



REQUEST FOR QUALIFICATIONS

**OFFICE OF REAL ESTATE AND FACILITIES
MANAGEMENT**

REGARDING:

The Judicial Council of California seeks to Establish a Qualified Pool of Energy Services Companies to implement energy efficiency and water conservation projects.

No: REFM-2015-13-DM

PROPOSALS DUE:

AUGUST 14, 2015,
NO LATER THAN 2:00 P.M. PACIFIC TIME

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1.0 BACKGROUND INFORMATION

- 1.1 The Judicial Council of California (JCC) manages over 250 courthouse facilities throughout the state. The majority of these facilities are superior court courthouses, and the portfolio varies greatly from small, historic facilities to large, urban facilities.
- 1.2 The Judicial Council’s Office of Real Estate and Facilities Management is interested in pursuing energy efficiency and water conservation projects at courthouse facilities as a means to address rising utility costs and as a response to the drought.
- 1.3 Public Utilities Code Section 388 allows a state agency to establish a pool of qualified energy service companies. The JCC is interested in establishing a qualified pool of Energy Services Companies (ESCOs) to implement energy efficiency and water conservation projects at courthouse facilities. It is anticipated these projects will be implemented through performance contracts.
- 1.4 Public Utilities Code Section 388 also allows a state agency to enter into a performance contract with a qualified ESCO. A performance contract is an agreement made between the JCC and an ESCO in which an ESCO guarantees a minimum, specified dollar amount of energy savings will result from the implementation of an energy project.

2.0 DESCRIPTION OF SERVICES AND DELIVERABLES

This Request for Qualifications () will establish a pool of qualified ESCOs capable of assessing, designing, constructing and installing energy efficiency and water conservation measures at JCC facilities. Companies responding to this should submit a Statement of Qualifications (SOQ) further defined in Section 7 below. The SOQs will be evaluated to identify the most highly qualified submitters with the capacity to successfully deliver energy and water conservation projects. The SOQs selected will make up the JCC’s pool of ESCOs. The selected ESCOs will be given the opportunity to bid on Requests for Proposals for energy and water conservation projects at JCC courthouse facilities.

3.0 TIMELINE FOR THIS

The JCC has developed the following list of key events related to this . All dates are subject to change at the discretion of the JCC.

EVENT	DATE
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EVENT	DATE
RFQ issued	July 23, 2015
Deadline for questions	July 28, 2015
Pre-proposal Conference	July 31, 2015
Questions and answers posted	August 5, 2015
Latest date and time proposal may be submitted	2:00., p.m., Thursday, August 14, 2015
Evaluation of proposals (<i>estimate only</i>)	Week of August 24, 2015
Notice of Intent to Award (<i>estimate only</i>)	Week of August 31, 2015
Negotiations and execution of contract (<i>estimate only</i>)	Week of September 7, 2015
Contract start date (<i>estimate only</i>)	Week of September 14, 2015
Contract end date (<i>estimate only</i>)	December 31, 2017

4.0 ATTACHMENTS

The following attachments are included as part of this :

ATTACHMENT	DESCRIPTION
Attachment 1: Master Agreement	Standard agreement including Exhibits A through D. If selected, the person or entity submitting a response to the RFQ must sign this JCC Standard Form agreement
Attachment 2: Administrative Rules Governing s (Non-IT Services)	These rules govern this solicitation.
Attachment 3: Submitter's Acceptance of Terms and Conditions	On this form, a submitter must indicate acceptance of the Terms and Conditions or identify exceptions to the Terms and Conditions.
Attachment 4: General Certifications Form	The submitter must complete the General Certifications Form and submit the completed form with its proposal.

Attachment 5: Darfur Contracting Act Certification	The Submitter must complete the Darfur Contracting Act Certification and submit the completed certification with its SOQ.
Attachment 6: Payee Data Record Form	This form contains information the JCC requires in order to process payments and must be submitted with the SOQ.
Attachment 7: DVBE Form	Disabled Veteran Business Enterprise participation form.
Attachment 8:	Form for submission of questions.

5.0 PRE-PROPOSAL CONFERENCE

The JCC will hold a pre-proposal conference July 31, 2015 from 1- 2 p.m., as identified in the timeline above. The pre-proposal conference will be a conference call as follows:

Call-in number: 877-820-7831
Participant Code: 326556

Attendance at the pre-proposal conference is optional. Submitters are strongly encouraged to attend.

6.0 SUBMISSIONS OF SOQs

6.1 Submit one (1) original and three (3) copies in paper form.

6.2 Submit electronic file of Firm’s SOQ in PDF format on a flash drive

6.3 Submitters should provide straightforward, concise information that satisfies the requirements of the “SOQ Contents” section below. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the ’s instructions and requirements, and completeness and clarity of content.

6.4 SOQs must be delivered no later than, August 14th at 2 p.m., as listed on the coversheet of this to:

Judicial Council of California
Attn: Nadine McFadden – REFM-2015-13-DM
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102

(Indicate Number and Name of Your Firm on lower left corner of envelope.)

6.5 Late SOQs will not be accepted.

- 6.6 Only written SOQs will be accepted. SOQs must be sent by registered or certified mail, courier service (e.g. FedEx), or delivered by hand. SOQs may not be transmitted by fax or email.

7.0 STATEMENTS OF QUALIFICATION CONTENTS

7.1 The following information must be included in your SOQs. SOQs lacking any of the following information may be deemed non-responsive.

- a. **Cover Letter:** Please include a one-page cover letter with the Submitter's name, address, telephone and fax numbers, and federal tax identification number. Note that if the submitter is a sole proprietor using his or her social security number, the social security number will be required before finalizing a contract. Also, please include the name, title, address, telephone number, and email address of the individual who will act as the designated representative and contact person for purposes of this .
- b. **Firm Description:** Please include a one-page description of the firm.
- c. **Team Resumes:** For each member of your team, please include a one-page resume describing the individual's background and experience, as well as the individual's ability and experience in conducting energy efficiency and water conservation projects.
- d. **Team Description:** Provide a one-page description of the proposed team, including all major subcontractors. Please identify any team leaders/principals that will be managing projects and the roles and responsibilities of other team members.
- e. **Qualifications:** Provide a detailed description of past energy efficiency and water conservation projects completed by your team. Please limit each project to a one-page description, and include the following:
 - Identify the client, a description of services provided, the timeframe for completion, the original project budget and final cost. Please clarify any discrepancy between original project budget and final cost.
 - Identify team members that participated in the project.
 - Identify any special circumstances related to the project, i.e. security issues, after-hours work, hazardous waste, etc.
 - Provide a client reference with current contact information for each project.

Please limit qualifications to fifteen projects, i.e. fifteen pages maximum.

Please limit the SOQ to 35 pages maximum.

- f. Acceptance of the Terms and Conditions.

- i. On Attachment 3, the Submitter must check the appropriate box and sign the form. If the Submitter marks the second box, it must provide the required additional materials. An “exception” includes any addition, deletion, or other modification.
- ii. If exceptions are identified, the Submitter must also submit (i) a red-lined version of the Terms and Conditions that implements all proposed changes, and (ii) a written explanation or rationale for each exception and/or proposed change.
- g. Certifications, Attachments, and other requirements.
 - i. The Submitter must complete the General Certifications Form (Attachment 4) and submit the completed form with its submittal.
 - ii. The Submitter must complete the Darfur Contracting Act Certification (Attachment 5) and submit the completed certification with its proposal.
 - iii. If Contractor is a California corporation, limited liability company (“LLC”), limited partnership (“LP”), or limited liability partnership (“LLP”), proof that Contractor is in good standing in California. If Contractor is a foreign corporation, LLC, LP, or LLP, and Contractor conducts or will conduct (if awarded the contract) intrastate business in California, proof that Contractor is qualified to do business and in good standing in California. If Contractor is a foreign corporation, LLC, LP, or LLP, and Contractor does not (and will not if awarded the contract) conduct intrastate business in California, proof that Contractor is in good standing in its home jurisdiction.
 - iv. Copies of the Submitter’s (and any subcontractors’) current business licenses, professional certifications, or other credentials.
 - v. Payee Data Record.
Provide one (1) completed and signed Payee Data Record Form (Attachment 6). Indicate the exact legal name under which the Firm proposes to contract with the Judicial Council.

8.0 EVALUATION OF SUBMITTALS

- 8.1 At the time submittals are opened, each SOQ will be checked for the presence or absence of the required contents. ESCOs will be selected based on the quality of the SOQ. The JCC will evaluate the proposals on a 100 point scale using the criteria set forth in the table below.

CRITERION	MAXIMUM NUMBER OF POINTS
Does the team have the appropriate qualifications and experience for the potential energy efficiency and water conservation projects?	50
Does the team have experience with Guaranteed Energy Savings Contract projects with other state entities?	25
Does the team have experience working on public buildings?	15
Did the submitter follow directions outlined in this ?	10

8.2 A notice identifying the selected teams will be posted at <http://www.courts.ca.gov/rfps.htm>.

8.3 Rejection of s: The Judicial Council may reject any or all SOQs and may or may not waive an immaterial deviation or defect in a SOQ. The Judicial Council’s waiver of an immaterial deviation or defect shall in no way modify the or excuse Firm from full compliance with the specifications. The Judicial Council reserves the right to accept or reject any or all of the items in the SOQ, to cease negotiations with one Firm if mutually-agreed terms cannot be reached and begin negotiations with another Firm, to award the contract in whole or in part and/or negotiate any or all items with individual Firm if it is deemed in the Judicial Council’s best interest. Moreover, the Judicial Council reserves the right to make no selection.

9.0 CONFIDENTIAL OR PROPRIETARY INFORMATION

SUBMITTALS ARE SUBJECT TO DISCLOSURE PURSUANT TO APPLICABLE PROVISIONS OF THE CALIFORNIA PUBLIC CONTRACT CODE AND RULE 10.500 OF THE CALIFORNIA RULES OF COURT. The JCC will not disclose (i) social security numbers, or (ii) balance sheets or income statements submitted by a Submitter that is not a publicly-traded corporation. All other information in proposals will be disclosed in response to applicable public records requests. Such disclosure will be made regardless of whether the proposal (or portions thereof) is marked “confidential,” “proprietary,” or otherwise, and regardless of any statement in the proposal (a) purporting to limit the JCC’s right to disclose information in the proposal, or (b) requiring the JCC to inform or obtain the consent of the Submitter prior to the disclosure of the proposal (or portions thereof). Any proposal that is password protected, or contains portions that are password protected, may be rejected. Submitters are

accordingly cautioned not to include confidential, proprietary, or privileged information in proposals.

