

**SAN MIGUEL COMMUNITY SERVICES DISTRICT  
STANDARD TERMS AND CONDITIONS  
FOR CONTRACTS FOR GOODS OR SERVICES**

**THESE STANDARD TERMS AND CONDITIONS** (“Standard Terms”) are required to be agreed to by any Contractor, per the policies of the San Miguel Community Services District (“District”) a community services district formed under the provisions of Government Code section 61010 et seq. (“District”), whose address is 1150 Mission St., San Miguel, CA 93451, in conjunction with any contract the District enters into for goods or services. These Standard Terms are thus incorporated by reference into any Contract, Agreement or bid for good or services by and between the District and Business, Firm or Contractor (“Contractor”).

**Section 1. Commencement of Work.** Subject to the terms of the contract (“Contract”) Contractor shall provide District with goods or services (“Work”) as described in the Contract. Contractor shall not commence Work under the Contract until Contractor has received a fully executed Contract and been given written approval to proceed (“Notice to Proceed”). District shall not be liable for any Work performed prior to the Notice to Proceed. Written notice to proceed may be given to Contractor via electronic communication.

**Section 2. Time of Performance.** Contractor warrants that it will commence performance of the Services or delivery of the Goods within the time frame specified in the Request for Proposal (“RFP”) or bid documents, and shall conform to the Completion Schedule.

**Section 3. Contract Alterations & Integration.** No alteration or variation of the Contract or of these Standard Terms shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated in writing in the Contract shall be binding on any of the parties hereto.

**Section 4. Severability.** Contractor and District agree that if any provision of the Contract is found to be illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Either party having knowledge of such term or provision shall promptly inform the other of its presumed non-applicability of such provision. Should the illegal or unenforceable provision be a material or essential term of the Contract, the Contract shall be terminated in a manner commensurate with the interests of both parties, to the maximum extent reasonable.

**Section 5. Independent Status.** At all times during the Term, Contractor shall be deemed to be an independent contractor and shall be wholly responsible for the manner in which Contractor performs the services required under these Standard Terms. Contractor shall be liable for its acts and omissions, and those of its employees, contractors, subcontractors, representatives, volunteers, and its agents. Nothing contained herein shall be construed as creating an employment, agency or partnership relationship between District and Contractor. District shall have the right to control Contractor only insofar as the result of Contractor’s services rendered pursuant to these Standard Terms; however, District shall not have the right to control the means by which Contractor accomplishes Services rendered.

**Section 6. Governing Law.** To the extent not inconsistent with applicable federal law, the Contract and these Standard Terms shall be construed in accordance with and governed by the laws of the State of California.

**Section 7. Contractor's Power and Authority.** Contractor warrants it has full power and authority to enter into the Contract and will hold District harmless from and against any loss, cost, liability, and expense (including reasonable attorney fees) arising out of any breach of this warranty. Further, Contractor shall not enter into any arrangement, agreement or contract with any third party that might abridge any rights of the District under the Contract.

**Section 8. Assignments.** Contractor shall not assign the Contract, either in whole or in part, without District's written consent, which will not be unreasonably withheld.

**Section 9. Personnel.** Contractor shall give its personal attention to the performance of the Contract and shall make every effort, consistent with sound business practices, to honor District's requests regarding Contractor's assignment of its employees. However, Contractor maintains the sole right to determine the assignment of its employees in order to keep all phases of work under its control. If an employee of Contractor is unable to perform due to illness, resignation or other factors beyond Contractor's control, Contractor shall use its best effort to provide suitable substitute personnel.

**Section 10. Representations of Contractor.** District relies upon the following representations by Contractor in entering into the Contract:

**10.1. Qualifications.** Contractor represents that it is qualified to perform the Services provided in the Contract and that it possesses the necessary licenses and permits required to perform the Services or will obtain such licenses or permits prior to the time such licenses or permits are required. Contractor shall hold a valid Contractor's license issued by the State of California, a California-registered Professional license (if applicable) and be a business registered with the County of San Luis Obispo. Contractor shall also ensure that all subcontractors are similarly licensed and qualified. Contractor represents and warrants to District that Contractor shall, at Contractor's sole cost and expense, keep in effect or obtain at all times during the Term of the Contract, any licenses, certificates, permits, and approvals which are legally required for Contractor to practice Contractor's profession at the time the Services are rendered. Copies or verification of a license or certificate in good standing will be provided by Contractor to District upon request.

**10.2. Contractor Performance.** Contractor represents and warrants that all Services under the Contract shall be performed in a Contractor manner and shall conform to the customs and standards of practice observed on similar, successfully completed projects by specialists in the Services to be provided. Contractor shall adhere to accepted Contractor standards as set forth by relevant Contractor associations and shall perform all Services required under the Contract in a manner consistent with generally accepted Contractor customs, procedures and standards for such Services. All work or products completed by Contractor shall be completed using the best practices available for the profession and shall be free from any defects. Contractor agrees that, if

a Service is not so performed, in addition to all of its obligations under the Contract, these Standard Terms and at law, Contractor shall re-perform or replace unsatisfactory Service at no additional expense to District.

