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**Article 1. DEFINITIONS**

- 1.1. The following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
- 1.1.1. **“Agreement” or “Contract” or “Contract Documents”**: This Agreement prepared to establish the terms and conditions under which the Program Manager provides the Services to the Judicial Council, and all Exhibits thereto and Judicial Council-approved modification(s) thereto.
  - 1.1.2. **“Architect(s)”**: The architect(s) that the Judicial Council designates as being the architect(s) for all or a portion of the Capital Program, including all consultants to the architect(s). Each Design Team for each Project will include an Architect. There will be more than one Architect for the projects within the Capital Program, although referred to throughout the Agreement as if singular in number.
  - 1.1.3. **“Bid”**: As used herein, any procurement document that the Judicial Council utilizes to procure construction services from a Contractor, which may be a request for proposal, a request for qualifications, a formal bid, a solicitation or other method.
  - 1.1.4. **“Capital Program”**: As used herein, a group of related judicial branch courthouse construction, renovation, and facility modification projects, subprograms, and program activities for which the Judicial Council Capital Program office has responsibility to oversee and manage.
  - 1.1.5. **“Contractor(s)”**: The entity(ies), including its subcontractors, and their sub-subcontractors that the Judicial Council designates as being the entity that shall construct a specific construction project that is a component of the Capital Program, including all consultants to that entity. The Parties acknowledge that this entity may be contracted to the Judicial Council through varied project delivery methods including, without limitation, design-bid-build, construction manager-at-risk, or design-build. There will be more than one Contractor for the projects within the Capital Program, although referred to throughout the Agreement as if singular in number.
    - 1.1.5.1. **“Construction Manager-at-Risk” or “CMR(s)”**: If a project is procured through a construction manager-at-risk delivery method, then Contractor is read in this Agreement to be the successful CMR that contracts with the Council to construct the project.
    - 1.1.5.2. **“Design/Build”**: If a project is procured through a design-build delivery method, then Contractor is read in this Agreement to be the successful Design/Build contractor that contracts with the Council to design and construct the project.
    - 1.1.5.3. **“Design-Bid-Build”**: If a project is procured through a design-bid-build delivery method, then Contractor is read in this Agreement to be the successful bidder that contracts with the Council to construct the project.
  - 1.1.6. **“Construction Cost”**: The total cost to the Judicial Council of all elements of the construction of a particular Project that is designed or specified by the Design Team. All the Construction Costs together make up the Capital Program’s Construction Costs.

- 1.1.6.1. The Construction Cost does **not** include the compensation of the Design Team, the Program Manager, the Construction Manager, the cost of the land, rights-of-way, owner controlled insurance program, financing or other costs which are the responsibility of the Judicial Council.
- 1.1.6.2. The Construction Cost amount may be identified as the “Guaranteed Maximum Price” in a CMR’s contract or the “Total Contract Amount” in a design-bid-build Contractor’s contract.
- 1.1.6.3. There is a Construction Cost for each specific construction Project that is a component of the overall Capital Program.
- 1.1.7. **“Construction Manager(s)”**: The individual(s), partnership(s), corporation(s), association(s), joint venture(s), or any combination thereof, that has entered into a separate agreement with the Judicial Council to be a construction manager for a specific construction Project that is a component of the Capital Program, including all consultant(s) to the Construction Manager. There will be more than one Construction Manager for the Capital Program, although referred to throughout the Agreement as if singular in number.
- 1.1.8. **“Court Cost Reduction Report”**: The April 20, 2012 “Court Facilities: Recommendations on Reducing Costs of SB 1407 Projects” prepared by the Court Facilities Working Group to the Judicial Council and adopted by the Judicial Council on April 24, 2012.
- 1.1.9. **“Day(s)”**: Unless otherwise designated, “day(s)” means calendar day.
- 1.1.10. **“Design Team”**: The architect(s), engineer(s), and other designer(s) that the Judicial Council designates as designing all or a portion of the Capital Program, including a Design/ Builder, if applicable, along with all consultants to the architect(s), engineer(s) or other designer(s), who have a responsibility to the Judicial Council to design all or a portion of a Project either directly or as a subconsultant or subcontractor. There will be more than one Design Team for the Projects within the Capital Program, although referred to throughout the Agreement as if singular in number.
- 1.1.11. **“Director”**: The Director of the Judicial Council’s Judicial Branch Capital Program Office. The Director is be the point of contact for the Program Manager in its communications with the Judicial Council.
- 1.1.12. **“Extra Services”**: Judicial Council-authorized services as identified in Exhibit D and/or Judicial Council-authorized deliverables as identified in Exhibit D.
- 1.1.13. **“Fee”**: The Program Manager’s Fee is the amount as stated in the Agreement, as further defined herein, and is payable as set forth herein and in Exhibit E.
- 1.1.14. **“Judicial Council”**: The Judicial Council of California.
- 1.1.15. **“Phase(s)”**: One or more of the time frames within which the construction Projects within the Capital Program will be authorized and performed. The potential Phases of each individual construction Project are as follows: Study & Acquisition Phase; Preliminary Plans/Schematic Design Phase; Preliminary Plans/Design Development Phase, Working Drawings Phase, Construction Phase, and Project Completion/Closeout Phase.

- 1.1.16. **“Program Budget”**: The cumulative total amount indicated by the Judicial Council of the Project Budgets for all of the Projects in the Capital Program including design, construction management, construction, administration, financing, and all other costs. The Construction Cost is a component of the Program Budget. There is a Project Budget for each specific construction Project that is a component of the Capital Program.
- 1.1.17. **Program Manager**: The individual, partnership, corporation, association, joint venture, or any combination thereof, that has entered into the Agreement with the Judicial Council to perform the Services, identified as such in the Agreement, and referred to throughout the Agreement as if singular in number, including all Subconsultant(s) to the Program Manager.
- 1.1.18. **“Project”**: Each individual construction project within the Capital Program.
- 1.1.19. **“Project Budget”**: The total amount indicated by the Judicial Council for each specific Project in the Capital Program including design, construction management, construction, administration, financing, and all other costs. The Construction Cost is a component of the Project Budget. There is a Project Budget for each specific construction project that is a component of the Capital Program.
- 1.1.20. **“Project Manager”**: The Judicial Council’s project manager and authorized representative for specific construction Project(s) that are a component of the Capital Program. There will be more than one Project Manager in the Capital Program, although referred to throughout the Agreement as if singular in number.
- 1.1.21. **“Service(s)” or “Work”**: All labor, materials, supervision, services, tasks, and work that the Program Manager is required to perform and that are required by, or reasonably inferred to perform the tasks in the Agreement. **“Basic Services”** are the Services indicated in Exhibit C and **“Extra Services”** are the Services indicated in Exhibit D.
- 1.1.22. **“Site(s)”**: The location(s) of the construction Project(s) that are a component of the Capital Program.
- 1.1.23. **“Subconsultant(s)”**: Any and all consultant(s), subcontractor(s), vendors or agent(s) employed by, retained by, or under contract(s) with the Program Manager for any portion of the Work. Nothing in the foregoing shall create any contractual relationship between the Judicial Council and any Subconsultants employed by the Program Manager under terms of this Agreement.

**Article 2. SCOPE, RESPONSIBILITIES AND SERVICES OF PROGRAM MANAGER**

- 2.1. **Scope**: Program Manager shall provide the Services described herein and under Exhibits B and C for the Capital Program.
- 2.2. **Coordination**: In the performance of Program Manager’s services under this Agreement, Program Manager shall maintain direct communication with the Judicial Council’s Director as the primary point of contact with the Judicial Council.
  - 2.2.1. The Program Manager shall coordinate its work with other Judicial Council personnel and/or Judicial Council’s designated representatives as may be requested and desirable, but shall take primary direction from the Director.

2.2.2. Program Manager shall also coordinate with all members of the Design Team, and the Judicial Council's risk, safety and quality management staff. If the Program Manager employs Subconsultant(s), the Program Manager shall ensure that its contract(s) with its Subconsultant(s) include language notifying the Subconsultant(s) of the Judicial Council's insurance, safety, and labor compliance programs, if any.

2.3. **Program Manager as Judicial Council Representative:**

2.3.1. Program Manager is the Council's representative for the Capital Program and will render the Services as described in Exhibits B and C, which will commence upon the receipt of a Notice to Proceed signed by the Director.

2.3.2. Program Manager is an independent consultant and is solely responsible for obtaining any and all business and professional licenses and permits and for complying with any applicable Federal or State laws, codes and regulations, and municipal ordinances, as necessary, for the prosecution of the Services.

**Article 3. PROGRAM MANAGER STAFF**

3.1. The Program Manager has been selected to perform the work herein because of the skills and expertise of key individuals.

3.2. The Program Manager agrees that the following key personnel in Program Manager's firm shall be associated with the Capital Program:

- 3.2.1 Principal in Charge: ..... *tbd*
- 3.2.3 Program Manager: ..... *tbd*
- 3.2.4 Quality Manager: ..... *tbd*
- 3.2.4 Scheduler: ..... *tbd*
- 3.2.4 Other Job Title/Function: ..... *tbd*
- 3.2.4 Other Job Title/Function: ..... *tbd*
- 3.2.4 Other Job Title/Function: ..... *tbd*

3.3. The Program Manager shall not change any of the key personnel listed above and in Exhibit H without prior written approval by the Director, unless those individuals cease to be employed by Program Manager. In either case, the Director shall be allowed to interview and approve replacement personnel.

3.4. If any designated lead or key person, Subconsultant or Subconsultant employee fails to perform to the satisfaction of the Director, then upon written notice, the Program Manager shall immediately remove that person, Subconsultant or Subconsultant employee from the Capital Program and provide a temporary replacement. Program Manager shall within seven (7) days provide a permanent replacement person, Subconsultant or Subconsultant employee acceptable to the Director. All lead or key personnel for any Subconsultant must also be designated by the Subconsultant.

