JUDICIAL COUNCIL OF CALIFORNIA
LEVERAGED PROCUREMENT AGREEMENT

AGREEMENT NUMBER
1034963
Federal Employer I.D. Number **26-3758621**

1. In this Leveraged Procurement Agreement ("Agreement"), the term "Vendor" refers to **Shen Milson & Wilke LLC** and the term "Establishing Judicial Branch Entity" or "Establishing JBE" refers to the **Judicial Council of California.** This Agreement is entered into between Vendor and the Establishing JBE for the benefit of the Judicial Branch Entities (as defined in Appendix D). Any Judicial Branch Entity that enters into a Participating Addendum with Vendor pursuant to this Agreement is a "Participating Entity" (collectively, "Participating Entities"). The Establishing JBE and the Participating Entities are collectively referred to as "JBEs" and individually as "JBE").
2. This Agreement is effective as of **June 1, 2017** ("Effective Date") and expires on **June 30, 2020** ("Expiration Date"). This Agreement includes three (3) one-year options to extend through **June 30, 2023**.
3. The title of this Agreement: **Leveraged Procurement Agreement for Statewide Audiovisual Systems and Maintenance Services**

   The title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.
4. The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties' entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.
   Appendix A – Materials and Services
   Attachment 1 to Appendix A – Descriptions and Prices of Materials, Services, and Deliverables
   Attachment 2 to Appendix A – Acceptance and Sign-off Form
   Appendix B – Payment Provisions
   Appendix C – General Provisions
   Appendix D – Defined Terms
   Appendix E – Participating Addendum
   Appendix F – Sample Services Request Form
   Appendix G – Sample Work Order Form
   Appendix H – Unruh Civil Rights Act and FEHA Certification

ESTABLISHING JBE'S SIGNATURE	**VENDOR'S SIGNATURE**
Judicial Council of California	**Shen Milson & Wilke LLC**
BY *(Authorized Signature)* ✍	BY *(Authorized Signature)* ✍ Principal
PRINTED NAME AND TITLE OF PERSON SIGNING Christine Powlan Contracts Facilities, Supervisor	PRINTED NAME AND TITLE OF PERSON SIGNING Tonero, Jeff Director
DATE EXECUTED 11/17/18	DATE EXECUTED 12/8/17
ADDRESS **Branch Accounting and Procurement** **455 Golden Gate Avenue** **San Francisco, CA 94102-3688**	ADDRESS **351 California Street, Suite 810** **San Francisco, CA 94104**

APPENDIX A

Materials and Services

1. Background, Purpose, and Ordering.

1.1 This Agreement sets forth the terms and conditions that apply to Vendor's provision of Work to the JBEs. "Work" shall mean the Materials, Services, and Deliverables as further described in Sections 2 and 3 below. This Agreement does not obligate a JBE to place any orders for Work under this Agreement, and does not guarantee Vendor a specific volume of orders.

1.2 Each JBE shall have the right to place orders under this Agreement for any of the Work. A JBE may place orders for Work by entering into a Participating Addendum with Vendor in the form attached as Appendix E to this Agreement ("Participating Addendum"). Pricing for Work shall be in accordance with the prices set forth in this Agreement. After a Participating Addendum has been presented to the Vendor by a JBE, the Vendor shall acknowledge, sign, and perform under the Participating Addendum in a timely manner. Vendor shall provide the Work for each JBE in accordance with the terms of this Agreement and the applicable Participating Addendum.

1.3 Each Participating Addendum constitutes and shall be construed as a separate, independent contract between Vendor and the JBE signing such Participating Addendum, subject to the following: (i) each Participating Addendum shall be governed by this Agreement, and the terms in this Agreement are hereby incorporated into each Participating Addendum; (ii) the Participating Addendum may not alter or conflict with the terms of this Agreement, or exceed the scope of the Work provided for in this Agreement; and (iii) the term of the Participating Addendum may not extend beyond the expiration date of the Agreement. The Participating Addendum and this Agreement shall take precedence over any terms and conditions included on Vendor's invoice or similar document. Vendor shall notify the Establishing JBE within five (5) business days of receipt of a Participating Addendum from a Participating Entity. The Vendor shall promptly provide the Establishing JBE with a fully-signed copy of each Participating Addendum between the Vendor and a Participating Entity.

1.4 Under a Participating Addendum, the JBE may at its option place orders for the Materials using a purchase order or work order, subject to the following: such purchase order or work order is subject to and governed by the terms of the Leveraged Procurement Agreement and the Participating Addendum, and any term in the purchase order that conflicts with or alters any term of the Leveraged Procurement Agreement (or the Participating Addendum) or exceeds the scope of the Work provided for in this Agreement, will not be deemed part of the contract between Vendor and JBE. Subject to the foregoing, the Participating Addendum shall be deemed to include such purchase orders or work orders.

1.5 The JBE signing the Participating Addendum shall be solely responsible for: (i) the acceptance of and payment for the Work under such Participating Addendum; and (ii) its

obligations and any breach of its obligations. Any breach of obligations by a JBE shall not be deemed a breach by any other JBE. Under no circumstances shall a JBE have any liability or obligation except pursuant to a Participating Addendum signed by such JBE, nor shall any breach by a JBE under a Participating Addendum give rise to a breach under any other Participating Addendum or be deemed grounds for termination of this Agreement by Vendor. The Establishing JBE shall have no liability or responsibility of any type related to: (i) any other JBE's use of or procurement through this Agreement (including any Participating Addendum), or (ii) such JBE's business relationship with Vendor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.

