



ATTACHMENT B [Addendum No. 01]

**JUDICIAL COUNCIL OF CALIFORNIA
MASTER AGREEMENT FOR ID/IQ CONSULTING SERVICES
COVERSHEET**

AGREEMENT NUMBER
[@MA-XX-IDIQ-YYYY-##]
FEDERAL EMPLOYER ID NUMBER
[@#] 1926

1. This Master Agreement for ID/IQ Consulting Services is between the Judicial Council of California (“Judicial Council”) and [@Consultant name] (“Consultant”). Judicial Council and Consultant may be individually referred to herein as “Party” or collectively referred to herein as “Parties.”
2. The term of this Agreement shall commence [Start Date, 20__] (the “Effective Date”) and terminate on the later of either [End Date, 20__] (“Initial Term”) or the dates of work pursuant to an authorized Service Work Order. Judicial Council shall have the option, exercisable in writing, to extend this Agreement for two (2) additional periods of one (1) year each (“Subsequent Term(s)”). Subsequent Terms shall be authorized by written Notice given by Judicial Council. Service Work Orders must be authorized prior to the termination date of this Agreement and no new Service Work Orders shall be authorized after the termination date of this Agreement. The end date for services authorized in a Service Work Order may exceed the termination date of this Agreement; provided, however, that the terms and conditions of this Agreement shall remain in full force and effect with regard to any outstanding Service Work Order(s) after the termination date of this Agreement until the Work of said Service Work Order(s) is complete.
3. The title of this Agreement is: Master Agreement for IDIQ for Environmental Health and Safety Consulting Services. The number of this Agreement is: [@MA-XX-IDIQ-YYYY-##]. This Agreement is issued pursuant to Judicial Council solicitation number: RFP-FS-2022-15-KO. The Agreement’s title and number are for administrative reference only and do not define, limit, or construe the scope or extent of this Agreement.
4. The maximum amount payable to Consultant under this Agreement shall not at any time exceed the total of all of the total amount(s) encumbered over the course of the agreement by the Judicial Council for this Agreement.
5. This Agreement constitutes the entire agreement between the Parties with regard to its subject matter and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by an Amendment executed by both Parties. In the event of a conflict in documents, the following order of precedence shall prevail: (1) the most recently executed Master Agreement or Amendment Coversheet for this Agreement; (2) Exhibits A, B, C, D, E, and F (in order of preference); (3) the most recently executed Service Work Order; and (4) documents referenced in authorized Service Work Orders, if any. As regards the subject matter they address, amended documents shall prevail over previous document(s).
6. The following documents are individually or collectively referred to as “Contract Documents”:
 - This signed Master Agreement Coversheet;
 - Exhibit A, Standard Provisions;
 - Exhibit B, Special Provisions;
 - Exhibit C, Service Work Orders: Authorization Process, Invoicing and Payment Provisions;
 - Exhibit D, Services Types, Services Descriptions, Prices;
 - Exhibit E, Services Request Form; and
 - Exhibit F, Consultant Proposal Form

JUDICIAL COUNCIL’S SIGNATURE	CONSULTANT’S SIGNATURE	
Judicial Council of California	CONSULTANT’S NAME (if Consultant is not an individual person, state whether Consultant is a corporation, partnership, etc.)	
	[@Consultant name], a [Corporation]	
BY (Authorized Signature)	LICENSE NO.:	EXP DATE:
	[CSLB#] / [DIR PWCR#]	[ExpDate]
	BY (Authorized Signature)	
PRINTED NAME AND TITLE OF PERSON SIGNING	PRINTED NAME AND TITLE OF PERSON SIGNING	
Alice Lee, Supervisor, Contracts-Facilities		
DATE EXECUTED	DATE EXECUTED	
ADDRESS	ADDRESS	
Branch Accounting and Procurement 455 Golden Gate Avenue, 6th Floor San Francisco, CA 94102	[@Address]	

EXHIBIT A

STANDARD PROVISIONS

1. Definitions

- 1.1. Terms defined in the Contract Documents shall apply to this Agreement and to all authorized Service Work Orders. Term(s) defined in an authorized Service Work Order shall apply only to that particular Service Work Order.
- 1.1.1. “Acceptance” means the written acceptance issued to Consultant by the Judicial Council’s Project Manager after Consultant has successfully provided the Work in accordance with this Agreement.
- 1.1.2. “Agreement” refers to this Master Agreement for ID/IQ Consulting Services and shall constitute the entire integrated agreement between the Judicial Council and Consultant and includes the Contract Documents incorporated by reference in a fully executed Master Agreement Coversheet. The term “Contract” may be used interchangeably with the term “Agreement”.
- 1.1.3. “Amendment” means Judicial Council’s standard form of Amendment Coversheet and any documents it explicitly references or incorporates that, when signed by the Parties, modifies the provisions of this Agreement or an authorized Service Work Order.
- 1.1.4. “Authority Having Jurisdiction” means an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure.”
- 1.1.5. “Business Day” means days of the week excluding Saturday and Sunday, and State holidays.
- 1.1.6. “CAFM” stands for Computer Aided Facilities Management. In the context of this Agreement and wherever used herein, the CAFM system is, and shall be construed to mean, the system currently used by the Judicial Council to issue Service Work Orders and track work progress, or any other such system subsequently implemented for those or similar purposes by the Judicial Council at the Judicial Council’s sole discretion.
- 1.1.7. “Consultant” means the firm contracting with the Judicial Council.
- 1.1.8. “Consultant Proposal” means a written document, substantially in the format of Exhibit F hereto that Consultant submits to the Judicial Council in response to a Services Request Form in accordance with the provisions of the Service Work Order process detailed in Exhibit C.
- 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. “Court(s)” means one or more of the superior or appellate courts in the State’s court system.
- 1.1.11. “Day” means calendar day.
- 1.1.12. “Deliverable(s)” means and includes any Material(s) provided or to be provided under this Agreement that are explicitly designated as a Deliverable in an authorized Service Work Order.
- 1.1.13. “Fixed Price” means the set price to be charged for a Service.
- 1.1.14. “Force Majeure” means a delay which impacts the timely performance of Work or otherwise delays the Project, for which neither Consultant, its Subconsultant(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:

1.1.14.1. Acts of God or the public enemy;

1.1.14.2. Acts or omissions of any government entity;

1.1.14.3. Fire or other casualty for which a Party is not responsible;

1.1.14.4. 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;

1.1.14.5. Strike or defensive lockout; and

1.1.14.6. Unusually severe weather conditions.

Force Majeure does not include failures or delays caused by Consultant and/or its Subconsultant(s).

1.1.15. "GAAP" means Generally Accepted Accounting Principles.

1.1.16. "Hourly Rates" means the fixed hourly rates according to job description/classification for Services that are to be provided, as specified in Exhibit D.

1.1.17. "Judicial Branch Entity" means the Supreme Court, each Court of Appeal, each superior court, and the Judicial Council.

1.1.18. "Key Personnel" refers to Consultant personnel or personnel of Subconsultant(s) that are designated as "Key Personnel" and identified by name in an authorized Service Work Order.

1.1.19. "Lump Sum Based Service(s)" mean pre-described Service(s) that is/are priced at a Lump Sum Basis as set forth in this Agreement. The Service(s) must fall into a category listed in Exhibit D and approved by the Judicial Council Project Manager for the SWO to be authorized.

1.1.20. "Material(s)" means any type of tangible item provided to the Judicial Council by Consultant 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).

1.1.21. "Notice" means a written document provided in accordance with the provisions of the section entitled "Notice" set forth in Exhibit A.

1.1.22. "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 section 1770 and 1773. This amount includes the basic hourly rate for a worker along with any applicable "employer payments" including (i) health and welfare, (ii) pension, (iii) vacation/holiday, (iv) training, and (v) other payments. If applicable, this amount will include overtime and recognized holidays. Prevailing Wage as used herein does not include any costs associated with travel and/or subsistence payments pursuant to Labor Code sections 1773.1 and 1773.9, as such costs are governed by Exhibit C, Section 5 ("Travel and Living Expenses Guidelines"). Notwithstanding anything in this Agreement to the contrary, Consultant shall be required to ensure its workers are paid all travel and/or subsistence payments as required under Labor Code sections 1773.1 and 1773.9 to the extent applicable.

1.1.23. "Pricing Methodology" means the methodology for certain contractual terms and conditions. There are two (2) types of Pricing Methodology set forth in this Agreement: Lump Sum Basis and Time and Materials Basis.

1.1.24. "Project" refers to the totality of work encompassed or contemplated under an individual authorized Service Work Order. May also be referred to as "Service Work Order."

- 1.1.25. "Reimbursable Expense" means expense(s) incurred or to be incurred by Consultant and/or its Subconsultant(s) for Reimbursable Item(s).
- 1.1.26. "Reimbursable Item(s)" or "Reimbursable(s)" means tangible item(s) utilized by Consultant's or Subconsultant's employees in the performance of Service(s).
- 1.1.27. "Schedule of Values" or "SOV" means a document jointly developed and approved by Consultant and the Judicial Council reflecting portions of the Service Work Order Grand Total allotted for payment upon completion of the performance of various parts of the Work.
- 1.1.28. "Service(s)" means and includes authorized action(s) that are performed by Consultant or its Subconsultant(s). There are two types of Services that may be provided under this Agreement, Lump Sum Based Service(s) and Time and Materials Based Service(s).
- 1.1.29. "Service Type" means the particular type(s) of Service(s) Consultant is authorized to perform as detailed in Exhibit D hereto.
- 1.1.30. "Service Work Order" or "SWO" refers to a unique entry within Judicial Council's CAFM system. Issuance of a SWO constitutes Work Authorization. Consultant must login to Judicial Council's CAFM system and "accept" the SWO issued prior to beginning Work. The SWO references and incorporates other documents such as the Services Request Form and Consultant Proposal Form as well as the Contract Documents.
- 1.1.31. "Service Work Order Proposal" means a set of documents including, but not limited to at least: (1) Consultant Proposal Form, (2) dates of performance, (3) a list of proposed Subconsultants, (4) payment schedule, (5) sketches, Drawings, and or layouts, and technical data or information.
- 1.1.32. "Service Work Order Grand Total" means the total or maximum price authorized for the services specified in the Service Work Order issued in accordance with the SWO process detailed in Exhibit C.
- 1.1.33. "Service Work Order Time(s)" means the period of time, including authorized adjustments, identified in the authorized Service Work Order for completion of the Work or a designated portion of the Work.
- 1.1.34. "Services Request Form" refers to the form listed in this Contract as Exhibit E. Once a SWO is issued, this form serves as a summary of Services to be provided by Consultant in the Project.
- 1.1.35. "State" refers to the State of California.
- 1.1.36. "Statement of Work" is the description of Work, as specified in Consultant's Proposal Form(s) for each SWO.
- 1.1.37. "Subconsultant(s)" shall mean and include any individual, firm, partnership, agent, or corporation having a contract, purchase order, or agreement with Consultant or with any Subconsultant of any tier for the performance of Service(s) or provision of Material(s), in whole or in part, relating to this Agreement. When reference is made to a Subconsultant(s) in this Agreement, it shall include every level and/or tier, of Consultant's Subconsultants, agents, suppliers, and/or material men.
- 1.1.38. "Subsequent Term(s)" shall mean additional periods of one (1) year each.
- 1.1.39. "Supplemental Service Work Order" or "SSWO" means a type of Service Work Order authorized following the authorization of a Service Work Order that alters or amends the already authorized Service Work Order. Supplemental Service Work Orders may add Work, or remove Work not yet performed, as deemed necessary by Judicial Council. Authorization of Supplemental Service Work Orders that only seek to remove Work not yet performed are not subject to approval by Consultant and are binding upon Consultant upon authorization of Judicial Council.

- 1.1.40. "Third Party" refers to any individual, organization, agent, or any combination thereof that is not a party to this Agreement.
- 1.1.41. "Time and Materials Based Service(s)" means pre-described Services that are to be provided on a Time and Materials Basis as specified in this Agreement. The Service(s) must fall into a category listed in Exhibit D and approved by the Judicial Council Project Manager for the SWO to be authorized.
- 1.1.42. "Travel and Living Expense(s)" means expense(s) for travel and living costs actually incurred or that are expected to be incurred by Consultant's or its Subconsultant's employees in the course of performing the Services or providing the Reimbursable(s).
- 1.1.43. "Work" includes Services and/or Materials.
- 1.1.44. "Work Authorization" means permission for Consultant to begin Work.

