

APPENDIX A

Statement of Work

1. Contractor's Services

The Contractor, with expertise in relocation management, will work in conjunction with the court to manage a successful relocation of the court to its permanent location at the historic Stanley Mosk Library and Courts Building in Sacramento, California. The Contractor will assist the court in developing a detailed relocation plan and schedule to accommodate the needs of individual departments, with revisions as needed. The Contractor will identify and track personnel and equipment to be moved, and work with the court to identify needs and establish defined scopes of work for a move vendor, technical crews, and other services to complete the relocation. The Contractor will be asked to:

- A. Develop a detailed relocation plan and schedule with phasing to accommodate the court's needs;
- B. Manage critical deadlines and coordinate with the court as needed;
- C. Coordinate with the court, move vendor, the U.S. Bank Tower, the Department of General Services, and other agencies and entities as needed;
- D. Monitor site(s) as needed to identify and resolve any issues prior to and during the move;
- E. Develop a plan to identify and track personnel and equipment to be moved and update with revisions as needed;
- F. Identify needs and develop comprehensive scopes of work for a move vendor and other vendors as needed, and assist the court in selection of additional vendors as needed;
- G. Provide client and site regulations to move crews and enforce adherence to these regulations;
- H. Manage delivery and pick up of packing materials and equipment as needed;
- I. Provide on-site supervision and coordination during each phase of the relocation;
- J. Address and resolve any quality control or customer satisfaction issues;
- K. After the move, perform a site walk with court representatives and generate a punch list, and ensure the timely resolution of any punch list items.

2. Contractor's Personnel

- A. Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the JBE is dissatisfied with any of Contractor's personnel, for any reason or no reason, Contractor shall replace them with qualified personnel.
- B. Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to this project. Any additional personnel are subject to approval by the JBE.
- C. Contractor shall cooperate with the JBE if the JBE wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the JBE may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the JBE of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the JBE and performed by Contractor.

3. Project Managers

The project manager is Deena C. Fawcett, Clerk/Administrator, or designee, Court of Appeal, Third Appellate District, 621 Capitol Mall, 10th Floor, Sacramento, CA 95814, 916-654-0209.

4. Special Provisions Applicable to Certain Consulting Services Agreements

4.1 Special Provisions for Consulting Services of \$5,000 or more. If this Agreement provides for the payment of \$5,000 or more for Consulting Services performed for the JBE:

- A. Contractor has attached to this Agreement resumes of each Contractor participant who will exercise a major administrative role or major policy or consultative role. Contractor shall use reasonable efforts to make these participants available to perform Services during the Term. Any additional participants are subject to approval by the JBE.
- B. The JBE shall evaluate the Contractor's performance of this Agreement.

4.2 Legal Services. If this Agreement provides for the performance of legal services, Contractor shall adhere to any legal cost and billing guidelines, legal budgets, and legal bill or law firm audits as may be required by the JBE. If this Agreement does not provide for legal representation to low-income or middle-income persons

in civil, criminal, or administrative matters, Contractor shall also adhere to any litigation plans or case phasing of activities as may be required by the JBE. If this Agreement does not provide for legal representation to low-income or middle-income persons in civil, criminal, or administrative matters, and also provides for Compensation (other than reimbursement of expenses) over \$50,000, Contractor shall also comply with the requirements of Business and Professions Code section 6072, which concerns performance of pro bono legal services.

5. Special Provisions for Commercial Office Moving Services Agreements

If this is an agreement of more than \$2,500 with a carrier for commercial office moving services, Contractor shall abide by the requirements contained in the *State Administrative Manual*, section 3810, which requires the Contractor to employ only drivers and supporting personnel who are under a current collective bargaining agreement or who are paid applicable prevailing wages and employed under prevailing standards and conditions of employment.

6. Special Provisions for Agreements for Equipment, Materials, or Supplies; Loss Leader Prohibition.

If this Agreement involves the furnishing of equipment, materials, or supplies, Contractor shall not sell or use any article or product as a “loss leader” as defined in Section 17030 of the Business and Professions Code.

APPENDIX B

Pricing and Payment

1. General

The Contractor may invoice the JBE, and the JBE shall compensate Contractor under this Agreement as set forth in this Appendix B.