1.6 This Agreement is a nonexclusive agreement. Each JBE reserves the right to provide, or have others provide the Work. Vendor shall reasonably cooperate with any third parties retained by a JBE to provide the Work.

2. Materials

2.1 Description of Materials. As ordered by each JBE under a Participating Addendum, Vendor shall provide to the JBEs the following products, Materials, and supplies ("Materials") free and clear of all liens, claims, and encumbrances, and in accordance with this Agreement: See Attachment 1 to Appendix A.

2.2 Risk of Loss; Title. Vendor will deliver the Materials "Free on Board Destination Freight Prepaid", to the JBEs at the address specified in the applicable Participating Addendum. Title to the Materials vests in the applicable JBE upon such JBE's receipt of the Materials.

2.3 Inspection and acceptance criteria. All Materials provided by Vendor are subject to testing and inspection by the applicable JBE upon delivery. The JBE may reject any Materials that do not meet the requirements of this Agreement or industry, technical, or other market place standards. Vendor will be not be paid for any rejected Materials.

2.4 Warranties. Vendor warrants to the JBEs that the Materials will be merchantable for their intended purposes, free from all defects in materials and workmanship, in compliance with all applicable specifications and documentation, and to the extent not manufactured pursuant to detailed designs furnished by the JBE, free from defects in design. The JBE's approval of designs or specifications furnished by Vendor shall not relieve Vendor of its obligations under this warranty.

3. Services.

3.1 Description of Services. As ordered by each JBE under a Participating Addendum, Vendor shall perform the following services ("Services") for the JBEs: See Attachment 1 to Appendix A.

3.2 Description of Deliverables. As ordered by each JBE under a Participating Addendum, Vendor shall deliver to the JBEs the following work products ("Deliverables"): See Attachment 1 to Appendix A.

3.3 Acceptance Criteria. The Services and Deliverables must meet the following acceptance criteria or the JBE may reject the applicable Services or Deliverables. The JBE may use Attachment 2 ("Acceptance and Signoff Form") to notify Vendor of the acceptance or rejection

of the Services and Deliverables. Vendor will not be paid for any rejected Services or Deliverables.

3.4 Timeline. Vendor must perform the Services and deliver the Deliverables according to the timeline agreed between the applicable JBE and Vendor.

3.5 Project Managers. Each JBE may designate a project manager. The Establishing JBE's project manager is **Paul R. Menard, AIA,** Manager, Quality Compliance. A JBE may change its project manager at any time upon notice to Vendor without need for an amendment to this Agreement. Vendor's project manager is **Stephen Shea, Director**. Subject to written approval by the Establishing JBE, Vendor may change its project manager without need for an amendment to this Agreement.

3.6 Service Warranties. Vendor warrants to the JBEs that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and (ii) Vendor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Vendor warrants that each Deliverable and the Services will conform to the requirements of this Agreement and all applicable specifications and documentation. The foregoing warranty shall commence upon the JBE's acceptance of such Deliverable or Service, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable or Service does not to conform to the foregoing warranty, Vendor shall promptly correct all nonconformities to the satisfaction of the JBE.

3.7 Resources. Vendor is responsible for providing any and all facilities, materials and resources (including personnel, equipment, tools and software) necessary and appropriate for performance of the Services and to meet Vendor's obligations under this Agreement.

3.8 Commencement of Performance. This Agreement is of no force and effect until signed by both parties and all Establishing JBE-required approvals are secured. Any commencement of performance prior to Agreement approval (and approval by a JBE of a Participating Addendum) shall be at Vendor's own risk.

3.9 Stop Work Orders; Changes in Work.

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

B. If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Vendor shall resume the performance of the

Work. The JBE shall make an equitable adjustment in the delivery schedule and the Participating Addendum shall be modified, in writing, accordingly, if:

i. The Stop Work Order results in an increase in the time required for performance of any part of the Participating Addendum; and

ii. Vendor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage.

C. The JBEs shall not be liable to Vendor for loss of profits because of a Stop Work Order issued under this provision.

D. The JBEs reserve the right to require Vendor to make changes in the requested Work, including changes to an individual purchase order or work, increases or decreases to payment, which may include additions, deletions, or modifications to the Work, or changes in the timing or level of effort for the Work.

4. **Acceptance or Rejection.** All Materials, Services, and Deliverables are subject to acceptance by each JBE. The JBE may reject any Materials, Services or Deliverables that (i) fail to meet applicable requirements or specifications, including acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the JBE). If the JBE rejects any Good, Service, or Deliverable (other than for late performance or delivery), Vendor shall modify such rejected Good, Service, or Deliverable at no expense to the JBE to correct the relevant deficiencies and shall redeliver such Good, Service, or Deliverable to the JBE within ten (10) business days after the JBE's rejection, unless otherwise agreed in writing by the JBE. Thereafter, the parties shall repeat the process set forth in this section until the JBE accepts such corrected Good, Service, or Deliverable. The JBE may terminate the portion of the Participating Addendum that relates to a rejected Good, Service, or Deliverable at no expense to the JBE, if the JBE rejects that Good, Service, or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

5. **Ordering Options.** At the JBE's option, prior to executing a purchase order or work order, a JBE may issue a work authorization form to Vendor in order to request detailed project scope and pricing information from Vendor. Each individual JBE may use its own work authorization form. See Appendix F for a sample "Service Request Form" See Appendix G for a sample "Work Order Form."

