

**FUNDING AGREEMENT BETWEEN
COUNTY OF SANTA CLARA
AND
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
FOR
VTA VICTIM SUPPORT AND RESILIENCY CENTER**

THIS AGREEMENT ("AGREEMENT") is between the County of Santa Clara, referred to herein as "COUNTY", and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, referred to herein as "VTA". Hereinafter, COUNTY and VTA may be individually referred to as "PARTY" or collectively referred to as "PARTIES".

I. RECITALS

1. Whereas, on May 26, 2021, VTA suffered a mass shooting tragedy at its Guadalupe Light Rail Division located at 100 W. Younger, San Jose, where nine VTA employees lost their lives and one gunman, also a VTA employee, terminated his life shortly after the attack; and
2. Whereas, on August 5, 2021, California State Senator Dave Cortese from the 15th Senate District notified VTA that the legislature approved two allocations of financial assistance for VTA on June 28, 2021, for a total of \$20,000,000. The legislation language specified use of this money to fund worker support and assistance, including mental health services, worker training, and retraining, trauma counseling, and reasonable accommodations for VTA employees; and
3. Whereas, on August 31, 2021, the County of Santa Clara Board of Supervisors approved a referral to Administration to work in partnership with VTA, the Office of the District Attorney, Behavioral Health Services Department and other partners to develop a trauma recovery center, similar to the Resiliency Center borne from the Gilroy Garlic Festival Shooting in July 2019, to begin immediate operations to support VTA employees and families recovering from the May 26 mass shooting; and
4. Whereas, on September 7, 2021, a joint labor-management committee, referred to herein as "COMMITTEE", was formed, based on the state legislation language, with representation from each union and management to review and advise on state funding expenditures prior to sending final recommendations to the VTA Board for approval; and
5. Whereas, on October 4, 2021, the COMMITTEE presented a proposed budget allocation framework to the VTA Board of Directors to obtain feedback before submitting the application to the California Workforce Development Board who is administering the state funding; and
6. Whereas, on October 15, 2021, a grant application was submitted to the California Workforce Development Board which contained six priorities to be funded by the state funding grant including COUNTY professional mental health services and programs; and
7. Whereas, the COUNTY holds contracts with various mental health professionals and non-profit organizations to support the victim's families, VTA employees and their families, and others who were impacted by the mass shooting; and
8. Whereas, the COUNTY will establish an immediate trauma recovery center to house such contracted services, referred to herein as the "VTA Resiliency Center", to begin immediate operations to support VTA employees and families recovering from the May 26 mass shooting; and

Approved: 04/05/2022

9. Whereas, the VTA Resiliency Center will ultimately be folded into a future Santa Clara County Trauma Recovery Center which is a vision supported by both State Senator Dave Cortese and District Attorney Jeff Rosen; and
10. Whereas, the duration of the state funding grant will be from the date of disbursement through December 31, 2023; and
11. Whereas, VTA and COUNTY desire to specify herein the terms and conditions under which state funding will be administered by VTA to the COUNTY as directed by the VTA Board of Directors.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

II. AGREEMENT

1. PROJECT DESCRIPTION

The COUNTY will provide, manage, and coordinate the operation and contractual mental health services to support individuals, including VTA employees and families, recovering from the May 26, 2021 mass shooting (the "PROJECT") during the term of this AGREEMENT.

The funding received by the COUNTY through this AGREEMENT will allow for professional mental health services to be provided to anyone who was traumatized by the May 26, 2021 shooting including:

- a) family members of the shooting victims; and
- b) VTA employees or contractors and their family members.

2. TERM OF AGREEMENT

The term of this AGREEMENT will commence on the Effective Date (as defined in the signature block below) and continue through the earlier of: (i) 24 months after the Effective Date, (ii) completion of PROJECT, (iii) cancellation of the PROJECT, or (iv) termination of this AGREEMENT pursuant to the terms herein.

3. COST OF PROJECT

Total cost of this PROJECT ("TOTAL PROJECT COST") is estimated not to exceed \$600,000. TOTAL PROJECT COST means the total cumulative dollar amount actually incurred and expended toward the PROJECT by all PARTIES involved, as measure at the completion or termination of the PROJECT.

