



SUPERIOR COURT OF CALIFORNIA
C O U N T Y O F T U L A R E

SERVICE CONTRACT GENERAL TERMS AND CONDITIONS

I. ACCOUNTING

Contractor will maintain a system of accounting and internal controls that meets Generally Accepted Accounting Principles (GMP).

II. AMENDMENT AND WAIVER

Except as provided herein, no alteration, amendment, variation, or waiver of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Waiver by either party of any default, breach, or condition precedent shall not be construed as a waiver of any other default, breach or condition precedent, or any other right hereunder. No interpretation of any provision of this Agreement shall be binding upon Court unless agreed to in writing by the Court.

III. AUDIT; RETENTION OF RECORDS; OWNERSHIP

- A. AUDIT - Upon reasonable Notice, Contractor will provide to Court, to any federal or state entity with monitoring or reviewing authority, or to Court's authorized representatives, access to and the right to examine and audit all records and documents relating to performance and billing under this Agreement, and, as necessary, to determine compliance with relevant federal, state, and local statutes, rules, and regulations. Contractor agrees to provide Court with all relevant information requested and will permit access to its premises at reasonable times for the purpose of interviewing employees and inspecting and copying any relevant records.
- B. RETENTION OF RECORDS - Contractor will maintain all financial data, supporting documents, and all other records relating to performance and billing under this Agreement for a period in accordance with state and federal law. The minimum retention period will be (4) four years from the date of the submission of the final payment request or until audit findings are resolved, whichever is later.
- C. OWNERSHIP - The Court is the exclusive owner of all materials collected and produced in connection with the Services provided under this Agreement. Upon termination or expiration of this Agreement (subject to any mutually agreed period of continuation of Services), or upon the Court's Notice at any time, and subject only to the duty of confidentiality owed to a represented party, Contractor will give original materials to the Court or to another party at Court's direction.

IV. ASSIGNMENT AND SUBCONTRACTS

- A. Contractor will not assign its rights or obligations under this Agreement, either in whole or in part, without the prior written consent of Court, in the form of an Amendment.
- B. Contractor shall obtain prior written approval from Court before subcontracting any of the services delivered under this Agreement. Contractor remains legally obligated for the performance of all Agreement terms including work performed by third parties under subcontracts and shall be held responsible by Court for the performance of any subcontractor whether approved by Court or not. All subcontracted services shall be subject to all applicable provisions of this Agreement.

V. CHOICE OF LAW; JURISDICTION AND VENUE

- A. CHOICE OF LAW - This Agreement and performance under it will be exclusively governed by the laws of the State of California without regard to its conflict of law provisions.
- B. JURISDICTION AND VENUE - Contractor irrevocably consents to the exclusive jurisdiction and venue of the state and federal courts located in San Francisco, California, in any legal action concerning or relating to this Agreement.

VI. CERTIFICATIONS AND REPRESENTATIONS

Contractor's signature on this Agreement shall also serve as certification for the following paragraphs:

- A. COMPLIANCE WITH LAWS GENERALLY - Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services, and pays all undisputed debts when they come due.
- B. ADA COMPLIANCE - Contractor certifies that it and its subcontractors comply with applicable provisions of the federal Americans with Disabilities Act ("ADA") of 1990 (42 U.S.C. Sections 012101 et seq.), which prohibits discrimination on the basis of disability, as well as with all applicable regulations and guidelines issued pursuant to the ADA.
- C. FEHA COMPLIANCE
 - 1. Contractor certifies that it and its subcontractors comply with all applicable provisions of the Fair Employment and Housing Act, California Government Code, § 12990 et seq., and all applicable regulations promulgated under California Code of Regulations, title 2, § 7285 et seq.
 - 2. Contractor certifies that it and its subcontractors will not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, disability (both mental and physical, including HIV and AIDS), medical condition (including cancer and genetic characteristics), request for family and medical care leave, marital or domestic partner status, age (over 40), sex (including gender identity) or sexual orientation. Contractor will ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination
 - 3. Contractor certifies that it and its subcontractors will not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor or its subcontractors may interact in the performance of this Agreement. Contractor and its subcontractors will take all reasonable steps to prevent such unlawful harassment from occurring.
- D. DRUG-FREE WORKPLACE - Contractor certifies that it and its subcontractors will provide a drug-free workplace as required by California Government Code, § 8355 through 8357.
- E. AUTHORITY - Contractor has the authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has the authority to bind Contractor to this Agreement. This Agreement constitutes a valid and binding obligation of Contractor, enforceable in accordance with its terms. Contractor is qualified to do business and in good standing in the State of California.
- F. NOT AN EXPATRIATE CORPORATION - Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code section 10286.1 and is eligible to contract with the State.
- G. SALES AND USE TAX COLLECTION - Contractor collects and remits sales and uses taxes as and to the extent required under the Revenue and Taxation Code.