10.0 DISABLED VETERAN BUSINESS ENTERPRISE INCENTIVE

The State of California requires contract participation goals of a minimum of three percent (3%) for disabled veteran business enterprises (DVBE's). Proposers are subject to this participation goal. If a Proposer is selected under this to enter into an agreement with the Judicial Council, the Judicial Council will require that the Proposer participate in the DVBE program at this level. Participation will be documented in the DVBE Compliance Form provided with this . Information about DVBE resources that may assist you in formulating your DVBE program can be found on the Executive Branch's internal website at: <http://www.dgs.ca.gov/pd/Programs/OSDS.aspx> or by calling the Office of Small Business and DVBE Certification at 916-375-4940.

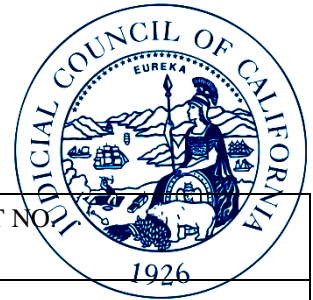
11.0 PROTESTS

Any protests will be handled in accordance with Chapter 7 of the Judicial Branch Contracting Manual (see www.courts.ca.gov/documents/jbcl-manual.pdf). Failure of a Submitter to comply with the protest procedures set forth in that chapter will render a protest inadequate and non-responsive, and will result in rejection of the protest. The deadline for the JCC to receive a solicitation specifications protest is the submittal due date. Protests must be sent to:

Judicial Council of California
Attn: Brian Agius – REFM-2015-13-DM
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102
(Indicate Number and Name of Your Firm on lower left corner of envelope.)

ATTACHMENT 1 MASTER AGREEMENT

**JUDICIAL COUNCIL OF CALIFORNIA
STANDARD AGREEMENT FORM**



AGREEMENT NO. @	AMENDMENT NO. @
FEDERAL EMPLOYER ID NUMBER @	

- This Agreement is between the Judicial Council of California, (the "Judicial Council"), and @ ("Contractor"). Judicial Council and Contractor may be individually referred to herein as "Party" or collectively referred to herein as "Parties."
- The term ("Term") of this Agreement shall commence on @, 2015 (the "Effective Date") and shall expire on @, (the "Expiration Date")
- The title of this Agreement is: REFM-2015-13-DM Energy Service Consulting

The title listed is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.
- The maximum amount payable to Contractor under this Agreement (the "Contract Amount") shall be equal to the total of all of the maximum amounts specified as payable to Contractor on the most recently executed Standard Agreement Forms pertaining to all Work Orders authorized or modified under this Agreement.
- The parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement consists solely of the Contract Documents named below, any documents attached or referenced therein, and any Amendment(s) made in accordance with the provisions of this Agreement.

The following is the descending order of precedence that shall prevail in interpretation of Contract Documents: Standard Agreement Form(s); Exhibits A, B, E, D, C, D

- The following documents, and any attachments to or documents explicitly referenced by them shall collectively be referred to as "Contract Documents":

Exhibit A, Standard Provisions;	Attachment 1 to RFP, Master Agreement
Exhibit A, Standard Provisions;	Attachment 2, Administrative Rules Governing the RFP
Exhibit B, Special Provisions;	Attachment 3, Proposers Acceptance of Terms and Conditions
Exhibit C, Invoicing and Payment Provisions;	Attachment 4, General Certifications Form
Exhibit D, Services Descriptions and Pricing;	Attachment 5, Darfur Contracting Act Certification Form
	Attachment 6, Payee Data Record Form
	Attachment 7, DVBE Participation Form

JUDICIAL COUNCIL'S SIGNATURE	CONTRACTOR'S SIGNATURE
Judicial Council of California	@
BY (Authorized Signature) ✍	BY (Authorized Signature) ✍
PRINTED NAME AND TITLE OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING
ADDRESS Judicial Council of California Attn: Business Services Unit, FL 6 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS @

EXHIBIT A
STANDARD PROVISIONS

1. Indemnification

- 1.1. Contractor agrees to the fullest extent permitted by law, to indemnify, defend (with counsel satisfactory to the Judicial Council), and hold harmless (collectively, “Indemnify”) the State of California, the Judicial Council of California, the Courts, the Counties, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, contractors, representatives, volunteers and employees (individually, an “Indemnified Party”) from any and all claims, lawsuits, losses, costs (including reasonable attorney fees and costs), liabilities, and damages arising from, related to or in connection with, in whole or in part, any of the following:
- 1.1.1. Contractor’s or any of its employees’ or Subcontractor’s negligent acts or omissions, or intentional misconduct, including without limitation any criminal acts;
 - 1.1.2. Contractor’s breach of its obligations under this Agreement;
 - 1.1.3. Contractor’s or any of its employees’ or Subcontractor’s violation of any applicable law, rule, or regulation; and/or
 - 1.1.4. any claim or lawsuit by any third party, Contractor, Subcontractor, supplier, worker, or any other person, firm, or corporation, (i) furnishing or supplying Work, Services, Materials, or supplies in connection with the performance of this Agreement, or (ii) who may be injured or damaged by the Contractor or any of its Subcontractors agents, or employees when such claim arises from, is related to, or is in connection with, the Contractor’s performance under this Agreement.
- 1.2. This Article 1 does not require the Contractor to Indemnify an Indemnified Party for that portion of any loss, cost, liability, or damage to the extent that portion arises from the negligence or intentional misconduct of the Indemnified Party.

2. Relationship of Parties

Contractor and its employees and Subcontractors, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Judicial Council.

3. Assignment

- 3.1 Contractor shall not voluntarily or involuntarily assign (e.g. assignment by operation of law), encumber, novate, or otherwise transfer or delegate all or any interest in this Agreement (“Assignment”) to a Third Party without the prior written consent of the Judicial Council, which must take the form of an Amendment to this Agreement.
- 3.2 Any request from Contractor regarding an Assignment of this Agreement must be provided to the Judicial Council in the form of a Notice provided at least sixty (60) Days in advance of the requested date of the Assignment.
- 3.3 The Judicial Council shall have the right to impose conditions upon its agreement to an Assignment, and may, as a condition of such consent, require an agreement guaranteeing full performance of all Contractor’s obligations from the Contractor, Contractor’s parent organization (if any), or the parent organization of the entity of the organization to whom this Agreement is to be assigned. If there is an

involuntary assignment of this Agreement by operation of law, the provisions of this Article 3.3 shall be binding upon the Third Party to whom this Agreement is assigned.

- 3.4 The Judicial Council shall consent to an Assignment only if assignee assumes in writing all of the Contractor's obligations hereunder; however, unless otherwise explicitly specified in the Assignment Amendment, Contractor shall not be released from an obligation of this Agreement by reason of such Assignment.
- 3.5 Any voluntary Assignment by Contractor or Assignment by operation of law (e.g. involuntarily assignment) of all or any portion of Contractor's interest in this Agreement without an Amendment agreeing to such Assignment shall be deemed a material breach allowing the Judicial Council, at its sole option, to terminate this Agreement for cause without prior resort to the Dispute Resolution Process, and exercise all remedies available to it under this Agreement and applicable law. The provisions of this Article 3.5 shall be enforceable against the Third Party to whom this Agreement has been so assigned.

4. Changes in Contractor Name:

- 4.1 Any change in Contractor's name must be memorialized in the form of an Amendment to this Agreement.
- 4.2 Contractor must provide Notice to the Judicial Council of any planned change in Contractor's name at least sixty (60) Days prior to the effective date of the Notice.

5. Time of Essence

Time is of the essence in this Agreement.

6. Validity of Alterations

Alteration(s) to this Agreement or an authorized Work Order shall not be valid unless made in writing and signed by the Parties in the form of an Amendment, and any oral understanding or agreement that is not incorporated herein shall not be binding on either of the Parties.

7. Consideration

The consideration to be paid to Contractor under this Agreement shall in no event exceed the Contract Amount. The consideration to be paid to Contractor under an authorized Work Order shall in no event exceed the amount specified on the most recently authorized Standard Agreement Form applicable to that Work Order. Said compensation shall constitute Contractor's sole and complete consideration for all of Contractor's efforts, costs, and expenses incurred in performance of its obligations under this Agreement, as well as any other efforts, costs, or expenses incurred or experienced as a consequence of this Agreement,

END OF EXHIBIT A

EXHIBIT B

SPECIAL PROVISIONS

1. Definitions

- 1.1. Terms defined in this Agreement shall apply to this Agreement and to all authorized Work Orders. Term(s) defined within an authorized Work Order shall apply only to that Work Order. Additional defined terms may be found throughout the text of this Agreement.
- 1.1.1. “Actual Cost” means an amount actually paid by Contractor to a third party for materials or services procured in the course of providing the Material(s) and/or Services provided or to be provided under this Agreement, but only if Exhibit D specifies that such a cost is applicable to or comprises a component of the price charged for that Material or Service.
- 1.1.2. “Agreement Amendment” an Agreement Amendment modifies this Agreement and shall be comprised of a fully executed Standard Agreement Form referring to this Agreement and, as necessary, Contract Documents.
- 1.1.3. “Article” a part of the text of this Agreement as referred to in the text of this Agreement.
- 1.1.4. “Business Day” means days of the week excluding Saturday and Sunday, and excluding Judicial Council designated holidays.
- 1.1.5. “Confidential Information” means trade secrets, financial, statistical, personnel, technical, or any other data or information relating to the Judicial Council’s, the Courts’ or the State’s business, or the business of its constituents.
- 1.1.6. “Court(s)” means one or more of the superior or appellate courts in the State’s court system.
- 1.1.7. “Day” means calendar day.
- 1.1.8. “Deliverable” shall mean any Material provided as a result of a Service authorized under this Agreement.
- 1.1.9. “Fixed Price Basis” means that the price applicable to Contractor’s provision of a Material or Service shall be set at or below the price specified for it in Exhibit D.
- 1.1.10. “Force Majeure” means a delay which impacts the timely performance of Work or otherwise delays the Project, for which neither Contractor, its Subcontractor(s) nor the Judicial Council are liable because such delay or failure to perform was unforeseeable and beyond the control of the affected Party(ies). Acts of Force Majeure include, but are not limited to:
- 1.1.10.1. Acts of God or the public enemy;
 - 1.1.10.2. Acts or omissions of any government entity;
 - 1.1.10.3. Fire or other casualty for which a Party is not responsible;
 - 1.1.10.4. Quarantine or epidemic;
 - 1.1.10.5. Strike or defensive lockout; and
 - 1.1.10.6. Unusually severe weather conditions.
- Force Majeure does not include failures or delays caused by Contractor and/or its Subcontractor(s).
- 1.1.11. “GAAP” means Generally Accepted Accounting Principles.

