

Attachment A

Standard Agreement Sample

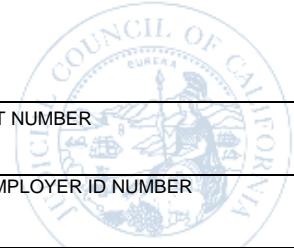
Consultant Services for the
California Trial Court Facilities
Standards, 2011 edition



ADMINISTRATIVE OFFICE
OF THE COURTS

OFFICE OF COURT CONSTRUCTION
AND MANAGEMENT

JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS
STANDARD AGREEMENT COVERSHEET



(SAMPLE DOCUMENT)

AGREEMENT NUMBER
FEDERAL EMPLOYER ID NUMBER

1. In this Agreement, the term "Contractor" refers to , and the term "AOC" refers to the Judicial Council of California, Administrative Office of the Courts.

2. This Agreement becomes effective as of (the "Effective Date") and expires on .

3. The maximum amount that the AOC may pay Contractor under this Agreement is \$.

4. The purpose of this Agreement is:

The purpose listed above is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.


5. The parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement (made up of this coversheet, the following exhibits, and any attachments) contains the parties' entire understanding related to the subject matter of this Agreement.

- Exhibit A –
- Exhibit B –
- Exhibit C –
- Exhibit D –

AOC'S SIGNATURE	CONTRACTOR'S SIGNATURE
Judicial Council of California, Administrative Office of the Courts	CONTRACTOR'S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)</i>
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i>
PRINTED NAME AND TITLE OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING
ADDRESS 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS

Sample Document

Administrative Office of the Courts Use Only

Fund Title	Program/ Category	Item	Chapter	Statute	Fiscal Year	Object of Expenditure	Amount
Amount Encumbered by this Document:			Prior Amount Encumbered for this Contract:			Total Amount Encumbered to Date:	
\$			\$			\$	
I hereby certify upon my own personal knowledge that budgeted funds are available for the period of the expenditure stated above.							
SIGNATURE OF ACCOUNTING OFFICER						DATE	
							

ATTACHMENT A
EXHIBIT A
STANDARD PROVISIONS

1. Indemnification

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) Contractor or any of its employees’ or Subcontractor’s negligent acts, omissions, or intentional misconduct;
- (b) Contractor’s breach of its obligations under this Agreement;
- (c) Contractor or any of its employees’ or Subcontractor’s violation of any applicable law, rule, or regulation; and/or
- (d) Any claim or lawsuit by any 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 Contractor’s performance under 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.

2. Relationship of Parties

Contractor and its employees and Subcontractors, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

3. Termination for Cause

The State may terminate this Agreement and be relieved of the payment of any consideration to Contractor for any Work not yet completed and accepted if Contractor fails to perform as specified in this Agreement at the time and in the manner provided. If the

Agreement is terminated, the State may proceed with the Work in any manner it deems proper. The cost to the State to perform the Work shall be deducted from any sum due Contractor under this Agreement or any other agreement, and the balance, if any, shall be paid to Contractor upon demand.

4. No Assignment

Without the written consent of the State, Contractor shall not assign this Agreement in whole or in part.

5. Time of Essence

Time is of the essence in this Agreement.

6. Validity of Alterations

Alteration or variation of the terms of this Agreement shall not be valid unless made in writing and signed by the parties, and an oral understanding or agreement that is not incorporated shall not be binding on any of the parties.

7. Consideration

The consideration to be paid to Contractor under this Agreement shall in no event exceed the Contract Amount. Contractor shall be paid in accordance with the Payment Provisions set forth in Exhibit "C" of this Agreement. The State's payments to Contractor pursuant to this section shall constitute full compensation for all of Contractor's time, materials, costs and expenses incurred in the performance of this Agreement.

END OF EXHIBIT

ATTACHMENT A

EXHIBIT B

SPECIAL PROVISIONS

1. Definitions

Terms defined below and elsewhere throughout the Contract Documents shall apply to the Agreement as defined.

- A. “**Acceptance**” means the written acceptance issued to Contractor by the State’s Project Manager after Contractor has completed a Deliverable, in compliance with this Agreement, including without limitation, D, the Statement of Work.
- B. “**Administrative Director**” refers to that individual or authorized designee, empowered by the State to make final and binding executive decisions on behalf of the State.
- C. “**Amendment**” means a written document issued by the State and signed by Contractor which alters the Agreement and which identifies the following: (1) a change in the Work; (2) an adjustment to the Agreement terms.
- D. “**Business Day**” means days of the week excluding Saturday and Sunday, as well as Contractor’s pre-established and published holidays applicable to its employees.
- E. “**Confidential Information**” means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the State’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.
- F. The “**Agreement**” constitutes the entire integrated agreement between the State and Contractor, and includes the Contract Documents incorporated by reference into a fully executed State Standard Agreement form. The term “**Contract**” may be used interchangeably with the term “**Agreement**.”
- G. “**Contract Amount**” means the total amount encumbered under this Agreement for payment by the State to Contractor for performance of all Work and reimbursement of all expenses, in accordance with the Contract Documents.
- H. The “**Contractor**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures,

contracting with the State to do the Contract Work. Contractor is one of the parties to this Agreement.