4. FINANCIAL CONTRIBUTION TO COST OF PROJECT

- a. VTA's Financial Contribution for PROJECT. VTA will contribute an amount not to exceed \$600,000 of the state funding to be used by the COUNTY for completion of the PROJECT. All funds will be available on a reimbursement basis only, pursuant to the terms and conditions set forth herein.
- b. COUNTY's Financial Contribution for PROJECT. COUNTY is solely responsible for all funds COUNTY has expended toward the PROJECT prior to September 1, 2021, and COUNTY must not seek reimbursement from VTA for such costs.
- c. Additional Funds. Any additional funds required to complete the PROJECT will be COUNTY's sole

responsibility.

5. ELIGIBLE USE OF FUNDS

Only ELIGIBLE COSTS (as defined herein) directly related to the PROJECT costs incurred by COUNTY on or after September 1, 2021, will be eligible for reimbursement.

VTA will only reimburse COUNTY for actual costs directly related to the PROJECT that have been pre-approved by VTA ("ELIGIBLE COSTS"). ELIGIBLE COSTS are costs that: (i) are directly related to the planning, operation, and administration of the PROJECT; and (ii) were incurred in compliance with all applicable state funding requirements.

The following costs are eligible for reimbursement:

- Mental health professional services contracts that have been pre-approved by VTA;
- Fully staffed County positions that have been pre-approved by VTA to fulfill the PROJECT scope of work;
- Trauma and grief counseling, training, sessions, workshops or events.

6. COUNTY'S ROLE

a. Tasks. COUNTY will be the sponsor and implementing agency for the PROJECT. In its role as sponsor and implementing agency under this AGREEMENT, COUNTY must perform and/or be responsible for the following tasks:

- i. Serve as project manager to provide, manage, and coordinate the PROJECT.
- ii. Perform all procurement actions necessary for PROJECT, including but not limited to advertising the work via a public solicitation, opening bids in response to the public solicitation, awarding a contract, approving contract documents, and administering the awarded contract in accordance with all applicable laws, regulations, and codes, including but not limited to the California Public Contract Code and the California Labor Code.
- iii. Obtain all necessary permits and certifications for PROJECT.
- iv. Keep VTA apprised of potential changes that may affect PROJECT operations.
- v. Conduct standard close-out activities for the PROJECT, including but not limited to performing final accounting review and reviewing all contractual requirements.

b. Other PROJECT Management Duties. COUNTY must:

- i. Actively monitor actual PROJECT expenditures to ensure that state funds are used to pay only for ELIGIBLE COSTS (as defined in Section 5).
- ii. Provide VTA with written quarterly progress reports ("PROGRESS REPORTS") (as supplied by VTA to COUNTY) on the PROJECT, including but not limited to updates on PROJECT expenditures, any changes in scope and schedule, PROJECT status, and any other information VTA may require for inclusion in the progress updates.

- iii. Submit the PROJECT's final report ("FINAL REPORT") to VTA. This FINAL REPORT must be in writing and must include information regarding final PROJECT costs, along with any other information VTA may require for inclusion in the FINAL REPORT.
- iv. COUNTY will make staff available to present on the PROJECT at VTA committees as needed.

7. VTA'S ROLE

VTA will perform and/or be responsible for the following tasks to perform oversight for PROJECT, such as:

- a. review PROJECT's PROGRESS REPORTS and FINAL REPORT; and
- b. ensure PROJECT compliance with the state funding requirements.

8. COUNTY'S OBLIGATIONS

COUNTY must:

- a. Ensure that all state funds are expended on only allowable PROJECT expenditures as described above in Section 5. ELIGIBLE USE OF FUNDS.
- b. Begin request for reimbursement of ELIGIBLE COSTS (see Section 5. ELIGIBLE USE OF FUNDS) from VTA within one (1) year of the Effective Date of this AGREEMENT.
- c. Submit to VTA all records including contractors' invoices, miscellaneous invoices, and force account charges as substantiation for invoices submitted to VTA for reimbursement hereunder.
- d. Maintain financial records, books, documents, papers, accounting records, and other evidence pertaining to costs related to this AGREEMENT for five (5) years. COUNTY shall make such records available to VTA upon VTA's written request for review and audit purposes. Financial audits will be performed at VTA's sole discretion.
- e. Submit invoices to VTA at vta.accountspayable@vta.org, no more frequently than monthly, for reimbursement of ELIGIBLE COSTS (see Section 5. ELIGIBLE USE OF FUNDS). COUNTY must submit invoices within one year of the date COUNTY incurs the cost submitted on the invoice for reimbursement (unless otherwise approved by VTA in writing).