2. Relationship of Parties

- 2.1. Consultant and its employees and Subconsultants, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Judicial Council.
- 2.2. The Judicial Council has authority to enter into Agreements on behalf of Judicial Branch Entities. A Judicial Branch Entity may elect to utilize this Agreement by issuing Service Work Orders, as described in this Agreement, in which case the terms and conditions of this Agreement govern such orders. This Agreement or any Service Work Order does not, is not intended to, nor shall it be construed to create the relationship of agent, employee or joint venture between the Judicial Council or any other Judicial Branch Entity and Consultant or Consultant.

3. No Assignment

Consultant shall not voluntarily or involuntarily assign (e.g., assignment by operation of law), encumber, novate, or otherwise transfer or delegate ("Assign") all or any interest in this Agreement ("Assignment") without the prior advance written consent of the Judicial Council. Any request from Consultant to Assign this Agreement shall be provided to Judicial Council in the form of a Notice. The Judicial Council shall have the right to impose conditions upon any Assignment. The Judicial Council's consent to Assignment shall be evidenced by a written agreement between the Parties. The Judicial Council shall consent to such Assignment only if assignee assumes in writing all of the Consultant's obligations hereunder; provided, however, Consultant shall not be released from its obligations hereunder by reason of such assignment. Any voluntary Assignment by Consultant or Assignment by operation of law (e.g., involuntarily assignment) of all or any portion of Consultant's interest in this Agreement shall be deemed a default allowing the Judicial Council to exercise all remedies available to it under this Agreement and applicable law.

4. Time of Essence

Time is of the essence in this Agreement and in all Service Work Orders thereunder.

5. Validity of Alterations

Alteration or variation of the terms of this Agreement or authorized Service Work Order shall not be valid unless made in writing and signed by the Parties in the form of an Amendment, and any oral understanding or agreement that is not incorporated herein shall not be binding on any of the Parties. No verbal agreements shall be honored.

6. Consideration

The consideration to be paid to Consultant under this Agreement shall in no event exceed the Contract Amount (defined in Exhibit C). The consideration to be paid to Consultant under an authorized Service Work Order shall in no event exceed the Service Work Order Grand Total specified in a properly authorized Service Work Order. Consultant shall be paid in accordance with the Payment Provisions set forth in Exhibit C. The Judicial Council's payments to Consultant pursuant to this Agreement shall constitute full compensation for all of Consultant's time,

materials, efforts, costs and expenses incurred in the performance of any obligation(s) or any other activities undertaken pursuant to this Agreement.

9. Services to Be Provided and Manner of Performance of Work

Consultant shall provide Work specified in accordance with the provisions of authorized Service Work Order. Work shall be performed to the Judicial Council's satisfaction, in compliance with the specifications for the Work given in the Service Work Order and Contract Documents.

10. Standard of Care

- 10.1. Consultant and its Subconsultant(s) shall provide the Work in accordance with the standards and criteria specified in this Agreement and any standards and criteria specified in an authorized Service Work Order; however, in no event shall the Work be performed in a manner that is less than the standard of care generally accepted in the industry pertaining to the applicable Service Type.
- 10.2. The Judicial Council shall have the right to establish specific standards and criteria, including acceptance criteria applicable to an individual Service Work Order by specifying such provisions in the Statement of Work.

11. Indemnification

- 11.1. Consultant agrees to indemnify, defend, and hold harmless (collectively, "Indemnify") the State, the Judicial Council of California, the State's trial courts, appellate courts, justices, judges, subordinate judicial officers, court executive officers, court administrators, and any and all of their directors, officers, agents, representatives, volunteers and employees (individually, an "Indemnified Party"; collectively, the "Indemnified Parties") from any and all claims, lawsuits, losses, costs, liabilities, and damages to the extent caused by any of the following:
 - 11.1.1. Consultant's or its employees' or Subconsultants' or Subconsultants' employees' negligent acts or omissions, or intentional or willful misconduct;
 - 11.1.2. Consultant's breach of its obligations under this Agreement;
 - 11.1.3. Consultant's or its employees' or Subconsultants' or Subconsultants' employees' violation of any applicable law, rule, or regulation;
 - 11.1.4. Claims or lawsuits by any third party, Consultant, Subconsultant, supplier, worker, agent or any other person, firm, or corporation furnishing or supplying work, materials, or supplies who may be injured or damaged by Consultant or any of its employees or Subconsultants when such claim arises from, is related to, or is in connection with the Consultant's operations or performance under this Agreement; and
 - 11.1.5. Failure to properly pay prevailing wages as defined in Labor Code section 1720 et seq., or failure to comply with any other Labor Code requirements.
- 11.2. The Consultant's defense obligation under this section is limited to reimbursement of any expenditure, including reasonable attorney fees and costs, incurred by an Indemnified Party in defending claims or lawsuits, ultimately determined to be due to negligent acts or omissions, or intentional misconduct of Consultant or any of its employees or Subconsultants.
- 11.3. This section does not require Consultant to Indemnify an Indemnified Party for such portion of any loss, cost, liability, or damage that arises solely from the negligence or intentional misconduct of an Indemnified Party.
- 11.4. This section shall not be construed to limit an Indemnified Party's rights as an additional insured under a policy of insurance furnished pursuant to Exhibit B.

- 11.5. This section shall not be construed to limit the defense obligations of any insurance company to an Indemnified Party named as an additional insured under any policy described in Exhibit B.

12. Work Guarantee

- 12.1. Consultant guarantees that the Work conforms to the standards and criteria established in this Agreement and its authorized Service Work Order(s). If the Judicial Council identifies defects or deficiencies in the Work, Consultant shall, at the Judicial Council's sole option, remedy the defects and/or deficiencies to the satisfaction of the Judicial Council. Consultant shall have a period of ten (10) Business Days to provide a cure following receipt of a written communication from the Judicial Council's Project Manager informing Consultant of the existence of a defect or deficiency. In no event shall the Judicial Council be responsible for any costs or expenses incurred by Consultant to remedy any such defect(s) or deficiency(ies).
- 12.2. Consultant guarantees that the Work will be performed / provided in accordance with the schedule or within the dates specified in Service Work Orders.
- 12.3. Consultant guarantees that the Work will be performed in accordance with all applicable laws, codes, and rules as set forth by Authorities Having Jurisdiction. If a permit is to be procured for the Project, Consultant shall submit all required documentation to the satisfaction of the permitting agency.

13. Acceptance

- 13.1. In addition to any specific criteria specified in an authorized Service Work Order, the Judicial Council's Project Manager will apply the following criteria in determining whether to accept the Work:
- 13.1.1. Timeliness: the Work was provided on time and according to schedule;
- 13.1.2. Completeness: the Work contained all of the attributes and elements required by this Agreement and the Service Work Order; and
- 13.1.3. Technical Accuracy: the Work complied with specific standards specified in this Agreement and the Service Work Order.
- 13.2. 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 Consultant of its guarantee obligations under this Agreement.
- 13.3. If the Judicial Council's Project Manager rejects Work, Consultant shall provide a cure in accordance with the provisions of this Agreement.
- 13.4. If the Judicial Council's Project Manager does not accept Work and Consultant disputes such action, the Parties agree to first attempt to settle their dispute according to the disputes process set forth below.

14. Disputes

- 14.1. The Parties shall comply with the following provisions for the resolution of disputes:
- 14.1.1. Informal Negotiations. If the dispute does not involve an issue that requires submission of a Notice pursuant to the Section entitled "Notice" of this Agreement, the respective Parties' Project Managers shall make a good faith attempt to promptly resolve the dispute by informal negotiation.
- 14.1.2. Demand. If the dispute involves an issue that requires submission of a Notice pursuant to the Section entitled "Notice" herein, or if the dispute is not settled in a timely manner pursuant to informal negotiations between the Parties' Project Managers, either Party may issue a Demand to the other Party as follows. The Party submitting a Demand ("Submitting Party") must issue a written statement (the "Demand"), in the form of a Notice, to the other Party ("Receiving Party"). The Demand must be submitted in compliance with the provisions of the Section entitled "Notice" herein, and (i) be fully supported by detailed factual information and supporting documentation;

(ii) state the specific Agreement provisions on which the Demand is based; (iii) if the Demand regards a cost adjustment, state the exact amount of the cost adjustment sought; and (iv) must be accompanied by pertinent records supporting the Demand. The Demand shall include a written statement signed by an authorized representative of the Submitting Party indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and provide reasoning to support their contention that the amount (if any) requested reflects an adjustment in payment the Submitting Party believes is equitable.

- 14.1.3. Response to Demand. The Receiving Party shall, within ten (10) Business Days, provide a final written response (“Final Response”) or request additional information deemed necessary to prepare a Final Response. The Final Response shall state whether the Receiving Party accepts or rejects the Demand. The Final Response must be provided to the Submitting Party in the form required by the Section of this Agreement entitled “Notice”. If the Receiving Party requests additional information to prepare the Final Response, the Submitting Party shall promptly comply with the Receiving Party’s request for such information. Any delay caused by the Submitting Party’s failure to respond to a request for additional information shall extend the ten (10) Business Day period within which the Receiving Party must provide a Final Response, however, unless otherwise agreed to by the Parties in writing, in no event shall the time period allowed for a Final Response be extended beyond twenty (20) Business Days following the date on which the Submitting Party issues the Demand. Regardless of any request(s) for additional information, a failure on the part of the Receiving Party to provide a Final Response within these twenty (20) Business Days shall be deemed a rejection of the Demand.
- 14.1.4. Senior Level Negotiations. If the Demand is rejected and the Submitting Party provides written Notice that it will continue to pursue the Demand, or if the time period allowed for a Final Response to the Demand has expired without issuance of a Final Response, the Parties shall attempt to resolve the Demand by negotiations between assigned senior representatives of the Parties. The representatives shall meet as often as they deem reasonably necessary to resolve the Demand. The senior representatives of the Parties shall make a good faith effort to resolve the Demand within thirty (30) Business Days (or such longer period as they may agree to in writing) following the date on which the Submitting Party provides written Notice that it will continue to pursue the Demand or the date on which the time period allowed for a Final Response to the Demand has expired without issuance of a Final Response.
- 14.1.5. Mediation. If the Demand is not resolved by negotiations of the Party’s assigned representatives, the Parties shall submit the dispute to mediation prior to either Party initiating an action in court. Notwithstanding the foregoing, Consultant’s failure to so schedule and proceed to mediation in good faith following forty-five (45) Days’ written Notice from the Judicial Council to do so will be deemed a waiver by Consultant of this requirement to submit the dispute to mediation and the Judicial Council may proceed to act in its discretion including initiating litigation or exercising any other right and remedy available at law.
- 14.1.6. Litigation. If the Parties have not resolved the dispute after mediation, either Party may initiate an action in a court of competent jurisdiction.
- 14.1.7. Confidentiality. All discussions and negotiations conducted pursuant to this dispute resolution process prior to litigation are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code section 1152 applies. Mediation shall be confidential and shall be subject to the provisions of California Evidence Code sections 703.5 and 1115 through 1128.
- 14.2. Performance during Dispute and Claim Resolution Process. Unless otherwise directed in writing by the Judicial Council, Consultant shall diligently proceed with performance of the Services at the same time that a dispute is addressed via this dispute resolution process. Consultant’s failure to diligently proceed with performance of the Services will be considered a material breach of this Agreement.

15. Termination

15.1. Termination for Cause.

15.1.1. If the Judicial Council determines that Consultant has failed to perform Work in accordance with the provisions of this Agreement or any authorized Service Work Order or has otherwise materially failed to meet the obligations of this Agreement, the Judicial Council may terminate this Agreement and all authorized Service Work Orders in full, or may terminate any individual authorized Service Work Order, by providing Notice of termination specifying the reasons for Consultant's termination.

15.2. Termination for Non-Appropriation of Funds.

15.2.1. Funding for the Project(s) contemplated by this Agreement is conditioned upon appropriation by the California Legislature and allocation by the Judicial Council of California and/or sale of lease revenue or other bonds, of sufficient funds to support the Project.

15.2.2. By Notice to Consultant the Judicial Council may terminate this Agreement and all Service Work Orders in full, or may terminate any individual authorized Service Work Order for lack of appropriation of funds, or any other withdrawal, reduction or limitation imposed by the Judicial Council's budget, funding or financial resources. Such termination for non-appropriation of funds or for lack of sufficient funds to continue with a Project shall not constitute a breach of the Agreement by Judicial Council.

15.3. Termination for Convenience.

15.3.1. The Judicial Council shall have the option, at its sole discretion, to terminate this Agreement and all authorized Service Work Orders at any time during the term hereof, or terminate any individual authorized Service Work Order prior to its completion, for convenience and without cause, upon Notice to Consultant.

16. Actions of Consultant upon Termination

16.1. Immediately upon receipt of a Notice of termination, Consultant shall, unless otherwise instructed in writing by the Judicial Council, proceed with diligence to take all actions necessary to effect the rapid and economical termination of its obligations under this Agreement and to minimize any liability of Consultant and/or the Judicial Council to any Third Party(ies) that could result from such termination.

