



ATTACHMENT 1
STANDARD AGREEMENT rev December 2016

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| AGREEMENT NUMBER [Agreement number] |
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- In this agreement (“Agreement”), the term “Consultant” refers to **[Consultant name]**, and the term “Judicial Council” refers to the **Judicial Council of California**.
 - This Agreement is effective as of **July 1, 2017** (“Effective Date”) and expires on **June 30, 2018** (“Expiration Date”). This Agreement includes one or more options to extend through **[June 30, 2019]**.
 - The maximum amount the Judicial Council, may pay Consultant under this Agreement is \$**[Dollar amount]** (the “Contract Amount”). The maximum amount the Judicial Council, may pay Consultant is (i) \$**[Dollar amount]** during the Initial Term, and (ii) \$**[Dollar amount]** during the Option Term.
 - The purpose or title of this Agreement is to determine the feasibility (or not) of major renovations to certain existing California Superior Court Buildings; findings will be documented in reports for each building studied.
- The purpose or title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.*
- The parties agree that this Agreement, made up of this coversheet, the appendices listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

- Appendix A – Services
- Appendix B – Payment Provisions
- Appendix C – General Provisions
- Appendix D – Defined Terms
- Appendix E – Consultant’s Key Personnel

| JUDICIAL COUNCIL,’S SIGNATURE | CONSULTANT’S SIGNATURE |
|--|---|
| [Judicial Council of California] | CONSULTANT’S NAME (if Consultant is not an individual person, state whether Consultant is a corporation, partnership, etc., and the state or territory where Consultant is organized) [Consultant name] |
| BY (Authorized Signature)  | BY (Authorized Signature)  |
| PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title] | PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title] |
| DATE EXECUTED [Date] | DATE EXECUTED [Date] |
| ADDRESS [Address] | ADDRESS [Address] |

APPENDIX A

Services

1. Background and Purpose.

- Pursuant to the Trial Court Facilities Act of 2002 (SB 1732), ownership of and responsibility for most superior court facilities in California transferred from the counties to the state. Subsequent to this transfer the Judicial Council of California (Judicial Council) assumed full responsibility for trial court buildings whose title transferred to the state [gov't code 70391].
- Selected consultant(s) shall work closely with Judicial Council Capital Program Office staff in studying the structural, architectural, cost, and schedule involved with a renovation of existing court buildings identified by the Judicial Council. Each court building assigned to Consultant shall have a separate report documenting feasibility issues, conceptual renovation designs, cost benefit analysis, and renovation project schedule.

2. Services.

2.1 Description of Services. Consultant shall perform the following services ("Services"):

For each assigned building, the Consultant shall advise the Judicial Council on the feasibility and characteristics of physical renovation construction in the following general manner:

Research & Concepts

Research the current physical, structural architectural and functional conditions. Such research may include but is not limited to the following: Review of previous analysis furnished by the Judicial Council; site-visit(s) to inspect the building conditions; and interviews of building operators and Court leaders to ascertain functional conditions. Other investigations necessary for the Consultant to perform the Services. Collect research data in the specified format.

Prepare up to three alternative renovation construction concepts. Document building deficiencies, rank major deficiencies against specified criteria. For each renovation concept prepare engineering & architectural studies; cost models and construction duration estimates. Provide and present concepts to Judicial Council with supporting data and recommendations on the most viable concept; from this information, the Judicial Council will select a single concept for further study.

Project Feasibility Report

Prepare and provide a Project Feasibility Report (PFR). Prepare an initial draft of the PFR about the selected concept in the specified content and format. Content may include but is not limited to the following: Conceptual design drawings, diagrams, photographs, maps, schedules that describe the renovation in sufficient enough detail that a reader unfamiliar with the subject building or construction could reasonably understand the likely scope, complexity, cost, and duration of the proposed renovation. Prepare and provide summaries or abstracts of the PFR in advance of a final report. Consultant shall specifically **not** make recommendations or suggestions related to project delivery options, or how the Judicial Council can or should solicit design or construction work on the Project.

Prepare and provide a final PFR. After receipt of editorial and copy editing review from the Judicial Council, revise, elaborate, and clarify the draft report. Provide electronic files of the final document in the specified format for print production and distribution.

Working Documents

At the time it provides the final PFR, Consultant shall organize and provide a copy of all of Consultant's raw data, back-up information, research notes, and preliminary drafts it used to prepare the PFR and the final PFR.