**10.3. No Waiver of Claims.** The granting of any progress payment by District, or the receipt thereof by Contractor, or any inspection, review, approval or oral statement by any representative of District, or state certification, shall not, in any way, waive, limit, or replace any certification or approval procedures normally required or lessen the liability of Contractor to re-perform or replace unsatisfactory Service, including but not limited to cases where the unsatisfactory character of such Service may not have been apparent or detected at the time of such payment, inspection, review or approval.

**10.4. District's Remedies are Cumulative.** Nothing in the Contract shall constitute a waiver or limitation of any right or remedy, whether in equity or at law, which District or Contractor may have under the Contract, these Standard Terms or any applicable law. All rights and remedies of District, whether under the Contract, these Standard Terms or applicable law, shall be cumulative.

**10.5. No Conflict of Interest.** Contractor represents that no conflict of interest will be created under state or federal law by entering into or in carrying out the Contract.

**Section 11. Time.** Time is of the essence in the performance of the Contract.

**Section 12. Cancellation.** District has the right to cancel the Contract at any time and without future financial obligation upon thirty (30) days written notice to Contractor.

**Section 13. Termination for Default.** District may terminate the Contract and be relieved of the payment of any consideration to Contractor should Contractor fail to perform the covenants at the time and in the manner herein provided. In the event of such termination, the District may proceed with the Work in any manner deemed proper by the District. The cost to the District shall be deducted from any sum due the Contractor under the Contract, and the balance, if any, shall be paid the Contractor upon demand.

**Section 14. Suspension of Services by District.** District reserves the right to suspend Contractor's Services when District determines that it is necessary to do so. When possible, District shall give Contractor notice of such suspension and Contractor shall, upon receipt of said notice, suspend all Services except any Services, the completion of which is authorized by the notice given by District. If the Services are suspended by District for more than sixty (60) consecutive days, for reasons other than the fault of the Contractor, the Contractor shall be compensated for Services performed prior to notice of such suspension. When the Project is resumed, the Contractor's compensation shall be equitably adjusted by the District to provide for expenses incurred by the interruption of the Services. In this regard, Contractor shall furnish to District such financial information as in the judgment of the District Manager is necessary to determine the reasonable value of the Services rendered by Contractor during the period when Services were suspended.

If the Parties are unable to agree upon the amount of extra compensation which is due to Contractor within thirty (30) days of Contractor resuming Services, the amount of such additional compensation, if any, that is required to appropriately compensate the Contractor for its expenses incurred by the interruption of Services may, upon the agreement of the Parties, be determined by arbitration. The parties will split the cost of arbitration (hearing officer fees and costs, court reporter fees, e.g.) evenly, but will individually bear all other costs related to their participation in the arbitration of the dispute, including attorneys' fees, travel costs, expert witnesses and the like. Such arbitration shall be commenced by the Contractor no later than sixty (60) calendar days following the event which entitles the Parties to pursue arbitration unless the Parties agree in writing to an extended time period for commencement of arbitration. Unless otherwise agreed in writing, all Parties shall carry on the Services and perform their duties during any arbitration proceedings, and the District shall continue to make payments for the Services in progress as required by the Contract.

## **Section 15. Rights and Remedies of District for Default.**

**15.1.** In the event the Work provided by Contractor in the performance of the Contract should fail to conform to the requirements herein, or to the sample submitted by Contractor, District may reject the same. It shall thereupon become Contractor's duty to forthwith reclaim remove and replace all rejected goods or correct the performance of services conforming to the requirements herein or the samples submitted, without expense to the District. Should Contractor fail, neglect, or refuse to do so, District shall thereupon have the right, but not the obligation, to use self-help or retain another contractor to complete the services contracted for or to purchase in the open market, in lieu thereof, a corresponding quantity of any of the goods and to deduct the cost of such from any moneys due or that may thereafter become due to Contractor.

**15.2.** In the event Contractor fails to perform under the Contract or fails to make prompt delivery of any goods as specified in the Contract, the same conditions as to District's right, but not obligation, to contract for the Work in the open market and receive reimbursement from Contractor, as set forth in subsection (a), above shall apply.

**15.3.** In the event that the District terminates the Contract, either in whole or in part, due to Contractor's default or breach, Contractor shall compensate District, in addition to any other remedy District may have available to it, for any loss or damage sustained and cost incurred by the District in procuring a replacement contractor or procuring any goods that the Contractor agreed to supply.

**15.4.** District's rights and remedies provided above shall not be exclusive and shall be in addition to any other rights and remedies provided by law, equity or the Contract.

## **Section 16. Warranty.**

**16.1.** Contractor warrants that (i) Work performed or furnished hereunder will conform to the requirements of the Contract (including, without limitation, all descriptions, specifications, and drawings identified in the Statement of Work) and (ii) any goods furnished hereunder will be free from defects in materials and workmanship. Where the parties have agreed to design

specifications in the Statement of Work directly or by reference, Contractor warrants the goods shall provide all functionality required thereby. District's approval of designs or specifications furnished by Contractor shall not relieve Contractor of its obligations under this warranty.

