

ATTACHMENT 2 TO THE RFP

JUDICIAL COUNCIL OF CALIFORNIA STANDARD AGREEMENT COVERSHEET

AGREEMENT NUMBER
[@#]
FEDERAL EMPLOYER ID NUMBER
[@#]

1. This Agreement is between the **Judicial Council of California** (“Judicial Council”), and [**Criteria Architect Firm**] (“Criteria Architect”). Judicial Council and Criteria Architect may be individually referred to herein as “Party” or collectively referred to herein as “Parties.”

2. The term of this Agreement commences upon the Effective Date and is complete upon final payment by the Judicial Council (“Term”).

3. The title of this Agreement is: Criteria Architect Services Agreement. The number of this Agreement is: [#]. The title and number listed is for administrative reference only and does not define, limit, or construe the scope or extent of the Agreement.

4. The total amount that the Judicial Council may pay the Criteria Architect under this Agreement shall not at any time exceed \$[Dollar amount] (“Fee”).

5. This Agreement constitutes the entire agreement between the Parties with regard to its subject matter and supersedes all prior discussions, negotiations and agreements, whether oral or written. This Agreement may be amended or modified only by an Amendment executed by both Parties. In the event of conflict in documents, the following order of precedence shall prevail: (1) the most recently executed Amendment to the Agreement, (2) the Standard Agreement Coversheet pertaining to this Agreement; (2) Exhibits A, B, C, D, E, F, G, and H (in order of preference).

6. The following documents are individually or collectively referred to as “Contract Documents”:
 - Exhibit A: Standard Provisions
 - Exhibit B: Responsibilities and Services of Criteria Architect
 - Exhibit C: Criteria Architect Proposal
 - Exhibit D: Schedule for Work
 - Exhibit E: Fee Schedule
 - Exhibit F: Key Personnel
 - Exhibit G: Owner’s Badge, Escort and Entry Policy
 - Exhibit H: Conflict of Interest Policy for Design-Build Projects

7. This Agreement has to date authorized the performance of the following Phases of Services in the following amounts:

\$0.00	Project Study Phase - NIC
\$0.00	Site Acquisition Phase - NYA
\$0.00	Performance Criteria Phase – NYA
\$0.00	Design-Build Phase – NYA
\$0.00	Total Amount Encumbered to Date

JUDICIAL COUNCIL’S SIGNATURE	CRITERIA ARCHITECT’S SIGNATURE
Judicial Council of California	CRITERIA ARCHITECTS’S NAME <i>(if Criteria Architect is not an individual person, state whether Criteria Architect is a corporation, partnership, etc.)</i> [@Contractor name]
	LICENSE NO. AND EXP DATE: [ARCHITECT LICENSE], [ExpDate] / [DIR#], [ExpDate]
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i>
PRINTED NAME AND TITLE OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING
DATE EXECUTED	DATE EXECUTED
ADDRESS Branch Accounting and Procurement 455 Golden Gate Avenue, 6 th Floor San Francisco, CA 94102	ADDRESS [@Address]

EXHIBIT A

STANDARD PROVISIONS

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Article 1. DEFINITIONS

- 1.1. The following definitions for words or phrases shall apply when used in this Agreement, including all Exhibits:
 - 1.1.1. **“Acceptance”** means the written acceptance issued to Criteria Architect by the Judicial Council’s Project Manager after Criteria Architect has successfully provided the Work in accordance with this Agreement.
 - 1.1.2. **“Agreement”** means the Agreement between the Judicial Council and Criteria Architect inclusive of all Exhibits and Amendments to the Agreement. The Agreement shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Judicial Council and Criteria Architect. May also be referred to herein as the “Contract.”
 - 1.1.3. **“Amendment”** means a Standard Agreement form substantially in the format of the Standard Agreement form used to enter into this Agreement and any documents it explicitly references that, when signed by the Parties, modifies the provisions of this Agreement.
 - 1.1.4. **“Authority Having Jurisdiction”** means any organization, office, or individual responsible for enforcing the requirements of a statute, regulation, code or standard, or for approving equipment, materials, an installation, or a procedure in relation to the Project.
 - 1.1.5. **“Bid”** means any procurement document that the Council utilizes to procure construction services from a Contractor, which may be a request for proposal, a request for qualifications, a formal bid, a solicitation, or other method.
 - 1.1.6. **“Building Components/Disciplines”** means the various building components and disciplines from which the design of the Project is comprised including, but not limited to, site, architectural, building envelope, mechanical, electrical, structural, fire protection, civil engineering, landscape architecture. Security and detention, food service, lighting, low voltage, data, audio-visual, acoustical, electronics, telephone, telecommunications, and any other systems or specialists, related to Criteria Architect’s complete performance of all the Services herein.
 - 1.1.7. **“Capital Outlay Program”** or **“Capital Program”** means a group of related judicial branch courthouse construction, renovation, and facility modification projects, subprograms, and program activities for which the Judicial Council’s Facilities Services has responsibility to oversee and manage.
 - 1.1.8. **“Claim(s)”** means all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative, or otherwise), losses, delays, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney’s and consultants’ fees and causes of action, including personal injury and/or death.
 - 1.1.9. **“Confidential Information”** means trade secrets, financial, statistical, personnel, technical, or any other data or information relating to the Judicial Council’s, the Courts’ or the State’s business, or the business of its constituents.
 - 1.1.10. **“Construction Documents”** means the final working drawings and specifications that set forth in detail the design and all of the requirements for construction of the entire Project, and must be approved by the Criteria Architect, the Judicial Council, and the DBE, if applicable. The Construction Documents provide the basis upon which the DBE shall bid the Project and are part of the design build contract with the DBE.
 - 1.1.11. **“Contract Documents”** means this Agreement inclusive of all exhibits and amendments.
 - 1.1.12. **“Court(s)”** means the superior or appellate court for whose benefit the Project is being undertaken.
 - 1.1.13. **“Criteria Architect”** means the architectural firm engaged as an agent by the Judicial Council to prepare the Performance Criteria documents, and to review the design documents to ensure compliance with the Performance Criteria documents. The Criteria Architect’s team may include additional consultants (“Criteria Team”) to aid in development of Performance Criteria documents and review of the design documents for adherence to the Performance Criteria documents.
 - 1.1.14. **“Criteria Architect Proposal”** means the proposal Criteria Architect submits to the Judicial Council in response to the Request for Proposals, or similar solicitation, for this Agreement.
 - 1.1.15. **“Criteria Conformance Guidelines”** means that written validation and conformance process developed by the Criteria Architect and approved by the Judicial Council to ensure the Project complies with all Project Criteria though all Project phases.

- 1.1.16. **“Criteria Conformance Report”** means that written validation and conformance report prepared by the Criteria Architect and submitted to the Judicial Council to evaluate whether that a Design-Build Project complies with all Project Criteria though all project phases including, but not limited to solicitation, design, and construction.
- 1.1.17. **“Data”** means everything created, developed, or produced in the course of the Criteria Architect’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.
- 1.1.18. **“Day(s)”** means calendar day of 24 hours, unless otherwise specifically defined.
- 1.1.19. **“Director”** means the Director of Facilities Services of the Judicial Council or the Director's designee.
- 1.1.20. **“Design Build Entity” or “DBE”** means the corporation, limited liability company, partnership, joint venture, or other legal entity that will enter into an Agreement with the Judicial Council to perform the Work included in the final performance criteria documents.
- 1.1.21. **“Energy Efficiency Measures”** means an element of design that minimizes energy consumption and integrates passive and active design elements while meeting the operational needs of the facility.
- 1.1.22. **“Extra Services”** means Council-authorized services, Council-authorized deliverables and Council-authorized reimbursables as identified in **Exhibit C**.
- 1.1.23. **“Fee”** means the Criteria Architect’s Fee is the amount as stated in the Agreement, as further defined herein, and is payable as set forth herein and in **Exhibit E**.
- 1.1.24. **“Final Acceptance”** means a written Acceptance issued by the Judicial Council by and through its Project Manager that accepts the Performance Criteria Documents or any Criteria Conformance Report, as final and complete, in accordance with this Agreement.
- 1.1.25. **“Force Majeure”** means a delay which impacts the timely performance of Work or otherwise delays the Project, for which neither Criteria Architect, its sub-Consultant(s) nor the Judicial Council are liable because such delay or failure to perform was unforeseeable and beyond the control of the affected Party(ies). Acts of Force Majeure include, but are not limited to:
 - 1.1.25.1. Acts of God or the public enemy;
 - 1.1.25.2. Acts or omissions of any government entity, except that any order of any local, state, or federal Authority Having Jurisdiction arising from a present or future Covid-19 outbreak which impacts the progress of the Work shall be considered reasonably foreseeable and not be considered Force Majeure;
 - 1.1.25.3. Fire or other casualty for which a Party is not responsible;
 - 1.1.25.4. Quarantine or epidemic, except that any present or future outbreak of Covid-19, or any similar or derivative strain thereof shall be considered reasonably foreseeable and shall not be considered Force Majeure;
 - 1.1.25.5. Strike or defensive lockout; and
 - 1.1.25.6. Unusually severe weather conditions.Force Majeure does not include failures or delays caused by Criteria Architect and/or its sub-Consultant(s).
- 1.1.26. **“GAAP”** means Generally Accepted Accounting Principles.
- 1.1.27. **“Guaranteed Maximum Price” or “GMP”**: The maximum price that the Judicial Council will pay DBE for construction of the Project.
- 1.1.28. **“Indemnified Parties”** means the State, the Judicial Council, the State’s trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their agents, representative, officers, consultants, employees, representatives, and volunteers.
- 1.1.29. **“Intellectual Property Rights”** means 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
- 1.1.30. **“Judicial Council”** means the Judicial Council of California.

- 1.1.31. **“Key Personnel”** refers to Criteria Architect personnel or personnel of Subconsultant(s) that are designated as “Key Personnel” and identified by name in **Exhibit F**.
- 1.1.32. **“LEED”** means the Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ of the United States Green Building Council (USGBC), a nationally accepted benchmark for the design, construction, and operation of high-performance green buildings.
- 1.1.33. **“Material(s)”** means any type of tangible item provided to the Judicial Council by Criteria Architect and/or its Subconsultants, including but not limited to, written reports, goods, supplies, equipment, and other commodities. Material(s) exclude all software, services, and Reimbursable(s).
- 1.1.34. **“Notice”** means a written document provided in accordance with the provisions of the section entitled “Communications/Notice” set forth in Article 33.
- 1.1.35. **“Notice to Proceed”** means written permission to begin Work. A separate Notice to Proceed is required for each Phase of Work.
- 1.1.36. **“NYA” or “Not Yet Authorized”** means the Services for a Phase of the Work that is within the Agreement, but for which the Judicial Council has not yet authorized Criteria Architect to perform. NYA Services are intended to be within the scope of the Agreement but shall only be undertaken by the Criteria Architect if the Judicial Council authorizes the Phase in which the NYA Services is included.
- 1.1.37. **“Performance Criteria”** means the requirements developed by the Criteria Architect for the Judicial Council to describe the Judicial Council’s program requirements and objectives for the Project, including as appropriate, use, space, price, durability, production standards, ingress and egress requirements, or other criteria for the intended use of the Project, expressed in conceptual documents, performance-oriented preliminary drawings, standards, outline specifications and/or other documents provided to DBE by the Judicial Council establishing the Project’s basic elements and scale and their relationship to the Site
- 1.1.38. **“Performance Criteria Documents”** means those documents prepared by the Criteria Architect that set forth the Performance Criteria for the Project.
- 1.1.39. **“Phase(s)”** means one or more of the time frames within which the Services may be authorized and performed.
- 1.1.40. **“Post-GMP Services”** means Criteria Architect scope of work pursuant to the Agreement after the Judicial Council’s acceptance of the DBE’s GMP.
- 1.1.41. **“Pre-GMP Services”** means Criteria Architect scope of work pursuant to the Agreement after the completion of the Performance Criteria phase of work and prior to establishment of the DBE’s GMP.
- 1.1.42. **“Prevailing Wage”** means the prevailing wage for applicable craft and classification of a worker as determined by the California Department of Industrial Relations pursuant to Labor Code sections 1770 and 1773, et seq.
- 1.1.43. **“Project”** means the total design and construction of the Work addressed in the contract documents prepared by the Criteria Architect and Judicial Council.
- 1.1.44. **“Project Manager”**: The Judicial Council’s project manager and authorized representative for this Project. The Project Manager is the point of contact for the Criteria Architect in its communications with the Judicial Council.
- 1.1.45. **“Reimbursable Expense”** means expense(s) incurred or to be incurred by Criteria Architect and/or its Subconsultant(s) for Reimbursable Item(s).
- 1.1.46. **“Reimbursable Item(s)” or “Reimbursable(s)”** means tangible item(s) utilized by Criteria Architect’s or Subconsultant’s employees in the performance of Service(s).
- 1.1.47. **“Service(s)” or “Work”**: All labor, materials, supervision, services, tasks, and work that the Criteria Architect is required to perform and that are required by, or reasonably inferred from, the Agreement, including but not limited to those services detailed in Exhibit B.
- 1.1.48. **“State”** refers to the State of California.
- 1.1.49. **“Subconsultant(s)”** means a party or entity who has a direct contract with the Criteria Architect to perform portion(s) of the Work, including, but not limited to “subcontractors” as defined by Labor Code section 1722.1.