16.2. The Judicial Council, at its sole discretion, may dictate when and how the termination will be effected. Such actions may include but are not limited to, the following:

16.2.1. When termination is effective.

16.2.2. When the termination of performance of certain Services and provision of Materials under this Agreement will be effected.

16.2.3. When Subconsultants are to be notified of the termination.

16.2.4. Whether the Judicial Council asserts an interest in any not yet complete Materials.

16.2.5. Consultant's schedule to provide the Judicial Council with Work or Material created in the course of the performance of Services hereunder.

17. Effect of Termination

17.1. Termination for Cause.

In addition to any other rights and remedies accorded it in this Agreement, if this Agreement or any authorized Service Work Order is terminated for cause the Judicial Council may deduct from any payment(s) owed Consultant at the time of termination:

- 17.1.1. The undisputed amount owed the Judicial Council;
- 17.1.2. The amount that Judicial Council reasonably determines necessary to remedy or obtain performance of the Services; and
- 17.1.3. All costs, expenses, charges or damages incurred by the Judicial Council to obtain performance of the Work

17.2. Termination for Non-Appropriation or Convenience.

In the event of a termination for non-appropriation of funds or a termination for convenience, the Judicial Council shall pay Consultant for:

- 17.2.1. Any accepted Work including allowable Reimbursable(s) and Travel and Living Expenses, incurred in accordance with the Service Work Order(s) or necessitated by the termination of Service Work Order; and
- 17.2.2. The proportion of Work that Consultant has performed, but that Judicial Council has not yet accepted, including allowable Reimbursable(s) purchased prior to the effective date of the termination, and Travel and Living Expenses properly incurred prior to the effective date of termination.

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

All copyrights and rights in any Data, or Materials, produced with funding from or in the performance of this Agreement that may presumptively vest in Consultant, or any Subconsultant and other contractors of Consultant, are hereby assigned including the ownership of any rights therein to the Judicial Council.

19. Ownership of Data

- 19.1. Everything created, developed or produced in the course of the Consultant's performance of the Work, or any Subconsultant thereof, including, without limitation, all drawings and specifications, reports, records, files, documents, photographs, raw and final survey files, memoranda, schedules, recordings, information and other Material(s) or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by Consultant for the Judicial Council and are the sole property of the Judicial Council without further employment or the payment of additional compensation to Consultant or any other party.
- 19.2. 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").
- 19.3. To the extent that any of the Data or the Intellectual Property Rights are not works for hire, Consultant hereby irrevocably assigns its entire right, title and interest in and to all such Data and the Intellectual Property Rights therein, to the Judicial Council.
- 19.4. At the Judicial Council's request, Consultant will assist the Judicial Council in the Judicial Council's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. Consultant 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.

- 19.5. The Judicial Council shall be entitled to access the Data in whatever form, including, without limitation CAD, at all times during the term of the Agreement. Any such Data in the possession of Consultant or in the possession of any Subconsultant upon completion or termination of the Agreement or any authorized Service Work Order, and as otherwise requested by the Judicial Council, shall be immediately delivered to the Judicial Council. If any Data is lost, damaged or destroyed before final delivery to the Judicial Council, Consultant shall replace said Data at its own expense and Consultant assumes all risks of loss, damage or destruction of or to such Data.
- 19.6. The Judicial Council expressly acknowledges and agrees, if applicable, that the Data to be provided by Consultant under the Agreement may contain certain design details, features and concepts from the Consultant'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 Consultant. Nothing herein shall be construed as a limitation on the Consultant's right to re-use such component design details, features and concepts on other projects, in other contexts or for other clients.
- 19.7. The Judicial Council acknowledges the Consultant's work product, including electronic files, as instruments of professional service. If the Judicial Council reuses or makes any modification to the Consultant's work product without the prior written reasonable authorization of Consultant, the Judicial Council agrees, to the fullest extent permitted by law, to indemnify, defend, and hold harmless Consultant, and its officers, directors, employees and Subconsultants, against any damages, liabilities or costs, including reasonable attorney fees and defense costs, directly arising from the reuse or modification of the Consultant's work product by the Judicial Council, or by any person or entity that lawfully acquires or obtains the Consultant's work product from or through the Judicial Council without the written authorization of Consultant.

20. Limitation on Publication

- 20.1. Consultant shall not publish or submit for publication any article, press release, or other writing relating to this Agreement or to the Consultant's Services being provided to the Judicial Council without prior review and written approval by the Judicial Council.
- 20.2. Any request for a review of any such article, press release, or other writing shall be made to the Judicial Council in the form of a Notice.
- 20.3. The Judicial Council will endeavor to complete its review within thirty (30) days of submission to the Judicial Council, and, if approval is denied, the Judicial Council will provide reasons for its denial.

21. Personnel

- 21.1. Consultant shall provide all personnel and obtain and provide all Subconsultant personnel necessary to provide the Work authorized under this Agreement.
- 21.2. Consultant shall designate certain personnel or Subconsultants as Key Personnel on each authorized Service Work Order. The specific capacity, responsibilities, and Work to be performed by Key Personnel shall be fully detailed in the authorized Service Work Order.
- 21.3. Consultant shall designate a Project Manager for each authorized Service Work Order.
- 21.4. Replacement of Key Personnel.
 - 21.4.1. The Judicial Council reserves the right, in its sole discretion, to disapprove of, or request replacement of, any Key Personnel designated by Consultant.
 - 21.4.2. Judicial Council shall have the sole discretion to approve Consultant's replace Key Personnel. Any such replacement shall be by written Amendment to the applicable Service Work Order.
 - 21.4.3. If, through no fault, action, or inaction of Consultant, a Key Personnel becomes incapacitated or is otherwise rendered unavailable to work during the period of performance of an authorized Service

Work Order, Consultant shall promptly designate a replacement that possesses the equivalent experience and skills.

- 21.4.4. If Consultant cannot furnish a replacement acceptable to the Judicial Council, the Judicial Council may terminate the applicable Service Work Order.

22. Project Managers

- 22.1. The Project Managers assigned by the Judicial Council and Consultant shall act as their respective Party's authorized representatives and shall:
- 22.1.1. Manage the day to day activities of the Work;
 - 22.1.2. Serve as the primary contact with the other Party's Project Manager assigned to the Service Work Order;
 - 22.1.3. Manage the day to day activities of their personnel;
 - 22.1.4. Cooperate with any Third Parties working on the Project when necessary to ensure successful completion of the Project;
 - 22.1.5. Plan and schedule the performance of the Services;
 - 22.1.6. Ensure that budget and schedule commitments are met; and
 - 22.1.7. Ensure the overall quality of the Work provided.
- 22.2. With the exception of the actions that require a Notice, the Project Managers are authorized to resolve issues and disputes relating to the performance of the Work.
- 22.3. Consultant's Project Manager shall, if the Judicial Council so specifies in the Service Work Order, be responsible for providing written progress reports in accordance with the requirements of the authorized Service Work Order.

23. Background Checks

- 23.1. If Consultant assigns persons (whether employees or Subconsultant employees) to provide Services under this Agreement that require that person have access to the systems (whether on-site or by remote access) or access to the premises of the Judicial Council or other Judicial Branch entities, the Judicial Council shall have the right, but not the obligation, to conduct a background check or to require Consultant to conduct a background check, as permitted by law, on all such persons before the Judicial Council will grant such persons access. Consultant will cooperate and will ensure that its Subconsultant(s) cooperate with the Judicial Council in performing any background check and will promptly notify the Judicial Council of any person that refuses to undergo a background check. If the Judicial Council requires a background check and the employee refuses to undergo or fails the check, Consultant shall not utilize that person to perform Work. Consultant shall obtain all releases, waivers, or permission so that the background information can be released to the Judicial Council. Any costs and expenses incurred to obtain background checks are the sole responsibility of Consultant.

24. Agreement Term

- 24.1. At the sole discretion of the Judicial Council, Subsequent Terms may be utilized and an extension of the Initial Term shall be authorized by an Amendment.
- 24.2. Consultant assumes all liability and risks associated with commencing performance on a Service Work Order prior to authorization in accordance with the Service Work Order Authorization Process detailed in Exhibit C, including nonpayment for any Work performed, prior to Judicial Council authorizing the Work.

- 24.3. Work shall commence upon the date specified for the start of Work in the Service Work Order and shall be completed as indicated in the Service Work Order. If no completion date is specified on the Service Work Order, the date for the completion of the Work shall be the date Consultant completes the Work.

25. Judicial Council's Payment Obligations

- 25.1. The Judicial Council's payment obligations are contingent on the continued availability of authorized funds to pay for Work. The Judicial Council may terminate this Agreement or any Service Work Order(s) authorized hereunder, without prejudice to any right or remedy, for lack of appropriation of funds. If expected or actual funding is withdrawn, reduced or limited in any way the Judicial Council shall have the right to terminate any Work Order for convenience by providing Notice to Consultant.
- 25.2. If any Service Work Order(s) is/are terminated for non-appropriation, Consultant shall be subject to fulfillment of the terms of the termination Notice, and released from any obligation to provide further Work under that Service Work Order.
- 25.3. Payments to be made under this Agreement shall be paid by the State of California funds and are not made by the Judicial Council. Notwithstanding anything in this Agreement to the contrary, it shall not be deemed an event of default if the State is unable to make any payment(s) as a result of the State of California's failure to timely approve and adopt a state budget appropriating funds therefor. Should the State fail to make any payment as a result of the State of California's failure to timely approve and adopt a state budget so appropriating funds, Consultant shall continue to provide Work under already authorized Service Work Order(s) and the Judicial Council shall promptly make any payment(s) owed upon approval and adoption of a budget by the State of California.

26. Notice

- 26.1. Notice must be provided in any of the following events:
- 26.1.1. In the event of any need to assign, novate, or change the name of either Party to this Agreement;
- 26.1.2. In the event of any replacement of Key Personnel;
- 26.1.3. In the event of any claim of any material breach of this Agreement;
- 26.1.4. In the event that a Third Party claim or dispute that alleges facts that would constitute a breach of this Agreement is brought or threatened against Consultant or its Subconsultant(s).
- 26.1.5. In the event of any change to the address of either Party or its representative.
- 26.2. The Notice must:
- 26.2.1. Be in writing;
- 26.2.2. Identify this Agreement, citing both the Agreement Title and Agreement Number given on the Master Agreement Coversheet. If the Notice applies to a Service Work Order, the number of the Service Work Order must also be cited;
- 26.2.3. Unambiguously be identified as a "Notice brought in accordance with the provisions of the Section Entitled "Notice" of Exhibit A of the Agreement" (or in accordance with other applicable provisions of this Agreement so requiring Notice);
- 26.2.4. Delivered in person, pre-paid by a reputable express carrier, or by registered or certified mail (postage pre-paid). If delivered in person, the Notice must be delivered to the reception desk of the 6th Floor at 455 Golden Gate Ave, San Francisco, CA 94102; and

26.2.5. Addressed to the representative(s) of the Parties as follows:

If provided to the Judicial Council:

Judicial Council of California
Risk Management
Attn: Manager, Contracts
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102

With a copy to:

The Project Manager(s) named in the Service Work Order(s) at the Project Manager's address specified in the Service Work Order(s).

If provided to the Consultant:

[@Consultant name]
Attn: [@contact]
[@address]

- 26.3. Notice is effective on the date of receipt; however, if the date of receipt does not occur upon a Business Day, Notice is effective on the first Business Day following the date of receipt.
- 26.4. Any correctly addressed Notice that is refused, lays unclaimed, or is not deliverable because of an act or omission of the Party to whom submitted will be deemed effective as of the date that the Notice was refused, unclaimed, or deemed undeliverable.

27. Subcontracting

- 27.1. Consultant shall be allowed to utilize Subconsultants of Consultant's choice provided Consultant identifies the Subconsultant and/or service provider to be used and their respective responsibilities in Consultant's Proposal Form (Exhibit F).
- 27.2. No Party to this Agreement shall in any way contract on behalf of or in the name of another Party to this Agreement.
- 27.3. Consultant is responsible for all aspects of the control and coordination of Subconsultants and shall ensure that their actions are coordinated in a manner to optimize the provision of the Project.
- 27.4. Consultant shall ensure that all Subconsultants comply with the provisions of this Agreement which are to be incorporated into any agreement or contract with any Subconsultants.
- 27.5. Consultant expressly acknowledges that its Subconsultants are not third party beneficiaries of this Agreement.
- 27.6. If approved by the Judicial Council's Project Manager, Consultant may, during the term of this Agreement, add Service Types and Subconsultants to provide such work, subject to the provisions of Exhibit D.

