1.21. **“Service(s)” or “Work”**: All labor, materials, supervision, services, tasks, and work that the Construction Manager is required to perform and that are required by, or reasonably inferred from, the Agreement.
- 1.1.22. **“Subconsultant(s)”**: Any and all consultant(s), subcontractor(s), vendors or agent(s) employed by, retained by, or under contract(s) with the Construction Manager for any portion of the Work.

1.2 Capitalization

1.2.1 Terms capitalized in the Agreement include those that are:

- a) Specifically defined; or
- b) Titles and captions of numbered Articles, Exhibits, Parts, Subparts, Sections, or Paragraphs; or
- c) Titles of other documents.

Article 2. SCOPE, RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

- 2.1. **Scope**: Construction Manager must provide the Services described herein and under **Exhibit “B”** for the Project. The Parties agree that the Construction Manager’s Services described herein will be based on the Construction Manager administering the work of a CMR, a Design/Build contractor or a Design-Bid-Build contractor with respect to the Project. The Council reserves the right to choose the delivery method for the Project.
- 2.2. **Coordination**: In the performance of Construction Manager’s Services under this Agreement, Construction Manager shall maintain direct communication with the Council’s Project Manager as the primary point of contact with the Council.
 - 2.2.1. The Construction Manager must coordinate its Work with other Council personnel and/or Council’s designated representatives as may be requested and desirable, but must take primary direction from the Project Manager.
 - 2.2.2. The Construction Manager must also follow the direction of the Director, as appropriate.
 - 2.2.3. Construction Manager must also coordinate with all members of the Design Team, and the Council’s risk, safety and quality management staff. If the Construction Manager employs Subconsultant(s), the Construction Manager must ensure that its contract(s) with its Subconsultant(s) include language notifying the Subconsultant(s) of the Council’s insurance, safety, and labor compliance programs, if any.
- 2.3. **Construction Manager as Judicial Council Representative**:
 - 2.3.1. Construction Manager is the Council’s representative for the Project and will render the Services as described in **Exhibit “B,”** which will commence upon the receipt of a Notice to Proceed signed by the Director. Construction Manager’s Services will be completed in accordance with the schedule attached as **Exhibit “E.”**
 - 2.3.2. Construction Manager is an independent consultant and is solely responsible for obtaining any and all business and professional licenses and permits and for complying with any applicable Federal or State laws, codes and regulations, and municipal ordinances, as necessary, for the prosecution of the Services.

- 2.3.3. Construction Manager's authority is limited to providing direction and making decisions that do not involve an adjustment in the Contractor(s)'s contract price or the Contractor(s)'s contract time or design and which are consistent with the overall intent of the Project's design or involve any increase in cost to the Project without the Council's prior written approval.

Article 3. CONSTRUCTION MANAGER STAFF

- 3.1. The Construction Manager has been selected to perform the work herein because of the skills and expertise of key individuals.
- 3.2. The Construction Manager agrees that the following key personnel in Construction Manager's firm will be associated with the Project:
 - 3.2.1. Project Director
 - 3.2.2. Sr. Project Manager
 - 3.2.3. Project Manager
 - 3.2.4. Sr. Construction Manager
 - 3.2.5. Construction Manager
 - 3.2.6. Project Engineer
 - 3.2.7. Estimator
 - 3.2.8. Scheduler
 - 3.2.9. Document Control Specialist
 - 3.2.10. Commissioning Authority
 - 3.2.11. Commissioning Agent
- 3.3. The Construction Manager must not change any of the key personnel listed above and in **Exhibit "F"** without prior written approval by the Council, unless those individuals cease to be employed by Construction Manager. In either case, the Council will be allowed to interview and approve replacement personnel.
- 3.4. If any designated lead or key person, Consultant or Subconsultant employee fails to perform to the satisfaction of the Council, then upon written notice, the Construction Manager must immediately remove that person, Consultant or Subconsultant employee from the Project and provide a temporary replacement. Construction Manager must within seven (7) days provide a permanent replacement person, Consultant or Subconsultant employee acceptable to the Council. All lead or key personnel for any Subconsultant must also be designated by the Consultant.
- 3.5. The Construction Manager is responsible for all costs associated with replacing any of Construction Manager's key personnel, including the additional costs to familiarize replacement personnel with the Work. If the Construction Manager does not furnish replacement personnel acceptable to the Council, the Agreement may be terminate this for cause.
- 3.6. Construction Manager represents that the Construction Manager has no existing interest and will not acquire any interest, direct or indirect, that could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any conflict of interest will be employed by Construction Manager.
- 3.7. **Background Checks.** If the Construction Manager assigns persons (whether employees, independent contractors, Subconsultants or agents) to perform Work under this Agreement that requires that the person have access to the systems (whether on-site or by remote access) or premises of the Council or other Judicial Branch entities, the Council has the right, but not the obligation, to conduct a background check or to require the Construction Manager to conduct a background check, as permitted by law, on that person(s) before the Council will grant to that person(s) access to the Council's or other judicial branch entities' premises or systems. The Construction Manager will cooperate with the Council in performing that background check, and will promptly notify the Council of any person refusing to undergo a background check, and will reassign that person to perform other services. The Construction Manager must obtain all releases, waivers, or permissions required for the release of that information to the Council. Costs incident to background checks are the sole responsibility of the Construction Manager.

Article 4. SCHEDULE OF WORK

- 4.1. The Construction Manager must commence the Work under this Agreement upon receipt of a "Notice to Proceed,"

and must prosecute the Work diligently as described in **Exhibit “B”** in accordance with the schedule attached as **Exhibit “D.”** Time is of the essence and failure of Construction Manager to perform the Work on time as specified in this Agreement is a material breach of this Agreement.

4.2. **Authorization.**

- 4.2.1. By entering into this Agreement, the Council only authorizes the Construction Manager to begin its Work within the Preliminary Plans / Design Development Phase.
- 4.2.2. The Council has the sole and unilateral right to authorize additional Phases, however, those authorizations will be made in the form of an amendment pursuant to this Agreement, authorizing the appropriate Phase and funding specified herein, which must be executed by the Construction Manager and the Council.
- 4.2.3. Construction Manager is not authorized to begin any work or services marked “NYA” (Not Yet Authorized).

Article 5. FEE AND METHOD OF PAYMENT

- 5.1. Council will pay Construction Manager a fixed fee in an amount equal to _____ dollars (\$ _____) for all Services contracted for under this Agreement pursuant to the provisions herein and in **Exhibit “E.”** (“Fee”).
 - 5.1.1. If the Construction Cost is reduced or increased by more than 10%, or the Project schedule is reduced or increased by more than 180 days, or the scope of the Project is modified in the Council’s determination and discretion to a significant degree, there shall be an equitable adjustment to Fee based upon the modified Construction Cost or Project schedule or Project scope. The Construction Manager’s Fee is full compensation for all Services performed pursuant to this Agreement. The compensation for any Extra Services will become part of the Fee upon the Council’s authorization of those Extra Services.
- 5.2. The Construction Manager’s Fee includes, without limitation, all costs for overhead; personnel; administration; profit; travel within two hundred (200) miles of the Project location; offices; per diem expenses; and all deliverables, printing, and shipping, under the Agreement.

Article 6. PAYMENT FOR EXTRA SERVICES

- 6.1. Extra Services are those services, deliverables, and reimbursables identified in **Exhibit “C.”** Any charges for Extra Services will be paid by the Council as described in **Exhibit “C”** only upon certification that the claimed Extra Services were authorized in writing in advance by the Project Manager, an amendment was executed and that the authorized Extra Services have been satisfactorily completed. Notwithstanding the preceding, an amendment is not required for travel beyond two hundred (200) miles of the Project location, however, the prior written authorization of the Project Manager is still required for travel beyond two hundred (200) miles of the Project location.
- 6.2. A written proposal describing the scope of the Extra Services and listing the personnel, labor duration, rates, and cost shall be submitted by the Construction Manager to the Project Manager for approval followed by a fully executed amendment before proceeding with the performance of any Extra Services.
- 6.3. The Parties acknowledge that the rates for Extra Services will not change for the term of the Agreement.

Article 7. STANDARD OF CARE

Construction Manager, its officers, agents, employees, subcontractors, subconsultants and any persons or entities for whom Construction Manager is responsible, must provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. The Council’s review, approval of, or payment for any of the Services required under this Agreement must not be construed as assent that Construction Manager has complied, nor in any way relieve the Construction Manager of compliance, with (i) the applicable standard of care or (ii) applicable statutes, regulations, rules, guidelines and requirements.

Article 8. OWNERSHIP OF DATA

- 8.1. Everything created, developed or produced in the course of the Construction Manager's performance of the Services, including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the Construction Manager for the Council and are the sole property of the Council without further employment or the payment of additional compensation to the Construction Manager. The Council owns all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights"). To the extent that any of the Data or the Intellectual Property Rights therein is not works for hire, the Construction Manager hereby irrevocably assigns its entire right, title and interest in and to all those Data and the Intellectual Property Rights therein, to the Council. At the Council's request, the Construction Manager will assist the Council in the Council's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. Construction Manager irrevocably appoints the Council as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the Council deems necessary to perfect the Council's interest and Intellectual Property Rights in the Data as set forth herein.
- 8.2. The Council is entitled to access copies of the Data, in whatever form, at all times during the Term of the Agreement. Any Data in the possession of the Construction Manager or in the possession of any Subconsultant upon completion or termination of the Agreement must be immediately delivered to the Council. If any Data are lost, damaged or destroyed before final delivery to the Council, the Construction Manager must replace them at its own expense and the Construction Manager assumes all risks of loss, damage or destruction of or to Data.
- 8.3. After completion of the Project or after termination of this Agreement, Construction Manager must deliver to Council a complete set of Project records, including without limitation all documents generated by Construction Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Project records, both paper and electronic, must be indexed using a file index numbering scheme provided or approved by the Project Manager and appropriately organized for easy use by Council personnel. All Project records are property of the Council, whether or not those records are in the Construction Manager's possession.

Article 9. ROYALTIES AND PATENTS

Construction Manager must pay all royalties and license fees related to this Agreement. Construction Manager's indemnity obligations herein include any claims or suites for infringement of patent rights and hold the Council harmless.

Article 10. COUNCIL PROPRIETARY OR CONFIDENTIAL INFORMATION

- 10.1. Construction Manager understands and agrees that, in the performance of the Services under this Agreement or in contemplation thereof, the Construction Manager may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, the Council and that information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Council. This confidential information may include, without limitation, information related to security systems in court buildings, security systems in detention facilities, and the design and construction of those systems.
- 10.2. Construction Manager agrees that all information disclosed by the Council to the Construction Manager must be held in confidence and used only in the performance of the Agreement.
- 10.3. Construction Manager shall exercise the same standard of care to protect this private or confidential information as the Construction Manager uses to protect its own proprietary information and in any case no less than a reasonably prudent person or entity would use to protect its own proprietary data.
- 10.4. It is understood, however, that the Construction Manager may disclose the Council's confidential information on a "need to know" basis to the Construction Manager's employees, the Construction Manager's Subconsultants, and the Subconsultants' employees, and as required by law. Construction Manager must execute written agreements

with its Subconsultants that bind each Subconsultant and its employees to the confidentiality provisions set forth in this Agreement.

- 10.5. Construction Manager will not acquire any right or title to the confidential information. Construction Manager agrees not to use the confidential information for any purpose except to provide the Services. Notwithstanding the foregoing, the Construction Manager may disclose the confidential information:
 - 10.5.1. To the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that the Construction Manager first gives reasonable notice of its intention to disclose in order for the Council to seek a protective order; or
 - 10.5.2. To the extent necessary to enforce its rights under this Agreement.
- 10.6. Construction Manager agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Article and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

Article 11. LIMITATION ON PUBLICATION.