- 1.1.50. **“Sustainable Building Measures”** means elements of the design that result in minimizing carbon footprint, pollution, resource waste, and environmental impacts associated with facility construction operations and, as applicable, demolition.
- 1.1.51. **“Target Guaranteed Maximum Price”** or **“TGMP”** means the total estimated cost for the Post-GMP construction work by the DBE as established by the Judicial Council

1.2 Capitalization and usage

1.2.1 Terms capitalized in the Agreement include those that are:

- a) Specifically defined; or
- b) Titles and captions of numbered Articles, Exhibits, Parts, Subparts, Sections, or Paragraphs; or
- c) Titles of other documents.

1.2.2 Usage

- a) For the purposed of this Agreement the term “shall” is mandatory and “may” is permissive.

Article 2. SCOPE, RESPONSIBILITIES AND SERVICES OF CRITERIA ARCHITECT

- 2.1. **Scope.** Criteria Architect shall provide the Services described herein and under **Exhibit B** for the Project. The Parties agree that the Criteria Architect’s Services described herein will be based on the Criteria Architect administering the work of providing professional services during Project Study, Site Acquisition, Performance Criteria, and/or Design-Build Phases for the Project as Phases are authorized.
- 2.2. **Coordination.** In the performance of Criteria Architect’s Services under this Agreement, Criteria Architect shall maintain direct communication with the Project Manager as the primary point of contact with the Judicial Council.
 - 2.2.1. The Criteria Architect shall coordinate its Work with other Judicial Council personnel and/or the Judicial Council’s designated representatives as may be requested and desirable but must take primary direction from the Project Manager.
 - 2.2.2. The Criteria Architect must also follow the direction of the Director, as appropriate.
 - 2.2.3. Criteria Architect must also coordinate with all members of the Judicial Council’s risk, safety, and quality management staff. If the Criteria Architect employs Subconsultant(s), the Criteria Architect must ensure that its contract(s) with its Subconsultant(s) include language notifying the Subconsultant(s) of the Judicial Council’s insurance, safety, and labor compliance programs, if any.
- 2.3. **Criteria Architect as Judicial Council Representative.**
 - 2.3.1. Criteria Architect will render the Services as described in **Exhibit B**, which will commence upon the receipt of a Notice to Proceed signed by the Director. Criteria Architect’s Services will be completed in accordance with the schedule attached as **Exhibit D**.
 - 2.3.2. Criteria Architect is an independent consultant and is solely responsible for obtaining any and all business and professional licenses and permits and for complying with any applicable Federal or State laws, codes and regulations, and municipal ordinances, as necessary, for the prosecution of the Services.

Article 3. CRITERIA ARCHITECT STAFF

- 3.1. The Criteria Architect has been selected to perform the work herein because of the skills and expertise of Key Personnel.
- 3.2. The Criteria Architect agrees that the Key Personnel listed in Exhibit F on the Criteria Architect’s team will be the personnel associated with the Project.

- 3.3. The Criteria Architect must not change any of the Key Personnel listed in **Exhibit F** without prior written approval by the Judicial Council unless those individuals cease to be employed by Criteria Architect. In either case, the Judicial Council will be allowed to interview and approve replacement personnel.
- 3.4. If any designated lead or Key Personnel, including employees and Subcontractors, fails to perform to the satisfaction of the Judicial Council, then upon written Notice, the Criteria Architect must immediately remove that person from the Project and provide a temporary replacement. Criteria Architect must within fifteen (15) days provide a permanent replacement person, employee, or Subconsultant employee acceptable to the Judicial Council. All lead or Key Personnel for any Subconsultant must also be designated by the Consultant.
- 3.5. The Criteria Architect is responsible for all costs associated with replacing any of Criteria Architect's Key Personnel, including the additional costs to familiarize replacement Key Personnel with the Work. If the Criteria Architect does not furnish replacement Key Personnel acceptable to the Judicial Council, the Agreement may be terminated for cause.
- 3.6. Criteria Architect represents that the Criteria Architect has no existing interest and will not acquire any interest, direct or indirect, that could conflict in any manner or degree with the performance of Services required under this Agreement and that no person having any conflict of interest will be employed by Criteria Architect.
- 3.7. Criteria Architect shall contract for or employ, at Criteria Architect's expense, Subconsultant(s) to the extent deemed necessary for completion of its Services on the Project including, but not limited to, applicable Building Components/Disciplines subconsultants, interior designers, and cost estimation providers, all licensed as required by applicable law. The Judicial Council reserves the right to reject the Criteria Architect's use of any particular Subconsultant. Nothing in the foregoing procedure shall create any contractual relationship between the Judicial Council and any Subconsultant(s) employed by the Criteria Architect under terms of the Agreement.
- 3.8. If the Criteria Architect assigns persons (whether employees, independent contractors, Subconsultants or agents to perform Work under this Agreement that requires that the person have access to the systems (whether on-site or by remote access) or premises of the Judicial Council or other Judicial Branch entities, the Judicial Council has the right, but not the obligation, to conduct a background check or to require the Criteria Architect to conduct a background check, as permitted by law, on that person(s) before the Judicial Council will grant to that person(s) access to the Judicial Council's or other judicial branch entities' premises or systems. The Criteria Architect will cooperate with the Judicial Council in performing that background check and will promptly notify the Judicial Council of any person refusing to undergo a background check and will reassign that person to perform other services. The Criteria Architect must obtain all releases, waivers, or permissions required for the release of that information to the Judicial Council. Costs incident to background checks are the sole responsibility of the Criteria Architect.

Article 4. EMPLOYMENT STATUS

- 4.1 Criteria Architect will, during the entire term of Agreement, be construed to be an independent contractor and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow Judicial Council to exercise discretion or control over the professional manner in which the Criteria Architect performs the Services which are the subject matter of this Agreement; provided always, however, that the Services to be provided by Criteria Architect must be provided in a manner consistent with all applicable standards and regulations governing those Services.
- 4.2 Criteria Architect understands and agrees that the Criteria Architect's personnel and Subconsultants are not and will not be eligible for membership in or any benefits from any Judicial Council group plan for hospital, surgical or medical insurance or for membership in any Judicial Council retirement program or for paid vacation, paid sick leave or other leave, with or without pay or for other benefits which accrue to a Judicial Council employee.
- 4.3 The Criteria Architect shall pay, when due, all applicable income taxes, including estimated taxes, incurred Criteria Architect a result of the compensation paid by the Judicial Council to the Criteria Architect for the Services. The State is exempt from federal excise taxes and no payment will be made for any taxes levied on the Criteria Architect's or any Subconsultants' employees' wages. To the extent permitted by Civil Code section 2782.8, the Criteria Architect agrees to indemnify, defend, and hold the Judicial Council harmless for any claims, costs, losses, fees, penalties, interest or damages (including attorney fees and costs) suffered by the Judicial Council resulting from the Criteria Architect's failure to comply with this provision. The Judicial Council may

- offset any taxes paid by the Judicial Council as a result of the Criteria Architect's breach of this provision against any amounts owed Criteria Architect.
- 4.4 If applicable, Criteria Architect shall provide a written, executed document indicating whether Criteria Architect is listed on either or both of the State of California Franchise Tax Board's "Top 500 Delinquent Taxpayers" (available at <https://www.ftb.ca.gov/aboutFTB/Delinquent-Taxpayers.shtml>) or the California State Board of Equalization's "Top 500 Sales & Use Tax Delinquencies in California" (available at <http://www.boe.ca.gov/sutax/top500.htm>).
- 4.5 Should Judicial Council, in its discretion, or a relevant taxing authority (e.g., the Internal Revenue Service, the State Employment Development Department, etc.) determine that Criteria Architect is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement will be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Criteria Architect which can be applied against this liability). Judicial Council will then forward those amounts to the relevant taxing authority.
- 4.6 Should a relevant taxing authority determine a liability for past Services performed by Criteria Architect for Judicial Council, upon notification of that fact by Judicial Council, Criteria Architect must promptly remit the amount due or arrange with Judicial Council to have the amount due withheld from future payments to Criteria Architect under this Agreement (and offsetting any amounts already paid by Criteria Architect which can be applied as a credit against that liability).
- 4.7 A determination of employment status pursuant to the preceding two paragraphs will be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Criteria Architect shall not be considered an employee of Judicial Council. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Criteria Architect is an employee for any other purpose, then Criteria Architect agrees to a reduction in Judicial Council's liability resulting from this Agreement pursuant to principles similar to those stated in the foregoing paragraphs so that the total expenses of Judicial Council under this Agreement will not be greater than they would have been had the court, arbitrator, or administrative authority determined that Criteria Architect was not an employee.
- 4.8 Nothing in this Agreement shall operate to confer rights or benefits on persons or entities not a party to this Agreement.

Article 5. SCHEDULE OF WORK

- 5.1. The Criteria Architect must commence the Work under this Agreement upon execution and must prosecute the Work diligently as described in **Exhibit B** in accordance with the schedule attached as **Exhibit D**. Time is of the essence and failure of Criteria Architect to perform the Work on time as specified in this Agreement is a material breach of this Agreement.
- 5.2. **Work Authorization.**
- 5.2.1. By entering into this Agreement, the Judicial Council only authorizes the Criteria Architect to begin its Work on the Phase indicated on the Coversheet of the Agreement.
- 5.2.2. The Judicial Council has the sole and unilateral right to authorize additional Phases, however, those authorizations will be made in the form of an amendment pursuant to this Agreement, authorizing the appropriate Phase and funding specified herein, which must be executed by the Criteria Architect and the Judicial Council. Work for additional Phases added to the Agreement by amendment will be authorized using Notice to Proceed.
- 5.2.3. Criteria Architect is not authorized to begin any work or services marked "NYA" (Not Yet Authorized).

Article 6. FEE AND METHOD OF PAYMENT

- 6.1. Judicial Council will pay Criteria Architect a fixed fee for all Services contracted for under this Agreement pursuant to the provisions herein and in **Exhibit E** (“Fee”). The compensation for any Extra Services will become part of the Fee upon the Judicial Council’s written authorization of those Extra Services.
- 6.2. The Criteria Architect’s Fee includes, without limitation, all costs for overhead; personnel; administration; profit; travel; offices; per diem expenses; and all deliverables, printing, and shipping, under the Agreement.

Article 7. PAYMENT FOR EXTRA SERVICES

- 7.1. Extra Services are those services, deliverables, and Reimbursables identified in **Exhibit C**. Any charges for Extra Services will be paid by the Judicial Council as described in **Exhibit C** only upon certification that the claimed Extra Services were authorized in writing in advance by the Project Manager, an amendment was executed, and that the authorized Extra Services have been satisfactorily completed. If any service is performed by Criteria Architect without prior written authorization by the Judicial Council or the Judicial Council’s authorized representative, the Judicial Council will not be obligated to pay for such service.
- 7.2. A written proposal describing the scope of the Extra Services and listing the personnel, labor duration, rates, and cost shall be submitted by the Criteria Architect to the Project Manager for approval followed by a fully executed amendment before proceeding with the performance of any Extra Services.
- 7.3. The Parties acknowledge that the rates for Extra Services will be good for three years and update every two years thereafter based on Bureau of Labor Statistics CPI for Urban Wage Earners and Clerical Workers (CPI-W).

Article 8. STANDARD OF CARE

- 8.1 Criteria Architect, its officers, agents, employees, subcontractors, subconsultants and any persons or entities for whom Criteria Architect is responsible, must provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing the same services for projects of the type, scope, and complexity of the Project. The Judicial Council’s review, approval of, or payment for any of the Services required under this Agreement must not be construed as assent that Criteria Architect has complied, nor in any way relieve the Criteria Architect of compliance, with (i) the applicable standard of care or (ii) applicable statutes, regulations, rules, guidelines, and requirements.
- 8.2 Criteria Architect shall provide Services that comply with all applicable requirements of federal, state, and local law including, without limitation, the following statutes, regulations, and standards:
 - 8.2.1 California Code of Regulations, Title 24, California Building Standards Code, including all amendments thereto.
 - 8.2.2 California Trial Court Facilities Standards.
 - 8.2.3 California Code of Regulations, Title 19, Regulations of the State Fire Marshall, and all pertinent local fire safety codes, rules, regulations, or ordinances.
 - 8.2.4 Americans with Disabilities Act.
 - 8.2.5 U. S. Copyright Act.
 - 8.2.6 Notwithstanding subsequent approvals by any Authority Having Jurisdiction, Criteria Architect’s failure to comply with these requirements shall be considered a material breach of this Agreement.
- 8.3 The Criteria Architect is responsible for the cost of construction change orders caused directly by the Criteria Architect’s willful misconduct or negligent acts, errors, or omissions. Without limiting Criteria Architect’s liability for indirect or consequential cost impacts, the direct costs for which the Criteria Architect is liable will equal its proportionate share of the difference between the cost of the change order and the reasonable cost of the work had that work been a part of the originally prepared construction documents.