ATTACHMENT 1 TO APPENDIX A
Hourly Rates

This Attachment 1 contains the hourly rates provided by the Vendor and agreed upon by the JBE. The Vendor agrees that all future proposals for any JBE project that utilizes this agreement must reflect these rates. The JBE reserves the right to reject any proposal for work the Vendor bids, for any reason, regardless of adhesion to the rates listed below.

Position Titles	Hourly Rates
Partner	$300.00
Principal	$265.00
Associate Principal	$225.00
Sr. Associate Consultant	$185.00
Associate	$156.00
Consultant	$110.00
CAD Designer	$92.00
Staff	$82.00

Attachment 2 to Appendix A
ACCEPTANCE AND SIGNOFF FORM

Description of Services or Deliverables provided by Vendor:

_____

Date submitted to the JBE:_____

The Services or Deliverables are:

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

_____

_____

_____

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

_____

_____

_____

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

_____

_____

_____

Please note level of satisfaction:

[ ] Poor [ ] Fair [ ] Good [ ] Very Good [ ] Excellent

Comments, if any:

_____

_____

[ ] The Services or Deliverables listed above are accepted.

[ ] The Services or Deliverables listed above are rejected.

Name:_____

Title:_____

Name of JBE:_____

Date:_____

END OF ATTACHMENT

APPENDIX B

Payment Provisions

1. **General.** Subject to the terms of this Agreement, Vendor shall invoice the JBE, and the JBE shall compensate Vendor, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Vendor for its performance under this Agreement. Vendor shall bear, and the JBE shall have no obligation to pay or reimburse Vendor for, any and all other fees, costs, profits, taxes or expenses of any nature that Vendor incurs. Vendor may not raise the amounts specified in this Appendix during the Term of this Agreement without the written approval of the Establishing JBE, which approval may be withheld for any reason.
2. **Compensation for Materials.** Vendor will only invoice for Materials that the JBE has accepted within executed Work Orders associated with this agreement.
3. **Compensation for Services or Deliverables.**
   - 3.1 **Amount.** Vendor will invoice for Services or Deliverables that the JBE has accepted within executed Work Orders associated with this agreement. Rates for Services provided are defined within Attachment 1 to Appendix A.
   - 3.2 **Withholding.** When making a payment tied to the acceptance of Deliverables, the JBE shall have the right to withhold ten percent (10%) of each such payment until the JBE accepts the final Deliverable.
   - 3.3 **No Advance Payment.** The JBEs will not make any advance payments for Services or Deliverables.
4. **Invoicing and Payment**
   - 4.1 **Invoicing.** Vendor shall submit invoices to the JBE in arrears no more frequently than monthly. Vendor's invoices must include information and supporting documentation acceptable to the JBE. Vendor shall adhere to reasonable billing guidelines issued by the JBE from time to time.
   - 4.2 **Payment.** The JBE will pay each correct, itemized invoice received from Vendor after acceptance of the applicable Materials, Services, or Deliverables, in accordance with the terms of this Agreement and the applicable Participating Addendum. Notwithstanding any provision to the contrary, payments to Vendor are contingent upon the timely and satisfactory performance of Vendor's obligations.
   - 4.3 **No Implied Acceptance.** Payment does not imply acceptance of Vendor's invoice, Materials, Services, or Deliverables. Vendor shall immediately refund any payment made in error. The JBE shall have the right at any time to set off any amount owing from Vendor to the JBE against any amount payable by the JBE to Vendor under this Agreement.
5. **Taxes.** Unless otherwise required by law, the JBE is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Vendor or on any taxes levied on employee wages. The JBE shall only pay for any state or local sales, service, use,

or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the JBE pursuant to this Agreement.

6. **Amendments.** Requests for Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. In the event of an act of Force Majeure, the Judicial Council may in its sole discretion encumber additional funds under this Agreement, although the performance period of the Agreement may be amended due to an act of Force Majeure. After a review of the request, a written decision shall be provided to Vendor:

    6.1 A change in the Work due to:

        6.1.1 Additional scope of Work;

        6.1.2 Changes mandated by agencies having authority over the Project;

        6.1.3 Unforeseen Site Conditions;

7. **Travel Guidelines by County.** For overnight travel, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) California Department of Human Resources guidelines, the Judicial Council will reimburse lodging expenses incurred while traveling, at Vendor's actual cost. Lodging costs may not exceed $250 (per day per person), plus tax and energy surcharge in San Francisco county; $125 (per day per person), plus tax and energy surcharge in Monterey and San Diego counties; $120 (per day per person), plus tax and energy surcharge in Los Angeles, Orange and Ventura counties; $140 (per day per person), plus tax and energy surcharge in Alameda, San Mateo, and Santa Clara counties; or $110 (per day per person), plus tax and energy surcharge in all other California counties. Meals shall be reimbursed at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~$8.00; lunch~$12.00; dinner~$20.00; and/or incidentals~$6.00.

APPENDIX C

General Provisions

1. **Provisions Applicable to Services**

   1.1 **Qualifications.** Vendor shall assign to this Agreement only persons who have sufficient training, education, and experience to successfully perform Vendor's duties. If a JBE is dissatisfied with any of Vendor's personnel, for any or no reason, Vendor shall replace them with qualified personnel with respect to such JBE. In addition to the foregoing, each purchase order or work order placed by a JBE pursuant to this Agreement may designate key personnel agreed upon by the parties and such key personnel shall be required to perform the Work under such order.

