

**STANDARD AGREEMENT** —  
STD. 2 (REV.5-91)

**APPROVED BY THE  
ATTORNEY GENERAL**

Contract Number	Amendment Number
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER	

THIS AGREEMENT, made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ ("Effective Date"), in the State of California, by and between State of California, through its duly elected or appointed, qualified and acting

TITLE OF OFFICER ACTING FOR STATE Business Services Manager	ENTITY Judicial Council of California, Administrative Office of the Courts 455 Golden Gate Ave. San Francisco, CA 94102	, hereafter called the AOC, and
CONTRACTOR'S NAME		, hereafter called the Contractor.

WITNESSETH: That the Contractor for and in consideration of the covenants, conditions, agreements, and stipulations of the AOC hereinafter expressed, does agree to furnish to the AOC services and materials as follows:

Incorporated into this Agreement herewith, and attached hereto, are the following Contract Documents: (1) Exhibit A, Scope of Work; (2) Exhibit B, Payment Provisions; (3) Exhibit C, General Terms and Conditions; (4) Exhibit D, Hourly Rates for Extra Services; (5) Exhibit E, Subcontractors to Contractor; (6) Exhibit F, Contractor's Key Personnel; and (7) Exhibit G, Project Program. In the event of a conflict between Exhibit A and Exhibit G, the terms of Exhibit A shall take precedence over those of Exhibit G.

As set forth further in Exhibit A, Scope of Work, the Contractor shall provide architectural and engineering services for \_\_\_\_\_ in \_\_\_\_\_ County, California, Project no. \_\_\_\_\_.

As set forth further in Exhibit B, Payment Provisions, the Contract Amount shall be the firm fixed price of \$ \_\_\_\_\_.

The initial term of this Agreement commences on \_\_\_\_\_, and expires on \_\_\_\_\_ ("Term").

IN WITNESS WHEREOF, this Agreement has been entered into by the parties hereto, effective upon the Effective Date.

STATE OF CALIFORNIA			CONTRACTOR			
ENTITY Judicial Council of California, Administrative Office of the Courts			CONTRACTOR (if other than an individual, state whether a corporation, partnership, etc.)			
BY (AUTHORIZED SIGNATURE) ▷			BY (AUTHORIZED SIGNATURE) ▷			
PRINTED NAME OF PERSON SIGNING Grant Walker			PRINTED NAME AND TITLE OF PERSON SIGNING			
TITLE Business Services Manager			ADDRESS Attn:			
AMOUNT ENCUMBERED BY THIS DOCUMENT \$	PROGRAM/CATEGORY (CODE AND TITLE)		FUND TITLE			<i>Department of General Services Use Only</i>
PRIOR AMOUNT ENCUMBERED FOR THIS CONTRACT \$0.00	(OPTIONAL USE)					
TOTAL AMOUNT ENCUMBERED TO DATE \$	ITEM	CHAPTER	STATUTE	FISCAL YEAR	EXEMPT FROM DEPARTMENT OF GENERAL SERVICES APPROVAL.	
OBJECT OF EXPENDITURE (CODE AND TITLE)						
I hereby certify upon my own personal knowledge that budgeted funds are available for the period of the expenditure stated above.		T.B.A. NO.	B.R. NO.			
SIGNATURE OF ACCOUNTING OFFICER ▷			DATE			

CONTRACTOR     STATE AGENCY     DEPT. OF GEN. SER.     CONTROLLER

**Exhibit A**

**SCOPE OF WORK**

**A.1. Project Description**

Contractor shall provide architectural, engineering, and related professional services customarily performed by architects and engineers (“Services”), in connection with a public works project respecting judicial branch facilities located in \_\_\_\_\_, California, all as more particularly described in Exhibit G (the “Project”).

**A.2. Definitions**

For purposes of this Agreement, the following definitions apply:

- a. **ACCEPTANCE:** is the written acceptance issued by the AOC after the Contractor has completed a deliverable, submittal, phase, or other contract requirement, in compliance with this Agreement.
- b. **ACQUISITIONS PHASE:** is a pre-design phase that typically includes site capacity studies, topographic survey, and geotechnical investigation.
- c. **CONSTRUCTION DOCUMENTS:** are working drawings and specifications provided by the Contractor, and such standard documents as may be furnished by the AOC to the Contractor, that set forth in detail all the requirements for construction of the entire Project.
- d. **CONSTRUCTION PHASE:** is the entire construction period for the Project and encompasses pre-construction-start meetings and ends with Final Acceptance by the AOC of all punch list items, including, without limitation, construction observation, shop drawing and submittal reviews, site reviews, written clarification of Construction Documents, preparation of change orders at the direction of the AOC, processing of as-built drawings, preparation of observation reports, and issuance of the certificate of occupancy.
- e. **CONSTRUCTION BUDGET:** is the budget amount established by the AOC that represents the maximum authorized cost for construction of the Project. The Construction Budget does not include fees for professional architectural and engineering services, inspection, testing services, modular furniture, or AOC contingency.
- f. **ENERGY EFFICIENCY MEASURES:** are an element of the design that minimizes energy consumption, integrates passive and active design elements, while meeting the operational needs of the facility.
- g. **FINAL ACCEPTANCE:** is the written Acceptance issued by the AOC, by and through its Project Manager, that accepts as final and complete the requirements of the Construction Documents, in accordance with this Agreement.

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h. FLOOR AREA: is a measurement of the design using methods and definitions set forth in the 1996 edition of the Building Owners and Managers Association publication titled "Standard Method for Measuring Floor Area in Office Buildings," or such other standards as may be adopted by the AOC.

i. NIC (NOT AUTHORIZED IN CONTRACT): shall include the Services that are specifically so designated in this Agreement. Such Services are within the intended scope of this Agreement for the completion of the Project. However, such Services are not presently authorized under this Agreement. At the AOC's option and upon the issuance of written authorization by the AOC, the Contractor shall provide the Services or any portion thereof, designated currently by "NIC," and the Contract Amount will be increased as set forth in Exhibit B. Contractor shall then perform the scope of Services as authorized upon the AOC's exercise of its option.

j. OUTLINE SPECIFICATION: is an abbreviated set of specification requirements that identify materials, systems, and equipment, and their criteria and quality standards consistent with the design, Project requirements, and the Construction Budget.

k. PRELIMINARY PLAN PHASE: is the initial design phase, typically developed in two distinct steps: schematic design and design development.

l. PRE-SCHEMATIC / STUDY PHASE: is a pre-design phase that typically includes program development and security risk assessment.

m. RECORD DOCUMENTS: are the Construction Documents, amended to show the Project as it was constructed. Record Documents include any significant changes or clarifications to the Construction Documents resulting from the construction process.

n. STOP SERVICES ORDER: is a written notice, delivered in accordance with this Agreement, by which the AOC may require the Contractor to stop all, or any part, of the Services under this Agreement, for the period set forth in the Stop Services Order. The Stop Services Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Services provision in section C.13 of Exhibit C.

o. SUSTAINABLE BUILDING MEASURES: are elements of the design that result in minimizing pollution, resource waste, and environmental impacts associated with facility construction operation and, if applicable, demolition.

p. WORKING DRAWINGS PHASE: is a phase that includes working drawings, technical specifications, addenda, general conditions, supplementary conditions, bidding requirements, and the bid proposal developed to set forth in detail all aspects of the design, function and construction. These documents will be used for estimating the cost of the Project, securing bids for construction, and constructing the Project.

### **A.3. Construction Budget**

a. The Contractor shall accomplish the design Services required under this Agreement so as to permit the AOC (i) to undertake a procurement for construction services using its standard, competitive, sealed bid procedures or such other project delivery method as the AOC may determine to utilize for the construction work, and (ii) to engage a construction contractor to construct the Project for a price that does not exceed the Construction Budget that is set forth below. If the lowest competitive responsive bid by a responsible bidder exceeds the Construction Budget, the AOC may elect to abandon the project, reduce the scope of work to fit within the Construction Budget, or provide additional funds as required to construct the full scope of work. If the lowest competitive responsive bid by a responsible bidder for the construction contract exceeds the Construction Budget by more than 10%, at the AOC's request, the Contractor shall perform without charge, any redesign, value engineering, or other work necessary or appropriate to enable the AOC to re-bid or revise the construction contract and/or to permit award of the construction contract within the Construction Budget.

b. The preliminary Construction Budget established by the AOC is: \$ \_\_\_\_\_ as of \_\_\_\_\_, 20\_\_\_\_. Based on the information developed during the Study Phase, the AOC, in consultation with the Contractor, will confirm and fix the Construction Budget before authorization of the Preliminary Plan Phase.