Judicial Council of California
Agreement # with @

- 1.1.12. "Hourly Rate(s) Basis" means that an amount that will be charged for Contractor's provision of a Material or Service or as a component of a charge for a Material or Service is based upon and shall be incurred based upon hours actually expended by persons in providing that Material or Service. Hourly Rate(s) for Materials and Services are given in Exhibit D.
- 1.1.13. "Judicial Branch Entity(ies)" or "JBE(s)" means and includes any or all of the following entities of the State of California: the Supreme Court; the Court(s) of Appeal; the Superior Court(s); and the Judicial Council.
- 1.1.14. "Material(s)" means and includes any type of tangible item provided or to be provided to the Judicial Council by Contractor and/or by its Subcontractors, including but not limited to documents and written reports.
- 1.1.15. "Minimum Charge" means a fixed amount applicable to the calculation of the total price for a Material or Service if and as so specified in Exhibit D.
- 1.1.16. "Notice" means a written document provided in accordance with the provisions of Exhibit B, Article 18 .
- 1.1.17. "Rate" means a unit of measure used to determine a Fixed Price applicable to a Material or Service (e.g. price is \$.10 per \$1,000 of assessed valuation).
- 1.1.18. "Service(s)" means and includes the action(s) contemplated in this Agreement that are to be performed by the Contractor or its Subcontractor(s).
- 1.1.19. "Services Request Form" means the printed form that will be used to describe the Services and Materials being authorized under a Work Order, a sample of which is provided in Exhibit E, Statement of Work.
- 1.1.20. "Standard Agreement Form" means a printed form substantially in the format of the form executed by the Parties to enter into this Agreement.
- 1.1.21. "State" refers to the State of California.
- 1.1.22. "Statement of Work" is the document that provides a description of the Materials and Services that shall be provided under this Agreement if authorized in accordance with this Agreement.
- 1.1.23. "Subcontractor(s)" shall mean and include any individual, firm, partnership, agent, or corporation having a contract, purchase order, or agreement with the Contractor or with any Subcontractor of any tier for the performance of Service(s) or provision of Materials contemplated by this Agreement. When reference is made to a Subcontractor(s) in this Agreement, it shall include every level and/or tier, of Contractor's Subcontractors, agents, suppliers, and/or materialmen.
- 1.1.24. "Third Party" refers to any individual, organization, agent, or entity that is not a party to this Agreement.
- 1.1.25. "Work" means and includes both the Materials and Services provided or to be provided under this Agreement.
- 1.1.26. "Work Order" means a Standard Agreement Form accompanied by a completed Services Request Form.
- 1.1.27. "Work Order Amendment" a Work Order Amendment modifies an already authorized Work Order and shall be comprised of a fully executed Standard Agreement Form referring to that Work Order, and , as necessary, any documents explicitly referenced therein.

2. **Performance of Work / Pricing**

- 2.1. Contractor shall provide the Services and/or Materials specified in Exhibit E, in accordance with the provisions of this Agreement, for the JBE property or prospective property specified in authorized Work Orders issued by the Judicial Council. Contractor's obligation to provide the Services and Materials may be limited to properties located in certain counties of the State if so specified in Exhibit E.
- 2.2. Contractor shall provide Services and Materials in accordance with the descriptions provided in authorized Work Order(s), however, if no description of a Service or Material is provided in a Work Order, the description of the Service or Material provided in Exhibit D of this Agreement shall apply.
- 2.3. Contractor will provide Deliverable(s) specified in an authorized Work Order within the period of time specified in that Work Order, or, if no period of time is specified in an a Work Order, within not more than the Maximum Allowable Time for Delivery specified for that Deliverable in Exhibit D.
- 2.4. The price that Contractor may quote for a Material or Service may be subject to certain assumptions and/or conditions; may in whole or part be based on Hourly Rates; may in whole or part include Actual Costs; and may be subject to Minimum Charge(s); but only if expressly so provided for in Exhibit D.
- 2.5. If a Service or Material or a component of the price applicable to Service or Material is priced on a Fixed Price Basis in Exhibit D, Contractor shall quote prices for said Service or Material or component of the price of said Service or Material in its Work Order Proposals at the fixed price(s) specified in Exhibit D, or, at Contractor's sole option, less than the fixed price(s) specified in Exhibit D. Contractor will, subject to the provisions of Exhibit C, invoice for and be paid the fixed price applicable to the Service or Material or component of the Service or Material specified in the authorized Work Order.
- 2.6. If a Service or Material or a component of the price applicable to Service or Material s priced on an Hourly Rate(s) Basis or Other Rate(s) Basis in Exhibit D, Contractor shall quote prices in its Work Order Proposals at the Hourly Rate(s) and/or Other Rates Basis specified in Exhibit D, or, at Contractor's sole option, less than the Hourly Rate(s) or Other Rates specified in Exhibit D. Contractor shall, subject to the provisions of Exhibit C, invoice for and be paid only for hours of work actually incurred in the provision of the Service or Material. Regardless of anything to the contrary in Exhibit D, Contractor shall not apply any additional charge, fee, or surcharge to its quoted Hourly Rate charges for any reason, including but not limited to overtime.
- 2.7. If a Service or Material or a component of the price applicable to Service or Material is subject to a Minimum Charge in Exhibit D, Contractor shall quote prices for said Service or Material or component of the price of said Service or Material in its Work Order Proposals at the Minimum Charge specified in Exhibit D, or, at Contractor's sole option, less than the Minimum Charge specified in Exhibit D. Contractor will, subject to the provisions of Exhibit C, invoice for and be paid the Minimum Charge applicable to the Service or Material or component of the Service or Material specified in the authorized Work Order.
- 2.8. Contractor shall not apply any additional charge, fee, or surcharge of any type, including but not limited to any retainer charge, to an Actual Cost quoted to the Judicial Council in Work Order Proposals. Any expected Actual Costs quoted in Work Order Proposals shall be net of any discount(s) and/or allowance(s) accorded Contractor. If Contractor receives a rebate of any amount paid as a consequence of Contractor's purchase of a material or service priced in whole or part at Actual Cost per Exhibit D, Contractor shall reduce the amount invoiced to the Judicial Council for the Material and/or Service or price component of such Material or Service by an amount equal to the amount rebated. Contractor shall, subject to the provisions of Exhibit C, invoice at the Actual Cost incurred in the provision of the Service or Material.

- 2.9. Regardless of the method of pricing of a Service or Material, Contractor is obligated to provide complete performance of and provision of all Services and Materials specified in an authorized Work Order for an amount that shall in no event exceed the total amount specified for a Material or Service on that authorized Work Order, without regard to the amount of time, effort, or expense actually expended or incurred in providing said Material or Service.
- 2.10. If Contractor intends to use Subcontractor(s), the prices for the Work of such Subcontractor's is provided in Exhibit D, in accordance with the format specified in Exhibit D.

3. **Standard of Care**

In no event shall the Materials be provided and/or Services be performed in a manner inconsistent with any applicable standard of care prescribed by law or with less than the standard of care considered generally acceptable in the industry to which it applies.

4. **Warranty**

If the Judicial Council's Project Manager identifies defect(s) or deficiencies in the Materials or Services, Contractor shall remedy the defect(s) and/or deficiencies so as to bring the Work into conformance with the provisions of this Agreement. Following receipt of notice of a defect or deficiency, Contractor shall have a period of ten (10) Business Days, or such longer period of time as the Judicial Council's Project Manager has expressly agreed to in writing, in which to provide a cure. In no event shall the Judicial Council be responsible for any costs or expenses incurred by Contractor to remedy any such defect(s) or deficiency(ies).

5. **Acceptance**

- 5.1. The Judicial Council's Project Manager will apply the following criteria in determining whether the Materials and/or Services are acceptable:
- 5.1.1. Timeliness: The Material and/or Service was provided on time and according to schedule;
 - 5.1.2. Completeness: The Material and/or Service was provided in accordance with the provisions of this Agreement; and
 - 5.1.3. Technical accuracy: The Materials and/or Services complied with any specific standards given in this Agreement.
- 5.2. If the Judicial Council's Project Manager finds that a Material or Service has not been provided in accordance with this Agreement, the Judicial Council's Project Manager shall notify Contractor's Project Manager of the existence of the defect or deficiency.
- 5.3. If the Judicial Council's Project Manager finds a Material and/or Service unacceptable and Contractor's Project Manager disputes such finding, the Project Managers of the respective parties shall first attempt to settle any such dispute according to the Informal Negotiations, Article 6.1.1 of the Dispute Resolution Process set forth below.

6. **Dispute Resolution Process**

- 6.1. Unless otherwise specified in this Agreement, the following Dispute Resolution Process shall apply to any claim of inadequate performance that may be made with regards to this Agreement as well as to any other claim(s) that may be made by either party with regard to this Agreement.
- 6.1.1. Informal Negotiations. If the dispute does not involve an issue that requires submission of a Notice pursuant to the Exhibit B Article 18 of this Agreement, the respective Parties' Project Managers shall make a good faith attempt to promptly resolve the dispute by informal negotiation.

- 6.1.2. Demand. If the dispute involves an issue that requires submission of a Notice pursuant to the Exhibit B, Article 18 herein, or if the dispute is not settled in a timely manner pursuant to informal negotiations between the Parties' Project Managers, either Party may issue a Demand to the other Party as follows. The Party submitting a Demand ("Submitting Party") must issue a written statement (the "Demand"), in the form of a Notice, to the other Party ("Receiving Party"). The Demand must be submitted in compliance with the provisions of Exhibit B, Article 18 herein, and (i) be fully supported by detailed factual information and supporting documentation; (ii) state the specific Agreement provisions on which the Demand is based; (iii) if the Demand regards a cost adjustment, state the exact amount of the cost adjustment sought; and (iv) must be accompanied by pertinent records supporting the Demand. The Demand shall include a written statement signed by an authorized representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and provide reasoning to support their contention that the amount (if any) requested reflects an adjustment in payment the Submitting Party believes is equitable.
- 6.1.3. Response to Demand. The Receiving Party shall, within ten (10) Business Days, provide a final written response ("Final Response") or request additional information deemed necessary to prepare a Final Response. The Final Response shall state whether the Receiving Party accepts or rejects the Demand. The Final Response must be provided to the Submitting Party in the form required by Exhibit B, Article 18". If the Receiving requests additional information to prepare the Final Response, the Submitting Party shall promptly comply with the Receiving Party's request for such information. Any delay caused by Submitting Party's failure to respond to a request for additional information shall extend the 10 Business Day period within which the Receiving Party must provide a Final Response, however, unless otherwise agreed to by the Parties in writing, in no event shall the time period allowed for a Final Response be extended beyond twenty (20) Business Days following the date on which the Submitting Party issues the Demand. Regardless of any request(s) for additional information, a Failure on the part of the Receiving Party to provide a Final Response within these twenty (20) Business Days shall be deemed a rejection of the Demand.
- 6.1.4. Senior Level Negotiations. If the Demand is rejected and the Submitting Party provides written Notice that it will continue to pursue the Demand, or if the time period allowed for a Final Response to the Demand has expired without issuance of a Final Response, the Parties shall attempt to resolve the Demand by negotiations between assigned senior representatives of the Parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The senior representatives of the Parties shall make a good faith effort to resolve the Demand within thirty (30) Business Days (or such longer period as they may agree to in writing) following the date on which the Submitting Party provides written Notice that it will continue to pursue the Demand or the date on which the time period allowed for a Final Response to the Demand has expired without issuance of a Final Response.
- 6.1.5. Mediation. If the Demand is not resolved by negotiations of the Party's assigned representatives, the Parties shall submit the dispute to mediation prior to either Party initiating an action in court.
- 6.1.6. Litigation. If, after mediation the Parties have not resolved the dispute, either Party may initiate an action in a court of competent jurisdiction. In the event of litigation of a dispute arising from or related to this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs.
- 6.1.7. Confidentiality. All discussions and negotiations conducted pursuant to this dispute resolution process prior to litigation are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code Section 1152 apply. Mediation shall be confidential and shall be subject to the provisions of California Evidence Code Sections 703.5 and 1115 through 1128.

