

**ATTACHMENT D  
ADDITIONAL TERMS**

A. Delivery and Storage

Delivery and storage of all equipment and materials (if applicable) shall be the responsibility of the contractor.

B. Prevailing Wage

The County believes that street sweeping operations are exempt from prevailing wage requirements. However, during the term of this contract, if it is determined that prevailing wages must be paid for street sweeping services, in accordance with Labor Code Sections 1773 et. seq., by any revised administrative regulations or by a court decision in which the County is a party, Contractor shall invoice the County for the difference in rates based upon the difference between the actual wages paid and the required prevailing wages and the County shall pay such difference in rates to the extent that Contractor pays such amounts to its employees or former employees. County shall not be responsible for the reimbursement or payment of any penalties or interest.

C. Controlling Law

The Contract shall be governed and construed in accordance with the laws of the State of California and proper venue for legal action regarding the Contract shall be the COUNTY OF SAN BENITO.

D. Warranty

Contractor warrants to County and CSA No. 9 that the services covered by this Contract will conform to the specifications, description and time provisions furnished by the County and will be of first class workmanship; and County reserves the right to cancel the unfilled portion of this contract without liability to Contractor for breach of this warranty. Unacceptable service is not waived by acceptance of previous unacceptable service nor by failure to notify Contractor thereof.

E. Rights and Remedies of the COUNTY OF SAN BENITO for Default

1. In the event any service furnished by the contractor in the performance of the contract should fail to conform to specifications therefore, the COUNTY OF SAN BENITO may reject the same, and it shall thereupon become the duty of the contractor to complete the service as specified, without additional expense to the COUNTY OF SAN BENITO; providing that should the contractor fail, neglect or refuse so to do the COUNTY OF SAN BENITO shall have the right to purchase the service in the open market, in lieu thereof, and deduct from any moneys due or that may thereafter become due to the contractor the difference between the prices named in the contract and the actual cost thereof to the COUNTY OF SAN

- BENITO, except when delivery is delayed by fire, strike, freight embargo, or Act of God or the government.
2. Cost of providing any service which does not meet specifications, will be the responsibility of the contractor.
  3. The rights and remedies of the COUNTY OF SAN BENITO provided above shall not be exclusive and are in addition to any other rights and remedies provided by the law or under the contract.

#### F. Force Majeure

Contractor shall not be liable for any delays with respect to the Contract due to causes beyond its reasonable control, such as acts of God, epidemics, war, terrorism or riots.

#### G. Recycled Products

A "product containing recycled materials" shall mean, with respect to a paper product, a "recycled paper product" as that term is defined in Section 12301 (c) the Public Contract Code, and shall mean, with respect to other products, a "recycled product," such as, but not limited to, plastic, motor oil, paint, pavement, insulation, tires, etc., as that term is defined in Section 12301 (d) of the Public Contract Code.

To the extent that the Public Contract Code or other provisions of State law provide for purchasing preferences which are more extensive than those established herein, or for additional procedures to increase the use of recycled materials, the provisions of State law shall prevail.

#### H. Subcontractors

Contractor may subcontract out the work of the contract to be awarded, subject to the prior approval of County, which shall not be unreasonably withheld. Contractor shall provide the contract with subcontractor to County for its review and approval in advance. Contractor shall insure that any subcontractor contract requires the subcontractor to comply with this contract in all respects. Without limitation, the subcontractor shall be required to indemnify the County and shall be required to comply with all insurance coverage requirements required of successful contractor under this contract.

#### I. Insurance Requirements

##### 1. Indemnity

In conjunction with work performed at County site, the Contractor shall exonerate, indemnify, defend, and hold harmless COUNTY (which shall include, without limitation, its officers, agents, employees and volunteers) from and against:

- a. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon them for injury to or death of persons, or damage to property as a result of,

arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons. In addition, the Contractor shall hold the County of San Benito its officers, agents, and employees, harmless from liability of any nature or kind, including costs and expenses, for infringement or use of any copyrighted or un-copyrighted composition, secret process, patented or unpatented invention, article, or appliance furnished or used in connection with the Contract or purchase order.

- b. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Contract (including, without limitation, unemployment insurance, Social Security and payroll tax withholding).

## 2. Insurance

CONTRACTOR, at its sole cost and expense, for the full term of this Contract (and extensions thereof), shall obtain and maintain at minimum all of the following insurance coverage. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of CONTRACTOR'S insurance coverage and shall not contribute to it.

### a. Types of Insurance and Minimum Limits:

- 1) Worker's Compensation and Employer's Liability Insurance in conformance with the laws of the State of California.
- 2) CONTRACTOR'S vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, shall each be covered with Automobile Liability Insurance in the minimum amount of \$1,000,000.00 combined single limit per accident for bodily injury and property damage.
- 3) CONTRACTOR shall obtain and maintain Comprehensive General Liability Insurance coverage in the minimum amount of \$1,000,000.00 combined single limit, including bodily injury, personal injury, and property damage. Such insurance coverage shall include, without limitation:
  - (i) Contractual liability coverage adequate to meet the CONTRACTOR'S indemnification obligations under this Request,

- (ii) Full Personal Injury coverage,
- (iii) Broad form Property Damage coverage, and
- (iv) A cross-liability clause in favor of COUNTY.

3. Other Insurance Provisions

- a. As to all insurance coverage required herein any deductible or self-insured retention exceeding \$5,000.00 shall be disclosed to and be subject to written approval by COUNTY.
- b. If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, CONTRACTOR shall maintain such insurance coverage for five years after expiration of the term (and any extensions) of this Contract.
- c. All required Automobile Liability Insurance, Comprehensive or Commercial General Liability Insurance or Professional Liability Insurance shall contain the following endorsement as a part of each policy: **"The County of San Benito is hereby added as an additional insured as respects the operations of the named insured."**

- d. All the insurance required herein shall contain the following clause:

"It is agreed that these policies shall not be canceled nor the coverage reduced until thirty (30) days after the COUNTY shall have received written notice of such cancellation or reduction. The notice shall be deemed effective the date delivered to the COUNTY as evidenced by properly validated return receipt. Such notice shall be sent to: County of San Benito, San Benito County Administration Office, 481 4<sup>th</sup> Street, San Benito, CA 95023."

- e. CONTRACTOR agrees to provide COUNTY at or before the effective date of any award from the IFB with a certificate of insurance of the coverage required.
- f. All required insurance policies shall be endorsed to contain the following clause:

"This Insurance shall not be cancelled until after thirty (30) days prior written notice has been given to:

San Benito County  
Administration Department  
481 4<sup>th</sup> Street  
Hollister, CA 95023."

4. CONTRACTOR agrees to provide its insurance broker(s) with a full copy of these insurance requirements and provide COUNTY on or before the effective date of this Contract Certificates of Insurance for all required coverage.
5. In the event of any conflict between this Paragraph I and Attachment C to the County's Standard Contract, the requirements of this Paragraph I shall prevail.

**- END ATTACHMENT D -**