



Judicial Council of California
ADMINISTRATIVE OFFICE OF THE COURTS

Request for Proposals

Date

July 10, 2007

To

Attorneys and Law Firms

From

Administrative Office of the Courts,
Office of the General Counsel

Subject

Request for Proposals: Legal services related to establishing public private partnerships (P3s) to fund judicial branch capital projects, including, initially, a project to construct a new courthouse in Long Beach, California; possible additional services related to (1) establishing P3s for other capital projects, and (2) developing and constructing the Long Beach courthouse.

Action Requested

You are invited to review and respond to the attached Request for Proposals (RFP)

Project Title

Legal Services for Implementation of Public Private Partnership Projects, and Long Beach Courthouse Construction and Development

RFP Number: OGC-070710-RB

Deadline

Proposals must be received by 2 p.m. on August 14, 2007.

Send Proposals To:

Judicial Council of California
Administrative Office of the Courts
Attn: Nadine McFadden, OGC-070710-RB
455 Golden Gate Avenue
San Francisco, CA 94102
(Indicate RFP Number and Project Title on lower left corner of envelope)

Submit Questions To:

solicitations@jud.ca.gov

1. BACKGROUND INFORMATION

- 1.1 The Judicial Council of California, chaired by the Chief Justice of California, is the policy making body of the California judicial system. The Administrative Office of the Courts (AOC) is the staff agency of the Judicial Council, and assists both the council and its chair in performing their duties.
- 1.2 The mission of the AOC's Office of the General Counsel (OGC) is to provide high-quality, timely, and ethical legal advice and services to the Chief Justice, the Judicial Council, council advisory committees and task forces, the appellate and trial courts, and the AOC.
- 1.3 The Trial Court Facilities Act of 2002 (SB 1732), as amended (Gov. Code, §70301, et. seq.), shifts responsibility for California's trial court facilities from the counties to the State of California (State). The current inventory of superior court facilities comprises over 450 buildings containing approximately ten million usable square feet of space devoted to court occupancy. Under SB 1732, the Judicial Council and the AOC are acquiring, managing, and operating court facilities for the State.
- 1.4 Under SB 1732, the Judicial Council has authority to recommend to the Governor and the Legislature the amount proposed to be spent for projects paid for with money in the State Court Facilities Construction Fund. (Gov. Code, § 70374(a). In support of the council, OCCM has developed a capital outlay plan for the appellate and superior courts, following an intensive master planning effort. The capital outlay plan, which has been approved by the Judicial Council, can be reviewed at http://www.courtinfo.ca.gov/programs/occm/documents/final_to_dof_5yr_plan_fy08_09_07_06_01.pdf.
- 1.5 Many of California's trial courts have suffered from deferred maintenance, lack adequate security, do not meet current life safety and seismic codes, and are not accessible to people with disabilities. Several courts with high caseload growth occupy leased offices or modular buildings to meet the need for courtrooms and public services areas, with the result that local facilities are not consolidated, inefficient to operate, and do not meet the full functional needs of the public and the court.
- 1.6 Therefore, the AOC needs to develop alternative models, including the P3 approach, to leverage all available resources. The first project on which the AOC is considering use of P3 funding is the development and construction of a new courthouse in Long Beach, California, for use by the Los Angeles Superior Court (Long Beach Project). A P3 is being considered for this project because there is a potential to capitalize on the value of courthouse land to fund, in part, construction of the new courthouse.
- 1.7 This RFP and its Attachments A, B, and C (the AOC's Standard Agreement for legal services), and any addendum to this RFP, its Attachments, and the Standard

Agreement will be posted at <http://www.courtinfo.ca.gov/reference/rfp> (RFP Website).

2. PURPOSE OF THIS RFP

- 2.1 The AOC seeks to identify and retain one or more attorneys or law firms (service providers) to represent and counsel the California judicial branch, including the AOC and the Judicial Council, related to the following:
- A. Establishing P3s to fund judicial branch capital projects, including, initially, the Long Beach Project. The Long Beach Project is one of the highest priority capital outlay projects in the judicial branch. The AOC will build a new court facility with at least 31 courtrooms and all court support areas in a building that will comprise approximately 306,500 gross square feet. For planning purposes, it is assumed that the new court will be a seven-story building including basement-level secure parking, a vehicle sallyport, in-custody holding cells, surface parking, and landscaping.
 - B. Planning, Design, Development, Construction, and Administration of the Long Beach Courthouse. Potential service providers may also propose through this RFP to provide non-P3-related legal services for the Long Beach Project or future capital projects, including advice related to planning, design, development, construction, and administration of courthouses (Development and Construction).
 - C. Ongoing and Future P3-related Legal Work. As the AOC may undertake other court facility P3 projects in the future, this RFP also solicits proposals for ongoing and future legal work related to P3 projects.
 - D. Ongoing and Future Legal Work related to Development and Construction of Courthouses. As the AOC will undertake other court facility capital projects in the future, this RFP also solicits proposals for ongoing and future legal work related to Development and Construction projects.
- 2.2 The award of an agreement for legal services for the Long Beach Project and other projects is contingent on the appropriation of state funds.

3. SCOPE OF SERVICES

- 3.1 The following legal practice areas are within the scope of P3-related legal services:
- A. Public Finance, with specialized knowledge of P3 formation and governance;
 - B. Real Estate Finance;
 - C. Tax;

- D. Administrative Law (including rulemaking);
 - E. Public Contracting;
 - F. Real Estate Transactions (purchases, sales, and leasing); and
 - G. Other project-related practice areas as identified by the AOC.
- 3.2 The above legal practice areas—except public finance and tax—and the following additional legal practice areas are within the scope of performing Development and Construction legal services:
- A. Public Works (land use, development and construction); and
 - B. Environmental.
- 3.3 Knowledge of all applicable law, but specifically Article VI of the state Constitution, the Trial Court Facilities Act of 2002, as amended (the “Act”), Rules of Court related to judicial administration (Title 10), and AOC procurement policies and procedures are within the scope of performing all legal services provided pursuant to this RFP.
- 3.4 The following activities are within the scope of performing P3-related legal services:
- A. Researching, drafting legal opinions, and otherwise providing legal advice and counsel;
 - B. Drafting legislation, rules of court, and policies and procedures;
 - C. Performing legal due diligence;
 - D. Drafting contract terms and conditions;
 - E. Attending meetings throughout the state; and
 - F. Performing other project-related activities as identified by the AOC.
- 3.5 The above activities—except, perhaps, drafting legislation, rules of court, and policies and procedures—and, in addition, preparing and responding to environmental and planning reports and permits are within the scope of performing legal services related to Development and Construction.

4. CLARIFICATIONS AND AMENDMENTS

- 4.1 Prospective service providers with suggestions for amending this RFP or questions related to this RFP are directed to Attachment B, section B, for applicable administrative rules. All questions and requests related to amending this RFP must be e-mailed to the solicitation mailbox identified on the cover page of this RFP (please include the RFP number in the subject line), and received by the proposal deadline listed in the RFP Schedule, below.

- 4.2 This RFP is subject to amendment by the AOC, in its discretion at any time. Service providers and prospective service providers are encouraged to visit the AOC's RFP Website on at least a daily basis to check for clarifications and amendments to this RFP, including updates to the schedule. *Note: The AOC is under no obligation to notify prospective service providers of clarifications or amendments to this RFP. The AOC is not responsible for the failure of a prospective service provider to receive notification of a clarification or amendment in a timely manner or otherwise.* It is the sole responsibility of prospective service providers to remain apprised of any clarifications or amendments.