- I. **“Court(s)” or “Trial Court(s)”** means one or more of the fifty-eight (58) superior courts in the California state trial court system.
- J. **“Data”** means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.
- K. **“Day”** means calendar day.
- L. **“Deliverable(s)”** means and includes any tangible item provided or to be provided under this Agreement, including written reports. Services may be performed in pursuit of providing Deliverable(s), however, a Deliverable may not consist solely of the performance of Services.
- M. **“Deliverable Basis”** means that the Services provided shall result in the provision of a Deliverable or Deliverables.
- N. **“Expenses”** means and includes both Travel and Living Expenses and Reimbursable Expenses.
- O. **“Firm Fixed Price”** means a single fixed amount or amounts designated as payment for a Deliverable or Deliverables.
- P. **“Firm Fixed Price Basis”** means that the Contractor shall receive, as full and complete compensation for the provision of Deliverable(s), Firm Fixed Price(s), which shall constitute complete compensation for all costs, expenses, and efforts incurred by Contractor in provision of the Deliverable(s).
- Q. **“Force Majeure”** means a delay which impacts the timely performance of Work which neither Contractor nor the State are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:
- Acts of God or the public enemy;
 - Acts or omissions of any government entity;
 - Fire or other casualty for which a party is not responsible;
 - Quarantine or epidemic;
 - Strike or defensive lockout; and,
 - Unusually severe weather conditions.
- R. **“Hourly Basis”** means that Contractor shall be paid at an hourly rate for each such hour of authorized Work actually performed.

- S. “**Key Personnel**” refers to Contractor’s personnel or personnel of Subcontractors that are named in in this Agreement, whom the State has approved to perform specific Work. Qualifications of Key Personnel are provided in any resumes set forth in or attached to this Agreement. Work and roles of Key Personnel are as set forth in this Agreement.
- T. “**Material**” means all types of tangible personal property, including but not limited to reports, goods, supplies, equipment, commodities, and information and telecommunication technology.
- U. “**Notice**” means a written document as required by this Agreement and given by:

Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.
- V. “**Project**” refers to all activity executed under this Agreement, including the Work of Contractor and its Subcontractors and the responsibilities of the State and the State’s representatives.
- W. “**Reimbursable Expenses**” means specific expense(s) incurred or to be incurred by Contractor and/or its Subcontractor(s) in pursuit of performance of the Work.
- X. “**Service(s)**” means and includes action(s) that shall be performed by the Contractor’s or its Subcontractor’s employees. Services may or may not result in the provision of Deliverables.
- Y. The “**State**” refers to the Judicial Council of California / Administrative Office of the Courts (“**AOC**”).
- Z. “**Statement of Work**” means and includes a description of Services and Deliverables to be provided according to this Agreement.
- AA. “**State Standard Agreement**” means the form used by the State to enter into agreements with other parties. An originally signed, fully executed version of the State Standard Agreement form, together with the integrated Contract Documents, shall constitute the “**Agreement**”.
- BB. “**Subcontractor**” shall mean and include any individual, firm, partnership, agent, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of this Agreement. When **the State** refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, agents, suppliers, and/or materialmen.

- CC. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, that is not a party to this Agreement.
- DD. **“Time and Materials Not to Exceed Basis”** means that the Contractor shall be compensated for Work actually performed on an Hourly Basis.
- EE. **“Travel and Living Expenses”** means expenses for travel and living costs incurred or to be incurred by Contractor’s employees or Contractor’s Subcontractor’s employees in pursuit of performance of the Work, as further specified in Exhibit C.
- FF. **“Work”** means and includes the provision of Services alone and/or Services that result in the provision of Deliverables.

2. Manner of Performance of Work

Contractor shall provide, and shall act to ensure that its Subcontractors shall provide that all Work specified in these Contract Documents is performed to the State's satisfaction, in compliance with the standards specified in Exhibit D, and in compliance with the Nondiscrimination/No Harassment Clause, as set forth in this Exhibit B.

3. Standard of Professionalism

Contractor shall conduct all Work consistent with professional standards for the industry and type of work being performed under the Agreement. .