- H. NO INTERFERENCE WITH OTHER CONTRACTS - To the best of Contractor's knowledge, this Agreement does not create a conflict of interest or default under any of Contractor's other contracts.
- I. WORK ELIGIBILITY - All personnel assigned to perform this Agreement are able to work legally in the United States and possess valid proof of work eligibility.
- J. SPECIAL PROVISIONS REGARDING DISCHARGE VIOLATIONS - If Contractor is a private entity, Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.
- K. LABOR/COLLECTIVE BARGAINING - Contractor certifies that it and its subcontractors will give written Notice of their obligations under the foregoing provisions to labor organizations with which it or they have collective bargaining agreements or other agreements. Contractor will also take all action necessary to ensure that the representations in this section remain true, prior to the execution of this Agreement, during the performance of this Agreement, and through final payment by the Court.
- L. NATIONAL LABOR RELATIONS BOARD (NLRB) CERTIFICATION - Contractor certifies that, within the immediately preceding (2) two-year period, no more than one final, unappealable finding of contempt of Court by a federal court has been issued against Contractor because of Contractor's failure to comply with an order of the NLRB.
- M. PROHIBITION AGAINST HIRING COURT EMPLOYEES - Contractor certifies and will require all subcontractors to certify to the following:

"Former Court employees will not be offered employment positions for two years from the date of separation, if that employee participated in the decision-making process relevant to the Agreement, or for one year from the date of separation if that employee was in a policymaking position in the same general subject area as the proposed Agreement, within the prior twelve-month period of Court employment."

VII. CHANGES IN SERVICES; STOP WORK ORDER (If applicable)

A. CHANGES IN WORK

1. Court reserves the right to require Contractor to make changes in the Services, as set forth in Exhibit A, Scope of Services, which may include additions, deletions, or modifications to the Services, or changes in the timing or level of effort for the Services.
2. For any change proposed, Court or Contractor will submit in writing:
 - a. a description of the proposed change and the reasons for the change.
 - b. a summary of the total compensation to be paid to the Contractor with a breakdown of tasks and costs, including any reduction in work or costs resulting from the change; and
 - c. a statement of the expected impact on schedule.
3. If Court and Contractor agree on a change in work, Court will issue an Amendment documenting the change, for the parties' execution.
4. If the parties cannot agree to the terms of a change, Contractor will proceed diligently with Services unless otherwise directed by Court, and any continuing disagreement will follow the process set forth in the Dispute Resolution section XIII, below.

Contractor should not proceed with any change prior to receiving a written directive or Amendment from Court. All costs for changes performed by Contractor without Court's prior written approval will be at Contractor's sole risk and expense.

- B. **STOP WORK ORDER - (If applicable)**
1. Court may, at any time, by delivery of a written Stop Work Order to Contractor, require Contractor to stop any or all of the Work for ninety (90) days after the Stop Work Order is delivered to Contractor, and for any further period to which the parties may agree.
 2. Upon receipt of the Stop Work Order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the costs incurred to Court during the applicable Stop Work period. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any mutually agreed extension of that period, Court will either cancel the Stop Work Order or terminate the Work, as provided in the Termination section XXVII below.
 3. If a Stop Work Order is cancelled, or the period of the Stop Work Order or any extension thereof expires, Contractor will resume Work. Court may make an equitable adjustment in the delivery schedule, the Contract Amount, or both, if
 - a. the Stop Work Order increased Contractor's costs, or the time required for performance; and
 - b. Contractor asserts its right to an equitable adjustment within thirty (30) days after the end of the applicable Stop Work period.
 4. If a Stop Work Order is not cancelled and the Work covered by the Stop Work Order is terminated other than for cause, Court may allow reasonable costs resulting from the Stop Work Order.
 5. Court will not be liable to Contractor for loss of profits because of any Stop Work Order.

VIII. COMPLIANCE WITH LAWS, LICENSES AND PERMITS

- A. Contractor must observe and comply with all applicable laws, rules, and regulations affecting the Services. During the term of this Agreement, Contractor will obtain and keep in full force and effect, all permits and licenses necessary to accomplish the Services. Such permits and licenses will be made available to Court, upon request.
- B. Contractor will promptly provide Notice to Court of any conflict discovered between the Agreement and any applicable laws, rules, regulations, and/or permits and licenses, and await resolution of the conflict. If Contractor proceeds with the Services in question without resolution of the conflict, Contractor will be solely liable for any costs, fines, penalties, or damages that accrue, including costs for remedial work required to comply with such requirements.

