

STANDARD AGREEMENT rev July 2018
 Federally Funded Dependency Representation Program

AGREEMENT NUMBER [Agreement number]

1. In this agreement (“Agreement”), the term “Contractor” refers to **[Contractor name]**, and the term “JBE” refers to the **Judicial Council of California**.
2. This Agreement is effective as of **[Date]** (“Effective Date”) and expires on **[Date]** (“Expiration Date”), unless the Judicial Council exercises its option to extend this Agreement for one additional year.

This agreement includes two options to extend through fiscal 2021-2022.

[Text for Non-DRAFT providers]- This Agreement coincides with the Contractor’s Agreement with the Court, with the same effective and expiration dates.

3. The maximum amount the JBE may pay Contractor under this Agreement is \$**[Dollar amount]** (the “Contract Amount”). The annual allocation for fiscal year 2020-2021, if the Agreement is extended, is to be determined by the Judicial Council.

CDSS, the pass-through agency for the Federally Funded Dependency Representation Expansion Program funds, does not allow supplanting of Court Appointed Counsel funds.

4. The purpose or title of this Agreement is: **Contractor to provide enhanced court-appointed dependency counsel services for the Superior Court of California, County of [County]**.

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.

5. 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 – Services
- Appendix B – Payment Provisions
- Appendix C – General Provisions
- Appendix D – Defined Terms and Special Provisions
- Appendix E – Unruh Civil Rights Act and FEHA Certification *[Only when entering into or renewing a contract \$100,000 or more]*
- Appendix F – Court Appointed Counsel Invoice & Data Collection Form

JBE’S SIGNATURE	CONTRACTOR’S SIGNATURE
[JUDICIAL COUNCIL OF CALIFORNIA]	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 [Brian Walsh, Supervisor]	PRINTED NAME AND TITLE OF PERSON SIGNING [Name and title]

Agreement No. [redacted], with [redacted].

DATE EXECUTED [Date]	DATE EXECUTED [Date]
ADDRESS [455 Golden Gate Avenue San Francisco, CA 94102]	ADDRESS [Address]

DRAFT

APPENDIX A

Services

1. BACKGROUND AND PURPOSE.

The primary purpose of the Center for Families, Children and the Courts (CFCC) of the Judicial Council of California (JCC) is to maximize access to and effectiveness of court services for children, families, victims of violence, limited English speakers, and self-represented litigants. CFCC also implements innovative court-related programs for children and families and promotes those services in the legal community and to the public.

Since 1961, the juvenile court has had authority to appoint counsel for indigent parents and children in juvenile court cases. This Agreement is created to expand the scope and enhance the quality of legal representation provided to parents of a candidate for title IV-E or a title IV-E eligible child utilizing Title IV-E funds.

Revisions to the Child Welfare Policy Manual (CWPM) section 8.4B now allow for the title IV-E agency to claim title IV-E administrative costs of independent legal representation by an attorney for a child who is a candidate for title IV-E foster care or in foster care and his/her parent to prepare for and participate in all stages of foster care legal proceedings, such as court hearings related to a child's removal from the home and appellate legal proceedings. These administrative costs of legal representation must be paid through the title IV-E agency. The purpose of this agreement is to expand the scope and enhance the quality of legal representation provided to parents of a candidate for title IV-E or a title IV-E eligible child and allow the JCC to accept match funding for eligible personnel and related expenses. This recent change in policy will ensure that, among other things: reasonable efforts are made to prevent removal and finalize the permanency plan; and parents and children are engaged in the development of case plans.

2. GENERAL TERMS AND CONDITIONS [*]

2.1 INDEPENDENT CONTRACTOR

Contractor shall be, and is, an independent contractor, and is not an employee or agent of the Judicial Council or the Court and is not covered by any employee benefit plans provided to Judicial Council employees or Court employees. Contractor is liable for the acts and omissions of itself, its employees, its Subcontractors and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between the Judicial Council, or the Court, and Contractor. Contractor will determine the method, details and means of performing the Services, including, without limitation, exercising full control over the employment, direction, compensation and discharge of all Subcontractors, agents, employees or other persons assisting Contractor in the performance of the Services. Contractor shall be solely responsible for all matters relating to the payment of Contractor's employees, including but not limited to compliance with Medicare, social security, income tax withholding, unemployment and workers' compensation laws and regulations, withholding for/providing of any and all employee benefits, and all other laws and regulations governing such matters. Neither party to this Agreement has any authority to enter into any contract or otherwise incur any liability in the name of, or on behalf of, the other party.