**A.4. Schedule Of Work**

The Contractor agrees to perform the Services according to the following schedule. Firm start and completion dates will be inserted for each phase as this Agreement is amended to include subsequent phases.

a. Pre-Schematic / Study Phase [Optional: (NIC)].

(i) Start date: \_\_\_\_\_

(ii) Completion date: \_\_\_\_\_

b. Acquisitions Phase [Optional: (NIC)].

(i) Estimated start date: \_\_\_\_\_

(ii) Estimated completion date: \_\_\_\_\_

c. Preliminary Plan Phase [Optional: (NIC)].

(i) Schematic Design:

Estimated start date: \_\_\_\_\_

Estimated completion date: \_\_\_\_\_

(ii) Design Development:

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Estimated start date: \_\_\_\_\_

Estimated completion date: \_\_\_\_\_

d. Working Drawings Phase [Optional: (NIC)].

(i) Estimated start date: \_\_\_\_\_

(ii) Estimated completion date of 50% Construction Documents:  
\_\_\_\_\_

(iii) Estimated completion date of 100% Construction Documents:  
\_\_\_\_\_

(iv) Bidding Phase Services:

Estimated start date: \_\_\_\_\_

Estimated completion date: \_\_\_\_\_

e. Construction Phase [Optional: (NIC)].

Estimated start date of Construction: \_\_\_\_\_

**A.5. Basic Services**

a. General

Contractor agrees to provide or perform, as Basic Services, all Services and tasks set forth in this section A.5 and such other normal, customary, and incidental services as are necessary to provide design and construction support for the Project. Contractor shall be responsible for the performance of all Basic Services, regardless of whether their actual costs exceed the Contract Amount. The Basic Services shall be performed in phases, as described in sections A.5.b through A.5.e of this exhibit, with Contractor commencing each succeeding phase only upon receipt of a Notice to Proceed given by the AOC. Contractor agrees to:

(i) Contract for or employ at Contractor's expense, a sufficient number of specialists and other workers with requisite skills and experience as appropriate for the successful completion of this Project.

(ii) Engage only subcontractors and employees who possess, and will maintain in good standing during the performance of the Services, valid and applicable licenses where the State of California requires that the work to be performed by that subcontractor or employee must be performed by a licensed person or entity.

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- (iii) Restrict subcontracting to only those subcontractors approved in writing by the AOC pursuant to section C.9 of Exhibit C and who have agreed in writing to be bound by the terms and conditions applicable to the Services of the Contractor under this Agreement.
- (iv) Prepare, organize, and distribute in a timely manner, progress reports and drawings.
- (v) Conduct Project status meetings with the AOC, other professionals and consultants under contract with the AOC, and/or State or local agencies as needed and directed by the AOC during the course of the design and construction of the Project; after each Project meeting, prepare, organize, and distribute in a timely manner, meeting notes and lists of action items for review, comment, and use.
- (vi) Cooperate with other consultants the AOC may employ for work related to the Project.
- (vii) Review and analyze land surveys, geotechnical reports, and other documents prepared by consultants, and incorporate information and recommendations from such documents into the working drawings for the Project.
- (viii) Provide a land survey including, but not limited to, topographical, title information with exceptions and easements plotted, and utilities features and locations as directed by the AOC.
- (ix) Provide a preliminary geotechnical investigation and report on the selected site as directed by the AOC.
- (x) Provide space planning, design, furniture and equipment floor plans, bid documents and specifications, and other services related to moveable furniture and equipment (excluding desk-top office equipment) within the Project; incorporate existing furniture and equipment into the design and specifications; review the inventory of existing furniture and equipment provided by the AOC and the Court, and provide consultation on the items to be reused.
- (xi) Develop, maintain, and regularly update a schedule of Project activities including but not limited to architectural or engineering activities, required submittal milestone dates, status review meetings, and AOC or agency review and approval milestone dates. The schedule of Project activities shall be a Gantt chart format prepared in Microsoft Project. The Contractor shall provide an updated schedule of Project activities to the AOC within ten (10) days of commencement of each phase except the Construction or Bidding Phase.

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- (xii) Prepare Project documentation in Adobe Acrobat .pdf format, Microsoft Word .doc format, and AutoCAD .dwg format, as indicated in this Agreement or agreed upon in writing with the AOC at the commencement of the Services.
- (xiii) Provide estimated construction cost breakdowns of the Project at indicated intervals consistent with the stage of development of the Contractor's drawings and specifications. The form of the cost estimates shall be based on Unifomat standards except for the cost estimate at the 100% Construction Documents phase which shall be prepared in both Unifomat and Construction Specification Institute Master formats. Contractor shall be responsible for designing the Project such that the construction cost estimates do not exceed the Construction Budget.
- (xiv) Conduct milestone review meetings with the AOC and Project team immediately before commencing each Project phase listed in section A.4 of this exhibit. At the milestone review meetings, the AOC shall identify goals for the upcoming work, examine the performance of the Project team against the goals in the preceding phase, and set forth corrective measures as necessary or appropriate.
- (xv) Field check existing conditions as necessary or appropriate. All field checks of existing conditions must be documented, to the best of the Contractor's knowledge, in the Construction Documents with an identified plan of action.
- (xvi) Abide by applicable conditions imposed by funding sources, and comply with all requirements of such conditions, including auditing requirements and payroll affidavits.
- (xvii) Consult with the AOC if the AOC or the Contractor becomes aware of any construction deficiency that develops prior to expiration of the guarantee period specified in the construction contract for the Project, regardless of whether the deficiency became apparent before or after Final Acceptance of the work by the AOC, and suggest satisfactory methods for correction of such deficiencies.
- (xviii) Use prototypical designs or other design drawings, specifications or calculations provided by the AOC when requested by the AOC to do so. Unless otherwise directed in writing, Contractor shall recheck such designs and any other design data, drawings, specifications and calculations provided by the AOC and shall be responsible therefor to the same extent as if such material had been provided by Contractor under this Agreement.
- (xix) Provide Construction Documents which, at a minimum, reflect compliance

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with applicable statutes, regulations, rules, guidelines, and requirements.

- (xx) Obtain construction-related approvals, including, but not limited to, written approvals by the State Fire Marshal and the Division of the State Architect (“DSA”) Access Compliance Unit.
- (xxi) Provide a written description of Contractor’s quality assurance program (“QA Program”) commencing with the Preliminary Plan Phase. The Quality Assurance Program shall be designed to advance the goal of achieving a quality Project, within schedule and budget, in compliance with the terms of this Agreement. Contractor shall submit the QA Program to the AOC within 20 days of commencement of each phase. At a minimum the following shall apply:
  - 1. The QA Program shall cover all activities affecting quality performed by Contractor and Contractor’s subcontractors.
  - 2. The Contractor shall provide the AOC access to its records documenting implementation of the QA Program (“QA Records”). Contractor shall retain and maintain identifiable, legible, and retrievable QA Records for the duration of the Project. Contractor shall submit QA records to the AOC upon the completion of each phase of the work.
  - 3. The Contractor shall ensure that all drawings and specifications shall be reviewed and checked by at least one other professional trained in the same discipline as the professional who prepared the drawings and specifications, with the goals of:
    - (a) Assuring the completeness of the drawings and specifications;
    - (b) Assuring a high level of construction quality; and
    - (c) Avoiding change orders to construction contracts, which are caused by conflicts, ambiguities, inaccuracies, and deficiencies in the construction drawings and specifications.
  - 4. The QA program will identify the specific methodology that will be used to cross-check drawings of the various disciplines for completeness and accuracy at each submittal stage.
- (xxii) Correct or revise inconsistencies, errors or omissions in its Construction Documents, including those drawings and specifications prepared by Contractor’s consultants, without additional compensation.



(xxiii) Conduct Project status meetings in \_\_\_\_\_, as directed by the AOC.

b. Pre-Schematic/Study Phase [Optional: (NIC)].