- 2.2 Consultant must consider alternative renovation construction concepts which may include, but not be limited to: renovating and/or expanding the existing facility, leasing additional space, purchasing and converting existing buildings, and constructing new facilities. The Consultant shall provide an analysis and comparison of alternatives, including, but not limited to an estimate of the construction and lifecycle costs, implementation issues, advantages and disadvantages from a court operational and service perspective.
- 2.3 Consultant shall prepare an estimate of probable construction and/or development cost for each Project Feasibility Report in a format acceptable to the Judicial Council.
- 2.4 Consultant shall provide Services that comply with all applicable requirements of federal, state, and local law including, without limitation, the following statutes, regulations and standards.
 - 2.4.1 California Code of Regulations, Title 24, California Building Standards Code, including all amendments thereto.
 - 2.4.2 California Trial Court Facilities Standards, 2011 edition.
 - 2.4.3 California Code of Regulations, Title 19, Regulations of the State Fire Marshall, and all pertinent local fire safety codes, rules, regulations, or ordinances.
 - 2.4.4 Americans with Disabilities Act.
 - 2.4.5 U. S. Copyright Act.

- 2.5** Consultant shall contract for or employ at its expense, subconsultant(s) to the extent deemed necessary for completion of its Services licensed as required by applicable law. The Judicial Council reserves the right to reject the Consultant's use of any particular subconsultant. Nothing in the foregoing procedure shall create any contractual relationship between the Judicial Council and any subconsultant(s) employed by the Consultant under terms of the Agreement.
- 2.6** Consultant shall coordinate with Judicial Council Personnel and/or its Project Manager as directed by the Project Manager, including without limitation to Consultant and other professionals employed by the Judicial Council.
- 2.7** Consultant shall conduct status meetings with the Judicial Council, other professionals and consultants under contract with the Judicial Council as needed and directed by the Judicial Council during the course of providing the Services; and after each meeting, prepare, organize, and distribute in a timely manner, meeting notes and lists of action items for review, comment, and use.
- 2.8** Consultant shall verify existing conditions through document review or court building site visits as necessary or appropriate. Consultant shall advise Judicial Council of material differences between documents and current building configurations, and advise Judicial Council on any testing that is required or recommended to ascertain existing conditions that affect a feasibility of renovation.
- 2.9 Acceptance Criteria.** The Services must meet the following acceptance criteria or the Judicial Council may reject the applicable Services. The Judicial Council may use the attached Acceptance and Signoff Form to notify Consultant of the acceptance or rejection of the Services. Consultant will not be paid for any rejected Services.
- Services will be rendered with promptness and diligence and will be executed in a workman-like manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services will be rendered in the most cost-effective manner consistent with the required level of quality and performance.
- 2.10 Timeline.** Consultant must perform the Services and deliver the Services according to the Feasibility Studies Master Schedule prepared by the Judicial Council.
- 2.11 Project Managers.** The Judicial Council's project manager is: **Clifford Ham**. The Judicial Council may change its project manager at any time upon notice to Consultant without need for an amendment to this Agreement. Subject to written approval by the Judicial Council, Consultant may change its project manager without need for an amendment to this Agreement.

2.12 Resources. Consultant is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for performance of the Services and to meet Consultant's obligations under this Agreement. The Consultant shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services. The Consultant has been selected to perform the Services herein, in part, because of the skills and expertise of the key individual and/or firms (collectively "Consultant's Key Personnel") that are listed in Exhibit E. Substitution or replacement of the individuals and/or firms identified in Exhibit E is allowed only with written approval of the Judicial Council

2.13 Commencement of Performance. This Agreement is of no force and effect until signed by both parties and all Judicial Council-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Consultant's own risk.

3 Stop Work Orders.

3.1 The Judicial Council may, at any time, by Notice to Consultant, require Consultant to stop all or any part of the Services for a period up to ninety (90) days after the Notice is delivered to Consultant, and for any further period to which the parties may agree ("Stop Work Order"). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, Consultant shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Services covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Consultant, or within any extension of that period to which the parties shall have agreed, the Judicial Council shall either (i) cancel the Stop Work Order; or (ii) terminate the Services covered by the Stop Work Order as provided for in this Agreement.