**16.2.** All warranties, including special warranties specified elsewhere herein, shall inure to District, its successors, assigns, customer agencies, and other governmental users of the Work.

**Section 17. Conformity with Law and Safety.** Contractor shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal and local governing bodies having jurisdiction over any or all of the scope of Services, including all provisions of the Occupational Safety and Health Act of 1979 as amended, all California Occupational Safety and Health Regulations, the California Building Code, the American with Disabilities Act, any copyright, patent or trademark law and all other applicable federal, state, municipal and local safety regulations, appropriate trade association safety standards, and appropriate equipment manufacturer instructions. All Services performed by Contractor must be in accordance with these laws, ordinances, codes and regulations. Contractor's failure to comply with any laws, ordinances, codes or regulations applicable to the performance of the Services hereunder shall constitute a breach of contract. In cases where standards conflict, the standard providing the highest degree of protection shall prevail.

If a death, serious personal injury or substantial property damage occurs in connection with the performance of the Contract, Contractor shall immediately notify the District's General Manager (or his/her designee) by telephone. If any accident occurs in connection with the Contract, Contractor shall promptly submit a written report to District. This report shall include the following information: (a) name and address of the injured or deceased person(s); (b) name and address of Contractor's subcontractor, if any; (c) name and address of Contractor's liability insurance carrier; and (d) a detailed description of the accident, including whether any of District's equipment, tools or materials were involved.

If a release of a hazardous material, substance, or waste occurs in connection with the performance of the Contract, Contractor shall immediately notify County of San Luis Obispo Environmental Health and the District. Contractor shall not store hazardous materials or hazardous waste within the District limits without a proper permit from County of San Luis Obispo Environmental Health.

**Section 18. Insurance Requirements.** If the Work provides for services, the Contractor shall not commence the Work until it has obtained all the insurance required in the Contract, and such insurance has been approved by the District.

#### **18.1 Policies and Coverage.**

(a) The Contractor shall obtain and maintain the following policies and coverage:

(1) Comprehensive or Commercial Form General Liability Insurance, on an occurrence basis, covering Work done or to be done by or on behalf of the Contractor and providing insurance for bodily injury, personal injury,

property damage, and contractual liability. The aggregate limit shall apply separately to the Work.

(2) Business Automobile Liability Insurance on an occurrence basis, covering owned, hired, and non-owned automobiles used by or on behalf of the Contractor and providing insurance for bodily injury, property damage, and contractual liability. Such insurance shall include coverage for uninsured and underinsured motorists

(3) Worker's Compensation including Employers Liability Insurance as required by law.

(b) The Contractor also may be required to obtain and maintain the following policies and coverage:

(1) Environmental Impairment Liability Insurance should the Work involve hazardous materials, such as asbestos, lead, fuel storage tanks, and PCBs.

(2) Other Insurance by agreement between the District and the Contractor.

**18.2 Verification of Coverage.** The Contractor shall submit original certificates of insurance and endorsements to the policies of insurance required by the Contract to the District as evidence of the insurance coverage. Renewal certifications and endorsements shall be timely filed by the Contractor for all coverage until the Work is accepted as complete. The District reserve the right to require the Contractor to furnish the District complete, certified copies of all required insurance policies.

**18.3 Insurance Provisions.** Nothing in these insurance provisions shall be deemed to alter the indemnification provisions in the Contract. The insurance policies shall contain, or be endorsed to contain, the following provisions.

(a) For the general and automobile liability policies, the District, their officers, employees, representatives, volunteers, and agents are to be covered as additional insureds. If the contract is partially or wholly funded by or through the County of San Luis Obispo, the County shall also be covered as additional insureds.

(b) For any claims related to the Work, the Contractor's insurance coverage shall be primary insurance with respect to the District, its officers, employees, representatives, volunteers, and agents. Any insurance or self-insurance maintained by the District, its officers, employees, representatives, volunteers, and agents shall be in excess of the Contractor's insurance and shall not contribute with it.

(c) Each insurance policy required by this section shall state that coverage shall not be canceled by either the Contractor or the insurance carrier, except after thirty (30) Days prior written notice by certified mail, return receipt requested, has been given to the District.

(d) The District, its officers, employees, representatives, volunteers, and agents shall not by reason of their inclusion as additional insureds incur liability to the insurance carriers for payment of premiums for such insurance.

#### **18.4 Amount of Insurance.**

(a) The insurance furnished by Contractor shall provide coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:

(1) Comprehensive or Commercial Form General Liability Insurance--  
Limits of Liability  
\$2,000,000 General Aggregate  
\$1,000,000 Each Occurrence--combined single limit for bodily injury and property damage.

(2) Business Automobile Liability Insurance-Limits of Liability  
\$1,000,000 Each Accident-- combined single limit for bodily injury and property damage to include uninsured and underinsured motorist coverage.

(3) Workers' Compensation limits as required by law.

