

**SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN MATEO**

**REQUEST FOR PROPOSAL**

**TRAFFIC ASSISTANCE PROGRAM**



**REQUEST FOR PROPOSAL – RFP 2016-02**

**WRITTEN PROPOSALS DUE BY**

**Friday, February 19, 2016 - 4:00 PM, PST**

**Superior Court of California, County of San Mateo**  
400 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063  
Attention: Mary Treanor, Contracts Administrator  
Finance Division

## **1.0 INTRODUCTION**

The Superior Court of California, County of San Mateo, hereinafter “Court,” is interested in contracting with a public or private not-for-profit agency to provide clerical support to the Court for the processing of traffic violation cases at the Court’s facilities as authorized by Section 11205.2 of the California Vehicle Code. Pursuant to Section 11205.2, the service provider may assist the Court with clerical processing of traffic cases that includes performing clerical duties as well as printing and providing to traffic violators copies of the Department of Motor Vehicles authorized list of traffic violator schools.

The following is a description of the terms of the program, scope of services to be provided, and the prospective service provider (hereinafter “Prospective bidder”) selection process. Prospective bidder’s submission of a Proposal for this project will be considered prospective bidder’s agreement to comply with the specifications in this RFP and the terms and conditions as stated herein in the proposed contract that is included in this Request for Proposal.

## **2.0 BACKGROUND INFORMATION**

### **2.1 Issuing Body**

The Superior Court of California, County of San Mateo (“Court”) is issuing this Request for Proposal (“RFP”) to solicit competitive proposals from entities who can provide clerical staff and administrative support and supervision of their staff for the Court’s Traffic Assistance Program (also referred herein as “TAP”) as described herein.

### **2.2 Program Background**

The Court adjudicates all adult traffic matters that occur in San Mateo County. The Court has the option to order a person convicted of a violation, or in lieu of adjudicating a violation on the citation, to attend traffic violator school, if that person qualifies under the statutes. Each person who signs up for traffic violator school is required to pay a Traffic Violator School fee in addition to the fine, fees and associated assessments. Funds collected for the Traffic Violator School fee subsidizes in most part the services that will be provided as described in this RFP.

Currently the average number of adult traffic violators paying fines, forfeiting bail and registering for traffic school is three thousand (3,000) per month. Traffic matters are processed and heard at the Court’s Redwood City Annex building.

### **2.3 Program Goals and Objectives**

- A. The Court’s goal is to select a service provider who will be able to provide the most cost effective and highest quality of service under this Program.
- B. It is the Court’s objective to have a service provider who will provide qualified and experienced staff at all times to provide clerical services for processing traffic violation transactions and paperwork as well as assisting those persons conducting business at the Court’s traffic division clerk’s office.
- C. The Court reserves the right to reject any or all Proposals, in whole or in part, submitted in response to this RFP. The Court further reserves the right to make no award and to modify or cancel, in whole or in part, this RFP.

### **3.0 DESCRIPTION OF SERVICES AND DELIVERABLES**

The JBE seeks the services of a person or entity with expertise in the provision of clerical staff and administrative support and supervision of their staff for the Court's Traffic Assistance Program (also referred to herein as "TAP") as described herein.

#### **3.1 Staffing**

- A. Service Provider will employ, train and assign to the Court at least four (4) employees, with the number of assigned staff subject to discussion and agreement with the Service Provider, to provide clerical services at the Court Clerk's Office in the Traffic Division. The selection of an employee is the responsibility of Service Provider. However, the Court reserves the right to participate in the selection process prior to assignment to the Court. The persons selected will be employees of Service Provider and not employees of the Court, and will not be entitled to any benefits, privileges, or other rights that are related to Court employees.
- B. Service Provider will provide supervisory and administrative staff that will provide administrative support for and supervision of their staff assigned to work at the Court's facility. This may include but is not limited to:
  - 1. Providing all human resources services and support including payroll, training, and disciplinary action;
  - 2. Arranging staffing backup in the event of absences;
  - 3. Providing emergency contact between the Court and Service Provider or between Service Provider's employees; and
  - 4. Conducting periodic on-site visits and meetings.
- C. The employees assigned to the Court will perform a variety of duties relating to processing traffic citations as requested by the Court that may include but is not limited to back office clerical processing (that may include handling cash and check payments), front counter and phone public service, processing correspondence, filing, and data entry.
- D. Service Provider's employees will report to the Court's facilities on all court business days and will not report on any court holidays or mandated court closure days.
- E. It is Service Provider's responsibility to handle all personnel processes, issues, and requests including any human resources oversight of Service Provider's assigned staff to the Court. Service Provider may request the Court's participation or input in these personnel matters. Part of the administration of this program requires conducting onsite visits and periodic and as-needed meetings with staff.
- F. All of the Service Provider's staff must obtain fingerprint security clearance through LiveScan and their employees must be bonded at their own expense.
- G. Any special Service Provider staff space and equipment accommodations are to be provided for by Service Provider at Service Provider's expense. Service Provider may consult with Court to satisfy any special requests. This may include, but is not limited to, any ADA compliance or accommodations requests.

#### **3.2 Administrative Services**

- A. Service Provider will provide a current date-stamped county specific list of Traffic Violator Schools as downloaded from the DMV’s internet website to the Court on a monthly basis pursuant to the requirements as stated in Veh.C. 11205(b). This list will only include those schools that have been licensed and approved by the Department of Motor Vehicles.
- B. Service Provider will complete any report required by the Department of Motor Vehicles under this Court Traffic Assistance program (TAP) and submit the report to the Department of Motor Vehicles.

**3.3 Enhancement Projects and Programs**

Service Provider will work with the Court to develop new and enhance existing programs and operational functions to improve traffic related services to the public and court staff as allowable under the California Vehicle Code. Specifics regarding these projects will be determined and agreed to between Service Provider and the Court on a project-by-project basis and is conditioned on the availability of traffic violator school funds.

**3.4 Contract Term**

The term of the contract will be for three years subject to the terms and conditions as stated in the proposed contract included herein under Attachment 2.

**4.0 MINIMUM QUALIFICATIONS**

To be considered for full evaluation and possible award, prospective bidders must first meet the threshold minimum qualification requirements listed in the following table (minimum requirements can be met by combining experience, expertise, and resources of prospective bidder and any proposed subcontractors):

<b>No.</b>	<b>Minimum Qualifications</b>
1.	Prospective bidder must be a private or public non-profit organization/agency.
2.	Prospective bidder must have all necessary insurance coverage as stated in the sample proposed contract.
3.	The Court requires the Prospective bidder to have experience in providing the services required herein.
4.	Neither prospective bidder nor any of its proposed subcontractors are currently under investigation by or have been suspended or have their licenses or certifications revoked by any state or federal government agency and neither prospective bidder nor any of its proposed contractors are tax delinquent with the State of California or Federal Government (reference Attachment 4, General Certifications Form)
5.	Compliance with the Judicial Branch Contracting Laws (Public Contract Code sections 19201, et. Seq.) as stated in the “General Terms” of the proposed contract.

The prospective bidder must state specifically in its Executive Summary how it will comply with each minimum qualification specified above and whether they will be able to execute the certification requirements as specified in the contract. Subject to the Court’s right in its complete discretion to waive minor deviations or defects, only those proposals that meet all of the foregoing minimum qualifications shall be considered for a full evaluation and a possible contract award.

Prospective bidders who fail to meet any of the listed minimum qualifications will be notified in writing, and will have three (3) business days from receipt of such notification to file proof that all such qualifications are met.

## 5.0 TIMELINE FOR THIS RFP

The JBE has developed the following list of key events related to this RFP. All dates are subject to change at the discretion of the JBE.

EVENT	DATE
RFP issued	January 27, 2016
Deadline for Proposers' Requests for Clarifications, Modifications or Questions	February 3, 2016 – 5:00 p.m. (PST)
Questions and answers posted online	February 5, 2016 – 5:00 p.m. (PST)
Deadline for submitting a solicitation specifications protest (see Section 15.0)	February 10, 2016- 5:00 p.m. (PST)
Latest date and time proposal may be submitted	February 19, 2016 – 4:00 p.m. (PST)
Notice of Intent to Award ( <i>estimate only</i> )	February 29, 2016
Contract start date ( <i>estimate only</i> )	April 1, 2016
Contract end date ( <i>estimate only</i> )	March 31, 2019

## 6.0 QUESTIONS AND COMMUNICATIONS WITH COURT REGARDING THE RFP

### 6.1 Communications with Court Regarding the RFP

Except as specifically addressed elsewhere in the RFP, Proposers must send any communications regarding the RFP to the Court at [rfp@sanmateocourt.org](mailto:rfp@sanmateocourt.org) (the "Solicitations Mailbox"). Proposers must include the RFP Number in the subject line of any communication.

### 6.2 Questions Regarding the RFP

If a Proposer's question relates to a proprietary aspect of its proposal and the question would expose proprietary information if disclosed to competitors, the Proposer may submit the question via email to the Solicitations Mailbox, conspicuously marking it as "CONFIDENTIAL." With the question, the Proposer must submit a statement explaining why the question is sensitive. If the Court concurs that the disclosure of the question or answer would expose proprietary information, the question will be answered, and both the question and answer will be kept in confidence. If the Court does not concur regarding the proprietary nature of the question, the question will not be answered in this manner, and the Proposer will be notified.