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

   1.3 **Background Checks.** Vendor shall cooperate with the JBE if the JBE wishes to perform any background checks on Vendor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the JBE may require. Vendor shall not assign personnel who refuse to undergo a background check. Vendor shall provide prompt notice to the JBE of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the JBE and performed by Vendor. Vendor shall ensure that the following persons are not assigned to perform services for the JBE: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Vendor or that, after disclosure to the JBE, the JBE advises are unacceptable to the JBE.

2. **Vendor Certification Clauses.** Vendor certifies to the JBEs that the following representations and warranties, which shall apply to this Agreement and any Participating Addendum, are true. Vendor shall cause its representations and warranties to remain true during the Term. Vendor shall promptly notify the JBEs if any representation and warranty becomes untrue. Vendor represents and warrants as follows:

   2.1 **Authority.** Vendor has authority to enter into and perform its obligations under this Agreement and any Participating Addendum, and Vendor's signatory has authority to bind Vendor to this Agreement and any Participating Addendum.

   2.2 **Not an Expatriate Corporation.** Vendor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBEs.

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

2.4 No Conflict of Interest. Vendor has no interest that would constitute a conflict of interest under PCC sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.

2.5 No Interference with Other Contracts. To the best of Vendor's knowledge, this Agreement and any Participating Addendum does not create a material conflict of interest or default under any of Vendor's other contracts.

2.6 No Litigation. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Vendor's ability to perform its obligations.

2.7 Compliance with Laws Generally. Vendor complies with all laws, rules, and regulations applicable to Vendor's business and its obligations under this Agreement and any Participating Addendum.

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

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

2.10 Noninfringement. The Materials, Services, Deliverables, and Vendor's performance under this Agreement (and any Participating Addendum) do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.

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

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

2.13 California Labor Code. Vendor certifies that it is aware of the provisions of the California Labor Code, without limitation, section 1720, et seq., section 1770, et seq., and section 1771.1 that require the payment of prevailing wage rates to certain classes

of trade labor, the registration of Vendors, subcontractors and sub-subcontractors, and other requirements. The Vendor agrees to fully comply with and to require its subcontractors to fully comply with all applicable prevailing wage requirements of the California Labor Code.

Vendor also acknowledges that, for purposes of Labor Code section 1725.5, some of its Services may be a public work to which Labor Code section 1771 applies. That portion of the Services is therefore subject to compliance monitoring and enforcement by the Department of Industrial Relations. Vendor and its subcontractors must comply with Labor Code section 1725.5, including without limitation the registration requirements.

A. If it becomes necessary to employ a craft, classification or type of worker other than those listed on-line at:

B. http://www.dir.ca.gov/oprl/DPreWageDetermination.htm, the Vendor shall contact the Division of Labor Statistics and Research to find the appropriate prevailing wage determination. If the Division of Labor Statistics and Research is unable to identify a determination that is applicable, the Vendor shall notify the Court immediately, and the Court will request a special determination from the Division of Labor Statistics and Research. The rate thus determined shall be applicable from the commencement of the project.

C. The Vendor and each subcontractor shall keep an accurate payroll record showing the names, addresses, social security numbers, work classifications, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Vendor and/or subcontractor in connection with the work. Payroll records shall be certified and shall be on forms provided by the Division of Labor Standards Enforcement, or shall contain the same information as those forms. Upon written request by the JBE, the Vendor's and subcontractor's certified payroll records shall be furnished within ten (10) days. The Vendor's and subcontractor's certified payroll records shall be available for inspection at the principal office of the Vendor.

(1) Vendor shall pay travel and subsistence payments to persons required to execute the work as travel and subsistence payments are defined in applicable collective bargaining agreements filed with the Department of Industrial Relations, pursuant to Labor Code, Sections 1773.1 and 1773.9.

(2) Vendor acknowledges and agrees that, if this Agreement involves a dollar amount or a number of working days greater than those specified in Labor Code section 1777.5, then this Agreement is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of Vendor to ensure compliance with Labor Code section 1777.5 for all apprenticeship occupations.

3. Insurance

3.1 Basic Coverage. Vendor shall provide to each JBE and maintain at the Vendor's expense the following insurance during the Term:

A. *Commercial General Liability.* The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability "occurrence" form, with coverage for liabilities arising out of premises, operations, independent Vendors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least $1,000,000 per occurrence and annual aggregate.

B. *Workers Compensation and Employer's Liability.* The policy is required only if Vendor has employees. The policy must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of $1,000,000 per accident or disease.

C. *Automobile Liability.* This policy is required only if Vendor uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Vendor's performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least $1,000,000 per occurrence.

D. *Professional Liability.* This policy is required only if Vendor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Vendor's performance of Services under this Agreement, at minimum limits of $1,000,000 per occurrence and annual aggregate. If the policy is written on a "claims made" form, Vendor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any such "claims made" policy must be no later than the date that activities commence pursuant to this Agreement.

3.2 Umbrella Policies. Vendor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.

3.3 Aggregate Limits of Liability. The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

3.4 Deductibles and Self-Insured Retentions. Vendor shall declare to each JBE all deductibles and self-insured retentions that exceed $100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed $100,000 per occurrence are subject to each JBE's approval. Deductibles and self-insured retentions do not limit Vendor's liability.