5. RFP SCHEDULE

The AOC has developed the following schedule of events:

RFP Schedule (all times are Pacific Time)

No.	Events	Key Dates
1	Deadline for submission of prospective service providers' Questions and Requests to Amend this RFP	2:00 pm on July 31, 2007
2	Responses to Questions and Requests to Amend posted on the RFP Website (Estimated)	August 7, 2007
3	Deadline for submission of proposals	2:00 pm on August 14, 2007
4	Interviews of service providers in San Francisco (Estimated)	August 28, 29, 30 2007
5	Notice of Intent to Award (Estimated).	September 5, 2007

6. SPECIFICS OF A RESPONSIVE PROPOSAL

- 6.1 The following information must be included in the proposal:
- A. The prospective service provider's name, address, telephone and fax numbers, and social security number or tax identification number.
 - B. Five hard copies and one electronic copy (in MS Word or PDF format) of the proposal signed by an authorized representative of the prospective service provider, including name, title, address, email address, and telephone/fax numbers of the one individual who is the service provider's designated representative.

- C. Resumes describing the background and experience (including representative transactions) of the primary persons who provide the legal services.
- D. The proposal must specify which legal services the prospective service provider will perform. If the prospective service provider's proposal has geographic or other limitations on some or all of the services offered, these limitations must be specified and described. For example, the prospective service provider's proposal must describe any potential, actual, or apparent conflicts of interest with respect to the potential service provider's representation of judicial branch entities, including the AOC, the Judicial Council, or any court, including but not limited to the Superior Court of California, County of Los Angeles.
- E. When describing the proposed legal service, the proposal must separately address P3-related legal services, and legal services related to Design and Construction. In addition, the proposal must specify whether such services are limited to the initial P3 project (the Long Beach Project), or also proposed for future projects.
- F. The proposal must include a separate fee proposal for P3 legal services, and legal services related to Development and Construction. For the Long Beach Project, prospective service providers must set forth their best estimate of the total amount the AOC should expect to encumber for their services and, as applicable, apportion it between (a) for P3-related legal services, and (b) for Development and Construction-related legal services. It is expected that all service providers responding to this RFP will offer the service provider's government or comparable favorable rates. The fee proposal must specify the service provider's standard rates (and, if different, government rates) for the services in question, and what discount, if any, will be made available to the AOC. The AOC will also consider alternative billing arrangements, and the proposal should also describe in detail all alternatives acceptable to the service provider, *for example*:
- volume discounts,
 - combined hourly rates,
 - flat fees (lump sum or percentage),
 - not-to-exceed amounts, and
 - contingent fee proposals.

With respect to each proposed billing arrangement, the service provider must state whether it provides the same or similar services to other clients on more favorable terms.

- G. The proposal must state the maximum term for which the fee proposal is guaranteed, the ceiling, if any, on rate increases, and the terms of any option that

the service provider agrees to extend to the AOC if the AOC selects the service provider to perform P3 legal services, or legal services related to Development and Construction.

- H. Names of clients for which the service provider has provided similar services, including for each the contact person, address, email address, and telephone number. The AOC may check references submitted by the service provider.
 - I. Only if the prospective service provider is proposing to provide P3 legal services, names of up to 10 financial and consulting (non-legal) firms with which it has collaborated in advising a common P3 client. Include for each firm the contact person, address, email address, and telephone number. The AOC may contact the firms submitted by the service provider.
- 6.2 Responsive proposals are straightforward, concise, and satisfy the requirements noted above. Expensive bindings, color displays (except as necessary for clarity), and the like are discouraged. Emphasis should be placed on brevity, conformity with instructions, requirements of this RFP, and completeness and clarity of content.
- 6.3 Proposals must be delivered to the person identified on the cover page of this RFP, or that person's delegate.

7. SELECTION PROCESS

- 7.1 An evaluation panel of AOC staff will review the submitted proposals in accordance with the evaluation criteria in this RFP.
- 7.2 The AOC will notify those prospective service providers that the AOC wishes to interview.
- 7.3 The AOC will post its Intent to Award an agreement.
- 7.4 If a satisfactory agreement on services and compensation is not executed by the AOC and the first-selected service provider within the time period the AOC may allocate for signing the agreement, the AOC reserves the right to award an agreement to any other qualified service provider. The AOC may enter into negotiations at any time with multiple service providers.
- 7.5 Until a service provider and the AOC execute a binding agreement for the legal services, the AOC reserves the right to change the project description and scope of work.
- 7.6 The AOC expects the service provider selected for the Long Beach project under this RFP to be among the firms that the AOC will consider also for other engagements for related legal services. That service provider may also be retained for subsequent phases of the Long Beach Project, or any other project, subject to the AOC's

satisfaction with the service provider's services and agreement to terms and conditions of the engagement.

8. NOTICES; CERTAIN RIGHTS OF THE AOC

- 8.1 The AOC cannot guarantee the amount or duration of services for this project or any future project. All awards and agreements are subject to the appropriation of state funds.
- 8.2 The AOC's procurement policies and procedures exempt legal services from competitive bidding requirements. This RFP neither alters that exception nor constitutes a promise to contract with any legal service provider or subcontractor in connection with this RFP.
- 8.3 The AOC reserves the right to reject any and all proposals, in whole or in part. Under no circumstances is the AOC or the State of California responsible for prospective services providers' costs to prepare a proposal or associated documents.
- 8.4 The AOC will accept written proposals only. The AOC may retain submitted proposals in its records that are publicly available, subject, however, to section 12 of this RFP, "Confidential or Proprietary Information."

9. EVALUATION OF PROPOSALS

In evaluating the proposals, the AOC will use a best value approach to evaluating proposals, including consideration of the following criteria, which are listed in equal or descending order of priority:

- A. responsiveness and quality of the proposal, and responses to requests for additional information,
- B. prospective service provider's demonstrated expertise and capacity to perform the work,
- C. prospective service provider's overall experience and expertise,
- D. fee proposal,
- E. degree to which the prospective service provider accepts the terms and conditions of the AOC's Standard Agreement, and
- F. references and further inquiries made of references.

10. ADDITIONAL REQUIREMENTS

- 10.1 A hard copy of proposals should be sent by reputable courier with tracking capability, registered mail, certified mail or by hand delivery, by the deadline in this RFP

- Schedule, to the person identified on the cover page of this RFP. Incomplete proposals and/or proposals received after the deadline may be rejected.
- 10.2 Contact with the AOC may be made only through the email address listed on page one of this RFP; telephone calls will not be accepted. Additionally, prospective service providers and their representatives, and lobbyists are asked **not** to contact the Superior Court of Los Angeles County, or any other state government entity concerning this RFP.
- 10.3 If the prospective service provider is awarded a contract under this RFP, the service provider must agree that it will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003. Thereby, the service provider will be agreeing to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of: (i) 30 multiplied by the number of full time attorneys in the service provider's offices in the State of California, with the number of hours prorated on an actual day basis for any contract period of less than a full year, or (ii) 10% of its contract with the State of California (as further defined in Section 6072). Failure to make a good faith effort may be cause for non-renewal of a State of California contract for legal services, and may be taken into account when determining the award of future contracts with the State of California for legal services.