- 6.2. Performance During Dispute And Claim Resolution Process. Unless otherwise directed in writing by the Judicial Council, Contractor shall diligently proceed with performance of the Services and provision of the Materials at the same time that a dispute is addressed via this Disputes Resolution Process. Contractor's failure to diligently proceed with such performance will be considered a material breach of this Agreement.

7. Termination

7.1. Termination for Cause.

If the Judicial Council determines that the Contractor has failed to provide the Material(s) and/or Service(s) in accordance with the provisions of this Agreement or is otherwise not in conformance with provision(s) of this Agreement, the Judicial Council shall have the right to terminate this Agreement or, at its discretion, an authorized Work Order, by providing a Notice of termination.

7.2. Termination for Non-Appropriation of Funds.

7.2.1. Funding for payment for the Material(s) and/or Service(s) contemplated by this Agreement is conditioned upon appropriation by the California Legislature of sufficient funds and allocation of those funds by the Judicial Council of California.

7.2.2. By Notice to the Contractor the Judicial Council may terminate this Agreement in full or, at its discretion, an authorized Work Order, for lack of appropriation of funds, or for any other withdrawal, reduction or limitation imposed by the Judicial Council's budget, funding or financial resources. Such termination shall not constitute a breach of the Agreement by Judicial Council.

7.3. Termination for Convenience.

7.3.1. The Judicial Council shall have the option, at its sole discretion, to terminate this Agreement or, at its discretion, an authorized Work Order, at any time during the term hereof for convenience and without cause, upon issuance of Notice to the Contractor.

8. Actions of the Contractor Upon Termination

8.1. Immediately upon receipt of a any Notice of termination, Contractor shall, unless otherwise instructed in writing by the Judicial Council, proceed with diligence to take all actions necessary to affect a rapid and economical termination of provision of the Material(s) and/or Service(s) and shall in so doing minimize any liability that might accrue to the Contractor, the Judicial Council, or any Third Party(s) as a result of such termination.

8.2. The Judicial Council, at its sole discretion, may dictate certain provisions regarding how a termination for convenience or a termination for non-appropriation of funds will be brought into effect. Such actions may include, but are not limited to, the following:

8.2.1. When termination will be effective.

8.2.2. What Material(s) and/or Service(s) must be provided prior to termination.

8.2.3. When Subcontractors are to be notified of the termination.

9. Effect of Termination

9.1. Termination For Cause.

In addition to any other rights and remedies accorded it under this Agreement and applicable law, if this Agreement or an authorized Work Order, is terminated for cause, the Judicial Council:

- 9.1.1. may deduct from any payment(s) owed Contractor at the time of termination any undisputed amount owed the Judicial Council; and
- 9.1.2. shall be paid the difference in amount paid for Material(s) and Service(s) actually procured in excess of the cost that would have been charged by Contractor for the same over (1) if the Agreement is terminated, the remaining Term of the Agreement or (2) if a Work Order is terminated, the complete cost of the Work, plus any costs and expenses incurred and any damages suffered by the Judicial Council as a result of such termination.

9.2. Termination For Non-Appropriation or Convenience.

In the event of a termination for non-appropriation of funds or a termination for convenience, the Judicial Council shall pay Contractor for any conforming Material(s) and/or Service(s) provided prior to the Notice of termination.

10. **Copyrights and Rights in Data, Material, and Deliverables**

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

11. **Ownership of Data**

- 11.1. Everything created, developed or produced in the course of the Contractor's provision of the Material(s) and/or Service(s), including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and other material(s) or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the Contractor for the Judicial Council and are the sole property of the Judicial Council without any payment of compensation other than that duly owed under this Agreement.
- 11.2. The Judicial Council owns all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights").
- 11.3. To the extent that any of the Data or the Intellectual Property Rights are not works for hire, the Contractor hereby irrevocably assigns its entire right, title and interest in and to all such Data and the Intellectual Property Rights therein, to the Judicial Council.
- 11.4. At the Judicial Council's request, the Contractor will, at no cost, assist the Judicial Council in the Judicial Council's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. The Contractor irrevocably appoints the Judicial Council as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the Judicial Council deems necessary to perfect the Judicial Council's interest and Intellectual Property Rights in the Data as set forth herein.
- 11.5. The Judicial Council shall be entitled to access the Data in whatever form, including, without limitation CAD, at all times during the term of the Agreement. Any such Data in the possession of the Contractor or in the possession of any Subcontractor upon expiration or termination of a Work Order or the Agreement shall be immediately delivered to the Judicial Council's Project Manager. If any Data are lost, damaged or destroyed before final delivery to the Judicial Council, the Contractor shall replace it at its own expense and the Contractor assumes all risks of loss, damage or destruction of or to such Data.

- 11.6. The Judicial Council expressly acknowledges and agrees that the Data to be provided by Contractor under the Agreement may contain certain design details, features and concepts from the Contractor's pre-existing best practices, which are, and shall remain, the sole and exclusive property of Contractor. Nothing herein shall be construed as a limitation on the Contractor's right to re-use such design details, features and concepts on other projects, in other contexts, or for other clients.
- 11.7. The Judicial Council acknowledges the Contractor's work product, including electronic files, as instruments of professional service. If the Judicial Council reuses or makes any modification to the Contractor's work product without the prior written authorization of the Contractor, the Judicial Council agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the Contractor, and its officers, directors, employees and Subcontractors, against any damages, liabilities or costs, including reasonable attorney fees and defense costs, arising from or allegedly arising from or in any way connected with the reuse or modification of the Contractor's work product by the Judicial Council, or by any person or entity that lawfully acquires or obtains the Contractor's work product from or through the Judicial Council without the written authorization of the Contractor.

12. **Limitation on Publication**

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

13. **Personnel**

Contractor shall provide all personnel and obtain and ensure the provision of all Subcontractor personnel and services necessary to provide the Material(s) and/or Service(s) contemplated by this Agreement.

14. **Project Managers**

- 14.1. The Judicial Council and Contractor shall each designate named individuals to serve as their respective project managers ("Project Manager(s)") Said Project Managers have the following responsibilities and authorities: :
 - 14.1.1. Manage the day to day activities necessary to provide and receive the Material(s) and/or Service(s);
 - 14.1.2. Serve as the primary contact with the other Party's Project Manager.
 - 14.1.3. Manage the day to day activities of their respective personnel;
 - 14.1.4. Cooperate with any Third Parties involved in the performance or receipt of the Material(s) and/or Service(s);
 - 14.1.5. Ensure that budget and schedule commitments are met; and
 - 14.1.6. Ensure the overall quality of the Material(s) and/or Service(s) provided.

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- 14.2. With the exception of actions that require a Notice, the Project Managers are allowed the authority to resolve issues and disputes that arise with relation to the performance and receipt of the Material(s) and/or Service(s)
 - 14.3. Contractor's Project Manager shall, if this Agreement so specifies in Exhibit E, the Statement of Work, be responsible for providing written progress reports in accordance with any requirements given in the Statement of Work.
 - 14.4. The name and address of the Judicial Council's Project Manager is provided in Exhibit C.
 - 14.5. The contact information for the Contractor's Project Manager shall be provided to the Judicial Council's Project Manger via written communication.
15. **Background Checks**
- 15.1. If the Contractor assigns persons (whether employees or Subcontractor employees) to provide Services under this Agreement that require that person have access to the computer systems (whether on-site or by remote access) of the Judicial Council or access to any premises of the Judicial Council or other Judicial Branch entities, the Judicial Council shall have the right, but not the obligation, to conduct a background check or to require the Contractor to conduct a background check, as permitted by law, on all such persons before the Judicial Council will grant such persons access to Judicial Council facilities or computer systems.
 - 15.2. Contractor will cooperate, and will ensure that its Subcontractor(s) cooperate if the Judicial Council chooses to itself perform any such background check, and will promptly notify the Judicial Council of the name of any person that refuses to undergo a background check
 - 15.3. If the Judicial Council requires a background check and a Contractor employee or Subcontractor employee refuses to undergo or fails the background check, Contractor agrees that that person shall not be utilized to fulfill Contractor's obligations under this Agreement.
 - 15.4. Contractor shall, at no cost to the Judicial Council, obtain all Contractor and Subcontractor employee releases, waivers, or permissions necessary for the Judicial Council to perform a background checks or required to release the results of a background check to the Judicial Council.
 - 15.5. Any costs and expenses incurred with regard to background checks are the sole responsibility of the Contractor and will not be reimbursed by the Judicial Council.
16. **Agreement Term Extension(s)**
- Any extension of the Term of this Agreement shall be specified in an Amendment to this Agreement.
17. **Judicial Council's Payment Obligations**
- 17.1. Payments to be made under this Agreement are made from funds of the State of California ("State Funds"). Payment is made directly by the State, and not by the Judicial Council.
 - 17.2. Notwithstanding anything in this Agreement to the contrary, it shall not be deemed an event of default if the State is unable to make any payment(s) as a result of the State of California's failure to timely approve and adopt a state budget.
 - 17.3. Should the State fail to make any payment as a result of the State of California's failure to timely approve and adopt a state budget, Contractor shall, absent any Notice of Termination, continue to

provide the Material(s) and/or Service(s) and the State shall promptly make any payment(s) duly owed upon approval and adoption of a budget by the State of California.