Construction Manager must not publish or submit for publication any article, press release, or other writing relating to the Construction Manager's Services for the Council without prior review and written permission by the Council. The Council review will be completed within thirty (30) days of submission to the Project Manager and, if permission is denied, the Council will provide its reasons for denial in writing.

Article 12. CONFLICT OF INTEREST

- 12.1. Construction Manager and employees of the Construction Manager must not participate in proceedings that involve the use of Council funds or that are sponsored by the Council if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. Construction Manager and employees of the Construction Manager must also avoid actions resulting in or creating the appearance of:
 - 12.1.1. Use of an official position with the government for private gain;
 - 12.1.2. Preferential treatment to any particular person associated with this Agreement or the Work of this Agreement;
 - 12.1.3. Loss of independence or impartiality;
 - 12.1.4. Impropriety;
 - 12.1.5. A decision made outside official channels; or
 - 12.1.6. Adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- 12.2. **Prohibited Financial Conflict of Interest.** Construction Manager and its Subconsultants presently have no interest and will not acquire any interest which would present a conflict of interest pursuant to California Government Code sections 1090 et seq. and 87100 et seq., during the performance of Services pursuant to this Agreement. Construction Manager further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the Council are now, nor in the future will they be, in any manner interested directly or indirectly in this Agreement, or in any profits expected to arise from this Agreement, as set forth in California Government Code sections 1090 et seq. and 87100 et seq.
- 12.3. **Conflict of Interest for Former Council Employees.** Construction Manager certifies and must require any Subconsultant to certify to the following: Former Council employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision-making process relevant to this Agreement, or for one year from the date of separation if that employee was in a policy-making position or in any part of the decision-making process in the same general subject area as the proposed contract within the twelve (12) month period after his or her employment with Council.
- 12.4. All Construction Manager personnel identified as key personnel in this Agreement must complete and submit California Fair Political Practices Commission - Form 700 on a yearly basis over the duration of this Agreement.

Article 13. TERMINATION OF AGREEMENT

- 13.1. **Termination of Construction Manager for Cause.** If Construction Manager fails to perform Construction Manager's duties to the satisfaction of the Council, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager violates any of the material terms or provisions of this Agreement, the Council has the right to terminate this Agreement effective immediately upon the Council giving written notice thereof to the Construction Manager. In the event of a termination for cause pursuant to this Article, Construction Manager may invoice Council for all Work performed until the notice of termination, but Council has the right to withhold payment and deduct any amounts equal to the Council's costs because of Construction Manager's actions, errors, or omissions that caused the Council to terminate the Construction Manager.
- 13.2. **Termination of Construction Manager for Convenience.** Council has the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice Council and Council will pay all undisputed invoice(s) for Work performed until the notice of termination. This will be the only amount(s) potentially owing to Construction Manager's if there is a termination for convenience.
- 13.3. **Termination by Council for Non-Appropriation or No Authorizations; Council's Obligation Subject to Availability of Funds.**
- 13.3.1. The Council's obligation under this Agreement is subject to the availability of authorized funds. The Council may terminate the Agreement or any part of the Work, without prejudice to any right or remedy of the Council, for lack of appropriation of funds and/or the Council's determination not to authorize specific Work or Phases. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or if the Council determines not to authorize further Work of Phases not yet authorized, the Council may terminate this Agreement in whole or in part, upon written notice to the Construction Manager.
- 13.3.2. Payment to Construction Manager shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
- 13.3.2.1. The Council will be liable only for payment in accordance with the terms of this Agreement for Services rendered prior to the effective date of termination; and
- 13.3.2.2. The Construction Manager will be released from any obligation to provide further Services pursuant to the Agreement as are affected by the termination.
- 13.3.3. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should an appropriation not be approved, the Council, in its sole discretion, may terminate the Agreement at the close of the current appropriation year, however, in lieu of terminating the Agreement, the Council, in its sole discretion, may choose to suspend the Project in accordance with the Suspension of Project provision below. The appropriation year ends on June 30 of each year.
- 13.4. **Termination of Agreement by Construction Manager.** The Construction Manager has the right to terminate this Agreement if the Council does not fulfill its material obligations under this Agreement and fails to cure a default of such material obligations within sixty (60) days, or if the default cannot be cured within sixty (60) days, to commence to cure a default, diligently pursue the cure, and complete the cure within a reasonable time. This sixty (60) day cure period begins to run only after the Council's receipt of a written notice and demand from Construction Manager to the Council to cure a default of a material obligation(s).
- 13.5. Except as indicated in this Article, termination will have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination.
- 13.6. **Suspension of Project.** The Council may, in its sole discretion, suspend the Project by written notice. The Construction Manager will be compensated for Services performed prior to notice of suspension.

- 13.6.1. If the Project is suspended by the Council for less than one hundred and eighty (180) consecutive days, the Construction Manager will reduce or suspend its services as directed by the Council.
- 13.6.2. If the Project is suspended by the Council for more than one hundred and eighty (180) consecutive days, then when the Project is resumed, the schedule will be adjusted and the Construction Manager's compensation will be equitably adjusted to provide for expenses incurred in the resumption of the Construction Manager's Services.
- 13.6.3. Upon resumption of the Project after suspension, the Construction Manager will take all reasonable efforts to maintain the same Project personnel.

Article 14. INDEMNITY

- 14.1. Construction Manager shall indemnify, protect, and hold free and harmless the State, the Judicial Council of California, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their agents, representative, officers, consultants, employees, representatives, and volunteers (the "indemnified parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, delays, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Construction Manager, its directors, officials, officers, employees, contractors, subcontractors, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. This indemnity excludes Construction Manager's liability as to the active or sole negligence or willful misconduct of the Council.
- 14.2. Construction Manager shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Construction Manager, its directors, officials, officers, employees, contractors, subcontractors, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. Construction Manager must pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties in any Claim. Construction Manager must also reimburse Council for the cost of any settlement paid by Council arising out of any Claim. Construction Manager must reimburse the indemnified parties for any and all legal expenses and costs, including attorneys' fees, expert witness fees and consultant fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided to the extent caused by this agreement to indemnify. Construction Manager's obligation to indemnify is not restricted to insurance proceeds, if any, received by the indemnified parties. The Council has the right to accept or reject any legal representation that Construction Manager proposes to defend the Indemnified Parties.

Article 15. UNION ORGANIZING

Construction Manager, by signing the Agreement, hereby acknowledges the applicability of Government Code section 16645 through section 16649 to the Agreement. Construction Manager will not assist, promote or deter union organizing by employees performing work on a Council contract, including a public works contract. No Council funds received under the Agreement will be used to assist, promote or deter union organizing. Construction Manager will not, for any business conducted under the Agreement, use any Council property to hold meetings with employees or supervisors, if the purpose of those meetings is to assist, promote or deter union organizing, unless the Council property is equally available to the general public for holding meetings. If Construction Manager incurs costs, or makes expenditures to assist, promote or deter union organizing, Construction Manager will maintain records sufficient to show that no reimbursement from Council funds has been sought for these costs, and that Construction Manager must provide those records to the Attorney General upon request.

Article 16. SAFETY

- 16.1. Construction Manager shall retain full responsibility for the safety of all persons employed or contracted by Construction Manager, Subconsultants, or suppliers.

- 16.2. Construction Manager must comply with the safety and security standards and provisions of all applicable local, state and federal laws and building and construction codes related to performing its Services, including the provisions of Title 8 of the California Code of Regulations, California Construction Safety Orders and all revisions, amendments and regulations thereto.
- 16.3. **Security.** Construction Manager must ensure that prior to any person employed or contracted by Construction Manager, Subconsultants, or suppliers enters a Project site, that person will only be allowed on the Project site when in full compliance with the “Owner’s Badge, Escort and Entry Policy” attached hereto as **Exhibit “H.”**

Article 17. DRUG-FREE WORKPLACE

By signing the Agreement, the Construction Manager certifies, under penalty of perjury under the laws of the State of California, that the Construction Manager will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.). No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on Council property. No visitor or contractor is to use drugs on these sites. The Construction Manager’s indemnity obligations of the Agreement include the Construction Manager’s obligation to enforce and maintain a drug free workplace.

Article 18. RESPONSIBILITIES OF THE COUNCIL

- 18.1. The Council will provide to the Construction Manager complete information regarding the Council’s requirements for the Project.
- 18.2. The Council will provide to the Construction Manager a legal description of the Project site and all reports, surveys, drawings, and tests in the Council’s possession that concern the conditions of the Project site.
- 18.3. The Council will examine the documents submitted by the Construction Manager and will render decisions so as to avoid unreasonable delay in the process of the Construction Manager’s Services.
- 18.4. The Council will retain design professional(s) whose services, duties and responsibilities will be described in written agreement(s) between the Council and design professional(s).
- 18.5. The Project Manager will be available during normal business hours and as often as may be required to render decisions and to furnish information in a timely manner.

Article 19. LIABILITY OF COUNCIL

- 19.1. Other than as provided in this Agreement, Council’s obligations under this Agreement are limited to the payment of the Fee provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event will Council be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.
- 19.2. Council shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Construction Manager, or by its employees, even if the equipment was furnished or loaned to Construction Manager by Council.
- 19.3. The Construction Manager hereby waives any and all claim(s) for recovery from the Council under this Agreement, which loss or damage is covered, whether paid or unpaid, by valid and collectible insurance policies or programs of self-insurance. Construction Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver extends to claims paid, or expenses incurred, by Construction Manager’s insurance company on behalf of the Council.
- 19.4. Neither the Council, nor any other officer or employee of the Council will be personally responsible for liabilities arising under the Agreement.

Article 20. CONSTRUCTION MANAGER’S INSURANCE

- 20.1. **General Requirements.** General Requirements for Construction Manager's Insurance:

- 20.1.1. Construction Manager must maintain the required insurance for its operations with an insurance company or companies that are rated “A-VII” or higher by A. M. Best’s key rating guide, and are authorized to do business in the State of California.
- 20.1.2. For all insurance policies required by this Article, the Construction Manager must declare any deductible or self-insured retention (SIR). Any deductible or SIR must be clearly stated on the appropriate certificate of insurance.
- 20.1.3. If self-insured, the Construction Manager agrees to administer its self-insurance program in a commercially reasonable manner so as to ensure the availability of funds to cover losses required to be insured against by Construction Manager under the terms of this Article.
- 20.1.4. Construction Manager, prior to commencement of the Work under this Agreement, must provide the Council with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the Council, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance and signed insurance policy endorsement must specifically provide verification that the State of California, the Judicial Council of California, the Superior Court of California in the County in which the Project is located, and their respective elected and appointed officials, judges, officers, and employees have been added as additional insureds on the insurance policy being referenced.
- 20.1.5. The Certificates of Insurance must be addressed as follows:
- Capital Program Risk Management
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94012-3688
- 20.1.6. All insurance policies required under this Article must be in force until the end of the TERM of this Agreement or longer, as required herein.
- 20.1.7. If the insurance expires during the Term of the Agreement, the Construction Manager must immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsements, or it may be declared in breach of Contract. The Council reserves the right to withhold all progress payments until the breach is cured to the satisfaction of the Council. Construction Manager must provide renewal insurance certificates and signed policy endorsements to the Council no later than ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements.
- 20.1.8. In the event Construction Manager fails to keep in effect at all times the specified insurance coverage, the Council may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of that event, subject to the provisions of this Agreement.
- 20.1.9. The insurance required by the “Insurance Requirements” in this Article, as well as any excess liability or umbrella liability insurance that Construction Manager maintains in compliance with the terms of this Article, with the exception of Professional Liability insurance, must be endorsed to include the State of California, the Judicial Council of California, the Superior Court of California in the County in which the Project is located, and their respective elected and appointed officials, judges, officers, and employees as additional insureds, but only with respect to liability assumed by Construction Manager under the terms of this Agreement or liability arising out of the performance of the Services.
- 20.1.10. Construction Manager, and any insurer providing insurance required under the terms of this Article, must waive any right of recovery or subrogation it may have against the State of California, the Judicial Council of California, the Superior Court of California in the County in which the Project is located, and their respective elected and appointed officials, judges, officers, and employees for direct physical loss or damage to the Work, or for any liability arising out of the Services performed by Construction Manager under this Agreement.
- 20.1.11. All insurance policies required under this Article must contain a provision that coverage will not be

materially changed or cancelled without thirty (30) days prior written notice to the Council.