Proposers interested in responding to the RFP may submit questions via email to the Solicitations Mailbox on procedural matters related to the RFP or requests for clarification or modification of

the RFP no later than the deadline for questions listed in the timeline of the RFP (Section 4.0) If the Proposer is requesting a change, the request must set forth the recommended change and the Proposer’s reasons for proposing the change. Questions or requests submitted after the deadline for questions will not be answered. Without disclosing the source of the question or request, a copy of the questions and the Court’s responses will be made available on the court’s website.

## 7.0 RFP ATTACHMENTS

The following attachments are included as part of this RFP:

ATTACHMENT	DESCRIPTION
Attachment 1: Administrative Rules Governing RFPs (Non-IT Services)	These rules govern this solicitation.
Attachment 2: JBE Standard Terms and Conditions	If selected, the person or entity submitting a proposal (the “Proposer”) must sign: this JBE Standard Form agreement  The following provisions within the Terms and Conditions are minimum contract terms and conditions (“Minimum Terms”): <b>Appendix C.</b>
Attachment 3: Proposer’s Acceptance of Terms and Conditions	On this form, the Proposer must indicate acceptance of the Terms and Conditions or identify exceptions to the Terms and Conditions.  <b>Note: A material exception to a Minimum Term will render a proposal non-responsive.</b>
Attachment 4: General Certifications Form	The Proposer must complete the General Certifications Form and submit the completed form with its proposal.
Attachment 5: Darfur Contracting Act Certification	The Proposer must complete the Darfur Contracting Act Certification and submit the completed certification with its proposal.
Attachment 6: Payee Data Record Form	This form contains information the JBE requires in order to process payments and must be submitted with the proposal.

## 8.0 PAYMENT INFORMATION

**8.1** Contractor shall submit monthly invoices for services performed for the previous month. After receipt of an invoice, Court will review the services performed before approving the invoice for payment, or provide contractor with specific reasons why any payment is being withheld and inform contractor of remedial actions required in order for contractor to receive the amount withheld.

- 8.2** An invoice shall contain a detail of services rendered, employee hours, and any other incidental expenses allowable under the contract, the Court's contract number and contractor's signature. Invoices will be submitted by contractor to:

Elizabeth Evans, Chief of Court Operations  
Superior Court of California, County of San Mateo  
400 County Center, 2<sup>nd</sup> floor  
Redwood City, CA 94063

## **9.0 SUBMISSIONS OF PROPOSALS**

- 9.1** Proposals should provide straightforward, concise information that satisfies the requirements of the "Proposal Contents" section below. Expensive bindings, color displays, and the like are not necessary or desired. Emphasis should be placed on conformity to the RFP's instructions and requirements, and completeness and clarity of content.
- 9.2** The Proposer must submit its proposal in two parts, the technical proposal and the cost proposal.
- A. The Proposer must submit **one (1) unbound original and three (3) bound copies** of the technical proposal. The original must be signed by an authorized representative of the Proposer. The original technical proposal (and the copies thereof) must be submitted to the JBE in a single sealed envelope, separate from the cost proposal. The Proposer must write the RFP title and number on the outside of the sealed envelope.
- B. The Proposer must submit **one (1) unbound original and three (3) bound copies** of the cost proposal. The original must be signed by an authorized representative of the Proposer. The original cost proposal (and the copies thereof) must be submitted to the JBE in a single sealed envelope, separate from the technical proposal. The Proposer must write the RFP title and number on the outside of the sealed envelope.
- C. The Proposer must submit **one (1)** electronic version of the program proposal in Microsoft Word or PDF format and **one (1)** electronic version of the cost proposal in Microsoft Excel format on CD-ROM or USB memory stick/flash drive. .
- 9.3** Proposals must be delivered by the date and time listed on the coversheet of this RFP to:
- Superior Court of California, County of San Mateo  
Attn: Mary Treanor, Court Contracts Analyst  
Finance Division  
400 County Center, 4<sup>th</sup> Floor  
Redwood City, CA 94063
- 9.4** Late proposals will not be accepted.
- 9.5** Only written proposals will be accepted. Proposals must be sent by registered or certified mail, courier service (e.g. FedEx), or delivered by hand. Proposals may not be transmitted by fax or email.

## **10.0 GENERAL REQUIREMENTS AND PROPOSAL CONTENTS**

All applications must contain the information and forms that are listed in this section. Failure to do so will be treated as an incomplete proposal and will not be considered.

### **10.1 Required Content and Forms**

- A. An Executive Summary
- B. Detailed Program and Budget narratives as described below
- C. Contractor Certificates (See Attachments)
- D. Certificates of Insurance – Proof of insurance is needed for the application. Actual Certificates will be required at time of signing of a contract. (Note: the Court, State of California and the Judicial Council of California must be included and named on the policy as endorsed parties when the contract documents are executed.)
- E. Darfur Certification (See Attachment 5)

### **10.1 Not for Profit**

Prospective Bidder must be either a private or public not-for-profit agency that has proven experience providing clerical staffing support to governmental agencies or organizations.

### **10.2 Executive Summary**

The Executive Summary should be a high level document summarizing the prospective bidder's proposal and their qualifications for providing this service as well as their ability to meet the time line in starting up this service.

### **10.3 Program Narrative**

Respondents to this RFP shall submit a program narrative that specifically discusses how they will provide the services being sought by the Court, and addresses how they will meet the minimum service components listed in section 10.6 below. The narrative should include detailed information about a prospective bidder's ability to provide such services, the ability to meet the Court's capacity requirements, previous experience and resources that will enable the provider to accomplish the tasks set forth in this section. Agencies may include additional components or enhancements in a separate section of the Technical Proposal and if applicable, in a separate section of the Budget Proposal. The Narrative should also include a strategic program start-up and transition plan and timetable, including but not limited to hiring, orientation, start of services, staff performance evaluation, service documentation and accountability procedures.

### **10.4 Technical Proposal**

The following information must be included in the technical proposal. A proposal lacking any of the following information may be deemed non-responsive.

- A. The Proposer's name, address, telephone and fax numbers, and federal tax identification number.
- B. Name, title, address, telephone number, and email address of the individual who will act as the Proposer's designated representative for purposes of this RFP.
- C. For each key staff member: a resume describing the individual's background and experience, as well as the individual's ability and experience in conducting the proposed activities.

- D. Names, addresses, and telephone numbers of a minimum of three (3) clients for whom the Proposer has conducted similar services. The JBE may check references listed by the Proposer.
- E. Identification of what the service provider requires from the Court to fulfill contract requirements.
- F. Information concerning procedures and contact person for resolving issues relative to services and personnel.
- G. Acceptance of the Terms and Conditions.
  - 1. On Attachment 3, the Proposer must check the appropriate box and sign the form. If the Proposer marks the second box, it must provide the required additional materials. An “exception” includes any addition, deletion, or other modification.
  - 2. If exceptions are identified, the Proposer must also submit (i) a red-lined version of the Terms and Conditions that implements all proposed changes, and (ii) a written explanation or rationale for each exception and/or proposed change.
  - 3. **Note: A material exception to a Minimum Term will render a proposal non-responsive.**
- H. Certifications, Attachments, and other requirements.
  - 1. The Proposer must complete the General Certifications Form (Attachment 4) and submit the completed form with its proposal.
  - 2. The Proposer must complete the Darfur Contracting Act Certification (Attachment 5) and submit the completed certification with its proposal.
  - 3. If Contractor is a California corporation, limited liability company (“LLC”), limited partnership (“LP”), or limited liability partnership (“LLP”), proof that Contractor is in good standing in California. If Contractor is a foreign corporation, LLC, LP, or LLP, and Contractor conducts or will conduct (if awarded the contract) intrastate business in California, proof that Contractor is qualified to do business and in good standing in California. If Contractor is a foreign corporation, LLC, LP, or LLP, and Contractor does not (and will not if awarded the contract) conduct intrastate business in California, proof that Contractor is in good standing in its home jurisdiction.
  - 4. Proposer must include statement that the service provider will agree to provide general liability, worker’s compensation and employers liability, motor vehicle liability, and professional liability insurance, if selected, naming the Superior Court of California, County of San Mateo, and the Judicial Council of California as additional insureds.
  - 5. Proposer must include statement that the service provider acknowledges that proof of nonprofit agency status will be required prior to the execution of an agreement.

6. Proposer must include proof of financial solvency or stability (e.g., balance sheets and income statements). Include financial record keeping procedures of the prospective bidder and a description of the proposed cash flow and billing in arrears procedures.

## **10.5 Cost Proposal.**

- A. No other Court funds will be used to fund the services provided under this Agreement over and above the funds collected under Vehicle Code Section 11205.2(c). The following information must be included in the cost proposal.
- B. The Cost Proposal shall include but not be limited to:
  1. A detailed line item budget showing total cost of the proposed services, including:
    - a. Cost for staff assigned to provide services at the Court's location(s) (inclusive of all related costs associated with each staff member);
    - b. Administrative overhead costs including but not limited to management, supervision, human resources, travel;
    - c. Description of how costs associated with periodic visits and special trips to our Court will be priced. (Will scheduled site visits be calculated as an operational cost or will it be a separate cost billed when a trip is made?); and
    - d. Cost for providing monthly printed DMV approved traffic school lists.
- C. A full explanation of all budget line items in a narrative entitled "Budget Justification." The start-up budget should be outlined separately from the annual budget.
  1. Start-Up Budget

Any start-up costs prior to a prospective bidder's commencement of the services should be listed in a separate, clearly labeled section. Explain the nature of the proposed costs and why they are appropriate and necessary. Include a description of who would be performing the start-up activities and how long it will take to perform those activities.

