

ATTACHMENT C – REVISION 1

SAMPLE STANDARD AGREEMENT

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

	AGREEMENT NUMBER
	FEDERAL EMPLOYER ID

1. In this Agreement, the term “Service Provider” refers to **[Service Provider name]**, and the terms “AOC” refers to the Judicial Council of California, Administrative Office of the Courts.
2. This Agreement becomes effective as of _____ (the “Effective date”) and expires on _____
3. The maximum amount that the AOC may pay Service Provider under this Agreement is **[\$Dollar amount]**.
4. The purpose of this Agreement:

The purpose of this Agreement is to set forth the terms and conditions that apply to Service Provider furnishing of appraisal services to the AOC. The AOC is not obligated to encumber funds as a result of entering into this Agreement with the Service Provider, nor is it obligated to issue any number of Work Orders. Except as expressly provided in the Agreement, no liability shall attach to the AOC by reason of entering into this Agreement.

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

5. This Agreement constitutes the entire agreement between the Parties with regard to its subject matter and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by an Amendment executed by both Parties. In the event of conflict in documents, the following order of precedence shall prevail: (1) the most recently executed Standard Agreement Form pertaining to this Agreement; (2) Exhibits A, B, C, D, E, F, and G (in order of preference); (3) the most recently executed Standard Agreement Form related to an authorized Work Order; and (4) documents referenced in authorized Work Orders, if any. As regards the subject matter they address, amended documents shall prevail over previous document(s). Work will be initiated via authorized Work Orders as specified in this Agreement.
6. This Agreement is composed of the following documents that are collectively referred to as the “Contract Documents”.

Exhibit A – Standard Provisions	Exhibit D – Work to be Performed	Exhibit G - DGS Implied Dedication
Exhibit B – Special Provisions	Exhibit E - Work Authorization Form	
Exhibit C –Process and Payment Provisions and Payment Provisions	Exhibit F - DGS Appraisal Specifications	

AOC’S SIGNATURE	SERVICE PROVIDER’S SIGNATURE
Judicial Council of California, Administrative Office of the Courts	SERVICE PROVIDER’S NAME <i>(if Service Provider is not an individual person, state whether Service Provider is a corporation, partnership, etc.)</i>
BY <i>(Authorized Signature)</i>	BY <i>(Authorized Signature)</i>
 PRIN	
ADDI	
455 G San F	
SAMPLE ONLY – DO NOT SIGN	

EXHIBIT A

STANDARD PROVISIONS

1. Indemnification

Service Provider agrees, to the fullest extent permitted by law, to indemnify, defend (with counsel satisfactory to the AOC), and hold harmless (collectively, “Indemnify”) the State, the Judicial Council of California, the Administrative Office of the Courts, the State’s trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their officers, agents, Service Providers, representatives, volunteers and employees (individually, an “Indemnified Party”) from any and all claims, lawsuits, losses, costs (including attorney fees and costs), liabilities, and damages arising from, related to or in connection with, in whole or in part, any of the following:

- (a) Service Provider or any of its employees’ or Subcontractor’s negligent acts, omissions, or intentional misconduct;
- (b) Service Provider’s breach of its obligations under this Agreement;
- (c) Service Provider or any of its employees’ or Subcontractor’s violation of any applicable law, rule, or regulation; and/or
- (d) Any claim or lawsuit by any third party, Service Provider, Subcontractor, supplier, worker, or any other person, firm, or corporation furnishing or supplying Work, Services, Materials, or supplies in connection with the performance of this Agreement who may be injured or damaged by the Service Provider or any of its Subcontractors, or employees when such claim arises from, is related to, or is in connection with Service Provider’s performance under this Agreement.

This article does not require the Service Provider to Indemnify an Indemnified Party for such portion of any loss, cost, liability, or damage that arises solely from the negligence or intentional misconduct of the Indemnified Party.

2. Relationship of Parties

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

3. Termination for Cause

The AOC may terminate this Agreement and be relieved of the payment of any consideration to Service Provider for any Work not yet completed and accepted if Service Provider fails to perform as specified in this Agreement at the time and in the manner provided. If the Agreement is terminated, the AOC may proceed with the Work in any manner it deems proper. The cost to the AOC to perform the Work shall be deducted from any sum due Service Provider under this Agreement or any other agreement, and the balance, if any, shall be paid to Service Provider upon demand.

4. No Assignment

Service Provider shall not voluntarily or involuntarily assign (e.g. assignment by operation of law), encumber, or otherwise transfer or delegate its duty or obligation to perform any work under the Agreement without the prior written consent of the AOC. Any voluntary assignment by Service Provider or assignment by operation of law (e.g. involuntarily assignment) of any portion of Service Provider's duty or obligation to perform any work under the Agreement shall be deemed a default allowing the AOC to exercise all remedies available to it under applicable law. Consent will not be given to an assignment which would relieve the Service Provider of their responsibilities under the Agreement. Any assignment in violation hereof shall be null and void.

5. Time of Essence

Time is of the essence in this Agreement.

6. Validity of Alterations

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

7. Consideration

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

END OF EXHIBIT A

EXHIBIT B

SPECIAL PROVISIONS

1. Definitions

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

A. “**Acceptance**” means the written acceptance issued to Service Provider by the AOC’s Project Manager after Service Provider has completed a Deliverable, in compliance with this Agreement, including without limitation, Exhibit D, Work to be Performed.

B. “**Administrative Director**” refers to that individual or authorized designee, empowered by the AOC to make final and binding executive decisions on behalf of the AOC.

C. “**Amendment**” means a written document issued by the AOC and signed by Service Provider which alters the Agreement and which identifies the following: (1) a change in the Work (as defined below); (2) an adjustment to the Agreement terms.

D. “**AOC’s Project Manager**” means the AOC’s Project Manager named in the “Notices” section of this Exhibit B; except that, in the case of Work performed under a specific Work Authorization, the AOC Project Manager is the AOC Project Manager named on that Work Authorization form.

E. “**Business Day**” means days of the week excluding Saturday and Sunday, as well as Service Provider’s pre-established and published holidays applicable to its employees.

F. “**Confidential Information**” means trade secrets, financial, statistical, personnel, technical, and other Data and information relating to the AOC’s business or the business of its constituents. Confidential Information does not include (i) information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party; (ii) information that becomes generally available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement; (iii) information that is independently developed by the receiving party without reference to the Confidential Information; and (iv) information that the receiving party rightfully obtains from a Third Party free of the obligation of confidentiality to the disclosing party.

G. The “**Agreement**” constitutes the entire integrated agreement between the AOC and Service Provider, and includes the Contract documents incorporated by reference into a fully executed AOC Standard Agreement form. The term “**Contract**” may be used interchangeably with the term “**Agreement**.”

H. “**Contract Amount**” means the total amount encumbered under this Agreement for payment by the AOC to Service Provider for performance of all Work and reimbursement of all expenses, in accordance with the Contract documents.

I. “**Service Provider**” means the individual, association, partnership, firm, company, consultant, corporation, affiliates, or combination thereof, including joint ventures, contracting with the AOC to do the Contract Work. Service Provider is one of the parties to this Agreement.

J. “**Service Provider’s Project Manager**” as more particularly described below in paragraph B, subparagraph 9.C., means the person on Service Provider’s staff designated by Service Provider to serve as the primary contact with the AOC’s Project Manager.

K. “**Court(s)**” or “**Trial Court(s)**” means one or more of the fifty-eight (58) superior courts in the California state trial court system

L. “**Data**” means all types of raw data, articles, papers, charts, records, reports, studies, research, memoranda, computation sheets, questionnaires, surveys, and other documentation.

M. “**Day**” means calendar day, unless otherwise specified.

N. “**Deliverable(s)**” means and includes any tangible item provided or to be provided under this Agreement, including written reports. Services may be performed in pursuit of providing Deliverable(s); however, a Deliverable may not consist solely of the performance of Services.

O. “**Deliverable Basis**” means that the Services provided shall result in the provision of a Deliverable or Deliverables.

P. “**Expenses**” means and includes both Travel and Living Expenses and Reimbursable Expenses.

Q. “**Firm Fixed Price**” means a single fixed amount or amounts designated as payment for a Deliverable or Deliverables.

R. “**Firm Fixed Price Basis**” means that the Service Provider shall receive, as full and complete compensation for the provision of Deliverable(s), Firm Fixed Price(s), which shall constitute complete compensation for all costs, expenses, and efforts incurred by Service Provider in provision of the Deliverable(s).

S. “**Force Majeure**” means a delay which impacts the timely performance of Work which neither Service Provider nor the AOC are liable because such delay or failure to perform was unforeseeable and beyond the control of the party. Acts of Force Majeure include, but are not limited to:

- i. Acts of God or the public enemy;
- ii. Acts or omissions of any government entity;

- iii. Fire or other casualty for which a party is not responsible;
- iv. Quarantine or epidemic;
- v. Strike or defensive lockout; and,
- vi. Unusually severe weather conditions.

T. **“Hourly Basis”** means that Service Provider shall be paid at an hourly rate for each such hour of authorized Work actually performed.

U. **“Key Personnel”** refers to Service Provider’s personnel or personnel of Subcontractors named in this Agreement, whom the AOC has approved to perform specific Work. Work and roles of Key Personnel are as set forth in this Agreement.

V. **“Material”** means all types of tangible personal property, including but not limited to reports, goods, supplies, equipment, commodities, and information and telecommunication technology.

W. **“Notice”** means a written document as required by this Agreement and given by:

- i. Depositing in the U. S. Mail (or approved commercial express carrier) prepaid to the address of the appropriate authorized representative of the other party, which shall be effective upon date of receipt; or hand-delivered to the other party’s authorized representative, which shall be effective on the date of service.

X. **“Project”** refers to all activity executed under this Agreement, including the Work of Service Provider and its Subcontractors and the responsibilities of the AOC and the AOC’s representatives.

Y. **“Reimbursable Expenses”** means specific expense(s) incurred or to be incurred by Service Provider and/or its Subcontractor(s) in pursuit of performance of the Work.

Z. **“Service(s)”** means and includes action(s) that shall be performed by the Service Provider’s or its Subcontractor’s employees. Services may or may not result in the provision of Deliverables.

AA. The **“State”** refers to the Judicial Council of California, Administrative Office of the Courts (**“AOC”**).

BB. **“Statement of Work”** means and includes a description of Services and Deliverables to be provided according to this Agreement.

CC. **“AOC Standard Agreement”** means the form used by the AOC to enter into agreements with other parties. An originally signed, fully executed version of the AOC’s Standard Agreement form, together with the integrated Contract documents, shall constitute the **“Agreement”**.

DD. **“Subcontractor”** shall mean and include any individual, firm, partnership, agent, or corporation having a contract, purchase order, or agreement with the Service Provider, or with any Subcontractor of any tier for the performance of any part of this Agreement. When the AOC refers to Subcontractor(s) in this document, for purposes of this Agreement and unless otherwise expressly stated, the term “Subcontractor” includes, at every level and/or tier, all subcontractors, sub-consultants, agents, suppliers, and/or materialmen.