IX. CONFIDENTIAL INFORMATION

- A. Requirements of Strict Confidence - While performing Services under this Agreement, Contractor and its subcontractors may gain access to Confidential Information that, if disclosed to Third Parties, may be damaging to the Court, its personnel, Court users, or other government entities. Neither Contractor nor its subcontractors acquire any right or title to the Confidential Information, and Contractor and its subcontractors agree not to disclose any Confidential Information to any third party. All Confidential Information disclosed to Contractor, or its subcontractor will be held in strict confidence and used only in performance of Services under this Agreement. In the event of any unauthorized disclosure or loss of Confidential Information, Contractor will immediately provide Notice to Court, with pertinent details of the unauthorized disclosure or loss, and any remedial measures taken.

- B. Confidential Information is defined as: 1. Any financial, statistical, personal, technical, or other data or information that is designated confidential by a party to this Agreement,
2. All information related to the business of the Court that may be obtained orally, in writing, or from any source, or on any Court mainframe, Court or judicial branch computer network or workstation, and all software, whether owned or licensed by Court and whether accessed by Contractor by direct or remote access method,
 3. Any information relating to the methods, processes, financial data, lists, apparatus, statistics, programs, research, development, or related information of the Court concerning the past, present, or future official business and/or the results of the provision of services to the Court, and 4. Information relating to Court personnel and Court users.
5. Confidential Information does not include:
- a. Information that is already known by the receiving party, free of obligation of confidentiality to the disclosing party;
 - b. Information generally and lawfully available to the public, other than as a result of disclosure by the receiving party in breach of this Agreement;
 - c. Information independently developed by the receiving party without reference to the Confidential Information; and
 - d. Information that the receiving party rightfully obtains from a third party free of the obligation of confidentiality to the disclosing party.
- C. Permissible Disclosures - Contractor may disclose Court's Confidential Information on a "need-to-know" basis to Contractor's employees and subcontractors and any representatives of the Court that are working on the project. Additionally, Contractor may disclose the Confidential Information, to the extent necessary to (i) comply with any applicable law, rule, regulation, or ruling; (ii) respond to any enforceable summons or subpoena; or (iii) enforce its rights under this Agreement.

X. CONFLICT OF INTEREST; PROHIBITION AGAINST GRATUITIES

- A. CONFLICT OF INTEREST 1. Contractor covenants that it and its subcontractors presently have no interest, and will acquire no interest, which would directly or indirectly conflict in any manner or to any degree, with the full and complete performance required under this Agreement. Contractor further agrees to submit full disclosure statements, if required by law to do so, pursuant to the requirements of the California Fair Political Practices Act or any other applicable federal or state law, regulation, or conflict of interest code.
2. Contractor and its subcontractors and employees will not participate in proceedings that involve the use of Court funds or that are sponsored by Court if the Contractor, its subcontractors, or their employees, principals, partners, family members, or organizations have a financial interest in the outcome of the proceedings.
 3. Contractor and its subcontractors and employees will not engage in actions resulting in or creating the appearance of use of an official position with the government for private gain, preferential treatment to any particular person associated with these Services or Agreement, impairment of Court's independence or impartiality, a decision made outside official channels, or adverse effects on the confidence of the public in the integrity of Court.

- B. PROHIBITION AGAINST GRATUITIES 1. Contractor covenants that no gratuities, in the form of entertainment, gifts, or otherwise, were ordered by Contractor or any agent, director, or representative of Contractor, to any officer, official, agent, or employee of Court, in an effort to secure the Agreement or favorable treatment with respect to any determinations concerning the performance of the Agreement.
2. For any breach or violation of this covenant, Court has the right to terminate the Agreement for cause, wither whole or in part. Any loss or damage sustained by Court in procuring, on the open market, replacement goods or services that Contractor agreed to provide, will be borne and paid for by Contractor. Court's rights and remedies under this provision are in addition to any other rights and remedies provided by law or under this Agreement.

XI. CONSIDERATION

- A. The consideration paid to Contractor is the entire compensation for all Services performed under this Agreement, including all of Contractor's expenses incurred, such as travel and per-diem expenses, unless otherwise expressly provided, as set forth in Exhibit B, Payment Terms.
- B. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK - Court's payment will not relieve Contractor from its obligation to replace unsatisfactory work, even if the unsatisfactory character of such work may have been apparent or detected at the time such payment was made. Services, work, data, or components that do not conform to requirements of this Agreement will be rejected and will be replaced by Contractor without delay or additional cost to Court.
- C. DISALLOWANCE - If Contractor receives payment from Court for a service or reimbursement that is later disallowed or rejected by the Court, Contractor will promptly refund the disallowed amount to Court upon Court's request. At its option, Court may set the amount disallowed from any payment due to Contractor, under this Agreement or any other agreement.

