



## **SAN DIEGO ASSOCIATION OF GOVERNMENTS (SANDAG) STANDARD TERMS AND CONDITIONS**

### **1. INTEGRATED AGREEMENT**

These Standard Terms and Conditions are agreed to by SANDAG and the consultant, vendor or contractor (CONTRACTOR) providing goods or services to SANDAG. The Standard Terms and Conditions are supplemental to provisions in any purchase order, work order, federal requirements, Request for Offers, certifications or forms that SANDAG provides to CONTRACTOR, which together shall be known as the Agreement. SANDAG is a government agency and as such it shall only be bound by additional terms and conditions supplied by CONTRACTOR when they are in writing and signed by an authorized SANDAG representative.

### **2. INSPECTION AND ACCEPTANCE**

All goods are subject to final inspection and acceptance by SANDAG freight on board at destination notwithstanding any payment or prior inspection at CONTRACTOR's facilities. Final inspection will be made within a reasonable time after receipt of goods purchased.

### **3. CHANGES**

By written notice or order, SANDAG may, from time-to-time, order work suspension or make changes in quantities, drawings, designs, specifications, place of delivery or delivery schedules, methods of shipment and packaging, and property and services to be furnished by CONTRACTOR. If any such change causes an increase or decrease in the price of this Agreement or in the item required for its performance, CONTRACTOR or SANDAG shall promptly notify the other party thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. Nothing in this clause, however, shall excuse CONTRACTOR from proceeding immediately with the Agreement as changed.

### **4. TAXES**

CONTRACTOR agrees that all prices it provides to SANDAG shall include all applicable taxes and the type and amount of those taxes shall be set forth on CONTRACTOR's quote and invoice(s). SANDAG is not exempt from sales tax. SANDAG is exempt from payment of Federal Excise Tax. Do not include Federal Excise Tax on invoices to SANDAG.

### **5. DEFAULT AND EXCESS REPROCUREMENT LIABILITY**

SANDAG may terminate this Agreement if a federal or state proceeding for the relief of debtors is undertaken by or against CONTRACTOR, or if CONTRACTOR makes an assignment for the benefit of creditors, or if CONTRACTOR fails, after reasonable notice by SANDAG to cure a deficiency in performance or lack of progress thereto, and SANDAG shall have such additional remedies as may be available whether or not it so terminates this Agreement, including, but not limited to, the payment by CONTRACTOR to SANDAG of expenses incurred by SANDAG in re-procuring elsewhere the same or similar goods or services defaulted by CONTRACTOR hereunder, provided such CONTRACTOR'S re-procurement expenses obligation shall be limited to the excess over the price specified in the Agreement for such goods or services.

### **6. INDEMNIFICATION**

With regard to the CONTRACTOR's performance in connection with or incidental to this Agreement, the CONTRACTOR agrees to defend, indemnify, protect and hold SANDAG and its directors, officers, and employees harmless from and against any and all claims asserted or liability established for damages or



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injuries to any person or property, including injury to the CONTRACTOR's or its subcontractors' employees, agents, or officers, which arise from or are connected with or are caused or claimed to be caused by the negligent, reckless, or willful acts or omissions of the CONTRACTOR and its subcontractors and their agents, officers, or employees, in performing the work or services herein, or the breach of any representation, warranty, covenant or obligation of CONTRACTOR and/or its subcontractors associated with this Agreement, and all expenses of investigating and defending against same, including attorney's fees and costs; provided, however, that the CONTRACTOR's duty to indemnify and hold harmless shall not include any claims or liability arising from the established sole negligence or willful misconduct of SANDAG, its directors, agents, officers, or employees.

### **7. ASSIGNMENTS AND SUBCONTRACTORS**

Neither the Agreement nor any interest herein, nor claim thereunder may be assigned by CONTRACTOR either voluntarily or by operation of law, nor may all or substantially all of this Agreement be further subcontracted by CONTRACTOR without the prior written consent of SANDAG. No consent shall be deemed to relieve CONTRACTOR of its obligations to comply fully with the requirements of the Agreement.