- 20.1.12. Construction Manager is responsible for and is not permitted to recover from the State of California, from the Judicial Council of California, or from the Superior Court of California in the County in which the Project is located, any deductible or self-insured retention that is connected to the insurance required under this Article.
- 20.1.13. The insurance required under this Article must be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California, the Judicial Council of California, the Superior Court of California in the County in which the Project is located.
- 20.1.14. The cost of all insurance required by this Article is the sole responsibility of the Construction Manager and is part of the Construction Manager's Fee.
- 20.1.15. Construction Manager must require insurance from its Subconsultants in substantially the same terms and conditions as required of the Construction Manager herein and with limits of liability that, in the opinion of the Construction Manager, are sufficient to protect the interests of the Construction Manager, State of California, the Judicial Council of California, and the Superior Court of California in the County in which the Project is located.
- 20.2. **Insurance Requirements.** Throughout the term of the Agreement, with the exception of Professional Liability insurance, the Construction Manager must maintain at a minimum and in full force and effect, the following insurance:
- 20.2.1. **Professional Liability.**
- 20.2.1.1. Professional Liability Insurance to include coverage for any act, error, or omission committed or alleged to have been committed in the performance of the Services. This insurance must cover the Construction Manager for two million dollars (\$2,000,000) per claim and annual aggregate limit.
- 20.2.1.2. Professional Liability Insurance is to continue through completion of construction plus three years thereafter and if provided on a "claims made" basis include a retroactive date of no later than the Effective Date of the Agreement.
- 20.2.2. **Commercial General Liability.** Commercial General Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) for off Project site operations written on an occurrence form with limits of not less than \$5,000,000 per occurrence and a \$5,000,000 per location annual aggregate limit of liability. The policy must include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance must apply separately to each insured against whom a claim is made or lawsuit is brought subject to the insurance policy limit of liability.
- 20.2.3. **Commercial Automobile Liability.** Automobile liability insurance with limits of not less than \$1,000,000 per accident. This insurance must cover liability arising out of the operation, use, loading or unloading of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the Work.
- 20.2.4. **Workers' Compensation.** Statutory workers' compensation insurance for all of the Construction Manager's employees who are engaged in providing the Services, including special coverage extensions where applicable and employer's liability insurance with limits not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.

Article 21. NONDISCRIMINATION/NO HARASSMENT CLAUSE

- 21.1. **Nondiscrimination.** During the performance of this Agreement, Construction Manager and its Subconsultants must not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), marital status, age (over 40), sex, or sexual orientation. Construction Manager

must ensure that the evaluation and treatment of employees and applicants for employment are free of discrimination.

- 21.2. **No Harassment.** During the performance of this Agreement, the Construction Manager and its Subconsultants must not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Construction Manager or its Subconsultants interact in the performance of this Agreement. Construction Manager and its Subconsultants must take all reasonable steps to prevent harassment from occurring.
- 21.3. **FEHA.** Construction Manager must comply with applicable provisions of the Fair Employment and Housing Act, California Government Code section 12900 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, section 11000 et seq. The applicable regulations of the Fair Employment and Housing Council implementing California Government Code section 12900 et seq., set forth in chapter 5 of division 4.1 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- 21.4. Construction Manager must include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.
- 21.5. Construction Manager must not enter into any subcontract with any person or firm decertified from State contracts pursuant to Government Code section 12990.

Article 22. CONSTRUCTION MANAGER'S USE OF COMPUTER SOFTWARE

By execution of the Agreement, the Construction Manager certifies that it has appropriate systems and controls in place to ensure that Council funds will not be used in the performance of the Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

Article 23. COVENANT AGAINST CONTINGENT FEES

Construction Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Construction Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Construction Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Council has the right to annul this Agreement without liability, or in its discretion, to deduct from the Fee or consideration or otherwise recover, the full amount of that fee, commission, percentage fee, gift, or contingency.

Article 24. ENTIRE AGREEMENT/MODIFICATION

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Construction Manager is entitled to no other benefits than those specified herein. No changes, amendments, or alterations are effective unless in writing and signed by both Parties. Construction Manager specifically acknowledges that in entering this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others.

Article 25. NON-ASSIGNMENT OF AGREEMENT

This Agreement is intended to secure the specialized services of the Construction Manager. Construction Manager must not assign, transfer, delegate or subcontract any interest therein without the prior written consent of Council. Any assignment, transfer, delegation or subcontract without the Council's prior written consent will be considered null and void. There shall also be no voluntary or involuntary assignment, either by operation of law or demand of a third party that is binding on the Council without the Council's prior, written consent.

Article 26. CALIFORNIA LAW / VENUE

- 26.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement will be determined and governed by the laws of the State of California. The Construction Manager consents to personal jurisdiction in California.

- 26.2. Venue for all litigation relative to the formation, interpretation, and performance of this Agreement will be in the County in which the Project is located. Construction Manager waives California Code of Civil Procedure section 394.

Article 27. ALTERNATIVE DISPUTE RESOLUTION

- 27.1. **Informal Negotiations.** The Parties must make a good faith attempt to promptly resolve all disputes by informal negotiation.
- 27.2. **Demand.** If a dispute is not settled pursuant to informal negotiations, the Party submitting a dispute (“Submitting Party”) must make written demand (“Demand”) in the form of a Notice to the Party receiving the Demand (“Receiving Party”). The Demand must be supported by detailed factual information and supporting documentation, including the following information:

27.2.1. State the specific Agreement provisions on which the Demand is based; and

27.2.2. If the Demand regards a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand.

The Demand must include a written statement signed by an authorized representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested accurately reflects the adjustment for which the Submitting Party thinks the Receiving Party is responsible.

- 27.3. **Response to Demand.** The Receiving Party must within fourteen (14) days, provide a written response (“Response”) to the Submitting Party. The Response must state whether the Receiving Party:

27.3.1. Accepts or rejects the Demand or

27.3.2. Needs any additional information in order for it to fully analyze the Demand.

The Submitting Party must promptly comply with Receiving Party’s request for additional information. Any delay caused by Submitting Party’s failure to respond to a request for additional information shall extend the period within which the Receiving Party must provide the Response. In no event, however, will the time period for a Response be extended beyond thirty (30) days from the date the Receiving Party receives the Demand. Failure of the Receiving Party to provide a Response within this time period will be deemed a rejection of the Demand by the Receiving Party.

- 27.4. **Senior Level Negotiations.** If the Demand remains unresolved after the time period for a Response, the Parties must attempt to resolve the Demand by negotiations between assigned representatives of the Parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The Parties must make a good faith effort to resolve the Demand within a period of thirty (30) days after the time period for a Response.

- 27.5. **Mediation.** If the Demand is not resolved by negotiations of the Parties’ assigned representatives, the Parties must make a good faith attempt to promptly resolve the dispute through mediation prior to either Party initiating an action in court.

- 27.6. **Confidentiality.** To the extent permitted by applicable law, all discussions and negotiations conducted pursuant to this Article are confidential and will be treated as compromise and settlement negotiations to which California Evidence Code section 1152 applies. Mediation will be confidential and will be subject to the provisions of California Evidence Code sections 703.5 and 1115 through 1128.

- 27.7. **Continuation of Work.** Pending final resolution of any dispute hereunder, the Parties must continue to diligently perform each Party’s respective obligations set forth in this Agreement.

- 27.8. **Notices.** All written notices required under this Article must be made pursuant to the “Communications / Notice”

provision of this Agreement.

Article 28. SEVERABILITY

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired or invalidated thereby.

Article 29. EMPLOYMENT STATUS

- 29.1. Construction Manager will, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow Council to exercise discretion or control over the professional manner in which the Construction Manager performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Construction Manager must be provided in a manner consistent with all applicable standards and regulations governing those Services.
- 29.2. Construction Manager understands and agrees that the Construction Manager's personnel are not and will not be eligible for membership in or any benefits from any Council group plan for hospital, surgical or medical insurance or for membership in any Council retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a Council employee.
- 29.3. Should Council, in its discretion, or a relevant taxing authority (e.g., the Internal Revenue Service, the State Employment Development Department, etc.) determine that Construction Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement will be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Construction Manager which can be applied against this liability). Council will then forward those amounts to the relevant taxing authority.
- 29.4. Should a relevant taxing authority determine a liability for past Services performed by Construction Manager for Council, upon notification of that fact by Council, Construction Manager must promptly remit the amount due or arrange with Council to have the amount due withheld from future payments to Construction Manager under this Agreement (and offsetting any amounts already paid by Construction Manager which can be applied as a credit against that liability).
- 29.5. A determination of employment status pursuant to the preceding two paragraphs will be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Construction Manager shall not be considered an employee of Council. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction Manager agrees to a reduction in Council's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of Council under this Agreement will not be greater than they would have been had the court, arbitrator, or administrative authority determined that Construction Manager was not an employee.
- 29.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 30. WARRANTY OF CONSTRUCTION MANAGER

- 30.1. Construction Manager warrants that the Construction Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the Services that it has herein agreed to perform.
- 30.2. Construction Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the Work of this Agreement.
- 30.3. Construction Manager certifies that it is aware of the provisions of the California Labor Code including, without limitation, section 1720, et seq., section 1770, et seq., and section 1771.1 that require the payment of prevailing

wage rates to certain classes of trade labor, the registration of contractors, subcontractors and Subconsultants, and other requirements. The Construction Manager agrees to fully comply with and to require its Subconsultants to fully comply with all applicable prevailing wage requirements of the California Labor Code.

Article 31. AUDIT

Construction Manager must establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Construction Manager transacted under this Agreement. Construction Manager shall retain these books, records, and systems of account during the Term of this Agreement and for twelve (12) years thereafter.

Pursuant to Government Code Section 8546.7, this Agreement is subject to examination and audit of the State Auditor as specified in the code. Construction Manager shall permit the Council, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and original records, and to make audit(s) of all billing statements, invoices, original records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the Council shall give reasonable prior notice to Construction Manager and will conduct audit(s) during Construction Manager’s normal business hours, unless Construction Manager otherwise consents.

Article 32. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS

Construction Manager is responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over Five Thousand Dollars (\$5,000).

Article 33. COMMUNICATIONS / NOTICE

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

<u>Council</u> Capital Program Operations & Programs Division Judicial Council of California 455 Golden Gate Avenue, San Francisco, CA 94102-3688 ATTN: Deepika Padam	<u>Construction Manager</u> _____, Inc. _____ _____, CA _____ ATTN: _____
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Any notice personally given is effective upon receipt. Any notice sent by overnight delivery service is effective the day after delivery. Any notice given by mail is effective five (5) days after deposit in the United States mail.

