

ATTACHMENT 2 TO THE RFP – ADDENDUM 1

**JUDICIAL COUNCIL OF CALIFORNIA
STANDARD AGREEMENT COVERSHEET**

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

- This Agreement is between the **Judicial Council of California** (“Judicial Council”), and **[@Construction Management Firm]** (“Construction Manager”). Judicial Council and Construction Manager may be individually referred to herein as “Party” or collectively referred to herein as “Parties.”
- The term of this Agreement commences upon **[@Effective date]**, the “Effective Date,” and is complete upon final payment by Judicial Council (“Term”).
- The title of this Agreement is: Construction Management Services Agreement. The number of this Agreement is: **[@#]**. This Agreement is issued pursuant to Judicial Council solicitation number: **[RFP-FS-2023-14-MY]**. The title and number listed is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.
- The total amount that Judicial Council may pay Construction Manager under this Agreement shall not at any time exceed **[\$[@Dollar amount]]** (“Contract Fee” or “Contract Amount”).
- This Agreement constitutes the entire agreement between the Parties with regard to its subject matter and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by an Amendment executed by both Parties. In the event of conflict in documents, the following order of precedence shall prevail: (1) the most recently executed Amendment to the Agreement; (2) the Standard Agreement Coversheet pertaining to this Agreement; and (3) Exhibits A, B, C, D, E, F, G, H, I, and J (in order of preference).
- The following documents are individually or collectively referred to as “Contract Documents”:
 - Exhibit A: Standard Provisions
 - Exhibit B: Responsibilities and Services of Construction Manager
 - Exhibit C: Payment Provisions
 - Exhibit D: Schedule of Work
 - Exhibit E: Firm Personnel Billing Rates
 - Exhibit F: Key Personnel
 - Exhibit G: Internal Background Check Policy
 - Exhibit H: Contract Fee
 - Exhibit I: DVBE Participation Form
 - Exhibit J: Prevailing Wage and Related Labor Requirements Certification

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

\$0.00	Performance Criteria Phase
\$0.00	Pre-GMP Services Phase - NYA
\$0.00	Post-GMP Services Phase - NYA
\$0.00	Total Amount



JUDICIAL COUNCIL’S SIGNATURE	CONSTRUCTION MANAGER’S SIGNATURE
Judicial Council of California	CONSTRUCTION MANAGER’S NAME (if Construction Manager is not an individual person, state whether Construction Manager is a corporation, partnership, etc.) [@Construction Management Firm]
	LICENSE NO. AND EXP DATE: LICENSE #[@#], [@ExpDate] DIR PWCR #[@#], [@ExpDate]
BY (Authorized Signature) 	BY (Authorized Signature) 
PRINTED NAME AND TITLE OF PERSON SIGNING Steven Bonde, Principal Manager, Procurement	PRINTED NAME AND TITLE OF PERSON SIGNING
DATE EXECUTED	DATE EXECUTED
ADDRESS Branch Accounting and Procurement 455 Golden Gate Avenue, 6 th Floor San Francisco, CA 94102	ADDRESS [Address]

EXHIBIT A

STANDARD PROVISIONS

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Article 1 DEFINITIONS

- 1.1. The following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
- 1.1.1. **“Acceptance”** or **“Accept”** means the written acceptance issued to Construction Manager by Judicial Council’s Project Manager after Construction Manager has successfully provided the Work in accordance with this Agreement.
 - 1.1.2. **“Agreement”** or **“Contract Documents”** means the Agreement between Judicial Council and Construction Manager inclusive of all Exhibits and Amendments to the Agreement. The Agreement shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Judicial Council and Construction Manager. May also be referred to herein as the “Contract.”
 - 1.1.3. **“Amendment”** means a Standard Agreement form substantially in the format of the Standard Agreement form used to enter into this Agreement, and any documents it explicitly references that, when signed by the Parties, modifies the provisions of this Agreement.
 - 1.1.4. **“Authority Having Jurisdiction”** means any organization, office, or individual responsible for enforcing the requirements of a statute, regulation, code, or standard, or for approving equipment, materials, an installation, or a procedure in relation to the Project.
 - 1.1.5. **“Bid”** means any procurement document that Judicial Council utilizes to procure Project-related services from a contractor, which may be a request for proposal, a request for qualifications, a formal bid, a solicitation, or other method.
 - 1.1.6. **“Building Components/Disciplines”** means the various building components and disciplines from which the design of the Project is comprised, including, but not limited to, site, architectural, building envelope, mechanical, electrical, structural, fire protection, civil engineering, landscape architecture, security and detention, food service, lighting, low voltage, data, audio-visual, acoustical, electronics, telephone, telecommunications, and any other systems or specialties.
 - 1.1.7. **“Capital Outlay Program”** or **“Capital Program”** means a group of related judicial branch courthouse construction, renovation, and facility modification projects, subprograms, and program activities for which the Judicial Council’s Facilities Services has responsibility to oversee and manage.
 - 1.1.8. **“Claim(s)”** means all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative, or otherwise), losses, delays, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney’s and consultants’ fees and causes of action, including, without any limitation whatsoever, personal injury and/or death.

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- 1.1.9. “**Confidential Information**” means trade secrets, financial, statistical, personnel, technical, or any other data or information relating to the Judicial Council’s, the Courts’ or the State’s business, or the business of its constituents.
- 1.1.10. “**Construction Documents**” means the final working drawings and specifications that set forth in detail the design and all of the requirements for construction of the entire Project, and must be approved by the Criteria Architect, the Judicial Council, and/or the DBE (if applicable). The Construction Documents provide the basis upon which the DBE shall bid the Project and are part of the design build contract with the DBE.
- 1.1.11. “**Contract Documents**” means this Agreement inclusive of all exhibits and amendments.
- 1.1.12. “**Contract Fee**” or “**Fee**” means the amount as stated in the Agreement, as further defined herein, that is payable as set forth herein and in Exhibit H.
- 1.1.13. “**Court(s)**” means the superior or appellate court for whose benefit the Project is being undertaken.
- 1.1.14. “**Criteria Architect**” means the architectural firm engaged as an agent by Judicial Council to prepare the Performance Criteria documents, and to review the design documents to ensure compliance with the Performance Criteria documents. The Criteria Architect’s team may include additional consultants (“Criteria Team”) to aid in development of Performance Criteria documents and review of the design documents for adherence to the Performance Criteria documents.
- 1.1.15. “**Data**” means everything created, developed, or produced in the course of the Construction Manager’s performance of the Services, including, without limitation, all drawings and specifications, reports, records, files, documents, photographs, videos, memoranda, schedules, recordings, information, and other materials or data, whether in hard copy or electronic format(s).
- 1.1.16. “**Day(s)**” means calendar day of 24 hours, unless otherwise specifically defined.
- 1.1.17. “**Direct Cost of the Work**” means the total cost of the construction work of the Project as may be revised throughout the Post-GMP Phase.
- 1.1.18. “**Director**” means the Director of Facilities Services of the Judicial Council or the Director's designee.
- 1.1.19. “**Design Build Entity**” or “**DBE**” means the corporation, limited liability company, partnership, joint venture, or other legal entity that will enter into an Agreement with Judicial Council to perform the work included in the final performance criteria documents, and for design and construction of the Project.

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- 1.1.20. **“Extra Services”** means Judicial Council-authorized services, deliverables, and reimbursables as identified in Exhibit B.
- 1.1.21. **“Force Majeure”** or **“Force Majeure Event”** means an event that is one or more of the following events that prevents Judicial Council’s or Construction Manager’s performance and is beyond the reasonable contemplation of the Parties as of the Effective Date: fires; floods; lightning; explosion; windstorms; tornadoes; earthquakes; other natural catastrophes which neither party can prevent; acts of nature or public enemy (including acts of terrorism); war (declared or undeclared); riot or similar civil disturbance; blockade; insurrections; revolution; epidemics; pandemics; viral outbreaks; quarantine restrictions; strikes; lockouts and other labor disputes; fuel shortages; or freight embargoes. Force Majeure may include the actions or omissions of third parties not under control of Construction Manager or Judicial Council. Notwithstanding the preceding, Force Majeure Events shall not include (a) strikes or lockouts involving Construction Manager or Construction Manager’s employees, (b) strikes or lockouts involving Construction Manager’s Subconsultants or Subconsultants’ employees, unless Construction Manager has taken all diligent efforts to avoid or minimize the strikes or lockouts.
- Notwithstanding the foregoing, Construction Manager agrees that the Contract Amount is based on Construction Manager’s full compliance with all applicable and existing federal, state, and/or local statutes, orders, rules, regulations, ordinances, and/or directives relating to construction site safety in connection with any disease, or derivative strain thereof, known to the Parties as of the Effective Date. Therefore, any delay, including but not limited to supply chain delay, associated with any disease, or derivative strain thereof, known to the Parties as of the Effective Date, or any federal, state, or local order relating thereto, shall not be considered a Force Majeure Event.
- 1.1.22. **“GAAP”** means Generally Accepted Accounting Principles.
- 1.1.23. **“Guaranteed Maximum Price”** or **“GMP”** means the maximum price that Judicial Council will pay to the selected DBE for construction of the Project.
- 1.1.24. **“Indemnified Parties”** means the State, the Judicial Council, the State’s trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and all of their agents, representative, officers, consultants, employees, representatives, and volunteers.
- 1.1.25. **“Inspector of Record”** or **“IOR”** or **“Project Inspector”** means the person or persons employed or engaged as an independent contractor(s) by Judicial Council to inspect the performance of the construction work by DBE for compliance with the Construction Documents. The authority of the Project Inspector to monitor the performance of the Work will be strictly limited to the authority specified herein and in Title 24 of the California Code of Regulations, and no additional authority has been granted nor shall be inferred.

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- 1.1.26. **“Intellectual Property Rights”** means 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.
- 1.1.27. **“Judicial Council”** means the Judicial Council of California.
- 1.1.28. **“Key Personnel”** refers to Construction Manager personnel or personnel of Subconsultant(s) who are designated as “Key Personnel” and identified by name in Exhibit F.
- 1.1.29. **“LEED”** means the Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ of the United States Green Building Council (USGBC), a national benchmark for the design, construction, and operation of high-performance green buildings.
- 1.1.30. **“Material(s)”** means any type of tangible item provided to Judicial Council by Construction Manager and/or its Subconsultants, including but not limited to, written reports, goods, supplies, equipment, and other commodities. Material(s) exclude all software, Services, and Reimbursable(s).
- 1.1.31. **“NIC”** or **“Not in Contract”** means the Services for a Phase of the Work that is not included in the Agreement. An amendment to the Agreement is required to proceed with any work identified as NIC.
- 1.1.32. **“Notice”** means a written document provided in accordance with the provisions of the section entitled “Communications/Notice” set forth in Article 29.
- 1.1.33. **“Notice to Proceed”** means written permission to begin Work. A separate Notice to Proceed is required for each Phase of Work.
- 1.1.34. **“NYA”** or **“Not Yet Authorized”** means the Services for a Phase of the Work that is within the Agreement, but for which Judicial Council has not yet authorized Construction Manager to perform. NYA Services are intended to be within the scope of the Agreement but shall only be undertaken by Construction Manager if Judicial Council authorizes the Phase in which the NYA Services is included.
- 1.1.35. **“OCIP”** or **“Owner Controlled Insurance Program”** means the Project-specific insurance program initiated and administered by Judicial Council during the Construction Phase, to provide any or all of the insurance requirements that will insure the interest and activities of the DBE and any of its Subcontractor(s) or their Sub-Subcontractor(s) performing work at or incidental to the Project site.
- 1.1.36. **“Performance Criteria”** means the requirements developed by or for Judicial Council to describe Judicial Council’s program requirements and objectives for the Project, including as appropriate, use, space, price, durability, production standards, ingress and egress requirements, or other criteria for the intended use of the Project, expressed in conceptual documents, performance-oriented preliminary drawings, standards, outline specifications,

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and/or other documents provided to DBE and Construction Manager by Judicial Council, establishing the Project's basic elements and scale and their relationship to the Site.

- 1.1.37. **“Phase(s)”** means one or more of the timeframes within which the Services may be authorized and performed.
- 1.1.38. **“Post-GMP Services”** means Construction Manager's scope of work pursuant to the Agreement after Judicial Council's acceptance of the DBE's GMP.
- 1.1.39. **“Pre-GMP Services”** means Construction Manager's scope of work pursuant to the Agreement prior to the establishment of the GMP.
- 1.1.40. **“Prevailing Wage”** means the prevailing wage for applicable craft and classification of a worker as determined by the California Department of Industrial Relations, pursuant to Labor Code sections 1770 and 1773, et seq.
- 1.1.41. **“Project”** means the total design and construction of the Work addressed in the Program Criteria and contract documents, prepared and developed by the Criteria Architect and Judicial Council.
- 1.1.42. **“Project Manager”** means the Judicial Council employee who is authorized to act as Judicial Council's agent to oversee the design and construction of the Project. The Project Manager is the point of contact for the Construction Manager in its communications with Judicial Council.
- 1.1.43. **“Reimbursable Expense”** means expense(s) incurred or to be incurred by Construction Manager and/or its Subconsultant(s) for Reimbursable Item(s).
- 1.1.44. **“Reimbursable Item(s)”** or **“Reimbursable(s)”** means tangible item(s) utilized by Construction Manager's or Subconsultant's employees in the performance of Service(s).
- 1.1.45. **“Service(s)”** or **“Work”** means all labor, materials, supervision, services, tasks, and work that the Construction Manager is required to perform and that is required by, or reasonably inferred from, the Agreement, including but not limited to the services detailed in Exhibit B.
- 1.1.46. **“State”** means the State of California.
- 1.1.47. **“Subconsultant(s)”** means a party or entity who has a direct contract with the Construction Manager to perform portion(s) of the Work, including, but not limited to “subcontractors,” as defined by Labor Code section 1722.1.
- 1.1.48. **“Target Guaranteed Maximum Price”** or **“TGMP”** means the total estimated cost for the Post-GMP construction work by the DBE as established by Judicial Council.

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1.2. **Capitalization and Usage.**

1.2.1. Terms capitalized in the Agreement include those that are:

1.2.1.1. Specifically defined; or

1.2.1.2. Titles and captions of numbered Articles, Exhibits, Parts, Subparts, Sections, or Paragraphs; or

1.2.1.3. Titles of other documents.

1.2.2. Usage

1.2.2.1. For the purposes of this Agreement, the terms “**shall**” and “**will**” and “**must**” are mandatory, and “**may**” is permissive.

Article 2 SCOPE, RESPONSIBILITIES, AND SERVICES OF CONSTRUCTION MANAGER

2.1. **Scope.** Construction Manager shall provide the Services described herein and under Exhibit B for the Project. The Parties agree that Construction Manager’s Services described herein will be based on Construction Manager performing professional services for Judicial Council on the Project during the Performance Criteria development, the Pre-GMP Phase, and the Post-GMP Phase, as such Phases are authorized by Judicial Council.

2.2. **Coordination.** In the performance of the Services, Construction Manager shall maintain direct communication with the Project Manager as the primary point of contact with Judicial Council.