Start-up labor costs should not exceed the equivalent of one month's labor costs as outlined in the annual budget.
  2. Annual Budget

The annual budget should outline the ongoing personnel and other costs associated with providing the clerical support services. Each major expense should be listed separately and there should be justifications containing a level of detail sufficient for the proposal to be analyzed for cost effectiveness and for the prospective bidder to deliver a high quality level of service.

The budget shall include estimated travel costs associated with supervision and training of their staff (e.g. scheduled staff visits and inspections). These scheduled supervisory visitations should be calculated into the cost of the services provided. These costs are separate and distinctive from occasional unscheduled meetings that may be requested by the Court.
- D. Itemized projected monthly and annual cost for services described in Section 3.0 of this RFP specifying all of the services to be provided and all associated costs pertaining to the service (e.g. periodic staff meetings, site visits, training and management administrative costs).
- E. "Not to exceed" total for all work and expenses payable under the contract, if awarded.

- F. A proposed payment plan. Please note that the Court will not make payment in advance of services. Payments are typically made on a monthly basis and a detailed invoice of services provided must be submitted and approved prior to payment being made.
- G. The Court is not liable for nor will pay for any other fees or other associated costs that are not already stated in the fees for services as stated herein. The cost of administration and supervision of the prospective service provider must be set forth in detail in the proposal or be calculated into the hourly rate of their employees (at which time this must be specified in the bid). This may include but is not limited to scheduled site visits, human resources costs, and staff overhead.

If there are any non-foreseeable supplemental administrative costs of fees that the Prospective Bidder may impose during the course of the contract term, the Contractor will be required to present it to the Court Executive Officer for review. Court will not be liable for payment of such fees unless the Court agrees to them in writing prior to incurring the cost.

**NOTE:** 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.

#### **10.6 Minimum Service Requirements**

The following are minimum requirements for the services to be provided under this RFP:

- A. Comply with all contractual obligations imposed by the Court.
- B. Obtain adequate and appropriate liability insurance coverage for the type of business and services that are provided, including but not limited to professional liability insurance.
- C. Provide employees who meet the qualifications as specified herein.
- D. It is mandatory that all employees and volunteers are fingerprinted and undergo security clearance by LiveScan. Proof of the LiveScan clearance must be provided to the Court.
- E. Establish procedures and practices for ongoing monitoring of employee performance.
- F. Conduct regular and timely performance reviews for all staff and establish procedures for hiring, discipline and termination.
- G. Provide for ongoing recruitment and monitoring of suitable staff that reflect the racial, economic and ethnic diversity of San Mateo County.
- H. Provide the Court with copies of policies and procedures.

#### **11.0 OFFER PERIOD**

A Proposer's proposal is an irrevocable offer for ninety (90) days following the proposal due date. In the event a final contract has not been awarded within this period, the JBE reserves the right to negotiate extensions to this period.

#### **12.0 EVALUATION OF PROPOSALS**

**12.1** At the time proposals are opened, each proposal will be checked for the presence or absence of the required proposal contents.

**12.2 Evaluation Committee:**

The Court will conduct a comprehensive, fair, and impartial evaluation of proposals received in response to this RFP. All proposals received from prospective bidders will be reviewed and evaluated by a committee of qualified personnel (“Evaluation Committee”). The name, units, or experience of the individual members will not be made available to any prospective bidder. The Evaluation Committee will first review and screen all proposals submitted, except for the cost proposals, according to the minimum qualifications set forth in Section 4.0.

Prospective bidders satisfying the minimum qualifications will then be evaluated in accordance with the evaluation criteria set forth in Section 11.3 below. The Evaluation Committee will first review and complete the evaluation of the technical proposals, without the cost proposal. Thereafter, the cost proposals will be opened, reviewed, and evaluated to determine an overall evaluation score.

**12.3 Evaluation Criteria**

A. The JBE will evaluate the proposals on a using the criteria set forth below. Award, if made, will be to the highest-scored proposal.

B. If a contract will be awarded, the JBE will post an intent to award notice at [www.sanmateocourt.org](http://www.sanmateocourt.org).

C. Criteria:

1. Confidence that the prospective bidder has the ability to best deliver high quality and appropriate services and accommodations consistent with the stated specifications.
2. Superior responsiveness to specifications, quality of work plan, and demonstrated understanding of the purposes of this project. Specifications for documentation, performance, service or any other deliverables that are the minimum requirements for this RFP.
3. Provider qualifications and prompt and continuous availability of quality services.
4. Financial feasibility and cost effectiveness of the proposal.
5. Capabilities of the prospective bidder in terms of qualifications and relevant past experience. Prospective bidders shall indicate their past performance functioning as a prospective bidder agency, including past performance in providing similar types of program services.
6. Prospective bidder’s documented status as a public or private not-for-profit organization/agency. Agencies in the process of applying for not-for-profit status will be considered only if they submit documentation that their applications for tax-exempt status were filed with the Internal Revenue Service and Franchise Tax Board prior to the deadline for responses to this RFP.
7. Qualifications and experience of key individuals proposed and guaranteed as available and committed to this project (including resumes). In the case of positions that will be

filled by new-hires, the prospective bidder's stated and guarantee of the minimum qualifications and the guaranteed start date.

8. Financial and organizational stability. Prospective bidders shall include in their proposals sufficient financial documentation to establish their financial capability. The Court reserves the right to request additional information to assure itself of a prospective bidder's financial status. If a prospective bidder is substantially or wholly owned by another entity, the proposal shall so state and shall include the most recent financial report of the parent organization.
9. The proposed schedule for program start up. It is anticipated that a contract can be signed in early March 2016 with a start date of April 1, 2016 at the latest.
10. The reasonableness of the proposed work plan, including the capabilities and number of personnel/personnel hours allocated to specific tasks.

### **13.0 INTERVIEWS**

The JBE may conduct interviews with Proposers to clarify aspects set forth in their proposals or to assist in finalizing the ranking of top-ranked proposals. The interviews may be conducted in person or by phone. If conducted in person, interviews will likely be held at the JBE's offices. The JBE will not reimburse Proposers for any costs incurred in traveling to or from the interview location. The JBE will notify eligible Proposers regarding interview arrangements.

### **14.0 CONFIDENTIAL OR PROPRIETARY INFORMATION**

**PROPOSALS ARE SUBJECT TO DISCLOSURE PURSUANT TO APPLICABLE PROVISIONS OF THE CALIFORNIA PUBLIC CONTRACT CODE AND RULE 10.500 OF THE CALIFORNIA RULES OF COURT.** The JBE will not disclose (i) social security numbers, or (ii) balance sheets or income statements submitted by a Proposer that is not a publicly-traded corporation. All other information in proposals will be disclosed in response to applicable public records requests. Such disclosure will be made regardless of whether the proposal (or portions thereof) is marked "confidential," "proprietary," or otherwise, and regardless of any statement in the proposal (a) purporting to limit the JBE's right to disclose information in the proposal, or (b) requiring the JBE to inform or obtain the consent of the Proposer prior to the disclosure of the proposal (or portions thereof). Any proposal that is password protected, or contains portions that are password protected, may be rejected. Proposers are accordingly cautioned not to include confidential, proprietary, or privileged information in proposals.

### **15.0 PROTESTS**

Any protests will be handled in accordance with Chapter 7 of the Judicial Branch Contracting Manual (see [www.courts.ca.gov/documents/jbcl-manual.pdf](http://www.courts.ca.gov/documents/jbcl-manual.pdf)). Failure of a Proposer to comply with the protest procedures set forth in that chapter will render a protest inadequate and non-responsive, and will result in rejection of the protest. The deadline for the JBE to receive a solicitation specifications protest is: the **seven (7) days before the deadline to submit a proposal**. The deadline for a protest to the award is **five (5) business days** after the intent to award is posted. Protests must be sent to the individual listed in the Submission of Proposal section who will forward the matter to the appropriate Reviewing Officer.

**ATTACHMENT 1  
ADMINISTRATIVE RULES GOVERNING RFPs  
(NON-IT SERVICES)**

**1. COMMUNICATIONS WITH THE JUDICIAL BRANCH ENTITY ( “JBE”) REGARDING THE RFP**

Except as specifically addressed elsewhere in the RFP, Proposers must send any communications regarding the RFP to [rfp@sanmateocourt.org](mailto:rfp@sanmateocourt.org) (the “Solicitations Mailbox”). Proposers must include the RFP Number in subject line of any communication.

**2. QUESTIONS REGARDING THE RFP**

Proposers interested in responding to the RFP may submit questions via email to the Solicitations Mailbox on procedural matters related to the RFP or requests for clarification or modification of the RFP no later than the deadline for questions listed in the timeline of the RFP. Once submitted, questions become part of the procurement file and are subject to disclosure; Proposers are accordingly cautioned not to include any proprietary or confidential information in questions. If the Proposer is requesting a change, the request must set forth the recommended change and the Proposer’s reasons for proposing the change. Questions or requests submitted after the deadline for questions will not be answered. Without disclosing the source of the question or request, a copy of the questions and the JBE’s responses will be made available prior to the proposal due date and time.