3.5 **Additional Insured Endorsements.** Vendor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the Establishing JBE, the State of California, the Participating Entities, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees).

3.6 **Certificates of Insurance.** Before Vendor begins performing Services, Vendor shall give the Establishing JBE (and on request, any Participating Entity) certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without thirty (30) days' prior written notice to the Establishing JBE and any Participating Entity.

3.7 **Qualifying Insurers.** For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A - or better that is approved to do business in the State of California.

3.8 **Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the Establishing JBE, any Participating Entity, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.

3.9 **Partnerships.** If Vendor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.

3.10 **Consequence of Lapse.** If required insurance lapses during the Term, the JBEs are not required to process invoices after such lapse until Vendor provides evidence of reinstatement that is effective as of the lapse date.

4. **Indemnity.** Vendor will defend (with counsel satisfactory to the JBE or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with: (i) a latent or patent defect in any Materials; (ii) an act or omission of Vendor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement; (iii) a breach of a representation, warranty, or other provision of this Agreement or any Participating Addendum; and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement or any Participating Addendum, and acceptance of any Materials, Services, or Deliverables. Vendor shall not make any admission of liability

or other statement on behalf of an indemnified party or enter into any settlement or other agreement that would bind an indemnified party, without the affected JBE's prior written consent, which consent shall not be unreasonably withheld; and such JBE shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Vendor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

5. **Option Term.** Unless Section 2 of the Coversheet indicates that an Option Term is not applicable, the Establishing JBE may, at its sole option, extend this Agreement for up to three (3) one-year extensions (each an "Option Term"), at the end of which Option Term this Agreement shall expire. In order to exercise an Option Term, the Establishing JBE must send Notice to Vendor at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Vendor's signature.

6. **Tax Delinquency.** Vendor must provide notice to the JBEs immediately if Vendor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Establishing JBE may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below (and each JBE may terminate its Participating Addendum immediately "for cause" pursuant to Section 7.2 below) if (i) Vendor fails to provide the notice required above, or (ii) Vendor is included on either list mentioned above.

7. **Termination**

   7.1 **Termination for Convenience.** The Establishing JBE may terminate, in whole or in part, this Agreement (and a JBE may terminate, in whole or in part, a Participating Addendum) for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Establishing JBE (and regarding a Participating Addendum, except as otherwise directed by the JBE), Vendor shall immediately: (a) stop Services (or development of Deliverables) as specified in the Notice; and (b) stop the delivery or manufacture of Materials as specified in the Notice.

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

   7.3 **Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.

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

7.5 Rights and Remedies.

A. *Nonexclusive Remedies.* All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Vendor shall notify the Establishing JBE and the affected Participating Entities immediately if Vendor is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement (or a Participating Addendum). If Vendor is in default: (i) a JBE may withhold all or any portion of a payment otherwise due to Vendor, and exercise any other rights of setoff as may be provided in this Agreement; (ii) a JBE may require Vendor to enter into nonbinding mediation; (iii) the Establishing JBE may exercise, following Notice, the Establishing JBE's right of early termination of this Agreement (and a JBE may exercise its right of early termination of a Participating Addendum) as provided herein; and (iv) a JBE may seek any other remedy available at law or in equity.

B. *Replacement.* If the Establishing JBE terminates this Agreement (or if a JBE terminates a Participating Addendum) in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate, Materials or services equivalent to those terminated, and Vendor shall be liable to the JBE for any excess costs for those Materials or services. Notwithstanding any other provision, in no event shall the excess cost to the JBEs for such Materials and services be excluded as indirect, incidental, special, exemplary, punitive or consequential damages of the JBEs. Vendor shall continue any Work not terminated.

C. *Delivery of Materials.* In the event of any expiration or termination of this Agreement (or a Participating Addendum), Vendor shall promptly provide the applicable JBE or JBEs with all originals and copies of the Deliverables for such JBE, including any partially-completed Deliverables-related work product or materials, and any JBE-provided materials in its possession, custody, or control. In the event of any termination of this Agreement or Participating Addendum, the JBEs shall not be liable to Vendor for compensation or damages incurred as a result of such termination.

D. *Participating Addenda.* The termination of this Agreement shall not result in the termination of any outstanding Participating Addendum that has not been terminated by a JBE, and this Agreement shall continue to apply to any such Participating Addendum until such time as all Work under such Participating Addendum has been completed by its terms or is terminated as provided in this Section 7; provided, however, that the term of such Participating Addendum may not exceed the expiration date of this Agreement. Issuance and acknowledgement of any Participating Addendum (as evidenced by the JBE's and Vendor's signature on the Participating Addendum) must be completed before the termination or expiration of this Agreement.

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

8. **Assignment and Subcontracting.** Vendor may not assign or subcontract its rights or duties under this Agreement (including any Participating Addendum), in whole or in part, whether by operation of law or otherwise, without the prior written consent of the Establishing JBE. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

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

If to Vendor:	**If to the Judicial Council of California :**
Name: Jeff Tonero Title: Director San Francisco Office Vendor Name: Shen Milson & Wilke LLC Address: 351 California St. Ste 810, San Francisco, CA 94104 Direct: 415-391-7610 Email: jtonero@smwllc.com	Name: Stephen Saddler Title: Contracts Manager Address: 455 Golden Gate Avenue San Francisco, CA 94102-3668

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

10. **Provisions Applicable to Certain Agreements.** The provisions in this section are applicable to this Agreement and to any Participating Addendum, provided, however that if this Agreement or a Participating Addendum is not of the type described in the first sentence of a subsection, then that subsection does not apply to this Agreement or such Participating Addendum.