28. Changes and Amendments

- 28.1. Amendments to any of the Contract Documents can be made only with prior written approval from:

Judicial Council of California
Branch Accounting and Procurement
Attn: Manager, Contracts
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102

- 28.2. Any request for a change in the terms and conditions of this Agreement must be submitted to the other Party in writing in the form of a Notice and must be accompanied by a narrative description of the proposed change and the reasons for the change.
- 28.3. After a review of the request, a written decision shall be provided to other Party.
- 28.4. Amendments to this Agreement shall be made only by bilateral execution of a Master Agreement Coversheet.

29. Retention of Records and Audits

- 29.1. Consultant must retain and maintain easily available all Records pertaining to Consultant's performance of obligations undertaken under this Agreement.
- 29.2. Consultant shall ensure that its Subconsultant(s) retain and maintain easily available all Records pertaining to Subconsultants' performance of this Agreement.
- 29.3. Records ("Records") include but are not limited to any books, reports, accounts, estimates, documents, detailed financial information, certified payrolls, invoices, or any other documentation or evidence, as well as any documents utilized in the preparation of Proposals, invoices, disputes, litigation and any claims. Records must be maintained in accordance with industry standards and GAAP and practices, consistently applied.
- 29.4. The provisions of this Section shall not apply to any work product that is the result of Consultant's or Subconsultants' collaboration with legal counsel or to any of Consultant's or Subconsultants' confidential or proprietary information that does not fall within the definition of a Record as given above.
- 29.5. Consultant shall ensure that the Judicial Council and/or its designated representative(s) will have access upon twenty-four (24) hours' advance written notice, at all times during Consultant's or Subconsultants' normal business hours, to all Records for the purposes of inspection, audit, and copying. Consultant shall, and shall ensure that Subconsultant(s) shall, at no cost to Judicial Council, provide access and proper facilities for such purposes.
- 29.6. Consultant shall ensure in accordance with the terms of this Agreement that all Subconsultant(s) are bound to all provisions of this Section.
- 29.7. Records must be retained and available throughout the period of the term of this Agreement and for a period of five (5) years following the expiration date of this Agreement, or until five (5) years after final settlement of all disputes, claims, or litigation to which the Records relate, whichever date occurs later.
- 29.8. If an audit or Judicial Council internal review reveals that Consultant and/or its Subconsultant(s) have overcharged the Judicial Council, Consultant 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 Consultant and/or its Subconsultant(s) has overcharged the Judicial Council by ten percent (10%) or more on any invoice, in which case Consultant 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.
- 29.9. The obligations of this Section shall survive the expiration of and any termination of this Agreement.

30. Accounting System Requirements

Consultant shall maintain, and shall ensure that its Subconsultant(s) maintain, an adequate system of accounting and internal controls that meets GAAP.

31. Judicial Council Court Representation

- 31.1. 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.
- 31.2. Any Court designated by name in an authorized Service Work Order shall be an intended third party beneficiary of the Services provided under this Agreement. In the event the Court gives conflicting instructions or makes conflicting determinations with respect to any matter affecting Consultant's performance of its obligations, Consultant shall notify the Judicial Council of the conflict and the Judicial Council shall resolve any such conflict.

32. Confidentiality

- 32.1. Both the Judicial Council and Consultant acknowledge and agree that in the course of performing the Work under this Agreement, the Judicial Council may disclose Confidential Information to Consultant and/or its Subconsultants.
- 32.2. Consultant shall not disclose any Confidential Information to any Third Party and shall exercise reasonable care to prevent the disclosure of any Confidential Information.
- 32.3. In the event Consultant is required to disclose the Confidential Information to Consultant's employees, Subconsultants and their employees in order to perform the Services hereunder, Consultant shall execute a confidentiality agreement to require the same duty of nondisclosure and ensure Consultant's employees and subconsultants shall not use Confidential Information for any purpose unrelated to performance of the Work relating to this Agreement and authorized Service Work Orders. Consultant may disclose Confidential Information to other Third Parties only upon prior written approval by the Judicial Council's Project Manager.
- 32.4. Neither Consultant nor its Subconsultants shall acquire a right or title in or to the Confidential Information as a result of any disclosure contemplated hereunder. Notwithstanding the foregoing, Consultant 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.
- 32.5. The Judicial Council reserves the right to disclose all Materials provided under this Agreement to Third Parties for the purpose of validation of the quality of Consultant's work and to use Materials for their intended purpose.
- 32.6. Consultant 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.

33. Trade Secret, Patent and Copyright Indemnification

- 33.1. Consultant shall hold the Judicial Council, the Court(s), the State, and their officers, agents, and employees, 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 Consultant or its Subconsultants in connection with this Agreement.
- 33.2. Consultant, at its own expense, shall defend any action brought against the Judicial Council, the Court(s) and/or the State, and their officers, agents, and employees, to the extent that such action is based upon a claim that any Data or Materials supplied by Consultant or its Subconsultants infringes a United States patent or copyright or violates a trade secret. Consultant shall pay those costs and damages finally awarded against the Judicial Council, the Courts, and/or the State and their officers, agents, and employees, in any such action. Such defense and payment shall be conditioned on the following:
 - 33.2.1. That Consultant shall be notified within a reasonable time in writing by the Judicial Council of any Notice of such claim; and,

- 33.2.2. That Consultant shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise, provided, however, that 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.
- 33.3. 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 Consultant 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 if the use of such Data or Materials by the Judicial Council and/or the Courts shall be prevented by injunction, Consultant 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. If, in the sole option of the Judicial Council, the return of such infringing Data or Materials makes the retention of other Data or Materials acquired from Consultant under this Agreement impractical, the Judicial Council shall then have the option of terminating the Service Work Order under which the Data or Materials were provided, in its entirety, without penalty or termination charge. Consultant agrees to take back said Data or Materials and refund any sums that the Judicial Council has paid Consultant less any reasonable amount for use or damage.

34. Conflict of Interest

- 34.1. Consultant shall ensure that its officers and employees and those of its Subconsultant(s) shall not participate in proceedings that will result in decision making regarding the use of State funds encumbered or that may be encumbered under this Agreement if that person's partner, family, or organization has a financial interest in the outcome of the proceedings.
- 34.2. Consultant shall ensure that its officers and employees and those of its Subconsultant(s) shall avoid actions resulting in or creating an the appearance that (i) an official position with the government was used for private gain; (ii) preferential treatment was accorded to any particular person associated with this Agreement; (iii) the independence or impartiality of the Judicial Council or the Courts has been compromised; (iv) decisions are made outside official channels; or (v) that adversely affects the confidence of the public in the integrity of the Judicial Council or the Courts.
- 34.3. Neither Consultant nor its Subconsultants will, for a duration equivalent to two (2) years following the end of this Agreement, award a contract to any Judicial Council or Court officer or employee that had any role in the decision making process relevant to awarding this Agreement or any such individual involved in making decisions regarding the use of the State funds encumbered under this Agreement. Consultant shall incorporate this requirement into its subcontracts pursuant to Section 27.4 of this Agreement.
- 34.4. To the extent applicable, Consultant shall comply with the Judicial Council's Conflict of Interest Policy for Design-Build Projects adopted on November 19, 2021 pursuant to Government Code section 70398.1(B).

35. Covenant Against Gratuities

- 35.1. Consultant warrants that neither Consultant itself 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 or of the Court(s) for the purpose of securing or having secured award of this Agreement or any Service Work Order to Consultant.
- 35.2. Consultant warrants that neither Consultant itself 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 or of the Court(s) for the purpose of securing an outcome favorable to Consultant 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.
- 35.3. Consultant warrants that neither Consultant itself nor any of its employees nor Subconsultant(s) or their employees will, without immediate written Notice to the Judicial Council, 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 or of the Court(s) for the purpose of securing an outcome favorable to Consultant 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.

- 35.4. 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 Consultant has agreed to supply, shall be borne and paid for by Consultant. 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.

36. Submitting False Claims; 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 Consultant or any Subconsultant under the standards set forth in Government Code section 12650 et seq. Any Consultant or Subconsultant who submits a false claim shall be liable to the Judicial Council for three times the amount of damages that the Judicial Council sustains because of the false claim. Any Consultant or Subconsultant who submits a false claim shall also be liable to the Judicial Council for (i) the costs, including attorney fees, of a civil action brought to recover any of those penalties or damages, and (ii) a civil penalty of up to \$10,000 for each false claim.

37. Responsibility for Equipment, Real Property; Unused Reimbursable Item(s)

- 37.1. Neither the Judicial Council nor the Court(s) shall be responsible for any damage to persons or property as a result of the use, misuse, or failure of any equipment used by Consultant or its Subconsultant(s) employees even though such equipment may be furnished, rented, or loaned to Consultant by the Judicial Council or the Court(s).
- 37.2. Any Reimbursable Items purchased by Consultant that remain unused at the completion of the Work shall be returned to the Judicial Council Project Manager prior to submission of Consultant's final invoice pertaining to the Service Work Order under which said Reimbursable Items were purchased.

38. Independent Contractor

Consultant shall be, and is, an independent contractor, is not an employee or agent of the Judicial Council, and is not covered by any employee benefit plans provided to the Judicial Council's employees. Consultant is, and shall be, liable for its own acts and omissions as well as those of its employees and Subconsultants. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the Judicial Council and Consultant. Consultant will determine the method, details and means of performing its responsibilities with regard to provision of the Services, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all persons assisting Consultant in the performance of the Services. Consultant shall be solely responsible for all matters relating to the payment of its Subconsultants and employees, including compliance with social security, withholding, any and all employee benefits, and all regulations governing such matters.

39. Payment of Income Taxes

- 39.1. If applicable, Consultant shall provide a written, executed document identifying, if at all, that Consultant 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>).
- 39.2. Consultant shall pay, when due, all applicable income taxes, including estimated taxes, incurred as a result of the compensation paid by the Judicial Council to Consultant for the Work. The Judicial Council is exempt from federal excise taxes and no payment will be made for any taxes levied on the Consultant's or any Subconsultants' employees' wages. Consultant 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 Consultant's failure to comply with this

provision. The Judicial Council may offset any taxes paid by the Judicial Council as a result of the Consultant's breach of this provision against any amounts owed Consultant.

40. **Certifications**

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

- 40.1. Nondiscrimination. Consultant and its Subconsultants does not and 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, sex, sexual orientation, gender identity, or domestic partner status. Consultant and its Subconsultant(s) shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
- 40.2. No Harassment. Consultant and its Subconsultant(s) does not and shall not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Consultant or its Subconsultants interact in the performance of this Agreement. Consultant and its Subconsultants shall take all reasonable steps to prevent harassment from occurring.
- 40.3. FEHA. Consultant does and shall comply with the 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 7285 et seq. The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
- 40.4. Compliance with Americans with Disabilities Act. Consultant does and 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.
- 40.5. Notice to Labor Organizations. Consultant and any of its Subconsultant(s) shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- 40.6. Compliance. Consultant shall include the nondiscrimination, no harassment, and compliance provisions of this section in any and all subcontracts issued to perform Services under this Agreement. Consultant has, unless exempt, complied with the nondiscrimination program requirements. (Government Code section 12990(a)-(f) and California Code of Regulations, title 2, section 8103 et seq.)
- 40.7. Prohibited Financial Conflict of Interest. Consultant 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. Consultant 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.
- 40.8. Drug-Free Workplace. Consultant does and will provide a drug-free workplace as required by California Government Code sections 8355 through 8357.
- 40.9. National Labor Relations Board. No more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against Consultant within the immediately preceding two (2) year period because of the Consultant's failure to comply with an order of the National Labor Relations Board.
- 40.10. Brokerage or Contingent Fees. No person or selling agency has been employed or retained to solicit or secure this Agreement upon an understanding or agreement for a commission, percentage, brokerage or contingent fee.

- 40.11. Computer Software Use. Consultant has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

41. Labor Code Provisions [ONLY WHERE AND AS APPLICABLE]

41.1. Prevailing Wage.

- 41.1.1. Consultant and all Subconsultants shall pay all workers on Work performed pursuant to this Agreement 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 (“DIR”), 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 Labor Code. Copies of the general prevailing rates of per diem wages for each craft, classification, or type of worker needed to execute the Agreement, as determined by Director of the DIR, are on file at the Judicial Council’s principal office. Prevailing wage rates are also available on the internet at <http://www.Dir.ca.gov>.
- 41.1.2. Consultant shall ensure that Consultant and all Subconsultants have each executed and provided to the Judicial Council prior to commencing any Work a Prevailing Wage and Related Labor Requirements Certification.
- 41.1.3. Projects may be subject to compliance monitoring and enforcement by the DIR. Consultant shall post job site notices, as prescribed by regulation. Consultant shall comply with all requirements of Labor Code section 1771.4, except the requirements that are exempted by the Labor Commissioner for the Project.

