



Attachment A

CM at Risk Agreement for Preconstruction and Construction Phase Services

New San Diego Courthouse

Superior Court of California

County of San Diego



ADMINISTRATIVE OFFICE
OF THE COURTS

OFFICE OF COURT CONSTRUCTION
AND MANAGEMENT

TABLE OF CONTENTS
CM@RISK CONTRACT

STANDARD AGREEMENT

JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS

AGREEMENT NUMBER
FEDERAL EMPLOYER ID NUMBER

THIS AGREEMENT is made and entered into this ___ day of ____ (“Effective Date”), in the State of California, by and between the parties identified below.

In this agreement (the “Agreement”), the term “Contractor” refers to Contractor and the term “AOC” refers to the Judicial Council of California, Administrative Office of the Courts.



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

As further set forth further in Exhibit A, the Statement of Work, the Contractor shall, as authorized, provide Preconstruction Services and Construction Management at Risk services with a maximum not to exceed price for the _____.

The Work to be performed under this Agreement will be authorized in four (4) phases: Acquisition and Feasibility Studies Phase, Preliminary Plan Phase, Working Drawing Phase, and Construction Phase. By entering into this Agreement, the AOC authorizes the Acquisition and Feasibility Studies Phase. The AOC has the sole and unilateral right to authorize the Preliminary Plan Phase, Working Drawing Phase and Construction Phase, and said authorizations shall be made, in the form of an Amendment to this Agreement authorizing the appropriate Phase and funding specified herein, which shall be signed by the Contractor.

The Work is hereby authorized and funded through performance of the Acquisition and Feasibility Studies Phase, for the firm fixed price as set forth in Exhibit B, Payment Provisions.

This Agreement shall commence upon the Effective Date, as set forth above, and shall complete upon final payment and release of final retention by the AOC.

AOC’S SIGNATURE	CONTRACTOR’S SIGNATURE
Judicial Council of California, Administrative Office of the Courts	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc.)</i>
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING Grant Walker Senior Manager, Business Services	PRINTED NAME AND TITLE OF PERSON SIGNING
ADDRESS 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS

Administrative Office of the Courts Use Only


Fund Title	Program/ Category	Item	Chapter	Statute	Fiscal Year	Object of Expenditure	Amount
Amount Encumbered by this Document:			Prior Amount Encumbered for this Contract:			Total Amount Encumbered to Date:	
\$0.00			\$0.00			\$0.00	
I hereby certify upon my own personal knowledge that budgeted funds are available for the period of the expenditure stated above.							
SIGNATURE OF ACCOUNTING OFFICER 						DATE	

Exhibit A of Attachment A

STATEMENT OF WORK

.1. Project Description

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

.2. Definitions

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

- A. **ACCEPTANCE:** is the written acceptance issued by the AOC after the Contractor has completed a deliverable, submittal, phase, or other contract requirement, in compliance with this Agreement.
- B. **ACQUISITION AND FEASIBILITY STUDIES PHASE:** is a pre-design phase that typically includes construction planning, project delivery planning, Program verification, site capacity studies, utilities and topographic surveys, and geotechnical investigation.
- C. **AOC (State):** is the Judicial Council of California, Administrative Office of the Courts.
- D. **ARCHITECT or ENGINEER:** The architect, engineers and other professional consultants under contract to the AOC to provide design and construction documentation, and construction administration services for the project.
- E. **BASIC SERVICES:** means and includes Services of a general nature that shall be performed and provided throughout all Phases of this Agreement.
- F. **BID PACKAGE:** is a set of documents that contains the Statement of Work, specifications, a request for price, required schedule, drawings, and General and Supplementary conditions for a portion of the construction work.
- G. **CEQA:** is the California Environmental Quality Act (Public Resources Code sections 21000 *et seq.* and its implementing guidelines, Title 14, California Code of Regulations, sections 15000 *et seq.*), as amended.
- H. **CONSTRUCTION DOCUMENTS:** are approved final working drawings and

specifications, and the General Conditions of the Contract for Construction, including General, Supplementary and other Conditions as may be developed for the Project, that set forth in detail all of the requirements for construction of the entire Project.

- I. **CONSTRUCTION MANAGER AT RISK (CM at Risk):** is the Contractor selected to review and participate in the production of the Construction Documents and who agrees to perform the work identified in the Contract Documents. The Contractor shall solicit trade bids from trade contractors on a competitive basis and enter into contracts with these trade contractors to perform their trade work. The term "Contractor" means the Contractor or the Contractor's representative.
- J. **CONSTRUCTION PHASE:** is the entire construction period for the Project and encompasses pre-construction-start meetings and ends with Final Acceptance by the AOC of all punch list items.
- K. **CONSTRUCTION BUDGET:** is the budget amount established by the AOC that represents the maximum authorized cost for the Direct Cost of the construction work, FF&E (modular and free-standing furniture, furnishings, and equipment), escalation, insurance, Contractor's Construction Phase Services and Contractor (CM at Risk) Change Order Contingency. The Construction Budget does not include fees for professional architectural and engineering services, AOC inspection, testing and inspection services, or AOC contingency.
- L. **CONTRACTOR (CM at Risk):** is the individual, partnership, corporation, association, joint venture, or any combination thereof, who has entered into a contract with the AOC to do the Work, identified as such in the Agreement, and referred to throughout the Contract as if singular in number. The Contractor is selected to review and participate in the production of the construction documents and who agrees to perform the work identified in the Contract Documents. The Contractor shall solicit bids from trade subcontractors on a competitive basis and enter into contracts with these subcontractors to perform their trade work. The term "Contractor" means the Contractor or the Contractor's representative.
- M. **CONTRACTOR (CM at Risk) CHANGE ORDER CONTINGENCY:** is the contingency identified in the Agreement which is to be used by the Contractor, upon AOC review, to pay for extra work due to conflicts, ambiguities or omissions in the Contract Documents or in the subcontractor bid packages. The contingency amount is included in the GMAX.
- N. **CONTRACT SUM:** is the Contract Sum stated on the Coversheet as the "Total Amount Encumbered to Date", and includes any authorized adjustments made by Change Order, and is, at all times during the term of the Contract, the total amount payable by the State to the Contractor under the Contract Documents for all goods, services, and expenses rendered or to be rendered under the Agreement.
- O. **COUNTY:** The County of San Diego.

- P. COURT: Superior Court of California, County of San Diego.
- Q. COVERSHEET: is the face page of the Agreement that includes the AOC as the contracting Entity, and also includes the “Total Amount Encumbered to Date.”
- R. DELIVERABLE: means and includes any tangible item provided or to be provided under this Agreement. A Deliverable does not include Services.
- S. DESIGN DOCUMENT(s): mean and include written documents specifying the attributes, characteristics, and requirements of the building to be constructed, including its site, as specified in Exhibit G, the Project Program and as further developed and elaborated upon by the AOC’s Architect or Engineer throughout the design process described in this Agreement.
- T. DIRECT COST: shall mean costs necessarily incurred by the Contractor in the proper performance of the work in the construction phase, as set forth in Article 6.7.1 of Exhibit H, General Conditions of The Contract For Construction.
- U. ENERGY EFFICIENCY MEASURES: are elements of the design that minimize energy consumption, integrating passive and active design elements, while meeting the operational needs of the facility.
- V. FLOOR AREA: is a measurement of the design using methods and definitions set forth in the Building Owners and Managers Association publication titled “Gross Areas of a Building, Methods of Measurement © 2009” or such other standards as may be adopted by the AOC.
- W. FURNITURE VENDOR is a third party under contract with the AOC, if so retained, which may be responsible for providing furniture and equipment specifications, and for supplying and installing furniture and related items under a separate agreement (the “Furniture Procurement and Installation”) agreement.
- X. General Conditions of the Contract for Construction: is the AOC Document Exhibit H, General Conditions of The Contract For Construction (Document 00700), which is a part of the Contract between the AOC and the Contractor that determines the roles and responsibilities of the various parties during the Construction Phase.
- Y. GUARANTEED MAXIMUM PRICE (GMAX): is the maximum price that the AOC and the Contractor agree upon as payment for managing and for supplying and installing all the work as shown in the completed Construction Documents. The GMAX is the sum of the direct costs of the Contractor for construction of the Project, General and Supplementary Conditions, Performance and Payment Bonds, Contractor fee for construction, Contractor overhead and profit, and Contractor (CM at Risk) Change Order Contingency. Contractor Preconstruction fees, fees for professional architectural and engineering services, inspection, testing services, modular and freestanding furniture (unless otherwise included), insurance if not provided through an AOC provided owner controlled insurance program (OCIP), and AOC contingency are not included in the GMAX.

- Z. LEED: is The Leadership in Energy and Environmental Design (LEED) Green Building Rating System™ of the United State Green Building Council (USGBC), a nationally accepted benchmark for the design, construction, and operation of high performance green buildings.
- AA. MASTER PROJECT SCHEDULE: means a schedule document provided by the Contractor as specified in Exhibit A, Article A.3.
- BB. NIC (NOT AUTHORIZED IN CONTRACT): means that the Services for a particular Phase of the Work have yet to be authorized. Services so identified are within the scope of this Agreement, provided that the AOC authorizes said Phase.
- CC. PHASE: is a distinct portion of the Work to be provided under this Agreement, as specified in the Statement of Work.
- DD. PRE-SCHEMATIC / STUDY PHASE: is a pre-design phase that typically includes program development and security risk assessment.
- EE. PRELIMINARY PLAN PHASE: is the initial design phase, typically developed in two distinct stages, Schematic Design and Design Development.
- FF. PROJECT: means and includes the Work specified this Agreement, as necessary to provide for the construction specified in Exhibit G, Project Program.
- GG. PROJECT REQUIREMENT(S): means and includes the written requirements pertaining to the Project that are provided in Exhibit G, the Project Program.
- HH. RECORD DOCUMENTS: are the Construction Documents, amended to show the Project as it was constructed. Record Documents include any significant changes or clarifications to the Construction Documents resulting from the construction process.
- II. SERVICE: means and includes obligations that are performed or are to be performed under this Agreement. A Service may or may not result in the provision of Deliverable(s).
- JJ. STATE (AOC): is the Judicial Council of California, Administrative Office of the Courts.
- KK. STOP SERVICES ORDER: is a written notice, delivered in accordance with this Agreement, by which the AOC may require the Contractor to stop all, or any part, of the Services under this Agreement, for the period set forth in the Stop Services Order. The Stop Services Order shall be specifically identified as such and shall indicate that it is issued pursuant to the Stop Services provision in section C.12 of Exhibit C.
- LL. SUBCONTRACTOR: is any third party, individual, partnership, corporation, association, joint venture, or any combination thereof, that has entered into a

contract with the Contractor or who serves as an agent of Contractor in performance of the Work.