(4) Errors & Omissions Liability  
\$2,000,000 General Aggregate  
\$1,000,000 Each Occurrence

(b) For Work involving hazardous materials, the Contractor shall provide additional coverage in amounts not less than the following, unless a different amount is stated in the Supplementary General Conditions:

(1) Environmental Impairment (pollution) Liability Insurance-Limits of Liability  
\$10,000,000 General Aggregate  
\$ 5,000,000 Each Occurrence-- combined single limit for bodily injury and property damage, including cleanup costs.

(2) In addition to the coverage for Business Automobile Liability Insurance, the Contractor shall obtain for hazardous material transporter services:

(i) MCS-90 endorsement

- (ii) Sudden & Accidental Pollution endorsement--Limits of Liability\*
  - \$1,000,000 Each Occurrence
  - \$2,000,000 General Aggregate

\*A higher limit on the MCS-90 endorsement required by law must be matched by the Sudden & Accidental Pollution Insurance.

**18.5 Acceptability of Insurers.** Insurers shall be licensed by the State of California to transact insurance and shall hold a current A.M. Best's rating of A:VII, or shall be a carrier otherwise acceptable to the District.

**18.6 Subcontractor's Insurance.** Contractor shall ensure that its subcontractors are covered by insurance of the types required as referenced above and that the amount of insurance for each subcontractor is appropriate for that subcontractor's Work. Contractor shall not allow any subcontractor to commence Work on its subcontract until the insurance has been obtained and approved by the District. Only the Contractor and its hazardous materials subcontractor(s) shall have the coverage for projects involving hazardous materials.

**18.7 Miscellaneous.**

- (a) Any deductible under any policy of insurance required in the Contract shall be Contractor's liability.
- (b) Acceptance of certificates of insurance by the District shall not limit the Contractor's liability under the Contract.
- (c) In the event the Contractor does not comply with these insurance requirements, the District may, at its option, provide insurance coverage to protect the District. The cost of the insurance shall be paid by the Contractor and, if prompt payment is not received, may be deducted from Contract sums otherwise due the Contractor.
- (d) If the District are damaged by the failure of Contractor to provide or maintain the required insurance, the Contractor shall pay the District for all such damages.
- (e) Unless otherwise provided in the Contract, the Contractor's obligations to obtain and maintain all required insurance are non-delegable duties.
- (f) If the Contract is a construction contract pursuant to Public Contract Code section 7105, the Contractor's liability for damages proximately caused by acts of God (as defined in Public Contract Code section 7105) and not involving



Contractor negligence shall be limited to five percent (5%) of the Contract, provided that the Work damaged is built in accordance with accepted and applicable building standards and the plans and specifications of the District. This subsection shall not limit any entitlement to payment from any insurance policy of the Contractor.

**Section 19. Excusable Delays; Notice to Other Party of Delay.** Neither the District nor the Contractor shall be deemed to be in breach of the Contract in the event that performance of the Work is temporarily interrupted or discontinued due to a “Force Majeure” event which is defined as: national emergencies as declared by competent authorities, emergency governmental actions or regulations, pandemics, epidemics, disease, riots, wars, sabotage, civil disturbances, insurrections, explosion, natural disasters such as floods, earthquakes, landslides, fires, strikes, lockouts and other labor disturbances or other catastrophic events, which are beyond the reasonable control of Contractor.

Force Majeure does not include:

**19.1.** Contractor’s financial inability to perform;

**19.2.** Contractor’s failure to obtain any necessary permits or licenses from other governmental agencies; or

**19.3.** Contractor’s failure to obtain the right to use the facilities of any public utility where such failure is due solely to the acts or omissions of the Contractor.

**Section 20. General Indemnity.** To the fullest extent permitted by law, Contractor shall indemnify, defend, and hold harmless the District, and its officers, agents and employees from any and all claims and losses accruing or resulting to any other person, firm or corporation furnishing or supplying Work, service, materials or supplies in connection with the performance of the Contract, and from any and all claims and losses accruing or resulting to any person, firm or corporation related to, arising out of or resulting from Contractor’s performance of the Contract.

**Section 21. Invoices.** Invoices shall be submitted, in arrears, to the address stipulated in the Contract. The Resolution or Purchase Order number must be included on the invoice. Final invoice shall be marked as such.

**21.1.** In the event that additional services are required, the Contractor shall submit invoices in accordance with provisions herein.

**21.2.** For work of a continuing nature, the Contractor shall submit invoices in arrears, upon completion of each phase. Contractor shall be reimbursed for travel, subsistence and business expenses necessary for the performance of services pursuant to the Contract in accordance with District policy.

**21.3.** Unless otherwise specified, the District shall pay properly submitted invoices not more than forty-five (45) days after the later of:

- (a) The District's acceptance of goods;
- (b) The performance completion date of services; or
- (c) Receipt of an undisputed invoice.

Late payment penalties shall not apply to the Contract.

**21.4.** The consideration to be paid Contractor, as described within the Contract, shall be in full compensation for all of Contractor's expenses incurred in the performance hereof, including travel and per diem, unless otherwise expressly so provided.

