

Request for Proposals
RFP S19203

SR 17 Corridor Congestion Relief Project

Highway Engineering Services

November 6, 2019
Erron Alvey, Contract Administrator

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INTRODUCTION: The Santa Clara Valley Transportation Authority, also known as VTA, is the result of a 1995 merger between two previously separate entities: the Santa Clara County Transit District and the Congestion Management Agency for Santa Clara County. VTA is an independent special district responsible for bus and light rail operations, congestion management, specific highway improvement projects and countywide transportation planning. As such, VTA is both an accessible transit provider and multi-modal transportation planning organization involved with transit, highways, roadways, bikeways, and pedestrian facilities. Working under the direction of a 12-member Board of Directors (“Board”), VTA’s annual operating budget is approximately \$400 million, and its currently approved capital program is approximately \$1 billion. VTA’s bus fleet of 505 buses serves a 346 square mile urbanized service area and operates approximately 18 million miles annually. The 42.2-mile light rail system is served by 99 rail cars and 5 historic trolley cars and operates approximately 2.2 million miles annually. VTA employs approximately 2,050 people, of whom approximately 650 are administrative, clerical and professional positions and 1,400 are operators and maintenance positions. There are four operating/maintenance facilities located within Santa Clara County. The administrative headquarters is located separately from these four facilities.

For more information about VTA, log on to www.VTA.org.

ABOUT RFP S19203: VTA seeks Proposals from qualified firms to provide alternative analysis and preliminary engineering services (“Services”) through the Project Initiation Document (“PID”) phase of the SR 17 Corridor Congestion Relief Project (“Project”) in the Town of Los Gatos (“City”) and Santa Clara County (“County”). (See **Appendix A1** for Location Map).

There will be future phases of design and engineering work including Project Approval/Environmental Document (“PA/ED”); Plans, Specifications, & Estimate (“PS&E”); and Design Services During Construction (“DSDC”).

These Additional Services would ideally be awarded to the same Contractor. Such services would only be requested from a qualified Contractor that has demonstrated satisfactory performance of work on the current or previous stages during the course of the contract. Proposers shall include a statement of interest in performing the Additional Services and qualifications for such work in their proposal.

NOTICE TO PROPOSERS OF LIMITATION OF FUTURE CONTRACTING: The Proposer(s) selected under this Request for Proposals (RFP) will be precluded from submitting Proposals or bids as a prime contractor or subcontractor for work resulting from any future procurement with VTA if the specifications, requirements, scope of services, and/or RFPs or IFBs for such work were developed or influenced by the work performed under the contract resulting from this RFP. Further, if a contractor or subcontractor obtains or has access to nonpublic information related to a future RFP or IFB through work performed under this RFP, that contractor or subcontractor may be barred from submitting Proposals as a prime contractor or subcontractor on that future RFP or IFB and should refrain from participating in the work resulting from this RFP.



NOTICE TO PROPOSERS OF REQUIREMENT TO AVOID CONFLICTS OF

INTERESTS: Contractors and subcontractors performing work resulting from this RFP are required to avoid conflicts of interest resulting from services provided to VTA through other engagements. In particular, contractors and subcontractors providing services under any engagements that developed or influenced the requirements, scope of services, or criteria for this RFP are ineligible to participate in the work resulting from this RFP. Contractors and subcontractors providing services under such engagements that involve the supervision, oversight, review, critique, or acceptance of work products under this RFP are also ineligible to participate in the work resulting from this RFP.

Similarly, contractors and subcontractors who have or who have had access to nonpublic information related to this RFP may have a conflict of interest, which may preclude those contractors or subcontractors from submitting proposals as a prime contractor or subcontractor on a future RFP or IFB.

Contractors and subcontractors proposing to provide services under this RFP remain responsible for avoiding conflicts of interest and must review their existing VTA engagements with their prospective teaming partners before submitting Proposal under this RFP to assure that conflicts of interest are avoided. Contractors and subcontractors performing work resulting from this RFP must continue to monitor for and avoid conflicts of interest at all times.

In addition to contractors' and subcontractors' obligations to avoid conflicts of interest, VTA also monitors for potential conflicts. VTA reviews all potential conflicts, whether actual or apparent, on a case-by-case basis. VTA reserves the right to determine whether an actual conflict exists in its sole discretion and to determine whether a potential conflict of interest exists in its reasonable discretion. Nothing in this RFP is intended to operate as a waiver of either actual or apparent conflicts.

PROPOSER/CONTRACTOR DEFINED:

The term "Proposer" shall mean any individual or firm submitting a Proposal in response to this RFP. The term "Contractor" represents the successful Proposer selected for contract award. These terms may be used interchangeably throughout this RFP.



I. INSTRUCTIONS TO PROPOSERS

A. PROCUREMENT SCHEDULE: VTA’s procurement schedule dates are listed in Table 1 below. All dates set forth in this RFP are subject to change at VTA’s sole discretion and will be provided to firms submitting a Proposal under this RFP (“Proposers”) as an addendum. All references in this RFP to “time” are Pacific Time.

Table 1

ACTIVITY	DATE/TIME
Issue RFP	November 6, 2019
Pre-Proposal Conference	November 18, 2019 at 10:00 a.m.
Deadline to Submit Questions	November 20, 2019 at 4:00 p.m.
Deadline to Submit Proposal	December 13, 2019 at 4:00 p.m.
Interviews	January 14-15, 2020

B. DESIGNATED POINT OF CONTACT: All communications with VTA regarding this RFP shall be in writing (US mail/ email) to the Designated Point of Contact identified below. All emails must indicate in the subject line “RFP S19203 for US 101 Interchanges Improvement.” No telephone calls will be accepted. Except as otherwise provided herein, no contact will be entertained by the Procurement, Contracts, and Materials Management staff outside of the formal Q&A period, and/or by anyone other than the Designated Point of Contact regarding this RFP.

Any unauthorized contact related to this RFP is not permitted. Any breach of this provision may result in the Proposer’s submittal being deemed non-responsive and may be cause for rejection.

The Designated Point of Contact for this procurement shall be as follows:

Erron Alvey, Contract Administrator
Santa Clara Valley Transportation Authority
3331 North First Street, Building A
San Jose, California 95134
Email: Erron.Alvey@VTA.org

C. PRE-PROPOSAL CONFERENCE: All prospective Proposers are strongly encouraged to attend the pre-Proposal conference scheduled at the date and time stated on Table 1. The pre-Proposal conference will be held at:

Santa Clara Valley Transportation Authority
3331 North First Street, Building A, Room B106
San Jose, California 95134



- D. EXAMINATION OF PROPOSAL DOCUMENTS:** By submitting a Proposal, the Proposer represents that it has thoroughly examined and become familiar with the work required under this RFP, and that it is capable of performing quality work to achieve VTA's objectives.
- E. ADDENDA/CLARIFICATIONS:** VTA reserves the right to make changes to these RFP documents as it may deem appropriate up until the date for submission of the Proposals (set forth in Table 1). Any and all changes to this RFP will be made by written addendum, which will be issued by VTA to all prospective Proposers who have registered and downloaded the Proposal documents at the VTA website. All addendum and other related materials will be posted to the VTA.org procurement site. Prospective Proposers will be notified by email when information has been posted to the VTA procurement site for this RFP. **NOTHING RELIEVES PROPOSER FROM BEING BOUND BY ADDITIONAL TERMS AND CONDITIONS IN ADDENDA.**

Questions or comments regarding this RFP must be submitted in writing and must be received by VTA no later than the date and time stated in Table 1. Email questions must be submitted to the Designated Point of Contact listed above and shall include "RFP S19203 QUESTIONS" in the subject line.

Responses from VTA will be published on the VTA online procurement website (or communicated in writing to all recipients of this RFP).

- F. SUBMISSION OF PROPOSALS:** All Proposals shall be submitted to the Designated Point of Contact no later than the date and time stated in Table 1.

The Proposer shall submit seven (7) printed copies and one (1) copy of the Proposal in an electronic format in the form of a CD, DVD, or flash drive, accompanied by a separate and sealed envelope, containing one printed copy of the Exceptions Form 3, Cost Proposal Form 4, SBE Form 5, Designation of Subcontractors Form 6, and Resource Plan (Dollars) Form 10 (the "Cost Proposal Packet").

The package must bear the Proposer's name and address, and be clearly labeled as follows:

"RFP S19203 SR 17 CORRIDOR CONGESTION RELIEF PROJECT"

All responses, inquiries, and correspondence related to this RFP and all reports, charts, displays, schedules, exhibits, and other documentation produced by the Proposer submitted as part of the Proposal will become the property of VTA when received by VTA and may be considered public information under applicable law. Any proprietary information in the Proposal should be identified as such. VTA does not typically disclose proprietary information to the public, unless required by law; however, VTA cannot guarantee that such information will be held confidential.



- G. WITHDRAWAL OF PROPOSALS:** A Proposer may withdraw its Proposal at any time before the expiration of the time for submission of Proposals as provided in this RFP by delivering to the Designated Point of Contact a written request for withdrawal signed by, or on behalf of, the Proposer.
- H. RIGHTS OF VTA:** VTA may investigate the qualifications of any Proposer under consideration, require confirmation of information furnished by the Proposer, and require additional evidence or qualifications to perform the Services described in this RFP.

VTA reserves the right to:

- Reject any or all Proposals.
 - Issue subsequent Requests for Proposal.
 - Postpone opening for its own convenience.
 - Remedy technical errors in the Request for Proposal process.
 - Approve or disapprove the use of particular subcontractors.
 - Solicit best and final offers from all or some of the Proposers.
 - Award a professional services contract to one or more Proposers.
 - Waive informalities and irregularities in Proposals.
 - Conduct interviews at its discretion.
- I. CONTRACT TYPE:** It is anticipated that VTA will award a professional services contract (“Contract”). If awarded, the Contract will be Cost Plus Fixed Fee with an initial term of two (2) years. This RFP does not commit VTA to enter into such Contract nor does it obligate VTA to pay for costs incurred in preparation or submission of Proposals or in anticipation of entry into a Contract.
- J. COLLUSION:** By submitting a Proposal, each Proposer represents and warrants that its Proposal is genuine and not a sham, collusive or made in the interest of or on behalf of any person not named therein; that the Proposer has not, directly or indirectly, induced or solicited any other person to submit a sham Proposal or any other person to refrain from submitting a Proposal; and that the Proposer has not in any manner sought collusion to secure any improper advantage over any other person submitting a Proposal.
- K. AUDIT REPORT/REQUIREMENTS:** Proposers must agree to abide by VTA Audit Requirements. Every Proposer that has been the subject of any audit report by any government or public agency or qualified independent CPA must attach with its Proposal the latest such audit report, including direct labor, materials, fringe benefits and general overhead.