- MM. SUSTAINABLE BUILDING MEASURES: are elements of the design that result in minimizing pollution, resource waste, and environmental impacts associated with facility construction operation and, if applicable, demolition.
- NN. TUNNEL: is a utilitarian secure horizontal and vertical underground structure, which is to be used for secure movement of people, connecting the central holding of the court building with the County Main Jail, which will be part of the Project if construction proceeds at the Downtown Civic Center Site following completion of CEQA review.
- OO. WORK: means and includes the provision of Services and/or Deliverables under this Agreement.
- PP. WORKING DRAWING PHASE: is a phase that includes working drawings, technical specifications, addenda, general conditions, supplementary conditions, bidding requirements, the bid proposal developed to set forth in detail all aspects of the design, function and construction, and the bidding of the Project.

.3. Schedule Of Work

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

.4. Basic Services

A. General

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

Contractor agrees to:

1. Provide sufficient number(s) of specialists and other workers with requisite skills and experience as appropriate for the successful completion of the Project.
2. Perform the Services in collaboration with the AOC, the Court, the AOC’s selected Architect(s) and/or Engineer(s), and other third parties as identified by the AOC including, but not limited to, the County.
3. Prepare, organize, and distribute monthly progress reports in a timely

manner in a format acceptable to the AOC.

4. Conduct Project Status Meetings with the AOC, Court representatives, other third party professionals and consultants working with the AOC, and/or State or local agencies as needed and directed by the nature of the Work or as directed by the AOC during the course of the Work. The frequency and location of the Project Status Meetings will be as agreed with the AOC, however, Project Status Meetings shall be held not less than on a monthly basis. The location of the meetings will typically be in the locale of the Project or at the AOC's Burbank or San Francisco offices, unless otherwise agreed.
5. Review and analyze drawings and documents prepared by AOC consultants, and make recommendations to the AOC regarding such documents.
6. Review the geotechnical investigation and property/utility survey on the selected site as directed by the AOC.
7. Develop, maintain, and regularly update a Master Project Schedule of Project activities as applicable to the Project. The Master Project Schedule shall include, but not be limited to: Project design and pre-construction activities; due dates of contractual obligations; Project meetings; dates for submission for required milestones; CEQA mitigations, actions, and deadlines; Peer and Constructability Reviews; review times assumptions; dates for AOC or agency submittals, reviews, and/or approvals including the Interim Facilities Panel, Judicial Council, Department of Finance, and Public Works Board review and approval meetings; Peer Reviews; Access Compliance and State Fire Marshal review submittals and response to comments; 'back-check' submittals and approvals; bidding activities and approvals and the development of the GMAX; Notice to Proceed for Construction Phase; activities and milestones during construction; Commissioning Activities; Furniture, Fixtures and Equipment ordering, delivery, outfitting, and installation; technology, communications, and A/V equipment ordering, delivery, outfitting and installation; punchlist preparation, punchlist work, and punchlist sign-off; move-in, occupancy, and initiation of Court operations; and Project Closeout. This schedule shall be reviewed with the AOC at all project meetings, must be approved by the AOC, and shall be updated by Contractor at each submittal. Contractor shall incorporate appropriate detailed design phase information from the schedule prepared by the Architect. The Master Schedule shall be in a Gantt chart format prepared using the latest version of Primavera, unless otherwise agreed by the AOC. The Contractor shall provide an updated Master Project Schedule to the AOC within ten (10) days of commencement of each Phase and at other times when significant changes are made to the schedule or as requested by the AOC.

8. Provide all Deliverables and Project correspondence in Adobe Acrobat.pdf format, Microsoft Office format, and AutoCAD.dwg format, as indicated in this Agreement, or as agreed upon with the AOC, throughout the term of this Agreement.
9. Provide estimated construction cost breakdowns of the Project at times indicated and at intervals consistent with the stage of development of the Architect's drawings and specifications.
10. Attend milestone review meetings with the AOC and Project team immediately before commencing each Project phase listed in section A.4 of this exhibit. At the milestone review meetings, assist the AOC in identifying goals for the upcoming work, examine the performance of the Project team against the goals in the preceding phase, and propose corrective measures as necessary or appropriate.
11. Conduct value analysis and constructability reviews and peer review workshops; provide documentation of the findings and action items from each activity; maintain a database of actions taken or resolution of each finding or action item. Participate in and contribute to Risk Analysis workshops conducted by the Architects during each phase of the Project.
12. Document and Consult with the AOC if the Contractor becomes aware of deficiencies, errors or omissions in the Construction Documents for the Project developed by the Architect or the AOC regardless of whether the deficiency became apparent before or after final approval of the Construction Documents by the AOC, Architect, and the Contractor at the end of the Working Drawings Phase and suggest satisfactory methods for correction of such deficiencies.
13. Assist the Architect in providing Construction Documents which, at a minimum, reflect compliance with AOC standards and the Project Programs; and assist the AOC by advising of any perceived non-conformance to applicable statutes, building codes, regulations, rules, guidelines, and requirements.
14. Obtain (where responsible), and monitor, construction-related approvals, including, but not limited to, written approvals by the State Fire Marshal, California Corrections Authority, and the Division of the State Architect ("DSA") Access Compliance Unit.
15. Provide all necessary materials, facilities, and ancillary services (such as cleanup) necessary for provision of the Services not being provided by the Subcontractor(s) when necessary for the performance of the Services during construction and for completion of the construction.
16. Provide a written description of Contractor's quality control program ("QC Program") commencing with the Preliminary Plan Phase. The QC Program

shall be designed to advance the goal of achieving a quality Project, within schedule and budget, in compliance with the terms of this Agreement. Contractor shall submit the QC Program to the AOC within 20 days of commencement of each phase. The AOC shall have the right to review the QC Program, and use of said program is subject to the AOC's written approval. At a minimum the following shall apply:

- (i) The QC Program shall cover all activities affecting quality performed by Contractor and Contractor's Subcontractors.
- (ii) The Contractor shall provide the AOC access to its records documenting implementation of the QC Program ("QC Records"). Contractor shall retain and maintain identifiable, legible, and retrievable QC Records for the duration of the Project. Contractor shall submit QC records to the AOC upon the completion of each phase of the work.
- (iii) As part of its QC Program, and at a minimum, the Contractor shall ensure that all drawings and specifications shall be reviewed and checked by at least one professional trained in the same discipline as the professional who prepared the drawings and specifications, with the goals of:
 - (a) Advising AOC of the completeness of the drawings and specifications;
 - (b) Assuring a high level of construction quality; and
 - (c) Avoiding change orders to construction contracts, which are caused by conflicts, ambiguities, inaccuracies, and deficiencies in the construction drawings and specifications.
- (iv) The QC Program will identify the specific methodology that will be used to cross-check drawings of the various disciplines for completeness and accuracy at each submittal stage.

17. The Project is being designed for sustainability and to the standards of LEED 2.2 "Silver" rating or better including full participation in the formal LEED certification process from the design through construction phases. The contractor is to provide required, full documentation for LEED certification during construction phase. Submittals to USGBC, as required for certification, shall be included in the scope of work of the Architect. The project will participate in the sustainable design incentive programs sponsored by the public utility company under the responsibility for coordination by the Architect.

B. Acquisition and Feasibility Studies Phase:

1. During this phase Contractor shall, in coordination with the AOC, the

Architect or Engineer and other third parties (as necessary and authorized by the AOC), provide the following:

- (i) Assistance and information for the CEQA study prepared by the AOC, including but not limited to conceptual definition of construction impacts, amount of excavation, spoils off-haul, fill import, quantity of truck traffic, extent of construction staging areas, and construction equipment types to be used. Review and provide recommendations on CEQA study draft documents related to construction impact and possible mitigation measures.
- (ii) Fast Track Study: A feasibility study of alternative methods for bidding and construction aside from the traditional process initially outlined for the Project, including but not limited to: fast-track multiple sequential bid packages; design-assist or design-build (for certain project components); or other methods, as directed by the AOC, to decrease Project completion time, reduce duplication of efforts and increase construction quality. The study shall document: the objectives, benefits, and risks of alternative(s); the best practices in the construction industry related to the alternative(s); and strategies for funding and administrative approvals. The study shall include estimated savings in time or money for each alternative bidding and construction method. The study shall be provided in printed and electronic forms, in a format agreed to by the Contractor and AOC. Assist the AOC in presentations of the feasibility study results to decision makers.
- (iii) Participate in and contribute information to a feasibility study, conducted by the Architect, of the possible provision of chilled water to the Project from a local district cooling utility.
- (iv) Tunnel: A construction planning study for the Tunnel, including but not limited to alternative approaches to the contracting and construction methods, scope definition, and delineation of bid packages.
- (v) Project Scope Confirmation: After reviewing the documents prepared by the Architect including but not limited to the Program, utilities and property survey, and initial geotechnical study, for completeness and coordination, the Contractor shall make recommendations to the AOC on necessary additions or amendments to the Project Description (Exhibit G to this Agreement) in order that the entire scope of the design and construction for the Project, as understood at conclusion of the Acquisition and Feasibility Studies Phase, is accurately recorded.
- (vi) Cost Model and Initial Project Schedule: Based upon the amended Project Description, the Program, results of the study of alternate

bidding and construction methods, and other Project information prepare a conceptual cost estimate for the total construction and an initial Master Project Schedule. Contractor shall compare their conceptual cost estimate with the conceptual cost estimate independently prepared by the Architect for this Phase and endeavor to resolve discrepancies in the estimates to the satisfaction of the AOC, and with the goal that both cost estimates are less than or equal to the AOC's Construction Budget.

2. Upon successful completion all deliverables and services of the Acquisition and Feasibility Studies Phase, the AOC will issue a written communication that the Acquisition and Feasibility Studies Phase is complete.