3.5. The Program Manager shall be responsible for all costs associated with replacing any of Program Manager's key personnel, including the additional costs to familiarize replacement personnel with the Work. If the Program Manager does not furnish replacement personnel acceptable to the Director, the Judicial Council may terminate this Agreement for cause.

- 3.6. Program Manager represents that the Program Manager has no existing interest and will not acquire any interest, direct or indirect, that could conflict in any manner or degree with the performance of services required under this Agreement and that no person having any conflict of interest shall be employed by Program Manager.
- 3.7. **Background Checks.** If the Program Manager assigns persons (whether employees, independent contractors, Subconsultants 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 Judicial Council or other Judicial Branch entities, the Judicial Council shall have the right, but not the obligation, to conduct a background check or to require the Program Manager to conduct a background check, as permitted by law, on that person(s) before the Judicial Council will grant to that person(s) access to the Judicial Council's or other judicial branch entities' premises or systems. The Program Manager will cooperate with the Judicial Council in performing that background check, and will promptly notify the Judicial Council of any person refusing to undergo a background check, and will reassign that person to perform other services. The Program Manager shall obtain all releases, waivers, or permissions required for the release of that information to the Judicial Council. Costs incident to background checks are the sole responsibility of the Program Manager.

**Article 4. SCHEDULE OF WORK**

- 4.1. The Program Manager shall prosecute the work diligently as described in Exhibits B and C and shall perform each of the Services for each Phase for each Project in accordance with the schedule attached as Exhibit E. Time is of the essence and failure of Program Manager to perform work on time as specified in this Agreement is a material breach of this Agreement.

**Article 5. FEE AND METHOD OF PAYMENT**

- 5.1. Judicial Council shall pay Program Manager for all Services contracted for under this Agreement, the amounts indicated in and pursuant to the provisions herein and in Exhibit E ("Fee Schedule").
- 5.2. The Program Manager's Fee set forth in this Agreement shall be full compensation for all Services performed as indicated in Exhibit E, including, without limitation, all costs for personnel, travel within two hundred (200) miles of, offices, per diem expenses, printing, providing, or shipping of deliverables.

**Article 6. PAYMENT FOR EXTRA SERVICES**

- 6.1. Extra Services are those services, deliverables, and reimbursables identified in Exhibit D. Any charges for Extra Services shall be paid by the Judicial Council as described in Exhibit D only upon certification that the claimed Extra Services were authorized in writing in advance by the Director, an amendment was executed and that the Extra Services have been satisfactorily completed.
- 6.2. A written proposal describing the scope of the Extra Services and listing the personnel, labor duration, rates, and cost shall be submitted by the Program Manager to the Director for approval followed by an executed amendment before proceeding with the performance of any Extra Services.
- 6.3. The rates for Extra Services shall not be changed for the term of the Agreement.

**Article 7. STANDARD OF CARE**

Program Manager, its officers, agents, employees, subcontractors, Subconsultants and any persons or entities for whom Program Manager is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Capital Program. The Judicial Council's review, approval of, or payment for any of the Services required under this Agreement shall not be construed as assent that Program Manager has complied, nor in any way relieve the Program Manager of compliance, with (i) the applicable standard of care or (ii) applicable statutes, regulations, rules, guidelines and requirements.

**Article 8. OWNERSHIP OF DATA**

- 8.1. Everything created, developed or produced in the course of the Program Manager's performance of the Services, including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the Program Manager for the Judicial Council and are the sole property of the Judicial Council without further employment or the payment of additional compensation to the Program Manager. The Judicial Council owns all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights"). To the extent that any of the Data or the Intellectual Property Rights therein is not works for hire, the Program Manager hereby irrevocably assigns its entire right, title and interest in and to all those Data and the Intellectual Property Rights therein, to the Judicial Council. At the Judicial Council's request, the Program Manager will assist the Judicial Council in the Judicial Council's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. Program Manager irrevocably appoints the Judicial Council as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the Judicial Council deems necessary to perfect the Judicial Council's interest and Intellectual Property Rights in the Data as set forth herein.
- 8.2. The Judicial Council shall be entitled to access copies of the Data, in whatever form, at all times during the Term of the Agreement. Any Data in the possession of the Program Manager or in the possession of any Subconsultant upon completion or termination of the Agreement shall be immediately delivered to the Judicial Council. If any Data are lost, damaged or destroyed before final delivery to the Judicial Council, the Program Manager shall replace them at its own expense and the Program Manager assumes all risks of loss, damage or destruction of or to Data.
- 8.3. In addition to providing documents throughout the term of this Agreement, after expiration of the Term and/or after termination of this Agreement, Program Manager shall deliver to Judicial Council a complete set of records, including without limitation all documents generated by Program Manager, copies of all documents exchanged with or copied to or from all other Project participants, and all closeout documents. Program records shall be indexed and appropriately organized for easy use by Judicial Council personnel. All Program records are property of the Judicial Council, whether or not those records are in the Program Manager's possession.

**Article 9. ROYALTIES AND PATENTS**

Program Manager shall pay all royalties and license fees related to this Agreement. Program Manager's indemnity obligations herein shall include any claims or suites for infringement of patent rights and hold the Judicial Council harmless.

**Article 10. JUDICIAL COUNCIL PROPRIETARY OR CONFIDENTIAL INFORMATION**

- 10.1. Program Manager understands and agrees that, in the performance of the Services under this Agreement or in contemplation thereof, the Program Manager may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, the Judicial Council and that information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Judicial Council. This confidential information may include, without limitation, information related to security systems in court buildings, security systems in detention facilities, and the design and construction of those systems.
- 10.2. Program Manager agrees that all information disclosed by the Judicial Council to the Program Manager shall be held in confidence and used only in the performance of the Agreement.
- 10.3. Program Manager shall exercise the same standard of care to protect this private or confidential information as the Program Manager uses to protect its own proprietary information and in any case no less than a reasonably prudent person or entity would use to protect its own proprietary data.
- 10.4. It is understood, however, that the Program Manager may disclose the Judicial Council's confidential information on a "need to know" basis to the Program Manager's employees, the Program Manager's Subconsultants, and the Subconsultants' employees, and as required by law. Program Manager shall execute written agreements with its Subconsultants that bind each Subconsultant and its employees to the confidentiality provisions set forth in this Agreement.
- 10.5. Program Manager shall acquire no right or title to the confidential information. Program Manager agrees not to use the confidential information for any purpose except to provide the Services. Notwithstanding the foregoing, the Program Manager may disclose the confidential information:
  - 10.5.1. To the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that the Program Manager first gives reasonable notice of its intention to disclose in order for the Judicial Council to seek a protective order; or
  - 10.5.2. To the extent necessary to enforce its rights under this Agreement.
- 10.6. Program Manager agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

**Article 11. LIMITATION ON PUBLICATION.**

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

**Article 12. CONFLICT OF INTEREST**

- 12.1. Program Manager and employees of the Program Manager shall not participate in proceedings that involve the use of Judicial Council funds or that are sponsored by the Judicial Council if the person's partner, family, or organization has a financial interest in the outcome of the

proceedings. Program Manager and employees of the Program Manager shall also avoid actions resulting in or creating the appearance of:

- 12.1.1. Use of an official position with the government for private gain;
  - 12.1.2. Preferential treatment to any particular person associated with this Agreement or the Work of this Agreement;
  - 12.1.3. Loss of independence or impartiality;
  - 12.1.4. Impropriety;
  - 12.1.5. A decision made outside official channels; or
  - 12.1.6. Adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- 12.2. **Prohibited Financial Conflict of Interest.** Program Manager and its Subconsultants presently have no interest and shall not acquire any interest which would present a conflict of interest pursuant to California Government Code sections 1090 et seq. and 87100 et seq., during the performance of Services pursuant to this Agreement. Program Manager further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the Judicial Council are now, nor in the future will they be, in any manner interested directly or indirectly in this Agreement, or in any profits expected to arise from this Agreement, as set forth in California Government Code sections 1090 et seq. and 87100 et seq.
- 12.3. **Conflict of Interest for Former Judicial Council Employees.** Program Manager certifies and shall require any Subconsultant to certify to the following: Former Judicial Council employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period after his or her employment with Judicial Council.
- 12.4. All Program Manager personnel identified as key personnel in this Agreement must complete and submit California Fair Political Practices Commission - Form 700 on a yearly basis over the duration of this Agreement.

**Article 13. TERMINATION OF AGREEMENT**

- 13.1. **Termination of Program Manager for Cause.** If Program Manager fails to perform Program Manager's duties to the satisfaction of the Judicial Council, or if Program Manager fails to fulfill in a timely and professional manner Program Manager's material obligations under this Agreement, or if Program Manager violates any of the material terms or provisions of this Agreement, the Judicial Council shall have the right to terminate this Agreement effective immediately upon the Judicial Council giving written notice thereof to the Program Manager. In the event of a termination pursuant to this subdivision, Program Manager may invoice Judicial Council for all work performed until the notice of termination, but Judicial Council shall have the right to withhold payment and deduct any amounts equal to the Judicial Council's costs because of Program Manager's actions, errors, or omissions that caused the Judicial Council to terminate the Program Manager.
- 13.2. **Termination of Program Manager for Convenience.** Judicial Council shall have the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Program Manager may invoice Judicial Council and Judicial Council shall pay all undisputed invoice(s) for work performed until the notice of termination. This shall be the only amount(s) potentially owing to Program Manager's if there is a termination for convenience.

13.3. **Termination by Judicial Council for Non-Appropriation or No Authorizations; Judicial Council's Obligation Subject to Availability of Funds.**

13.3.1. The Judicial Council's obligation under this Agreement is subject to the availability of authorized funds. The Judicial Council may terminate the Agreement or any part of the Work, without prejudice to any right or remedy of the Judicial Council, for lack of appropriation of funds and/or the Judicial Council's determination not to authorize specific Work. If expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or if the Judicial Council determines not to authorize further Work not yet authorized, the Judicial Council may terminate this Agreement in whole or in part, upon written notice to the Program Manager.