3.1.1 If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Consultant shall resume the performance of Services. The Judicial Council shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:

- i. The Stop Work Order results in an increase in the time required for, or in Consultant's cost properly allocable to the performance of any part of this Agreement; and
- ii. Consultant requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the Judicial Council decides the facts justify the action, the Judicial Council may receive and act upon a proposal submitted at any time before final payment under this Agreement.

3.1.2 The Judicial Council shall not be liable to Consultant for loss of profits because of a Stop Work Order issued under this provision.

3.1.3 Acceptance or Rejection. All Services are subject to acceptance by the Judicial Council. The Judicial Council may reject any Services that are delivered late (without prior consent by the Judicial Council). If the Judicial Council rejects any Service(s), (other than for late performance or delivery), Consultant shall modify such rejected Service, or at no expense to the Judicial Council, correct the relevant deficiencies and shall redeliver such Service to the Judicial Council within ten (10) business days after the Judicial Council's rejection, unless otherwise agreed in writing by the Judicial Council. Thereafter, the parties shall repeat the process set forth in this section until the Judicial Council accepts such corrected Service. The Judicial Council may terminate that portion of this Agreement which relates to a rejected Service at no expense to the Judicial Council if the Judicial Council rejects that Service, (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

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ACCEPTANCE AND SIGNOFF FORM

Description of Services provided by Consultant: _____

Date submitted to the Judicial Council: _____

The Services are:

1) Submitted on time: yes no. If no, please note length of delay and reasons.

2) Complete: yes no. If no, please identify incomplete aspects of the Services.

3) Technically accurate: yes no. If no, please note corrections required.

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

The Services listed above are accepted.

The Services listed above are rejected.

Name: _____

Title: _____

Date: _____

END OF APPENDIX A

APPENDIX B
Payment Provisions

1. General. Subject to the terms of this Agreement, Consultant shall invoice the Judicial Council, and the Judicial Council shall compensate Consultant, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Consultant for its performance under this Agreement. Consultant shall bear, and the Judicial Council shall have no obligation to pay or reimburse Consultant for, any and all other fees, costs, profits, taxes or expenses of any nature which Consultant incurs.

2. Compensation for Services.

2.1 Amount. The Judicial Council will pay Consultant the following compensation with respect to each of the assigned buildings for the Services set forth in this Agreement:

| | Assigned Court Buildings | Lump Sum Fee |
|--|---------------------------------|---------------------|
| | | |
| | | |
| | | |

2.2 No Advance Payment. The Judicial Council will not make any advance payment for Services.

2.3 Expenses. Except as set forth in this section, no expenses relating to the Services shall be reimbursed by the Judicial Council.

3. Invoicing and Payment.

3.1 Invoicing. Consultant will invoice Judicial Council after the Judicial Council's acceptance of the following Services with respect to each assigned building.

| Service | Portion of Lump Sum Compensation |
|--|---|
| Research and Concepts | 40% |
| Initial Draft Project Feasibility Report | 40% |
| Final Project Feasibility Report | 20% |

3.1.1 Consultant shall submit invoices to the Judicial Council in arrears for each service as listed in section 2.1 of this Appendix B. Consultant's invoices must include information and supporting documentation acceptable to the Judicial Council. Consultant shall adhere to reasonable billing invoicing guidelines issued by the Judicial Council from time to time.

3.2 Payment. The Judicial Council will pay each correct, itemized invoice received from Consultant after acceptance of the applicable Services, in accordance with the terms of this Agreement.

Notwithstanding any provision in this Agreement to the contrary, payments to Consultant are contingent upon the timely and satisfactory performance of Consultant's obligations under this Agreement.

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

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

END OF APPENDIX B

APPENDIX C

General Provisions

1. Provisions Applicable to Services

1.1 Qualifications. Consultant shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Consultant's duties. If the Judicial Council, is dissatisfied with any of Consultant's personnel, for any or no reason, Consultant shall replace them with qualified personnel. All architects, and engineers, identified in Exhibit E as Consultant's Key Personnel shall be currently and properly licensed according to the State of California laws.

1.2 Turnover. Consultant shall endeavor to minimize turnover of personnel Consultant has assigned to perform Services.

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

2.1 Authority. Consultant has authority to enter into and perform its obligations under this Agreement, and Consultant's signatory has authority to bind Consultant to this Agreement.

2.2 No Gratuities. Consultant has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Council Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.