Article 9. ACCEPTANCE

- 9.1 In addition to any specific criteria specified in **Exhibit B**, the Judicial Council's Project Manager will apply the following criteria in determining whether to accept the Work:
 - 9.1.1 Timeliness: The Work was provided on time and according to the Project schedule;
 - 9.1.2 Completeness: The Work contained all of the attributes and elements required by this Agreement; and
 - 9.1.3 Technical Accuracy: The Work complied with specific standards specified in this Agreement.
- 9.2 The Judicial Council's acceptance of a Service or Material shall be evidenced only by a written Notice of Acceptance and no other act or communication, or absence of the same shall be construed as an Acceptance. Acceptance by the Judicial Council does not relieve Criteria Architect of its obligations under this Agreement.
- 9.3 If the Judicial Council's Project Manager rejects Work, Criteria Architect shall provide a cure in accordance with the provisions of this Agreement.
- 9.4 If the Judicial Council's Project Manager does not accept Work and Criteria Architect disputes such action, the Parties agree to first attempt to settle their dispute according to the disputes process set forth herein.

Article 10. PERFORMANCE REVIEW

- 10.1 Performance Review for Criteria Architect. The Judicial Council or its agent may evaluate Criteria Architect's performance under this Agreement. Such evaluation may include assessing Criteria Architect's compliance with all Agreement terms and performance standards. Any deficiencies in the Criteria Architect's performance that the Judicial Council reasonably determines are severe or continuing and compromises the quality of Criteria Architect's Work if not corrected, will be reported to the Criteria Architect's principal. The report may include recommended improvements and corrective measures to be taken by the Criteria Architect. If the Criteria Architect's performance remains unsatisfactory as determined by the Judicial Council in its sole discretion, the Judicial Council may, without limitation, terminate this Agreement for cause or impose other penalties as specified in this Agreement. Any evaluation of Criteria Architect's performance conducted by the Judicial Council shall not be construed as an Acceptance of the Criteria Architect's work product or methods of performance. Criteria Architect shall be solely responsible for the quality, completeness, and accuracy of the work product that Criteria Architect and its Sub-Consultants deliver under this Agreement. Criteria Architect shall not rely on Judicial Council to perform any quality control review of Criteria Architect's work product, as such review shall be conducted by Criteria Architect.

Article 11. SAFETY

- 11.1. Criteria Architect shall retain full responsibility for the safety of all persons employed or contracted by Criteria Architect, Subconsultants, or suppliers.
- 11.2. Criteria Architect must comply with the safety and security standards and provisions of all applicable local, state and federal laws and building and construction codes related to performing its Services, including the provisions of Title 8 of the California Code of Regulations, California Construction Safety Orders and all revisions, amendments and regulations thereto.
- 11.3. Criteria Architect must ensure that prior to any person employed or contracted by Criteria Architect, Subconsultants, or suppliers enters a Project site, that person will only be allowed on the Project site when in full compliance with the "Owner's Badge, Escort and Entry Policy" attached hereto as **Exhibit G**.

Article 12. LABOR COMPLIANCE

To the extent the Criteria Architect is performing work subject to prevailing wages, the following provisions of this Article apply.

- 12.1. **Prevailing Wage.**
 - 12.1.1. The Criteria Architect and all Subcontractors under the Criteria Architect shall pay all workers on Work performed pursuant to this Contract not less than the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work as determined by the Director of the Department of Industrial

Relations, State of California, for the type of work performed and the locality in which the work is to be performed, pursuant to sections 1770 et seq. of the California Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Contract, as determined by Director of the State of California Department of Industrial Relations, are on file at the Court's principal office. Prevailing wage rates are also available from the Court or on the internet at (<http://www.dir.ca.gov>).

12.1.2. Criteria Architect shall ensure that Criteria Architect and all of Criteria Architect's Subconsultants execute the Prevailing Wage and Related Labor Requirements Certification attached to the Contract and incorporated herein.

12.1.3. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. Criteria Architect shall post job site notices, as prescribed by regulation. Criteria Architect shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

12.2. Registration.

12.2.1. Criteria Architect shall comply with the registration and compliance monitoring provisions of Labor Code section 1771.4, including furnishing its certified payroll records ("CPR(s)") to the Labor Commissioner of California and complying with any applicable enforcement by the Department of Industrial Relations ("DIR"). Labor Code section 1771.1(a) states the following:

12.2.1.1. "A contractor or subcontractor shall not be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of this section for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded."

12.2.2. Criteria Architect shall, and shall ensure that all Subconsultants, comply with Labor Code section 1725.5, including without limitation the registration requirements with the Department of Industrial Relations that are set forth in Labor Code section 1725.5. Criteria Architect represents to the Court that all Subconsultants are registered pursuant to Labor Code section 1725.5. Criteria Architect shall not permit any Subconsultants to perform Work on the Project, without first verifying the Subconsultant is properly registered with the DIR as required by law and providing this information in writing to the Court. Criteria Architect acknowledges that, for purposes of Labor Code section 1725.5, this Work is public work to which Labor Code section 1771 applies.

12.3. Hours of Work.

12.3.1. Notwithstanding the timing and duration of the Work under the Contract which is subject to court activities and other coordination required for occupied facilities, as provided in article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code, eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Criteria Architect or by any Subconsultant on any subcontract under this Contract upon the Work or upon any part of the Work contemplated by this Contract shall be limited and restricted by Criteria Architect to eight (8) hours per day, and forty (40) hours during any one week, except as hereinafter provided. Notwithstanding the provisions hereinabove set forth, Work performed by employees of Criteria Architect in excess of eight (8) hours per day and forty (40) hours during any one week, shall be permitted upon this public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half times the basic rate of pay.

12.3.2. Criteria Architect shall keep and shall cause each Subconsultant to keep an accurate record showing the name of and actual hours worked each calendar day and each calendar week by each worker employed by Criteria Architect in connection with the Work or any part of the Work contemplated by this Contract. The record shall be kept open at all reasonable hours to the inspection of Judicial Council and to the Division of Labor Standards Enforcement of the DIR.

12.3.3. Pursuant to Labor Code section 1813, Criteria Architect shall as a penalty to the Court forfeit the statutory amount (believed by the Court to be currently twenty five dollars (\$25)) for each worker employed in the execution of this Contract by Criteria Architect or by any Subconsultant for each calendar day during which such worker is required or permitted to work more than eight (8) hours in any one calendar day and forty (40) hours in any one calendar week in violation of the provisions of article 3 (commencing at section 1810), chapter 1, part 7, division 2, of the Labor Code.

- 12.3.4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the Court.
- 12.3.5. Project Work will typically take place in an occupied court facility; therefore, work hours may be restricted depending upon the Project. The individual Service Work Order will include any restrictions on hours of work. If the Service Work Order does not include a restriction on hours of work, then the work must take place during business hours.

12.4. Payroll Records.

- 12.4.1. In addition to submitting CPR(s) to the Labor Commissioner of California pursuant to Labor Code section 1771.4 or any other applicable law, if requested by the Court, Criteria Architect shall provide to the Court and shall cause each Subconsultant performing any portion of the Work to provide the Court CPR(s), showing the name, address, social security number, work classification, straight time, and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by the Criteria Architect and/or each Subconsultant in connection with the Work.
- 12.4.2. All CPRs shall be available for inspection at all reasonable hours at the principal office of Criteria Architect on the following basis:
 - 12.4.2.1. A certified copy of an employee's CPR shall be made available for inspection or furnished to the employee or his/her authorized representative on request.
 - 12.4.2.2. CPRs shall be made available for inspection or furnished upon request to a representative of the Court, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the Department of Industrial Relations.
 - 12.4.2.3. CPRs shall be made available upon request by the public for inspection or copies thereof made; provided, however, that a request by the public shall be made through either the Court, Division of Apprenticeship Standards, or the Division of Labor Standards Enforcement. If the requested CPRs have not been provided pursuant to the provisions herein, the requesting party shall, prior to being provided the records reimburse the costs of preparation by Criteria Architect, Subconsultants, and the entity through which the request was made. The public shall not be given access to the records at the principal office of Criteria Architect.
- 12.4.3. The form of certification for the CPRs shall be as follows:

I, _____ (Name-Print), the undersigned, am the _____ (Position in business) with the authority to act for and on behalf of _____ (Name of business and/or Criteria Architect), certify under penalty of perjury that the records or copies thereof submitted and consisting of _____ (Description, number of pages) are the originals or true, full, and correct copies of the originals which depict the payroll record(s) of actual disbursements by way of cash, check, or whatever form to the individual or individual named, and (b) we have complied with the requirements of sections 1771, 1811, and 1815 of the Labor Code for any work performed by our employees on the Project.

Date: _____ Signature: _____

(Section 16401 of Title 8 of the California Code of Regulations)
- 12.4.4. Each Criteria Architect shall file a certified copy of the CPRs with the entity that requested the records within ten (10) days after receipt of a written request.
- 12.4.5. Any copy of records made available for inspection as copies and furnished upon request to the public or any public agency by the Court, Division of Apprenticeship Standards, or Division of Labor Standards Enforcement shall be marked or obliterated in such a manner as to prevent disclosure of an individual's name, address, and social security number. The name and address of Criteria Architect awarded Contract or performing Contract shall not be marked or obliterated.
- 12.4.6. Criteria Architect shall inform the Court of the location of the records enumerated hereunder, including the street address, city, and county, and shall, within five (5) Business Days, provide a notice of change of location and address.
- 12.4.7. In the event of noncompliance with the requirements of this section, Criteria Architect shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Criteria Architect must comply with this section. Should noncompliance still be evident after the ten (10) day period, Criteria Architect shall, as a penalty to the Court, forfeit one hundred dollars (\$100) for each calendar day, or portion thereof, for

each worker, until strict compliance is effectuated. Upon the request of Division of Apprenticeship Standards or Division of Labor Standards Enforcement, these penalties shall be withheld from progress payments then due.

12.4.8. It shall be the responsibility of Criteria Architect to ensure compliance with the provisions of Labor Code section 1776.

12.5. Apprentices.

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

12.5.2. Apprentices of any crafts or trades may be employed and, when required by Labor Code section 1777.5, shall be employed provided they are properly registered in full compliance with the provisions of the Labor Code.

12.5.3. Every such apprentice shall be paid the standard wage paid to apprentices under the regulations of the craft or trade at which he/she is employed and shall be employed only at the work of the craft or trade to which she/he is registered.

12.5.4. Only apprentices, as defined in section 3077 of the Labor Code, who are in training under apprenticeship standards and written apprentice agreements under chapter 4 (commencing at section 3070), division 3, of the Labor Code, are eligible to be employed. The employment and training of each apprentice shall be in accordance with the provisions of the apprenticeship standards and apprentice agreements under which he/she is training.

12.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Criteria Architect and any Subconsultants employing workers in any apprenticeable craft or trade in performing any Work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Criteria Architect or Subconsultant under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.

12.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Contract as indicated above, Criteria Architect and any Subconsultant may be required to make contributions to the apprenticeship program.

12.5.7. If Criteria Architect or Subconsultant willfully fails to comply with Labor Code section 1777.5, then, upon a determination of noncompliance by the Administrator of Apprenticeship, it shall:

12.5.7.1. Be denied the right to bid or propose on any subsequent project for one (1) year from the date of such determination; and

12.5.7.2. Forfeit as a penalty to the Court the full amount as stated in Labor Code section 1777.7. Interpretation and enforcement of these provisions shall be in accordance with the rules and procedures of the California Apprenticeship Council and under the authority of the Chief of the Division of Apprenticeship Standards.

12.5.8. Criteria Architect and all Subconsultants shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.

12.5.9. Criteria Architect shall become fully acquainted with the law regarding apprentices prior to commencement of the Work. Special attention is directed to sections 1777.5, 1777.6, and 1777.7 of the Labor Code, and title 8, California Code of Regulations, section 200 et seq. Questions may be directed to the State Division of Apprenticeship Standards, 455 Golden Gate Avenue, San Francisco, California 94102.

12.5.10. Criteria Architect shall ensure compliance with all certification requirements for all workers on the Project including, without limitation, the requirements for electrician certification in Labor Code sections 108 et seq.

Article 13. ACCOUNTING AND AUDITS

13.1. Criteria Architect must establish and maintain books, records, and systems of account, in accordance with generally accepted accounting principles, reflecting all business operations of Criteria Architect transacted under this Agreement. Criteria Architect shall retain these books, records, and systems of account during the Term of this Agreement and for three (3) years thereafter.

13.2. Pursuant to Government Code Section 8546.7, this Agreement is subject to examination and audit of the State Auditor as specified in the code. Criteria Architect shall permit the Judicial Council, its agent, other

representatives, or an independent auditor to audit, examine, and make excerpts, copies, and transcripts from all books and original records, and to make audit(s) of all billing statements, invoices, original records, and other data related to the Services covered by this Agreement. Audit(s) may be performed at any time, provided that the Judicial Council shall give reasonable prior Notice to Criteria Architect and will conduct audit(s) during Criteria Architect's normal business hours, unless Criteria Architect otherwise consents.