18. Notice

18.1. Notice must be provided in any of the following events:

18.1.1. In the event of a request to assign, novate, or change the name of either party to this Agreement;

18.1.2. In the event of any claim of a material breach of this Agreement; or

18.1.3. In the event that a Third Party claim or dispute is brought or threatened against Contractor or its Subcontractor(s) and that claim or dispute alleges facts that would, if proven true, support a claim of a material breach of this Agreement by Contractor; or

18.1.4. Whenever otherwise required in this Agreement.

18.2. A Notice must:

18.2.1. Be in writing;

18.2.2. Identify this Agreement, citing both the Agreement Name and Agreement Number given on the Standard Agreement Form. If pertaining to a Work Order, provide the Judicial Council Work Order Number for that Work Order.

18.2.3. Unambiguously identify itself as a Notice brought in accordance with the provisions of the Exhibit B, Article 18 of this Agreement;

18.2.4. Be delivered in person, by a pre-paid reputable express mail carrier, or by registered or certified mail (postage pre-paid). If delivered in person, the Notice must be delivered to the reception desk of the Judicial Council on the 6th Floor at 455 Golden Gate Ave, San Francisco, CA 94102; and a written receipt obtained from the Judicial Council;

18.2.5. Be addressed to the representative(s) of the Parties as follows:

If provided to the Judicial Council:

@

Business Services

Judicial Council of California

455 Golden Gate Ave, Floor 6

San Francisco, CA 94102-3660

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If provided to Contractor:

@

18.3. Notice is effective on the date of receipt; however, if the date of receipt does not occur upon a Business Day, Notice is effective on the first Business Day following the date of receipt.

18.4. Any correctly addressed Notice that is refused, lays unclaimed, or is not deliverable because of an act or omission of the Party to whom submitted will be deemed effective as of the date that the Notice was refused, unclaimed, or deemed undeliverable.

19. **Subcontracting**

- 19.1. Contractor is allowed to utilize Subcontractors of its own choosing in performing its obligations under this Agreement, but no such use shall act to constitute an Assignment of this Agreement or relieve Contractor of any requirement of this Agreement.
- 19.2. Contractor shall be solely responsible for the supervision, review, and approval of Work provided by its Subcontractors and any such Work provided to the Judicial Council shall be considered to constitute Contractor's own Work. All communication with the Judicial Council regarding Work provided or to be provided under this Agreement shall be through Contractor and not via its Subcontractor(s).
- 19.3. No Party to this Agreement shall in any way contract on behalf of or in the name of another Party to this Agreement.
- 19.4. Contractor shall ensure that all Subcontractors comply with the provisions of this Agreement applicable to Subcontractors.

20. **Changes and Amendments**

- 20.1. Amendments to this Agreement or an authorized Work Order can be made only with the written approval of:
- 20.2. @
Business Services
Judicial Council of California – Business Services
455 Golden Gate Avenue, Floor 6
San Francisco, CA 94102

or his duly appointed designee.
- 20.3. Any request for a change to the terms and conditions of this Agreement must be submitted to the other Party in writing in the form of a Notice and must be accompanied by a narrative description of the proposed change and the reasons for the requested change.
- 20.4. After a review of the request, a written decision shall be provided to other Party.
- 20.5. Amendments to this Agreement or an authorized Work Order shall be made only by bilateral execution of a Standard Agreement Form.

21. **Accounting System Requirement**

Contractor shall maintain an adequate system of accounting and internal controls that meets GAAP.

22. **Retention of Records and Audits**

- 22.1. Contractor must retain and maintain easily available all Records pertaining to Contractor's performance of its obligations undertaken under this Agreement.
- 22.2. Contractor shall ensure that its Subcontractor(s) retain and maintain easily available all Records pertaining to Subcontractor(s) performance of actions undertaken as a result of this Agreement.
- 22.3. Records ("Records") include but are not limited to any books, reports, accounts, estimates, documents, detailed financial information, quotations, certified payrolls, invoices, or any other documentation or evidence, as well as any documents utilized in the preparation of quotations, Invoices, Disputes,

litigation and any Claims. Records must be maintained in accordance with industry standards and GAAP and practices, consistently applied.

- 22.4. The provisions of this Article 22 shall not apply to any work product that is the result of Contractor's or Subcontractor(s') collaboration with legal counsel or to any of Contractor's or Subcontractor(s') confidential or proprietary information that does not fall within the definition of a Record as given above.
- 22.5. Contractor shall ensure that the Judicial Council and/or its designated representative(s) will have access upon twenty-four (24) hours advance written notice, at all times during Contractor's or Subcontractor(s') normal business hours, to all Records for the purposes of inspection, audit, and copying. Contractor shall, and shall ensure that consultant(s') shall, at no cost to Judicial Council, provide access and proper facilities for such purposes.
- 22.6. Contractor shall ensure that all Subcontractor(s) are bound to all provisions of this Article 22.
- 22.7. Records must be retained and available throughout the period of the term of this Agreement and for a period of five (5) years following the Expiration Date of this Agreement, or until five (5) years after final settlement of all Disputes, Claims, or litigation to which the Records relate, whichever date occurs later.
- 22.8. If an audit or Judicial Council internal review reveals that the Contractor and/or its Subcontractor(s') have overcharged the Judicial Council, Contractor will immediately pay to the Judicial Council the overcharged amount plus interest effective from the date of receipt of overpayment. The rate of interest will be equal to eighteen percent (18%) per year or the maximum rate permitted by applicable law, whichever is less. Audit(s) or Judicial Council internal review(s) will be conducted at the Judicial Council's expense, unless an audit or review reveals that the Contractor and/or its Subcontractor(s') has overcharged the Judicial Council by ten percent (10%) or more, in which case the Contractor will reimburse the Judicial Council for all costs and expenses incurred by the Judicial Council in connection with such audit or review, including direct and indirect costs associated with Judicial Council representatives.
- 22.9. The obligations of this Article 22 shall survive the expiration of and any termination of this Agreement.

23. **Accounting System Requirements**

Contractor shall maintain and shall ensure that its Subcontractor(s') maintain an adequate system of accounting and internal controls that meets GAAP.

24. **Insurance**

24.1. Insurance Required. Without limiting the Contractor's indemnification obligation and in addition thereto, the Contractor shall secure and maintain in force throughout the term of this Agreement the following types of insurance with limits as shown. By requiring such minimum insurance, the Judicial Council shall not be deemed or construed to have assessed the risks that may be applicable to the Contractor under this Agreement. The Contractor shall assess its own risks and if it deems appropriate and/or prudent, maintain greater limits and/or broader coverage. Each policy, other than the Professional Liability policy, shall be written on an "occurrence" form. The Professional Liability policy may be written on a "claims made" form.

24.1.1. **Workers' Compensation:** The Contractor shall maintain statutory workers' compensation coverage for all its employees who will be engaged in the performance of the Contract, and employer's liability with limits not less than \$1,000,000 for each accident \$1,000,000 disease policy limit, \$1,000,000 disease – each employee.

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- 24.1.2. Commercial General Liability Insurance covering liability arising from premises, operations, independent Contractors, products and completed operations, personal injury and advertising injury, and liability assumed under contract. The policy shall provide limits of not less than \$2,000,000 per occurrence and \$2,000,000 annual aggregate. The insurance must apply separately to each insured against whom a claim is made or lawsuit is brought, subject only to the insurance policy's limit of liability.
- 24.1.3. Commercial or Business Automobile Liability Insurance covering liability arising out of a motor vehicle, including owned, non-owned, leased, and hired vehicles assigned to or used in connection with the Project. The policy shall provide combined single limits of not less than \$1,000,000 per accident or loss.
- 24.1.4. Professional Liability Insurance; Errors and Omissions covering the Contractor's acts, errors or omissions committed or alleged to have been committed which arise out of rendering or failure to render the Services provided under the terms of this Agreement. The policy shall provide limits of not less than \$1,000,000 per claim or per occurrence and \$1,000,000 annual aggregate. If the policy is written on a "claims made" form, the Contractor shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Services which are the subject of this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that Services commence pursuant to this Agreement.
- 24.2. Additional Insured Endorsements. All policies required in this section with the exception of Workers' Compensation and Professional Liability, must be endorsed to name the following as additional insureds with respect to liabilities arising out of the Contractor's Services for the Judicial Council under this Agreement: the State of California, the Judicial Council of California, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers and employees.
- 24.3. Required Policy Provisions. Each policy required in subsection (a) above must provide that:
- 24.3.1. The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by the State of California, the Judicial Council of California, the State's trial courts, or appellate courts.
- 24.3.2. The policy shall apply separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer's liability.
- 24.3.3. The Contractor will provide the Judicial Council with thirty (30) days' advance written notice of any change or cancellation, mailed to the following individuals:

Stephen Saddler
Manager, Business Services
Judicial Council of California
455 Golden Gate Avenue FL 6
San Francisco, CA 94102

Laura Sainz
Manager, Environmental Compliance and Sustainability
Office of Real Estate and Facilities Management
Judicial Council of California
2860 Gateway Oaks Drive, Suite 400, Sacramento, CA 95833

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- 24.4. The insurer waives any and all rights of subrogation against the State of California, the Judicial Council of California, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers or employees except for Professional Liability coverage.
- 24.5. Waiver of Claims: Contractor shall waive any right of recovery or subrogation it may have against any of the State of California, the Judicial Council of California, or the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers or employees for loss or damage for any loss arising out of the Services performed by Contractor under this Agreement, and the Contractor will require any insurer providing insurance required under this section to do the same.
- 24.6. Qualifying Insurers. Contractor will maintain, or cause to be maintained, insurance issued by an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide, and are authorized to do business in the State of California.
- 24.7. Deductibles and Self-Insured Retentions. For all insurance policies required by this Agreement, Contractor will declare any deductible or self-insured retention (SIR). Contractor will be responsible for reimbursement of any deductible to its insurer. Contractor will administer any self-insurance program in a commercially reasonable manner that ensures sufficient funds are available to cover all losses Contractor must insure against under the terms of this section.
- 24.8. Contractor is responsible for and may not recover from the State of California, the Judicial Council of California, or any Superior Court of California, including their respective elected and appointed officials, judges, subordinate judicial officers, officers, employees, and agents, if any, any deductible or self-insured retention that is connected to the insurance required under this section.
- 24.9. If Contractor fails to keep in effect at all times the specified insurance coverage, the Judicial Council may, in addition to any other remedies it may have, declare the Contract to be in breach and withhold all progress payments and retentions until the breach is cured, or terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- 24.10. No Reduction or Limit of the Contractor's Obligation. Insurance affected or procured by the Contractor shall not reduce or limit the Contractor's contractual obligation to indemnify and defend the Judicial Council. Acceptance of the Contractor's insurance by the Judicial Council shall not relieve or decrease the liability of the Contractor hereunder.
- 24.11. Joint Ventures. If the Contractor is an association, partnership, or other joint business venture, the insurance required in subsection (a) above shall be provided by any one of the following methods:
- 24.11.1. Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured.
- 24.11.2. Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 24.12. Evidence of Coverage. Before commencing any work under this Agreement, the Contractor must furnish to the Judicial Council certificates of insurance and applicable endorsements, in form and with insurers satisfactory to the Judicial Council, evidencing that all required insurance coverage is in effect. The Judicial Council reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificates and endorsements must be sent to the Judicial Council Project Manager at their address as given in this Agreement.