**Section 22. Document Referencing.** All correspondence, invoices, bills of lading, shipping memos, packages, etc., must show the Resolution or Purchase Order number. If factory shipment, the factory must be advised to comply. Invoices not properly identified with the District's reference number and Contractor identification number may be returned to Contractor and may cause delay in payment.

**Section 23. Packing and Shipment.**

**23.1.** All goods required by the Contract are to be packed in suitable containers for protection in shipment and storage, and in accordance with applicable specifications. Each container of a multiple container shipment shall be identified to:

- (a) Show the number of the container and the total number of containers in the shipment; and
- (b) Show the number of the container in which the packing sheet has been enclosed.

**23.2.** All shipments by Contractor or its subcontractors must include packing sheets identifying: the District's contract number; item number; quantity and unit of measure; part number and description of the goods shipped; and appropriate evidence of inspection, if required. Goods for different contracts shall be listed on separate packing sheets.

**Section 24. Delivery.** Contractor shall strictly adhere to the delivery and completion schedules specified in the Contract. Time, if stated as a number of days shall mean calendar days unless otherwise specified in the Statement of Work. The quantities specified the Contract are the only quantities required. If Contractor delivers in excess of the quantities specified in the Contract, District shall not be required to make any payment for the excess deliverables, and may return them to Contractor at Contractor's expense or utilize any other rights available to District at law or in equity.

**Section 25. Substitutions.** Substitution of Work may not be tendered without advance written consent of District. Contractor shall not use any specification in lieu of those contained in the Contract without written consent of District.

**Section 26. Inspection, Acceptance and Rejection.** Unless otherwise specified in the Contract all Work may be subject to inspection and test by District.

**Section 27. Taxes, Fees, Expenses, and Extras.**

**27.1.** Payment of any taxes, including California sales and use taxes, levied upon the Contract, the transaction, or the Services or goods delivered pursuant hereto, shall be the obligation of Contractor.

**27.2.** Unless specified otherwise, prices quoted shall include all required and applicable taxes.

**27.3.** No charge for delivery, drayage, express, parcel post, packing, cartage, insurance, license fees, permits, cost of bonds, or for any other purpose will be paid by District unless expressly included and itemized in the Contract. Unless otherwise indicated on the Purchase Order or Contract, on "FOB Shipping Point" transactions vendor shall arrange for lowest cost transportation, prepay, add freight to invoice, and furnish supporting freight bills over \$50. The Shipper, Carrier or Contractor will be liable for any damages during transit. On "FOB Shipping Point" transactions, should any shipments under the Contract be received by District in a damaged condition and any related freight loss and damage claims filed against the carrier or carriers by wholly or partially declined by the carrier or carriers with the inference that damage was the result of the act of the shipper, such as inadequate packing or loading or some inherent defect in the equipment and/or material, vendor shall, at its own expense, assist District in establishing carrier liability.

**27.4.** Contractor certifies it will immediately advise District of any change in its retailer's seller's permit or certification of registration or applicable affiliate's seller's permit or certificate of registration.

**Section 28. Use of Data.** Contractor shall not utilize any non-public District information it may receive by reason of the Contract, for pecuniary gain not contemplated by the Contract, regardless of whether Contractor is or is not under contract at the time such gain is realized. District specific information contained in the report, survey, or other product developed by Contractor pursuant to the Contract is the property of District and shall not be used in any manner by Contractor unless authorized in writing by District.

**Section 29. Confidentiality of Data.**

**29.1.** Contractor acknowledges the privacy rights of individuals to their personal information that are expressed in the Information Practices Act (California Civil Code section 1798 et seq.) and in California Constitution Article 1, Section 1. Contractor shall maintain the privacy of personal information and protected data as confidential information. Contractor shall

not use, disclose, or release confidential information contained in District records without full compliance with applicable state and federal privacy laws, and the Contract. Contractor shall maintain the privacy of confidential information and shall be financially responsible for any notifications to affected persons (after prompt consultation with District) whose personal information is disclosed by any security breach relating to confidential information resulting from Contractor's or its personnel's acts or omissions. Further, if so, requested by District, Contractor shall be administratively responsible for providing such notification in the most expedient time possible consistent with the methods prescribed in California Civil Code sections 1798.29 and 1798.82.

**29.2.** Contractor further agrees that all financial, statistical, personal, technical and other data and information relating to District's operation designated "confidential" by District, and not otherwise subject to disclosure under the California Public Records Act, and made available to Contractor to perform the Contract or which become available to Contractor while performing the Contract, shall be protected by Contractor using the same level of care it takes to protect its own information of a similar nature, but in no event less than reasonable care. Contractor shall not use or disclose confidential information other than to carry out the purposes of the Contract. Contractor shall not disclose any confidential information other than on a "need to know" basis and then only:

(a) To its representatives, provided however, that each such employee or officer has entered into a confidentiality agreement;

(b) To affiliates of or Subcontractors to Contractor, only with written prior consent by District and provided that:

(1) Use by such Affiliates or Subcontractor shall be limited to the purpose of the agreement;

(2) Affiliate or Subcontractor is bound by contract and or confidentiality agreement to protect District data from unauthorized access.