4. Services Warranties

- A. Contractor warrants and represents that its employees and its Subcontractors employees assigned to perform Services under this Agreement have the appropriate required credentials in the specified area(s) of competence required by the regulations cited in Exhibit D; or, if no credentials are cited in Exhibit D, the skills, training, and background reasonably commensurate with his or her level of performance or responsibility so as to be able to perform in a competent and professional manner in accordance with generally accepted industry standards.
- B. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, customer agencies, and any other recipients of the Services provided hereunder.
- C. Contractor warrants that the Services will be performed on time and according to the applicable schedule.
- D. Contractor warrants that the Services to be provided hereunder will conform to the requirements of the Statement of Work of this Agreement. This warranty shall begin upon the date of the State’s final payment for the Services, and shall extend for a period of 180 Days thereafter (“Warranty Period”). If the State identifies defect(s) in the Services provided during the Warranty Period, Contractor shall either re-perform the Services or otherwise remedy the defect to the satisfaction of the State. Contractor shall (unless a longer period is agreed to in writing with the State’s

Project Manager) have a period of ten (10) Business Days following receipt of Notice of the existence of a defect, in which to provide a cure. In no event shall the State be responsible for any costs incurred by Contractor to remedy any deficiencies in the Services

- E. All warranties, including any special warranties specified elsewhere herein, shall inure to the State, its successors, assigns, the Court(s), the Counties and/or any other customer agencies or other beneficiaries of the Services provided hereunder.

5. Acceptance of Deliverables

- A. The State's Project Manager shall be responsible for the sign-off acceptance of all Deliverables required and performed/submitted pursuant to this Agreement. Upon successful completion of a Deliverable, Contractor shall provide the State's Project Manager with a completed Acceptance and Signoff Form (Exhibit E). The State's Project Manager will apply the standards established in Exhibit D and the acceptance criteria set forth in subparagraph B of this article, as appropriate, to determine the acceptability of the Deliverable provided by Contractor. If the State's Project Manager rejects the Deliverable, the parties agree to any dispute(s) resulting from such rejection(s) will be resolved as set forth in this article.

- B. Acceptance Criteria for Deliverables ("**Criteria**") provided by Contractor pursuant to this Agreement include:

Timeliness: The Work was provided on time; according to schedule;

Completeness: The Deliverable contained all of the, Data, Materials, and features required by the Agreement; and

Technical accuracy: The Deliverable complied with the standards of this Agreement, or, if this Agreement lacks a standard for provision of the Work, the currently generally accepted industry standard.

- C. Contractor shall provide the Deliverable to the State, in accordance with direction from the Project Manager and as provided for in Exhibit D. The State shall accept the Deliverable, provided that Contractor has delivered the Deliverable in accordance with the Criteria. The State's Project Manager shall assign the Acceptance and Signoff Form to notify Contractor of the Deliverable's acceptability.

- D. If the State rejects the Deliverable provided, the State's Project Manager shall submit to Contractor's Project Manager a written rejection describing in detail the failure of the Deliverable as measured against the Criteria. If the State rejects the Deliverable, then Contractor shall have a period of ten (10) Business Days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.

- E. If a resolution of the dispute is not reached between the State's Project Manager and Contractor's Project Manager as to the Deliverable's acceptability, a principal of the Contractor and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment

of the Administrative Director of the AOC, or its designee, and/or the Contractor fails to cure such deficiencies that are perceived in the Deliverable to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the State may reject the Deliverable and will notify Contractor in writing of such action and the reason(s) for so doing. Upon rejection of the Deliverable, the State may terminate this Agreement applicable to said Deliverable, pursuant to the terms of Exhibit A - Standard Provisions article 3.

6. Copyrights and Rights in Data, Material, and Deliverables

All copyrights and rights in any Data, Materials, and/or Deliverables produced with funding from this Agreement that may presumptively vest in Contractor shall be transferred to the State.

7. Ownership

Any interest of Contractor or any of its Subcontractors in any Data, Materials, and/or Deliverables in any form, or other documents and/or recordings prepared by Contractor or its Subcontractors in its performance of Work under this Agreement shall become the property of the State. Upon the State's written request, or upon any termination of this Agreement Contractor shall assign and/or shall act to ensure that its Subcontractor's assign any such interest to the State and provide the State with copies of all such Data, Materials, and/or Deliverables, within thirty (30) Days of the request.

Contractor agrees and shall ensure that its Subcontractors agree not to assert any rights at common law, or in equity, or establish any claim to statutory copyright in such Data, Materials, and/or Deliverables. Contractor shall not, and shall ensure that its Subcontractors shall not publish or reproduce such Data, Materials, and/or Deliverables in whole, or part, or any manner or form, or authorize others to do so without the written consent of the State.

8. Limitation on Publication

Contractor shall not, and shall ensure that its Subcontractors shall not publish or submit for publication any article, press release, or other writing relating to Contractor's services for the State without prior review and written permission by the State.