- 13.3. If an audit or Judicial Council internal review reveals that the Criteria Architect and/or its Subconsultant(s) have overcharged the Judicial Council, Criteria Architect will immediately pay to the Judicial Council the overcharged amount plus interest from the date of receipt of overpayment. The rate of interest will be equal to eighteen percent (18%) per year, or the maximum rate permitted by applicable law, whichever is less. The audit or Judicial Council internal review will be conducted at the Judicial Council's expense, unless the audit or review reveals that the Criteria Architect and/or its Subconsultant(s) has overcharged the Judicial Council by ten percent (10%) or more on any invoice, in which case the Criteria Architect will reimburse the Judicial Council for all costs and expenses incurred by the Judicial Council in connection with such audit or review, including direct and indirect costs associated with Judicial Council representatives. This remedy shall not be exclusive to any other remedies available to the Judicial Council including, without limitation, a claim against the Criteria Architect for a False Claim pursuant to the False Claims Act (Gov. Code § 12650, et seq.)
- 13.4. **IMS/Monetary Penalties.** The Judicial Council shall be entitled to remedy any "False Claims," as defined in California Government Code section 12650 et seq., made to the Judicial Council by the Criteria Architect or any Sub-Consultant under the standards set forth in Government Code section 12650 et seq. Any Criteria Architect or Sub-Consultant who submits a False Claim shall be liable to the Judicial Council for three (3) times the amount of damages that the Judicial Council sustains from the False Claim. If Criteria Architect and/or Sub-Consultant submits a False Claim, they shall also be liable to the Judicial Council 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.
- 13.5. **Accounting System Requirements.** Criteria Architect shall maintain and shall ensure that its Sub-Consultant(s) maintain, an adequate system of accounting and internal controls that meets GAAP.
- 13.6. The obligations of this Section shall survive the expiration of and any termination of this Agreement.

Article 14. COST DISCLOSURE - DOCUMENTS AND WRITTEN REPORTS

- 14.1. Criteria Architect is responsible for compliance with California Government Code section 7550, if the total cost of the Agreement is over Five Thousand Dollars (\$5,000).

Article 15 CRITERIA ARCHITECT'S USE OF COMPUTER SOFTWARE

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

Article 16. OWNERSHIP OF DATA

- 16.1. Everything created, developed or produced in the course of the Criteria Architect'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 Criteria Architect for the Judicial Council and are the sole property of the Judicial Council without further employment or the payment of additional compensation to the Criteria Architect. The Judicial Council owns all of the right, title, and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights"). To the extent that any of the Data or the Intellectual Property Rights therein is not works for hire, the Criteria Architect hereby irrevocably assigns its entire right, title, and interest in and to all those Data and the Intellectual Property Rights therein, to the Judicial Council. At the Judicial Council's request, the Criteria Architect will assist the Judicial Council in the Judicial Council's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. Criteria Architect irrevocably appoints the Judicial Council as its attorney in fact, coupled with an interest, to take all

actions and execute and file all documents that the Judicial Council deems necessary to perfect the Judicial Council's interest and Intellectual Property Rights in the Data as set forth herein.

- 16.2. The Judicial Council is entitled to access copies of the Data, in whatever form, including without limitation Computer Aided Design (CAD), at all times during the Term of the Agreement. Any Data in the possession of the Criteria Architect or in the possession of any Subconsultant upon completion or termination of the Agreement must be immediately delivered to the Judicial Council. If any Data are lost, damaged, or destroyed before final delivery to the Judicial Council, the Criteria Architect must replace the Data at its own expense and the Criteria Architect assumes all risks of loss, damage, or destruction of or to Data.
- 16.3. After completion of the Project or after termination of this Agreement, Criteria Architect must deliver to Judicial Council a complete set of Project records, including without limitation all documents generated by Criteria Architect and copies of all documents exchanged with or copied to or from all other Project participants must be indexed using a file index numbering scheme provided or approved by the Project Manager and appropriately organized for easy use by Judicial Council personnel. All Project records are property of the Judicial Council, whether or not those records are in the Criteria Architect's possession.
- 16.4. The Judicial Council expressly acknowledges and agrees that the Data to be provided by Criteria Architect under the Agreement may contain certain design details, features and concepts from the Criteria Architect's best practices detail library, which collectively may form portions of the design for the Project, but which separately are, and shall remain, the sole and exclusive property of Criteria Architect. Nothing herein shall be construed as a limitation on the Criteria Architect's right to re-use such component design details, features, and concepts on other projects, in other contexts or for other clients.
- 16.5. The Judicial Council acknowledges the Criteria Architect's work product, including electronic files, as instruments of professional service. If the Judicial Council reuses or makes any modification to the Criteria Architect's work product without the prior written authorization of the Criteria Architect, the Judicial Council agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless the Criteria Architect, and its officers, directors, employees and Sub-Consultants, against any damages, liabilities or costs, including reasonable attorney fees and defense costs, arising from or in any way connected with the reuse or modification of the Criteria Architect's work product by the Judicial Council, or by any person or entity that lawfully acquires or obtains the Criteria Architect's work product from or through the Judicial Council without the written authorization of the Criteria Architect.

Article 17. ROYALTIES AND PATENTS

- 17.1. Criteria Architect must pay all royalties and license fees related to this Agreement.
- 17.2. To the extent permitted under Civil Code section 2782.8, Criteria Architect shall hold the Indemnified Parties harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, Article, or appliance furnished or used by Criteria Architect or its Subconsultants in connection with this Agreement.
- 17.3. To the extent permitted under Civil Code section 2782.8, Criteria Architect, at its own expense, shall defend any action brought against the Indemnified Parties to the extent such action is based upon a Claim that any Data or Materials supplied by Criteria Architect or its Subconsultants infringes a United States patent or copyright or violates a trade secret. Criteria Architect shall pay those costs and damages finally awarded against the Indemnified Parties in any such action. Such defense and payment shall be conditioned on the following:
- 17.4. That Criteria Architect shall be notified within a reasonable time in writing by the Judicial Council of any Notice of such claim; and,
- 17.5. That Criteria Architect shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, except where any such settlement or compromise would not fully resolve the outstanding claim and would expose the Judicial Council to any future liabilities related thereto. When principles of government or public law are involved, the Judicial Council, the Court(s) and/or the State shall have the option to participate in such action at its own expense.
- 17.6. Should the Data or Materials, become the subject of a claim of infringement of a United States patent or copyright or a trade secret, the Judicial Council shall permit Criteria Architect at its option and expense either to procure for the Judicial Council and/or the Court(s) the right to continue using the Data or Materials, or to replace or modify the same so that they become non-infringing. If none of these options can reasonably be taken, or an injunction prevents the use of those Data or Materials by the Judicial Council and/or the Courts, Criteria Architect agrees to

take back such Data or Materials and make every reasonable effort to assist the Judicial Council and/or the Courts in procuring substitute Data or Materials of the reasonably same value and quality. If, at the election of the Judicial Council in its sole discretion, the return of such infringing Data or Materials makes the retention of other Data or Materials acquired from Criteria Architect under this Agreement impractical, the Judicial Council shall then have the option of terminating the Agreement, in its entirety, without penalty or termination charge. Criteria Architect agrees to take back the infringing Data or Materials and refund any sums that the Judicial Council has paid Criteria Architect less any reasonable amount for use or damage. The rights and remedies of the Judicial Council 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.

Article 18. JUDICIAL COUNCIL PROPRIETARY OR CONFIDENTIAL INFORMATION

- 18.1. Criteria Architect understands and agrees that, in the performance of the Services under this Agreement or in contemplation thereof, the Criteria Architect may have access to private or Confidential Information which may be owned or controlled by, or otherwise in the possession of, the Judicial Council and that information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the Judicial Council. This Confidential Information may include, but is not limited to, information related to security systems in court buildings, security systems in detention facilities, and the design and construction of those systems.
- 18.2. Criteria Architect agrees that all Confidential Information disclosed by the Judicial Council to the Criteria Architect must be held in confidence and used only in the performance of the Agreement.
- 18.3. Criteria Architect shall exercise the same standard of care to protect this private or Confidential Information as the Criteria Architect 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 information.
- 18.4. It is understood, however, that the Criteria Architect may disclose the Judicial Council's confidential information on a "need to know" basis to the Criteria Architect's employees, the Criteria Architect's Subconsultants, and the Subconsultants' employees, and as required by law. Criteria Architect must execute written agreements with any employee or Subconsultant receiving the Judicial Council's Confidential Information incorporating this Article and obligating the recipient of the Confidential Information to comply with the provisions set forth herein.
- 18.5. Notwithstanding the foregoing, Criteria Architect may disclose Confidential Information: (i) to the extent necessary to comply with any law, rule, regulation, or applicable ruling; or (ii) as appropriate to respond to any summons or subpoena. Criteria Architect shall provide Notice to the Judicial Council within a reasonable time prior to any such disclosure so that the Judicial Council may take any protective measure(s) to prevent the disclosure of Confidential Information.
- 18.6. Neither Criteria Architect nor its Subconsultants shall acquire a right or title in or to the Confidential Information as a result of any disclosure contemplated hereunder.
- 18.7. The Judicial Council reserves the right to disclose all Data and Materials provided under this Agreement to Third Parties for the purpose of validation of the quality of Criteria Architect's Work and to use all Data and Materials for their intended purpose. Any disclosure of Confidential Information pursuant to this section shall not affect the confidential nature of any Confidential Information.
- 18.8. Criteria Architect agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

Article 19. LIMITATION ON PUBLICATION

- 19.1. Criteria Architect must not publish or submit for publication any article, press release, or other writing relating to the Criteria Architect's Services for the Judicial Council without prior review and written permission by the Judicial Council. The Judicial Council endeavor to review any request for publication within thirty (30) days of submission to the Project Manager and, if permission is denied, the Judicial Council will provide its reasons for denial in writing.

Article 20. COVENANT AGAINST CONTINGENT FEES

- 20.1. Criteria Architect warrants that neither Criteria Architect, nor any of its employees, nor Subconsultant(s) or their employees, have provided, or shall at any time provide, any gratuity in the form of money, tangible item(s), intangible benefit(s), or in any other form, to any officer, official, agent, or employee of the Judicial Council, any Judicial Branch Entity, or of the Court(s) for the purpose of securing or having secured award of this Agreement.
- 20.2. Criteria Architect warrants that neither Criteria Architect, nor any of its employees, nor Subconsultant(s) or their employees, have provided or shall at any time provide any gratuity in the form of money, tangible item(s), intangible benefit(s), or in any other form, to any officer, official, agent, or employee of the Judicial Council, any Judicial Branch Entity, or of the Court(s) for the purpose of securing an outcome favorable to the Criteria Architect any of its Subconsultant(s) resulting from any decisions made regarding the use of the State funds encumbered or to be encumbered under this Agreement.
- 20.3. Criteria Architect warrants that neither Criteria Architect, nor any of its employees nor Subconsultant(s) or their employees, will knowingly allow any Third Party to provide any gratuity in the form of money, tangible item(s), intangible benefit(s), or in any other form to any officer, official, agent, or employee of the Judicial Council, any Judicial Branch Entity, or of the Court(s) for the purpose of securing an outcome favorable to the Criteria Architect any of its Subconsultant(s) resulting from any decisions made regarding the use of the State funds encumbered or to be encumbered under this Agreement.
- 20.4. For breach or violation of any of the aforesaid warranties, the Judicial Council will have the right to terminate this Agreement, and any loss or damage sustained by the Judicial Council in procuring, on the open market, any Work which the Criteria Architect has agreed to supply, shall be borne, and paid for by the Criteria Architect. The rights and remedies of the Judicial Council 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.

Article 21. CONFLICT OF INTEREST

- 21.1. **Conflict of Interest.** Criteria Architect and employees of the Criteria Architect must not participate in proceedings that will result in decision-making regarding the use of Judicial Council funds or that are sponsored by the Judicial Council if the person's partner, family, or organization has a financial interest in the outcome of the proceedings. Criteria Architect and employees of the Criteria Architect must also avoid actions resulting in or creating the appearance of:
 - 21.1.1. Use of an official position with the government for private gain;
 - 21.1.2. Preferential treatment to any particular person associated with this Agreement or the Work of this Agreement;
 - 21.1.3. Loss of independence or impartiality;
 - 21.1.4. Impropriety;
 - 21.1.5. A decision made outside official channels; or
 - 21.1.6. Adverse effects on the confidence of the public in the integrity of the government or this Agreement.
- 21.2. Criteria Architect shall comply with the Judicial Council's Conflict of Interest Policy for Design-Build Projects included as **Exhibit H**.
- 21.3. **Prohibited Financial Conflict of Interest.** Criteria Architect and its Subconsultants 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. Criteria Architect further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the Judicial Council are now, nor in the future will they be, in any manner interested directly or indirectly in this Agreement, or in any profits expected to arise from this Agreement, as set forth in California Government Code sections 1090 et seq. and 87100 et seq.
- 21.4. **Conflict of Interest for Former Judicial Council Employees.** Criteria Architect certifies and must require any Subconsultant to certify to the following: Former Judicial Council employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision-making process relevant to this Agreement, or for one year from the date of separation if that employee was in a policy-making position or in any part of the decision-making process in the same general subject area as the proposed contract within the twelve (12) month period after his or her employment with Judicial Council.