An additional copy addressed to:

Manager Business Services

Judicial Council of California
Agreement # with @

Attn: Insurance Certificate, Contract # (Enter Contract Number from 1st page upper left of this Agreement)
Judicial Council of California
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102

- 24.13. Consequences of Lapse. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Judicial Council receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Judicial Council may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

25. **Judicial Council Court Representation**

- 25.1. The Judicial Council has the authority to act on behalf of any Judicial Branch Entity and to bind said entity with regard to any matters relating to this Agreement.
- 25.2. Any Judicial Branch Entity the Contractor provides Services for is an intended third party beneficiary. In the event that that such a JBE gives Contractor conflicting instructions or makes conflicting determinations with respect to any matter affecting Contractor's performance of its obligations, the Contractor shall notify the Judicial Council Project Manager who shall have the authority and responsibility for resolution of any such conflict.

26. **Confidentiality**

- 26.1. Both the Judicial Council and Contractor acknowledge and agree that in the course of providing the Services under this Agreement, the Judicial Council may disclose Confidential Information to Contractor and/or its Subcontractors.
- 26.2. Contractor shall not disclose any Judicial Council Confidential Information to any Third Party and shall exercise reasonable care to prevent such disclosure.
- 26.3. In the event Contractor is required to disclose Confidential Information to Contractor's employees, Subcontractors or Subcontractor's employees in order to provide Services hereunder, Contractor shall execute a confidentiality agreement of its own authorship with such parties. The confidentiality agreement shall require the same duty of nondisclosure and duty to exercise reasonable care imposed upon Contractor under this Agreement, and shall require that such parties may only use the Confidential Information for the purpose of providing the Services and for no other purpose. Other than Contractor's employees, Subcontractors or Subcontractor's employees Contractor may not disclose Confidential Information to any party without the prior written approval of the Judicial Council's Project Manager.
- 26.4. Neither Contractor nor its Subcontractors shall acquire a right or title in or to the Confidential Information as a result of any disclosure contemplated hereunder. Notwithstanding the foregoing, Contractor may disclose Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or applicable ruling; or (ii) as appropriate to respond to any summons or subpoena.
- 26.5. The Judicial Council reserves the right to disclose any Materials provided under this Agreement to Third Parties for the purpose of validation of the quality of Contractor's work and to employ the Materials for their intended purpose.
- 26.6. Contractor agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Article 26 and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

27. **Trade Secret, Patent and Copyright Indemnification**

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- 27.1. Contractor shall hold the Judicial Council, the Judicial Branch Entities, the State, and their respective officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used by Contractor or its Subcontractors in performance of the Services.
- 27.2. Contractor, at its own expense, shall defend any action brought against the Judicial Council, the Judicial Branch Entities, and/or the State, and their respective officers, agents, and employees, to the extent that such action is based upon a claim that any Data or Materials supplied by Contractor or its Subcontractors infringes a United States patent or copyright or violates a trade secret. Contractor shall pay all costs and damages finally awarded against the Judicial Council, the Judicial Branch Entities, and/or the State and their respective officers, agents, and employees, in any such action. Such defense and payment shall be conditioned on the following:
- 27.2.1. That Contractor shall be notified within a reasonable time in writing by the Judicial Council of any notice of such claim; and,
- 27.2.2. That Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that when principles of government or public law are involved, the Judicial Council, the Judicial Branch Entities and/or the State shall have the option to participate in such action at its own expense.
- 27.3. Should the Data or Materials, become the subject of a claim of infringement of a United States patent or copyright or a trade secret, the Judicial Council shall permit Contractor at its option and expense either to procure for the Judicial Council and/ or the appropriate Judicial Branch Entities the right to continue using the Data or Materials, or to replace or modify the same so that they become non-infringing. If in the sole opinion of the Judicial Council none of these options can reasonably be taken, or if the use of such Data or Materials by the Judicial Council and/or the Judicial Branch Entities is prevented by injunction, Contractor agrees to take back such Data or Materials and make every reasonable effort to assist the Judicial Council and/or the Judicial Branch Entities in procuring equivalent substitute Data or Materials. If, in the sole option of the Judicial Council, the return of such infringing Data or Materials diminishes the usefulness of other Data or Materials acquired from Contractor, Judicial Council shall then have the sole option of terminating any then continuing Services under which the Data or Materials are still being provided, in their entirety, without penalty or termination charge, and Contractor agrees to take back any such Data or Materials and refund all amounts that the Judicial Council has paid Contractor for said Services, less a reasonable amount for use of such Data or Materials by the Judicial Council.

28. **Licenses**

- 28.1. Contractor shall ensure that Contractor and its employees, and its Subcontractor(s) and their employees or agents providing Services under this Agreement shall have and shall at all times maintain throughout the duration of their performance of the Services all appropriate license(s) required under law to provide the Service(s). Contractor shall ensure that both Contractor's own employees and those of its Subcontractor(s) are regularly monitored to ensure compliance with this provision of the Agreement.
- 28.2. If the possession of a license(s) is required under law for the provision of a Service, Contractor shall ensure that such Service will either be performed by an appropriately licensed individual or be performed under the direct supervision and with the review and approval of an appropriately licensed individual.
- 28.3. Contractor shall provide immediate Notice to the Judicial Council in the event that any license required to be held by Contractor or any of its Subcontractor(s) or any of their employees or agents is suspended, cancelled, or expires during a period in which they are performing Service(s) that require a license.

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- 28.4. Contractors and individuals required by law to be licensed are licensed and regulated by the California Contractors' State License Board which has jurisdiction to investigate complaints if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. Any questions concerning licensed individuals or organizations may be referred to the California Contractor's State License Board.
- 28.5. If no license is required of an individual performing Services, Contractor shall ensure that such individuals possess the appropriate skills, training, and background reasonably commensurate with the responsibility assigned, so as to be able to perform in a competent and professional manner in accordance with generally accepted industry standards.
- 28.6. Contractor shall ensure that in the event of an Assignment of this Agreement or a change in Contractor's name, that any licenses and any other approvals required under applicable law or regulation are transferred to new name as of the date the Assignment or change in name is effective.
29. **Conflict of Interest**
- 29.1. Contractor shall ensure that its officers, employees, and agents shall not participate in any decision making proceedings that involves the use of State funds allocated or that may be allocated under this Agreement if that person or their partner, family, or organization has a financial interest in the outcome of such proceedings.
- 29.2. Contractor and its officers and employees shall avoid actions resulting in or creating an appearance: (1) of the use of a Judicial Council employee for private gain; (2) of preferential treatment of any Judicial Council employee or agent participating in activities associated with this Agreement; (3) of a loss of independence or impartiality on the part of Judicial Council employees or agents; (4) that decisions are made outside official channels; or (5) that may have adverse effects on the confidence of the public in the integrity of the Judicial Council or its employees.
- 29.3. Contractor agrees that it shall bind its Subcontractors to conflict of interest provisions not less strict than those provided here.
- 29.4. Contractor agrees and shall require its Subcontractors to agree that Judicial Council employees will not be awarded a contract for (a) two (2) years from the date of separation if that employee had any part in any policy or decision making process related to this Agreement or the Project.
30. **Covenant Against Gratuities**
- 30.1. Contractor asserts that neither Contractor itself nor any of its employees or agents, nor its Subcontractors nor their employees or agents have provided any gratuity, in any form, including but not limited to money, tangible item(s), services, or intangible benefit(s) ("Gratuity") to any Judicial Council or Judicial Branch Entity employee or agent for the purpose of securing award of this Agreement to Contractor.
- 30.2. Contractor shall ensure that neither Contractor itself nor any of its employees or agents, nor its Subcontractors nor their employees or agents will at any time provide any Gratuity, to any Judicial Council or Judicial Branch Entity employee or agent for the purpose of securing an outcome favorable to the Contractor or its Subcontractors as a result of Judicial Council decisions made with regard to this Agreement.
- 30.3. Contractor agrees that if at any time Contractor becomes aware that a Gratuity from any party was or is to be provided to any Judicial Council or Judicial Branch Entity employee Contractor will provide immediate written Notice of the same to the Judicial Council.

30.4. For falsification or breach of any of the aforesaid, the Judicial Council will have the right to terminate this Agreement for cause and without prior resort to the Dispute Resolution Process.

31. **Submitting False Claims; Monetary Penalties**

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

32. **Responsibility for Equipment, Real Property**

Neither the Judicial Council nor any Judicial Branch Entity shall be responsible for any damage to persons or property that result from the use, misuse, or failure of any equipment used by the Contractor or its Subcontractor(s) or their employees even though such equipment is furnished by the Judicial Council or a JBE.

33. **Independent Contractor**

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

34. **Payment of Income Taxes**

The Contractor shall pay, when due, all applicable income taxes, including estimated taxes, incurred as a result of the compensation that accrues to Contractor as a result of this Agreement. The Judicial Council is exempt from federal excise taxes and no payment will be made for any taxes levied on the Contractor's or any Subcontractor's employees' wages. The Contractor agrees to indemnify, defend and hold the Judicial Council harmless for any claims, costs, losses, fees, penalties, interest or damages (including attorney fees and costs) suffered by the Judicial Council resulting from the Contractor's failure to comply with this provision. The Judicial Council may offset any taxes paid by the Judicial Council as a result of the Contractor's breach of this provision against any amounts owed Contractor.

35. **National Labor Relations Board**

By executing this Agreement, Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two (2) year period because of Contractor's failure to comply with an order of the National Labor Relations Board.

36. **Drug-Free Workplace**

Contractor certifies that it will provide a drug-free workplace as required by California Government Code, Sections 8355 through Section 8357.