Article 34. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

This Project has a Disabled Veteran Business Enterprise (“DVBE”) participation requirement of three percent (3%). The Construction Manager must document its DVBE compliance by completing the DVBE Participation Form set forth as **Exhibit “G.”**

Article 35. OTHER PROVISIONS

- 35.1. The Construction Manager is responsible for the cost of construction change orders caused directly by the Construction Manager’s willful misconduct or negligent acts, errors or omissions. Without limiting Construction Manager’s liability for indirect or consequential cost impacts, the direct costs for which the Construction Manager is liable will equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared construction documents.
- 35.2. This Agreement shall not be construed against any party as the drafter of the Agreement.

EXHIBIT “B”

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER FOR CONSTRUCTION OF A COURT FACILITY

Construction Manager shall provide professional construction management services relating to the following Project:

1. GENERAL DESCRIPTION OF THE PROJECT

- 1.1. The New Modesto Courthouse project for the Superior Court of California-County of Stanislaus is a new courthouse building comprised of approximately 308,964 gross square feet on eight floors plus a basement. The program includes twenty-seven courtrooms with associated chambers, jury rooms, administrative areas, public spaces, building support, detention areas at courtrooms and central holding as well as enclosed secure parking for thirty-three cars. The project will include shelling five of the twenty-seven court sets (courtrooms plus related spaces as defined in the Standards.) The acquired site is approximately 2.8 acres bounded by 9th Street, H Street, 10th Street and I Street. Site development includes demolition of existing buildings as well as on-grade parking for approximately 43 cars and other site related work associated with the new courthouse.
- 1.2. The project is currently authorized for the Preliminary Plans Phase; has completed the Schematic Design and is currently in Design Development. Construction Management Services will begin with an independent cost estimate of the 50% Design Development documents.
- 1.3. This project includes but is not limited to all building structure, exterior enclosure systems, interior fit out improvements, mechanical, electrical, low voltage, lighting, telecommunication, audio visual, and security systems.
- 1.4. The site development includes but is not limited to existing building abatement, demolition, site preparation, underground dry and wet utilities, landscape, hardscape, site walls, auto, bus and service circulation drives, ramps to sally port infrastructure, surface parking for approximately 80 cars, security barriers, fencing and gates.
- 1.5. The Construction Cost for the proposed Project is \$159,048,754.00 (CCCI 6055, July 2015).
- 1.6. The Project includes the furnishing and installation of interior furniture, furnishings, and fixtures.
- 1.7. The Project is currently at the **Preliminary Plans/ Design Development** stage of design.
- 1.8. **LEED.** The Project will be designed to be certified “Silver” by the U.S. Green Building Council (USGBC), who oversees in the Leadership in Energy and Environmental Design (LEED) Program.
- 1.9. **Project Goals.** The following goals are for the overall design, construction and commissioning of the new courthouse that is the subject of the Project. Construction Manager’s scope of Services is intended to further these goals, whether or not the Construction Manager is primarily responsible for achieving all of these goals. This Project will be consistent with the California Trial Court Facilities Standards, as adopted by the Judicial Council of California and in effect as of the Effective Date. The California Trial Court Facilities Standards is available at www.courts.ca.gov. The purpose of the standards are to produce high performing public buildings with a positive architectural legacy that reflects the Judicial Council’s commitment to providing equal access to justice. These goals have been developed early in the Project process and will be reevaluated throughout the design and construction phases and at the completion of the Project to determine whether the Project goals were achieved. The specific goals for this Project, as determined by the Council, are:
 - 1.9.1. **Design** – The Courthouse will function equally well as a setting for the delivery of justice, as a public services center, and as a community landmark.
 - 1.9.2. **Schedule and Cost** – The Project design and construction will be completed within the approved schedule

and within the authorized funds. Where possible, project tasks should be concurrent.

- 1.9.3. **Courthouse Life Span** – This facility should function effectively for several generations. The design shall support a logical and cost effective approach to incremental construction without undue disruption of court operations. The design shall accommodate change over time in court operations. Seismic design shall incorporate innovative and cost effective measures to ensure building stability and longevity.
 - 1.9.4. **Design Quality Assurance** – Periodic peer review shall be sought throughout the phases of the Project for enhanced quality assurance.
 - 1.9.5. **Sustainable Design/LEED “Silver” Certification** - The Project shall be designed for sustainability and to the standards of the United State Green Building Council’s (USGBC) LEED™ “Silver” rating. The project will receive certification by the USGBC as well as participate in the incentives/rewards program sponsored by the local utility company.
 - 1.9.6. **Accessibility** – Design of building shall reflect Judicial Council’s mission to provide “access to justice” for all, including equal access and fairness with the highest quality of justice and service to the public. The building shall incorporate universal design concepts, to make the facility accessible to all users without treating persons with disabilities differently.
 - 1.9.7. **Security** – The design will provide for efficient and safe court operations in a cost effective manner. Security measures for the building and site shall meet the requirements of the Council and County’s Sheriff.
 - 1.9.8. **Durability, Quality and Efficiency** – Materials and systems for the building and site should be chosen with regard to the amount of traffic, use and visibility of each space or area. Materials should be durable, operationally and energy efficient, easily cleaned/maintained, and environmentally friendly.
 - 1.9.9. **Commissioning** – The Project shall include commissioning to ensure that the building systems perform interactively in accord with the design intent.
- 1.10. **Project Funding**
- 1.10.1. Funding of this Project for the Preliminary Plan Phase was included in the 2014 - 15 State Budget Act.
 - 1.10.2. Funding for future Phases of the Project is dependent upon appropriation by the California Legislature and allocation by the Judicial Council, and/or sale of lease revenue or other bonds, of sufficient funds to support the activities described in this Agreement.
- 1.11. **Preliminary Project Schedule [Estimated dates]**
- 1.11.1. Study and Acquisition Phase
 - Completed
 - 1.11.2. Preliminary Plans / **Schematic Design Phase**
 - Completed
 - 1.11.3. Preliminary Plans / **Design Development Phase**
 - Start date: 2/15/2017
 - Completion date: 03/2018
 - 1.11.4. Working Drawings Phase
 - Start date: 07/2018

- Completion date: 5/2019

Bidding

- Start date: 6/2019
- Completion Date: 9/2019

1.11.5. Construction Phase

- Estimated start date of Construction: 1/2020
- Estimated date for end of Construction: 8/2022
- Move-In: 9/2022

1.11.6 Project Completion/Closeout Phase

- Estimated start date of Project Completion/Closeout Phase : 9/2022
- Estimated completion date of Project Completion/Closeout Phase: 9/2023

2. GENERAL SERVICES

2.1. Oversight:

- 2.1.1. Construction Manager must work with the Design Team; manage work related to the Project; monitor the Contractor(s); and advise the Project Manager as to all material developments in the Project.
- 2.1.2. Construction Manager must develop reporting and forecasting methods in compliance with Council standards, procedures and templates. Reports include but are not limited to: monthly progress reports, review of schedules, cost control reports, and budget status reports. All proposed reporting and forecasting methods and report formats must be approved by the Project Manager, and after that approval, Construction Manager must implement the approved reporting and forecasting methods.
- 2.1.3. The General Services requirements govern over all Phases of the Project to the extent applicable.
- 2.1.4. Construction Manager must perform all of its Services indicated in this Agreement related to the Project, including, without limitation, managing the work of the Contractor(s), regardless of how that entity is identified, how it is procured or during which Phase it begins to work on the Project.
- 2.1.5. Construction Manager must consult with and advise the Director and the Project Manager regarding possible construction delivery methods, including advantages and disadvantages of Design-Bid-Build, CMR, and Design/Build for some or all components of the Project.

- 2.2. **Compliance with Council Policies & Manuals:** In its performance of all Services, Construction Manager must ensure that its practices, procedures, directions and actions are compliant and consistent with the Council's most recent policies and manuals, including, without limitation, and to the extent adopted by the Council, the most recent Program Management Manual, Project Execution Manual and Project Administration Manual ("PMM/PEM/PAM"). Construction Manager must have at least one copy of each of these manuals available for reference at the Project site at all times.

- 2.3. **Communication.** As directed by the Project Manager, Construction Manager will be the primary point of contact with the Contractor(s) and will either initiate, respond to, or be part of all communications between Council, the Contractor(s) and the Design Team. In consultation with the Project Manager and according to Council approved policies, procedures, forms, and reporting requirements for the Project, Construction Manager will establish a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.

- 2.4. **Commissioning.** Construction Manager shall manage, coordinate and oversee commissioning services on the Project (including working with Council's commissioning agent), including, without limitation the following:
- 2.4.1. Schedule, manage, coordinate and oversee the inspection, review and verify that the performance of the Project and its systems meet or exceed the design intent.
 - 2.4.2. Assure the participation and cooperation of the Council, the Inspector, the Design Team, the Contractor and all of Contractor's Subcontractors and Suppliers as required to complete the commissioning process.
 - 2.4.3. Schedule, manage, coordinate and oversee Council's commissioning agent's verification of systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the Project Inspector for future resolution.
 - 2.4.4. Schedule, coordinate and oversee documented testing of system parameters, under actual or simulated operating conditions.
 - 2.4.5. Schedule, coordinate and oversee device tests, calibration and functional performance test procedures.
 - 2.4.6. Schedule, manage, coordinate and oversee the preparation of a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues, and the date of final resolution as confirmed by the Construction Manager and Inspector. Deficiencies are defined as those issues where products execution or performance does not satisfy the Project Contract Documents and/or the design intent.
 - 2.4.7. Final performance commissioning of systems will begin only after the appropriate Contractor certifies that systems are 100% complete and ready for functional testing.
 - 2.4.8. Schedule, manage, coordinate and oversee special facility start-up processes to bring the facility to a fully operational state, free of deficiencies in an efficient and timely manner.
 - 2.4.9. After occupancy, oversee Council's commissioning agent optimize systems under "live" operating conditions and ensure correction of any outstanding construction deficiencies.
- 2.5. **Management Team.** Construction Manager must provide and maintain a qualified, experienced and competent management team on the Project site.
- 2.6. **Coordination**
- 2.6.1. **Design.** Construction Manager is not the Architect of the Project, but as indicated further herein, Construction Manager will perform specific Services during all Phases of the Project to assist, review, coordinate, opine and cooperate with the Design Team and all other design professional(s) of the Project, and Contractor(s), if applicable.
 - 2.6.2. **Construction.** Construction Manager is not the Contractor of the Project. As provided for herein, Council will contract with the Contractor(s) for the actual construction of the Project. Construction Manager will perform the specific Services set forth herein during all Phases of the Project to manage the construction of the Project and review, coordinate, and cooperate with the Contractor(s) of the Project.
 - 2.6.3. **Plan Review.** In addition to performing its own plan reviews, constructability reviews, and value analyses, Construction Manager must analyze the Council's third-party code review and work with Design Team and Council to finalize and correct deficiencies and mistakes in the design documents.
 - 2.6.4. **Risk Management.** Construction Manager must meet with the Project Manager and with the Council's Risk Management Unit and Quality Compliance Unit staff and consultants to discuss, and make recommendations regarding, the development and implementation of an effective risk management program for the Project.
- 2.7. **Subconsultants.** Construction Manager must contract for, at Construction Manager's expense, Subconsultants, to

the extent deemed necessary for performance of Construction Manager's Services. Nothing in the foregoing shall create any contractual relationship between the Council and any Subconsultants employed by the Construction Manager under terms of this Agreement.