C. Preliminary Plan Phase: (NIC)

1. During this phase Contractor shall, in coordination with the AOC, the Architect or Engineer and other third parties (as necessary and authorized by the AOC), provide the following:
 - (i) Constructability Reviews: After reviewing all design documents for completeness and coordination, the Contractor shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, and phasing, to ensure efficient construction. Constructability Review shall be conducted on the 100% Schematic Design and 100% Design Development documents.
 - (ii) Tunnel Bidding: review and comment on design-build documents prepared by the Architect, for completeness and clarity; identification and pre-qualification of tunneling subcontractors; Subcontractor Bid Package services, as described in Section A.4.D.4 of this Agreement, for design-build portions of the Tunnel.
 - (iii) Value Analysis: Contractor shall conduct value analysis workshops at 100% Schematic Design and 100% Design Development stage. Contractor is responsible for confirming, at the end of each stage, in writing to the AOC, that all Project and construction costs have been identified. Contractor shall lead the activities of the AOC, Architect, and other project participants in a value analysis and verify the cost-effectiveness of the design. Contractor shall demonstrate to the satisfaction of the AOC and shall certify in writing to the AOC, that the Design Documents and/or Construction Documents, at the end of each of these stages, are in conformance with the requirements of the Project Program and quality standards set by the AOC, and that Contractor's current total cost estimate for construction of the Project is equal to or less than the Construction Budget.

- (iv) **Cost Control Management:** Contractor shall prepare, based upon Design Documents prepared by the Architect or Engineer and identified by the AOC, its own cost estimate of the total construction cost of the Project at several times, as specified in this SOW. Contractor shall compare its cost estimate with the cost estimate independently prepared by the Architect or Engineer for these same design documents and endeavor to resolve discrepancies in the estimates to the satisfaction of the AOC, and with the goal that both cost estimates are less than or equal to the AOC's Construction Budget. Contractor shall recommend, if necessary, appropriate modifications of the Design Documents to lower both the Contractor's and the Architect or Engineer's independent estimates to amounts equal to or lower than the Construction Budget. Contractor's cost estimates shall be provided according to Uniformat standards and as specified below, and arranged in Uniformat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:
- (a) 50% and 100% Schematic Design and 50% and 100% Design Development; Uniformat format elemental categories and detailed to Level 3;
 - (b) Each cost estimate shall:
 - (1) Reflect the best professional estimate of actual costs anticipated.
 - (2) Establish internal estimating allowances, consistent with good professional practice, appropriate to the phase of development. Larger allowances are assumed held at early phases gradually diminishing to zero at completion of final cost estimate.
 - (3) Adjust reported cost values to contract ENR CCCI value. Do not advance costs to the estimated start of construction, mid-point of construction or to present day values unless otherwise directed by the AOC. Questions regarding the calculation of ENR CCCI values shall be reviewed with the AOC Project Manager.
- (v) Authorization to proceed with each succeeding step in the design process is contingent upon the AOC's written Acceptance of both the Architect or Engineer's and Contractor's independent cost estimates, which when evaluated separately, must both be equal to or less than the Construction Budget.
- (vi) **Life Cycle Cost Analysis:** A Life Cycle Cost Analysis shall be performed/updated on design alternatives for building enclosure,

HVAC, and Electrical (normal and low-voltage) systems at 100% Schematic Design and 100% Design Development, and submitted to the AOC.

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

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

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

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

D. Working Drawing Phase: (NIC)

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

(i) Value Analysis: Conduct value analysis workshops at 50% and 90% Working Drawing stages to confirm that all project and construction costs have been identified. Lead the activities of AOC, Architect, and other project participants in the value analysis and verify the cost-effectiveness of the design and the conformance of the design or construction documents to the Project budget program and quality standards set by the AOC.

(ii) Life Cycle Cost Analysis: A Life Cycle Cost Analysis shall be performed/updated on design alternatives for building enclosure, HVAC, and Electrical (normal and low-voltage) systems at 50% Working Drawing stage, and submitted to the AOC.

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

- Initial cost of system;
 - Energy consumption costs, based on the energy analysis prepared by the Architect;
 - Maintenance and custodial costs;
 - Life expectancy (may require life expectancy of subsystems);
 - Replacement costs (if applicable);
 - Total cost of ownership over twenty-five (25) years.
- (iii) Constructability Reviews: After reviewing all design documents for completeness and coordination, the Contractor shall make recommendations and provide information and cost comparisons regarding construction materials, methods, systems, and phasing, to ensure efficient construction. Constructability reviews shall be conducted on 50% and 90% Working Drawing documents.
- (iv) Cost Control Management: Contractor shall prepare, based upon Design Documents prepared by the Architect or Engineer and identified by the AOC, its own cost estimate of the total construction cost of the Project at several times, as specified in this SOW. Contractor shall compare its cost estimate with the cost estimate independently prepared by the Architect or Engineer for these same design documents and endeavor to resolve discrepancies in the estimates to the satisfaction of the AOC, and with the goal that both cost estimates are less than or equal to the AOC's Construction Budget. Contractor shall recommend, if necessary, appropriate modifications of the Design Documents to lower both the Contractor's and the Architect or Engineer's independent estimates to amounts equal to or lower than the Construction Budget. Contractor's cost estimates shall be provided according to Unifomat standards and as specified below, and arranged in Unifomat format (a building systems organization format). Construction cost estimates shall be developed/updated and submitted as a part of each of the following submittals:
- (a) Working Drawings;
- (1) 50% milestone; Unifomat format elemental categories and detailed to Level 4;
 - (2) 90% milestone; Unifomat format elemental categories and detailed to Level 4 and additionally in CSI format.

Each cost estimate shall:

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

of the Project.

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

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

- (i) Bid packages shall be logical, inclusive and distinct.
- (ii) Bid packages shall be sufficiently comprehensive to secure competitive bids for provision of all of the Construction Phase work of the Project, as documented in the approved Construction Documents.
- (iii) Each bid package shall include a statement of work specifying all work to be performed by that subcontractor for the portion of the work as shown in the Construction Documents to be solicited, and shall include a schedule or due dates that requires the performance of the work within the timeframe envisioned for such work in the Master Project Schedule for the Construction Phase of the Project. Bid packages shall only solicit fixed price bids or Time and Materials bids with a fixed not-to-exceed amount.
- (iv) Individual packages shall, if the AOC so directs, include a number of additive or deductive alternates acceptable to the AOC. If the bid packages developed include alternates that require the selection and use of particular other alternate(s) in order to ensure the constructability of the Project, the Contractor shall identify them, in writing, to the AOC.
- (v) Each bid package shall, at a minimum, include any flow down provisions of this Agreement, including but not limited to Article 4 and Article 11, section 11.2 of Exhibit H, General Conditions Of The Contract For Construction (Document 00700) applicable to the Subcontractor's performance for the Contractor.
- (vi) If the AOC elects to provide the Construction Phase insurance by an owner controlled insurance program (OCIP) each bid package shall include a description of the OCIP and the subcontractor's responsibilities to comply with its provisions.
- (vii) If appropriate, the Master Project Schedule will be provided in trade

Contractor bid package. The Trade bid package shall include sufficient information regarding the timing of work being bid to ensure that the Project can be constructed within the approved Master Schedule for the Construction Phase of the Work, and shall provide terms and conditions that will inform prospective Subcontractors that they will be bound to performance within such time periods.

- (viii) Contractor may include, in the bid packages, legal terms and conditions standard to the Contractor for the type and duration of the Subcontractor engagements contemplated by this Agreement, however, such terms and conditions shall not be such that they shall be considered onerous and likely to result in higher bid prices.
- (ix) All bid packages shall be provided to the AOC as a single deliverable, and are subject to review by the AOC.
- (x) Notwithstanding AOC's review of the bid packages, Contractor warrants the bid packages developed shall conform to the provisions of this Agreement. Any omissions, errors, or ambiguities in the bid packages shall be construed against the Contractor and in favor of the AOC.

5. Bidding of the Project: Upon written approval of the AOC, Contractor shall competitively bid the subcontractor bid packages and shall comply with the applicable state statutes and the Exhibit H, General Conditions Of The Contract For Construction (Document 00700) and the Supplementary Conditions as agreed upon by the AOC and Contractor. Contractor shall:

- (i) Advertise in trade venues acceptable to the AOC, including venues in the local Project area. Local advertising and other outreach should encourage participation of local subcontractors and vendors in the prequalification process. The Contractor shall solicit qualifications from a sufficient number of subcontractors for each bid package to ensure at least three (3) qualified subcontractors result from this solicitation. Contractor shall prequalify at least three (3) qualified subcontractors for each bid package, and present such evidence of prequalification to the AOC.
- (ii) When the AOC has agreed in writing that at least three (3) Qualified Subcontractors for a bid package have been selected, issue said bid package to the prequalified subcontractors.
- (iii) Receive bids for bid packages. Verify completeness of each bid submittal. Verify that the proposer has agreed to be bound by the flow down terms and provisions. Verify that the proposer has agreed to perform with in a period of time that will allow completion of the Project in accordance with the Master Schedule.

Provided that the bid complies with all of the above, the bid shall be considered a conforming bid. If insufficient conforming bids are received, unless otherwise directed in writing by the AOC, Contractor shall repeat steps (i) and (ii) above until three (3) conforming bids have been received.

- (iv) When sufficient conforming bids have been received, the Contractor, under the observation of the AOC and the Architect, shall identify such combination of bids and alternates as the AOC may elect to accept that has lowest cost while ensuring the constructability of the Project.
- (v) If the combination of bids and AOC-accepted alternates and all direct costs of the Contractor for construction of the Project including General and Supplementary Conditions, Performance and Payment Bonds, Contractor fee for construction, Contractor overhead and profit, Allowance for Furniture, Fixtures and Equipment and Contractor (CM at Risk) Change Order Contingency results in a GMAX that is less than or equal to the Construction Budget plus 10%, the AOC shall have the option to proceed with the Construction Phase of the Project. Contractor shall, upon authorization of the Construction Phase by the AOC, provide the Construction Services. Contractor shall warrant the Subcontractor bid packages against ambiguities, conflicts, or omissions, and guarantee to the AOC that the total Project shall be built for the available construction budget where the aggregate of all trade contractor bids, including any authorized alternatives, shall be less than, but close to, the construction budget as may have been modified by the AOC.
- (vi) If the GMAX exceeds the Construction Budget plus 10%, the AOC shall have the option to terminate this Agreement, provide additional funds as required to authorize the Project, or, at the AOC's option and as a negotiated service, have the Architect or Engineer and Contractor repeat the appropriate and necessary activities of the Working Drawings Phase, with the goal of modifying the Design Documents or period of proposed construction to reduce the total cost of the resultant combination of bids and alternates to less than or equal to the Construction Budget. Contractor shall endeavor to mitigate any time lost due to rebids or due to the time needed for the AOC to obtain any additional funding when revising the Master Schedule for the Construction Phase of the Project. This re-bidding process may, if the resultant combination of bids and alternates having the lowest total cost exceeds the Construction Budget plus 10%, be repeated a second time at the discretion of the AOC, and the AOC shall have the same options specified above.