2.2.1. Construction Manager shall coordinate its Work with other Judicial Council personnel and Judicial Council’s designated representatives as may be requested and desirable but must take primary direction from the Project Manager.

2.2.2. Construction Manager must also follow the direction of the Director, as appropriate.

2.2.3. Construction Manager must also coordinate with all members of Judicial Council's risk, safety, and quality management staff. If Construction Manager employs Subconsultant(s), Construction Manager must ensure that its contract(s) with its Subconsultant(s) include language notifying the Subconsultant(s) of Judicial Council’s insurance, safety, and labor compliance programs, if any.

2.3. **Construction Manager as Judicial Council Representative.**

2.3.1. Construction Manager will render the Services as described in Exhibit B, which will commence upon the receipt of a Notice to Proceed signed by the Director. Construction Manager’s Services will be completed in accordance with the schedule attached as Exhibit D. Judicial Council reserves the right to issue a Notice(s) to Proceed by Phase for Construction Manager’s Services, in its sole discretion.

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- 2.3.2. Construction Manager is an independent contractor and is solely responsible for obtaining any and all business and professional licenses and permits, and for complying with any applicable Federal or State laws, codes and regulations, and municipal ordinances, as necessary, for the execution of the Services.
- 2.3.3. Judicial Council's agreement with the Design Build Entity authorizes Construction Manager to Stop Work. Construction Manager must obtain written authorization from Judicial Council before ordering the Design Build Entity to Stop Work.

Article 3 CONSTRUCTION MANAGER STAFF

- 3.1. Construction Manager has been selected to perform the Work herein because of the skills and expertise of its Key Personnel.
- 3.2. Construction Manager agrees that the Key Personnel listed in Exhibit F will be the personnel associated with the Project.
- 3.3. Construction Manager must not change any of the Key Personnel listed in Exhibit F without prior written approval by Judicial Council unless any Key Personnel ceases to be employed by Construction Manager. In either case, Judicial Council will be allowed to interview and approve replacement personnel.
- 3.4. If any designated lead or Key Personnel, including employees and Subconsultants, fails to perform to the satisfaction of Judicial Council, then upon written Notice, Construction Manager must immediately remove that person from the Project and provide a temporary replacement. Construction Manager must within fifteen (15) days provide a permanent replacement person, employee, or Subconsultant employee acceptable to Judicial Council. All lead or Key Personnel for any Subconsultant must also be designated by the Construction Manager.
- 3.5. Construction Manager is responsible for all costs associated with replacing any Key Personnel, including, without limitation, all additional costs to familiarize replacement Key Personnel with the Work. If Construction Manager does not furnish replacement Key Personnel acceptable to Judicial Council, Judicial Council may, in its discretion, terminate Construction Manager for cause.
- 3.6. Construction Manager represents that Construction Manager has no existing interest and will not acquire any interest, direct or indirect, that could conflict in any manner or degree with the performance of Services required under this Agreement, and that no person having any conflict of interest will be employed by Construction Manager. If Judicial Council determines that Construction Manager has or had a conflict in any manner or degree with the performance of the Services, Judicial Council may, in its discretion, terminate Construction Manager for cause.
- 3.7. Construction Manager shall contract for, at Construction Manager's expense, Subconsultants, to the extent deemed necessary for performance of the Services. Nothing in this Agreement shall create any contractual relationship between Judicial Council and any Subconsultants employed by Construction Manager.

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- 3.8. If Construction Manager assigns persons (whether employees, independent contractors, Subconsultants, or agents) to perform Work under this Agreement that requires that the person have access to the systems (whether on-site or by remote access) or premises of Judicial Council or other Judicial Branch entities, Judicial Council has the right, but not the obligation, to conduct a background check or to require Construction Manager to conduct a background check, as permitted by law, on that person(s) before Judicial Council will grant to that person(s) access to Judicial Council's or other judicial branch entities' premises or systems. Construction Manager will cooperate with Judicial Council in performing that background check and will promptly notify Judicial Council of any person refusing to undergo a background check, and will reassign that person to perform other services. Construction Manager must obtain all releases, waivers, or permissions required for the release of that information to Judicial Council. Costs incident to background checks are the sole responsibility of Construction Manager.

Article 4 EMPLOYMENT STATUS

- 4.1. Construction Manager will, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow Judicial Council to exercise discretion or control over the professional manner in which Construction Manager performs the Services which are the subject matter of this Agreement; provided, however, that the Services provided by Construction Manager must always be provided in a manner consistent with all applicable standards and regulations governing those Services.
- 4.2. Construction Manager understands and agrees that Construction Manager's personnel and Subconsultants are not, and will not be, eligible for membership in, or any benefits from, any Judicial Council group plan for hospital, surgical, or medical insurance, or for membership in any Judicial Council retirement program or for paid vacation, paid sick leave, or other leave, with or without pay, or for other benefits which accrue to a Judicial Council employee.
- 4.3. Construction Manager shall pay, when due, all applicable income taxes, including estimated taxes, incurred by Construction Manager as a result of the compensation paid by Judicial Council to Construction Manager for the Services. The State is exempt from federal excise taxes and no payment will be made for any taxes levied on Construction Manager's or any Subconsultants' employees' wages. To the furthest extent permitted by law, Construction Manager agrees to indemnify, defend, and hold Judicial Council harmless for any claims, costs, losses, fees, penalties, interest, or damages (including attorney fees and costs) suffered by Judicial Council in any way related to Construction Manager's failure to comply with this provision. Judicial Council may offset any taxes paid by Judicial Council as a result of Construction Manager's breach of this provision against any amounts owed to Construction Manager.
- 4.4. If applicable, Construction Manager shall provide a written, executed document identifying, if at all, that Construction Manager is listed on either or both of the State of California Franchise Tax Board's "Top 500 Delinquent Taxpayers" (available at <https://www.ftb.ca.gov/about-ftb/newsroom/top-500-past-due-balances/corporate-income-tax-list.html>) or the California Department of Tax and Fee Administration's "Top 500 Sales & Use Tax Delinquencies in California" (available at <https://www.cdtfa.ca.gov/taxes-and-fees/top500.htm>).

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- 4.5. Should Judicial Council, in its discretion, or a relevant taxing authority (e.g., the Internal Revenue Service, the State Employment Development Department, etc.) determine that Construction Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement will be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Construction Manager which can be applied against this liability). Judicial Council will then forward those amounts to the relevant taxing authority.
- 4.6. Should a relevant taxing authority determine a liability for past Services performed by Construction Manager for Judicial Council, upon notification of that fact by Judicial Council, Construction Manager must promptly remit the amount due or arrange with Judicial Council to have the amount due withheld from future payments to Construction Manager under this Agreement (and offsetting any amounts already paid by Construction Manager, which can be applied as a credit against that liability).
- 4.7. A determination of employment status pursuant to the preceding two paragraphs will be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Construction Manager shall not be considered an employee of Judicial Council. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Construction Manager is an employee for any other purpose, then Construction Manager agrees to a reduction in Judicial Council's liability resulting from this Agreement, pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of Judicial Council under this Agreement will not be greater than they would have been had the court, arbitrator, or administrative authority determined that Construction Manager was not an employee.
- 4.8. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 5 SCHEDULE OF WORK

- 5.1. Construction Manager must commence the Work under this Agreement upon receipt of a Notice(s) to Proceed issued by the Director, or the Director's designee, and must execute the Work diligently as described in Exhibit B, in accordance with the schedule attached as Exhibit D. Time is of the essence and failure of Construction Manager to perform the Work on time as specified in this Agreement is a material breach of this Agreement.
- 5.2. **Work Authorization.**
 - 5.2.1. By entering into this Agreement, Judicial Council only authorizes Construction Manager to begin its Work on the Phase indicated on the Coversheet of the Agreement.
 - 5.2.2. Judicial Council has the sole and unilateral right to authorize additional Phases; however, those authorizations will be made in the form of an Amendment to this Agreement, authorizing the appropriate Phase and funding specified herein, which must be executed by Construction Manager and Judicial Council. Work for additional Phases added to the Agreement after the Parties execute an Amendment will be authorized by the Director's or the Director's designee's issuance of a Notice(s) to Proceed.

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5.2.3. Construction Manager is not authorized to begin any Work or Services identified as NYA.

Article 6 FEE AND METHOD OF PAYMENT

- 6.1. Judicial Council will pay Construction Manager the Fee for all Services contracted for under this Agreement, pursuant to the provisions herein and in Exhibit H. Compensation for any Extra Services will become part of the Fee upon Judicial Council's written authorization of those Extra Services.
- 6.2. Construction Manager's Fee includes, without limitation, all costs for overhead, personnel, administration, profit, travel, offices, per diem expenses, and all deliverables, printing, and shipping, under the Agreement.

Article 7 PAYMENT FOR EXTRA SERVICES

- 7.1. Extra Services are those services, deliverables, and Reimbursables identified in Exhibit B. Extra Services must be authorized by Judicial Council and executed as an Amendment. Any charges for Extra Services will be paid by Judicial Council as described in the Amendment and Exhibit B. If any Extra Service is performed by Construction Manager without prior written authorization by Judicial Council or Judicial Council's authorized representative, then Judicial Council will not be obligated to pay for that service.
- 7.2. A written proposal describing the scope of the Extra Services and listing the personnel, labor duration, rates, and cost(s) shall be submitted by Construction Manager to the Project Manager for approval. Upon approval, and before proceeding with the performance of any Extra Services, the Parties shall execute an Amendment to the Agreement, unless otherwise directed in writing by Judicial Council.
- 7.3. The Parties acknowledge that the rates for Extra Services will be good for three years and updated every two years thereafter, based on the Bureau of Labor Statistics CPI for Urban Wage Earners and Clerical Workers (CPI-W).

Article 8 STANDARD OF CARE

- 8.1. Construction Manager, its officers, agents, employees, Subconsultants, and any persons or entities for whom Construction Manager is responsible, must provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement, and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. Judicial Council's review, approval of, or payment for any of the Services required under this Agreement must not be construed as assent that Construction Manager has complied, nor in any way relieve the Construction Manager of compliance, with (i) the applicable standard of care and/or (ii) applicable statutes, regulations, rules, guidelines, and requirements governing Construction Manager's Services.
- 8.2. Construction Manager shall provide Services that comply with all applicable requirements of federal, state, and local law, including, without limitation, the following statutes, regulations, and standards:
 - 8.2.1. California Code of Regulations, Title 24, California Building Standards Code, including all amendments thereto.

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- 8.2.2. California Trial Court Facilities Standards.
 - 8.2.3. California Code of Regulations, Title 19, Regulations of the State Fire Marshal, and all pertinent local fire safety codes, rules, regulations, or ordinances.
 - 8.2.4. Americans with Disabilities Act.
 - 8.2.5. U. S. Copyright Act.
 - 8.2.6. Notwithstanding subsequent approvals by any Authority Having Jurisdiction, Construction Manager's failure to comply with these requirements shall be considered a material breach of this Agreement.
- 8.3. Construction Manager is responsible for all costs, including, without limitation, direct, indirect, and consequential cost impacts, in any way related to Construction Manager's failure to timely and diligently perform the Services. Without in any way limiting Construction Manager's responsibility for all such costs, such impacts shall include costs related to improperly coordinating with an Authority Having Jurisdiction, costs arising from delayed or improper review and processing of submittals, payment applications, change order requests, contingency and allowance use requests, schedule reviews, requests for time extensions, and any other Service under this Agreement.

Article 9 PERFORMANCE REVIEW

- 9.1. Judicial Council or its agent may evaluate Construction Manager's performance under this Agreement. Such evaluation may include assessing Construction Manager's compliance with all Agreement terms and performance standards. Any deficiencies in Construction Manager's performance that Judicial Council reasonably determines are severe or continuing and compromises the quality of Construction Manager's Work if not corrected, will be reported to Construction Manager's principal. The report may include recommended improvements and corrective measures to be taken by Construction Manager. If Construction Manager's performance remains unsatisfactory as determined by Judicial Council, in its sole discretion, Judicial Council may, without limitation, terminate this Agreement for cause or impose other penalties as specified in this Agreement. Any evaluation of Construction Manager's performance conducted by Judicial Council shall not be construed as an Acceptance of Construction Manager's work product or methods of performance. Construction Manager shall be solely responsible for the quality, completeness, and accuracy of the work product that Construction Manager and its Subconsultants deliver under this Agreement. Construction Manager shall not rely on Judicial Council to perform any quality control review of Construction Manager's work product, as such review shall be conducted by Construction Manager.

Article 10 SAFETY

- 10.1. Construction Manager shall retain full responsibility for the safety of all persons employed or contracted by Construction Manager, Subconsultants, or suppliers, including compliance with any Project site safety or other safety protocols related to COVID-19, or any similar or derivative strain, issued by any State, local, and/or federal authority.

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- 10.2. Construction Manager must comply with the safety and security standards and provisions of all applicable local, State, and federal laws and building and construction codes related to performing its Services, including the provisions of Title 8 of the California Code of Regulations, California Construction Safety Orders and all revisions, amendments, and regulations thereto.
- 10.3. Construction Manager must ensure that prior to any person employed or contracted by Construction Manager, Subconsultants, or suppliers enters a Project site, that person will only be allowed on the Project site when in full compliance with the “Internal Background Check Policy,” attached hereto as Exhibit G.

Article 11 LABOR COMPLIANCE

To the extent the Construction Manager is performing work subject to prevailing wages, the following provisions of this Article apply.

11.1. Prevailing Wage.

- 11.1.1. Construction Manager and all Subconsultants under Construction Manager shall pay all workers on Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work, as determined by the Director of the Department of Industrial Relations, State of California (“DIR”), for the type of Work performed and the locality in which the Work is to be performed, pursuant to Sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by the Director of DIR, are on file at the Judicial Council’s principal office. Prevailing wage rates are also available on the internet (at <http://www.dir.ca.gov>).
- 11.1.2. Construction Manager shall ensure that Construction Manager and all of Construction Manager’s Subconsultants execute the Prevailing Wage and Related Labor Requirements Certification attached to the Contract and incorporated herein.
- 11.1.3. The Project is subject to compliance monitoring and enforcement by DIR. Construction Manager shall post job site notices, as prescribed by regulation. Construction Manager shall comply with all applicable requirements of Labor Code section 1771.4.

11.2. Registration.

- 11.2.1. Construction Manager shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records (“CPR(s)”) to the Labor Commissioner of California and complying with any applicable enforcement by DIR. Labor Code section 1771.1(a) states the following:

A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract

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Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded.

11.2.2. Construction Manager shall, and shall ensure that all Subconsultants, comply with Labor Code section 1725.5, including without limitation the registration requirements with DIR that are set forth in Labor Code section 1725.5. Construction Manager represents to Judicial Council that all Subconsultants are registered pursuant to Labor Code section 1725.5. Construction Manager shall not permit any Subconsultants to perform Work on the Project without first verifying the Subconsultant is properly registered with DIR, as required by law, and then providing this information in writing to Judicial Council. Construction Manager acknowledges that, for purposes of Labor Code section 1725.5, this Work is public work to which Labor Code section 1771 applies.