- 2.8. **Cooperation.** Construction Manager must cooperate with others employed by or contracted with the Council for the design, coordination or management of other work related to the Project. These Services include but are not limited to establishing schedules for these entities (e.g., soils consultant(s), hazardous materials testing and other consultant(s), etc.), and review of costs, estimates, and invoices of each. Construction Manager must schedule and attend regular meetings with the Project Manager, the Design Team and the Contractor(s).
- 2.9. **Regulatory Agencies.** Construction Manager must advise the Project Manager as to the regulatory agencies that have jurisdiction over the Project, and coordinate with and implement the requirements of the regulatory agencies. Construction Manager must coordinate transmittal of documents to regulatory agencies for review and advise the Project Manager of potential problems in completion of such reviews.
- 2.10. **Design Components.** Construction Manager must consult with the Project Manager and Design Team in the selection of materials, building systems, and equipment. Provide recommendations on construction feasibility actions designed to minimize adverse impacts of labor or material shortages, time requirements for procurement, installation and construction completion, and factors related to construction cost, including estimates of alternative designs and materials.
- 2.11. **Taking Minutes.** Construction Manager must chair, conduct and take minutes of periodic meetings between Project Manager and its design professional(s), of the Site Committee meetings, of other meetings during the course of the Project which are not already determined to be the responsibility of the CMR or Architect and, if requested by the Project Manager, the Council's Court Facilities Advisory Committee and its subcommittees. Construction Manager shall invite the Council and/or its representative to participate in these meetings. Construction Manager must keep meeting minutes to document comments generated in these meetings, but is not responsible for analyzing design issues raised in said meetings. CMA shall be responsible for review, comment and corrections to all minutes generated by all other parties involved in the project.
- 2.12. **Accuracy of Work Product.** Construction Manager is responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other Services furnished by Construction Manager under this Agreement as well as coordination with all Master Plans, studies, reports and other information provided by the Council to Construction Manager. Construction Manager must, without additional compensation, correct or revise any errors or omissions in the deliverables it generates.
- 2.13. **Meeting Logs.** Construction Manager must maintain logs of all meetings, site visits or discussions held in conjunction with the work of this Project, with documentation of major discussion points, observations, decisions, questions or comments. These logs and documents must be furnished to the Project Manager and/or its representative(s) for inclusion in the overall Project documentation.
- 2.14. **Records Management Protocol.** Construction Manager shall adhere to the Council's Records Management Protocol and utilize the Council's management information system(s) ("MIS"), as developed, to manage the Project and all communications between the Council, the Construction Manager, the Design Team, the Contractor(s) and other parties involved in the Project.
 - 2.14.1. Construction Manager shall utilize the MIS to support such functions as planning, organizing, scheduling, budgeting, reporting progress and identifying and documenting problems and solutions for the Project. The MIS shall allow for monthly progress reports to the Council regarding the schedule for the Project.
- 2.15. **Monthly Reports.** Construction Manager must provide to the Project Manager with five (5) paper copies and an electronic copy of the monthly Project report in strict conformance with the format and template provided by the Council. If the Council has not provided Construction Manager with a template for this purpose, then Construction Manager must provide its own template to the Council for approval, two (2) weeks prior to the due date of the Construction Manager's first Monthly Report. When the Council does provide its template, no matter at what phase of the Project, the Construction Manager shall immediately begin using that template. The monthly report must be submitted by the 5th calendar day of each month and must contain complete and accurate information through the last day of the previous month. Monthly reports that include, without limitation:

- 2.15.1. The status of the Project and an update on Project activities;
 - 2.15.2. A comparison of the Project Budget to costs incurred through the date of the report;
 - 2.15.3. A comparison of the Project schedule to the work actually completed through the date of the report;
 - 2.15.4. Any revision to the Project schedule or Project Budget made during the month covered by the report;
 - 2.15.5. A summary of change orders made during the month covered by the report;
 - 2.15.6. A list of all pending change orders and all outstanding issues requiring action or approval by the Council;
 - 2.15.7. The status of RFIs;
 - 2.15.8. The status of submittals;
 - 2.15.9. The status of any governmental requirements and activities required to facilitate approval of the Project; and
 - 2.15.10. Any other reports concerning the Project as the Council may reasonably request.
 - 2.15.11. Pictures, videos and other documentation to form the basis for a visual representation and record of the progress of the Project.
- 2.16. **Construction Cost.** In addition to its other duties related to budgeting and estimating, the Construction Manager must perform the following tasks related to the Construction Cost.
- 2.16.1. Construction Manager must independently develop, review, validate and reconcile the Construction Cost with the Design Team, the Project Manager and, if selected at that time, the Contractor(s), at the completion of each of the following Phases. The format used by the Construction Manager and all others performing independent Construction Cost estimates must be the same. The format to be used must be pre-approved by the Project Manager before the start of each estimate for each Phase. Independent estimate preparation and reconciliation will occur as needed, but at least at the following times:
 - 2.16.1.1. At the middle of the Preliminary Plans / 50% Design Development Phase
 - 2.16.1.2. At the end of the Preliminary Plans / 100% Design Development Phase
 - 2.16.1.3. At 50% through the Working Drawings Phase (NYA)
 - 2.16.1.4. At 90% through the Working Drawings Phase (NYA)
 - 2.16.1.5. Prior to certification that Working Drawings are 100% complete. (NYA)
 - 2.16.1.6. If Contractor submits proposed change orders or proposed requests for use of Project Contingency or similar contingency in the Construction Documents, Construction Manager must perform the same review and validation of the costs of those items so that the Council can evaluate the sufficiency and necessity of each proposed change order or request for use of contingency funds.
 - 2.16.2. Construction Manager will provide local market cost estimates with backup on primary systems and materials.
 - 2.16.3. The Construction Cost may include allowances, contingencies and other amounts. The Council expects that the use of these designations will decrease by the end of the Working Drawings Phase.
 - 2.16.4. Construction Manager must work cooperatively with the Design Team and the Contractor(s) so that the construction cost of the work designed by the Design Team will not exceed the Construction Cost, as may be adjusted with the Council's written approval.
 - 2.16.5. Construction Manager must notify the Project Manager if Construction Manager believes the construction cost of the work as designed by the Design Team will exceed the Construction Cost. The Construction Manager, however, must not perform and is not responsible for any design or architectural services.
- 2.17. **Project Budget.** At the same time that it is developing, reviewing and reconciling the Construction Cost, the Construction Manager must perform the same for the Project Budget. The Construction Manager must coordinate with the Design Team and the Project Manager while performing these activities.

- 2.18. **Court Cost Reduction Report.** Construction Manager must thoroughly review and ensure that its Services are in compliance with the Court Cost Reduction Report and that it utilizes the cost reduction efforts, recommendations and rationale indicated in the Court Cost Reduction Report. At all times while developing, reviewing and reconciling the Construction Cost and the Project Budget, the Construction Manager must ensure that those budgets do not exceed the limits indicated in the Court Cost Reduction Report and do not, in any way, otherwise violate the requirements of the Court Cost Reduction Report.
- 2.19. **Independent Estimate.** Construction Manager must prepare an independent estimate of all components of the Project Budget at the end of each Phase. This estimate must be based on all costs that a prudent and experienced designer and contractor would incur, as well as known facts, construction tasks, supplemental judgments, and other economic analyses necessary to support the design decision. The cost estimate submitted for 100% Working Drawings Phase will be used as the basis to determine if the Contractor(s)'s proposed price to construct the Project is fair and reasonable and reflects the understanding of the Project requirements and the terms and conditions of the Construction Phase contract.
- 2.20. **CMR Selection.** If the Council utilizes a CMR and a CMR has not yet been selected, Construction Manager must assist on a limited basis the Council in selecting and retaining the CMR, including, without limitation:
- 2.20.1. Reviewing and revising the request for qualifications or other solicitation documents;
- 2.20.2. Assisting the Council in negotiating and drafting the CMR's agreement with the Council to construct the Project.
- 2.21. **Subcontractor Bidding and Negotiation of Guaranteed Maximum Price.** If the Council utilizes a CMR, Construction Manager must assist the Council throughout the subcontractor bidding process, including, without limitation, a review and analysis of subcontractor bids and assisting the Council regarding the negotiations with the CMR with respect to determining the Guaranteed Maximum Price ("GMP") and any necessary or related value engineering.
- 2.22. **Procurement for Design-Bid-Build Project.** If the Council procures the construction of the Project through a Design-Bid-Build process, the Construction Manager will perform the following scopes of work:
- 2.22.1. Develop master bid/award schedule(s) and construction milestones for the Project through the completion of construction, as directed by Council, in coordination with the Design Team and advise and consult with Council. Construction Manager must review, and if appropriate accept, contractor(s)' schedules on behalf of the Council, but must not dictate Contractor(s)'s means and/or methods of performance.
- 2.22.2. Work with the Project Manager and the Design Team to separate the Construction Phase for the Project into bid packages.
- 2.22.3. Make recommendations to the Project Manager for prequalification of potential bidders and if needed manage all aspects of the bidder prequalification process.
- 2.22.4. Conduct pre-bid conferences to familiarize potential bidders with the bid documents, and any special systems, materials or methods and with Project procedures. Receive questions from potential bidders coordinate responses to questions with the Project Manager and the Design Team, and respond to bidder questions by addenda.
- 2.22.5. Prepare bid analyses and advise the Project Manager on compliance of bidders with Council requirements and bid requirements. Report and make recommendations to the Project Manager after review and evaluation regarding Contractor selection.
- 2.22.6. Conduct with the Project Manager, pre-award conferences with each successful bidder including discussion of Contractor(s)'s team members and key success factors for the Project. Construction Manager must advise the Council on the acceptability of contractor(s) for the Project.
- 2.23. **Consultant Selection.** If requested by the Project Manager, Construction Manager must assist the Project Manager and the Council with the process of identifying, soliciting proposals from, and negotiating contracts and/or

amendments to contracts with consultants necessary for the completion of the Project. If requested by the Project Manager, Construction Manager must advise Council and make recommendations concerning the scope of services, the fees and the administration of consultants.