EE. **“Third Party”** refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, that is not a party to this Agreement.

FF. **“Time and Materials Not-to-Exceed Basis”** means that the Service Provider shall be compensated for Work actually performed on an Hourly Basis. If the time and materials costs exceed the maximum Not-to-Exceed Amount, Service Provider assumes the excessive costs.

GG. **“Travel and Living Expenses”** means expenses for travel and living costs incurred or to be incurred by Service Provider’s employees or Service Provider’s Subcontractor’s employees in pursuit of performance of the Work, as further specified in **Exhibit C, Process and Payment Provisions**.

HH. **“Work”** or **“Work to be Performed”** or **“Contract Work”** may be used interchangeably and means and includes the provision of Services alone and/or Services that result in the provision of Deliverables.

II. **“Work Authorization Process”** and **“Work Authorization Form”** means the process and instrument used by the AOC to request and accept price and service quotes from the Service Provider as specified in **Exhibit C, Process and Payment Provisions** and **Exhibit E, Work Authorization Form**.

2. Manner of Performance of Work

Service Provider shall provide, and shall act to ensure that its Subcontractors shall provide that all Work specified in these Contract documents is performed to the AOC's satisfaction, in compliance with the standards specified in **Exhibit D, Work to be Performed**, and in compliance with the Nondiscrimination/No Harassment Clause, as set forth in this Exhibit B.

3. Standard of Professionalism

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

4. Services Warranties

A. Service Provider warrants and represents that its employees and its Subcontractors employees assigned to perform Services under this Agreement have the appropriate required credentials in the specified area(s) of competence required by the regulations cited in **Exhibit D, Work to be Performed**; or, if no credentials are cited in Exhibit D, the skills, training, and background reasonably commensurate with his or her level of performance or responsibility so as to be able to perform in a competent and professional manner in accordance with generally accepted industry standards.

B. All warranties, including any special warranties specified elsewhere herein, shall inure to the AOC, its successors, assigns, customer agencies, and any other recipients of the Services provided hereunder.

C. Service Provider warrants that the Services will be performed on time and according to the applicable schedule.

5. Acceptance of the Work

A. The AOC's Project Manager shall be responsible for the sign-off acceptance of all Work required and performed and/or submitted pursuant to this Agreement. The AOC's Project Manager will apply the standards established in Exhibit D and the acceptance criteria set forth in subparagraph B of this article, as appropriate, to determine the acceptability of the Work provided by Service Provider. If the AOC's Project Manager rejects the Work, the parties agree that any dispute(s) resulting from such rejection(s) will be resolved as set forth in this article.

B. Acceptance Criteria for Work ("**Criteria**") provided by Service Provider pursuant to this Agreement include:

- i. Timeliness: The Work was provided on time; according to schedule;
- ii. Completeness: The Work contained all of the, Data, Materials, and features required by the Agreement; and
- iii. Technical accuracy: The Work complied with the standards of this Agreement, or, if this Agreement lacks a standard for provision of the Work, the currently generally accepted industry standard.

C. Service Provider shall provide the Work to the AOC in accordance with direction from the AOC's Project Manager and as provided for in Exhibit D. The AOC's Project Manager shall accept the Work, provided that Service Provider has delivered the Work in accordance with the Criteria.

D. If the AOC rejects the Work provided, the AOC's Project Manager shall submit to Service Provider's Project Manager a written rejection describing in detail the failure of the Work as measured against the Criteria. If the AOC rejects the Work, then Service Provider shall have a

period of ten (10) Business Days from receipt of the Notice of rejection to correct the stated failure(s) to conform to the Criteria.

E. If a resolution of the dispute is not reached between the AOC's Project Manager and Service Provider's Project Manager as to the Work's acceptability, a principal of the Service Provider and the Administrative Director of the AOC, or its designee, shall meet to discuss the problem. If agreement cannot be reached, in the reasonable judgment of the Administrative Director of the AOC, or its designee, and/or the Service Provider fails to cure such deficiencies that are perceived in the Work to the reasonable satisfaction of the Administrative Director, or its designee, in the reasonable time established by the Administrative Director, the AOC may reject the Work and will notify Service Provider in writing of such action and the reason(s) for so doing. Upon rejection of the Work, the AOC may terminate this Agreement applicable to said Work, pursuant to the terms of Exhibit A - Standard Provisions article 3.

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

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

7. Ownership

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

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

8. Limitation on Publication

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

9. Service Provider Personnel

A. Service Provider shall provide all personnel and Subcontractor personnel necessary to provide the Work authorized under this Agreement.

B. Service Provider and/or its Subcontractors shall provide certain Key Personnel, including Service Provider's Project Manager(s), to perform certain Work set forth in this Agreement.

C. Service Provider's Project Manager shall:

- i. Serve as the primary contact with the AOC's Project Manager and personnel;
- ii. Manage the day to day activities of Service Provider and its Subcontractor's personnel;
- iii. Identify the appropriate resources needed;
- iv. Plan and schedule the Work;
- v. Meet budget and schedule commitments;
- vi. Provide Progress Reports in accordance with this Agreement; and
- vii. Act to ensure the overall quality of the Work performed.

D. The AOC reserves the right to disapprove the continuing assignment of any Key Personnel provided under this Agreement, if, in the AOC's opinion, the performance of Key Personnel is unsatisfactory. The AOC agrees to provide Notice to Service Provider in the event it makes such a determination. If the AOC exercises this right, Service Provider shall immediately assign replacement Key Personnel, possessing equivalent or greater experience and skills.

E. If any of Key Personnel assigned to a Project, through no cause or fault of Service Provider, become unavailable to perform Work, Service Provider shall immediately provide replacement Key Personnel, possessing equivalent or greater experience and skills as required by this.

F. If any Key Personnel become unavailable or are disapproved and Service Provider cannot furnish a replacement acceptable to the AOC the AOC may terminate this Agreement for cause, pursuant to Exhibit A - Standard Provisions, article 3.

10. Agreement Term Agreement Term & Renewals

A. The term of this Agreement shall commence **May 1, 2014**, (the "Effective Date") and terminates **April 30, 2017**, ("Initial Term") or the date work pursuant to a Work Order authorized during the Initial Term is completed.

B. The term of this Agreement may be extended for (1) one-year renewal option at the sole option of the AOC.

- C. The parties agree that any extension of this Agreement is subject to a written Amendment.
- D. Service Provider assumes all liability and risks associated with commencing performance on a Work Order prior to authorization in accordance with the Work Order Authorization Process detailed in Exhibit C, including nonpayment for any Work performed, prior to AOC authorizing the Work.
- E. Regardless of the expiration date of this Agreement, the terms and conditions of this Agreement shall unless otherwise terminated as specified herein, continue to be binding upon any Work Order executed under this Agreement until the work under said Work Order shall have been completed in full.

11. Background Checks

A. If the Service Provider assigns persons (whether employees, independent Service Providers, subcontractors or agents) to perform work under this Agreement that requires that the person have access to the systems (whether on-site or by remote access) or premises of the AOC or other Judicial Branch entities, the AOC shall have the right, but not the obligation, to conduct a background check or to require the Service Provider to conduct a background check, as permitted by law, on all such persons before the AOC will grant to such persons access to the AOC's or other judicial branch entities' premises or systems. The Service Provider will cooperate with the AOC in performing such background check, and will promptly notify the AOC of any such person refusing to undergo such background check, and will reassign such person to perform other services. The Service Provider shall obtain all releases, waivers, or permissions required for the release of such information to the AOC. Costs incident to background checks are the sole responsibility of the Service Provider.

12. Termination Other Than for Cause

A. In addition to termination for cause under Exhibit A, Standard Provisions, article 3, the AOC may terminate this Agreement for convenience and without cause at any time upon providing Service Provider written Notice at least ten (10) Days before the effective date of termination. Upon receipt of the termination Notice, Service Provider shall promptly discontinue all Work affected unless the Notice specifies otherwise.

B. If the AOC terminates this Agreement other than for cause, the AOC shall pay Service Provider for the fair value of satisfactory Work rendered before the termination.

13. AOC's Obligation Subject to Availability of Funds

A. The AOCs obligation under this Agreement is subject to the availability of authorized funds. The AOC may terminate the Agreement or any part of the Contract Work, without prejudice to any right or remedy of the AOC, for lack of appropriation of funds. If

expected or actual funding is withdrawn, reduced or limited in any way prior to the expiration date set forth in this Agreement, or in any Amendment hereto, the AOC may terminate this Agreement in whole or in part, upon written Notice to Service Provider. Such termination shall be in addition to the AOC's rights to terminate for convenience or default.

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

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

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

14. Notice:

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

B. Notice to the AOC shall be directed to:

To the AOC: Portfolio Administration Analyst
Office of Real Estate and Facilities Management
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

With a copy to: Manager, Real Estate
Office of Real Estate and Facilities Management
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

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

C. Notice to Service Provider shall be directed to:

[INSERT SERVICE PROVIDER'S NOTICE INFORMATION]

15. Subcontracting

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

16. Changes and Amendments

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

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

B. Requests for said changes or amendments must be submitted in writing and must be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. After a review of the request, a written decision shall be provided to Service Provider. Amendments to the Agreement shall be authorized via bilateral execution of a AOC Standard Agreement.

17. Accounting System Requirement

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

18. Retention of Records

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

19. Audit

Service Provider shall permit the authorized representative of the AOC or its designee or both at any reasonable time to inspect or audit all Data relating to performance and billing to the AOC under this Agreement. Service Provider further agrees to maintain such Data for a period of three (3) years after final payment under this Agreement.

A. Such Data shall at a minimum include:

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

B. Upon the request of the AOC's Fiscal Division or the AOC's Project Manager, Service Provider agrees to provide the logs of said Data within 5 Business Days of request.