- 21.5. **Fair Political Practices.** All Criteria Architect personnel identified as key personnel in this Agreement must complete and submit California Fair Political Practices Commission - Form 700 on a yearly basis over the duration of this Agreement.

Article 22. RESPONSIBILITIES OF THE COUNCIL

- 22.1. The Judicial Council will provide to the Criteria Architect complete information regarding the Judicial Council's requirements for the Project.
- 22.2. The Judicial Council will provide to the Criteria Architect a legal description of the Project site and all reports, surveys, drawings, and tests in the Judicial Council's possession that concern the conditions of the Project site.
- 22.3. The Judicial Council will examine the documents submitted by the Criteria Architect and will render decisions so as to avoid unreasonable delay in the process of the Criteria Architect's Services.
- 22.4. The Project Manager will be available during normal business hours and as often as may be required to render decisions and to furnish information in a timely manner.

Article 23. WARRANTY OF CRITERIA ARCHITECT

- 23.1. Criteria Architect warrants that the Criteria Architect is properly licensed and/or certified under the laws and regulations of the State of California to provide all the Services that it has herein agreed to perform.
- 23.2. Criteria Architect warrants and represents that Criteria Architect shall ensure that any of its employees or Subcontractors, including but not limited to its engineering Subcontractor(s), providing a Service(s) contemplated by this Agreement have and maintain throughout their work, all license(s) required under law to provide that Service(s).
- 23.3. If the possession of a license(s) is required under law for the performance of a Service(s), Criteria Architect warrants and represents that that Service(s) will either be performed by appropriately licensed individuals or under the direct supervision and subject to the review and approval of appropriately licensed individuals.

Article 24. FORCE MAJEURE

- 24.1. Neither Party shall be liable for damages, nor have the right to terminate this Agreement, for any delay or default in performing hereunder if such delay or default is due to an act of Force Majeure. If an act of Force Majeure prevents Criteria Architect's performance of the Work hereunder, the Judicial Council shall be excused from compensating Criteria Architect until the act of Force Majeure no longer prevents Criteria Architect's performance of the Work.

Article 25. DISPUTE RESOLUTION

- 25.1. **Informal Negotiations.** The Parties must make a good faith attempt to promptly resolve all disputes by informal negotiation.
- 25.2. **Demand.** If a dispute is not settled pursuant to informal negotiations, the Party submitting a dispute ("Submitting Party") must make written demand ("Demand") in the form of a Notice to the Party receiving the Demand ("Receiving Party"). The Demand must be supported by detailed factual information and supporting documentation, including the following information:
- 25.2.1. State the specific Agreement provisions on which the Demand is based; and
- 25.2.2. If the Demand regards a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand.
- 25.2.3. The Demand must include a written statement signed by an authorized representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested accurately reflects the adjustment for which the Submitting Party thinks the Receiving Party is responsible.
- 25.3. **Response to Demand.** The Receiving Party must within fourteen (14) days, provide a written response ("Response") to the Submitting Party. The Response must state whether the Receiving Party:
- 25.3.1. Accepts or rejects the Demand or
- 25.3.2. Needs any additional information in order for it to fully analyze the Demand.

- 25.3.3. The Submitting Party must promptly comply with Receiving Party's request for additional information. Any delay caused by Submitting Party's failure to respond to a request for additional information shall extend the period within which the Receiving Party must provide the Response. In no event, however, will the time period for a Response be extended beyond thirty (30) days from the date the Receiving Party receives the Demand. Failure of the Receiving Party to provide a Response within this time period will be deemed a rejection of the Demand by the Receiving Party.
- 25.4. **Senior Level Negotiations.** If the Demand remains unresolved after the time period for a Response, the Parties must attempt to resolve the Demand by negotiations between assigned representatives of the Parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The Parties must make a good faith effort to resolve the Demand within a period of thirty (30) days after the time period for a Response.
- 25.5. **Mediation.** If the Demand is not resolved by negotiations of the Parties' assigned representatives, the Parties must make a good faith attempt to promptly resolve the dispute through mediation prior to either Party initiating an action in court.
- 25.6. **Litigation.** If, after mediation pursuant to section 23.5 the parties have not resolved the dispute, the receiving party's decision made pursuant to section 23.5 (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
- 25.7. **Confidentiality.** To the extent permitted by applicable law, all discussions and negotiations conducted pursuant to this Article are confidential and will be treated as compromise and settlement negotiations to which California Evidence Code section 1152 applies. Mediation will be confidential and will be subject to the provisions of California Evidence Code sections 703.5 and 1115 through 1128.
- 25.8. **Continuation of Work.** Pending the final resolution of any dispute arising under, related to, or involving this Agreement, Criteria Architect agrees to diligently proceed with the performance of this Agreement, including the delivery of deliverables or providing of Services, in accordance with the Judicial Council's instructions. Criteria Architect's failure to diligently proceed in accordance with the Judicial Council's instructions will be considered a material breach of this Agreement.
- 25.9. **Notices.** All written Notices required under this Article must be made pursuant to the "Communications / Notice" provision of this Agreement.

Article 26. TERMINATION OF AGREEMENT

- 26.1. **Termination of Criteria Architect for Cause.** If Criteria Architect fails to perform Criteria Architect's duties to the satisfaction of the Judicial Council, or if Criteria Architect fails to fulfill in a timely and professional manner Criteria Architect's material obligations under this Agreement, or if Criteria Architect violates any of the material terms or provisions of this Agreement, the Judicial Council has the right to terminate this Agreement effective immediately upon the Judicial Council giving written Notice of termination and specifying the reasons for termination to the Criteria Architect. In the event of a termination for cause pursuant to this Article, Criteria Architect may invoice the Judicial Council for all Work performed up to the Notice of termination, but the Judicial Council has the right to withhold payment and deduct any amounts equal to the Judicial Council's costs resulting from Criteria Architect's actions, errors, or omissions that caused the Judicial Council to terminate the Criteria Architect.
- 26.2. **Termination of Criteria Architect for Convenience.** The Judicial Council has the right in its sole discretion to terminate the Agreement for its own convenience. In the event of a termination for convenience, Criteria Architect may invoice the Judicial Council, which will pay all undisputed invoice(s) for Work performed until the Notice of termination. This will be the only amount(s) potentially owing to Criteria Architect if there is a termination for convenience.
- 26.3. **Termination by the Judicial Council for Non-Appropriation or No Authorizations; Judicial Council's Obligation Subject to Availability of Funds.**

- 26.3.1. The Judicial Council's obligation under this Agreement is subject to the availability of authorized funds. The Judicial Council may terminate the Agreement or any part of the Work, without prejudice to any right or remedy of the Judicial Council, for lack of appropriation of funds and/or the Judicial Council's determination not to authorize specific Work or Phases. If expected or actual funding is withdrawn, reduced, or limited in any way prior to the expiration date set forth in this Agreement, or if the Judicial Council determines not to authorize further Work of Phases not yet authorized, the Judicial Council may terminate this Agreement in whole or in part, upon written Notice to the Criteria Architect.
 - 26.3.2. Payment to Criteria Architect shall not exceed the amount allowable for appropriation by Legislature. If the Agreement is terminated for non-appropriation:
 - 26.2.2.1.
 - 26.3.2.1. The Judicial Council will be liable only for payment in accordance with the terms of this Agreement for Services rendered prior to the effective date of termination; and
 - 26.3.2.2. The Criteria Architect will be released from any obligation to provide further Services pursuant to the Agreement as are affected by the termination.
 - 26.3.3. Funding for this Agreement beyond the current appropriation year is conditional upon appropriation by the Legislature of sufficient funds to support the activities described in this Agreement. Should an appropriation not be approved, the Judicial Council, in its sole discretion, may terminate the Agreement at the close of the current appropriation year, however, in lieu of terminating the Agreement, the Judicial Council, in its sole discretion, may choose to suspend the Project in accordance with the suspension of project provision below. The appropriation year ends on June 30 of each year.
- 26.4. **Actions of the Criteria Architect upon Termination.** Immediately upon receipt of a Notice of termination, Criteria Architect shall, unless otherwise instructed in writing by the Judicial Council, proceed with diligence to take all actions necessary to affect the rapid and economical termination of its obligations under this Agreement and to minimize any liability of the Criteria Architect and/or the Judicial Council to any third party(ies) that could result from such termination.
- 26.5. **Termination Communication.** The Judicial Council, at its sole discretion, may dictate when and how the termination will be affected. Such actions may include, but are not limited to, the following:
- 26.5.1. When termination is effective.
 - 26.5.2. When the termination of performance of certain Services and provision of Materials under this Agreement will occur.
 - 26.5.3. When Subconsultants are to be notified of the termination.
 - 26.5.4. Whether the Judicial Council asserts an interest in any not yet complete Materials.
 - 26.5.5. Criteria Architect's schedule to provide the Judicial Council with Work or Material created in the course of the performance of Services hereunder.
- 26.6. **Termination of Agreement by Criteria Architect.** The Criteria Architect has the right to terminate this Agreement if the Judicial Council does not fulfill its material obligations under this Agreement and fails to cure a default of such material obligations within sixty (60) days, or if the default cannot be cured within sixty (60) days, to commence to cure a default, diligently pursue the cure, and complete the cure within a reasonable time. This sixty (60) day cure period begins to run only after the Judicial Council's receipt of a written Notice and demand from Criteria Architect to the Judicial Council to cure a default of a material obligation(s).
- 26.7. **Rights.** Except as indicated in this Article, termination will have no effect upon any of the rights and obligations of the Parties arising out of any transaction occurring prior to the effective date of termination.
- 26.8. **Suspension of Project.**
- 26.8.1. The Judicial Council may, in its sole discretion, suspend the Project by written Notice. The Criteria Architect will be compensated for Services performed prior to Notice of suspension.
 - 26.8.2. If the Project is suspended by the Judicial Council for less than one hundred and eighty (180) consecutive days, the Criteria Architect will reduce or suspend its services as directed by the Judicial Council.

- 26.8.3. If the Project is suspended by the Judicial Council for more than one hundred and eighty (180) consecutive days, then when the Project is resumed, the schedule will be adjusted, and the Criteria Architect's compensation will be equitably adjusted to provide for expenses incurred in the resumption of the Criteria Architect's Services.
- 26.8.4. Upon resumption of the Project after suspension, the Criteria Architect will take all reasonable efforts to maintain the same Project personnel.

Article 27. CRITERIA ARCHITECT'S INSURANCE

27.1. General Requirements. General Requirements for Criteria Architect's Insurance:

- 27.1.1. By requiring the minimum insurance set forth in this Agreement, the Judicial Council shall not be deemed or construed to have assessed the risks that may be applicable to Criteria Architect under this Agreement. Criteria Architect shall assess its own risks and if it deems appropriate or prudent, maintain higher limits or broader coverage.
- 27.1.2. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Criteria Architect; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to the Judicial Council in compliance with the Insurance Requirements set forth in this Agreement. The Judicial Council may, in its sole discretion, accept self-insurance or risk-pool coverage as a substitute for any of the required insurance policies under this Agreement. No representation is made by the Judicial Council that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Criteria Architect under this Agreement.
- 27.1.3. Criteria Architect shall obtain and maintain the required insurance for the duration of this Agreement with an insurance company or companies acceptable to the Judicial Council, in its sole discretion, and that are rated "A-VII" or higher by A. M. Best's key rating guide and are authorized to do business in the state of California.
- 27.1.4. For all insurance policies required under this Agreement, no deductible shall exceed five (5) percent of the minimum limit of insurance required under this Agreement unless authorized in writing by the Judicial Council. Any Criteria Architect deductible must be clearly stated on the appropriate certificate of insurance.
- 27.1.5. Self-Insured retentions (SIR) must be declared to and approved in writing by the Judicial Council. The Judicial Council may require the Criteria Architect to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Judicial Council. Any and all deductibles and SIRs shall be the sole responsibility of Criteria Architect or subcontractor who procured such insurance and shall not apply to the Indemnified Parties. Judicial Council may deduct from any amounts otherwise due Criteria Architect to fund the SIR. Policies shall NOT contain any SIR provisions that limit the satisfaction of the SIR to the named insured. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR. Judicial Council reserves the right to obtain a copy of any policies and endorsements for verification.
- 27.1.6. Criteria Architect is responsible for and may not recover from the State of California, Judicial Council, or the Court any deductible or self-insured retention that is connected to the insurance required under this Agreement. If self-insured, Criteria Architect warrants that it will maintain funds to cover losses required to be insured against by Criteria Architect under the terms of this Agreement.
- 27.1.7. Criteria Architect, prior to commencement of the Work, shall provide Judicial Council with certificates of insurance and signed insurance policy endorsements, on forms acceptable to Judicial Council, as evidence that the required insurance is in full force and effect. The insurance required under this Agreement, and any excess liability or umbrella liability insurance, that Criteria Architect maintains in compliance with the terms of this "General Requirements" subsection (with the exception of Professional Liability Insurance, if required) must be endorsed to include the [State Public Works Board]; State of California; Judicial Council of California; the Superior Court of California, County in which the Project is located, and their respective elected and appointed officials, judicial officers, officers, employees, and agents as additional insureds. No payments will be made to Criteria Architect until all required current and complete certificates of insurance and signed insurance policy endorsements are properly endorsed and on file with the Judicial Council.