2. Compensation

2.1 Payment will not be made until the services are provided.

2.2 Payment will be made upon the submission of an accurate invoice containing a full explanation of the services provided, service period, accurate billing address, invoice number, invoice date, vendor name and remittance address, and submission to the JBE at the address identified in the contract as “billed to” or “invoice submitted to” for payment.

3. Expenses

3.1 Allowable Expenses. Contractor may submit for reimbursement, without mark-up, only the following categories of expense: personnel, materials, computer support, travel, lodging, per diem, and overhead rates.

3.2 Limitation on Travel Expenses. Travel will be reimbursed in accordance with the JBE travel rate guidelines (see attachment 5 to RFP). All travel is subject to preauthorization and approval by the JBE.

4. Invoicing and Payment

4.1 Invoicing. Contractor shall submit invoices to the JBE in arrears no more frequently than monthly. Contractor’s invoices must include information and supporting documentation, including a workload report in the form the JBE may specify from time-to-time. Contractor shall adhere to reasonable billing guidelines issued by the JBE from time to time.

4.2 Acceptance; Payment. All Goods, Services, and deliverables are subject to written acceptance by the JBE. The JBE may reject any Goods, Services or deliverables that (i) fail to meet applicable requirements or acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late. Payment does not

imply acceptance of Contractor's invoice, Goods, Services, or deliverables.
Contractor shall immediately refund any payment made in error.

- 4.3 Availability of Funds.** The JBE's obligation to compensate Contractor is subject to the availability of funds. The JBE shall notify Contractor if funds become unavailable or limited during the Term.

APPENDIX C

General Terms and Conditions

1. Contractor Certification Clauses

1.1 Representations and Warranties. Contractor certifies that the following representations and warranties are true:

- A. *Authority.* Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and in good standing in the State of California.
- B. *Not an Expatriate Corporation.* Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1, and is eligible to contract with the JBE.
- C. *Sales and Use Tax Collection.* Contractor collects and remits sales and use taxes as and to the extent required under the Revenue and Taxation Code.
- D. *No Gratuities.* Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- E. *No Conflict of Interest.* Contractor has no interest that would constitute a conflict of interest under Public Contract Code sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- F. *No Interference with Other Contracts.* To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- G. *No Litigation.* No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or, to Contractor's knowledge, threatened against or affecting Contractor or Contractor's business, financial condition, or ability to perform this

Agreement, except any suit, action, arbitration, proceeding, or investigation that individually or in the aggregate with others will not or would not have a material adverse affect on Contractor's business, the validity or enforceability of this Agreement, or Contractor's ability to perform this Agreement.

- H. *Compliance with Laws Generally.* Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.
- I. *Work Eligibility.* All personnel assigned to perform this Agreement are able to work legally in the United States and possess valid proof of work eligibility.
- J. *Drug Free Workplace.* Contractor provides a drug-free workplace as required by California Government Code sections 8355 through 8357.
- K. *No Harassment.* Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement, and Contractor takes all reasonable steps to prevent harassment from occurring.
- L. *Non-discrimination.* Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor has notified in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of non-discrimination.
- M. *Special Provisions regarding Domestic Partners, Spouses, and Gender Discrimination.* If this Agreement provides for total Compensation of more than \$100,000, Contractor is in compliance with Public Contract Code section 10295.3, which, subject to specified exceptions, generally prohibits discrimination in the provision of benefits between employees with spouses and employees with domestic partners, or discriminates between employees with spouses or domestic partners of a different sex and employees with spouses or domestic partners of the same sex, or

discriminates between same-sex and different-sex domestic partners of employees or between same-sex and different-sex spouses of employees.

- N. *Special Provisions regarding Compliance with National Labor Relations Board Orders.* If this Agreement provides for making any purchase of goods or services from a private entity, except for a purchase of goods by credit card for an amount less than \$2,500 from any one Contractor (but not to exceed in the aggregate \$7,500 per year from the Contractor), no more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.
- O. *Special Provisions regarding Compliance with the Sweatfree Code of Conduct.* If this Agreement provides for furnishing equipment, materials, or supplies other than public works, or for the laundering of apparel, garments or corresponding accessories:
1. No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108. This declaration is made under penalty of perjury.
 2. Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph A and shall provide the same rights of access to the JBE.
- P. *Special Provisions regarding Compliance with the Child Support Compliance Act.* If Contractor is a private entity, and this Agreement provides for Compensation of \$100,000 or more:

1. Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 2. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- Q. *Special Provisions regarding Discharge Violations.* If Contractor is a private entity, Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.
- R. *Electronic Waste Recycling Act.* If this Agreement provides for the purchase or lease of covered electronic devices under the Electronic Waste Recycling Act of 2003, Public Resources Code sections 42460 et seq., Contractor complies with the requirements of that Act, and Contractor maintains documentation and provides reasonable access to its records and documents that evidence compliance.
- S. *Use of Postconsumer Material.* If this Agreement provides for the purchase and sale of Goods specified in Public Contract Code section 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), and the percentage of the Contractor's postconsumer material in these Goods cannot be verified by reference to a written advertisement, including, for example, a product label, a catalog, or a manufacturer or vendor website:
1. Contractor has delivered a declaration to the JBE specifying the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code section 12200 in Goods offered or sold to the JBE, regardless of whether the Goods meet the requirements of Public Contract Code section 12209.1;
 2. Under penalty of perjury, the declaration is true and correct and will remain so until Contractor delivers any amendment of a the current declaration to the JBE, in which case the current declaration as amended will be true and correct; and

3. If Contractor sells under this Agreement any printer or duplication cartridges that comply with Public Contract Code section 12209, Contractor has so specified in the declaration required under this section.

1.2 Covenant as to Representations and Warranties. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JBE if any representation and warranty becomes untrue.

2. Indemnity

Contractor shall indemnify and defend (with counsel satisfactory to the JBE Office of the General Counsel) Judicial Branch Entities and Judicial Branch Personnel against all claims, damages, losses, and expenses, including attorney fees and costs, founded upon (i) Contractor's performance of, or failure to perform, the Services or Contractor's other duties under this Agreement, or (ii) any other breach by Contractor of this Agreement. Contractor'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.

3. Insurance

3.1 Basic Coverage. Contractor shall provide and maintain at Contractor's expense the following insurance during the Term:

- A. *Workers' Compensation and Employer's Liability.* The policy is required only if Contractor has employees. It 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 million per accident or disease;
- B. *Commercial General Liability.* The policy must cover bodily injury and property damage liability, including coverage for the products – completed operations hazard and liability assumed in a contract, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit; and
- C. *Professional Liability.* The policy must cover liability resulting from errors or omissions committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1 million per claim.
- D. *Commercial Automobile Liability.* The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-

owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.

- 3.2 “Claims Made” Coverage.** If any required insurance is written on a “claims made” form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the JBE’s acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any “claims made” policy must be no later than the date that Services commence under this Agreement.
- 3.3 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.
- 3.4 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 times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 3.5 Deductibles and Self-Insured Retentions.** Contractor shall declare to the JBE 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 JBE’s approval. Deductibles and self-insured retentions do not limit Contractor’s liability.
- 3.6 Additional Insured Status.** Contractor shall require Contractor’s commercial general liability insurer, Contractor’s commercial automobile liability insurer, and, if applicable, Contractor’s commercial umbrella liability insurer to name Judicial Branch Entities and Judicial Branch Personnel as additional insureds with respect to liability arising out of Contractor’s Services under this Agreement.
- 3.7 Certificates of Insurance.** Before Contractor begin performing Services, Contractor shall give the JBE 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 30 or more days’ prior written notice to the JBE. Any replacement certificates of insurance are subject to the approval of the JBE, and, without prejudice to the JBE, Contractor shall not perform work before the JBE approves the certificates.
- 3.8 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.
- 3.9 Required Policy Provisions.** Each policy must provide, as follows:

- A. *Insurance Primary; Waiver of Subrogation.* The basic coverage provided is primary and non-contributory 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; and
- B. *Separation of Insureds.* The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability policy, applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.

3.10 Partnerships. If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:

- A. *Separate.* Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
- B. *Joint.* Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

3.11 Consequences of Lapse. If required insurance lapses during the Term, the JBE is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

4. Default and Remedies

4.1 Default. A default exists under this Agreement if:

- A. Contractor fails or is unable to meet or perform any of Contractor's duties under this Agreement, and this failure is not cured within 30 days following notice of default or is not capable of being cured within this cure period;
- B. Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor 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;
- C. Contractor makes or has made under this Agreement any representation or warranty that is or was incorrect, inaccurate, or misleading;
- D. Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under this Agreement, (ii) ensure that these obligations are

legal, valid, and binding, or (iii) make this Agreement admissible when required is not fulfilled or performed.