13.3.2. Payment to Program Manager shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:

13.3.2.1. The Judicial Council will be liable only for payment in accordance with the terms of this Agreement for services rendered prior to the effective date of termination; and

13.3.2.2. The Program Manager shall be released from any obligation to provide further services pursuant to the Agreement as are affected by the termination.

13.3.3. 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 an appropriation not be approved, the Judicial Council, in its sole discretion, may terminate the Agreement at the close of the current appropriation year, however, in lieu of terminating the Agreement, the Judicial Council, in its sole discretion, may choose to suspend all or any portion of the Capital Program in accordance with the Suspension of Capital Program provision below. The appropriation year ends on June 30 of each year.

13.4. **Termination of Agreement by Program Manager.** The Program Manager has the right to terminate this Agreement if the Judicial Council does not fulfill its material obligations under this Agreement and fails to cure a default of such material obligations within sixty (60) days, or if the default cannot be cured within sixty (60) days, to commence to cure a default, diligently pursue the cure, and complete the cure within a reasonable time. This sixty (60) day cure period begins to run only after the Judicial Council's receipt of a written notice and demand from Program Manager to the Judicial Council cure a default of material obligations.

13.5. Except as indicated in this Article, termination shall have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination.

13.6. **Suspension of Capital Program.** The Judicial Council may, in its sole discretion, suspend all or portions of the Capital Program by written notice. The Program Manager shall be compensated for services performed prior to notice of suspension.

13.6.1. If all or portions of the Capital Program is suspended by the Judicial Council for less than one hundred and eighty (180) consecutive days, the Program Manager will reduce or suspend its services as directed by the Judicial Council.

- 13.6.2. If all or portions of the Capital Program is suspended by the Judicial Council for more than one hundred and eighty (180) consecutive days, then when that portion of the Capital Program is resumed, the schedule shall be adjusted and the Program Manager's compensation shall be equitably adjusted to provide for expenses incurred in the resumption of the Program Manager's services.
- 13.6.3. Upon resumption of that portion of the Capital Program after suspension, the Program Manager will take all reasonable efforts to maintain the same key personnel.

**Article 14. INDEMNITY**

- 14.1. Program Manager shall indemnify, protect, and hold free and harmless the State, the Judicial Council of California, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their agents, representative, officers, consultants, employees, representatives, and volunteers (the "indemnified parties") from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, delays, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action, including personal injury and/or death ("Claim(s)"), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Program Manager, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or this Agreement. This indemnity excludes Program Manager's liability as to the active or sole negligence or willful misconduct of the Judicial Council.
- 14.2. Program Manager shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Program Manager, its directors, officials, officers, employees, contractors, subcontractors, consultants, subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services or this Agreement. Program Manager shall pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties in any Claim. Program Manager shall also reimburse Judicial Council for the cost of any settlement paid by Judicial Council arising out of any Claim. Program Manager shall reimburse the indemnified parties for any and all legal expenses and costs, including attorneys' fees, expert witness fees and consultant fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided to the extent caused by this agreement to indemnify. Program Manager's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by the indemnified parties. The Judicial Council shall have the right to accept or reject any legal representation that Program Manager proposes to defend the Indemnified Parties.

**Article 15. UNION ORGANIZING**

Program Manager, by signing the Agreement, hereby acknowledges the applicability of Government Code section 16645 through section 16649 to the Agreement. Program Manager will not assist, promote or deter union organizing by employees performing work on a Judicial Council contract, including a public works contract. No Judicial Council funds received under the Agreement will be used to assist, promote or deter union organizing. Program Manager

will not, for any business conducted under the Agreement, use any Judicial Council property to hold meetings with employees or supervisors, if the purpose of those meetings is to assist, promote or deter union organizing, unless the Judicial Council property is equally available to the general public for holding meetings. If Program Manager incurs costs, or makes expenditures to assist, promote or deter union organizing, Program Manager will maintain records sufficient to show that no reimbursement from Judicial Council funds has been sought for these costs, and that Program Manager shall provide those records to the Attorney General upon request.

**Article 16. SAFETY**

- 16.1. Program Manager shall retain full responsibility for the safety of all persons employed or contracted by Program Manager, its suppliers or Subconsultants.
- 16.2. Program Manager shall comply with the safety and security standards and provisions of all applicable local, state and federal laws and building and construction codes related to performing its Services, including the provisions of Title 8 of the California Code of Regulations, California Construction Safety Orders and all revisions, amendments and regulations thereto.
- 16.3. **Security.** Program Manager shall ensure that, prior to any person employed or contracted by Program Manager, Subconsultants, or suppliers enters a Project Site, that person shall only be allowed on Site in fully compliance with the "Owner's Badge, Escort and Entry Policy."

**Article 17. DRUG-FREE WORKPLACE**

By signing the Agreement, the Program Manager certifies, under penalty of perjury under the laws of the State of California, that the Program Manager will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code, Section 8350 et seq.). No drugs, alcohol and/or smoking are allowed at any time in any buildings and/or grounds on Judicial Council property. No visitor or contractor is to use drugs on these Sites. The Program Manager's indemnity obligations of the Agreement include the Program Manager's obligation to enforce and maintain a drug free workplace.

**Article 18. RESPONSIBILITIES OF THE JUDICIAL COUNCIL**

- 18.1. The Judicial Council shall provide to the Program Manager complete information regarding the Judicial Council's Capital Program.
- 18.2. The Judicial Council shall examine the documents submitted by the Program Manager and shall render decisions so as to avoid unreasonable delay in the process of the Program Manager's services.
- 18.3. The Director and the Program Manager shall be available during working hours and as often as may be required to render decisions and to furnish information in a timely manner.

**Article 19. LIABILITY OF THE JUDICIAL COUNCIL**

- 19.1. Other than as provided in this Agreement, Judicial Council's obligations under this Agreement shall be limited to the payment of the Fee provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall Judicial Council be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the services performed in connection with this Agreement.

- 19.2. Judicial Council shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Program Manager, or by its employees, even if the equipment was furnished or loaned to Program Manager by Judicial Council.
- 19.3. The Program Manager hereby waives any and all claim(s) for recovery from the Judicial Council under this Agreement, which loss or damage is covered, whether paid or unpaid, by valid and collectible insurance policies or programs of self-insurance. Program Manager agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver shall extend to claims paid, or expenses incurred, by Program Manager's insurance company on behalf of the Judicial Council.
- 19.4. Neither the Judicial Council, nor any other officer or employee of the Judicial Council will be personally responsible for liabilities arising under the Agreement.

**Article 20. PROGRAM MANAGER'S INSURANCE**

- 20.1. **General Requirements.** General Requirements for Program Manager's Insurance:
  - 20.1.1. Program Manager shall maintain the required insurance for its operations with an insurance company or companies that are rated "**A-VII**" or higher by A. M. Best's key rating guide, and are authorized to do business in the State of California.
  - 20.1.2. For all insurance policies required by this Article, the Program Manager shall declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance.
  - 20.1.3. If self-insured, the Program Manager agrees to administer its self-insurance program in a commercially reasonable manner so as to ensure the availability of funds to cover losses required to be insured against by Program Manager under the terms of this Article.
  - 20.1.4. Program Manager, prior to commencement of the work under this Agreement, shall provide the Judicial Council with certificates of insurance and signed insurance policy endorsements, on forms acceptable to the Judicial Council, as evidence that the required insurance is in full force and effect. Where applicable, each certificate of insurance and signed insurance policy endorsement shall specifically provide verification that the State of California, the Judicial Council of California, and their respective elected and appointed officials, judges, officers, and employees have been added as additional insureds on the insurance policy being referenced.
  - 20.1.5. The Certificates of Insurance shall be addressed as follows:

Capital Program Risk Management  
Judicial Council of California  
455 Golden Gate Avenue  
San Francisco, CA 94012-3688
  - 20.1.6. All insurance policies required under this Article shall be in force until the end of the Term of this Agreement or longer, as required herein.
  - 20.1.7. If the insurance expires during the Term of the Agreement, the Program Manager shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsements, or it may be

declared in breach of Contract. The Judicial Council reserves the right to withhold all progress payments until the breach is cured to the satisfaction of the Judicial Council. Program Manager must provide renewal insurance certificates and signed policy endorsements to the Judicial Council at least ten (10) days following the expiration of the previous insurance certificates and signed policy endorsements.