Proposers must also agree to submit cost or pricing data in accordance with 48 CFR Part 31.



L. ECONOMIC INTEREST FORM 700: The Proposer’s key person as well as other positions within his or her firm, determined by VTA, to be participating in the making of governmental decisions will each be required to file a Form 700 the financial disclosure form mandated by the Fair Political Practices Commissions (FPPC). The Form 700 will be required to be filed upon execution of the Contract in which the VTA retains the services of the Proposer, annually thereafter, and upon separation of services pursuant to FPPC rules and regulations.

M. INCORPORATION OF EXHIBITS AND ATTACHMENTS: All exhibits, and attachments referenced in this RFP are incorporated herein by this reference.

II. PROPOSER’S MINIMUM QUALIFICATIONS

A. REQUIRED MINIMUM QUALIFICATIONS: The following qualifications are the minimum required qualifications that a Proposer must have in order for a Proposal to be considered:

1. The Proposer shall be a Civil Engineering firm with a minimum of 10 years of highway design experience.
2. The proposed Project Manager shall be a licensed engineer registered in State of California with a minimum of seven (7) years of experience in managing complex highway projects.

B. PREFERRED QUALIFICATIONS: The Proposer shall be familiar with Caltrans’, VTA’s, and City’s requirements, policies, procedures, manuals and standards including compliance with Federal Highway Administration (“FHWA”) requirements. The Proposer shall demonstrate previous work done on State Highway interchange projects in Caltrans District 4.



III. EVALUATION AND SELECTION

A. EVALUATION CRITERIA: The following criteria will be used to evaluate Proposals:

Qualifications of the Firm	10 Points
Staffing and Project Organization	25 Points
Work Plan	30 Points
Project Understanding / Delivery Efficiencies	25 Points
Local Firm Preference	10 Points

- 1. QUALIFICATIONS OF THE FIRM:** Evaluation of this qualification will be based on the Proposer’s and subcontractors’ qualifications and previous experience on similar and/or related projects. The evaluation will be based on the strength of the information for three key similar or related projects that the Proposer has completed in the past five years or has underway. The factors to be considered for each of these three projects are: details on the project and its relevance as qualification for the proposed project; the total cost of the project; the percentage of work for which the Proposer was responsible; a comparison of the originally proposed duration of work by the Proposer compared to the actual completed or projected work duration by the Proposer; the originally proposed Proposer’s work budget compared to the actual completed or projected work budget to be considered; experience working with highway properties or other public agencies; strength and stability of the firm; and assessments by three client references.
- 2. STAFFING AND PROJECT ORGANIZATION:** Evaluation of this criterion will be based on the Project Manager’s (“PM’s”), and if applicable, the Deputy Project Manager’s (“DPM’s”) and other key staff’s relevant experience, including staff from subcontractors on similar or related projects for the PID, PA/ED, and PS&E phases. The relevant experience includes experience in the past ten years: (i) working with Caltrans District 4 on projects that are similar and/or related to the project that is the subject of this RFP; (ii) conducting similar or related project development for highway projects; and (iii) managing the development of highway improvement projects involving multiple agencies and stakeholders. Experience prior to the last ten years can be provided, but the focus of the evaluation for this criteria will be experience in the past ten years. The proposed PM/DPM should be able to demonstrate the ability to lead a multi-faceted team, manage a schedule, and budget in a dynamic environment and provide at least three references from experience in the past ten years who could be contacted to respond to questions regarding ability to manage a multi-faceted team, complex schedules and defined budgets. VTA’s investigation of staff references may extend beyond those provided in the Proposal.



- 3. WORK PLAN:** Evaluation of this criterion will be based on the presentation of a well-conceived work plan showing that the Proposer has a full grasp of the key technical issues to lead to project success through the Proposer's allocation and use of staff resources to meet VTA's objectives and work requirements for the Project. The Proposal shall succinctly describe the proposed approach for addressing the required work in an effective yet realistic manner, outlining the activities that would be undertaken in completing the various tasks and specifying who would perform the tasks including highlighting and explaining the importance of certain tasks as critical tasks. The Proposal shall include both a detailed schedule for completing the major subtasks specified in the Scope of Work, a high-level schedule identifying the most critical tasks coinciding with the discussion on critical tasks, and a discussion on the overall proposed duration for completing the work with added information on how the duration could change as needed. Finally, evaluation of this criterion will also be through an assessment of percentages and hours allocated to the major subtasks by staff (including key staff from subcontractors) to reflect the Proposers' overall understanding of the Project requirements and proposed flow of work.
 - 4. PROJECT UNDERSTANDING / DELIVERY EFFICIENCIES:** Evaluation of this criterion will be based on the presentation of the Project issues and critical items that need to be addressed during the development of the Project and discussion on key steps that will be taken to ensure optimizing of delivery effort. The Proposal will provide: 1) solutions, strategies or recommendations for the identified project issues and critical items, 2) a detailed discussion on the proposed stakeholder involvement, and 3) identification of potential pitfalls to the successful delivery of this project and steps that will be taken to avoid the pitfalls including an identification of the potentially most impactful three pitfalls. This Proposal will also show the relationship between the project issues/critical items and the proposed work plan (staffing, tasks, and schedule) identified in the "Work Plan" criteria. The use of graphical aids, figures and tables to demonstrate the Proposer's project understanding and proposed delivery efficiencies will factor in the scoring for this criterion. Any new ideas, if any, should be discussed in this section in the Proposal.
 - 5. LOCAL FIRM PREFERENCE:** A local firm is a firm that currently has its main office or a branch office with meaningful production capability located within Santa Clara County, or a firm that, upon award of the Contract by VTA, will establish such a local office. Five points shall be awarded if at least fifty percent of the dollar value of services to be rendered will be performed by a local firm. An additional point shall be awarded for each additional ten percent of the dollar value of services to be performed by a local firm, to a maximum point award of ten points.
- B. EVALUATION PROCEDURE:** The review board will evaluate Proposals based on the pre-established criteria to determine the successful Proposer or establish a shortlist of firms to interview. VTA reserves the right to conduct interviews at its discretion.



Proposers are asked to keep the interview date stated in Section I, A Table 1 available in the event the review board conducts interviews. If invited to interview, VTA will notify Proposers regarding the schedule and other pertinent interview information. Typically, the interview is scheduled for one (1) hour and requires the project manager to be a lead participant.

The names of the review board members are not revealed prior to the interviews. The individual or composite rating and evaluation forms prepared by individual review board members are not retained by VTA and will not be revealed.

C. BASIS OF AWARD: When the review board has completed its work, negotiations will be conducted for the extent of services to be rendered.

Award may be made on the basis of initial Proposals submitted without any negotiations or discussions. If awarded, the award will be a qualifications-based award made solely on the qualitative evaluation criteria. Price will be excluded as an evaluation criterion.

Following evaluations of the stated criteria, VTA will open the sealed cost Proposal from the highest ranked Proposer and enter into negotiation for costs and any timely-submitted exceptions submitted by the Proposer.

In the event negotiations are unsuccessful and the parties have reached an impasse, negotiations are deemed concluded and cannot later be resumed with that Proposer. VTA may enter into negotiations with the next highest-ranked Proposer. If necessary, negotiations with successive Proposers in descending order of ranking may be conducted until contract award can be made to the Proposer whose price is considered fair and reasonable by VTA.

When VTA engages the highest-ranked Proposer in negotiations, a Notice of Intent of Award, which will be submitted as a courtesy to the shortlisted Proposers.

Upon completion of a successful negotiation, VTA will issue a Notice of Recommended Award, which will initiate the five (5) day pre-award protest period pursuant to VTA's protest policies.

IV. PROPOSAL FORMAT AND CONTENT

A. FORMAT: Proposals shall be typed, as concise as possible and shall not include any unnecessary promotional material. The nature and form of response are at the discretion of the Proposer, but shall include the information listed below.



B. CONTENT: The Proposer shall include the information described below:

- 1. PROFILE OF FIRM:** This section shall include a brief description of the firm's size as well as the local organizational structure; it shall also include a discussion of the firm's financial stability, capacity and resources. Additionally, this section shall include a listing of any lawsuit or litigation and the result of that action resulting from (a) any public project undertaken by the Proposer or by its subcontractors where litigation is still pending or has occurred within the last five (5) years or (b) any type of project where claims or settlements were paid by the Proposer or its insurers within the last five (5) years.

- 2. QUALIFICATIONS OF THE FIRM:** This section shall include a brief description of the Proposer's and subcontractors qualifications and previous experience on similar or related projects. Description of pertinent project experience shall include a summary of the work performed, the total project cost, the percentage of work the firm was responsible for, the period over which the work was completed. Give a brief statement of the firm's adherence to the schedule and budget for each project. Proposer must provide the name, title, and phone number of three (3) clients to be contacted for references, although VTA reserves the right to check other references beyond the three provided.

Information on the PM/DPM and other key staff's availability to take on this project shall be provided in Proposer's Proposal using the attached **Form 8 – Key Staff Availability**.

It is recommended that the Evaluation Criteria section of this RFP be reviewed very carefully for further details on the requested information related to firm qualifications, staff details and project team organization that must be provided in the Proposal.

- 3. WORK PLAN:** By presentation of a well-conceived work plan, this section of the Proposal shall establish the Proposer understands VTA's objectives and work requirements and Proposer's ability to satisfy those objectives and requirements. The work plan shall describe the work assigned to the prime and each subcontractor. The work plan shall also include a timetable for completing all work specified in the Scope of Work. Proposer must state the Business Diversity Program goal commitment as a percentage of total contract value.

It is recommended that the Evaluation Criteria section of this RFP be reviewed very carefully for further details on the required information related to the work plan.

- 4. PROJECT UNDERSTANDING AND DELIVERY EFFICIENCIES:** This section shall include the Proposer's understanding of the project's critical issues and solutions, strategies, or recommendations to address those critical issues for a successful project delivery. This section will also identify the Proposer's understanding of stakeholder involvement on the issues, key pitfalls to project delivery, and related cost implications. The Proposer



may also suggest technical or procedural innovations that have been used successfully on other projects and which may facilitate the completion of this Project.

It is recommended that the Evaluation Criteria section of this RFP be reviewed very carefully for further details on the information requested to demonstrate project understanding and proposed delivery efficiencies including the use of graphical aids, figures and tables for an easy to follow and understand presentation.