4.2 Notice. Contractor shall notify the JBE immediately if Contractor defaults, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement.

4.3 Remedies.

A. *Available Remedies.* The JBE may do any of the following:

1. Withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor;
2. Require Contractor to enter into non-binding mediation;
3. Exercise, following notice, the JBE's right of early termination of this Agreement as provided below; and
4. Seek any other remedy available at law or in equity.

B. *Remedies Cumulative.* All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

5. Termination and Cancellation; Effect of Expiration or Termination

5.1 Early Termination and Cancellation Rights.

- A. The JBE may terminate this entire Agreement immediately "for cause" if Contractor is in default;
- B. The JBE may also cancel delivery immediately of all or any portion of unshipped Goods or limit Contractor's Services, and, proportionately, Contractor's compensation except to reimburse Contractor for its actual costs incurred before expenses arising out of early termination by the JBE, and any direct and indirect expenses incurred by cancellation of Goods in process that are custom made for the JBE), if:
 1. the JBE determines that having Contractor provide the Services has become infeasible due to changes in applicable laws or regulations; or

2. expected or actual funding to compensate Contractor is withdrawn, reduced, or limited.
- C. The JBE may terminate this entire Agreement, with or without cause, by giving Contractor 30 days' notice.
- D. This entire Agreement will terminate immediately without further action of the parties upon the death, or temporary or permanent incapacity, of a natural person who is a party to this Agreement or a general partner of a partnership that is a party to this Agreement.

5.2 Effect of Expiration and Early Termination; Survival.

- A. Upon the Termination Date:
 1. The JBE shall be released from compensating Contractor for Services, other than those Contractor satisfactorily performed before the Termination Date, and for any indirect costs.
 2. Without prejudice to the JBE, Contractor shall be released from performing Services.
 3. Contractor shall return to the JBE any equipment purchased or built with JBE funds, with costs incurred by Contractor being reimbursed by the JBE.
- B. All provisions of this Appendix C will survive the expiration or termination of this Agreement, except for section 1 and promises regarding the maintenance of insurance in section 3 (other than section 3.2, which will also survive).

6. Assignment and Subcontracting; Successors

6.1 Permitted Assignments and Subcontracts.

- A. Neither party may assign or subcontract its rights or duties under this Agreement, except as follows:
 1. The JBE may assign the JBE's rights and duties to any Judicial Branch Entity. The JBE shall notify Contractor in writing within 30 days following the assignment.
 2. Either party may assign its rights and duties or subcontract portions of this Agreement to a third party if the non-assigning party gives advance written consent to the assigning party. Consent may be

withheld for any reason or no reason. If a non-assigning party does consent, the consent will take effect only if there is a written agreement between the assigning or subcontracting party and all assignees and subcontractors, stating the assignees and subcontractors:

- a. are jointly and severally liable to the non-assigning party for performing the duties in this Agreement of the assigning/subcontracting party;
- b. affirm the rights granted in this Agreement to the non-assigning party;
- c. make the representations and warranties made by the assigning/subcontracting party in this Agreement; and
- d. appoint the non-assigning party an intended third party beneficiary under the written agreement with the assigning/subcontracting party.

B. No assignment or subcontract will release either party of its duties under this Agreement.

6.2 Successors. This Agreement binds the parties as well as their heirs, successors, and assignees.

7. Notices

Notices under this Agreement must be in writing. Notices may be delivered in person, via a reputable express carrier, or by registered or certified mail (postage pre-paid). Notice is effective on receipt; however, any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified will be treated as effective on the first day that the notice was refused, unclaimed, or deemed undeliverable. Notices must be addressed to a party's project manager, if one is designated in Appendix A; otherwise, notices must be addressed to the individual(s) in the signature block of this Agreement. Either party may change its address for receipt of notice by entering a different recipient and address below or by giving notice at any time to the other party in the manner permitted by this paragraph.

If to the JBE:

Name: _____

Title: _____

Address: _____

Phone: _____

E-mail: _____

If to Contractor:

Name: _____

Title: _____

Address: _____

Phone: _____

E-mail: _____

8. Miscellaneous Provisions; Interpretation

8.1 Independent Contractor. Contractor is an independent contractor to the JBE. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBE.