9. VTA'S OBLIGATIONS

VTA will remit the amount due to the COUNTY under an invoice within thirty (30) calendar days of receipt of a complete and proper, fully documented invoice complying with the requirements set forth herein.

10. MODIFICATION TO PROJECT

COUNTY must inform VTA, in writing, of any modifications to the PROJECT.

11. INDEMNIFICATION

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all losses or liabilities incurred by Party shall not be shared pro rata but, instead, COUNTY and VTA agree that, pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Parties hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other Parties under this Agreement.

12. INSURANCE

At all times during this AGREEMENT, COUNTY must comply with the insurance requirements and specifications of Attachment A attached hereto, and herein incorporated by reference.

13. ADDITIONAL INSURED AND INDEMNITY PROVISION

In any agreement executed between the COUNTY and a third party for purposes related in any way to the subject matter of this AGREEMENT ("Third Party Contract"), the COUNTY must require that VTA be named as (i) Additional insureds on a primary and non-contributory basis with Separation of Insureds and Waiver of Subrogation on all policies of insurance, except when not applicable or required in the Third Party Contract and (ii) indemnified parties in any indemnity provision contained in the Third Party Contract. Third Party Contracts must contain insurance requirements with coverages at least as broad as, and limits at least as great as, the requirements of Attachment A in this AGREEMENT.

14. PUBLIC WORKS

If the COUNTY awards a contract to a third party for the performance of a public work (as defined in California Labor Code Section 1720 through 1720.6) (a "Public Works Contract") in connection with this AGREEMENT, the COUNTY must comply, and must require such third party to comply, with the requirements of California Labor Code Section 1720 et seq. If the Public Works Contract is funded in whole or in part with federal funds, the COUNTY must also comply, and must require such third party to also comply, with the requirements of the Davis Bacon Act (40 U.S.C. Sections 3141-3144 and 3146-3148).

15. COMPLIANCE WITH APPLICABLE LAW

In the execution of the PROJECT and performance of its responsibilities set forth herein, COUNTY and any contractor or subcontractors must comply with all applicable requirements of state, federal, and local law. COUNTY and any contractor or subcontractors must comply with any applicable laws, regulations, and/or guidelines relating to COVID-19, including, but not limited to, Centers for Disease Control and Prevention (CDC) guidelines and Santa Clara County Department of Public Health orders and/or guidelines.

16. COMPLIANCE WITH WAGE AND HOUR LAWS

COUNTY and any contractor or subcontractors they employ to perform work of the PROJECT under this AGREEMENT, must comply with all applicable federal, state, and local wage and hour laws. Applicable laws may include, but are not limited to, the Federal Fair Labor Standards Act, the California Labor Code, and any local Minimum Wage Ordinance or Living Wage Ordinance.

17. COMPLIANCE WITH STATE FUNDING REQUIREMENTS

In its performance under this AGREEMENT, COUNTY must comply with, and must ensure PROJECT compliance with state legislation funding requirements set forth in Senate Bill 129 passed on [Monday, June 28, 2021]. VTA's financial contribution under this Agreement must be used exclusively "for worker support and assistance, including mental health services, worker training, and retraining. retraining, trauma counseling, and reasonable accommodations."

18. TERMINATION

Each of the PARTIES may at any time terminate this AGREEMENT by giving ten (10) business days' written notice of such termination to other PARTY. Notice must identify the effective date of such cancellation and must be provided in accordance with the terms and conditions of this AGREEMENT.

In the event of termination as set forth herein, COUNTY must submit its final invoice to VTA within thirty (30) calendar days of the effective date of termination solely for ELIGIBLE COSTS incurred by COUNTY prior to the effective date of the termination (see Section 5. ELIGIBLE USE OF FUNDS).

19. AUDIT AND RECORDS

- a. COUNTY must maintain, and shall require their contractors to maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data pertaining to services performed under this AGREEMENT, including the costs of contract administration. Such documentation must be supported by properly executed payrolls, invoices, contracts, and vouchers evidencing in detail the nature and propriety of any charges and must be sufficient to allow a proper audit of services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the services must be clearly identified and readily accessible.
- b. For the duration of the AGREEMENT, and for a period of five (5) years after final payment, VTA shall have access during normal business hours to any books, accounts, records, data, and other relevant documents that are pertinent to this AGREEMENT for audits, examinations, excerpts, and transactions and copies thereof must be furnished upon request.