- 27.1.8. The insurance required under this Agreement, including all required additional insured coverages, must be endorsed to be primary and non-contributory to any insurance or self-insurance maintained by the State of California, Judicial Council, or the Court. Criteria Architect's liabilities under this Agreement shall not be limited in any manner to the insurance coverage required.
- 27.1.9. Failure to provide the documentation as required prior to the commencement of Work shall not constitute or be construed as a waiver of the obligation to provide such documentation.
- 27.1.10. The Certificates of Insurance must be addressed and mailed to:
- [Insert Name]
Contract Specialist, Branch Accounting and Procurement
Contract Number [insert contract number here]
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94012
- 27.1.11. All insurance policies required under this Agreement must remain in force for the entire duration of this Agreement. If the insurance expires during the Term of this Agreement, Criteria Architect shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsement(s), or Criteria Architect will be in breach of this Agreement, and the Judicial Council may direct the Criteria Architect to stop work or may take other remedial action. Criteria Architect must provide renewal insurance certificates and signed policy endorsements to Judicial Council on or before the expiration date of the previous insurance certificates and signed policy endorsements. Any new insurance procured by Criteria Architect must conform to the requirements of this Agreement.
- 27.1.12. In the event Criteria Architect fails to keep the specified insurance coverage in force at all times required under this Agreement, Judicial Council may, in addition to and without limiting any other remedies available to it, (i) order the Criteria Architect to stop work, or (ii) terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- 27.1.13. Criteria Architect, and each insurer providing insurance required under this Agreement, expressly waives all rights of recovery and subrogation rights it may have against the State of California, Judicial Council, the Court, and their respective elected and appointed officials, judicial officers, officers, employees, and agents for direct physical loss or damage to the Work, and for any liability arising out of or in connection with the Work performed by Criteria Architect under this Agreement or arising out of or in connection with Criteria Architect's breach of this Agreement. This provision does not apply to professional liability insurance policies.
- 27.1.14. Criteria Architect shall provide the Judicial Council with written notice within TEN (10) calendar days of becoming aware of a material change or cancellation of the insurance policies required under this Agreement. In the event of expiration or cancellation of any insurance policy, Criteria Architect shall immediately notify the Judicial Council's Project Manager.
- 27.1.15. Judicial Council reserves the right to request certified copies of any of the insurance policies required under this Agreement, which must be provided by Criteria Architect within TEN (10) business days following the request by Judicial Council.
- 27.1.16. Criteria Architect must require insurance from its Subcontractors in substantially the same form as required of the Criteria Architect herein and with limits of liability that are sufficient to protect the interests of the Criteria Architect, State of California, the Judicial Council, and the Superior Court of California in the County in which the Project is located.
- 27.2. **Insurance Requirements.** Throughout the term of the Agreement, the Criteria Architect must maintain at a minimum and in full force and effect, the following insurance:
- 27.2.1. **Professional Liability.** Professional Liability Insurance shall include coverage for any negligent act, error, or omission committed or alleged to have been committed which arises out of rendering or failure to render the Work provided under the terms of this Agreement. The policy shall provide limits of not less than \$4,000,000 per claim or per occurrence and \$4,000,000 annual aggregate. If the policy is written on a "claims made" form, Criteria Architect shall continue such coverage, either through policy renewals or the purchase of an

extended discovery period, if such extended coverage is available, for not less than three (3) years from the date of completion of the Work which is the subject of this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that Work commences pursuant to the Agreement.

- 27.2.2. **Commercial General Liability.** Commercial General Liability Insurance shall be written on an occurrence form with limits of not less than \$ 5,000,000 per occurrence for bodily injury and property damage and \$5,000,000 annual aggregate. The policy shall include coverage for liabilities arising out of or in connection with premises, operations, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy shall include coverage for property damage resulting from explosion, collapse, or underground hazard. This insurance shall apply separately to each insured against whom a claim is made or suit is brought. The products and completed liability shall extend for not less than three (3) years past the completion of the Work or the termination of this Agreement, whichever occurs first.
- 27.2.3. **Commercial Automobile Liability.** Commercial Automobile Liability Insurance shall have limits of not less than \$1,000,000 per accident. This insurance must cover liability arising out of or in connection with the operation, use, loading, or unloading of a motor vehicle assigned to or used in connection with the Work including, without limitation, owned, hired, and non-owned motor vehicles.
- 27.2.4. **Workers' Compensation.** If Criteria Architect has employees, it shall maintain workers' compensation insurance as required by law. Employer's liability limits shall be not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee. If Criteria Architect does not have employees, it shall provide a letter, on company letterhead, to the Judicial Council certifying, under penalty of perjury, that it does not have employees. Upon the Judicial Council's receipt of the letter, Criteria Architect shall not be required to maintain workers' compensation insurance.
- 27.2.5. **Unmanned Aircraft Liability Insurance.** If Contractor utilizes drones or any other unmanned aircraft in the performance of the Work, existing insurance coverage must include an endorsement for unmanned aircraft operations. Contractor must maintain a separate aircraft liability policy to cover unmanned aircraft operations with limits and coverage equal to or greater than \$1,000,000 per claim or per occurrence and \$2,000,000 annual aggregate. If Contractor does not have the applicable insurance and a Remote Pilot Certificate (commonly known as a drone license) from the FAA, the use of a drone or any other unmanned aircraft usage is prohibited.
- 27.2.6. **Umbrella Policies.** Criteria Architect may satisfy basic coverage limits through any combination of primary, excess, or umbrella insurance.

Article 28. INDEMNITY

- 28.1. To the extent permitted by California Civil Code section 2782.8, Criteria Architect shall indemnify, protect, and hold free and harmless the State, the Judicial Council, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their agents, representative, officers, consultants, employees, representatives, and volunteers (the “Indemnified Parties”) from any and all actions, assessments, counts, citations, claims, costs, damages, demands, judgments, liabilities (legal, administrative or otherwise), losses, delays, notices, expenses, fines, penalties, proceedings, responsibilities, violations, attorney's and consultants' fees and causes of action, including personal injury and/or death (“Claim(s)”), to the extent that the Claim(s) arises out of, pertains to, or relates to the negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Criteria Architect, its directors, officials, officers, employees, contractors, subcontractors, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. Criteria Architect shall not be subject to liability under this Article for Claims that result from the active or sole negligence or willful misconduct of the Indemnified Parties or for Claims that result from defects in design furnished by the Indemnified Parties. .
- 28.2. Criteria Architect shall defend and pay all costs, expenses and fees to defend the Indemnified Parties, from any and all Claim(s), to the extent that the Claim(s) arises out of, pertains to, or relates to the alleged negligence (active or passive, ordinary or gross), recklessness (ordinary or gross), errors or omissions, or willful misconduct of Criteria Architect, its directors, officials, officers, employees, contractors, subcontractors, Subconsultants, or agents directly or indirectly arising out of, connected with, or resulting from the performance of the Services, the Project, or this Agreement. Criteria Architect must pay and satisfy any judgment, award or decree that may be rendered against the indemnified parties in any Claim. Criteria Architect must also reimburse Judicial Council for the cost of any settlement paid by Judicial Council arising out of any Claim. Criteria Architect must reimburse the

indemnified parties for any and all legal expenses and costs, including attorneys' fees, expert witness fees and consultant fees, incurred by each of them in connection therewith or in enforcing the indemnity herein provided to the extent caused by this agreement to indemnify. Criteria Architect's obligation to indemnify is not restricted to insurance proceeds, if any, received by the indemnified parties. The Judicial Council has the right to accept or reject any legal representation that Criteria Architect proposes to defend the Indemnified Parties. The cost to defend charged to the Criteria Architect shall not exceed the Criteria Architect's proportionate share of fault. However, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the Criteria Architect shall meet and confer with the other parties regarding unpaid defense costs to negotiate a re-allocation costs amongst the defendants.

Article 29. LIABILITY OF THE COUNCIL

- 29.1. Other than as provided in this Agreement, Judicial Council's obligations under this Agreement are limited to the payment of the Fee provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event will Judicial Council be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect, or incidental damages, including, but not limited to, lost profits or revenue, arising out of or in connection with this Agreement for the Services performed in connection with this Agreement.
- 29.2. Judicial Council shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Criteria Architect, or by its employees, even if the equipment was furnished or loaned to Criteria Architect by Judicial Council.
- 29.3. The Criteria Architect hereby waives any and all claim(s) for recovery from the Judicial Council under this Agreement, which loss or damage is covered, whether paid or unpaid, by valid and collectible insurance policies or programs of self-insurance. Criteria Architect agrees to have its required insurance policies endorsed to prevent the invalidation of insurance coverage by reason of this waiver. This waiver extends to claims paid, or expenses incurred, by Criteria Architect's insurance company on behalf of the Judicial Council.
- 29.4. Neither the Judicial Council, nor any other officer or employee of the Judicial Council will be personally responsible for liabilities arising under the Agreement.

Article 30. COMMUNICATIONS / NOTICE

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

Judicial Council Facilities Services Administrative Division Judicial Council of California 455 Golden Gate Avenue, San Francisco, CA 94102-3688 ATTN: Samara Lull	Criteria Architect _____, Inc. _____ _____, CA _____ ATTN: _____
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Any Notice personally given is effective upon receipt. Any Notice sent by overnight delivery service is effective the day after delivery. Any Notice given by mail is effective five (5) days after deposit in the United States mail.

Article 31. NONDISCRIMINATION/NO HARASSMENT CLAUSE

- 31.1. The Criteria Architect and its Subconsultants 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 Criteria Architect and its Subconsultant(s) shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 31.2. During the performance of this Agreement, the Criteria Architect and its Subconsultants must not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom the Criteria Architect or its Subconsultants interact in the performance of this Agreement. Criteria Architect and its Subconsultants must take all reasonable steps to prevent harassment from occurring.

- 31.3. Criteria Architect must comply with applicable provisions of the Fair Employment and Housing Act, California Government Code section 12900 et seq., and the applicable regulations promulgated under California Code of Regulations, title 2, section 11000 et seq. The applicable regulations of the Fair Employment and Housing Council implementing California Government Code section 12900 et seq., set forth in chapter 5 of division 4.1 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- 31.4. The Criteria Architect shall comply with applicable provisions of the Americans with Disabilities Act of 1990 (“ADA”) (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.
- 31.5. Criteria Architect must include the nondiscrimination/no harassment and compliance provisions of this clause in any and all subcontracts issued to perform Work under the Agreement.
- 31.6. Criteria Architect must not enter into any subcontract with any person or firm decertified from State contracts pursuant to Government Code section 12990.
- 31.7. No more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Criteria Architect within the immediately preceding two (2) year period because of the Criteria Architect’s failure to comply with an order of the National Labor Relations Board.

Article 32. DISABLED VETERAN BUSINESS ENTERPRISE PARTICIPATION

- 32.1. This Project has a Disabled Veteran Business Enterprise (“DVBE”) participation goal of three percent (3%). The Criteria Architect must document its DVBE compliance by completing the DVBE Participation Form set forth as Attachment 9 to the RFP.

Article 33. DRUG FREE WORKPLACE

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

Article 34. UNION ORGANIZING

- 34.1. Union Organizing. Criteria Architect, by signing the Agreement, hereby acknowledges the applicability of Government Code section 16645 through section 16649 to the Agreement. Criteria Architect will not assist, promote, or deter union organizing by employees performing work on a Judicial Council contract, including a public works contract. No Judicial Council funds received under the Agreement will be used to assist, promote, or deter union organizing. Criteria Architect will not, for any business conducted under the Agreement, use any Judicial Council property to hold meetings with employees or supervisors, if the purpose of those meetings is to assist, promote or deter union organizing, unless the Judicial Council property is equally available to the general public for holding meetings. If Criteria Architect incurs costs, or makes expenditures to assist, promote or deter union organizing, Criteria Architect will maintain records sufficient to show that no reimbursement from Judicial Council funds has been sought for these costs, and that Criteria Architect must provide those records to the Attorney General upon request.

Article 35. MISCELLANEOUS

- 35.1. This Agreement shall not be construed against any party as the drafter of the Agreement.
- 35.2. **Survival.** The termination or expiration of this Agreement shall not relieve either Party of any obligation or liability accrued thereunder 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 for herein.