- (vii) If the second re-bid fails to produce a total construction cost less than or equal to the Construction Budget plus 10%, this Agreement may be terminated by the AOC.
 - (viii) In the event of termination, Contractor shall be paid in full for all Services provided through the end of the Working Drawing Phase, and neither party shall have any further claims or liability for damages to the other with regard to the Services so provided.
- 6. Contractor agrees to, upon authorization by the AOC, execute an amendment to this Agreement authorizing performance of the Construction Phase of the Project for a GMAX, as defined in this Agreement.
 - 7. When requested by the AOC, the Contractor will respond to Public Record Act (PRA) requests for all PRA requests initially submitted to the AOC or the Contractor. The Contractor will provide the AOC with documentation of their response to any PRA request.

E. Construction Phase: (NIC)

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

preparation of meeting agenda, preparation of construction procedures for clarifications, change orders, shop drawings, progress payments, field testing and inspection, safety program, OCIP, labor compliance program, and preparation and distribution of preconstruction conference notes.

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

.5. The Tunnel

With respect to the Tunnel only, the AOC and County have, by separate written agreement, agreed that (i) the County will actively participate in the design, development, construction and completion of the Tunnel, and (ii) upon final acceptance of the completed Tunnel by the AOC and County, the AOC will (1) transfer to the County all of its right, title, and interest in and to the Tunnel including all owned, reserved or acquired real property interests on which the Tunnel is located, and (2) assign to the County, without reservation of any kind, this Agreement and all other contracts, subcontracts and other agreements pertaining to the design, development construction and completion of the Tunnel including this Agreement primarily in order to transfer to the County any and all design and construction warranties, indemnities, claims, waivers of recovery and subrogation, additional insured rights, and other contract rights of a similar nature. The County's active participation in the design, development, construction and completion of the Tunnel will include the following: (I) setting program requirements, reviewing and approving development and construction documents for the Tunnel before commencement of construction; (II) performing periodic inspections of the Tunnel during construction; (III) performing a final inspection upon substantial completion of the Tunnel; and (IV) reviewing and accepting final record drawings, warranties, and operations and maintenance manuals. At all times prior to transfer of the Tunnel to the County, as between the AOC and the Contractor, the AOC will be responsible for implementing and coordinating the active participation of the County in the Project described above, provided, however, that the Contractor will at all times cooperate with the AOC and County in that process.

Exhibit A of Attachment A

Schedule of Work: all dates are estimated, refer to Article A.3

Acquisition and Feasibility Studies Phase

Start: June 1, 2010
Complete: August 9, 2010

Preliminary Plans / Schematic Design Phase (NIC)

Start: August 16, 2010
Complete: March 4, 2011

Preliminary Plans / Design Development Phase (NIC)

Start: March 7, 2011
Complete: December 1, 2011

Working Drawings Phase (NIC)

Start: December 5, 2011
Complete: August 6, 2013

Bidding Phase (NIC)

Start: August 7, 2013
Complete: December 1, 2013

Construction Phase (NIC)

Start: December 11, 2013
Complete: March 1, 2016

Exhibit B of Attachment A

PAYMENT PROVISIONS

.1. Contract Amount

The total amount the AOC may pay the Contractor under this Agreement will not exceed the Contract Amount of \$ _____ as set forth in this Exhibit.

A. Compensation – Acquisition and Feasibility Studies, Preliminary Plans and Working Drawing Phase Services

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

- (i) Acquisition and Feasibility Studies Phase \$ _____
- (ii) Preliminary Plan Phase/Schematic Design (NIC) \$ _____
- (iii) Preliminary Plan Phase/Design Development (NIC) \$ _____
- (iv) Working Drawing Phase (NIC) \$ _____

B. Compensation – Construction Phase Services (NIC)

1. The compensation for all Services with regard to this Phase shall be at the maximum price that follows:

- (i) Direct Cost of the work (estimated) \$ 444,910,000
(See Exhibit H, Article 6.7.1.)

Construction phase services
(See Exhibit H, Article 6.72.
Based on _____ % x \$ _____
estimated Direct Cost of the Work)

Contractor (CM at Risk) Change Order Contingency \$ 14,850,000

Guaranteed Maximum Price
(sum of Direct Cost, construction phase
services, and Contractor (CM at Risk) Change Order Contingency)
\$ _____

- (ii) In the event that Direct Cost of work as result of accepted bids and

alternates varies from the amount shown in (i) above, only the Contractor (CM Risk) Change Order Contingency shall be recalculated by the same percentage as stated above. The Construction phase services fee shall remain unchanged.

C. Allowance for Permit Fees

1. The Contractor shall secure and pay for, and the AOC shall compensate Contractor for the permits, fees, and services specified as "Paid by State" in the Miscellaneous Project Costs section of Attachment C.

D. Payment of Liquidated Damages

1. The liquidated damages for the Contractor's failure to complete Work of the Project within the construction duration as agreed and determined at the commencement of the Project pursuant to Exhibit H, General Conditions of The Contract for Construction (Document 00700) Section 7.3 Liquidated Damages is \$6000.00 per calendar day.

.2. Method of Payment

A. Method of Payment – Acquisition and Feasibility Studies, Preliminary Plan, and Working Drawing Phase Services

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

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

2. Such invoices shall clearly indicate:
 - (i) The Contract number;
 - (ii) A unique invoice number;
 - (iii) The Contractor's name and address;
 - (iv) Taxpayer identification number;
 - (v) Name of the Phase of the Project being invoiced;
 - (vi) Brief description of the Work performed in the billing period;

- (vii) Percentage of the Phase being billed in the invoice as a percent and in dollars;
- (viii) Amount of Retention to be withheld from the invoice;
- (ix) Net amount to be paid for the invoice;
- (x) Percentage of the total Phase billed to date, expressed as a percent and in dollars;
- (xi) Total amount of Retention withheld to date;
- (xii) Preferred remittance address, if different from the mailing address;
- (xiii) The original signature of the authorized representative of the Contractor.

3. Retention:

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

Such invoices shall clearly indicate:

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

Contractor.

B. Method of Payment - Construction Phase

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

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

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

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

- E. Payment shall be made by the AOC to the Contractor at the address specified on the invoice.

- F. The AOC may withhold full or partial payment to the Contractor in any instance in which the Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

.3. Disallowance

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

.4. Payment Does Not Imply Acceptance of Work

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

.5. Release of Claims

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

identified by the Contractor as outstanding as of the date of Contractor's submission of Contractor's final application for payment. Contractor's failure to identify any such claims shall operate as a release of all claims.

END OF EXHIBIT B

Exhibit C of Attachment A

GENERAL TERMS AND CONDITIONS

.1. Effective Date of Agreement

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

.2. Submitting False Claims; Monetary Penalties

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

.3. Responsibility for Equipment and Real Property

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

.4. Independent Contractor

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

compliance with social security, withholding, any and all employee benefits, and all regulations governing such matters.

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

.5. Contractor's Key Personnel

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

.6. Standard of Care

The Contractor, its officers, agents, employees, Subcontractors, consultants and any persons or entities for whom Contractor is responsible, shall provide all Services pursuant to this Agreement in accordance with the requirements of this Agreement and in a manner consistent with the standard of care under California law applicable to those who specialize in providing such services for projects of the type, scope, and complexity of the Project. The AOC's Acceptance of any submittals, deliverables, or other work product of the Contractor shall not be construed as

assent that Contractor has complied, nor in any way relieve the Contractor of, compliance with (i) the applicable standard of care or (ii) applicable statutes, regulations, rules, guidelines, and requirements.

.7. AOC's Quality Assurance Plan

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

.8. Subcontracting and Employee Qualifications

- A. The Contractor is prohibited from subcontracting this Agreement or any part of it, except to the Subcontractors set forth in Exhibit E, unless such subcontracting is first approved by the AOC in a written instrument executed and approved in the same manner as this Agreement. An agreement made in violation of this section shall confer no rights on any party and shall be null and void.
- B. When required by this Agreement or if requested by the AOC, the Contractor shall provide documentation that a proposed Subcontractor has been qualified to the satisfaction of the AOC, and is experienced and able to perform that portion of the Services. The Contractor shall require all Subcontractors to comply with the provisions of this Agreement. If requested by the AOC, the Contractor shall provide copies of all Contractors' agreements with its Subcontractors to the AOC. The AOC's review of subcontracts shall in no way relieve the Contractor of any of its responsibilities and obligations under this Agreement.
- C. Contractor shall, in the course of the work, engage only Subcontractors and employees who possess, and will maintain in good standing during the performance of the Services, valid and applicable licenses where the State of California or this Agreement requires that the work to be performed by that Subcontractor or employee must be performed by a licensed person or entity.
- D. The Contractor expressly acknowledges that its Subcontractors are not third party beneficiaries of this Agreement.

.9. Intentionally Omitted

.10. Indemnification

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

.11. Insurance

A. General Requirements: During the Acquisition and Feasibility Studies, Preliminary Plan Phase and the Working Drawing Phases:

1. The insurance required under this section 11.A shall remain in force until the beginning of the Construction Phase at which time the provisions Article 11 of Exhibit H, General Conditions of The Contract For Construction (Document 00700) will apply.
2. Contractor shall maintain insurance issued by an insurance company or companies that are rated "A-VII" or higher by A. M. Best's key rating guide and that are authorized to do business in the State of California.
3. For all insurance policies required by this Section 11.A, Contractor shall declare any deductible or self-insured retention (SIR). Any deductible or SIR shall be clearly stated on the appropriate certificate of insurance.
4. If self-insured, the Contractor agrees to administer its self-insurance program in a commercially reasonable manner so as to ensure the availability of funds to cover losses required to be insured against by Contractor under the terms of this Section 11.A.
5. The Contractor shall, prior to commencement of Acquisition and Feasibility Studies, Preliminary Plan Phase and Working Drawing Phase Services, provide to the AOC certificates of insurance, on forms

acceptable to the AOC, as evidence that the required insurance is in full force and effect. For the insurance required under the terms of section 11.B.1 and 11.B.2 each certificate of insurance shall specifically provide verification that the State of California, Judicial Council of California, Administrative Office of the Courts, and the their respective elected and appointed officials, judges, officers, employees and agents have been added as additional insureds, but only as respects liability assumed by the Contractor under the terms of this Agreement, or liability arising out of the performance of the Services.