41.2. Registration.

- 41.2.1. Consultant 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 DIR. Labor Code section 1771.1(a) states the following:

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.

- 41.2.2. Consultant shall ensure that Consultant and all Subconsultants (which shall include any “contractor” and “subcontractor” as defined in Labor Code section 1722.1 for purposes of these provisions) comply with Labor Code section 1725.5, including without limitation the registration requirements with the DIR that are set forth in Labor Code section 1725.5. Consultant represents that all “Subconsultants are registered pursuant to Labor Code section 1725.5. Consultant shall not permit any Subconsultant to perform Work without first verifying the Subconsultant is properly registered with the DIR as required by law and providing this information in writing to the Judicial Council. Consultant acknowledges that, for purposes of Labor Code section 1725.5, the Work may be public work to which Labor Code section 1771 applies.

41.3. Hours of Work.

- 41.3.1. Notwithstanding the timing and duration of the Work under any SWO which is subject to court activities and other coordination required for occupied facilities, as provided in Labor Code

section 1810 et seq., eight (8) hours of labor shall constitute a legal day's work. The time of service of any worker employed at any time by Consultant or by any Subconsultant on any subcontract under this Agreement upon the Work or upon any part of the Work contemplated by this Agreement shall be limited and restricted by Consultant to eight (8) hours per day, and forty (40) hours during any one (1) week, except as hereinafter provided. Notwithstanding the foregoing provisions, Work performed by employees of Consultant in excess of eight (8) hours per day and forty (40) hours during any one (1) week shall be permitted upon any public work upon compensation for all hours worked in excess of eight (8) hours per day at not less than one and one-half (1.5) times the basic rate of pay.

- 41.3.2. Consultant 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 in connection with the Work or any part of the Work contemplated by this Agreement. The record shall be kept open at all reasonable hours to the inspection of the Judicial Council and to the Division of Labor Standards Enforcement of the DIR.
 - 41.3.3. Pursuant to Labor Code section 1813, Consultant shall as a penalty to the Judicial Council forfeit the statutory amount for each worker employed in the execution of this Agreement by Consultant 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 Labor Code section 1810 et seq. or other law.
 - 41.3.4. Any Work necessary to be performed after regular working hours, or on Sundays or other holidays shall be performed without additional expense to the Judicial Council.
 - 41.3.5. Work will typically take place in an occupied court facility; therefore, work hours may be restricted depending upon the nature of 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.
- 41.4. Payroll Records.
- 41.4.1. Consultant and all Subconsultants shall comply with the compliance monitoring provisions of Labor Code section 1771.4, including furnishing its CPRs to the Labor Commissioner of California and complying with any applicable enforcement by DIR. Labor Code section 1771.4 requires Consultant and Subconsultants to provide electronic copies of CPRs to the Labor Commissioner of California at least once every 30 days, and within 30 day of project completion, the failure to timely provide the CPRs could result in penalties of up to \$5,000, or as otherwise determined by Labor Code section 1771.4, applicable laws, and regulations.
 - 41.4.2. In addition to submitting CPRs to the Labor Commissioner of California pursuant to Labor Code section 1771.4 or any other applicable law, if requested by the Judicial Council, Consultant shall provide, and shall cause each Subconsultant performing any portion of the Work to provide the Judicial Council with the CPRs 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 Consultant and/or each Subconsultant in connection with the Work.
 - 41.4.3. All CPRs shall be available for inspection at all reasonable hours at the principal office of Consultant on the following basis:
 - 41.4.3.1. 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.
 - 41.4.3.2. CPRs shall be made available for inspection or furnished upon request to a representative of the Judicial Council, Division of Labor Standards Enforcement, Division of Apprenticeship Standards, and/or the DIR.

41.4.3.3. 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 Judicial Council, 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 Consultant, 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 Consultant.

41.4.4. 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 Consultant), 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)

41.4.5. Each Consultant 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.

41.4.6. Any records made available for inspection as copies and furnished upon request to the public or any public agency by the Judicial Council, 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 Consultant awarded this Agreement or performing this Agreement shall not be marked or obliterated.

41.4.7. Consultant shall inform the Judicial Council 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.

41.4.8. In the event of noncompliance with the requirements of this section, Consultant shall have ten (10) days in which to comply subsequent to receipt of written notice specifying in what respects Consultant must comply with this section. Should noncompliance still be evident after the ten (10) day period, Consultant shall, as a penalty to the Judicial Council 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.

41.4.9. It shall be the responsibility of Consultant to ensure compliance with the provisions of Labor Code section 1776.

41.5. Apprentices.

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

- 41.5.2. 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.
- 41.5.3. 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.
- 41.5.4. Only apprentices, as defined in Labor Code section 3077, 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 the apprentice is training.
- 41.5.5. Pursuant to Labor Code section 1777.5, if that section applies to this Agreement as indicated above, Consultant and any Subconsultants employing workers in any apprenticeable craft or trade in performing any Work under this Agreement shall apply to the applicable joint apprenticeship committee for a certificate approving Consultant or Subconsultant under the applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the Work.
- 41.5.6. Pursuant to Labor Code section 1777.5, if that section applies to this Agreement as indicated above, Consultant and any Subconsultant may be required to make contributions to the apprenticeship program.
- 41.5.7. If Consultant 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:
 - 41.5.7.1. Be denied the right to bid or propose on any subsequent project for one (1) year from the date of such determination; and
 - 41.5.7.2. Forfeit as a penalty to the Judicial Council 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.
- 41.5.8. Consultant and all Subconsultants shall comply with Labor Code section 1777.6, which section forbids certain discriminatory practices in the employment of apprentices.
- 41.5.9. Consultant 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.
- 41.5.10. Consultant shall ensure compliance with all certification requirements for all workers performing Work including, without limitation, the requirements for electrician certification in Labor Code section 108 et seq.

42. Force Majeure

Neither Party shall be liable for damages or 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.

43. General

- 43.1. Survival. The termination or expiration of this Agreement or any authorized Service Work Order shall not relieve either Party of any obligation or liability accrued there under 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.
- 43.2. 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.
- 43.3. Waiver.
- 43.3.1. 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 and any such waiver shall not be construed as a waiver of any succeeding breach of the same or other term or condition of this Agreement.
- 43.3.2. The omission by either Party at any time to remedy any default or 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.
- 43.4. Severability. The provisions of this Agreement are separate and severable. Should any court hold that any provision of this Agreement is invalid, void or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the reasonable intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.
- 43.5. Governing Law; Jurisdiction.
- 43.5.1. This Agreement, and all of the rights and duties of Consultant and the Judicial Council arising out of or related to this Agreement or to the relationship of Consultant and the Judicial Council, are governed by the laws of the State of California without regard to its conflicts of law rules. This provision applies to all claims and causes of action that Consultant has or may acquire against the Judicial Council, whether based on contract, tort, statute, or anything else.
- 43.5.2. Consultant agrees that any claims that it has or may acquire against the Judicial Council shall be commenced in and decided exclusively by a court of competent jurisdiction located in the State of California. Consultant agrees to submit to the personal and exclusive jurisdiction of courts located in the State of California. Consultant waives all defenses and arguments that the courts located in the State of California constitute an inconvenient forum based upon the residence or domicile of Consultant, the location of the Project that is the subject of the litigation or the location of witnesses, the location of documents, or anything else.
- 43.6. Agreement Construction. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.
- 43.7. Public Contract Code References. Public Contract Code references create duties of Consultant under this Agreement; however, the references do not imply that the Judicial Council is subject to the Public Contract Code.
- 43.8. 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.

END OF EXHIBIT A

EXHIBIT B

SPECIAL PROVISIONS

1. Insurance Requirements

1.1. General Requirements.

- 1.1.1. 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 Consultant under this Agreement. Consultant shall assess its own risks and if it deems appropriate or prudent, maintain higher limits or broader coverage.
- 1.1.2. The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to Consultant; 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 Consultant under this Agreement.
- 1.1.3. Consultant 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.
- 1.1.4. 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 Consultant deductible must be clearly stated on the appropriate Certificate of Insurance.
- 1.1.5. Self-Insured Retentions (SIR) must be declared to and approved in writing by the Judicial Council. The Judicial Council may require Consultant 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 SIR shall be the sole responsibility of Consultant or Subconsultant who procured such insurance and shall not apply to the Indemnified Parties (defined above). Judicial Council may deduct from any amounts otherwise due Consultant 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. The Judicial Council reserves the right to obtain a copy of any policies and endorsements for verification.
- 1.1.6. Consultant is responsible for and may not recover from the State of California, Judicial Council, or a Court any deductible or self-insured retention that is connected to the insurance required under this Agreement. If self-insured, Consultant warrants that it will maintain funds to cover losses required to be insured against by Consultant under the terms of this Agreement.
- 1.1.7. Prior to commencement of any Work, Consultant 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 Consultant 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, the Judicial Council, any applicable Court, and their respective elected and appointed officials, judicial

officers, officers, employees, and agents as additional insureds. No payments will be made to Consultant until all required current and complete Certificates of Insurance and signed insurance policy endorsements are properly endorsed and on file with the Judicial Council.

- 1.1.8. 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 Court. Consultant's liabilities under this Agreement shall not be limited in any manner to the insurance coverage required.
- 1.1.9. Failure to provide the documentation as required prior to the commencement of Work shall not constitute or be construed as a waiver by the Judicial Council of Consultant's obligations to provide such documentation.
- 1.1.10. The Certificates of Insurance must be addressed and mailed to:

Judicial Council of California
Manager, Contracts, Branch Accounting and Procurement
Attn: Certificate of Insurance, Contract Number [@MA-XX-IDIQ-YYYY-##]
455 Golden Gate Avenue, 6th Floor
San Francisco, CA 94102

- 1.1.11. All insurance policies required under this Agreement must remain in force for the entire duration of this Agreement. If the insurance expires during the Initial Term, or any Subsequent Term(s), of this Agreement, Consultant shall immediately renew or replace the required insurance and provide a new current Certificate of Insurance and signed insurance policy endorsement(s), or Consultant will be in breach of this Agreement, and the Judicial Council may direct Consultant to stop work or may take other remedial action. Consultant must provide renewal insurance certificates and signed policy endorsements to the Judicial Council on or before the expiration date of the previous insurance certificates and signed policy endorsements. Any new insurance procured by Consultant must conform to the requirements of this Agreement.
- 1.1.12. In the event Consultant fails to keep the specified insurance coverage in force at all times required under this Agreement, the Judicial Council may, in addition to and without limiting any other remedies available to it, (i) order Consultant to stop work, or (ii) terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- 1.1.13. Consultant, and each insurer providing insurance required under this Agreement, expressly waives all rights of recovery and subrogation rights it may have against the State, Judicial Council, 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 Consultant under this Agreement or arising out of or in connection with Consultant's breach of this Agreement. This provision does not apply to professional liability insurance policies.
- 1.1.14. Consultant shall provide the Judicial Council with written notice within **ten (10) 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, Consultant shall **immediately** notify the Judicial Council's Project Manager.
- 1.1.15. Judicial Council reserves the right to request certified copies of any of the insurance policies required under this Agreement, which must be provided by Consultant within **ten (10) Business Days** following the Judicial Council's request.
- 1.1.16. Consultant must require insurance from its Subconsultants in substantially the same form as required of Consultant herein and with limits of liability that are sufficient to protect the interests of Consultant, State, Judicial Council, and Court in which the Project is located.

1.2. Individual Policy Requirements.

1.2.1. Commercial General Liability.

Commercial General Liability Insurance shall be written on an occurrence form with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage and \$4,000,000 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. 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.

1.2.2. 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.

1.2.3. Workers' Compensation & Employers' Liability Insurance.

If Consultant 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 Consultant 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, Consultant shall not be required to maintain workers' compensation insurance.

1.2.4. Professional Liability Insurance.

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 \$1,000,000 per claim or per occurrence and \$2,000,000 annual aggregate. If the policy is written on a "claims made" form, Consultant 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.

1.2.5. Consultant's Equipment Insurance.

Consultant shall maintain equipment insurance covering its business property, equipment, and tools used in the performance of the Work at the Project sites that are not intended to become a permanent part of the Work. The Judicial Council shall not be responsible for loss or damage to or obtaining and/or maintaining in force insurance on temporary structures, construction equipment, tools, or personal effects, owned or rented to or in the care, custody, and control of Consultant or Subconsultant of any tier.

1.2.6. Unmanned Aircraft Liability Insurance.

If Consultant utilizes drones or any other unmanned aircraft in the performance of the Work, existing insurance coverage must include an endorsement for unmanned aircraft operations. Consultant 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 Consultant 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.