**3. ERRORS IN THE RFP**

- A. If, before the proposal due date and time listed in the timeline of the RFP, a Proposer discovers any ambiguity, conflict, discrepancy, omission, or error in the RFP, the Proposer must immediately notify the JBE via email to the Solicitations Mailbox and request modification or clarification of the RFP. Without disclosing the source of the request, the JBE may modify the RFP before the proposal due date and time by releasing an addendum to the solicitation.
- B. If a Proposer fails to notify the JBE of an error in the RFP known to the Proposer, or an error that reasonably should have been known to the Proposer, before the proposal due date and time listed in the timeline of the RFP, the Proposer shall propose at its own risk. Furthermore, if the Proposer is awarded the agreement, the Proposer shall not be entitled to additional compensation or time by reason of the error or its later correction.

**4. ADDENDA**

- A. The JBE may modify the RFP before the proposal due date and time listed in the timeline of the RFP by issuing an addendum. It is each Proposer’s responsibility

to inform itself of any addendum prior to its submission of a proposal by checking the Court's website [www.sanmateocourt.org](http://www.sanmateocourt.org)

- B. If any Proposer determines that an addendum unnecessarily restricts its ability to propose, the Proposer shall immediately notify the JBE via email to the Solicitations Mailbox no later than one day following issuance of the addendum.

## **5. WITHDRAWAL AND RESUBMISSION/MODIFICATION OF PROPOSALS**

A Proposer may withdraw its proposal at any time before the deadline for submitting proposals by notifying the JBE in writing of its withdrawal. The notice must be signed by the Proposer. The Proposer may thereafter submit a new or modified proposal, provided that it is received at the JBE no later than the proposal due date and time listed in the timeline of the RFP. 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 listed in the timeline of the RFP.

## **6. ERRORS IN THE PROPOSAL**

If errors are found in a proposal, the JBE may reject the proposal; however, the JBE may, at its sole option, correct arithmetic or transposition errors or both on the basis that the lowest level of detail will prevail in any discrepancy. If these corrections result in significant changes in the amount of money to be paid to the Proposer (if selected for the award of the agreement), the Proposer will be informed of the errors and corrections thereof and will be given the option to abide by the corrected amount or withdraw the proposal.

## **7. RIGHT TO REJECT PROPOSALS**

- A. Before the proposal due date and time listed in the timeline of the RFP, the JBE may cancel the RFP for any or no reason. After the proposal due date and time listed in the timeline of the RFP, the JBE may reject all proposals and cancel the RFP if the JBE determines that: (i) the proposals received do not reflect effective competition; (ii) the cost is not reasonable; (iii) the cost exceeds the amount expected; or (iv) awarding the contract is not in the best interest of the JBE.
- B. The JBE may or may not waive an immaterial deviation or defect in a proposal. The JBE's waiver of an immaterial deviation or defect shall in no way modify the RFP or excuse a Proposer from full compliance with RFP specifications. Until a contract resulting from this RFP is signed, the JBE reserves the right to accept or reject any or all of the items in the proposal, to award the contract in whole or in part and/or negotiate any or all items with individual Proposers if it is deemed in the JBE's best interest. A notice of intent to award does not constitute a contract, and confers no right of contract on any Proposer.
- C. The JBE reserves the right to issue similar RFPs in the future. The RFP is in no way an agreement, obligation, or contract and in no way is the JBE or the State of California responsible for the cost of preparing the proposal.

- D. Proposers are specifically directed **NOT** to contact any JBE personnel or consultants for meetings, conferences, or discussions that are related to the RFP at any time between release of the RFP and any award and execution of a contract. Unauthorized contact with any JBE personnel or consultants may be cause for rejection of the Proposer's proposal.

## 8. EVALUATION PROCESS

- A. An evaluation team will review all proposals that are received by the appropriate deadline to determine the extent to which they comply with RFP requirements.
- B. Proposals that contain false or misleading statements may be rejected if in the JBE's opinion the information was intended to mislead the evaluation team regarding a requirement of the RFP.
- C. During the evaluation process, the JBE may require a Proposer's representative to answer questions with regard to the Proposer's proposal. Failure of a Proposer to demonstrate that the claims made in its proposal are in fact true may be sufficient cause for deeming a proposal non-responsive.
- D. In the event of a tie, the contract will be awarded to the winner of a single coin toss. The coin toss will be witnessed by two JBE employees. The JBE will provide notice of the date and time of the coin toss to the affected Proposers, who may attend the coin toss at their own expense.

## 9. DISPOSITION OF MATERIALS

All materials submitted in response to the RFP will become the property of the JBE and will be returned only at the JBE's option and at the expense of the Proposer submitting the proposal.

## 10. PAYMENT

- A. Payment terms will be specified in any agreement that may ensue as a result of the RFP.
- B. **THE JBE DOES NOT MAKE ADVANCE PAYMENT FOR SERVICES.** Payment is normally made based upon completion of tasks as provided in the agreement between the JBE and the selected Proposer. The JBE may withhold ten percent of each invoice until receipt and acceptance of the final deliverable. The amount of the withhold may depend upon the length of the project and the payment schedule provided in the agreement between the JBE and the selected Proposer.

## 11. AWARD AND EXECUTION OF AGREEMENT

- A. Award of contract, if made, will be in accordance with the RFP to a responsible Proposer submitting a proposal compliant with all the requirements of the RFP

and any addenda thereto (including any administrative or technical requirements), except for such immaterial defects as may be waived by the JBE.

- B. A Proposer submitting a proposal must be prepared to use a standard JBE contract form rather than its own contract form.
- C. The JBE will make a reasonable effort to execute any contract based on the RFP within forty-five (45) days of selecting a proposal that best meets its requirements. However, exceptions taken by a Proposer may delay execution of a contract.
- D. Upon award of the agreement, the agreement shall be signed by the Proposer in two original contract counterparts and returned, along with the required attachments, to the JBE no later than ten (10) business days of receipt of agreement form or prior to the end of June if award is at fiscal year-end. Agreements are not effective until executed by both parties. Any work performed before receipt of a fully-executed agreement shall be at the Proposer's own risk.

## **12. FAILURE TO EXECUTE THE AGREEMENT**

The period for execution set forth in Section 11 (“Award and Execution of Agreement”) may only be changed by mutual agreement of the parties. Failure to execute the agreement within the time frame identified above constitutes sufficient cause for voiding the award. Failure to comply with other requirements within the set time constitutes failure to execute the agreement. If the successful Proposer refuses or fails to execute the agreement, the JBE may award the agreement to the next qualified Proposer.

## **13. NEWS RELEASES**

News releases or other publicity pertaining to the award of a contract may not be issued without prior written approval of the Court Executive Officer or designee.

## **14. ANTI-TRUST CLAIMS**

- A. In submitting a proposal to the JBE, the Proposer offers and agrees that if the proposal is accepted, the Proposer will assign to the JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act Chapter 2, commencing with Section 16700, of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Proposer for sale to the JBE pursuant to the proposal. Such assignment shall be made and become effective at the time the JBE tenders final payment to the Proposer. (See Government Code section 4552.)
- B. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, the Proposer shall be entitled to receive reimbursement for actual legal costs incurred and may, upon

RFP Title: *Traffic Assistance Program*

RFP Number: *2016-02*

Attachment 1 – Administrative Rules

demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid.

- C. Upon demand in writing by the Proposer, the JBE shall, within one year from such demand, reassign the cause of action assigned under this section if the Proposer has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action. (See Government Code section 4554.)

## **15. AMERICANS WITH DISABILITIES ACT**

The JBE complies with the Americans with Disabilities Act (ADA) and similar California statutes. Requests for accommodation of disabilities by Proposers should be directed to the individual listed in the Submission of Proposal section of this RFP who will forward the matter to the appropriate officer.

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO**  
**STANDARD AGREEMENT** rev January 2016  
with Contractor Name.

AGREEMENT NUMBER <b>41-16-D0K#.</b>
--

- In this agreement (“Agreement”), the term “Contractor” refers to **Contractor Name.** , and the term “JBE” refers to the **Superior Court of California, County of San Mateo**
- This Agreement is effective as of **Effective Date.** (“Effective Date”) and expires on **Expiration Date.** (“Expiration Date”).  
This Agreement includes one or more options to extend through **Date or N/A.**
- The maximum amount the JBE may pay Contractor under this Agreement is **\$Dollar Amount.** (the “Contract Amount”). The maximum amount the JBE may pay Contractor is (i) **\$Dollar Amount.** during the Initial Term, and (ii) **Dollar Amount.** during the Option Term.
- The purpose or title of this Agreement is: **Purpose or Descriptive Title**  
*The purpose or title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.*
- The parties agree that this Agreement, made up of this coversheet, the appendixes listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties.

- Appendix A – Goods and Services
- Appendix B – Payment Provisions
- Appendix C – General Provisions
- Appendix D – Defined Terms

JBE’S SIGNATURE	CONTRACTOR’S SIGNATURE
<b>Superior Court of California, County of San Mateo</b>	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized)</i>  Contractor Name
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING <b>Presiding Judge</b>	PRINTED NAME AND TITLE OF PERSON SIGNING Name and Title.
DATE EXECUTED Date.	DATE EXECUTED Date.

RFP Title: *Traffic Assistance Program*  
RFP Number: 2016-02  
Attachment 2 – Standard Terms and Conditions

ADDRESS

**400 County Center  
Redwood City, CA 94063**

ADDRESS

Contractor Address.