### **8. FEDERAL, STATE, AND LOCAL LAWS**

CONTRACTOR warrants that in the performance of this Agreement it shall comply with all applicable federal, state, and local laws and ordinances and all lawful orders, rules, and regulations thereunder. This requirement includes, but is not limited to, license, bonding or registration requirements that CONTRACTOR must meet to provide the services or goods to SANDAG covered by the Agreement.

### **9. INFRINGEMENT INDEMNITY**

In lieu of any other warranty by SANDAG or CONTRACTOR against infringement of intellectual property rights, statutory or otherwise, it is agreed that CONTRACTOR shall indemnify and defend, at its expense, any suit against SANDAG based on a claim that any item furnished under this Agreement or the normal use or sale thereof infringes any United States Letters Patent or copyright, and shall pay costs and damages finally awarded in any such suit, provided that CONTRACTOR is notified in writing of the suit and given authority, information, and assistance at CONTRACTOR'S expense, for the defense of same. If the use or sale of said item is enjoined as a result of such suit, CONTRACTOR, at no expense to SANDAG, shall obtain for CONTRACTOR the right to use and sell said item, or shall substitute an equivalent item acceptable to SANDAG and extend this patent indemnity hereto.

### **10. CONTRACTOR'S WARRANTIES**

CONTRACTOR warrants that all goods and services it provides under this Agreement meet the specifications or other requirements of the Agreement. CONTRACTOR warrants that all goods and services furnished or performed under this Agreement shall be satisfactory for their intended purposes, shall be free from liens or other encumbrances, and shall be free of all defects in the design, materials, and workmanship for a period of one (1) year from final acceptance by SANDAG, regardless of whether the same were furnished or performed by CONTRACTOR or by any of its subcontractors of any tier (the "Warranty Period"). Any defect in any such goods or labor during the applicable Warranty Period, due to defective design, equipment, materials, or workmanship shall be redesigned, repaired, or replaced within a time period and in a manner acceptable to SANDAG. SANDAG may return any goods or materials, which are defective, unsatisfactory, or of inferior quality or workmanship. Such goods or materials shall, unless used by SANDAG, remain the property of CONTRACTOR and may be returned at CONTRACTOR'S risk and expense. CONTRACTOR shall reimburse SANDAG for all prior payments therefore and/or costs incurred in connection with delivery or return of such goods or materials. All goods



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provided in any portion for SANDAG shall be new products. Any commercial off-the-shelf software shall be new and the latest appropriate release versions and shall have been obtained specifically for SANDAG. CONTRACTOR shall provide comprehensive and continuing warranty repair and restoration services on all aspects of the delivered goods, including but not limited to, hardware and software products during the Warranty Period. Any warranty from a subcontractor or supplier to CONTRACTOR, which exceeds this time period, shall be extended to SANDAG for the same period of time as given to CONTRACTOR. CONTRACTOR additionally warrants that goods sold to SANDAG under the Agreement will be adequately contained, packaged, marked, labeled, and/or provided in compliance with all applicable federal and state laws and regulations (including materials deemed hazardous); be performed within the rules and regulations of the Occupational Safety and Health Act of 1970 (as amended); and be produced or transferred or disposed of as required by federal and state laws and regulation under the conditions of the Toxic Substances Control Act; the Hazardous Materials Control and Hazardous Waste Regulations; and other toxic laws and programs. CONTRACTOR expressly agrees to protect, indemnify, and hold harmless SANDAG, its directors, employees, and agents for any loss, damage, fine, liability, fee (including reasonable charges and fees), or expense arising in connection with or resulting from CONTRACTOR's failure to furnish goods or perform services that conform with any warranty contained herein.

### **11. MATERIAL SAFETY DATA SHEET**

It is mandatory for CONTRACTOR to supply an MSDS with the first shipment of any merchandise that contains any hazardous material. Also, at any time the content of an MSDS is revised, CONTRACTOR is required to provide the new information relevant to the specific hazardous material to SANDAG.