11. PROPOSED CONTRACT TERMS AND ADMINISTRATIVE RULES

- 11.1 Incorporated into this RFP, and attached as Attachment B, is a document that sets forth the Administrative Rules Governing this request for proposals." By submitting their proposals, prospective service providers agree they will follow, and acknowledge they have followed, these rules in preparing and submitting their proposals.
- 11.2 Contracts with successful service providers will be signed by the parties on an AOC Standard Agreement in the form attached to this RFP as Attachment C. By submitting their proposals, the prospective service providers agree and acknowledge, respectively, that they: (a) will provide the services, for the fees, as specified in their proposals, respectively, and (b) have no objection to the Standard Agreement, except as may be expressly noted in their respective proposals. Proposals must set forth with particularity any terms and conditions of the Standard Agreement that the prospective service provider is not willing to accept, together with any additional language it requires.
- 11.3 The AOC reserves the right to modify or update the Standard Agreement, in whole or in part, at any time up to the execution of a definitive contract with a service provider.

12. CONFIDENTIAL OR PROPRIETARY INFORMATION

The AOC supports and is responsive to the public's need for information about the conduct of business within the judicial branch. Although the California Public Records Act (PRA) generally does not apply to the judicial branch, documents and information maintained by the AOC will be made available to the public in accordance with AOC policy. One copy of each proposal will be retained for the AOC's files. If a prospective service provider thinks that its proposal contains information that is confidential or proprietary, the prospective service provider must highlight and mark that information as proprietary in each copy of the proposal. The AOC will determine whether that information meets the requirements for an exemption from disclosure. If so, that information will not be disclosed pursuant to a request for public documents. If the AOC does not consider that information to meet the requirements for exemption from disclosure, the information will be made available to the public, regardless of the notation or markings.

If a prospective service provider is unsure if its confidential or proprietary information will meet the requirements for an exemption from disclosure, the firm should contact the AOC for clarification before including this information in its proposal.

ATTACHMENT A

- Project Title:** Legal Services for Implementation of Public Private Partnership Projects, and Long Beach Courthouse Construction and Development
- Project Location:** Various locations in Northern and Southern California, including the Long Beach area of Los Angeles County
- Solicitation No:** OGC-070710-RB
- Project Description:** This project consists primarily of providing legal services related to establishing public private partnerships (P3s) to develop, fund, and deliver judicial branch capital projects. The initial P3 project is for the construction of a new courthouse in Long Beach, California. Legal services may also relate to (1) establishing P3s for other capital projects, and (2) developing and constructing the Long Beach courthouse.
- Schedule** Estimated Start of Services: No earlier than August 2007
- Current Funding:** Services are subject to authorization of the New Long Beach Courthouse in the FY 07-08 State Budget Act, and appropriation and allocation of funds to support related legal services

End of Attachment A

ATTACHMENT B

ADMINISTRATIVE RULES GOVERNING REQUEST FOR PROPOSALS

A. General

The Request for Proposals (RFP), the evaluation of proposals, and the award of any contract shall conform to these Administrative Rules. A service provider's proposal is an irrevocable offer for 120 days following the deadline for its submission.

B. Questions and Requests to Amend the RFP

1. If a prospective service provider discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFP, the prospective service provider should immediately give the AOC a written notice of the problem by submitting a question or requesting that the RFP be amended.
2. If a prospective service provider thinks that one or more of the RFP's requirements, either as originally posted or as amended, is unfair, or unnecessarily onerous, or restrictive, or precludes less costly or alternative solutions, the prospective service provider should submit a written request that the RFP be amended, setting forth the recommended amendment, and the prospective service provider's reasons for requesting it.
3. Any question or request to amend the RFP must be submitted to the AOC by the proposal due date and time, and addressed to the contact person listed on the cover sheet to the RFP. The AOC may amend the RFP without identifying the source of the amendment.
4. If prior to the proposal due date and time a prospective service provider submitting a proposal knows of or should have known of an error in the RFP but fails to notify the AOC of the error, the prospective service provider submits a proposal at its own risk. If the prospective service provider is awarded a contract for services, it will not be entitled to additional compensation, time to perform work, or any other advantage by reason of the error or, at the AOC's option, its later correction.
5. The AOC may answer questions or amend the RFP, for any reason, prior to the proposal due date and time by posting them to a publicly available website to which prospective service providers have been directed.
6. If a prospective service provider's question or request for amendment relates to a proprietary aspect of its proposal and the question or request for amendment would expose proprietary information if disclosed to competitors, the prospective service provider may submit the question or request for amendment in writing, conspicuously

marking it as "CONFIDENTIAL." With the question or request, the prospective service provider must submit a statement explaining why the question or request is sensitive. The AOC will determine whether the information meets the requirements for an exemption from disclosure. If so, that information will not be disclosed pursuant to a request for public documents, and the AOC may, pursuant to the request, either answer the confidential question privately, or (b) amend the RFP without revealing the source of the request for amendment. If the AOC does not consider the question or request for amendment to meet the requirements for exemption from disclosure, the information will be made available to the public, regardless of the notation or markings. If a prospective service provider is unsure if its confidential or proprietary information will meet the requirements for an exemption from disclosure, the firm should not contact the AOC for clarification before submitting this information.

C. Withdrawal and Resubmission/Modification of Proposal

A prospective service provider may withdraw its proposal at any time prior to the deadline for submitting proposals by notifying the AOC in writing of its withdrawal. The notice must be signed by the prospective service provider. The prospective service provider may thereafter submit a new or modified proposal, provided that it is received at the AOC no later than the proposal due date and time. Modifications offered in any other manner, oral or written, will not be considered. Proposals cannot be changed or withdrawn after the proposal due date and time. Nothing in this paragraph affects the ability of the AOC to consider additional information submitted via interview, reference, or otherwise, as set forth in these Administrative Rules.

D. Evaluation Process

1. An evaluation team will review all proposals that are received to determine the extent to which they comply with the RFP's requirements.
2. AOC reserves the right to review the proposals, as well as supplemental information collected in the course of the evaluation process, including but not limited to information submitted to clarify any information in the proposal, and information gained in interviews and reference checks.
3. Proposals that fail to meet requirements of the RFP may be rejected. However, AOC reserves the right to evaluate any proposal submitted, regardless of whether such proposal fails to meet any requirement of the solicitation document.
4. Proposals that in the opinion of the AOC contain false or misleading statements may be rejected. During the evaluation process, the AOC may require a prospective service provider's representative to answer questions with regard to its proposal. Failure to demonstrate that any statement or representation made in a proposal are in fact true may be cause for rejection of a proposal, or of deeming the proposal non-responsive to the RFP. Failure of a prospective service provider to respond to questions is sufficient cause to reject a proposal.

E. Rejection of Proposals

The AOC may reject any or all proposals and may or may not waive any deviation or defect in a proposal. The AOC's waiver of a deviation or defect shall in no way modify the RFP or excuse a prospective service provider from full compliance with the RFP's specifications. The AOC reserves the right to accept or reject any or all of the Services in a proposal, to award a contract for any or all of the Services, or to negotiate any or all items with prospective service providers if it is deemed in the AOC's best interest. Moreover, the AOC reserves the right to make no selection from among respondents to this RFP.