8.2 Special Provisions for Agreements Providing for Compensation of \$50,000 or more; Union Activities Restrictions. As required under Government Code sections 16645-16649, if this Agreement provides for total Compensation of \$50,000 or more to Contractor, then the covenants in this section apply to Contractor's activities. Contractor shall not:

- A. Assist, promote, or deter union organizing by employees performing work under state or judicial branch contracts;
- B. Use the state's or JBE's funds received under this Agreement to assist, promote or deter union organizing; or
- C. For any business conducted under this Agreement, use any property of the state or JBE to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state or judicial branch property is equally available to the general public for holding meetings.

If Contractor incurs costs, or makes expenditures to assist, promote, or deter union organizing, Contractor shall maintain records sufficient to show that no reimbursement from the state's and JBE's funds has been sought for these costs, and provide those records to the Attorney General upon request.

8.3 Special Provisions regarding DVBE Participation Certification. If Contractor made a commitment to achieve Disabled Veteran Business Enterprise participation, Contractor shall within 60 days of receiving final payment under

this Agreement (or within such other time period as may be specified elsewhere in this Agreement) certify in a report to the JBE: (1) the total amount the prime Contractor received under the Agreement; (2) the name and address of any Disabled Veteran Business Enterprises (DVBE) that participated in the performance of this Agreement; (3) the amount each DVBE received from the Contractor; (4) that all payments under this Agreement have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

8.4 Audit and Records

- A. *Audit.* Contractor shall allow the JBE's designees and the JBE to review and audit Contractor's documents and records relating to this Agreement, subject only to a lawyer's duty of confidentiality owed to a represented party. Contractor shall correct errors and deficiencies by the 20th day of the month following the review or audit.
- B. *Ownership.* The JBE is the exclusive owner of all materials collected and produced in connection with the Services. Upon the Termination Date (subject to any mutually agreed period of continuation of Services), or upon the JBE's notice at any time, and subject only to the duty of confidentiality owed to a represented party, Contractor shall give original materials to the JBE or to another party at the JBE's direction. Contractor shall maintain all other materials in an accessible location and condition for a period of not less than four years after the later of:
 - 1. Contractor's receipt of final payment under this Agreement; and
 - 2. The JBE's resolution with Contractor of the findings of any final audit.
- C. *Copies.* Contractor may retain copies of any original documents Contractor provides to the JBE.

8.5 Special Provisions regarding Ownership of Results.

- A. *Special Provisions regarding Grant Funds.* If this Agreement provides Compensation to Contractor for a project funded through a grant, at the conclusion of the Project, title to all expendable and non-expendable personal property with a value of \$500 or more purchased with JBE funds shall vest, automatically and without further action of the parties, with the JBE. If Contractor provides written certification to the JBE that the property will continue to be used for grant-related purposes and the JBE approves such certification in writing, the JBE may permit title to all such property to remain with Contractor in accordance with the JBE's written

instructions. Contractor must await specific written instructions from the Project Manager regarding any transfer of title or disposition.

- B. *Special Provisions regarding Ownership of Certain Equipment.* If Compensation under this Agreement is not through grant funding and this Agreement provides for the provision of equipment purchased or built with JBE funds, title to any equipment purchased or built with JBE funds shall vest in the JBE immediately upon payment of the purchase price. Before delivery to the JBE, Contractor is responsible for loss or damage to the equipment to the extent it results from the negligent act or omission of Contractor or its directors, officers, employees, or agents, and Contractor shall make all necessary or appropriate repairs and adjustments.

8.6 Special Provisions for Elevator Maintenance Agreements. If this is an elevator maintenance agreement, the Term of this Agreement shall be for a period of no less than five years even if a shorter term is specified, but this Agreement may be terminated during the Term as specified in Appendix C.

8.7 Confidential Information; Publicity.

- A. *Confidential Information.* Contractor agrees to hold in confidence the following confidential information Contractor receives in connection with this Agreement:
1. All written information that is marked confidential;
 2. All non-public information in electronic form to which Contractor has access; and
 3. All verbal information the JBE later confirms in writing is confidential.