- 20.1.8. In the event Program Manager fails to keep in effect at all times the specified insurance coverage, the Judicial Council may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of that event, subject to the provisions of this Agreement.
  - 20.1.9. The insurance required by the “Insurance Requirements” in this Article, as well as any excess liability or umbrella liability insurance that Program Manager maintains in compliance with the terms of this Article, with the exception of Professional Liability insurance, shall be endorsed to include the State of California, the Judicial Council of California, and their respective elected and appointed officials, judges, officers, and employees as additional insureds, but only with respect to liability assumed by Program Manager under the terms of this Agreement or liability arising out of the performance of the Services.
  - 20.1.10. Program Manager, and any insurer providing insurance required under the terms of this Article, shall waive any right of recovery or subrogation it may have against the State of California, the Judicial Council of California, and their respective elected and appointed officials, judges, officers, and employees for direct physical loss or damage to the Work, or for any liability arising out of the Services performed by Program Manager under this Agreement.
  - 20.1.11. All insurance policies required under this Article shall contain a provision that coverage will not be materially changed or cancelled without thirty (30) days prior written notice to the Judicial Council.
  - 20.1.12. Program Manager shall be responsible for and may not recover from the State of California, the Judicial Council of California, any deductible or self-insured retention that is connected to the insurance required under this Article.
  - 20.1.13. The insurance required under this Article shall be endorsed to be primary and non-contributing with any insurance or self-insurance maintained by the State of California, the Judicial Council of California.
  - 20.1.14. The cost of all insurance required by this Article is the sole responsibility of the Program Manager and is part of the Program Manager’s Fee.
  - 20.1.15. Program Manager shall require insurance from its Subconsultants in substantially the same terms and conditions as required of the Program Manager herein and with limits of liability that, in the opinion of the Program Manager, are sufficient to protect the interests of the Program Manager, State of California, the Judicial Council of California.
- 20.2. **Insurance Requirements.** Throughout the term of the Agreement, with the exception of Professional Liability insurance, the Program Manager shall maintain at a minimum and in full force and effect, the following insurance:
- 20.2.1. **Professional Liability.**

- 20.2.1.1. Professional Liability Insurance to include coverage for any act, error, or omission committed or alleged to have been committed in the performance of the Services. This insurance shall cover the Program Manager for two million dollars (\$2,000,000) per claim and annual aggregate limit.
- 20.2.1.2. Professional Liability Insurance is to continue through completion of construction plus three years thereafter and, if provided on a "claims made" basis, include a retroactive date of no later than the Effective Date of the Agreement.
- 20.2.2. **Commercial General Liability.** Commercial General Liability Insurance (and if required Excess Liability or Umbrella Liability insurance) for off Project Site operations written on an occurrence form with limits of not less than \$5,000,000 per occurrence and a \$5,000,000 per location annual aggregate limit of liability. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom a claim is made or lawsuit is brought subject to the insurance policy limit of liability.
- 20.2.3. **Commercial Automobile Liability.** Automobile liability insurance with limits of not less than \$1,000,000 per accident. This insurance shall cover liability arising out of the operation, use, loading or unloading of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the Work.
- 20.2.4. **Workers' Compensation.** Statutory workers' compensation insurance for all of the Program Manager's employees who are engaged in providing the Services, including special coverage extensions where applicable and employer's liability insurance with limits not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee.

**Article 21. NONDISCRIMINATION/NO HARASSMENT CLAUSE**

- 21.1. **Nondiscrimination.** During the performance of this Agreement, Program Manager and its Subconsultants 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, Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), marital status, age (over 40), sex, or sexual orientation. Program Manager shall ensure that the evaluation and treatment of employees and applicants for employment are free of discrimination.
- 21.2. **No Harassment.** During the performance of this Agreement, the Program Manager and its Subconsultants shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Program Manager or its Subconsultants interact in the performance of this Agreement. Program Manager and its Subconsultants shall take all reasonable steps to prevent harassment from occurring.
- 21.3. **FEHA.** Program Manager shall 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.

- 21.4. Program Manager shall include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.
- 21.5. Program Manager shall not enter into any subcontract with any person or firm decertified from State contracts pursuant to Government Code section 12990.

**Article 22. PROGRAM MANAGER’S USE OF COMPUTER SOFTWARE**

By execution of the Agreement, the Program Manager certifies that it has appropriate systems and controls in place to ensure that Judicial Council funds will not be used in the performance of the Agreement for the acquisition, operation, or maintenance of computer software in violation of copyright laws.

**Article 23. COVENANT AGAINST CONTINGENT FEES**

Program Manager warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the Program Manager, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Program Manager, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent on or resulting from the award or making of this Agreement. For breach or violation of this warranty, the Judicial Council shall have the right to annul this Agreement without liability, or in its discretion, to deduct from the contract price or consideration or otherwise recover, the full amount of that fee, commission, percentage fee, gift, or contingency.

**Article 24. ENTIRE AGREEMENT/MODIFICATION**

This Agreement, including the Exhibits hereto, supersedes all previous contracts and constitutes the entire understanding of the parties hereto. Program Manager shall be entitled to no other benefits than those specified herein. No changes, amendments, or alterations shall be effective unless in writing and signed by both Parties. Program Manager specifically acknowledges that in entering this Agreement, Program Manager relies solely upon the provisions contained in this Agreement and no others.

**Article 25. NON-ASSIGNMENT OF AGREEMENT**

In as much as this Agreement is intended to secure the specialized services of the Program Manager, Program Manager may not assign, transfer, delegate or subcontract any interest therein without the prior written consent of Judicial Council and any assignment, transfer, delegation or subcontract without the Judicial Council’s prior written consent shall be considered null and void. There shall also be no voluntary or involuntary assignment, either by operation of law or demand of a third party, that is binding on the Judicial Council without the Judicial Council’s prior, written consent.

**Article 26. CALIFORNIA LAW / VENUE**

- 26.1. This Agreement has been executed and delivered in the State of California and the validity, enforceability and interpretation of any of the clauses of this Agreement shall be determined and governed by the laws of the State of California. The Program Manager consents to personal jurisdiction in California.

- 26.2. Venue for all litigation relative to the formation, interpretation, and performance of this Agreement shall be in the County of San Francisco. Program Manager waives California Code of Civil Procedure section 394.

**Article 27. ALTERNATIVE DISPUTE RESOLUTION**

- 27.1. **Informal Negotiations.** The Parties shall make a good faith attempt to promptly resolve all disputes by informal negotiation.

- 27.2. **Demand.** If a dispute is not settled pursuant to informal negotiations, the Party submitting a dispute (“Submitting Party”) must make written demand (“Demand”) in the form of a Notice to the Party receiving the Demand (“Receiving Party”). The Demand must be supported by detailed factual information and supporting documentation, including the following information:

27.2.1. State the specific Agreement provisions on which the Demand is based; and

27.2.2. If the Demand regards a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand.

The Demand shall include a written statement signed by an authorized representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested accurately reflects the adjustment for which the Submitting Party thinks the Receiving Party is responsible.

- 27.3. **Response to Demand.** The Receiving Party shall within fourteen (14) days, provide a written response (“Response”) to the Submitting Party. The Response shall state whether the Receiving Party:

27.3.1. Accepts or rejects the Demand or

27.3.2. Needs any additional information in order for it to fully analyze the Demand. The Submitting Party shall promptly comply with Receiving Party’s request for additional information. Any delay caused by Submitting Party’s failure to respond to a request for additional information shall extend the period within which the Receiving Party must provide the Response. In no event, however, shall the time period for a Response be extended beyond thirty (30) days from the date the Receiving Party receives the Demand.

Failure of the Receiving Party to provide a Response within this time period shall be deemed a rejection of the Demand by the Receiving Party.

- 27.4. **Senior Level Negotiations.** If the Demand remains unresolved after the time period for a Response, the Parties shall attempt to resolve the Demand by negotiations between assigned representatives of the Parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The Parties shall make a good faith effort to resolve the Demand within a period of thirty (30) days after the time period for a Response.

- 27.5. **Mediation.** If the Demand is not resolved by negotiations of the Parties’ assigned representatives, the Parties shall make good faith attempt to promptly resolve the dispute through mediation prior to either Party initiating an action in court.

- 27.6. **Confidentiality.** To the extent permitted by applicable law, all discussions and negotiations

conducted pursuant to this Section are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code section 1152 apply. Mediation shall be confidential and shall be subject to the provisions of California Evidence Code sections 703.5 and 1115 through 1128.

- 27.7. **Continuation of Work.** Pending final resolution of any dispute hereunder, the Parties shall continue to diligently perform each Party's respective obligations set forth in this Agreement.
- 27.8. **Notices.** All written notices required under this Article must be made pursuant to the "Communications / Notice" provision of this Agreement.

**Article 28. SEVERABILITY**

If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

**Article 29. EMPLOYMENT STATUS**

- 29.1. Program Manager shall, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow Judicial Council to exercise discretion or control over the professional manner in which the Program Manager performs the services which are the subject matter of this Agreement; provided always, however, that the services to be provided by Program Manager shall be provided in a manner consistent with all applicable standards and regulations governing those services.
- 29.2. Program Manager understands and agrees that the Program Manager's personnel are not and will not be eligible for membership in or any benefits from any Judicial Council group plan for hospital, surgical or medical insurance or for membership in any Judicial Council retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a Judicial Council employee.
- 29.3. Should Judicial Council, in its discretion, or a relevant taxing authority (e.g., the Internal Revenue Service, the State Employment Development Department, etc.) determine that Program Manager is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Program Manager which can be applied against this liability). Judicial Council shall then forward those amounts to the relevant taxing authority.
- 29.4. Should a relevant taxing authority determine a liability for past services performed by Program Manager for Judicial Council, upon notification of that fact by Judicial Council, Program Manager shall promptly remit the amount due or arrange with Judicial Council to have the amount due withheld from future payments to Program Manager under this Agreement (and offsetting any amounts already paid by Program Manager which can be applied as a credit against that liability).
- 29.5. A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Program Manager shall not be considered an employee of Judicial Council. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority

determine that Program Manager is an employee for any other purpose, then Program Manager agrees to a reduction in Judicial Council's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of Judicial Council under this Agreement shall not be greater than they would have been had the court, arbitrator, or administrative authority determined that Program Manager was not an employee.

- 29.6. Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

**Article 30. WARRANTY OF PROGRAM MANAGER**

- 30.1. Program Manager warrants that the Program Manager is properly licensed and/or certified under the laws and regulations of the State of California to provide all the services that it has herein agreed to perform.
- 30.2. Program Manager certifies that it is aware of the provisions of the Labor Code of the State of California, that require every employer to be insured against liability for workers compensation or to undertake self-insurance in accordance with the provisions of that code, and it certifies that it will comply with those provisions before commencing the performance of the work of this Agreement.
- 30.3. Program Manager certifies that it is aware of the provisions of the California Labor Code including, 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 contractors, subcontractors and consultants, and other requirements. To the extent applicable to the Services that are being provided by the Program Manager under this Agreement, the Program Manager agrees to fully comply with and to require its Subconsultants to fully comply with all applicable prevailing wage requirements of the California Labor Code.