20. Insurance and Waiver of Claims

A. General Requirements:

- iv. Service Provider shall maintain insurance issued by an insurance company or companies that are rated “A-VII” or higher by A. M. Best’s key rating guide. If self-insured, review of financial information may be required.
- v. The insurance required under Article 20, subparagraph B.i, and B.ii, shall include the State of California, the Judicial Council of California, and the Administrative Office of the Courts and their respective officers, agents, employees and servants as additional insureds, but only insofar as the Services provides under the Contract are concerned.
- vi. The insurance required under Article 20 subparagraph B shall be primary and non-contributing to any programs of insurance or self-insurance maintained by the State of California, the Judicial Council of California, or the Administrative Office of the Courts.
- vii. The Service Provider and any insurer providing the insurance required under Article 20 subparagraph B shall waive any right of recovery or subrogation they may have against the State of California, the Judicial Council of California, or the Administrative Office of the Courts.
- viii. All coverage shall be in force until the end of the term of this agreement or Final Acceptance of the Work, whichever comes later. If the insurance expires during the term of the Contract, the Service Provider shall immediately provide a new current certificate(s) of insurance as evidence that he required insurance is in force, or may be declared in breach of Contract. The AOC reserves the right to withhold all progress and retention payments until it has received the required certificate(s) of insurance. Renewal insurance certificates must be tendered to the AOC at least 10 days following the expiration of the previous insurance certificate. This new insurance shall be in accordance with the terms of the contract.
- ix. Insurance policies shall contain a provision that coverage will not be cancelled without 30 days prior written notice to the AOC
- x. The Service Provider shall be solely responsible, without any compensation from the AOC, for any deductible or self-insured retention contained within the insurance.
- xi. In the event the Service Provider fails to keep in effect at all times the specified insurance coverage, the AOC may, in addition to any other remedies it may have, terminate this contract upon the occurrence of such event, subject to the provisions of this contract.
- xii. The Certificates of Insurance required under this section and any advance written notice of any change or cancellation shall be mailed to the Administrative Office of the Courts, Senior Manager, Business Services Office, at the address specified in Exhibit B, No. 16, item A.

- B. Insurance Requirements. The Service Provider shall furnish to the AOC's evidence of insurance as follows:
- i. Commercial General Liability: The Service Provider shall maintain commercial general liability insurance written on an occurrence form covering the Service Provider, the AOC parties, and subcontractors with limits of not less than \$2,000,000 per occurrence and \$2,000,000 aggregate. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Service Provider's limit of liability.
 - ii. Commercial Automobile Liability: The Service Provider shall maintain commercial automobile insurance with liability with limits of not less than \$1,000,000 per accident. Such insurance shall cover owned, hired, and non-owned motor vehicles.
 - iii. Workers' Compensation: The Service Provider shall maintain statutory workers' compensation insurance, and employers liability insurance with limits of not less than each accident, \$500,000 each employee, and \$500,000 policy limit for all its employees who will be engaged in the performance of the contract, including special coverage extensions where applicable.
 - iv. Professional Liability: Professional Liability insurance covering the Service Provider's professional acts, errors or omissions committed or alleged to have been committed which arise out of rendering or failure to render the services provided under the terms of this agreement with limits of at least \$1,000,000 per claim and \$1,000,000 in the annual aggregate. If the policy is written on a "claims made" reporting form, the Service Provider shall keep such policy in force (or purchase an extended reporting period) for not less than three years from the date of completion of the Work which is subject in this Agreement. The retroactive date of any such "claims made" policy must be no greater than the date the activities commenced pursuant to this Agreement.
- C. Waiver of Claims: The AOC, the Judicial Council of California, the Administrative Office of the Courts, the superior courts and appellate courts of the State of California, and any of their officers, employees, and agents (collectively, "State Entities") shall not be liable for any injury, loss, or damage to Service Provider, Subcontractors, or their officers, employees, or agents including, without limitation, damage to the property of Service Provider, Subcontractors or their officers, employees, and agents, by or from any cause whatsoever, except to the extent the injury, loss, or damage was caused from the gross negligence or intentional misconduct of the State Entities. Service Provider and Subcontractors hereby waive all claims and their respective insurers waive all rights of subrogation against the State Entities for any injury, loss, or damage to Service Provider, Subcontractors, or their officers, employees, or agents including, without limitation,

damage to the property of Service Provider, Subcontractors or their officers, employees, and agents, in or about the Facilities, by or from any cause whatsoever, except to the extent the injury, loss, or damage was caused from the gross negligence or intentional misconduct of the State Entities. Neither the AOC, nor any officer or employee of the AOC, shall be liable for any loss or damage that may happen to the Work, or any part thereof; nor to any of the materials or other items used or employed in performing the Work;

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

21. Confidentiality

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

B. Service Provider agrees not to disclose the Confidential Information to any Third Party and to treat it with the same degree of care as it would its own confidential information. It is understood, however, that Service Provider may disclose the AOC's Confidential Information on a "need to know" basis to Service Provider's employees and Subcontractors and, as directed by the Project Manager, representatives of the AOC that are performing Work authorized under this Agreement. All such employees and Subcontractors of Service Provider shall have executed a confidentiality agreement with Service Provider requiring a promise of confidentiality concerning Service Provider's clients and business.

C. Service Provider shall acquire no right or title to the Confidential Information. Service Provider agrees not to use the Confidential Information for any purpose except as contemplated pursuant to this Agreement. Notwithstanding the foregoing, Service Provider may disclose the Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it; (ii) as appropriate to respond to any summons or subpoena applicable to it; or (iii) to the extent necessary to enforce its rights under this Agreement.

D. The AOC reserves the right to disclose all Work provided under this Agreement disclose to third parties for the purpose of validation of the Work.

E. Service Provider shall bind its Subcontractors to provisions of confidentiality with regard to the Confidential Information disclosed that are not less strict than those assumed by Service Provider hereunder.

22. Permits and Licenses

The Service Provider shall observe and comply, and shall ensure that its Subcontractors observe and comply with all federal, state, city, and county laws, rules, and regulations affecting Service Provider and its Subcontractor(s)' performance of the Work provided under this Agreement. The Service Provider shall procure and keep in full force and effect, and shall ensure

that its Subcontractors procure and keep in full force and effect, during the Term of this Agreement, all permits and licenses necessary to accomplish the Work contemplated in this Agreement.

23. Conflict of Interest

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

B. Service Provider shall certify and shall require its Subcontractors to certify that: Former AOC employees will not be awarded a contract for (a) two (2) years from the date of separation if that employee had any part in the decision making process relevant to this Agreement, or (b) for one (1) year from the date of separation if that employee was in a policy making position in the same general subject area as this Agreement within the twelve (12) month period of his or her separation from AOC's service.

24. Covenant Against Gratuities

Service Provider warrants by signing this Agreement that no gratuities, in the form of entertainment, gifts, or otherwise, were offered by Service Provider or any agent, director, Subcontractor or representative of Service Provider, to any officer, official, agent, or employee of the AOC with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this warranty, the AOC will have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by the AOC in procuring, on the open market, any Work which Service Provider agreed to supply, which shall be borne and paid for by Service Provider. The rights and remedies of the AOC provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

25. National Labor Relations Board

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

26. Drug-Free Workplace

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

27. Nondiscrimination/No Harassment Clause

A. During the performance of this Agreement, Service Provider and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, age (over 40), sex, or sexual orientation. Service Provider shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.

B. During the performance of this Agreement, Service Provider and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Service Provider or its Subcontractors interact in the performance of this Agreement. Service Provider and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.

C. Service Provider shall comply, and shall ensure that its Subcontractors comply, with applicable provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.

D. Service Provider and any of its Subcontractors shall give written Notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

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

28. Americans with Disabilities Act

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

29. Choice of Law

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

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

30. Severability

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

31. Waiver

The omission by either party at any time to enforce any default or right, or to require performance of any of this Agreement's terms, covenants, or provisions by the other party at the time designated, shall not be a waiver of the default or right, nor shall it affect the right of the party to enforce those provisions later.

32. Signature Authority

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

33. Survival

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

34. Entire Agreement

This Agreement, consisting of all documents as defined herein, constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties. No waiver, alteration, modification of, or addition to

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Request For Real Estate Appraisal Services for Office of Real Estate and Facilities Management

the terms and conditions contained herein shall be binding unless expressly agreed in writing by a written amendment to this Agreement.

END OF EXHIBIT B

EXHIBIT C

PROCESS AND PAYMENT PROVISIONS

1. Contract Amount

The total amount owed by the AOC to Service Provider under this Agreement for performing any and all Work authorized hereunder, and for all Travel and Living Expense and/or Reimbursable Expenses, shall not in total exceed the Total Amount Encumbered to Date authorized for this Agreement on the AOC Standard Agreement form signed to enter into this Agreement, including any Amendments thereof.

2. Compensation for Contract Work

A. A general description of the scope and nature of Services that may be performed under this Agreement is given in **Exhibit D, Work to be Performed**. The AOC will provide Service Provider with a Work Authorization Form, Part 1 Request for Quote (as described below under section 3 Work Authorization Process), detailing the Services the AOC's desires to purchase and the location for which they will be provided. If necessary, the parties will confer to further clarify the nature of the Services the AOC deems necessary.

B. Service Provider shall, upon request, provide written Price Quotes for the Services to be performed which are described in **Exhibit D, Work to be Performed**. The Price Quotes shall be priced on a Time and Materials Not-to-Exceed Basis for the Services necessary to provide the appraisal, including buildup of the price based upon the hourly rates, as specified in paragraph 9 below, or, if the Service Provider so offers in its written Price Quote, Time and Materials Not-to-Exceed Basis or Firm Fixed Price rates lower than those in paragraph 9 below. If the parties have agreed that Service Provider will incur Travel and Living Expenses or Reimbursable Expenses in the course of performance of the Work, Service Provider shall specify in the Work Authorization Form, Part I Request for Quote, said expenses. Travel and living expenses must be in accordance with the Travel and Living Expense Guidelines given below.

C. The total actual cost which the AOC may reimburse the Service Provider under any individual Work Authorization, pursuant to this provision, including any Travel and Living or Reimbursable Expenses, shall not exceed the amount specified on the face of the Work Authorization.

D. Unless the AOC elects to receive one invoice per Work Authorization, Service Provider shall, on a monthly basis, and in one invoice, bill the AOC for all accepted Work (and any authorized associated Travel and Living or Reimbursable Expenses) actually performed and/or incurred and accepted in the previous calendar month. Invoices shall be broken down on a Work

Authorization by Work Authorization basis, and the invoiced detail for each work Authorization shall show:

- i. For any Services in a Work Authorization priced on an Time and Materials Not-to-Exceed Basis, Service Provider shall invoice the AOC for the actual hours worked during that month at the rates specified in the Work Authorization, but not to exceed the Not-to-Exceed Amount for that Service specified in the Work Authorization.
- ii. For any Services or a Work Authorization priced on a Firm Fixed Price Basis, Service Provider shall invoice and the AOC shall compensate Service Provider for the fixed price specified in the Work Authorization.
- iii. Unless otherwise specified in a Work Authorization, the Time and Materials Not-to-Exceed Basis rates set are inclusive of all costs, any materials needed to perform the Services, and all benefits, expenses, fees, overhead, and profits payable to the Service Provider for services rendered to the AOC.
- iv. If a Work Authorization specifies that the AOC is obligated to pay Travel and Living or Reimbursable Expenses, Service Provider shall, in its monthly invoice, charge the AOC for the Travel and Living Expenses actually incurred in the performance of the Work.
- v. The Service Provider shall not charge, nor shall the AOC pay, any overtime rate.