The JBE owns the confidential information, and the JBE authorizes Contractor to use it only for purposes of performing this Agreement. For example, Contractor may give confidential information on a “need-to-know” basis to Contractor’s professional services providers, employees and subcontractors who have also executed confidentiality agreements that protect the JBE’s confidential information to the same extent as this section. Contractor may also disclose the JBE’s confidential information to the extent necessary to comply with law, provided Contractor gives the JBE advance notice.

- B. *Publicity.* Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the JBE’s Project Manager.

- C. *Specific Performance.* Contractor understands a default under this section will result in irreparable damage for which no adequate remedy will be available. Accordingly, injunctive or other equitable relief is a remedy that the JBE will be entitled to seek.

8.8 Special Provisions Applicable to Competitively Bid Contracts; Antitrust Claims. If Services or Goods under this Agreement were obtained by means of a competitive bid, Contractor shall comply with the requirements of Government Code sections set out below.

- A. Contractor shall assign to the JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE pursuant to the bid. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Contractor. (GC 4552)
- B. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by the Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. (GC 4553)
- C. Upon demand in writing by the Contractor, the JBE shall, within one year from such demand, reassign the cause of action assigned under this part if the Contractor has been or may have been injured by the violation of law for which the cause of action arose and (1) the JBE has not been injured thereby, or (2) the JBE declines to file a court action for the cause of action. (GC 4554)

8.9 Choice of Law and Jurisdiction. California law, without regard to its choice-of-law provisions, governs 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.

8.10 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 §1654.

8.11 Amendment and Waiver. No amendment to this Agreement will be effective unless in writing. A party's waiver of enforcement of any of this Agreement's terms or conditions is effective only if in writing. A party's specific waiver does

not constitute a waiver by that party of any earlier, concurrent, or later breach or default.

- 8.12 Authority and Binding Effect.** Each party warrants it has the authority to enter into this Agreement, it may perform the services provided for in this Agreement, and its representative who signs this Agreement has the authority to do so. Each party warrants this Agreement constitutes a valid and binding obligation of the party, enforceable in accordance with its terms.
- 8.13 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 8.14 Headings.** All headings are for reference purposes only and do not affect the interpretation of this Agreement.
- 8.15 Time of the Essence.** Time is of the essence of the Contractor's performance of Services under this Agreement.
- 8.16 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

APPENDIX D

Defined Terms

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

“Agreement” means this Standard Agreement.

“Contractor” means the person or entity named in the Agreement.

“Compensation” means all remuneration owed to Contractor in respect of Services, including Contractor’s professional fees, direct costs (including filing fees), indirect costs (including overhead expenses), profit, and taxes.

“Consulting Services” refers to the services performed under “Consulting Services Agreements,” which are defined in Public Contract Code section 10335.5, substantially, as contracts that:

1. Are of an advisory nature;
2. Provide a recommended course of action or personal expertise;
3. Have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and
4. Are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

The end product may include anything from answers to specific questions to design of a system or plan, and includes workshops, seminars, retreats, and conferences for which paid expertise is retained by contract.

"Consulting Services Agreements" do not include:

1. Contracts between a state agency and the federal government; or
2. Contracts with local agencies, as defined in Revenue and Taxation Code, section 2211, to subvene federal funds for which no matching state funds are required.

“DVBE” is an acronym for Disabled Veteran Business Enterprise.

“Expiration Date” is the last day of the Term, unless the Initial Term is extended by exercise of an option. In that event, the Expiration Date will instead refer to the date specified as the expiration date in the notice of exercise of the option.

“Initial Term” is the period commencing on the Effective Date and expiring on the Expiration Date set forth in this Agreement.

“JBE” is the Court of Appeal, Third Appellate District.

“Judicial Branch Entity” means any California superior or appellate court, the Judicial Council of California, the Administrative Office of Courts, and the Habeas Corpus Resource Center; these entities comprise the “Judicial Branch.”

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

“Loss,” as used in the indemnity provisions of this Agreement includes any actions, claims, demands, causes of action, fines, penalties, losses, liabilities, damages, costs, expenses, and attorneys’ fees.

“Option Period” means the period, if any, through which this Agreement may be extended by a party.

“Services” are Contractor’s duties as defined in Appendix A.

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

“Termination Date” has the same meaning as “Expiration Date” unless this Agreement is validly terminated before the applicable Expiration Date, in which case Termination Date means the effective date this Agreement is validly terminated.