6. The certificates of insurance shall be addressed as follows:

Contract Specialist
Administrative Office of the Courts, Business Services
455 Golden Gate Avenue
San Francisco, CA 94102

7. All insurance shall be in force until the beginning of the Construction Phase. If any of the required insurance expires during the Acquisition and Feasibility Studies, Preliminary Plan Phase or Working Drawing Phase, the Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance or be declared in breach of Contract. The AOC reserves the right to withhold all progress payments until the breach is cured to the satisfaction of the AOC. Renewal insurance certificates must be tendered to the AOC at least 10 following the expiration of the required insurance.
8. The Contractor, and any insurer providing insurance required under the terms of this section 11.B.1 and 11.B.2 shall waive any right of recovery or subrogation it may have against the State of California, Judicial Council of California, Administrative Office of the Courts, and the their respective elected and appointed officials, judges, officers, employees and agents for loss or damage related to the Service, or for any liability arising out of the Services performed by the Contractor under this Agreement.
9. All required insurance policies shall contain a provision that coverage will not be cancelled without 30 days prior written notice to the AOC.
10. The Contractor shall be responsible for, and may not recover from the AOC, any deductible or self-insured retention contained within the insurance.
11. In the event the Contractor fails to keep in effect at all times the specified insurance coverage, the AOC may, in addition to any other remedies it may have, terminate this Contract upon the occurrence of such event, subject to the provisions of this Contract.
12. Any insurance required under this section 11.B.1 and 11.B.2 shall be

endorsed to be primary and non-contributing to any insurance or programs of self-insurance maintained by the State of California or the AOC.

13. The AOC reserves the right to request certified copies of the insurance policies required under the terms of this section 11.A.1.

B. Insurance Requirements for the Preliminary Plan and Working Drawing Phases:

Prior to the commencement of the Acquisition and Feasibility Studies, Preliminary Plan Services and the Working Drawing Services the Contractor shall furnish to the AOC with evidence that the of following insurance is in force:

1. **Commercial General Liability:** Commercial general liability insurance (and if required excess liability or umbrella liability insurance) written on an occurrence form with limits of not less than \$5,000,000 per occurrence and \$5,000,000 annual aggregate for bodily injury and property damage liability combined. The policy shall include coverage for liabilities arising out of premises, operations, independent contractors, products, completed operations, personal and advertising injury liability assumed under an insured contract, and professional services provided in connection with the Acquisition and Feasibility Studies, Preliminary Plan Phase and Working Drawing Phase Services. This insurance shall apply separately to each insured against whom claim is made or suit is brought subject to the insurance policy limit of liability.
2. **Commercial Automobile Liability:** Automobile Liability insurance with limits of not less than \$1,000,000 per accident. Such insurance shall cover liability arising out of the operation of a motor vehicle, including owned, hired, and non-owned motor vehicles, assigned to or used in connection with the performance of the Services.
3. **Workers' Compensation:** Statutory workers' compensation insurance providing coverage for all its employees who will be engaged in the performance of the Services, including special coverage extensions where applicable, and employer's liability insurance with limits of liability of 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.
4. **Professional Liability.** As an alternative to including professional liability insurance within the coverage provided by the Commercial General Liability policy, Contractor may provide separate Professional Liability insurance covering the Contractor's acts, errors or omissions committed or alleged to have been committed which arise out of rendering or failure to render the Services provided under the terms of this Agreement. The policy shall provide limits of not less than \$5,000,000 per claim or per occurrence and \$5,000,000 annual aggregate. If the policy is written on a

"claims made" form, the Contractor 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 activities commence pursuant to this Agreement.

- C. Insurance Requirements for the Construction Phase: refer to Exhibit H, General Conditions of the Contract for Construction (Document 00700).
- D. Neither the AOC, nor any officer or employee of the AOC, shall be liable for any loss or damage that may happen to the Work, or any part thereof; nor to any of the materials or other items used or employed in performing the Work; nor for injury to any person or persons, either workers or the public, for damage to property from any cause which might have been prevented by the Contractor, or the Contractor's employees or agents, against all of which injuries or damages the Contractor shall properly guard. The Contractor shall indemnify and hold harmless the AOC, and all officers and employees of the AOC, from all suits, actions or claims brought for, or on account of injuries or damages received or sustained by any person or persons, by or from the Contractor, the Contractor's employees or agents, in construction of the Work, or by or in consequence of the Contractor's failure to properly guard the same, or by or as a result of any act or omission of the Contractor, the Contractor's employees or agents. In addition to any remedy authorized by law, moneys due the Contractor under the Contract, as considered necessary by the AOC, may be retained until disposition has been made of such suits, actions, or claims for damages; however, this provision shall not be construed as precluding the AOC from enforcing any right of offset the AOC may have to any such moneys.
- E. NO PERSONAL LIABILITY: Neither the AOC, nor any other officer or employee of the AOC will be personally responsible for liabilities arising under the Contract.

.12. Stop Services Order

- A. The AOC may, at any time, by delivery of a Stop Services Order to the Contractor, require the Contractor to stop all, or any part, of the Services pursuant to this Agreement, for a period up to ninety (90) days after the Stop Services Order is delivered to the Contractor, and for any further period to which the parties may agree. The Stop Services Order shall be specifically identified as such and shall indicate it is issued under this section. Upon receipt of the Stop Services Order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Services covered by the Stop Services Order during the period of Services stoppage.
- B. The AOC shall not be liable to the Contractor for any costs, expenses, or loss of profits because of the Stop Services Order issued under this provision unless

expressly specified in the Stop Services Order.

.13. Force Majeure

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

.14. Termination for Cause

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

.15. Termination for Non-Appropriation of Funds

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

.16. Termination for Convenience

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

.17. Actions of the Contractor Upon Termination

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

- A. Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by the AOC.
- B. Not placing any further orders or entering into any subcontracts for materials, Services, equipment or other items.

- C. Canceling any and all existing orders and terminating any and all subcontracts.
- D. Assigning to the AOC any or all of the Contractor's right, title, and interest under the existing orders and subcontracts.
- E. Settling all outstanding liabilities and all claims arising out of the cancellation of orders and termination of subcontracts.
- F. Completing performance of any Services that the AOC designates to be completed prior to the date of termination specified by the AOC.
- G. Providing to the AOC any tangible work product and Data created in the course of the performance of Services hereunder.

.18. Effect of Termination

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

- A. **Payment Upon Termination.** The AOC shall pay for Contractor's Services satisfactorily performed through the effective date of termination; in no event shall Contractor's compensation under this Section exceed the reasonable value of the performed Services, based on the Contractor's progress of the Services performed and the proportionate corresponding value of the Contract Amount. Additionally, the Contractor shall not be entitled to recover its anticipated profit on any work not performed pursuant to said termination.
- B. **Offset and Deduction.** The AOC may deduct from any payment upon termination:
 - 1. All payments previously made by the AOC for Services covered by the Contractor's final invoice.
 - 2. The amount of any undisputed claim that the AOC may have against the Contractor in connection with this Agreement.
 - 3. In instances in which the AOC reasonably determines that the cost of any Services is excessive and if excessive due to costs incurred to remedy or replace defective materials or rejected Services, the AOC will pay the difference between the invoiced amount and the AOC's reasonable estimate of the reasonable cost of replacing the materials or performing the invoiced Services in compliance with the requirements of this Agreement.

.19. Ownership of Data

- A. Everything created, developed or produced in the course of the Contractor's performance of the Services, including, without limitation, all drawings and specifications, reports, records, files, documents, memoranda, schedules,

recordings, information and other materials or data (collectively, "Data") in any form, prepared, or in the process of being prepared, are works made for hire by the Contractor for the AOC and are the sole property of the AOC without further employment or the payment of additional compensation to the Contractor. The AOC owns all of the right, title and interest, in and to the Data, including, without limitation, all trademarks, copyrights, trade secrets, patents, and any and all other intellectual property rights therein (collectively, the "Intellectual Property Rights"). To the extent that any of the Data or the Intellectual Property Rights therein are not works for hire, the Contractor hereby irrevocably assigns its entire right, title and interest in and to all such Data and the Intellectual Property Rights therein, to the AOC. At the AOC's request, the Contractor will assist the AOC in the AOC's prosecution, perfection, and registration of any or all Intellectual Property Rights in the Data. The Contractor irrevocably appoints the AOC as its attorney in fact, coupled with an interest, to take all actions and execute and file all documents that the AOC deems necessary to perfect the AOC's interest and Intellectual Property Rights in the Data as set forth herein.

- B. The AOC shall be entitled to access copies of the Data in whatever form, including, without limitation CAD, all times during the term of the Agreement. Any such Data in the possession of the Contractor or in the possession of any Subcontractor upon completion or termination of the Agreement shall be immediately delivered to the AOC. If any Data are lost, damaged or destroyed before final delivery to the AOC, the Contractor shall replace them at its own expense and the Contractor assumes all risks of loss, damage or destruction of or to such Data.

.20. Proprietary or Confidential Information of AOC

- A. The Contractor understands and agrees that, in the performance of the Services under this Agreement or in contemplation thereof, the Contractor may have access to private or confidential information which may be owned or controlled by, or otherwise in the possession of, the AOC and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to the AOC. The Contractor agrees that all information disclosed by the AOC to the Contractor shall be held in confidence and used only in the performance of the Agreement. The Contractor shall exercise the same standard of care to protect such information as the Contractor uses to protect its own proprietary information and in any case no less than a reasonably prudent person or entity would use to protect its own proprietary data.
- B. It is understood, however, that the Contractor may disclose the AOC's confidential information on a "need to know" basis to the Contractor's employees, the Contractor's Subcontractors, and the Subcontractors' employees, and as required by law. Contractor shall execute written agreements with its Subcontractors that bind each Subcontractor and its employees to the confidentiality provisions set forth in this Agreement.
- C. The Contractor shall acquire no right or title to the confidential information. The

Contractor agrees not to use the confidential information for any purpose except to provide the Services. Notwithstanding the foregoing, the Contractor may disclose the confidential information: (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it or as appropriate to respond to any summons or subpoena applicable to it; provided, however, that the Contractor first gives reasonable notice of its intention to disclose in order for the AOC to seek a protective order; or (ii) to the extent necessary to enforce its rights under this Agreement.

- D. The Contractor agrees that monetary damages are inadequate to remedy any breach or threatened breach of this Section and, accordingly, consents to injunctive relief for any breach or threatened breach hereof without the posting of any bond.

