

## **EXHIBIT D**

### **GENERAL PROVISIONS**

**1. Independent Contractor**

Contractor shall be deemed to be an independent contractor of County. Nothing in this contract shall be construed as creating an employer-employee relationship, partnership or a joint venture relationship. Nothing in this contract authorizes or permits the County to exercise discretion or control over the professional manner in which Contractor provides services. Contractor's services shall be provided in a manner consistent with all applicable standards and regulations governing such services.

**2. No Eligibility for Fringe Benefits**

Contractor understands and agrees that Contractor and its personnel are not, and will not be, eligible for membership in or any benefits from any County group plan for hospital, surgical, or medical insurance, or for membership in any County retirement program, or for paid vacation, paid sick leave, or other leave, with or without pay, or for any other benefit which accrues to a County employee.

**3. Warranty of Contractor for Provision of Services**

The Contractor warrants that Contractor has obtained and shall keep in full force and effect during the term of this Contract all permits, registrations and licenses necessary to accomplish the work specified in the Contract. Contractor warrants that it, and each of the personnel employed or otherwise retained by Contractor, will at all times, to the extent required by law, be properly certified and licensed under the local, state and federal laws and regulations applicable to the provision of services herein. These include all licenses, registrations, and permits required by: (i) the California Department of Consumer Affairs, Bureau of Collection and Investigative Services, and (ii) any applicable laws or regulations. Such license and permits are to be presented to Court personnel or Sheriff's personnel upon demand, and include the following:

a. The Contractor's security guards shall be registered with the California Department of Consumer Affairs and shall have a current and valid guard registration card in their possession while on duty.

b. The guard registration cards must be current, and must be presented to Court or judicial branch personnel upon demand. If a Contractor's security guard is unable to present his/her guard registration card upon demand, he/she will be relieved from duty and Contractor shall, within seventy-two (72) hours or sooner, provide a security guard who has appropriate cards in his/her possession, at no additional cost to the Court.

c. The Contractor shall also obtain and maintain all other business and professional licenses that may be required by Federal, Court, State and local laws, regulations, rules, and codes.

**4. Warranty of Contractor re Compliance with all Laws**

The Contractor warrants that Contractor shall keep informed of, observe, comply with, and cause all of its agents and personnel to observe and comply with all Federal, State, and local laws and rules and regulations made pursuant to such laws, which in any way affect the conduct of work under this Contract. If any conflict arises between provisions of the scope of work or specifications in this Contract and any law, then the Contractor shall immediately notify the County in writing.

**5. Power and Authority of Contractor**

If the Contractor is a corporation or general partnership, Contractor represents and warrants that it is and will remain, throughout the term of this Contract, either a duly organized, validly existing California corporation or general partnership in good standing under the laws of the State of California or a duly organized, validly existing foreign corporation or general partnership in good standing in the state of incorporation or formation and authorized to transact business in the State of California.

**6. Non-Assignment of Contract**

Inasmuch as this Contract is intended to secure the specialized services of the Contractor, Contractor shall not delegate, assign, or otherwise transfer in whole or in part its rights or obligations under this contract without the prior written consent of County. Any such assignment, transfer, or delegation without the County's prior written consent shall be null and void. The Contractor will be responsible for the obligations of its contractors to the same extent as if such obligations were performed by Contractor's employees. All contractors of Contractor will execute a binding written agreement to comply with the obligations of Contractor under this Contract. The County agrees that Contractor may delegate responsibilities under this Contract to its managing partner, Guardsmark, LLC.

**7. Entire Agreement and Modifications**

This Contract supersedes all previous contracts between the parties hereto on the same subject matter and constitutes the entire understanding of the parties hereto on the subject matter of this Contract. Contractor shall be entitled to no other benefits than those specified herein. No changes, amendments or alterations shall be effective unless in writing and signed by both parties. This Contract may be executed (a) in counterparts, each of which will be deemed an original, but both of which together will constitute one and the same instrument; and (b) by facsimile signature and facsimile signatures will be fully binding and effective for all purposes and will be given the same effect as original signatures. Contractor specifically acknowledges that in entering into and executing this contract, Contractor relies solely upon the provisions contained in this Contract and no others.

**8. Governing Law and Venue**

This Contract shall be governed by, and construed in accordance with, the laws of the State of California, without regard to its conflict of laws provisions. The exclusive jurisdiction for any claim arising under this Contract will be in California.

**9. Waiver.**

No delay or failure on the part of any party hereto in exercising any right, power or privilege under this Contract shall impair any such right power or privilege or be construed as a waiver of any default or any acquiescence therein. No single or partial exercise of any such right, power or privilege shall preclude the further exercise of such right power or privilege or the exercise of any other right, power or privilege. No waiver shall be valid unless made in writing and signed by the party against whom enforcement of such waiver is sought and then only to the extent expressly specified therein.