XII. CONTRACTOR STATUS

A. INDEPENDENT CONTRACTOR

1. Contractor, subcontractors, and their officers, agents, employees, and all others acting on behalf of Contractor for the Services, act as independent contractors and not as Court agents, officers or employees. Contractor has no authority to bind or incur any obligation on behalf of Court. Except as expressly provided in Exhibit A, Scope of Services, Contractor has no authority or responsibility to exercise any rights or power vested in Court.
2. This Agreement will not be considered under any circumstance to create a jointventure relationship.
3. If any governmental entity concludes that Contractor is not an independent Contractor, Court may terminate this Agreement immediately upon Notice. Alternatively, Contractor may agree to a reduction in Court's financial liability, so that Court's total costs under this Agreement do not exceed the originally contemplated amount.

- B. CONTRACTOR'S EMPLOYEES 1. Contractor's employees will be entirely and exclusively under the direction, supervision, and control of Contractor. All terms of employment including hours, wages, working conditions, discipline, hiring, and termination, or any other employment issues or requirements of law, will be determined by Contractor. 2. Contractor will issue W-2 forms or other forms as required by law for income and employment tax purposes for all of Contractor's employees, consultants, and independent contractors.

3. If the Internal Revenue Service or any other federal or state governmental entity should investigate or challenge Contractor's independent status with respect to Court, the parties agree that (i) each will inform the other party of such investigation or challenge; and (ii) Court will have the right, but not the obligation, to participate in any discussion or negotiation occurring with the federal or state entity, regardless who initiates such discussions or negotiations.
4. Contractor will indemnify and hold Court harmless from all claims, costs, and liabilities resulting from third-party actions alleging an employment relationship between Court and any Contractor or subcontractor personnel.

C. EXCLUSIVE CONTROL OF MEANS AND METHOD OF PERFORMANCE

1. Contractor will determine the method, details, and means of performing or supplying the Services under this Agreement. Contractor will be responsible

to Court only for the requirements and results specified in this Agreement and more particularly as set forth in Exhibit A, Scope of Services, and will not be subjected to Court's control with respect to the physical action or activities of Contractor in fulfillment of this Agreement. Contractor will have the "right to control" and bear the sole responsibility for the job site conditions and safety.

2. Notwithstanding Contractor's status as an independent contractor, Court shall withhold from payments made to Contractor such sums as are required to be withheld from employees by the Federal Internal Revenue Code; the Federal Insurance Compensation Act; the State Personal Income Tax Law and the State Unemployment Insurance Code; provided, however, that said withholding is for the purpose of avoiding Court's liability under said laws and does not abrogate Contractor's status as an independent contractor as described in the Agreement.

XIII. DISPUTE RESOLUTION

A. In the event of any dispute arising out of or relating to this Agreement, Court and Contractor will attempt, in good faith, to informally resolve them. Contractor will meet with Court's Project Manager or other designated representative to discuss the matter and any actions necessary to resolve a dispute.

B. ESCALATION

If the Project Manager is unable to resolve the dispute with Contractor, each party's Chief / Court Executive Officer (CEO) or designated representative will meet to exchange information and attempt resolution within fifteen (15) days of the effective date of the Notice. The decision of the CEO, or his designee, shall be the final decision of the Court.

C. CONFIDENTIALITY DURING DISPUTE RESOLUTION

1. All dispute resolution negotiations are considered confidential, and will be treated as compromise and settlement negotiations, to which California Evidence Code § 1152 applies.
2. Pending final resolution of any dispute, Contractor agrees to proceed diligently with the performance of the Services, including Services associated with the dispute, unless otherwise directed by Court. Contractor's failure to diligently proceed in accordance with Court's instructions will be considered a material breach of the Agreement.

XIV. DUPLICATE COUNTERPARTS

This Agreement may be executed in duplicate counterparts and shall be deemed executed when it has been signed by both parties.

XV. FORCE MAJEURE

A. Force Majeure events include, but are not limited to:

1. Catastrophic acts of nature, or public enemy
2. Civil disorder
3. Fire or other casualty for which a party is not responsible
4. Quarantine or epidemic

B. The party asserting a Force Majeure event will immediately provide Notice to the other party of the occurrence and nature of the Force Majeure event, and its expected impact on schedule. The party claiming Force Majeure will use commercially reasonable efforts to continue or resume performance, including alternate sources or means. Contractor will have no right to additional payment for costs incurred as a result of a Force Majeure event.

