

March 30, 2018

Request for Proposals
for
Crossing Guard Services
for
Various Locations
in
Marin County

By the

Transportation Authority of Marin (TAM)

RESPONSES DUE:

3:00 PM, Thursday, April 19, 2018

Transportation Authority of Marin (TAM)
900 Fifth Avenue, Suite 100
San Rafael, CA 94901

**Request for Proposals
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Marin County**

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SECTION 1 — INTRODUCTION

The Transportation Authority of Marin (TAM) serves as the Sales Tax Authority and Congestion Management Agency for Marin County and is responsible for delivering the Measure A Program and for programming State and Federal funding for transportation projects within the County. The Marin County Sales Tax Expenditure Plan stipulates four strategies to implement Measure A, one of which addresses the growing need to provide safer access to schools. As a sub-strategy to eliminate major barriers to using alternative modes to schools, the Transportation Authority of Marin (TAM) Crossing Guard Program was developed to provide trained crossing guards for critical intersections throughout Marin County.

In addition, TAM administers the \$10 Vehicle Registration Fee approved by the voters in 2010 as Measure B. Measure B was instrumental in expanding the Crossing Guard Program in 2011 by providing additional funding for guards.

As the agency responsible for the implementation and accountability of the Program, TAM has provided oversight during implementation of the current contract that utilized trained crossing guards under contract with a professional company that specializes in crossing guard programs. It is the intent of TAM to continue to provide crossing guards throughout Marin County using contracted guard services. This Request for Proposals (RFP) stipulates the program's scope of services and proposal process.

SECTION 2 — SERVICES TO BE PROVIDED

Under contract to TAM, the selected contractor will:

1. Provide capable and reliable personnel to fill the crossing guard requirements of TAM; and
2. Provide a single staff member to manage the Crossing Guard program for TAM. This person will also act as the single point of contact with TAM for all contractual and operational issues.

Recruiting and Employee Screening

The contractor shall have a recruiting plan that will assure a fully qualified crossing guard to

be available for each crossing guard location designated by TAM. All applicants for crossing guard positions will be prescreened to determine qualifications and suitability for employment, including a criminal background check. Crossing guards must meet minimum standards as follows:

1. Be a minimum of 18 years old;
2. Not have any felony convictions;
3. Not have any misdemeanor convictions involving crimes against children or any other offense that would suggest inappropriate behavior around children;
3. Have the ability to communicate clearly and concisely with motorists and pedestrians; and
4. Demonstrate the following abilities and characteristics:
 - a) Good physical condition, including sight and hearing;
 - b) Neat appearance;
 - c) Sense of responsibility for the safety of children;
 - d) Good verbal communication skills; and
 - e) Familiarity with traffic rules and regulations.

Contractor will run background checks at contractor's expense. TAM has the absolute right at its sole discretion and judgment to reject the persons proposed by Contractor to have face-to-face personal contacts with school children in the execution of this contract. The Contractor must provide the agreed upon number of crossing guards (with approved background checks) no later than five days prior to commencement of the program. Penalties will be assigned in accordance with dates outlined in the signed agreement.

The contractor is responsible for determining a plan that will allow TAM personnel to review the contents of each guards background check. This information is to be readily available to TAM staff at all times.

Training

The contractor shall provide orientation and fully train each crossing guard before he/she is assigned to any crossing guard duties. Orientation procedures and training standards shall be subject to approval by TAM and should include (but not be limited to) instruction on holding the crossing guard stop sign, wearing the required crossing guard safety vest, and properly reporting to the local Police Department any violations by motorists for failure to stop as instructed by crossing guards.

Management and Reporting

The contractor shall provide a staff member to manage the Crossing Guard program for TAM. The manager must have a minimum of a high school education and a valid California driver's license. The manager shall be available at all times when crossing guards are on duty: 1) to manage that guard activities are taking place at required locations and times; 2) to respond to problems and/or complaints; and 3) to return phone calls to

TAM within 30 minutes. The manager shall have a vehicle to travel to work sites. Each school site shall be visited a minimum of once per month by the manager or other designated management personnel. The visit will include discussion of school calendar changes and parent feedback received.

The manager shall assign schedules, monitor and supervise supervisors, lead guards, and other crossing guards as necessary. Each crossing guard hired shall be able to contact that manager or other supervisor in the event he/she cannot report for his/her assignment with sufficient time before the start time of the shift for the manager to arrange for a substitute. The manager will then ensure, when a crossing guard is unable to report to his/her assigned location, that a substitute crossing guard will be supplied for the designated location at the times required under this contract.

The manager is to be TAM's single point of contact for all issues. This includes contract terms, invoicing, payment issues, service difficulties and any other issue that may arise.

It is expected that supervisors will be part of this program to assist the manager in the day to day supervision of the crossing guards. The current contract has four additional supervisors to manage the 90 guards. Historically, this level of supervision has been found to be the minimum to be effective. The following Supervisor level will be required:

45 to 55 guard locations require two Supervisors;
56 to 76 guard locations require three Supervisors;
77 to 101 guard locations require four Supervisors; and
102 to 127 guard locations will require five supervisors.
These positions are in addition to the Manager position.

The contractor shall establish quarterly contact with a TAM representative for quality assurance of the program. The contractor shall ensure that all comments regarding the performance of guard services are relayed to the TAM representative.

Clothing and Equipment

The contractor shall supply all necessary equipment, including signs, traffic vests, whistles and raincoats. It is expected that TAM will provide hats with the TAM and Safe Routes logos.

Locations and Hours

The contractor shall be responsible for ensuring that crossing guard services are provided at the designated locations and at the designated hours on all days in which the designated schools in Marin County are in session. This may include summer school. The contractor shall coordinate any scheduling and any schedule changes directly with TAM.

The current list of Guard Locations is attached in Appendix A. The funding level is not set at this time. The funding level is expected to be somewhere between 58 and 110

locations, however it may go below or above these levels. This evaluation may result in additions or subtractions of crossing guard locations for this contract. For proposal purposes only, please assume 180 days per location along with a 25-day summer school session at 20 locations. All personnel (except volunteers) working in Marin must be paid at least the Marin County Living Wage. The living wage is also to be paid for all non-working minimum hours charged to TAM.

As requirements are evaluated, TAM reserves the right to add, delete, or revise the schedules, locations, and/or any portion of the work at any time with a 30-day notification, as may be deemed advisable at the contract price. Price negotiations will only be allowed if the number of guard locations falls below 50.

Term and Termination of Contract

The Contract shall become effective on August 1, 2018 and will extend to July 31, 2023. Contract renewal may be approved only by TAM's Executive Director on behalf of TAM and is not expected for this solicitation.

Payment and Records

TAM will pay for hourly services in accordance with the agreed upon crossing guard locations and hours at the agreed upon hourly rate. Travel time is not to be invoiced. The contractor shall submit invoices to TAM on a monthly basis for the number of hours actually worked. Hourly minimums are to be clearly stated in the proposal. The guard is to be paid for a minimum of four hours. The contractor is responsible for adherence to all federal and state laws regarding payment for guard show-up times and split shifts. The contractor shall manage all payroll responsibilities, ensuring that all guards receive weekly payroll and workers' compensation coverage in accordance with all state and federal requirements. TAM may at its sole option provide bus travel passes to the guards upon request. Any hourly minimums must be equal for morning and afternoon shifts.

The proposed hourly rate shall be inclusive of management and supervision costs. Total billings for the five-year contract period are expected to range between \$6 to \$11 million depending on the actual number of guard locations. This information is for proposing contractor use only and is not to be considered a request by TAM for similar pricing. The contractor should be aware that the County of Marin sets the Living Wage annually effective January 1. The contractor is free to pay hourly rates higher than the Living Wage; however the same wage is to be paid for all hours worked or not. Additional hours over the proposed minimum are not to be invoiced even at hard to staff locations. It is expected that the Contractor will utilize higher wages in these cases.

Total compensation will be set by the price per hour proposed to be added to the Marin County Living Wage multiplied by the minimum number of hours proposed by the Contractor. The amount to be added to the Marin County Living Wage will be constant for the five year contract period.

TAM may institute usage of volunteer guards managed by this contract. The total compensation due the Contractor for volunteer guards will be the same as the rate added to the County Living Wage multiplied by the Contractor proposed minimum. This price is to include (same as paid positions) management and supervision time, insurance and liability, background checks, training, full supervision and corrective action, equipment including rain gear, school coordination, and all other duties associated with the paid positions.

SECTION 3 — SCHOOL CALENDAR

Crossing guard services are provided near schools in a variety of School Districts throughout the County. Crossing locations are near both public and private schools. The contractor should be prepared to offer services in accordance with various school calendars. This will result in some locations requiring service on days when other locations do not. Total days of service may not be consistent for all locations.

The contractor supervisor will be responsible to coordinate with representatives from all school districts and schools served to verify that coverage is provided in accordance with school schedules.

SECTION 4 — RFP SUBMITTAL REQUIREMENTS

Please prepare your proposal in accordance with the following requirements.