2.2 QUALITY OF SERVICES

- A. Contractor agrees that each of its employees, Subcontractors, and agents assigned to perform any Services under this Agreement shall have the skills, training, and background reasonably commensurate with his or her responsibilities, so as to be able to perform in a competent and professional manner. Contractor further agrees that the Services provided shall be performed in good faith and in a competent and timely manner consistent with professional standards for such work, will conform to the requirements of this Agreement, and will not infringe upon the rights of third parties. In addition, Contractor shall, and shall cause its employees, agents and Subcontractors to:
- i. Provide quality representation for its clients and comply with the provisions of California Welfare and Institutions Code section 317 and California Rules of Court, rule 5.660.
 - ii. Provide competent attorneys to render the Services. Contractor's attorneys shall participate regularly in continuing legal education activities respecting juvenile dependency issues, and shall demonstrate adequate skills, knowledge and comprehension of the statutory scheme, purposes and goals of dependency proceedings, the specific statutes, rules of court and cases relevant to such proceedings, and the applicable procedures for filing petitions for extraordinary writs and other documents.
 - iii. Not restrict its attorneys' ability to serve on countywide committees, or their ability to participate in or lead public training seminars or conferences, provided such activities are consistent with the attorneys' obligations as professionals and the performance of the Services.
 - iv. Adhere to the State Bar Act and the California Rules of Professional Conduct relative to the provision of the Services.

2.3 JUDICIAL COUNCIL'S QUALITY ASSURANCE PLAN

- A. The Judicial Council or its agent may evaluate Contractor's performance under this Agreement. Such evaluation may include assessing Contractor's compliance with all Agreement terms and performance standards.
- i. The Judicial Council may perform annual peer, client and judicial officer evaluation of attorneys, including attorneys providing services on a subcontracting basis. Contractor agrees to participate in the evaluation process by providing information requested by the Judicial Council, including completion and return of peer evaluation forms to the Judicial Council or to the Judicial Council's agent as requested.
 - ii. Contractor's deficiencies which Judicial Council determines are severe or continuing and that may place performance of the Agreement in jeopardy if not corrected will be reported to Contractor. The report may include recommended improvements and corrective measures to be taken by Contractor. If Contractor's performance remains unsatisfactory to the Judicial Council, the Judicial Council may terminate this Agreement for cause or impose other penalties as specified in this Agreement. Any evaluation of Contractor's performance conducted by the Judicial Council shall not be construed as an acceptance of Contractor's work product or methods of performance. Contractor shall be solely responsible for the work product it delivers under this Agreement; Contractor shall not rely on the Judicial Council to perform any quality control review of Contractor's work product, and Contractor shall be solely responsible for the quality, completeness, and accuracy of its own work product.
- B. As required by PCC 10353.5, Contractor shall (i) adhere to legal cost and billing guidelines designated by the Judicial Council; (ii) adhere to litigation plans designated by the Judicial Council, if applicable; (iii) adhere to case phasing of activities designated by the Judicial Council, if applicable; (iv) submit and adhere to legal budgets as designated by the Judicial Council; and (v) submit to legal bill audits and law firm audits if so requested by the Judicial

Council, whether conducted by employees or designees of the Judicial Council or by any legal cost-control provider retained by the Judicial Council for that purpose. Contractor may be required to submit to a legal cost and utilization review as determined by the Judicial Council.

2.4. OWNERSHIP OF DATA

Contractor will provide to the client or subsequent counsel, at no cost, copies of all relevant client files produced by Contractor in the course of its performance of Services including, without limitation, any motions or briefs. Contractor will provide these copies upon request by the client or upon appointment of subsequent counsel. The client or the subsequent counsel may use the materials in the client file at his or her discretion. All reports, records, files, documents, memoranda, schedules, recordings, information and other materials or data that the Contractor is required to create by the Judicial Council or provide to the Judicial Council pursuant to this Agreement (collectively, "Data") are the sole property of the Judicial Council without the payment of additional compensation to Contractor. Contractor shall provide the Judicial Council with all Data within thirty (30) days of the Judicial Council's written request. However, nothing in this Section 2.4 is intended to create any right in any person or entity to any Data that is covered by the attorney work-product doctrine.

2.5. OPERATING RESERVE

- A. Contractor shall maintain, at all times during the term of this Agreement, an unallocated operating reserve at least equal to [11.5 percent] of the total annual Agreement Amount.
- B. Contractor shall maintain, at all times during the term of this Agreement, an additional reserve (distinct from the reserve identified in Section 2.5.A above) in an amount at least equal to outstanding employee leave balances for any employees funded through this program.
- C. [The unallocated operating reserve shall be established and maintained according to procedures developed by the Contractor's Board of Directors. Expenditures from the unallocated operating reserve shall follow the procedures set forth by the Board of Directors and shall be reflected in the financial information the Contractor furnishes to the Court.]
- D. Contractor shall notify the Judicial Council within forty-five (45) calendar days if any reserve required by this Section 14 falls below the applicable minimum level. Contractor shall include with the notification: (1) a detailed explanation of the reason(s) for the reduced reserve level; and (2) a plan for specific operational change(s) to increase the reserve to the mandatory minimum level. Contractor shall not be deemed to be in breach of this Agreement if any reserve required by this Section 2.5 falls below the applicable minimum level if Contractor has implemented a plan to raise the applicable reserve to the minimum level within a reasonable period of time. For avoidance of doubt, any line of credit or similar instruments may be used to determine whether the reserves required under this Section 2.5 have been met.