11.3. **Hours of Work.**

11.3.1. Notwithstanding the timing and duration of the Work under the Contract, which is subject to Court activities and other coordination required for occupied facilities, as provided in Article 3 (commencing at Section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Construction Manager or by any Subconsultant on any subcontract under this Contract, upon the Work or upon any part of the Work contemplated by this Contract, shall be limited and restricted by Construction Manager to eight (8) hours per day and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Construction Manager in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

11.3.2. Construction Manager shall keep and shall cause each Subconsultant to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Construction Manager in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of Judicial Council and to the Division of Labor Standards Enforcement of DIR.

11.3.3. Pursuant to Labor Code section 1813, Construction Manager shall, as a penalty to the Judicial Council, forfeit the statutory amount (believed by Judicial Council to be currently twenty-five dollars (\$25)) for each worker employed in the execution of this Contract by Construction Manager or by any Subconsultant, for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of Article 3 (commencing at Section 1810), chapter 1, part 7, division 2, of the Labor Code.

11.3.4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays, shall be performed without additional expense to Judicial Council.

11.3.5. Project Work will typically take place in an occupied court facility; therefore, work hours may be restricted depending upon the Project. The individual Service Work Order will include any restrictions on hours of work. If the Service Work Order does not include a restriction on hours of work, then the work must take place during business hours.

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11.4. Payroll Records.

11.4.1. In addition to submitting CPR(s) to the Labor Commissioner of California, pursuant to Labor Code section 1771.4 or any other applicable law, if requested by Judicial Council, Construction Manager shall provide to Judicial Council (and shall require each Subconsultant performing any portion of the Work to provide to Judicial Council), CPR(s), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Construction Manager and/or each Subconsultant in connection with the Work.

11.4.2. All CPRs shall be available for inspection at all reasonable hours at the principal office of Construction Manager on the following basis:

11.4.2.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.

11.4.2.2. CPRs shall be made available for inspection or furnished upon request to a representative of Judicial Council, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or DIR.

11.4.2.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either Judicial Council, the Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records, reimburse the costs of preparation by Construction Manager, Subconsultants, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Construction Manager.

11.4.3. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Construction Manager), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and we have complied with the requirements of Sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ Signature: _____

(Section 16401 of Title 8 of the California Code of Regulations)

11.4.4. Each Construction Manager shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.

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- 11.4.5. Any copy of records made available for inspection and furnished upon request to the public or any public agency by Judicial Council, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Construction Manager awarded Contract or performing Contract shall not be marked or obliterated.
- 11.4.6. Construction Manager shall inform Judicial Council of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) business days, provide a notice of change of location and address.
- 11.4.7. In the event of noncompliance with the requirements of this Section, Construction Manager shall have ten (10) days in which to comply, subsequent to receipt of written notice, specifying in what respects Construction Manager must comply with this Section. Should noncompliance still be evident after the ten (10) day period, Construction Manager shall, as a penalty to Judicial Council, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for each worker, until strict compliance is effectuated. Upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.
- 11.4.8. It shall be the responsibility of Construction Manager to ensure compliance with the provisions of Labor Code section 1776.
- 11.5. Apprentices.**
- 11.5.1. Construction Manager acknowledges and agrees that if this Contract involves a dollar amount greater than, or a number of working days greater than, that specified in Labor Code section 1777.5, then this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Construction Manager to ensure compliance with this Article and with Labor Code section 1777.5 for all apprenticeship occupations.
- 11.5.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed, provided they are properly registered in full compliance with the provisions of the Labor Code.
- 11.5.3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed, and shall be employed, only at the work of the craft or trade to which he/she is registered.
- 11.5.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.
- 11.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Construction Manager and any Subconsultants employing workers in any apprenticeable craft or trade, in performing any Work under this Contract, shall apply to the applicable joint apprenticeship committee for a certificate approving the Construction Manager or Subconsultant under the applicable apprenticeship standards, and fixing the ratio of apprentices to journeymen employed in performing the Work.

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- 11.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Construction Manager and any Subconsultant may be required to make contributions to the apprenticeship program.
- 11.5.7. If Construction Manager or Subconsultant willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:
- 11.5.7.1. Be denied the right to bid or propose on any subsequent project for one (1) year from the date of such determination; and
- 11.5.7.2. Forfeit, as a penalty, to Judicial Council, the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.
- 11.5.8. Construction Manager and all Subconsultants shall comply with Labor Code section 1777.6, which forbids certain discriminatory practices in the employment of apprentices.
- 11.5.9. Construction Manager shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 1515 Clay Street Suite 1902, Oakland, California, 94612.
- 11.5.10. Construction Manager shall ensure compliance with all certification requirements for all workers on the Project, including, without limitation, the requirements for electrician certification in Labor Code sections 108 et seq.

Article 12 ACCOUNTING AND AUDITS

- 12.1. Construction Manager must establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Construction Manager transacted under this Agreement. Construction Manager shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter.
- 12.2. Pursuant to Government Code section 8546.7, this Agreement is subject to examination and audit of the State Auditor as specified in the code. Construction Manager shall permit Judicial Council, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and original records, and to make audit(s) of all billing statements, invoices, original records, and other data related to the Services covered by this Agreement. The audit(s) may be performed at any time, provided that Judicial Council shall give reasonable prior Notice to Construction Manager and will conduct the audit(s) during Construction Manager's normal business hours, unless Construction Manager otherwise consents.
- 12.3. If an audit or Judicial Council internal review reveals that Construction Manager and/or its Subconsultant(s) have overcharged Judicial Council, Construction Manager will immediately pay to Judicial Council the overcharged amount plus interest from the date of receipt of overpayment. The rate of interest will be equal to eighteen percent (18%) per year, or the maximum rate permitted by applicable law,

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whichever is less. The audit or Judicial Council internal review will be conducted at Judicial Council's expense, unless the audit or review reveals that Construction Manager and/or its Subconsultant(s) has overcharged Judicial Council by ten percent (10%) or more on any invoice, in which case Construction Manager will reimburse Judicial Council for all costs and expenses incurred by Judicial Council in connection with such audit or review, including direct and indirect costs associated with Judicial Council representatives, in addition to the payment of the overcharged amount. This remedy shall not be exclusive to any other remedies available to Judicial Council, including, without limitation, a claim against Construction Manager for a False Claim pursuant to the False Claims Act (Gov. Code § 12650, et seq.)

- 12.4. **IMS/Monetary Penalties.** Judicial Council shall be entitled to remedy any "False Claims," as defined in California Government Code section 12650 et seq., made to Judicial Council by Construction Manager or any Subconsultant(s) under the standards set forth in Government Code section 12650 et seq. Any Construction Manager or Subconsultant(s) who submits a False Claim shall be liable to Judicial Council for three (3) times the amount of damages that Judicial Council sustains from the False Claim. If Construction Manager and/or Subconsultant(s) submit a False Claim, they shall also be liable to Judicial Council for: (a) the costs, including attorneys' 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.
- 12.5. **Accounting System Requirements.** Construction Manager shall maintain, and shall ensure that its Subconsultant(s) maintain, an adequate system of accounting and internal controls that meets GAAP.
- 12.6. The obligations of this section shall survive the expiration of, and any termination of, this Agreement.

Article 13 COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS

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

Article 14 CONSTRUCTION MANAGER'S USE OF COMPUTER SOFTWARE

- 14.1. By executing this Agreement, Construction Manager certifies that it has appropriate systems and controls in place to ensure that Judicial Council funds will not be used in the performance of the Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.
- 14.2. Construction Manager must use Judicial Council's designated document management systems, databases, and construction management software. Construction Manager must use Judicial Council-implemented systems and may not introduce new systems to the Project without the prior written approval of Judicial Council, which may be withheld in Judicial Council's sole and absolute discretion.

Article 15 OWNERSHIP OF DATA

- 15.1. Everything created, developed, or produced in the course of Construction Manager's performance of the Services, including, without limitation, all Data, in any form, prepared, or in the process of being prepared, are works made for hire by Construction Manager for Judicial Council and are the sole property of Judicial Council without further employment or the payment of additional compensation to Construction Manager. 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"). To the extent that any of the Data or the Intellectual Property Rights therein is not works for hire, Construction Manager hereby irrevocably assigns its entire right, title, and interest in and to all those Data and the Intellectual Property Rights therein, to Judicial

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Council. At Judicial Council's request, Construction Manager will assist Judicial Council in Judicial Council's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. Construction Manager irrevocably appoints Judicial Council as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that Judicial Council deems necessary to perfect Judicial Council's interest and Intellectual Property Rights in the Data as set forth herein.

- 15.2. Judicial Council is entitled to access copies of the Data, in whatever form, including without limitation, Computer Aided Design (CAD), at all times during the term of this Agreement. Any Data in the possession of Construction Manager or in the possession of any Subconsultant upon completion or termination of the Agreement must be immediately delivered to Judicial Council. If any Data is lost, damaged, or destroyed before final delivery to Judicial Council, Construction Manager must replace the Data at its own expense and Construction Manager assumes all risks of loss, damage, or destruction of or to Data.
- 15.3. After completion of the Project or after termination of this Agreement, Construction Manager must deliver to Judicial Council a complete set of Project records, including without limitation, all documents generated by Construction Manager, and copies of all documents exchanged with, or copied to or from all other Project participants, must be indexed using a file index numbering scheme provided or approved by the Project Manager and appropriately organized for easy use by Judicial Council personnel. All Project records are property of Judicial Council, whether or not those records are in Construction Manager's possession.

Article 16 ROYALTIES AND PATENTS

- 16.1. Construction Manager must pay all royalties and license fees related to this Agreement.
- 16.2. To the furthest extent permitted under California law, Construction Manager shall hold the Indemnified Parties 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 Construction Manager or its Subconsultants in connection with this Agreement.
- 16.3. To the furthest extent permitted under California law, Construction Manager, at its own expense, shall defend any action brought against the Indemnified Parties to the extent such action is based upon a Claim that any Data or Materials supplied by Construction Manager or its Subconsultants infringes a United States patent or copyright, or violates a trade secret. Construction Manager shall pay those costs and damages finally awarded against the Indemnified Parties in any such action. Such defense and payment shall be conditioned on the following:
 - 16.3.1. That Construction Manager shall be notified within a reasonable time in writing by Judicial Council of any Notice of such Claim; and
 - 16.3.2. That Construction Manager shall have the sole control of the defense of any action on such Claim and all negotiations for its settlement or compromise, except where any such settlement or compromise would not fully resolve the outstanding Claim and would expose Judicial Council to any future liabilities related thereto. When principles of government or public law are involved, Judicial Council, the Court(s), and/or the State shall have the option to participate in such action at its own expense.
- 16.4. Should the Data or Materials become the subject of a claim of infringement of a United States patent or copyright or a trade secret, Judicial Council shall permit Construction Manager at its option and expense either to procure for Judicial Council and/or the Court(s) the right to continue using the Data or Materials,

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or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or an injunction prevents the use of those Data or Materials by Judicial Council and/or the Courts, Construction Manager agrees to take back such Data or Materials and make every reasonable effort to assist Judicial Council and/or the Courts in procuring substitute Data or Materials of the reasonably same value and quality. If, in the determination of Judicial Council, in its sole discretion, the return of such infringing Data or Materials makes the retention of other Data or Materials acquired from Construction Manager under this Agreement impractical, Judicial Council shall then have the option of terminating the Agreement, in its entirety, without penalty or termination charge. Construction Manager agrees to take back the infringing Data or Materials and refund any sums that Judicial Council has paid Construction Manager, less any reasonable amount for use or damage. The rights and remedies of Judicial Council provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

Article 17 JUDICIAL COUNCIL PROPRIETARY OR CONFIDENTIAL INFORMATION

- 17.1. Construction Manager understands and agrees that in the performance of the Services under this Agreement or in contemplation thereof, Construction Manager may have access to private or Confidential Information which may be owned or controlled by, or otherwise in the possession of Judicial Council, and that information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Judicial Council. This Confidential Information may include, but is not limited to, information related to security systems in court buildings, security systems in detention facilities, and the design and construction of those systems.
- 17.2. Construction Manager agrees that all Confidential Information disclosed by Judicial Council to Construction Manager must be held in confidence and used only in the performance of the Agreement.
- 17.3. Construction Manager shall exercise the same standard of care to protect this private or Confidential Information as Construction Manager uses to protect its own proprietary information and, in any case, not less than a reasonably prudent person or entity would use to protect its own proprietary information.
- 17.4. It is understood, however, that Construction Manager may disclose Judicial Council's confidential information on a "need to know" basis to Construction Manager's employees, Construction Manager's Subconsultants, and the Subconsultants' employees, and as required by law. Construction Manager must execute written agreements with any employee or Subconsultant receiving Judicial Council's Confidential Information incorporating this Article and obligating the recipient of the Confidential Information to comply with the provisions set forth herein.
- 17.5. Notwithstanding the foregoing, Construction Manager 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. Construction Manager shall provide Notice to Judicial Council within a reasonable time prior to any such disclosure so that the Judicial Council may take any protective measure(s) to prevent the disclosure of Confidential Information.
- 17.6. Neither Construction Manager nor its Subconsultants shall acquire a right or title in, or to, the Confidential Information as a result of any disclosure contemplated hereunder.
- 17.7. Judicial Council reserves the right to disclose all Data and Materials provided under this Agreement to Third Parties for the purpose of validation of the quality of Construction Manager's Work and to use all Data and Materials for their intended purpose. Any disclosure of Confidential Information pursuant to this section shall not affect the confidential nature of any Confidential Information.