C. Any assertion of a Force Majeure event by subcontractors will be attributed to Contractor.

XVI. INDEMNIFICATION

A. To the fullest extent permitted by law, Contractor will indemnify, hold harmless, and defend, with counsel satisfactory to the Court, Court and its agents, officers, and employees from and against any and all claims, damages, losses, judgments, liabilities, expenses, and other costs, including litigation costs and attorneys' fees, arising or resulting from, or in connection with, the performance or breach of this Agreement by Contractor or its officers, employees, agents, representatives, or subcontractors. Such indemnification will not include loss, damage, or expense arising from the sole negligence or willful misconduct of Court or its agents, officers, and employees.

B. **(If applicable; for professional service contracts requiring insurance for errors and omissions.)** For Contractor's acts, errors, or omissions which are covered by Contractor's Professional Liability insurance, Contractor will provide the above indemnification for that proportion of damages, costs, and liabilities that are attributed to Contractor, or any of its subcontractors, but not for Court's proportionate share of liability.

C. Contractor's obligation to defend, indemnify, and hold Court and its agents, officers, and employees harmless is not limited to, or restricted by, any requirement in this Agreement that Contractor procure and maintain a policy of insurance.

XVII. INSURANCE

A. Basic Coverage. Contractor shall provide and maintain at Contractor's expense the following insurance during the Term:

1. Workers' Compensation and Employer's Liability. The policy is required only if Contractor has employees. It must include workers' compensation to meet minimum requirements of the California Labor Code, and it must provide coverage for employer's liability bodily injury at minimum limits of \$1 million per accident or disease.

2. Commercial General Liability (CGL). The policy must cover bodily injury and property damage liability, including coverage for the products, completed operations hazard, and liability assumed in a contract, personal and advertising injury liability, and contractual liability, at minimum limits of \$1 million per occurrence, combined single limit; and

- a. **[CGL insurance is required for contracts involving hazardous activities or any other activity specified in the California**

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3. Professional Liability (PL). The policy must cover liability resulting from errors or omissions committed in Contractor's performance of Services under this Agreement, at minimum limits of \$1 million per claim.

- a. **[PL insurance is required for contracts involving the furnishing of Consulting Services or professional services. If Contractor does not, however, actually maintain a policy with limits of \$1 million or more per claim and the COURT determines the risk of a lower limit is commercially reasonable under the circumstances, the minimum limit may be \$500,000 or the limit Contractor actually maintains, whichever is greater.]**

4. Commercial Automobile Liability (CAL). The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit.

- a. **CAL insurance is required if Contractor will use a vehicle in the performance of this Agreement. I**

5. Commercial Crime Insurance (CCI). The policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; damage to our buildings, and property; and fraudulent transfer of money, securities, and property. The minimum liability limit must be acceptable to the Court.

- a. **[CCI insurance is required if Contractor performs this Agreement regularly on the Court's premises or handles or has regular access to the Court's funds or property of significant value.]**

B. "Claims Made" Coverage. If any required insurance is written on a "claims made" form, Contractor shall maintain the coverage continuously throughout the Term, and, without lapse, for three years beyond the termination or expiration of this Agreement and the COURT'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.

C. Umbrella Policies. Contractor may satisfy basic coverage limits through any combination of basic coverage and commercial umbrella liability insurance.

D. Aggregate Limits of Liability. The basic coverage limits of liability may be subject to annual aggregate limits. If this is the case the annual aggregate limits of liability must be at least two times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.