### **12. DELAYS**

CONTRACTOR will not be held liable for failure or delay in the fulfillment, if hindered or prevented by fire, strikes, or other events beyond its control. CONTRACTOR is responsible for notifying the SANDAG department receiving the goods or services of any late or delayed shipments or services. SANDAG reserves the right to cancel all or any part of the Agreement if CONTRACTOR fails to make delivery its goods or services within the time specified on the Agreement.

### **13. TITLE AND RISK OF LOSS**

Unless otherwise provided in this Agreement, CONTRACTOR shall have title to and bear the risk of any loss of or damage to the goods purchased hereunder until they are delivered in conformity with this Agreement at the Freight on Board point specified in the Agreement and upon such delivery title shall pass from CONTRACTOR and CONTRACTOR's responsibility for loss or damage shall cease, except for loss or damage resulting from CONTRACTOR's negligence. Passing of title upon such delivery shall not constitute acceptance of the item by SANDAG.

### **14. NOTICE OF LABOR DISPUTE**

Whenever CONTRACTOR has knowledge that any actual or potential labor dispute may delay this Agreement, CONTRACTOR shall immediately notify and submit all relevant information to SANDAG. CONTRACTOR shall insert the substance of this entire clause in any subcontract hereunder as to which a labor dispute may delay this Agreement. Subcontractors need give notice and information only to its next lower tier subcontractor.

### **15. EQUAL EMPLOYMENT OPPORTUNITY**

In connection with the execution of the Agreement, CONTRACTOR shall not discriminate against any employee or applicant because of race, religion, color, gender, marital status, national origin, disability,



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or any other class of persons protected by California or federal law. The CONTRACTOR shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, gender, marital status, national origin, disability, or any other basis prohibited by California or federal law. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training, including apprenticeship. CONTRACTOR shall ensure that this provision is passed through to any subcontractor it uses to provide the goods or services covered by the Agreement.

### **16. DISADVANTAGED BUSINESS ENTERPRISE**

In connection with the performance of this agreement, the CONTRACTOR will cooperate with SANDAG in meeting its commitments and goals with regard to the maximum utilization of Disadvantaged Business Enterprises (DBEs) and small businesses, and CONTRACTOR will use its best efforts to ensure that DBEs shall have an equitable opportunity to compete for subcontract work under this agreement. Additional DBE provisions are in the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) federal terms and conditions, which also may be applicable to this Agreement. CONTRACTOR shall ensure that this provision is passed through to any subcontractor it uses to provide the goods or services covered by the Agreement.

### **17. CONFLICTS OF INTEREST**

- A. CONTRACTOR covenants that no member of, or delegate to, the Congress of the United States shall have any interest, direct or indirect, in the Agreement or the proceeds hereof. CONTRACTOR further covenants that, for the terms of the Agreement, no director, member, officer, or employee of SANDAG during his tenure in office or one (1) year thereafter shall have any interest, direct or indirect, in the Agreement or the proceeds thereof. CONTRACTOR further covenants that by providing goods or services under the Agreement it will not create a conflict of interest prohibited by California law.
- B. All SANDAG business must be conducted within ethical standards approved by the SANDAG Board of Directors. Some of these standards can be found in SANDAG Board Policies Nos. 004, 016, 023 and 024 at [sandag.org/legal](http://sandag.org/legal). SANDAG staff are specifically prohibited from participating in the selection process when those staff have a close personal relationship, family relationship, or past (within the last 12 months), present, or potential business or employment relationship with a person or business entity seeking a contract. It is unlawful for any contract to be made by SANDAG if any individual Board member or staff has a prohibited financial interest in the contract.
- C. CONTRACTOR is strongly discouraged from giving gifts to SANDAG officers, employees, agents or Board members who have taken or may in the future take part in contracting decisions for SANDAG. SANDAG officers, employees, agents, and Board members shall not solicit or accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements that could bias their decision-making. This prohibition applies to any gift, gratuity, favor, entertainment, or loan, and includes such items as liquor, lodging, travel, food, and tickets to public functions such as sports events, theater, etc. If a person has any reason to believe a financial or organizational conflict of interest exists with regard to a particular procurement, he/she should notify the SANDAG Office of General Counsel immediately.