If required by a court of competent jurisdiction or an appropriate administrative body with legal authority to order the disclosure of confidential information or protected data, Contractor will notify District in writing prior to any such disclosure to give District an opportunity to oppose any such disclosure. Prior to any disclosure of confidential information as required by legal process, Contractor shall:

(c) Notify District of any actual or threatened legal compulsion of disclosure, and any actual legal obligation of disclosure, immediately upon becoming so obligated; and

(d) Delay disclosure until District has provided Contractor with notice that they will oppose or agree to such disclosure or the time specified for legal compliance is reached.

**29.3.** Contractor shall cooperate with any litigation or investigation proceedings concerning protected data loss or other breach of Contractor's obligations under the Contract. Any access, transmission, or storage of protected data outside the United States must be approved in

writing by District in advance. Contractor's failure to comply with any provision of this Section shall constitute a material breach of the Contract.

**Section 30. Dispute.** Any dispute arising under or resulting from the Contract that is not resolved within sixty (60) days of time by authorized representatives of Contractor and District shall be brought to the attention of Contractor's Chief Executive Officer (or designee) and District's General Manager (or designee) for resolution. If this informal dispute resolution process is unsuccessful, the parties may resolve such dispute by arbitration pursuant to Section 31. Despite an unresolved dispute, Contractor shall continue without delay in performing its responsibilities under the Contract. Contractor shall accurately and adequately document all Work it has performed under the Contract.

**Section 31. Arbitration of Disputes.** All claims, disputes and other matters in question between District and Contractor arising out of, or relating to the Contract or the breach thereof, including claims of Contractor for extra compensation for Work under the Contract may be decided by arbitration before a single arbitrator in accordance with the provisions of Sections 1281 to 1284.2 of the California Code of Civil Procedure (the "Arbitration Laws") if the Parties mutually agree. The provisions of Section 1283.05 of the Arbitration Laws would apply to any arbitration proceeding except as otherwise provided in the Contract. The arbitrator shall have authority to decide all issues between the Parties including, but not limited to, claims for extras, delay and liquidated damages, if any, provided for in the Contract, matters involving defects in the Work product or Deliverables of the Contractor, rights to payment, and whether the necessary procedures for arbitration have been followed. The award rendered by the arbitrator shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

Notice of the demand for arbitration shall be filed in writing with the other Party. The demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen, and in no event shall it be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitation.

The Parties shall jointly appoint an arbitrator within fifteen (15) calendar days of the date of giving of the notice of the demand for arbitration. If the Parties are unable to jointly agree upon the appointment of an arbitrator within said fifteen (15) calendar day period, and do not agree in writing to extend said period for a fixed period, then either Party may seek to have the arbitrator appointed by the Superior Court of San Luis Obispo in accordance with arbitration rules.

In addition to the other rules of law which may be applicable to any arbitration hereunder, the following shall apply:

**31.1.** Promptly upon the filing of the arbitration each Party shall be required to set forth in writing and to serve upon each other Party a detailed statement of its contentions of fact and law.

**31.2.** All parties to the arbitration shall be entitled to the discovery procedures as provided in Section 1283.05 of the California Code of Civil Procedure.

**31.3.** The arbitration shall be commenced and conducted as expeditiously as possible consistent with affording reasonable discovery as provided herein.

**31.4.** These additional rules shall be implemented and applied by the arbitrator.

The parties will split the cost of arbitration (hearing officer fees and costs, court reporter fees, e.g.) evenly, but will individually bear all other costs related to their participation in the arbitration of the dispute, including attorneys' fees, travel costs, expert witnesses and the like.

**Section 32. Conflict of Interest.** Contractor represents that no conflict of interest will be created under state or federal law by entering into or in carrying out the Contract. District requires a Statement of Economic Interests (California Form 700) to be filed by any Contractor who is involved in the making or participation in the making of decisions which may foreseeably have a material effect on any District financial interest. Contractor warrants that no conflict of interest will be created under state or federal law by entering into or carrying out the Contract.

**Section 33. Endorsement.** Nothing contained in the Contract shall be construed as conferring on any party, any right to use the other Party's name as an endorsement of product/service or to advertise, promote or otherwise market any product or service without the prior written consent of the other party. Furthermore, nothing in the Contract shall be construed as endorsement of any commercial product or service by the District, its officers or employees.

**Section 34. Covenant Against Gratuities.** Contractor shall warrant that no gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by Contractor, or any agent or representative of Contractor, to any officer or employee of District with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, District shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by District in procuring on the open market any items that Contractor agreed to supply shall be borne and paid for solely by Contractor. District's rights and remedies provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law, equity or under the Contract.

**Section 35. Nondiscrimination.**

**35.1.** During the performance of the Contract, Contractor and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, gender identity or expression, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition, age, marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment.