F. Award of Contract

1. Award of the contract, if made, will be in accordance with the RFP to a responsible service provider determined by the AOC to be substantially compliant with all the requirements of the RFP and any addenda thereto, except deviations or defects waived by the AOC. Determination of whether a proposal substantially complies with the RFP requirements is in the sole discretion of the AOC.
2. Questions regarding the AOC's award of any business on the basis of proposals submitted in response to the RFP, or on any related matter, should be addressed to the contact person listed on the cover sheet of the RFP.

G. Execution of Contracts

Prospective service providers selected to provide Services on a particular project, will be required to execute an AOC standard form contract, and will not be able to use their own contract form.

H. Protest Procedure

1. General. Failure to comply with the protest procedures set forth in this Section H will render a protest inadequate and noncompliant, and will result in rejection of the protest.
2. Protest Prior to Proposal Due Date and Time. An interested party that is an actual or prospective service provider with a direct economic interest in the procurement may file a protest based on allegedly restrictive or defective specifications or other improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to its submission of a proposal. Such protest must be received prior to the proposal due date and time. The protestor must have exhausted all administrative remedies discussed in these Administrative Rules prior to submitting the protest. Failure to do so may be grounds for denying the protest.
3. Protest After Notice of Intent to Award. A prospective service provider that submitted a proposal may protest the award of a contract based on allegations of improprieties

occurring during the evaluation process, if the protest meets all of the following conditions:

- a. The prospective service provider has submitted a proposal that it believes to be responsive to the RFP;
- b. The prospective service provider believes that its proposal meets the administrative and technical requirements of the RFP, and proposes services of proven quality and performance;
- c. The service provider believes that its proposal offers services at a competitive cost to the AOC; and
- d. The prospective service provider believes that the AOC has incorrectly selected another prospective service provider submitting a proposal for an award.

Protests must be received no later than five (5) business days after the AOC posts the notice of intent of award on the RFP Website.

4. Form of Protest. Protests must be submitted to the contact person listed on the cover sheet to the RFP, who will forward the protest to an appropriate contract officer for review and determination. An appropriate contract officer is one who was not, or will not be, a voting member of the evaluation team for the RFP. Protests must meet the following requirements to be considered:
 - a. The protest must be in writing and sent by certified, or registered mail, or overnight delivery service (with proof of delivery), or delivered personally to the address noted above. If the protest is hand-delivered, a receipt must be requested;
 - b. The protest must include the name, address, telephone and facsimile numbers, and email address of the party protesting or their representative;
 - c. The protest must include the title of the RFP under which the protest is submitted;
 - d. The protest must include a detailed description of the specific legal and factual grounds of protest, together with any supporting documentation; and
 - e. The protest must include the specific ruling or relief requested.

The AOC, at its discretion, may make a decision regarding the protest without requesting further information or documents from the protestor. Therefore, the initial protest submittal must include all grounds for the protest and all evidence available at the time the protest is submitted. If the protesting party later raises new grounds or evidence that was not included in the initial protest but which could have been raised at that time, the AOC will not consider such new grounds or new evidence.

5. Determination of Protests Prior to Proposal Due Date and Time. Upon receipt of a timely and proper protest based on allegedly restrictive or defective specifications or other

improprieties in the solicitation process that are apparent, or should have been reasonably discovered prior to the submission of a proposal, the AOC will provide a written determination to the protesting party prior to the proposal due date and time. If required, the AOC may extend the proposal due date and time to allow for a reasonable time to review the protest.

If the protesting party elects to appeal a decision on its protest, the protesting party will follow the appeals process outlined below. The AOC, at its sole discretion, may elect to withhold the contract award until the protest is resolved or denied, or proceed with the award and implementation of the contract.

6. Determination of Protests Submitted After Notice of Intent to Award. Upon receipt of a timely and proper protest, the AOC will investigate the protest and will provide a written response to the protesting party within a reasonable time. If the AOC requires additional time to review the protest and is not able to provide a response within ten (10) business days, the AOC will notify the protesting party. The AOC, at its sole discretion, may elect to withhold the selection, or contract award, until the protest is resolved or denied, or proceed with the selection, or the award and implementation of the contract. If the protesting party elects to appeal the decision on its protest, the protesting party will follow the appeals process outlined below.
7. Appeals Process. The contracting officer's decision on the protest shall be considered the final action by the AOC unless the protesting party thereafter seeks an appeal of the decision by filing a request for appeal with the AOC's Business Services Manager. Appeals must be submitted to the contact person listed on the cover sheet to the RFP within five (5) business days of the issuance of the AOC's determination on the protest.

The justification for appeal is specifically limited to:

- a. Facts and/or information related to the protest, as previously submitted, that were not available at the time the protest was originally submitted;
- b. The contracting officer's determination on the protest contained errors of fact, and that such errors of fact were significant and material factors in the contracting officer's decision; or
- c. The decision of the contracting officer was in error of law or regulation.

The protesting party's request for appeal shall include:

- a. The name, address telephone and facsimile numbers, and email address of the protesting party filing the appeal or their representative;
- b. A copy of the contracting officer's decision;
- c. The legal and factual basis for the appeal; and

- d. The ruling or relief requested.

Issues that could have been raised earlier will not be considered on appeal.

Upon receipt of a request for appeal, the AOC's Business Services Manager will review the request and the decision of the contracting officer and shall issue a final decision. The decision of the AOC's Business Services Manager shall constitute the final action of the AOC.

9. Protest Remedies. If the protest is upheld, the AOC will consider all circumstances surrounding the procurement in its decision for a fair and reasonable remedy, including the seriousness of the procurement deficiency, the degree of prejudice to the protesting party or to the integrity of the competitive procurement system, the good faith efforts of the parties, the extent of performance, the cost to the AOC, the urgency of the procurement, and the impact of the recommendation(s) on the AOC. The AOC may pursue any combination of the following remedies:
 - a. Terminate the contract for convenience;
 - b. Re-solicit the requirement;
 - c. Issue a new solicitation;
 - d. Refrain from exercising options to extend the term under the contract, if applicable;
 - e. Award a contract consistent with statute or regulation; or
 - f. Apply other such remedies as may be required to promote compliance.

Notwithstanding that a protest is upheld, AOC reserves the right, upon consideration of the circumstances as set forth in this section, to proceed with the protested selection or award of contract, and to implement a contract with the firm selected or awarded the contract.

I. News Releases

News releases pertaining to the award of a contract may not be made without prior written approval of the AOC's Business Services Manager.

J. Disposition of Materials

All materials submitted in response to this RFP will become the property of the AOC and will be returned only at the AOC's option and at the expense of the prospective service provider submitting the material. One copy of a submitted proposal will be retained for official files, subject to disclosure in accordance with the RFP.

K. Payment

1. Payment terms will be specified in any agreement that may ensue as a result of this RFP.
2. **UNDER NO CIRCUMSTANCES WILL THE AOC PAY RETAINERS OR MAKE ANY OTHER ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon satisfactory completion of tasks as provided in the agreement between the AOC and the selected service provider. The AOC reserves the right to accept alternative billing methods set forth in the selected service provider's proposal, or negotiate others. The AOC may withhold payment of invoices until receipt and acceptance of the service or work product, as set forth in the agreement between the AOC and the selected service provider. The amount withheld may depend upon the length of the project and the payment schedule provided in the agreement between the AOC and the selected service provider.

End of Attachment B

ATTACHMENT C

AOC's STANDARD AGREEMENT FOR LEGAL SERVICES

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

	AGREEMENT NUMBER [Agreement Number]
	FEDERAL EMPLOYER ID NUMBER [Fed. Employer ID]

1. In this Agreement, the term "Contractor" refers to **[Contractor name]**, and the term "AOC" refers to the Judicial Council of California, Administrative Office of the Courts.