20. NOTICES

All notices required or permitted under this AGREEMENT must be in writing, will be effective five (5) days after being sent by personal service or certified mail, or forty-eight (48) hours after being sent by electronic mail to the individuals at the addresses set forth below, or to such other address which may be specified in writing by the PARTIES hereto.

VTA:

Brandi Childress
Chief of Staff to the General Manager
Santa Clara Valley Transportation Authority
3331 N First Street
San Jose, CA 95134
Email: brandi.childress@vta.org

COUNTY:
James Gibbons-Shapiro
Assistant District Attorney
Santa Clara District Office of the District Attorney
70 West Hedding Street, West Wing
San Jose, CA 95110
(408) 792-2985
Email: jgibbonsshapiro@dao.sccgov.org

Written notification to the other PARTY must be provided, in advance, for changes in the name or address of the individuals identified above.

21. GENERAL TERMS AND CONDITIONS

- a. **Headings.** The subject headings of the articles and paragraphs in this AGREEMENT are included for convenience only and will not affect the construction or interpretation of any of its provisions.
- b. **Construction and Interpretation of Agreement.** This AGREEMENT, and each of its provisions, terms and conditions, has been reached as a result of negotiations between the PARTIES. Accordingly, each PARTY expressly acknowledges and agrees that (i) this AGREEMENT will not be deemed to have been authored, prepared, or drafted by any particular PARTY and (ii) the rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this AGREEMENT or in the resolution of disputes.
- c. **Amendment.** No alteration or variation of the terms of this AGREEMENT will be valid unless made in writing and signed by both of the PARTIES hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the PARTIES hereto.
- d. **Entire Agreement.** This AGREEMENT contains the entire understanding between VTA and COUNTY relating to the subject matter hereof. This AGREEMENT supersedes any and all other agreements which may have existed between the PARTIES, whether oral or written, relating to the subject matter hereof. This AGREEMENT is binding upon each PARTY, their legal representatives, and successors for the duration of the AGREEMENT.
- e. **Representation and Warranty of Authority.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a party to this AGREEMENT.
- f. **No Waiver.** The failure of either PARTY to insist upon the strict performance of any of the terms, covenants and conditions of this AGREEMENT will not be deemed a waiver of any right or remedy that either PARTY may have, and will not be deemed a waiver of either PARTY's right to require strict performance of all of the terms, covenants, and conditions hereunder.

- g. **Dispute Resolution.** If a question or allegation arises regarding (i) interpretation of this AGREEMENT or its performance, or (ii) the alleged failure of a PARTY to perform, the PARTY raising the question or making the allegation shall give written notice thereof to the other PARTY. The PARTIES shall promptly meet in an effort to resolve the issues raised. If the PARTIES fail to resolve the issues raised, alternative forms of dispute resolution, including mediation, may be pursued by mutual agreement. It is the intent of the PARTIES to the greatest extent possible to avoid litigation as a method of dispute resolution.
- h. **Severability.** If any of the provisions of this AGREEMENT (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and COUNTY shall negotiate an equitable adjustment in the provisions this AGREEMENT with a view toward effecting the purpose of this AGREEMENT, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
- i. **Governing Law.** The laws of the State of California will govern this AGREEMENT, as well as any claim that might arise between COUNTY and VTA, without regard to conflict of law provisions.
- j. **Venue.** Any lawsuit or legal action arising from this AGREEMENT must be commenced and prosecuted in the courts of Santa Clara County, California. COUNTY agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.
- k. **Non-discrimination.** The PARTIES and any contractors performing services on behalf of the PARTIES ("Contractors") will not unlawfully discriminate or permit discrimination, harass, or allow harassment against any person or group of persons because of race, color, religious creed, national origin, ancestry, age (over 40), sex, gender, gender identity, gender expression, sexual orientation, marital status, pregnancy, childbirth or related conditions, medical condition (including cancer), mental disability, physical disability (including HIV and AIDS), genetic information, or military and veteran's status, or in any manner prohibited by federal, state, or local laws. In addition, the PARTIES and Contractors shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. The PARTIES and Contractors must ensure that the evaluation and treatment of their employees and applicants for employment is free of such discrimination and harassment.
- l. **Relationship of the PARTIES.** It is understood that this is an AGREEMENT by and between independent parties and does not create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship other than that of independent contractor.
- m. **Execution in Counterparts / Electronic Signature.** This AGREEMENT may be executed in any number of counterparts and by each PARTY in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

Unless otherwise prohibited by law, VTA policy, or COUNTY policy, the PARTIES agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term "electronic copy of a signed contract" refers to a writing as set forth in Evidence Code

Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by each of the PARTIES.