1. *Proposal:* The proposal (excluding resumes and the transmittal letter) shall not exceed a total of 25 single-sided, 8.5" x 11" pages. An additional electronic copy should be provided in either Adobe PDF or MS Word format. Resumes should be included in an appendix.
2. *Transmittal Letter:* The proposal shall be transmitted with a cover letter describing the firm's/team's interest and commitment to the proposed project. The letter shall state that the proposal shall be valid for a 90-day period and should include the name, title, address and telephone number of the individual to whom correspondence and other contacts should be directed during the contractor selection process. It is the responsibility of each proposer to check the TAM web site for any revisions or addenda related to this RFP before submitting a proposal. Each proposer shall include a statement in the transmittal letter confirming the TAM web site has been checked for revisions or addenda to this RFP, and a list of each revision or addenda that has been issued by TAM and incorporated into the proposal. A person authorized by the firm/team to negotiate a contract with TAM shall sign the cover letter.

Address the cover letter as follows:

Dan Cherrier, Project Manager
Transportation Authority of Marin

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Crossing Guard Services**

**Transportation Authority of Marin
March 30, 2018**

900 Fifth Avenue, Suite 100
San Rafael, California 94901

3. *Project Understanding:* This section shall clearly convey that the contractor understands the nature of the work, including coordination with and approvals from TAM.
4. *Approach and Management Plan:* This section shall provide the firm's/team's proposed approach and management plan for providing the services. Discuss the proposed relationships among the Manager and other supervisors. Explain how guard attendance and performance will be supervised. Explain how TAM will be kept apprised of training records and background checks. Explain your procedures for administering background checks and the internal minimum passing requirements. How will you communicate with the schools and keep TAM apprised of schedule changes? How will TAM be notified if a guard misses a shift? Explain how shift times will be set to reflect the distance from the school to the crossing guard location to account for student travel time. **Note, TAM requires a minimum of one-hour on-site per shift per location.**
5. *Qualifications and Experience:* The proposal shall provide the qualifications and experience of the contractor. Please emphasize the specific qualifications and experience in providing crossing guard services. Key Team Members are expected to be committed for the duration of the project. Replacement of Key Team Members will not be permitted without prior consultation with and approval of the TAM.
6. *Additional Relevant Information:* Provide additional relevant information that may be helpful in the selection process (not to exceed the equivalent of 2 single-sided pages).
7. *References:* Please provide references that indicate the ability of your firm to successfully manage a crossing guard program.
8. *Cost:* Please provide a hourly rate for the amount to be added to the Marin County Living Wage along with any minimum hours per shift. The add-on hourly rate is to remain fixed for the entire five year duration of the Contract. Note, minimums are not to be applied on a daily basis. TAM may at its sole option require the guards to be on site up to the entire minimum period with no additional compensation. Please explain how you will deal with worker discontent regarding some guards working longer hours than others for the same pay. Confirm that site time for the Manager and supporting supervisors is included in the guard time. Travel time and pay are considered contractor overhead. Explain how TAM will be kept apprised of compliance with the Marin County Living Wage.
9. *Submittal of Proposals:* Three (3) copies of your proposal (plus electronic copy) are due at the TAM offices no later than the time and date specified in Section 6, below.

Envelopes or packages containing the proposals should be clearly marked, **“Proposals Enclosed.”**

10. *Professional Services Contract*: Indicate your willingness to accept the terms and conditions in attached sample contract, including your ability to comply with TAM's insurance requirements, or list those to which you take exception, and, as appropriate, provide proposed alternate wording. Note especially the insurance requirements and the non-performance financial penalties. It is not TAM's intent to make substantial changes to attached sample contract; however, TAM will adjust certain language to memorialize aspects of the selected contractor's proposal.

SECTION 5 — SELECTION OF CONTRACTOR

The proposals will be evaluated and scored on a 100 point total basis using the following criteria:

Project understanding and approach, including an understanding of the role of TAM. Overall Management Plan.	20
Qualifications and specific experience of Key Team Members.	20
Capacity to provide qualified personnel and Staffing Plan.	20
Total Program Cost and Hourly Rates	20
Knowledge of unique requirements, including background checks, minimum wage, Marin County Living Wage, Federal and State laws concerning show-up times and split shift payments. Ability to provide TAM with specific background information.	15
Similar Crossing Guard Experience	5
Total	100

TAM will evaluate each proposal and may establish a “short list” of qualified firms that will be asked to attend an interview in which each firm will demonstrate its understanding of, and approach to the Project.

The Manager and any other Key Team Members should attend the interview. The evaluation / interview panel may include representatives from TAM and other agencies, but the specific composition of the panel will not be revealed prior to the interviews. Costs for travel expenses and proposal preparation shall be borne by the contractor.

Once the top firm/team has been determined, TAM staff will start contract negotiations with the firm/team. If contract negotiations are not successful, the second ranked firm/team may be asked to negotiate a contract with TAM, etc.

SECTION 6 — SELECTION PROCESS DATES

- April 13, 2018:** Last day for submittal of questions.
- April 19, 2018:** **Proposals are due no later than 3:00 PM** at the offices of the Transportation Authority of Marin, 900 Fifth Avenue, Suite 100, San Rafael, CA 94901. TAM reserves the right to waive any proposal irregularities.
- May 3, 2018:** Interviews (if necessary) for contractor selection for the **Crossing Guard Program**
- May 14, 2018:** Contractor selection approval by TAM Board.

If you have any questions regarding this RFP, please contact:

Dan Cherrier
Project Manager
Phone (415) 226-0829
Fax (415) 226-0816
dcherrier@tam.ca.gov

Solicitation Disclaimer

TAM reserves the right to amend this RFP, to withdraw all or a portion of this RFP, and to award a contract for only a portion of the scope of services described herein. TAM reserves the right to reject any and all responses. All responses to this RFP become the property of TAM upon submission. The costs of preparing a proposal and participating in an interview are at the sole expense of the proposer.

SECTION 7 – DISADVANTAGED BUSINESS ENTERPRISES (DBE) POLICY

TAM is committed to and has adopted a Disadvantaged Business Enterprise (DBE) Policy to ensure non-discrimination in the award and administration of all contracts and to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to TAM's construction, procurement, and professional services activities. To this end, TAM has developed procedures to remove barriers to DBE participation in the bidding and award process and to assist DBEs to develop and compete successfully outside of the DBE Program. In connection with the performance of this contract, the Contractor will cooperate with TAM in meeting these commitments and objectives.

Pursuant to 49 CFR §26.13, and as a material term of any Agreement with TAM, the Contractor hereby makes the following assurance and agrees to include this assurance in any Agreements it makes with subcontractors in the performance of this contract: "The

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Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by the Contractor or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as TAM deems appropriate.”

TAM implements the DBE policy in accordance with DOT regulations, and no contract specific DBE participation goal has been established for this contract. However, Proposers shall cooperate with TAM in meeting its commitments and objectives with regard to ensuring nondiscrimination in the award and administration of Authority Contracts and shall use its best efforts to insure that barriers to DBE’s participation do not exist. By submitting a Proposal, a Proposer is deemed to have made the foregoing assurance and to be bound by its terms. For DBE questions and assistance, contact Bill Whitney, DBE Officer, at (415) 226-0823 or bwhitney@tam.ca.gov.

SECTION 8 - GENERAL TERMS AND CONDITIONS

1. Conflicts of Interest. The proposer shall disclose any currently known or potential conflicts of interest with TAM, the State Department of Transportation, and the County of Marin. The proposers signature affixed to and dated on the cover letter shall constitute a certification, under penalty of perjury under the laws of the State of California, that the proposer declares that the proposer is not currently, and will not during the performance of any services for TAM participate in any other work involving a third party with interests currently in conflict or likely to be in conflict with TAM’s interests without TAM’s approval.

2. Amendments to RFP. TAM reserves the right to amend or cancel this RFP by addendum before the final submittal due date. Revisions to the RFP shall be posted on the TAM web page at least one full business day prior to the deadline for submittal of responses. It is the responsibility of each proposer to check the Web site for any revisions related to this RFP. The proposers shall each confirm in the transmittal letter of its response the receipt of all addenda issued to this RFP.

3. Non-commitment of TAM. This RFP does not commit TAM to award a contract, to pay any costs incurred in the preparation of a response to this request, or to procure or contract for services.

4. Confidentiality. Before award of the contract, all responses to this RFP will be designated confidential to the extent permitted by the California Public Records Act. After

award of the contract (or if not awarded, after rejection of all responses) all responses will be regarded as public records and will be subject to review by the public. Any language purporting to render all or portions of the responses confidential will be regarded as non-effective and will be disregarded.

ATTACHMENTS

- A. TAM Sample Contract
- B. List of Crossing Guard Locations

APPENDIX A – SAMPLE CONTRACT

Contract Log # _____

**CONTRACT BETWEEN
TRANSPORTATION AUTHORITY OF MARIN
AND
YOUR FIRM**

THE ABOVE-REFERENCED CONTRACT (this “**Contract**”) is made and entered into effective as of the 31st day of July, 2018 (the “**Effective Date**”) by and between the TRANSPORTATION AUTHORITY OF MARIN a Joint Powers Agency (hereinafter referred to as “**TAM**”), and Your Firm, Incorporated, a California Corporation (hereinafter referred to as “**Contractor**”). TAM and Contractor are sometimes hereinafter referred to collectively as the “**Parties**” or individually as a “**Party**.”