**35.2.** Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Contract.

**Section 36. Americans with Disabilities Act (ADA).** Contractor warrants that it complies with California and federal disabilities laws and regulations. (Americans with Disabilities Act of 1990, 42 U.S.C. 12101 et seq). Contractor hereby warrants the Work it will provide under the Contract comply with the accessibility requirements of Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d), and its implementing regulations set forth at Title 36, Code of Federal Regulations, Part 1194. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its Work. Contractor further agrees to indemnify and hold harmless District from any claims arising out of Contractor's failure to comply with the aforesaid requirements. Failure to comply with these requirements shall constitute a material breach of the Contract.

**Section 37. Debarment and Suspension.** By accepting a contract with the District, Contractor certifies neither it nor its principals or its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal department or agency (*2 Code Federal Regulations [CFR] 180.*)

**Section 38. DVBE, MBE, WBE and Small Business Participation.** The District encourages the procurement of services from small businesses and businesses which are owned by disabled veterans, women and minorities. To that end:

**38.1.** Within sixty (60) days of receiving final payment under the Contract (or within such other time period as may be specified elsewhere in the Contract), the Contractor shall report to District:

- (a) The name and address of the small business (SB(s)) who participated in the performance of the Contract;
- (b) The total amount any prime Contractor received under the Contract; and
- (c) The amount each SB received from the prime Contractor.

**38.2.** Within sixty (60) days of receiving final payment under the Contract (or within such other time period as may be specified elsewhere in the Contract), the Contractor shall report to District:

- (a) The name and address of the disabled veteran business enterprises (DVBE), minority business enterprises (MBE) or women's business enterprises WBE(s) who participated in the performance of the Contract;
- (b) The total amount any prime Contractor received under the Contract; and

(c) The amount each DVBE, MBE or WBE received from the prime Contractor. The Contractor shall also certify that all payments under the Contract have been made to the DVBE, MBE or WBE.

**Section 39. Contractor’s Staff.** Contractor warrants that its staff assigned to performing work under the Contract are legally able to perform such duties.

**Section 40. Environmental Sustainability Incentive.** The District’s practice is to acquire supplies and services from vendors which promote a clean energy economy that increases our nation’s energy security, safeguards the health of our environment, and reduces greenhouse gas emissions from direct and indirect activities. As such, the District encourages Contractor to implement innovative sustainability concepts and practices beyond the base performance standards including but not limited to:

- Use of Green Products
- Sustainability in Concessions
- Recycling and Use of Recycled Materials (Waste Minimization and Management)
- Energy and Water Conservation
- Education and Promotion of Sustainability
- Other Environmentally Sustainable Practices

**Section 41. Recycled Content Certification**

If applicable to the project, Contractor shall certify in writing the minimum, if not exact, percentage of postconsumer material in products, materials, goods, or supplies offered or sold to the District.

**Section 42. Hazardous Materials/Environmental Requirements**

In the event of a spill of a hazardous waste, as defined in California Code of Regulations, Title 22, Section 66261.3, at the construction site or within the boundaries of District property, the Contractor shall immediately notify authorized District personnel and will make every effort to mitigate the spill and minimize its effect on the environment.

(a). Hazardous Materials

(1) Asbestos

The Contractor is prohibited from installing any asbestos-containing materials or products in any Work to be performed under the Contract. The Contractor shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in duration by Project completion, the warranty period, or other provisions of the Contract.

(2) Lead

The Contractor is prohibited from installing any lead-containing materials or products, including paint, in any Work to be performed under the Contract without the written consent of the Executive Facilities Officer and Director of Environmental Health and Safety. The Contractor shall be responsible for removal and replacement costs should it be determined this provision has been violated; this responsibility shall not be limited in



duration by Project completion, the warranty period, or other provisions of the Contract. Notwithstanding the foregoing paragraph, in the event of an emergency constituting an immediate hazard to health or safety of The Trustees' employees, property, or licenses, the District may undertake, at the Service Provider's expense, without prior notice, all work necessary to correct such violation. The District may bring to the attention of the Contractor a possible hazardous situation in the field regarding the safety of personnel on the site. The Contractor shall be responsible for verifying the observance of all local, state, and federal workplace safety guidelines. In no case shall this right to notify the Contractor absolve the Contractor of its responsibility for monitoring safety conditions. Such notification shall not imply that anyone other than the Contractor has assumed any responsibility for field safety operations.

(3) Explosives

Explosives shall not be used without first obtaining written permission from the District and then shall be used only with the utmost care and within the limitations set in the written permission and in accordance with prudence and safety standards required by law. Permits for the use or storage of explosives must be obtained from the County or State, when applicable.

A. Storage of explosives on the Project site or District is prohibited. Powder activated tools are not explosive for purposes of this Article; however, such tools shall only be used in conformance with State safety regulations.