E. If a Work Authorization requires that the AOC pay Travel and Living Expenses, the following guidelines shall apply:

- i. Provided that reimbursement for transportation, meals, and lodging expenses is authorized in a Work Authorization, the AOC shall, subject to the provisions of this Agreement, reimburse the Service Provider for actual and reasonable expenses incurred for necessary transportation, meals, lodging, and other travel-related expenses required for the Service Provider's employees or Subcontractors who actually performed the Work authorized under the Work Authorization. Such travel expenses shall not exceed the maximum amount set forth in the Work Authorization, and shall be subject to the provisions of the Travel Plan specified in the Work Authorization.
- ii. The AOC shall reimburse Service Provider for actual and reasonable transportation, meals, and lodging expenses actually incurred by Service Provider in the course of performance of the Work.
 - (a) For necessary air transportation, the AOC will reimburse the Service Provider for the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) days prior to travel, unless the Project Manager agrees otherwise in writing.

- (b) If overnight lodging expense is authorized, in accordance with the California Department of Human Resources guidelines, the AOC will reimburse Service Provider only as follows:

For hotel room rental - at the actual cost incurred if supported by a zero balance receipt, but not to exceed \$110.00 per Day except:

- In the counties of Alameda, San Mateo, or Santa Clara, which shall not exceed \$140.00 per Day.
- In the county of San Francisco, which shall not exceed \$150.00 per Day.
- In the counties of Monterey and San Diego, which shall not exceed \$125.00 per Day.
- In the counties of Los Angeles, Orange, or Ventura, which shall not exceed \$120.00 per Day; plus occupancy tax and/or energy surcharge, if any.

- (c) For meals - at the actual cost incurred but not to exceed the following maximum amounts per person per meal per Day:

Breakfast \$8.00
Lunch \$12.00
Dinner \$20.00

These rates are fixed for the term of this Agreement and will not adjust up or down if the AOC adjusts its published rates for AOC employees during that time. For necessary private vehicle ground transportation usage, the AOC will reimburse the Service Provider the published IRS rate. This rate is fixed for the term of this Agreement and will not adjust up or down if the AOC adjusts its published rates for AOC employees during that time.

- iii. The Service Provider shall maintain a file of original invoices for all travel and living related expenses. Upon the AOC's Project Manager's request, the Service Provider shall provide copies of receipts for reimbursement of transportation, lodging, and meal expenses together with a time sheet.

3. Payment and Withholding

A. Payment terms will be specified in the contract document that will be executed as a result of an award made under this RFP, however, prospective Service Providers are hereby advised that AOC payments are made by the State of California, and the AOC does not make any advance payment for services. Payment by the AOC is normally made based upon completion of tasks as provided for in the agreement between the AOC and the selected Service Provider.

B. The AOC may withhold ten percent of each invoice until receipt and acceptance of the final good or service procured. The amount withheld may depend upon the length of the project and the payment schedule provided in the agreement between the AOC and the awarded Service Provider.

4. Work Authorization Process

A. The AOC uses a 3-part Work Authorization Form (WA) to request price quotes for individual appraisal work, receive price quotes back from Service Providers, and to award orders and authorize work to proceed. The Work Authorization Form will be substantially in the form shown in **Exhibit E** of this Agreement. Part 1 of the form is the “Request for Quote” to be completed by the AOC; Part 2 is the Price Quote to be completed by the Service Provider; and Part 3 is the Work Authorization to be completed by the AOC.

B. AOC will e-mail to Service Provider, **Part 1** of the WA.

C. In accordance with the pricing specified in this Agreement or with other lower pricing Service Provider may wish to offer, Service Provider will complete **Part 2** of the WA which is the “**Price Quote**”. Prices quoted on the Price Quote must be on a Time and Materials Not-to-Exceed Basis. The maximum price quoted on a Time and Materials Not-to-Exceed Basis (“Not-to-Exceed Amount”) shall be based on Service Provider’s good faith estimate of the total number of hours necessary to provide Service in full. Service Provider shall indicate whether any expected Travel and Living or Reimbursable Expenses will be applicable to the Work and the amount of said expenses. Service Provider shall provide a total amount (“Total Amount”) for all Services and expenses on the Work Authorization. The costs of Travel and Living Expenses and other expenses provided on Work Authorizations must be in accordance with the Travel and Living Expense Guidelines specified in **Exhibit C, Process and Payment Provisions**, of this Agreement. Service Provider will sign, scan and e-mail the quote back within two (2) Business Days, or a later date as specified in the Request for Quote.

Service Provider shall, if applicable, specify the names of personnel, and Subcontractors, if any, who will perform the Work (as so agreed), any schedule (if applicable) or required completion date for the Work (as agreed). Required completion date must be in accordance with agreed-upon turnaround times for the requested services, as specified in **Exhibit C, Process and Payment Provisions, paragraph 8**, unless otherwise agreed upon by AOC’s designated Project Manager.

Service Provider’s Price Quote shall not be revocable for sixty (60) days after receipt and shall be submitted substantially in the form of **Exhibit E, Work Authorization Form, Part 2**.

D. If the AOC accepts Service Provider's Price Quote, the AOC's designated Project Manager will sign, scan and e-mail back Part 3 of the WA which is the "AOC Authorization Signature." Unless otherwise stated in the Work Authorization, Service Provider will begin Work upon receipt of the e-mail bearing the AOC Authorization Signature.

E. If the parties agree to revise the approved scope of Work, schedule, or price, the parties may agree to amend the Work Authorization with a new or revised Work Authorization, executed in the same manner as the original Work Authorization.

F. No Work Authorization shall act to modify the terms and conditions of the Standard Agreement, and any language in a Work Authorization that purports to do so shall be null and void, and without effect.

G. Any commencement of performance prior to the Service Provider's receipt of an AOC signed Work Authorization shall be done so at the Service Provider's own risk.

H. All Work Authorizations are subject to the terms and conditions of the Standard Agreement. In the event of a conflict between a Work Authorization and the Standard Agreement, the Standard Agreement shall prevail.

I. The AOC reserves the right to modify the Work Authorization Form from time to time (including Parts 1, 2, and 3) (**Exhibit E**) as it deems necessary or appropriate, in its sole discretion, and will notify the Service Provider of any such modification prior to implementing the modified form(s). Any such modification(s) will be considered automatically incorporated into this Agreement upon notification of Service Provider by AOC.

5. Work Authorization Total Amount

A. The Work Authorization shall set forth a Total Amount which is the maximum amount the AOC will pay the Service Provider for all Work and all expenses incurred in the performance of the Work authorized. Said Total Amount includes all fixed prices and/or any hourly rates with not to exceed amounts, as well as any travel and living expenses and/or other expenses applicable to the Work and approved by the AOC.

B. Absent any material change to the Work described in a Work Authorization, Service Provider shall perform the Work for an amount equal to or less than the Total Amount specified in the Work Authorization.

C. In the event that the AOC agrees there is a material change to the Work, and the AOC does not wish to authorize additional funds, the AOC is prepared, if appropriate, to adjust the specifications describing the Work in order to enable Service Provider to complete a portion of the Work within the Total Amount for said Work, and Service Provider agrees that Service Provider is willing to make such adjustments to accommodate this need at the request of the AOC.

D. All firm fixed prices and hourly rates for provision of the Work in a Work Authorization shall be as set forth in Exhibit C.

E. In no event will the AOC pay more than the total amount stated in the authorized Work Authorization.

6. Work Authorization

A. All Work performed under this Agreement will be authorized only by a fully executed Work Authorization.

B. All requests and communications about the Work to be performed under a Work Authorization shall be made through the Project Manager or Project Manager's designee as identified in the Work Authorization.

C. There is no limit on the number of Work Authorizations the AOC may issue under the Standard Agreement.

D. There will be no specific limitation on the quantity, minimum and/or maximum value of individual Work Authorizations.

E. The AOC does not guarantee that the Service Provider will receive a specific volume of Work, a specific total contract amount, or a specific Work Authorization value.

7. Taxes

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

8. Invoices and Method of Payment

A. The AOC will endeavor to pay invoices within sixty (60) days after receipt of a correct, itemized invoice. In no event shall the AOC be liable for interest or late charges for any late payments. **Invoices MUST clearly indicate:**

- **Contract number**, (which can be found in the upper right hand corner of the signature page)
- **AOC Work Authorization (WA) Number** Specified on the Work Authorization
- Unique **invoice number**;
- Service Provider's name and address;
- Service Provider's Taxpayer identification number;
- A one line description of the Work Authorization;
- Name and brief description of each Service provided under Work Authorization number;
- If the Service is priced on a Firm Fixed Price Basis, the Firm Fixed Price applicable to the Service as specified in the Work Authorization;

- If the Service is priced on a Time and Materials Not-to-Exceed Basis, the Hourly Rate, number of hours actually worked, the Not-to-Exceed Amount specified in the Work Authorization, and the total amount invoiced for the Service, which shall not exceed the Not-to-Exceed Amount specified in the Work Authorization;
- Travel related expenses incurred;
- Reimbursable expenses incurred;
- Preferred remittance address, if different from the mailing address.

The Service Provider shall submit one (1) original invoice to:

**Judicial Council of California
Administrative Office of the Courts
Office of Real Estate and Facilities Management
Project Manager (Name and address designated on Work Authorization)**

9. Turnaround Times for Services Performed

Service Provider shall provide the following turnaround times unless the Parties jointly agree specifically to a different turnaround time in the Work Authorization for a specific report:

- a. Level 1 Report ([INSERT SERVICE PROVIDER'S PROPOSED DAYS HERE BEFORE FINALIZING CONTRACT ____] business days): Appraisal report with no/few challenges (e.g., a single parcel located in an area with recent comparable sales)
- b. Level 2 Report ([INSERT SERVICE PROVIDER'S PROPOSED DAYS HERE BEFORE FINALIZING CONTRACT ____] business days): A moderately complex appraisal report with some challenges (e.g., a "carve-out" parcel which is currently part of a larger parcel – but for which no legal description is currently available)
- c. Level 3 Report ([INSERT SERVICE PROVIDER'S PROPOSED DAYS HERE BEFORE FINALIZING CONTRACT ____] business days): A complex report with multiple challenges (e.g., a "carve-out" parcel which is currently part of a larger parcel – but for which no legal description is currently available, and which is located in an area with no recent comparable sales).

Failure to meet the agreed-upon delivery date may result in penalties that can include a reduction in payment of 25%, a cancellation of the order with no financial liability to the AOC and no financial obligation of the AOC to the service provider.

10. Service Provider's Hourly Rates and Not-to-Exceed Amounts

HOURLY RATES

The following hourly rates shall be applicable throughout the term of this Agreement, including its extensions or reinstatements.

[INSERT SERVICE PROVIDER’S PROPOSED HOURLY RATES HERE BEFORE FINALIZING CONTRACT]

NOT-TO EXCEED AMOUNTS

The following Not-to-Exceed Amounts shall be applicable throughout the term of this Agreement, including its extensions or reinstatements.