2. This Agreement becomes effective **[Date]** (the "Effective Date") and **[Date]**.



3. The title of this Agreement is: **[Title]**

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

4. The maximum amount that the AOC may pay Contractor under this Agreement is **[\$Dollar amount]**.

5. The parties agree to the terms and conditions of this Agreement and acknowledge that this Agreement (made up of this coversheet, the following exhibits, and any attachments) contains the parties' entire understanding related to the subject matter of this Agreement. If there are any inconsistent terms in the exhibits, the following is the descending order of precedence: Exhibit C, D, B, A.

- Exhibit A – Scope of Work
- Exhibit B – Payment Provisions
- Exhibit C – General Provisions
- Exhibit D – Definitions

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> [Contractor name]
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title]	PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title]
ADDRESS 455 Golden Gate Avenue San Francisco, CA 94102	ADDRESS [Address]

Administrative Office of the Courts Use Only

Agreement Number	[Agreement Number]
Contractor Name	[Contractor Name]

Fund Title	Program/Category	Item	Chapter	Statute	Fiscal Year	Object of Expenditure	Amount


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 [Date]

EXHIBIT A
SCOPE OF WORK

1. Services.
 - 1.1 **Matters.** Contractor must provide services to the AOC in connection with _____ (the “Matter”), as further described in Attachment A-1 to this Agreement.
 - 1.2 **Staffing.** Contractor must provide the services of [*Insert name(s) of attorney(s)*], and designated associates and employees under his or her management, in relation to the Matter. Contractor must identify and obtain the AOC’s Project Manager’s approval for all attorneys and paralegals who will work on the Matter. Contractor must use its best efforts to retain the same participating employees during the course of the Matter.
 - 1.3 **Budgets.** Contractor must prepare a budget for the Matter as requested by the AOC’s Project Manager. Each budget report must include an estimate of all fees and costs by task. Contractor must immediately advise the AOC’s Project Manager of any developments that may significantly affect a projected budget. If requested by the AOC’s Project Manager, Contractor must deliver an updated budget report.
2. Conflicts. Contractor must seek a waiver from the AOC prior to representing a party with interests potentially or actually adverse to any Judicial Branch Entity.
3. Service Levels. Contractor must perform the Services with the highest degree of professionalism.
4. Transitioning Matters. The AOC may, at any time, remove Contractor from a Matter. If the AOC does so, Contractor must transition the Matter as requested by the AOC’s Project Manager.
5. Designation of Project Managers. All day-to-day requests and communications about the Services must be made through the Project Managers. Formal notices must be delivered in accordance with Section 7 of Exhibit C. Project Managers are authorized to make day-to-day decisions related to the implementation of Services. The AOC’s Project Manager may delegate authority with regard to a Matter to another AOC attorney. The parties’ respective Project Managers and their contact information are on Attachment 5.

- End of Exhibit -

EXHIBIT B

PAYMENT PROVISIONS

1. **Contract Amount.** The maximum amount the AOC may pay Contractor under this Agreement is the Contract Amount. The Contract Amount includes all hourly fees and expenses.
2. **Compensation.**
 - 2.1 **Fees.** *[As determine pursuant to any competitive procurement process or as otherwise agreed by the parties.]*
 - 2.2 **Travel Expenses.** The AOC will reimburse Contractor, in arrears, for itemized travel expenses Contractor reasonably incurs while performing the Services. The amount the AOC will pay Contractor for these travel expenses is part of the maximum amount the AOC may pay Contractor under this Agreement described in Section 1 above.
 - (A) **Allowed Expenses.** Specifically, the AOC will reimburse Contractor for:
 - (1) Reasonable and necessary transportation (including airfare) at Contractor's actual cost. All air transportation is limited to coach fares. Contractor must book all air transportation at least 14 days prior to travel, unless the AOC's Project Manager agrees otherwise in writing. Private vehicle ground transportation is limited to \$0.485 per mile.
 - (2) Meals associated with overnight travel, at Contractor's actual cost. Meal costs may not exceed (per person per day):
 - (a) breakfast \$6.00;
 - (b) lunch \$10.00; and
 - (c) dinner \$18.00.
 - (3) Incidental expenses incurred while traveling: up to \$6.00 per person for each full 24 hour period. The AOC will not reimburse incidental expenses incurred in connection with travel of less than 24 hours or for fractional days.
 - (4) Lodging expenses incurred while traveling, at Contractor's actual cost. Lodging costs may not exceed \$110.00 (per day per person), plus tax and energy surcharge. Within the counties of Alameda, San Francisco, San Mateo, and Santa Clara, the maximum rate is \$140, plus tax and energy surcharge.

(B) Non-Allowed Expenses. The AOC will not reimburse Contractor for:

- (1) Meals not associated with overnight travel.
- (2) Any travel expense not listed in Section 2.2(A).
- (3) Use of Contractor's office for meetings related to the Services.

(C) Requirements. Contractor must submit a written travel plan to the AOC's Project Manager prior to incurring any travel expenses, except for reasonable travel incidental to court appearances, depositions, and witness/client meetings. The written travel plan must include the reason for the trip, the number of persons traveling, the types of expenses Contractor expects to incur, and the estimated costs. The AOC must approve the written travel plan prior to the travel or the AOC will not reimburse Contractor for the expenses.

2.3 Other Expenses. The AOC will reimburse Contractor, in arrears, for the itemized expenses listed below that Contractor reasonably incurs while performing the Services. The amount the AOC will pay Contractor for these expenses is part of the maximum amount the AOC may pay Contractor under this Agreement described in Section 1 above.

(A) Allowed Expenses. Specifically, the AOC will reimburse Contractor for:

- (1) Postage, overnight delivery, or courier services at Contractor's actual cost.
- (2) Facsimile transmissions and long-distance telephone charges at Contractor's actual cost.
- (3) Copies at \$0.10 per page.
- (4) Computerized legal research at Contractor's actual cost. However, Contractor must obtain approval from the AOC's Project Manager before conducting computerized legal research that will result in charges of more than \$250 during any monthly billing period.
- (5) Overtime for non-attorney employees, only if approved by the AOC's Project Manager in advance.

(B) Rarely Allowed Expenses. Only in exceptional circumstances, in the AOC Project Manager's discretion upon approval in writing before the expenses are incurred, the AOC may reimburse Contractor for:

- (1) Secretarial/clerical services, word processing, computer time, or other staff services such as proofreading or filing.
- (2) Fees for background checks.

3. Limitations.

The AOC will not pay Contractor for more than one attorney to attend meetings, depositions, court appearances, or negotiations unless the AOC's Project Manager approves their attendance in advance in writing.

