

ADDENDUM NO. 1

C19135 – Landscaping Maintenance Services

ISSUED DATE: NOVEMBER 21, 2019

Notice is hereby given that the following revisions, additions, and modifications are hereby incorporated into the Invitation for Bids (“IFB”).

Approved By



Kiet Vu
Construction Contracts Administrator

Approved for Release:



Daren Gee, P.E.
Construction Contracts Administration Manager

THIS ADDENDUM CONTAINS 3 PAGES
(Including attachments)

SECTION 6 SPECIAL CONDITION, Page 6-1

1. **DELETE** entire paragraph in **Subsection 6.1.1 Indemnify and Hold Harmless**, and **REPLACE** it with the paragraph shown in **Attachment No. 1**.

SECTION 6 SPECIAL CONDITIONS

6.1. Indemnity and Defense of Claims

6.1.1. Indemnify and Hold Harmless

Contractor must indemnify and hold harmless VTA, the Bay Area Rapid Transit District ("BART"), any public agencies within whose jurisdiction, on whose behalf, or on whose property the Work is being performed, any party VTA is contractually obligated to identify in this Contract as an indemnitee, and each of their respective Board of Directors, Board of Supervisors, Councils, individual board members, officers, agents, employees, and consultants (each, an "Indemnitee"; collectively, the "Indemnitees") from any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) arising out of, pertaining to, or caused by, or in any way relating to the Work, including the performance of this Contract or any subcontract hereunder, by Contractor and/or its agents, employees, or subcontractors, whether such claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) are based upon a contract, or for personal injury, death or property damage or upon any other legal or equitable theory whatsoever.

6.1.2. Limitation on Indemnity

Notwithstanding any language in this Contract to the contrary, Contractor is not obliged to indemnify and/or hold harmless the Indemnitees from any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) arising from the sole or active negligence or willful misconduct of VTA or its agents, servants or independent contractors who are directly responsible to VTA, or from damages for defects in designs furnished by those persons.

6.1.3. Duty to Defend

Contractor agrees, at its own expense, and upon written request by VTA or any individual Indemnitee, to immediately defend any suit, action, claim, or demand brought against any Indemnitee founded upon, alleging, or implicating any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) covered by Contractor's indemnity obligation set forth in this **Section 6.1**, and regardless of whether Contractor and/or any of its agents, employees, or subcontractors, was, in fact, liable. In the event a court of competent jurisdiction determines that any suit, action, claim, or demand brought against any Indemnitee was caused by the sole or active negligence or willful misconduct by VTA or its agents, servants or independent contractors who are directly responsible to VTA, VTA shall promptly reimburse Contractor for costs of defending the Indemnitees in such action incurred by Contractor, but only in proportion to the sole or active negligence or willful misconduct of VTA or its agents, servants or independent contractors who are directly responsible to VTA.

6.1.4. Survive Expiration or Termination

The indemnity and defense of claims terms set forth in this Section 6.1 will survive the expiration or termination of the Contract and remain in full force and effect.

6.2. Insurance

Contractor's attention is directed to **Appendix A Insurance Requirements** of this Contract.