

STANDARD AGREEMENT —
STD. 2 (REV.5-91) CM@R (4-12-06)

**APPROVED BY THE
ATTORNEY GENERAL**

Contract Number	Amendment Number
TAXPAYER'S FEDERAL EMPLOYER IDENTIFICATION NUMBER	

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

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

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

Incorporated into this Agreement herewith, and attached hereto, are the following Contract Documents: (1) Exhibit A, Statement of Work; (2) Exhibit B, Payment Provisions; (3) Exhibit C, General Terms and Conditions; (4) Exhibit D, Acceptance and Signoff Form; (5) Exhibit E, Subcontractors to Contractor; (6) Exhibit F, Contractor's Key Personnel; (7) Exhibit G, Project Program; and (8) Exhibit H.1, Table of Articles and Exhibit H.2, Division 00700 - General Conditions Of The Contract For Construction.

As further set forth further in Exhibit A, the Statement of Work, the Contractor shall, as authorized, provide Preconstruction Services and Construction Management at Risk services with a guaranteed maximum price for the _____ Project in _____ County, California.

This contract will be authorized in three (3) phases: Preliminary Plan Phase, Working Drawing Phase, and Construction Phase. By entering into this Agreement, the AOC authorizes the Preliminary Plan Phase. The AOC has the sole and unilateral right to authorize the Working Drawing Phase and Construction Phase, and said authorization shall be made, in the form of an Amendment to this Agreement authorizing the appropriate Phase and funding specified herein, which shall be signed by the Contractor.

This contract is hereby authorized through performance of the Preliminary Plan Phase, for the firm fixed price of \$XXXXXX. The term of the performance of the Services of this Phase begins on the Effective Date and expires on _____

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

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

CONTRACTOR STATE AGENCY DEPT. OF GEN. SER. CONTROLLER

Exhibit A

STATEMENT OF WORK

.1. Project Description

Contractor shall, as authorized, provide the Services specified in this statement of work (“Statement of Work”, “SOW”) in connection with a public works project for a judicial branch facility to be located in _____, California, in accordance with the scope of the Project, which is more particularly described in Exhibit G, Project Program (the “Project”).

.2. Definitions

For the purposes of this Agreement, the following definitions shall apply. Additional definitions are made throughout the Agreement and in Exhibit H.2, 00700 - General Conditions Of The Contract For Construction. During the Construction Phase of the Agreement, the defined terms of Exhibit H.2, 00700 shall take precedence over those of Exhibit A.

- A. ACCEPTANCE: is the written acceptance issued by the AOC after the Contractor has completed a deliverable, submittal, phase, or other contract requirement, in compliance with this Agreement.
- B. ACQUISITIONS PHASE: is a pre-design phase that typically includes site capacity studies, topographic survey, and geotechnical investigation.
- C. AOC (State): is the Judicial Council of California, Administrative Office of the Courts.
- D. ARCHITECT or ENGINEER: The architect, engineers and other professional consultants under contract to the AOC to provide design and construction documentation, and construction administration services for the project.
- E. BASIC SERVICES: means and includes Services of a general nature that shall be performed and provided throughout all Phases of this Agreement.
- F. BID PACKAGE: is a set of documents that contain the Statement of Work, specifications, a request for price, required schedule, drawings, and General and Supplementary conditions for a portion of the construction work.
- G. CONSTRUCTION DOCUMENTS: are approved final working drawings and specifications, and the Conditions of the Contract, including General, Supplementary and other Conditions as may be developed for the Project, that set forth in detail all of the requirements for construction of the entire Project.
- H. CONSTRUCTION MANAGER AT RISK (Contractor): is the Contractor selected

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to review and participate in the production of the Construction Documents and who agrees to perform the work identified in the Contract Documents. The Contractor shall solicit trade bids from trade contractors on a competitive basis and enter into contracts with these trade contractors to perform their trade work. The individual, partnership, corporation, association, joint venture, or any combination thereof, who has entered into a contract with the State to do the Work, identified as such in the Agreement, and referred to throughout the Contract as if singular in number. The term "Contractor" means the Contractor or the Contractor's representative.

- I. CONSTRUCTION PHASE: is the entire construction period for the Project and encompasses pre-construction-start meetings and ends with Final Acceptance by the AOC of all punch list items.
- J. CONSTRUCTION BUDGET: is the budget amount established by the AOC that represents the maximum authorized cost for construction of the Project . The Construction Budget does not include fees for professional architectural and engineering services, State inspection, testing and inspection services, modular furniture, or AOC contingency.
- K. CONTRACTOR (Construction Manager at Risk): is the individual, partnership, corporation, association, joint venture, or any combination thereof, who has entered into a contract with the State to do the Work, identified as such in the Agreement, and referred to throughout the Contract as if singular in number. The Contractor is selected to review and participate in the production of the construction documents and who agrees to perform the work identified in the Contract Documents. The Contractor shall solicit bids from trade subcontractors on a competitive basis and enter into contracts with these subcontractors to perform their trade work. The term "Contractor" means the Contractor or the Contractor's representative.
- L. CONTRACTOR CONTINGENCY: is the contingency identified in the Agreement which is to be used by the Contractor to pay for change orders or extra work due to conflicts, ambiguities or omissions in the Contract Documents or in the subcontractor bid packages.
- M. DELIVERABLE: means and includes any tangible item provided or to be provided under this Agreement. A Deliverable does not include Services.
- N. DESIGN DOCUMENT(s): mean and include written documents specifying the attributes, characteristics, and requirements of the building to be constructed, including its site, as specified in Exhibit G, the Project Program and further developed and elaborated upon by the AOC's Architect/Engineer throughout the design process described in this Agreement.
- O. ENERGY EFFICIENCY MEASURES: are an element of the design that

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minimizes energy consumption, integrates passive and active design elements, while meeting the operational needs of the facility.

- P. FLOOR AREA: is a measurement of the design using methods and definitions set forth in the 1996 edition of the Building Owners and Managers Association publication titled "Standard Method for Measuring Floor Area in Office Buildings," or such other standards as may be adopted by the AOC.
- Q. GENERAL CONDITIONS OF THE CONTRACT FOR CONSTRUCTION: is the AOC Document 00700, which is a part of the Contract between the AOC and the Contractor that determines the roles and responsibilities of the various parties during the Construction Phase.
- R. GUARANTEED MAXIMUM PRICE (GMAX): is the maximum price that the AOC and the Contractor agree upon as payment for managing and for supplying and installing all the work as shown in the completed Construction Documents. The GMAX is the sum of the direct costs of the Contractor for construction of the Project, General and Supplementary Conditions, Performance and Payment Bonds, Contractor fee for construction, Contractor overhead and profit, and Contractor contingency. Contractor Preconstruction fees, fees for professional architectural and engineering services, inspection, testing services, modular furniture, and AOC contingency are not included in the GMAX.
- S. MASTER SCHEDULE: means a schedule document provided by the Contractor as specified in Exhibit A, Article A.3.
- T. NIC (NOT AUTHORIZED IN CONTRACT): means that the Services for a particular Phase of the Work have yet to be authorized. Services so identified are within the scope of this Agreement, provided that the AOC authorizes said Phase.
- U. PHASE: is a distinct portion of the Work to be provided under this Agreement, as specified in the Statement Of Work.
- V. PRELIMINARY PLAN PHASE: is the initial design phase, typically developed in two distinct stages, Schematic Design and Design Development.
- W. PRE-SCHEMATIC / STUDY PHASE: is a pre-design phase that typically includes program development and security risk assessment.
- X. PROJECT: means and includes the Work specified this Agreement, as necessary to provide for the construction specified in Exhibit G, Project Program.
- Y. PROJECT REQUIREMENT(S): means and includes the written requirements pertaining to the Project that are provided in Exhibit G, the Project Program.
- Z. RECORD DOCUMENTS: are the Construction Documents, amended to show the

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Project as it was constructed. Record Documents include any significant changes or clarifications to the Construction Documents resulting from the construction process.