1.2.7. Umbrella Policies.

Consultant may satisfy basic coverage limits through any combination of primary, excess, or umbrella insurance.

2. Licenses

- 2.1. Consultant shall ensure that Consultant, its Subconsultants, and all their employees or agents providing Work under this Agreement shall have prior to commencing and shall at all times maintain throughout the duration of their performance of the Work all appropriate license(s) required under law to provide the Work being performed. Consultant shall regularly monitor and ensure that its Subconsultant(s) monitor to ensure, compliance with this provision of the Agreement.
- 2.2. If the possession of a license(s) or certificate(s), including without limitation a valid California Professional Consulting Engineer license and Professional Geologist/Hydrogeologist license, is required under law for the performance of any Work or requested by the Judicial Council, Consultant shall ensure that the Work will either be performed by an appropriately licensed individual or, where permissible, under the direct supervision and with the review and approval of an appropriately licensed individual.
- 2.3. If the possession of a license(s), including without limitation a valid California Contractor's license, is required under law for the performance of any Public Work, Consultant shall ensure that the Public Work will either be performed by an appropriately licensed entity "General Building Contractor – B License" or "Specialty Contractor – C License" as applicable to the specific Service Work Order.
- 2.4. Consultant shall provide immediate Notice to the Judicial Council in the event that any license required to be held by Consultant or any of its Subconsultants or any of their employees or agents is suspended, cancelled, or expires during a period in which they are performing Work requiring a license.
- 2.5. Consultants and individuals required by law to be licensed are licensed and regulated by the California Consultants Board which has jurisdiction to investigate complaints if a complaint regarding a patent act or omission is filed within four years of the date of the alleged violation. Any questions concerning licensed individuals or organizations may be referred to the California Consultants Board.
- 2.6. If no license is required of an individual performing Services, Consultant shall ensure that such individuals possess the skills, training, and background reasonably commensurate with the responsibility assigned, so as to be able to perform in a competent and professional manner in accordance with generally accepted industry standards.

3. RESERVED

4. Consultant's Project Schedule

- 4.1. Project Schedule Submission. Within five (5) Business Days of the Judicial Council directing Consultant to begin Work on an authorized Service Work Order which Consultant previously accepted in CAFM pursuant to Exhibit C to this Agreement, Consultant shall submit to the Judicial Council a project schedule consistent with the Service Work Order Time indicated in the Service Work Order ("Project Schedule").

- 4.2. Scheduling Software. Consultant must create the Project Schedule utilizing a scheduling software program acceptable to Judicial Council, which at a minimum shall be Microsoft Project. Consultant acknowledges that Microsoft Excel is not an acceptable scheduling software.
- 4.3. Judicial Council Approval. Consultant must provide an acceptable Project Schedule for the Judicial Council's consideration and approval. If requested by the Judicial Council, Consultant shall make reasonable updates or revises to the Project Schedule as necessary prior to its approval. Work shall not proceed on the Service Work Order until the Judicial Council has approved the Project Schedule. Once approved, Judicial Council and Consultant may, if agreed to in writing, approve subsequent changes to the Project Schedule.

5. Disabled Veteran Business Enterprise Program

- 5.1. This section is applicable only if Consultant received a Disabled Veteran Business Enterprise ("DVBE") incentive in connection with this Agreement.
- 5.2. Consultant's failure to meet the DVBE commitment set forth in its proposal constitutes a breach of the Agreement.
- 5.3. If Consultant used DVBE Subconsultants in connection with this Agreement:
 - 5.3.1. Consultant must use the DVBE Subconsultants identified in its bid or proposal, unless the Judicial Council approves in writing replacement by another DVBE Subconsultant in accordance with the terms of this Agreement; and
 - 5.3.2. Consultant must within sixty (60) days of receiving final payment under this Agreement certify in a report to the Judicial Council, on a form supplied by or satisfactory to the Judicial Council, the following:
 - 5.3.2.1. The total amount of money Consultant received under the Agreement;
 - 5.3.2.2. The name and address of each DVBE Subconsultant to which Consultant subcontracted Work in connection with the Agreement;
 - 5.3.2.3. The amount each DVBE Subconsultant received from Consultant in connection with the Agreement; and
 - 5.3.2.4. That all payments under the Agreement have been made to the applicable DVBE Subconsultants.
 - 5.3.3. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

END OF EXHIBIT B

EXHIBIT C

SERVICE WORK ORDERS: AUTHORIZATION PROCESS, INVOICING AND PAYMENT PROVISIONS

1. Maximum Service Work Order Amount and Contract Amount

- 1.1. The maximum amount the Judicial Council shall be obligated to pay to Consultant under any individual Service Work Order authorized under this Agreement for performing all Work, as well as payment for all Travel and Living Expense and/or any Reimbursable Expenses incurred, shall not at any time exceed the Total Amount specified on the face of the most recently authorized Service Work Order applicable. No verbal agreements will be honored.
- 1.2. The maximum amount the Judicial Council shall be obligated to pay to Consultant under this Agreement (“Contract Amount”) shall not at any time exceed the total of all total amount(s) encumbered over the course of the Agreement by the Judicial Council for this Agreement. The total amount that the Judicial Council may pay Consultant under this Agreement shall not at any time exceed the total of the Service Work Order Grand Total of all Service Work Orders authorized for the performance through the current date.

2. Service Work Order Authorization

- 2.1. The Judicial Council will authorize the performance of Work and spending of funds under this Agreement only via Service Work Order issued through Judicial Council’s CAFM system. Service Work Orders must be “accepted” by Consultant within the CAFM system. This involves Consultant logging into CAFM, opening the SWO, and clicking the “Accept” button. A written document will be provided by Judicial Council via CAFM software system that summarizes the Project details and references all other documents incorporated within the Project.
- 2.2. Service Work Orders may only be authorized during the Initial Term of this Agreement or any Subsequent Terms. Service Work Orders must be authorized prior to the expiration date of this Agreement. The end date for Services authorized in a Service Work Order may exceed the expiration date of this Agreement; provided, however, that the terms and conditions of this Agreement shall remain in full force and effect with regard to any outstanding Service Work Order(s) after the expiration of this Agreement until the Work of said Service Work Order(s) is complete.
- 2.3. Service Work Orders may only be authorized for the specific Service Types and Services described in Exhibits D, E, and F.
- 2.4. Project Awards.
 - 2.4.1. Consultant acknowledges that the Judicial Council may have multiple qualified firms under contract to provide the same Services as Consultant under this Agreement (“Qualified Firms”). Said Qualified Firms, including Consultant, may be asked to provide Consultant Proposals for some Projects, but may not be asked to provide Consultant Proposals on other Projects or none at all. The Judicial Council will typically solicit multiple Qualified Firms to propose Services for the same Project.
 - 2.4.2. Selection of Consultant for a specific Project is at the sole discretion of the Judicial Council. The Judicial Council will award Projects to Consultant based on, without limitation, Consultant’s qualifications, specific expertise, proposed costs for the Project, knowledge of and involvement with specific systems and/or facilities for the Project, prior performance on other Projects, and those other factors that the Judicial Council may deem pertinent for the Project.
 - 2.4.3. Any Project with an estimated, proposed, or actual cost greater than One Hundred Twenty-Five Thousand Dollars (\$125,000) may in the sole discretion of the Judicial Council be assigned to the Qualified Firm that proposes the lowest cost for that Project. The Judicial Council will evaluate

all other relevant factors of the Qualified Firms submitting Consultant Proposals in the event Projects receive multiple proposals at the same price.

3. Service Work Order Process

- 3.1. Services Request Form. The Judicial Council's Project Manager will provide Consultant with an unsigned Services Request Form (Exhibit E), describing the Work the Judicial Council wants performed. The Judicial Council's Project Manager will complete the Services Request Form and send to Consultant electronically. The Judicial Council Project Manager will inform Consultant of the appropriate Pricing Methodology to be used in the Service Work Order.
- 3.2. Pricing Methodologies. Two Pricing Methodologies are allowable under this Agreement. Pricing Methodology sets both the total amount of compensation that will be made under a Service Work Order, as well as terms and conditions that will apply to the Services to be provided. Only one type of Pricing Methodology may be used in any individual Service Work Order and that methodology will apply to all Services provided under that Service Work Order. If more than one methodology is necessary, the Services must be segregated into separate Service Work Orders.
 - 3.2.1. Lump Sum Based Services Pricing.
 - 3.2.1.1. When a Service Work Order is authorized for performance on a lump sum basis ("Lump Sum Basis"), the prices for all expected Hourly Rates and Fixed Price Services, the cost of any expected Travel and Living Expenses, and the cost of any expected Reimbursables will be added to calculate a lump sum price ("Lump Sum Price") applicable to that Service Work Order. The applicable price(s) and costs and method to be used to calculate the Lump Sum Price are specified below.
 - 3.2.1.2. Consultant will be compensated for Lump Sum Basis Service Work Orders according to a percentage of particular phases, deliverables, or schedule of fixed milestone amounts with each milestone amount associated with the provision and acceptance of individual designated Deliverable(s) as agreed to between the Judicial Council Project Manager and Consultant's Project Manager. The total of the price(s) for all Deliverables must be equal the Lump Sum Price applicable to the Service Work Order.
 - 3.2.1.3. In Service Work Orders authorized on a Lump Sum Basis, Consultant is responsible for the provision in full of all of the Services and Materials specified in the Service Work Order as well as bearing all costs and expenses for any Travel and Living Expenses, any Reimbursables expenses, and any other costs and expenses incurred to provide the Services and Materials (including profit), regardless of the amount of Consultant's actual costs and expenses incurred. Consultant shall be compensated solely by payment of a Lump Sum Price.
 - 3.2.2. Time and Materials Based Services Pricing.
 - 3.2.2.1. When performing Services on a time and materials basis ("Time and Materials Basis"), the prices will be subject to Judicial Council agreement on a Service Work Order-by-Service Work Order basis, and shall only apply to the Service Work Order in which authorized.
 - 3.2.2.2. When a Service Work Order is authorized for performance on a Time and Materials Basis, the prices for all expected Hourly Rates and Fixed Price Services, the cost of any expected Travel and Living Expenses, and the cost of any expected Reimbursables will be added to calculate a time and materials price ("Time and Materials Price") applicable to that Service Work Order. The applicable price(s) and costs and method to be used to calculate the Time and Materials Price are specified below. The Judicial Council may, in its discretion, include a not-to-exceed amount in any Service Work Order on a Time and Materials Basis and Consultant shall not exceed said not-to-exceed amount.

- 3.2.2.3. Consultant will be compensated for Time and Materials Basis Service Work Orders in the form of monthly payments based upon: the hours of work actually expended in performing the Hourly Rates Services; the price for any Fixed Price Service(s) actually performed; the actual cost for any allowed Travel and Living Expenses actually incurred (when incurred in accordance with, and in amounts not to exceed the maximum amounts specified as allowable in, the Judicial Council's Travel and Living Expense Rules and Rates); and the actual cost of any allowed Reimbursables (in amounts at or below the Reimbursable(s) prices specified in the Service Work Order).
- 3.2.2.4. In Service Work Orders authorized on a Time and Materials Basis, Consultant is, subject to the limitation of the Time and Materials Price as further elucidated below, responsible for the provision of Services and Materials specified in a Service Work Order if authorized in accordance with the provisions of the Service Work Order, for paying for any Travel and Living Expenses and Reimbursable(s) necessary to provide those Services and Materials if authorized by the Judicial Council's Project Manager. Consultant shall be compensated solely in the form of payments for the Services, Materials, Travel and Living Expenses, and Reimbursables expenses which shall be made as specified above; however, Consultant shall not provide Services and/or Materials, incur Travel and Living Expenses, or purchase Reimbursable(s) past the point at which the total of such charges, if invoiced to the Judicial Council in accordance with this Agreement, would exceed the Time and Materials Price applicable to that Service Work Order.
- 3.3. Initial Consultant Proposal Form. Upon receipt, Consultant will, in coordination with the Judicial Council's Project Manager, edit the Consultant Proposal Form (Exhibit F) and the Judicial Council Project Manager will edit the Services Request Form (Exhibit E) if necessary, so that each appropriately describes, to the satisfaction of both Parties, the various elements of the Work and Materials to be provided, and submit the revised version.
- 3.4. Consultant Proposal Form Contents. Consultant will fill out and submit electronically the Consultant Proposal Form (Exhibit F) based upon the description of the Services requested by the Services Request Form, providing the following:
- 3.4.1. Service Work Order Subtotals and Service Work Order Grand Total: List the Service Types and the corresponding subtotals as applicable to the Project. If the Service is to be performed by a Subconsultant, include the name of each Subconsultant and the amount of administrative mark-up, if any, the Consultant will apply to the Subconsultant.
- 3.4.2. Schedule of Deliverables and Milestone Payments: If Lump Sum Basis Pricing Methodology is used, after consultation with the Judicial Council Project Manager, provide a list of designated Deliverable(s) and the amount to be paid upon acceptance of each such Deliverable that has been agreed to by both Parties. The Judicial Council does not pay for Services in advance and no milestone payment will be tied to initiation of the Work. The individual Milestone Payments to be used shall be proportioned to correspond to the portion of the Project Services necessary to provide the Deliverable. Invoicing and Payments may only be made according to this Schedule of Deliverables and Milestone Payments. Deliverables must be tangible.
- 3.4.3. Hourly Rates Services: If a Time and Materials Basis Pricing Methodology is used, provide the corresponding Hourly Rates (from Exhibit D of this Agreement), number of hours, and subtotal for the utilized job title. Note: Prevailing wage rates and Public Works registration requirements will apply if and to the extent applicable.
- 3.4.4. Fixed Price Services: If Fixed Price Services are to be provided, describe the Services, the category of Services it falls into (consult Exhibit D for approved Service Types), the price, quantity, and subtotal. Fixed Price Services are approved on a Project by Project basis by the Judicial Council Project Manager.
- 3.4.5. Travel and Living Expenses: If performance of a Service will necessitate the expenditure of Travel and Living Expenses, and if the Judicial Council will authorize reimbursement therefor, describe the Travel and Living Expenses that are necessary to perform the Service. Provide the titles (and