(b). Environmental Requirement

(1) Air and Water Pollution Control

The Contractor shall comply with all air and water pollution control rules, regulations, ordinances and statutes which apply to the Work performed under the Contract, including any air pollution control rules, regulations, ordinances and statutes. In the absence of any applicable air pollution control rules, regulations, ordinances or statutes governing solvents, all solvents, including but not limited to the solvent portions of paints, thinners, curing compounds, and liquid asphalt used on the Project, shall comply with the applicable material requirements of the San Luis Obispo County Air Pollution Control District (APCD). All containers of solvent, paint, thinner, curing compound or liquid asphalt shall be labeled to indicate that the contents fully comply with these requirements. Unless otherwise provided in the special provisions, material to be disposed of shall not be burned either inside or outside the premises. A regular watering program shall be initiated to adequately control the amount of fugitive dust in accordance with applicable APCD rules. Trucks hauling dirt from the site shall be covered in accordance with applicable state and local requirements. To reduce exhaust emissions, unnecessary idling of construction vehicles and equipment shall be avoided. \_

(2) Sound Control Requirements

The Contractor shall comply with all sound control and noise level rules, regulations and ordinances which apply to the Work. In the absence of any such rules, regulations and ordinances, the Contractor shall conduct its Work to minimize disruption to others due to sound and noise from the workers and shall be responsive to the District's requests to reduce noise levels. Each internal combustion engine, used for any purpose on the Project or related to the Project, shall be equipped with a muffler of a type recommended by the manufacturer.

No internal combustion engine shall be operated on the Project without a muffler. Construction equipment shall be fitted with modern emission control devices and shall be kept in proper tune. Loading and unloading of construction materials will be scheduled to minimize disruptions to campus activities. Construction activities will be scheduled to minimize disruption to the District and to campus users.

(3) Archaeological Finds

If the Contractor discovers any artifacts during excavation and/or construction, the Contractor shall stop all affected work and notify the District, who will call in a qualified archaeologist to assess the discovery and suggest further mitigation, as necessary. If the Contractor discovers human remains, the Contractor shall notify the District who will be responsible for contacting the county coroner and a qualified archaeologist. If the remains are determined to be Native American, the District shall contact the appropriate tribal representatives to oversee removal of the remains.

**Section 43. Notices.**

Any notice or communication required hereunder between District and Contractor must be in writing, and may be given either personally, by facsimile (with original forwarded by regular U.S. Mail), by registered or certified mail (return receipt requested), or by Federal Express, UPS or other similar couriers providing overnight delivery. If personally delivered, a notice or communication shall be deemed to have been given when delivered to the Party to whom it is addressed. If given by facsimile transmission, a notice or communication shall be deemed to have been given and received upon actual physical receipt of the entire document by the receiving Party's facsimile machine. Notices transmitted by facsimile after 5:00 p.m. on a normal business day or on a Saturday, Sunday or holiday shall be deemed to have been given and received on the next normal business day. If given by registered or certified mail, such notice or communication shall be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent, or (ii) five (5) days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar courier, a notice or communication shall be deemed to have been given and received on the date delivered as shown on a receipt issued by the courier. Any Party hereto may at any time, by giving ten (10) days written notice to the other Party hereto, designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to District:	San Miguel P.O. Box 180 1150 Mission St. San Miguel, Attention: Tel: (805) 467-3388	Community    General	Services   CA	District   93451 Manager
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With a courtesy copy to:

WhiteBrenner LLP  
1414 K Street, 3<sup>rd</sup> Floor  
Sacramento, California 95814  
Attention: Douglas L. White, Esq.  
Tel: (916) 468-0950  
Fax: (916) 468-0951

If to Contractor: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 44. General Provisions.**

**44.1. Modification.** No alteration, amendment, modification, or termination of the Contract or these Standard Terms shall be valid unless made in writing and executed by all of the Parties to the Contract.

**44.2. Waiver.** No covenant, term, or condition or the breach thereof shall be deemed waived, except by written consent of the Party against whom the waiver is claimed, and any waiver of the breach of any covenant, term, or condition shall not be deemed to be a waiver of any preceding or succeeding breach of the same or any other covenant, term, or condition.

**44.3 Drafting and Ambiguities.** Each Party acknowledges that it has reviewed these Standard Terms with its own legal counsel, and based upon the advice of that counsel, have freely entered into these Standard Terms. Each Party has participated fully in the review and revision of these Standard Terms. Any rule of construction that ambiguities are to be resolved against the drafting party does not apply in interpreting these Standard Terms.

**44.4. Audit.** District shall have access at all reasonable times to all reports, contract records, contract documents, contract files, and personnel necessary to audit and verify Contractor’s charges to District under the Contract and these Standard Terms.

**44.5. Mandatory and Permissive.** “Shall” and “will” and “agrees” are mandatory. “May” and “can” are permissive.

**44.6. Successors and Assigns.** All representations, covenants, and warranties specifically set forth in these Standard Terms, by or on behalf of, or for the benefit of, any or all Parties hereto, shall be binding upon and inure to the benefit of such Party, its successors and assigns.

**44.7. Headings.** Headings used in these Standard Terms are for reference purposes only and shall not be considered in construing these Standard Terms.

**44.8. Attorney's Fees and Costs.** If any action at law or in equity, including action for declaratory relief, is brought to enforce or interpret provisions of these Standard Terms, the prevailing Party shall be entitled to reasonable attorney's fees and costs, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which such Party may be entitled.