- AA. SERVICE: means and includes obligations that are performed or are to be performed under this Agreement. A Service may or may not result in the provision of Deliverable(s).
- BB. STATE (AOC): is the Judicial Council of California, Administrative Office of the Courts.
- CC. STOP SERVICES ORDER: is a written notice, delivered in accordance with this Agreement, by which the AOC may require the Contractor to stop all, or any part, of the Services under this Agreement, for the period set forth in the Stop Services Order. The Stop Services Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Services provision in section C.12 of Exhibit C.
- DD. SUBCONTRACTOR: is any third party, individual, partnership, corporation, association, joint venture, or any combination thereof, that has entered into a contract with the Contractor or who serves as an agent of Contractor in performance of the Work.
- EE. SUSTAINABLE BUILDING MEASURES: are elements of the design that result in minimizing pollution, resource waste, and environmental impacts associated with facility construction operation and, if applicable, demolition.
- FF. WORK: means and includes the provision of Services and/or Deliverables under this Agreement.
- GG. WORKING DRAWING PHASE: is a phase that includes working drawings, technical specifications, addenda, general conditions, supplementary conditions, bidding requirements, the bid proposal developed to set forth in detail all aspects of the design, function and construction, and the bidding of the Project.

.3. Schedule Of Work

The schedule applicable to the provision of the Services under this Agreement is provided in Attachment 1 to Exhibit A – the contract schedule (“Contract Schedule”). Contractor agrees that it shall provide the Services of the specified Phase(s) according to said schedule. Firm start and completion dates will be inserted for each Phase as this Agreement is amended to authorize subsequent Phases.

.4. Basic Services

- A. General

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Contractor agrees to provide or perform, as Basic Services, the Services and tasks set forth in this section A.4 and any other services that are necessary, normal, customary, or incidental to the performance of Contractor's responsibilities under any Phase of this Agreement.

Contractor agrees to:

1. Provide sufficient number(s) of specialists and other workers with requisite skills and experience as appropriate for the successful completion of the Project.
2. Perform the Services in collaboration with the AOC, the Court, the AOC's selected Architect(s) and/or Engineer(s), and other third parties as identified by the AOC.
3. Prepare, organize, and distribute monthly progress reports in a timely manner in a format acceptable to the AOC.
4. Conduct Project Status Meetings with the AOC, Court representatives, other third party professionals and consultants working with the AOC, and/or State or local agencies as needed and directed by the nature of the work or as directed by the AOC during the course of the Work. The frequency and location of the Project status meetings will be as agreed with the AOC, however, Project Status Meetings shall be held not less than on a monthly basis. The location of the meetings will typically be in the locale of the Project unless otherwise agreed.
5. Review and analyze drawings and documents prepared by AOC consultants, and make recommendations to the AOC regarding such documents.
6. Review the geotechnical investigation and report on the selected site as directed by the AOC.
7. Develop, maintain, and regularly update a Master Project Schedule of Project activities as applicable to the Project. The Master Project Schedule shall include, but not be limited to: Project design and construction activities; due dates of contractual obligations; Project meetings; dates for submission for required milestones; CEQA mitigations, actions, and deadlines; Peer and Constructability Reviews; review times assumptions; property acquisition, and escrow closing deadlines; dates for AOC or agency submittals, reviews, and/or approvals including the Interim Facilities Panel, Judicial Council, Department of Finance, and Public Works Board review and approval meetings; Peer Reviews; Access Compliance and State Fire Marshal review submittals and response to comments; 'back-check' submittals and approvals; bidding activities and approvals and the

development of the GMAX; Notice to Proceed for Construction Phase; activities and milestones during construction; Commissioning Activities; Furniture, Fixtures and Equipment ordering, delivery, outfitting, and installation; punchlist preparation, punchlist work, and punchlist sign-off; move-in, occupancy, and initiation of Court operations; and Project Closeout. This schedule shall be reviewed with the AOC at all project meetings, must be approved by the AOC, and shall be updated by Contractor at each submittal. Contractor shall incorporate appropriate detailed design phase information from the schedule prepared by the Architect. The Master Schedule shall be in a Gantt chart format prepared using the latest version of Microsoft Project, unless otherwise agreed by the AOC. The Contractor shall provide an updated Master Schedule to the AOC within ten (10) days of commencement of each Phase and at other times when significant changes are made to the schedule or as requested by the AOC.

8. Provide all deliverables and project correspondence in Adobe Acrobat.pdf format, Microsoft Word.doc format, and AutoCAD.dwg format, as indicated in this Agreement, or as agreed upon with the AOC, throughout the term of this Agreement.
9. Provide estimated construction cost breakdowns of the Project at times indicated intervals consistent with the stage of development of the Architect's drawings and specifications. The form of the cost estimates shall be based on Unifomat standards except for cost estimates during the Working Drawing phase which shall be prepared in both Unifomat and Construction Specification Institute Master formats.
10. Attend milestone review meetings with the AOC and Project team immediately before commencing each Project phase listed in section A.4 of this exhibit. At the milestone review meetings, assist the AOC in identifying goals for the upcoming work, examine the performance of the Project team against the goals in the preceding phase, and propose corrective measures as necessary or appropriate.
11. Conduct value analysis and, constructability reviews and peer review workshops, including but not limited to appropriate meeting facilities; documentation of the findings and action items from each; maintain a database of actions taken or resolution of each finding or action item.
12. Consult with the AOC if the Contractor becomes aware of deficiencies, errors or omissions in the Construction Documents for the Project developed by the Architect or the AOC regardless of whether the deficiency became apparent before or after final approval of the Construction Documents by the AOC, Architect, and the Contractor at the

end of the Working Drawings Phase and suggest satisfactory methods for correction of such deficiencies.