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- 17.8. Construction Manager agrees that monetary damages are inadequate to remedy any breach or threatened breach of this section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

Article 18 LIMITATION ON PUBLICATION

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

Article 19 COVENANT AGAINST CONTINGENT FEES

- 19.1. Construction Manager warrants that neither Construction Manager, nor any of its employees, nor Subconsultant(s) or their employees, have provided, or shall at any time provide, any gratuity in the form of money, tangible item(s), intangible benefit(s), or in any other form, to any officer, official, agent, or employee of Judicial Council, any Judicial Branch Entity, or of the Court(s) for the purpose of securing or having secured award of this Agreement.
- 19.2. Construction Manager warrants that neither Construction Manager, nor any of its employees, nor Subconsultant(s) or their employees, have provided, or shall at any time provide, any gratuity in the form of money, tangible item(s), intangible benefit(s), or in any other form, to any officer, official, agent, or employee of Judicial Council, any Judicial Branch Entity, or of the Court(s) for the purpose of securing an outcome favorable to Construction Manager or any of its Subconsultant(s), resulting from any decisions made regarding the use of the State funds encumbered or to be encumbered under this Agreement.
- 19.3. For breach or violation of any of the aforesaid warranties, Judicial Council will have the right to terminate this Agreement, and any loss or damage sustained by Judicial Council in procuring, on the open market, any Work which Construction Manager has agreed to supply, shall be borne and paid for by Construction Manager. The rights and remedies of Judicial Council provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

Article 20 CONFLICT OF INTEREST

- 20.1. **Conflict of Interest.** Construction Manager and employees of Construction Manager must not participate in proceedings that will result in decision making regarding the use of Judicial Council funds or that are sponsored by Judicial Council if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. Construction Manager and employees of Construction Manager must also avoid actions resulting in, or creating the appearance of:
- 20.1.1. Use of an official position with the government for private gain;
 - 20.1.2. Preferential treatment to any particular person associated with this Agreement or the Work of this Agreement;
 - 20.1.3. Loss of independence or impartiality;
 - 20.1.4. Impropriety;

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- 20.1.5. A decision made outside official channels; or
- 20.1.6. Adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- 20.2. Construction Manager shall comply with Judicial Council's Conflict of Interest Policy, which is available at <https://www.courts.ca.gov/documents/design-build-conflict-of-interest-policy.pdf>.
- 20.3. **Prohibited Financial Conflict of Interest.** Construction Manager certifies that Construction Manager and its Subconsultants presently have no interest, and will not acquire any interest, which would present a conflict of interest pursuant to California Government Code sections 1090 et seq. and 87100 et seq., during the performance of Services pursuant to this Agreement. Construction Manager further certifies that, to the best of its knowledge after due inquiry, no employees or agents of 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.
- 20.4. **Conflict of Interest for Former Judicial Council Employees.** Construction Manager certifies, and must require any Subconsultant to certify to the following: Former Judicial Council employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision-making process relevant to this Agreement, or for one year from the date of separation if that employee was in a policy-making position or in any part of the decision-making process in the same general subject area as the proposed contract within the twelve (12) month period after his or her employment with Judicial Council.
- 20.5. **Fair Political Practices.** All Construction Manager personnel identified as Key Personnel in this Agreement must complete and submit California Fair Political Practices Commission - Form 700 on a yearly basis over the duration of this Agreement.

Article 21 RESPONSIBILITIES OF JUDICIAL COUNCIL

- 21.1. Judicial Council will provide to Construction Manager complete information regarding Judicial Council's requirements for the Project.
- 21.2. Judicial Council will provide to Construction Manager a legal description of the Project site and all reports, surveys, drawings, and tests in Judicial Council's possession that concern the conditions of the Project site.
- 21.3. Judicial Council will examine the documents submitted by Construction Manager and will render decisions so as to avoid unreasonable delay in the process of Construction Manager's Services.
- 21.4. The Project Manager will be available during normal business hours and as often as may be required to render decisions and to furnish information in a timely manner.

Article 22 WARRANTY OF CONSTRUCTION MANAGER

- 22.1. Construction Manager warrants that Construction Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the Services that it has herein agreed to perform.

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- 22.2. Construction Manager warrants and represents that Construction Manager shall ensure that any of its employees or Subconsultants providing a Service(s) contemplated by this Agreement have, and maintain throughout their work, all license(s) required under law to provide that Service(s).
- 22.3. If the possession of a license(s) is required under law for the performance of a Service(s), or any part thereof, Construction Manager warrants and represents that the Service(s) will either be performed by appropriately licensed individuals or under the direct supervision and subject to the review and approval of appropriately licensed individuals.

Article 23 FORCE MAJEURE

- 23.1. Neither Party shall be liable for damages, nor 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. If an act of Force Majeure prevents Construction Manager's performance of the Work hereunder, Judicial Council shall be excused from compensating Construction Manager until the act of Force Majeure no longer prevents Construction Manager's performance of the Work, as reasonably determined by Judicial Council.

Article 24 DISPUTE RESOLUTION

- 24.1. **Informal Negotiations.** The Parties must make a good faith attempt to promptly resolve all disputes by informal negotiation.
- 24.2. **Demand.** If a dispute is not settled pursuant to informal negotiations, the Party submitting a dispute ("Submitting Party") must make written demand ("Demand") in the form of a Notice to the Party receiving the Demand ("Receiving Party"). The Demand must be supported by detailed factual information and supporting documentation, including the following information:
 - 24.2.1. State the specific Agreement provisions on which the Demand is based;
 - 24.2.2. If the Demand regards a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand; and
 - 24.2.3. The Demand must include a written statement signed by an authorized representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested accurately reflects the adjustment for which the Submitting Party thinks the Receiving Party is responsible.
- 24.3. **Response to Demand.** The Receiving Party must within fourteen (14) days, provide a written response ("Response") to the Submitting Party. The Response must state whether the Receiving Party:
 - 24.3.1. Accepts or rejects the Demand, or needs any additional information in order for it to fully analyze the Demand.
 - 24.3.2. The Submitting Party must promptly comply with Receiving Party's request for additional information. Any delay caused by Submitting Party's failure to respond to a request for additional information shall extend the period within which the Receiving Party must provide the Response. In no event, however, will the time period for a Response be extended beyond thirty (30) days from the date the Receiving Party receives the Demand. Failure of the Receiving Party to provide a Response within this time period will be deemed a rejection of the Demand by the Receiving Party.

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- 24.4. **Senior Level Negotiations.** If the Demand remains unresolved after the time period for a Response, the Parties must attempt to resolve the Demand by negotiations between assigned representatives of the Parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The Parties must make a good faith effort to resolve the Demand within a period of thirty (30) days after the time period for a Response.
- 24.5. **Mediation.** If the Demand is not resolved by negotiations of the Parties' assigned representatives, the Parties must make a good faith attempt to promptly resolve the dispute through mediation prior to either Party initiating an action in court.
- 24.6. **Litigation.** If, after mediation pursuant to Section 24.5, the parties have not resolved the dispute, the receiving party's decision, made pursuant to Section 24.5, will be conclusive and binding regarding the dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation, or one (1) year following the accrual of the cause of action, whichever is later. In the event of litigation of a dispute arising from or related to this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs.
- 24.7. **Confidentiality.** To the furthest extent permitted by applicable law, all discussions and negotiations conducted pursuant to this Article shall be confidential and shall be treated as compromise and settlement negotiations, to which California Evidence Code section 1152 applies. Mediation will be confidential and will be subject to the provisions of California Evidence Code sections 703.5 and 1115 through 1128.
- 24.8. **Continuation of Work.** Pending the final resolution of any dispute arising under, related to, or involving this Agreement, Construction Manager agrees to diligently proceed with the performance of this Agreement, including the delivery of deliverables or providing of Services, in accordance with Judicial Council's instructions. Construction Manager's failure to diligently proceed in accordance with Judicial Council's instructions will be considered a material breach of this Agreement.
- 24.9. **Notices.** All written Notices required under this Article must be made pursuant to the "Communications/Notice" provision of this Agreement.

Article 25 CHANGES TO CONSTRUCTION MANAGER'S SCOPE OF WORK

- 25.1. The Judicial Council may, at any time, by written order, direct changes to the Services described in this Agreement. Construction Manager may also propose changes to the Services described in this Agreement based upon occurrences that are not the result of Construction Manager's errors or omissions. Any changes resulting in an increase in the cost of, or the time required for performance of the agreed upon Services will require an Amendment to this Agreement. Notwithstanding any dispute between Construction Manager and Judicial Council about whether the Services constitute a change or modification to Construction Manager's scope of work, or a dispute relating to the value of the claimed change or modification, Construction Manager agrees to diligently proceed with the Services upon receipt of written direction from Judicial Council.
- 25.2. For any change proposed by either Judicial Council or Construction Manager, Construction Manager shall submit in writing: (i) a description of the proposed change and the reasons for the change; (ii) the total contract amount to be paid to Construction Manager with a breakdown of tasks and costs, including any reduction in costs resulting from the change; and (iii) the expected impact on schedule. Construction Manager shall submit this Notice no later than fifteen (15) days after Judicial Council's order or other occurrence that causes the change. Failure to submit this Notice within this time period shall constitute a

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waiver of Construction Manager's right to seek an adjustment of the Contract Amount or the Term of this Agreement.

- 25.3. If Judicial Council and Construction Manager reach agreement on a change, the agreement shall be set forth in an Amendment.
- 25.4. Construction Manager shall perform the following Extra Services, only when authorized by an Amendment. The cost for each Extra Service shall be determined before, and no work related to any Extra Service shall be performed until, an Amendment is made. In no event shall Judicial Council be responsible for compensating Construction Manager in excess of the Contract Amount in the absence of an Amendment that specifically increases the Contract Amount.
- 25.4.1. Additional Services. Providing additional services beyond the services identified in the Agreement, including Exhibit B, required in order to respond to significant documented changes in the Project, including, but not limited, to scope, cost, schedule, quality, complexity, or method of delivery.
- 25.4.2. Damage to Project. Providing consultation concerning replacement of work damaged by fire or other cause during construction, and furnishing services required in connection with replacement of such work.
- 25.4.3. Serving as a Witness. Preparing to serve or serving as a witness in connection with any public hearing (except for a contractor's hearing necessitated by its request to substitute a Subconsultant), dispute resolution proceeding, or legal proceeding, other than that necessitated by the negligent acts, errors, or omissions of Construction Manager or where Construction Manager is party thereto.
- 25.5. 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 E. Payment for Extra Services will be either on a time and materials basis or a firm, fixed price, as determined by Judicial Council.
- 25.6. If the Project is delayed more than 180 days, based on the original schedule listed in Exhibit D, Judicial Council will adjust Construction Manager's hourly rates using the U.S. Department of Labor CPI index for urban wage earners and clerical workers, and by using the U.S. city average. Any escalation costs shall be capped at a ten percent (10%) increase from the original cost.

Article 26 TERMINATION OF AGREEMENT

- 26.1. **Termination of Construction Manager for Cause**. If Construction Manager fails to perform Construction Manager's duties to the satisfaction of Judicial Council, or if Construction Manager fails to fulfill in a timely and professional manner Construction Manager's material obligations under this Agreement, or if Construction Manager violates any of the material terms or provisions of this Agreement, Judicial Council has the right to terminate this Agreement effective immediately upon Judicial Council giving written Notice of termination and specifying the reasons for termination to Construction Manager. In the event of a termination for cause provided for herein, Construction Manager may invoice Judicial Council for all Work performed up to the Notice of termination, but Judicial Council has the right to withhold payment and deduct any amounts equal to Judicial Council's costs resulting from Construction Manager's actions, errors, or omissions that caused Judicial Council to terminate Construction Manager.

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- 26.2. **Termination of Construction Manager for Convenience.** Judicial Council has the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Construction Manager may invoice Judicial Council and Judicial Council shall pay all undisputed invoice(s) for Work performed until the Notice of termination. This will be the only amount(s) potentially owing to Construction Manager if there is a termination for convenience.
- 26.3. **Termination by Judicial Council for Non-Appropriation or No Authorizations; Judicial Council's Obligation Subject to Availability of Funds.**
- 26.3.1. Judicial Council's obligation under this Agreement is subject to the availability of authorized funds. Judicial Council may terminate the Agreement or any part of the Work, without prejudice to any right or remedy of Judicial Council, for lack of appropriation of funds and/or Judicial Council's determination not to authorize specific Work or Phases. If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration date set forth in this Agreement, or if Judicial Council determines not to authorize further Work of Phases not yet authorized, Judicial Council may terminate this Agreement in whole or in part, upon written Notice to Construction Manager.
- 26.3.2. Payment to Construction Manager shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
- 26.3.2.1. Judicial Council will be liable only for payment in accordance with the terms of this Agreement for Services rendered prior to the effective date of termination; and
- 26.3.2.2. Construction Manager will be released from any obligation to provide further Services pursuant to the Agreement as are affected by the termination.
- 26.3.3. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should an appropriation not be approved, Judicial Council, in its sole discretion, may terminate the Agreement at the close of the current appropriation year; however, in lieu of terminating the Agreement, Judicial Council, in its sole discretion, may choose to suspend the Project in accordance with the "Suspension of Project" provision below. The appropriation year ends on June 30 of each year.
- 26.4. **Actions of Construction Manager upon Termination.** Immediately upon receipt of a Notice of termination, Construction Manager shall, unless otherwise instructed in writing by Judicial Council, proceed with diligence to take all actions necessary to affect the rapid and economical termination of its obligations under this Agreement, and to minimize any liability of Construction Manager and/or Judicial Council to any third party(ies) that could result from such termination. Construction Manager will provide all Data, or any other document related to the Project in Construction Manager's possession, whether in electronic or hard copy formats, draft or final, to Judicial Council immediately upon termination.
- 26.5. **Termination Communication.** Judicial Council, at its sole discretion, may dictate when and how the termination will be affected. Such actions may include, but are not limited to, the following:
- 26.5.1. When termination is effective.
- 26.5.2. When the termination of performance of certain Services and provision of Materials under this Agreement will occur.

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- 26.5.3. When Subconsultants are to be notified of the termination.
- 26.5.4. Whether Judicial Council asserts an interest in any not yet complete Materials.
- 26.5.5. Construction Manager's schedule to provide Judicial Council with Work or Material created in the course of the performance of Services hereunder.
- 26.6. **Termination of Agreement by Construction Manager.** Construction Manager has the right to terminate this Agreement if Judicial Council does not fulfill its material obligations under this Agreement and fails to cure a default of such material obligations within sixty (60) days, or if the default cannot be cured within sixty (60) days, to commence to cure a default, diligently pursue the cure, and complete the cure within a reasonable time. This sixty (60) day cure period begins to run only after Judicial Council's receipt of a written Notice and demand from Construction Manager to Judicial Council to cure a default of a material obligation(s).
- 26.7. **Rights.** Except as indicated in this Article, termination will have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination.
- 26.8. **Suspension of Project.**
 - 26.8.1. Judicial Council may, in its sole discretion, suspend the Project by written Notice. Construction Manager will be compensated for Services performed prior to Notice of suspension.
 - 26.8.2. If the Project is suspended by Judicial Council for less than one hundred and eighty (180) consecutive days, Construction Manager will reduce or suspend its services as directed by Judicial Council.
 - 26.8.3. If the Project is suspended by Judicial Council for more than one hundred and eighty (180) consecutive days, then when the Project is resumed, the schedule will be adjusted, and Construction Manager's compensation will be equitably adjusted to provide for expenses incurred in the resumption of Construction Manager's Services.
 - 26.8.4. Upon resumption of the Project after suspension, Construction Manager will take all reasonable efforts to maintain the same Project personnel.

Article 27 CONSTRUCTION MANAGER'S INSURANCE

- 27.1. **General Requirements.** *[Revised]*
 - 27.1.1. By requiring the minimum insurance set forth in this Agreement, the Judicial Council shall not be deemed or construed to have assessed the risks that may be applicable to Construction Manager under this Agreement. Construction Manager shall assess its own risks and if it deems appropriate or prudent, maintain higher limits or broader coverage.
 - 27.1.2. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to Construction Manager; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to the

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Judicial Council in compliance with the Insurance Requirements set forth in this Agreement. The Judicial Council may, in its sole discretion, accept self-insurance or risk-pool coverage as a substitute for any of the required insurance policies under this Agreement. No representation is made by the Judicial Council that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of Construction Manager under this Agreement.