RECITALS:

WHEREAS, TAM manages a variety of transportation projects and programs in Marin County, California; and

WHEREAS, TAM and Contractor desire to enter into an independent contractor relationship whereby Contractor shall perform for TAM Crossing Guard services as set forth in **Exhibit A** attached hereto and hereby incorporated herein (collectively, the “**Services**,” which shall include, without limitation, all services, materials and other work product provided by Contractor hereunder), subject to the terms and conditions of this Contract;

NOW, THEREFORE, for and in consideration of the foregoing and the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. SERVICES

Scope of Work. Contractor agrees to provide the Services in a timely and professional manner, in accordance with the terms and conditions of this Contract. Subject to Sections 10 and 11, should Contractor retain the assistance of any other person or entity to perform the Services, Contractor agrees and warrants that each such assistant shall execute an agreement containing substantially identical terms as this Contract with regard to the obligations imposed on Contractor under this Contract. Contractor agrees that the scope of the Services listed in Exhibit A may be modified by TAM at any time and for any reason. Contractor shall use its best professional skill and effort in performing the Services, which shall meet or exceed industry standards.

Business Conflicts. Subject to Contractor’s compliance with the terms and conditions of this Contract, including without limitation Sections 14 and 15 below, Contractor may provide services for other parties, provided that the services provided by Contractor to third parties does not conflict with, and are not detrimental to, the interest of TAM. To ensure that Contractor does not provide services to third parties in a manner that conflicts with, or is detrimental to, the interests of TAM, Contractor shall fully and promptly disclose all possible conflicts to TAM.

2. ACCESS TO LANDS AND DATA

TAM guarantees access to and shall make provisions for Contractor to enter upon public and private lands as required to perform the Services. TAM shall make available a list of crossing guard locations. This list may be subject to frequent change

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3. FEES AND PAYMENT SCHEDULE

The fees (the “**Fees**”) and payment schedule for furnishing services under this Contract shall be based on the rate schedule which is attached hereto as **Exhibit A**. The Fees shall remain in effect for the Term (as hereinafter defined) of the Contract unless extended through addendum. Contractor agrees that Contractor shall not be entitled to any compensation whatsoever other than the Fees for the performance of the Services under this Contract or from TAM’s use of any Work Product (as hereinafter defined) related to, based on or derived from the Services. Contractor shall provide TAM with Contractor’s Federal Tax I.D. number prior to submitting the first invoice. Terms specific to this contract are also listed in **Exhibit A**. **Significant penalties exist, as shown in Exhibit A, for not complying with all terms and will affect total payment due to Contractor.**

TAM shall make payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. TAM shall pay Contractor all proper invoice charges within thirty (30) days of TAM’s receipt of an invoice that complies with **Exhibit A**. **Payment will be reduced by applicable penalties as listed in Exhibit A.** Contractor’s final invoice must be submitted within thirty (30) days of completion of the Services.

4. MAXIMUM COST TO TAM

In no event will the Fees for the Services to be provided herein exceed the maximum sum of XXXXXX dollars (\$X,XXX,XXX.00) total, including direct non-salary expenses. All Fees including direct non-salary expenses are to be included in the crossing guard hourly rate.

5. TERM OF CONTRACT

This Contract shall commence on the Effective Date and shall terminate on July 31, 2023.

6. INSURANCE

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to TAM. The general liability policy shall be endorsed naming the TRANSPORTATION AUTHORITY OF MARIN as an additional insured. Each certificate of insurance must be current on the Effective Date and if scheduled to lapse prior to the end of the Term, must be automatically updated before final payment may be made to Contractor. Each certificate of insurance and required endorsement shall be furnished to TAM prior to Contractor’s commencement of the Services. Each certificate shall provide for thirty (30) days advance notice to TAM of any cancellation in coverage, except for cancellation due to non-payment of premium, in which case the certificate shall provide for ten (10) days advance notice to TAM. Said policies shall remain in force through the Term and shall be payable on a per occurrence basis only, except those required by Sections 6.4.a. and 6.4.b. which may be provided on a claims-made basis consistent with the criteria noted therein. A Waiver of Subrogation is required.n

Failure to provide and maintain the insurance required by this Contract shall constitute a material breach of the Contract. In addition to any other available remedies, TAM may suspend payment to Contractor for any Services provided during any time that insurance was not in effect and until such time as Contractor provides adequate evidence that Contractor has obtained the required coverage.

A request for a waiver of any of the following insurance requirements must be set forth on **Exhibit B** attached hereto. A request for a waiver of the insurance requirements must specify whether Contractor is requesting reduced amounts of coverage or requesting to have a particular type of coverage waived entirely.

6.1 GENERAL LIABILITY

Contractor shall maintain a commercial general liability insurance policy in an amount of no less than Two Million Dollars (\$2,000,000.00) per occurrence. TAM shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page.

Insurance Reduction or Waiver of Coverage Requested (Exhibit B)

6.2 AUTO LIABILITY

Where the services to be provided under this Contract involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of One Million Dollars (\$1,000,000.00) per occurrence.

Insurance Reduction or Waiver of Coverage Requested (Exhibit B)

6.3 WORKERS' COMPENSATION

Contractor acknowledges that it is aware of the provisions of the Labor Code of the State of California which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that Code, and it certifies that it will comply with such provisions before commencing the performance of the work under this Contract. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to self-insure shall be provided to TAM prior to commencement of the Services.

Insurance Reduction or Waiver of Coverage Requested (Exhibit B)

6.4 OTHER INSURANCE

Contractor may be required to carry additional insurance based upon the nature of the work to be performed (the Services). For each additional required insurance, a corresponding certificate of insurance must be provided. Claims made policies must have a retroactive date either prior to the Effective Date or the beginning of the work in the Contract. Claims-made coverage must extend a minimum of twelve (12) months beyond completion of the work in the Contract or end of the Term, whichever is later. If coverage is cancelled or non-renewed, and not replaced with another claim made policy with a retroactive date prior to the Effective Date, Contractor must purchase extended reporting coverage for a minimum of twelve (12) months beyond completion of the work in the Contract. Contractor shall maintain a policy limit of not less than One Million Dollars (\$1,000,000) per incident, with a deductible or self-insured retention not to exceed *Two Thousand Five Hundred Dollars (\$2,500) unless approved by TAM in writing.

6.4.a. Professional Liability Insurance..... (check box if required)

*Deductibles greater than Two Thousand Five Hundred Dollars (\$2,500) require Insurance Reduction/Waiver form (Exhibit B) to be completed.

6.4.b. Maritime Insurance..... (check box if required)

Contractor's general liability and/or professional liability insurance may be provided, in part, by self-insurance as long as Contractor provides either (1) evidence to TAM that Contractor has segregated amounts in a special insurance reserve fund meeting the contract's insurance requirements and restricted specifically to this project or (2) Contractor's general insurance reserves are adequate to provide the necessary coverage and TAM may conclusively reply thereon, or (3) if Contractor has a deductible of One Hundred Thousand Dollars (\$100,000) or more, TAM shall have the same benefits and protections as if Contractor carried insurance with a third party insurance company, satisfying the insurance requirements within this Contract.

7. REPRESENTATIONS AND WARRANTIES / INDEMNIFICATION

7.1 Representations and Warranties. Contractor hereby represents or covenants, as applicable, and warrants that it, and each of its directors officers, employees, members, managers, partners, permitted Contractors, contractors, agents, successors, heirs, representatives, beneficiaries, administrators, executors, trustees, affiliates, permitted assigns and/or representatives (each and all, "Contractor" for the purposes of Section 7, 14 and 15): (i) is not a party to any agreement – and does not have any interest or obligation – that will limit, interfere, or otherwise conflict with any provision of this Contract, the performance of the Services or any of Contractor's obligations hereunder; (ii) shall not, during the Term and thereafter, make any commitment or obligation or engage in any activity that will limit, interfere or otherwise conflict with any provision of this Contract, the performance of the Services or any of Contractor's obligations hereunder, without obtaining TAM's express prior written approval; (iii) shall not infringe any and all right, title and interest, including, but not limited to, any and all patent rights, mask work rights, copyrights, moral rights, trade secret rights, trademark rights, including any and all supplements, enhancements, modifications, translations and derivative works thereto, whether now known or hereafter devised, industrial property rights, all other intellectual property rights and property rights of any nature whatsoever, and any and all renewals of the foregoing (separately and collectively, "**Proprietary Rights**") of TAM or any party in performing the Services or discharging any of Contractor's obligations hereunder; (iv) shall, at TAM's request, during the Term and thereafter, execute and/or verify any proper oath, assignment, application, specification or other document or instrument that TAM, its agents or attorneys (each a "**TAM Party**"), deems desirable or necessary to evidence or carry out this Contract's terms and conditions and/or compliance therewith; (v) shall use its best efforts to ensure that in performing the Services or fulfilling its obligations hereunder, Contractor does not in any way adversely impact TAM's reputation or goodwill; (vi) shall avoid deceptive, misleading, or unethical business practices; and (vii) shall comply with all applicable laws and governmental regulations in performing the Services and fulfilling its obligations hereunder.