13. Assist the Architect in providing Construction Documents which, at a minimum, reflect compliance with AOC standards, the Project Program, applicable statutes, building codes, regulations, rules, guidelines, and requirements.
14. Monitor construction-related approvals, including, but not limited to, written approvals by the State Fire Marshal and the Division of the State Architect (“DSA”) Access Compliance Unit.
15. Provide all necessary materials, facilities, and ancillary services (such as cleanup) necessary for provision of the Services not being provided by the Subcontractor(s) when necessary for the performance of the Services during construction and for completion of the construction, including but not limited to provision of on-site trailers and office equipment of a type and style acceptable to the AOC (including but not limited to telephones, fax machines, local area network, broadband internet access, computers, printers and copiers) for the staff of the CM, the Architect, the AOC and the Inspector of Record.
16. Provide a written description of Contractor’s quality assurance program (“QA Program”) commencing with the Preliminary Plan Phase. The Quality Assurance Program shall be designed to advance the goal of achieving a quality Project, within schedule and budget, in compliance with the terms of this Agreement. Contractor shall submit the QA Program to the AOC within 20 days of commencement of each phase. The AOC shall have the right to review the QA Program, and use of said program is subject to the AOC’s written approval. At a minimum the following shall apply:
 - (i) The QA Program shall cover all activities affecting quality performed by Contractor and Contractor’s subcontractors.
 - (ii) The Contractor shall provide the AOC access to its records documenting implementation of the QA Program (“QA Records”). Contractor shall retain and maintain identifiable, legible, and retrievable QA Records for the duration of the Project. Contractor shall submit QA records to the AOC upon the completion of each phase of the work.
 - (iii) As part of its Quality Control Program, and at a minimum the Contractor shall ensure that all drawings and specifications shall be reviewed and checked by at least one professional trained in the same discipline as the professional who prepared the drawings and

specifications, with the goals of:

- (a) Assuring the completeness of the drawings and specifications;
 - (b) Assuring a high level of construction quality; and
 - (c) Avoiding change orders to construction contracts, which are caused by conflicts, ambiguities, inaccuracies, and deficiencies in the construction drawings and specifications.
- (iv) The QA program will identify the specific methodology that will be used to cross-check drawings of the various disciplines for completeness and accuracy at each submittal stage.

B. Preliminary Plan Phase:

1. During this phase Contractor shall, in coordination with the AOC the Architect/Engineer and other third parties (as necessary and authorized by the AOC), provide the following:
 - (i) **Value Analysis:** Contractor shall conduct value analysis workshops at two stages of this Phase -100% Schematic Design stage, and 100% Design Development stage. Contractor is responsible for confirming, at the end of each stage, in writing to the AOC, that all Project and construction costs have been identified. Contractor shall lead the activities of the AOC, Architect, and other project participants in a value analysis and verify the cost-effectiveness of the design. Contractor shall demonstrate to the satisfaction of the AOC and shall certify in writing to the AOC, that the Design Documents and/or Construction Documents, at the end of each of these stages, are in conformance with the requirements of the Project Program and quality standards set by the AOC, and that Contractor's current total cost estimate for construction of the Project is equal to or less than the Construction Budget.
 - (ii) **Constructability Reviews:** After reviewing all design documents for completeness and coordination, the Contractor shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, phasing, to ensure efficient construction. Constructability review shall be conducted on the 100% Design Development documents.
 - (iii) **Structural and Mechanical Peer Review:** Contractor shall retain qualified structural and mechanical engineers licensed in the State of California, and acceptable to the AOC to conduct reviews of the

structural and mechanical design documents and shall perform such a review at 100% Design Development.

- (iv) Cost Control Management: Contractor shall prepare, based upon Design Documents prepared by the Architect/Engineer and identified by the AOC, its own cost estimate of the total construction cost of the Project at several times, as specified in this SOW. Contractor shall compare their cost estimate with the cost estimate independently prepared by the Architect/Engineer for these same design documents and endeavor to resolve discrepancies in the estimates to the satisfaction of the AOC, and with the goal that both cost estimates are less than or equal to the AOC's Construction Budget. Contractor shall recommend, if necessary, appropriate modifications of the Design Documents to lower both the Contractor's and the Architect/Engineer's independent estimates to amounts equal to or lower than the Construction Budget. Contractor's cost estimates shall be provided according to Unifomat standards and as specified below, and arranged in Unifomat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:
- (a) 100% Schematic Design; Unifomat elemental categories and detailed to Level 2;
 - (b) 100% Design Development; Unifomat format elemental categories and detailed to Level 3;
 - (c) Each cost estimate shall:
 - (1) Reflect the best professional estimate of actual costs anticipated.
 - (2) Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phases gradually diminishing to zero at completion of final cost estimate.
 - (3) Adjust reported cost values to contract ENR CCCI value. Do not advance costs to the estimated start of construction, mid-point of construction or to present day values unless otherwise directed by the AOC. Questions regarding the calculation of ENR CCCI values shall be reviewed with the AOC Project

Manager.

- (v) Authorization to proceed with each succeeding step in the design process is contingent upon the AOC's written Acceptance of both the Architect/Engineer's and Contractor's independent cost estimates, which when evaluated separately, must both be equal to or less than the Construction Budget.

2. Life Cycle Cost Analysis.

- (i) A Life Cycle Cost Analysis shall be performed/updated on design alternatives for building enclosure, HVAC, and Electrical (normal and low-voltage) systems at 100% Schematic Design and at 100% Design Development, and submitted to the AOC.

Life Cycle Cost Analysis shall include, but is not limited to:

- Initial cost of system;
- Energy consumption costs, based on the energy analysis prepared by the Architect;
- Maintenance and custodial costs;
- Life expectancy (may require life expectancy of subsystems)
- Replacement costs (if applicable)
- Total cost of ownership over twenty-five (25) years.

3. Approvals: Contractor shall monitor all regulatory approvals required during the Preliminary Plan Phase.

4. Upon successful provision of all Deliverables and Services of the Preliminary Plan Phase, The AOC will issue a written communication that the Preliminary Plan Phase is complete.

C. Working Drawing Phase:

1. The AOC shall have the option of authorizing the Working Drawings Phase. If authorized, the Contractor shall in coordination with the AOC, the Architect/Engineer, and other third parties (as necessary and authorized by the AOC), provide the following:

- (i) Value Analysis: Conduct value analysis workshops at 50% and 90% Working Drawing stages to confirm that all project and construction costs have been identified. Lead the activities of AOC, Architect,

and other project participants in the value analysis and verify the cost-effectiveness of the design and the conformance of the design or construction documents to the Project budget program, and quality standards set by the AOC.

- (ii) **Constructability Reviews:** After reviewing all design documents for completeness and coordination, the Contractor shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, and phasing, to ensure efficient construction. Constructability reviews shall be conducted on 50% and 90% Working Drawing documents.
- (iii) **Structural and Mechanical Peer Reviews:** Contractor shall retain qualified structural and mechanical engineers, licensed in the State of California and acceptable to the AOC, to conduct reviews and submit reports on the structural and mechanical design documents at 50% and 90% complete Working Drawings, to determine compliance to the Building Code, accepted engineering practice, and AOC standards.
- (iv) **Cost Control Management:** Contractor shall prepare, based upon Design Documents prepared by the Architect/Engineer and identified by the AOC, its own cost estimate of the total construction cost of the Project at several times, as specified in this SOW. Contractor shall compare their cost estimate with the cost estimate independently prepared by the Architect/Engineer for these same design documents and endeavor to resolve discrepancies in the estimates to the satisfaction of the AOC, and with the goal that both cost estimates are less than or equal to the AOC's Construction Budget. Contractor shall recommend, if necessary, appropriate modifications of the Design Documents to lower both the Contractor's and the Architect/Engineer's independent estimates to amounts equal to or lower than the Construction Budget. Contractor's cost estimates shall be provided according to Unifomat standards and as specified below, and arranged in Unifomat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:

(a) Working Drawings;

- (1) 50% milestone; Unifomat format elemental categories and detailed to Level 4;
- (2) 90% milestone; Unifomat format elemental

categories and detailed to Level 4 and additionally
in CSI format.