- 2.6. AMENDMENTS.** This Agreement may not be modified or amended, except by written instrument executed and approved by all parties in the same manner as this Agreement. Requests for Amendments shall be submitted in writing and shall be accompanied by a narrative description of the proposed change and the reasons for the change. Additional funds may not be encumbered under the Agreement due to an act of Force Majeure, although the performance period of the Agreement may be amended due to an act of Force Majeure. Amendments to the Agreement shall be authorized via execution of a Standard Amendment Coversheet.

A Bi-lateral Amendment **is not** required in order for the Judicial Council (i) to extend, at its sole option, this Agreement pursuant to its terms; (ii) to modify the Annual Allocation for each fiscal

year; and/or (iii) to set the Annual Allocation for the second and third fiscal year based on funding at the time of extension by exercise of the option as provided for in this Agreement.

2.7 AGREEMENT TERM. At the sole discretion of the Judicial Council, the Agreement may be extended for one year and the expiration date changed from **June 30, 2020 to June 30, 2021 for the first Option term, and to June 30, 2022 for the second Option term.** The Judicial Council, if it elects to exercise its option to extend, will provide notice to the Contractor that the Agreement will be extended and the revised Annual Allocation for the second year of the agreement. The form will contain the signature of the Judicial Council, but will not require or contain the signature of the Contractor. Any additional deliverable required to be submitted to the Judicial Council by the Contractor in support of an extension or revision to the Agreement will be attached to a copy of the Notice of Agreement Extension and revised Annual Allocation, which will be provided to the Contractor and maintained by the Judicial Council. Any allocation not expended by the Contractor during the first fiscal year of the Agreement may not carry-over into the next fiscal year or be allocated to another program. All other terms and conditions shall remain in place. In no event shall the Agreement be extended for more than two years, making the maximum allowable length of the Agreement term three (3) years.

2.8. ENTIRE AGREEMENT. This Agreement, consisting of the executed Standard Agreement Coversheet, the Agreement Funding and Account Code Information Form, and all exhibits and attachments thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous modifications, agreements, proposals, negotiations, representations, and commitments, both oral and written, between the parties.

2.9 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.

2.10 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.

3.0 SCOPE OF SERVICES AND SERVICE LEVELS [*] (Final Scope of Services TBD)

3.1 SCOPE OF SERVICES

Contractor will provide enhanced legal representation to Title IV-E children in foster care or to the child's parents at every stage of dependency proceedings, in order to, as stated in the CWPM, "ensure that, among other things: reasonable efforts are made to prevent removal and finalize the permanency plan,; and parents and youth are engaged in and complying with case plans."

The Contractor and the Court agree to implement the following recommendations from the *Family Justice Initiative Making the Legal System Work for Children and Parents in Child Welfare Proceedings*:

[Scope of Services will be based on Contractor's Federally Funded Dependency Representation Program Application (RFA).]

Contractor shall comply with [County Name] Superior Court Rules in performance of this Agreement.

Contractor shall represent a total of approximately [State number of clients or range] clients in juvenile dependency proceedings in the Superior Court of California, County of [County Name].

This representation requires, but is not limited to, adherence to the following performance standards:

- i. Establishing and maintaining an attorney-client relationship;
- ii. Visiting Child clients at each new placement, whenever feasible;
- iii. Conducting thorough, continuing, and independent investigations and interviews at every stage of the proceedings;
- iv. Determine the client's position, counsel them on all their legal options, and provide zealous advocacy.
 - For child clients, determine the child's wishes and best interests. Advise the court of the child's wishes and advocate for those wishes and best interests, when appropriate;
- v. Contacting social workers and other professionals associated with the client's case prior to each hearing, whenever practical and appropriate:
 - For Child clients, this includes contacting CASA and school personnel;
- vi. Requesting services (by court order if necessary) to access entitlements and to ensure a comprehensive service plan:
 - For Child clients, this may include requesting services related to IEPs and attending meetings related to the Child, as practical and appropriate;
- vii. Monitoring compliance with court orders, including provision of and effectiveness of court-ordered services;
- viii. Filing pleadings, motions, responses, or objections as necessary to represent the client;
- ix. Preparing for and participating in all hearings:
 - For Child clients, preparing for and participating in 241.1 hearings pertaining to current juvenile dependents with a goal of maintaining the dependency jurisdiction wherever possible and appropriate;
 - For Parent clients, representation at hearings set to determine the ability to pay for the cost of court appointed counsel.
- x. Investigating the interests of Child clients beyond the scope of the juvenile dependency proceeding and notifying the court of issues on behalf of the Child, administratively or judicially. These interests may include:
 - a. School/special education issues;
 - b. Mental health assessment and treatment;
 - c. Immigration;
 - d. Personal injury; and
 - e. Delinquency or status offender matters;