- E. Deductibles and Self-Insured Retentions. Contractor shall declare to the COURT all deductibles and self-insured retentions that exceed \$100,000 per occurrence. Any increases in deductibles or self-insured retentions that exceed \$100,000 per occurrence are subject to the COURT's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- F. Additional Insured Status. Contractor shall require Contractor's commercial general liability insurer, Contractor's commercial automobile liability insurer, and, if applicable, Contractor's commercial umbrella liability insurer to name Judicial Branch Entities and Judicial Branch Personnel as additional insureds with respect to liability arising out of Contractor's Services under this Agreement.
- G. Certificates of Insurance. Before Contractor begins performing Services, Contractor shall give the COURT certificates of insurance attesting to the existence of coverage, and stating that the policies will not be canceled, terminated, or amended to reduce coverage without 30 or more days' prior written notice to the COURT. Any replacement certificates of insurance are subject to the approval of the COURT, and, without prejudice to the COURT, Contractor shall not perform work before the COURT approves the certificates.
- H. Qualifying Insurers. For insurance to satisfy the requirements of this section, all required insurance must be issued by an insurer with an A.M. Best rating of A or better that is approved to do business in the State of California.
- I. Required Policy Provisions. Each policy must provide, as follows:
1. Insurance Primary; Waiver of Subrogation. The basic coverage provided is primary and non-contributory with any insurance or self-insurance maintained by Judicial Branch Entities and Judicial Branch Personnel, and the basic coverage insurer waives any and all rights of subrogation against Judicial Branch Entities and Judicial Branch Personnel; and
 2. Separation of Insureds. The commercial general liability policy, or, if maintained in lieu of that policy, the commercial umbrella liability 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.
- J. Partnerships. If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either of the following methods:
1. Separate. Separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or
 2. Joint. Joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- K. Consequences of Lapse. If required insurance lapses during the Term, the COURT is not required to process invoices after such lapse until Contractor provide evidence of reinstatement that is effective as of the lapse date.

XVIII. LIMITATION OF LIABILITY

Court will not be liable to Contractor, its officers, employees, subcontractors, or third parties for any indirect, special, or consequential damages, including lost profits or revenue, arising from or relating to this Agreement, regardless of whether Court was advised of the possibility of such loss or damage. In no event will Court's liability for direct damages arising from or related to this Agreement, for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, exceed the amounts paid to Contractor by Court under this Agreement.

XIX. MODIFICATION

No modification or change to this Agreement will be valid without written approval by Court, in the form of an Amendment, including any changes to Exhibit A, Scope of Services.

XX. PROHIBITED BIDS FOR END PRODUCT OF THIS AGREEMENT

No person, firm, or subsidiary thereof which has been awarded a consulting services agreement may submit a bid for, or be awarded an agreement for, the provision of services, procurement of materials or data, or any other related action which is required, suggested, or otherwise deemed appropriate in the end product of this Agreement. This provision will not apply to any person, firm, or subsidiary thereof, which is awarded a subcontract under this Agreement in an amount no more than ten percent of the total monetary value of this Agreement.

XXI. SCOPE OF SERVICES; ACCEPTANCE

- A. SCOPE OF SERVICES - Contractor will perform and complete all Services described in Exhibit A, Scope of Services, in compliance with the requirements of this Agreement, and to the satisfaction of Court.
- B. ACCEPTANCE
 1. [This paragraph applicable only if an Acceptance Form attachment is used for this Agreement.] All Services provided by Contractor under this Agreement is subject to written acknowledgement and acceptance by Court's Project Manager. The Court's Project Manager will apply the acceptance criteria set forth in Exhibit A, Scope of Services, (including timeliness, completeness, technical accuracy and conformance to statistical, industry or marketplace standards) to determine acceptance or non-acceptance of the work.
 2. If the Services are not acceptable, the Court's Project Manager shall detail its failure to meet the acceptance criteria. Contractor shall have ten (10) business days from receipt of Acceptance and Sign-O Form to correct the failure(s) to conform to the acceptance criteria. Contractor will re-submit the Services, and the Project Manager shall re-apply the acceptance criteria to determine its acceptance or non-acceptance. Thereafter, the parties shall repeat the process set forth in this section until Contractor's receipt of Court's written acceptance of such corrected Services; provided, however, that if Court rejects any Services on at least two (2) occasions, Court may terminate that portion of this Agreement which relates to the rejected Services at no expense to Court.
- C. PRIOR WORK - Prior work, performed by Contractor pursuant to Court's authorization, but before execution of this Agreement, will be considered as having been performed subject to the provisions of this Agreement.

- D. NON-EXCLUSIVITY - This is a non-exclusive agreement. Court reserves the right to perform, or have others perform the Services of this Agreement. Court reserves the right to bid the Services to others or procure the Services by other means.