10.1 Union Activities Restrictions. *If the Contract Amount is over $50,000, this section is applicable.* Vendor agrees that no JBE funds received under this Agreement or any Participating Addendum will be used to assist, promote or deter union organizing during the Term. If Vendor incurs costs, or makes expenditures to assist, promote or deter union organizing, Vendor will maintain records sufficient to show that no JBE funds were used for those expenditures. Vendor will provide those records to the Attorney General upon request.

10.2 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination. *If the Contract Amount is $100,000 or more, this section is applicable.* Vendor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.

10.3 Child Support Compliance Act. *If the Contract Amount is $100,000 or more, this section is applicable.* Vendor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Vendor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

10.4 Priority Hiring. *If the Contract Amount is over $200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Vendor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.

10.5 Iran Contracting Act. *If the Contract Amount is $1,000,000 or more and Vendor did not provide to the Establishing JBE an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Vendor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending $20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide Materials or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Establishing JBE to enter into this Agreement (and written permission from each JBE to enter into the applicable Participating Addendum) pursuant to PCC 2203(c).

10.6 Loss Leader Prohibition. *If this Agreement (including any Participating Addendum) involves the purchase of Materials, this section is applicable.* Vendor shall not sell or use any article or product as a "loss leader" as defined in section 17030 of the Business and Professions Code.

10.7 Recycling. *If this Agreement (including any Participating Addendum) provides for the purchase or use of Materials specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those Materials. Without limiting the foregoing, if this Agreement (including any Participating Addendum) includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable.* Vendor shall use recycled products in the performance of this Agreement (including any Participating Addendum) to the maximum extent doing so is economically feasible. Upon request, Vendor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the PCC 12200, in such Materials regardless of whether the Materials meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

10.8 Sweatshop Labor. *If this Agreement (including any Participating Addendum) provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable.* Vendor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBEs under this Agreement (or any Participating Addendum) have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Vendor adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and PCC 6108. Vendor agrees to cooperate fully in providing reasonable access to Vendor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Vendor's compliance with the requirements under this section and shall provide the same rights of access to the JBEs.

10.9 Federal Funding Requirements. *If this Agreement (or a Participating Addendum) is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement (or a Participating Addendum) may have been written for the mutual benefit of both parties (or Participating Entities) before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement (or a Participating Addendum) were executed after that determination was made. This Agreement (or a Participating Addendum) is valid and enforceable only if sufficient funds are made available to the Establishing JBE (or the applicable Participating Entity) by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement (or a Participating Addendum) is subject to any additional restrictions, limitations, or conditions enacted by the Congress

or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement (or a Participating Addendum) in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement (or a Participating Addendum) is intended to be paid, this Agreement (or Participating Addendum) shall be deemed amended without any further action of the parties to reflect any reduction in funds. The Establishing JBE may invalidate this Agreement (and a JBE may invalidate a Participating Addendum) under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement (or Participating Addendum) to reflect any reduction in funds.

10.10 DVBE Commitment. This section is applicable if Vendor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement. Vendor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Vendor used DVBE subcontractor(s) in connection with this Agreement (or a Participating Addendum): (i) Vendor must use the DVBE subcontractors identified in its bid or proposal, unless the Establishing JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Vendor must, within sixty (60) days of receiving final payment under each Participating Addendum, certify in a report to the applicable JBE: (1) the total amount of money Vendor received under the Participating Addendum; (2) the name and address of each DVBE subcontractor to which Vendor subcontracted work in connection with the Participating Addendum; (3) the amount each DVBE subcontractor received from Vendor in connection with the Participating Addendum; and (4) that all payments under the Participating Addendum have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

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

10.12 Legal Services. *If this Agreement is for legal services, this section is applicable.* Vendor shall: (i) adhere to legal cost and billing guidelines designated by the JBE; (ii) adhere to

litigation plans designated by the JBE, if applicable; (iii) adhere to case phasing of activities designated by the JBE, if applicable; (iv) submit and adhere to legal budgets as designated by the JBE; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the JBE; and (vi) submit to legal bill audits and law firm audits if so requested by the JBE, whether conducted by employees or designees of the JBE or by any legal cost-control provider retained by the JBE for that purpose. Vendor may be required to submit to a legal cost and utilization review as determined by the JBE. If (a) the Contract Amount is greater than $50,000, (b) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, then Vendor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in section 6213 of the Business and Professions Code, during each year of the Agreement equal to the lesser of either (A) thirty (30) multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any period of less than a full year or (B) the number of hours equal to ten percent (10%) of the Contract Amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for nonrenewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with a Judicial Branch Entity for legal services.

10.13 Good Standing. *If Vendor is a corporation, limited liability company, or limited partnership, and this Agreement (and any Participating Addendum) is performed in whole or in part in California, this section is applicable.* Vendor is, and will remain for the Term, qualified to do business and in good standing in California.

10.14 Equipment Purchases. *If this Agreement (or any Participating Addendum) includes the purchase of equipment, this section is applicable.* The JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Vendor's invoice to the JBE, or require Vendor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the JBE at no expense to the JBE. If a theft occurs, Vendor must file a police report immediately.