Basic Services in the Pre-Schematic/Study Phase consist of the following, and ancillary services that are necessary and appropriate:

- (i) The Contractor shall develop a written and graphical statistical description of the design, functional, and space requirements for the building and its site (the "Program"). The AOC shall provide Judicial Branch standards; caseload, employee, and judicial position projections for this court and Project; and a format for the Program. The Contractor shall develop the Program based on the AOC-provided information and data gathered from interviews conducted by the Contractor with court personnel. The Program shall include but not be limited to: size and quantity of each type of interior space; allowances for non-useable space; adjacency and relationships of spaces to achieve the required functions; staff and public parking demand; secure parking, loading, and official vehicle parking within the building or site; a conceptual structural system; and specific Project design and performance standards and operation objectives for each major building system. The Program shall also address the site area required for appropriate design and, if designated by the AOC, to accommodate future expansion.
- (ii) The Contractor shall develop three alternatives for meeting the Project goals to test the cost and implementation feasibility of the proposed Project. Alternatives may include, but not be limited to: renovating and/or expanding the existing facility, leasing additional or new space, purchasing and converting existing buildings, and constructing new facilities. The Contractor shall provide an analysis and comparison of alternatives, which shall be based on several factors, including, but not limited to an estimate of the development costs, an estimate of the operating costs (provided by the AOC), implementation issues, advantages and disadvantages from a court operational and service perspective, and Project goals and criteria established by a Project advisory group.
- (iii) The Contractor shall prepare for the AOC's review a written estimate of probable construction and/or development costs for each alternative of the Project, indicating the estimated cost of each principal element of the building, and with allowances for site construction, in a format acceptable to the AOC.
- (iv) The Contractor shall conduct and prepare a written Project specific threat/vulnerability assessment and risk analysis to determine the anticipated threats, the likely vulnerability of the Project to those credible

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threats and potential consequences to court operations and the AOC's asset value. The analysis methodology shall be consistent with that described in "Threat/Vulnerability Assessment and Risk Analysis," a paper prepared for the federal GSA by Applied Research Associates, Inc. *[Project Manager: If Preschematic/Study Phase is not included (NIC), include this item in Preliminary Plan Phase.]*

- (v) *The Contractor shall develop a list of desirable site attributes and requirements based on the Program as accepted by the AOC, the threat/vulnerability assessment and risk analysis, and discussions with the AOC. This list will be used for the evaluation of potential sites. [Project Manager: Delete if site acquisition is not included in Scope of Work.]*

c. Acquisitions Phase [Optional: (NIC)].

Basic Services in the Acquisitions Phase consist of the following, and ancillary services that are necessary and appropriate:

- (i) The Contractor shall assist the AOC in the evaluation of potential sites by preparing sketch plan examinations to determine if the building program, parking, and required set-backs can be reasonably accommodated on up to three (3) potential sites.
- (ii) The Contractor shall assist the AOC during site acquisition negotiations by preparing site plan diagrams or other exhibits to be attached to the acquisition agreement.
- (iii) The Contractor shall prepare for the AOC's review an estimate of probable construction cost of the Project, indicating the estimated cost of each principal element of the building and site construction, in a format acceptable to the AOC.

d. Preliminary Plan Phase [Optional: (NIC)].

The Preliminary Plan Phase includes Schematic Design and Design Development as specified below.

(i) Schematic Design.

Upon written authorization by AOC to proceed with the Schematic Design, Contractor shall perform the following Basic Services:

1. Assist the AOC in confirming the programming requirements based on discussions with the client representatives from the \_\_\_\_\_ Court and the AOC. The Contractor shall prepare room data sheets for each space type that indicate the dimensions;

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- furniture and fixture configuration; and acoustical, HVAC, electrical, communications, and data requirements and standards.
2. Provide assistance for the CEQA process to be performed by the State or the AOC, such as surveying of the Project site as necessary to provide a legal description, plotting title exceptions, attending public meetings to describe and clarify proposed design, and responding to public comments on design related issues.
  3. Include Energy Efficiency and Sustainable Building Measures in the design whenever possible and economically feasible. The Contractor shall make recommendations to the AOC for cost and feasibility of implementation of Energy Efficiency Measures and Sustainability Measures, within the approved design.
  4. Provide a code analysis indicating how the design of the Project complies with applicable building codes, including California Title 24.
  5. Prepare for the AOC's review Schematic Design studies incorporating the program requirements and including structure and site utilization plans, floor plans, elevations, sections, perspectives, and other documents necessary to illustrate the scale and relationship of Project components. Building designs shall pay particular attention to orientation, solar consideration and passive energy techniques and shall conform to applicable energy regulations. Schematic Design studies shall be revised until a design concept has been accepted and approved by the AOC.
  6. Prepare for the AOC's review: (a) Outline Specifications indicating architectural, structural, civil, mechanical, electrical, and other systems and materials proposed; (b) mounted presentation drawings and study perspectives of the Project and other graphic material necessary to convey the concept of the architectural design; (c) a detailed room-by-room tabulation of all net assignable Floor Areas, and a summary of the gross Floor Area; (d) security design program statement; and (e) a comparison to the program area requirements.
  7. Prepare for the AOC's review an estimate of probable construction cost of the Project, indicating the estimated cost of each principal element of the building and site construction, in a format acceptable to the AOC, at the 50% and 100% completion stages.
  8. Provide copies of all deliverables as specified herein for AOC to review and retain a record copy. AOC will, as appropriate, notify

Contractor of its Acceptance of the deliverables.

(ii) Design Development.

Upon written authorization by AOC to proceed with the Design Development, Contractor shall perform the following as Basic Services:

1. Prepare from the Schematic Design documents accepted and approved by the AOC, Design Development documents consisting of: (a) site plans, architectural, structural, mechanical, and electrical floor plans, elevations; cross-sections and other drawings necessary to fix and describe the size and character of all components of the Project; (b) Outline Specifications establishing the size, character, and quality of the entire Project in its essentials as to kinds and locations of materials and type of structural, mechanical, electrical and other systems; (c) a tabulation of both the approximate net assignable and gross Floor Areas; and (d) a comparison to the initial program area requirements and security program statement.
2. Provide an analysis setting forth how energy efficient and sustainable building materials are included in the design of the Project where possible and economically feasible.
3. Update the code analysis that Contractor developed during the Schematic Design phase.
4. Provide, if required by the AOC, graphic information demonstrating that the design is compatible with local architectural standards and submit complimentary copies of such design to the local review boards for their comments.
5. Provide security consulting and analysis for the Project, including plans, cost estimates, and design elements necessary to comply with any security-related rules, standards, guidelines, or policies adopted by the Judicial Council pursuant to Rule 6.170 of the California Rules of Court.
6. Prepare the final geotechnical report with requirements for the design and construction of foundations, other subsurface structures, and roads, driveways, and parking areas. Geotechnical requirements shall also be incorporated into the Construction Documents.
7. Prepare for the AOC's review an estimate of probable construction cost of the Project, indicating the estimated cost of each principal

element of the building and site construction, in a format acceptable to the AOC, at the 50% and 100% completion stages.

8. Prepare for the AOC's review a written description of the design criteria for all Project components including but not limited to, structural, mechanical, electrical, telecommunications, security, lighting, acoustical and audio visual systems.
9. Provide copies of all deliverables as specified herein for AOC to review and retain a record copy. AOC will, as appropriate, notify Contractor of its Acceptance of the deliverables.

e. Working Drawings Phase [Optional: (NIC)].

(i) Construction Documents.

Upon written authorization from the AOC to proceed with the Construction Documents, Contractor shall perform the following as Basic Services:

1. Prepare, using Design Development documents accepted and approved by the AOC and such standard documents as may be furnished by the AOC, Construction Documents consisting of working drawings and specifications that set forth in detail all the requirements for construction of the entire Project. The Construction Documents shall be designed to promote economy in construction, maintenance, and operation, and to comply with design criteria and cost limitations.
2. Prepare information required for the General Construction Activity Permit [per requirements of the State Water Resources Control Board (SWRCB), available on the SWRCB website at <http://www.swrcb.ca.gov/stormwtr/construction.html>] regarding the Storm Water Pollution Prevention Plan (SWPPP), as required for inclusion in the Construction Documents. Such information will be for use by the construction contractor in preparation of the construction contractor's final SWPPP for the Project site and for the construction contractor's use in filing the Notice of Intent with the SWRCB and in meeting any other county, city, municipality, or other local agency requirements regarding storm water discharges and management. Information and documentation to be provided typically includes a topographical survey (identifying streams, channels, wetlands, etc.), site map (base map including known hazardous or toxic waste areas), certification page, amendment page, site hydrology (rainfall, watershed management), soil type (site runoff, impervious areas), site and

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construction area sizes, and discharge sampling and analysis strategy.