Each cost estimate shall:

- Reflect the best professional estimate of actual costs anticipated.
 - Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phases gradually diminishing to zero at completion of final cost estimate.
 - Adjust reported cost values to contract ENR CCCI value. Do not advance costs to the estimated start of construction, mid-point of construction or to present day values unless otherwise directed by the AOC. Questions regarding the calculation of ENR CCCI values shall be reviewed with the AOC Project Manager.
- (v) Develop Supplementary Conditions (with AOC and Architect participation and subsequent AOC written approval) that address the Project conditions, modify the General Conditions as appropriate and as agreed upon by the AOC.
- (vi) Authorization to proceed with each succeeding step in the design process is contingent upon the AOC's written Acceptance of both the Architect/Engineer's and Contractor's independent cost estimates, which when evaluated separately, must both be equal to or less than the Construction Budget.
- (vii) Approvals: Contractor shall monitor all regulatory approvals required during the Working Drawing Phase.
- (viii) Contractor shall provide the Master Schedule for the Construction Phase of the Project, which must, unless modified by a written amendment to this Agreement, and regardless of weather conditions, be completed on or before 518 calendar days from the date of Notice To Proceed with Construction. The Master Schedule for the Construction Phase of the Project shall be provided to the AOC, and is subject to the AOC's written approval. Preparation of the Master Schedule for the Construction Phase will take into consideration sufficient time for the AOC to authorize said stage, including any time necessary for the AOC to obtain approval of funding.
2. Upon successful completion of all activities and the successful provision of all deliverables of the Working Drawings Phase specified above, the AOC, the Architect, and the CM shall, in a written and signed document, designate the names, versions, and revision numbers of the final

Construction Documents and Master Schedule for the Construction Phase of the Project.

3. Upon the AOC's written approval of the final Design Documents, the Design Documents are incorporated into and become an integral part of the Construction Documents, and upon approval of the Master Schedule applicable to the Construction Phase, the Contractor is authorized to begin the activities of the Subcontractor Bid Package stage:

4. Subcontractor Bid Package Stage

The AOC shall be provided, in writing, with a plan for the division of the construction activities of the Construction Phase work into bid packages.

- (i) Bid packages shall be logical, inclusive and distinct.
- (ii) Bid packages shall be sufficiently comprehensive to secure competitive bids for provision of all of the Construction Phase work of the Project, as documented in the approved Construction Documents.
- (iii) Each bid package shall include a statement of work specifying all work to be performed by that Subcontractor for the portion of the work as shown in the Construction Documents to be solicited, and shall include a schedule or due dates that requires the performance of the work within the timeframe envisioned for such work in the Master Project Schedule for the Construction Phase of the Project. Bid packages shall only solicit fixed price bids or Time and Materials bids with a fixed not-to-exceed amount.
- (iv) Individual packages shall, if the AOC so directs, include a number of additive or deductive alternates acceptable to the AOC. If the bid packages developed include alternates that require the selection and use of particular other alternate(s) in order to ensure the constructability of the Project, the Contractor shall identify them, in writing, to the AOC.
- (v) Each bid package shall, at a minimum, include any flow down provisions of this Agreement, including but not limited to Article 4 of the General Conditions Of The Contract (Document 00700) applicable to the Subcontractor's performance for the Contractor.
- (vi) If appropriate, the Master Project Schedule will be provided in trade Contractor bid package. The Trade bid package shall include sufficient information regarding the timing of work being bid to ensure that the Project can be constructed within the approved

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Master Schedule for the Construction Phase of the Work, and shall provide terms and conditions that will inform prospective Subcontractors that they will be bound to performance within such time periods.

- (vii) Contractor may include, in the bid packages, legal terms and conditions standard to the Contractor for the type and duration of the Subcontractor engagements contemplated by this Agreement, however, such terms and conditions shall not be such that they shall be considered onerous and likely to result in higher bid prices.
 - (viii) All bid packages shall be provided to the AOC as a single deliverable, and are subject to review by the AOC.
 - (ix) Notwithstanding AOC's review of the bid packages, Contractor warrants the bid packages developed shall conform to the provisions of this Agreement. Any omissions, errors, or ambiguities in the bid packages shall be construed against the Contractor and in favor of the AOC.
5. Bidding of the Project: Upon written approval of the AOC, Contractor shall competitively bid the subcontractor bid packages and shall comply with the applicable state statutes and the General Conditions Of The Contract For Construction (Document 00700) and the Supplementary Conditions as agreed upon by the AOC and Contractor. Contractor shall:
- (i) Advertise in trade venues acceptable to the AOC and solicit qualifications from a sufficient number of subcontractors for each bid package to ensure at least 3 qualified subcontractors result from this solicitation. Contractor shall prequalify at least three (3) qualified subcontractors for each bid package, and present such evidence of prequalification to the AOC.
 - (ii) When the AOC has agreed in writing that at least 3 Qualified Subcontractors for a bid package have been selected, issue said bid package to the prequalified subcontractors.
 - (iii) Receive bids for bid packages. Verify completeness of each bid submittal. Verify that the proposer has agreed to be bound by the flow down terms and provisions. Verify that the proposer has agreed to perform with in a period of time that will allow completion of the Project in accordance with the Master Schedule. Provided that the bid complies with all of the above, the bid shall be considered a conforming bid. If insufficient conforming bids are received, Contractor shall repeat steps (i) and (ii) above until three (3)

conforming bids have been received.

- (iv) When sufficient conforming bids have been received, the Contractor, under the observation of the AOC and the Architect, shall identify that combination of bids and alternates as the AOC may elect to accept that has lowest cost while ensuring the constructability of the Project.
- (v) If the combination of bids and AOC-accepted alternates and all direct costs of the Contractor for construction of the Project including General and Supplementary Conditions, Performance and Payment Bonds, Contractor fee for construction, Contractor overhead and profit, and Contractor contingency results in a GMAX that is less than or equal to the Construction Budget plus 10%, the AOC shall have the option to proceed with the Construction Phase of the Project. Contractor shall, upon authorization of the Construction Phase by the AOC, provide the Construction Services. Contractor shall warrant the Subcontractor bid packages against ambiguities, conflicts, or omissions in, and guarantee to the AOC that the total project shall be built for the available construction budget where the aggregate of all trade contractor bids, including any authorized alternatives, shall be less than, but close to, the construction budget as may have been modified by the AOC.
- (vi) If the GMAX exceeds the Construction Budget plus 10%, the AOC shall have the option to terminate this agreement, provide additional funds as required to authorize the Project, or, at the AOC's option and at no additional cost, have the Architect/Engineer and Contractor repeat the appropriate and necessary activities of the Working Drawings Phase, with the goal of modifying the Design Documents or period of proposed construction to reduce the total cost of the resultant combination of bids and alternates to less than or equal to the Construction Budget. Contractor shall endeavor to mitigate any time lost due to rebids or due to the time needed for the AOC to obtain any additional funding when revising the Master Schedule for the Construction Phase of the Project. This re-bidding process may, if the resultant combination of bids and alternates having the lowest total cost exceeds the Construction Budget plus 10% be repeated a second time at no additional cost to the AOC, and the AOC shall have the same options specified above.
- (vii) If the second re-bid fails to produce a total construction cost less than or equal to the Construction Budget plus 10%, this Agreement may be terminated by the AOC.