- 27.1.3. Construction Manager shall obtain and maintain the required insurance for the duration of this Agreement with an insurance company or companies acceptable to the Judicial Council, in its sole discretion, and 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.
- 27.1.4. For all insurance policies required under this Agreement, no deductible shall exceed five (5) percent of the minimum limit of insurance required under this Agreement unless authorized in writing by the Judicial Council. Any Construction Manager deductible must be clearly stated on the appropriate Certificate of Insurance.
- 27.1.5. Self-Insured Retentions (SIR) must be declared to and approved in writing by the Judicial Council. The Judicial Council may require Construction Manager to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Judicial Council. Any and all deductibles and SIR shall be the sole responsibility of Construction Manager or Subconsultant who procured such insurance and shall not apply to the Indemnified Parties (defined above). Judicial Council may deduct from any amounts otherwise due Construction Manager to fund the SIR. Policies shall **not** contain any SIR provisions that limit the satisfaction of the SIR to the named insured. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR. The Judicial Council reserves the right to obtain a copy of any policies and endorsements for verification.
- 27.1.6. Construction Manager is responsible for and may not recover from the State of California, Judicial Council, or a Court any deductible or self-insured retention that is connected to the insurance required under this Agreement. If self-insured, Construction Manager warrants that it will maintain funds to cover losses required to be insured against by Construction Manager under the terms of this Agreement.
- 27.1.7. Prior to commencement of any Work, Construction Manager shall provide Judicial Council with Certificates of Insurance and signed insurance policy endorsements, on forms acceptable to Judicial Council, as evidence that the required insurance is in full force and effect. The insurance required under this Agreement, and any excess liability or umbrella liability insurance, that Construction Manager maintains in compliance with the terms of this “General Requirements” subsection (with the exception of Professional Liability Insurance, if required) must be endorsed to include the State, the Judicial Council, any applicable Court, and their respective elected and appointed officials, judicial officers, officers, employees, and agents as additional insureds. No payments will be made to Construction Manager until all required current and complete Certificates of Insurance and signed insurance policy endorsements are properly endorsed and on file with the Judicial Council.
- 27.1.8. The insurance required under this Agreement, including all required additional insured coverages, must be endorsed to be primary and non-contributory to any insurance or self-insurance maintained by the State of California, Judicial Council, or Court. Construction

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Manager's liabilities under this Agreement shall not be limited in any manner to the insurance coverage required.

- 27.1.9. Failure to provide the documentation as required prior to the commencement of Work shall not constitute or be construed as a waiver by the Judicial Council of Construction Manager's obligations to provide such documentation.
- 27.1.10. The Certificates of Insurance must be addressed and mailed to: *[Revised]*

Judicial Council of California
Contracts, Branch Accounting and Procurement
Attn: Certificate of Insurance, Contract Number @##
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102

The Certificates of Insurance must also be emailed to:

Contracts@jud.ca.gov

- 27.1.11. All insurance policies required under this Agreement must remain in force for the entire duration of this Agreement. If the insurance expires during the Initial Term, or any Subsequent Term(s), of this Agreement, Construction Manager shall immediately renew or replace the required insurance and provide a new current Certificate of Insurance and signed insurance policy endorsement(s), or Construction Manager will be in breach of this Agreement, and the Judicial Council may direct Construction Manager to stop work or may take other remedial action. Construction Manager must provide renewal insurance certificates and signed policy endorsements to the Judicial Council on or before the expiration date of the previous insurance certificates and signed policy endorsements. Any new insurance procured by Construction Manager must conform to the requirements of this Agreement.
- 27.1.12. In the event Construction Manager fails to keep the specified insurance coverage in force at all times required under this Agreement, the Judicial Council may, in addition to and without limiting any other remedies available to it, (i) order Construction Manager to stop work, or (ii) terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- 27.1.13. Construction Manager, and each insurer providing insurance required under this Agreement, expressly waives all rights of recovery and subrogation rights it may have against the State, Judicial Council, Court, and their respective elected and appointed officials, judicial officers, officers, employees, and agents for direct physical loss or damage to the Work, and for any liability arising out of or in connection with the Work performed by Construction Manager under this Agreement or arising out of or in connection with Construction Manager's breach of this Agreement. This provision does not apply to professional liability insurance policies.
- 27.1.14. Construction Manager shall provide the Judicial Council with written notice within **ten (10) Days** of becoming aware of a material change or cancellation of the insurance policies required under this Agreement. In the event of expiration or cancellation of any insurance policy, Construction Manager shall **immediately** notify the Judicial Council's Project Manager.

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- 27.1.15. Judicial Council reserves the right to request certified copies of any of the insurance policies required under this Agreement, which must be provided by Construction Manager within **ten (10) Business Days** following the Judicial Council's request.
- 27.1.16. Construction Manager must require insurance from its Subconsultants in substantially the same form as required of Construction Manager herein and with limits of liability that are sufficient to protect the interests of Construction Manager, State, Judicial Council, and Court in which the Project is located.
- 27.2. **Individual Policy Requirements.**
- 27.2.1. **Commercial General Liability.**
- Commercial General Liability Insurance shall be written on an occurrence form with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage and \$4,000,000 annual aggregate. The policy shall include coverage for liabilities arising out of or in connection with premises, operations, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall include coverage for property damage resulting from explosion, collapse, or underground hazard. This insurance shall apply separately to each insured against whom a claim is made or suit is brought. The products and completed liability shall extend for not less than three (3) years past the completion of the Work or the termination of this Agreement, whichever occurs first.
- 27.2.2. **Commercial Automobile Liability.**
- Commercial Automobile Liability Insurance shall have limits of not less than \$1,000,000 per accident. This insurance must cover liability arising out of or in connection with the operation, use, loading, or unloading of a motor vehicle assigned to or used in connection with the Work including, without limitation, owned, hired, and non-owned motor vehicles.
- 27.2.3. **Workers' Compensation & Employers' Liability Insurance.**
- If Construction Manager has employees, it shall maintain workers' compensation insurance as required by law. Employer's liability limits shall be not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee. If Construction Manager does not have employees, it shall provide a letter, on company letterhead, to the Judicial Council certifying, under penalty of perjury, that it does not have employees. Upon the Judicial Council's receipt of the letter, Construction Manager shall not be required to maintain workers' compensation insurance.

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27.2.4. Professional Liability Insurance.

Professional Liability Insurance shall include coverage for any negligent act, error, or omission committed or alleged to have been committed which arises out of rendering or failure to render the Work 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 \$2,000,000 annual aggregate. If the policy is written on a “claims made” form, Construction Manager 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 Work which is 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 Work commences pursuant to the Agreement.

27.2.5. Cyber Liability Insurance.

Cyber Liability Insurance, with limits not less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by Construction Manager in this Agreement and shall include, but not be limited to, claims involving security breach, system failure, data recovery, business interruption, cyber extortion, social engineering, infringement of intellectual property, including but not limited to infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, and alteration of electronic information. The policy shall provide coverage for breach response costs, regulatory fines and penalties as well as credit monitoring expenses.

27.2.6. Commercial Crime Insurance.

This policy is required if Construction Manager handles or has regular access to the Judicial Council’s funds or property of significant value to the Judicial Council. This policy must cover dishonest acts including loss due to disappearance or destruction of money, securities, and property; forgery and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$1,000,000.

27.2.7. Unmanned Aircraft Liability Insurance.

If Construction Manager utilizes drones or any other unmanned aircraft in the performance of the Work, existing insurance coverage must include an endorsement for unmanned aircraft operations. Construction Manager must maintain a separate aircraft liability policy to cover unmanned aircraft operations with limits and coverage equal to or greater than \$1,000,000 per claim or per occurrence and \$2,000,000 annual aggregate. If Construction Manager does not have the applicable insurance and a Remote Pilot Certificate (commonly known as a drone license) from the FAA, the use of a drone or any other unmanned aircraft usage is prohibited.

27.2.8. Umbrella Policies.

Construction Manager may satisfy basic coverage limits through any combination of primary, excess, or umbrella insurance.

Article 28 INDEMNITY

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- 28.1. To the furthest extent permitted by California law, Construction Manager shall indemnify, protect, and hold free and harmless the Indemnified Parties from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Construction Manager, its directors, officials, officers, employees, contractors, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. Construction Manager shall not be subject to liability under this Article for Claims that result from the active or sole negligence or willful misconduct of the Indemnified Parties or for Claims that result from defects in design furnished by the Indemnified Parties.
- 28.2. Construction Manager shall defend and pay all costs, expenses, and fees to defend the Indemnified Parties from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Construction Manager, its directors, officials, officers, employees, contractors, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. Construction Manager shall pay and satisfy any judgment, award, or decree that may be rendered against the Indemnified Parties in any Claim. Construction Manager shall also reimburse Judicial Council for the cost of any settlement paid by Judicial Council arising out of any Claim. Construction Manager must reimburse the Indemnified Parties for any and all legal expenses and costs, including attorneys' fees, expert witness fees, and consultant fees, incurred by each of them in connection therewith, or in enforcing the indemnity herein provided, to the extent caused by this Agreement to indemnify. Construction Manager's obligation to indemnify is not restricted to insurance proceeds, if any, received by the Indemnified Parties. Judicial Council has the right to accept or reject any legal representation that Construction Manager proposes to defend the Indemnified Parties. Construction Manager's obligation to defend the Indemnified Parties shall be triggered immediately upon any of the Indemnified Parties providing Notice to Construction Manager of the Claim. However, in the event that one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, Construction Manager shall meet and confer with the other parties regarding unpaid defense costs to negotiate a reallocation of costs amongst the defendants.
- 28.3. This "Indemnity" provision shall survive the early termination or expiration of the Agreement.

Article 29 LIABILITY OF JUDICIAL COUNCIL

- 29.1. Other than as provided in this Agreement, Judicial Council's obligations under this Agreement are limited to the payment of the Fee provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event will Judicial Council be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited, to lost profits or revenue arising out of, or in connection with, this Agreement for the Services performed in connection with this Agreement.
- 29.2. Judicial Council shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Construction Manager, or by its employees, even if the equipment was furnished or loaned to Construction Manager by Judicial Council.
- 29.3. Construction Manager hereby waives any and all claim(s) for recovery from Judicial Council under this Agreement, which loss or damage is covered, whether paid or unpaid, by valid and collectible insurance policies or programs of self-insurance. Construction Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver extends to claims paid, or expenses incurred, by Construction Manager's insurance company on behalf of Judicial Council.

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- 29.4. Neither Judicial Council, nor any other officer or employee of Judicial Council, will be personally responsible for liabilities arising under the Agreement.

Article 30 COMMUNICATIONS/NOTICE

- 30.1. Notices and communications between the Parties to this Agreement shall be sent to the following addresses:

<u>Judicial Council</u>	<u>Construction Manager</u>
Judicial Council of California	[@Firm Name]
Facilities Services	[@Address]
455 Golden Gate Avenue, 8 th Floor	[@City], CA [Zip Code]
San Francisco, CA 94102-3688	ATTN: [Contact Name]
ATTN: [Kim Bobic]	

Any Notice personally given is effective upon receipt. Any Notice sent by overnight delivery service is effective the day after delivery. Any Notice given by mail is effective five (5) days after deposit in the United States mail.

Article 31 NONDISCRIMINATION/NO HARASSMENT CLAUSE

- 31.1. Construction Manager and its Subconsultants shall not unlawfully discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, ancestry, physical or mental disability, or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), medical condition, marital status, age (over 40), sex, sexual orientation, gender identity, or domestic partner status. Construction Manager and its Subconsultant(s) shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 31.2. During the performance of this Agreement, Construction Manager and its Subconsultants must not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Construction Manager or its Subconsultants interact with in the performance of this Agreement. Construction Manager and its Subconsultants must take all reasonable steps to prevent harassment from occurring.
- 31.3. Construction Manager must comply with applicable provisions of the Fair Employment and Housing Act, California Government Code section 12900 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, section 11000 et seq. The applicable regulations of the Fair Employment and Housing Council implementing California Government Code section 12900 et seq., set forth in Chapter 5 of division 4.1 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- 31.4. Construction Manager shall comply with applicable provisions of the Americans with Disabilities Act of 1990 (“ADA”) (42 U.S.C. section 12101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.
- 31.5. Construction Manager must include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.
- 31.6. Construction Manager must not enter into any subcontract with any person or firm decertified from State contracts pursuant to Government Code section 12990.

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- 31.7. Construction Manager must confirm that no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against Construction Manager within the immediately preceding two (2) year period because of the Construction Manager's failure to comply with an order of the National Labor Relations Board.

Article 32 DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

- 32.1. This Project has a Disabled Veteran Business Enterprise ("DVBE") participation goal of three percent (3%). The Construction Manager must document its DVBE compliance by completing the DVBE Participation Form set forth as Exhibit I.

Article 33 DRUG-FREE WORKPLACE

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

Article 34 UNION ORGANIZING

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

Article 35 MISCELLANEOUS

- 35.1. This Agreement shall not be construed against any Party as the drafter of the Agreement.
- 35.2. **Survival.** The termination or expiration of this Agreement shall not relieve either Party of any obligation or liability accrued thereunder prior to, or subsequent to, such termination or expiration, nor affect or impair the rights of either Party arising under the Agreement prior to, or subsequent to, such termination or expiration, except as expressly provided for herein.
- 35.3. **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.
- 35.4. **Waiver.** Any waiver of any term or condition of this Agreement must be made in the form of an Amendment and executed by an authorized representative of the waiving Party. Any waiver of a specific term or condition shall not be construed as a waiver of any succeeding breach of the same or other term or condition of this Agreement.

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- 35.4.1. The failure by either Party at any time to remedy the other Party's default, 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.
- 35.5. **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby.
- 35.6. **California Law/Venue.** This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement will be determined and governed by the laws of the State of California. Construction Manager consents to personal jurisdiction in California.
- 35.6.1. Venue for all litigation relative to the formation, interpretation, and performance of this Agreement will be in the County in which the Project is located. Construction Manager waives California Code of Civil Procedure section 394.
- 35.7. **Construction of Agreement.** 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. The terms of construction herein shall likewise be applicable to any Service Work Order, or Supplemental Service Work Order.
- 35.8. **Public Contract Code References.** Public Contract Code references create duties of the Construction Manager under this Agreement; however, the references do not imply that the Judicial Council is subject to the Public Contract Code.
- 35.9. **Entire Agreement.** This Agreement is a completely integrated agreement that constitutes the entire agreement between the Parties relating to its subject matter and supersedes all previous agreements, proposals, negotiations, representations, and commitments, whether oral or written, with regard thereto. No extrinsic evidence whatsoever shall be admissible to vary or supplement the terms of this completely integrated written agreement.
- 35.9.1. Construction Manager specifically acknowledges that in entering this Agreement, Construction Manager relies solely upon the provisions contained in this Agreement and no others.
- 35.10. **Non-Assignment of Agreement.** This Agreement is intended to secure the specialized services of Construction Manager. Construction Manager must not assign, transfer, delegate, or subcontract any interest therein without the prior written consent of Judicial Council. Judicial Council shall consent to such assignment only if assignee assumes in writing all of Construction Manager's obligations hereunder, but Construction Manager shall not be released from its obligations hereunder by reason of such assignment. Any voluntary or involuntary assignment (e.g., assignment by operation of law) of all or any portion of Construction Manager's interest in this Agreement, without the prior written approval of Judicial Council, shall be deemed a default, allowing Judicial Council to exercise all remedies available to it under this Agreement and applicable law. Construction Manager expressly acknowledges that its Subconsultants are not third-party beneficiaries of this Agreement.