10.15 Four-Digit Date Compliance. *If this Agreement (or any Participating Addendum) includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Vendor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the JBEs. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement or any Participating Addendum.

10.16 Janitorial Services or Building Maintenance Services. *If this Agreement (or any Participating Addendum) is for janitorial or building maintenance services, this section is applicable.* If this Agreement (or a Participating Addendum) requires Vendor to perform Services at a new site, Vendor shall retain for sixty (60) days all employees

currently employed at that site by any previous contractor that performed the same services at the site. Vendor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.

10.17 Small Business Preference Commitment. This section is applicable if Vendor received a small business preference in connection with this Agreement. Vendor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement (and any Participating Addendum). Vendor must within sixty (60) days of receiving final payment under this Agreement (and any Participating Addendum) report to the JBE the actual percentage of small/micro business participation that was achieved. If Vendor is a nonprofit veteran service agency ("NVSA"), Vendor must employ veterans receiving services from the NVSA for not less than seventy-five percent (75%) of the person-hours of direct labor required for the production of Materials and the provision of services performed pursuant to this Agreement (and any Participating Addendum).

11. Miscellaneous Provisions.

11.1 Independent Vendor. Vendor is an independent Vendor to the JBEs. No employer-employee, partnership, joint venture, or agency relationship exists between Vendor and the JBEs. Vendor has no authority to bind or incur any obligation on behalf of the JBEs. If any governmental entity concludes that Vendor is not an independent Vendor, the Establishing JBE may terminate this Agreement (and a JBE may terminate a Participating Addendum) immediately upon notice.

11.2 GAAP Compliance. Vendor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.

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

11.4 Licenses and Permits. Vendor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services (including Deliverables) or the delivery of the Materials. Vendor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.

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

11.6 Ownership of Deliverables. Unless otherwise agreed in this Agreement, regarding any Deliverables or any other Work or work product to be provided to a JBE, Vendor hereby assigns to such JBE all rights, title, and interest (and all intellectual property rights, including but not limited to copyrights) in and to such Deliverables, Work, and work product, any partially-completed Deliverables, and related materials. Vendor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Vendor shall not publish or reproduce any Deliverable or other work product in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JBE.

11.7 Publicity. Vendor shall not make any public announcement or press release about this Agreement (or any Participating Addendum) without the prior written approval of the Establishing JBE (and with respect to any Participating Addendum, the prior written approval of the applicable JBE).

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

11.9 Negotiated Agreement. This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.

11.10 Amendment and Waiver. Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Establishing JBE. A waiver of enforcement of any of this Agreement's terms or conditions by the Establishing JBE is effective only if expressly agreed in writing by a duly authorized officer of the Establishing JBE. Any waiver or failure by a JBE to enforce any provision of this Agreement or Participating Addendum on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.11 Follow-On Contracting. No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring Materials or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.

11.12 Severability. If any part of this Agreement is held unenforceable, all other parts remain enforceable.

11.13 Headings; Interpretation. All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.

11.14 Time of the Essence. Time is of the essence in Vendor's performance under this Agreement.

11.15 Counterparts. This Agreement may be executed in counterparts, each of which is considered an original.

11.16 Dispute Resolution. The parties will attempt, in good faith, to resolve any disputes informally. The Vendor will meet with the JBE Project Manager, or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

(a) **Escalation**:

1. If a dispute remains unresolved following written notice by either party, each party's Chief Executive Officer ("CEO") or designated representative will meet to exchange information and attempt resolution within fifteen (15) days of the effective date of such notice.

2. If the matter is not resolved as set forth in Section 11.16(a)(1), the aggrieved party will submit a second written notice which will: (i) provide detailed factual information; (ii) identify the specific provisions in the Leveraged Procurement Agreement on which any demand is based; (iii) advise if the demand involves a cost adjustment and, if so, provide the exact amount, accompanied by all supporting records; and (iv) attach a declaration that the demand is made in good faith, the supporting data are accurate and complete, and the amount requested properly

reflects the necessary adjustment. The notice will be signed by an authorized representative of the aggrieved party.

3. Each party will comply with reasonable requests for additional information. Any additional information will be provided within fifteen (15) days after receipt of a written request, unless otherwise agreed.

(b) **Confidentiality During Dispute Resolution**: All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.

(c) **Performance During Dispute Resolution**: Pending final resolution of any dispute, Vendor agrees to proceed diligently with the performance of the work, including work associated with the dispute, unless otherwise directed. Vendor's failure to diligently proceed in accordance with the JBE's instructions will be considered a material breach of this Agreement.

11.17 Protection of Utilities. Vendor shall protect from damage public and private utilities encountered during the performance of any Work under this Agreement. Prior to beginning any Work, Vendor shall give proper notification to the agencies that have utilities in place, and shall cooperate with these agencies in the protection and relocation of underground utilities, facilities and structures.

11.18 Hazardous Materials.

(a) Should Vendor's personnel, during the course of a survey at a JBE facility or during an approved installation, encounter hazardous materials (hazardous materials include asbestos, PCBs, lead, radioactive materials, explosives and other materials defined as hazardous or dangerous wastes), Vendor's installers shall not disturb such materials, but should immediately contact the JBE's Project Manager to determine an alternative installation plan that will not disturb those or other hazardous materials.