### **18. TERMINATION**

- A. General



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1. The maximum amount for which SANDAG shall be liable if the Agreement is terminated is the capacity amount remaining on the Agreement as of the date of the notice of termination.
2. Contractor shall immediately notify subcontractors and service or supply vendors providing services under this Agreement of the early termination date of this Agreement. Failure to notify any subcontractor and service or supply vendor shall result in the CONTRACTOR being liable for the termination costs incurred by any subcontractor and service or supply vendor for work performed under this Agreement, except those specifically agreed to in the termination notice to the CONTRACTOR.

### B. Termination for Cause

1. In the event SANDAG determines sufficient cause exists and the nature and timing of the goods or services to be provided render a cure period feasible, SANDAG will send a notice to cure to the address set forth in this Agreement for CONTRACTOR. If CONTRACTOR fails to satisfactorily cure the problems within 10 days of receiving written notice from SANDAG specifying the nature of the cause, SANDAG may immediately cancel and/or terminate this Agreement and every right of the CONTRACTOR and any person claiming any right by or through the CONTRACTOR under this Agreement.
2. Termination for cause also shall be merited in the event of a material breach of this Agreement. Events of material breach shall include, but not be limited to, failure to adhere to the delivery schedule for goods or services, failure to maintain required insurance; bankruptcy; failure to pay any subcontractor or other company or person retained by CONTRACTOR in connection with this Agreement; documentation or lack thereof establishing that CONTRACTOR is failing to meet its Disadvantaged Business Enterprise (DBE) commitment; CONTRACTOR refuses or negligently fails, except in cases for which extension of time is provided by SANDAG, to supply sufficient properly skilled staff or proper materials to perform as required by this Agreement; or CONTRACTOR negligently or intentionally disregards laws, ordinances, rules, regulations, or orders of any public authority having jurisdiction.
3. In the event of such termination, SANDAG may proceed with obtaining the goods or services in any manner deemed proper by SANDAG. All actual and reasonable costs to SANDAG in the event of termination for cause ("termination costs") shall be deducted from any sum due the CONTRACTOR under this Agreement for goods or services provided and the balance, if any, shall be paid to the CONTRACTOR upon demand. Termination costs include, but are not limited to, the cost of SANDAG soliciting a new contractor and any increase in the fees that must be paid to the new contractor.

### C. Termination for Convenience

#### 1. General Conditions

SANDAG may terminate this Agreement, in whole or in part, at any time by written notice to the CONTRACTOR when it is in the best interest of SANDAG. CONTRACTOR shall be paid its costs, including contract closeout costs and profit on work performed up to the time of termination if SANDAG is terminating for convenience. CONTRACTOR shall promptly submit its termination claim to SANDAG to be paid to CONTRACTOR. If CONTRACTOR has any property in its possession belonging to SANDAG, CONTRACTOR will account for the same and dispose of it in the manner that SANDAG directs. No billable costs will be





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considered payable after notice of termination is given to CONTRACTOR.

### D. Contractor's Deliverables under Early Termination

Contractor shall provide all documents and correspondence required as part of its efforts to provide the goods and services. All documents must be received and accepted before the settlement cost invoice is paid.

### E. Contractor Claims under Early Termination

Contractor agrees to release SANDAG from any and all further claims for services performed arising out of this Agreement or its early termination, upon acceptance by CONTRACTOR of payment in the total amount agreed upon as full and final payment of its costs from performance and early termination of this Agreement.