4. Invoicing and Payment.

- 4.1** Contractor must submit invoices to the AOC no more often than once per month, for Services provided and allowed expenses incurred during the preceding month. Contractor's billing partner must personally review each invoice before it is sent to the AOC to determine its accuracy and fairness, and to ensure that the invoice complies with the requirements in this Agreement.
- 4.2** Contractor must submit each original invoice to:
- Judicial Council of California
Administrative Office of the Courts
ATTN: Finance Division, Accounts Payable
455 Golden Gate Avenue, 7th Floor
San Francisco, CA 94102-3688
- 4.3** Contractor must send a copy of each invoice to the attention of the AOC's Project Manager at the address specified in Attachment 5.
- 4.4** Contractor's invoices must be detailed and precise. Contractor's invoices must clearly indicate fees and costs incurred for the current billing period month and include at least the following information:
- (A) Agreement number;
 - (B) Unique invoice number;
 - (C) Contractor's name and address;
 - (D) Contractor's federal employer identification number;
 - (E) Name of the Matter and number of the file;
 - (F) Billing period;
 - (G) Description of each activity performed for each day Services were performed;
 - (H) Name, labor classification (e.g., partner, associate, paralegal), billing rate, and hours worked by each person involved in each activity;
 - (I) Breakdown of allowed expenses, identified by billing period;
 - (J) Total amount of fees and costs "billed to date," including the preceding month; and
 - (K) Preferred remittance address, if different from the address on the Coversheet.

- 4.5** Contractor's invoice must be printed on a printed bill head or signed by the billing partner.
 - 4.6** Contractor must keep original invoices and receipts for expenses and provide copies for the AOC's review upon request.
 - 4.7** After the AOC receives Contractor's invoice, the AOC will either process the invoice for payment or give Contractor specific reasons why part or all of the AOC's payment is being withheld and what actions Contractor must take to receive the withheld amount.
 - 4.8** Payment does not imply acceptance of Services, that expenses are allowable, or that the invoice is accurate. Contractor must immediately refund any payment made in error, or the AOC may offset the amount paid in error from any payment that is due or that may become due to Contractor under this Agreement or any other agreement between the parties.
 - 4.9** Contractor must send to the AOC a completed Std 204, Payee Data Record Form, unless Contractor is a State agency or other governmental entity. Contractor must send an updated Std 204 to the AOC any time relevant information changes.
- 5.** Availability of Funds. The AOC's funding comes from the State and is subject to annual budget appropriations. If the State reduces the AOC's funding, the AOC may not be able to pay Contractor. The AOC will notify Contractor in writing if funds become unavailable or limited during the Term. The AOC will not be in breach of this Agreement for failure to pay Contractor's invoices if the failure results from the State's failure to approve and adopt a budget in a timely manner.
- 6.** Expenses and Taxes.
- 6.1** Contractor must pay all fees, fines, taxes, or other costs of doing business related to the Services, except for the expenses allowed under Exhibit B, Sections 2.2 and 2.3. Unless required by law, the AOC will not withhold any taxes, such as social security or federal income tax, on Contractor's behalf.
 - 6.2** The AOC will pay any applicable State or local sales or use taxes on the Services.

- End of Exhibit -

EXHIBIT C
GENERAL PROVISIONS

1. Representations and Warranties.

1.1 Contractor's Representations and Warranties. Contractor represents and warrants that the following statements are true:

- (A) **No Gratuities.** Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise) to any Judicial Branch Personnel with a view toward securing this Agreement or securing favorable treatment with respect to any determinations concerning the performance of this Agreement.
- (B) **No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under California Government Code section 1090 *et seq.* or section 87100 *et seq.*, or under California Rules of Court 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- (C) **No Interference with other Agreements.** This Agreement does not constitute a conflict of interest or default under any other of Contractor's other agreements.
- (D) **No Litigation.** No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform the Services.
- (E) **Drug Free Workplace.** Contractor provides a drug-free workplace as required by California Government Code sections 8355-8357.
- (F) **Work Eligibility.** Contractor's personnel assigned to the Matter are able to work legally in the United States and possess valid proof of work eligibility.
- (G) **Pro Bono Work.**
 - (1) **Applicability.** This section applies to Contractor only if:
 - (a) the Contract Amount is greater than \$50,000, and
 - (b) the Services are to be performed in the State.
 - (2) **Good Faith Efforts.** Contractor must make a good faith effort during the Term to provide pro bono legal services as set forth in California Business and Professions Code section 6072.

- (3) **Non-Compliance.** If applicable, the AOC may take Contractor's failure into account in connection with any amendment or extension of this Agreement, and when determining the award of future contracts.
 - (H) **GAAP.** The Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
 - (I) **Compliance with Laws.**

 - (1) **General.** Contractor is in compliance with all laws, rules and regulations applicable to its business, including the Rules of Professional Conduct of the State Bar of California. Contractor pays all undisputed debts when they come due.
 - (2) **Specific.**

 - (a) **Non-discrimination.** Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical, including HIV or AIDS), marital or domestic partner status, medical condition (including cancer or genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender identity), and sexual orientation.
 - (b) **No Harassment.** Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement. Contractor takes all reasonable steps to prevent unlawful harassment from occurring.
 - (c) **Employment and Labor Laws.** Contractor also complies with applicable provisions of the federal Americans with Disabilities Act (42 U.S.C. 12101, *et seq.*), California's Fair Employment and Housing Act, California Government Code section 12990 *et seq.*, and California Code of Regulations, title 2, section 7285 *et seq.*
- 1.2 **Representations and Warranties to Remain True.** During the Term, Contractor must not take an action, or omit to perform any act, that may result in a representation and warranty becoming untrue. Contractor must immediately notify the AOC if any representation and warranty becomes untrue.
2. **Indemnity.** Contractor must defend (with counsel satisfactory to the AOC), hold harmless and indemnify Judicial Branch Entities and Judicial Branch Personnel from all claims, losses, and expenses, including attorney fees and costs, resulting from (A) a matter or event related to the Services, (B) a matter or event related to Contractor's or its subcontractors' acts or omissions related to the performance of this Agreement, or (C)

Contractor's breach under this Agreement, except to the extent a claim or loss is due to the active negligence or willful misconduct of an indemnified party.

3. Insurance.

3.1 Basic Coverage. Contractor must maintain at its expense the following insurance during the Term:

- (A) **Commercial General Liability.** This policy must include all coverage in the Insurance Services Office (ISO) Commercial General Liability Coverage "occurrence" form, CG 0001 (including products and completed operations and blanket contractual liability covering the indemnities contained in this Agreement) with no coverage deletions or exceptions, with limits not less than \$1,000,000.00 for each occurrence, combined single limit bodily injury and property damage, with a \$2,000,000.00 policy aggregate.
- (B) **Professional Liability.** This policy must cover Contractor's performance under this Agreement, at minimum limits of \$1 million per claim.
- (C) **Workers' Compensation/Employer's Liability.** This policy is required only if Contractor has employees, or hires employees any time during the Term. The policy must include workers' compensation coverage that meets applicable statutory requirements, and employer's liability coverage for bodily injury and property damage at minimum limits of \$500,000 each for (i) each accident, (ii) disease policy limit, and (iii) disease – each employee.
- (D) **Automobile Liability.** This policy must cover bodily injury and property damage and be applicable to all vehicles, whether owned, non-owned, leased, or hired. Contractor may substitute personal automobile liability insurance, if Contractor has no transportation or hauling responsibilities under this Agreement. The minimum liability limit will be \$1 million per occurrence, combined single limit.

3.2 "Claims Made" Coverage. If any required policy is written on a "claims made" form, Contractor must maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the AOC's acceptance of all Services provided under this Agreement. The retroactive date or "prior acts inclusion date" of any "claims made" policy must be no later than the date that Services commence under this Agreement.

3.3 Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella coverage.

3.4 Deductibles and Self-Insured Retentions. Contractor must declare to the AOC all deductibles and self-insured retentions, and they are subject to the AOC's approval. Deductibles and self-insured retentions do not limit Contractor's liability.