- 2.24. **Best Judgment.** Evaluations of the Council’s Construction Cost, Project Budget, and preliminary and detailed cost estimates prepared by the Construction Manager, must represent the Construction Manager’s best judgment as a professional familiar with the construction industry.
- 2.25. **Project Information.** Construction Manager must provide documentation, pictures, and other information and assistance to the Council for the Council’s use on a website for public access to show Project status.
- 2.26. **Local Government and Utility Company Consultation, Review, Inspection and Approval.** The Council is not subject to local ordinances or regulations, including local building codes, local agency review or inspections (“Local Regulations”) with respect to the Project to the extent that it relates to the design or construction on the Project site. However, the Council is generally subject to Local Regulations with respect to obtaining encroachment permits, utility connections or performing off-site work with respect to the Project. Therefore, to the extent the Council is subject to Local Regulations, Construction Manager must provide to the appropriate local government officials and local utility companies the opportunity to review the documents required and applicable for compatibility with those specific Local Regulations. This must begin no later than the Preliminary Plans/Schematic Design Phase so that the design can easily respond to appropriate recommendations. Construction Manager must maintain a schedule of those permits, reviews, and inspections that are required for the design and construction of the Project, and ensure that the Council, its Design Team, and Contractor(s) comply with the requirements so as not to delay the completion of the Project.
- 2.27. **State Consultation, Review, Inspection and Approval.** The Council is generally subject to State building codes. To the extent required by applicable law, Construction Manager must provide to the appropriate and applicable state government officials (e.g., the California State Fire Marshal, the Division of the State Architect, the Board of Community Corrections, etc.) the opportunity to review the documents required and applicable for compatibility with those building codes, permits, and inspections. This must begin no later than the Preliminary Plans/Schematic Design Phase so that the design can easily respond to appropriate recommendations. Construction Manager must maintain a schedule of those permits, reviews, and inspections that are required for the design and construction of the Project, and ensure that the Council, its Design Team, and Contractor(s) comply with the requirements so as not to delay the completion of the Project.
- 2.28. **Labor Code Compliance.**
 - 2.28.1. Construction Manager acknowledges and understands that the State monitors and enforces compliance with Labor Code requirements through statutorily-authorized programs. Construction Manager must ensure that the Contractor(s), its subcontractors, and other consultant's providing labor are in compliance with the State's requirements for contractor registration, payment of prevailing wages and use of apprentices in the design and construction of the Project.
 - 2.28.2. Construction Manager also acknowledges that, for purposes of Labor Code section 1725.5, some of its Services may be a public work to which Labor Code section 1771 applies. That portion of the Services is therefore subject to compliance monitoring and enforcement by the Department of Industrial Relations. Construction Manager must comply with Labor Code section 1725.5, including without limitation the registration requirements. Additionally, all Construction Manager’s Subconsultants (as defined as “subcontractors” by Labor Code section 1722.1) must, to the extent required, comply with Labor Code section 1725.5 to be qualified to bid or propose on, be listed in a proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance under this Agreement. Construction Manager represents to the Council that all “subcontractors” (as defined by Labor Code section 1722.1), to the extent required, are registered pursuant to Labor Code section 1725.5.
- 2.29. **Safety.** Construction Manager must provide a qualified person, as defined by the Occupational Safety & Health Administration, to initially and continually review and from time-to-time monitor, the Contractor(s)’s Safety Program.
 - 2.29.1. This shall include a review of all submittals and implementation of the Contractor(s)’s Safety Program and Contractor(s)’s compliance with the safety requirements of the Contractor(s)’s contract documents.

- 2.29.2. The Construction Manager must report to the appropriate Contractor(s) personnel, the Project Manager, and the Council's Risk Manager any observed deviations from the Contractor(s)'s Safety Program, the OCIP; applicable CalOSHA requirements; the Council's most recent PMM/PEM/PAM; and the Council's safety manual and documentation.
 - 2.29.3. Construction Manager has the responsibility and authority to follow-up with a written safety notice to the Contractor(s), and must provide copies of those to the Project Manager and Council's Risk Manager.
 - 2.29.4.
 - 2.29.5. Neither the Construction Manager nor the Council shall be responsible for or have any liability for Contractor(s)'s failure to comply with or enforce Contractor(s)'s Safety Program.
- 2.30. **Storm Water.** Construction Manager must ensure that the Council's qualified storm water developer/ designer prepares a full storm water management program for the Project that is approved by the State Water Resources Control Board, or other applicable agencies. Construction Manager must also ensure that the Design Team and all Project Contractor(s), Project sub-contractor(s) and Construction Manager's Subconsultants comply with any Council-approved storm water management program that is applicable to the Project
- 2.31. **Environmental Requirements.**
- 2.31.1. Construction Manager must provide direction and planning to ensure Project adherence to applicable environmental requirements, laws, regulations and rules such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the Air Quality Management District, the State of California and the Regional Water Quality Control Board.
 - 2.31.2. Construction Manager must ensure that the Project incorporates all requirements of the Council's adopted CEQA document including all mitigation measures in the Mitigation Monitoring Plan and the "project description" set forth in the CEQA document, and that those requirements become part of the scope of the Contractor's work on the Project.
- 2.32. **Scheduling.** In strict conformance with the standardized schedule format provided by the Council, Construction Manager shall prepare, track and report on schedule status for the Project throughout the design and construction phases. If the Council has not provided Construction Manager with a standard format for this purpose, then Construction Manager must provide its own format to the Council for approval, two (2) weeks prior to the due date of the Construction Manager's first schedule submittal. If the Construction Manager provides its own format to the Council for approval, that format must include appropriate design phase and construction phase activities, activity descriptions, and activity logic. When the Council does provide its standard format, no matter at what phase of the Project, the Construction Manager must immediately begin using that format.
- Construction Manager must develop master schedules and milestone schedules for the Project utilizing the standard format, and must report on same each month to the Council. Construction Manager must provide to the Project Manager with five (5) paper copies and an electronic copy of these master schedules and milestone schedules.
- 2.32.1. Construction Manager must ensure that the Contractor fully complies with all its contractual requirements related to providing ongoing schedules, updated schedules, recovery schedules, and related documentation.
 - 2.32.2. Construction Manager must evaluate Contractor's schedules for compliance with Council's deadlines, milestones and completion dates; for logical ties between tasks; for accurate projections for the duration of specific tasks and activities; and related impacts on cost-loaded items and/or earned-value items. Construction shall provide its evaluation in writing to the Council within seven (7) days or earlier to ensure no delay in the Work of the Project.
 - 2.32.3. The Construction Manager must perform the following tasks with respect to Scheduling:
 - 2.32.3.1. If Council provides Construction Manager with a Work Breakdown Structure (WBS) as part of the standard format, Construction manager shall utilize the WBS in its scheduling activities.

- 2.32.3.2. Construction Manager at Risk will be providing cost-loaded scheduling under their agreement with Judicial Council to construct the Project. Construction Manager is expected to review cost-loaded schedules.
- 2.32.3.3. Construction Manager shall incorporate into its scheduling activities any guidelines that the Council provides with respect to establishing construction phase milestones and associated liquidated damages.
- 2.33. **Payment Applications.** Construction Manager must review for accuracy, and prepare a recommendation, and forward to the Project Manager for payment the invoices from the Design Team, the Contractor(s) and other consultants. Construction Manager must provide its reports and information in an electronic format in a form acceptable to the Council.
- 2.34. **Cost Controls.** Construction Manager must prepare and implement methods to budget and track all expenditures on the Project. Construction Manager must generate monthly reports to the Project Manager reflecting this information. If the Council has not provided Construction Manager with a template for this purpose, then Construction Manager must provide its own template to the Council for approval, two (2) weeks prior to the due date of the Construction Manager's first cost control monthly report. When the Council does provide its template, no matter at what phase of the Project, the Construction Manager shall immediately begin using that template.
- 2.35. **Not in Scope / Coordination with Special Consultants.** Construction Manager is **NOT** responsible to perform the following scopes of work or services, but Construction Manager must coordinate the Council's other consultants and vendors that are performing these services (e.g., Construction Manager must establish and maintain a schedule of all environmental and archeological investigations, testing, etc.). In addition, Construction Manager will assist the Council in procuring these scopes of work or services when required.
 - 2.35.1. Ground contamination or hazardous material analysis.
 - 2.35.2. Any asbestos testing, design or abatement.
 - 2.35.3. Historical significance report.
 - 2.35.4. Soils investigation.
 - 2.35.5. Geotechnical hazard report.
 - 2.35.6. Topographic survey, including utility locating services.
 - 2.35.7. Other items specifically designated as the Council's responsibilities under this Agreement.
 - 2.35.8. As-built documentation from previous construction projects.

3. STUDY AND ACQUISITION PHASE – COMPLETED

4. PRELIMINARY PLAN PHASES & WORKING DRAWINGS PHASE

- 4.1. **Provision of Services.** Construction Manager must provide all of the Services in Article 4 with respect to each of the Preliminary Plan Phases and the Working Drawings Phases (including subcontractor bidding and GMP negotiations, if applicable) if and when those Phases are authorized by the Council.
- 4.2. **Meetings.** Construction Manager must attend all planning, programming and master site planning meetings related to the Project.
- 4.3. **Value Analyses.**
 - 4.3.1. Value analysis is expected to be an ongoing process to determine ways to build a more efficient and

economical Project without reducing its quality and meet its goals and objectives.

- 4.3.2. Construction Manager must organize and conduct value analysis workshops with Project Manager, the Design Team and the Contractor(s) (if selected) for the Project and provide value analysis at the following times:
 - 4.3.2.1. At the end of the Preliminary Plans / Design Development Phase
 - 4.3.2.2. At 50% through the Working Drawings Phase (NYA)
 - 4.3.2.3. At 90% through the Working Drawings Phase (NYA)
 - 4.3.3. This evaluation will consist of a review of the proposed materials, equipment, systems and other items depicted in the Design Documents and must be coordinated with the Project Manager, the Council's current design guidelines, the Design Team and the Contractor(s). The Construction Manager will prepare a value analysis report that will document the results of the evaluation and make recommendations to the Project Manager with respect to alternatives, deletions or amendments of proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs and efficiencies. The Construction Manager must provide to the Project Manager, value analysis recommendations and cost/benefit analysis of those recommendations.
 - 4.3.4. This evaluation will ensure that the Construction Cost and the Project Budget will be in full compliance with the Court Cost Reduction Report and utilize the cost reduction efforts, recommendations and rationale indicated in the Court Cost Reduction Report.
 - 4.3.5. This evaluation will also consider the incorporation of "green building" technology and the cost/benefit of that technology and lifecycle costing.
 - 4.3.6. Prior to the value analysis workshop, the Construction Manager and the Design Team will provide all participants with a preliminary list of value analysis items for discussion and order of magnitude estimates of cost both for design and construction.
 - 4.3.7. The workshop will consist of an initial Project design review, research of alternative solutions, and evaluations of alternatives. The workshop will conclude with a review of design and construction costs, benefits of various items selected, and selection of items to be incorporated into the Project design.
 - 4.3.8. The Construction Manager will incorporate the workshop findings into one complete report for submittal to and approval of the Project Manager and Design Team.
- 4.4. **Constructability and Plan Reviews.**
- 4.4.1. The Construction Manager must conduct constructability reviews and site verifications of the Project at the following times:
 - 4.4.1.1. At the end of the Preliminary Plans / Design Development Phase
 - 4.4.1.2. At 50% through the Working Drawings Phase (NYA)
 - 4.4.1.3. At 90% through the Working Drawings Phase (NYA)
 - 4.4.1.4. When Working Drawings are 100% complete (NYA)
 - 4.4.2. The Construction Manager must review the design documents for code compliance, clarity, consistency, constructability and coordination. The results of the review must be provided in writing and in electronic database or spreadsheet format and as notations on the documents to the Project Manager. The Construction Manager must also make recommendations to the Project Manager with respect to constructability, construction cost sequence of construction, construction duration and separation of the contracts for various projects into categories of the work and separate Bid trade packages. However, the Construction Manager is

not responsible for providing, nor does the Construction Manager control, the Project design or the contents of the design documents.

4.4.3. Construction Manager's actions in reviewing the Project design and the design documents and in making recommendations as provided herein are advisory only to the Council. The Design Team members are not third party beneficiaries of the Construction Manager's work described in this paragraph and the Design Team members remain solely responsible for the contents of design drawings and design documents.

4.5. **Site Logistics and Traffic Analysis.** Construction Manager must review Contractor(s)'s site logistics plans, traffic flow diagrams and plans for the performance of the Project, showing the use of designated roadways or street lights, the closing of any roadways, streets and/or sidewalks, and the re-routing of any traffic. Construction Manager must assist in obtaining necessary government approvals required to implement traffic plans.