- 5. PROJECT STAFFING:** This section shall discuss how the Proposer would propose to staff this Project. The Proposer's project team members shall be identified by name, location, specific responsibilities on the Project and the estimated person-hours of participation. An organizational chart for the project team and resumes for key personnel shall be included. Key personnel will be an important factor considered by the review board. The assignment of multiple tasks to project team members to ensure compactness of the proposed project team may be an important factor for the review board especially if such an organizational structure is shown to provide project delivery efficiencies and project management efficiencies. Once the Proposal is submitted, there can be no change of key personnel without the prior approval of VTA.
- 6. ADMINISTRATIVE SUBMITTALS:** The Proposer must complete all the forms attached hereto and submit in the Proposal. Forms No. 3 through No. 6, and 10 must be printed and submitted in a separate and sealed envelope titled "Cost Proposal Packet" as part of the Proposal.

V. BUSINESS DIVERSITY PROGRAM POLICY: Proposer shall adhere to VTA's Business Diversity Program requirements.

A. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE POLICY AND REQUIREMENTS: It is the policy of the Santa Clara Valley Transportation Authority to ensure that Minority and Women-Owned Business Enterprises ("MWBE"), as defined in the VTA MWBE Program, have an equitable opportunity to participate in the performance of contracts and subcontracts financed with local funds. VTA has an 18% MWBE aspirational goal. In this regard, Proposer will use its best efforts to ensure that MWBE firms have an equitable opportunity to compete for subcontract work.

For more information on VTA's Business Diversity Programs, please see website at www.vta.org or call the Office of Business Diversity Programs at (408) 321-5962 for assistance in identifying eligible MWBE firms. Listings of eligible firms are also available at the following:

<https://vta.sdbbe.com/FrontEnd/VendorSearchPublic.asp?TN=vta&XID=5635>



B. SMALL BUSINESS ENTERPRISE POLICY AND REQUIREMENTS: It is VTA policy to ensure that Small Business Enterprise (“SBE”) firms, as defined in Federal Regulations 13 CFR Part 121 and 49 CFR Part 26, have an equitable opportunity to participate in the performance of contracts and subcontracts.

1. SBE PROGRAM REQUIREMENTS:

- a. Goal Assignment:** In connection with performance of this RFP, Proposer shall fully comply with VTA policy and procedures pertaining to utilization of SBE firms. A **4.65%** SBE contract specific participation goal has been established by the Office of Business Diversity Programs (“OBDP”) as stated in this RFP. Any certified Disadvantaged Business Enterprise (“DBE”) firm is eligible to participate towards the SBE participation goal. SBE firms must be certified or accepted as certified by VTA’s OBDP.

Listings for SBE and DBE firms are:

VTA SBE Database:

- <http://www.VTA.org/about-us/doing-business-with-VTA-search-for-sbes>

California UCP DBE Database:

- http://www.dot.ca.gov/hq/bep/find_certified.htm.

- b. Contractor Registration:** All SBE DBE and MWBE firms listed on Form 5, Listing of MWBE Prime and Subcontractors and Form 6, Listing of SBE Prime and Subcontractors, must be certified by VTA’s OBDP, the California Unified Certification Program (“CUCP”), and or accepted as certified by OBDP at the time of the Proposal due date to be counted toward the contract SBE goal. Proposers must comply with VTA's SBE Program Policy and Requirements on utilization of SBE.
- a.** A Proposer who fails to achieve the SBE participation goal and who fails to demonstrate sufficient good faith efforts to meet such goal shall be deemed “non-responsive” and therefore ineligible for award of the Contract, see Good Faith Effort Guidelines, Section C.
- b.** Form 5, SBE Listing of Prime and Subcontractors, Form 6, SBE Designation of Prime and Subcontractors, and other documentation in compliance with SBE Program Policy and Requirements must be submitted at time of Proposal submittal.
- c.** It is the Proposer’s sole responsibility for verifying subcontractor certification as a SBE or DBE to VTA.



2. GOOD FAITH EFFORTS GUIDELINES

- a.** Attendance at Pre-Bid/Pre-Proposal Meeting: Attendance at pre-Proposal conference, if held by VTA.
- b.** Identification of scope of work for subcontracts in order to meet the project goal: Selecting portions of the work that can be subcontracted to SBEs in order to increase the likelihood that the overall SBE goal will be achieved. This includes where appropriate, breaking out contract work items into economically feasible units to facilitate SBE utilization.
- c.** Advertisement of subcontracting opportunities: Advertisement in trade association publications and disadvantaged/minority and woman owned business focused media. Advertisements must identify specific subcontracting opportunities being solicited, project name and location, proposer contact person including name, address, phone, fax, and email, and Proposal solicitation submittal due date. Advertisements should appear a minimum of ten (10) days prior to Proposal due date.
- d.** Written Requests for Bids/Proposals: Provision of written notices to the maximum number of SBE firms to solicit interest for each subcontracting area identified sufficient to meet the established goal. Notices should be issued at least ten (10) days prior to Proposal due date.
- e.** Solicitation Follow-Up: Subsequent efforts to solicit SBE and DBE within all available subcontracting areas. The follow-up solicitation should occur within a reasonable time of the initial solicitation, in order to allow the Proposer to solicit additional SBE firms and identify additional subcontracting items to draw greater interest and sub-Proposals.
- f.** Negotiation in Good Faith: Negotiating in good faith with interested SBE to facilitate SBE utilization. Utilize a sound basis for selection and/or rejection of SBE Proposals.
- g.** Performance of Other Bidders/Proposers in meeting the SBE Goal: In determining where the Proposer has made adequate efforts to meet the SBE, VTA will take into account the performance of other proposers in meeting the established contract-specific goal requirements.
- h.** Provision of assistance to SBEs to obtain bonding, lines of credit and/or insurance: Provision of assistance to interested SBE firms in obtaining bonding, lines of credit, and/or insurance as required by the Proposer.



- i. Utilization of community outreach services: Utilization of outreach services within the SBE community, including Contractor groups, local, State and federal SBE and DBE offices and other organizations that provide assistance in the recruitment and placement of SBE firms.

C. FRAUDS AND FRONTS: Contactors are cautioned against knowingly and willfully using “fronts” to meet the SBE goal of the Contract. The use of “fronts” or “pass through” subcontracts to non-disadvantaged firms constitutes a criminal violation.

VI. INSURANCE AND INDEMNIFICATION REQUIREMENTS: Contractor shall adhere to the insurance requirements set forth in Exhibit A. Proposer’s attention is directed to the insurance requirements in the exhibit. It is highly recommended that Proposers confer with their insurance carriers or brokers in advance of Proposal submission to determine the availability of insurance certificates and endorsements that will be required for the Contract awarded through this RFP.

Proposer’s attention is also directed to the indemnification and defense of claims obligations set forth in Exhibit A8.

VII. PROTESTS

A. SOLICITATION PHASE: Prior to the closing date for submittal of Proposal, Proposer may submit to VTA protests regarding the procurement process, or alleged improprieties in specifications, or alleged restrictive specifications. Any such protests must be filed no later than ten (10) working days prior to the scheduled closing date. If necessary, the closing date of this solicitation may be extended pending a resolution of the protest.

B. PRE-AWARD: Protests dealing with alleged improprieties in the procurement or the procurement process that can only be apparent after the closing date for receipt of Proposals must be filed within five (5) working days after issuance of the Notice of Recommended Award. Protests will contain a statement of the grounds for protests and supporting documentation. Protestor will be notified of VTA’s final decision prior to issuance of award.

Protestors shall have an opportunity to appear and be heard before the agency prior to the opening of Proposals in the case of protests based on the content of the request for Proposals or prior to final award in the case of protests based on other grounds. Proposer’s requests and protests shall be **in writing only** and be addressed to:

Santa Clara Valley Transportation Authority
Attn: Thor Vue, Chief Procurement Officer
Procurement, Contracts & Materials Management
3331 North First Street, Building A
San Jose, California 95134



The full text of VTA's Policy No. 36 may be obtained at <http://www.vta.org/about-us/doing-business-with-vta-policies>. Failure to comply with the above protest procedures will render a protest untimely and/or inadequate and shall result in its rejection.

VIII. SCOPE OF SERVICES:

A. Background Information

This RFP is for Engineering Services and PID for this Project. The Project includes multiple phases of design and engineering work. On March 19, 2019 the Town of Los Gatos Council approved and supported the VTA 2016 Measure B project to commence alternatives study and initiate project development for improvements along SR 17 within the City limits.

The SR 17 Corridor Congestion Relief Project under this RFP is the project of interest, both to the VTA and stakeholders, including Caltrans and City, to improve traffic operations and relieve congestion on SR 17 between SR 17/SR 85 interchange and SR 17/SR 9 interchange in the Town of Los Gatos.

B. Proposed Project

The Project's study limits are approximately between SR 17/ SR 85 interchange and SR 17/SR 9 interchange in the Town of Los Gatos. The proposed Project is shown in the Location Map - **Appendix A1**. Conceptual Drawings are also included in **Appendix A2**.

The Project's improvements to be studied under this RFP may include, but not be limited to, constructing auxiliary lanes from Lark Avenue to the SR17/SR 9 interchange, adding travel lanes on SR 17, and modifying the existing on-ramps and off-ramps to improve freeway mainline operations, local traffic circulation, bicycle and pedestrian access, and reduce traffic cut-through City streets. More recent conditions, including land uses and traffic patterns may lead to new considerations for possible improvements, but those proposed improvements serve as a good Proposal starting point.

C. Project Elements

The following provides more information on the focus of this RFP, which is to provide Project Alternatives Analysis leading to the completion of PID. These project scope elements are required for the PID. This list is considered to be representative, but not exhaustive, of the typical project elements for this Project.

Project Alternatives

Contractor will investigate and provide up to three (3) Build Alternatives and a No-build. Proposed Build Alternatives will consist of, but are not limited to, alternatives to achieve



the most cost-effective solution in providing better traffic operations, optimizing use of existing right-of-way, and best fit for the land use of the surrounding area. The alternatives will also: (i) consider an evaluation of bicycle and pedestrian access that follows the latest “Complete Streets” policy and guideline; (ii) develop or improve bicycle and pedestrian facilities and transit at the SR 17/ SR 9 interchange, and possibly surrounding areas; and (iii) provide better connections to local roads and planned developments in the area. See **Appendix B** for the 2009 VTA’s adopted Multi-Modal Design Practices and Principles. **Appendix C** is the VTA Complete Streets Resolution and Policy approved in 2017. Contractor will be required to assist VTA to comply with the requirements of reporting as outlined in the Measure B Complete Streets Reporting Requirements in **Appendix D**. Contractor will prepare preliminary geometrics for the proposed interchanges improvements using current available base mapping either from VTA, Caltrans, and/or City. Contractor will analyze the alternatives to quantitatively compare cost, level of delay reduction, traffic operations, safety, design exceptions, environmental impacts, right-of-way and utility relocation requirements. Contractor will present the findings to VTA, Caltrans, City, and other stakeholders for review and to reach consensus on the Project alternatives and scope. VTA anticipates that this task will be an iterative process.