**10. Severability**

The Contractor agrees that if any provision of this Contract is found to be invalid, illegal or unenforceable, such term or provision shall be deemed stricken and the remainder of the Contract shall remain in full force and effect. Upon determination that any term or provision is invalid, illegal or unenforceable, the parties shall negotiate in good faith to modify this contract so as to affect the original intent of the parties as closely as possible.

**11. Interpretation of Contract**

If parts of the Contract conflict, the following priorities shall govern: the Standard and Special Provisions shall take precedence over the Attachments and Exhibits.

**12. Notices**

All notices given or made pursuant hereto shall be in writing and shall be deemed to have been duly given if delivered personally, mailed by registered or certified mail (postage paid, return receipt requested) or sent by a nationally recognized overnight courier (providing proof of delivery) to the parties at the following addresses or sent by electronic transmission to the following facsimile numbers (or at such other address or facsimile number for a party as shall be specified by like notice):

To the County:

San Luis Obispo County Sheriff's Office  
Civil Division Commander  
1585 Kansas Avenue  
San Luis Obispo, CA 93405

Notice to the Contractor shall be directed to:

Guardsmark, GP  
101 South First Street, Suite 408  
Burbank, CA 91502  
Attn: Manager in Charge  
Or Fax: (818) 841-0185

With a copy to:

Guardsmark, LLC  
22 South Second Street  
Memphis, TN 38103  
Attn: General Counsel

Or Fax: (901) 522-7911

Any such notice shall be deemed to have been received if: (a) in the case of personal delivery or facsimile transmission with confirmation retained, on the date of such delivery or transmission; (b) in the case of nationally recognized overnight courier, on the next business day after the date sent; (3) in the case of mailing, on the third business day following posting.

**13. Headings**

The headings contained in this Contract are for reference purposes only and shall not affect in any way the meaning or interpretation of this Contract.

**14. Signatory Authority**

Contractor warrants that it has full power and authority to enter into and perform this Contract, and the person signing this Contract warrants that he/she has been properly authorized and empowered to enter into this Contract.

**15. Indemnification**

Contractor shall defend, indemnify and hold harmless the County, its officers and employees from all claims, demands, damages, costs, expenses, judgments, attorney fees, or other losses accruing or resulting to any and all other contractors, subcontractors, suppliers, and laborers, and any other person, entity, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Contract, and from any and all claims, losses, expenses and liabilities accruing or resulting to any person, firm, entity or corporation who may be injured or damaged by the Contractor or its agents, contractors or employees in the performance of this Contract to the extent such claims, losses, expenses and liabilities arise from the (i) the negligent or otherwise wrongful act or omission of Contractor, or (ii) the breach by Contractor of any provision of this Contract.

**16. Insurance**

Contractor, at its sole cost, shall purchase and maintain the insurance policies set forth below on all of its operations under this Contract. All of the insurance companies providing insurance for Contractor/Consultant shall have, and provide evidence of, an A.M. Best & Co. rating of A:VII or above, unless exception is granted by Risk Manager, and be authorized to do business in the State of California. Further, all policies shall be maintained for the full term of this Contract and related warranty period if applicable.

a. Scope and Limits of Required Insurance Policies

- (1) Commercial General Liability. Policy shall include coverage at least as broad as set forth in Insurance Services Office Commercial General Liability Coverage (CG 00 01) with policy limits of not less than one million dollars (\$1,000,000.00) combined single limit per occurrence. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:
  - (a) The County of San Luis Obispo, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Contract.
  - (b) The insurance provided herein shall be considered primary coverage to the County of San Luis Obispo with respect to any insurance or self insured retention maintained by the County. Further, the County's insurance shall be considered excess insurance only and shall not be called upon to contribute to this insurance.
  - (c) The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo.
- (2) Business Automobile Policy. Policy shall include coverage at least as broad as set forth in the liability section of Insurance Services Office Business Auto Coverage (CA 00 01) with policy limits of no less than \$1 million dollars combined single limit for each occurrence. Said insurance shall include coverage for owned, non-owned, and hired vehicles. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:
  - (a) The County of San Luis Obispo, its officers and employees, is named as an additional insured for all liability arising out of the operations by or on behalf of the named insured in the performance of this Contract.

(b) The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo.

(3) Workers' Compensation / Employer's Liability Insurance.

(a) Workers' compensation policy shall provide statutory limits as required by State of California. Policy shall be endorsed with the following specific language or contain equivalent language in the policy:

(i) Contractor and its insurer shall waive all rights of subrogation against the County, its officers and employees for workers' compensation losses arising out of this contract.

(ii) The policy shall not be cancelled or materially changed without first giving thirty days prior written notice to the County of San Luis Obispo.