## 19. AUDIT AND INSPECTION OF RECORDS

CONTRACTOR shall provide SANDAG, its internal or external auditors and any delegates thereof such access to CONTRACTOR'S books, records, and facilities as may be deemed necessary to examine, audit, and inspect all work data, records, and activities related to the goods or services described in the Agreement that may be needed to verify compliance with the terms specified in the Agreement or to verify CONTRACTOR's or any of its subcontractors' performance under and compliance with the Agreement. CONTRACTOR shall maintain such books, records, data, documents, and activities related to the goods and services described herein for a period of three (3) years from the date of final payment by SANDAG under the Agreement.

## 20. PRODUCT/SERVICE REPORTS

SANDAG may require product/service reports to be submitted to SANDAG. When requested, CONTRACTOR will provide such reports to the SANDAG Contracts and Procurement Department, 401 B Street, Suite 800, San Diego, California 92101 within thirty (30) calendar days. All reports are to be provided in hardcopy and electronic format acceptable to SANDAG.

## 21. SYSTEM AND DATA SECURITY

For purposes of the Agreement, SANDAG Data means: All information, data, and other content, including Sensitive Information and other information whether or not made available by SANDAG or SANDAG's agents, representatives or users, to CONTRACTOR or its employees, agents, representatives or subcontractors, and any information, data and content directly derived from the foregoing, including data reflecting user access or use. SANDAG Data is at all times exclusively owned by SANDAG and shall not be reused, sold, transferred or provided to anyone for any reason without SANDAG's permission. CONTRACTOR shall immediately inform SANDAG in the event of an improper release of SANDAG Data. For purposes of the Agreement, "Sensitive Information" includes, but is not limited to, trade secret information; documents marked as confidential; medical records; personnel records, home addresses and phone numbers of any person, social security numbers, credit card numbers, bank account numbers or any other personally identifiable information protected by California law; and knowledge of selections of CONTRACTORS or subcontractors in advance of an official announcement by SANDAG.

CONTRACTOR will bear full responsibility for ensuring that any product or service provided does not introduce, via any means, any spyware, adware, ransomware, rootkit, keylogger, virus, trojan, worm, or any other malicious code or mechanism designed to permit unauthorized access to or recording of SANDAG Data, or which may restrict any authorized user's access to or use of SANDAG Data.



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CONTRACTOR shall not use for financial gain, disclose, or make other improper use of SANDAG Data or Sensitive Information that is acquired in connection with the Agreement. All financial, statistical, personal, technical, or other data and information relative to a party's or another entity's operations, which are designated confidential by a party and made available to the other party in order to carry out the Agreement, shall be protected by the receiving party from unauthorized use and disclosure.

### **22. STANDARD OF CARE**

CONTRACTOR's services shall be performed in accordance with generally-accepted professional practices and principles and in a manner consistent with the level of care and skill ordinarily exercised by members of the profession currently practicing under similar conditions. All services shall be performed to the reasonable satisfaction of SANDAG. Errors or omissions identified in the CONTRACTOR's work product and deemed to be negligent shall be corrected upon written notification by SANDAG, and no additional payment shall be made for said corrections. Corrections of errors or omissions to the CONTRACTOR's work product shall not limit enforcement of any other provision of the Agreement.

### **23. PAYMENT TERMS**

Payment will be made Net 30, notwithstanding any provision to the contrary in invoices or other documentation from CONTRACTOR. Payments may be withheld or portions thereof may be deducted or set-offs may be made against CONTRACTOR, if CONTRACTOR is not performing work in accordance with the applicable provisions of the Agreement. The time for payment of invoices shall run only from the date of receipt of correct invoices with any certification documents required by SANDAG. If expressly authorized by SANDAG, transportation and subsistence costs to be reimbursed shall be the actual costs incurred, but shall not exceed the rates stipulated in the Caltrans Travel and Expense Guide for Non-Represented Employees (see [dot.ca.gov/hq/asc/travel/ap\\_b/nr.htm](http://dot.ca.gov/hq/asc/travel/ap_b/nr.htm)). CONTRACTOR must submit its invoice within sixty (60) days of completing the order. Failure to observe this time limitation may constitute a waiver of all claims for payment of the invoice. Invoices shall be prepared and submitted in duplicate to the address shown on the Agreement. Separate invoices are required for each Agreement and shall reference the Agreement number, item number, description of supplies or services, sizes, unit of measure, quantity, unit price, and extended totals.