Contractor shall not be required to provide legal representation regarding any of the above-referenced interests.

- xi. Participating in alternative dispute resolution efforts, including but not limited to Family Group Conferences, Team Decision Making meetings and mediation, as appropriate and beneficial to the client;
- xii. Determining if appeals and writs are appropriate and, where necessary, filing writ and notice of appeal;
- xiii. Arranging for substitute representation where necessary to avoid court delay;
- xiv. Providing representation if the Child client becomes a non-minor dependent; and
- xv. Performing any other duties as required by applicable law, statute or ethical obligations, including the Welfare and Institutions Code.

3.2 CONFLICTS AVOIDANCE

A. Contractor will ensure that conflicts are declared only when an actual conflict exists.

i. New Appointments

- Contractor shall establish procedures to check for conflicts of interest and shall decline appointment of new clients who present a conflict of interest with their Contractor's present clients.

[Or, if contract includes conflicts representation:]

- [Contractor shall establish procedures to check for conflicts of interest, and institute a process to avoid conflicts. Contractor shall arrange for representation of all new clients by one of its [number of firms] separate law firms or by a contract attorney if assignment of a case to one of the [number of firms] separate law firms is not possible due to legal conflict of interest.]

Ongoing Clients

- [Contractor shall (a) establish procedures to determine whether actual conflicts of interest arise among current clients; (b) advise the court when such conflicts arise; and (c) arrange for the appropriate reassignment of cases either to [one of its] other law firm(s) or to a contract attorney if reassignment of the case to the other firm is not possible due to legal conflict of interest.]

3.3 CONFLICT APPOINTMENT ADMINISTRATION

A. Contractor will identify qualified independent contractor attorneys and execute contracts with those attorneys to be available for appointment in cases of conflict of interest, pursuant to Section 3.2 above. Any such contract shall be subject to the process set forth in Appendix C, Section 8 (Assignment and Subcontracting). Contractor will ensure that enough independent contractor attorneys are available to represent all clients whose representation would present a conflict of interest pursuant to Section 2 above.

B. Contractor agrees to incorporate the reporting of monthly statistics, regarding the number of conflict clients represented, into the independent contractor attorney contracts. Contractor will facilitate the reporting of monthly statistics as identified in Section 8, below.

3.4 COURTROOM STAFFING

Contractor shall staff the Dependency courtroom(s) so as to ensure adequate attorney availability at all times.

3.5 EDUCATION AND TRAINING

- A. Contractor shall comply with the education and training standards outlined in California Rules of Court, rule 5.660.
- B. Contractor shall attend statewide multi-disciplinary trainings or conferences, as practical.

3.6 SYSTEM MEETINGS AND JOINT JURISDICTION

- A. **System Meetings.** Contractor shall participate in systems meetings, as required by the Court, that are intended to improve services for children and families in dependency court. Those meetings include but are not limited to:
[To be specified by the Court]
- B. **Joint Jurisdictional Courts.** Contractor shall attend and participate in joint jurisdictional court hearings, meetings, and other in-court and out-of-court events.
[To be specified by the Court]

3.7 STAFFING AND SERVICE LEVEL

- A. Contractor agrees to provide, at a minimum, the following staffing pursuant to this agreement:
 - i. [No. of full-time equivalent Attorney(s)] FTE Attorneys. (Attorney FTE level for dependency representation services only.)
[additional staff if appropriate]
- B. The estimated annual salary for key personnel shall be as follows:

[Staff and salaries to be identified in this section will include management staff, attorneys, social workers and investigators.]

Table 1

Key Personnel	Estimated Annual Salary
[TITLE]	\${ANNUAL SALARY AMOUNT, AVERAGE OR RANGE]

- C. Contractor agrees to represent the number of clients as designated in Contractor’s primary agreement with the Judicial Council or the Court. Contractor agrees to keep monthly statistics regarding the number of clients represented as identified in Section 3.8, below.
- D. [This section requires flexibility based on local needs] Contractor agrees to represent the following clients in dependency cases:

- [All parents or all children [this may be a percentage based on the county].