.21. Audit and Retention of Records

The Contractor shall permit authorized representatives of the AOC and/or its designee at any reasonable time to inspect, copy, or audit any and all records and documentation related to the performance of the Agreement, including records related to billings and other financial records. The Contractor shall allow the auditor(s) access to such records during normal business hours and shall allow the auditor(s) to interview any employees or others who might reasonably have information related to such records. Further, the Contractor agrees to include the same right of the AOC to audit records and interview staff in any subcontract related to performance of this Agreement. The Contractor shall maintain, and shall require its Subcontractors to maintain, all records and documentation related to the performance of this Agreement, including records related to billings and other financial records, in an accessible location and condition for a period of not less than three (3) years after final payment is received pursuant to this Agreement or until after final audit has been resolved, whichever is later. The Contractor shall adequately protect all records against fire or other damage. The State of California, or any state agency or entity having an interest in the subject of this Agreement, shall have the same rights conferred upon the AOC by this section. Further, Contractor shall be subject to examination and audit by the AOC Auditor. The examination and audit shall be confined to those matters connected with the performance of this agreement, including, but not limited to, the cost of administering this agreement (Government Code Section 8546.7).

.22. Accounting System Requirements

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

.23. AOC and San Diego County Superior Court Representation

- A. AOC Project Management.

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

Project Manager
Office of Court Construction and Management

Judicial Council of California
Administrative Office of the Courts
455 Golden Gate Avenue
San Francisco, San Francisco, CA 94102
415-865-4900

2. All requests and communications about the Work to be performed under this Agreement shall be made through the Project Manager.
 3. The Project Manager is not authorized by the AOC to make any commitments or changes which will affect the price, terms or conditions of this Agreement absent an amendment executed by the parties.
- B. Third Party Representation. The AOC has the authority to speak on behalf of the Court (and to bind such court with respect to Acceptance of deliverables and all matters hereunder).

.24. Dispute Resolution For Acquisition and Feasibility Studies, Preliminary Plan, And Working Drawing Phases

- A. Notice of Dispute. The parties shall attempt in good faith to resolve potential disputes informally and promptly. If a dispute persists, either party may submit a written demand to the other party at the earliest practicable time that the dispute is identified (the "Demand"). The Demand shall: (i) be fully supported by detailed factual information and supporting documentation; (ii) state the specific Agreement provisions on which the Demand is based; and (iii) if the Demand involves a cost adjustment, state the exact amount of the cost adjustment accompanied by all records supporting the Demand. The Demand shall include a written statement signed by an authorized person indicating that the Demand is made in good faith, that the supporting data and documents are accurate and complete, and that the amount requested accurately reflects the adjustment for which the submitting party believes the other party is responsible. To assist the other party in its review of the Demand, the submitting party shall comply with reasonable requests for additional information. The receiving party shall provide a written response to the submitting party's Demand stating a decision as to whether the receiving party accepts or rejects the Demand. Failure by the receiving party to provide such a response shall be deemed a decision by the receiving party constituting a rejection of the Demand.
- B. Senior Level Negotiations. Upon written request by either party after the receipt of a Demand, the parties shall attempt to resolve the dispute by negotiations between the principal (or equivalent) of the Contractor and the designated representative of the AOC. The principal (or equivalent) of the Contractor and the designated representative of the AOC shall meet as often as they deem reasonably necessary to exchange information and attempt to resolve the Demand within thirty (30) days after the Demand was initially delivered.
- C. Mediation. If the senior level negotiations do not result in resolution of the dispute

within thirty (30) days after the Demand was received, the parties shall submit their dispute to mediation prior to any party initiating an action in court.

- D. **Litigation.** If, after mediation pursuant to Section C.23(c), the parties have not resolved the dispute, the receiving party's decision made pursuant to Section C.23(a) will be conclusive and binding regarding the dispute unless the submitting party commences an action in a court of competent jurisdiction to contest such decision within ninety (90) days following the conclusion of such mediation or one (1) year following the accrual of the cause of action, whichever is later. In the event of litigation of a dispute arising from or related to this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees and costs.
- E. **Confidentiality.** All negotiations conducted pursuant to this Section C.23 are confidential and shall be treated as compromise and settlement negotiations to which California Evidence Code Section 1152 applies. The mediation shall be confidential and shall be subject to the provisions of California Evidence Code Sections 703.5 and 1115 through 1128.
- F. **Continuation of Work.** Pending the final resolution of any dispute arising under, related to, or involving this Agreement, Contractor agrees to diligently proceed with the performance of this Agreement, including the delivery of deliverables or providing of Services, in accordance with the AOC's instructions. Contractor's failure to diligently proceed in accordance with the AOC's instructions will be considered a material breach of this Agreement.
- G. See Exhibit H, General Conditions Of The Contract For Construction (Document 00700) for Dispute Resolution during the Construction Phase.

.25. Certifications

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

- A. **Nondiscrimination/No Harassment Provisions and Compliance.**
 - 1. **Nondiscrimination.** The Contractor and its Subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, creed, religion, color, national origin, ancestry, physical or mental disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), medical condition, marital status, age (over 40), sex, sexual orientation, gender identity, or domestic partner status. The Contractor and its Subcontractors shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination.
 - 2. **No Harassment.** The Contractor and its Subcontractors shall not engage in unlawful harassment, including sexual harassment, with respect to any

persons with whom the Contractor or its Subcontractors interact in the performance of this Agreement. The Contractor and its Subcontractors shall take all reasonable steps to prevent harassment from occurring.

3. FEHA. The Contractor shall comply with the provisions of the Fair Employment and Housing Act, California Government Code, Sections 12990 *et seq.*, and the applicable regulations promulgated under California Code of Regulations, title 2, Sections 7285 *et seq.* The applicable regulations of the Fair Employment and Housing Commission implementing California Government Code, Section 12990, set forth in chapter 5 of division 4 of title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part of it as if set forth in full.
 4. Compliance with Americans with Disabilities Act. The Contractor complies with applicable provisions of the Americans with Disabilities Act (“ADA”) of 1990 (42 U.S.C. Section 12101 *et seq.*), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.
 5. Notice to Labor Organizations. The Contractor and any of its Subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
 6. Compliance. The Contractor shall include the nondiscrimination, no harassment, and compliance provisions of this section in any and all subcontracts issued to perform Services under this Agreement. Contractor has, unless exempt, complied with the nondiscrimination program requirements. (Government Code, Section 12990 (subdivisions a-f) and CCR, Title 2, Section 8103 *et seq.*)
- B. Prohibited Financial Conflict of Interest. The Contractor and its Subcontractors presently have no interest and will not acquire any interest which would present a conflict of interest pursuant to California Government Code sections 1090 *et seq.* and 87100 *et seq.* during the performance of Services pursuant to this Agreement. The Contractor further certifies that, to the best of its knowledge after due inquiry, no employees or agents of the AOC are now, nor in the future will they be, in any manner interested directly or indirectly in this Agreement, or in any profits expected to arise from this Agreement, as set forth in California Government Code sections 1090 *et seq.* and 87100 *et seq.*
- C. Conflict of Interest for Former AOC Employees. The Contractor certifies and shall require any Subcontractor to certify to the following: Former AOC employees will not be awarded a contract for two (2) years from the date of separation if that employee had any part of the decision making process relevant to the contract, or for one year from the date of separation if that employee was in a policy making

position in the same general subject area as the proposed contract within the twelve (12) month period of his or her separation from AOC service.

- D. Contractor shall not, without specific written approval in advance from the AOC in the form of an Amendment to this Agreement, self-perform any Construction-Phase construction work. Contractor shall not subcontract or in any manner cause said work to be done by any entity in which the Contractor, its parent or associate companies, or any of Contractor's owned or controlled subsidiaries have a financial or other business interest.
- E. **Covenant Against Gratuities.** No gratuities, in the form of entertainment, gifts, or otherwise, were offered by the Contractor or any agent, director, or representative of the Contractor, to any officer, official, agent, or employee of the AOC with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement. For breach or violation of this provision, the AOC will have the right to terminate this Agreement, either in whole or in part, and any loss or damage sustained by the AOC in procuring, on the open market, any items which the Contractor agreed to supply, shall be borne and paid for by the Contractor. The rights and remedies of the AOC provided in this provision shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
- F. **Drug-Free Workplace.** The Contractor will provide a drug-free workplace as required by California Government Code Sections 8355 through 8357.
- G. **National Labor Relations Board.** No more than one (1) final, unappealable finding of contempt of court by a federal court has been issued against the Contractor within the immediately preceding two (2) year period because of the Contractor's failure to comply with an order of the National Labor Relations Board.
- H. **Brokerage Or Contingent Fees.** No person or selling agency has been employed or retained to solicit or secure this Agreement upon an understanding or agreement for a commission, percentage, brokerage or contingent fee.
- I. **Computer Software Use.** Contractor has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

.26. General

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

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

- C. Remedies Cumulative. All remedies provided for in this Agreement are cumulative and may be exercised individually or in combination with any other remedy available hereunder.
- D. Assignment. The Services to be performed by the Contractor are personal in nature and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless specifically identified as such in this Agreement or consented to in advance by the AOC by written instrument executed and approved in the same manner as this Agreement. Except as otherwise provided herein, all of the terms, provisions and conditions of the Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, assigns and legal representatives. Any assignment in violation hereof shall be null and void. The Contractor hereby (1) acknowledges that following final acceptance of the Tunnel by the AOC and the County, this Agreement, insofar as it pertains to the Tunnel only, including, without limitation, any and all design and construction warranties, indemnities, claims, waivers of recovery and subrogation, additional insured rights, and other contract rights of a similar nature, will be assigned without reservation of any kind by the AOC to the County, and (2) consents to that assignment.
- E. Waiver. Any waiver of any term of this Agreement must be in writing and executed by an authorized representative of the waiving party and shall not be construed as a waiver of any succeeding breach of the same or other term of this Agreement.
- F. Severability. The provisions of this Agreement are separate and severable. Should any court hold that any provision of this Agreement is invalid, void or unenforceable, then (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) such provision shall be enforced to the maximum extent possible so as to effect the reasonable intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.
- G. Compliance with Laws. The Contractor shall keep itself fully informed of all municipal, county, state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply, at no expense to the AOC, with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. The Contractor shall procure and keep in full force during the term of this Agreement any and all permits and licenses necessary to accomplish the Services contemplated in this Agreement at no expense to the AOC.
- H. Time is of the Essence. Time is of the essence in this Agreement.