[INSERT SERVICE PROVIDER’S PROPOSED NOT-TO-EXCEED AMOUNTS BELOW BEFORE FINALIZING CONTRACT]

Type of Report	LAND ONLY	
	Not-to-Exceed Amount	LAND + IMPROVEMENTS Not-to-Exceed Amount
1. New Report		
Restricted Use Report	\$	\$
Appraisal Report Summary	\$	\$
Self-Contained	\$	\$
2. New Report - AOC provides recent appraisal report from another firm		
Restricted Use Report	\$	\$
Appraisal Report Summary	\$	\$
Self-Contained	\$	\$
3. Multiple new appraisal reports for properties in same vicinity, appraised concurrently, creating economies of scale.		
Restricted Use Report	\$	\$
Appraisal Report Summary	\$	\$
Self-Contained	\$	\$
4. Update of a previous Service Provider appraisal report to reflect current market conditions.		
Restricted Use Report	\$	\$
Appraisal Report Summary	\$	\$
Self-Contained	\$	\$
5. Update of a previous Service Provider appraisal report to reflect expanded scope.		
Restricted Use Report	\$	\$
Appraisal Report Summary	\$	\$
Self-Contained	\$	\$
6. Update of a previous Service Provider appraisal report to reflect reduced scope.		

Restricted Use Report	\$	\$
Appraisal Report Summary	\$	\$
Self-Contained	\$	\$

7. Update of a previous Service Provider appraisal report to change approach used.

Restricted Use Report	\$	\$
Appraisal Report Summary	\$	\$
Self-Contained	\$	\$

8. New Commission appraisal report to determine brokerage market commission rates where a broker represents AOC to acquire a specific type of property.

Commission	\$	\$
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OTHER CHARGES

[IF APPLICABLE, INSERT SERVICE PROVIDERS "OTHER CHARGES" HERE BEFORE FINALIZING THE CONTRACT]

OPTION TO REDUCE RATES

Service Provider shall have the option of reducing its rates and prices at any time during the term of this Agreement by writing to the AOC and supplying the new rates and prices. Service Provider also is encouraged to submit Price Quotes during the Work Authorization process (as described in Exhibit C, section 3) at reduced rates and prices, in order to remain competitive with other Service Providers.

SERVICES PROVIDED AT NO CHARGE

The following administrative services will be provided at no additional charge:

Status Reports: If requested by the AOC, Service Provider will provide the AOC with regular order status reports on a weekly, bi-weekly, or monthly basis, at AOC's option.

Copies of Reports: Up to four (4) hard-copy, bound reports with original signatures, delivered via courier service or USPS to an AOC-specified address within California.

END OF EXHIBIT C

EXHIBIT D

WORK TO BE PERFORMED

A. GENERAL

Service Provider shall furnish without limitation all necessary labor, material, hardware, software, tools and equipment to complete the Work as described in this document, and as specified in a Work Authorization. Service Provider will use available codes, standards, and technology to provide the service to the standard level of professional care.

Use of Subcontractors: Use of subcontractors will be permitted; however, Service Provider will itself remain the sole point of contact with the AOC, and will be solely responsible for the supervision and the acts of its subcontractors, and must warrant the work of such subcontractors as if it were the Service Provider's own work.

B. STATEMENT OF WORK – REQUIRED APPRAISAL SERVICES

1. General Report Requirements

- a. Types of Properties
 - 1) Land
 - 2) Land + Improvements
- b. Types of Reports
 - 1) Restricted Use Report;
 - 2) Appraisal Report Summary;
 - ~~3) Self-Contained; and~~
 - ~~4) Commission~~
- c. Approaches required:
 - 1) Cost Valuation
 - 2) Income Capitalization
 - 3) Sales Comparison
 - 4) Combination of above
 - 5) Alternative approach for Special Use properties
 - a) Use Value
 - b) Going Concern Value
 - c) Combination of above
- d. Types of Services
 - 1) New appraisal report.
 - 2) New appraisal report – AOC provides a recent appraisal report from another firm.

- 3) Multiple new appraisal reports for properties in the same vicinity, being appraised concurrently, thereby affording Service Provider certain economies of scale.
- 4) Update of a previous Service Provider appraisal report, to reflect current market conditions.
- 5) Update of a previous Service Provider appraisal report to reflect expanded scope.
- 6) Update of a previous Service Provider appraisal report to reflect reduced scope.
- 7) Update of a previous Service Provider appraisal report to change approach used
- 8) New Commission appraisal report to determine brokerage market commission rates where a broker represents the AOC to acquire a specific type of property.

2. State of California, Department of General Services Requirements: All **Appraisal Reports self-contained appraisal reports** must conform to the requirements of the State of California, Department of General Services (“DGS”). DGS reviews all AOC appraisal reports commissioned in connection with the purchase of real property and will reject any appraisal if it is non-conforming. Requirements (“DGS Requirements”) are as follows:

- a. Each **Appraisal Report self-contained appraisal report** must conform to the requirements contained in the DGS document entitled “Department of General Services Appraisal Specifications (DGS), (Revised January 1, 2008)” (“DGS Specifications”), as may be revised or updated from time to time. The current document is included as **Exhibit F** to this Agreement.
- b. Each **Appraisal Report self-contained appraisal report** appraisal report must include a statement regarding “Implied Dedication”. Please refer to the DGS Document Regarding Implied Dedication, included as **Exhibit G** to this Agreement.

3. Additional AOC Report Requirements

- a. All depictions of the subject property and the comparable properties must be a minimum of 4” x 6” in size, including any photographs required by DGS Specifications.
- b. **Use of local appraisers:** While not stated in the DGS Specifications, local appraisers with knowledge of the local real estate markets are preferred, therefore the AOC requires that each appraisal be performed by, and signed by, a local appraiser with a minimum of 5 years experience in the geographic market in which the subject property is located. In the event the Service Provider does not have a local appraiser in the market where the appraisal work is to be performed, the Service Provider must subcontract the appraisal work out to a qualified appraiser who is located within that market. The Service Provider will remain responsible for overseeing the subcontractor’s work and for insuring that the work meets all contractual requirements between the AOC and the Service Provider. Because the definition of “local” may vary depending on location, the Service Provider will need to indicate in its proposals to the AOC, how it intends to meet this requirement.

- c. Regional, area, and neighborhood analyses (Item 13 in the current DGS Specifications) are to include economic trends regarding employment, income levels, population data, household size, housing statistics, nearby support facilities (e.g. schools, retail), transportation linkages, traffic counts, development density, and condition of surrounding properties. Data sources for these analyses should include local real estate market participants and internal and external reports.
- d. Real estate data collected and analyzed (Item 14 in the current DGS Specifications) are to include occupancy levels, absorption rates, construction supply pipeline, rental rates, operating expenses, tenant improvement allowances, leasing commissions, capitalization rates, and marketing/exposure periods for similar properties.

C. CONTRACT ADMINISTRATION REQUIREMENTS

1. Order/Price Quote Process. When the AOC requires appraisal services, we will request price quotes from one or more firms currently on contract with the AOC. Each firm will provide a separate written, signed price quote for each new appraisal order. Service Provider's price quotes must include the following:

- a. If requested by the AOC, Service Provider's suggested approach(es) to be used for the appraisal. (Note: For ~~self-contained Appraisal Reports~~, any request by AOC for this information, does not in any way limit the requirement that Service Provider comply with DGS Requirement No. 19 included in **Exhibit F**);
- b. A complete list of any assumptions or limiting conditions that will apply to the appraisal;
- c. A list of Service Provider's personnel and Subcontractors, if any, identified by name, title and hourly rate, that will be assigned to perform the appraisal;
- d. Indicate how the local appraiser requirement will be met (years of experience and/or listing of appraisal reports [including dates] previously prepared in the requested location);
- e. If requested by the AOC, a detailed Work Plan and a schedule of critical path responsibilities, describing the Work to be undertaken and identifying individuals and resources necessary for the performance of the Work in accordance with the schedule (if applicable);
- f. A Not-to-Exceed Amount for the Services necessary to provide the appraisal, including a buildup of the price based upon the hourly rates;
- g. If applicable, an estimate of the Travel and Living Expenses necessary to provide the appraisal, which must be priced as provided for in the Travel and Living Expense Guidelines. (See **Exhibit C, Par. 2.E.**);

- h. A Firm Fixed Price for any permitted Reimbursable Expenses necessary to provide the appraisal.

2. Delivery/Approval of Reports by AOC

Service Provider will e-mail an electronic version of the report to the AOC for review and comment no later than the mutually agreed-upon due date for completion of the work. The initial appraisal report submitted to the AOC on the completion due date must be a complete, final, proofread, fact-checked report that meets all DGS/AOC requirements, with only minor revisions, if any, needed after review by the AOC. (If requested by AOC, Service Provider will provide the report in MS Word format to allow the AOC to insert comments and/or questions for Service Provider's review.) The AOC will provide comments and/or questions to the document and provide that document back to Service Provider, or indicate the report is acceptable as is. Once agreement has been reached on the final changes, if any, Service Provider will provide to the AOC within five (5) business days both an electronic PDF version of the final report (via e-mail) and hard copy, bound reports in the quantity requested and to the address specified.

3. Approval of ~~Self-Contained Appraisal Reports~~ by DGS

- a. If ~~a self-contained an Appraisal Report appraisal-report~~ is rejected by DGS because the report does not conform to one or more of the DGS Requirements noted above, Service Provider will, at no additional charge to the AOC, and within no more than five (5) business days after written request from AOC, revise the report to conform to the DGS Requirements. Service Provider also will provide a redlined document which shows the edits made, as compared to the original appraisal report.
- b. If ~~a self-contained an Appraisal Report appraisal-report~~ is rejected by DGS for any other reason, the AOC and Service Provider will negotiate a reasonable fee to cover the cost of revising the report to address DGS's new requirements. Upon agreement by the AOC and Service Provider, as to the fee to cover the cost of revising the report, Service Provider will, within no more than five (5) business days thereafter, revise the report to conform to the new requirements. Service Provider also will provide a redlined document which shows the edits made, as compared to the original appraisal report.
- c. Once agreement has been reached on the final changes, Service Provider will provide to the AOC within five (5) business days both an electronic PDF version of the final report (via e-mail) and hard copy, bound reports with original signatures, in the quantity requested and to the address specified.

4. Status Reports

- a. If requested by the AOC, Service Provider will provide the AOC with regular order status reports on a weekly, bi-weekly, or monthly basis, at AOC's option.