2.3 No Conflict of Interest. Consultant has no interest that would constitute a conflict of interest under Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104.

2.4 No Interference with Other Contracts. To the best of Consultant's knowledge, this Agreement does not create a material conflict of interest or default under any of Consultants' other contracts.

2.5 No Litigation. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Consultant's ability to perform the Services.

2.6 Compliance with Laws Generally. Consultant complies in all material respects with all laws, rules, and regulations applicable to Consultant's business and services.

2.7 Drug Free Workplace. Consultant provides a drug free workplace as required by California Government Code sections 8355 through 8357.

2.8 No Harassment. Consultant does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Consultant may interact in the performance of this Agreement, and Consultant takes all reasonable steps to prevent harassment from occurring.

2.9 Noninfringement. The Services and Consultant's performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.

2.10 Nondiscrimination. Consultant complies with the Federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Consultant does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Consultant will notify in writing each labor organization with which Consultant has a collective bargaining or other agreement of Consultant's obligations of nondiscrimination.

2.11 National Labor Relations Board Orders. No more than one, final unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two-year period because of Consultant's failure to comply with an order of a federal court requiring Consultant to comply with an order of the National Labor Relations Board. Consultant swears under penalty of perjury that this representation is true.

3. Insurance

3.1 Basic Coverage. Consultant shall provide and maintain at the Consultant is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the Judicial Council's discretion and Consultant's expense the following insurance during the Term:

- A. *Commercial General Liability.* The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent Consultants, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
- B. *Workers Compensation and Employer's Liability.* The policy is required only if Consultant has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1,000,000 per accident or disease.
- C. *Automobile Liability.* This policy is required only if Consultant uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Consultant's performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.

- D. *Professional Liability.* This policy is required only if Consultant performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Consultant's performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Consultant shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.
- E. *Commercial Crime Insurance.* This policy is required only if Consultant 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 theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$[Dollar amount].

- 3.2 **Umbrella Policies.** Consultant may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- 3.3 **Aggregate Limits of Liability.** The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 3.4 **Deductibles and Self-Insured Retentions.** Consultant shall declare to the Judicial Council, all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the Judicial Council's approval. Deductibles and self-insured retentions do not limit Consultant's liability.
- 3.5 **Additional Insured Endorsements.** Consultant's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Judicial Council, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, Consultants, volunteers or employees.
- 3.6 **Certificates of Insurance.** Before Consultant begins performing Services, Consultant shall give the Judicial Council, certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days' prior written notice to the Judicial Council.
- 3.7 **Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.

- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Judicial Council, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, Consultants, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Consultant is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the Judicial Council is not required to process invoices after such lapse until Consultant provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Consultant will defend (with counsel satisfactory to the Judicial Council or its designee), indemnify and hold harmless the Judicial Council and any applicable Superior Court and their respective agents, employees, judges, judicial officers, subordinate judicial officers, representatives, independent consultants or subconsultants against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with (i) an act or omission of Consultant, its agents, employees, independent consultants, or subconsultants in the performance of this Agreement, (ii) a breach of a representation, warranty, or other provision of this Agreement, and (iii) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Services. Consultant shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the Judicial Council's prior written consent, which consent shall not be unreasonably withheld; and the Judicial Council shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Consultant's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

5. Option Term. The Judicial Council may, at its sole option, extend this Agreement for a single one-year term, at the end of which Option Term this Agreement shall expire. In order to exercise this Option Term, the Judicial Council must send Notice to Consultant at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Consultant's signature.

6. Termination

6.1 Termination for Convenience. The Judicial Council may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Judicial Council, Consultant shall immediately: stop Services as specified in the Notice.

6.2 Termination for Cause. The Judicial Council may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Consultant fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the Judicial Council, is not capable of being cured within this cure period); (ii) Consultant or Consultant's creditors file a petition as to Consultant's bankruptcy or insolvency, or Consultant is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Consultant makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.

6.3 Termination for Changes in Budget or Law. The Judicial Council's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The Judicial Council may terminate this Agreement or limit Consultant's Services (and reduce proportionately Consultant's fees) upon Notice to Consultant without prejudice to any right or remedy of the Judicial Council if: (i) expected or actual funding to compensate Consultant is withdrawn, reduced or limited; or (ii) the Judicial Council determines that Consultant's performance under this Agreement has become infeasible due to changes in applicable laws.