(b) Employer's liability policy shall provide one million dollars (\$1,000,000.00) per accident for bodily injury or disease.

b. Deductibles and Self-Insurance Retentions.

All deductibles and/or self-insured retentions which apply to the insurance policies required herein will be declared in writing and approved by the County prior to commencement of this contract.

c. Documentation.

Prior to commencement of work and annually thereafter for the term of this contract, Contractor will provide to the County of San Luis Obispo properly executed certificates of insurance clearly evidencing the coverage, limits, and endorsements specified in this contract. Further, at the County's request, the Contractor shall provide copies of endorsements and certified copies of the insurance policies within thirty days of request.

d. Absence of Insurance Coverage.

County may direct Contractor to immediately cease all activities with respect to this contract if it determines that Contractor fails to carry, in full force and effect, all insurance policies with coverage levels at or above the limits specified in this contract. Any delays or expense caused due to stopping of work and change of insurance shall be considered Contractor's delay and expense.

**17. Waiver of Subrogation**

Contractor and its insurance carrier waive any and all rights of subrogation against the Judicial Branch Entities. This waiver will be reflected on the Certificate of Insurance, provided by Contractor. If Contractor fails to obtain the appropriate waivers of subrogation, additional insured status, or certificates of insurance from carrier, Contractor will indemnify Court from all costs and liability caused by Contractor's breach.

**18. Nonappropriation of Funds.**

In the event that the term of this Contract extends into fiscal years subsequent to the year in which it was approved, continuation of the Contract is contingent on the appropriation of funds by the San Luis Obispo County Board of Supervisors or, if applicable, provision of State or Federal funding source. If County notifies Contractor in writing that the funds for this Contract have not been appropriated or provided, this Contract will terminate. In such an event, the County shall have no further liability to pay any funds to the Contractor or to furnish any other consideration under this Contract, and the Contractor shall not be obligated to perform any provisions of this Contract or to provide services intended to be funded pursuant to this Contract. If partial funds are appropriated or provided, the County shall have the option to either cancel this Contract with no liability to the County or offer a Contract amendment to the Contractor to reflect the reduced amount. The Contractor shall be paid for all work performed prior to termination as provided herein.

**19. Force Majeure**

Neither the County nor the Contractor shall be deemed in default in the performance of the terms of this contract if either party is prevented from performing the terms of this Contract by causes beyond its control, including without limitation: acts of God; rulings or decisions by municipal, Federal, States or other governmental bodies; any laws or regulations of such municipal, Federal, States or other governmental bodies; or any catastrophe resulting from flood fire, explosion, or other causes beyond the control of the defaulting party. Any party delayed by force majeure shall as soon as reasonably possible give the other party written notice of the delay. The party delayed shall use reasonable diligence to correct the cause of the delay, if correctable, and if the condition that caused the delay is corrected, the party delayed shall immediately give the other parties written notice thereof and shall resume performance under this Contract.

**20. Fiscal Controls**

Contractor shall adhere to the accounting requirements, financial reporting, and internal control standards as described in the *Auditor-Controller Contract Accounting and Administration Handbook*, (Handbook) which contains the minimum required procedures and controls that must be employed by Contractor's accounting and financial reporting system, and which is incorporated herein by reference. Contractor shall require subcontractors to adhere to the Handbook for any services funded through this contract, unless otherwise agreed upon in writing by County.

- a. The Handbook is available at <http://www.slocounty.ca.gov/AC/>, under Policies and Procedures or at the Auditor-Controller's Office, 1055 Monterey Street Room D220, County Government Center, San Luis Obispo CA, 93408,
- b. The Office of Management and Budget (OMB) circulars are available at <http://www.whitehouse.gov/omb/circulars>.

**21. State Audit**

Pursuant to California Government Code section 8546.7, every county contract involving the expenditure of funds in excess of ten thousand dollars (\$10,000) is subject to examination and audit of the State Auditor for a period of three years after final payment under the contract.

**22. Inspection Rights**

The Contractor shall allow the County to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract and to inspect evaluate and audit any and all books, records, and facilities maintained by Contractor and subcontractors, pertaining to such service at any time during normal business hours. Books and records include, without limitation, all physical records originated or prepared pursuant to the performance under this Contract including work papers, reports, financial records and books of account. Upon request, at any time during the period of this Contract, and for a period of five years thereafter, the Contractor shall furnish any such record, or copy thereof, to County.

**23. Third Party Beneficiaries**

It is expressly understood that the enforcement of the terms and conditions and all rights of action related to enforcement, shall be strictly reserved to County and Contractor. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person.

**24. Tax Information Reporting**

Upon request, Contractor shall submit its tax identification number or social security number, whichever is applicable, in the form of a signed W-9 form, to facilitate appropriate fiscal management and reporting.