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(viii) In the event of termination, Contractor shall be paid in full for all Services provided through the end of the Working Drawing Phase, and neither party shall have any further claims or liability for damages to the other with regard to the Services so provided.

6. Contractor agrees to, upon authorization by the AOC, execute an amendment to this Agreement authorizing performance of the Construction Phase of the Project for a not-to exceed GMAX including the total Contractor's Construction Phase fee of XXXXX% (from the Contractor's Proposal). Said amendment shall incorporate the provisions of the General Conditions Of The Contract For Construction (Document 00700).

D. Construction Phase:

1. Upon AOC's decision to authorize the Construction Phase of this Agreement, Contractor agrees to execute an Amendment to this Agreement in the form of Exhibit H, with all of its exhibits and attachments completed in accordance with the approved Construction Documents and the Master Schedule. Contractor agrees that it shall provide the Construction Services and shall be responsible for the construction of the Project and provision of the Construction Phase Services, in accordance with this Agreement and the terms and conditions of Exhibit H, according to the schedule specified in the Master Schedule. Contractor shall be paid not more than the GMAX price for the provision of the construction and said Services. Payments will be made in accordance with Exhibit B.
2. Contractor agrees that it shall utilize the Subcontractors responsible for the bid / alternates selection that resulted in the GMAX price to perform the Construction work. If the value of the subcontract is greater than one half of one percent of the GMAX, then that Subcontractor shall be a listed subcontractor as required by the Public Contract Code, section 4100 et seq and Exhibit E shall be amended to document as Subcontractors.
3. Contractor shall enter into contracts with the accepted low responsive Subcontractor bidders for each bid package and proceed with the provision of the Construction Phase Services and Construction Work, according to the provisions of the bid packages and Exhibit H.
4. The CM shall conduct a preconstruction conference with the subcontractors, Architect, Inspector of Record, AOC Project Manager and other appropriate persons. Services include preparation of meeting agenda, preparation of construction procedures for clarifications, change orders, shop drawings, progress payments, field testing and inspection, and safety program, and preparation and distribution of preconstruction conference notes.

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5. Following each Project status meeting during the Construction Phase , Contractor shall prepare, organize, and distribute in a timely manner, meeting notes and lists of accomplishments and action items for review, comment, and use.

Exhibit A

Attachment 1

Contract Schedule

A. Preliminary Plan Phase.

1. Schematic Design:

Start date: _____

Completion date: _____

2. Design Development:

Start date: _____

Completion date: _____

B. Working Drawings Phase - NIC

1. Estimated start date: _____

2. Estimated completion date of 50% Construction Documents:

3. Estimated completion date of 100% Construction Documents:

4. Bidding Phase Services:

Estimated start date: _____

Estimated completion date: _____

C. Construction Phase - NIC

1. Estimated start date of Construction: _____

2. Estimated completion date of Construction: (+518 Calendar Days)

END OF EXHIBIT A

Exhibit B

PAYMENT PROVISIONS

.1. Contract Amount

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

A. Compensation – Preliminary Plans and Working Drawing Phase Services

1. The compensation for all Services provided for the following Phases shall be shall be a firm, fixed price as follows which includes all travel and living expenses and any other costs incidental to providing the Services.

- (i) Preliminary Plan Phase \$.
- (ii) Working Drawing Phase \$

B. Compensation – Construction Phase Services

1. The compensation for all Services provided with regard to this Phase shall be shall be at the firm, fixed price that follows, which includes all travel and living expenses and any other costs incidental to providing the Services

- (i) Construction Phase \$

.2. Method of Payment

A. Method of Payment – Preliminary Plan and Working Drawing Phase Services

1. The Contractor shall submit an invoice to the address specified below for the Work successfully completed and approved for that month, billed as a percentage of the total fixed price for the Services of that Phase..

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

2. Such invoices shall clearly indicate:

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- (i) The Contract number;
- (ii) A unique invoice number;
- (iii) The Contractor's name and address;
- (iv) Taxpayer identification number;
- (v) Name of the Phase of the Project being invoiced;
- (vi) Brief description of the Work performed in the billing period;
- (vii) Percentage of the Phase being billed in the invoice as a percent and in dollars;
- (viii) Amount of Retention to be withheld from the invoice;
- (ix) Net amount to be paid for the invoice;
- (x) Percentage of the total Phase billed to date, expressed as a percent and in dollars;
- (xi) Total amount of Retention withheld to date.
- (xii) Preferred remittance address, if different from the mailing address;
- (xiii) The original signature of the authorized representative of the Contractor.

3. Retention:

The AOC shall withhold payment of an amount equal to 10 percent from all payments made for invoices submitted as above and paid. Upon successful completion of all of the activities and provision of all deliverables of a Phase, Contractor shall submit an Acceptance and Signoff Form (Exhibit D) detailing the amount of each individual retention, with a total of all retentions, to the Project Manager. The State's Project Manager shall review the Acceptance and Signoff Form, and, applying the Acceptance Criteria, will either approve the Form in full, or give the Contractor specific written reasons why approval is being withheld, and return to the Contractor. Upon receipt of an AOC signed Acceptance and Signoff form, the Contractor shall submit an invoice for the retentions to the address specified below.

Such invoices shall clearly indicate:

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- (i) The Contract number;
- (ii) A unique invoice number;
- (iii) The Contractor's name and address;
- (iv) Taxpayer identification number;
- (v) Name of the Phase for which the retentions are being invoiced;
- (vi) Amounts of each individual retention, with a total of all retentions;
- (vii) Preferred remittance address, if different from the mailing address;
- (viii) The original signature of the authorized representative of the Contractor.

B. Method of Payment - Construction Phase

- 1. Refer to the General Conditions Of The Contract For Construction (Document 00700).

C. Invoices furnished by the Contractor under this Agreement must be in the form specified above and must be submitted for approval to:

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

A copy shall also be sent to the AOC Accounts Payable:

(confirm recipient)
Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, CA 94102

- D. The AOC will endeavor to pay invoices within thirty (30) days after receipt of a correct, itemized invoice. In no event shall the AOC be liable for interest or late charges for any late payments.

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- E. Payment shall be made by the AOC to the Contractor at the address specified on the invoice.
- F. The AOC may withhold full or partial payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

.3. Disallowance

If the Contractor claims or receives payment from the AOC that is later disallowed by the AOC, the Contractor shall promptly refund the disallowed amount to the AOC upon the AOC's request. At its option, the AOC may offset the amount disallowed from any payment due or that may become due to the Contractor under this Agreement or any other agreement.