7.2 Indemnity. Pursuant to CA Civil Code Section 2782.8, Contractor agrees to indemnify, defend and hold TAM, its employees, officers and agents harmless from all liabilities arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of Contractor.

8. NONDISCRIMINATORY EMPLOYMENT

Contractor and/or any permitted sub-Contractor shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted sub-Contractor understands and agrees that Contractor and/or any permitted sub-Contractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances.

9. DRUG-FREE WORKPLACE POLICY

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on TAM's premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Contract.

10. SUBCONTRACTING

Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior express written approval of TAM except for any subcontract work identified and expressly authorized by TAM herein. If Contractor hires a sub-Contractor under this Contract, Contractor shall require sub-Contractor to provide and maintain insurance coverage identical to what is required of Contractor under this Contract and shall require sub-Contractor to name Contractor as additional insured under each policy in accordance with this Contract. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its sub-Contractor and shall forward to TAM evidence of same.

11. ASSIGNMENT

The rights, responsibilities and duties under this Contract are personal to Contractor and may not be transferred or assigned (including Accounts Receivable) without the express prior written consent of TAM. Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to TAM, as is evidenced in writing. Subject to the foregoing restrictions, this Contract shall be binding upon, and inure to the benefit of, the Parties and their respective, heirs, administrators, executors, trustees, successors and permitted assigns.

12. LICENSING AND PERMITS

Contractor shall, at its sole expense, maintain all required government and other regulatory licenses throughout the Term of this Contract. Contractor shall also, at its sole expense, obtain any and all permits which might be required to perform the Services.

13. BOOKS OF RECORD AND AUDIT PROVISION

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be kept in accordance with generally accepted accounting practices. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five (5) years from the end of the Term or earlier termination of this Contract. Contractor will permit TAM to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Contractor shall promptly refund to TAM any monies erroneously charged to TAM.

14. CONFIDENTIALITY

14.1 Confidential Information. Contractor agrees that during the Term of this Contract, and thereafter, Contractor shall keep TAM's Confidential Information (as hereinafter defined) confidential and shall not, directly or indirectly, on behalf of Contractor or any third party, use, divulge, publish or otherwise disclose or allow to be disclosed any aspect of Confidential Information, except as expressly provided herein solely for TAM's benefit. "**Confidential Information**" means any confidential, trade secret or other proprietary information (in whatever form or media, and whether or not marked as confidential) disclosed by TAM to Contractor under this Contract (including, without limitation, any reproductions or copies thereof), except information that the Contractor clearly proves to TAM: (a) is public knowledge at the time of disclosure, (b) was known by the Contractor before disclosure by TAM, or becomes public knowledge or otherwise known to the Contractor after such disclosure, other than by breach of a confidentiality obligation, or (c) is independently developed by the Contractor by persons without access to Confidential Information of TAM. Confidential Information shall include, without limitation, the following categories of information: any and all nonpublic information relating to TAM, methodologies, data, databases, know-how, procedures, techniques, tutorials and processes of TAM, services rendered or deliverables furnished by TAM, financial and operational information, and other matters relating to the operations or projects of TAM including traffic data and traffic studies, information relating to actual or potential clients and/or client lists, client requirements, forecasts and projections, accounting, finance or tax information, pricing information, and the terms of this Contract.

14.2 Protection and Disclosure of Confidential Information. The Contractor shall exercise at least the same degree of care and protection with respect to the Confidential Information of TAM that it exercises with respect to its own Confidential Information, but in no event shall the Contractor exercise less than a reasonable standard of care, and in addition shall not directly or indirectly disclose, copy, distribute, republish or allow any third party to have access to any Confidential Information of TAM except to the extent expressly permitted in writing by TAM. Notwithstanding the above, the Contractor may disclose Confidential Information of TAM to the employees and agents of the Contractor who have a bona fide need to know and to third parties if so required by law (including court order or subpoena), provided that such disclosure is

made in accordance with the terms of Section 14.3. Contractor acknowledges that breach of this Section will cause irreparable harm to TAM entitling TAM to injunctive relief, among other remedies.

14.3 Notification Obligation. If the Contractor becomes aware of any unauthorized use or disclosure of the Confidential Information, the Contractor shall promptly and fully notify TAM of all facts known to it concerning such unauthorized use or disclosure. In addition, if the Contractor or any of its employees or agents are requested or required (by oral questions, interrogatories, requests for information or documents in legal proceedings, subpoena, civil investigative demand or other similar process) to disclose any of the Confidential Information, the Contractor shall not disclose the Confidential Information without providing TAM at least twenty-four (24) hours prior written notice of any such request or requirement so that TAM may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Contract. Notwithstanding the foregoing, the Contractor shall exercise its best efforts to preserve the confidentiality of the Confidential Information including, without limitation, by cooperating with TAM to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential Information by such tribunal.

14.4 Restricted Storage and Access. Contractor shall access Confidential Information that is stored electronically only via TAM's computers, and shall access Confidential Information only while Contractor is at TAM's offices, unless otherwise expressly authorized by TAM in writing. If Contractor wishes to store Confidential Information electronically, Contractor may only store such Confidential Information on TAM's computers located at TAM's offices. Under no circumstances shall Contractor copy Confidential Information onto non-TAM computers or other equipment not owned by TAM without the express prior written consent of TAM. Contractor shall not remove any Confidential Information from TAM's offices without the express prior written consent of TAM. TAM reserves the right, in its sole discretion, to revoke any authorization or consent given hereunder.

14.5 Mutual Cooperation. Each Party shall notify and cooperate with the other Party in enforcing TAM's rights if such Party becomes aware of a threatened or actual violation of TAM's confidentiality requirements by a third party. Upon reasonable request by TAM, the Contractor shall provide copies of the confidentiality agreements entered into with its agents or independent contractors relating to this Contract.

14.6 Return of Confidential Information. Upon the termination or expiration and non-renewal of this Contract or upon the request of TAM, Contractor shall either promptly return the Confidential Information, and any and all reproductions and copies thereof, to TAM or destroy all such Confidential Information, and Contractor shall sign an affidavit certifying to TAM under penalty of perjury that all such Confidential Information in Contractor's possession has been returned or destroyed.

15. WORKS FOR HIRE

15.1 Work Product. Contractor acknowledges and agrees that the Proprietary Rights in and to any and all studies, deliverables, inventions, ideas, improvements, know-how, designs and discoveries, whether or not patentable and whether or not reduced to practice, patents, trademarks, trade secrets, original works of authorship (including, but not limited to, all algorithms, HTML, Java files and associated data, graphic materials, illustrations, creative writings, written information, photographs, product documentation, flow charts, databases, developments, processes, techniques, formulae, technology, drawings, marketing, advertising, product plans, reports, specifications, technical data, any computer program (source code and object code), research, schematics, prototypes, models and products) made, conceived and/or created by Contractor, whether solely or jointly with others that: (i) is developed in whole or in part on TAM's time or using TAM's computers, equipment, supplies, facilities or Confidential Information; (ii) results from, or is suggested by, any task or project assigned to Contractor under this Contract, the Services or the fulfillment of Contractor's obligations under this Contract; or (iii) relates in any manner to the actual or reasonably anticipated project, work, research and/or operations of TAM (separately and collectively, "**Work Product**"), is solely owned by, and belongs to, TAM. Contractor expressly acknowledges and agrees that all such works of authorship are "works made for hire" as defined in the U.S. Copyright Act and belong exclusively to TAM to the fullest extent permitted under applicable law. Contractor

hereby waives and shall not assert any and all moral rights Contractor may have to such works of authorship, which may inure to Contractor under the laws of any nation.

15.2 Assignment of Work Product. If Work Product, or any part thereof, is for any reason deemed not to constitute works made for hire owned by TAM, or if Contractor should, by operation of law or otherwise, be deemed to retain any rights thereto, for good and valuable consideration, including without limitation the consideration recited herein, Contractor hereby grants, conveys, bargains, sells, assigns, transfers and delivers to TAM, its successors and assigns, any and all of Contractor's Proprietary Rights, in and to the Work Product. Contractor also expressly assigns to TAM all legal rights necessary for TAM to pursue any legal action against any third party arising out of or in connection with the Work Product assigned hereunder. Contractor shall cause Contractor's permitted successors and assigns to assign all Proprietary Rights in Work Product to TAM to the maximum extent permitted by law. Contractor covenants not to personally, or cause any third party to, infringe any of TAM's Proprietary Rights in or to the Work Product. Upon the request of TAM, its agents or attorneys (each a "**TAM Party**"), Contractor shall promptly execute further written assignments and any additional document a TAM Party, in its sole and absolute discretion, deems necessary to effect, record and/or perfect the transfer of rights, title and interest in and to the Work Product.

