

# MERCETRIGIANI

## SUMMARY OF STANDARD PROVISIONS

### SERVICE AGREEMENTS

A number of issues should be considered by a community association board of directors when entering into contracts for services. Initial consideration should be given to the community association's governing documents and applicable state law for the proper source of authority and any limitations for such agreements. In addition, the community association should be careful to "know" the vendor or provider, making certain that the vendor or provider is properly licensed or certified, if appropriate, and formed under the laws of or authorized to transact business in the jurisdiction in which the community association is located, where the work is to be performed.

Standard service agreements entered into by a community association should also contain provisions addressing the following issues:

1. Independent Contractor – The agreement should provide that the vendor is an independent contractor. In addition, the agreement should provide that the vendor is responsible to screen employees, supervise their work, and obtain and pay for all required employee insurance including worker's compensation.
2. Indemnification – The agreement should provide that the vendor indemnifies and saves harmless the community association and its members and guests against any claims including recovery of costs and attorneys' fees. Conversely, language which provides that the community association indemnifies the vendor should be stricken, if possible.
3. Warranties – The agreement should provide that the vendor warrants the work or services performed under the agreement. The "warranty" should be clearly stated and will vary depending upon the work provided. In addition, the agreement should provide that any manufacturer's warranties will be assigned by the vendor to the community association.
4. Subcontracting – The agreement should provide that the vendor may not subcontract the work or services without the prior written consent of the community association.
5. Assignment – The agreement should provide that it is not assignable without the consent of the community association.
6. Insurance – The agreement should require that the vendor insure the community association, its members and guests, or include the community association as an

additional named insured under the vendor's general liability insurance. The vendor should be required to demonstrate that the appropriate insurance coverage is in place by providing a certificate of insurance to the community association. The agreement should also provide that insurance may not be canceled without reasonable advance written notice to the community association.

7. Permits and Licenses – The agreement should provide that the vendor is responsible for obtaining any necessary permits or licenses and satisfying any governmental requirements prerequisite to providing service under the agreement.
8. Utilities – The agreement should provide that the vendor is responsible, when appropriate, for contacting and coordinating with the utility companies in advance of work to be performed.
9. Inspection – Agreement should provide that vendor has inspected and is familiar with the property and warranties that the vendor is capable of performing the work required by the agreement.
10. Discrimination – The agreement should provide that the vendor does not and will not discriminate in violation of federal, state or local law.
11. Mechanic's Liens – The agreement should provide that the vendor provide proof that the subcontractors and vendors have been paid.
12. Notices – The agreement should provide that any notices under the agreement must be provided in writing to persons designated in the agreement.
13. Damages – As appropriate, the agreement should provide for liquidated damages when actual damage may be difficult to determine.
14. Cancellation – The cancellation provisions of the agreement should be consistent with the provisions of the community association's governing documents, generally 30 days with cause and 60 days without cause.
15. Attorneys' Fees – The agreement should provide that attorneys' fees and costs are to be awarded to the community association in the event of a dispute.
16. Applicable Law – The law of the jurisdiction in which the community association is located should apply.