.4. Payment Does Not Imply Acceptance of Work

The granting of any payment by the AOC, or the receipt thereof by the Contractor, shall in no way lessen the liability of the Contractor to correct unsatisfactory work in connection with this Agreement.

.5. Release of Claims

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

END OF EXHIBIT B

Exhibit C

GENERAL TERMS AND CONDITIONS

.1. Effective Date of Agreement

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

.2. Submitting False Claims; Monetary Penalties

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

.3. Responsibility for Equipment and Real Property

The AOC shall not be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by the Contractor, or by any of its employees or agents, even though such equipment is furnished, rented, or loaned to the Contractor by the AOC.

.4. Independent Contractor

- A. Independent Contractor. The Contractor shall be, and is, an independent contractor, is not an employee or agent of the AOC, and is not covered by any employee benefit plans provided to the AOC's employees. The Contractor is, and shall be, liable for its own acts and omissions as well as those of its employees, its Subcontractors and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the AOC and the Contractor. Unless otherwise specified in this Agreement, the Contractor will determine the method, details and means of performing its responsibilities with regard to the Services, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons

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assisting the Contractor in the performance of the Services. The Contractor shall be solely responsible for all matters relating to the payment of its employees, including compliance with social security, withholding, any and all employee benefits, and all regulations governing such matters.

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

.5. Contractor's Key Personnel

- A. The Contractor shall use adequate numbers of qualified individuals with suitable training, education, experience and skill to perform the Services. The Contractor has been selected to perform the Services herein, in part, because of the skills and expertise of the key individuals and/or firms (collectively "Contractor's Key Personnel") that are listed in Exhibit F. Substitution or replacement of the individuals and/or firms identified in Exhibit F is not allowed except with written approval of the AOC
- B. If the designated lead or key person fails to perform to the satisfaction of the AOC upon written notice, the Contractor will have fifteen (15) calendar days to remove that person from the Project and replace that person with one acceptable to the AOC. All lead or key personnel for any subcontractor must also be designated by any subcontractor and are subject to all conditions stated in this section.
- C. The Contractor shall be responsible for all costs associated with replacing any of Contractor's Key Personnel, including the additional costs to familiarize replacement personnel with the Services. If the Contractor does not furnish replacement personnel acceptable to the AOC, the AOC may terminate this Agreement for cause.
- D. Prior to the authorization of any Phase of the Agreement, the parties will agree upon any Key Personnel applicable to that Phase. Said personnel shall be documented in Exhibit F.

.6. Standard of Care

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The Contractor, its officers, agents, employees, Subcontractors, consultants and any persons or entities for whom Contractor is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project. The AOC's Acceptance of any submittals, deliverables, or other work product of the Contractor shall not be construed as assent that Contractor has complied, nor in any way relieve the Contractor of, compliance with (i) the applicable standard of care or (ii) applicable statutes, regulations, rules, guidelines, and requirements.

.7. AOC's Quality Assurance Plan

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

.8. Subcontracting and Employee Qualifications

- A. The Contractor is prohibited from subcontracting this Agreement or any part of it, except to the Subcontractors set forth in Exhibit E., unless such subcontracting is first approved by the AOC in a written instrument executed and approved in the same manner as this Agreement. An agreement made in violation of this section shall confer no rights on any party and shall be null and void.
- B. When required by this Agreement or if requested by the AOC, the Contractor shall provide documentation that a proposed subcontractor has been qualified to the satisfaction of the AOC, and is experienced and able to perform that portion of the Services. The Contractor shall require all subcontractors to comply with the provisions of this Agreement. If requested by the AOC, the Contractor shall provide copies of all Contractor's agreements with its subcontractors to the AOC. The AOC's review of subcontracts shall in no way relieve the Contractor of any of its responsibilities and obligations under this Agreement.
- C. Contractor shall, in the course of the work, engage only subcontractors and employees who possess, and will maintain in good standing during the

performance of the Services, valid and applicable licenses where the State of California or this Agreement requires that the work to be performed by that subcontractor or employee must be performed by a licensed person or entity.

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

.9. Background Checks

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

.10. Indemnification

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

.11. Insurance

- A.* General Requirements:

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1. Contractor shall maintain insurance issued by an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide. If self-insured, review of financial information may be required.
 2. All coverage shall be in force until Final Acceptance of the Work, except as otherwise provided for Builders Risk/Installation Floater under Clause 11.1.2.4. If the insurance expires during the term of the Contract, the Contractor shall immediately provide a new current certificate or be declared in breach of Contract. The State reserves the right to withhold all progress and retention payments until the breach is cured to the satisfaction of the State. Renewal insurance certificates must be tendered to the State at least 10 days prior to the expiration of the previous insurance certificate. This new insurance shall be in accordance with the terms of the Contract.
 3. Insurance policies shall contain a provision that coverage will not be cancelled without 30 days prior written notice to the State.
 4. The Contractor shall be responsible for any deductible or self-insured retention contained within the insurance.
 5. In the event the Contractor fails to keep in effect at all times the specified insurance coverage, the State may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
 6. Any insurance required to be carried shall be primary.
- B. Insurance Requirements for the Preliminary Plan and Working Drawing Phases:
The Contractor shall furnish to the State evidence of insurance as follows:
1. Commercial General Liability: The Contractor shall maintain commercial general liability insurance written on an occurrence form covering the Contractor, the State parties, and subcontractors with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the Contractor's limit of liability. The policy shall include the AOC and the State of California, its officers, agents, employees and servants as additional named insureds, but only insofar as the operations under the Contract are concerned.
 2. Automobile Liability: Automobile Liability: The Contractor shall

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maintain motor vehicle liability with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of a motor vehicle including owned, hired, and non-owned motor vehicles.

3. **Workers' Compensation:** The Contractor shall maintain statutory workers' compensation coverage for all its employees who will be engaged in the performance of the Contract, including special coverage extensions where applicable and employer's liability with limits not less than \$1,000,000 for each accident \$1,000,000 disease policy limit, \$1,000,000 disease – each employee.
- C. Neither the State, nor any officer or employee of the State, shall be liable for any loss or damage that may happen to the Work, or any part thereof; nor to any of the materials or other items used or employed in performing the Work; nor for injury to any person or persons, either workers or the public, for damage to property from any cause which might have been prevented by the Contractor, or the Contractor's employees or agents, against all of which injuries or damages the Contractor shall properly guard. The Contractor shall indemnify and hold harmless the State, and all officers and employees of the State, from all suits, actions or claims brought for, or on account of injuries or damages received or sustained by any person or persons, by or from the Contractor, the Contractor's employees or agents, in construction of the Work, or by or in consequence of the Contractor's failure to properly guard the same, or by or as a result of any act or omission of the Contractor, the Contractor's employees or agents. In addition to any remedy authorized by law, moneys due the Contractor under the Contract, as considered necessary by the State, may be retained until disposition has been made of such suits, actions, or claims for damages; however, this provision shall not be construed as precluding the State from enforcing any right of offset the State may have to any such moneys.
 - D. **Insurance Requirements for the Construction Phase:** refer to the General Conditions Of The Contract For Construction (Document 00700).
 - E. **NO PERSONAL LIABILITY:** Neither the State, nor any other officer or employee of the State will be personally responsible for liabilities arising under the Contract.