**Article 31. AUDIT**

Program Manager shall establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Program Manager transacted under this Agreement. Program Manager shall retain these books, records, and systems of account during the Term of this Agreement and for twelve (12) years thereafter. Pursuant to Government Code Section 8546.7, this Agreement shall be subject to examination and audit of the State Auditor as specified in the code. Program Manager shall permit the Judicial Council, its agent, other representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and records, and to make audit(s) of all billing statements, invoices, records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the Judicial Council shall give reasonable prior notice to Program Manager and shall conduct audit(s) during Program Manager's normal business hours, unless Program Manager otherwise consents.

**Article 32. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS**

Program Manager shall be responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over Five Thousand Dollars (\$5,000).

**Article 33. COMMUNICATIONS / NOTICE**

Notices and communications between the Parties to this Agreement may be sent to the following addresses:

<p><b><i>Judicial Council</i></b>                  Judicial Council of California                  455 Golden Gate Avenue                  San Francisco, CA 94102                  ATTN: .....</p>	<p><b><i>Program Manager</i></b>                  ....., Inc.                  .....                  ....., CA .....                  ATTN: .....</p>
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Any notice personally given shall be effective upon receipt. Any notice sent by overnight delivery service shall be effective the day after delivery. Any notice given by mail shall be effective five (5) days after deposit in the United States mail.

**Article 34. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION**

This Agreement has a Disabled Veteran Business Enterprise (“DVBE”) participation requirement of three percent (3%). The Program Manager must document its DVBE compliance by completing the DVBE Participation Form set forth as Exhibit L.

**Article 35. OTHER PROVISIONS**

- 35.1. The Program Manager shall be responsible for the cost of construction change orders caused directly by the Program Manager’s willful misconduct or negligent acts, errors or omissions. Without limiting Program Manager’s liability for indirect or consequential cost impacts, the direct costs for which the Program Manager shall be liable shall equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared construction documents.
- 35.2. This Agreement shall not be construed against any party as the drafter of the Agreement.

## **EXHIBIT B — SCOPE OF WORK, BASIC SERVICES**

### **1. GENERAL DESCRIPTION OF THE BASIC SERVICES**

- 1.1. The Judicial Council has determined that in order to obtain the benefits and control of its Capital Program it must manage the program as a group of interrelated construction projects, subprograms, and program activities, which can be optimized to achieve the Judicial Council's scope, cost, schedule, and quality objectives. To achieve these objectives, the Judicial Council requires assistance in specific program tasks for which Program Manager provides the Basic Services indicated herein;
- 1.2. As defined herein, "Basic Services" will mean a group of services, more fully set forth in section 2 below, that are provided to the Judicial Council by the Program Manager;
- 1.3. In providing the Basic Services, Program Manager will report to the Director or designee and attend all meetings related to, or necessary for the performance of the Basic Services;
- 1.4. **Accuracy of Work Product.** Program Manager shall be responsible for the professional quality and technical accuracy of its work product in delivering the studies, reports and other information to the Judicial Council, and shall, without additional compensation, correct or revise any errors or omissions in the deliverables it generates;
- 1.5. **Source of Information.** In providing the Basic Services the Program Manager will utilize the information provided by the Judicial Council staff, project managers, construction manager-agency, construction contractors, architects, and other consultants as necessary to develop and provide requisite plans and reports necessary to manage and control Capital Program, and provide performance and productivity assessment, program cost management analysis, program schedule analysis, and program risk analysis;
- 1.6. **Best Judgment.** Evaluations of all costs, budgets and preliminary and detailed cost estimates prepared by the Program Manager shall represent the Program Manager's best judgment as a professional familiar with the construction industry.
- 1.7. **Compliance with Council Policies & Manuals.** In its performance of all Services, Program Manager must ensure that its practices, procedures, directions and actions are compliant and consistent with the Judicial Council's most recent policies and manuals, including, without limitation, and to the extent adopted by the Judicial Council, the most recent Program Management Manual, Program Execution Manual and Project Administration Manual ("PMM/PEM/PAM").

### **2. DESCRIPTION OF BASIC SERVICES**

- 2.1. **Overall Capital Program Management.** The Program Manager will under the general direction of the Director, assist the Judicial Council with overall management, coordination, and administration of the Capital Program, interfacing with Judicial Council staff of various divisions and offices, and representatives of outside organizations.
- 2.2. **Deliverables:**
  - 2.2.1. **Program Management Services.** Starting on the first day of a Notice to Proceed issued by the Director, the Program Manager must assign a senior level consultant working under general direction of the Director to provide guidance in the management and successful delivery of both Basic Services and Extra Services, and provide consultative assistance as necessary to make sure the Capital Program

proceeds in compliance with its overall statutory and Judicial Council requirements. This is an ongoing requirement and in providing this service the Program Manager will provide the Director with a scope of work and a cost proposal for the executive level support on a monthly firm fixed cost basis, based on an ongoing need of 80 hours per month;

- 2.2.2. **Capital Program Progress Report.** Starting on the first day of a Notice to Proceed issued by the Director, the Program Manager will develop and deliver to the Director within a time period of not more than 30 calendar days, a standardized Capital Program Progress Report (Report) format and process to provide to the Director critical information regarding the Capital Program. The Report format must convey details of the Capital Program, and each Project's, cost, schedule, quality and risk for the time period covered, and in an agreed format that is clear, precise and relevant to the reader. In developing the report format and process the Program Manager will:
- 2.2.2.1. Develop a template report format that will include standardized metrics, tables, graphs, dashboards and photographic representations for acceptance by the Judicial Council;
  - 2.2.2.2. Establish a process to gather the information needed to develop the Report monthly, including the best source of the information, and the format and timing for which the information is to be provided;
  - 2.2.2.3. Provide a user guide and training to those individuals and organizations responsible for providing the information necessary to produce the Report;
  - 2.2.2.4. Implement the approved process and produce the initial Report, and three (3) additional monthly Reports in order to validate and improve the recommended Report format and process to account for lessons learned, modifications, additions and deletions of information and information sources, and user needs;
  - 2.2.2.5. Provide a scope of work and cost proposal for the ongoing production, support, continuous improvement, and maintenance of the Report through the duration of the Agreement on a monthly firm fixed cost basis.
- 2.2.3. **Document Aggregation and Organization.** Starting on the first day of a Notice to Proceed issued by the Director, the Program Manager will develop and deliver to the Director within a time period of not more than 70 calendar days, a Web-based collaboration tool, which includes document and content management functionality (collaborative server software) that is domiciled in a manner that provides secure access to both the Judicial Council and its external partners. The system must provide a centralized, password protected space for the sharing of documents and other information necessary to manage the Capital Program, and warehouse project information for eventual transfer to the Judicial Council document management system. In developing the collaborative server software the Program Manager will:
- 2.2.3.1. Ensure compliance with applicable Judicial Council security policies (ref. National Institute of Standards and Technology (NIST) Special Publication 800-53);
  - 2.2.3.2. Ensure compatibility with existing Judicial Council systems and network architecture;
  - 2.2.3.3. Collaborative server software. Establish a document library within the collaborative server software required to collect documents, spreadsheets, presentations, and media files necessary to review, analyze, and report on the status of the Capital Program;
  - 2.2.3.4. Develop a user guide necessary to successfully upload documents to collaborative server software, and utilize and manage the information once uploaded;

- 2.2.3.5. Provide training to designated users on the process to successfully upload documents to collaborative server software, and utilize and manage the information once uploaded;
  - 2.2.3.6. Operate the collaborative server software for a period of 120 calendar days in order to validate and improve the collaborative server software and document management process to account for lessons learned, modifications, additions and deletions of system architecture, and user's needs, and to track and ensure compliance with actual document upload requirements;
  - 2.2.3.7. Provide a scope of work and cost proposal for the ongoing production, support, continuous improvement, and maintenance of the collaborative server software through the duration of the Agreement on a monthly firm fixed cost basis.
- 2.2.4. **Change Order Report.** Starting on the first day of a Notice to Proceed issued by the Director, the Program Manager will develop and deliver to the Director within a time period of not more than ninety (90) calendar days, a change order and project contingency fund report (Report) that can be used to monitor change-orders, potential change-orders (PCO), Requests for Information (RFI), and provide a listing of all potential disputes that could have a cost impact on a Project budget and contingency funds, compared to agreed upon project contract milestones in order to track contingency use, timeliness of change order review and approval, RFI processing, and funding available to complete projects. The report should inventory change orders by type to identify areas that may provide lessons learned and provide evidence of design clarification across the Capital Program. In developing the change order and project contingency fund Report the Program Manager will:
- 2.2.4.1. Establish process, procedures and forms necessary to analyze change orders, and collect change order, PCO, and RFI information from project teams required to produce the Report;
  - 2.2.4.2. Develop a Report format that provides information as to change-order status, contingency use, available funding, and types of change-orders by project and aggregated into Capital Program level information;
  - 2.2.4.3. Develop a user guide necessary to analyze change orders, and collect, document, and analyze information necessary to produce the Report;
  - 2.2.4.4. Provide training to designated users on the processes to collect, document, and analyze information necessary to produce the Report;
  - 2.2.4.5. Establish a process to forecast the effect on project contingency and reserve funds of change orders whether approved, in process, or PCO's that may result in an approved change order;
  - 2.2.4.6. Implement the approved process and produce the initial Report, and three (3) additional monthly Reports in order to validate and improve the recommended Report format and process to account for lessons learned, modifications, additions and deletions of information and information sources, and user needs;
  - 2.2.4.7. Provide a scope of work and cost proposal for the ongoing production, support, continuous improvement, and maintenance of the Report through the duration of the Agreement on a monthly firm fixed cost basis.
- 2.2.5. **Master Schedule Template.** Starting on the first day of a Notice to Proceed issued by the Director, the Program Manager will develop and deliver to the Director within a time period of not more than One hundred fifteen (115) calendar days, an integrated master project (bidding and construction phase only) plan and schedule (IMPS) format that establishes a consistent approach that construction contractors follow in developing a master construction schedule for use by the Judicial Council. The intent

of the IMPS is to provide the Judicial Council with a well defined Project plan and schedule template to use in day-to-day Project and Capital Program management that is not contractually binding on the construction contractor, and that does not replace the construction contractor's requirement and need to produce its own detailed project execution schedule and plans. In developing the IMPS format and process the Program Manager will:

- 2.2.5.1. Establish process, standardized IMPS format, standardized definitions, standardized construction work breakdown structure and schedule format, standardized minimum required construction activities, and typical activity durations for a courthouse construction project that are fundamental management tools critical to performing effective planning, scheduling and managing of work efforts;
  - 2.2.5.2. Provide IMPS in a format that can support statistical Schedule Risk Assessment;
  - 2.2.5.3. Provide a IMPS format that is event-based, specifying the events, significant accomplishments, and accomplishment criteria needed to successfully complete the Project;
  - 2.2.5.4. Establish procedures, forms, and a user's guide necessary to implement the IMPS with all construction contractors and construction management-agency firms;
  - 2.2.5.5. Provide training to designated users on the process to successfully complete the IMPS on pre-determined schedules;
  - 2.2.5.6. Work with construction contractor's to implement the IMPS for a period of one hundred eighty (180) calendar days in order validate and improve the IMPS concepts to account for lessons learned, modifications, additions and deletions of process, and construction contractor and Judicial Council needs;
  - 2.2.5.7. Provide a scope of work and cost proposal for the ongoing production, support, continuous improvement, and maintenance of the IMPS through the duration of the Agreement on a monthly firm fixed cost basis.
- 2.2.6. **Benchmark Report.** Starting on the first day of a Notice to Proceed issued by the Director, the Program Manager will develop and deliver to the Director within a time period of not more than one hundred twenty (120) calendar days, a Capital Program Benchmark Report, (Report) utilizing industry, Capital Program, and Project specific data, providing Capital Program and project metrics and benchmarks. The Report data is to be developed and presented in a form that provides an anticipated range of Project construction costs and professional fees parsed by type and location of a project, design process, project delivery method, project management method, construction techniques and methods, and quality assurance methods. Cost must be presented for all phases of project design, i.e. pre-design, design, construction, and warranty phase. The information contained in the Report must be in a form that will provide project teams information to assist in forecasting the time and cost to complete projects, and serve as a basis of architectural, construction contractor, construction management, and specialty consultants, e.g. construction inspector, contract cost negotiations. In developing the Report the Program Manager will :
- 2.2.6.1. Establish standardized cost ranges for 1) architect and associated engineers/consultants for pre-design, design by phase (schematic design, preliminary plans, working drawings), construction, and post construction services, 2) Construction Manager - Agency services by the same phases, 3) specialty consultants by similar phases;
  - 2.2.6.2. Identify how cost ranges will change as a percentage differences by Project size; complexity, and location;

- 2.2.6.3. Establish procedures, forms, and a user's guide necessary to use the information contained in the Report;
  - 2.2.6.4. Provide training to designated users on the process to successfully utilize the information contained in the report;
  - 2.2.6.5. Provide a scope of work and cost proposal for the ongoing update of Report benchmark information on an annual basis.
- 2.2.7. **Budget Management Plan.** Starting on the first day of a Notice to Proceed issued by the Director, the Program Manager will develop and deliver to the Director within a time period of not more than 120 calendar days, utilizing the State's required budget format, a Project budget management plan that supports all of the elements of the project management plan, and provides a responsibility matrix that establishes the responsibilities and accountabilities of those charged with delivering the Capital Program to provide timely and meaningful information to the budget process in order to prevent it from becoming a mere paper exercise. In developing the budget management plan the Program Manager will:
- 2.2.7.1. Establish, utilizing the State's standardized budget format, a budget process and management plan that provides appropriate level of detail and backup, and includes: 1) revisions management 2) Project objectives and unique challenges that affect the budget, 3) responsibilities and accountabilities of the specific positions (including Judicial Council staff, consultants, design professionals, and construction contractors) necessary to produce an accurate and meaningful Project budget, 4) the revenue source for each element of the budget, 5) standardized definitions necessary to understand and utilize the budget, 6) a roadmap schedule of budget preparation and maintenance indicating critical activities and interfaces, as well as critical dates that are dictated by executive and governance authorities, 7) Project general and administrative expenses that cannot be charged to the capital outlay budget, and 9) budget analysis indices and metrics;
  - 2.2.7.2. Establish procedures, forms, and a user's guide necessary to implement the Project budget plan;
  - 2.2.7.3. Provide training to designated users on the process to successfully implement and maintain the Project budget plan;
  - 2.2.7.4. Assist Capital Program staff develop a budget, utilizing the budget management plan for 2 projects, one in construction and one in design, in order validate and improve the plan concepts to account for lessons learned, and modifications, additions and deletions of changes recommended by plan users;
  - 2.2.7.5. Provide a scope of work and cost proposal for the ongoing production, modification, continuous improvement, and maintenance of the Project budget plan through the duration of the Agreement on a monthly firm fixed cost basis.
- 2.2.8. **Program Responsibility Matrix.** Starting on the first day of a Notice to Proceed issued by the Director, the Program Manager will develop and deliver to the Director within a time period of not more than one hundred fifteen (115) calendar days, a Capital Program management plan and responsibility matrix that demonstrates to those associated with delivering the Capital Program, the responsibilities and accountabilities of each person/organization serving the Project. In developing the program management plan and responsibility matrix the Program Manager will:
- 2.2.8.1. Establish a process and standardized program management plan format to include: 1) revisions management, 2) specific positions (including Judicial Council staff, consultants, design professionals, and construction contractors)

- necessary to manage the Capital Program, 3) the description and function of each positions, 4) standardized definitions of necessary positions and functions, 5) complete organizational chart that can be easily modified to represent real time circumstance, 6) a roadmap schedule of Capital Program critical activities and interfaces, as well as critical dates that are dictated by executive and governance authorities;
- 2.2.8.2. Establish procedures, forms, and a user's guide necessary to implement the Capital Program Management Plan;
  - 2.2.8.3. Provide training to designated users on the process to successfully modify and maintain the Capital Program Management Plan;
  - 2.2.8.4. Maintain the Capital Program Management Plan for a period of one hundred eighty (180) calendar days in order validate and improve the plan concepts to account for lessons learned, and modifications, additions and deletions of changes recommended by plan users;
- 2.2.9. **Project Responsibility Matrix.** Starting on the first day of a Notice to Proceed issued by the Director, the Program Manager will develop and deliver to the Director within a time period of not more than ninety (90) calendar days, a project management plan and responsibility matrix that demonstrates to those associated with delivering the Capital Program, the responsibilities and accountabilities of each person/organization serving the project. In developing the project management plan and responsibility matrix the Program Manager will:
- 2.2.9.1. Establish process and standardized project management plan format, to include: 1) revisions management, 2) project description, 3) scope of work, 4) work breakdown structure, 5) Project budget, 6) specific positions (including Judicial Council staff, consultants, design professionals, and construction contractors) necessary to manage the Project, 8) the description and function of each positions, 9) utilize standardized definitions developed in the Capital Program Management Plan, 10) complete organizational chart that can be easily modified to represent real time circumstance, 11) a roadmap schedule of Project's critical activities and interfaces, as well as critical dates that are dictated by executive, governance authorities and regulatory authorities, 12) standardized metrics, tables, graphs, dashboards and photographic representations, 13) format of the plan's requirements from functional units, i.e. Quality Management, Risk Management, Business services, etc., 14) project records management and control.
  - 2.2.9.2. Establish procedures, forms, and a user's guide necessary to implement the project management plan;
  - 2.2.9.3. Provide training to designated users on the process to successfully modify and maintain the project management plan;
  - 2.2.9.4. Assist Capital Program project managers with the production of individual project management plans for a period of 180 calendar days in order validate and improve the plan concepts to account for lessons learned, and modifications, additions and deletions of changes recommended by plan users.

## **EXHIBIT C — SCOPE OF WORK, EXTRA SERVICES**

### **1. GENERAL DESCRIPTION OF THE EXTRA SERVICES**

- 1.1.** The Judicial Council has determined that in order to obtain the benefits and control of its Capital Program it must manage the program as a group of interrelated construction projects, subprograms, and program activities, which can be optimized to achieve the Judicial Council's scope, cost, schedule, and quality objectives. To achieve these objectives, the Judicial Council requires assistance in specific program tasks for which Program Manager provides the Extra Services indicated herein.
- 1.2.** As defined herein, "Extra Services" will mean a group of services, more fully set forth in section 2 below, that may be provided to the Judicial Council by the Program Manager on an if needed/when needed basis.
- 1.3.** In providing the Extra Services, Program Manager will report to the Director or designee and attend all meetings related to, or necessary for, the performance of the Basic Services.
- 1.4. Accuracy of Work Product.** Program Manager shall be responsible for the professional quality and technical accuracy of its work product in delivering the studies, reports and other information to the Judicial Council, and shall, without additional compensation, correct or revise any errors or omissions in the deliverables it generates.
- 1.5. Source of Information.** In providing the Extra Services the Program Manager will utilize the information provided by the Judicial Council staff, project managers, construction manager-agency, construction contractors, architects, and other consultants as necessary to develop and provide requisite plans and reports necessary to manage and control the Capital Program, and provide the any or all of the Services set forth below.
- 1.6. Best Judgment.** Evaluations of all costs, budgets, and preliminary and detailed cost estimates prepared by the Program Manager shall represent the Program Manager's best judgment as a professional familiar with the construction industry.
- 1.7. Compliance with Council Policies and Manuals.** Performance of all Services, Program Manager must ensure that its practices, procedures, directions and actions are compliant and consistent with the Judicial Council's most recent policies and manuals, including, without limitation, and to the extent adopted by the Judicial Council, the most recent Program Management Manual, Project Execution Manual and Project Administration Manual ("PMM/PEM/PAM")

- 2.** Extra Services to this Agreement will be performed by Program Manager if needed and requested by Judicial Council as indicated in the Agreement, and if the Program Manager and or its Subconsultants have the expertise to perform those Extra Services.