- n. **Warranty of Authority to Execute Agreement.** Each PARTY to this AGREEMENT represents and warrants that each person whose signature appears hereon is authorized and has the full authority to execute this AGREEMENT on behalf of the entity that is a PARTY to this AGREEMENT.

Signatures of PARTIES on following page.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT as of the last date set forth below ("Effective Date").

COUNTY OF SANTA CLARA ("County")



Mike Wasserman, President
Board of Supervisors

Dated: APR 05 2022

Signed and certified that a copy of this document has been delivered by electronic or other means to the President, Board of Supervisors.

Attest:



TIFFANY LENNEAR
Clerk of the Board of Supervisors

Dated: APR 05 2022

Approved as to form and legality:

DocuSigned by:



KARUN TILAK
Deputy County Counsel

Dated: 3/2/2022

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY ("VTA")

3/29/2022

Dated: _____

Carolyn M. Gonot
General Manager/CEO

APPROVED AS TO FORM AND LEGALITY

3/17/2022

Dated: _____

Evelynn Tran
VTA General Counsel

ATTACHMENT A INSURANCE REQUIREMENTS

COUNTY'S ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW. IT IS HIGHLY RECOMMENDED THAT COUNTY CONFER WITH THEIR INSURANCE CARRIERS OR BROKERS IN ADVANCE OF PROPOSAL SUBMISSION TO DETERMINE THE AVAILABILITY OF INSURANCE CERTIFICATES AND ENDORSEMENTS REQUIRED BY THIS CONTRACT.

INSURANCE

Without limiting County's obligation to indemnify and hold harmless VTA, County must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the Work hereunder by County or its employees. The cost of such insurance must be included in Contract. In any subcontracts between the County and third parties ("Third Party Contract"), County must require its subcontractor to name VTA as Additional Insured on a primary and non-contributory basis with Waiver of Subrogation except when not applicable or required in the Third Party Contract. For existing Third Party Contracts that the County has entered into prior to the date of this Agreement under which a contractor will provide services under the Agreement, the County shall ask the contractor to provide a certificate of insurance naming VTA as Additional Insured on a primary and non-contributory basis with Waiver of Subrogation.

County must furnish its Letter of Self Insurance, within three (3) business days of any such request by VTA.

In the event of any material change in the Contract Scope of Services, VTA reserves the right to change the insurance requirements set forth herein. County must furnish complete copies of all insurance policies, within three (3) business days of any request for such by VTA.

A. Liability and Workers' Compensation Insurance

1. Minimum Scope of Coverage

Coverage must be at least as broad as:

- a. Insurance Services Office General Liability coverage ("occurrence" form CG 0001), including Products/Completed Operations Liability. General Liability insurance written on a "claims made" basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 "any auto." Auto Liability written on a "claims-made" basis is not acceptable.
- c. Workers' Compensation insurance as required by the Labor Code of the State of California, and Employer's Liability insurance.

- d. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of County's services under this Agreement. This coverage must be continuously maintained for a minimum of two (2) years following completion of this Agreement. This coverage may be written on a "claims made" basis, if so, please see special provisions in Section B.
- e. Cyber Liability (including privacy liability and network security coverage).

2. Minimum Limits of Insurance

County must maintain limits no less than:

- a. General Liability \$2,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. This requirement may be satisfied by a combination of General Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying General Liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- b. Automobile Liability (including umbrella/excess liability): \$1,000,000 limit per accident for bodily injury and property damage. This requirement may be satisfied by a combination of Auto Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying auto liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- c. Workers' Compensation and Employer's Liability: Statutory Workers' Compensation limits and Employer's Liability limits of \$1,000,000 per accident.
- d. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim. This requirement may be satisfied by a combination of Professional Liability with Excess or Umbrella. Umbrella/Excess policies must feature inception and expiration dates concurrent with the underlying professional liability policy, "Follow Form" coverage, and a "Drop Down" provision.
- e. Cyber Liability: \$1,000,000 per occurrence.