3. Furnish to the AOC for review all work at the 50 percent, 90 percent and 100 percent stages of completion. Contractor shall provide copies of the deliverables for the AOC to review as specified in section A.5.g of this Exhibit A. Contractor shall retain record copies of said deliverables. The AOC will review deliverables and either notify Contractor of Acceptance or request modifications. Upon completion of review by the AOC, Contractor shall make all changes and corrections necessary to meet the requirements of the approved Program scope and budget for the Project, at no additional cost to the AOC. Contractor shall respond to each review comment at each stage of completion, indicating the resolution of each item.
4. Obtain stamped approval by the State Fire Marshal and DSA Access Compliance Unit on all drawings/documents as required.
5. Provide design phase scheduling information in the format agreed upon with the AOC at the commencement of Services, for inclusion into the master schedule prepared and updated by the AOC's selected construction manager.
6. Respond to and/or make corrections to the deliverables as a result of a constructability review performed by the AOC or the AOC's selected construction management firm.
7. Prepare a construction cost estimate at the 50 percent and 100 percent completion stages.
8. Prepare Construction Documents in full compliance with applicable building codes, ordinances, and other regulatory authorities.
9. Provide to the AOC, upon written Acceptance by it of the 100 percent complete Construction Documents, completed drawings and specifications on reproducible masters and computer discs containing electronic files, as specified below (Assembly of the Project manual and reproduction of the Construction Documents for distribution to bidders will be provided by the AOC):
  - (a) Drawings - Original full-size drawings plotted on reproducible paper, as determined by the AOC. Each drawing shall bear the stamp and signature of the Contractor and/or subcontractor, and, when required, the

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approval stamps of the State Fire Marshal and/or DSA  
Access Compliance Unit.

- (b) Specifications - Printed copy for all work applicable to the Project; in format complying with the current edition of the Construction Specifications Institute's "MasterFormat"; as directed by the AOC and in accordance with the following:
    - (1) Division 1 - General Requirements shall be prepared in accordance with the AOC's requirements; as determined for the Project.
    - (2) Supplemental information shall be provided to complete the Project manual, AOC-prepared Bidding Requirements, and General Conditions of the Contract for Construction.
    - (3) Where articles, materials, and equipment are identified by brand names, at least two names shall be used, and such names shall be followed by the words "or equal." Specifications shall not contain restrictions that will limit competitive bids. Exceptions shall only be as permitted by the AOC.
  - (c) The Construction Documents shall bear the stamp and signature of the Contractor and/or subcontractor, and the approval stamps of the State Fire Marshal and/or DSA Access Compliance Unit.
  - (d) Construction cost estimate - will be prepared in both Uniformat and Construction Specification Institute formats, and shall include materials, labor, subcontract costs, and contractor's indirect costs, overhead, profit, insurance, taxes, and bonds.
10. Notify, immediately and in writing, the AOC if it becomes evident, during development of the Construction Documents for the Project, that the construction cost will exceed the Construction Budget established by the AOC, and cease and hold in abeyance all work until funding differences, scope, and/or criteria are resolved and such changes as may be required are executed.
- (ii) Bidding Phase.

Bidding process and procedures will be the responsibility of the AOC. Upon written authorization by the AOC to proceed with the Bidding

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Phase, Contractor shall perform the following as Basic Services:

1. Attend pre-bid conference at Project site.
2. Refer all questions concerning intent to the AOC for response while the Project is being advertised for bids. In the event that items requiring interpretation of the drawings or specifications are discovered during the bidding period, said items shall be analyzed by the Contractor for decision by the AOC as to the proper procedure required. Corrective action taken will be in the form of an addendum prepared by the Contractor and issued by the AOC. The Contractor shall prepare all necessary supplemental drawings at no additional cost to the AOC.
3. Refrain from giving any directions, clarifications, corrections, or other modification of the Bidding Documents either verbally or in writing to any person other than the AOC's Project Manager. The Project Manager will determine whether the information should be placed in an addendum to be distributed to all bidders.
4. Assist in preparing the construction solicitation documents where required by local laws, ordinances, or at the AOC's request in such form and manner as to enable the AOC to solicit separate bids and award separate contracts for up to a total of      ( ) different parts of the Project.

f. Construction Phase [Optional: (NIC)].

It is understood that overall construction phase management will be the responsibility of the AOC, and its designated representative. Observation for compliance with the Construction Documents shall be the responsibility of the AOC.

Upon written authorization from the AOC to proceed with the Construction Phase, Contractor shall perform the following as Basic Services:

- (i) Attend the preconstruction meeting with the successful construction contractor.
- (ii) Provide the geotechnical engineering Services during grading, excavation, paving and foundation construction in order to confirm that field conditions conform to the preliminary investigation, and interpret, and advise the construction contractor on requirements of, the Construction Documents related to geotechnical engineering and field conditions.
- (iii) Review the construction contractor's construction schedule and schedule



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of values, and provide comments thereon to the AOC.

- (iv) Review for conformance with the Contractor's design intent applicable submittals and shop drawings; recommend approval, changes or disapproval of same; and keep a record of all submittals and shop drawings received from the construction contractor. Interpretation of the drawings and specifications shall be a joint effort of the AOC, or its designated representative, and the Contractor. In the event that the AOC and the Contractor do not agree, the AOC's interpretation shall prevail.
- (v) Furnish all necessary additional drawings for supplementing, clarifying and/or correcting material inconsistencies, errors and omissions in the Construction Documents and for any related change orders. Such drawings shall be requested in writing from the Contractor by AOC and shall be at no additional cost to the AOC. The original of the drawings and contract wording for change orders shall be submitted to AOC for duplication and distribution.
- (vi) Take an active role in setting the standards of quality expected in the Project, anticipating that such standards will be established via periodic observation of the construction work in progress.
- (vii) Make visits to the job site as requested by the AOC to resolve discrepancies in the Construction Documents and to review the progress of the Project. Contractor shall bring to the attention of the AOC, in writing, any defects or deficiencies in the work by the AOC's construction contractor that the Contractor should reasonably observe. The Contractor shall have no authority to issue instructions on behalf of the AOC or to authorize another to do so. Any changes or modifications to the construction contract shall be between the AOC and its construction contractor.
- (viii) Prepare Record Documents. Record Documents shall include drawings and specifications to record significant changes utilizing information provided by the AOC, the construction contractor, and change orders. Drawings shall be prepared on the original CAD files. Specifications shall show changes and annotate which of the two "or equal" listed items the Construction Contractor furnished. These Record Documents shall be delivered to the AOC at completion of construction and shall be a condition precedent to the AOC's approval of the Contractor's final payment.
- (ix) Take part in the final observations and preparation of the punch lists.
- (x) Make visits to the site after completion of construction but prior to the expiration of the warranty period specified in the construction contract to

review for evidence of faulty materials and faulty workmanship. This requirement shall include one (1) visit nine (9) months after completion and not more than two (2) additional visits as the AOC may request within twelve (12) months after completion of construction. The AOC shall ensure that one observation is of landscaping or similar seasonal items that may not be completed at the same time as other work.

g. Deliverables

- (i) At each indicated submittal and as directed by the AOC, Contractor shall provide the following quantities of documents:
1. Pre-Schematics: Four (4) bound sets of printed documents, one (1) unbound reproducible set of printed documents, plus one (1) set of files in an electronic format as described in this Agreement.
  2. Schematic Design: Four (4) bound sets of printed documents, one (1) unbound reproducible set of printed documents at 50% and 100%, plus one (1) set of files in an electronic format as described in this Agreement.
  3. Design Development: Four (4) bound sets of printed documents and one (1) unbound reproducible set of printed documents at 50% and 100% plus one (1) set of files in an electronic format as described in this Agreement at 100%.
  4. Construction Documents: Four (4) bound sets of printed documents and one (1) unbound reproducible set of printed documents at 50%, 90%, 100% and final. Printed documents provided at final will be copies of the stamped and signed documents. Provide three (3) sets of files in an electronic format as described in this Agreement at final.
  5. Construction Phase: For each issuance of a changed or new document during construction, provide one (1) reproducible. For Record Documents, provide one (1) original full-size reproducible of each drawing, one (1) unbound set of specifications, and three (3) sets of drawings and specifications files in an electronic format as described in this Agreement at the completion of the Project.
- (ii) The Basic Services include one (1) rendered site plan, one (1) exterior rendering, and one (1) miscellaneous rendering, which Contractor shall provide as part of the \_\_\_\_\_ phase. [*Project Manager to specify whether this is necessary and, if so, at which phase.*]
- (iii) Electronic Documents Requirements for All Phase Submittals:

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1. Contractor shall provide drawings in Adobe Acrobat .pdf format (version 6.0) and AutoCAD (AutoCAD version 2000+ or later). If creating .dwg files from other than AutoCAD, Contractor shall ensure that all graphic elements and typeface are preserved and exactly match the hard copy documents.  
Contractor's/subcontractor's stamp may be omitted in .dwg files.
2. Contractor shall submit one .dwg CAD file for each submitted hard copy document in an electronic folder along with the file's unbound XREFs. Contractor shall include a directory matrix with the file name, corresponding hard copy drawing name and number, XREF file names and descriptions, and layer names and descriptions. Each submittal shall include all font files, line types, and a table of plotting colors and line weights.
3. Contractor shall submit specifications in Microsoft Word 2003.
4. Contractor shall submit electronic documents on compact discs (CD). Contractor shall label each CD with the Contractor's name, address, and telephone number; AOC Project name and Project number; submittal phase; and date of submittal.