#### **2.1. Staffing, Cost and Payment for Extra Services.**

The Program Manager will perform the Extra Services either with its own staff or Subconsultants pursuant to the following provisions:

- 2.1.1.** With its own employees at either (a) an agreed upon fixed sum, or (b) a not-to-exceed amount utilizing the hourly rates set forth identified in the Fee Schedule set forth in Exhibit E, both rates or fixed sums shall include overhead, administrative cost and profit;

**or**

- 2.1.2. Through a Subconsultant that directly performs those services without any further subcontracting to other entities. The mark-up on any approved item of Extra Services performed by sub-consultant(s) or subcontractor(s) shall not exceed five percent (5%).
- 2.2. Payment for these Extra Services will only be paid based on complete documentation demonstrating all work, equipment, and materials used in performing the Extra Services, to the reasonable determination of the Project Manager as being incurred in the performance of the Extra Services.

### **3. DESCRIPTION OF EXTRA SERVICES**

#### **3.1. Additional Staffing.**

Provide administrative assistant(s) and other professional disciplines as needed to accomplish any work that is additional to the Basic Services.

#### **3.2. Administrative Support.**

Provide professional and administrative support services to the Capital Program office (“CPO”) to accomplish any work that is additional to the Basic Services including business process analysis, data analysis, technical writing, communications support, graphic support, and related administrative office support. Develop and maintain a consistent data entry protocol, format, and guidance in the development of key CPO information systems that will promote data consistency and transparency for report preparation. Attend and participate in CPO meetings and draft meeting minutes or review meeting minutes prepared by others, as needed.

#### **3.3. Uniform Standards.**

Develop and maintain uniform standards for all aspects of project delivery, including schedule and cost controls.

#### **3.4. Project Delivery.**

Develop contracting and procurement strategies and provide expertise on design and project delivery options, methods, and tradeoffs.

#### **3.5. Review of Financial Information/Records for Audits.**

Review financial, economic and project level information. Assist the Judicial Council in maintaining all necessary records to comply with potential bond audits or any other applicable audits. Review information that is reported from the CPO to assure that commonly accepted practices are followed in elements that may be subject to audit.

#### **3.6. Lessons-Learned Information.**

Assist the Judicial Council in the development and use of a lessons-learned process to disseminate information to all Projects as needed.

#### **3.7. Quality Control.**

Develop and maintain a quality control process for design quality.

**3.8. Sequencing and Scheduling.**

Provide the following Services:

3.8.1. Provide program level schedule analysis and brief CPO management on key Capital Program milestones.

3.8.2. Review Judicial Council's sequencing and scheduling of projects and provide input as to whether it is the best use of Judicial Council staff and financial resources.

**3.9. Meetings.**

Attend meetings associated with these Extra Services.

**3.10. Dispute Avoidance.**

Provide dispute avoidance and claim mitigation strategies.

**3.11. Serving as a Witness.**

Provide expert witness services in connection with any public hearing (except for a contractor's hearing necessitated by its request to substitute a subcontractor), dispute resolution proceeding or legal proceeding, other than that necessitated by the negligent acts, errors or omissions of Program Manager or where the Program Manager is party thereto.

**3.12. Billing and Payment Procedures.**

3.12.1. Assist the Judicial Council in developing simplified approval and billing procedures acceptable to the Judicial Council;

3.12.2. Provide monthly program level accounting services related to assembling, reviewing, and forwarding to the Director an analysis of the payments made and in progress to the architect, construction manager - agency, construction contractor, and other specialty consultants.

**3.13. Training.** Assist the Judicial Council in developing and providing training to Judicial Council staff, and/or architect, construction manager - agency, construction contractor, and other specialty consultants on Capital Program related policies, procedures, and processes.

**3.14. Building Standards.** Provide detailed knowledge of building codes, standards, material and equipment life-cycle costs and installation issues to develop practical, functional, and cost-effective solutions for a variety of functional criteria including permitting, inspection, commissioning, and safety. Program Manager shall consult with the Design Team in the selection of materials, building systems, and equipment. Provide recommendations on construction feasibility actions designed to minimize adverse impacts of labor or material shortages, time requirements for procurement, installation and construction completion, and factors related to construction cost, including estimates of alternative designs and materials.

**3.15. Evaluation of Procedures.** Assist the Judicial Council in evaluating and revising current procedures and developing new procedures as necessary.

3.15.1.1. .

**3.16. Consultant Selection, Oversight & Coordination.**

3.16.1. Assist the Judicial Council in identifying, recruiting, and selecting consultants, including architects, construction management-agency firms, and specialty consultants;

3.16.2. Assist the Project Manager and the Judicial Council with the process of identifying, soliciting proposals from, and negotiating contracts and/or amendments to contracts

with architects, construction manager - agencies, construction contractor, and other specialty consultants necessary for the completion of the Program;

- 3.16.3. Assist the Judicial Council in the management, coordination, supervision, oversight, and evaluation of performance of the separately hired consultants, including architects, construction contractors, construction manager-agencies, and specialty consultants.

**3.17. Constructability Reviews.**

Assist the Judicial Council in validating results of project constructability reviews.

**3.18. Risk Analysis/Risk Management.**

- 3.18.1. Meet with the Director, the Judicial Council's Risk Management Unit staff and consultants to discuss, and make recommendations regarding, the development, and implementation of an effective risk management program for the Capital Program;
- 3.18.2. Establish and maintain both project level and Capital Program risk level lists and risk registers;
- 3.18.3. Perform project and Capital Program risk analysis, and continually monitor risk management objectives and results.

**3.19. Quality Control.**

- 3.19.1. Develop and maintain a quality control process for financial reporting and control;
- 3.19.2. Establish, maintain, and document quality and performance standards and specifications.

**3.20. Regulatory Agencies.**

Advise the Director as to the regulatory agencies that have jurisdiction over each project in the Capital Program, and establish a responsibility matrix of the requirements of the regulatory agencies, including notations of the statutory or administrative rule under which the requirements are established.

**3.21. Further Budget and Cost Control Services.**

To the extent not already provided as part of other portions of the Basic Services indicated herein, the Program Manager will provide some or all of the following, as requested by the Director:

- 3.21.1. Assist the Judicial Council in revising budgets to reflect actual expenditures and to reallocate available funds as necessary;
- 3.21.2. Provide Capital Program fund forecasting, control, and reporting;
- 3.21.3. Tabulate, compile and check accuracy and appropriateness of all expenditures associated with the Capital Program, using standard accounting methods and based on information provided by the Judicial Council;
- 3.21.4. Maintain status of all obligations, commitments, and expenses against the status of revenue available for the Capital Program.

**3.22. Policies, Procedures, and Processes.**

Assist the Judicial Council in developing and maintaining its Capital Program policies, procedures and processes.

**3.23. Damage to Project.**

Provide consultation concerning replacement of work damaged by fire or other cause during construction and furnishing services required in connection with replacement of such work.

**EXHIBIT D**  
**CURRENT LIST OF PROJECTS WITHIN THE CAPITAL PROGRAM**  
**(Subject to change at the Judicial Council's discretion)**

County	Project	Architect	Construction Contractor	Authorized Total Project Cost
Santa Clara	Santa Clara Family Justice Center	Zimmer Gunsul Frasca	Hensel Phelps	\$233,267,000.
San Diego	New San Diego Central	Skidmore Owings & Merrill	Rudolph and Sletten	\$555,499,000.
San Joaquin	New Stockton	NBBJ	Turner Construction	\$272,939,000.
Tehama	New Red Bluff	LPAS	Rudolph and Sletten	\$57,822,000.
Los Angeles	Hollywood Courthouse Modernization (formerly New Camarillo-Mental Health)	A.C. Martin Partners	To be selected, schedule TBD	\$84,239,000.
Merced	New Los Banos	Williams + Paddon	Swinerton Builders	\$26,680,000.
Glenn	Renovate-Addition Willows Historic	Page & Turnbull	Kitchell Contractors, Inc.	\$42,932,000.
Imperial	New El Centro	Safdie Rabines	Hensel Phelps	\$46,465,000.
Alameda	East County	KMD Architects (bridging documents)	Hensel Phelps	\$147,683,625.
Riverside	New Indio	CO Architects	C. W. Driver	\$52,634,000.
Lake	New Lakeport	Mark Cavagnero and Associates	TBD	\$49,688,000.
Siskiyou	New Yreka	EHDD	McCarthy Building Company Inc.	\$69,653,000.
Tuolumne	New Sonora	Lionakis	Sundt Construction	\$69,236,000.
Shasta	New Redding	NBBJ	To be selected, schedule TBD	\$170,598,000.
Sonoma	New Santa Rosa	Richard Meier & Partners	To be selected, schedule TBD	\$178,689,000.
Inyo	New Inyo	Natoma Architects, Inc.	To be selected, schedule TBD	\$33,704,000.
Stanislaus	New Modesto	Skidmore, Owings & Merrill, LLP	To be selected, schedule TBD	\$277,164,000.
El Dorado	New Placerville	Dreyfuss & Blackford	To be selected, schedule TBD	\$91,073,000.
Santa Barbara	New Santa Barbara	Moore Ruble Yudell Architects & Planners	Rudolph and Sletten	\$132,077,000.
Riverside	New Mid-County Civil Courthouse	Perkins+Will	To be selected, schedule TBD	\$118,582,000.
Mendocino	New Ukiah	Skidmore, Owings & Merrill, LLP	To be selected, schedule TBD	\$94,451,000.
Los Angeles	New Eastlake Juvenile	To be selected, schedule TBD	To be selected, schedule TBD	\$90,312,000.
Sacramento	New Sacramento Criminal	To be selected, schedule TBD	To be selected, schedule TBD	\$451,959,000.