3.5 Certificates of Insurance. Before Contractor begins performing Services, Contractor must have its insurance broker or agent send the AOC certificates of insurance and endorsements attesting to the existence of coverage and providing that the policies cannot be canceled, allowed to lapse, terminated or amended to reduce coverage without 30 days' prior written notice to the AOC. The certificates must reference the agreement number of this Agreement. Contractor must require its Commercial General Liability policy carrier to endorse Contractor's policy to include the Judicial Branch Entities and Judicial Branch Personnel as additional insureds with respect to liability arising out of its Services. Contractor must send all certificates and endorsements sent to the AOC's Business Services Manager, at the address listed in Attachment 5.

3.6 Qualifying Insurers. For insurance to satisfy the requirements of this section, all required insurance must be issued by a carrier with an A.M. Best rating of A-/VII or better that is authorized to transact business in the State.

3.7 Required Policy Provisions. Each policy must provide, as follows:

(A) **Insurance Primary; Waiver of Subrogation.** The policy is primary and non-contributory with any insurance or self-insurance programs carried or administered by Judicial Branch Entities and Judicial Branch Personnel. For Workers' Compensation and Professional Liability insurance, the insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel.

(B) **Application.** The policy applies separately to each insured against whom a claim is made and/or a lawsuit is brought, to the limits of the insurer's liability.

3.8 Subcontractors; Partnerships. Contractor must include all subcontractors as insureds under Contractor's policies or Contractor must furnish separate certificates and endorsements for each subcontractor. If Contractor is an association, partnership, or other joint business venture, the insurance may be provided by either of the following methods:

(A) **Separate.** Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or

(B) **Joint.** Joint insurance program with the association, partnership, or other joint business venture included as a named insured.

3.9 Consequences of Lapse. If required insurance lapses during the Term, the AOC is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

4. Breach and Remedies.

4.1 Breach. A breach exists under this Agreement if Contractor:

- (A) makes a material misrepresentation in writing; or
 - (B) fails or is unable to meet or perform any material promise in this Agreement, and
 - (1) is incapable of curing this failure, or
 - (2) does not cure this failure within 10 days following notice (or within a longer period if specified in the notice).
- 4.2 Notice.** Contractor must give the AOC notice immediately if Contractor breaches, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a breach under this Agreement.

4.3 Remedies.

- (A) **Available Remedies.** If a breach exists under this Agreement, the AOC may do any of the following:
 - (1) require Contractor to enter into non-binding mediation;
 - (2) terminate this Agreement, in whole or in part, in accordance with this Exhibit C; and
 - (3) seek any other available remedy at law or in equity.
- (B) **Remedies Cumulative.** All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

5. Termination; Effect of Expiration or Termination

5.1 Early Termination.

- (A) The AOC may terminate this Agreement in whole or in part “for cause” if Contractor is in breach.
- (B) The AOC may terminate this Agreement in whole or in part, or modify or limit the Services and, proportionately, Contractor’s compensation, if:
 - (1) the AOC determines that having Contractor provide the Services has become infeasible due to changes in applicable laws or regulations, or
 - (2) expected or actual funding to compensate Contractor is withdrawn, reduced or limited.
- (C) The AOC may terminate this Agreement in whole or in part at any time for any or no reason upon 10 days’ written notice.
- (D) This entire Agreement will terminate immediately without further action of the parties if Contractor is a natural person and Contractor dies or becomes temporarily or permanently incapacitated.

- (E) In the event a federal or State tax or employment agency concludes that an independent contractor relationship does not exist, either Contractor or the AOC may terminate this Agreement immediately upon written notice.
- (F) Contractor may withdraw from representing the AOC in a Matter:
 - (1) with the AOC's consent;
 - (2) without the AOC's consent if the AOC fails to pay Contractor any undisputed amount; or
 - (3) without the AOC's consent if continuing Contractor's representation would be unlawful or unethical.

5.2 Effect of Expiration and Early Termination; Survival.

- (A) Upon receipt of any termination notice from the AOC, Contractor must promptly discontinue all affected Services unless the notice specifies otherwise.
- (B) Upon the End Date:
 - (1) The AOC will be released from compensating Contractor for Services other than those Contractor satisfactorily performed prior to the End Date.
 - (2) Contractor must submit Contractor's final invoice for payment within 60 days of the End Date. The AOC will not pay any Contractor invoice received after this period.
 - (2) Contractor will be released from performing Services, except for Services in any non-terminated portion of the Agreement.
- (B) All rights and duties in this Exhibit C and Exhibit D will survive the expiration or termination of this Agreement with respect to Services performed prior to expiration or termination, and continuing obligations specified in this Agreement to be performed afterwards.
- (C) In the event of termination, expiration, or removal/withdrawal from a Matter, Contractor must withdraw as counsel for the AOC (and any person represented on the AOC's behalf) as soon as it is reasonably possible to do so without (i) prejudice to the AOC's interests (or the interest of any person represented on the AOC's behalf), or (ii) violation of Contractor's statutory or ethical duties. Contractor must notify the AOC of any further services, prior to withdrawal or substitution, which Contractor believes are necessary to avoid prejudice to the AOC's interests (or the interest of any person represented on the AOC's behalf), and obtain the AOC's consent prior to performing such services.

6. Assignment; Successors.

6.1 Permitted Assignments.

- (A) Contractor may not assign Contractor's rights or duties under this Agreement without the AOC's prior written consent. Consent may be withheld for any reason or no reason. Any attempted assignment will be void or invalid.
- (B) The AOC may assign its rights and duties to any State entity. The AOC will notify Contractor in writing within 30 days following the assignment.
- (C) Any assignment by Contractor will take effect only if there is a written agreement between Contractor and all assignees, stating the assignees:
 - (1) are jointly and severally liable to the AOC for performing Contractor's duties in this Agreement;
 - (2) affirm the rights granted in this Agreement to the AOC;
 - (3) make the representations and warranties made by Contractor in this Agreement; and
 - (4) appoint the AOC an intended third party beneficiary under the written agreement.
- (D) No assignment will release either party of its duties under this Agreement.

6.2 Successors. This Agreement binds the parties as well as their heirs, successors, and assignees.

7. Subcontracting.

7.1 Permitted Subcontracts. Contractor may not subcontract its duties under this Agreement without the AOC's prior written consent. Consent may be withheld for any reason or no reason.

7.2 Requirements. Any subcontract by Contractor will take effect only if there is a written agreement between Contractor and each subcontractor, stating each subcontractor:

- (A) makes the representations and warranties made by Contractor in this Agreement;
and
- (B) appoints the AOC an intended third party beneficiary under the written agreement.

7.3 No Release. No subcontract will release Contractor from its duties under this Agreement.

7. Notices. Notices under this Agreement must be in writing. Notices must be delivered in person, via a reputable express carrier, or by registered or certified mail (postage pre-paid). Notice is effective on receipt; however, any correctly addressed notice that is refused,

unclaimed, or undeliverable because of an act or omission of the party to be notified will be deemed effective as of the first date that the notice was refused, unclaimed, or deemed undeliverable. Notices will be addressed to a party's Project Manager, at the address listed in Attachment 5. For notices to the AOC, Contractor must also send a copy to the AOC's Business Services Manager, at the address listed in Attachment 5.