15.3 Disclosure of Work Product. Contractor agrees that in connection with any Work Product Contractor shall: (i) promptly disclose such Work Product in writing to TAM (which shall be received in confidence by TAM), to permit TAM to claim rights to which it may be entitled under this Contract, and (ii) if TAM requests, promptly execute any additional written assignment of title to TAM for any Work Product required to be assigned by this Section 15 and Contractor shall preserve any such Work Product as Confidential Information of TAM. If Contractor believes that Contractor is entitled to ownership, either in whole or in part, of any Work Product, Contractor shall immediately so notify TAM's Board in writing. Contractor shall preserve all Work Product as Confidential Information of TAM. Contractor expressly agrees and covenants to keep and maintain adequate and current written records of all Work Product. The records will be in the form of notes, sketches, drawings and any other format that may be specified by TAM and shall at all times be available to, and remain the sole property of, TAM.

15.4 Termination of Proprietary Rights. TAM and Contractor hereby acknowledge that certain Proprietary Rights in and to Work Product assigned to TAM hereunder may, under certain circumstances and after the assignment thereof to TAM, be terminated by Contractor in accordance with the provisions of the Copyright Act. The Parties further acknowledge that it is their intention that, if any such assignments are terminated by Contractor, TAM shall have the exclusive rights of first and last refusal with respect thereto, which right of first and last refusal shall be exercised as follows:

Until the expiration of a period of sixty (60) days following TAM's receipt of a valid notice of termination with respect to any such Proprietary Rights, Contractor shall not negotiate with any third party with respect to the grant, sale, assignment, license, or other transfer of the Work Product thereof. During said sixty (60) day period, Contractor shall negotiate in good faith and exert best efforts to reach an agreement with TAM for TAM's acquisition of such Proprietary Rights and/or Work Product. If TAM and Contractor fail to reach agreement by the end of said sixty (60) day period, Contractor shall be free to negotiate with third parties for the grant, sale, assignment, license, or other transfer of such Proprietary Rights and/or Work Product, only for terms and conditions more favorable to Contractor than those last offered by TAM.

If Contractor receives such a bona fide offer from a third party, which offer Contractor wishes to accept, Contractor shall notify TAM of the terms therein in writing and TAM shall have ten (10) days from its receipt thereof to notify Contractor that it desires to acquire the Proprietary Rights and/or Work Product subject to the terms of such offer. If TAM so notifies Contractor, such copyrights shall automatically vest in TAM and Contractor shall enter into a written agreement with TAM reflecting such terms and conditions promptly after Contractor's receipt of such notice. If TAM does not so notify Contractor and Contractor does not accept such third party offer, the foregoing procedures shall apply to any further offers which Contractor

receives and wishes to accept, including any offer containing identical terms and conditions rejected by Contractor, whether received by Contractor from the same or from a different third party.

15.5 Patent, Trademark and Copyright Registrations. Contractor agrees to assist any TAM Party, at TAM's expense, to secure TAM's rights in the Work Product and any Proprietary Rights relating thereto in any and all countries, including the disclosure to TAM of all pertinent information, written records and data with respect thereto, the execution of all applications, specifications, oaths, assignments and other instruments that a TAM Party, in its sole discretion, deems necessary to apply for and obtain such rights. Upon the request of a TAM Party, Contractor shall promptly execute any and all applications for U.S. or foreign patent, trademark or copyright registrations regarding Work Product and execute any additional documents and do all other lawfully permitted acts to further the prosecution and issuance letters of registration thereon. Contractor hereby irrevocably appoints each TAM Party as Contractor's attorney-in-fact for the purpose of executing such registration applications, assignments and additional documents in Contractor's name and stead and with the same legal force and effect as if executed by Contractor.

16. TERMINATION / FORCE MAJEURE

- A. If Contractor fails to properly provide in any manner the Services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance hereunder, TAM may terminate this Contract by giving five (5) calendar days written notice to Contractor.
- B. Nonperformance of either Party shall be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or orders or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the nonperforming Party.
- C. Either Party may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other Party. Notice of termination shall be by written notice to the other Party and be sent in accordance with Section 30.
- D. In the event of termination not due to the fault of Contractor, Contractor shall be paid for Services properly performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract including any and all amendments thereto.
- E. Upon receipt of termination notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Contract on the date specified by TAM and to minimize the liability of Contractor and TAM to third parties as a result of termination. All such actions shall be subject to the prior approval of TAM. Such actions shall include, without limitation:
 - i. Halting the performance of the Services and other work under this Contractor on the date(s) and in the manner specified by TAM.
 - ii. Not placing any further orders or subcontracts for materials, services, equipment or other items.
 - iii. Terminating all existing orders and subcontracts.
 - iv. At TAM's direction, assigning to TAM any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, TAM shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
 - v. Subject to TAM's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
 - vi. Completing performance of any Services or work that TAM designates to be completed prior to the date of termination specified by TAM.

- vii. Taking such action as may be necessary, or as TAM may direct, for the protection and preservation of any property related to this Contract which is in the possession of Contractor and in which TAM has or may acquire an interest.
- F. In no event shall TAM be liable for costs incurred by Contractor or any of its sub-Contractors after the termination date specified by TAM, except for those costs associated in compliance with the immediately preceding subsection (E). Non-recoverable costs include, but are not limited to, anticipated profits on this Contract, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under subsection (E).
- G. TAM's payment obligation under this Section shall survive termination of this Contract.

17. RIGHTS AND DUTIES UPON TERMINATION OR EXPIRATION

- A. Sections 14, 15, 17, and each other provision of this Contract that may be reasonably construed to survive termination hereof, shall survive termination or expiration of this Contract for any reason.
- B. Subject to the immediately preceding subsection (A), upon termination of this Contract prior to the expiration of the Term specified in Section 5, this Contract shall terminate and be of no further force or effect. Contractor shall transfer title to TAM, and deliver in the manner, at the times, and to the extent, if any, directed by TAM, any work in progress, completed work, supplies, equipment, and other materials produced as part of, or acquired in connection with the performance of this Contract, and any completed or partially completed work which, if this Contract had been completed, would have been required to be furnished to TAM. This subsection shall survive termination of this Contract.

18. RELATIONSHIP BETWEEN THE PARTIES

It is expressly understood that in the performances of the Services herein, Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as officers, employees or agents of TAM. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all payroll withholding taxes, social security, and worker's compensation arising from or relating to Services. Contractor or any agent or employee of Contractor is liable for the acts or omissions of itself, its employees and its agents. Nothing in this Contract shall be construed as creating an employment or agency relationship between TAM and Contractor or any agent or employee of Contractor.

Any terms in this Contract referring to direction from TAM shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. TAM does not retain the right to control the means or the method by which Contractor performs work under this Contract.

19. PAYMENT OF TAXES AND OTHER EXPENSES

Should TAM, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Contract shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). TAM shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for TAM, upon notification of such fact by TAM, Contractor shall promptly remit such amount due or arrange with TAM to have the amount due withheld from future payments to Contractor under this Contract (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Contract, Contractor shall not be considered an employee of TAM. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in TAM's financial liability so that TAM's total expenses under this Contract are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

20. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any payment by TAM, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, and thereafter the unsatisfactory character of such work, equipment, components, or workmanship that do not conform to the requirements of this Contract may be rejected by TAM and in such case must be replaced by Contractor without delay.

21. SUBMITTING FALSE CLAIMS AND MONETARY PENALTIES

Pursuant to Government Code sections 12650 et seq., any Contractor, sub-Contractor or Contractor who submits a false claim shall be liable to TAM for three times the amount of damages that TAM sustains because of the false claim. A Contractor, sub-Contractor or Contractor who submits a false claim shall also be liable to TAM for the costs of a civil action brought to recover any of those penalties or damages, and may be liable to TAM for a civil penalty for up to \$10,000 for each false claim. A Contractor, sub-Contractor or Contractor will be deemed to have submitted a false claim to TAM if the Contractor, sub-Contractor or Contractor: (a) knowingly presents or causes to be presented to an officer or employee of TAM, a false claim for payment or approval; (b) knowingly makes, uses or causes to be made or used a false record or statement to get a false claim paid or approved by TAM; (c) conspires to defraud TAM by getting a false claim allowed or paid by TAM; (d) has possession, custody, or control of public property or money used or to be used by TAM and knowingly delivers or causes to be delivered less property than the amount for which the person receives a certificate or receipt; (e) is authorized to make or deliver a document certifying receipt of property used or to be used by TAM and knowingly makes or delivers a receipt that falsely represent the property used or to be used; (f) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to TAM; (g) is a beneficiary of an inadvertent submission of a false claim to TAM, subsequently discovers the falsity of the claim, and fails to disclose the false claim to TAM within a reasonable time after discovery of the false claim.

22. MODIFICATION OF CONTRACT

This Contract may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed by duly authorized officers or representatives of both Parties and approved in the same manner as this Contract.

23. ENTIRE AGREEMENT

This Contract sets forth the entire agreement between the Parties, and supersedes all other oral or written agreements, understandings and provisions between them, concerning the subject matter hereof. This Contract may be modified only as provided in Section 22.