### **24. DISPUTES**

This Agreement shall be interpreted in accordance with the laws of the State of California. In the event CONTRACTOR has a dispute with SANDAG during the performance of this Agreement, CONTRACTOR shall continue to perform, unless SANDAG informs CONTRACTOR in writing to cease performance. CONTRACTOR shall submit a statement of the grounds for the dispute including all pertinent dates, names of persons involved, and supporting documentation to the SANDAG Project Manager. The Project Manager and other appropriate SANDAG staff will review the documentation in a timely manner and reply to CONTRACTOR within twenty (20) days. Upon receipt of an adverse decision by SANDAG, CONTRACTOR may submit a request for reconsideration to the SANDAG Executive Director. The request for reconsideration must be received within ten (10) days from the postmark date of the SANDAG reply. The Executive Director will respond to the request for reconsideration within ten (10) working days. The decision of the Executive Director will be final and in writing. If CONTRACTOR is dissatisfied with the results following exhaustion of the above dispute resolution procedures, CONTRACTOR shall make a written request to SANDAG for mediation. SANDAG shall respond to a request for mediation within thirty (30) calendar days. If SANDAG agrees mediation is appropriate, a mutually acceptable mediator shall be selected by the parties and the parties will proceed to mediation of the dispute. If any action is brought to interpret or enforce any term of this Agreement, the action shall be brought in a state or federal court situated in the County of San Diego, State of California. In the event of any such litigation between the



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parties, the prevailing party shall be entitled to recover all reasonable costs incurred, including reasonable attorneys' fees, litigation and collection expenses, witness fees, and court costs as determined by the court.

**25. INDEPENDENT CONTRACTOR**

CONTRACTOR hereby declares that it is engaged in an independent business and agrees that in the performance of this Agreement it shall act as an independent CONTRACTOR and not as an employee of SANDAG. CONTRACTOR has and hereby retains full control of all the employment, compensation, and discharge of all employees of CONTRACTOR assisting in its performance hereunder. CONTRACTOR shall be fully responsible for all matters relating to payment of its employees, including compliance with Social Security, withholding tax, maintaining sufficient workers compensation insurance, and all other laws and regulations governing such matters. CONTRACTOR shall be responsible for its own acts and those of its agents and employees during the term of this Agreement.

**26. INSURANCE**

CONTRACTOR shall procure and maintain for the duration of this Agreement, the following types and amounts of insurance against claims for injuries to persons, or damages to property, which may arise from or in connection with the performance of the work under the Agreement by CONTRACTOR, its agents, representatives, or employees:

Insurance Type	Requirements	Limits
<b>Commercial General Liability (CGL)</b>	Coverage shall conform to ISO Form CG 00 01 covering CGL on an "occurrence" basis. Policy shall include all elements of Coverages A, B and C.	Limits no less than \$1,000,000 - per occurrence for bodily injury, personal injury and property damage. The general aggregate limit shall be twice the required occurrence limit.  The policy shall be issued on a policy basis.
<b>Automobile Liability</b>	Coverage shall conform to ISO Form CA 00 01 covering any auto (Code 1).	Limit no less than \$300,000 - per accident for bodily injury and property damage.  The policy shall be issued on a combined single limit.
<b>Workers' Compensation and Employer's Liability</b>	Insurance shall cover or insure under the applicable laws relating to workers' compensation insurance, in accordance with the "Workers' Compensation and Insurance Act," Division IV of the Labor Code of the State of California and any Acts amendatory thereof.  Not required for sole proprietors or companies with no employees. Verifiable proof of exemption shall be required from CONTRACTOR upon request.	As required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident; \$1,000,000 policy limit bodily injury by disease; and \$1,000,000 each employee bodily injury by disease.