.12. Stop Services Order

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

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steps to minimize the incurrence of costs allocable to the Services covered by the Stop Services Order during the period of Services stoppage.

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

.13. Force Majeure

Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by Force Majeure. Force Majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of God, such as earthquakes, floods, and other natural disasters, such that performance is impossible.

.14. Termination for Cause

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

.15. Termination for Non-Appropriation of Funds

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

.16. Termination for Convenience

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

.17. Actions of the Contractor Upon Termination

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

- A. Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by the AOC.
- B. Not placing any further orders or entering into any subcontracts for materials, Services, equipment or other items.
- C. Canceling any and all existing orders and terminating any and all subcontracts.
- D. Assigning to the AOC any or all of the Contractor's right, title, and interest under the existing orders and subcontracts.
- E. Settling all outstanding liabilities and all claims arising out of the cancellation of orders and termination of subcontracts.
- F. Completing performance of any Services that the AOC designates to be completed prior to the date of termination specified by the AOC.
- G. Providing to the AOC any tangible work product and Data created in the course of the performance of Services hereunder.

.18. Effect of Termination

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

- A. **Payment Upon Termination.** The AOC shall pay for Contractor's Services satisfactorily performed through the effective date of termination; in no event shall Contractor's compensation under this Section exceed the reasonable value of the performed Services, based on the Contractor's progress of the Services performed and the proportionate corresponding value of the Contract Amount. Additionally, the Contractor shall not be entitled to recover its anticipated profit on any work not performed pursuant to said termination.
- B. **Offset and Deduction.** The AOC may deduct from any payment upon termination:
 - 1. All payments previously made by the AOC for Services covered by the Contractor's final invoice.

2. The amount of any undisputed claim that the AOC may have against the Contractor in connection with this Agreement.
3. In instances in which the AOC reasonably determines that the cost of any Services is excessive and if excessive due to costs incurred to remedy or replace defective materials or rejected Services, the AOC will pay the difference between the invoiced amount and the AOC's reasonable estimate of the reasonable cost of replacing the materials or performing the invoiced Services in compliance with the requirements of this Agreement.

.19. Ownership of Data

1. Everything created, developed or produced in the course of the Contractor's performance of the Services, including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the Contractor for the AOC and are the sole property of the AOC without further employment or the payment of additional compensation to the Contractor. The AOC owns all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights"). To the extent that any of the Data or the Intellectual Property Rights therein are not works for hire, the Contractor hereby irrevocably assigns its entire right, title and interest in and to all such Data and the Intellectual Property Rights therein, to the AOC. At the AOC's request, the Contractor will assist the AOC in the AOC's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. The Contractor irrevocably appoints the AOC as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the AOC deems necessary to perfect the AOC's interest and Intellectual Property Rights in the Data as set forth herein.
2. The AOC shall be entitled to access copies of the Data in whatever form, including, without limitation CAD, all times during the term of the Agreement. Any such Data in the possession of the Contractor or in the possession of any subcontractor upon completion or termination of the Agreement shall be immediately delivered to the AOC. If any Data are lost, damaged or destroyed before final delivery to the AOC, the Contractor shall replace them at its own expense and the Contractor assumes all risks of loss, damage or destruction of or to such Data.

.20. Proprietary or Confidential Information of AOC

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- A. The Contractor understands and agrees that, in the performance of the Services under this Agreement or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, the AOC and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the AOC. The Contractor agrees that all information disclosed by the AOC to the Contractor shall be held in confidence and used only in the performance of the Agreement. The Contractor shall exercise the same standard of care to protect such information as the Contractor uses to protect its own proprietary information and in any case no less than a reasonably prudent person or entity would use to protect its own proprietary data.
- B. It is understood, however, that the Contractor may disclose the AOC's confidential information on a "need to know" basis to the Contractor's employees, the Contractor's subcontractors, and the subcontractors' employees, and as required by law. Contractor shall execute written agreements with its subcontractors that bind each subcontractor and its employees to the confidentiality provisions set forth in this Agreement.
- C. The Contractor shall acquire no right or title to the confidential information. The Contractor agrees not to use the confidential information for any purpose except to provide the Services. Notwithstanding the foregoing, the Contractor may disclose the confidential information: (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that the Contractor first gives reasonable notice of its intention to disclose in order for the AOC to seek a protective order; or (ii) to the extent necessary to enforce its rights under this Agreement.
- D. The Contractor agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

.21. Audit and Retention of Records

- 1. The Contractor shall permit authorized representatives of the AOC and/or its designee at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of the Agreement, including records related to billings and other financial records. The Contractor shall allow the auditor(s) access to such records during normal business hours and shall allow the auditor(s) to interview any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include the same right of the AOC to audit records and interview staff in any subcontract related to performance of this Agreement. The Contractor shall maintain, and shall require its

subcontractors to maintain, all records and documentation related to the performance of this Agreement, including records related to billings and other financial records, in an accessible location and condition for a period of not less than three (3) years after final payment is received pursuant to this Agreement or until after final audit has been resolved, whichever is later. The Contractor shall adequately protect all records against fire or other damage. The State of California, or any state agency or entity having an interest in the subject of this Agreement, shall have the same rights conferred upon the AOC by this section. Further, Contractor shall be subject to examination and audit by the AOC Auditor. The examination and audit shall be confined to those matters connected with the performance of this agreement, including, but not limited to, the cost of administering this agreement (Government Code Section 8546.7).

Accounting System Requirements

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

.22. AOC and _____ Court Representation

A. AOC Project Management.

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

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

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

- ##### B. Third Party Representation. The AOC has the authority to speak on behalf of the _____ Court (and to bind such court with respect to Acceptance of deliverables and all matters hereunder.

.23. Dispute Resolution For Preliminary Plan And Working Drawing Phases

- A. Notice of Dispute. The parties shall attempt in good faith to resolve potential disputes informally and promptly. If a dispute persists, either party may submit a written demand to the other party at the earliest practicable time that the dispute is identified (the "Demand"). The Demand shall: (i) be fully supported by detailed factual information and supporting documentation; (ii) state the specific Agreement provisions on which the Demand is based; and (iii) if the Demand involves a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand. The Demand shall include a written statement signed by an authorized person indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested accurately reflects the adjustment for which the submitting party believes the other party is responsible. To assist the other party in its review of the Demand, the submitting party shall comply with reasonable requests for additional information. The receiving party shall provide a written response to the submitting party's Demand stating a decision as to whether the receiving party accepts or rejects the Demand. Failure by the receiving party to provide such a response shall be deemed a decision by the receiving party constituting a rejection of the Demand.
- B. Senior Level Negotiations. Upon written request by either party after the receipt of a Demand, the parties shall attempt to resolve the dispute by negotiations between the principal (or equivalent) of the Contractor and the designated representative of the AOC. The principal (or equivalent) of the Contractor and the designated representative of the AOC shall meet as often as they deem reasonably necessary to exchange information and attempt to resolve the Demand within thirty (30) days after the Demand was initially delivered.
- C. Mediation. If the senior level negotiations do not result in resolution of the dispute within thirty (30) days after the Demand was received, the parties shall submit their dispute to mediation prior to any party initiating an action in court.
- D. Litigation. If, after mediation pursuant to Section C.23(c), the parties have not resolved the dispute, the receiving party's decision made pursuant to Section C.23(a) will be conclusive and binding regarding the dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later. In the event of litigation of a dispute arising from or related to this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs.
- E. Confidentiality. All negotiations conducted pursuant to this Section C.23 are confidential and shall be treated as compromise and settlement negotiations to

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which California Evidence Code Section 1152 applies. The mediation shall be confidential and shall be subject to the provisions of California Evidence Code Sections 703.5 and 1115 through 1128.