Or

- [All parent clients or all children].

3.8 CASE REPORTS AND MAINTENANCE OF RECORDS

B. Contractor shall provide the following Judicial Council case management reports:

- i. Upon Agreement Signing. A list of all current cases.

Caseload Data Entry. Contractor shall provide statistical information to the Judicial Council either by maintaining the following data in a case management system approved by the Judicial Council, or by providing monthly statistical reports including, but not limited to, the following:

- a. For newly-appointed cases:
 - (1) Case number;
 - (2) Party represented;
 - (3) For sibling groups, number of Children represented
 - (4) Appointment date;
 - (5) Initial hearing date; and
 - (6) Name of appointed attorney.
- b. For cases where representation is terminated:
 - (1) Case number;
 - (2) Date of termination of representation; and
 - (3) Reason for termination of representation.

Quarterly Workload Reports. At the request of the Judicial Council, with 60-days notice, Contractor shall provide detailed statistical workload data for a three-month period each year. The reporting quarter will change during each year of the Agreement and shall be specified by the Judicial Council. Data will be provided by the Contractor in the manner prescribed by the Judicial Council and will include, but will not be limited to, the following information for all ongoing cases:

- a. The amount of out-of-court time spent on each case each day, including a breakdown of time spent on specific tasks for each case; and
- b. The amount of time spent in court each day, including a daily list of the types of hearings for which an appearance is made.

Financial Reports. If requested by the Judicial Council, Contractor shall provide an income and expenditures report or an audited financial statement within thirty (30) days.

APPENDIX B
Payment Provisions [*]

1. **General.** Subject to the terms of this Agreement, Contractor shall invoice the JBE, and provide a copy to the Court if requested, and the JBE shall reimburse Contractor, as set forth in this Appendix B. The amounts specified in this Appendix shall be the total and complete reimbursement 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 Services.**

2.1 Amount. Contractor shall be paid on a monthly basis as reimbursement for the Services to be performed under this Agreement and reimbursement of approved operating expenses. Total compensation shall not exceed the maximum amount the Judicial Council shall pay the Contractor under this Agreement as set forth in item 3 on the Agreement Coversheet.

3. **MANNER OF PAYMENT**

3.1 **Reimbursement Process**

- A. The contractor must submit to the Judicial Council invoices, with copies to the Court if requested, for all reimbursable costs associated with the Federally Funded Dependency Representation Program, pursuant to this agreement, on a monthly basis, 7 calendar days after the close of each month.
- B. All invoices shall conform to the requirements specified in *Appendix F, Court Appointed Counsel Invoice & Data Collection Form*.
- C. In addition to any other documentation required under state or federal law, to substantiate the expenditure of funds by the contractor, each contractor shall be required to submit to the Judicial Council information that includes, but is not limited to, costing data on the number of employees funded under this agreement (i.e., attorneys, social workers, investigators) for Title IV-E dependency representation services, time spent on dependency representation services, rate of salary or wages per employee, and number of Title IV-E clients.
- D. The contractor is required to document the percentage of time spent on Title IV-E eligible activities for audit related purposes.
- E. **Invoicing.** Contractor shall submit invoices to the Judicial Council in arrears no more frequently than monthly. Contractor's invoices must include information and supporting documentation acceptable to the Judicial Council. Contractor shall adhere to reasonable billing guidelines issued by the Judicial Council. Contractor shall submit a copy of each monthly invoice to the local trial court.

All monthly invoices from local courts and/or each subcontractor providing court-appointed dependency counsel representation (*see Appendix F, Court Appointed Counsel Invoice & Data Collection Form*) must include:

- a. Reporting month and year
- b. Organization Name

- c. Attorney name(s), if different from (c)
- d. Court system
- e. Amount due for allowable legal services
- f. Number of staffs who support the attorneys (e.g. social workers, investigators, etc.).
- g. Number of active clients
- h. Case numbers (as recorded by the court)
- i. Hearing type phase (e.g. jurisdictional, dispositional, 364, 366.21(e), 366.21(f), 366.22, 366.25," or 366.3) and hearing date, when applicable
- j. Petition type (e.g. 300 original, 342 Subsequent, or 387 Supplemental)
- k. Party represented (i.e. mother, father, child, if sibling set, the number of siblings represented)
- l. Total number of clients at the beginning of the month, new clients, closed clients, and total clients at the end of the month- all stratified by parent, child, and total number

F. **Payment.** The Judicial Council will pay each correct, itemized invoice received from Contractor after approval at state and federal levels and after acceptance of the applicable Goods, Services, or Deliverables, in accordance with the terms of this Agreement.

G. The reimbursement process may take up to 90 days.

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.