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Failure to provide or continue in force any insurance as described in this Insurance section shall be deemed a material breach of the Agreement, which SANDAG may deem to constitute cause for immediate termination. SANDAG reserves the right to withhold payments to CONTRACTOR in the event of material noncompliance with the insurance requirements. The requirements as to the types and limits of insurance coverage to be maintained by CONTRACTOR are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by CONTRACTOR under the Agreement, including, but not limited to, the provisions concerning indemnification. The specified insurance limits are minimum amounts to be provided, and any insurance maintained by CONTRACTOR above such limits shall provide protection to SANDAG and all additional insureds to the same extent as other insurance provided by CONTRACTOR.

### **27. CONFORMITY TO LEGAL REQUIREMENTS**

CONTRACTOR shall comply with all federal, state, and local laws and ordinances applicable to this Agreement. This includes compliance with prevailing wage rates and payment in accordance with California Labor Code Section 1775 when applicable. CONTRACTOR shall cause all completed deliverables to conform to all applicable requirements of law: federal, state, and local. CONTRACTOR shall be aware of the requirements of the Immigration Reform and Control Act of 1986 and shall comply with those requirements, including, but not limited to, verifying the eligibility for employment of all agents, employees, consultants, and subcontractors that are included in this Agreement. CONTRACTOR represents and warrants to SANDAG that it has all necessary licenses, permits, qualifications, and approvals, of whatever nature, that are legally required for CONTRACTOR to practice its profession. CONTRACTOR further represents and warrants to SANDAG that it, at its sole cost and expense, shall keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are required for CONTRACTOR to practice its profession and/or perform services under this Agreement.

### **28. PRICES**

The price that CONTRACTOR charges in filling this Agreement shall not be higher than CONTRACTOR's most recent quote or charge to SANDAG for such materials, supplies, services, and/or installations, unless SANDAG expressly agrees otherwise in writing. Notwithstanding the prices set forth in the Agreement, SANDAG shall receive the benefit of any general reduction in the price of any item(s) listed herein, which may be made by SANDAG at any time prior to the last delivery of goods or services covered by this Agreement.

### **29. PROMPT PAYMENT**

Not later than thirty (30) days after receipt of each payment from SANDAG, CONTRACTOR shall pay to any subcontractor performing any work covered by the Agreement, the respective amounts owed for work performed by the subcontractor, to the extent of each subcontractor's interest therein, unless otherwise agreed to in writing. In addition, for projects that invoice only at the completion of the project, within seven (7) days of the CONTRACTOR'S receipt of released retention from SANDAG upon completion of the project as defined in California Public Contract Code section 7107, the CONTRACTOR shall pay each of its subcontractors from whom retention has been withheld, each subcontractor's share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. For projects that issue progress payment invoices, upon incremental acceptance of any portion of the work by SANDAG, the CONTRACTOR shall pay each of its subcontractors from which retention has been withheld, each subcontractor's share of the retention received, in accordance with the provisions of California Public Contract Code section 7107. This clause applies to all subcontractors.