OREFM-2013-06-CC

Request For Real Estate Appraisal Services for Office of Real Estate and Facilities Management

END OF EXHIBIT D

EXHIBIT E

WORK AUTHORIZATION FORM

The Work Authorization Form includes the following parts:

Part 1: Request for Quote

Part 2: Price Quote

Part 3: AOC Authorization Signature

**EXHIBIT E - WORK AUTHORIZATION FORM
PART 1: REQUEST FOR QUOTE**

Part 1: Request for Quote

AOC Request/WA No.:

(To be completed by the AOC and submitted unsigned to the Service Provider)

This Services Request is made by the Judicial Council of California Administrative Office of the Courts ("AOC") under **Agreement** _____ with:

Service Provider: Name of Firm

Contact Person:

Street Address:

City, State, Zip:

E-mail address:

Tel: ; Fax:

AOC's Project Manager for this Request is:

TBD, Portfolio Administration Analyst

455 Golden Gate Avenue, 8th Floor (OREFM)

San Francisco, CA 94102

TBD

Tel: TBD

Request Date:

Quote Needed By :

Report Needed By:

Submitted By:

Internal Requester Name/Tel:

Property ID/Name:

Property Street Address:

City, State, Zip:

AOC PROJECT COST CODES: _____ - _____ - _____ - _____ - _____

Funding Type: SB1732 SB1407 Other _____

SB 1407 Group: 1 2A 2B 2C 3A 3B 3C 1-3C 3D

Other _____

Facility/Site Name *(Brief Description for reference purposes -1 Facility/Site per Request Form):*

[If existing building, enter Bldg. ID and Bldg. Name here or indicate n/a]

[If Capital Project, indicate Project Name and Description here, including Bldg. ID if one has been assigned]

Request Date:

Price Quote Needed By :

Report Needed by:

Submitted by: AOC PM:

AOC Requester:

Detailed Description if Applicable:

Land Only Land + Improvements.

Address: City, State, Zip, County:

Assessor's Parcel Number:

Facility Square Feet:

Year Built:

Contact for Access to Property if Applicable:

Attached are the following: *(AOC to provide, if available, documents describing facility to be assessed, including, if available, a legal description, sale/ownership history for last 3 years, construction details, copies of extant leases, site plans, operating statements, lists of major capital improvements made in last 3 years or currently planned (including associated costs), and names/contact information of individuals knowledgeable about the Facility.)*

- **DGS Appraisal Specs-Jan. 2008** *(for self-contained-reports Appraisal Reports only-previously provided to Service Provider)*
- **DGS Implied Dedication Requirement** *(for self-contained-reports Appraisal Reports only-previously provided to Service Provider)*

Type of appraisal report:

- Title Transfer - Restricted Use Appraisal Report
- Acquisition - ~~Summary~~ Appraisal Report
- ~~Acquisition - Self-Contained Appraisal Report~~
- Commission Appraisal

New or Existing Appraisal:

- New Appraisal
- New Appraisal, AOC supplies previous appraisal
- Update to Previous Appraisal, previous appraisal performed by Service Provider for AOC

Description of the Purpose of the Appraisal: (AOC to Provide)

- Purchase
- Sale
- Valuation information for negotiation purposes
- Other (TBD)

Approach requested by AOC to be used in the Appraisal in addition to any other approach which Service Provider deems necessary in order to properly complete the appraisal including complying with the DGS Appraisal Specifications for **Appraisal Reports self-contained reports (including without limitation Requirement No. 19) which is attached to the master Agreement as Exhibit F): (Check As Many As Apply)**

- Cost Valuation
- Income Capitalization
- Sales Comparison
- Alternative Approach for Special Use Properties: Use Value Going Concern Value

Service Provider to Propose

(Note: Any request for Approach by AOC does not in any way limit the requirement that Service Provider comply with any requirement to properly complete the appraisal including complying with the DGS Appraisal Specifications for **Appraisal Reports self-contained reports** (including without limitation Requirement No. 19) which is attached to this Agreement as Exhibit F.)

Turnaround Time: (see master Agreement Exh. C, Par. 8 for definitions of turnaround times)

- Level 1 Report
- Level 2 Report
- Level 3 Report

Number of hard-copy reports required: _____

Send hard-copy reports to: _____

Notes/Comments:

MUST USE LOCAL APPRAISER OR PROVIDE LIST OF PROPERTIES YOUR FIRM PREVIOUSLY HAS APPRAISED IN THIS GEOGRAPHIC AREA. PLEASE ADDRESS THIS REQUIREMENT IN YOUR PRICE QUOTE.

Part 2: Price Quote

(To be completed by Service Provider)

AOC Request No.

Fees Per Exhibit C of Contract (per hour): [INSERT FEES HERE]. Anticipated cost savings attributed to the following will be reflected in Service Provider's Price Quote by a reduction to the number of hours required to complete the appraisal: 1) multiple properties in same vicinity resulting in economies for Service Provider; 2) update to Service Provider's previous appraisal; 3) Previous appraisal provided by AOC.

Approach to be used for appraisal in addition to any specified by the AOC (if not specified by AOC or if different from the one specified by the AOC in Part 1):

Cost Valuation Income Capitalization Sales Comparison

Turnaround Time if different from the one specified by the AOC in Part 1 (see master Agreement Exh. C, Par. 8 for definitions of turnaround times)

Level 1 Report Level 2 Report Level 3 Report Other _____ business days

Pricing and Personnel:

(Provide breakdown by hourly rate and personnel assigned, per Master Agreement Exhibit C)

Delivery Date

The Parties agree that the Turnaround Time (see master Agreement, Exh. C, Par. 8 for definitions of turnaround times) shall be based upon the following:

Level 1 Level 2 Level 3 Other _____ business days.

Accordingly, the Report will be completed business days after receipt of AOC Work Authorization.

Notes/Comments:

COMPANY: _____

BY: _____
[Signature of Authorized Agent of Service Provider]

Name: _____

Title: _____

Date: _____

Part 3: Work Authorization Signature *(To be completed by the AOC)*

AOC Request/ WA No.

JUCIDIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE COURTS

BY: _____

[Signature of AOC Project Manager]

Name: _____

Title: Portfolio Administration Analyst

Date: _____

EXHIBIT F

State of California • Department of General Services • Arnold Schwarzenegger, Governor

REAL ESTATE SERVICES DIVISION

P r o f e s s i o n a l S e r v i c e s B r a n c h

707 Third Street, 5th Floor • West Sacramento, California 95605

DEPARTMENT OF GENERAL SERVICES (DGS) APPRAISAL SPECIFICATIONS (Revised January 1, 2008)

All appraisals must be completed and signed by a State of California Certified Real Estate Appraiser, who certifies that the appraisal is in compliance with the Uniform Standards of Professional Appraisal Practice as currently adopted by the Appraisal Standards Board of the Appraisal Foundation.

The principle appraiser who is responsible for developing the appraisal report must certify that they have inspected the subject property and comparable property data whenever physically possible. The following Supplemental Standards are required when applicable to the assignment:

1. Title page with sufficient identification of appraisal project.
2. Letter of transmittal summarizing important assumptions and conclusions, value estimate, date of value, date of report, etc.
3. Table of contents.
4. Assumptions and Limiting Conditions.
5. Description of the scope of work, including the extent of data collection and limitations, if any, in obtaining and analyzing relevant data.
6. Definition of Fair Market Value, as defined by California Code of Civil Procedures, Section 1263.320.
7. Photographs of subject property and comparable data, including significant physical features and the interior of structural improvements if applicable.
8. Copies of Assessor's plat maps with the subject parcels marked and an assemblage of all contiguous Assessors' parcels that depicts the ownership.
9. A legal description of the subject property if available.
10. For large, remote, or inaccessible parcels, provide aerial photographs or topographical maps depicting the subject boundaries
11. Three year subject property history, including sales, listings, leases, options, zoning, applications for permits, or other documents or facts that might indicate or affect use or value.
12. Discussion of any current Agreement of Sale, option, or listing of subject property. This issue requires increased diligence since state agencies often utilize non-profit organizations to quickly acquire sensitive-habitat parcels using Option Agreements. However, due to confidentiality clauses, the terms of the

Option are often not disclosed to the state. If the appraiser discovers evidence of an Option, or the possible existence of an Option, and the terms can not be disclosed due to a confidentiality clause, then the appraiser is to cease work and contact the client. Current DGS policy requires disclosure of any Option or Purchase Agreement. If the Agreement is not made available, DGS will not review the appraisal.

13. Regional, area, and neighborhood analyses.

14. Market conditions and trends including identification of the relevant market area, a discussion of supply and demand within the relevant market area (or other areas of competition), and a discussion of the relevant market factors impacting demand for site acquisition or leasing within the relevant market area.

15. Discussion of subject land/site characteristics (size, topography, current use, zoning and land use issues, development entitlements, General Plan designations, utilities, offsite improvements, access, easements and restrictions, flood and earthquake information, toxic hazards, taxes and assessments, etc.)

16. Description of subject improvements, including all structures, square footage, physical age, type of construction, quality of construction, condition, site improvements, etc.

17. Subject leasing and operating cost history.

18. Opinion of highest and best use for the subject property, based on an in depth analysis supporting the concluded use. Such support typically requires a discussion of the four criteria or tests utilized to determine the highest and best use of a property. If alternative feasible uses exist, explain and support market, development, cash flow, and risk factors leading to an ultimate highest and best use decision.

19. All approaches to market value applicable to the property type and in the subject market. Explain and support the exclusion of any usual approaches to value.

20. Map(s) showing all comparable properties in relation to subject property.

21. Photographs and plat maps of comparable properties.

22. In depth discussion of comparable properties, similarities and differences, and comparisons and adjustments to the comparable data, and discussion of the reliability and credibility of the data as it relates to the indicated subject property value.

23. Comparable data sheets: 1) For sales, include information on grantor/grantee, sale/recordation dates, listed or asking price as of date of sale, financing, conditions of sale, buyer motivation, sufficient location information (street address, post mile, and/or distance from local landmarks such as bridges, road intersections, structures, etc.), land/site characteristics, improvements, source of any allocation of sale price between land and improvement, and confirming source. 2). For listings, also include marketing time from list date to effective date of the appraisal, original list price, changes in list price, broker feedback, if available. 3). For leases, include significant information such as lessor/lessee, lease date and term, type of lease, rent and escalation, expenses, size of space leased, tenant improvement allowance, concessions, use restrictions, options, and confirming source.

24. Discussion of construction cost methodology, data source used, costs included and excluded, depreciation methodology, a discussion of accrued depreciation from all causes, and remaining economic life.
25. Copies of construction cost data including, section and pages of cost manual (date of estimate or date of publication of cost manual must be provided if not indicated on page), copies of cost estimate if provided from another source, and supporting calculations including worksheets or spreadsheets.
26. In part-take situations, a discussion of special benefit and severance damages.
27. Include a copy of a recent preliminary title report (within the past year) as an appraisal exhibit and discuss the effect of title exceptions on fair market value. If unavailable, the appraisal should be made contingent upon review of the preliminary title report and the assumption that there is no affect on value.
28. Implied dedication statement.
29. Reconciliation and final value estimate. Explain and support conclusions reached.
30. Signed Certification consistent with language found in USPAP
31. If applicable, in addition to the above, appraisals of telecommunication sites must also provide:
 - A discussion of market conditions and trends including identification of the relevant market, a discussion of supply and demand within the relevant market area and a discussion of the relevant market factors impacting demand for site acquisition and leasing within the relevant market area.
 - An analysis of other (ground and vault) leases comparable to subject property. Factors to be discussed in the analysis include the latitude, longitude, type of tower, tower height, number of rack spaces, number of racks occupied, placement of racks, power source and adequacy, back-up power, vault and site improvements description and location on site, other utilities; access, and road maintenance costs.
32. There are occasions where properties involve water rights, minerals, or merchantable timber that require separate valuations. If the Certified Real Estate Appraiser determines that there may be water rights, minerals, or merchantable timber that require separate valuations, the appraiser will notify his/her client. The client may choose to modify the scope of the appraisal assignment to include water rights, minerals, or timber valuation by a credentialed subject matter specialist. In such cases, the appraisal review package submitted to DGS will include the real estate appraisal, the appraisal of water rights, minerals, or merchantable timber by a credentialed subject matter specialist, and a review of the water rights, minerals, or merchantable timber appraisal by a second credentialed subject matter specialist.