37. **Certifications**

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

- 37.1. No Harassment. The Contractor and its Subcontractor(s') shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its sub-consultants interact in the performance of this Agreement. The Contractor and its sub-consultants shall take all reasonable steps to prevent harassment from occurring.
- 37.2. FEHA. The Contractor shall comply with the provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- 37.3. Compliance with Americans with Disabilities Act. The Contractor complies with applicable provisions of the Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Section 12101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.
- 37.4. Notice to Labor Organizations. The Contractor and any of its Subcontractor(s') shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 37.5. Compliance. The Contractor shall include the nondiscrimination, no harassment, and compliance provisions of this Article 37 in any and all subcontracts issued to perform Services under this Agreement. Contractor has, unless exempt, complied with the nondiscrimination program requirements. (Government Code, Section 12990 (subdivisions a-f) and CCR, Title 2, Section 8103 et seq.)
- 37.6. Prohibited Financial Conflict of Interest. The Contractor and its sub-consultants presently have no interest and will not acquire any interest which would present a conflict of interest pursuant to California Government Code Sections 1090 et seq. and 87100 et seq., during the performance of Services pursuant to this Agreement. The Contractor further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the Judicial Council are now, nor in the future will they be, in any manner interested directly or indirectly in this Agreement, or in any profits expected to arise from this Agreement, as set forth in California Government Code Sections 1090 et seq., and 87100 et seq.
- 37.7. Drug-Free Workplace. The Contractor will provide a drug-free workplace as required by California Government Code Sections 8355 through 8357.
- 37.8. Computer Software Use. Contractor has appropriate systems and controls in place to ensure that State Funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
38. **Force Majeure**
- Neither Party shall be liable for damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is due to an act of Force Majeure.
39. **Americans with Disabilities Act**

By signing this Agreement, Contractor assures the State that it complies with applicable provisions of the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. Sections 012101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

40. **JBCL Appendix Provisions**

This Agreement incorporates the terms and conditions set forth in the appendix entitled “JBCL Appendix” attached to this Agreement. If there is any conflict between a provision in the JBCL Appendix and any other provision of this Agreement, the provision contained in the JBCL Appendix shall prevail.

41. **Other Provisions**

- 41.1. Contractor certifies that the following representations and warranties are true. Contractor shall cause these representations and warranties to remain true during the term of this Agreement, and Contractor shall promptly notify the JBE if any representation and warranty becomes untrue.
- 41.1.1. Non-discrimination. Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California’s Fair Employment and Housing Act (Government Code section 12990 et seq.) and associated regulations (Code of Regulations, title 2, section 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of non-discrimination.
- 41.1.2. National Labor Relations Board. No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor’s failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
- 41.1.3. Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBE.
- 41.2. Provisions Applicable Only to Certain Agreements. The provisions in this section are applicable only to the types of agreements specified in the title of each subsection. If the Agreement is not of the type described in the title of a subsection, then that subsection does not apply to the Agreement.
- 41.2.1. Agreements over \$10,000. This Agreement is subject to examinations and audit by the State Auditor for a period of three years after final payment.
- 41.2.2. Agreements over \$50,000. No JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the term of this Agreement (including any extension or renewal term).
- 41.2.3. Agreements of \$100,000 or More. Contractor certifies that it is, and will remain for the term of the Agreement, in compliance with PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits regarding marital or domestic partner status. Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the term of this Agreement) all applicable state and federal laws relating to child and family support enforcement, including,

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but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

- 41.3. Agreements Performed in California by Contractors that are Corporations, LLCs, or LPs. Contractor is, and will remain for the term of the Agreement, qualified to do business and in good standing in California.
- 41.4. This section is applicable if Contractor received a disabled veteran business enterprise (“DVBE”) incentive in connection with this Agreement. Contractor’s failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the JBE: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

42. **General**

- 42.1. Survival. Except as expressly provided for herein, termination or expiration of this Agreement or any Work Order shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration.
- 42.2. Remedies Cumulative. All remedies provided for in this Agreement are cumulative and may be exercised individually or in combination with any other remedy available hereunder.
- 42.3. Waiver.
- 42.3.1. Any waiver of any term or condition of this Agreement must be made in the form of an Amendment to this Agreement. Unless expressly provided for in such Amendment, any such waiver shall not be construed as applicable to any breach of a term or condition that occurred prior to said Amendment.
- 42.3.2. The omission by either Party at any time to remedy any default or enforce any right, or to require performance in accordance with the terms and conditions of this Agreement at the time designated shall not act as a waiver of the default or right, nor shall it affect the right of that party to enforce those provisions at a later date.
- 42.4. Severability. The provisions of this Agreement are separate and severable. Should any court hold that any provision of this Agreement is invalid, void or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the reasonable intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.
- 42.5. Governing Law; Jurisdiction

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- 42.5.1. This Agreement, and all of the rights and duties of Contractor and the Judicial Council arising out of or related to this agreement or to the relationship of Contractor and the Judicial Council, are governed by the laws of the State of California without regard to its conflicts of law rules. This provision applies to all claims and causes of action that Contractor has or may acquire against the Judicial Council, whether based on contract, tort, statute, or anything else.
- 42.5.2. Contractor agrees that any claims that it has or may acquire against the Judicial Council shall be commenced in and decided exclusively by a court of competent jurisdiction located in the State of California. Contractor agrees to submit to the personal and exclusive jurisdiction of courts located in the State of California. Contractor waives all defenses and arguments that the courts located in the State of California constitute an inconvenient forum based upon the residence or domicile of Contractor, the location of the work that is the subject of the litigation or the location of witnesses, the location of documents, or anything else.
- 42.6. Agreement Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.
- 42.7. Public Contract Code References. Public Contract Code references create duties of the Contractor under this Agreement; however, the references do not imply that the Judicial Council is subject to the Public Contract Code.
- 42.8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties as regards its subject matter, and supersedes all previous agreements, proposals, negotiations, representations and commitments, whether oral or written, with regard thereto.

END OF EXHIBIT B

EXHIBIT C

INVOICING AND PAYMENT PROVISIONS

1. Contract Amount

The total amount that Contractor may receive as compensation under this Agreement shall not at any time exceed the Contract Amount. Contractor shall ensure that the charges for any Materials and Services provided shall not at any time exceed the Contract Amount.

2. Compensation

The Judicial Council shall compensate Contractor for Services actually provided in accordance with the rates and charges specified in Exhibit D and in accordance with the provisions of this Agreement.

3. Taxes

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

4. Travel and Living Expenses

Travel and/or living expenses will not be reimbursed to Contractor under this Agreement.

5. Invoicing Instructions

5.1 Contractor will provide a separate invoice for each Work Order authorized under this Agreement. Upon completion of provision of all Services and Materials pertaining to a Work Order, and the written concurrence of the Judicial Council's Project Manager of such completion, Contractor shall provide an invoice pertaining to that Work Order as follows:

- Name and Number of this Agreement: "Energy Services Consulting,
- Master Agreement No: "XXXXXX"
- The Work Order Number provided on the authorized Work Order to which the Invoice pertains
- A unique invoice number;
- Contractor's name and address to which payment shall be directed;
- Contractor's Taxpayer identification number (FEIN);

5.2 For each Service being invoiced, provide:

5.2.1 The Descriptive Name for the Service, exactly as specified in the Work Order

5.2.2 Amount invoiced as follows:

5.2.2.1 Fixed Price Charges: If the Service was priced on a Fixed Price Basis, provide the Fixed Price for the Service, as specified on the Work Order accompanied by the words "Fixed Price".

5.2.2.2 Minimum Charge Charges: If the Service was priced to include a Minimum Charge, provide the Minimum Charge for the Service, as specified on the Work Order accompanied by the words "Minimum Charge".

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- 5.2.2.3 Actual Cost Charges: If the Service was priced to include an Actual Cost, provide the actual cost your organization incurred to provide the Service unless that cost exceeds the Actual Cost specified on the Work Order, in which case provide the Actual Cost specified on the Work Order, accompanied by the words "Actual Cost:"
- 5.2.2.4 Hourly Rates Charges: If the pricing of the Service was based on or priced to include Hourly Rates, provide, (separately for each employee), the position title and Hourly Rate as specified on the Work Order, the actual number of hours of work incurred by that title and the extended price for the hours being invoiced. Provide a total of all Hourly Rate charges being invoiced unless that total exceeds the total amount allowable for Hourly Rate Charges specified on the Work Order, in which case provide the total amount allowable for such Hourly Rate Charges specified on the Work Order accompanied by the words "Hourly Rate Charges:"
- 5.2.2.5 Other Rates Charges: If the pricing of the Service was based on or priced to include charges based on rates other than Hourly Rates, provide the explanation of the basis for the charge and the amount of the charge as specified on the Work Order, accompanied by the words "Other Rates Charges:"
- 5.2.2.6 Charges for Additional Services: If a Work Order is for Additional Services, provide the fixed price applicable to the Work Order.

5.3 Provide a total of all types of charges applicable to the Service.

5.4 Provide a total of all charges being invoiced.

6. Invoice Submission

6.1 Contractor shall submit one (1) original and two (2) copies of invoices to:

Judicial Council of California
c/o Finance Division, Accounts Payable
455 Golden Gate Avenue, FL 6
San Francisco, CA 94102

6.2 Contractor shall simultaneously submit an additional copy of the invoice to the Judicial Council's Project Manager.

Laura Sainz
Manager, Environmental Compliance and Sustainability
Office of Real Estate and Facilities Management
Judicial Council of California
2860 Gateway Oaks Drive, Suite 400
Sacramento, CA 95833

7. Payment

7.1 The State will pay invoices within sixty (60) Days after receipt of a correct, itemized invoice. In no event shall the Judicial Council or the State be liable for interest or late charges for any late payments. In the event that Work does not conform to the requirements of this Agreement, the Judicial Council shall have the right to place the invoice for such Work on hold until the defect of deficiency in the

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Work has been corrected, and the State's obligation to make payment under this Article 7 shall be extended by the number of the Days elapsed until said defect or deficiency has been provided.

7.2 Payment shall be made by the State to the Contractor at the address specified on the invoice.

7.3 The Judicial Council may withhold full or partial payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation of this Agreement.

8. Disallowance

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

9. Payment Does Not Imply Acceptance of Work

The granting of any payment by the Judicial Council, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct any errors in or deficiencies identified in Services provided.

10. Release of Claims

10.1 If Contractor has any outstanding claim against the Judicial Council Contractor must expressly identify said claim on the face of its final invoice submitted for payment.

10.2 The acceptance by Contractor of its final payment owed under this Agreement shall operate as a release of the Judicial Council, the JBE(s) and the State from all claims and all liability to the Contractor for all Materials and Services provided as well as anything else done or furnished in connection with this Agreement, including every act and neglect of the Judicial Council, the JBE(s) and/or the State.