### **30. PUBLIC WORKS**



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- A. CONTRACTOR is hereby put on notice that the services it provides to SANDAG under the Agreement may qualify as public works projects and CONTRACTOR will therefore be required to determine whether the scope of services it provides to fall under a classification that would require payment of prevailing wages. Services constituting public works are described in California Labor Code Sections 1720-1861 and include, but are not limited to: roofing, fencing, weeding, planting, trenching, dredging, digging, tree removal, wiring installation, electrical work, cabling installation, drywall installation, and modular office installation. If CONTRACTOR will perform services for SANDAG that require payment of prevailing wages, or intends to perform services that would be covered by California Labor Code, it is required to register with the California Department of Industrial Relations (DIR) in order to be compliant with the law. In the event the parties disagree as to whether a particular person is performing work subject to prevailing wage, SANDAG will make a decision regarding whether CONTRACTOR is in compliance with the law consistent with guidance from the Department of Labor. Neither CONTRACTOR nor its subcontractors may work on a public works project without a current and active DIR registration.
- B. In the event that CONTRACTOR engages in the performance of a public work under this Agreement as defined by Labor Code Section 1770 et seq., CONTRACTOR shall be required to cause such employees who are entitled to prevailing wages, to be paid the required wage amounts pursuant to applicable federal or state law. CONTRACTOR shall comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work. Prevailing wages must be paid to all workers employed on a public works project when the public works project is over \$1,000.
- C. CONTRACTOR further acknowledges that any work that qualifies as a public work within the meaning of California Labor Code Section 1720 shall cause CONTRACTOR, and its subcontractors to comply with the provisions of California Labor Code Sections 1775 et seq. CONTRACTOR agrees to comply with Labor Code Section 1776 regarding retention and inspection of payroll records and noncompliance penalties, Labor Code Section 1777.5 regarding employment of registered apprentices, and Labor Code Section 1813 regarding forfeiture for violations of the maximum hours per day and per week provisions contained in the same chapter.
- D. CONTRACTOR and any of its subcontractors working on the public work will be required to input and submit all applicable certified payroll records (CPRs) and accompanying documentation to DIR as well as into the SANDAG Labor Compliance Monitoring System (LCMS) for monitoring and compliance on an ongoing basis while work is being performed. Labor compliance forms that must be uploaded into the SANDAG LCMS include, but are not limited to the LCMP Checklist, Authorized Signatory Form, List of Trades/Crafts, DAS 140, DAS 142, Fringe Benefit Statement, Certified Payroll Report, Statement of Compliance, Statement of Non-Performance, Owner Operator CPR, Owner Operator Statement of Compliance, CAC 2 Form or Training Fund Contribution Form, Copy of Contribution Check, Court Ordered Deductions, Other Deductions Sign Off Form and Apprentice Certifications. LCMS is mandatory for CONTRACTOR and subcontractors to use on SANDAG public works unless SANDAG instructs otherwise. SANDAG will provide CONTRACTOR and any subcontractors a log-on identification and password to access the SANDAG reporting system. CONTRACTOR must enter all its second-tier and lower subcontractors' information into LCMS. In addition, CONTRACTOR shall use the DIR's Electronic Reporting System to furnish CPRs to the California Labor Commissioner. SANDAG's LCMS will allow CONTRACTOR to convert CPRs to the XML file format for upload to the DIRs system.
- E. For prevailing wage work, both state and federal prevailing wage rates may apply to this Agreement depending upon the funding type(s) that will be used. CONTRACTOR shall pay the applicable state



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prevailing wage rate for projects without federal funds, and at a minimum the higher of the applicable state or federal prevailing wage rate when federal funds are used. The applicable state prevailing wage rate for all work without federal funds will be based on the date SANDAG requested quotes and the applicable federal prevailing wage rate will be based on the date of quote/bid submission. The applicable state prevailing wages are available at <http://www.dir.ca.gov>. The applicable federal prevailing wages are available at <http://www.wdol.gov> and are attached to the Agreement.

- F. CONTRACTOR shall submit invoices referencing the Agreement number, and Project title. Invoices shall be submitted no later than 45 calendar days after the performance of work for which CONTRACTOR is billing. CONTRACTOR shall add the following statement to each invoice:

"I certify that this invoice represents a full and complete claim for consulting services performed during the billing period identified and wage rates are in compliance with the contract terms and all applicable state and federal prevailing wage laws. I acknowledge that SANDAG may audit invoices submitted to verify accuracy of wage rates and compliance with contract terms."

### 31. ENTIRE AGREEMENT

The Agreement represents the entire understanding of SANDAG and CONTRACTOR as to those matters contained in it. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. The Agreement may not be modified or altered, except in writing signed by SANDAG and CONTRACTOR. This Agreement supersedes all offers, negotiations, and other agreements concerning the subject matter contained herein. Any amendments to this Agreement must be in writing and executed by both parties hereto.