- 35.3. **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.
- 35.4. **Waiver.** Any waiver of any term or condition of this Agreement must be made in the form of an Amendment and executed by an authorized representative of the waiving Party. Any waiver of a specific term or condition shall not be construed as a waiver of any succeeding breach of the same or other term or condition of this Agreement.
- 35.4.1. The failure by either Party at any time to remedy the other Party's default, enforce any right, or to require performance in accordance with the terms and conditions of this Agreement at the time designated shall not act as a waiver of the default or right, nor shall it affect the right of that party to enforce those provisions at a later date.
- 35.5. **Severability.** If any term, covenant, condition, or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof will remain in full force and effect and will in no way be affected, impaired, or invalidated thereby
- 35.6. **California Law/Venue.** This Agreement has been executed and delivered in the State of California and the validity, enforceability, and interpretation of any of the clauses of this Agreement will be determined and governed by the laws of the State of California. The Criteria Architect consents to personal jurisdiction in California.
- 35.6.1. Venue for all litigation relative to the formation, interpretation, and performance of this Agreement will be in the County in which the Project is located. Criteria Architect waives California Code of Civil Procedure section 394.
- 35.7. **Construction of Agreement.** 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. The terms of construction herein shall likewise be applicable to any Service Work Order, or Supplemental Service Work Order.
- 35.8. **Public Contract Code References.** Public Contract Code references create duties of the Criteria Architect under this Agreement; however, the references do not imply that the Judicial Council is subject to the Public Contract Code.
- 35.9. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties as regards its subject matter and supersedes all previous agreements, proposals, negotiations, representations, and commitments, whether oral or written, with regard thereto. No extrinsic evidence whatsoever shall be admissible to vary or supplement the terms of this completely integrated written agreement.
- 35.9.1. Criteria Architect specifically acknowledges that in entering this Agreement, Criteria Architect relies solely upon the provisions contained in this Agreement and no others.
- 35.10. **Non-Assignment of Agreement.** This Agreement is intended to secure the specialized services of the Criteria Architect. Criteria Architect must not assign, transfer, delegate or subcontract any interest therein without the prior written consent of the Judicial Council. The Judicial Council shall consent to such assignment only if assignee assumes in writing all of the Criteria Architect's obligations hereunder, but Criteria Architect shall not be released from its obligations hereunder by reason of such assignment. Any voluntary or involuntary assignment (e.g. assignment by operation of law) of all or any portion of Criteria Architect's interest in this Agreement without the prior written approval of the Judicial Council shall be deemed a default allowing the Judicial Council to exercise all remedies available to it under this Agreement and applicable law. The Architect expressly acknowledges that its subcontractors are not third-party beneficiaries of this Agreement.
- 35.11. **Judicial Council Court Representation.** The Judicial Council has the authority to act on behalf of the Court(s) and to bind the Court(s) with regard to any matters relating to this Agreement.
- 35.11.1. The Parties expressly agree that the Court shall be an intended third party beneficiary of the Services provided under this Agreement. In the event the Court gives instructions or makes determinations that conflict with those of the Judicial Council with respect to any matter affecting Criteria Architect's performance of its obligations, the Criteria Architect shall notify the Judicial Council of the conflict and the Judicial Council shall resolve any such conflict.

END OF EXHIBIT

EXHIBIT B
RESPONSIBILITIES AND SERVICES OF CRITERIA ARCHITECT

Criteria Architect shall provide professional services relating to the following Project:

1. GENERAL DESCRIPTION OF THE PROJECT

- 1.1. The New Solano Hall of Justice shall be delivered using the Judicial Council's Design Build delivery method. The Project will entail the design and construction of a new twelve (12)-courtroom courthouse of approximately 141,000 square feet in the city of Fairfield. The Project scope includes secured parking for judicial officers, approximately 240 surface parking spaces, and sustainability measures to meet CalGreen requirements and achieve LEED silver certification at minimum. The Project will require acquisition of a site of approximately 2.9 acres and the structure is anticipated to be four – six (4-6) floors plus a basement. The Project program includes twelve (12)-courtrooms, chambers, and administrative areas in support of criminal, civil, family law, juvenile, probate, and traffic case types. Major functional components include central holding, jury assembly and a loading dock. The Project will allow the court to replace operations that are currently located in the existing deficient Hall of Justice building.
- 1.2. The project is currently authorized for the Site Acquisition Phase.
- 1.3. The anticipated Direct Cost of Work for the proposed Project is \$201,395,400.00 (CCCI 7892, July 2021).
- 1.4. The Project will be designed to be certified "Silver" by the U.S. Green Building Council (USGBC), who oversees in the Leadership in Energy and Environmental Design (LEED) Program. N/A for studies

2. Professional Services. The scope of Services required under this Agreement include the following professional Criteria Architect services as well as incidental services that members of those professions and those in their employ may logically or justifiably perform. The Services required will be associated with the following Phases:

- 2.1. Project Study Phase: (Not In Contract)
- 2.2. Site Acquisition Phase:
 - 2.2.1. Contract for or employ at Architect's expense, a sufficient number of specialists and other workers with requisite skills and experience as appropriate for the successful completion of this portion of the Work. Necessary consultants may include, but shall not be limited to, geotechnical engineer and land surveyor.
 - 2.2.2. Provide a preliminary geotechnical investigation and report on the proposed site(s) as directed by the Judicial Council.
 - 2.2.3. Provide a land survey including, but not limited to, topographical, title information with exceptions and easements plotted, utility features, and locations as directed by the Judicial Council.
 - 2.2.4. Review and analyze land surveys, geotechnical reports, and other documents prepared by consultants, and incorporate information and recommendations from such documents into the evaluation for the prospective sites and the associated documentation for each.
 - 2.2.5. Consult with the Judicial Council to review and validate the project feasibility report and provide a preliminary program for the Project.
 - 2.2.6. Provide blocking and massing diagrams for the prospective sites, including depictions of 3-dimensional blocking and stacking models.
 - 2.2.7. Provide test fits and conceptual site plans for the prospective sites.
 - 2.2.8. Cooperate with other consultants the Judicial Council may employ for work related to site evaluation and incorporate information and recommendations from consultants and their reporting documents into the site evaluations, site selection narratives, or any other documents the Judicial Council may require to support the site selection and acquisition process. Such coordination may include CEQA consultants and draft or approved mitigation measures, hydrology and/or hazardous materials consultants, biologists, and/or archeologists. Provide graphic support and/or assistance to such consultants as needed.
 - 2.2.9. Prepare a narrative site summary for the proposed sites as directed by the Judicial Council outlining preliminary requirements or site limitations that may influence the layout and design of the building including seismic zone, easements, encumbrances, utilities, etc.
 - 2.2.10. Evaluate and prepare conceptual parking requirements for the Project.
 - 2.2.11. Provide conceptual traffic evaluation and flow through prospective sites as directed by Judicial Council.

- 2.2.12. Prepare, organize, and distribute in a timely manner, progress reports, diagrams, and drawings. Prepare Project documentation in Adobe Acrobat .pdf format, Microsoft Word .doc format, and AutoCAD .dwg format, as indicated in this Agreement or agreed upon in writing with the Judicial Council at the commencement of the Services.
 - 2.2.13. Survey all real property agreements and instruments, including but not limited to recorded documents, to document and evaluate site development restrictions, limitations, or other conditions.
 - 2.2.14. Provide assistance with due diligence reports, plat maps, and legal disclosure documents and abide by applicable conditions and requirements imposed by funding sources and comply with all requirements of such conditions as directed by Judicial Council.
 - 2.2.15. Prepare site information and present to Court Facilities Advisory Committee (CFAC) and Project Advisory Group (PAG) for approval of selected site.
- 2.3. Performance Criteria Phase:
- 2.3.1. Conduct interviews with Judicial Council stakeholders to identify Project requirements.
 - 2.3.2. Evaluate stakeholder input and perform final architectural programming.
 - 2.3.3. Prepare, organize, and compile project Performance Criteria Documents that shall define the binding Project requirements including, but not limited to, the following documentation:
 - 2.3.3.1. Project narrative
 - 2.3.3.2. Individual space requirements
 - 2.3.3.3. Courtroom template selections
 - 2.3.3.4. Area calculations (net, component gross, building gross, and program SF)
 - 2.3.4. Conceptual site diagram (Plan) showing conceptual project footprint, utility points-of-connections, easements, encumbrances, and any other relevant site features.
 - 2.3.5. Two-dimensional blocking and stacking diagram
 - 2.3.6. Conceptual massing diagram (in three-dimensional rendering)
 - 2.3.7. Judicial Council Trial Court Facilities Standards (as prepared and supplied by the Judicial Council)
 - 2.3.8. Supplemental Requirements to Judicial Council Trial Court Facilities Standards
 - 2.3.9. Parking requirements and criteria
 - 2.3.10. Threat Vulnerability Report and mitigations (as prepared and supplied by the Judicial Council)
 - 2.3.11. CEQA Report and mitigations (as supplied by the Judicial Council consultant or Judicial Council staff)
 - 2.3.12. Conceptual Traffic Plan and vehicular circulation patterns
 - 2.3.13. Site development restrictions, limitations, or other conditions as identified from all real property agreements and instruments the site.
 - 2.3.4. Consult and coordinate with Judicial Council regarding project scope, including parking requirements, for inclusion in cost modeling and budgetary evaluations.
 - 2.3.5. Prepare and present project summary to Judicial Council committees such as CFAC and PAG.
 - 2.3.6. Prepare and present project summary to general public.
 - 2.3.7. Design-Build Entity selection services to provide support during the process to solicit and select DBE's including, but not limited to, the following tasks:
 - 2.3.7.1. Attend and participate in confidential meetings with short-listed DBEs prior to interviews
 - 2.3.7.2. Review, evaluate, and score technical proposals from shortlisted DBEs; compile findings for advisement of the Judicial Council
 - 2.3.7.3. Attend and perform de-brief of technical evaluations and scoring of DBE proposals with interview panel.
 - 2.3.7.4. Process any written questions received during the solicitation and selection process. Coordinate with Judicial Council as needed to identify, compile, and distribute complete, accurate, and appropriate responses and/or addenda to the Performance Criteria Documents
 - 2.3.7.5. Process and prepare any RFI documents, responses, and/or addenda during DBE selection
 - 2.3.7.6. Develop, maintain, and regularly update a schedule of project planning and DBE selection activities including but not limited to, required submittal milestone dates, confidential meetings, Judicial Council interviews, and final selection.
- 2.4. Design-Build Phase:
- 2.4.1. Contract for or employ at Criteria Architect's expense, a sufficient number of specialists and other workers with requisite skills and experience as appropriate to successfully verify Performance Criteria compliance.

- 2.4.2. Perform Performance Criteria conformance reviews of drawings, specification, and/or other submissions from Design-Build Entities at 50% and 100% Schematic Design, 50% and 95% Design Development, and 50% Construction Documents.
- 2.4.3. Prepare reports documenting of the non-conformance of any items.
- 2.4.4. Conduct meetings/follow-up with DBE team to correct and verify correction of non-conforming items or document acceptance of the variance.
- 2.4.5. Define and prepare a project specific list of submittals needed Judicial Council review and approval
- 2.4.6. Perform Submittal reviews to verify compliance with Performance Criteria and conformance with California Trial Court Facilities Standards.
- 2.4.7. Perform review of RFIs and responses for validation of compliance with Performance Criteria

END OF EXHIBIT

DRAFT

EXHIBIT C

CRITERIA ARCHITECT PROPOSAL

[TO BE AGREED TO BY THE PARTIES AND ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.]

DRAFT

EXHIBIT D

SCHEDULE OF WORK

[TO BE AGREED TO BY THE PARTIES AND ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.]

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EXHIBIT E

FEE SCHEDULE

[TO BE AGREED TO BY THE PARTIES AND ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.]

DRAFT

EXHIBIT F

KEY PERSONNEL

[TO BE ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.]

Name	Title

END OF EXHIBIT

EXHIBIT G



JUDICIAL COUNCIL OF CALIFORNIA



Internal Background Check Policy

Facilities Services' Contractor Clearance Program

- Title:** Background Checks for Contractors Working on the Judicial Council's Behalf in Restricted Areas
- Contact:** Facilities Services office's Emergency Planning and Security Coordination Unit (EPSCU)
- Policy Statement:** Judicial Council staff must adhere to this policy and related procedures to comply with the Federal Bureau of Investigation (FBI) security policy for personnel who have access to criminal justice information and the California Department of Justice (CA DOJ) regulations for the California Law Enforcement Telecommunications System (CLETS). In addition, access to other restricted areas as defined in this policy require adherence to this policy.

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WHO MUST COMPLY WITH THIS POLICY?

This policy applies to:

- Judicial Council (council) divisions, offices, and/or units that contract for non-council employees to work on the council's behalf;
- Council staff who work with those individuals (for example, the project managers); and
- Council staff who work on any contracts or agreements that provide for non-council employees to perform work on the council's behalf.

WHAT IS THE POLICY?