D. Work to be Performed

Contractor will provide services for the Project, including all fieldwork, investigation, special studies, and preparation of contract documents for completing the Alternatives Analysis and the PID.

Contractor will perform all services in accordance with the standards outlined below:

APPLICABLE STANDARDS

The documents, reports, plans, specifications and estimates will be prepared in accordance with Caltrans' regulations, policies, procedures, manuals and standards, including compliance with Federal Highway Administration (“FHWA”) requirements. The standards described below are not all-inclusive, but are intended only to illustrate types of sources.

- a. Roadway design must be in accordance with the latest editions, if applicable, of the Caltrans Highway Design Manual and the California Manual on Uniform Traffic Control Devices (“CA MUTCD”).
- b. Plans must be prepared in conformance with the latest editions of the Caltrans Plans Preparation Manual and the Caltrans CADD User’s Manual.



- c. All field and laboratory testing for geotechnical investigations must be performed and the Materials Report will be prepared in conformance with current editions of the Guidelines for Geotechnical Design Reports.
- d. Bridge plans, specifications, estimate and calculations must be in accordance with the Caltrans Division of Structures (“DOS”) Bridge Design Details Manual, Bridge Design Aids Manual, Bridge Memos to Designers, Bridge Design Specifications, Improved Seismic Design Criteria for California Bridges, and the latest Seismic Design Criteria (“SDC”).
- e. Design of improvements which impact existing or proposed underground utilities, must conform to Caltrans’ Policy on High and Low Risk Underground Facilities within Highway Rights-of-Way.
- f. All right-of-way maps must conform to the current Caltrans’ Right-of-way Manual. Design of the Project will be performed in accordance with Caltrans standards and practices. Any exceptions to applicable design standards must be approved by Caltrans via the process outlined in Caltrans Highway Design Manual and applicable memorandums and design bulletins published by Caltrans.
- g. Submittals must be made in the number and type specified in the current edition of the Caltrans’ publication entitled Guide for the Submittal of Plans, Specifications and Estimates, and, where applicable, Externally Financed Projects Branch (“EFPB”) Information and Procedures Guide of the Division of Structures, unless noted otherwise in the Contract documents.
- h. All designs for the constructed improvements within the City right-of-way must conform to the City Standard Plans, Guidelines, Policy and Procedure, and City Ordinances.
- i. All constructed improvements will be required to conform to Complete Streets best practices in order to improve bicycle, pedestrian, and transit elements of the system. Design of bicycle improvements must comply with most recent version of VTA Bicycle Technical Guidelines (“BTG”).

Contractor will complete the following PID phase tasks:

- TASK 1. Project Management
- TASK 2. Alternatives Analysis



TASK 3. Project Initiation Document

Task 1: Project Management

Contractor, under this PID phase of this Contract, will provide Project management for each task for the identified duration of the Contract schedule as specified in **Appendix E** – Preliminary Milestone Schedule. Contractor’s project management activities will consist of administration, coordination, supervision, project controls, attending meetings and quality assurance and control as stated in the following:

1.1 Project Administration/Project Coordination

Contractor will perform the following Project administrative duties:

- Prepare and submit monthly progress reports that will identify work performed on each task in the preceding month. Percent complete compared to percentages billed for each task will be shown.
- Prepare a monthly summary of total charges made to each task. This summary will present the Contract budget for each task, reallocated budget amounts, prior billing amount, current billing, total billed to date, and a total percent billed to date. An Engineering Progress and Performance Report (“EPPR”) or equivalent earned value analysis documentation will be attached as back-up sheets, which will include Contractor’s charges to each sub-task with an estimated percent complete of work.
- Provide a summary table indicating the amount of firm participation each month based upon current billing and total billed to date.
- Provide a monthly invoice by task that will present charges by staff member at agreed to hourly rates, expense charges, and subcontractor charges. Support documentation for Contractor’s and subcontractors’ direct expenses and other charges will be attached.
- Prepare and submit quarterly SBE Utilization reports and Final SBE Utilization report.
- Prepare additional design services Proposal, as requested by VTA.

Contractor will not perform any extra work without prior written authorization from VTA.

Contractor will coordinate with other agencies, as required by VTA, for project development. Contractor will coordinate planning and preliminary design effort with team members, including, but not limited to the following:

- VTA and its consultants



- Caltrans - all offices, departments, divisions and groups as directed by Caltrans Project Development, including Caltrans Division of Structure (“DOS”)
- Santa Clara County Roads and Airport Department
- Santa Clara Valley Water District (“SCVWD”)
- Federal Highway Administration
- Town of Los Gatos
- Private property owners
- Affected utility companies
- Public utility commissions

Contractor will coordinate with other projects that are under development and/or construction by VTA, Caltrans, and City, as required for project development. Contractor will coordinate planning and preliminary design effort with team members of other projects, including, but not limited to the following:

- VTA’s SR 85 Express Lanes Project, if required.
- City’s projects

1.2 Project Management and Control

As part of its project management and control activities, Contractor will perform the following project management and control activities:

- Supervise, coordinate, and monitor activities and product development for conformance with Caltrans, VTA, County, City, and FHWA standards and policies.
- Maintain compliance with other codes and standards as acceptable to Caltrans and City, and as approved by VTA.
- Prior to the start of any work, Contractor will interface with Caltrans and City staff to assure format consistency of all deliverable(s). Any deviation from the agreed-upon format will be Contractor’s responsibility, and no compensation will be permitted for such deviations.
- Coordinate in-house design staff and subcontractors to assure free and timely flow of information for each task activity.
- Maintain Project files in accordance with Caltrans' Uniform Filing System.
- Prepare a detailed Critical Path Method (“CPM”) schedule to reflect plan and progress of work and serve as a master schedule for the Project. Contractor will submit an updated electronic file schedule to VTA on a monthly basis to include key milestones and work completed.



- Prepare and maintain an Action Item Log.
- Prepare and maintain Data Request Log.
- Prepare and maintain a Submittals Registry Log, which will include scheduled and actual submittal dates, review periods, and receipt of comments.
- Prepare Risk Register and Risk Management Plan in accordance with Caltrans' guidelines and requirements.
- If required, Contractor will assist VTA with the preparation of any other required documentation such as cooperative activities or activities such as public outreach support that are needed for the Project.
- Prepare and maintain a Project Management Plan ("PMP") to define how the Project is to be executed, monitored and controlled.

1.3 Meeting Preparation and Attendance

Contractor will, under VTA direction:

- Prepare for and attend monthly Project Development Team ("PDT") meetings. Contractor will arrange meetings, provide discussion material, and prepare agenda and minutes.
- If requested by VTA, conduct bi-weekly project coordination conference calls with VTA to ensure timely communication with VTA on critical issues.
- Attend as-needed coordination meetings with VTA, Caltrans, City, and other agencies to resolve technical issues.
- Prepare and submit all meeting agendas to VTA one (1) week prior to the relevant meeting date. Prepare and distribute draft meeting minutes for VTA review within ten (10) working days after each meeting and allow two (2) weeks for receipt of any comments. Prepare and distribute final meeting minutes to the PDT incorporating relevant comments received on draft meeting minutes.
- Coordinate design workshop meetings with VTA, Caltrans, City, and other agencies to resolve outstanding issues.
- Prepare for and attend study session, stakeholder meetings, and City Council Presentations.



1.4 Develop & Maintain a Quality Management Plan (“QMP”) and Procedures

Contractor will establish and maintain a QMP and Procedures that meet VTA’s Quality Assurance (“VTA QA”) Program requirements, and conduct independent quality review of reports, plans, specifications, calculations, estimate and other required deliverables.

Contractor will:

- Within twenty (20) calendar days following execution of this Contract, update and submit a QMP for the Project for VTA’s approval, and within such QMP Contractor will propose to implement the requirements of the Contract.
- Assure promulgation of and strict adherence to the VTA approved QMP and Procedures in the conduct of the work.
- Contractor must require that its subcontractors subscribe to the Contractor’s approved QMP. Any waiver of this requirement must be approved by VTA QA Manager. If VTA grants a waiver of this requirement, the proposed substitute QMP must be approved and certified by the Contractor as meeting VTA’s QA Program requirements.
- Convene and document Quality Reviews, and make findings and corrective actions available for VTA’s review.

Contractor’s approach to quality will meet or exceed industry standards and practices and those of VTA’s QA Program requirements. Contractor will establish and maintain a QMP as part of the work plan. Contractor’s QMP will establish a process to ensure:

- 1) Quality control procedures strictly adhere to the approved Contractor’s QMP, and such procedures are properly documented throughout the entire course of the work.
- 2) Independent checking (check, back-check, and verification) of calculations, plans, specifications, and estimates.
- 3) Distribution of all Project correspondence and memoranda to appropriate personnel.
- 4) Those personnel responsible for assuring quality are independent of those having direct responsibility for the work being performed.
- 5) The Contractor’s Discipline/Task Managers approve and certify that required intra-disciplinary review (refers to internal (independent check) process within each discipline) and quality control activities are satisfactorily performed prior to submittal to Contractor.



- 6) The Contractor's Project Manager approves and certifies that required inter-disciplinary review (refers to external review process between disciplines that are conducted to ensure proper interface/continuity and to prevent conflicts among various disciplines) and above requirements are satisfactorily performed prior to submittal to VTA or other approving agencies (Caltrans and City).
- 7) The Contractor's Quality Assurance/Quality Control Manager conducts and documents random audits of Contractor's and subcontractors' work to check and certify compliance with the approved QMP.

The QMP will also establish a means to (i) evaluate quality of the interface/integration and (ii) confirm that conflicts do not exist in areas where various items of work are shown on several discipline drawings.

Contractor will verify that all design is accomplished in accordance with appropriate design criteria and required processes.

Contractor will conduct and document periodic audits of the project team (Contractor and subcontractors), and participate in VTA Quality Assurance Audits prior to submitting (i) Draft Project Study Report – Project Development Support (“PSR-PDS”), including all technical studies, and (ii) Final PSR-PDS submittal for conformance with Contract requirements, design criteria, constructability, and other Project quality standards.