9. Contractor's Personnel

- A. Contractor shall provide all personnel and Subcontractor personnel necessary to provide the Work authorized under this Agreement.
- B. Contractor and/or its Subcontractors shall provide certain Key Personnel, including Contractor's Project Manager(s), to perform certain Work set forth in this Agreement.
- C. Contractor's Project Manager shall:

- Serve as the primary contact with the State's Project Manager and personnel;
- Manage the day to day activities of Contractor and its Subcontractor's personnel;
- Identify the appropriate resources needed;

Plan and schedule the Work;
Meet budget and schedule commitments;
Provide Progress Reports in accordance with this Agreement; and
Act to ensure the overall quality of the Work performed.

- D. The State reserves the right to disapprove the continuing assignment of any Key Personnel provided under this Agreement, if, in the State's opinion, the performance of Key Personnel is unsatisfactory. The State agrees to provide Notice to Contractor in the event it makes such a determination. If the State exercises this right, Contractor shall immediately assign replacement Key Personnel, possessing equivalent or greater experience and skills.
- E. If any of Key Personnel assigned to a Project, through no cause or fault of Contractor, become unavailable to perform Work, Contractor shall immediately provide replacement Key Personnel, possessing equivalent or greater experience and skills as required by this.
- F. If any Key Personnel become unavailable or are disapproved and Contractor cannot furnish a replacement acceptable to the State, the State may terminate this Agreement for cause, pursuant to Exhibit A - Standard Provisions, article 3.

10. Background Checks

- A. 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.

11. Termination Other Than for Cause

- A. In addition to termination for cause under Exhibit A, Standard Provisions, article 3, the State may terminate this Agreement for convenience and without cause at any time upon providing Contractor written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, Contractor shall promptly discontinue all Work affected unless the Notice specifies otherwise.
- B. If the State terminates this Agreement other than for cause, the State shall pay Contractor for the fair value of satisfactory Work rendered before the termination.

12. State's Obligation Subject to Availability of Funds

A. The State's obligation under this Agreement is subject to the availability of authorized funds. The State may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the State, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the State may terminate this Agreement in whole or in part, upon written Notice to Contractor. Such termination shall be in addition to the State's rights to terminate for convenience or default.

B. Payment shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:

The State will be liable only for payment in accordance with the terms of this Agreement for Work provided prior to the effective date of termination; and Contractor shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.

C. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should such an appropriation not be approved, the Agreement may terminate at the close of the current appropriation year. The appropriation year ends on June 30 of each year.

13. Notice:

A. Any Notice of breach required by or with regard to this Agreement shall be in writing and shall be delivered as follows:

B. Notice to the AOC shall be directed to:

To the AOC: Project Manager
 Office of Court Construction and Management
 Judicial Council of California
 Administrative Office of the Courts
 2860 Gateway Oaks Drive, Suite 400
 Sacramento, CA 95833

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

C. Notice to Contractor shall be directed to:

TBD

14. Subcontracting

Contractor shall not subcontract the Work to be provided under this Agreement unless Contractor has identified the Subcontractor in writing in a Proposal that is acceptable to and authorized by the State. No party to this Agreement shall in any way contract on behalf of or in the name of another party to this Agreement.

15. Changes and Amendments

- A. Changes or Amendments to any component of the Contract Documents, can be made only with prior written approval from:

Mr. Grant Walker
Senior Manager, Business Services
Judicial Council of California
Administrative Office of the Courts – Business Services
455 Golden Gate Avenue
San Francisco, CA 94102

- B. Requests for said changes or Amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, 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 Contractor. Amendments to the Agreement shall be authorized via bilateral execution of a State Standard Agreement.

16. Accounting System Requirement

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

17. Retention of Records

Contractor shall maintain all financial Data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with California State and Federal law, a minimum retention period being no less than three (3) years. The retention period starts from the date of the submission of the final payment request. Contractor is also obligated to protect Data adequately against fire or other damage.

18. Audit

- A. Contractor shall permit the authorized representative of the State or its designee or both at any reasonable time to inspect or audit all Data relating to performance and

billing to the State under this Agreement. Contractor further agrees to maintain such Data for a period of three (3) years after final payment under this Agreement.