XXII. STANDARD OF PERFORMANCE; WARRANTIES

- A. STANDARD OF PERFORMANCE - Contractor will perform all Services with the requisite skill and diligence consistent with professional standards for the industry and type of work performed under the Agreement, and pursuant to the governing rules and regulations of the industry. Contractor understands that the Court relies on the accuracy, competence, and completeness of Contractor's services.
- B. WARRANTIES
1. Contractor warrants and represents that the Services and all deliverables furnished will conform to the requirements of this Agreement and such Services and deliverables will be merchantable, fit for their intended purposes, free from all defects in materials and workmanship, and, to the extent not manufactured pursuant to detailed designs furnished by Court, free from defects in design. Court's approval of designs or specifications furnished by Contractor will not relieve Contractor of its obligations under this warranty.
 2. NON-INFRINGEMENT - Contractor represents and warrants to Court that it either owns or is authorized to use for its own and the Court's benefit, all intellectual property rights used and to be used in connection with providing and/or performing the Services.
 3. All warranties will inure to Court, its successors, assigns, customer agencies, and users of the Services provided hereunder.
 4. Unless otherwise specified, the warranties set forth in this section commence after Services has been approved and accepted by Court.
- C. PERSONNEL REQUIREMENTS
1. Contractor will use adequate numbers of qualified individuals with suitable training, education, experience, and skill to perform the Services. For continuity, Contractor will endeavor to retain the same individuals during the performance of Services.
 2. Court reserves the right to disapprove Contractor's personnel, if dissatisfied with their performance. Upon receipt of such Notice, Contractor will immediately assign replacement personnel, with equivalent or greater experience and skills, who are acceptable to the Project Manager.
 3. Contractor will be responsible for all costs associated with replacing personnel, including additional costs to familiarize replacement personnel with the Services. If Contractor does not promptly furnish replacement personnel acceptable to the Project Manager, Court may terminate this Agreement for cause.

- D. BACKGROUND CHECKS - For Contractor's employees, subcontractors or agents with access to Court's systems (onsite or remotely) in the performance of their Services under this Agreement, Court will have the right, but not the obligation, to request or conduct a background check, before granting access to Court's premises or systems or at any other time. Contractor will cooperate with Court in performing any background checks, will provide prompt Notice to Court of any person refusing to undergo such background check, and will immediately remove such person from the project, and provide the results of any background check as

requested by Court. Contractor will obtain all releases, waivers, or permissions required for the release of such information to Court. Any additional costs will be borne by Contractor.

XXIII. SUBCONTRACTING

- A. Contractor will not engage a subcontractor to perform any portion of the Services, without the express written consent of Court. Any subcontracting without Court's written consent is a material breach of this Agreement.
- B. Contractor warrants and represents that all subcontractors will be subject to the same terms and conditions applicable to Contractor under this Agreement. Contractor will incorporate this Agreement as the prime agreement in any subcontracting relationship. Contractor will be liable for all subcontractor acts or omissions, including indemnity obligations.

XXIV. SUCCESSORS - [Optional: This paragraph applicable to new contracts following an acquisition]

This Agreement shall bind the successors of Court and Contractor in the same manner as if they were expressly named.

XXV. SURVIVAL

Terms that will survive termination or expiration of this Agreement include, but are not limited to: Assignment, Audit Rights and Retention of Records, Confidential Information, Indemnification, Limitation of Liability, and Warranties.

XXVI. Default and Remedies

A. Default - A default exists under this Agreement if:

- 1. Contractor or Contractor's creditors file a petition as to Contractor's bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business.
- 2. Contractor makes or has made under this Agreement any representation or warranty that is or was incorrect, inaccurate, or misleading.
- 3. Any act, condition, or thing required to be fulfilled or performed by Contractor to (i) enable Contractor lawfully to enter into or perform its obligations under this agreement, (ii) ensure that these obligations are legal, valid, and binding, or (iii) make this Agreement admissible when required is not fulfilled or performed.

B. Notice - Contractor shall notify the COURT immediately if Contractor defaults, or if a third-party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement.

C. Remedies -

- 1. Available Remedies: The COURT may do any of the following:
 - a. Withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement or any other agreement between a Judicial Branch Entity and Contractor.
 - b. Require Contractor to enter into non-binding mediation.

- c. Exercise, following notice, the COURT's right of early termination of this Agreement as provided below; and
 - d. Seek any other remedy available at law or in equity.
2. Remedies Cumulative: All remedies provided for in this Agreement may be exercised individually or in combination with any other available remedy.