3. Self-Insured Retention

The certificate of insurance must disclose the actual amount of any deductible or self-insured retention, or lack thereof, for all coverages required herein. Any self-insured retention or deductible in excess of \$250,000 must be declared to and approved by VTA. If County is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention or deductible in excess of \$250,000, County must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. VTA may elect one of the following options: to accept the existing self-insured retention or deductible.

B. Claims Made Provisions (not applicable to General Liability or Auto Liability)

Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

1. The policy must be in effect as of the date of this Agreement and the retroactive date must be no later than the date of this Agreement.
2. If any policy is not renewed or the retroactive date of such policy is to be changed, County must obtain or cause to be obtained the broadest extended reporting period coverage available in the commercial insurance market. This extended reporting provision must cover at least two (2) years.
3. No prior acts exclusion may be added to the policy during the Contract term.
4. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

C. Other Provisions

The policies must contain, or be endorsed to contain, the following provisions:

1. General Liability and Automobile Liability

- a. If the County uses commercial insurance to meet the general and automobile liability insurance requirements, VTA, its directors, officers, officials, employees and volunteers are to be named as additional insureds on County's commercial general and automobile excess insurance policies as respects: liability arising out of activities performed by or on behalf of County, including VTA's general supervision of County; products and completed operations of County and its subcontractors; premises owned, occupied or used by County; or automobiles owned, leased, hired or borrowed by County. The coverage must contain no special limitations on the scope of protection afforded to VTA, its directors, officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its directors, officers, officials, employees, or volunteers.
- c. County's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. The General Liability General Aggregate limit must apply per project, not per policy.
- e. Products/Completed Operations Liability coverage must be maintained for a minimum of two (2) years following completion of this Contract.

2. All Coverages

- a. The insurer must agree to waive all rights of subrogation against VTA, its directors, officers, officials, employees, and volunteers for losses arising from work performed by County and its subcontractors for VTA.

- b. County's insurance coverage must be primary insurance as respects VTA, its directors, officers, officials, employees, and volunteers. Self-insurance or insurance that may be maintained by VTA, its directors, officers, officials, employees, or volunteers may apply only as excess to County's insurance. County's insurance must not seek contribution from VTA's insurance program, except as permitted under the indemnification terms of this agreement.

3. Other insurance provisions

- a. The Certificate must disclose the actual amounts of all deductibles or self-insured retentions.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the rights to require County to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

D. Acceptability of Insurers

Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

E. Certificates of Insurance/Letter of Self Insurance

If the County uses commercial insurance to meet the requirements of Attachment A, County must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates must be issued on a standard ACORD Form. County must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.certificates@vta.org. All endorsements must be attached to the ACORD certificate in a single PDF document.

The certificates must (1) identify the insurers, the types of insurance, the insurance limits, the deductibles, and the policy term, (2) include copies of all the actual policy endorsements required above, and (3) in the "Certificate Holder" box include:

Santa Clara Valley Transportation Authority ("VTA")
3331 North First Street
San Jose, CA 95134-1906

In the Description of Operations/Locations/Vehicles/Special Items Box, the VTA Contract number must appear, the list of policies scheduled as underlying on the Umbrella/Excess policy must be listed, and Certificate Holder must be named as additional insured, and Waiver of Subrogation must be indicated as endorsed to all policies as stated in the Contract Documents.

It is a condition precedent to award of this Contract that all insurance certificates and endorsements be received and approved by VTA before Contract execution. No work may be performed until insurance is in full compliance. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

If County receives notice that any of the insurance policies required by this Exhibit may be cancelled or coverage reduced for any reason whatsoever, County must immediately provide written notice to VTA that such insurance policy required by this Exhibit is canceled or coverage is reduced.

If the County uses self insurance to meet the requirements of Attachment A , County must furnish VTA with a Letter of Self Insurance. The Letter of Self Insurance is to be signed by an authorized representative of the County. County must submit its Letter of Self Insurance electronically in PDF format to Insurance.certificates@vta.org.

F. Maintenance of Insurance

If County fails to maintain insurance as required herein, VTA, at its option, may suspend payment for work performed and/or may order County to suspend work at County's expense until a new policy of insurance is in effect.