24. SEVERABILITY

Should the application of any provision of this Contract to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Contract shall not be affected or impaired thereby, and (b) such invalid or unenforceable provision shall be enforced to the maximum extent possible so as to effect the intent of the Parties and shall be reformed without further action by the Parties to the extent necessary to make such provision valid and enforceable.

25. JURISDICTION AND VENUE / LEGAL EXPENSES

This Contract shall be construed in accordance with the laws of the State of California, without reference to its conflict of laws principles. The Parties agree that exclusive venue for any dispute arising hereunder shall be in a state court located in Marin County, California, or federal court located in San Francisco, California, and the Parties hereby consent to the exclusive jurisdiction of such courts. If TAM initiates legal action to enforce its rights under this Agreement, TAM shall be entitled, in addition to all other remedies available under law, to recover its legal expenses incurred in connection therewith, including without limitation reasonable attorney's and expert witness fees.

26. LIABILITY OF TAM

TAM's payment of obligations under this Contract shall be limited to the payment of the compensation provided for in Sections 3 and 4 of this Contract. NOTWITHSTANDING ANY OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL TAM BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS CONTRACT, EVEN IF TAM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

27. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall comply with any and all Federal, State and local laws (including, but not limited to Covenant Against Contingent Fees, below) affecting services covered by this Contract. Copies of any of the above-referenced local laws and resolutions may be secured from TAM's contact person referenced in Section 30 (NOTICES) below.

28. COVENANT AGAINST CONTINGENCY FEES

Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working for Contractor; to solicit or secure this Contract; and that it has not paid or agreed to pay any company or person other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award, or formation of this Contract. For breach or violation of this warranty, the local agency shall have the right to annul this Contract without liability, or at its discretion; to deduct from the Contract price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.

29. ADMINISTRATIVE REMEDY FOR AGREEMENT INTERPRETATION / MISCELLANEOUS

Should any question arise as to the meaning and intent of this Contract, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Executive Director of TAM, who shall decide the true meaning and intent of the Contract. This Contract may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Headings used in this Contract are for reference purposes only and in no way define, limit, construe or describe the scope or extent of such section or in any way affect this Contract. This Contract shall be construed within its fair meaning and no inference shall be drawn against the drafting Party in interpreting this Contract. Whenever used in this Contract, the singular shall include the plural, the plural shall include the singular, and the neuter gender shall include the male and female as well as a trust, firm, corporation, or other legal entity all as the context and meaning of this Contract may require.

30. NOTICES

All notices permitted or required under this Contract shall be in writing and shall be sent by registered or certified mail, or by FedEx or other similar overnight courier, to the Parties at their respective addresses

below. A notice sent by registered or certified mail shall be deemed given five (5) business days after deposited in the mail, or one (1) business day after being sent by FedEx or similar over night courier for next day delivery. This Contract shall be managed and administered on TAM's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Contract Manager and all notices shall be given to TAM at the following location:

<u>Contract Manager:</u>	<u>Dan Cherrier</u>
<u>Location:</u>	<u>Transportation Authority of Marin</u> <u>900 Fifth Avenue, Suite 100</u> <u>San Rafael, CA 94901</u>
<u>Contact:</u>	<u>415.226.0829</u> <u>dcherrier@tam.ca.gov</u>

Notices shall be given to Contractor at the following address:

<u>Contractor:</u>	<u></u>
<u>Location:</u>	<u></u>
<u>Contact:</u>	<u></u>

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31. ACKNOWLEDGEMENT OF EXHIBITS

**CONTRACTOR'S
INITIALS**

EXHIBIT A. **Scope of Services and Budget** _____

EXHIBIT B. **Insurance Reduction/Waiver** _____

IN WITNESS WHEREOF, the Parties have executed this Contract on the Effective Date.

TRANSPORTATION AUTHORITY OF MARIN:

CONTRACTOR:

By: _____
Dianne Steinhauser, Executive Director

By: _____
Authorized Signature

Name (Print)

Title

Company Name

Federal Employer ID Number or SSN

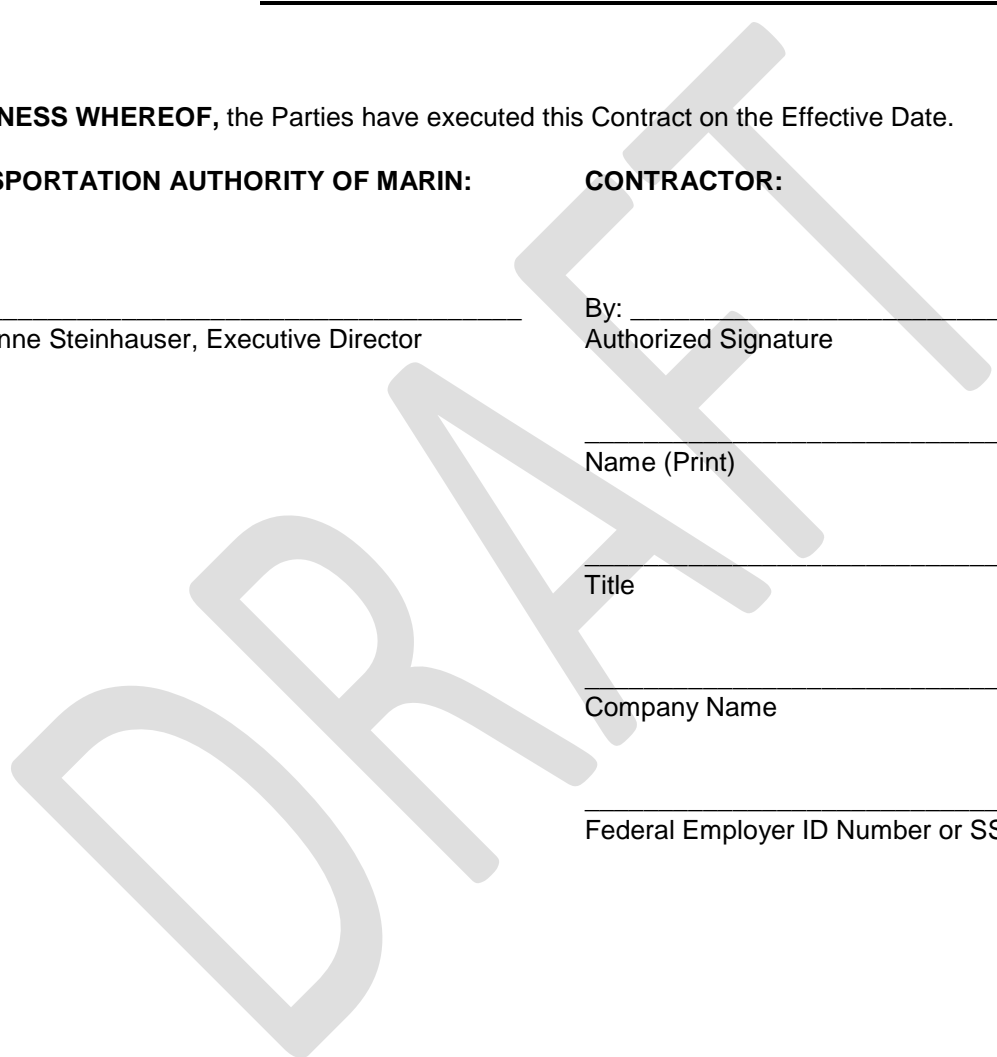


EXHIBIT A

Scope

1. Contractor shall supply trained adult school crossing guards at locations to be determined by TAM
2. Crossing guards shall have sufficient training to accomplish their work in a safe, legal, and professional manner.
3. Guards are to perform their services in accordance with applicable portions of the Statutes of the State of California, the California Vehicle Code and the Manual of Uniform Traffic Control Devices as amended by the State of California.
4. Program description as outlined in the TAM RFP for Crossing Guard Services dated April 29, 2015
5. The number of Supervisors on duty during guard working hours will be as outlined in the TAM Proposal for Crossing Guards dated March 30, 2018.
6. One area manager to manage the program.
7. Other regional and corporate management as required to administer the program effectively.
8. TAM to provide contractor with crossing guard locations. The locations and shift times maybe modified at any time by TAM.
9. Contractor to work with schools and school districts to determine optimal shift times. TAM to have final approval of shift times.
10. Contractor to provide TAM with immediate updates should shift times be modified.

Fees

1. The Contractor will be compensated at a rate of \$XX.XX per hour to be added to the current Marin County Living Wage for the total compensation of on-site time of adult crossing guards.
2. Each guard location will receive a minimum of XXX hours payment per day.
3. TAM reserves the right to combine locations when possible and only compensate contractor a total of XXX hours per day.
4. Hourly rate includes all contractor overhead and profit, including training, supervision, and equipment.
5. Hourly rate includes all indirect expenses, administration, management, and vehicles.
6. Guards are to be paid the current Marin County Living Wage as a minimum for worked and non-worked hours.
7. Guards are to be paid a minimum of four hours per day.
8. TAM may at its sole discretion add to Guard's Clipper Card account for travel to and from work.