XXVII. TERMINATION

- A. TERMINATION FOR CAUSE - Court may terminate this Agreement "for cause," in whole or in part and be relieved of any payments, if Contractor fails to perform the requirements of this Agreement at the time and in the manner agreed. Court may proceed with the Services in any manner deemed proper. All costs to Court arising from Contractor's default, including costs to complete or correct the Services, will be deducted from any sum due to the Contractor. Contractor will not be entitled to recover overhead or profit on the uncompleted portions of the Services.
- B. TERMINATION FOR CONVENIENCE
 1. Court may terminate this Agreement, in whole or in part, at any time and for any reason, upon at least thirty (30) days' Notice to Contractor. Upon receipt of the termination Notice, Contractor will promptly discontinue Services as specified in the Notice.
 2. If Court terminates all or part of this Agreement other than for cause, the Court will pay Contractor for the Services satisfactorily performed prior to the termination. Contractor will not recover overhead or profit on the uncompleted portions of the Services.
- C. TERMINATION DUE TO FUND APPROPRIATION AND AVAILABILITY
 1. Court's obligations under this Agreement are subject to the availability of funds authorized for the Services. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the Court's current fiscal year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement.
 2. Upon Notice, Court may terminate this Agreement in whole or in part, without prejudice to any right or remedy of Court, for lack of appropriation of funds. Upon termination, Court will pay Contractor for the fair value of Services satisfactorily performed prior to the termination, not to exceed the total Agreement amount.
- D. EFFECT OF TERMINATION
 1. Upon any expiration or termination, Court will have the right to take possession of any materials, equipment, deliverables, and other services including partially completed Services. Contractor will immediately assign to Court all of Contractor's right, title, and interest in and to such services and related materials and work product, and any and all intellectual property rights.
 2. Upon termination of any kind, Court may withhold from payment any sum that Court determines to be owed to Court by Contractor, or necessary to protect Court against loss due to outstanding liens or claims of former lien holders.

XXVIII. TIME IS OF THE ESSENCE

Time of performance is of the essence in the performance of Services by Contractor under this Agreement.

XXIX. WAIVER; SEVERABILITY

- A. WAIVER OF RIGHTS - Court's action, inaction, or failure to enforce any right or provision of this Agreement is not a waiver of its rights, and will not prevent Court from enforcing such rights on any future occasion.
- B. SEVERABILITY - The provisions of this Agreement will be effective in all cases, unless otherwise prohibited by applicable state or federal law. The provisions of this Agreement are separate and severable. The invalidity of any sentence, paragraph, provision, section, or portion of this Agreement will not affect the validity of the remainder of this Agreement.

XXX. ENTIRE AGREEMENT

- A. Headings or captions to the provisions of this Agreement are solely for the convenience of the parties, are not part of this Agreement, and will not be used to interpret or determine the validity of this Agreement.
- B. This Agreement was negotiated between the parties, and neither party "prepared" this Agreement for purposes of California Civil Code §1654. Any ambiguity will not be construed against the drafter, but rather the terms and provisions will be given a reasonable interpretation.
- C. This Agreement constitutes the entire and final understanding of the parties regarding this matter and supersedes and terminates any and all prior or contemporaneous negotiations, representations, understandings, discussions, orders, proposals, or agreements between the parties, whether written or oral, express or implied, relating in any way to this matter.

X. MISCELLANEOUS

Contractor further certifies that the following representations are true:

- A. **[This paragraph applicable only if contract value is \$50K or more]**
SPECIAL PROVISION FOR AGREEMENTS PROVIDING FOR COMPENSATION OF \$50,000 OR MORE: UNION ACTIVITIES RESTRICTION - During performance of this Agreement, Contractor shall not use any property of the State of California or Judicial Branch to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote, or deter union organizing, unless the state or judicial branch property is equally available to the general public for holding meetings.
- B. SPECIAL PROVISIONS REGARDING COMPLIANCE WITH THE CHILD SUPPORT COMPLIANCE ACT
 - 1. If this Agreement provides for Compensation of \$100,000 or more: [Paragraph B.1 and not applicable if contract value is less than \$100,000.] Contractor recognizes the importance of child and family support obligations and fully complies with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
 - 2. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

C. SPECIAL PROVISIONS REGARDING DISCHARGE VIOLATIONS - Contractor is not in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; or subject to any cease-and-desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions. Contractor has not been finally determined to be in violation of provisions of federal law relating to air or water pollution.

D. SPECIAL PROVISIONS REGARDING COMPLIANCE WITH THE SWEATFREE CODE OF CONDUCT - If this Agreement provides for furnishing equipment, materials, or supplies other than public works, or for the laundering of apparel, garments or corresponding accessories:

1. No apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the COURT under this Agreement have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. Contractor further declares under penalty of perjury that it adheres to the Sweat free Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108. This declaration is made under penalty of perjury.
2. Contractor cooperates fully in providing reasonable access to Contractor's records, documents, agents, and employees, and premises if reasonably required by authorized officials of the Department of Industrial Relations, or the Department of Justice to determine Contractor's compliance with the requirements under paragraph (a) and shall provide the same rights of access to the COURT.

E. NO LOSS LEADERS - It is unlawful for any person engaged in business within this state to sell or use any article or product as a 'loss leader' as defined in Section 17030 of the Business and Professions Code.

END OF EXHIBIT C