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35.11. **Judicial Council Court Representation.** Judicial Council has the authority to act on behalf of the Court(s) and to bind the Court(s) with regard to any matters relating to this Agreement.

35.11.1. The Parties expressly agree that the Court shall be an intended third-party beneficiary of the Services provided under this Agreement. In the event the Court gives instructions or makes determinations that conflict with those of Judicial Council with respect to any matter affecting Construction Manager's performance of its obligations, Construction Manager shall notify Judicial Council of the conflict and Judicial Council shall resolve any such conflict.

END OF EXHIBIT

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EXHIBIT B

RESPONSIBILITIES AND SERVICES OF CONSTRUCTION MANAGER

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

1. GENERAL DESCRIPTION OF THE PROJECT

- 1.1. [The Project involves the design and construction of the New Fort Ord Courthouse on behalf of the Superior Court of California, County of Monterey, utilizing the design build delivery method on a Judicial Council-owned site in Seaside, California. The Project requires the design and construction of a new, approximately 83,000 square-foot courthouse with approximately three (3) floors. The Project includes seven (7) courtrooms, chambers and administrative support areas; major functional components for central holding, jury assembly, alternative dispute resolution, family law, and self help law operations; and 280 surface parking spaces with solar power generation capability over 150 parking spaces along with secure parking for judicial officers. The Project replaces three (3) existing facilities, consolidating most family and civil law operations into a single location, and will include sustainability measures to achieve at a minimum LEED silver certification and compliance with CalGreen.]
- 1.2. [The Project site is approximately five (5) acres and is bounded by Divarty Street in the City of Marina to the north and Second Avenue in the City of Seaside to the east. Undeveloped land owned by the City of Seaside, bounds the Project site to the west and the south. California State University Monterey Bay owns a small strip of land immediately to the east of the Project site, including Second Avenue.]
- 1.3. [The following goals and objectives have been defined for the Project:
 - 1.4.1 Provide timely and effective access to justice;
 - 1.4.2 Implement a courthouse design that is accessible, modern and supports maximum flexibility and is able to support court operations for 50-75 years;
 - 1.4.3 Incorporate state-of-the-art technological infrastructure to accommodate increasing remote services while maintaining in-person services; and
 - 1.4.4 Create a courthouse that reflects both the Monterey peninsula vernacular aesthetic together with the dignity of the law and the stability of the judicial system.]
- 1.4. The anticipated Direct Cost of Work for the proposed Project is \$127,073,300.00 (CCCI 9001, [May] 2022).
- 1.5. [Funding of the Project for the Site Acquisition and Performance Criteria Phases was included in the 2021 – 22 State Budget Act. Funding for the Design Build Phase was included in the 2023 – 24 State Budget Act. Funding of the Project is dependent upon appropriation by the California Legislature, allocation by the Judicial Council, and/or the sale of lease revenue or other bonds, of sufficient funds to support the activities described in this Agreement.]
- 1.6. **Preliminary Project Schedule [Estimated dates]**

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1.6.1. Study and Acquisition Phase

- [Estimated State Public Works Board (SPWB) approval 01/2024]

1.6.2. Performance Criteria Phase

- Start Date: [08/01/2023]
- Completion Date: [03/17/2024]

1.6.3. DBE Selection

- Start Date: [01/18/2024]
- Completion Date: [06/16/2024]

1.6.4. Design Build Pre-GMP Phase

- Start Date: [06/16/2024]
- Completion Date: [08/26/2025]

1.6.5. Design Build Post-GMP Phase

- Start Date: [08/27/2025]
- Completion Date: [12/31/2027]

- 1.7. The Project will be designed to be certified “Silver” by the U.S. Green Building Council (USGBC), which oversees the Leadership in Energy and Environmental Design (LEED) Program.

2. BASIC SERVICES

2.1. Oversight:

- 2.1.1. Construction Manager must collaborate and coordinate with the DBE, manage all design and construction work related to the Project, monitor the DBE, and advise the Project Manager as to all material developments in the Project.
- 2.1.2. Construction Manager must develop reporting and forecasting methods in compliance with Judicial Council’s standards, procedures, and templates. Reports include, but are not limited to: monthly and quarterly progress reports, reviews of schedules, cost control reports, and budget status reports. All proposed reporting and forecasting methods and report formats must be approved by the Project Manager, and after that approval, Construction Manager must implement the approved reporting and forecasting methods.
- 2.1.3. These Basic Services requirements govern over all Phases of the Project to the extent applicable.

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- 2.1.4. Construction Manager must perform all of its Services indicated in this Agreement related to the Project, including, without limitation, managing the work of the DBE, regardless of how that entity is identified, how it is procured, or during which Phase it begins to work on the Project.
- 2.2. **Compliance with Judicial Council Policies & Manuals.** In its performance of all Services, Construction Manager must ensure that its practices, procedures, directions, and actions are compliant and consistent with Judicial Council's most recent procedures and policies. It is the obligation of Construction Manager to acquaint itself with Judicial Council's procedures and policies.
- 2.3. **Communication.** As directed by the Project Manager, Construction Manager will be the primary point of contact with the DBE and will either initiate, respond to, or be part of all communications between Judicial Council and the DBE. In consultation with the Project Manager and according to Judicial Council-approved policies, procedures, forms, and reporting requirements for the Project, Construction Manager will establish a communications procedure for the Project that allows for decision making at appropriate levels of responsibility and accountability.
- 2.4. **Commissioning.** Construction Manager shall coordinate and oversee the independent third-party commissioning services on the Project, including, without limitation, the following:
 - 2.4.1. Coordinate the commissioning agent's inspections.
 - 2.4.2. Ensure the participation and cooperation of Judicial Council, the IOR, the DBE, and all of the DBE's subcontractors and suppliers as required to complete the commissioning process.
 - 2.4.3. Coordinate and oversee Judicial Council's commissioning agent's verification of systems readiness for functional testing procedures prior to the start of functional testing. Deficiencies will be documented by the IOR for future resolution.
 - 2.4.4. Coordinate and oversee documented testing of system parameters, under actual or simulated operating conditions.
 - 2.4.5. Coordinate and oversee device tests, calibration, and functional performance test procedures.
 - 2.4.6. Manage, coordinate, and oversee the preparation of a list of noted deficiencies discovered as a result of the commissioning process. This list also includes the current disposition of issues and the date of final resolution, as confirmed by Construction Manager and IOR. Deficiencies are defined as those issues where a product's execution or performance does not satisfy the Contract Documents and/or the design intent.
 - 2.4.7. Final performance commissioning of systems will begin only after the DBE certifies that systems are 100% complete and ready for functional testing.
 - 2.4.8. Coordinate and oversee special facility start-up processes to bring the facility to a fully operational state, free of deficiencies and operating in an efficient and timely manner.

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- 2.4.9. After occupancy, oversee Judicial Council's commissioning agent to optimize systems under "live" operating conditions and ensure correction of any outstanding construction deficiencies.

3. COORDINATION

- 3.1. **Pre-GMP.** Construction Manager is not the Architect of the Project, but as indicated further herein, Construction Manager will perform specific Services during all Phases of the Project to assist, review, coordinate, and cooperate with the DBE's designers and all other design professional(s) of the Project, and contractor(s), if applicable.
- 3.2. **Post-GMP.** Construction Manager is not the DBE of the Project. As provided for herein, Judicial Council will contract with the DBE for the actual construction of the Project. Construction Manager will perform the specific Services set forth herein during all Phases of the Project to manage the DBE's construction of the Project and review, coordinate, and cooperate with the DBE.
- 3.3. **Risk Management.** Construction Manager must meet with the Project Manager and with Judicial Council's Risk Management Unit and Quality Compliance Unit staff and consultants to discuss and make recommendations regarding the development and implementation of an effective risk management program for the Project.
- 3.4. **Construction Procedures Manual.** Construction Manager shall assist the Project Manager in updating the Project Management Plan and utilize this information to draft the Construction Procedures Manual for approval by the Project Manager.
- 3.5. **Subconsultants.** Construction Manager must contract for, at Construction Manager's expense, Subconsultants, to the extent deemed necessary for performance of Construction Manager's Services. Nothing in the foregoing shall create any contractual relationship between Judicial Council and any Subconsultants employed by Construction Manager under the terms of this Agreement.
- 3.6. **Cooperation.** Construction Manager must cooperate with others employed by, or contracted with, Judicial Council for the design, coordination, or management of other work related to the Project. These Services include, but are not limited, to establishing schedules for these entities (e.g., soils consultant(s), hazardous materials testing, and other consultant(s), etc.), and reviewing of costs, estimates, and invoices of each. Construction Manager must schedule and attend regular meetings with the Project Manager and the DBE.
- 3.7. **Regulatory Agencies.** Construction Manager, in coordination with the Criteria Architect and DBE, must advise the Project Manager as to the regulatory agencies that have jurisdiction over the Project, and coordinate with, and implement the requirements of, the regulatory agencies. Construction Manager must coordinate transmittal of Judicial Council documents to regulatory agencies for review and advise the Project Manager of potential problems in completion of such reviews.
- 3.8. **Taking Minutes.** Construction Manager shall chair, conduct, and take minutes of periodic meetings between the Project Manager and its Performance Criteria professional(s), of the Site Committee meetings, of other meetings during the course of the Project which are not already determined to be the responsibility of the DBE and, if requested by the Project Manager, of meetings with the Judicial Council's Court Facilities Advisory Committee and its subcommittees. Construction Manager shall invite Judicial Council

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and/or its representative to participate in meetings. Construction Manager shall keep meeting minutes to document comments generated in these meetings, but is not responsible for analyzing design issues raised in said meetings. Construction Manager shall be responsible for review, comment, and corrections to all minutes generated by all other parties involved in the Project.

- 3.9. **Accuracy of Work Product.** Construction Manager is responsible for the professional quality and technical accuracy of all cost estimates, constructability reviews, studies, reports, projections, opinions of the probable cost of construction, and other Services furnished by Construction Manager under this Agreement, as well as coordination with all Master Plans, studies, reports, and other information provided by Judicial Council to Construction Manager. Construction Manager must, without additional compensation, correct or revise any errors or omissions in the deliverables it generates.
- 3.10. **Project Management Information System.** Judicial Council has developed a collaborative online document management system. The Judicial Council Program Information and Controls System (“JPIC”) is hosted on SharePoint software. JPIC is owner-controlled and will store and organize all electronic data related to the Project in a uniform and transparent system. Construction Manager’s team shall be provided training on the use of JPIC and shall utilize JPIC to manage the Project and report on Project status, which shall include the following, without limitation:
- 3.10.1. Construction Manager shall utilize JPIC to support such functions as planning, organizing, scheduling, budgeting, reporting progress, and identifying and documenting problems and solutions for the Project. Construction Manager shall draft and generate the monthly and quarterly progress reports to Judicial Council regarding status of the Project using JPIC.
- 3.10.2. The DBE shall utilize its preferred project management information system. Construction Manager shall copy high-level documents such as logs, schedules, and change order-related information from the DBE’s system to JPIC on a regular basis (typically weekly) and keep the Data current.
- 3.10.3. The IOR is required to provide Judicial Council updates on inspections on a monthly basis. Construction Manager shall enter this information into JPIC on a monthly basis.
- 3.10.4. At project completion, the DBE shall provide all project documents (as-builts, O&M manuals, training videos, submittals, etc. as well as the logs and schedules) to Judicial Council in electronic format. Construction Manager shall upload these electronic files to JPIC if requested by the Project Manager.
- 3.11. **Monthly and Quarterly Reports.** Construction Manager must provide to the Project Manager a monthly Project report generated in JPIC. The monthly report must be submitted monthly (as required by the Project Manager) and must contain complete and accurate information through the last day of the previous month. In addition to the monthly reports, Construction Manager will draft a quarterly report, summarizing the information from the monthly reports, to be submitted to the Project Manager.

4. CONSTRUCTION COST

- 4.1. In addition to its other duties related to budgeting and estimating, Construction Manager must perform the following tasks related to the Direct Cost of the Work.

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- 4.1.1. Construction Manager shall participate in target value design sessions led by the DBE. As estimate updates are submitted, Construction Manager must review and assist the DBE in confirming the costs are in alignment with the Target GMP. Independent review of building systems or project component estimates may be required periodically by Construction Manager's estimators where there are large cost variances or disagreements on pricing among the Project team.
- 4.1.2. Upon submission of the proposed GMP, Construction Manager shall review, validate, and discuss all components within the GMP binder.
- 4.1.3. If DBE submits proposed change orders or proposed requests for use of Project contingency or similar contingency in the Construction Documents, Construction Manager must review and validate the costs of those items so that Judicial Council can evaluate the sufficiency and necessity of each proposed change order or request for use of contingency funds.
- 4.1.4. Construction Manager will provide local market updates on materials, equipment, and labor costs for major trades.
- 4.1.5. The Target GMP may include allowances, contingencies, and other amounts.
- 4.1.6. Construction Manager must work cooperatively with the DBE so that the GMP will not exceed the Target GMP, as may be adjusted with Judicial Council's written Approval.
- 4.1.7. Construction Manager must immediately notify the Project Manager if Construction Manager believes the GMP will exceed the Target GMP. Construction Manager, however, must not perform and is not responsible for any design or architectural services.
- 4.2. **Project Budget.** Construction Manager must coordinate with the DBE and the Project Manager to monitor the Target GMP.
- 4.3. **DBE Selection.** If a DBE has not yet been selected, Construction Manager must assist Judicial Council in selecting and retaining the DBE, including, without limitation:
 - 4.3.1. Reviewing and revising the request for qualifications, request for proposals, or other solicitation documents; and
 - 4.3.2. Assisting Judicial Council in negotiating and finalizing the DBE agreement with Judicial Council as needed to construct the Project.
- 4.4. **Consultant Selection.** If requested by the Project Manager, Construction Manager must assist the Project Manager and Judicial Council with the process of identifying, soliciting proposals from, and negotiating contracts and/or amendments to contracts with consultants necessary for the completion of the Project. If requested by the Project Manager, Construction Manager must advise Judicial Council and make recommendations concerning the scope of services, the fees, and the administration of consultants.
- 4.5. **Best Judgment.** Evaluations of the DBE's estimates must represent the Construction Manager's best judgment as a professional familiar with the construction industry.

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4.6. **Constructability Review(s).** Construction Manager shall perform constructability reviews and site verification of the Project as set forth in the Pre-GMP Phase section below. Construction Manager shall review the design documents for clarity, consistency, constructability, and coordination. The results of the review shall be provided in writing and as notations on the documents to Judicial Council and uploaded to JPIC. Construction Manager shall also make recommendations to Judicial Council with respect to constructability, sequence of construction costs, construction duration, and separation of the contracts for the Project into categories of the work and separate bid trade packages. Construction Manager, however, shall not perform, and is not responsible for, any design or architectural services. Construction Manager's actions in reviewing the Project design and design documents, and in making recommendations as provided herein, are advisory only to Judicial Council. The DBE members are not third-party beneficiaries of Construction Manager's work described in this paragraph and the DBE remains solely responsible for the contents of design drawings and design documents.