Penalties

1. Unannounced audits will take place to observe guard attendance. Any location that is unmanned during any portion of the agreed upon shift time will result in non-payment for up to one week. TAM, at their sole discretion, may withhold any portion of the amount of any such non-payment, up to the entire non-payment amount, from the invoice submitted by Contractor to TAM for the month during which the location(s) is determined to be unmanned during an agreed upon shift. Any amount withheld based on this provision shall not be returned by TAM to Contractor and shall effectively reduce the maximum cost to TAM for services under this Contract by an equivalent amount without change to the scope of services required by this Contract.
2. Exceptions to the above penalty may be granted by TAM if advance or current notification is provided to the Contract Manager listed in Item 30. In this case non-payment will be just for the shift missed. A two-hour minimum will apply if half a shift is missed with advance or current notice.
3. Contractor shall provide TAM a written training summary by August 6, 2018 for all guards and supervisors to be deployed pursuant to this Contract. The written training summary shall include a list of the names of the guards and supervisors with an indication of the type of training and the date(s) on which the guard received the training. TAM, at their sole discretion, may withhold an amount equal to the number of guards less than XXX for which no training records are provided to TAM by Contractor at 5:00 p.m. on August 6, 2018 multiplied by one hundred dollars (\$100.00) from the first invoice from Contractor received by TAM after August 6, 2018. Any amount withheld based on this provision shall

not be returned by TAM to Contractor and shall effectively reduce the maximum cost to TAM for services under this Contract by an equivalent amount without change to the scope of services required by this Contract.

4. Contractor shall provide TAM an updated written training summary by August 13, 2018 for all guards and supervisors to be deployed pursuant to this Contract.
5. TAM, at their sole discretion, may withhold an amount equal to the number of guards less than XXX for which no training records are provided to TAM by Contractor at 5:00 p.m. on August 13, 2018 multiplied by two hundred dollars (\$200.00) from the first invoice from Contractor received by TAM after August 13, 2018. Any amount withheld based on this provision shall not be returned by TAM to Contractor and shall effectively reduce the maximum cost to TAM for services under this Contract by an equivalent amount without change to the scope of services required by this Contract.
6. A similar two hundred dollar (\$200.00) per guard or supervisor withholding will accrue each weekday after August 6, 2018 until the number of guards assigned to the Marin County program that have received the required training exceeds XXX as documented in an updated written training summary submitted by Contractor to TAM. TAM, at their sole discretion, may withhold any portion of the amount accrued pursuant to this provision, up to the entire amount accrued, from subsequent invoices submitted by Contractor to TAM. Any amount withheld based on this provision shall not be returned by TAM to Contractor and shall effectively reduce the maximum cost to TAM for services under this Contract by an equivalent amount without change to the scope of services required by this Contract.

Invoicing

1. Contractor shall submit an invoice for services rendered pursuant to this Contract at least once a month. Invoices submitted by Contractor to TAM shall include a list of the current guard locations for the invoice period with an indication of the number of hours billed each day during the invoice period for each location. The Invoice will contain letterhead of the vendor and a remittance location for payments within California.
2. Any revised Invoice shall bear the date of the revision along with a Revision number.

Reporting

1. Contractor shall submit a summary list of guarded locations with each invoice showing the contract location number (provided by TAM), location description, name of the guard assigned to each location during the invoice period. The summary list shall include an indication of whether or not the guard has received the appropriate training and background check, and is receiving the current Marin County Living Wage as required by this Contract
2. If multiple guards were utilized for any location(s), the required information shall be provided for each guard.
3. The contractor shall make available within two days detailed training records, background check, or payroll records (to verify compliance with Living Wage ordinance) upon request of TAM for any crossing guard or supervisor assigned to this program. A penalty of \$50 per day per guard requested will accrue until this information is provided. TAM, at their sole discretion, may withhold any portion of the amount accrued pursuant to this provision, up to the entire amount accrued, from subsequent invoices submitted by Contractor to TAM. Any amount withheld based on this provision shall not be returned by TAM to Contractor and shall effectively reduce the maximum cost to TAM for services under this Contract by an equivalent amount without change to the scope of services required by this Contract.
4. The TAM contract manager identified in Item 30 is to be notified by e-mail upon the contractor becoming aware of potential non-coverage of crossing guard locations or use of substitute guards.
5. Since the guard hourly rate includes manager and supervisor times, a separate report shall be submitted monthly listed hours worked on this contract in direct support of field activities. The report should include copies of supporting timecards and mileage logs.

**TAM Crossing Guard Program - 2017 Recertification
2017 Ranking Summary**

Approved March 22, 2018

2017 Rank	Location	City/Community	Total Weighted Score	Currently Guarded (2017-18)	Notes
1	Bahia Way & Kerner Boulevard	San Rafael	Note 1	X	2014 Score = 145
2	Nova Albion Way at Vallecito School	San Rafael	Note 1	X	2014 Score = 140
3	Sir Francis Drake Boulevard & Oak Tree Lane	Fairfax	Note 1	X	2014 Score = 140
4	Center Road & Leland Drive	Novato	Note 1	X	2014 Score = 134
5	East Blithedale Avenue & Lomita Avenue	Mill Valley	Note 1	X	2014 Score = 133
6	Sutro Avenue & Dominic Drive	Novato	Note 1	X	2014 Score = 133
7	Paladini Road & Vineyard Road	Novato	Note 1	X	2014 Score = 132
8	East Strawberry Drive at Strawberry School	Marin County	Note 1	X	2014 Score = 129
9	Sir Francis Drake & Glen Drive	Fairfax	Note 1	X	2014 Score = 129
10	Camino Alto & Sycamore Avenue	Mill Valley	Note 1	X	2014 Score = 127
11	Tiburon Boulevard & Lyford Drive	Tiburon	Note 1	X	2014 Score = 124
12	Miller Avenue & Evergreen Avenue	Mill Valley	Note 1	X	2014 Score = 122
13	Woodland Avenue & Lindaro Street	San Rafael	Note 1	X	2014 Score = 120
14	Sutro Avenue (in front of Pleasant Vly Elementary)	Novato	Note 1	X	2014 Score = 120
15	Butterfield Road & Green Valley Court	San Anselmo	Note 1	X	2014 Score = 118
16	San Ramon Way & San Benito Way	Novato	Note 1	X	2014 Score = 116
17	177 North San Pedro Road	San Rafael	Note 1	X	2014 Score = 115
18	Miller Avenue & Almonte Boulevard	Mill Valley	146	X	
19	Sunset Parkway & Merritt Drive	Novato	141	X	
20	Doherty Drive & Rose Lane (East) (at Piper Park)	Larkspur	140	X	
21	Sunset Parkway & Ignacio Boulevard	Novato	133	X	
22	Shoreline Highway & Almonte Boulevard	Mill Valley	132	X	
23	Ross Common (at Post Office)	Ross	128	X	
24	Kerner Boulevard & Canal Street	San Rafael	124	X	
25	Lomita Drive (in front of Edna Maguire School)	Mill Valley	118	X	
26	Mohawk Avenue (in front of Neil Cummins School)	Corte Madera	115		Guard provided by others
27	Tiburon Boulevard & San Rafael Avenue	Tiburon	114	X	
28	McAllister Avenue & Stadium Way	Kentfield	113	X	
29	College Avenue & Stadium Way	Kentfield	112	X	
30	San Ramon Way & San Juan Court	Novato	112	X	
31	Lovell Avenue & Old Mill Street	Mill Valley	112	X	

**TAM Crossing Guard Program - 2017 Recertification
2017 Ranking Summary**

Approved March 22, 2018

2017 Rank	Location	City/Community	Total Weighted Score	Currently Guarded (2017-18)	Notes
32	Tiburon Boulevard & Avenida Mireflores	Tiburon	111	X	
33	Larkspur Plaza Drive (Tam Racket Club) & Doherty Drive	Larkspur	110	X	
34	Bell Lane & Enterprise Concourse	Mill Valley	110	X	
35	Bahia Way at School Entrance	San Rafael	110	X	
36	5th Avenue & River Oaks Drive	San Rafael	110	X	
37	Sir Francis Drake Boulevard & Laurel Grove Avenue (East)	Kentfield	109	X	
38	Alameda De La Loma & Calle De La Mesa (East)	Novato	109	X	
39	Karen Way (in front of school)	Tiburon	108	X	
40	Lagunitas Road & Allen Avenue	Ross	108	X	
41	Hickory Avenue (near Mohawk Avenue)	Corte Madera	106	X	
42	Spindrift Passage & Prince Royal Passage	Corte Madera	106	X	
43	Knight Drive & Ashwood Court	San Rafael	106	X	
44	Las Gallinas Avenue & Elvia Court	San Rafael	105	X	
45	Magnolia Avenue & Wiltshire Avenue	Larkspur	101	X	
46	Lagunitas Road & Ross Common	Ross	99	X	
47	South Novato Boulevard & Lark Court	Novato	96	X	
48	Center Road & Wilson Avenue	Novato	93	X	
49	Tiburon Boulevard & Mar West Street	Tiburon	93	X	
50	Throckmorton Ave & Old Mill Street	Mill Valley	92	X	
51	Sir Francis Drake Boulevard & Marinda Dr	Fairfax	92	X	
52	Sir Francis Drake Boulevard & Manor Road	Kentfield	91		
53	Tiburon Boulevard & Stewart Drive	Tiburon	91		
54	Shoreline Highway & Pine Hill Road	Mill Valley	89	X	
55	Tiburon Boulevard & Trestle Glen Boulevard	Tiburon	88	X	
56	Wilson Avenue & Vineyard Road	Novato	87	X	
57	Oak Manor Drive (mid-block at school)	Fairfax	87	X	
58	South Novato Boulevard & Yukon Way	Novato	86	X	Projected Funding Line
59	East Blithedale Avenue & Elm Avenue	Mill Valley	82	X	
60	San Benito Way & San Ramon Way (south)	Novato	82	X	
61	Mt Shasta Drive & Idylberry Road	Lucas Valley	81	X	
62	Tiburon Boulevard & Kleinert Way/Ned's Way	Tiburon	81	X	