END OF EXHIBIT C

EXHIBIT D

PRICING FOR SERVICES

A. The hourly rates which include direct costs, indirect costs, overhead, administrative costs, and profit, to be utilized in arriving at a negotiated fee for Extra Services, are set forth in Exhibit D. Payment for Extra Services will be either on a time and materials basis or a firm fixed price, as determined by the Judicial Council. For projects that extend over multiple fiscal years the Judicial Council may consider, in its sole discretion, increases to hourly rates, for extra services.

END OF EXHIBIT D

End of Agreement

ATTACHMENT 2
ADMINISTRATIVE RULES GOVERNING RFPS
(NON-IT SERVICES)

1. COMMUNICATIONS WITH THE JUDICIAL COUNCIL OF CALIFORNIA (“JUDICIAL COUNCIL”) REGARDING THE RFP

Except as specifically addressed elsewhere in the RFP, Proposers must send any communications regarding the RFP to Solicitations@jud.ca.gov (the “Solicitations Mailbox”). Proposers must include the RFP Number in the subject line of any communication.

2. QUESTIONS REGARDING THE RFP

Proposers interested in responding to the RFP may submit questions via email to the Solicitations Mailbox on procedural matters related to the RFP or requests for clarification or modification of the RFP no later than the deadline for questions listed in the timeline of the RFP. Once submitted, questions become part of the procurement file and are subject to disclosure; Proposers are accordingly cautioned not to include any proprietary or confidential information in questions. If the Proposer is requesting a change, the request must set forth the recommended change and the Proposer’s reasons for proposing the change. Questions or requests submitted after the deadline for questions will not be answered. Without disclosing the source of the question or request, a copy of the questions and the JBE’s responses will be made available.

3. ERRORS IN THE RFP

- A. If, before the proposal due date and time listed in the timeline of the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Proposer must immediately notify the Judicial Council via email to the Solicitations Mailbox and request modification or clarification of the RFP. Without disclosing the source of the request, the Judicial Council may modify the RFP before the proposal due date and time by releasing an addendum to the solicitation.
- B. If a Proposer fails to notify the Judicial Council of an error in the RFP known to Proposer, or an error that reasonably should have been known to Proposer, before the proposal due date and time listed in the timeline of the RFP, Proposer shall propose at its own risk. Furthermore, if Proposer is awarded the agreement, Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

4. ADDENDA

- A. The Judicial Council may modify the RFP before the proposal due date and time listed in the timeline of the RFP by issuing an addendum. It is each Proposer’s

responsibility to inform itself of any addendum prior to its submission of a proposal.

- B. If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the Judicial Council via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

5. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS

A Proposer may withdraw its proposal at any time before the deadline for submitting proposals by notifying the Judicial Council in writing of its withdrawal. The notice must be signed by the Proposer. The Proposer may thereafter submit a new or modified proposal, provided that it is received at the Judicial Council no later than the proposal due date and time listed in the timeline of the RFP. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the proposal due date and time listed in the timeline of the RFP.

6. ERRORS IN THE PROPOSAL

If errors are found in a proposal, the Judicial Council may reject the proposal; however, the Judicial Council may, at its sole option, correct arithmetic or transposition errors or both on the basis that the lowest level of detail will prevail in any discrepancy. If these corrections result in significant changes in the amount of money to be paid to the Proposer (if selected for the award of the agreement), the Proposer will be informed of the errors and corrections thereof and will be given the option to abide by the corrected amount or withdraw the proposal.

7. RIGHT TO REJECT PROPOSALS

- A. Before the proposal due date and time listed in the timeline of the RFP, the Judicial Council may cancel the RFP for any or no reason. After the proposal due date and time listed in the timeline of the RFP, the Judicial Council may reject all proposals and cancel the RFP if the Judicial Council determines that: (i) the proposals received do not reflect effective competition; (ii) the cost is not reasonable; (iii) the cost exceeds the amount expected; or (iv) awarding the contract is not in the best interest of the Judicial Council.
- B. The Judicial Council may or may not waive an immaterial deviation or defect in a proposal. The Judicial Council's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a Proposer from full compliance with RFP specifications. Until a contract resulting from this RFP is signed, the Judicial Council reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual Proposers if it is deemed in the Judicial Council's best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any Proposer.

- C. The Judicial Council reserves the right to issue similar RFPs in the future. The RFP is in no way an agreement, obligation, or contract and in no way is the Judicial Council or the State of California responsible for the cost of preparing the proposal.
- D. Proposers are specifically directed **NOT** to contact any Judicial Council personnel or consultants for meetings, conferences, or discussions that are related to the RFP at any time between release of the RFP and any award and execution of a contract. Unauthorized contact with any Judicial Council personnel or consultants may be cause for rejection of the Proposer's proposal.

8. EVALUATION PROCESS

- A. An evaluation team will review all proposals that are received by the appropriate deadline to determine the extent to which they comply with RFP requirements.
- B. Proposals that contain false or misleading statements may be rejected if in the Judicial Council's opinion the information was intended to mislead the evaluation team regarding a requirement of the RFP.
- C. During the evaluation process, the Judicial Council may require a Proposer's representative to answer questions with regard to the Proposer's proposal. Failure of a Proposer to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.
- D. In the event of a tie, the contract will be awarded to the winner of a single coin toss. The coin toss will be witnessed by two Judicial Council employees. The Judicial Council will provide notice of the date and time of the coin toss to the affected Proposers, who may attend the coin toss at their own expense.

9. DISPOSITION OF MATERIALS

All materials submitted in response to the RFP will become the property of the Judicial Council and will be returned only at the Judicial Council's option and at the expense of the Proposer submitting the proposal.

10. PAYMENT

- A. Payment terms will be specified in any agreement that may ensue as a result of the RFP.
- B. **THE COURT DOES NOT MAKE ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon completion of tasks as provided in the agreement between the Judicial Council and the selected Proposer. The Judicial Council may withhold ten percent of each invoice until receipt and acceptance of the final deliverable. The amount of the withhold may depend upon the length of the project and the payment schedule provided in the agreement between the Judicial Council and the selected Proposer.

11. AWARD AND EXECUTION OF AGREEMENT

- A. Award of contract, if made, will be in accordance with the RFP to a responsible Proposer submitting a proposal compliant with all the requirements of the RFP and any addenda thereto (including any administrative or technical requirements), except for such immaterial defects as may be waived by the Judicial Council.
- B. A Proposer submitting a proposal must be prepared to use a standard Judicial Council contract form rather than its own contract form.
- C. The Judicial Council will make a reasonable effort to execute any contract based on the RFP within forty-five (45) days of selecting a proposal that best meets its requirements. However, exceptions taken by a Proposer may delay execution of a contract.
- D. Upon award of the agreement, the agreement shall be signed by the Proposer in two original contract counterparts and returned, along with the required attachments, to the Judicial Council no later than ten (10) business days of receipt of agreement form or prior to the end of June if award is at fiscal year-end. Agreements are not effective until executed by both parties. Any work performed before receipt of a fully-executed agreement shall be at Proposer's own risk.

12. FAILURE TO EXECUTE THE AGREEMENT

The period for execution set forth in Section 11 ("Award and Execution of Agreement") may only be changed by mutual agreement of the parties. Failure to execute the agreement within the time frame identified above constitutes sufficient cause for voiding the award. Failure to comply with other requirements within the set time constitutes failure to execute the agreement. If the successful Proposer refuses or fails to execute the agreement, the Judicial Council may award the agreement to the next qualified Proposer.

13. NEWS RELEASES

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of the Judicial Council's Business Services Administrator.

14. ANTI-TRUST CLAIMS

- A. In submitting a proposal to the Judicial Council, the Proposer offers and agrees that if the proposal is accepted, Proposer will assign to the Judicial Council all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the Judicial Council pursuant to the proposal. Such assignment shall be made and become effective at the time the Judicial Council tenders final payment to the Proposer. (See Government Code section 4552.)
- B. If the Judicial Council receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Proposer shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the Judicial Council any portion of the recovery, including treble damages, attributable to overcharges that were paid.
- C. Upon demand in writing by the Proposer, the Judicial Council shall, within one year from such demand, reassign the cause of action assigned under this section if the Proposer has been or may have been injured by the violation of law for which the cause of action arose and (a) the Judicial Council has not been injured thereby, or (b) the Judicial Council declines to file a court action for the cause of action. (See Government Code section 4554.)

15. AMERICANS WITH DISABILITIES ACT

The Judicial Council complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Proposers should be directed to the Solicitations Mailbox.

ATTACHMENT 3

**PROPOSER'S ACCEPTANCE OF
JUDICIAL COUNCIL MASTER AGREEMENT TERMS AND CONDITIONS**


Instructions: Mark the appropriate choice below and sign this attachment.

- Proposer accepts Attachment 1: Judicial Council Master Agreement Standard Terms and Conditions ("Attachment 1") without exception.

OR

- Proposer proposes exceptions or modifications to Attachment 1. Proposer must also submit (i) a red-lined version of Attachment 1 that clearly tracks proposed modifications, and (ii) a written explanation or rationale for each exception or proposed modification.

Proposed replacement of Attachment 1 in its entirety with Proposer's terms and conditions is not allowed and may render a proposal non-responsive.

BY (Authorized Signature) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

Attachment 4

GENERAL CERTIFICATIONS FORM

Check the box below, if agreed, and sign this attachment. Please note that the Judicial Council will reject a proposal from a Proposer that does not indicate acceptance of these clauses.


Conflict of Interest. Proposer has no interest that would constitute a conflict of interest under California Public Contract Code (PCC) sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with judicial branch entities.

Suspension or Debarment. Proposer certifies that neither Proposer nor any of Proposer’s intended subcontractors is on the California Department of General Services’ list of firms and persons that have been suspended or debarred from contracting with the state because of a violation of PCC 10115.10, regarding disabled veteran business enterprises.

Tax Delinquency. Proposer certifies that it is not on either (i) the California Franchise Tax Board’s list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization’s list of 500 largest delinquent sales and use tax accounts.

Conflict Minerals. Proposer certifies that either (i) it is not a scrutinized company as defined in PCC 10490(b), or (ii) the goods or services the Proposer would provide to the Judicial Council are not related to products or services that are the reason the Proposer must comply with Section 13(p) of the Securities Exchange Act of 1934. (Note: PCC 10490(b) defines a “scrutinized company” as “a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement.”)

Check this box to indicate acceptance of the clauses above.

BY (Authorized Signature) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

RFQ Title: Energy Services Consulting
RFQ No.: REFM-2015-13-DM