- I. **Governing Law; Jurisdiction.** This Agreement, and all of the rights and duties of Contractor and the AOC arising out of or related to this Agreement or to the relationship of Contractor and the AOC, are governed by the laws of the State of California without regard to its conflicts of law rules. This provision applies to all claims and causes of action that Contractor has or may acquire against the AOC, whether based on contract, tort, statute, or anything else. Contractor agrees that any claims it has or may acquire against the AOC shall be commenced in and decided exclusively by a court of competent jurisdiction located in the State of California. Contractor agrees to submit to the personal and exclusive jurisdiction of courts located in the State of California. Contractor 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 Contractor, the location of the Project that is the subject of the litigation or the location of witnesses, the location of documents, or anything else.
- J. **Agreement Construction.** Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and shall not be used to interpret or determine the validity of this Agreement. Any ambiguity in this Agreement shall not be construed against the drafter, but rather the terms and provisions hereof shall be given their reasonable interpretation.
- K. **Notices to the Parties.** All notices, requests, demands, and other communications hereunder must be in writing and will be deemed to have been duly given when hand delivered or five (5) days after being deposited in the United States mail, if mailed by certified or registered mail, return receipt requested, postage prepaid, to the following contact information or at such other address as delivered by like notice:
- To the AOC: Clifford Ham
 Office of Court Construction and Management
 Judicial Council of California
 Administrative Office of the Courts
 455 Golden Gate Avenue
 San Francisco, California 94102
- With a copy to: Business Services Senior Manager
 Judicial Council of California
 Administrative Office of the Courts
 455 Golden Gate Avenue
 San Francisco, CA 94102
- To the Contractor: TBD
- L. **Amendments.** This Agreement may not be modified or amended, except by written

instrument executed and approved in the same manner as this Agreement.

- M. **Public Contract Code References.** References to the Public Contract Code are provided for Contractor's convenience only and shall not imply that the Public Contract Code applies to the AOC, but rather shall be used to define the Contractor's obligations under the particular contract provision in which such code section is referenced. The AOC is not subject to the Public Contract Code.
- N. **Entire Agreement.** This Agreement, consisting of the Agreement Coversheet and all exhibits thereto, constitutes the entire agreement between the parties and supersedes all previous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties.

END OF EXHIBIT C

Exhibit D of Attachment A

ACCEPTANCE AND SIGN-OFF FORM

Description of Deliverable provided by Contractor:

Date submitted: _____

Work is:

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

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

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

Please note level of satisfaction:

Poor Fair Good Very Good Excellent

Comments, if any:

Work is accepted.

Work is unacceptable as noted above.

Name: _____

Title: _____

Date: _____

Exhibit E of Attachment A

SUBCONTRACTORS TO CONTRACTOR

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

END OF EXHIBIT E

Exhibit F of Attachment A
CONTRACTOR'S KEY PERSONNEL

Exhibit G

DESCRIPTION OF PROJECT

Project Description (subject to CEQA compliance)

The Project is the pre-construction planning, design, construction, and commissioning of a new building and site development for a trial court facility comprised of approximately 704,000 BGSF with 71 courtrooms (67 standard trial and 4 large special-purpose courtrooms), related superior court office & public service spaces, holding area at courtrooms and in central holding, and court support. Court building will entail approximately 18 to 20 above-grade floors with up to three below-grade levels that will be primarily dedicated to central holding, vehicle sallyport, building services and secure parking of approximately 112 stalls. The Project includes but is not limited to all building structure; enclosure; interior improvements; mechanical, electrical, data, telecommunication, audio visual, and security systems, as well as the selection and installation of interior furniture, furnishings, and fixtures.

The Project shall include an underground Tunnel connecting court building central holding to the San Diego County Main Jail located at Front Street and West B Street. The site development includes but is not limited to site preparation, underground utilities, landscape, hardscape, vehicular drives and ramps, street-frontage improvements, security barriers, fencing, and gates. The Project includes removal of existing low-rise buildings, underground utilities, and paving on the site prior to commencement of construction. The site will be in the San Diego Downtown Civic Center on a full city block (approximately 1.4 acres) site near the Hall of Justice and the County Main Jail. The Project does not include demolition of the existing County Courthouse or redevelopment of the underlying property.

Note that CEQA review of the Project will not be complete at the time this CM at Risk Agreement is executed. Completion of that review process could result in a restructuring of the Project.

Goals and Standards

The San Diego Central Courthouse shall welcome and inspire the public and engender respect for the judicial system in a safe, dignified, efficient, user-friendly environment in which to conduct the public business. It will serve as a cornerstone for the downtown government district. This project will be consistent with the *California Trial Court Facilities Standards*, adopted by Judicial Council of California effective April 21, 2006, as amended. The purposes of these standards are to produce high-performing public buildings with a positive architectural legacy that reflects the Judicial Council's commitment to providing equal access to justice.

The following goals have been established for the project:

1. **Architecture** – The architecture shall be dignified, timeless and constructed with quality, durable materials and systems. The entire Project shall be recognized by the community as a prominent public building that enriches the Civic Center of San Diego.
2. **Site Design** – Contribute to the development of a 21st century Civic Center; enhance the existing B Street and C Streets; enhance the pedestrian environment; support future re-development of adjacent properties envisioned in the Study Phase report and in City’s Downtown Community Plan. Landscape plantings and site construction shall improve the immediate area and create spaces that can be enjoyed by the public. Promote views from the site; avoid bridges or street-spanning buildings.
3. **Function** – Space configurations shall promote efficient court and security operations and shall be effectively designed to maximize usable space while providing efficient circulation, waiting, and queuing areas for the public.
4. **Schedule and Cost** – The project design and construction shall be completed within the approved schedule and within the authorized funds. Where possible project tasks should at least be concurrent, with the overall goal of creating the new San Diego central court building as quickly as prudent, and to avoid the effect of cost escalation. The Tunnel shall be complete and operational at the same time as the Court building.
5. **Life Span** – This facility should function effectively for several generations. The design shall support a logical and cost-effective approach to accommodate change over time in court operations. Seismic design shall incorporate innovative and cost-effective measures to ensure building stability, limit damage to structure & contents and to enhance building longevity.
6. **Design Quality Assurance** – The entire project team shall utilize quality assurance procedures to ensure that the contract documents result in change orders issued to the construction contractor of less than 2% of the original contract amount.
7. **Sustainable Design** – The Project shall be designed for sustainability and to the standards of the United State Green Building Council’s (USGBC) LEEDTM “Silver” rating, including full participation in the LEED certification process from the design through construction phases. The CM at Risk is to provide required, full documentation for LEED certification during construction phase. Submittals to USGBC, required for certification, are included in the scope of work of the Architect. The project will participate in the “Savings by Design” incentives/rewards program sponsored by the local utility company. The building shall consume 15% less energy or better than a code minimum facility. The Project shall take advantage of San Diego’s climate, promote access to sunlight, and optimize interior day lighting while addressing site influences.
8. **Accessibility** – Design of building shall reflect Judicial Council’s mission to provide access to justice for all, including equal access and fairness with the highest quality of service to the public. The building shall incorporate Universal design concepts, to make the facility equally accessible to all users.

- 9. **Security** – A secure environment shall be created by simple means and shall have clear divisions between private and public areas. The design will provide for efficient and safe court operations in a cost-effective manner. Security measures for the building and site shall meet the requirements of the AOC and other authorities having jurisdiction.
- 10. **Durability, Quality and Efficiency** – Materials and systems for the building and site should be chosen with regard to the amount of traffic, use and visibility of each space. Materials should be durable, operationally and energy efficient, easily maintained and environmentally friendly. Easy maintenance of materials and systems shall have high importance. Landscaping materials shall be chosen for durability, climate compatibility, and attractive appearance.
- 11. **Commissioning** – A building commissioning program shall be implemented to ensure that the building systems perform interactively in accord with the design intent.

These goals have been taken, in part, from the Study Phase Report, December 2005 prepared for the AOC and the Court by Architect. Project goals and principles will be re-evaluated throughout the design and construction phases and at the completion of the Project to determine whether the Project goals have been achieved.

Funding Sources – Funding of this project was approved, November 16, 2009, for the Acquisition and Feasibility Studies Phase and for Preliminary Plans (Schematic Design and Design Development) Phases in the 2009-10 State Budget Act. Upcoming state budget requests will be for the Working Drawing Phase in fiscal year 2011-12 and the Construction Phase in the fiscal year 2013-14.

Project Budget

Direct Cost of the Work ¹	\$444,910,000
Contractor (CM at Risk) Change Order Contingency ²	\$14,850,000
Construction Phase Services ³	TBD
<hr/>	
Total Project Budget	\$TBD

The total project budget amount must not be exceeded. The Office of Court Construction and Management is responsible for maintaining individual line items in the AOC detailed design & construction budget and for budget modification throughout the Project.

¹ As defined in 6.71 of Exhibit H, includes full scope of building, site, Tunnel, off-site, and demolition work; includes FF&E; escalated to assumed mid-point of construction approximately March 2015.

² CM at Risk Change Order Contingency administered jointly with AOC.

³ As defined in 6.72 of Exhibit H-General Conditions of the Contract for Construction.