h. Change Orders

- (i) The AOC may, at any time, by written order, direct changes to the Services described in this Agreement. The Contractor may also propose changes to the Services described in this Agreement based upon occurrences that are not the result of the Contractor's errors or omissions. If such changes will cause an increase in the cost of or the time required for performance of the agreed upon Services, such a change will require a formal written amendment to this Agreement and an equitable adjustment, as mutually agreed upon, shall be made to the Contract Amount as set forth in "Contract Amount" in the Agreement Coversheet or in the time of required performance as set forth in "Term of the Agreement" in the Agreement Coversheet, or both. Notwithstanding any dispute between the Contractor and the AOC about whether the Services constitute a change or modification to Contractor's scope of work or a dispute relating to the value of the claimed change or modification, Contractor agrees to diligently proceed with the Services upon receipt of written direction from the AOC.
- (ii) For any change proposed by either the AOC or the Contractor, the Contractor 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 the Contractor with a breakdown of tasks and costs, including any reduction in costs resulting from the change; and (iii) the expected impact on schedule.

The Contractor shall submit this notice no later than fifteen (15) days after the AOC's order or other occurrence that causes the change; failure to submit this notice within this time period shall constitute a waiver of the Contractor's right to seek an adjustment of the Contract Amount or the Term of this Agreement.

- (iii) If the AOC and the Contractor reach agreement on a change, the agreement shall be set forth in an amendment in writing executed and approved in the same manner as this Agreement.

#### **A.6. Extra Services**

a. Contractor shall perform the following Extra Services, only when authorized by a written amendment to this Agreement. 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 to this Agreement. In no event shall AOC be responsible for compensating Contractor in excess of the Contract Amount, unless there is a written amendment executed by the AOC that specifically increases the Contract Amount.

- (i) Revisions to Accepted Construction Documents or Design Development documents to accommodate changes (excluding corrections of inconsistencies, errors and omissions by Contractor) when so directed by the AOC.
- (ii) Preparation of change order documents as requested by the AOC (excluding corrections of inconsistencies, errors and omissions by Contractor) after a construction contract has been awarded.
- (iii) Preparation of drawings or change orders as required due to those actions of the AOC, that are beyond the scope of the Contractor's responsibilities.
- (iv) Preparation of measured drawings of existing structures except as required for the design services.
- (v) Selection of moveable furniture, equipment, or other articles that are not included in the construction contract unless otherwise specified in this Agreement.
- (vi) Services necessary to supervise correction of defects or damage to the Project (excluding corrections arising from inconsistencies, errors and omissions of Contractor).
- (vii) Services necessitated by the delinquency or insolvency of the construction contractor during or after the guarantee period.
- (viii) Preparation of such alternates to be included in the Construction

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Documents as may be deemed necessary by the AOC.

- (ix) Joining with and assisting the AOC in defending any claim or action related to or arising out of the Contractor's design (not attributable to inconsistencies, errors or omissions on the part of the Contractor) of the Project.
- (x) Additional rendering and/or models as may be deemed necessary by the AOC beyond those included in the Basic Services, will be an Extra Service.

b. The hourly rates which include direct costs, indirect costs, overhead, administrative costs, and profit, to be utilized in arriving at a negotiated fee for Extra Services, are set forth in Exhibit D. Payment for Extra Services will be either on a time and materials basis or a firm fixed price, as determined by the AOC.

*END OF EXHIBIT*

**Exhibit B**

**PAYMENT PROVISIONS**

**B.1. Contract Amount**

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

a. Compensation

(i) The compensation to be paid Contractor, as provided herein, shall be a firm, fixed price and shall be full consideration for all of Contractor's Services and expenses, direct or indirect, including travel and per diem, and all other costs incidental to providing the Services.

1. Total compensation for the scope of work authorized by this Agreement (Pre-Schematic/Study Phase only) shall be \$ \_\_\_\_\_.

(ii) Upon the AOC authorizing a further encumbrance of funds for this Agreement, this Agreement will be deemed to include the following phases of work, which are presently designated as "NIC." Contractor agrees that its compensation for such phases will be as indicated below:

- 1. Acquisitions Phase Total: \$ \_\_\_\_\_
- 2. Preliminary Plan Phase Total: \$ \_\_\_\_\_
- 3. Working Drawings Phase Total: \$ \_\_\_\_\_
- 4. Construction Phase Total: \$ \_\_\_\_\_

If the start date for any phase is delayed for more than one (1) year past the estimated start date through no fault of the Contractor, 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.

**B.2. Method of Payment**

a. The Contractor 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,

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the AOC will either approve the invoice for payment or give the Contractor specific written reasons why part or all of the payment is being withheld and what remedial actions the Contractor must take to receive the withheld amount.

b. The AOC will make payment after receipt of the Contractor's properly completed invoice. Invoices shall clearly indicate:

- (i) The contract number;
- (ii) A unique sequential invoice number;
- (iii) The Contractor's name and address;
- (iv) Taxpayer identification number;
- (v) Description of the completed Services, including percentage complete of each phase and sub-phase, and retention;
- (vi) Compensation previously invoiced, by phase; and
- (vii) Preferred remittance address, if different from the mailing address.

c. Invoices furnished by the Contractor under this Agreement must be in a form acceptable to the AOC and must be submitted for approval to:

\_\_\_\_\_, Project Manager  
Office of Court Construction and Management  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102

d. The authorized representative of the Contractor shall sign each invoice.

e. The AOC will endeavor to pay invoices within thirty (30) days after receipt of a correct, itemized invoice. In no event shall the AOC be liable for interest or late charges for any late payments. Payment shall be made by the AOC to the Contractor at the address specified in the section entitled "Notices to the Parties."

f. The AOC may withhold full or partial payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

g. Upon receipt and approval of Contractor's invoices, the AOC agrees to make payment as follows:

- (i) For Pre-Schematic/Study 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 the AOC's Acceptance and approval of the Pre-Schematic/Study Phase.

(ii) For Acquisitions 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 the AOC's Acceptance and approval of the Acquisitions Phase.

(iii) For Preliminary Plan 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 the AOC's Acceptance and approval of the Preliminary Plan Phase.

(iv) For Working Drawings 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 the AOC's Acceptance and approval of the Working Drawings Phase.

(v) For Construction Phase.

Monthly payment for the percentage of work completed less 10 percent retention, up to a maximum retained amount of \$50,000.00. The final 10 percent will be paid within forty-five (45) days of receipt of a correct, itemized invoice for the retention submitted after the AOC's Acceptance and approval of the Construction Phase. *[Note to Project Manager: Confirm that the amount retained is sufficient to cover preparation of record drawings by architects and engineers. The intent is to reduce the financial burden of retained earnings during the long construction period.]*

h. Unless otherwise directed by the AOC, no retention will be withheld for Extra Services.

### **B.3. Disallowance**

If the Contractor claims or receives payment from the AOC for a Service that is later disallowed by the AOC, the Contractor shall promptly refund the disallowed amount to the AOC upon the



AOC's request. At its option, the AOC may offset the amount disallowed from any payment due or that may become due to the Contractor under this Agreement or any other agreement.

**B.4. Payment Does Not Imply Acceptance of Work**

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

**B.5. Release of Claims**

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

*END OF EXHIBIT*

**Exhibit C**

**GENERAL TERMS AND CONDITIONS**

**C.1. Effective Date of Agreement**

This Agreement is effective on the Effective Date set forth on the Agreement Coversheet; however, the Contractor is not authorized to begin work until the AOC delivers a "Notice to Proceed" to the Contractor. The AOC will issue the Notice to Proceed only after the Contractor delivers evidence of insurance to the AOC that is consistent with the insurance requirements in this Agreement. If the Contractor begins work before delivery of the Notice to Proceed, that work will be at the Contractor's risk and expense and subject to all terms and conditions of this Agreement except those terms and conditions inconsistent with the Contractor's assumption of that risk and expense. If a Notice to Proceed is delivered, then work performed before delivery will be treated for all purposes as though it were performed after delivery. Further, an amendment will be necessary to incorporate the work designated as "NIC" in any event.

**C.2. Submitting False Claims; Monetary Penalties**

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

**C.3. Sales and Use Tax**

Payment of possessory interest taxes and California sales and use taxes, levied upon this Agreement, or any goods or the Services delivered pursuant hereto, shall be the obligation of the Contractor.