Task 1 Deliverables

- Detailed CPM design schedule, with monthly updates
- Meeting agendas and draft/final meeting minutes
- Action Item Log
- Data Request Log
- Submittals Registry Log
- Invoices and progress reports including EPPR
- SBE Quarterly and Final Utilization Reports
- Quality Management Plan
- Risk Management Plan and Risk Registry
- Project Management Plan

Task 2: Alternatives Analysis

Contractor will investigate and provide three (3) innovative Build Alternatives and a No-build. The alternatives will consist of, but are not limited to, alternatives to achieve the most cost-effective solution in providing better traffic operations, optimizing use of existing right-of-way, and best fit for the land use of the surrounding area. The



alternatives will also consider an evaluation of bicycle and pedestrian access that follows the latest “Complete Streets” policy and guideline, will accommodate other modes of transportation including transit being planned for the surrounding areas, and provide better connections to local roads and planned developments in the area. See **Appendix B, C, and D** for more information on Complete Streets. Contractor will refine preliminary geometrics for the proposed improvements using current available base mapping. Contractor will analyze the alternatives to quantitatively compare cost, level of delay reduction, traffic operations, safety, design exceptions, environmental impacts, right-of-way and utility relocation requirements. Contractor will present the findings to VTA, City, and other stakeholders for review and to reach consensus on the project alternatives and scope. This task is anticipated to be an iterative process.

Contractor will also determine the right-of-way, utilities easements, order of magnitude cost estimates, and permit requirements for each of the alternatives. Contractor will also prepare required reports to document various studies and design elements for value engineering opportunities, addressing those elements where it may appear that significant cost savings or other advantages can be realized. Deviations will be reconciled with the current VTA budget. Contractor’s activities and submittals will include, but are not limited to, the following:

Preliminary Plans/Exhibits and Summary Memorandum

Contractor will prepare, coordinate with Caltrans for resolution meetings, and submit preliminary plans/exhibits for all the studied alternatives.

- 2.1.1 Preliminary Plans/Exhibits - Plans/Exhibits will include basic layout information and identify all major proposed features including non-standard features.
- 2.1.2 Alternative Analysis Summary Memorandum - Memorandum will include description of each alternative studied and its cost estimate.

Task 2 Deliverables

- Preliminary Plans/Exhibits and Alternative Analysis Summary Memorandum

Task 3: Project Initiation Document (“PID”)

Task 3 will consist of developing necessary documents to support PID. Contractor will prepare PID documents in accordance with Caltrans’ latest Project Development Procedures Manual (“PDPM”). Contractor will prepare a streamlined PSR-PDS to document the need for the project, summarize key points from the Preliminary Environmental Analysis Report (“PEAR”), and summarize the scope, cost and overall impacts to enable an informed decision by the Project stakeholders to proceed toward project approval. The PID will contain Build Alternatives developed from Task 2 -



Alternative Analysis and a No-build alternative. The approved PSR-PDS will allow the Project to move into the PA/ED phase in future. The PID activities will consist of, but are not limited to, the following:

- Data collection and review of existing data and reports
- Site visit and field review to verify project features
- Develop design alternatives
- Prepare preliminary geometrics
- Identify and document non-standard design features
- Prepare Design Checklists (DIB78 and DIB82) as required
- Prepare Intersection Control Evaluation (“ICE”)
- Prepare Traffic Engineering Performance Assessment
- Prepare Preliminary Environmental Analysis Report
- Prepare Preliminary Design Reports
- Prepare Storm Water Data Report (PID Level)
- Prepare preliminary right-of-way requirements and utility matrices
- Prepare PID level cost estimate
- Prepare Draft and Final PSR-PDS including supporting documentation

Task 3 Deliverables

- Design Checklist (DIB78 and DIB82), as required
- Intersection Control Evaluation
- Traffic Engineering Performance Assessment
- Preliminary Environmental Analysis Report
- Preliminary Design Reports
- Storm Water Data Report (PID Level)
- Project Study Report – Project Development Support

It is VTA’s intent that the selected Proposer providing services for the Project may be awarded Additional Services by Contract amendments, which could include PA/ED, PS&E, DSDC and Project close-out.

Subsequent tasks and scope of work of the PA/ED, PS&E, and DSDC for the Project are anticipated to be conducted based on the developed and approved PID.

E. Project Assumptions

For the purpose of developing the Alternatives Analysis and PID, the following assumptions were made:

The Alternatives Analysis of Build Alternatives can be new concepts or expanded from the proposed improvements as stated in Section B – Proposed Project. An iterative



design process will be required in order to develop the optimum Build Alternative that best meets the geometric, operations, and safety requirements.

- The Project shall be administered in two phases. Phase 1 includes services to complete the Alternatives Analysis and PID phase. Phase 2 is anticipated to include the services to complete PA/ED, final design, and design support services during construction.
- Existing right-of-way will be shown on preliminary plans based on available right-of-way maps and supplemented by field surveys of right-of-way, as appropriate, in future phases of the Project.
- New topographic mapping will not be required for PID phase.
- Project meetings will be held at the VTA River Oaks office. Contractor will coordinate with VTA and prepare the agenda and minutes of monthly meetings. Other topic specific meetings may occur at Caltrans or City offices.

F. Work Schedule

Proposers will include separate detailed schedules for completing the major subtasks specified in the Scope of Work and an overall proposed duration for completing PID for the Project in the Proposals. Proposers will prepare schedules included in the Proposals in Gantt chart format (e.g. Microsoft Project or Primavera). A Preliminary Project Milestone Schedule can be seen in **Appendix E**.

G. Optional Additional Services

The following descriptions are provided to outline the general scope of potential Additional Services which may be requested on the resulting contract. These Additional Services are considered optional and Proposer's are not to include cost/performance of this work in their Proposals, however in order to qualify for the Additional Services in the resulting contract, Proposer's must contemplate the possibility of this work and inform VTA if they are qualified and capable of providing such services.

General Descriptions: Proposer's are required to have experience with Caltrans-related highway projects and the following provides Proposers with a general description of the Additional Services is being provided to Proposer's for the purpose of preparing Proposals which may include this work.



THE FOLLOWING TASKS ARE NOT REQUIRED IN THIS RFP. VTA RESERVES THE RIGHT TO AWARD THIS WORK AT A LATER DATE.

Task 4 - Project Approval/Environmental Document (PA/ED)

Project Approval:

The Project Report (PR) shall be in accordance with Caltrans guidelines. The PR activities and deliverables shall consist of, but are not limited to, the following:

- Preliminary Right-of-Way Requirements
- Preliminary Utility Coordination/Encroachment Policy Variance
- Preliminary Geometrics
- Fact Sheets
- Preliminary Stage Construction / Traffic Handling
- Transportation Management Plan
- Storm Water Data Report (PA/ED Level)
- Hydro-Modification and Drainage Report
- Location Hydraulics Study
- Preliminary Geotechnical Report
- Preliminary Construction Cost Estimate
- Preliminary Construction Schedule
- Highway Plan Sheets
- Landscape Concept Plans
- Value Analysis Support
- Life Cycle Cost Analysis
- Draft and Final PR

Environmental Document:

The Project shall be environmentally cleared under California Environmental Quality Act (“CEQA”)/National Environmental Policy Act (“NEPA”). The environmental document shall be prepared for execution by Caltrans after approval of the technical studies in accordance with the current guidance and annotated outline templates posted by Caltrans on the Standard Environmental Reference (“SER”) website. Project impacts to environmental resources shall be analyzed and technical studies shall be prepared, as needed. The environmental document activities and deliverables shall consist of, but are not limited to, the following:

- Draft and Final Environmental Document
- Draft and Final Technical Studies
 - Traffic Forecast Report
 - Traffic Operations Analysis Report (“TOAR”)



- Natural Environment Study (“NES”)
- Initial Site Assessment (“ISA”)
- Water Quality Study
- Archaeological Survey Report (“ASR”)
- Extended Phase I Investigation and Report (“XPI”), if appropriate
- Historical Resources Evaluation Report (“HRER”), if appropriate
- Historic Properties Survey Report (“HPSR”)
- Noise Study Report
- Air Quality Analysis and Report, including air quality conformity, PM2.5, MSAT, and climate change
- Visual and Aesthetics review memo
- Section 4(f) analysis
- Paleontological Identification Report (“PIR”)
- Open House/Community Meetings

Task 5 - Final Design

Final design services include the preparation of the Plans, Specifications and Estimate (PS&E) deliverables. This task is comprised of preparing PS&E, reports and other deliverables for the following submittals:

- 35% PS&E
- 65% PS&E
- 95% PS&E
- 100% PS&E
- Final Encroachment Permit
- Construction Bid Documents

Task 6 – Design Support During Construction (DSDC)

Design support services during construction includes engineering services to support the construction phase of the Project. This task is comprised of, but not limited to, the following key tasks:

- Clarification of existing design
- Responses to contractor questions about the plans and specifications
- Review of shop drawings
- Review of contractor technical submittals for conformance with the plans and specifications



IX. ADMINISTRATIVE SUBMITTALS

Proposer must submit all forms as part of the Proposal. **Forms No. 3, 4, 5, 6 and 10 must be printed and submitted in a separate and sealed envelope** as part of the Proposal.

FORM 1. GENERAL INFORMATION

FORM 2. LEVINE ACT STATEMENT

FORM 3. EXCEPTIONS TO THE CONTRACT

FORM 4. COST PROPOSAL FORM

FORM 5. LISTING OF SBE PRIME AND SUBCONTRACTORS

FORM 6. DESIGNATION OF SUBCONTRACTORS AND SUPPLIERS

FORM 7. LOCAL FIRM CERTIFICATION

FORM 8. KEY STAFF AVAILABILITY

FORM 9. RESOURCE PLAN (Hours)

FORM 10. RESOURCE PLAN (Dollars)



FORM 1. GENERAL INFORMATION

Instructions: Please complete this form and include in your Proposal. On a separate page, list all subcontractors; include company name, address, phone number and type of service.

Company Name			
Street Address			
City/State/Zip			
Phone No.		DIR No.	
DUNS No.		CAGE No.*	
Federal Taxpayer ID No.		NAICS Codes	

*Commercial and Government Entity (www.sam.gov)

POINT(S) OF CONTACT

<u>Primary</u>	
Name/Title	_____
Phone No.	_____
Cell Phone No.	_____
E-mail	_____

<u>Alternate</u>	
Name/Title	_____
Phone No.	_____
Cell Phone No.	_____
E-mail	_____

AUTHORIZED SIGNATORIES:

<u>Primary</u>	
Name/Title	_____
Signature	_____
E-mail	_____

<u>Alternate</u>	
Name/Title	_____
Signature	_____
E-mail	_____



FORM 2. LEVINE ACT STATEMENT

Prime Proposer and Subcontractors must submit a signed Levine Act Statement

California Government Code § 84308, commonly referred to as the "Levine Act," precludes an elected or appointed officer, or alternate, of a local government agency from participating in the award of a contract if he or she receives any contributions totaling more than \$250 in the twelve (12) months preceding the pendency of the contract award, and for three (3) months following the final decision, from the person or company awarded the contract. This prohibition applies to contributions to the officer, or received by the officer on behalf of any other officer, or on behalf of any candidate for elective office or on behalf of any committee in federal, state or local elections.