**EXHIBIT E — FEE SCHEDULE AND METHOD OF PAYMENT**

**Compensation for Basic Services**

1. The Program Manager’s fee set forth in this Agreement shall be full compensation for all of Program Manager’s Services incurred in its performance, including, without limitation, all costs for personnel, travel within two hundred (200) miles of, offices, per diem expenses, printing, providing, or shipping of deliverables as further defined in Exhibit B.
2. The Fee shall not exceed the amount set forth in the Agreement, including all billed expenses, without advance written approval of the Judicial Council. The Fee shall be paid as indicated in this table that shows the amount the Judicial Council will pay the Program Manager for each Project within the Capital Program for which the Program Manager is currently performing its Services.

Monthly Fee <u>per Project</u> within a specified Phase					
Study & Acquisition Phase	Preliminary Plans / Schematic Design Phase	Preliminary Plans / Design Development Phase	Working Drawings Phase	Construction Phase	Project Completion / Closeout Phase
\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____

**Compensation for Extra Services**

1. The following rates, which include overhead, administrative cost and profit, shall be utilized in arriving at the fee for Extra Services and shall not be changed for the Term of the Agreement. Program Manager shall bill monthly in quarter-hour increments for all Extra Services.

<u>Job Title</u>	<u>Hourly Billing Rate</u>
Principal in Charge:	\$ _____
Program Manager (s):	\$ _____
Quality Manager	\$ _____
Scheduler	\$ _____
Other _____	\$ _____
Other _____	\$ _____
Other _____	\$ _____

**Method of Payment and Invoicing**

1. Program Manager shall submit monthly invoices for Basic Services on a form and in the format approved by the Judicial Council. Each monthly invoice must indicate the total Fee as allocated per Project and must specifically identify the Phase for each applicable Project. In the event that a Project includes more than one Phase within a billing period, the Phase that includes the majority of the days within that billing period shall be utilized with respect to the applicable monthly fee. Below is a general structure for those invoices:

Itemized Monthly Invoice for Projects by Phase							
Project	Study & Acquisition Phase	Preliminary Plans / Schematic Design Phase	Preliminary Plans / Design Development Phase	Working Drawings Phase	Construction Phase	Project Completion / Closeout Phase	
___ Project	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	
___ Project	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	
___ Project	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	
___ Project	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	
___ Project	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	
<b>Subtotal</b>	\$_____	\$_____	\$_____	\$_____	\$_____	\$_____	
						<b>Monthly Total</b>	\$_____

2. Program Manager shall submit monthly invoices for Extra Services on a form and in the format approved by the Judicial Council. Each monthly invoice must itemize applicable hourly charges in quarter-hour increments by specific project and job classification/function.
3. Program Manager shall submit these monthly invoices in duplicate to the Judicial Council via the Project Manager.
4. Upon receipt and approval of Program Manager’s invoices, the Judicial Council shall endeavor to make payments on all undisputed amounts within sixty (60) days of receipt of the invoice.





## EXHIBIT H — GENERAL CERTIFICATIONS FORM

Check the box below, if agreed, and sign this attachment. Please note that the JBE will reject a proposal from a Proposer that does not indicate acceptance of these clauses.

**CONFLICT OF INTEREST.** Proposer has no interest that would constitute a conflict of interest under California Public Contract Code (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.

**SUSPENSION OR DEBARMENT.** Proposer certifies that neither Proposer nor any of Proposer's intended subcontractors is on the California Department of General Services' list of firms and persons that have been suspended or debarred from contracting with the state because of a violation of PCC 10115.10, regarding disabled veteran business enterprises.

**TAX DELINQUENCY.** Proposer certifies that it is not 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.

**CONFLICT MINERALS.** Proposer certifies that either (i) it is not a scrutinized company as defined in PCC 10490(b), or (ii) the goods or services the Proposer would provide to the JBE are not related to products or services that are the reason the Proposer must comply with Section 13(p) of the Securities Exchange Act of 1934. (Note: PCC 10490(b) defines a "scrutinized company" as "a person that has been found to be in violation of Section 13(p) of the Securities Exchange Act of 1934 by final judgment or settlement entered in a civil or administrative action brought by the Securities and Exchange Commission and the person has not remedied or cured the violation in a manner accepted by the commission on or before final judgment or settlement.")

**Check this box to indicate full acceptance of the clauses above.**

NAME OF COMPANY-FIRM
BY <i>(Authorized Signature)</i> 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

**EXHIBIT I — IRAN CONTRACTING ACT CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 2204, an Iran Contracting Act certification is required for solicitations of goods or services of \$1,000,000 or more. To submit a proposal to the Court, you must complete **ONLY ONE** of the following two paragraphs.

- To complete paragraph 1, check the corresponding box **and** complete the certification for paragraph 1.
- To complete paragraph 2, simply check the corresponding box.

1. We are not on the current list of persons engaged in investment activities in Iran created by the California Department of General Services (“DGS”) pursuant to PCC 2203(b), and we are not a financial institution extending twenty million dollars (\$20,000,000) or more in credit to another person, for 45 days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the current list of persons engaged in investment activities in Iran created by DGS.

**OR**

2. We have received written permission from the Court to submit a proposal pursuant to PCC 2203(c) or (d). A copy of the written permission from the Court is included with our proposal.

**CERTIFICATION FOR PARAGRAPH 1:**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer to the clause in paragraph 1. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>

## EXHIBIT J — DARFUR CONTRACTING ACT CERTIFICATION

Pursuant to Public Contract Code (PCC) section 10478, if a bidder or proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must either (i) certify that it is not a “scrutinized company” as defined in PCC 10476, or (ii) receive written permission from the Judicial Council to submit a bid or proposal.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
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To submit a bid or proposal to the Judicial Council, you must complete **ONLY ONE** of the following three paragraphs.

- To complete paragraph 1 or 2, simply check the corresponding box.
- To complete paragraph 3, check the corresponding box and complete the certification (below) for paragraph 3.

1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.

*OR*

2. We are a “scrutinized company” as defined in PCC 10476, but we have received written permission from the JUDICIAL COUNCIL to submit a bid or proposal pursuant to PCC 10477(b). *A copy of the written permission from the JUDICIAL COUNCIL is included with our bid or proposal.*

*OR*

3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a “scrutinized company” as defined in PCC 10476.

### **CERTIFICATION FOR PARAGRAPH 3:**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the bidder or proposer to the clause in paragraph 3. This certification is made under the laws of the State of California.

<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of</i> _____ <i>in the State of</i> _____

Firm Name: .....

This Project has a DVBE participation goal of three percent (3%) (DVBE Participation Goal). The selected Proposer must document its DVBE compliance with the DVBE Project Goal by completing the DVBE Participation Form.

**Submission of your DVBE compliance forms will be required following notification of intent to award and prior to the signing of the Legal Agreement.**

*Complete Parts A & B*

*“Contractor’s Tier” is referred to several times below; use the following definitions for tier:*

- 0 = Prime or Joint Contractor;
  - 1 = Prime subcontractor/supplier;
  - 2 = Subcontractor/supplier of level 1 subcontractor/supplier
-

**DVBE PARTICIPATION FORM - PART A – COMPLIANCE WITH DVBE**

**FIRM**

Company Name: \_\_\_\_\_  
 Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
 Claimed Value: DVBE \$ \_\_\_\_\_  
 Percentage of Total Contract Amount: DVBE \_\_\_\_\_%

**SUBCONTRACTORS/SUB-SUBCONTRACTORS/PROPOSERS/SUPPLIERS**

1. .... Company Name: \_\_\_\_\_  
 Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
 Claimed Value: DVBE \$ \_\_\_\_\_  
 Percentage of Total Contract Amount: DVBE \_\_\_\_\_%

2. .... Company Name: \_\_\_\_\_  
 Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
 Claimed Value: DVBE \$ \_\_\_\_\_  
 Percentage of Total Contract Amount: DVBE \_\_\_\_\_%

3. .... Company Name: \_\_\_\_\_  
 Nature of Work: \_\_\_\_\_ Tier: \_\_\_\_\_  
 Claimed Value: DVBE \$ \_\_\_\_\_  
 Percentage of Total Contract Amount: DVBE \_\_\_\_\_%

GRAND TOTAL: DVBE \_\_\_\_\_%

I hereby certify that the Contract Price, as defined herein, is the amount of \$ \_\_\_\_\_.  
 I understand that the Contract Price is the total dollar figure against which the DVBE participation requirements will be evaluated.

<i>Name of Firm</i>	
<i>Signature of Person Signing for Firm</i>	
<i>Name (printed) of Person Signing for Firm</i>	
<i>Title of Above-Named Person</i>	
<i>Date</i>	

**DVBE PARTICIPATION FORM - PART B – CERTIFICATION**

I hereby certify that I have made a diligent effort to ascertain the facts with regard to the representations made herein and, to the best of my knowledge and belief, each firm set forth in this bid as a Disabled Veterans Business Enterprise complies with the relevant definition set forth in California Code of Regulations, Title 2, section 1896.61, and Military and Veterans Code, section 999.

IT IS MANDATORY THAT THE FOLLOWING BE COMPLETED ENTIRELY;  
FAILURE TO DO SO WILL RESULT IN IMMEDIATE REJECTION.

<i>Name of Firm</i>	
<i>Signature of Person Signing for Firm</i>	
<i>Name (printed) of Person Signing for Firm</i>	
<i>Title of Above-Named Person</i>	
<i>Date</i>	

***End of DVBE Participation Form***