**C.4. Responsibility for Equipment and Real Property**

The AOC 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 the Contractor, or by any of its employees or agents, even though such equipment is furnished, rented, or loaned to the Contractor by the AOC.

**C.5. Independent Contractor**

a. Independent Contractor. The Contractor shall be, and is, an independent contractor, is not an employee or agent of the AOC, and is not covered by any employee benefit plans provided to the AOC's employees. The Contractor is, and shall be, liable for its own acts

and omissions as well as those of its employees, its subcontractors and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the AOC and the Contractor. The Contractor will determine the method, details and means of performing its responsibilities with regard to the Services, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons assisting the Contractor in the performance of the Services. The Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding, any and all employee benefits, and all regulations governing such matters.

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

#### **C.6. Contractor's Key Personnel**

a. The Contractor shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services. The Contractor has been selected to perform the Services herein, in part, because of the skills and expertise of the key individuals and/or firms (collectively "Contractor's Key Personnel") that are listed in Exhibit F. Substitution or replacement of the individuals and/or firms identified in Exhibit F is not allowed except with written approval of the AOC.

b. If the designated lead or key person fails to perform to the satisfaction of the AOC upon written notice, the Contractor will have fifteen (15) calendar days to remove that person from the Project and replace that person with one acceptable to the AOC. All lead or key personnel for any subcontractor must also be designated by any subcontractor and are subject to all conditions stated in this section.

c. The Contractor shall be responsible for all costs associated with replacing any of Contractor's Key Personnel, including the additional costs to familiarize replacement personnel with the Services. If the Contractor does not furnish replacement personnel acceptable to the AOC, the AOC may terminate this Agreement for cause.

#### **C.7. Standard of Care**

The Contractor, its officers, agents, employees, subcontractors, consultants and any persons or entities for whom Contractor is responsible, shall provide all Services pursuant to this Agreement in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project. The AOC's Acceptance of any submittals, deliverables, or other work product of the

Contractor shall not be construed as assent that Contractor has complied, nor in any way relieve the Contractor of, compliance with (i) the applicable standard of care or (ii) applicable statutes, regulations, rules, guidelines, and requirements.

### **C.8. AOC's Quality Assurance Plan**

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

### **C.9. Subcontracting**

a. The Contractor is prohibited from subcontracting this Agreement or any part of it, except to subcontractors as set forth in Exhibit E, unless such subcontracting is first approved by the AOC in a written instrument executed and approved in the same manner as this Agreement. An agreement made in violation of this section shall confer no rights on any party and shall be null and void.

b. If requested by the AOC, the Contractor shall provide documentation that the proposed subcontractor is experienced and able to perform that portion of the Services Contractor wishes to subcontract. The Contractor shall require all subcontractors to comply with the provisions of this Agreement. The Contractor shall provide copies of all agreements with subcontractors to the AOC. The AOC's approval of subcontracts shall in no way relieve the Contractor of any of its responsibilities and obligations under this Agreement.

c. The Contractor expressly acknowledges that its subcontractors are not third party beneficiaries of this Agreement.

### **C.10. Background Checks**

If the Contractor assigns persons (whether employees, independent contractors, subcontractors or agents) to perform work under this Agreement that requires that the person have access to the systems (whether on-site or by remote access) or premises of the AOC or other judicial branch entities, the AOC shall have the right, but not the obligation, to conduct a background check or to require the Contractor to conduct a background check, as permitted by law, on all such persons

before the AOC will grant to such persons access to the AOC's or other judicial branch entities' premises or systems. The Contractor will cooperate with the AOC in performing such background check, and will promptly notify the AOC of any such person refusing to undergo such background check, and will reassign such person to perform other services. The Contractor shall obtain all releases, waivers, or permissions required for the release of such information to the AOC. Costs incident to background checks are the sole responsibility of the Contractor.

### **C.11. Indemnification**

The Contractor agrees, to the fullest extent permitted by law, to indemnify, defend (with counsel satisfactory to the AOC), and hold harmless (collectively, "Indemnify") the State, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, contractors, representatives, volunteers and employees (individually, an "Indemnified Party") from any and all claims, lawsuits, losses, costs (including attorney fees and costs), liabilities, and damages arising from, related to or in connection with, in whole or in part, any of the following: (a) the Contractor's or any of its employees' or subcontractors' negligent acts, omissions, or intentional misconduct; (b) the Contractor's breach of its obligations under this Agreement; (c) the Contractor's or any of its employees' or subcontractors' violation of any applicable law, rule, or regulation; and/or (d) any claim or lawsuit by a third party, contractor, subcontractor, supplier, worker, or any other person, firm, or corporation furnishing or supplying work, Services, materials, or supplies in connection with the performance of this Agreement who may be injured or damaged by the Contractor or any of its subcontractors or employees, when such claim arises from, is related to, or is in connection with, the Contractor's performance of this Agreement. This article does not require the Contractor to Indemnify an Indemnified Party for such portion of any loss, cost, liability, or damage that arises solely from the negligence or intentional misconduct of the Indemnified Party.

### **C.12. Insurance**

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

- (i) Workers' compensation—At statutory minimums, including employers' liability coverage with limits not less than \$1,000,000 for each accident. This coverage shall not be required where the Contractor has no employees.
- (ii) Commercial General Liability Insurance—Covering bodily injury,

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property damage, personal injury, advertising injury, contractual liability, products, and completed operations. The policy shall provide limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.

- (iii) Commercial or Business Automobile Liability Insurance—Covering bodily injury and property damage and applicable to all owned, non-owned, leased, and hired vehicles. The policy shall provide combined single limits of at least \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
- (iv) Professional Liability Insurance; Errors and Omissions —Covering the Contractor's performance under this Agreement. The policy shall provide limits of at least \$1,000,000 per claim or per occurrence and \$1,000,000 annual aggregate. If the policy is written on a "claims made" form, the Contractor shall continue such coverage, either through policy renewals or the purchase of an extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the 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 activities commence pursuant to this Agreement. *[Contract Analyst to refer to chart in hidden text to determine professional liability insurance amounts. To view the table, go to the View menu and select "comments."]*

b. Additional Insured Endorsements. All policies required in subsection (a) above with the exception of Workers' Compensation and Professional Liability must be endorsed to name the following as additional insureds with respect to liabilities arising out of the Contractor's Services for the AOC under this Agreement: the State, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers and employees.

c. Required Policy Provisions. Each policy required in subsection (a) above must provide that:

- (i) The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by the AOC.
- (ii) The policy shall apply separately to each insured against whom a claim is made and/or a lawsuit is brought, except with respect to the limits of the insurer's liability.
- (iii) The AOC will receive thirty (30) days' advance written notice of any change or cancellation, mailed to the following address (with a copy to the AOC Business Services Manager, Grant Walker):

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\_\_\_\_\_, AOC Project Manager  
Office of Court Construction and Management  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102

(iv) The insurer waives any and all rights of subrogation against the AOC, the Judicial Council of California, the Administrative Office of the Courts, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, representatives, volunteers or employees except for Professional Liability coverage.

d. Qualifying Insurers. Insurance policies are to be placed with insurers with an A.M. Best rating of no less than A:VIII, or, if not rated with A.M. Best, with minimum surpluses the equivalent of A.M. Best's surplus size VIII. Professional Liability, Errors and Omissions insurance may be placed with insurers with an A.M. Best rating of no less than B+: VII.

e. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the AOC. Contractor shall furnish the AOC with said declaration of deductibles or self-insured retentions prior to the commencement of its Services. The deductible and/or self-insured retention shall not limit or apply to the Contractor's liability to the AOC and shall be the sole responsibility of the Contractor.

f. No Reduction or Limit of the Contractor's Obligation. Insurance affected or procured by the Contractor shall not reduce or limit the Contractor's contractual obligation to indemnify and defend the AOC. Acceptance of the Contractor's insurance by the AOC shall not relieve or decrease the liability of the Contractor hereunder.

g. Subcontractors. Except for Professional Liability coverage, the Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates of insurance and policy endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

h. Joint Ventures. If the Contractor is an association, partnership, or other joint business venture, the insurance required in subsection (a) above shall be provided by any one of the following methods:

- (i) Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured.
- (ii) Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

i. Evidence of Coverage. Before commencing any work under this Agreement, the

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Contractor must furnish to the AOC certificates of insurance and applicable endorsements, in form and with insurers satisfactory to the AOC, evidencing that all required insurance coverage is in effect. The AOC reserves the right to require the Contractor to provide complete, certified copies of all required insurance policies. The required certificates and endorsements must be sent to (with a copy to the AOC Project Manager):

Business Services Manager  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue, 7<sup>th</sup> Floor  
San Francisco, CA 94102

j. Consequences of Changes in Policies or Insurers. If at any time the foregoing policies shall be or become unsatisfactory to the AOC, the Contractor shall, upon notice to that effect from the AOC, promptly obtain a new policy, and shall submit the same to the AOC, with the appropriate certificates and endorsements, for approval.