(b) If some or all of the equipment or materials being provided by Vendor are on CAL OSHA's "Hazardous Substances List," Vendor must forward a completed Materials Safety Data Sheet (MSDS) to the JBE's Project Manager.

APPENDIX D

Defined Terms

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

"Agreement" is defined on the Coversheet.

"Vendor" is defined on the Coversheet.

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

"Consulting Services" refers to the services performed under "Consulting Services Agreements," which are defined in PCC 10335.5, substantially, as contracts that: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (iv) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

"Contract Amount" means the contract amount of any Participating Addendum.

"Coversheet" refers to the first page of this Agreement.

"Deliverables" is defined in Appendix A.

"Effective Date" is defined on the Coversheet.

"Establishing JBE" is defined on the Coversheet.

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

"Materials" is defined in Appendix A.

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

"JBEs" and **"JBE"** are defined on the Coversheet.

"Judicial Branch Entity" or **"Judicial Branch Entities"** means the Establishing JBE and any other California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

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

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

"Option Term" means a period, if any, through which this Agreement may be or has been extended by the Establishing JBE.

"Participating Addendum" is defined in Appendix A.

"Participating Entities" and **"Participating Entity"** are defined on the Coversheet.

"PCC" refers to the California Public Contract Code.

"Services" is defined in Appendix A.

"Stop Work Order" is defined in Appendix B.

"Term" comprises the Initial Term and any Option Terms.

"Work" is defined in Appendix A.

APPENDIX E

Participating Addendum

(1) This Participating Addendum is made and entered into as of [Date] ("Participating Addendum Effective Date") by and between the [ENTER NAME OF COURT or JBE] ("JBE") and **Shen Milsom & Wilke, LL** ("Vendor") pursuant to the Leveraged Procurement Agreement **# 1034963** ("Leveraged Procurement Agreement") dated **June 1, 2017** between the **Judicial Council of California** ("Establishing JBE") and Vendor. Unless otherwise specifically defined in this Participating Addendum, each capitalized term used in this Participating Addendum shall have the meaning set forth in the Leveraged Procurement Agreement.

(2) This Participating Addendum constitutes and shall be construed as a separate, independent contract between Vendor and the JBE, subject to the following: (i) this Participating Addendum shall be governed by the Leveraged Procurement Agreement, and the terms in the Leveraged Procurement Agreement are hereby incorporated into this Participating Addendum; (ii) the Participating Addendum (including any purchase order documents pursuant to the Participating Addendum) may not alter or conflict with the terms of the Leveraged Procurement Agreement, or exceed the scope of the Work provided for in the Leveraged Procurement Agreement; and (iii) the term of the Participating Addendum may not extend beyond the expiration date of the Leveraged Procurement Agreement. The Participating Addendum and the Leveraged Procurement Agreement shall take precedence over any terms and conditions included on Vendor's invoice or similar document.

(3) Under this Participating Addendum, the JBE may at its option place orders for the Materials using a purchase order or work order provided by the JBE, subject to the following: such purchase order or work order is subject to and governed by the terms of the Leveraged Procurement Agreement and the Participating Addendum, and any term in the purchase order or work order that conflicts with or alters any term of the Leveraged Procurement Agreement (or the Participating Addendum) or exceeds the scope of the Work provided for in this Agreement, will not be deemed part of the contract between Vendor and JBE. Subject to the foregoing, this Participating Addendum shall be deemed to include such purchase orders.

(4) The JBE is solely responsible for the acceptance of and payment for the Work under this Participating Addendum. The JBE shall be solely responsible for its obligations and any breach of its obligations. Any breach of obligations by the JBE shall not be deemed a breach by the Establishing JBE or any other Participating Entity. The Establishing JBE shall have no liability or responsibility of any type related to: (i) the JBE's use of or procurement through the Leveraged Procurement Agreement (including this Participating Addendum), or (ii) the JBE's business relationship with Vendor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.

(5) Pricing for the Work shall be in accordance with the prices set forth in the Leveraged Procurement Agreement.

(6) The term of this Participating Addendum shall be from the Effective Date until: June 30, 2020.

(7) The JBE hereby orders, and Vendor hereby agrees to provide, the following Work:

[*The JBE will issue a separate purchase order or work order*]

(8) Any notices must be sent to the following address and recipient:

If to Vendor:	If to the JBE:
Name: Jeff Tonero Title: Director San Francisco Office Vendor Name: Shen Milson & Wilke LLC Address: 351 California St. Ste 810, San Francisco, CA 94104 Direct: 415-391-7610 Email: jtonero@smwllc.com With a copy to: _____ **Name:** Title: Vendor Name: Address: Direct: Cell Phone: Fax:	**Name:** Title: JBE: Address: Direct: Cell Phone: Fax: Email: With a copy to: **Name:** Title: JBE: Address: Direct: Cell Phone: Fax: Email:

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

(9) This Participating Addendum and the incorporated documents and provisions (including the terms of the Leveraged Procurement Agreement) constitute the entire agreement between the parties and supersede any and all prior understandings and agreements, oral or written, relating to the subject matter of this Participating Addendum.

IN WITNESS WHEREOF, JBE and Vendor have caused this Participating Addendum to be executed on the Participating Addendum Effective Date.

[JBE]

By: _____

Name:

Title:

[VENDOR]

By: _____

Name: ~~Stephen Shea~~ Jeffrey Tosco

Title: Director

12/8/17