names if available) of individuals for whom the Travel and Living Expenses will be expended. Provide an explanation of the purpose for the expenditure(s) and the expected dates of the expenditure(s). All Travel and Living Expenditures must be costed out in accordance with the Judicial Council's Travel and Living Expense Rules and Guidelines, given in this Exhibit C as may be updated from time to time (except in those instances subject to and governed by the Prevailing Wage Laws). Provide the information requested on the form, along with a subtotal for all Travel and Living Expenses. If no Travel and/or Living Expenses are to be incurred, leave this section blank.

- 3.4.6. Reimbursable Items: If performance of a Service will necessitate Consultant's use of Reimbursable Items, provide a listing of the Reimbursable Items necessary to perform the Service along with quantities necessary, price, extended price, and a subtotal for all Reimbursable Items. If no Reimbursable Items are to be purchased, leave this section blank. Reimbursable Items must be priced at Consultant's actual acquisition cost, net of any discounts or rebates allowed and are not subject to any markup, charge, add on, or pass through charge or fee of any type. Reimbursable Items are not Services. The amounts listed here are allowances only and the individual Reimbursable Items to be invoiced may exceed the amounts listed in this section provided the total amount invoiced does not exceed the subtotal of all Reimbursable Items.
- 3.5. Consultant Proposal Form Submission. Upon completion of the above, Consultant's Project Manager shall submit Consultant's Proposal to the Judicial Council's Project Manager via email in the form of a file in modifiable MS-Word processing format.
- 3.6. Consultant Proposal Form Review. The Judicial Council's Project Manager shall review separately or with Consultant and may request changes to the Proposal submitted, in which event Consultant shall modify and resubmit the Proposal, again in accordance with the provisions of this Exhibit C.
- 3.7. Consultant Proposal Form Expiration. Consultant Proposals so submitted are available for acceptance and may not expire or be revoked for a period of twenty (20) Business Days following the date submitted to the Judicial Council's Project Manager, or until the date scheduled for the start of the Work in the applicable Service Work Order passes, whichever event occurs sooner.
- 3.8. SWO Creation. If the Judicial Council intends to accept Consultant's Proposal and proceed with the Project, the Judicial Council Project Manager will create a Service Work Order in Judicial Council's CAFM system and populate the Consultant Proposal Form (Exhibit F) with a unique SWO number. The Services Request Form (Exhibit E) and accepted Consultant Proposal Form (Exhibit F) will be uploaded to CAFM.
- 3.9. Consultant Proposal Form Acceptance. The Judicial Council Project Manager will then notify Consultant of its Proposal acceptance. The Judicial Council shall provide, via email, a Service Work Order consisting of a cover page with a unique Service Work Order number, the accepted Service Request Form (Exhibit E) and Consultant Proposal Form (Exhibit F).
- 3.10. Consultant CAFM Review. Consultant shall review all documents and, upon acceptance, log in to Judicial Council's CAFM system, look up the corresponding Service Work Order, and click "Accept." By clicking "Accept," Consultant agrees to all the provisions of this Agreement and the corresponding Service Work Order.
- 3.11. Work Commencement. Upon notification of Service Work Order acceptance in CAFM by Consultant, the Judicial Council shall direct Consultant to begin Work in writing in conjunction with Section 3.12 below. Within five (5) Business Days of the Judicial Council's direction to Consultant to begin Work on the SWO, Consultant shall submit to the Judicial Council Consultant's Project Schedule in compliance with the requirements of Exhibit B of this Agreement.
- 3.12. Additional Detailed Instructions. Following authorization of a Service Work Order, but before the initiation of Work on a Project, Judicial Council may furnish additional detailed written and/or graphic instructions to explain the Work more fully, and such instructions become a part of the requirements of the authorized Service Work Order applicable to a Project ("Additional Detailed Instructions"). Should such Additional Detailed Instructions, in the opinion of Consultant, constitute Work in excess of the requirements of the

authorized Service Work Order, Consultant must submit written Notice of the same to the Judicial Council within seven (7) Days following receipt of such Additional Detailed Instructions, and in no event any later than prior to commencement of the work of the Project. If in the Judicial Council's judgment, the Additional Detailed Instructions do in fact constitute Work in excess of the requirements of the authorized Service Work Order, the Judicial Council may, at Judicial Council's option, either close the authorized Service Work Order and create a new Service Work Order or issue a Supplementary Service Work Order to account for the excess Work.

3.13. SWO Cancellation. If the Parties agree to cancel an already authorized Work Order, the existing SWO must be closed within Judicial Council's CAFM system and a new SWO process started.

3.14. SWO Authorization.

3.14.1. Only the following Judicial Council personnel are approved to authorize a SWO: Principal Managers; Managers; Senior Project Managers and Project Managers; Facilities Operations Supervisors; Facilities Management Administrators; and Judicial Council Customer Service Center Personnel.

3.14.2. Judicial Council shall from time to time provide Consultant with the names and contact information of persons filling primary positions. This letter will be updated from time to time as personnel change, and is effective upon receipt. These changes will not require that this Agreement be amended.

3.15. Form Modifications. The Judicial Council reserves the right to modify the forms provided in Exhibits E and F, as it deems necessary or appropriate, in its sole discretion, and will notify Consultant of any modification to said form prior to implementing the modified form(s). Modified forms will be substantially similar to Exhibits E and F in this Agreement.

3.16. No Project Guarantee.

3.16.1. There is no minimum or maximum on the number of Service Work Orders that the Judicial Council may request or authorize under this Agreement or that Consultant will perform during the Initial Term or any Subsequent Terms of this Agreement.

3.16.2. The Judicial Council does not guarantee that Consultant will receive any authorized Service Work Order(s) under this Agreement.

4. Invoicing Instructions

4.1. Invoice Submission. All invoices are to be emailed to FacilitiesServicesInvoices@jud.ca.gov with a copy to Judicial Council's Project Manager. Invoices should be provided with the standard Request for Payment cover sheet provided by Judicial Council. All invoices must contain:

4.1.1. The Agreement Title and Agreement Number from the Master Agreement Coversheet to this Agreement;

4.1.2. The Service Work Order Number provided on the Service Work Order;

4.1.3. A unique invoice number;

4.1.4. Consultant's name and address;

4.1.5. Consultant's Taxpayer Identification Number (FEIN);

4.1.6. The Pricing Methodology applicable to the Service Work Order (i.e., "Pricing Methodology – Lump Sum Basis" or "Pricing Methodology – Time and Materials Basis");

4.1.7. Preferred remittance address if this address has changed at the time this Agreement was signed. In addition, Judicial Council must be notified of such a change immediately. Changes to the

remittance address made on an invoice or otherwise without the Judicial Council being specifically notified pursuant to this Agreement will result in processing and payment delays for which the Judicial Council shall have no liability to Consultant;

- 4.1.8. Date range of Work performed;
 - 4.1.9. Date of invoice; and
 - 4.1.10. Description of Work performed.
- 4.2. Invoice Format. In addition, Consultant shall provide invoices in formats that correspond to the Pricing Methodology specified in the authorized Service Work Order, as follows:

4.2.1. Lump Sum Based Service Work Orders:

Consultant shall, upon receipt and written acceptance by the Judicial Council's Project Manager of a Deliverable associated with a Payment Milestone but not more frequently than once monthly, submit an invoice for any Milestone Payments associated with any Deliverable(s) accepted by the Judicial Council during the previous calendar month. Deliverables shall not be invoiced to the Judicial Council in advance of receipt of written acceptance from the Judicial Council Project Manager.

4.2.1.1. Consultant's invoice for such Service Work Orders must specify the following:

- 4.2.1.1.1. Name of the Deliverable, using the same words as specified in the Service Work Order description;
- 4.2.1.1.2. Amount of the milestone payment designated for the accepted Deliverable, as specified in the Service Work Order;
- 4.2.1.1.3. A line specifying the Service Work Order Grand Total (i.e., "Service Work Order Grand Total = \$") applicable to the Service Work Order.

4.2.2. Time and Materials Based Service Work Orders:

Consultant shall submit an invoice for time and materials for Services rendered during the previous calendar month, and not more frequently than once monthly.

4.2.2.1. Consultant's invoice for such Service Work Orders must specify the following:

- 4.2.2.1.1. Schedule of Values (listing appropriate phases or milestones) and extended subtotals; OR
- 4.2.2.1.2. Hourly Rates: A section with the applicable job title, number of hours invoiced, applicable hourly rate as specified in Exhibit D, and subtotal;
- 4.2.2.1.3. Fixed Price Services (if applicable) with the description, price, quantity, and subtotal using the same language as provided in the Service Work Order;
- 4.2.2.1.4. Travel and Living Expenses (if applicable) actually incurred with the name and job title of the individual claiming expenses, date, purpose, and subtotal. Cost of travel or living expense must not exceed the allowance specified in the Judicial Council Travel and Living Expense Guideline;
- 4.2.2.1.5. Reimbursable Items (if applicable) with the description, actual cost incurred, quantity, and subtotal using the same language as provided in

the Service Work Order. Receipts must be provided as backup documentation.

4.2.2.1.6. Amount of retention (not to exceed 10% of amount invoiced).

4.2.2.1.7. Total invoice amount (minus retention, if applicable).

5. Judicial Council Travel and Living Expenses Guidelines

- 5.1. At Judicial Council's sole discretion, and **only if expressly specified by the Judicial Council in a Service Work Order and so agreed to by Consultant prior to performance of the Work**, the Judicial Council shall reimburse Consultant for actual and reasonable transportation, meals, and lodging expenses actually incurred by Consultant's and its Subconsultants' employees when actually incurred in the course of their performance of the Work, but subject to the following:
- 5.1.1. If air transportation is authorized, the Judicial Council will reimburse Consultant only at the actual cost incurred. All air transportation is limited to coach fares and must be booked a minimum of fourteen (14) Business Days prior to travel, unless the Project Manager agrees in writing to a shorter period in the Service Work Order.
 - 5.1.2. If overnight lodging expense is authorized, the Judicial Council will reimburse Consultant only (i) for hotel room rental at the actual cost, but not to exceed \$250.00 per Day in San Francisco County, plus occupancy tax and/or energy surcharge; \$125.00 per Day in Monterrey and San Diego Counties, plus occupancy tax and/or energy surcharge; \$120.00 per Day in Los Angeles, Orange, and Ventura Counties, plus occupancy tax and/or energy surcharge; \$140.00 per Day in Alameda, San Mateo, and Santa Clara Counties, plus tax and energy surcharge; or \$110.00 in all other California counties, plus tax and energy surcharge; and (ii) for meals, at the actual cost but not to exceed the following maximum amounts per person per Day: breakfast \$8.00; lunch \$12.00; dinner \$20.00; and incidentals \$6.00.
 - 5.1.3. Reimbursement for Travel and Living Expenses is subject to the applicable provisions of and must be charged in accordance with the Judicial Council's Guidelines for Travel and Living Expenses as may be updated from time to time and which are hereby incorporated into this Agreement by reference. Consultant may submit a written request to the Judicial Council Project Manager to review applicable provisions of the Judicial Council's Guidelines for Travel and Living Expenses prior to incurring any costs in order to confirm the acceptability thereof.
 - 5.1.4. If private vehicle ground transportation expense is authorized, the Judicial Council will reimburse Consultant at the then published Federal cents per mile, pursuant to <https://www.irs.gov/tax-professionals/standard-mileage-rates>.
 - 5.1.5. The Judicial Council is not obligated to pay for, and Consultant shall not invoice for any hours of non-production Work expended by Consultant or its Subconsultants' employees that are spent traveling to or from the location where the Service(s) are performed.
 - 5.1.6. Travel and Living Expenses shall be billed to the Judicial Council at Consultant's actual cost, including any discounts or rebates accorded to Consultant or its Subconsultants, and are not subject to any markup, fee, or other charge.
 - 5.1.7. Notwithstanding the preceding, Consultant shall be required to ensure its workers are paid, and Judicial Council shall reimburse Consultant if and to the extent applicable for, all travel and/or subsistence payments pursuant to Labor Code sections 1773.1 and 1773.9 or as otherwise required by the Prevailing Wage Laws.