SAMPLE

## APPENDIX A

### Goods and Services

#### 1. Background and Purpose.

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#### 2. Goods

**2.1 Description of Goods.** The JBE shall purchase from Contractor, and Contractor shall sell to the JBE the following products, goods, materials, and supplies (“Goods”) free and clear of all liens, claims, and encumbrances:

- 
- 

**2.2 Risk of Loss; Title.** Contractor will deliver the Goods “Free on Board Destination Freight Prepaid”, to the JBE at [address]. Title to the Goods vests in the JBE upon payment of the applicable purchase price.

**2.3 Inspection and acceptance criteria.**

- 
- 

**2.4 Goods Warranties.** Contractor warrants that the Goods will be merchantable for their intended purposes, free from all defects in materials and workmanship, in compliance with all applicable specifications and documentation, and to the extent not manufactured pursuant to detailed designs furnished by the JBE, free from defects in design. The JBE’s approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.

#### 3. Services.

**3.1 Description of Services.** Contractor shall perform the following services (“Services”):

- 
- 

**3.2 Description of Deliverables.** Contractor shall deliver to the JBE the following work products (“Deliverables”):

- 
- 

**3.3 Acceptance Criteria.** The Services and Deliverables must meet the following acceptance criteria or the JBE may reject the applicable Services or Deliverables. The JBE may use the attached Acceptance and Signoff Form to notify Contractor of the acceptance or rejection of the Services and Deliverables. Contractor will not be paid for any rejected Services or Deliverables.

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- 3.4 Timeline.** Contractor must perform the Services and deliver the Deliverables according to the following timeline:
- -
- 3.5 Project Managers.** The JBE’s project manager is: [insert name]. The JBE may change its project manager at any time upon notice to Contractor without need for an amendment to this Agreement. Contractor’s project manager is: [insert name]. Subject to written approval by the JBE, Contractor may change its project manager without need for an amendment to this Agreement.
- 3.6 Service Warranties.** Contractor warrants that: (i) the Services will be rendered with promptness and diligence and will be executed in a workmanlike manner, in accordance with the practices and professional standards used in well-managed operations performing services similar to the Services; and (ii) Contractor will perform the Services in the most cost-effective manner consistent with the required level of quality and performance. Contractor warrants that each Deliverable will conform to and perform in accordance with the requirements of this Agreement and all applicable specifications and documentation. For each such Deliverable, the foregoing warranty shall commence for such Deliverable upon the JBE’s acceptance of such Deliverable, and shall continue for a period of one (1) year following acceptance. In the event any Deliverable does not conform to the foregoing warranty, Contractor shall promptly correct all nonconformities to the satisfaction of the JBE.
- 3.7 Resources.** Contractor is responsible for providing any and all facilities, materials and resources (including personnel, equipment and software) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.
- 3.8 Commencement of Performance.** This Agreement is of no force and effect until signed by both parties and all JBE-required approvals are secured. Any commencement of performance prior to Agreement approval shall be at Contractor's own risk.
- 3.9 Stop Work Orders.**
- A.** The JBE may, at any time, by Notice to Contractor, require Contractor to stop all or any part of the Services for a period up to ninety (90) days after the Notice is delivered to Contractor, and for any further period to which the parties may agree (“Stop Work Order”). The Stop Work Order shall be specifically identified as such and shall indicate it is issued under this provision. Upon receipt of the Stop Work Order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the Services covered by the Stop Work Order during the period of stoppage. Within ninety (90) days after a Stop Work Order is delivered to Contractor, or within any extension of that period to which the parties shall have agreed, the JBE shall either (i) cancel the Stop Work Order; or (ii) terminate the Services covered by the Stop Work Order as provided for in this Agreement.
  - B.** If a Stop Work Order issued under this provision is canceled or the period of the Stop Work Order or any extension thereof expires, Contractor shall resume the performance of Services. The JBE shall make an equitable adjustment in the delivery schedule, the Contract Amount, or both, and the Agreement shall be modified, in writing, accordingly, if:
    - i. The Stop Work Order results in an increase in the time required for, or in Contractor’s cost properly allocable to the performance of any part of this Agreement; and
    - ii. Contractor requests an equitable adjustment within thirty (30) days after the end of the period of stoppage; however, if the JBE decides the facts justify the action, the JBE may receive and act upon a proposal submitted at any time before final payment under this Agreement.
  - C.** The JBE shall not be liable to Contractor for loss of profits because of a Stop Work Order issued under this provision.

4. **Acceptance or Rejection.** All Goods, Services, and Deliverables are subject to acceptance by the JBE. The JBE may reject any Goods, Services or Deliverables that (i) fail to meet applicable acceptance criteria, (ii) are not as warranted, or (iii) are performed or delivered late (without prior consent by the JBE). If the JBE rejects any Good, Service, or Deliverable (other than for late performance or delivery), Contractor shall modify such rejected Good, Service, or Deliverable at no expense to the JBE to correct the relevant deficiencies and shall redeliver such Good, Service, or Deliverable to the JBE within ten (10) business days after the JBE's rejection, unless otherwise agreed in writing by the JBE. Thereafter, the parties shall repeat the process set forth in this section until the JBE accepts such corrected Good, Service, or Deliverable. The JBE may terminate that portion of this Agreement which relates to a rejected Good, Service, or Deliverable at no expense to the JBE if the JBE rejects that Good, Service, or Deliverable (i) for late performance or delivery, or (ii) on at least two (2) occasions for other deficiencies.

## APPENDIX B

### Payment Provisions

1. **General.** Subject to the terms of this Agreement, Contractor shall invoice the JBE, and the JBE shall compensate Contractor, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the JBE shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature which Contractor incurs.
2. **Compensation for Goods.** Contractor will invoice the following amounts for Goods that the JBE has accepted:
  - 
  -
3. **Compensation for Services.**
  - 3.1 **Amount.** Contractor will invoice the following amounts for Services or Deliverables that the JBE has accepted:
    - 
    -
  - 3.2 **Withholding.** When making a payment tied to the acceptance of Deliverables, the JBE shall have the right to withhold fifteen percent (15%) of each such payment until the JBE accepts the final Deliverable.
  - 3.3 **No Advance Payment.** The JBE will not make any advance payment for Services.
4. **Expenses.** Except as set forth in this section, no expenses relating to the Goods, Services, and Deliverables shall be reimbursed by the JBE.
  - 4.1 **Allowable Expenses.** Contractor may submit for reimbursement, without mark-up, only the following categories of expense:
    - 
    -
  - 4.2 **Limit on Travel Expenses.** If travel expenses are allowed under Section 4.1 above: (i) all travel is subject to written preauthorization and approval by the JBE, and (ii) all travel expenses are limited to the maximum amounts set forth in the JBE's travel expense policy.
  - 4.3 **Expense Limit.** Contractor shall not invoice the JBE, and the JBE has no obligation to reimburse Contractor, for expenses of any type that exceed in the aggregate the amount of: \$ Dollar Amount. for the Initial Term and \$ [Dollar amount] for the Option Term.
  - 4.4 **Required Certification.** Contractor must include with any request for reimbursement from the JBE a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

**5. Invoicing and Payment**

**5.1 Invoicing.** Contractor shall submit invoices to the JBE in arrears no more frequently than monthly. Contractor's invoices must include information and supporting documentation acceptable to the JBE. Contractor shall adhere to reasonable billing guidelines issued by the JBE from time to time.

**5.2 Payment.** The JBE will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Goods, Services, or Deliverables, in accordance with the terms of this Agreement.

Notwithstanding any provision in this Agreement to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations under this Agreement.

**5.3 No Implied Acceptance.** Payment does not imply acceptance of Contractor's invoice, Goods, Services, or Deliverables. Contractor shall immediately refund any payment made in error. The JBE shall have the right at any time to set off any amount owing from Contractor to the JBE against any amount payable by the JBE to Contractor under this Agreement.

**6. Taxes.** Unless otherwise required by law, the JBE is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The JBE shall only pay for any state or local sales, service, use, or similar taxes imposed on the Services rendered or equipment, parts or software supplied to the JBE pursuant to this Agreement.

## APPENDIX C

### General Provisions

#### 1. Provisions Applicable to Services

- 1.1 Qualifications.** Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If the JBE is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel.
- 1.2 Turnover.** Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.
- 1.3 Background Checks.** Contractor shall cooperate with the JBE if the JBE wishes to perform any background checks on Contractor's personnel by obtaining, at no additional cost, all releases, waivers, and permissions the JBE may require. Contractor shall not assign personnel who refuse to undergo a background check. Contractor shall provide prompt notice to the JBE of (i) any person who refuses to undergo a background check, and (ii) the results of any background check requested by the JBE and performed by Contractor. Contractor shall ensure that the following persons are not assigned to perform services for the JBE: (a) any person refusing to undergo such background checks, and (b) any person whose background check results are unacceptable to Contractor or that, after disclosure to the JBE, the JBE advises are unacceptable to the JBE.

#### 2. Contractor Certification Clauses. Contractor certifies that the following representations and warranties are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JBE if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

- 2.1 Authority.** Contractor has authority to enter into and perform its obligations under this Agreement, and Contractor's signatory has authority to bind Contractor to this Agreement.
- 2.2 Not an Expatriate Corporation.** Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBE.
- 2.3 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.
- 2.4 No Conflict of Interest.** Contractor has no interest that would constitute a conflict of interest under PCC 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.
- 2.5 No Interference with Other Contracts.** To the best of Contractor's knowledge, this Agreement does not create a material conflict of interest or default under any of Contractor's other contracts.
- 2.6 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.
- 2.7 Compliance with Laws Generally.** Contractor complies in all material respects with all laws, rules, and regulations applicable to Contractor's business and services.
- 2.8 Drug Free Workplace.** Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.