Contractor shall submit an invoice for payment for the Services rendered under this Agreement ("**Invoices**") for approval by the Judicial Council to:

Judicial Council of California
 Center for Families, Children and the Courts
 Attn: Penelope Davis
 455 Golden Gate Avenue, 6th Floor
 San Francisco, CA 94102

4. **FINAL INVOICING**

For the very last Invoice to be processed under this Agreement, Contractor will identify the Invoice as the "Final Invoice."

5. **DISALLOWANCE**

If Contractor claims or receives reimbursement from the Judicial Council for a Service or expense that is later disallowed by the Judicial Council, California Department of Social Services, or federal government, Contractor shall promptly refund the disallowed amount to the Judicial Council upon the Judicial Council's request. At its option, the Judicial Council may offset the amount disallowed from any payment due or that may become due to Contractor under this Agreement or any other agreement.

6. **PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK**

The granting of any payment by the Judicial Council, or the receipt thereof by Contractor, shall in no way alter the obligation of Contractor to remedy unsatisfactory performance of the Services. Services that do not conform to the requirements of this Agreement, in the Judicial Council, California Department of Social Services, and/or Federal Government's judgment, may be

rejected by the Judicial Council. In such case Contractor must remedy the unsatisfactory performance without delay to bring it into conformance with this Agreement.

7. **Expenses.** Except as set forth in this section, no expenses relating to the Goods, Services, and Deliverables shall be reimbursed by the JBE.

7.1 **Allowable Expenses.** Contractor may submit for reimbursement, without mark-up, only the following categories of expense:

A. **Billable Activities.** Covered billable activities are limited to legal representation that is directly related to issues and causes of action over which the juvenile court has statutory jurisdiction and in compliance with Welfare & Institutions Code 317. Legal representation of the parent or child, or services in support of representation of the parent or child in administrative or judicial proceedings outside the scope of the juvenile court's statutory jurisdiction CAN NOT be claimed.

(1) Seeking an order from the juvenile court that initiates a separate court proceeding, such as the special immigrant juvenile findings, is an allowable billable activity; however engaging in legal representation outside of juvenile court is not a covered billable activity.

(a) For example, school discipline issues, participation in federal immigration proceedings, and eviction and other legal proceedings involving housing are not allowable billable activities.

B. **Operating Expenses.** Operating expenses are reimbursable in proportion to the attorneys' dependency practice, i.e., if the attorney has a mixed caseload of 40% dependency and 60% criminal, only 40% of any eligible operating expenses can be reimbursed. Common, allowable expenses include but are limited to:

(a) Rent and any tenant owed portion of tenant improvements;

(b) IT Expenses, such as: IT consultant, computers, servers, equipment maintenance fees, and repairs;

(c) Personnel costs, such as: salaries, benefits, attorney bar dues, licensure fees for staff social workers and investigators;

(d) Office Equipment, such as: printers, faxes, copiers, phones, ink, toner, paper, equipment rental fees, and code books;

(e) Furniture, including modifications based on ergonomic assessments;

(f) Mileage reimbursements for home visits;

(g) Insurance fees, such as: malpractice insurance, worker's compensation, and business permit fees;

(h) Phone Services, such as: landline and work cell phone equipment, wi-fi/internet/data, and monthly contract services fees;

(i) Contractor fees, such as: contract attorneys and investigators, human resources, and process servers; and

(j) Bonding studies and other expert fees.

7.2 Limit on Travel Expenses. All travel expenses are limited to the maximum amounts set forth in the JBE's travel expense policy.

7.3 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 amounts to be determined by the Judicial Council for the Option Terms.

7.4 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.

8. 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.

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 [2-Options]

[Option 1 – non-government 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.
- 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. Contractor shall provide prompt written notice to the JBE in the event that insurance coverage is cancelled or materially changed from the coverage set forth in the current certificate of insurance provided 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 Notices.** The Contractor shall provide the Judicial Council fifteen (15) days' advance written notice of any reduction in coverage or other change, nonrenewal, or cancellation, mailed to the address provided for notices in Section 9 of this Appendix.
- 3.10 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.
- 3.11 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.

[Option 2 – county/government self-insurance]

- A. **Insurance Required.** Contractor will provide a Statement of Coverage providing evidence of its program of self-insurance for general liability, automobile liability, professional liability and workers compensation/employers liability.
 - B. **No Reduction or Limit of Contractor’s Obligation.** Contractor’s program of self-insurance shall not reduce or limit Contractor’s contractual obligation to indemnify and defend the Judicial Council. Acceptance of Contractor’s program of self-insurance by the Judicial Council shall not relieve or decrease the liability of Contractor hereunder.
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.