VTA's [Board members](#) and their alternates as of the date of this RFP are as follows:

Name	Title	Represents
Teresa O'Neill	Chairperson	City of Santa Clara
Cindy Chavez	Vice Chairperson	County of Santa Clara
Magdalena Carrasco	VTA Board Member	City of San Jose
Charles "Chappie" Jones	VTA Board Member	City of San Jose
Lan Diep	VTA Board Member	City of San Jose
Sam Liccardo	VTA Board Member	City of San Jose
Raul Peralez	VTA Board Member	City of San Jose
Devora "Dev" Davis	VTA Alternate Board Member	City of San Jose
John McAlister	VTA Board Member	City of Mountain View
Adrian Fine	VTA Alternate Board Member	City of Palo Alto
Rob Rennie	VTA Board Member	Town of Los Gatos
Howard Miller	VTA Alternate Board Member	City of Saratoga
Larry Carr	VTA Board Member	City of Morgan Hill
Marie Blankley	VTA Alternate Board Member	City of Gilroy
Rich Tran	VTA Board Member	City of Milpitas
Glenn Hendricks	VTA Alternate Board Member	City of Sunnyvale
Dave Cortese	VTA Board Member	County of Santa Clara
Susan Ellenberg	VTA Alternate Board Member	County of Santa Clara
Jeannie Bruins	Ex-Officio Member	Metropolitan Transportation Commission

1. Have you or your company, or any agent on behalf of you or your company, made any contributions of more than \$250 to any VTA Board member or alternate in the twelve (12) months preceding the date of the issuance of this RFP?

No ___ Yes ___ Please identify the Board member or alternate: _____

2. Do you or your company, or any agency on behalf of you or your company, anticipate or plan to make any contributions of more than \$250 to any VTA Board member or alternate in the three months following the award of the contract?

No ___ Yes ___ Please identify the Board member or alternate: _____

Answering yes to either of the two questions above does not preclude VTA from awarding a contract to your firm. It does, however, preclude the identified Board member or alternate from participating in the contract award process for this contract.

Signature: Firm Name: Date:



FORM 3. EXCEPTIONS TO THE CONTRACT

SUBMIT IN A SEPARATE SEALED ENVELOPE

This form shall include any exceptions the Proposer takes to the Contract, which includes the “Compensation, Invoicing and Payment” and “Indemnity and Defense of Claims” and “Insurance Requirements.” If Proposer takes no exceptions, check the field “Proposer takes no exceptions” below.

All exceptions to the Contract terms and conditions must be stated on this form and submitted with the Proposal. Proposer’s failure to take timely exception to VTA’s terms and conditions expressly waives Proposer’s right to challenge or request modification of such terms and conditions and is conclusive evidence of Proposer’s assent thereto.

Proposer takes exception to the following:

Section Reference		Disposition (For VTA Use Only)
*Insert proposed changes here		
Section Reference		Disposition (For VTA Use Only)
*Insert proposed changes here		

*Make copies of this page if necessary

“Proposer takes no exceptions”

Firm Name:

Name

Title

Signature

Date



FORM 4. A&E SERVICES COST PROPOSAL FORM

SUBMIT IN A SEPARATE SEALED ENVELOPE

Proposer Name:

DETAIL DESCRIPTION OF COST ELEMENTS

A. DIRECT LABOR				
Specify Classification/Title	Proposed Employee Name	ESTIMATED HOURS	RATE/HOUR	ESTIMATED COST (\$)
TOTAL DIRECT LABOR COST				
B. INDIRECT COST RATE		TYPE	RATE (%)	X Total DLC=
ICR subject to approval and annual recertification.		Fringe and Benefits		
		Overhead		
		General and Administrative		
TOTAL INDIRECT COSTS				
1. TOTAL LABOR COST (A+B)				
2. FIXED FEE	%	X Total Labor Cost		
=				
3. TOTAL OF SUBCONTRACTOR COSTS (Attach SubContractor Proposals. Must be in same format)				
4. TOTAL OF OTHER DIRECT COSTS (Attach Listing. Must be allocable and approved in advance)				
TOTAL COST PROPOSAL (SUM 1-4)				

NOTE: FSLA exempt employees must be marked with an asterisk (*) and employees subject to prevailing wages must be marked with two asterisks (**).

Firm Name:

Name

Title

Signature

Date



**FORM 6. DESIGNATION OF SUBCONTRACTORS AND SUPPLIERS
FOR DATA COLLECTION REQUIREMENTS**

SUBMIT IN A SEPARATE SEALED ENVELOPE

Proposer: _____

Proposer shall completely fill in the form below for each proposed subcontract for all subcontractors, suppliers of materials, subContractors. **Include all firms**, regardless of ethnicity, gender or SBE or DBE status. Some information, such as ethnicity and gender is for information purposes only.

This form is to be completed and submitted separately with your Cost Proposal.

Firm Name	City and State	Portion of Work or Proposed Item	Ethnicity*	Gender+	Estimated Dollar Amount of Subcontract

*A=Asian	*AI= Asian Indian	*B=Black	*C=Caucasian
*H=Hispanic	*NA=Native American	*O=Other	

+F=Female	+M=Male
-----------	---------

Total Proposed Amount: \$ _____

Amount to be subcontracted: \$ _____

Percent to be subcontracted: _____ %



FORM 7. LOCAL FIRM CERTIFICATION

1. The Proposer hereby certifies that it is ___ / is not ___ a local firm. A local firm is a firm that currently has its main office or a branch office with meaningful production capability located within Santa Clara County, or a firm that, upon award of the contract by VTA, will establish such a local office.

If a local firm, specify local address: _____

2. The Proposer hereby certifies that _____% of the dollar value of services to be rendered will be performed by the following local firms (including Proposer, if applicable):

Name of Proposer or Subcontractor	% of Dollar Value
_____	_____
_____	_____
_____	_____
_____	_____

3. The above-listed subcontractors are local firms as defined in paragraph 1 above, and are located at the following local addresses:

Subcontractor Name	Address
_____	_____
_____	_____
_____	_____
_____	_____

Firm Name: _____

Name _____ Title _____

Signature _____ Date _____



FORM 8. KEY STAFF AVAILABILITY FORM

Key Staff	Location	Company Name	Role	Current Projects (*)	Current Workload % (*)	Availability	Estimated Person Hours
				1.			
				2.			
				3.			
				1.			
				2.			
				3.			
				1.			
				2.			
				3.			
				1.			
				2.			
				3.			
				1.			
				2.			
				3.			
				1.			
				2.			
				3.			
				1.			
				2.			
				3.			

Note:

* List all projects and current workload for each project. Add additional rows as needed. File available for download on the VTA solicitations website.



FORM 9. RESOURCE PLAN (Hours)

EXCEL FILE TO BE DOWNLOADED FROM VTA WEBSITE



FORM 10. RESOURCE PLAN (Dollars)

SUBMIT IN A SEPARATELY SEALED ENVELOPE

EXCEL FILE TO BE DOWNLOADED FROM VTA WEBSITE



X. EXHIBITS

EXHIBIT A SAMPLE CONTRACT

EXHIBIT A1 SCOPE OF SERVICES

EXHIBIT A2 COMPENSATION, INVOICING and PAYMENT

EXHIBIT A3 RATE SCHEDULE

EXHIBIT A4 APPROVED SUBCONTRACTORS

EXHIBIT A5 INSURANCE REQUIREMENTS

EXHIBIT A6 SMALL BUSINESS ENTERPRISES (SBE) REQUIREMENT

EXHIBIT A7 PREVAILING WAGE REQUIREMENTS

EXHIBIT A8 DESIGN PROFESSIONAL SERVICES SPECIAL TERMS AND
CONDITIONS



EXHIBIT A CONTRACT
BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
CONTNAME
FOR
ENGINEERING SERVICES FOR SR 17 CORRIDOR CONGESTION RELIEF PROJECT

CONTRACT NO. S19203

THIS CONTRACT for professional services (“Contract”) is entered into between the Santa Clara Valley Transportation Authority (“VTA”) and **Contname** (“Contractor”).

- A. SERVICES TO BE PERFORMED:** Contractor shall furnish all technical and professional labor, and materials to perform the services described in Exhibit [] (herein referred to as “Services”).
- B. TERM OF THIS CONTRACT:** The term of this Contract shall commence on the Effective Date (as defined in the signature block below) and continue through **December 31, 2022** (unless otherwise earlier terminated pursuant to the terms and conditions set forth herein).
- C. DAYS:** For purposes of this Contract, all references herein to “day” shall mean calendar day, unless specified otherwise. All references to “calendar day” shall mean any day, including Saturday, Sunday and all legal holidays. All references to “working day” or “business day” shall mean any business day, excluding Saturdays, Sundays and legal holidays.
- D. COMPENSATION:** Contractor shall be paid in accordance with Exhibit [] for the Services.
- Total compensation for the Services provided hereunder shall not exceed **\$xx,xxx.00**.

E. PERFORMANCE OF THE SERVICES:

1. Contractor represents that it is sufficiently experienced, properly qualified, registered, licensed, equipped, organized and financed to perform the Services.
2. Contractor shall perform the Services with the degree of skill and judgment normally exercised by firms performing services of a similar nature. In addition to other rights and remedies that VTA may have, VTA, at its option, may require Contractor, at Contractor’s expense, to re-perform any Services that fail to meet the above standards.

F. ASSIGNMENT AND SUBCONTRACTS:

1. Contractor shall not assign or transfer this Contract or any portion thereof without the prior written consent of VTA. Additionally, Contractor shall not subcontract any part of its



Services other than to those subcontractors that may be identified herein **or** in Exhibit []. Any assignment, transfer, change or subcontract in violation of this Contract shall be void.

2. Contractor shall be fully responsible and liable for the Services, products and actions of all subcontractors and suppliers of any tier, and shall include in each subcontract any provisions necessary to make all the terms and conditions of this Contract fully effective.

G. CHANGES: By written notice from VTA's Authorized Representative (as defined in Section L.1), VTA may, from time to time, order work suspension or make changes within the general scope of this Contract. If any such changes cause an increase or decrease in Contractor's cost to perform the Service or in the time required for its performance, Contractor shall promptly notify VTA thereof and assert its claim for adjustment within ten (10) days after the change is ordered, and an equitable adjustment shall be negotiated.

H. AUDIT AND RECORDS:

1. Contractor shall maintain, in accordance with generally accepted accounting principles and practices, complete books, accounts, records and data with respect to actual time devoted and costs incurred for the Services. Such documentation shall be supported by properly executed payrolls, invoices, contracts and vouchers evidencing in detail the nature and propriety of any charges. Such documentation shall be sufficient to allow a proper audit of the Services. All checks, payrolls, invoices, contracts and other accounting documents pertaining in whole or in part to the Services shall be clearly identified and readily accessible.
2. For the duration of this Contract, and for a period of three (3) years thereafter, VTA, its representatives and the state auditor shall have the right to examine and audit during Contractor's normal business hours the books, accounts, records, data and other relevant information to the extent required to verify the costs incurred hereunder where such costs are the basis for billings under this Contract.
3. Contractor shall report indirect costs in accordance with the cost principles contained in 48 CFR, Part 31, and follow the uniform administrative requirements set forth in 49 CFR, Part 18.
4. The provisions of this AUDIT AND RECORDS section shall be included in any subcontracts hereunder.