- 2.9 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, and Contractor takes all reasonable steps to prevent harassment from occurring.
- 2.10 Noninfringement.** The Goods, Services, Deliverables, and Contractor’s performance under this Agreement do not infringe, or constitute an infringement, misappropriation or violation of, any third party’s intellectual property right.
- 2.11 Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California’s Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). 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 and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor’s obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor’s failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

### 3. Insurance

- 3.1 Basic Coverage.** Contractor shall provide and maintain at the JBE’s discretion and Contractor’s expense the following insurance during the Term:
- A. Commercial General Liability.** The policy must be at least as broad as the Insurance Services Office (ISO) Commercial General Liability “occurrence” form, with coverage for liabilities arising out of premises, operations, independent contractors, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. The policy must provide limits of at least \$1,000,000 per occurrence and annual aggregate.
  - B. Workers Compensation and Employer’s Liability.** The policy is required only if Contractor has employees. The policy 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 \$1,000,000 per accident or disease.
  - C. Automobile Liability.** This policy is required only if Contractor uses an automobile or other vehicle in the performance of this Agreement. The policy must cover bodily injury and property damage liability and be applicable to all vehicles used in Contractor’s performance of this Agreement whether owned, non-owned, leased, or hired. The policy must provide combined single limits of at least \$1,000,000 per occurrence.
  - D. Professional Liability.** This policy is required only if Contractor performs professional services under this Agreement. The policy must cover liability resulting from any act, error, or omission committed in Contractor’s performance of Services under this Agreement, at minimum limits of \$1,000,000 per occurrence and annual aggregate. If the policy is written on a “claims made” form, Contractor shall maintain such coverage continuously throughout the Term and, without lapse, for a period of three (3) years beyond the termination and acceptance of all Services provided under this Agreement. The retroactive date or “prior acts inclusion date” of any such “claims made” policy must be no later than the date that activities commence pursuant to this Agreement.

- E. Commercial Crime Insurance.** This policy is required only if Contractor handles or has regular access to the JBE's funds or property of significant value to the JBE. This policy must cover dishonest acts including loss due to theft of money, securities, and property; forgery, and alteration of documents; and fraudulent transfer of money, securities, and property. The minimum liability limit must be \$[Dollar amount].
- 3.2 Umbrella Policies.** Contractor may satisfy basic coverage limits through any combination of basic coverage and umbrella insurance.
- 3.3 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 (2) times the limits required for each policy, or the aggregate may equal the limits required but must apply separately to this Agreement.
- 3.4 Deductibles and Self-Insured Retentions.** Contractor shall declare to the JBE 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 JBE's approval. Deductibles and self-insured retentions do not limit Contractor's liability.
- 3.5 Additional Insured Endorsements.** Contractor's commercial general liability policy, automobile liability policy, and, if applicable, umbrella policy must be endorsed to name the following as additional insureds with respect to liabilities arising out of the performance of this Agreement: the JBE, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees.
- 3.6 Certificates of Insurance.** Before Contractor begins performing Services, Contractor shall give the JBE 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 thirty (30) days' prior written notice to the JBE.
- 3.7 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.
- 3.8 Required Policy Provisions.** Each policy must provide, as follows: (i) the policy is primary and noncontributory 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; (ii) the insurance applies separately to each insured against whom a claim is made or a lawsuit is brought, to the limits of the insurer's liability; and (iii) each insurer waives any right of recovery or subrogation it may have against the JBE, the State of California, the Judicial Council of California, and their respective judges, subordinate judicial officers, executive officers, administrators, officers, officials, agents, representatives, contractors, volunteers or employees for loss or damage.
- 3.9 Partnerships.** If Contractor is an association, partnership, or other joint business venture, the basic coverage may be provided by either (i) separate insurance policies issued for each individual entity, with each entity included as a named insured or as an additional insured; or (ii) joint insurance program with the association, partnership, or other joint business venture included as a named insured.
- 3.10 Consequence of Lapse.** If required insurance lapses during the Term, the JBE is not required to process invoices after such lapse until Contractor provides evidence of reinstatement that is effective as of the lapse date.
- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the JBE or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses,

including attorneys' fees and costs, that arise out of or in connection with (i) a latent or patent defect in any Goods, (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement, (iii) a breach of a representation, warranty, or other provision of this Agreement, and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement, and acceptance of any Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement which would bind an indemnified party, without the JBE's prior written consent, which consent shall not be unreasonably withheld; and the JBE shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.

5. **Option Term.** Unless Section 2 of the Coversheet indicates that an Option Term is not applicable, the JBE may, at its sole option, extend this Agreement for a single one-year term, at the end of which Option Term this Agreement shall expire. In order to exercise this Option Term, the JBE must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term. The exercise of an Option Term will be effective without Contractor's signature.
6. **Tax Delinquency.** Contractor must provide notice to the JBE immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The JBE may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.
7. **Termination**
  - 7.1 **Termination for Convenience.** The JBE may terminate, in whole or in part, this Agreement for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the JBE, Contractor shall immediately: (a) stop Services as specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.
  - 7.2 **Termination for Cause.** The JBE may terminate this Agreement, in whole or in part, immediately "for cause" if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the JBE, is not capable of being cured within this cure period); (ii) 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; or (iii) Contractor makes or has made under this Agreement any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
  - 7.3 **Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
  - 7.4 **Termination for Changes in Budget or Law.** The JBE's payment obligations under this Agreement are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement. The JBE may terminate this Agreement or limit Contractor's Services (and reduce proportionately Contractor's fees) upon Notice to Contractor without prejudice to any right or remedy of the JBE if: (i) expected or actual funding to compensate Contractor is withdrawn,

reduced or limited; or (ii) the JBE determines that Contractor’s performance under this Agreement has become infeasible due to changes in applicable laws.

**7.5 Rights and Remedies of the JBE.**

- A. *Nonexclusive Remedies.*** All remedies provided in this Agreement may be exercised individually or in combination with any other available remedy. Contractor shall notify the JBE immediately if Contractor is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement. If Contractor is in default, the JBE may do any of the following: (i) 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; (ii) require Contractor to enter into nonbinding mediation; (iii) exercise, following Notice, the JBE’s right of early termination of this Agreement as provided herein; and (iv) seek any other remedy available at law or in equity.
- B. *Replacement.*** If the JBE terminates this Agreement in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the JBE for any excess costs for those goods or services. Notwithstanding any other provision of this Agreement, in no event shall the excess cost to the JBE for such goods and services be excluded under this Agreement as indirect, incidental, special, exemplary, punitive or consequential damages of the JBE. Contractor shall continue any Services not terminated hereunder.
- C. *Delivery of Materials.*** In the event of any expiration or termination of this Agreement, Contractor shall promptly provide the JBE with all originals and copies of the Deliverables, including any partially-completed Deliverables-related work product or materials, and any JBE-provided materials in its possession, custody, or control. In the event of any termination of this Agreement, the JBE shall not be liable to Contractor for compensation or damages incurred as a result of such termination; provided that if the JBE’s termination is not for cause, the JBE shall pay any fees due under this Agreement for Services performed or Deliverables completed and accepted as of the date of the JBE’s termination Notice.

**7.6 Survival.** Termination or expiration of this Agreement shall not affect the rights and obligations of the parties which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations which by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

**8. Assignment and Subcontracting.** Contractor may not assign or subcontract its rights or duties under this Agreement, in whole or in part, whether by operation of law or otherwise, without the prior written consent of the JBE. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

**9. Notices.** Notices must be sent to the following address and recipient:

<b>If to Contractor:</b>	<b>If to the JBE:</b>
Project Manager 400 County Center Redwood City, CA 94063	[name, title, address]
<u>With a copy to:</u>	<u>With a copy to:</u>

Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

**10. Provisions Applicable to Certain Agreements.** The provisions in this section are ***applicable only to the types of orders specified in the first sentence of each subsection.*** If this Agreement is not of the type described in the first sentence of a subsection, then that subsection does not apply to the Agreement.

- 10.1 Union Activities Restrictions.** *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no JBE funds received under this Agreement will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.
- 10.2 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with, (i) PCC 10295.3 which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.
- 10.3 Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 10.4 Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
- 10.5 Iran Contracting Act.** *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to JBE an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the JBE to enter into this Agreement pursuant to PCC 2203(c).
- 10.6 Loss Leader Prohibition.** *If this Agreement involves the purchase of goods, this section is applicable.* Contractor shall not sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code.
- 10.7 Recycling.** *If this Agreement provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable.* Contractor shall use recycled products in the performance of this Agreement to the maximum extent

doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.