4.7. **Value Engineering.**

4.7.1. Upon Judicial Council's request, and without considering it an Extra Service, Construction Manager shall provide value engineering at the 100% Design Development Phase and the 50% Construction Document Phase. This evaluation will consist of a review of the proposed materials, equipment, systems, and other items depicted in the design documents and shall be coordinated with Judicial Council's design guidelines, Performance Criteria, the Criteria Architect, and the DBE. Construction Manager shall prepare a value engineering report that will document the results of the evaluation (uploaded to JPIC) and shall make recommendations to Judicial Council with respect to alternatives, deletions, or amendments of such proposed items that pertain to the anticipated construction costs, useful life, maintenance and operational costs, and equipment efficiencies. Construction Manager shall provide value engineering recommendations and a cost/benefit analysis of those recommendations to Judicial Council.

4.7.1.1. At Judicial Council's request, and without considering it an Extra Service, Construction Manager shall organize and conduct a value engineering workshop for the Project.

4.7.1.2. Construction Manager shall invite Judicial Council, the DBE, and the Criteria Architect to participate in the workshop.

4.7.1.3. Prior to the value engineering workshop, the Construction Manager, the Judicial Council, the DBE, and the Criteria Architect shall provide all participants with a preliminary list of value engineering items for discussion and order of magnitude estimates of cost for design and construction.

4.7.1.4. The workshop shall consist of an initial Project design review, research of alternative solutions, and evaluations of alternatives. The workshop shall conclude with a review of design and construction costs, benefits of various items selected, and selection of items to be incorporated into the Project design.

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- 4.7.1.5. Construction Manager will incorporate the workshop findings into one complete report for submittal to Judicial Council, the DBE, and the Criteria Architect, and shall upload it to JPIC.
- 4.7.1.6. Value engineering is expected to be an ongoing process to determine ways to build a more efficient and economical Project, and to meet the goals and objectives of the Project without reducing its quality.
- 4.8. **Project Information.** Construction Manager must provide documentation, pictures, and other information and assistance to Judicial Council for Judicial Council’s use on a website for public access to show Project status.
- 4.9. **Local Government and Utility Company Consultation, Review, Inspection, and Approval.** Judicial Council is not subject to local ordinances or regulations, including local building codes, local agency review, or inspections (“Local Regulations”) with respect to the Project to the extent that it relates to the design or construction on the Project site. However, Judicial Council is generally subject to local regulations with respect to obtaining encroachment permits and utility connections or performing off-site work with respect to the Project. Therefore, to the extent Judicial Council is subject to local regulations, Construction Manager must assist the DBE to provide to the appropriate local government officials and local utility companies, the opportunity to review the documents required and applicable for compatibility with those specific local regulations. This must begin no later than schematic design development so that the design can easily respond to appropriate recommendations. Construction Manager must ensure the DBE maintains a schedule of those permits, reviews, and inspections that are required for the design and construction of the Project, and ensure that Judicial Council and the DBE comply with the requirements so as not to delay the completion of the Project.
- 4.10. **State Consultation, Review, Inspection, and Approval.** Judicial Council is generally subject to State building codes. To the extent required by applicable law, Construction Manager must provide to the appropriate and applicable state government officials (e.g., the California State Fire Marshal, the Division of the State Architect, the Board of Community Corrections, etc.) the opportunity to review the documents required and applicable for compatibility with those building codes, permits, and inspections prior to the DBE selection. Construction Manager must ensure the DBE maintains a schedule of those permits, reviews, and inspections that are required for the design and construction of the Project, and ensure that Judicial Council and the DBE comply with the requirements so as not to delay the completion of the Project.
- 4.11. **Labor Code Compliance.**
 - 4.11.1. Construction Manager acknowledges and understands that the State monitors and enforces compliance with Labor Code requirements through statutorily-authorized programs. Construction Manager will inform Judicial Council of any known non-compliance with Labor Code requirements by the DBE, its subcontractors or subconsultants.
- 4.12. **Safety.** Construction Manager must provide a qualified person, as defined by the Occupational Safety & Health Administration, to initially and continually review, and from time to time monitor, the DBE’s Safety Program.

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- 4.12.1. This shall include a review of all submittals and implementation of the DBE's Safety Program and the DBE's compliance with the safety requirements of the DBE's contract documents.
- 4.12.2. Construction Manager must report to the appropriate DBE personnel, the Project Manager, and Judicial Council's Risk Manager, any observed deviations from the DBE's Safety Program, the OCIP, applicable Cal/OSHA requirements, Judicial Council's most recent PMM/PEM/PAM, and Judicial Council's safety manual and documentation.
- 4.12.3. If deviations are noted as outlined above, Construction Manager has the responsibility and authority to follow-up with a written safety notice to the DBE and must provide copies of the notice to the Project Manager and Judicial Council's Risk Manager.
- 4.12.4. Neither Construction Manager nor Judicial Council shall be responsible for, or have any liability for, the DBE's failure to comply with or enforce the DBE's Safety Program.
- 4.13. **Stormwater.** Construction Manager must ensure that the DBE's qualified stormwater developer/designer prepares a full stormwater management program for the Project that is approved by the State Water Resources Control Board or other applicable agencies. Construction Manager must also ensure that the DBE, the Project subcontractor(s), and the Construction Manager's Subconsultants comply with any Judicial Council-approved stormwater management program that is applicable to the Project.
- 4.14. **Environmental Requirements.**
 - 4.14.1. Construction Manager must provide direction and planning to ensure Project adherence to applicable environmental requirements, laws, regulations, and rules, such as those emanating from the Environmental Protection Agency (EPA), Cal/EPA, the Air Quality Management District, the State of California, and the Regional Water Quality Control Board.
 - 4.14.2. Construction Manager must ensure that the Project incorporates all requirements of Judicial Council's adopted CEQA document, including all mitigation measures in the Mitigation Monitoring Plan and the "project description" set forth in the CEQA document, and that those requirements become part of the scope of the DBE's work on the Project.
 - 4.14.3. Unless otherwise directed by Judicial Council, Construction Manager shall be responsible for retaining all consultants necessary to ensure compliance with the Project's Mitigation Monitoring Plan, including, but not limited, to archeological, biological, paleontological, tribal cultural resources monitoring, and other consultants.
- 4.15. **Scheduling.** In strict conformance with the standardized schedule format provided by Judicial Council, Construction Manager shall prepare, track, and report on schedule status for the Project throughout the Pre-GMP and Post-GMP Phases. If Judicial Council has not provided Construction Manager with a standard format for this purpose, then Construction Manager must provide its own format to Judicial Council for approval, two (2) weeks prior to the due date of Construction Manager's first schedule submittal. If Construction Manager provides its own format to Judicial Council for approval, that format must include appropriate Pre-GMP and Post-GMP Phase activities, activity descriptions, and activity logic. When

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Judicial Council does provide its standard format, no matter at what phase of the Project, Construction Manager must immediately begin using that format.

- 4.15.1. Construction Manager must develop master schedules and milestone schedules for the Project utilizing the standard format and must report on same each month to Judicial Council. Construction Manager must provide the Project Manager with an electronic copy of these master schedules and milestone schedules. These master schedules and milestone schedules shall also be uploaded to JPIC.
- 4.15.2. Construction Manager must ensure that the DBE fully complies with all its contractual requirements related to providing ongoing schedules, updated schedules, recovery schedules, related documentation, establishing delay, and seeking extensions to the contractual time to design and construct the Project.
- 4.15.3. Construction Manager must evaluate the DBE's schedules for compliance with Judicial Council's deadlines, milestones, and completion dates; for logical ties between tasks; for accurate projections for the duration of specific tasks and activities; and for related impacts on cost-loaded items and/or earned-value items. Construction Manager shall provide its evaluation in writing to Judicial Council within seven (7) days or earlier from date of receipt of the DBE's schedule to ensure no delay in the design and construction of the Project.
- 4.15.4. Construction Manager must perform the following tasks with respect to scheduling:
 - 4.15.4.1. If Judicial Council provides Construction Manager with a Work Breakdown Structure ("WBS") as part of the standard format, Construction Manager shall utilize the WBS in its scheduling activities.
 - 4.15.4.2. DBE will be providing monthly schedule updates under its agreement with Judicial Council to design and construct the Project. Construction Manager shall review these schedules for compliance with the DBE's contractual obligations under the DBE's agreement with Judicial Council and shall advise Judicial Council on whether to accept or reject any schedule update.
 - 4.15.4.3. Construction Manager shall incorporate into its scheduling activities, any guidelines that Judicial Council provides with respect to establishing construction phase milestones and associated liquidated damages.
- 4.15.5. Construction Manager shall be responsible for reviewing the DBE's request for extensions of the DBE's contract time and shall evaluate the reasonableness of the request and whether the request complies with the DBE's construction documents. Construction Manager shall prepare a written recommendation as to whether to accept or reject the DBE's request.
- 4.16. **Payment Applications.** Regarding invoices from the DBE and other consultants, Construction Manager must review the invoices for accuracy, prepare a recommendation, and forward the payment application to the Project Manager for payment. Construction Manager must provide its reports and information in an electronic format in a form acceptable to Judicial Council.

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4.17. **Not in Scope/Coordination with Special Consultants.** Construction Manager is not responsible to perform the following scopes of work or services, but Construction Manager must coordinate with Judicial Council's other consultants and vendors that are performing these services (e.g., Construction Manager must establish and maintain a schedule of all environmental and archeological investigations, testing, etc.). In addition, Construction Manager will assist Judicial Council in procuring the following scopes of work or services when required:

- 4.17.1. Ground contamination or hazardous material analysis.
- 4.17.2. Any asbestos testing, design, or abatement.
- 4.17.3. Historical significance report.
- 4.17.4. Soils investigation.
- 4.17.5. Geotechnical hazard report.
- 4.17.6. Topographic survey, including utility locating services.
- 4.17.7. Other items specifically designated as Judicial Council's responsibilities under this Agreement.
- 4.17.8. As-built documentation from previous construction projects.

5. Phase-Specific Services.

5.1. The scope of services required under this Agreement include the following professional construction management services as well as incidental services that members of that profession and those in their employ may logically or justifiably perform. The services required will be associated with the following Phases:

5.2. Performance Criteria Phase:

- 5.2.1. Attend interviews with Judicial Council stakeholders and Criteria Architect to identify project requirements.
- 5.2.2. Consult and coordinate with Judicial Council and Criteria Architect regarding project scope, including parking requirements, for inclusion in cost modeling and budgetary evaluations.
- 5.2.3. Assist Criteria Architect in preparing project summary for presentation to Judicial Council Committees, such as the Court Facilities Advisory Committee (CFAC) and the Project Advisory Committee (PAG).
- 5.2.4. Assist Criteria Architect in preparing and presenting project summary to general public.
- 5.2.5. Provide support during the process to solicit and select the DBE for the Project, including, but not limited, to the following tasks:

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- 5.2.5.1. Assist Judicial Council in compiling information and preparing any RFQ or RFP for soliciting the DBE for the Project;
- 5.2.5.2. Attend and participate in confidential meetings with shortlisted DBEs prior to interviews;
- 5.2.5.3. Review, evaluate, and score technical proposals from shortlisted DBEs and compile findings for advisement of Judicial Council;
- 5.2.5.4. Attend and perform debrief of technical evaluations and scoring of DBEs' proposals with interview panel;
- 5.2.5.5. Assist Criteria Architect in processing any written questions received during the solicitation and selection process. Coordinate with Judicial Council as needed to support identifying, compiling, and distributing complete, accurate, and appropriate responses and/or addenda to the criteria documents; and
- 5.2.5.6. Support and assist Criteria Architect in processing and preparing any RFI documents, responses, and/or addenda during the DBE selection; and support Criteria Architect in developing, maintaining, and regularly updating a schedule of project planning and DBE selection activities, including, but not limited, to required submittal milestone dates, confidential meetings, Judicial Council interviews, and final selection.

5.3. Pre-GMP Phase:

- 5.3.1. Perform general criteria conformance and constructability reviews of drawings, specifications, and other submissions from the Design Build Entity at 50% and 100% Schematic Design, and 50% and 100% Design Development documents, as set forth above.
- 5.3.2. Prepare reports documenting nonconformance of any items.
- 5.3.3. Conduct meetings/follow-up with DBE and Criteria Architect to correct and verify correction of nonconforming items or document acceptance of the variance.
- 5.3.4. Assist Criteria Architect in preparing a project-specific list of submittals requiring Judicial Council review and approval.
- 5.3.5. Provide value engineering services when requested by Judicial Council, as set forth above.
- 5.3.6. Perform submittal reviews when requested and ensure Judicial Council reviews and provides input when required.
- 5.3.7. Perform review of RFIs and responses, and ensure Judicial Council reviews and provides response when required.

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- 5.3.8. Review DBE's site logistics plans, traffic flow diagrams, and plans for the performance of the Project, showing the use of designated roadways or streetlights, the closing of any roadways, streets and/or sidewalks, and the re-routing of any traffic.
- 5.3.9. **GMP Negotiation:** Provide comprehensive evaluation of the DBE's GMP binder and represent Judicial Council in GMP negotiations, which shall include, without limitation, and to the extent applicable:
 - 5.3.9.1. Review DBE's subcontractor bid documents to ensure completeness and determine whether DBE properly categorized and captured scope;
 - 5.3.9.2. Review all bids submitted by subcontractors to ensure they were responsive to scope and to eliminated scope gaps or overlaps;
 - 5.3.9.3. Review and identify DBE's proposed self-performed work and assess reasonableness of cost;
 - 5.3.9.4. Ensure that DBE properly prequalified bidders;
 - 5.3.9.5. Provide a comprehensive analysis of DBE's GMP to determine reasonableness and compliance with Target GMP; and
 - 5.3.9.6. Negotiate any proposed contingencies or allowances. Review cost breakdown in full and engage independent estimates when needed to confirm numbers are reasonable.
- 5.4. **Post-GMP Phase:**
 - 5.4.1. Perform general criteria conformance and constructability reviews of drawings, specifications, and/or other submissions from Design Build Entities at 95% Construction Documents as set forth above.
 - 5.4.2. Record the progress of work at the Project. When present, Construction Manager must prepare daily reports for the Project containing a record of weather, the members of the DBE and its subcontractor(s) present, and their number of workers, work accomplished, problems encountered, and other relevant data.
 - 5.4.3. Review pay applications and provide recommendations to Judicial Council.
 - 5.4.4. Establish a schedule of, and procedure for, requesting, required inspections and material testing as required by applicable building codes, the DBE's contract documents, and other applicable industry standards with the assistance of the Project Manager, Criteria Architect, DBE, Judicial Council's Risk & Quality Compliance Unit and the IOR.
 - 5.4.5. Maintain a change order log for the Project in the format provided by Judicial Council. If Judicial Council has not provided Construction Manager with a template for this purpose, then Construction Manager must provide its own template to Judicial Council for approval, two (2) weeks prior to the commencement of construction for the Project. When Judicial

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Council does provide its template, no matter at what Phase of the Project, Construction Manager shall immediately begin using that template, and Construction Manager shall create a new change order log incorporating all previous information into Judicial Council's form. The log must be submitted electronically to Judicial Council on a bi-weekly basis and must contain the current status of all executed change orders, change orders submitted to Judicial Council but not yet approved, fully negotiated potential change orders, potential change orders being negotiated, and requests for pricing of potential changes submitted to the DBE but not yet received back from the DBE. Additionally, the report must list all items and issues Construction Manager is aware of that may result in the issuance of a change order.