B. Such Data shall at a minimum include:

- i. Contractor shall maintain a log and a file of time sheets for all authorized hours actually worked by Contractor's employees and its Subcontractor's employees under this Agreement. The log must include, but is not limited to, the following information: (1) name and title of the employee; (2) Subcontractor providing the employee, if applicable; (3) the dates and hours worked; (4) description of the Work performed; and (5) hourly rate charged. Upon the request of the State's Project Manager, Contractor shall provide copies of the log and time sheets.
- ii. Contractor shall maintain a travel log and a file of original invoices for all authorized Travel and Living Expenses incurred by Contractor's employees and its Subcontractor's employees in performing the Work of this Agreement. The travel log must include, but is not limited to, the following information: (1) the beginning and ending dates of the trip; (2) Subcontractor providing the employee, if applicable; (3) the name and title of the personnel making the trip; (4) the beginning location of the trip and the destination; and (5) the purpose of the trip. Upon the request of the State's Project Manager, Contractor shall provide copies of the log and invoices applicable to said expenses.
- iii. Contractor shall maintain a log and a file of original invoices for all authorized Reimbursable Expenses incurred by Contractor and its Subcontractors in performing Work authorized under this Agreement. The log must include, but is not limited to, the following information: (1) the party incurring the expenditure (Contractor or name of Subcontractor); (2) date of the expenditure; (3) the purpose of the expenditure; (4) description of the goods or services purchased; and (5) the price of the expenditure. Upon the request of the State's Project Manager, Contractor shall provide copies of the log and invoices applicable to said expenses.

C. Upon the request of the State's Finance Division or the State's Project Manager, Contractor agrees to provide the logs of said Data within 5 Business Days of request.

19. Insurance and Waiver of Claims

A. General Requirements:

- i. Contractor shall maintain insurance issued by an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide. If self-insured, review of financial information may be required.
- ii. All coverage shall be in force until the end of the term of this agreement or Final Acceptance of the Work, whichever comes later. If the insurance

expires during the term of the Contract, the Contractor shall immediately provide a new current certificate or be declared in breach of Contract. The State reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the State. Renewal insurance certificates must be tendered to the State at least 10 days prior to the expiration of the previous insurance certificate. This new insurance shall be in accordance with the terms of the Contract.

- iii. Insurance policies shall contain a provision that coverage will not be cancelled without 30 days prior written notice to the State.
- iv. The Contractor shall be responsible for any deductible or self-insured retention contained within the insurance.
- v. In the event the Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
- vi. Any insurance required to be carried shall be primary.

B. Insurance Requirements. The Contractor shall furnish to the State evidence of insurance as follows:

- i. Commercial General Liability: The Contractor shall maintain commercial general liability insurance written on an occurrence form covering the Contractor, the State parties, and subcontractors with limits of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate. This is the minimum requirement. Higher limits will be required based on size and scope of job. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy shall include the AOC and the State of California, its officers, agents, employees and servants as additional named insureds, but only insofar as the operations under the Contract are concerned.
- ii. Business Automobile Liability: The Contractor shall maintain business automobile liability with limits of not less than \$1,000,000 per accident. Such insurance shall cover owned, hired, and non-owned motor vehicles.
- iii. Workers' Compensation: The Contractor shall maintain statutory workers' compensation coverage for all its employees who will be engaged in the performance of the Contract, including special coverage extensions where applicable and employer's liability with limits not less than \$1,000,000 for

each accident \$1,000,000 disease policy limit, \$1,000,000 disease – each employee.

iv. Professional Liability: Professional Liability/ Errors and Omissions insurance covering the contractor's professional duty under this agreement with limits of at least \$1,000,000 per claim and \$1,000,000 in the annual aggregate. If the policy is written on a "claims made" reporting form, the contractor shall keep such policy in force (or purchase an extended reporting period) for not less than three years from the date of completion of the Work which is subject in this Agreement. The retroactive date of any such "claims made" policy must be no greater than the date the activities commenced pursuant to this Agreement.

C. Waiver of Claims: The State, the Judicial Council of California, the Administrative Office of the Courts, the superior courts and appellate courts of the State of California, and any of their officers, employees, and agents (collectively, "State Entities") shall not be liable for any injury, loss, or damage to Contractor, Subcontractors, or their officers, employees, or agents including, without limitation, damage to the property of Contractor, Subcontractors or their officers, employees, and agents, by or from any cause whatsoever, except to the extent the injury, loss, or damage was caused from the gross negligence or intentional misconduct of the State Entities. Contractor and Subcontractors hereby waive all claims and their respective insurers waive all rights of subrogation against the State Entities for any injury, loss, or damage to Contractor, Subcontractors, or their officers, employees, or agents including, without limitation, damage to the property of Contractor, Subcontractors or their officers, employees, and agents, in or about the Facilities, by or from any cause whatsoever, except to the extent the injury, loss, or damage was caused from the gross negligence or intentional misconduct of the State Entities. Neither the State, nor any officer or employee of the State, shall be liable for any loss or damage that may happen to the Work, or any part thereof; nor to any of the materials or other items used or employed in performing the Work;

D. NO PERSONAL LIABILITY: Neither the State, nor any other officer or employee of the State will be personally responsible for liabilities arising under the Contract.

20. Confidentiality

A. Both the State and Contractor acknowledge and agree that in the course of performing the Work under this Agreement, the State may disclose Confidential Information to Contractor and/or its Subcontractors.