- 10.8 Sweatshop Labor.** *If this Agreement provides for the laundering of apparel, garments or corresponding accessories, or for furnishing equipment, materials, or supplies other than for public works, this section is applicable.* Contractor certifies that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the JBE 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 adheres to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at [www.dir.ca.gov](http://www.dir.ca.gov), and PCC 6108. Contractor agrees to cooperate 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 this section and shall provide the same rights of access to the JBE.
- 10.9 Federal Funding Requirements.** *If this Agreement is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if this Agreement were executed after that determination was made. This Agreement is valid and enforceable only if sufficient funds are made available to the JBE by the United State Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement is intended to be paid, this Agreement shall be deemed amended without any further action of the parties to reflect any reduction in funds. The JBE may invalidate this Agreement under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement to reflect any reduction in funds.
- 10.10 DVBE Commitment.** *This section is applicable if Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement.* Contractor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement: (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must within sixty (60) days of receiving final payment under this Agreement certify in a report to the JBE: (1) the total amount of money Contractor received under the Agreement; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Agreement; (3) the amount each DVBE subcontractor received from Contractor in connection with the Agreement; and (4) that all payments under the Agreement have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.

- 10.11 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to Contractor. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the JBE shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action.
- 10.12 Legal Services.** *If this Agreement is for legal services, this section is applicable.* Contractor shall: (i) adhere to legal cost and billing guidelines designated by the JBE; (ii) adhere to litigation plans designated by the JBE, if applicable; (iii) adhere to case phasing of activities designated by the JBE, if applicable; (iv) submit and adhere to legal budgets as designated by the JBE; (v) maintain legal malpractice insurance in an amount not less than the amount designated by the JBE; and (vi) submit to legal bill audits and law firm audits if so requested by the JBE, whether conducted by employees or designees of the JBE or by any legal cost-control provider retained by the JBE for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the JBE. If (a) the Contract Amount is greater than \$50,000, (b) the legal services are not the legal representation of low- or middle-income persons, in either civil, criminal, or administrative matters, and (c) the legal services are to be performed within California, then Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services, or an equivalent amount of financial contributions to qualified legal services projects and support centers, as defined in section 6213 of the Business and Professions Code, during each year of the Agreement equal to the lesser of either (A) thirty (30) multiplied by the number of full time attorneys in the firm's offices in California, with the number of hours prorated on an actual day basis for any period of less than a full year or (B) the number of hours equal to ten percent (10%) of the Contract Amount divided by the average billing rate of the firm. Failure to make a good faith effort may be cause for nonrenewal of this Agreement or another judicial branch or other state contract for legal services, and may be taken into account when determining the award of future contracts with a Judicial Branch Entity for legal services.
- 10.13 Good Standing.** *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.
- 10.14 Equipment Purchases.** *If this Agreement includes the purchase of equipment, this section is applicable.* The JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the JBE, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the JBE at no expense to the JBE. If a theft occurs, Contractor must file a police report immediately.
- 10.15 Four-Digit Date Compliance.** *If this Agreement includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the JBE. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and

representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement.

**10.16 Janitorial Services or Building Maintenance Services.** *If this Agreement is for janitorial or building maintenance services, this section is applicable.* If this Agreement requires Contractor to perform Services at a new site, Contractor shall retain for sixty (60) days all employees currently employed at that site by any previous contractor that performed the same services at the site. Contractor shall provide upon request information sufficient to identify employees providing janitorial or building maintenance services at each site and to make the necessary notifications required under Labor Code section 1060 et seq.

**10.17 Small Business Preference Commitment.** *This section is applicable if Contractor received a small business preference in connection with this Agreement.* Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement. Contractor must within sixty (60) days of receiving final payment under this Agreement report to the JBE the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement.

## 11. Miscellaneous Provisions.

**11.1 Independent Contractor.** Contractor is an independent contractor to the JBE. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBE. Contractor has no authority to bind or incur any obligation on behalf of the JBE. If any governmental entity concludes that Contractor is not an independent contractor, the JBE may terminate this Agreement immediately upon Notice.

**11.2 GAAP Compliance.** Contractor maintains an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.

**11.3 Audit.** Contractor must allow the JBE or its designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement, and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement, Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the JBE five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JBE in an amount equal to the cost of such audit. This Agreement is subject to examinations and audit by the State Auditor for a period three (3) years after final payment.

**11.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services or the delivery of the Goods. Contractor will be responsible for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.

**11.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the JBE's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement. Contractor will protect the

Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. The JBE owns all right, title and interest in the Confidential Information. Contractor will notify the JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JBE to protect such Confidential Information. Upon the JBE's request and upon any termination or expiration of this Agreement, Contractor will promptly (a) return to the JBE or, if so directed by the JBE, destroy all Confidential Information (in every form and medium), and (b) certify to the JBE in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the JBE shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.

- 11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, Contractor hereby assigns to the JBE ownership of all Deliverables, any partially-completed Deliverables, and related work product or materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JBE.
- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement without the prior written approval of the JBE.
- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement. The parties shall attempt in good faith to resolve informally and promptly any dispute that arises under this Agreement. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 11.9 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.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the JBE. A waiver of enforcement of any of this Agreement's terms or conditions by the JBE is effective only if expressly agreed in writing by a duly authorized officer of the JBE. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 11.11 Force Majeure.** Neither party shall be liable to the other for any delay in or failure of performance, nor shall any such delay in or failure of performance constitute default, if such delay or failure is caused by a force majeure. Force majeure, for purposes of this paragraph, is defined as follows: acts of war and acts of god, such as earthquakes, floods, and other natural disasters, such that performance is impossible.
- 11.12 Follow-On Contracting.** No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for, the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.
- 11.13 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.14 Headings; Interpretation.** All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word "including" means "including, without limitation." Unless

specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.

**11.15 Time of the Essence.** Time is of the essence in Contractor's performance under this Agreement.

**11.16 Counterparts.** This Agreement may be executed in counterparts, each of which is considered an original.

SAMPLE

## APPENDIX D

### Defined Terms

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

**“Agreement”** is defined on the Coversheet.

**“Contractor”** is defined on the Coversheet.

**“Confidential Information”** means: (i) any information related to the business or operations of the JBE, including information relating to the JBE’s personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of the JBE (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the JBE’s satisfaction that: (a) Contractor lawfully knew prior to the JBE’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.

**“Consulting Services”** refers to the services performed under “Consulting Services Agreements,” which are defined in PCC 10335.5, substantially, as contracts that: (i) are of an advisory nature; (ii) provide a recommended course of action or personal expertise; (iii) have an end product that is basically a transmittal of information, either written or oral, that is related to the governmental functions of state agency administration and management and program management or innovation; and (iv) are obtained by awarding a contract, a grant, or any other payment of funds for services of the above type.

**“Contract Amount”** is defined on the Coversheet.

**“Coversheet”** refers to the first page of this Agreement.

**“Deliverables”** is defined in Appendix A.

**“Effective Date”** is defined on the Coversheet.

**“Expiration Date”** is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.

**“Goods”** is defined in Appendix A.

**“Initial Term”** is the period commencing on the Effective Date and ending on the Expiration Date designated on the Coversheet.

**“JBE” is defined on the Coversheet.**

**“Judicial Branch Entity”** or **“Judicial Branch Entities”** means any California superior or appellate court, the Judicial Council of California, and the Habeas Corpus Resource Center.

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

**“Notice”** means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Appendix C.

**“Option Term”** means a period, if any, through which this Agreement may be or has been extended by the JBE.

**“PCC”** refers to the California Public Contract Code.

**“Services”** is defined in Appendix A.

**“Stop Work Order”** is defined in Appendix B.

RFP Title: *Traffic Assistance Program*  
RFP Number: 2016-02  
Attachment 2 – Standard Terms and Conditions

**“Term”** comprises the Initial Term and any Option Terms.

SAMPLE

**ATTACHMENT 3**  
**PROPOSER’S ACCEPTANCE OF TERMS AND CONDITIONS**

**Instructions:** Mark the appropriate choice below and sign this attachment.

- 1. Proposer accepts Attachment 2: JBE Standard Terms and Conditions (“Attachment 2”) without exception.

***OR***

- 2. Proposer proposes exceptions or changes to Attachment 2. Proposer must also submit (i) a red-lined version of Attachment 2 that implements all proposed changes, and (ii) a written explanation or rationale for each exception or proposed change.

BY ( <i>Authorized Signature</i> ) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

**ATTACHMENT 4  
GENERAL CERTIFICATIONS FORM**

Check the box below, if agreed, and sign this attachment. Please note that the JBE will reject a proposal from a Proposer that does not indicate acceptance of these clauses.

**Conflict of Interest.** Proposer has no interest that would constitute a conflict of interest under California Public Contract Code (PCC) sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with judicial branch entities.

**Suspension or Debarment.** Proposer certifies that neither Proposer nor any of Proposer’s intended subcontractors is on the California Department of General Services’ list of firms and persons that have been suspended or debarred from contracting with the state because of a violation of PCC 10115.10, regarding disabled veteran business enterprises.

**Tax Delinquency.** Proposer certifies that it is not on either (i) the California Franchise Tax Board’s list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization’s list of 500 largest delinquent sales and use tax accounts.

Check box to indicate acceptance of the clauses above.

BY (Authorized Signature) 
PRINTED NAME OF PERSON SIGNING
TITLE OF PERSON SIGNING

**ATTACHMENT 5  
 DARFUR CONTRACTING ACT CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 10478, if a proposer currently or within the previous three years has had business activities or other operations outside of the United States, it must either (i) certify that it is not a “scrutinized company” as defined in PCC 10476, or (ii) receive written permission from the JBE to submit a proposal.

To submit a proposal to the JBE, the proposer must insert its company name and Federal ID Number below and complete **ONLY ONE** of the following three paragraphs. To complete paragraph 1 or 2, simply check the corresponding box. To complete paragraph 3, check the corresponding box **and** complete the certification for paragraph 3.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>Printed Name and Title of Person Checking Box (for paragraph 1 or 2 below)</i>	

1. We do not currently have, and we have not had within the previous three years, business activities or other operations outside of the United States.