8. Miscellaneous Provisions; Interpretation.

8.1 Independent Contractor. Contractor is an independent contractor to the AOC. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor or its personnel and the AOC. Nothing Contractor does, or fails to do, in the performance of this Agreement will make Contractor or its personnel an employee of the AOC. The AOC will not provide to Contractor or its personnel the benefits that the AOC give to employees. If the Internal Revenue Service or any other federal or State governmental agency inquires about Contractor's status as an independent contractor, Contractor must inform the AOC and let the AOC participate in any discussion or negotiation with the agency.

8.2 Contractor's Personnel.

(A) Contractor must assign to this project only persons who have sufficient training, education and experience to successfully perform their duties. Contractor must endeavor to minimize turnover of personnel performing Services. If the AOC is dissatisfied with any of Contractor's personnel, for any reason or no reason, Contractor must replace them with qualified personnel.

(B) Contractor must cooperate with the AOC if the AOC decides to require background checks on Contractor or Contractor's personnel by obtaining, at no additional cost to the AOC, all releases, waivers and permissions the AOC requires. Contractor must not assign personnel who refuse to undergo a background check to perform Services.

8.3 Audit Rights. Contractor must allow the AOC's designees and the AOC to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement. In addition, either party (or its subcontractors) may be audited by State or federal agencies. If an audit determines that Contractor (or any subcontractors) is not in compliance with this Agreement, Contractor will promptly take actions as directed by the AOC to correct any non-compliance. Nothing in this paragraph requires the provision or disclosure of any information or material covered by the attorney-client privilege without the written consent of the client(s). If an audit determines that Contractor has overcharged the AOC five percent (5%) or more for Services provided during the time period subject to audit, Contractor must reimburse the AOC in an amount equal to the cost of such audit.

8.4 Ownership. As between the parties, the AOC is the exclusive owner of all materials Contractor collects and produces in connection with the Services, including copyrights. Within 30 days of the End Date, or upon the AOC's notice at any time, Contractor must give all materials you collect or produce to the AOC (or to another party at the AOC's direction). Unless the AOC specifies otherwise, all files must be saved in Microsoft Word and Excel formats, as applicable. Contractor must maintain Contractor's records relating to the Services and Contractor's invoices, and all other materials, in an accessible location and condition for a period of not less than four years after the later of:

- (1) The date when Contractor receives final payment under this Agreement; or
- (2) The date when the AOC resolves with Contractor the findings of any final audit.

Contractor may retain copies of any original documents Contractor provides to the AOC.

8.5 Confidential Information; Publicity.

(A) Confidential Information. Contractor agrees to hold in confidence the following Confidential Information:

- (1) All information that the AOC discloses to Contractor; and
- (2) All information to which Contractor gains access while providing Services.

Confidential Information does not include any information that Contractor can demonstrate has been made available to the public (other than through a breach of this Agreement). As between Contractor and the AOC, the AOC owns the Confidential Information, and the AOC authorizes Contractor to use it only for purposes of performing this Agreement. Contractor may also disclose the AOC's Confidential Information to the extent necessary to comply with law, provided Contractor gives the AOC prior written notice. Upon the End Date, Contractor must destroy or return all Confidential Information to the AOC, at the AOC's discretion, and certify to the AOC in writing that it has done so.

(B) Publicity. Contractor must not make any public announcement, press release, or other writing relating to the Services about this Agreement without the AOC's prior written approval.

(C) Specific Performance. Contractor understands a breach under this Section 8.4 may result in irreparable damage for which no adequate remedy may be available. Accordingly, injunctive or other equitable relief are remedies available to the AOC.

8.5 Choice of Law. California law, without regard to its choice-of-law provisions, governs this Agreement.

- 8.6 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 8.7 Amendment.** No amendment to this Agreement will be effective unless in writing on the AOC's form and signed by the Manager of the AOC's Business Services Unit. The AOC may exercise any option under this Agreement, and increase the Contract Amount if applicable, by notifying the Contractor, and will be effective without Contractor's signature.
- 8.8 Waiver.** A party's waiver of enforcement of any of this Agreement's terms or conditions will be effective only if it is in writing. A party's specific waiver will not constitute a waiver by that party of any earlier, concurrent, or later breach or default.
- 8.9 Authority and Binding Effect.** Each party warrants it has the authority to enter into this Agreement, it may perform as provided for in this Agreement, and its representative who signs this Agreement has the authority to do so. Each party warrants this Agreement constitutes a valid and binding obligation of the party, enforceable in accordance with its terms. This Agreement will not bind the AOC until it is signed by a duly authorized representative of the AOC.
- 8.10 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 8.11 Headings.** All headings are for reference purposes only and do not affect the interpretation of this Agreement.
- 8.12 Time of the Essence.** Time is of the essence in the performance of Services under this Agreement. The term "day" in this Agreement refers to a calendar day.
- 8.13 Non-Exclusive.** Contractor may perform work for any other person or entity, provided that the other work does not interfere with the Services. The AOC may use other contractors to perform any work. The AOC does not guarantee Contractor will work a certain number of hours or be offered a certain number of projects.
- 8.14 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

- End of Exhibit -

EXHIBIT D
DEFINITIONS

As used in this Agreement, the following terms have the indicated meanings:

“**AOC**” means the Administrative Office of the Courts, the staff agency to the Judicial Council of California.

“**Confidential Information**” is defined in Exhibit C, Section 9.4.

“**Contract Amount**” is the maximum amount the AOC may pay Contractor under this Agreement. The Contract Amount is the amount listed in Section 4 of the Coversheet, as amended from time to time.

“**Coversheet**” means the signature page of this Agreement.

“**Effective Date**” is defined in Section 2 of the Coversheet.

“**End Date**” means the later of the (i) date when this Agreement as a whole expires or is terminated pursuant to Exhibit C, Section 5.1, and (ii) the date on which Contractor have been replaced or withdrawn as attorney of record on the affected Matter.

“**Judicial Branch Entity**” has the meaning stated in Government Code sections 900.3 and 940.3: any superior court, court of appeal, the Supreme Court, the Judicial Council, or the Administrative Office of Courts.

“**Judicial Branch Personnel**” means judges, judicial officers, subordinate judicial officers, directors, officers, members, employees, agents, consultants and volunteers of a Judicial Branch Entity.

“**Judicial Council**” means the Judicial Council of California, the policymaking body of the State court system.

“**Matter**” is defined in Exhibit A, Section 1.1.

“**Project Manager**” means the individual designated in Exhibit A, Section 8.

“**Services**” are Contractor’s tasks described in Exhibit A, Section 1.

“**State**” means the state of California.

“**Term**” means the period specified in Section 2 of the Coversheet.

- End of Exhibit -

ATTACHMENT A-1

DESCRIPTION OF CONTRACTOR'S SERVICES

- End of Attachment -

ATTACHMENT __
CONTACT INFORMATION

The AOC's Project Manager

Contractor's Project Manager

Name: _____

Name: _____

Title: _____

Title: _____

Address: _____

Address: _____

Phone: _____

Phone: _____

E-mail: _____

E-mail: _____

AOC's Business Services Manager

Contractor's Billing Partner

Grant Walker

Name: _____

Business Services Manager

Title: _____

Administrative Office of the Courts

Address: _____

455 Golden Gate Avenue

San Francisco, California 94102

415-865-4090

Phone: _____

grant.walker@jud.ca.gov

E-mail: _____

- End of Attachment -

End of Attachment C