I. PROHIBITED INTERESTS:

1. **SOLICITATION:** Contractor warrants that it has not employed or retained any company or person, other than a bona fide employee working solely 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 working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award



or making of this Contract. For breach or violation of this warranty, VTA shall have the right to rescind this Contract without liability.

2. **INTEREST OF PUBLIC OFFICIALS:** No Board Member, officer or employee of the VTA during his or her tenure or for two (2) years thereafter shall have any interest, direct or indirect, in this Contract or the proceeds thereof.
3. **INTEREST OF THE CONTRACTOR:** The Contractor covenants that, presently, Contractor, its officers, directors or agents, have no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree (or create an appearance of conflict) with the performance of the Services. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be knowingly employed.

J. TERMINATION AND SUSPENSION:

1. VTA may, by giving at least ten (10) business days' written notice to Contractor, terminate this Contract, or suspend performance hereunder, in whole or in part at any time for VTA's convenience. Contractor shall be compensated (i) in accordance with the terms of this Contract for the Services satisfactorily performed prior to the effective date and time of termination or suspension, or (ii) the minimum dollar amount stated herein, whichever is applicable. Contractor shall have no right to recover lost profits on the balance of the Services.
2. VTA, by written notice given to Contractor, may declare default in Contractor's performance of any term of this Contract, specifying with particularity the basis for such default. Contractor shall deliver a response thereto in writing to VTA within two (2) business days of receipt of the notice, setting forth a reasonable Proposal to cure the default. If Contractor fails to deliver the foregoing response on time or fails to cure the default within ten (10) business days after receipt of the notice (or within such additional time the Parties may agree upon in writing), VTA may elect to terminate this Contract for cause by serving written notice thereof to Contractor.
3. In the event of such termination for cause, VTA shall be relieved of any obligation of further payment to Contractor, including its obligation to procure the minimum dollar amount stated herein (if any), and may complete the remainder of the Services by itself, or by using an alternative, third party contractor. The additional cost to VTA for completing the Services shall be deducted from any sum due to the Contractor and the balance, if any, shall be paid to the Contractor upon demand. The foregoing shall be in addition to any other legal or equitable remedies available to VTA.
4. If, after termination for failure to fulfill Contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the Parties shall be the same as if the termination had been issued for the convenience of VTA.



K. GENERAL PROVISIONS:

1. **OWNERSHIP OF DATA:** All drawings, specifications, reports and other data developed by Contractor, its assigned employees or subcontractors pursuant to this Contract shall become the property of VTA as prepared, whether delivered to VTA or not. Unless otherwise provided herein, all such data shall be delivered to VTA or its designee upon completion of this Contract or at such other times as VTA or its designee may request.

2. **CIVIL RIGHTS:**
 - a. **NONDISCRIMINATION:** During performance of this Contract, Contractor, its employees and subcontractors shall not unlawfully discriminate, harass, or allow harassment against any person because of race, religious creed, color, sex, gender, gender identity, gender expression, national origin, ancestry, physical disability (including HIV and AIDS), mental disability, medical condition (including cancer), genetic information, marital status, age (over 40), sexual orientation, or military and veteran status. In addition, Contractor and any subcontractor shall not unlawfully deny any of their employees family care leave or discriminate against such employees on the basis of having to use family care leave. Contractor shall ensure that the evaluation and treatment of its employees and applicants for employment are free of such discrimination and harassment.

 - b. **ADA ACCESSIBLE INFORMATION AND COMMUNICATIONS:** Any and all deliverables provided by Contractor to VTA pursuant to the Contract must be prepared and delivered in a format that is accessible to individuals with disabilities, as required by (i) the American with Disabilities Act of 1990 (ADA); (ii) 28 CFR Parts 35 and 36; (iii) 49 CFR Part 37; (iv) Section 504 of the Rehabilitation Act of 1973, as amended; and (v) California's Unruh Civil Rights Act.

3. **GOVERNING LAW:** The laws of the State of California will govern these terms and conditions, as well as any claim that might arise between Contractor and VTA, without regard to conflict of law provisions.

4. **FORUM SELECTION:** Any lawsuit or legal action arising from this Contract shall be commenced and prosecuted in the courts of Santa Clara County, California. Contractor agrees to submit to the personal jurisdiction of the courts located in Santa Clara County, California for the purpose of litigating all such claims.

5. **CONFIDENTIALITY AND DISCLOSURE:** Except as set forth in this paragraph, Contractor must not disclose to third parties any information, data, or materials that the Contractor obtains from VTA or otherwise learns of or is exposed to in the course of the performance of this Contract or information developed or obtained by Contractor in the performance of this Contract ("**Confidential Information**"). In addition, Contractor must not disclose or use any Confidential Information for any purpose other than the performance of the Services. Notwithstanding the foregoing, Contractor may disclose Confidential



Information to third parties or use such information for purposes other than performance of the Services if: (1) VTA provides express written consent for such use or disclosure; (2) the information is known to Contractor prior to obtaining such information from VTA or performing Services under this Contract; (3) the information is, at the time of disclosure by Contractor, then in the public domain; (4) the information is obtained by or from a third party who did not receive it, directly or indirectly, from VTA and who has no obligation of confidentiality with respect thereto. In addition, Contractor may disclose Confidential Information if required to do so by court order. However, upon receipt of an order requiring such disclosure, Contractor must inform VTA as soon as practicable in order to allow VTA to challenge such order if it determines that such challenge is appropriate. For purposes of this Section, “third parties” do not include those employees or authorized subcontractors engaged in the performance of the Services.

6. **NONWAIVER:** Failure of VTA to insist upon strict performance of any terms or conditions of this Contract or failure or delay in exercising any rights or remedies provided herein or by law or its failure to properly notify Contractor in the event of breach or its acceptance of or payment for any Services hereunder shall not release Contractor from the representations or obligations of this Contract and will not be deemed a waiver of any right of VTA to insist upon strict performance hereof or any of its rights or remedies hereunder.
7. **SEVERABILITY:** If any of the provisions of this Contract (or portions or applications thereof) are held to be unenforceable or invalid by any court of competent jurisdiction, VTA and Contractor shall negotiate an equitable adjustment in the provisions this Contract with a view toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof will not be affected thereby.
8. **INDEPENDENT CONTRACTOR:** In performance of the Services, Contractor will be acting as an independent contractor and not the agent or employee of VTA.
9. **ENTIRE CONTRACT:** This Contract constitutes the entire contract between VTA and Contractor relating to the subject matter hereof and supersedes any previous contracts, agreements, or understandings, whether oral or written.
10. **AMENDMENT:** Except as expressly provided herein, the provisions of this Contract cannot be altered, modified or amended except through the execution of a written amendment executed by VTA and Contractor.
11. **COMPLIANCE WITH APPLICABLE LAW:** In the performance of the Services, Contractor and its subcontractors shall comply with all applicable requirements of state, federal and local law. The provision of this paragraph shall be included in any subcontracts hereunder.
12. **DOCUMENTS AND WRITTEN REPORTS:** In accordance with Government Code § 7550(a), any document or written report prepared in whole or in part by nonemployees of VTA shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the



preparation of the document or written report if the total cost of the work performed by nonemployees of the agency exceeds five thousand dollars (\$5,000.00). The contract and subcontract numbers and dollar amounts shall be contained in a separate section of the document or written report.

13. INCORPORATION OF EXHIBITS AND ATTACHMENTS: All exhibits and attachments referenced in this Contract are incorporated herein by this reference.

L. AUTHORIZED REPRESENTATIVES AND POINTS OF CONTACT: The Authorized Representatives identified below, or assigned designees, have authority to authorize changes to the scope, terms and conditions of this Contract, as set forth herein.

1. AUTHORIZED REPRESENTATIVES:

VTA:
Thor Vue, Chief Procurement Officer
3331 N. First Street, Bldg. A
San Jose, CA 95134-1927
thor.vue@vta.org

Contractor:
Name/Title
Company Name
Address
City/State/Zip
Telephone
Email

2. NOTICES: Notices shall be in writing and addressed to the Authorized Representatives at the addresses set forth above.

3. POINTS OF CONTACT: The Points of Contact listed below are authorized to communicate regarding contract matters, except in the case where correspondence regarding legal notices must be addressed to the Authorized Representatives.

VTA:
Erron Alvey, Contracts Administrator
3331 N. First Street, Bldg. A
San Jose, CA 95134-1927
Erron.Alvey@vta.org

Contractor:
Name/Title
Company Name
Address
City/State/Zip



Telephone
Email

4. Written notification to the other Party shall be provided, in advance, for changes in the name or address of the designated Authorized Representatives or Points of Contact stated above

M. INSURANCE: Contractor shall adhere to the insurance requirements set forth in Exhibit A5.

N. INDEMNITY AND DEFENSE OF CLAIMS:

1. To the greatest extent permitted by law, Contractor shall indemnify and hold harmless VTA, its board members, officers, agents, employees, and Contractors (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) (each a “Claim” and collectively “Claims”), to the extent that the Claims arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor and/or its agents, employees, or subcontractors, whether such Claims are based upon a contract, or for personal injury, death, or property damage, or upon any other legal or equitable theory whatsoever. It is the specific intent of VTA and Contractor that Contractor be required to provide the full breadth of indemnities allowed by California Civil Code section 2782.8. Notwithstanding the foregoing, Contractor is not obliged to indemnify and/or hold harmless the Indemnitees from any Claims to the extent that the Claims are caused in any part by (i) VTA or its agents, servants, or independent contractors who are acting on behalf of VTA, or (ii) damages for defects in designs furnished by those persons.
2. To the greatest extent permitted by law, Contractor agrees, at its own expense, and upon written request by VTA or any individual Indemnitee, to immediately defend any suit, action, proceeding, dispute, or demand brought against any Indemnitee founded upon, alleging, or implicating any Claims covered by Contractor’s indemnity obligation set forth in subparagraph (1) immediately above and regardless of whether Contractor and/or any of its agents, employees, or subcontractors was in fact negligent or reckless or engaged in willful misconduct. In the event a court of competent jurisdiction determines that any suit, action, claim, or demand brought against any Indemnitee was caused in any part by VTA or its agents, servants, or independent contractors who are acting on behalf of VTA, VTA shall promptly reimburse Contractor for costs of defending the Indemnites in such action incurred by Contractor, but only in proportion to the liability of VTA or its agents, servants, or independent contractors who are acting on behalf of VTA. In no event will the cost to defend charged to Contractor exceed Contractor’s proportionate percentage of fault. However, notwithstanding the previous sentence, in the event that one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution, Contractor must meet and confer with other parties regarding unpaid defense costs.
3. This indemnity and defense of claims provision will survive the expiration or termination of this Contract and remain in full force and effect.