If you have any questions, please call Thomas Crandall at 916-375-4008.

EXHIBIT G

DGS DOCUMENT REGARDING IMPLIED DEDICATION

The following discussion of Implied Dedication was prepared by the California Department of General Services, which relates to Item 28 of the DGS Specifications.

PRESCRIPTIVE RIGHTS AND ADVERSE POSSESSION

Study of California Coastal Commission Work in the Area of Implied Dedication

1. The Gion v City of Santa Cruz case was a landmark implied dedication case for the California Coastal Commission.^[321] The case has been superseded by statute in some instances, has been subject to fairly intense criticism and has been rejected by other state jurisdictions in the United States.^[322] Thus, it is fair to say then the principles enunciated by Gion are controversial, even in the deeds context.
2. Notwithstanding its approach to application of the principles of implied dedication, Gion has been cited to stand for the time-tested proposition that land could be impliedly dedicated to the public in a number of forms: inland roads, public beaches, navigable waters such as the Colorado River, and inland access along irrigation canals.^[323] Thus, the concept that areas used by the public as if it were private property is well-developed in California. These concepts seem comfortable in the setting offered by the Deeds System as the public demands for access to the heavily populated coastal areas of Southern California are as natural to apply as the doctrine of public trust to areas traditionally used by the public.^[324]
3. The major criticism of Gion v City of Santa Cruz lies in the application of the reasoning and the elements of implied dedication.^[325] Gion can be interpreted as suggesting that two alternative methods are available for a determination of whether an implied dedication has occurred.^[326] The Gion decision suggests that the elements of implied dedication, namely intent and the adverse nature of the use, can be subsumed into one element, so that either of those components can be evinced to supply proof of an implied dedication.
4. A conservative approach to implied dedication in the Deeds System requires both intent and a showing that the use was adverse to the interests of the owner.^[327] The question is raised, whether a more conservative approach taken to implied dedication in the Deeds System would surely be more consistent for application in the Torrens system, if appropriate for application in the Torrens System at all.

Facts of Gion/Dietz

5. Gion represented facts very common to implied dedication cases taken to maintain coastal access in California. The Gion case actually represented two cases, which were jointly heard by the Supreme Court of the State of California in order to consolidate and consistently apply the principles of implied dedication to both.^[328] In each case the public had traversed across land which adjoined a beach, where the public "proceeded toward the sea to fish, swim, picnic, and view the ocean."^[329]
6. Mr Gion, a successor landowner, had occasionally posted no trespass signs but he had never required anyone to leave his property. The City of Santa Cruz had undertaken maintenance of the properties

for erosion control, and instituted trash collection receptacles for the management of litter, assuming rightly there was public use being made of the property.

7. The Superior Court, as the trial court, held that an easement was appropriate across the property for use of the public for recreational purposes. The trial court reasoning was that an implied dedication of an easement for access to the coast had been intended based on facts which included the uninterrupted public use over a period exceeding five years, the assertion of control by the City of Santa Cruz, and a conclusion that this had occurred in conjunction with the plaintiff's full acknowledgment of the use, dominion and control by the public.^[330]

8. The Dietz matter (the consolidated case) was initiated by a request for an injunction in the Superior Court to keep the public from interfering with the use of a stretch of coastline called Navarro Beach. Navarro Beach is located in Mendocino County, a fairly remote rural area of Northern California, and was solely accessible by an unimproved dirt road. The beach was characterised by a "small sandy peninsular jutting out into the Pacific Ocean."^[331] In short, Navarro Beach and its peninsula was a stunning property very attractive to beachgoers located along the northern California coastline. Evidence was submitted at trial that "[t]he public has used the beach and road for at least 100 years".^[332]

9. Evidence was produced that after 1950 the public use of the beach expanded exponentially and was accessible through use of the road by persons coming via automobiles, trucks, campers and trailers. Evidence was further produced that this beach was also frequented by commercial fisherman, "picnicking, hiking, swimming, fishing, skin-diving, camping, driftwood collecting, firewood collecting, and related activities."^[333]

10. Although Navarro Beach Road was owned by a succession of companies and persons, no one had ever objected to the public use of Navarro Beach Road. One previous owner "testified by deposition that she and her husband encouraged the public to use the road. 'We intended,' she said, 'that the public would go through and enjoy that beach without any charge, and just for the fun of being out there.'"^[334]

11. During World War II the United States Coast Guard had barred the public from their use of the beach for defence reasons. Successive owners attempted to obstruct the public access and placed 'no trespassing' signs across the entrance, however, the public removed those obstructions, including chains. The Mendocino County Superior Court ruled in favour of the landowners "concluding that there had been no dedication of the beach or of the road and, in particular, that widespread public use does not lead to imply dedication."^[335]

Analysis and Reasoning of the Supreme Court in Gion/Dietz

12. The California Supreme Court began their decision on appeal by citing to the Court's "most recent discussion on common law dedication, Union Transport Co. v Sacramento County^[336] The principles outlined in Union Transport case were set out in full by the Gion Court:

"In common law dedication of property to the public can be proved either by showing acquiescence of the owner in use of the land under circumstances that negate the idea that the use is under a licence or by establishing open and continuous use by the public for the prescriptive period. When dedication by acquiescence for a period of less than five years is claimed, the owners actual consent to the dedication must be proved. The owners intent is the crucial factor.

.... when, on the other hand, a litigant seeks to prove dedication by adverse use, the inquiry shifts from the intent inactivities of the owner to those of the public. The question then is whether the public has used the land 'for a period of more than five years with full knowledge of the owner, without asking or receiving permission to do so, and without objection being made by anyone.' as other cases have stated, the question is whether 'the public has engaged in long-continued adverse use' of the land sufficient to raise the 'conclusive and undisputable presumption of knowledge and acquiescence, while at the same time it negatives the idea of a mere licence.'"[337]

13. The California Supreme Court indicates that two tests are available for an analysis of whether there was an implied dedication to the public.[338] The first test requires acquiescence or an intention to dedicate. At trial, there was an inference raised that the landowners had acquiesced in the public use of the land, but the argument was not furthered on appeal. The second test related to whether there was an adverse use of the land consistent with the owners' acknowledgment of the adverse use, and actions which indicate no objection to the continuance of that use.[339] Notwithstanding that the California Supreme Court applied the tests relating to whether the use was adverse, the Court noted three questions which had been raised by lower courts struggling with the problem of whether a use could be considered to be adverse such that dedication was warranted. Those questions were:

"(1) When is a public use deemed to be adverse?

(2) Must a litigant representing the public prove that the owner did not grant a licence to the public?

(3) Is there any difference between dedication of shoreline property and other property?"[340]

14. After setting out the above questions, the Court clearly notes that analogies drawn from the law of adverse possession and easement by prescription in implied dedication cases should be used with caution as they "can be misleading".[341] Differentiation in the reasoning of the law of adverse possession and prescription stems from the nature of the rights gained and identification of the person or user gaining those rights.

15. The Court does not go so far to say that the concepts underlying adverse possession and easements by prescription are so remote as to be distinctive and different at law. The concept of implied dedication still carries the burden of similarities associated with an adverse use, which is wholly overlooked by the High Court and rejected by the Court of Appeal in its effort to distinguish Section 64 of the Land Transfer Act 1952.

16. Simply put, adverse possession and easements by prescription are grounded in a person acting to gain a right to possess, or to use. The actual possession or use defines the nature of what is acquired. The difference with implied dedication is not related to an absence of an adverse use, instead, it is related to the fact that a sufficient group of undefined persons called "the public" must believe they have a right to use, or to possess. What follows is that no objection is taken by the owner to that use, or to possession, after an acknowledgment that the use is adverse to the owner's interests.[342]

17. The Court notes that "[t]his public use [in implied dedication cases] may not be 'adverse' to the interests of the owner in the sense that the word is used in adverse possession cases".[343] The Gion Court explained that the element of adversity did not need to be shown by the litigants because the use was in excess of the statutory period of five years.[344] The Gion Court goes on to explain that the litigants needed to show that "persons have used the land as they would have used public land.... if a road is involved, the litigants must show that it was used as if it were a public road".[345] In other words, to

establish dedication to the public an ill-defined limited number of persons cannot assert a public claim. To reach the threshold of being a public claim a litigant must present evidence showing the "scene of significance is that whoever wanted to use the land did so... when they wished to do so without asking permission and without protest from the landowners".^[346]

18. The California Supreme Court went on to address the second question which the lower courts had laboured with, namely, the question of whether a "use by the public is under a licence by the fee owner", and whether a presumption of a licence must be overcome by the public with presentation of evidence to the contrary.^[347] The California Supreme Court rejects that any presumptions in favour of a licence should be implied, and indicates that "[t]he question where the public use of privately owned land is under a licence of the owner is ordinarily one of fact."^[348] In fact, the California Supreme Court provides a legal test that could be used to negate a finding of intent to dedicate through adverse use, which was, that the landowner "must either affirmatively prove that he has granted the public a licence to use his property or demonstrate that he has made a bona fide attempt to prevent public use."^[349]

19. The California Supreme Court further indicated that an owner may denote an objection to the adverse use by erecting 'No Trespassing' signs or by other efforts which the Court described as making "more than minimal and ineffectual efforts to exclude the public".^[350]

20. The landmark holding by the Gion Court was based on the following text:

"the rules governing shoreline property [do not] differ from those governing other types of property, particularly roads. Most of the case law involving dedication in this State has concerned roads and land bordering roads. [Citations.] This emphasis on roadways arises from the ease with which one can define a road, the frequent need for roadways through private property, and perhaps also the relative frequency with which express dedications of roadways are made. The rules governing implied dedication apply with equal force, however, to land used by the public for purposes other than a roadway".^[351]

21. The public policy support for the application of the rules of common law implied dedication to the shoreline, were held to be in accordance with the strong policies expressed in the State of California constitution and statutes "encouraging public use of shoreline recreational areas".^[352] The Gion Court found further support for its decision in the United States constitution which the court stated "clearly indicates that we should encourage public use of shoreline areas whenever that can be done consistently with the Federal constitution".^[353]