**OR**

2. We are a “scrutinized company” as defined in PCC 10476, but we have received written permission from the JBE to submit a proposal pursuant to PCC 10477(b). *A copy of the written permission from the JBE is included with our proposal.*

**OR**

3. We currently have, or we have had within the previous three years, business activities or other operations outside of the United States, but we **certify below** that we are not a “scrutinized company” as defined in PCC 10476.

**CERTIFICATION FOR PARAGRAPH 3:**

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY, that I am duly authorized to legally bind the proposer to the clause in paragraph 3. This certification is made under the laws of the State of California.

<i>Company Name (Printed)</i>	<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>	
<i>Printed Name and Title of Person Signing</i>	
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>

**PAYEE DATA RECORD (in lieu of IRS W-9)**Required in lieu of IRS W-9 form when receiving payments from  
the Judicial Council of California (JCC) on behalf of the Superior Courts of California**1  
Instructions**

See page two for additional instructional information and Privacy Statement. Complete all information on this form, sign, date, and return the form. Prompt return of this fully completed form will prevent delays when processing payments. Information provided in this form will be used to prepare Information Returns (1099). If this form was provided to you by one of the Superior Courts of California, return the form to the court. If this form was provided to you by the Judicial Council of California, submit the completed form to [TCAFS.VendorRequest@jud.ca.gov](mailto:TCAFS.VendorRequest@jud.ca.gov) or mail the form to the following address:

Judicial Council of California  
Trial Court Administrative Services - Vendor Maintenance Unit  
P.O. Box 981268  
West Sacramento, CA 95798

**SECTIONS 2 THRU 5 TO BE COMPLETED BY VENDOR****PAYEE'S LEGAL NAME - AS SHOWN ON FEDERAL INCOME TAX RETURN****BUSINESS NAME - IF DIFFERENT FROM ABOVE****E-MAIL ADDRESS****2  
Legal  
Name****REMITTANCE MAILING ADDRESS****BUSINESS ADDRESS (if different from remittance mailing address)****CITY, STATE, ZIP CODE****CITY, STATE, ZIP CODE****PHONE NUMBER****FACSIMILE NUMBER****3  
Payee  
Entity  
Type  
Complete  
One Box  
Only****ENTER FEDERAL EMPLOYER IDENTIFICATION NUMBER (FEIN)**      \_ \_ - \_ \_ \_ \_ \_

- PARTNERSHIP                       CORPORATION                       EXEMPT (NON-PROFIT)  
 LIMITED LIABILITY COMPANY       CORPORATION – LEGAL       GOVERNMENT  
 CORPORATION – MEDICAL       OTHER –                       ESTATE OR TRUST

 INDIVIDUAL/SOLE PROPRIETOR**ENTER SOCIAL SECURITY NUMBER (SSN)**      \_ \_ \_ - \_ \_ - \_ \_ \_

*If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN; however, the IRS prefers that you use your SSN. An employee vendor is not required to provide a SSN.*

NOTE  
A taxpayer  
identification number  
is required

**4  
Resident  
Status  
check the appropriate  
box**

- California Resident - Qualified to do business in California or maintains place of business  
 California Nonresident (see reverse side) - Payments to non-resident for services may be subject to State Income Tax withholding.  
 No services performed in California  
 Copy of Franchise Tax Board waiver of State Withholding attached

**5  
Certification  
NOTE  
See instructions on  
page 2  
Vendor  
Contact  
Information  
and  
signature**

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
- I am a U.S. citizen or other U.S. person, as defined by the IRS.

**I hereby certify under the penalty of perjury that the information provided on this document is true and correct.  
Should my information change, I will promptly notify the JCC at the address listed in Section 1.**

**VENDOR REPRESENTATIVE'S NAME (Type or Print)****TITLE****E-MAIL****AUTHORIZED VENDOR SIGNATURE****DATE****TELEPHONE****SECTION 6 TO BE COMPLETED BY COURT****6  
Vendor  
Category  
  
Court  
Contact****Please choose from the JCC Vendor category below to help us expedite payment**

- ARBITRATOR                       VOLUNTEER                       OTHER (*description required*)  
 CONTRACTOR                       GRAND JURY                       RENT                       SETTLEMENTS/AWARDS  
 COURT APPT. COUNSEL       INTEREST PAYMENTS ONLY       DECEASED FINAL PAYMENT  
 COURT REPORTER                       COURT INTERPRETER: (*indicate language*)  
 EMPLOYEE                       MEDIATOR                       GARNISHMENT TRUSTEE      **PAYMENT TERMS**

**COURT CONTACT NAME****PHONE NUMBER****EMAIL****FOR JCC USE ONLY** (Form updated 08/26/2014)

Assigned Vendor Number	Assigned By:
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**Requirement to Complete Payee Data Record**

*A completed Payee Data Record (in lieu of the IRS W-9) is required for payments and will be kept on file at the Judicial Council of California, Trial Court Administrative Services Office. Since each state agency with which you do business must have a separate Payee Data Record on file, it is possible for a payee to receive a similar form from various state agencies.*

**SECTIONS 2 THRU 5 TO BE FILLED OUT BY VENDOR**

<b>2</b>	<p>Enter the payee's legal name. Sole proprietorships must also include the owner's full name.</p> <p>An individual must list his/her legal name as it appears on his/her Federal Income tax return. If a different name is used, that name should also be entered, beneath the legal name.</p> <p>The mailing address should be the address at which the payee chooses to receive correspondence. The business address is the physical location of business, if different than mailing address. The phone number, e-mail address, and facsimile number should also be provided.</p>
<b>3</b>	<p>Check the box that corresponds to the payee business type. Check only one box. Corporations must check the box that identifies the type of corporation.</p> <p>The State of California requires that all parties entering into business transactions that may lead to payment(s) from the State provide their Taxpayer Identification Number (TIN). The TIN is required by the California Revenue and Taxation Code Section 18646 to facilitate tax compliance enforcement activities and the preparation of Form 1099 and other information returns as required by the Internal Revenue Code Section 6109(a).</p> <p>The TIN for individuals is their Social Security Number (SSN). A sole proprietor may have both a Federal Employer Identification Number (FEIN) and a SSN, the IRS prefers that sole proprietors use their SSN. Only partnerships, estates, trusts, and corporations will enter their FEIN.</p>
<b>4</b>	<p><b>Are you a California resident or non-resident?</b></p> <p>A corporation will be defined as a "resident" if it has a permanent place of business in California or is qualified through the Secretary of State to do business in California.</p> <p>A partnership is considered a resident partnership if it has a permanent place of business in California.</p> <p>An estate is a resident if the decedent was a California resident at the time of death.</p> <p>A trust is a resident if at least one trustee is a California resident.</p> <p>For individuals and sole proprietors, the term "resident" includes every individual who is in California for other than a temporary or transitory purpose and any individual domiciled in California who is absent for a temporary or transitory purpose. Generally, an individual who comes to California for a purpose that will extend over a long or indefinite period will be considered a resident. However, an individual who comes to perform a particular contract of short duration will be considered a non-resident.</p> <p>Payments to all non-residents may be subject to withholding. Non-resident payees performing services in California or receiving rent, lease, or royalty payments from property (real or personal) located in California will have 7% of their total payments withheld for State income taxes. However, no withholding is required if total payments to the payee are \$1,500 or less for the calendar year.</p> <p>For information on Non-resident Withholding, contact the Franchise Tax Board at the numbers listed below:          Withholding Services and Compliance Section: 1-888-792-4900 E-mail address: <a href="mailto:wscs.gen@ftb.ca.gov">wscs.gen@ftb.ca.gov</a>          For hearing impaired with TDD, call: 1-800-822-6268 Website: <a href="http://www.ftb.ca.gov">www.ftb.ca.gov</a></p>
<b>5</b>	<p><u>This form must be signed.</u> Provide the name, title, e-mail, and telephone number of the individual completing this form. Also, provide the date the form was completed.</p> <p><u>Certification Instructions:</u> You must cross out item 2 if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. If you are not a U.S. Citizen or U.S. person, as defined by the Internal Revenue Service, a different form may be required and tax withholdings may apply. See IRS website <a href="http://www.irs.gov/businesses/international/index.html">http://www.irs.gov/businesses/international/index.html</a> for additional information.</p>

**SECTION 6 TO BE FILLED OUT BY COURT**

<b>6</b>	<p>Please check the box that best describes the type of business/work the vendor provides. This will assist us in processing payment and tax withholdings. If the court is sending the request, please include contact information to assist with processing your request. <b>Not including court contact information may delay processing the request.</b></p>
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**Privacy Statement:** Section 7(b) of the Privacy Act of 1974 (Public Law 93-579) requires that any federal, State, or local governmental agency, which requests an individual to disclose their social security account number, shall inform that individual whether that disclosure is mandatory or voluntary, by which statutory or other authority such number is solicited, and what uses will be made of it. It is mandatory to furnish the information requested. Federal law requires that payment for which the requested information is not provided is subject to federal backup withholding and State law imposes non-compliance penalties of up to \$20,000. You have the right to access records containing your personal information, such as your SSN. To exercise the right, please contact the business services unit or the accounts payable unit of the state agency(ies) with which you transact that business.