6. Taxes

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

7. Invoice Submission

Consultant shall submit one (1) original of invoices to the Judicial Council Project Manager for processing.

8. Retention

The Judicial Council may, in its discretion, withhold payment of an amount equal to ten percent (10%) from all payments made for invoices submitted. Upon successful completion of all Work under an individual Service Work Order, Consultant shall separately invoice, for the amounts retained, if applicable.

9. Payment

9.1. The Judicial Council will endeavor to pay invoices within sixty (60) days after receipt of a correct, itemized invoice. In no event shall the Judicial Council be liable for interest or late charges for any late payments.

9.2. Payment shall be made by the Judicial Council to Consultant at the address specified when this Agreement was signed. Changes to this address can be made by notifying the Judicial Council in writing of the new remittance address but should be done prior to invoice submission to avoid processing delays.

9.3. The Judicial Council may withhold full or partial payment to Consultant in any instance in which Consultant has failed or refused to satisfy any material obligation provided for under this Agreement or the Service Work Order.

10. Disallowance

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

11. Payment Does Not Imply Acceptance of Work

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

12. Release of Claims

12.1. The acceptance by Consultant of its final payment due under an authorized Work Order shall be and shall operate as a release of the Judicial Council, the Court(s) and the State from all claims and all liability to Consultant for everything done or furnished in connection with said Work Order, including every act and neglect of the Judicial Council and or the Court(s).

12.2. Consultant shall, on the face of Consultant's final invoice submitted for payment, expressly identify as outstanding any claim that it has. Consultant's failure to identify any such claims shall operate as a release of all claims.

END OF EXHIBIT C

EXHIBIT D

SERVICE TYPES AND HOURLY RATES

1. Consultant Services

The scope of services awarded include professional environmental consultant services as well as incidental services logically and justifiably performed (“Services”).

Services as required may include the following:

- 1.1. Conduct environmental site assessment (“ESA”) (Phase 1, Phase 2, Phase 3, and Phase 4) investigations and activities in compliance with current regulations, codes, and best practices and provide detailed reports of findings and any subsequent recommendations.

2. Service Types and Billing Rates

- 2.1. Consultant shall, when specified in an authorized Service Work Order, provide Services within the following Scopes. The Services Request Form (Exhibit E), to be issued and approved on a Service Work Order-by-Service Work Order basis, will contain additional detail regarding the required scope for the applicable Project.
- 2.2. Service Types.
 - 2.2.1. General Consulting Services
 - 2.2.2. Phase 1 ESA: Work may include, but is not limited to, general site review and assessment
 - 2.2.3. Conduct Phase 2 ESA
 - 2.2.4. Conduct Phase 3 ESA
 - 2.2.5. Conduct Phase 4 ESA
 - 2.2.6. Conduct site visits to identify issues and collect data for environmental concerns for facility operations and occupancy
 - 2.2.7. Prepare surveys, reports and specifications for identifying asbestos-containing material (ACM), lead-based paint (LBP), polychlorinated biphenyls (PCBs), and other hazardous waste material
 - 2.2.8. Conduct inspections and manage field remedial clean-up activities including storage and transport of hazardous materials/hazardous waste
 - 2.2.9. Engage in monitoring and manage clean-up of air, soil, and water/groundwater resources
 - 2.2.10. Provide oversight during hazardous waste abatement activities including consultant selection, managing permits, managing abatement work, and performing close-out activities
 - 2.2.11. Represent Judicial Council’s interests in meetings with environmental regulatory agencies and others as requested

2.3. Hourly Rates

HOURLY RATES				
Service Type	In-House	Sub-Consultant	Personnel Job Title	Billing Rate
General Environmental Consulting Services			Principal	
			Project Manager	
			Senior Technician/Engineering Technician	
			Technician	
			Clerical/Administrative Assistant	
			Geologist/Hydrogeologist	
			GIS/CADD Specialist	
			Certified Industrial Hygienist	

2.4. Fixed Price Rates

FIXED PRICE SERVICES	
Services	Billing Rate
Phase I Environmental Site Assessment (Fixed Price)	

3. Consultant and Consultant’s Subconsultant Services and Pricing

- 3.1. All Service Types and descriptions that may be provided and all prices to be charged under this Agreement are specified in this Exhibit D.
- 3.2. All Hourly Rates of this Agreement shall remain firm and not subject to change throughout the Initial Term of this Agreement.
- 3.3. No other Services or Materials shall be provided or compensated for under this Agreement except for those items and amounts specified in an authorized Service Work Order, unless otherwise authorized in writing by the Judicial Council.
- 3.4. Addition of New Service Types or Job Titles.
 - 3.4.1. If Consultant and the Judicial Council’s Project Manager so agree, the addition of any new Service Types to Exhibit D is subject to execution of an Amendment to this Agreement and to the provisions of this section.
 - 3.4.2. Any such new Service Type or Job Title to be added shall be limited to professional services of an environmental health and safety consulting nature, and to such other incidental Services that members of those professions and those in their employ may logically or justifiably perform.
 - 3.4.3. If a new Service Type or Job Title is to be added, Consultant shall provide the pricing for the new Service Type(s) and/or Job Title(s) in a format specifying the Service Type(s) and/or Job Title(s) and their associated Hourly Rate(s). The Hourly Rates that will apply to any such new Service Types and/or Job Titles are subject to negotiation and, once approved and issued via Amendment to this Agreement, may not change with the exception of cost escalation as may be allowed in Subsequent Terms. All Hourly Rates provided must be priced at a single price (i.e., \$60.00/hr.), not a range, and otherwise in accordance with the terms of this Agreement.

- 3.5. Regardless of anything that may be stated to the contrary in Exhibit D, Consultant is not entitled to and will not charge the Judicial Council for any servicing charge, processing, billing or any other type of fee, uppage, or charge of any type that is made upon the Fixed Price Services and/or Hourly Rates charged by its Subconsultants and billed to the Judicial Council for any Subconsultant-provided Services, any Travel and Living Expenses incurred, or any Reimbursables provided as a result of this Agreement.
- 3.5.1. Notwithstanding the foregoing, the Judicial Council may, in its discretion, authorize Consultant on a Service Work Order-by-Service Work Order basis to include a reasonable administrative charge for Consultant's time, effort, management, and oversight of the Subconsultants providing Services or Work on a Project ("Subconsultant Administrative Charge"). In no event whatsoever will any Subconsultant Administrative Charge exceed industry standards as determined by the Judicial Council in its reasonable discretion and, in the event of any dispute between the Parties over the amount to be included for a Subconsultant Administrative Charge, the Judicial Council shall make the final determination.
- 3.6. At least sixty (60) days prior the start of any Subsequent Terms, Consultant may request by written Notice to the Judicial Council that Hourly Rates of this Agreement be adjusted by the Consumer Price Index (CPI), California, All Urban Consumers Series (CPI-U), for the previous 12 months. Within thirty (30) days of receiving said request, the Judicial Council shall notify Consultant in writing whether any such adjustments to the Hourly Rates will be made in the Judicial Council's sole reasonable discretion; if no response is issued in said time, it shall be deemed to be that no adjustment will be made. Revised Hourly Rates for the Agreement in Subsequent Terms shall not exceed the percentage difference of the most recently reported CPI for the previous 12 months; provided, however, that in no event shall the amount of the increase exceed five percent (5%) per year. As used in this Agreement, "CPI" means the unadjusted Consumer Price Index (above) as calculated by the California Bureau of Labor Statistics. The California Department of Finance posts CPI data on their website at the following link: <http://www.dof.ca.gov/Forecasting/Economics/Indicators/Inflation/>.
- 3.7. Upon execution of revised Hourly Rates for this Agreement in Subsequent Terms, if at all, all Service Work Orders currently authorized shall remain unchanged for the balance of their stated scope and duration. For any Service Work Orders currently authorized but delayed through no fault of Consultant for ninety (90) calendar days past the effective date of new Hourly Rates, then Consultant may request a revised Service Work Order valuation and reauthorization from the Judicial Council Project Manager so long as such changes do not exceed the limits stated above.

END OF EXHIBIT D



Date: [Date] _____

From: [Project Manager Name] _____
[Address] _____
[Phone] _____
[Email] _____

Project: [Project Title] _____

SWO: [SWO Number] _____

The Judicial Council of California requests that you provide a Proposal for the above referenced Project per the Services described below.

The Work was discussed on [Date] with the following individuals:

- [List contact name, company, and email/phone number here]
- [List contact name, company, and email/phone number here]
- [List contact name, company, and email/phone number here]

Consultant Proposal Is Due on or Before: [Time and Date]

Proposed Project Schedule: [Start/End Dates]

Instructions: Describe the requested Services and requirements for the Work *in detail* below in collaboration with Consultant(s). In the description, specify the exact scope of Work to be performed, identify all location(s) at which the Services will be provided, and indicate all documents (i.e. drawings, spec sheets, photos, etc.) that are or will be provided by the Judicial Council for the Project. Include all applicable phasing and schedule constraints including specific milestones. If detailed schedules and/or progress reports are required, include frequency, type(s) of information needed and any particular format to be used. Attach additional pages as needed. Be inclusive and thorough as the description will be relied on as a contractual obligation.

Services Requested:

[Insert detailed narrative of Project/Work being requested here]

The resulting Service Work Order is expected to be priced according to the following Pricing Methodology (check ONE):

- Lump Sum Basis Time and Materials Basis

END OF EXHIBIT E



Date: [Date]

Judicial Council PM: [Project Manager Name] _____
 [Address] _____
 [Address] _____
 [Phone] _____
 [Email] _____

Consultant PM: [Project Manager Name] _____
 [Company] _____
 [Address] _____
 [Phone] _____
 [Email] _____

Project: [Project Title] _____

SWO: [SWO Numbers] _____

Agreement No.: [Master Agreement Number] _____

SWO Start/End Dates: [Start/End Dates] _____

Agreement Expiration: [MA Expiration Date] _____

This Service Work Order will be priced according to the following Pricing Methodology (check ONE):

- Lump Sum Basis Time and Materials Basis

The Services Request Form (Exhibit E) that corresponds to this Consultant Proposal Form (Exhibit F) is hereby incorporated.

Does Consultant agree to provide the Services detailed in said Services Request Form? Yes No

Service Work Order Subtotals and Service Work Order Grand Total:

Service Types <i>Consult Exhibit D to determine what Services are available under this particular Agreement.</i>	Subtotal (Breakout Below)
General [Insert Type of Services] Services	\$
[Insert Service Type and name of Subconsultant]	\$
[Insert Service Type and name of Subconsultant]	\$
Travel and Living Expenditures (Only if applicable and approved by Judicial Council PM)	\$
Reimbursables (Only if applicable and approved by Judicial Council PM)	\$
Service Work Order Grand Total	\$

Schedule of Deliverables and Milestone Payments: (If Applicable)

Description of Deliverable	Due Date	Milestone Payment Amount
		\$

Service Types and Job Titles:

Hourly Service Types	Job Titles	Hourly Rate	# of Hours	Amount
General Environmental Consulting Services	Principal			
	Project Manager			
	Senior Technician/Engineering Technician			
	Technician			
	Clerical/Administrative Assistant			
	Geologist/Hydrogeologist			
	GIS/CADD Specialist			
	Certified Industrial Hygienist			
Fixed Price Services		Price	Quantity	Amount
Phase 1 Environmental Site Assessment				
[Description]				
Travel and Living Expenditures (Estimated; If Applicable)		Purpose		Amount
[Job Title]	[Name, if known]			
[Job Title]	[Name, if known]			
Reimbursable Items (Estimated; If Applicable)		Price	Quantity	Amount
[Description]				
[Description]				
Subconsultant Administrative Charge (If Applicable)		Rate	Charge	Amount
[Name of Subconsultant/Services Description]				
[Name of Subconsultant/Services Description]				
SERVICE WORK ORDER GRAND TOTAL:				\$

END OF EXHIBIT F