22. The analogy the Court makes, therefore, had lasting implications for application of the principles of implied dedication as the areas now subject to those principles were expanded from well defined roadways to beaches following the "the increased urbanisation of this State".^[354] The reason which seemed most significant to the Court that implied dedication was warranted, was reiterated at the end of the Court's decision.^[355] The Court was persuaded that in "both cases [Gion and Dietz] the public used the land in public ways, as if the land was owned by a government, as if the land were a public park".^[356]

23. The Gion Court was also persuaded by evidence that the city's maintenance of the cliffs along the beach in association with the public use warranted a finding of implied dedication. The long period of time (100 years) was also instrumental in persuading the Court that use of the beach has been as if the public owned it. The Gion court also noted the public's freedom from interference regarding their use of the beach and prior owners had given casual permission to a few to use the beach, which the Gion court held would not "deprive the many, whose rights are claimed totally independent of any permission asked or received of their interest in the land".^[357]

24. Unlike John Spencer, the property owners in Gion did not approve of the public's use of the property.^[358] The Gion court recognised, however, that the widespread public use of the land prior to the current ownership had given effect to the implied dedication by the public.
25. Notwithstanding that an analysis of the interest in land that was acquired by the public was relegated to a final footnote by the Gion court, the footnote is significant in regard to a finding of what can actually be gained by the public in accordance with a common law implied dedication.^[359] An important distinction was made by the Gion court in relation to the acquisition of public parks, as opposed to easements for general recreation. The California Supreme Court found that common law implied dedication principles will only extend a dedication over the scope of what use or possession the public actually acquired.
26. Another argument made by the appellants was that notwithstanding that section 802 of the Civil Code in California only granted easements, that this statute did not restrict the Court's ability to assess the nature of the public's acquisition as a park, which would in turn allow a fee simple ownership to be impliedly dedicated (a possessory use is associated with a park in contrast to a use associated with access). This argument, even in the context somewhat controversial reasoning by the California Supreme Court in Gion, was rejected.^[360]
27. The footnote, however, makes a very important point which distinguishes the rights granted by the High Court and Court of Appeal in the Stony Batter Decisions: the New Zealand lower courts arguably go beyond even that provided by Deeds System cases by granting fee simple ownership. No detailed examination was given of any evidence in either Stony Batter Decision that described the nature of the use, the scope of the users (aside from a generalised description of the public) and the character of their use and following from this, what property right may have been acquired. In essence a possessory estate was assumed.

Guidance or Aftermath - History in Accordance with Gion

28. Directly after the Gion decision, the California legislature amended California Civil Code section 813.^[361] California Civil Code section 813 is entitled "Recordation of Notice of Consent to Use Land; Effect; Revocation; Mailing Notice; Restriction in Notice". Although this Civil Code section was added in 1963, the 1971 amendment is considered to be a direct reaction to the Gion decision.^[362] Section 813 was understood to authorise notices that could be posted offering permission to the public which could be conditioned in the notice to restrict time, place, and the manner of the public use. The California legislature also enacted California Civil Code section 1009 at the same time of the amendment of section 813. California Civil Code section 1009 "prospectively imposes restrictions on the acquisition of the public's right an easement".^[363]
29. The legislative changes in California in 1971 made it eminently clear that such a notice providing permission of the public for use of private property would be construed conclusively as a licence to use, as follows:

"a notice of consent to the use of land, or any portion thereof, for the purpose described in the notice [would be construed as] conclusive... of consent... during the time such use is in effect by the public or any user for any purpose... in any judicial proceeding involving the issue as to whether all or any portion of such land has been dedicated to the public use or whether any user has a prescriptive right in such land or

any portion thereof.... and no use in violation of such restriction shall be considered public use for purposes of a finding of implied dedication".[\[364\]](#)

30. This amendment was significant for landowners faced with the possibility that the public may be using property owed in remote areas that would be difficult to police for trespass, particularly where neither the means or the inclination to undertake a physical confrontation to exclude the public looked available and attractive. This California Civil Code section provides an alternative: property owners can provide clear notice of a licence for the public to use property at the discretion of a landowner in a manner which will not ripen into a finding of implied dedication.

31. Notwithstanding that the 23 September 1970 Letter could surely have been construed as a permission in the nature of a license, consistent with the evidence, it seems harsh to have expected Arthur Hooks to take measures equivalent to physical confrontation to exclude the public from his property when the evidence at trial clearly illustrated his absence from the island, his disabled state in a nursing home, with a partially absentee son for a farm manager, with no clear indication of what Arthur Hooks was being told about events (particularly use of the formed road).

Other cases following Gion/Dietz

32. Friends of the Trails v Blasius is a recent California Court of Appeal case involving acquisition of a public easement by implied dedication through a property which had an irrigation "ditch ... used to convey water for purposes of the Nevada Irrigation District (NID)".[\[365\]](#) Nevada Irrigation District already had an easement on title for the conveyance of water through related infrastructure. The property through which the infrastructure ditch traverse was owned by various persons over time.

33. Upon acquiring the property in 1996 the successor landowners attempted to block the canal road adjacent to the ditch with a locked gate, and continued to deny passage through the gate to members of the public and adjoining neighbours. Friends of the Trails instituted an action seeking injunctive and declaratory relief, as well as a claim "to quiet title to a public easement for recreational purposes".[\[366\]](#)

34. Friends of the Trails argued that the public had acquired an easement for recreational purposes prior to the legislative change which followed the Gion California Supreme Court decision. Friends of the Trails argued that the public had by implication been granted the use of a non-motorised right-of-way in spite of the vehicular road having existed along the canal that was undoubtedly used in conjunction with the irrigation district.[\[367\]](#)

35. The California Court of Appeal in Friends of the Trails restates the law in relation to implied dedication, 30 years after Gion and following a change in legislation there was no real change to the analysis:

Dedications may occur pursuant to statute or the common law.

Dedication has been defined as an appropriation of land for some public use, made by the fee owner, and accepted by the public. By virtue of this offer which the fee owner has made, he is precluded from reasserting an exclusive right over the land now used for public purposes. American courts have freely applied this common law doctrine, not only to streets, parks, squares, and commons, but to other places subject to public use. California has been no exception to the general approach of wide application of the doctrine. [Citations]."[\[368\]](#)

36. The Friends of the Trails court relies heavily on the reasoning and application of the principles as they are founded in *Gion*, although it notes that these principles will only be good to public acquisitions prior to the legislative change. The landowners in *Friends of the Trails* argued vigorously against the holding in *Gion* that the legislative change made in reaction to *Gion* signalled a dissatisfaction from the reasoning of the Supreme Court. The landowners alleged that *Gion* marked "a departure from settled approaches to the law of dedication" and "that it was a troubling holding" that should not be "exacerbate[d] and extend[ed]" due to its "malignant effects".^[369]
37. The California Court of Appeal declined to "ignore a settled precedent".^[370] The *Friends of the Trails* court disagreed with the landowners argument that *Gion* is a "departure from settled approaches to the doctrine of implied dedication.... [and is] a sudden unpredictable change in legal norms governing property rights and public dedication"^[371]
38. The road used by NID was obviously present on the property in *Friends of the Trails*, and an easement was registered and actively used by the Irrigation District in conjunction with the canal conveying water. This is closely analogous to the situation in *Stony Batter* when John Spencer may have been cognisant of roads present on the *Hooks* property, which could have been taken to be crude farm tracks. There would be no reason at all to question the *Old Army Road* as an easement was clearly defined in favour of the Crown.^[372]
39. It is not clear how a subsequent bona fide purchaser for value, even looking beyond the title, would be able to make a subtle distinctions between the nature of the user for purposes of challenging a right to access. For example, would the landowner ask: was this a water irrigation user or someone else who should be ejected? Similarly, is this a hiker seeking access to the *Stony Batter* historic reserve via the *Lands & Survey* easement from *Man O' War Bay* or is this someone who should be challenged? Users in *Friends of the Trails*, as in the *Man O' War Bay Old Army Road* easement would be partaking in the rights clearly associated with and existing easement.
40. It seems unreasonable to expect a prospective property owner to split hair over distinctions as subtle as those in *Friends of the Trails*. The Court in *Friends of the Trails* indicated they felt the distinction was justified by an examination of facts "often imbued with overtones of local norms, customs, and expectations generally warrant[ing a] difference to the local finder of fact."^[373] The court accepted evidence presented at trial which clearly indicated that previous owners knew the uses being undertaken were recreational in nature and not associated with the irrigation canal easement.^[374] No in depth analysis of this kind made its way into the *Stony Batter* High Court or Court of Appeal Decision that delineated between the existing easement users and any user from the public.^[375]
41. The Court of Appeal in *Redwood Empire v Gombos* upheld previous rulings that the "changes [by the California legislature] operated prospectively only" so that any implied dedication, allegedly occurring before the legislative changes in 1971, would still be at issue.^[376] *Redwood Empire* was a forestry company which used forestry roads to access remote areas of commercial forests consistent with its business. The lower courts in *New Zealand* seemed to somewhat unfairly dismiss the appellant's concerns about the implications for effectively "backdating": we don't know how rare implied dedication really is because we don't know how many claims have accrued over the years. It is not as if a ledger balance is being kept on titles, unlike a registrable interest.
42. Following *Gion*, the *Redwood Empire* court held unequivocally that "the public's rights are limited to those consistent with the types of public uses upon which implied dedication was based".^[377] The *Redwood Empire* Court referred to the more recent case *Friends Of The Trails v Blasius*^[378] and noted that the California Supreme Court in that case had specifically restrained its holding to the grant of an

easement under the principles of implied dedication (not fee simple ownership).^[379] The Redwood Empire Court cites a number of authorities acknowledging that the rights gained by prescriptive easements govern the scope of what should be granted by implied dedication, then summarised the principles gleaned from each of them as follows:

"[i]t is settled law that the scope of a prescriptive easement is determined by the use through which it is acquired. A person using the land of another for the prescriptive period may acquire the right to such use, but does not acquire the right to make other uses of it. [Citations.] The extent of a servitude is determined by the terms of the grant, or the nature of the enjoyment by which it was acquired. We see no reason the same rule should not apply to a public easement that has arisen through implied dedication."^[380]

43. The Redwood Empire Court clarifies the statements made in Gion regarding the use of caution in relation to analogies made to prescriptive easements: application of the component of adversity in implied dedication should differ in principal only as to the use that can be gained, which would be personal to the adverse user or possessor as opposed to the use acquired by the public.^[381]

44. The Court of Appeal in California states that:

"[w]hen it comes to the issue of whether an impliedly dedicated public easement should be limited to the use that gave rise to it, prescriptive rights appear fully analogous [Citations.]. A dedication is legally equivalent to the granting of an easement".^[382]

45. The guidance provided by the Redwood Empire decision in relation to licences is also valuable, in that the scope of what was once a licence could incorporate foreseeable developments in relation to uses undertaken, on the other hand, could simply define the scope of what was acquired.^[383]

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