B. Contractor agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that Contractor may disclose the State's Confidential Information on a "need to know" basis to Contractor's employees and Subcontractors and, as directed by the Project Manager, representatives of the State that are performing Work authorized under this Agreement. All such employees

and Subcontractors of Contractor shall have executed a confidentiality agreement with Contractor requiring a promise of confidentiality concerning Contractor's clients and business.

- C. Contractor shall acquire no right or title to the Confidential Information. Contractor agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, Contractor may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.
- D. The State reserves the right to disclose all Work provided under this Agreement disclose to third parties for the purpose of validation of the Work.
- E. Contractor shall bind its Subcontractors to provisions of confidentiality with regard to the Confidential Information disclosed that are not less strict than those assumed by Contractor hereunder.

21. Permits and Licenses

The Contractor shall observe and comply, and shall ensure that its Subcontractors observe and comply with all federal, state, city, and county laws, rules, and regulations affecting Contractor and its Subcontractor(s) performance of the Work provided under this Agreement. The Contractor shall procure and keep in full force and effect, and shall ensure that its Subcontractors procure and keep in full force and effect, during the Term of this Agreement, all permits and licenses necessary to accomplish the Work contemplated in this Agreement.

22. Conflict of Interest

- A. Contractor shall ensure that its officers and employees shall not participate in proceedings that involve the use of State funds or that are sponsored by the State if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. Contractor and its officers and employees shall also avoid actions resulting in or creating the appearance of (1) use of an official position with the government for private gain; (2) preferential treatment to any particular person associated with this Agreement or the Work of this Agreement; (3) loss of independence or impartiality; (4) a decision made outside official channels; or (5) adverse effects on the confidence of the public in the integrity of the government or this Agreement. Contractor agrees that it shall bind its Subcontractors to conflict of interest provisions not less strict than those provided here.
- B. Contractor shall certify and shall require its Subcontractors to certify that:

Former State employees will not be awarded a contract for (a) two (2) years from the date of separation if that employee had any part in the decision making process relevant to this Agreement, or (b) for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as this

Agreement within the twelve (12) month period of his or her separation from State service.

23. Covenant Against Gratuities

Contractor warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Contractor or any agent, director, Subcontractor or representative of 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 warranty, the State 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 Work which Contractor agreed to supply, which shall be borne and paid for by Contractor. The rights and remedies of the State 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.

24. National Labor Relations Board

By executing this Agreement, Contractor certifies under penalty of perjury under the laws of the State of California that no more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two (2) year period because of Contractor's failure to comply with an order of the National Labor Relations Board.

25. Drug-Free Workplace

Contractor certifies that it will provide a drug-free workplace as required by California Government Code, Sections 8355 through Section 8357.

26. Nondiscrimination/No Harassment Clause

- A. During the performance of this Agreement, Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. Contractor shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- B. During the performance of this Agreement, Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor or its Subcontractors interact in the performance of this Agreement. Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.
- C. Contractor shall comply and shall ensure that its Subcontractors comply with applicable 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.

- D. 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.
- E. Contractor shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to its Subcontractors to perform Work under the Agreement.

27. Americans with Disabilities Act

By signing this Agreement, Contractor assures the State that it complies with applicable provisions of the Americans with Disabilities Act (“**ADA**”) of 1990 (42 U.S.C. Sections 012101 *et seq.*), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.

28. Choice of Law

This agreement, and all of the rights and duties of Contractor and State arising out of or related to this agreement or to the relationship of Contractor and State, are governed by the laws of the State of California without regard to its conflicts of law rules. This provision applies to all claims and causes of action that Contractor has or may acquire against State, whether based on contract, tort, statute, or anything else.

Contractor agrees that any claims that it has or may acquire against State shall be commenced in and decided exclusively by a court of competent jurisdiction located in the State of California. Contractor agrees to submit to the personal and exclusive jurisdiction of courts located in the State of California. Contractor waives all defenses and arguments that the courts located in the State of California constitute an inconvenient forum based upon the residence or domicile of Contractor, the location of the project that is the subject of the litigation or the location of witnesses, the location of documents, or anything else.

29. Severability

If any term or provision of this Agreement is found to be illegal or unenforceable, this Agreement shall remain in full force and effect and that term or provision shall be deemed stricken.

30. Waiver

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at

the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

31. Signature Authority

The parties signing this Agreement certify that they have proper authorization to do so.

32. 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.

33. Entire Agreement

This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to the terms and conditions contained herein shall be binding unless expressly agreed in writing by a written amendment to this Agreement.

END OF EXHIBIT

ATTACHMENT A
EXHIBIT C

PAYMENT PROVISIONS

.1. Contract Amount

The total amount the AOC may pay to the Contractor under this Agreement for performing the Work set forth in Exhibit D, Work to be Performed, shall be the actual cost not to exceed the Contract Amount of \$_____, as set forth in this Exhibit.