- 5.4.6. Construction Manager shall review any request for adjustment in the DBE's contract time or contract price, and any substantiation related thereto, to determine the reasonableness of the DBE's request. Construction Manager shall prepare a recommendation for Judicial Council as to whether to accept or deny the DBE's request.
- 5.4.7. Maintain electronically at the Project site and, at Judicial Council's offices if necessary, a current copy of all approved documents, drawings, specifications, addenda, change orders, use of allowance(s), use of contingency(s) and other modifications, and drawings marked by the DBE and its subcontractor(s) to record all changes made during construction.
- 5.4.8. Coordinate the purchase and installation of Judicial Council-furnished/Judicial Council-installed or Judicial Council-furnished/DBE- or consultant-installed furniture, fixtures, and equipment. Construction Manager is not authorized to procure, design, or install any of these items.
- 5.4.9. Review, monitor, and approve all as-built drawings, maintenance and operations manuals, and other closeout documents and ensure all required final documents submitted by the DBE meet the requirements of the DBE's contract documents.
- 5.4.10. Submit a final Project report to the Project Manager. The final Project report must be prepared and submitted in strict compliance with Judicial Council's final Project report procedure.

6. **Extra Services.** *[Revised]*

- 6.1. Construction Manager shall perform the following Extra Services, only when authorized by an Amendment. The cost for each Extra Service shall be determined before, and no work related to any Extra Service shall be performed until an Amendment is made. In no event shall Judicial Council be responsible for compensating Construction Manager in excess of the Contract Amount in the absence of an Amendment that specifically increases the Contract Amount.
 - 6.1.1. Revisions to Accepted Construction Documents or Design Development documents to accommodate changes (excluding corrections of inconsistencies, errors, and omissions by Construction Manager) when so directed by Judicial Council.

6.1.2. *[Deleted]*

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- 6.1.3. Preparation of drawings or change orders as required due to those actions of Judicial Council that are beyond the scope of the Construction Manager's responsibilities.
 - 6.1.4. Preparation of measured drawings of existing structures except as required for the design services.
 - 6.1.5. Selection of moveable furniture, equipment, or other articles that are not included in the Design Build Entity contract unless otherwise specified in this Agreement.
 - 6.1.6. Services necessary to supervise correction of defects or damage to the Project (excluding corrections arising from inconsistencies, errors, and omissions of Construction Manager).
 - 6.1.7. Services necessitated by the delinquency or insolvency of the Design Build Entity during or after the guarantee period.
 - 6.1.8. Preparation of such alternates to be included in the Construction Documents as may be deemed necessary by Judicial Council.
 - 6.1.9. Joining with and assisting Judicial Council in defending any claim or action related to or arising out of the Construction Manager's design (not attributable to inconsistencies, errors, or omissions on the part of the Construction Manager) of the Project.
 - 6.1.10. Additional rendering and/or models as may be deemed necessary by Judicial Council beyond those included in the Basic Services, will be an Extra Service.
- 6.2. 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 E. Payment for Extra Services will be either on a time and materials basis or a firm fixed price, as determined by Judicial Council.

END OF EXHIBIT

EXHIBIT C

PAYMENT PROVISIONS

1. **Contract Amount.** The total Contract Amount under this Agreement will be as set forth on the Agreement Coversheet.

1.1. Compensation. The compensation to be paid to Construction Manager, as provided herein, shall be a firm, fixed price and shall be full consideration for all of Construction Manager’s Services and expenses, direct or indirect, including travel and per-diem, and all other costs incidental to providing the Services.

Total compensation for the scope of work authorized by this Agreement is:

Phase	Phase Amount
Performance Criteria Phase	@ \$Amount
Pre-GMP Phase Services	@ \$Amount
Post-GMP Phase Services	@ \$Amount

1.2. If the start date for any phase is delayed for more than one (1) year past the estimated start date through no fault of Construction Manager, then the total compensation for that phase may be increased so long as such increase does not exceed the percentage difference between (i) the most recently reported Consumer Price Index (“CPI”) (as defined below) as of the first day of the term of this Agreement, and (ii) the most recently reported CPI as of the start date of the phase in question; provided, however, that in no event shall the amount of the increase exceed five percent (5%) per year. “CPI” means the unadjusted Consumer Price Index for Urban Wage Earners and Clerical Workers, All Items (1982-1984=100) published by the Bureau of Labor Statistics.

2. **Method of Payment.**

2.1. Construction Manager shall submit one (1) original and two (2) copies of each invoice for the Services no more frequently than once monthly, in arrears. After receipt of the invoice, Judicial Council will either approve the invoice for payment or give Construction Manager specific written reasons why part or all of the payment is being withheld, and what remedial actions Construction Manager must take to receive the withheld amount.

2.2. Judicial Council will make payment after receipt of Construction Manager’s properly completed invoice. Invoices shall clearly indicate

- 2.2.1. The contract number;
- 2.2.2. A unique sequential invoice number;
- 2.2.3. Construction Manager’s name and address;
- 2.2.4. Taxpayer identification number;

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- 2.2.5. Description of the completed Services, including percentage complete of each phase and sub-phase, and retention;
- 2.2.6. Compensation previously invoiced, by phase; and
- 2.2.7. Preferred remittance address, if different from the mailing address.
- 2.3. Invoices furnished by Construction Manager under this Agreement must be in a form acceptable to Judicial Council and must be submitted for approval to the Judicial Council Project Manager.
- 2.4. The authorized representative of Construction Manager shall sign each invoice.
- 2.5. Judicial Council will endeavor to pay invoices within thirty (30) days after receipt of a correct, itemized invoice. In no event shall Judicial Council be liable for interest or late charges for any late payments. Payment shall be made by Judicial Council to Construction Manager at the address specified in the section entitled "Notices to the Parties."
- 2.6. Judicial Council may withhold full or partial payment to Construction Manager in any instance in which Construction Manager has failed or refused to satisfy any material obligation under this Agreement.
- 2.7. Upon receipt and approval of Construction Manager's invoices, Judicial Council agrees to make payment as follows:
 - 2.7.1. For Performance Criteria Phase.
Monthly payment for the percentage of work completed less 10 percent retention. The final 10 percent will be paid within forty-five (45) days of receipt of a correct, itemized invoice for the retention submitted after Judicial Council's Acceptance of the Performance Criteria Phase.
 - 2.7.2. For Design Build Phases (includes Pre-GMP Phase and Post-GMP Phase).
Monthly payment for the percentage of work completed less 10 percent retention. The final 10 percent will be paid within forty-five (45) days of receipt of a correct, itemized invoice for the retention submitted after Judicial Council's Acceptance of the Design Build Phase.
 - 2.7.3. For Extra Services.
Unless otherwise directed by Judicial Council, no retention will be withheld for Extra Services.

3. **Disallowance.**

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

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4. Payment Does Not Imply Acceptance of Work.

The granting of any payment by Judicial Council, or the receipt thereof by Construction Manager, shall in no way lessen the liability of Construction Manager to correct unsatisfactory work in connection with the Services. Services that do not conform to the requirements of this Agreement may be rejected by Judicial Council, and in such case, Construction Manager must correct the delivery of Services without delay.

5. Release of Claims.

The acceptance by Construction Manager of final payment shall be, and shall operate as, a release to the State and Judicial Council of all claims and all liability to Construction Manager for everything done or furnished in connection with this Agreement (including every act and neglect of Judicial Council), with the exception of any claims that are expressly identified by Construction Manager as outstanding as of the date of Construction Manager's submission of Construction Manager's final application for payment. Construction Manager's failure to identify any such claims shall operate as a release of all claims.

END OF EXHIBIT

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EXHIBIT D

SCHEDULE OF WORK

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

END OF EXHIBIT

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EXHIBIT E

FIRM PERSONNEL BILLING RATES

**[FIRM PERSONNEL BILLING RATES, SUBMITTED IN ATTACHMENT 3 TO THE RFP, TO BE ATTACHED
PRIOR TO EXECUTION OF THE AGREEMENT.]**

END OF EXHIBIT

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EXHIBIT F

KEY PERSONNEL

**TO BE AGREED TO BY THE PARTIES AND ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.
FINAL STAFFING MAY BE REVIEWED AND NEGOTIATED WITH JUDICIAL COUNCIL.**

Name	Title

END OF EXHIBIT

EXHIBIT G

INTERNAL BACKGROUND CHECK POLICY

Internal Background Check Policy

Facilities Services' Contractor Clearance Program

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

Contact: Facilities Services office's Emergency Planning and Security Coordination Unit (EPSCU)

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

Contents:

- Who must comply with this policy? 2
- What is the policy? 2
 - Definition of Contractor 2
 - Definition of Restricted Area..... 2
 - Definition of Emergency Situation..... 3
- What is the purpose of this policy? 3
- What is the application process? 4
- What are the evaluation criteria?..... 5
- What is the evaluation process? 5
 - Applicants Suitable for Unescorted Access to Restricted Areas 6
 - Applicants Not Suitable for Unescorted Access to Restricted Areas 6
 - Subsequent Arrests 6
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- What is the badging process?..... 7
 - Badge Issuance 7
 - Badge Replacement 7
 - Badge Return 8
- Questions and Complaints 8
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- References..... 8

WHO MUST COMPLY WITH THIS POLICY?

This policy applies to:

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

WHAT IS THE POLICY?

Council staff must do all of the following:

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

Definition of Contractor

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

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

Definition of Restricted Area

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

1. contains a means to connect to FBI and CA DOJ criminal databases via CLETS; *or*
2. contains any records or information (transported, processed, or stored in physical or electronic format) that were obtained via CLETS.
3. are areas within the Facility that are not generally accessible to the public, including (i) judges' chambers, all non-public restrooms, elevators, break rooms, and corridors, and other non-public spaces that are dedicated for use only by judges or Court staff and employees, and (ii) public areas of a Facility during non-business hours that are subject to security screening during normal business hours.

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

Definition of Emergency Situation

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

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

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

WHAT IS THE PURPOSE OF THIS POLICY?

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

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

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

WHAT IS THE APPLICATION PROCESS?

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

- A project code for chargeback of CA DOJ billing costs;

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

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

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- A designated council contact or Contractor contact; and
- A designated council authorizer (ideally a manager or supervisor).

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

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

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

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

WHAT ARE THE EVALUATION CRITERIA?

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

1. A felony conviction of any kind or felony charge pending court disposition (that includes arrest warrant for a felony charge); or
2. Any misdemeanor conviction *or* charge pending court disposition involving violence, weapons, theft, robbery, burglary, embezzlement, dishonesty, gang activity, drugs (excluding certain misdemeanor marijuana convictions more than two years from the date of such conviction, as specified in California Labor Code section 432.8), or moral turpitude.

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

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

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

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

WHAT IS THE EVALUATION PROCESS?

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

Applicants Suitable for Unescorted Access to Restricted Areas

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

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

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

Applicants Not Suitable for Unescorted Access to Restricted Areas

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

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

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

Subsequent Arrests

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

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

Requests for Exceptions

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

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

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

WHAT IS THE BADGING PROCESS?

Badge Issuance

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

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

Badge Replacement

EPSCU replaces lost, stolen, and damaged badges. The council contact or Contractor contact must notify EPSCU when a replacement badge is necessary.

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Badge Return

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

QUESTIONS AND COMPLAINTS

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

ADDITIONAL RESOURCES

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

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

REFERENCES

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

END OF EXHIBIT

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EXHIBIT H

CONTRACT FEE

The Contract Fee consists of the staffing, hourly rates, and contract sum.

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

END OF EXHIBIT

EXHIBIT I

DVBE PARTICIPATION FORM

Firm Name: _____
RFP Project Title: _____
RFP Number: _____

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

Complete Parts A & B

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

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

PART A – COMPLIANCE WITH DVBE

FIRM

Company Name: _____
Nature of Work: _____ Tier: _____
Claimed Value: DVBE \$ _____
Percentage of Total Contract Amount: DVBE _____ %

SUBCONTRACTORS/SUB-SUBCONTRACTORS/PROPOSERS/SUPPLIERS

1. Company Name: _____
Nature of Work: _____ Tier: _____
Claimed Value: DVBE \$ _____
Percentage of Total Contract Amount: DVBE _____ %

2. Company Name: _____
Nature of Work: _____ Tier: _____
Claimed Value: DVBE \$ _____
Percentage of Total Contract Amount: DVBE _____ %

3. Company Name: _____
Nature of Work: _____ Tier: _____
Claimed Value: DVBE \$ _____
Percentage of Total Contract Amount: DVBE _____ %

GRAND TOTAL: DVBE _____ %

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

NAME OF FIRM _____
SIGNATURE OF PERSON SIGNING FOR FIRM _____
NAME (PRINTED) OF PERSON SIGNING FOR FIRM _____
TITLE OF ABOVE-NAMED PERSON _____
DATE _____

PART B – CERTIFICATION

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

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

NAME OF FIRM _____
SIGNATURE OF PERSON SIGNING FOR FIRM _____
NAME (PRINTED) OF PERSON SIGNING FOR FIRM _____
TITLE OF ABOVE-NAMED PERSON _____
DATE _____

END OF EXHIBIT

Judicial Council of California Agreement No. [@#] with [@Construction Management Firm]

EXHIBIT J

PREVAILING WAGE AND RELATED LABOR REQUIREMENTS CERTIFICATION

PROJECT/CONTRACT NO.: [PROJECT NUMBER] between the Superior Court of California, County of _____ (the “Court”) and _____ (the “Construction Manager”) (the “Contract” or the “Project”).

I hereby certify that I will conform to the State of California Public Works Contract requirements regarding prevailing wages, benefits, on-site audits with 48-hours’ notice, payroll records, and apprentice and trainee employment requirements, for all Work on the Project including, without limitation, the requirement that Construction Manager and all of its Subcontractors are registered pursuant to Labor Code section 1771, et seq.

DATE _____
PROPER NAME OF CONSTRUCTION MANAGER / SUBCONTRACTOR _____
SIGNATURE _____
NAME (PRINTED) OF PERSON SIGNING FOR FIRM _____
TITLE OF ABOVE-NAMED PERSON _____

THIS FORM MUST BE COMPLETED BY THE CONSTRUCTION MANAGER AND ALL SUBCONTRACTORS.

END OF EXHIBIT

END OF AGREEMENT