5. CONSTRUCTION PHASE

5.1. **Administer Construction Phase Activities.** Construction Manager must administer the contract(s) between the Council and the Contractor(s) and all other contracts between the Council and other contractors, consultants, suppliers, and vendor performing work on the Project site, if any. Although Construction Manager's Services include actions indicated herein, the Construction Manager acknowledges that it must consult with, inform, coordinate, and when appropriate seek prior approval of its activities with the Project Manager.

5.2. **Monitor Project.** Construction Manager must monitor the Contractor(s)'s activities and operations to verify that tools, equipment, and labor are furnished and work is performed and completed within the time as required or indicated in the Contractor(s)'s Contract Documents, to achieve the Council's objectives in relation to cost, time and quality, and to the satisfaction of the Council. Construction Manager expressly agrees to verify that the requirements of the Contractor(s)'s contract documents are met, observed, performed, and followed. Construction Manager is not responsible for and must not direct the Contractor(s)'s or other construction contractor(s)' means and methods.

5.3. **Meetings.** Construction Manager must conduct construction meetings for the Project to discuss and resolve such matters as progress, quality and scheduling. These meetings must be held weekly unless Project conditions do not require that frequency. Prepare and promptly distribute minutes. When required by field or other conditions, construction progress, or the quality of workmanship, conduct special construction meetings; record, prepare, and distribute minutes of these meetings to the Project Manager, the Contractor(s), the affected subcontractors (if any) and the Design Team.

5.4. **Schedule.** Construction Manager shall ensure Contractor(s) provides construction schedules as required by its Contractor's contract documents, including activity sequences and durations, submittal schedule, and procurement schedule for products that require long lead time. Construction Manager must review Contractor(s)'s construction schedules for conformity with the requirements of the Contractor(s)'s contract documents and conformity with the overall schedule for the Project. Where Contractor(s)'s construction schedules do not so conform, Construction Manager must take appropriate measures to secure Contractor(s)'s compliance with the requirements of its contract documents for updating, revising, and other obligations relative to its construction schedule. Construction Manager must incorporate Contractor(s)'s construction schedule updates and revisions into the master Project construction schedule.

5.5. **Contractor(s)'s Contractual Requirements.** Construction Manager must continually monitor whether Contractor(s)'s contract requirements are being fulfilled and recommend courses of action to the Project Manager when Contractor(s) fails to fulfill contractual requirements including, without limitation, the adequacy of the Contractor(s)'s personnel and equipment, and the availability of materials and supplies to meet the Contractor(s)'s schedules in relation to the Project schedule.

5.5.1. Construction Manager must notify the Project Manager in writing if Construction Manager becomes aware that the work of Contractor(s) is not being performed in accordance with the requirements of the Contractor(s)'s contract documents. Construction Manager must review any and all test and inspection reports and notify the Project Manager, the Council and the Design Team, as appropriate, of deficiencies in the work of which Construction Manager becomes aware and must advise the Council of projected consequences of that deficiency and make recommendations to the Council with respect to appropriate remedies to cure that deficiency.

- 5.5.2. As appropriate, Construction Manager shall have authority, with written authorization from the Council, to require additional inspection or testing of the work in accordance with the provisions of the Contractor(s)'s contract documents, whether or not such work is covered, installed or completed.
- 5.5.3. As appropriate, Construction Manager shall have authority, with written authorization from the Council, and after consultation with the Council's Project Inspector(s) ("Inspector") to reject work which does not conform to the requirements of the applicable Contractor(s)'s contract documents.
- 5.6. **Minor Variations.** Construction Manager, with the prior written approval of the Project Manager, may authorize minor variations in the Contractor(s)'s work from the requirements of the Contractor(s)'s contract documents that do not involve an adjustment in the Contractor(s)'s contract price or the Contractor(s)'s contract time or design and which are consistent with the overall intent of the Project's design. The Construction Manager must provide to the Design Team and the Project Manager copies of these written waivers to the Contractor(s). The Construction Manager's indemnity obligations as indicated herein are applicable to all unforeseen costs and/or schedule impacts to the Project that result from the Construction Manager's authorization(s) made pursuant to this subsection.
- 5.7. **Payment Applications.**
- 5.7.1. Construction Manager must review for accuracy, and prepare a recommendation, and forward to the Project Manager for payment the invoices from the Design Team, the Contractor(s) and other consultants. Construction Manager must provide its reports and information in an electronic format in a form acceptable to the Council.
- 5.7.2. Construction Manager shall certify certificates for payment to Contractor(s) and make written recommendations to the Project Manager concerning payment. Construction Manager's certification for payment will constitute a representation to the Council that, to the best of the Construction Manager's knowledge, information and belief, the Contractor(s)' work has progressed to the point indicated and the quality of the work is in accordance with the requirements of the Contractor(s)' contract documents. The issuance of a certificate for payment will further constitute a representation by the Construction Manager that the Contractor(s) are entitled to payment in the amount certified.
- 5.7.3. Construction Manager will adhere to the Council's procedures for review and payment of Project costs and expenses, including fees for the Design Team and consultants.
- 5.8. **Budgets.** Construction Manager must monitor ongoing Project costs to verify that projected costs do not exceed the approved budgets and provide the Project Manager timely notice of any potential increase in costs in excess of approved budgets provided to Construction Manager.
- 5.9. **Changes.** Construction Manager must evaluate Contractor(s)'s proposals, proposed change orders, requests to use contingency funds (if any) and review proposed changes prepared by the Design Team, with the Design Team's input as needed, for approval by the Project Manager. Construction Manager must advise the Project Manager concerning the necessity for, scope of and recommended cost of change orders or the use contingency funds.
- 5.10. **Change Order Log.** Construction Manager must maintain a change order log for the Project in the format provided by the Council. If the Council has not provided Construction Manager with a template for this purpose, then Construction Manager must provide its own template to the Council for approval, two (2) weeks prior to the commencement of construction for the Project. When the Council does provide its template, no matter at what phase of the Project, the Construction Manager shall immediately begin using that template. The log must be submitted electronically to the Council on a bi-weekly basis and must contain the current status of all executed change orders, change orders submitted to the Council but not yet approved, fully negotiated potential change orders, potential change orders being negotiated, and requests for pricing of potential changes submitted to the Contractor(s) but not yet received back from the Contractor(s). Additionally, the report must list all items and issues the Construction Manager is aware of that may result in the issuance of a change order (example: RFI response that has a high likelihood of resulting in the issuance of a change order), and a listing of all potential disputes that could have a cost impact on the Project budget).
- 5.11. **Project Contingency Log.** If there is a Project Contingency or similar contingency in the Construction Documents,

Construction Manager must maintain a Project contingency log for the Project in the format provided by the Council. If the Council has not provided Construction Manager with a template for this purpose, then Construction Manager must provide its own template to the Council for approval, two (2) weeks prior to the commencement of construction for the Project. When the Council does provide its template, no matter at what phase of the Project, the Construction Manager shall immediately begin using that template. The log must be submitted electronically to the Council on a bi-weekly basis and must contain the current status of all items for which the Contractor(s) has received approval, or is requesting approval, of use of the Project Contingency. This contingency log is not intended to contain the use of any Council contingency that is not with the Contractor's contract price or GMP.

- 5.12. **Contractor(s)'s Allowance Log.** Construction Manager must maintain a Contractor(s)'s Allowance log for the Project in the format provided by or approved by the Council. The log must be submitted electronically to the Council on a monthly basis and must contain the current status of all items for which the Contractor(s) has received approval, or is requesting approval, of use of the Project allowances(s), if any.
- 5.13. **Claims.** Construction Manager must assist the Project Manager in resolution of actual or potential disputes and claims of the Contractor(s) and other entities performing work or services on the Project in accordance with the Claims Management and Resolution policy provided in the most recent PMM/PEM/PAM and consistent with the requirements of the Contractor(s)'s contract documents.
- 5.14. **Testing & Inspection.** Construction Manager must, with the assistance of the Project Manager, the Design Team, Contractor(s), Council's Risk & Quality Compliance Unit and the Inspector(s), establish a schedule of, and procedure for, requesting, required inspections and material testing as required by applicable building codes, the Contractor(s)'s contract documents and other applicable industry standards.
- 5.15. **Quality Assurance Program.** Construction Manager must establish and implement, in consultation with the Inspector, a quality assurance program to review the Contractor(s)'s quality management program, and monitor the quality and workmanship of construction for conformity with:
 - 5.15.1. Accepted industry standards;
 - 5.15.2. Applicable laws, rules, codes, or ordinances;
 - 5.15.3. The Contractor(s)'s contract documents; and
 - 5.15.4. The established or approved inspection and testing schedule.
 - 5.15.5. Where it has been determined by the Design Team and/or Inspector(s) that the work of a Contractor(s) does not conform as set forth above, Construction Manager must notify the Project Manager and:
 - 5.15.5.1. Notify the Contractor(s) of the non-conforming work, even if the Inspector(s) already notified the Contractor(s); and
 - 5.15.5.2. Take any and all action(s) permitted by, and in accordance with, the Contractor(s)'s contract documents and California law to compel the Contractor(s) to correct the work.
- 5.16. **RFIs.** Construction Manager must maintain a log of requests for information ("RFI") submitted by the Contractor(s) to the Construction Manager or any member of the Design Team. Construction Manager shall utilize the Council's management information system(s) ("MIS"), as developed, for this purpose.
- 5.17. **Submittals.** Construction Manager must establish and implement procedures, in collaboration with the Project Manager and the Design Team, for processing and approval of shop drawings, product data, samples, and other submittals for each contract. Construction Manager will receive and transmit all submittals from the Contractor(s) to the Design Team and other reviewers for review and approval. Construction Manager must maintain and keep the submittal tracking log current. Construction Manager is also responsible for identifying, managing, and tracking all submittals requiring concurrent review and approval (parallel submittals) and ensuring that all review comments and approvals are coordinated prior to returning the submittal(s) to the Contractor(s).
- 5.18. **Daily Reports.** Construction Manager must record the progress of work at the Project. When present, Construction Manager must prepare daily reports for the Project containing a record of weather, the members of the Contractor(s)

and its subcontractor(s) present and their number of workers, work accomplished, problems encountered, and other relevant data.

- 5.19. **Project Documents.** Construction Manager must maintain at the Project site and, if necessary at the Council's offices, a current copy of all approved documents, drawings, specifications, addenda, change orders, use of allowance(s), use of contingency(s) and other modifications, and drawings marked by the Contractor(s) and its subcontractor(s) to record all changes made during construction.
- 5.19.1. These documents include, but are not limited to, shop drawings, product data, samples, submittals, field surveying notes, applicable handbooks, maintenance and operating manuals and instructions, and other related documents and revisions which are relevant to the Project work.
- 5.19.2. Construction Manager must ensure that the Design Team and the Contractor(s) maintain and provide to the Council all principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations as prepared/provided by the Contractor(s) and its subcontractor(s).
- 5.19.3. Construction Manager must collaborate with Council's consultants to ensure there is not unnecessary duplication of Project documentation and must make available its records to all of Council's consultants when appropriate.
- 5.19.4. At the completion of the Project, Construction Manager must deliver all these records to the Project Manager, at a location(s) directed by the Project Manager, in strict compliance with the Council's Project documents turn-over and archiving procedure.
- 5.20. **Compliance With Subcontractor Listing Laws.** Although the Council is not bound by the Public Contract Code, the Council has specifically incorporated the provisions of the Subletting and Subcontracting Fair Practices Act (Public Contract Code section 4100, et seq.) ("Subcontractor Listing Law") into the Contractor(s)'s contract documents. Construction Manager must monitor Contractor(s) compliance with section 4104 et seq., and notify the Council of any suspected violations thereof.