6.4 Rights and Remedies of the Judicial Council.

- A. *Nonexclusive Remedies.* All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Consultant shall notify the Judicial Council immediately if Consultant is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Consultant is in default, the Judicial Council may do any of the following: (i) withhold all or any portion of a payment otherwise due to Consultant, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between Judicial Council and Consultant; (ii) require Consultant to enter into nonbinding mediation; (iii) exercise, following Notice, the Judicial Council’s right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.
- B. *Replacement.* If the Judicial Council terminates this Agreement in whole or in part for cause, the Judicial Council may acquire from third parties, under the terms and in the manner the Judicial Council considers appropriate, services equivalent to those terminated, and Consultant shall be liable to the Judicial Council for any excess costs for those services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the Judicial Council for such services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the Judicial Council. Consultant shall continue any Services not terminated hereunder.

6.5 Survival. Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

7. Assignment and Subcontracting. Consultant may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Judicial Council. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

8. Notices. Notices must be sent to the following address and recipient:

| If to Consultant: | If to the Judicial Council: |
|-------------------------------|------------------------------------|
| <u>[name, title, address]</u> | <u>[name, title, address]</u> |
| <u>With a copy to:</u> | <u>With a copy to:</u> |

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

9. Good Standing. Consultant is, and will remain for the Term, qualified to do business and in good standing in California.

10. Miscellaneous Provisions.

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

10.2 GAAP Compliance. Consultant maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.

10.3 Audit. Consultant must allow the Judicial Council or its designees to review and audit Consultant's (and any subconsultants') documents and records relating to this Agreement, and Consultant (and its subconsultants) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Consultant (or any subconsultant) is not in compliance with this Agreement, Consultant shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Consultant has overcharged the Judicial Council five percent (5%) or more during the time period subject to audit, Consultant must reimburse the Judicial Council in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.

10.4 Licenses and Permits. Consultant shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services. Consultant will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.

10.5 Confidential Information. During the Term and at all times thereafter, Consultant will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the Judicial Council's express prior written consent on a case-by-case basis. Consultant will disclose Confidential Information only to its employees or Consultants who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Consultant at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Consultant will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Consultant protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The Judicial Council owns all right, title and interest in the Confidential Information. Consultant will notify the Judicial Council promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the Judicial Council to protect such Confidential Information. Upon the Judicial Council's request and upon any termination or expiration of this Agreement, Consultant will promptly (a) return to the Judicial Council or, if so directed by the Judicial Council, destroy all Confidential Information (in every form and medium), and (b) certify to the Judicial Council in writing that Consultant has fully complied with the foregoing obligations. Consultant acknowledges that there can be no adequate remedy at law for any breach of Consultant's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the Judicial Council shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

10.6 Ownership of Documents. Unless otherwise agreed in this Agreement, Consultant hereby assigns to the Judicial Council ownership of all documents, and any partially-completed work product or materials, prepared under this Agreement. Consultant agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Consultant shall not publish or reproduce any work product in whole or part, in any manner or form, or authorize others to do so, without the written consent of the Judicial Council.

10.7 Publicity. Consultant shall not make any public announcement or press release about this Agreement without the prior written approval of the Judicial Council.

10.8 Choice of Law and Jurisdiction. California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.

- 10.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 10.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Judicial Council. A waiver of enforcement of any of this Agreement’s terms or conditions by the Judicial Council is effective only if expressly agreed in writing by a duly authorized officer of the Judicial Council. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 10.11 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 10.12 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 10.13 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word “including” means “including, without limitation.” Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.
- 10.14 Time of the Essence.** Time is of the essence in Consultant’s performance under this Agreement.
- 10.15 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

END OF APPENDIX C

APPENDIX D

Defined Terms

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

“Agreement” is defined on the Coversheet.

“Consultant” is defined on the Coversheet.

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

“Contract Amount” is defined on the Coversheet.

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

“Effective Date” is defined on the Coversheet.

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

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

“Judicial Council” is defined on the Coversheet.

“Judicial Council Personnel” are employees, and agents of the Judicial Council.

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

“Option Term” means a period, if any, through which this Agreement may be or has been extended by the Judicial Council.

“Services” is defined in Appendix A.

“Stop Work Order” is defined in Appendix B.

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

END OF APPENDIX D

EXHIBIT E – Consultant’s Key Personnel