.2. Compensation

Compensation Types

Fixed Prices -Deliverables Basis

Work provided on a Deliverables Basis and Contractor is to be compensated on a Fixed Price Basis, Contractor shall be compensated solely at the actual Fixed Price(s) specified for the Deliverables.

Time and Materials Not to Exceed Basis -Deliverables Basis

Work provided on a Deliverables Basis and Contractor is to be compensated on a Time and Materials Not to Exceed Basis, Contractor shall be compensated at the Hourly Rates for Services as specified below, plus Travel and Living expenses and Reimbursable Expenses as specified below, if authorized.

Time and Materials Not to Exceed -- Non-Deliverables Basis

Work provided on a Non-Deliverables Basis and Contractor is to be compensated on a Time and Materials Not to Exceed Basis, Contractor shall be compensated for Work provided at the Hourly Rates for Services as specified below, plus authorized Travel and Living Expenses and Reimbursable Expenses as specified below, if authorized, up to but not to exceed the total Contract amount as set forth herein.

Hourly Rate Basis

When, Contractor is to be compensated on an Hourly Basis, Contractor shall be compensated only for hours actually incurred by Contractor or its Subcontractor employees in pursuit of the Work. Contractor shall be compensated at the Hourly Rates applicable to Contractor's employees as specified below, or at lower rates if so agreed.

Compensation for Travel and Living Expenses:

If authorized, Contractor shall be compensated for Travel and Living Expenses, according to the following AOC Policy for Compensation for Travel and Living Expenses:

The State shall reimburse Contractor for actual and reasonable transportation, meals, and lodging expenses actually incurred by Contractor's and its Subcontractor's employees in the course of their performance of the Work, but subject to the following:

If air transportation is authorized, the State will reimburse Contractor only at the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) Days prior to travel, unless the Project Manager agrees to a shorter period.

If overnight lodging expense is authorized, in accordance with the California Victim Compensation and Government Claims Board (formerly State Board of Control) guidelines, the State will reimburse Contractor only (i) for hotel room rental at the actual cost not to exceed \$110.00 per Day, plus occupancy tax and/or energy surcharge; and (ii) for meals, at the actual cost not to exceed the following maximum amounts per person per Day: breakfast~\$6.00; lunch~\$10.00; dinner~\$18.00; and incidentals~\$6.00.

For necessary private vehicle ground transportation usage, the State will reimburse the Contractor at the published IRS rate per mile. The State is not obligated to pay for, and Contractor shall not invoice for any hours of non-production work expended by the Contractor or its Subcontractor's employees that are spent traveling to or from the location where the Work is performed.

Travel and Living Expenses shall be billed to the at Contractor's actual cost, including any discounts or rebates accorded to Contractor or its Subcontractors, and are not subject to any markup, fee, or other charge.

Compensation for Reimbursable Expenses:

If authorized Contractor shall be compensated for Reimbursable Expenses, as follows:

The State shall reimburse Contractor for said expenses. Reimbursable Expenses shall not, exceed the total estimated amount for said expenses.

Reimbursable expenses are limited to itemized expenses otherwise not expressly excluded under this Agreement, for goods or services necessary to the performance of the Work and actually incurred by Contractor and or its Subcontractors or their respective employees in the performance of the Work.

Reimbursable Expenses shall be billed to the State at Contractor's or its Subcontractor's actual cost, including any discounts or rebates accorded to Contractor or its Subcontractors, and are not subject to any markup, fee, or other charge.

Taxes

The State is exempt from federal excise taxes and no payment will be made for any taxes levied on Contractor's or any Subcontractor's employees' wages. The State will pay for any applicable State of California or local sales or use taxes on the Deliverables provided or Services rendered pursuant to this Agreement.

.3. Invoicing Requirements

- i. Contractor shall invoice the State once monthly, summarizing all payments due in the previous calendar month.
- ii. Invoices furnished by the Contractor under this Agreement must be in the form specified above and must be submitted for approval to:

Project Manager's Name
Senior Project Manager
Office of Court Construction and Management
Judicial Council of California
Administrative Office of the Courts
2860 Gateway Oaks Drive, Suite 400
Sacramento, CA 95833

- iii. For Fixed Prices services provided on a Deliverables Basis, Contractor shall invoice on successful acceptance of a Deliverable. Contractor's invoice(s) shall clearly specify:

- The Contract number;
- A unique invoice number;
- Contractor's name and address;
- Contractor's Taxpayer identification number (FEIN);
- Description of the Deliverable
- The Fixed Price of the Deliverable
- Preferred remittance address, if different from the mailing address
- The DVBE dollars expended, if DVBE commitments were made.

iv. For Time and Materials Not to Exceed Basis Services provided on a Deliverables Basis, Contractor shall invoice on successful acceptance of a Deliverable. Contractor's invoice(s) shall clearly specify:

- The Contract number;
- A unique invoice number;
- Contractor's name and address;
- Contractor's Taxpayer identification number (FEIN);
- For each Deliverable accepted in the previous calendar month, provide separately by Deliverable:
 - Description of the accepted Deliverable Names, Titles, Hours, Rates and Dates of Performance for all of Contractor or its Subcontractor employees for hours of Work actually incurred in providing that Deliverable during the previous calendar month, including a total for all such Work.
 - If the Contractor is to be compensated for Travel and Living Expenses incurred in providing that Deliverable, the dates the expense was incurred, name of employee, and separate costs for air transportation, overnight lodging, private vehicle ground transportation (include origin, destination, and miles claimed).
 - If the Contractor is to be compensated for Reimbursable Expenses incurred in providing that Deliverable, the date the expense was incurred, description of the expense, and amount of the expense.
- A grand total for all hours, Travel and Living Expenses, and Reimbursable Expenses billed on the invoice, individually for each Deliverable and in total for the invoice, with a grand total
- Preferred remittance address, if different from the mailing address
- The DVBE dollars expended, if DVBE commitments were made.

v. For Time and Materials Not to Exceed Services not provided on a Deliverables Basis, Contractor shall invoice as follows. Contractor's invoice(s) shall clearly specify:

- The Contract number;
- A unique invoice number;
- Contractor's name and address;
- Contractor's Taxpayer identification number (FEIN);
- Names, Titles, Hours, Rates and Dates of Performance for all of Contractor or its Subcontractor employees for hours of Work actually incurred during the previous calendar month, including a total for all such Work.
- If the Contractor is to be compensated for Travel and Living Expenses, the dates the expense was incurred, name of employee, and separate costs for air transportation, overnight lodging, private vehicle ground transportation (include origin, destination, and miles claimed).
- If the Contractor is to be compensated for Reimbursable Expenses, the

date the expense was incurred, description of the expense, and amount of the expense.

- A grand total for all hours, Travel and Living Expenses, and Reimbursable Expenses billed on the invoice.
- Preferred remittance address, if different from the mailing address
- The DVBE dollars expended, if DVBE commitments were made.

.4. Payment

- i. 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.
- ii. Payment shall be made by the AOC to the Contractor at the address specified on the invoice.
- iii. 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.

.5. Disallowance

If the Contractor claims or receives payment from the AOC 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.

.6. 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 this Agreement.

.7. Release of Claims

The acceptance by the Contractor of its final payment due under this Agreement 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 invoice. Contractor's failure to identify any such claims shall operate as a release of all claims.

END OF EXHIBIT

**ATTACHMENT A
EXHIBIT D
STATEMENT OF WORK**

1. Project Description

Contractor shall, as authorized, provide the Services specified in this statement of work (“Statement of Work”, “SOW”) for Standards guiding the development of capital projects for judicial branch facilities in the State of California.

2. Schedule of Work

Contractor agrees that it shall provide the Services specified within the dates of performance.

3. Statement of Work

Contractor agrees to provide or perform, as specified in this Agreement, the following Services and tasks set forth in this section, when authorized under this Agreement, as well as any other services that are necessary, normal, customary, or incidental to the performance of Contractor’s responsibilities.

Contractor agrees to provide consultant services in 2 phases:

Phase 1 of the Project will generally include:

- a. Formation of a process for managing and evaluating the development of the new edition of the Standards.
- b. Evaluation of the current Standards, considering the experiences in using this information, industry best practices, current regulations, etc.
- c. Identify, in consultation with the OCCM, specifically which elements should be revised, retained or added.
- d. Identify the scope of consulting services necessary to create the new edition of the Standards, the implementation budget and a master schedule for the Project.
- e. Establishment of a collaboration web site to exchange and review information throughout the Project.

Phase 2 begins after Phase 1 has been approved by the AOC and will generally include:

- a. Prepare a detailed work plan, including a matrix of responsibilities for managing the development, review, approval, publishing and distribution of the Standards.
- b. Convene workshops and progress review meetings as needed. Document and maintain records of the decisions reached in such meetings.
- c. Assemble staff and resources necessary to accomplish the work; adding sub-consultants and resources as required.
- d. Regularly refine and update the project schedule.

- e. Prepare new chapters, revisions and additions to the Standards 2006 edition, including engineering and architectural diagrams, computer generated visualizations, illustrations, tables and graphics. Provide incremental drafts for review.
- f. Evaluate the appropriate format for ease of use, publication and distribution of the Standards. The format shall allow for wide, easy access by users and easy amendment as needed. Publication of the Standards in a Web based format will be evaluated in addition to the printed format
- g. Assist the AOC to obtain approval of the Standards from the Judicial Council.

Arrange for professional printing and distribution of the Standards in 3-ring binder and electronic (PDF) formats.

END OF AGREEMENT