7.7 ACTIONS OF CONTRACTOR UPON NOTICE OF TERMINATION

- A. Immediately upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by the Judicial Council and to minimize the liability of Contractor and the Judicial Council to Third Parties as a result of termination. All such actions shall be subject to the prior approval of the Judicial Council, at the Judicial Council's sole discretion, and shall be in accordance with the attorneys' obligations to their clients.
- i. **Withdrawal and Tail Representation.** Contractor will continue to represent existing clients until Contractor withdraws as counsel of record (or substitutes counsel) without prejudice to the interests of Contractor's clients and without violating any law, rule or regulation.
 - ii. **Release from Performance of Services.** Contractor will be released from performing Services to the extent Contractor effectively withdraws as counsel of record (or substitutes counsel) in accordance with Section 7.7.A.i above. If Contractor cannot be released from performing Services due to an inability to withdraw as described above, Contractor will give the Judicial Council as much written notice as possible before the termination date, which notice will describe each affected matter and the basis for the Contractor's inability to withdraw, and the Contractor and the Judicial Council will then confer in good faith. If a court orders that Contractor maintain certain representations or, using its reasonable judgment, the Judicial Council determines that Contractor's assertions warrant its continued representation as its withdrawal is not permitted for the reasons stated in the immediately preceding paragraph, then, until such time as this Agreement would have expired, (had it not been earlier terminated for change in law) pursuant to the expiration date of the Agreement or, if renewed, the date of expiration of the renewed Agreement, the following provisions shall apply:
 - i. Contractor's duties under this Agreement will continue after the termination date solely with respect to the affected matters;
 - ii. Compensation following the termination date will be at a prorated monthly rate of \$[Dollar Amount] per client for legal services provided.

7.8 EFFECT OF TERMINATION

- A. In addition to any other remedies and actions set forth in this Agreement, if this Agreement is terminated for cause, non-appropriation of funds, or for convenience, the following will apply:
- i. **Payment Upon Termination.** The Judicial Council shall pay for Contractor's Services satisfactorily performed through the effective date of termination; provided, however, that in no event shall Contractor's total compensation pursuant to this Agreement exceed the Agreement Amount.
 - ii. **Offset and Deduction.** The Judicial Council may deduct from any payment upon termination:
 - a. All payments previously made by the Judicial Council for Services covered by Contractor's final invoice.

- b. The amount of any claim that the Judicial Council may have against Contractor in connection with this Agreement.
- c. Where Contractor is terminated for cause, in the event the Judicial Council determines it must provide services to remedy the results of Contractor's inadequately performed Services, the Judicial Council may deduct, from any amounts owed Contractor hereunder, the Judicial Council's good faith estimate of the reasonable cost of replacing performance of such inadequately performed Services.

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:

If to Contractor:	If to the JBE:
<u>[name, title, address]</u>	<u>[Penelope Davis, Supervising Analyst 455 Golden Gate Avenue, Sixth Floor San Francisco, CA 94102]</u>
With a copy to: <u>Superior Court of California, County of [County Name] Address</u>	With a copy to:

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 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.
- 10.7 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.

- 10.8 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.
- 10.9 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.
- 10.10 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.
- 10.11 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 Loss Leader Prohibition.** 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.
- 11.9 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.
- 11.10 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.
- 11.11 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.
- 11.12 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.
- 11.13 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.
- 11.14 Severability.** If any part of this Agreement is held unenforceable, all other parts remain enforceable.
- 11.15 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.

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

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

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APPENDIX D

Defined Terms and Special Provisions [*]

1. Defined Terms. As used in this Agreement, the following terms have the indicated meanings:

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

“**Agreement Amount**” means the maximum amount encumbered under this Agreement as set forth on the Standard Agreement Coversheet of this Agreement.

“**Amendment**” means a written document issued by the Judicial Council and signed by the Contractor which alters the Agreement and identifies the following:

- a. A change in the Services;
- b. A change in Agreement Amount;
- c. A change in time allotted for performance; and/or
- d. An adjustment to the Agreement terms.

“**Child**” or “**Children**” refers to all children including eligible non-minor dependents in juvenile dependency proceedings.

“**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.

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

“**Court**” means the Superior Court of California, County of [County Name].

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

“**Deliverables**” means one or more items, if specified in the contract documents, that the Contractor shall complete and deliver or submit to the Judicial Council for acceptance.

“**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.

“**Full Time Equivalent**” (FTE) – **Definition in development.**

“**Force Majeure**” means a delay that prevents the timely performance of any obligation because such delay or failure to perform was un foreseeable and beyond the control of the party that failed to perform. Acts of Force Majeure include, but are not limited to:

- iii. Acts of God or the public enemy;
- iv. Acts or omissions of any government entity;

- v. Fire or other casualty for which a party is not responsible;
- vi. Quarantine or epidemic
- vii. Strike or defensive lockout; and,
- viii. Unusually severe weather conditions.