6. PROJECT COMPLETION/CLOSEOUT PHASE

- 6.1. Construction Manager must observe all the Project's check-outs of utilities, operational systems and equipment, and start-up and testing. Construction Manager shall observe those events with the Project Manager, the Council's maintenance personnel, and the Contractor(s) and applicable subcontractor(s). Construction Manager must maintain records of these events. Construction Manager shall ensure the Council that those events were done in compliance with applicable provisions of the Contractor(s)'s contract that all work has been performed and accepted, and that all systems are complete and operative.
- 6.2. Prior to starting the punch list for the Project, or portions thereof, Construction Manager must, in consultation with the Project Manager, the Design Team, all project inspectors, and the Contractor(s) ensure the preparation of a list of incomplete work. All items of incomplete work must be added to the punch list. No punch list will be created until the Council has determined that all incomplete items are of minor significance.
- 6.3. At the punch list phase of the Project or designated portions thereof, the Construction Manager shall, in consultation with the Project Manager, the Design Team and all project inspectors, ensure the preparation of a list of incomplete or deficient work which does not conform to the requirements of the Contractor(s)'s contract documents ("punch list work") and a schedule for the completion of the punch list work. The Construction Manager must provide this list to the Contractor(s). The Construction Manager must coordinate Contractor(s)'s performance and completion of punch list work. The Construction Manager must review the completed punch list work with the Project Manager, the Design Team and all project inspectors. The Construction Manager must ensure, with input from these entities, that the completed punch list work complies with applicable requirements of the Contractor(s)' contract documents.
- 6.4. Construction Manager must advise the Project Manager when the Construction Manager determines that the Project or designated portions thereof are complete and all punch list items have been completed.
- 6.5. Construction Manager must conduct, with the Project Manager, the Design Team and all project inspectors, final inspections of the Project or designated portions thereof. The Construction Manager must advise the Project Manager when the Construction Manager determines that the Project is at final completion, including the

completion of all outstanding punch list items.

- 6.6. Construction Manager must assist with the issuance of a Certificate of Final Completion, and must provide to the Council a written recommendation regarding final payment to the Contractor(s).
 - 6.7. If requested by the Project Manager, Construction Manager will coordinate the purchase and installation of Judicial-furnished/Council-installed or Council-furnished/Contractor(s)- or consultant-installed furniture, fixtures and equipment. Construction Manager is not authorized to procure, design, or install any of these items.
 - 6.8. Final Project Documents.
 - 6.8.1. Construction Manager must review, monitor and approve all as-built drawings, maintenance and operations manuals, and other closeout documents and ensure all required final documents submitted by the Contractor(s) meet the requirements of the Contractor(s)'s contract documents.
 - 6.8.2. The Construction Manager must, secure and deliver to the Project Manager or the Project Managers designee, all required guarantees, keys, manuals, record drawings, daily logs, Project files, and all other electronic and physic Project records in strict compliance with the JCCs Project records turn-over and archiving procedure.
 - 6.8.3. Construction Manager must use its best efforts and all due diligence to ensure all Project participants provide all required closeout documents and information on a timely basis and to not cause a delay in Project completion or approval of the Project.
 - 6.8.4. Construction Manager shall certify that all project documentation and records are uploaded into the Council's Records Management Protocol and the MIS for electronic archiving. If it is technically not possible to create an electronic copy of a Project document, record or item (e.g. physical sample of a lighting fixture), the Construction Manager must seek direction from the Project Manager as to how the item should be archived or disposed of.
 - 6.9. **Final Report.** The Construction Manager must, within ten (10) weeks of final completion of the Project, submit a final Project report to the Project Manager. The final Project report must be prepared and submitted in strict compliance with the Council's final Project report procedure.
7. **WARRANTY.** The Construction Manager shall ensure that all documentation for all warranties and guarantees are provided by the Contractors(s) as required by the PMM/PEM/PAM.

END OF EXHIBIT B

EXHIBIT "C"

CRITERIA AND BILLING FOR EXTRA SERVICES

[THESE ARE ONLY EXAMPLE SCOPES OF EXTRA SERVICES. THE SCOPE OF EXTRA SERVICES SHALL BE REVIEWED AND APPROVED BY THE COUNCIL.]

1. Extra Services to this Agreement will be performed by Construction Manager if needed and requested by Council as indicated in the Agreement and if the Construction Manager and or its Consultants have the expertise to perform those Extra Services.. The rates identified in the Fee Schedule, **Exhibit "E"** include costs for overhead, personnel, administration and profit, and shall be utilized in arriving at the fee for Extra Services if the Project Manager and the Construction Manager do not agree to a fixed fee and cost. .
2. Extra Services may include, without limitation, the following services and/or reimbursables:
 - 2.1. **Additional Services.** Providing additional services beyond the services identified in the Agreement, including Exhibit B, required to respond to significant documented changes in the Project, including but not limited to scope, cost, schedule, quality, complexity, or method of delivery.
 - 2.2. **Damage to Project.** Providing consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.
 - 2.3. **Serving as a Witness.** Preparing to serve or serving as a witness in connection with any public hearing (except for a contractor's hearing necessitated by its request to substitute a subcontractor), dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Construction Manager or where the Construction Manager is party thereto.
 - 2.4. **Travel Beyond Two Hundred (200) Miles of the Project Location.** Only with prior written approval of the Project Manager, the Council will reimburse Construction Manager for actual and reasonable transportation, meals, and lodging expenses beyond two hundred (200) miles of the Project location to the extent that they are actually incurred by Construction Manager's and its Subconsultant's employees in the course of their performance of the Work, but subject to the following:
 - 2.4.1 If air transportation is authorized, the Council will reimburse Construction Manager only at the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) Days prior to travel, unless the Project Manager agrees in writing to a shorter period.
 - 2.4.2 If overnight lodging expense is authorized, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the Council will reimburse Construction Manager only (i) for hotel room rental at the actual cost not to exceed \$110.00 per Day, plus occupancy tax and/or energy surcharge; and (ii) for meals, at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~\$8.00; lunch~\$12.00; dinner~\$20.00; and incidentals~\$6.00.
 - 2.4.3 If private vehicle ground transportation expense is authorized, the Council will reimburse the Construction Manager at the published IRS rate.
 - 2.4.4 The Council is not obligated to pay for, and Construction Manager shall not invoice for any hours of non-production work expended by the Construction Manager or its Consultant's employees that are spent traveling to or from the location where the Work is performed. Notwithstanding the preceding, the Council will pay for travel and subsistence expenses (including travel time) with respect to those workers traveling to perform Services that are expressly covered by the Prevailing Wage Laws and only to the extent that those workers are entitled to travel and subsistence expenses (including travel time) pursuant to the Prevailing Wage Laws.
 - 2.4.5 Travel and Living Expenses shall be billed to the Council at Construction Manager's actual cost, including any discounts or rebates accorded to Construction Manager or its Subconsultants, and are not subject to any markup, fee, or other charge.
3. At the Council's discretion and only if directed to do so by the Council, the Construction Manager shall perform the Extra

Services either:

- 3.1.1. With its own employees at a not-to-exceed amount utilizing the hourly rates identified in the Fee Schedule set forth in **Exhibit “E,”** which amounts include overhead, personnel, and administrative costs and profit; or
 - 3.1.2. Through a Subconsultant that directly performs those services, without any further subcontracting to other entities, at a 5% mark-up on the Subconsultant’s work.
4. Payment for these Extra Services will only be paid based on complete documentation demonstrating all work, equipment and materials used in performing the Extra Services, to the reasonable determination of the Project Manager, has been incurred by the Construction Manager in the performance of the Extra Services.
5. Except for “Travel Beyond Two Hundred (200) Miles of the Project Location” which cannot be marked up, the mark-up on any approved item of Extra Services performed by Subconsultant(s) or subcontractor(s) shall not exceed five percent (5%).

EXHIBIT "D"

SCHEDULE OF WORK

[TO BE AGREED TO BY THE PARTIES AND ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.]

EXHIBIT "E"

FEE SCHEDULE

Compensation

1. The Construction Manager's fee set forth in this Agreement is the total compensation for all of Construction Manager's Services incurred in its performance, including, without limitation, all costs for overhead, personnel, administration, profit, travel within two hundred (200) miles of the Project location, per diem expenses, and all deliverables, printing, and shipping, under the Agreement. The Fee shall not exceed the amount set forth in the Agreement, including all billed expenses, without written approval of a modification to the Agreement. The total Fee for each Phase of the Project is indicated below:

TOTAL FEE PER PHASE	
Phase	Phase Amount
Preliminary Plans / Design Development Phase	\$_____
Working Drawings Phase	\$_____ (NYA)
Construction Phase	\$_____ (NYA)

Method of Payment

1. Construction Manager must submit monthly invoices on a form and in the format provided by or approved by the Council. Each invoice will provide a detailed description of the specific Services performed and the time spent performing those services, in quarter-hour increments.
2. Construction Manager must submit these invoices on a monthly basis in electronic format and with two (2) duplicate paper copies to the Council via the Project Manager.
3. Upon receipt and approval of Construction Manager's invoices, the Council will endeavor to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice, as follows. The determination on the completeness of Services and level of completion of construction shall be the reasonable determination of the Judicial Council.
 - 3.1. **For Preliminary Plans / Design Development Phase:** Monthly payments for the percentage of Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon Construction Manager's completion of all Services in this Phase to the Judicial Council's satisfaction.
 - 3.2. **For Working Drawings Phase (NYA):** Monthly payments for the percentage of Services complete up to ninety-five percent (95%) of the fee for the Phase; one hundred percent (100%) payment upon Construction Manager's completion of all Services in this Phase to the Judicial Council's satisfaction.
 - 3.3. **For Construction Phase (NYA):** Monthly payments based on Construction Manager's invoices up to the percentage of construction completed on the Project.

Personnel and Hourly Rates

The following rates, which include all costs including but not limited to overhead, expenses, personnel and administrative costs and profit, will be utilized in paying for Extra Services, and will not be changed for the Term of the Agreement. Construction Manager must bill in quarter-hour increments for all Extra Services.

<u>Job Title</u>	<u>Hourly Rate</u>
Principal In Charge:	\$_____ .00
Project Director:	\$_____ .00
Construction Manager (s):	\$_____ .00
Assistant Construction Manager	\$_____ .00
Other	
Other	

EXHIBIT "F" – KEY PERSONNEL

Name	Title

EXHIBIT "G"- DVBE CERTIFICATIONS

DVBE PARTICIPATION FORM - PART A – COMPLIANCE WITH DVBE

Complete Parts A & B

“Contractor’s Tier” is referred to several times below; use the following definitions for tier:

- 0 = Prime or Joint Contractor;
 - 1 = Prime subcontractor/supplier;
 - 2 = Subcontractor/supplier of level 1 subcontractor/supplier
-

Company Name: _____

Nature of Work: _____ Tier: _____

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

SUBCONTRACTORS/SUB-SUBCONTRACTORS/PROPOSERS/SUPPLIERS

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

Percentage of Total Contract Amount: DVBE _____%

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

Percentage of Total Contract Amount DVBE _____%

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

Percentage of Total Contract Amount DVBE _____%

GRAND TOTAL: DVBE _____%

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

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

<i>Date</i>	
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DVBE PARTICIPATION FORM - PART B – CERTIFICATION

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

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

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

End of DVBE Participation Form

EXHIBIT "H"

OWNER'S BADGE, ESCORT AND ENTRY POLICY