Schedule: See Exhibit A.4.E

SPACE/FUNCTIONAL SUMMARY	#CR's	Study Phase Program
COMPONENT SUMMARY		
<i>Courtroom and related spaces</i>		
Courtroom (lg): # @ xxx SF	4@2500sf	
Courtroom (sm): # @ xxx SF	67@1600sf	
Chambers, jury deliberation		
Conference rooms, reception		
Net Component		210,172
Component Circulation %		26%
CGSF		265,531
<i>Court administration /support</i>		
CEO, Fam. Mediator (typ)		
Net Component		38,449
Component Circulation %		26%
CGSF		48,296
<i>Clerk of Court</i>		
Courtroom clerks, public counters, processing, files, storage		
Net Component		21,841
Component Circulation %		30%
CGSF		28,394
<i>Court security operations & holding</i>		
Lobby screening, central control, Holding at courtroom and Central Holding		
Net Component		13,495
Component Circulation %		50%
CGSF		20,243
<i>Building support services</i>		
Assignable rooms/spaces Operations offices		
Net Component		92,915
Component Circulation %		20%
CGSF		111,502
<i>Other: Judicial related agency offices</i>		
Net Component		
		0
Component Circulation %		
CGSF		
<i>Total Net Program Space</i>		
Component Gross Square Foot (CGSF) Total		473,966
Building grossing factor 30%		38%
Total Gross Square Feet		655,925
Parking garage		40,000
Loading Area		8,000
Total Building Gross Square Feet (BGSF):		703,925
Surface parking:		N.A.
Stalls		112

Space Program Summary

Component	New Central Courthouse	
	2004 Need ⁽¹⁾	Building Program @ 2102
	NOSF	Staff
1. Courtroom Suites ⁽²⁾	210,113	0
2. Judicial Chambers Suites ⁽³⁾	55,418	188
3. Legal Services	3,572	21
4. Judicial Services	1,569	10
5. Court Reporters	1,342	10
6. Criminal Court Business Office	18,558	129
7. Criminal Court Clerk	7,985	75
8. Pretrial Services	1,851	18
9. Family Court Operations	8,411	67
10. Family Court Services	6,682	30
11. Family Law Facilitators	4,516	26
12. Probate	4,371	28
13. Family Domestic Violence	1,513	4
14. Jury Services ⁽⁴⁾	13,021	21
15. Executive Office	2,289	6
16. Central Operations Administration	1,938	8
17. Information Technology ⁽⁵⁾	2,345	7
18. Administrative Services	14,314	36
19. Personnel and Payroll	5,385	39
20. Evaluation and Planning	3,515	21
21. Central Archival Records ⁽⁶⁾	6,587	7
22. Appeals	2,783	16
23. Sheriff ⁽⁷⁾	20,243	40
24. Grand Jury	1,775	1
25. Building Support / Maintenance ⁽⁸⁾	58,374	2
26. Shared Court Support	9,393	0
27. Food Concession / Dining	7,500	0
Total Net Occupiable Square Feet	475,362	810
<i>x Grossing Factor (38%)</i>	1.38	
Total Gross Square Feet	655,925	
Parking ⁽⁹⁾	40,000	
Loading ⁽⁹⁾	8,000	
	703,925	

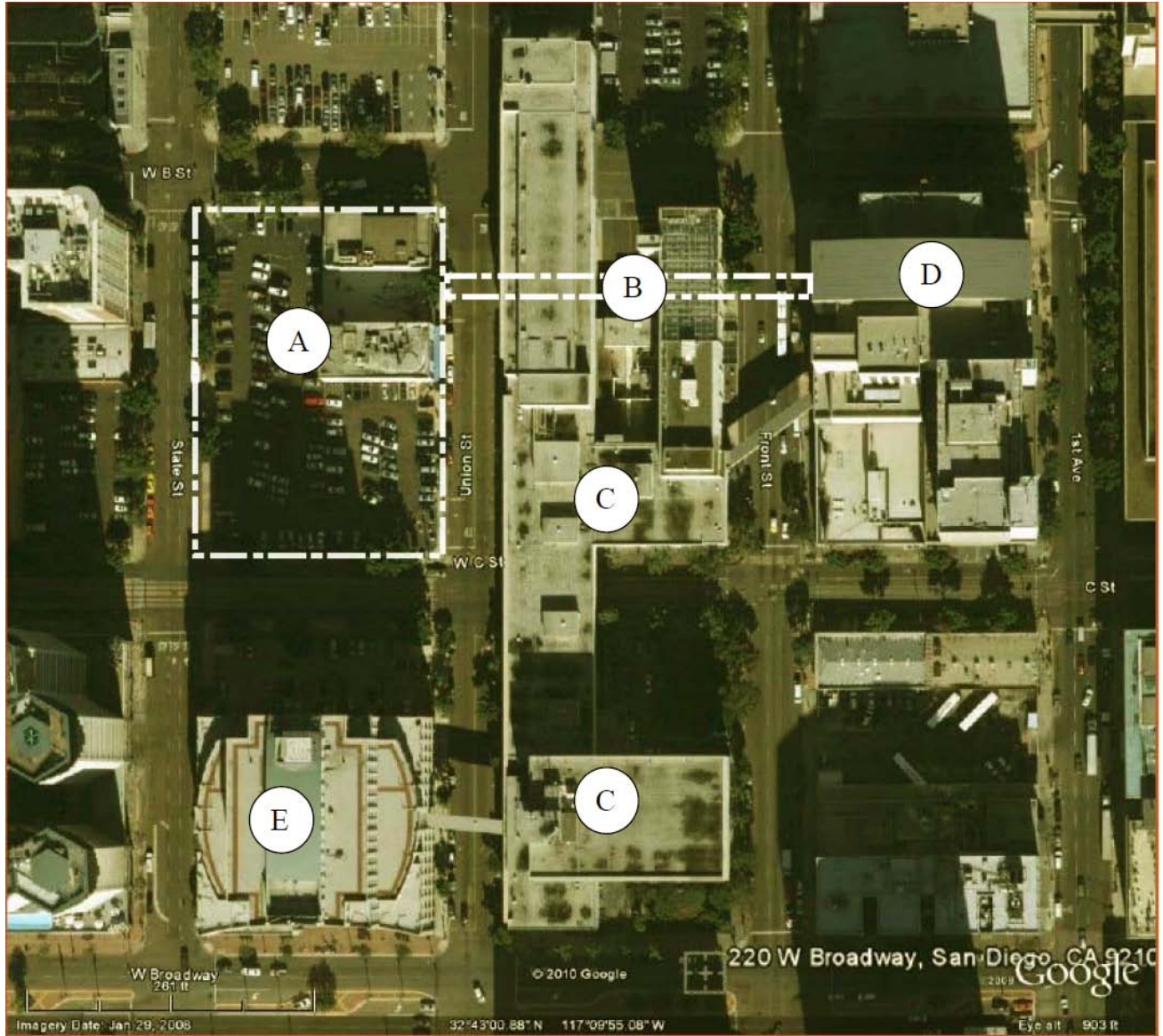
Notes:

General Notes: Final determination regarding need for spaces, including Judge's libraries, cafeteria/food concession, central archival records, media room, attorney lounge, will need to be made during schematic design. 16 Civil Courtrooms and Chambers, Civil Court Business Office, Civil Court Clerk, most of IT, Court Facilities Unit, and part of Administrative Services will remain at Hall of Justice.

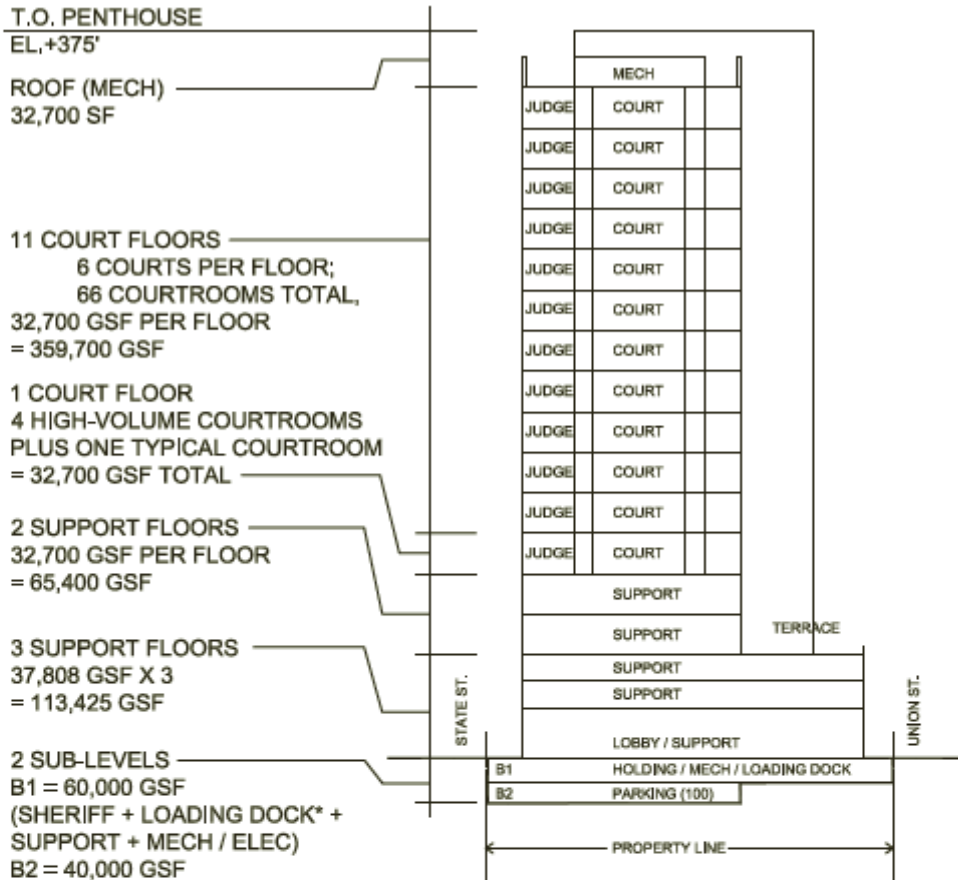
- (1) Current per SOM/RGA Program.
- (2) All courtrooms and support are assumed to be the same (except for several large arraignment/high-volume courtrooms), including jury boxes, spectator seating for about 45, courtroom holding areas, and jury deliberation room.
- (3) Assumes 71 judicial officer chamber suites (one per courtroom) in the new building. Presiding and Asst. Presiding Judges are included in the 71 chamber count.
- (4) Jury Services assumed to be in the new building. If remote from HOJ, the HOJ may need a satellite jury assembly operation.
- (5) AOC to determine whether most staff could or should be off-site. Only a small contingent of support staff are required to service/support computer equip. on-site.
- (6) AOC to determine whether some or all of these records can be located off-site. Most active records are held in the business offices.
- (7) Staffing requires confirmation by Sheriff's Department.
- (8) No staff information provided. Status of General Services as future building manager is yet to be determined. Storage requirements require further discussion.
- (9) Area quantity for parking and loading provided by SOM. Loading area accommodates large truck access inside the building, which may be a security concern and should be reviewed.

Legend:

- A: Preferred Site (Approximately 200' x 300')
- B: Tunnel (Approximate Location)
- C: County Courthouse & Old Jail (AOC Property)
- D: County Main Jail
- E: Hall of Justice



Site Diagram: Preferred Site and Surrounding Buildings



PROGRAM SECTION DIAGRAM

SCHEME 1

PROGRAM AREA ABOVE GRADE = 603,925 GSF
PROGRAM AREA BELOW GRADE (B1) = 52,000 GSF* (HOLDING, MECH, SUPPORT; *8000 SF LOADING DOCK AND RAMP AREA COUNTED IN PARKING AREA)
BUILDING PROGRAM AREA SUB-TOTAL = <u>655,925 GSF</u>
PARKING AREA BELOW GRADE (B2+B1*) = 40,000 GSF + 8000 SF LOADING DOCK*
TOTAL BUILDING GROSS AREA = <u>703,925 GSF</u>