Council staff must do all of the following:

1. Ensure that each "Contractor" is fingerprinted, evaluated, and badged *before* he or she is allowed unescorted access to a "Restricted Area." A person who has not met these requirements may only enter a Restricted Area during an "Emergency Situation" and:
 - a. must be escorted at ALL times by someone who has met these requirements; or
 - b. must be found suitable for unescorted access to Restricted Areas by the court, in compliance with FBI *Criminal Justice Information Services Security Policy* and CA DOJ regulations for CLETS found in *CLETS Policies, Practices and Procedures*.
2. Adhere to the EPSCU procedure for background check services, which is referenced at the end of this policy under Additional Resources.
3. Ensure that contracts, agreements, and related documents do not contradict or counteract this policy or the related EPSCU procedure.

Definition of Contractor

For the purposes of this policy and related EPSCU services, any person who either contracts with the council or is employed through a third party who contracts with the council *who provides services* under that contract at a court or the California Court Technology Center (CCTC).

This excludes contractors and agencies who do not receive payment for services from the council. It also excludes employees of entities that are able to do fingerprint-based background checks that are submitted to the CA DOJ. Those entities are responsible for performing their own background checks of their employees. EPSCU only provides background checks to employees of private contractors who cannot do fingerprint-based background checks that are submitted to the CA DOJ (as commercially-available searches will not suffice).

Definition of Restricted Area

For the purposes of this policy, any area of either the CCTC or a court facility which:

1. contains a means to connect to FBI and CA DOJ criminal databases via CLETS; *or*
2. contains any records or information (transported, processed, or stored in physical or electronic format) that were obtained via CLETS.
3. are areas within the Facility that are not generally accessible to the public, including (i) judges' chambers, all non-public restrooms, elevators, break rooms, and corridors, and other non-public spaces that are dedicated for use only by judges or Court staff and employees, and (ii) public areas of a Facility during non-business hours that are subject to security screening during normal business hours.

The definition of Restricted Area also applies to areas where CLETS information can be discussed, or electronic access to network and computing components where CLETS data is transported or stored in a physical or electronic format.

Definition of Emergency Situation

For the purposes of this policy, any condition arising from a sudden or unexpected occurrence in which prompt services are needed *to avoid or minimize* the impact on the CCTC, court facility, or the council staff's ability to do the following:

- Ensure the safety and security of people occupying and visiting the facility;

- Conduct business in a timely manner in a safe and functional environment;
- Preserve the facility; and
- Protect files, records, and documents located in the facility.

Visitors to the CCTC or the non-public areas of a court facility are not required to undergo a background and fingerprint check. They must, however, be escorted at ALL times.

WHAT IS THE PURPOSE OF THIS POLICY?

The council retains contractors to do work on its behalf or on behalf of courts, and these contractors are often located in the courts. Many if not all courts subscribe to CLETS service from the CA DOJ and have CLETS terminals, records, and information in their facilities, as does the CCTC.¹

There are strict regulations regarding access to CLETS. Government Code sections 15150–15167 establish the CA DOJ’s responsibility for maintenance of the system. The CA DOJ publishes a *CLETS Policies, Practices, and Procedures* document that specifies, among other things, the fingerprint and background check requirements for access to CLETS-provided information. Entities that subscribe to CLETS service from the CA DOJ are responsible for their compliance. Also, FBI security policy addresses personnel who have access to criminal justice information. Screening requirements are outlined in the FBI’s *Criminal Justice Information Services Security Policy*.

As a service to the courts and as a precaution, council’s staff have implemented a policy of conducting CLETS-level background checks for any of its contractors who would be working in Restricted Areas.² The council’s Executive Office delegated to EPSCU oversight of background checks for non-council employees working under contract with the council in Restricted Areas. EPSCU worked with the CA DOJ and several council offices to define Restricted Areas, establish a procedure for providing related services, and identify the evaluation criteria that are listed in this policy.

WHAT IS THE APPLICATION PROCESS?

Council staff are responsible for requesting EPSCU’s services when needed. As part of the initial set-up process, they will be required to provide EPSCU the following:

- A project code for chargeback of CA DOJ billing costs;
- A designated council contact or Contractor contact; and
- A designated council authorizer (ideally a manager or supervisor).

EPSCU and the council’s Human Resources (HR) office share a single Originating Agency Identifier (ORI) number. HR receives the CA DOJ invoices and uses the project code that council staff provide to do chargebacks for the cost of the Contractor background checks.

EPSCU will send the EPSCU program procedure to the designated council contact and Contractor contact, as applicable. The council contact and Contractor contact are responsible for explaining the restrictions to the “Applicants.” They are also responsible for providing EPSCU with the following:

- A background check authorization signed by the Applicant;
- A completed badge form, authorized by the council authorizer; and
- A digital photograph of the Applicant that meets the requirements on the badge form.

¹ Depending on the type and location of their work, contractors may be subject to additional requirements, which will be specified by the Judicial Council’s Agency CLETS Coordinator (ACC) who can be reached at Nicole.Rosa@jud.ca.gov.

² The Court retains authority over access to its facility and this policy does not supersede the Court’s responsibility, if a CLETS Subscribing Agency, to comply with FBI’s *Criminal Justice Information Services Security Policy* and CA DOJ’s *CLETS Policies, Practices and Procedures*.

EPSCU will send the council contact or Contractor contact an “Applicant Packet” with the appropriate instructions and forms. The forms are prefilled with the council routing and billing information. The council contact or the Contractor contact gives the Applicant the paperwork so he or she can be fingerprinted. The Applicant should fingerprint within two weeks. It usually takes two weeks to three months for the CA DOJ to provide the background check results. Delays sometimes occur due to poor fingerprint quality, criminal information hits, or erroneous information submitted on the fingerprint transaction. EPSCU will provide the council contact and Contractor contact with information about how Applicants can check the status of their submissions with the CA DOJ.

WHAT ARE THE EVALUATION CRITERIA?

EPSCU will review the results using the following evaluation criteria, which comply with FBI and CA DOJ regulations. Applicants are not suitable for unescorted access to a Restricted Area if an Applicant’s background check reveals any of the following:

1. A felony conviction of any kind or felony charge pending court disposition (that includes arrest warrant for a felony charge); or
2. Any misdemeanor conviction *or* charge pending court disposition involving violence, weapons, theft, robbery, burglary, embezzlement, dishonesty, gang activity, drugs (excluding certain misdemeanor marijuana convictions more than two years from the date of such conviction, as specified in California Labor Code section 432.8), or moral turpitude.

Crimes of moral turpitude (that are not already described in the criteria above) include:

- Assaultive crimes involving false imprisonment, discharging a firearm, and shooting at an inhabited dwelling.
- Drug crimes involving maintaining a drug house, possessing heroin for sale, possessing marijuana for sale, selling drugs, and transporting a controlled substance.
- Escape crimes involving escape with or without violence and evading a peace officer.
- Property crimes involving arson, forgery, and receiving stolen property.
- Sex crimes involving indecent exposure, lewd acts on a child, pimping and pandering, and rape.
- Weapon crimes involving possessing or conspiring to possess an illegal firearm and possessing a deadly weapon with intent to assault.
- Other crimes involving bribery, extortion, kidnapping, perjury, and terrorist threat.

The following will be reviewed on an individual basis to determine suitability for unescorted access to a Restricted Area:

1. Misdemeanor convictions greater than 10 years old;
2. Felony or misdemeanor arrests without conviction and/or misdemeanor convictions, within the last 10 years that, when taken in total, establish reasonable doubt about the Contractor’s suitability for access; or
3. Outstanding arrest warrants indicating possible fugitive status.

WHAT IS THE EVALUATION PROCESS?

Because the council qualifies as an Applicant Agency under California law, it receives the criminal record results electronically from the CA DOJ. EPSCU follows the CA DOJ instructions to keep the information secure. It cannot share the criminal record result information.

Applicants Suitable for Unescorted Access to Restricted Areas

If an Applicant is suitable for unescorted access per the evaluation criteria, EPSCU will notify the council contact(s) and Contractor contact(s), as applicable. EPSCU will delete the criminal record results.

If not already submitted, the council contact or Contractor contact must provide EPSCU with the Applicant’s completed badge form and digital photograph. These will be used for badge purposes only. The digital photograph must meet the requirements on the badge request. If not already submitted, EPSCU must also have the council authorizer’s approval for a badge, via a signed badge form or e-mail approval.

EPSCU will forward the Contractor’s badge to the council contact or Contractor contact for distribution. The Contractor must

wear the badge in a visible location at all times while in a Restricted Area, as visual confirmation that he or she is suitable for unescorted access.

Applicants Not Suitable for Unescorted Access to Restricted Areas

If an Applicant is not suitable per the evaluation criteria, EPSCU will notify the council contact(s) and Contractor contact(s), as applicable, that the Applicant is not suitable for unescorted access to a Restricted Area. EPSCU will mail the relevant criminal record results to the Applicant at the address he or she listed on the Live Scan form, then delete the criminal record results.

If the Applicant believes that the criminal record results contained an error, he or she must contact the CA DOJ's California Justice Information Services Division at 916-227-3849 to obtain information on how to correct the record. Information on this process is also available at the Office of the Attorney General's website at http://oag.ca.gov/fingerprints/security_faq.

EPSCU must submit a No Longer Interested (NLI) form to the CA DOJ so that it does not receive subsequent arrest notifications or dispositions on Applicants deemed not suitable. For this reason, if the Applicant's record is corrected and the council authorizer wants EPSCU to re-evaluate, the Applicant will have to be re-fingerprinted.

Subsequent Arrests

After EPSCU receives criminal record results, it automatically gets subsequent arrest notifications and dispositions. EPSCU will continue to get this information until it submits a NLI form to the CA DOJ.

If EPSCU is notified of a Contractor's arrest, it may reevaluate the person's suitability for unescorted access to Restricted Areas. EPSCU reserves the right to change its determination of a person's suitability for unescorted access to Restricted Areas based on a subsequent arrest. If this occurs, EPSCU will notify the council contact(s) and Contractor contact(s), as applicable, and request that the Contractor's badge be returned, that unescorted access to a Restricted Area be discontinued, and that the Contractor's last-known address be provided. EPSCU will mail the relevant criminal record results to the Contractor at that address, delete the criminal record results, and send an NLI.

Requests for Exceptions

Exceptions are rarely considered because the evaluation criteria implement mandatory FBI and CA DOJ regulations. If an Applicant receives notice that he or she is not suitable for access to Restricted Areas, the council contact or Contractor contact may ask the council authorizer to request an exception from EPSCU. The request must be in writing. It must include the Applicant's name and reason for the request. The Applicant will have to be re-fingerprinted. EPSCU will send the council contact or Contractor contact a new Applicant Packet.

Before re-fingerprinting, the Applicant may want to consider options for cleaning up his or her criminal record. One resource is the Online Self-Help Center located on the California Judicial Branch's website at www.courts.ca.gov (specifically, the *Figuring out your options* section under *Cleaning Your Criminal Record*).

Once EPSCU receives the criminal record results electronically from the CA DOJ, the EPSCU supervisor will evaluate the results and notify the council authorizer, council contact(s), and Contractor contact(s) of the decision.

WHAT IS THE BADGING PROCESS?

Badge Issuance

EPSCU issues badges to Applicants suitable for unescorted access to restricted areas. These green badges help identify Contractors who have been deemed suitable by EPSCU for unescorted access to Restricted Areas. The badges do not provide any special privileges to Contractors (for example, bypassing entrance security screening). They do not allow access to secured council facilities.

The badges that allow access to the council buildings are part of a separate EPSCU program. Council building access is only granted to people who will work in the building regularly, and it must be applied for in person. The council contact or designee may escort the Contractor to the EPSCU Badge Room to complete the required form and have a photograph taken.

Badge Replacement

EPSCU replaces lost, stolen, and damaged badges. The council contact or Contractor contact must notify EPSCU when a replacement badge is necessary.

Badge Return

When an approved Applicant is no longer employed by the Contractor company or is reassigned so that he or she no longer needs unescorted access to a Restricted Area, the following must happen. The council contact or Contractor contact must promptly inform EPSCU, collect the Contractor's badge, and return it to EPSCU. EPSCU must fax or mail an NLI form to the CA DOJ so that it does not receive subsequent arrest notifications or subsequent arrest dispositions.

QUESTIONS AND COMPLAINTS

EPSCU communicates directly with the council contact or Contractor contact only. Any questions or complaints should be routed to the council contact or Contractor contact (for example, questions or complaints relating to the retention, day-to-day management, or termination of Contractors).

ADDITIONAL RESOURCES

Council staff may contact EPSCU for current versions of the following documents:

- Memo to contacts summarizing EPSCU program procedure
- Contractor Background Check Authorization
- Contractor Badge Information/Authorization

REFERENCES

- California Government Code sections 15150–15167
- Federal Bureau of Investigation *Criminal Justice Information Services Security Policy*
- California Department of Justice *CLETS Policies, Practices, and Procedures*
- Office of the Attorney General's website at http://oag.ca.gov/fingerprints/security_faq

END OF EXHIBIT

EXHIBIT H

CONFLICT OF INTEREST POLICY FOR DESIGN BUILD PROJECTS

[TO BE ATTACHED PRIOR TO EXECUTION OF THE AGREEMENT.]

END OF EXHIBIT

END OF AGREEMENT

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