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

### **C.13. Stop Services Order**

a. The AOC may, at any time, by delivery of a Stop Services Order to the Contractor, require the Contractor to stop all, or any part, of the Services pursuant to this Agreement, for a period up to ninety (90) days after the Stop Services Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Services Order shall be specifically identified as such and shall indicate it is issued under this section. Upon receipt of the Stop Services Order, the Contractor 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 Services Order during the period of Services stoppage.

b. The AOC shall not be liable to the Contractor for any costs, expenses, or loss of profits because of the Stop Services Order issued under this provision unless expressly specified in the Stop Services Order.

### **C.14. 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 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.



**C.15. Termination for Cause**

If the AOC determines that the Contractor has failed to perform in accordance with the terms and conditions of this Agreement, the AOC may terminate all or part of the Agreement for cause. This termination shall be effective if Contractor does not cure its failure to perform within ten (10) days (or more, if authorized in writing by the AOC) after receipt of a notice of intention to terminate from the AOC specifying the failure in performance.

**C.16. Termination for Non-Appropriation of Funds**

The Contractor acknowledges that funding for this Agreement is conditioned upon appropriation by the California Legislature and allocation by the Judicial Council of California, and/or sale of lease revenue or other bonds, of sufficient funds to support the activities described in this Agreement. By written notice to the Contractor, the AOC may immediately terminate this Agreement, in whole or in part, for lack of appropriation of funds, or other withdrawal, reduction or limitation in any way of the AOC's budget, funding or financial resources.

**C.17. Termination for Convenience**

The AOC shall have the option, in its sole discretion, to terminate this Agreement, in whole or in part, at any time during the term hereof, for convenience and without cause, upon written notice to the Contractor. The notice shall specify the date on which termination shall become effective.

**C.18. Actions of the Contractor Upon Termination**

Immediately upon receipt of any notice of termination of this Agreement, the Contractor shall commence and perform, with diligence, all actions necessary on the part of the Contractor to effect the termination of this Agreement on the date specified by the AOC and to minimize the liability of the Contractor and the AOC to third parties as a result of termination. All such actions shall be subject to the prior approval of the AOC, at the AOC's sole discretion. Such actions shall include, without limitation:

- a. Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by the AOC.
- b. Not placing any further orders or entering into any subcontracts for materials, Services, equipment or other items.
- c. Canceling any and all existing orders and terminating any and all subcontracts.
- d. Assigning to the AOC any or all of the Contractor's right, title, and interest under the existing orders and subcontracts.
- e. Settling all outstanding liabilities and all claims arising out of the cancellation of orders and termination of subcontracts.

f. Completing performance of any Services that the AOC designates to be completed prior to the date of termination specified by the AOC.

g. Providing to the AOC any tangible work product and Data created in the course of the performance of Services hereunder.

### **C.19. Effect of Termination**

In addition to any other remedies and actions set forth in this Agreement, if this Agreement is terminated for cause, non-appropriation of funds, or for convenience, the following will apply:

a. Payment Upon Termination. The AOC shall pay for Contractor's Services satisfactorily performed through the effective date of termination; in no event shall Contractor's compensation under this Section exceed the reasonable value of the performed Services, based on the Contractor's progress of the Services performed and the proportionate corresponding value of the Contract Amount. Additionally, the Contractor shall not be entitled to recover its anticipated profit on any work not performed pursuant to said termination.

b. Offset and Deduction. The AOC may deduct from any payment upon termination:

- (i) All payments previously made by the AOC for Services covered by the Contractor's final invoice.
- (ii) The amount of any undisputed claim that the AOC may have against the Contractor in connection with this Agreement.
- (iii) In instances in which the AOC reasonably determines that the cost of any Services is excessive and if excessive due to costs incurred to remedy or replace defective materials or rejected Services, the AOC will pay the difference between the invoiced amount and the AOC's reasonable estimate of the reasonable cost of replacing the materials or performing the invoiced Services in compliance with the requirements of this Agreement.

### **C.20. Ownership of Data**

a. Everything created, developed or produced in the course of the Contractor's performance of the Services, including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the Contractor for the AOC and are the sole property of the AOC without further employment or the payment of additional compensation to the Contractor. The AOC 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

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Intellectual Property Rights therein are not works for hire, the Contractor hereby irrevocably assigns its entire right, title and interest in and to all such Data and the Intellectual Property Rights therein, to the AOC. At the AOC's request, the Contractor will assist the AOC in the AOC's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. The Contractor irrevocably appoints the AOC as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the AOC deems necessary to perfect the AOC's interest and Intellectual Property Rights in the Data as set forth herein.

b. The AOC shall be entitled to access copies of the Data in whatever form, including, without limitation CAD, all times during the term of the Agreement. Any such Data in the possession of the Contractor or in the possession of any subcontractor upon completion or termination of the Agreement shall be immediately delivered to the AOC. If any Data are lost, damaged or destroyed before final delivery to the AOC, the Contractor shall replace them at its own expense and the Contractor assumes all risks of loss, damage or destruction of or to such Data.

c. AOC expressly acknowledges and agrees that the Data to be provided by Contractor under the Agreement may contain certain design details, features and concepts from the Contractor's best practices detail library, which collectively may form portions of the design for the Project, but which separately are, and shall remain, the sole and exclusive property of Contractor. Nothing herein shall be construed as a limitation on the Contractor's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.

d. The AOC acknowledges the Contractor's work product, including electronic files, as instruments of professional service. If the AOC reuses or makes any modification to the Contractor's work product without the prior written authorization of the Contractor, the AOC agrees, to the fullest extent permitted by law, to indemnify, defend (with counsel reasonably satisfactory to Contractor) and hold harmless the Contractor, and its officers, directors, employees and subconsultants, against any damages, liabilities or costs, including reasonable attorney fees and defense costs, arising from or allegedly arising from or in any way connected with the reuse or modification of the Contractor's work product by the AOC, or by any person or entity that lawfully acquires or obtains the Contractor's work product from or through the AOC without the written authorization of the Contractor.

**C.21. Proprietary or Confidential Information of AOC**

a. The Contractor understands and agrees that, in the performance of the Services under this Agreement or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, the AOC and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the AOC. The Contractor agrees that all information disclosed by the AOC to the Contractor shall be held in confidence and used only in the performance of the Agreement. The Contractor shall exercise the same standard of care to protect such information as the Contractor uses to protect its own proprietary information and in

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any case no less than a reasonably prudent person or entity would use to protect its own proprietary data.

b. It is understood, however, that the Contractor may disclose the AOC's confidential information on a "need to know" basis to the Contractor's employees, the Contractor's subcontractors, and the subcontractors' employees, and as required by law. Contractor shall execute written agreements with its subcontractors that bind each subcontractor and its employees to the confidentiality provisions set forth in this Agreement.

c. The Contractor shall acquire no right or title to the confidential information. The Contractor agrees not to use the confidential information for any purpose except to provide the Services. Notwithstanding the foregoing, the Contractor may disclose the confidential information: (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that the Contractor first gives reasonable notice of its intention to disclose in order for the AOC to seek a protective order; or (ii) to the extent necessary to enforce its rights under this Agreement.

d. The Contractor 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.

### **C.22. Audit and Retention of Records**

The Contractor shall permit authorized representatives of the AOC and/or its designee at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of the Agreement, including records related to billings and other financial records. The Contractor shall allow the auditor(s) access to such records during normal business hours and shall allow the auditor(s) to interview any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include the same right of the AOC to audit records and interview staff in any subcontract related to performance of this Agreement. The Contractor shall maintain, and shall require its subcontractors to maintain, all records and documentation related to the performance of this Agreement, including records related to billings and other financial records, in an accessible location and condition for a period of not less than three (3) years after final payment is received pursuant to this Agreement or until after final audit has been resolved, whichever is later. The Contractor shall adequately protect all records against fire or other damage. The State of California, or any state agency or entity having an interest in the subject of this Agreement, shall have the same rights conferred upon the AOC by this section.

### **C.23. Accounting System Requirements**

The Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles (GAAP).

**C.24. AOC and [REDACTED] Court Representation**

a. AOC Project Management.