**TAM Crossing Guard Program - 2017 Recertification
2017 Ranking Summary**

Approved March 22, 2018

2017 Rank	Location	City/Community	Total Weighted Score	Currently Guarded (2017-18)	Notes
63	Sir Francis Drake Boulevard & Bon Air Road	Kentfield	79		
64	Nova Albion Way & Montecillo Road	San Rafael	78		
65	Olive Avenue (in back of school)	Novato	78	X	
66	College Avenue & Woodland Avenue/Kent Avenue	Kentfield	75	X	
67	Butterfield Road & Rosemont Avenue (in front of School)	San Anselmo	75	X	
68	Blackstone Drive & Las Gallinas Avenue	San Rafael	74	X	Guard funded by others
69	San Marin Drive & San Ramon Way	Novato	74	X	Guard funded by others
70	Adams Street & Johnson Street	Novato	73	X	
71	Redwood Highway & NB Off-Ramp/DeSilva Drive (at POC)	Marin County	73		
72	Olema-Bolinas Road (in Front of School)	Bolinas	73	X	
73	Las Gallinas Avenue & Miller Creek Road	San Rafael	72	X	
74	Woodland Avenue & Eva Street	San Rafael	70		
75	Magnolia Avenue & King Street	Larkspur	70	X	
76	Tiburon Boulevard & East Strawberry Drive	Marin County	70		
77	Redwood Highway & Southbound Seminary Drive On-Ramp	Mill Valley	70	X	
78	Sir Francis Drake Boulevard & College Avenue	Kentfield	69	X	
79	One Main Gate Road at School	Novato	69	X	
80	Ricardo Lane & East Strawberry Drive	Marin County	68		
81	Happy Lane & 5th Avenue	San Rafael	68	X	
82	Blackfield Drive & Cecilia Way	Tiburon	68		
83	Gibson Avenue & Shoreline Highway	Tamalpais Valley	67		
84	Belle Avenue (in front of school)	San Rafael	67	X	
85	East Blithedale Avenue & Buena Vista Avenue	Mill Valley	67		
86	Center Road & Tamalpais Avenue	Novato	65	X	
87	Avenida Mireflores at School	Tiburon	65	X	
88	North San Pedro Road & Roosevelt Avenue	San Rafael	65	X	
89	Marinwood Avenue & Miller Creek Road	San Rafael	65		
90	Woodland Avenue & Lovell Avenue	San Rafael	64		
91	Corte Madera Avenue & Tamalpais Drive (& Redwood)	Corte Madera	63		
92	Wilson Avenue at X-walk to field	Novato	63	X	
93	Ross Avenue & Kensington Road	San Anselmo	61		

**TAM Crossing Guard Program - 2017 Recertification
2017 Ranking Summary**

Approved March 22, 2018

2017 Rank	Location	City/Community	Total Weighted Score	Currently Guarded (2017-18)	Notes
94	Nova Albion Way & Arias Street	San Rafael	61	X	
95	Sir Francis Drake Boulevard & Oak Manor Drive	Fairfax	61		
96	South Novato Boulevard & Sunset Pkwy	Novato	61	X	Guard funded by others
97	West Castlewood Drive & Knight Drive	San Rafael	60		Guard provided by others
98	Woodland Avenue (at back of Wade Thomas school)	San Anselmo	59		
99	Tiburon Boulevard & Blackfield Drive	Tiburon	59	X	
100	Almonte Boulevard & Rosemont Avenue	Mill Valley	59		
101	Sunset Parkway & Lynwood Drive	Novato	57	X	
102	Sir Francis Drake Boulevard & Broadmoor Avenue	San Anselmo	54		
103	Richmond Road & Belle Avenue	San Anselmo	54		
104	Shoreline Highway (in front of West Marin School)	Point Reyes Station	53	X	
105	Sir Francis Drake Boulevard & Saunders Avenue	San Anselmo	52		
106	Golden Hind Passage (in front of school)	Corte Madera	52		
107	San Marin Drive & San Carlos Way	Novato	52		
108	Sir Francis Drake Boulevard & Lagunitas Road	Ross	51		Guard provided by others
109	Center Road & Diablo Avenue	Novato	51	X	Guard funded by others
110	Arthur Street & Hayes Street	Novato	48	X	Guard funded by others
111	Sir Francis Drake Boulevard & Butterfield Road	San Anselmo	47		
112	Marin Street & Bayview Street	San Rafael	46		
113	Racquet Club Drive & 5th Avenue	San Rafael	45		
114	Arthur Street & Cambridge Street	Novato	43	X	
115	Grand Avenue & Jewell Street	San Rafael	43		
116	Sir Francis Drake Boulevard & Tamal Avenue	San Anselmo	42	X	
117	Blackfield Drive & Karen Way	Tiburon	42		
118	Sutro Avenue & Center Road	Novato	42		
119	Melrose Avenue & Evergreen Avenue	Tamalpais Valley	41		
120	Arthur Street & Taft Court/Tyler Street	Novato	41		
121	Sir Francis Drake Boulevard & Wolfe Grade	Kentfield	40	X	Guard funded by others
122	Bellam Boulevard & I-580 on ramp	San Rafael	38		
123	Arias Street & Trellis Drive	San Rafael	38	X	Guard funded by others
124	Avenida Mireflores & Hilary Drive	Tiburon	38		

**TAM Crossing Guard Program - 2017 Recertification
2017 Ranking Summary**

Approved March 22, 2018

2017 Rank	Location	City/Community	Total Weighted Score	Currently Guarded (2017-18)	Notes
125	Montford Avenue & Melrose Avenue	Tamalpais Valley	35		
126	Paradise Drive & Seawolf Passage	Corte Madera	35	X	Guard funded by others
127	End of Tinker Way	Novato	34		
128	Wilson Avenue & Hansen Road	Novato	34		
129	Nova Albion Way & Las Gallinas Avenue	San Rafael	33		
130	Tamalpais Drive & Eastman Avenue	Corte Madera	32	X	
131	Woodland Avenue & Siebel Street	San Rafael	31		
132	Bellam Boulevard & I-580 off ramp	San Rafael	31		
133	Lincoln Avenue & Paloma Avenue	San Rafael	29		
134	Kleinert Way & Neds Avenue	Tiburon	27		
135	Main Gate Road & C Street	Novato	27		
136	Sir Francis Drake Boulevard & Bolinas Avenue	San Anselmo	23		
137	Bellam Boulevard & Anderson Drive	San Rafael	19		
138	Bellam Boulevard & Francisco Boulevard East	San Rafael	16		
139	Trumbull Avenue & Vineyard Road	Novato	14		
140	Olive Avenue & Summers Avenue	Novato	13		
141	Diablo Avenue & Hotchkin Drive	Novato	5		
142	Evergreen Avenue & Ethel Avenue	Tamalpais Valley	Note 2		2014 Score = 41
143	Sir Francis Drake Boulevard & Meadow Way	San Geronimo	Note 2		2014 Score = 39
144	Sir Francis Drake Boulevard & South Eliseo Drive	Kentfield	Note 2		2014 Score = 37
145	Richmond Road & Mariposa Avenue	San Anselmo	Note 2		2014 Score = 36
146	Sir Francis Drake Boulevard & Barber Avenue/Ross Avenue	San Anselmo	Note 2		2014 Score = 29
147	Olema-Bolinas Road & Mesa Road	Bolinas	Note 2		2014 Score = 28
148	Sequoia Drive & Red Hill Avenue (Miracle Mile)	San Anselmo	Note 2		2014 Score = 25
149	Sir Francis Drake Boulevard & Aspen Court	San Anselmo	Note 2		2014 Score = 21
150	Harvard Avenue & Wellesley Avenue	Tamalpais Valley	Note 2		2014 Score = 20

Notes:

- 1) No 2017 volume data collected. Ranked 30 or above in last two count cycles (shown in same ranked order as in 2014 ranked list)
- 2) No 2017 volume data collected. Ranked 110 or below in last two count cycles (shown in same ranked order as in 2014 ranked list)
- 3) Tie breaker for locations with the same score is based on the peak hour pedestrian volume (not combined volumes).