“**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 B.

“**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.

“**Parent**” refers to all parents, guardians and de facto parents in juvenile dependency proceedings.

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

“**Standard Agreement Coversheet**” refers to the form used by the Judicial Council to enter into agreement with other parties.

“**Standard Amendment Coversheet**” refers to the form used by the Judicial Council to amend agreements with other parties.

“**Subcontractor**” shall mean an individual, firm, partnership, or corporation having a contract, purchase order, or agreement with the Contractor, or with any Subcontractor of any tier for the performance of any part of the Agreement.

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

“**Third Party**” refers to any individual, association, partnership, firm, company, corporation, consultant, Subcontractor, or combination thereof, including joint ventures, other than the Judicial Council or the Contractor, which is not party to this Agreement.

2. Special Provisions [*]

2.1 RETROACTIVE REIMBURSEMENT FOR FISCAL YEAR 2019-2020

- A. Under this Agreement, Contractors may submit invoices for eligible services and expenses, with supporting documentation, provided or incurred between July 1, 2019 and the Effective Date of this Agreement (“Retroactive Reimbursement Request”). Billing for services provided or expenses incurred prior to the CWPM revision (July 1, 2019) is prohibited. For each Retroactive Reimbursement Request, Contractor certifies that it has complied with the provisions of this Agreement as if such provisions were in effect at the time of the service or expense.

2.2 BUDGET PROCESS

- A. The Annual Allocation for the first fiscal year is set forth on the Federally Funded Dependency Representation Program Standard Agreement Coversheet. However, this initial allocation may be modified based on reallocation of Federally Funded Dependency Representation funding that is estimated to remain unspent, by workload, using the formula and method approved by the Judicial Council on January 22, 2015.

During the fiscal year, Contractors will be sent a questionnaire regarding anticipated spending needs for the remainder of the fiscal year. Contractors must indicate whether they anticipate spending less than the full allocation. The Judicial Council will reallocate funds as appropriate.

If the Contractor's initial allocation is changed, the Judicial Council will provide Notice to the Contractor of the new allocation amount. If appropriate, a copy of the Notice of Agreement Extension or Change of Allocation Amount, with a revised Annual Allocation including all attachments, will be provided to the Contractor.

- B. If the option to extend the Agreement for an additional fiscal year is exercised by the Judicial Council, the Contractor will receive notice that the Judicial Council intends to exercise the option and of the new allocation amount for the additional fiscal year of the Agreement.

2.3 STATE AND FEDERAL COMPLIANCE

- A. The parties to this Agreement shall comply with Title IV-E of the Social Security Act, Child Welfare Policy Manual, and all federal and state regulations and requirements promulgated thereunder.
- B. The parties to this Agreement are subject to any restrictions, limitations, or conditions enacted or adopted by the Legislature, Congress, or the California Department of Social Services that may affect the provisions, terms or funding of this Agreement in any manner.
- C. Contractor shall ensure that the reimbursements invoiced are limited to that portion of dependency representation activities and expenses that are specifically eligible and identifiable in accordance with Title IV-E and the CWPM.
- D. The Contractor shall accept responsibility for receiving, replying to, and/or complying with any audit exceptions by appropriate state and federal audit agencies that directly relate to the services to be performed under this Agreement. A draft of any reply shall be reviewed and approved for release by Judicial Council Internal Audit prior to release to the cognizant entity. A copy of the final reply shall be submitted to Judicial Council Internal Audit.
- E. The Contractor agrees to pay to the Judicial Council the amount of the Judicial Council's liability to the California Department of Social Services, the state of California or the federal government that results from the Court's failure to perform the obligations or comply with the conditions required by federal, state or local law or regulations or by this Agreement and identified by any audit exception. This section does not apply if such

liability was the result of the Contractor following written instructions or direction from the California Department of Social Services or the Judicial Council.

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APPENDIX E

**UNRUH CIVIL RIGHTS ACT AND
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the JBE for a solicitation of goods or services of \$100,000 or more, or (ii) entering into or renewing a contract with the JBE for the purchase of goods or services of \$100,000 or more.

CERTIFICATIONS:

1. Contractor is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. Contractor is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code);
3. Contractor does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code); **and**
4. Any policy adopted by a person or actions taken thereunder that are reasonably necessary to comply with federal or state sanctions or laws affecting sovereign nations or their nationals shall not be construed as unlawful discrimination in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the Contractor to the certifications made in this document.

<i>Contractor 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>	

Appendix F
Court Appointed Counsel Invoice & Data Collection Form [*]
Sample is in development and unavailable at this time.

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