- (i) For the purposes of this Agreement, the AOC's authorized representative ("Project Manager") shall be:

[REDACTED]  
Office of Court Construction and Management,  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Ave.  
San Francisco, CA 94102  
Phone: 415/865-\_\_\_\_\_  
Facsimile: 415/865-\_\_\_\_\_

- (ii) All requests and communications about the Services to be performed under this Agreement shall be made through the Project Manager.
- (iii) The Project Manager is not authorized by the AOC to make any commitments or changes which will affect the price, terms or conditions of this Agreement absent an amendment executed by the parties.

b. Third Party Representation. The AOC has the authority to speak on behalf of the [REDACTED] Court and to bind such court with respect to Acceptance of deliverables and all matters hereunder.

c. Third Party Beneficiary. The [REDACTED] Court shall be an intended third party beneficiary of this Agreement. In the event the court gives conflicting instructions or makes conflicting determinations with respect to any matter, it shall be the AOC's responsibility to resolve any such conflict promptly.

**C.25. Dispute Resolution**

a. Notice of Dispute. The parties shall attempt in good faith to resolve potential disputes informally and promptly. If a dispute persists, either party may submit a written demand to the other party at the earliest practicable time that the dispute is identified (the "Demand"). The Demand shall: (i) be fully supported by detailed factual information and supporting documentation; (ii) state the specific Agreement provisions on which the Demand is based; and (iii) if the Demand involves a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand. The Demand shall include a written statement signed by an authorized person 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 believes the other party is responsible. To assist the other party in its review of the Demand, the submitting party shall comply with reasonable requests for additional information. The receiving party shall

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provide a written response to the submitting party's Demand stating a decision as to whether the receiving party accepts or rejects the Demand. Failure by the receiving party to provide such a response shall be deemed a decision by the receiving party constituting a rejection of the Demand.

b. Senior Level Negotiations. Upon written request by either party after the receipt of a Demand, the parties shall attempt to resolve the dispute by negotiations between the principal (or equivalent) of the Contractor and the designated representative of the AOC. The principal (or equivalent) of the Contractor and the designated representative of the AOC shall meet as often as they deem reasonably necessary to exchange information and attempt to resolve the Demand within thirty (30) days after the Demand was initially delivered.

c. Mediation. If the senior level negotiations do not result in resolution of the dispute within thirty (30) days after the Demand was received, the parties shall submit their dispute to mediation prior to any party initiating an action in court.

d. Litigation. If, after mediation pursuant to Section C.25(c), the parties have not resolved the dispute, the receiving party's decision made pursuant to Section C.25(a) 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 attorney fees and costs.

e. Confidentiality. All negotiations conducted pursuant to this Section C.25 are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code Section 1152 applies. The mediation shall be confidential and shall be subject to the provisions of California Evidence Code Sections 703.5 and 1115 through 1128.

f. Continuation of Work. Pending the final resolution of any dispute arising under, related to, or involving this Agreement, Contractor agrees to diligently proceed with the performance of this Agreement, including the delivery of deliverables or providing of Services, in accordance with the AOC's instructions. Contractor's failure to diligently proceed in accordance with the AOC's instructions will be considered a material breach of this Agreement.

## **C.26. Certifications**

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

- a. Nondiscrimination/No Harassment Provisions and Compliance.
- (i) Nondiscrimination. The Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin,

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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. The Contractor and its subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

- (ii) No Harassment. The Contractor and its subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its subcontractors interact in the performance of this Agreement. The Contractor and its subcontractors shall take all reasonable steps to prevent harassment from occurring.
- (iii) FEHA. The Contractor shall comply with the provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 *et seq.*, and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 *et seq.* The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- (iv) Compliance with Americans with Disabilities Act. The Contractor complies with applicable provisions of the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. Section 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.
- (v) Notice to Labor Organizations. The Contractor and any of its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- (vi) Compliance. The Contractor shall include the nondiscrimination, no harassment, and compliance provisions of this section in any and all subcontracts issued to perform Services under this Agreement. Contractor has, unless exempt, complied with the nondiscrimination program requirements. (Government Code, Section 12990 (subdivisions a-f) and CCR, Title 2, Section 8103 *et seq.*)

b. Prohibited Financial Conflict of Interest. The Contractor and its subcontractors presently have no interest and will not acquire any interest which would present a conflict of interest pursuant to California Government Code sections 1090 *et seq.* and 87100 *et seq.* during the performance of Services pursuant to this Agreement. The Contractor further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the AOC are now, nor in

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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.*

c. Conflict of Interest for Former State Employees. The Contractor certifies and shall require any subcontractor to certify to the following: Former State 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 the contract, or for one year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from State service.

d. Covenant Against Gratuities. No gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the State with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this provision, the AOC will have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by the State in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the AOC 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.

e. Drug-Free Workplace. The Contractor will provide a drug-free workplace as required by California Government Code Sections 8355 through 8357.

f. National Labor Relations Board. No more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.

g. Brokerage Or Contingent Fees. No person or selling agency has been employed or retained to solicit or secure this Agreement upon an understanding or agreement for a commission, percentage, brokerage or contingent fee.

h. Computer Software Use. Contractor has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

### **C.27. Limitation on Publication**

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



**C.28. General**

a. Survival. The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.

b. Limitation on Publication. The Contractor shall not publish or submit for publication any article, press release, or other writing relating to the Contractor's Services for the AOC without prior review and written permission by the AOC, which consent shall be in the AOC's sole discretion.

c. 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.

d. Assignment. The Services to be performed by the Contractor are personal in nature and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first consented to by the AOC by written instrument executed and approved in the same manner as this Agreement. Except as otherwise provided herein, all of the terms, provisions and conditions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives. Any assignment in violation hereof shall be null and void.

e. Waiver. Any waiver of any term of this Agreement must be in writing and executed by an authorized representative of the waiving party and shall not be construed as a waiver of any succeeding breach of the same or other term of this Agreement.

f. Severability. The provisions of this Agreement are separate and severable. Should any court hold that any provision of this Agreement is invalid, void or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the reasonable intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

g. Compliance with Laws. The Contractor shall keep itself fully informed of all municipal, county, state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply, at no expense to the AOC, with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. The Contractor shall procure and keep in full force during the term of this Agreement any and all permits and licenses necessary to accomplish the Services contemplated in this Agreement at no expense to the AOC.

h. Time is of the Essence. Time is of the essence in this Agreement.

i. Governing Law; Jurisdiction. This Agreement shall be governed by California

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law without regard to any conflict of law rules that would direct the application of the laws of any other jurisdiction. The Contractor irrevocably consents to personal jurisdiction in California.

j. Agreement Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.

k. Notices to the Parties. All notices, requests, demands, and other communications hereunder must be in writing and will be deemed to have been duly given when hand delivered or five (5) days after being deposited in the United States mail, if mailed by certified or registered mail, return receipt requested, postage prepaid, to the following contact information or at such other address as delivered by like notice:

To the AOC: \_\_\_\_\_, Project Manager  
Office of Court Construction and Management  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102

With a copy to: Business Services Manager  
Judicial Council of California  
Administrative Office of the Courts  
455 Golden Gate Avenue  
San Francisco, CA 94102

To the Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

l. Amendments. This Agreement may not be modified or amended, except by written instrument executed and approved in the same manner as this Agreement.

m. Public Contract Code References. Public Contract Code references create duties of the Contractor under this Agreement; however, the references do not imply that the AOC is subject to the Public Contract Code.

n. Entire Agreement. This Agreement, consisting of the Agreement Coversheet and all exhibits thereto, constitutes the entire agreement between the parties and supersedes all previous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties.

*END OF EXHIBIT*

**Exhibit D**

**HOURLY RATES FOR EXTRA SERVICES**

<i><b>TITLE</b></i>	<i><b>HOURLY BILLING RATE</b></i>
1. Managing Principal	\$_____
2. Principal/Director	\$_____
3. Associate/Sr. Project Manager	\$_____
4. Project Manager / Sr. Project Designer / Sr. Engineer	\$_____
5. Project Architect / Sr. Interior Designer / Project Engineer	\$_____
6. Specifications Writer / Estimating	\$_____
7. Project Designer / Interior Designer / Architect / Engineer	\$_____
8. Job Captain / Designer	\$_____
9. Jr. Designer II / Technical Support / CADD Drafter	\$_____
10. Jr. Designer / Administrative Support	\$_____

*END OF EXHIBIT*

*END OF EXHIBIT*

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**Exhibit E**

**SUBCONTRACTORS TO CONTRACTOR**

*END OF EXHIBIT*

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**Exhibit F**

**CONTRACTOR'S KEY PERSONNEL**

*END OF EXHIBIT*

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**Exhibit G**

**PROJECT PROGRAM**

*END OF EXHIBIT*

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