- F. Continuation of Work. Pending the final resolution of any dispute arising under, related to, or involving this Agreement, Contractor agrees to diligently proceed with the performance of this Agreement, including the delivery of deliverables or providing of Services, in accordance with the AOC's instructions. Contractor's failure to diligently proceed in accordance with the AOC's instructions will be considered a material breach of this Agreement.
- G. See the General Conditions Of The Contract For Construction (Document 00700) for Dispute Resolution during the Construction Phase.

.24. Certifications

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

- A. Nondiscrimination/No Harassment Provisions and Compliance.
 - 1. Nondiscrimination. The Contractor and its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, ancestry, physical or mental disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), medical condition, marital status, age (over 40), sex, sexual orientation, gender identity, or domestic partner status. The Contractor and its subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
 - 2. No Harassment. The Contractor and its subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Contractor or its subcontractors interact in the performance of this Agreement. The Contractor and its subcontractors shall take all reasonable steps to prevent harassment from occurring.
 - 3. FEHA. The Contractor shall comply with the provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 *et seq.*, and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 *et seq.* The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if

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set forth in full.

4. Compliance with Americans with Disabilities Act. The Contractor complies with applicable provisions of the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. Section 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.
 5. Notice to Labor Organizations. The Contractor and any of its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 6. Compliance. The Contractor shall include the nondiscrimination, no harassment, and compliance provisions of this section in any and all subcontracts issued to perform Services under this Agreement. Contractor has, unless exempt, complied with the nondiscrimination program requirements. (Government Code, Section 12990 (subdivisions a-f) and CCR, Title 2, Section 8103 *et seq.*)
- B. **Prohibited Financial Conflict of Interest.** The Contractor and its subcontractors presently have no interest and will not acquire any interest which would present a conflict of interest pursuant to California Government Code sections 1090 *et seq.* and 87100 *et seq.* during the performance of Services pursuant to this Agreement. The Contractor further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the AOC are now, nor in the future will they be, in any manner interested directly or indirectly in this Agreement, or in any profits expected to arise from this Agreement, as set forth in California Government Code sections 1090 *et seq.* and 87100 *et seq.*
- C. **Conflict of Interest for Former State Employees.** The Contractor certifies and shall require any subcontractor to certify to the following: Former State employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one year from the date of separation if that employee was in a policy making position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from State service.
- D. Contractor shall not, without specific written approval in advance from the State in the form of an Amendment to this Agreement, self-perform any Construction-Phase construction work. Contractor shall not subcontract or in any manner cause said work to be done by any entity in which the Contractor, its parent or associate companies, or any of Contractor’s owned or controlled subsidiaries have a financial or other business interest,
- E. **Covenant Against Gratuities.** No gratuities, in the form of entertainment, gifts, or

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otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the State with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this provision, the AOC will have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by the State in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the AOC provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

- F. **Drug-Free Workplace.** The Contractor will provide a drug-free workplace as required by California Government Code Sections 8355 through 8357.
- G. **National Labor Relations Board.** No more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.
- H. **Brokerage Or Contingent Fees.** No person or selling agency has been employed or retained to solicit or secure this Agreement upon an understanding or agreement for a commission, percentage, brokerage or contingent fee.
- I. **Computer Software Use.** Contractor has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

.25. Limitation on Publication

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

.26. General

- A. **Survival.** The termination or expiration of the Agreement shall not relieve either party of any obligation or liability accrued hereunder prior to or subsequent to such termination or expiration, nor affect or impair the rights of either party arising under the Agreement prior to or subsequent to such termination or expiration, except as expressly provided herein.
- B. **Limitation on Publication.** The Contractor shall not publish or submit for

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publication any article, press release, or other writing relating to the Contractor's Services for the AOC without prior review and written permission by the AOC, which consent shall be in the AOC's sole discretion.

- C. Remedies Cumulative. All remedies provided for in this Agreement are cumulative and may be exercised individually or in combination with any other remedy available hereunder.
- D. Assignment. The Services to be performed by the Contractor are personal in nature and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless specifically identified as such in this Agreement or consented to in advance by the AOC by written instrument executed and approved in the same manner as this Agreement. Except as otherwise provided herein, all of the terms, provisions and conditions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives. Any assignment in violation hereof shall be null and void.
- E. Waiver. Any waiver of any term of this Agreement must be in writing and executed by an authorized representative of the waiving party and shall not be construed as a waiver of any succeeding breach of the same or other term of this Agreement.
- F. Severability. The provisions of this Agreement are separate and severable. Should any court hold that any provision of this Agreement is invalid, void or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the reasonable intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- G. Compliance with Laws. The Contractor shall keep itself fully informed of all municipal, county, state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply, at no expense to the AOC, with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. The Contractor shall procure and keep in full force during the term of this Agreement any and all permits and licenses necessary to accomplish the Services contemplated in this Agreement at no expense to the AOC.
- H. Time is of the Essence. Time is of the essence in this Agreement.
- I. Governing Law; Jurisdiction. This Agreement shall be governed by California law without regard to any conflict of law rules that would direct the application of the laws of any other jurisdiction. The Contractor irrevocably consents to personal jurisdiction in California.

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

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

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

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

To the Contractor:

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

M. Public Contract Code References. References to the Public Contract Code are provided for Contractor's convenience only and shall not imply that the Public Contract Code applies to the AOC, but rather shall be used to define the Contractor's obligations under the particular contract provision in which such code section is referenced. The AOC is not subject to the Public Contract Code.

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

END OF EXHIBIT C

Exhibit D

Acceptance & Signoff Form

Description of Deliverable provided by Contractor:

Date submitted: _____

Work is:

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

2) Complete: yes no. If no, please identify incomplete aspects of the Work.

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

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

Work is accepted.

Work is unacceptable as noted above.

Name: _____

Title: _____

Date: _____

END OF EXHIBIT D

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Exhibit E

SUBCONTRACTORS TO CONTRACTOR

For each Subcontractor, list the Subcontractor's legal name, location of Subcontractor's main office, and Contract work to be performed.

END OF EXHIBIT E

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Exhibit F

CONTRACTOR'S KEY PERSONNEL

END OF EXHIBIT

Exhibit G
PROJECT PROGRAM

AOC Construction Budget: \$ _____

General Description of the Project:

Exhibit H

The General Conditions of the Contract for Construction (Document 00700) is incorporated in its entirety by reference, and is attached to this Contract.

Other parts of the Contract for Construction
(to be incorporated by reference)

END OF EXHIBIT H
H-1