O. BUSINESS DIVERSITY PROGRAM REQUIREMENTS: Contractor shall adhere to the Small Business Enterprise requirements set forth in Exhibit A6.

P. SPECIAL PROVISIONS:

1. HIGHWAY PROJECT REQUIREMENTS: All files and drawings shall comply with the CALTRANS current CADD User’s Manual and current Drafting and Plans Manuals.

IN WITNESS WHEREOF, VTA and Contractor have executed this Contract as of the last date set forth below (“Effective Date”).

*(If signatures are on next page)
Signatures of parties on following pages*

*Santa Clara Valley
Transportation Authority*

Contractor

Name
Title

Name
Title

Date

Date

Approved as to Form

VTA Counsel



EXHIBIT A1 SCOPE OF SERVICES

[TO BE INSERTED AT TIME OF CONTRACT AWARD]



EXHIBIT A2 COMPENSATION, INVOICING and PAYMENT
COST PLUS FIXED-FEE

For the satisfactory performance and completion of the Services under this Contract, VTA will pay Contractor compensation as set forth herein.

A. COMPENSATION: This is a cost plus fixed-fee Contract with a maximum value of **\$XX,XXX.00**], for which amount Contractor agrees to complete the Services defined in this Contract.

Compensation for the Services shall be on a cost reimbursement basis and shall be the sum of direct labor costs, indirect labor costs (fringes and overhead), a fixed-professional fee, subcontractor costs and other direct costs, described below:

1. DIRECT LABOR COSTS: Direct labor costs shall be the total number of hours worked by each employee multiplied by the rate for such employee's labor category as set forth in the attached Exhibit **A3**. This exhibit shall contain the names and rates for Exempt and Non-Exempt Personnel.

Exempt Personnel: The rates for exempt personnel shall be applicable to both straight time, overtime, and premium time.

Non-Exempt Personnel: Non-exempt personnel shall be compensated premium time in accordance with prevailing California laws.

Overtime: Premium rates shall be compensated in accordance with prevailing California laws. All premium time shall be pre-approved in advance by VTA.

2. LABOR RATE ADJUSTMENTS:

a. Contractor may request increases in labor rates. Increases in labor rates may occur only once in a twelve (12) month period per individual. Contractor must make all requests in writing and deliver them to VTA at least thirty (30) days prior to the date the requested new rates are to become effective. VTA will review the request and, at its sole discretion, approve or deny the request in writing. VTA will issue adjustments, if any, prior to the effective date of the new labor rates.

b. The labor rate paid by Contractor to each employee may not increase more than the annual average of the Consumer Price Index for the San Francisco Bay Area, using the **CPI-U, All Urban Consumers** index type for the twelve (12) month period preceding a new rate. The CPI is as a guideline only, and VTA is not obligated to match or increase this rate.



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- c. At its discretion, VTA will consider individual exceptions to the above limitations, on a case-by-case basis, not to exceed one (1) adjustment per employee per year, where Contractor can demonstrate that additional compensation is necessary to retain a specific employee VTA considers, in its sole discretion, to be essential.
- 3. INDIRECT LABOR COSTS:** Indirect labor costs shall be the direct labor costs multiplied by a field or home office provisional overhead rate. Based upon **YYYY** audited overhead rates, the provisional field office overhead rate at the inception of this Contract is [] % and the provisional home office overhead rate at the inception of this Contract is [] %. These rates shall be subject to adjustment annually, based on an audit by a recognized independent auditing firm, which shall determine the actual rate for the period in which services are provided hereunder.
- a. Contractor shall submit to VTA the audited overhead rates for Contractor's most recently audited fiscal year within thirty (30) days of receipt of such rates from their independent auditor.
 - b. Upon VTA's acceptance of the actual rates, any overpayment or underpayment resulting from a variance between the actual and provisional rates shall be refunded or credited in total to VTA or paid to Contractor.
- 4. FIXED FEE:** VTA shall pay the Contractor a fixed professional fee of **\$XX,XXX.00** for the Services described in Section 1 of this Contract.

Each invoice submitted by Contractor shall include a progress payment of a portion of the fixed-fee. The portion of the fixed-fee included in each invoice shall be determined by multiplying the fixed-fee by the percent of total progress reported to VTA for that invoice period, less the total amount of the fixed-fee previously invoiced and paid.

Progress Percentage = (Total Costs Incurred to Date/Total Estimated Budget) X 100.

- 5. SUBCONTRACTOR COSTS:** Subcontractor costs shall be reimbursed at actual cost with no markup. Subcontractor costs shall be supported by appropriate documentation for reimbursement.
- 6. OTHER DIRECT COSTS (ODCs):** ODCs shall be authorized and reimbursed as follows. All ODCs shall be reimbursed at actual cost without mark-up and include the following types of expenses.
- a. Travel expenses related to the performance of Services shall be reimbursed for actual and reasonable costs incurred for mileage, transportation, lodging, meals, and other miscellaneous expenses. Air travel, auto rental, and lodging should be "economy" based and traveler should obtain the lowest price possible. Lodging rates for the Palo Alto, Sunnyvale, and San Jose area are defined by the GSA website www.gsa.gov. The meals and incidental expenses shall not exceed the per diem rates, as stated on GSA



website www.gsa.gov/mie. At no time shall alcohol, travel upgrades, fines, memberships, loss of personal property or cash, “no shows,” or personal itinerary changes be subject to reimbursement by VTA.

Invoicing travel expenses: All expenses related to travel shall be verified by legible, itemized receipts attached to a summary that provides the name of traveler, the date(s) traveled, and an itemized a description of each expense.

- b.** Parking, tolls, deliveries, printing, plan reproduction, and blue print services expenses directly associated with the work will be reimbursed at cost. Except as otherwise provided herein, telephone, computer costs, CAD machine charges, in-house copying and facsimile charges shall be included in overhead.
- c.** All ODCs shall require appropriate documentation for reimbursement. VTA must approve in writing any ODC item estimated to exceed \$500.00 prior to incurring the expense.

B. INVOICING:

- 1. INVOICE FORMAT:** Contractor shall be compensated and reimbursed by VTA on the basis of invoices submitted every month for the Services performed during the preceding month. The charges for each individual assigned under this Contract shall be listed separately. Further, invoices shall be in a form acceptable to VTA and each invoice must include:
 - Description of the work performed.
 - Hours worked by personnel classification.
 - Rate per personnel classification.
 - Other Direct Costs.
 - Subcontractor Costs supported by itemization in the same format.
 - Fixed-Fee.
 - Total Costs.
 - Percent of Schedule and Budget Expended.
- 2. WAIVER:** Contractor shall be deemed to have waived the right to payment for Services not invoiced within six (6) months of the date the Services were performed. For purposes of this provision the date of the invoice shall be the date it is received by VTA.
- 3. INVOICE SUBMITTAL:** Contractor shall submit invoices by e-mail to the address listed below. Invoices shall be in a PDF, Word, or Excel format.

Email: VTAAccountsPayable@vta.org

- 4.** Should VTA contest any portion of an invoice, that portion shall be held for resolution, but the uncontested balance shall be processed for payment. VTA may, at any time, conduct



an audit of any and all records kept by Contractor for the Services. Any overpayment uncovered in such an audit may be charged against the Contractor's future invoices and any retention funds.

C. PROMPT PAYMENT: VTA will pay Contractor within thirty (30) days after receipt by VTA of a proper, fully documented, invoice. Contractor shall pay subcontractors for satisfactory performance of any of the Services performed by subcontractors within fifteen (15) days of receipt of payment by VTA for such Services. Contractor agrees further to return retainage payments to each subcontractor within fifteen (15) days after the subcontractor's work is satisfactorily completed.



EXHIBIT A3 RATE SCHEDULE

Effective Date **MM/DD/20YY**

Identify the named key personnel, firm name, classification and labor rate. Provide the classification and labor rate for all your proposed staff.

Key Personnel:

Personnel Name	Classification	Direct Labor Rate	Home Office Overhead Rate	Field Office Overhead Rate	Profit (%)	Home Office Fully Burdened Rate	Field Office Fully Burdened Rate

Unnamed Personnel:

Classification	Direct Labor Rate	Home Office Overhead Rate	Field Office Overhead Rate	Profit (%)	Home Office Fully Burdened Rate	Field Office Fully Burdened Rate



EXHIBIT A4 APPROVED SUBCONTRACTORS
[TO BE INSERTED AT TIME OF CONTRACT AWARD]



**EXHIBIT A5 INSURANCE REQUIREMENTS
for
PROFESSIONAL SERVICE CONTRACTS**

INSURANCE: Without limiting the Contractor’s indemnification of VTA, the Contractor must procure and maintain for the duration of the Contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees, or subcontractors. The cost of such insurance must be included in the Contract. The Contractor must furnish complete copies of all insurance policies, within three (3) business days of any such request by VTA.

A. LIABILITY AND WORKERS’ COMPENSATION INSURANCE:

1. Minimum Scope of Coverage: Coverage must be at least as broad as:

- a. Insurance Services Office General Liability coverage (“occurrence” form CG 0001). General Liability insurance written on a “claims made” basis is not acceptable.
- b. Insurance Services Office Business Auto Coverage, Insurance Services Office form number CA 0001, covering Automobile Liability, code 1 “any auto.” Auto Liability written on a “claims-made” basis is not acceptable.
- c. Workers’ Compensation insurance as required by the Labor Code of the State of California, and Employers Liability insurance.
- d. Professional Liability, including limited contractual liability coverage, covering liability arising out of any negligent act, error, mistake or omission in the performance of Contractor’s services under this Contract. This coverage must be maintained for a minimum of two (2) years following completion of this Contract. This coverage may be written on a “claims made” basis, if so, please see special provisions in Section B.

2. Minimum Limits of Insurance: Contractor must maintain limits no less than:

- a. General Liability \$2,000,000 limit per occurrence for bodily injury, personal injury, and property damage. If a General Liability or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this project/location or the general aggregate limit must be twice the required occurrence limit. In no event may the General Liability primary policy limit per occurrence be less than \$2,000,000.



- b. Automobile Liability \$1,000,000 limit per accident for bodily injury and property damage.
 - c. Workers' Compensation and Employers Liability: Statutory Workers' Compensation limits and Employers Liability limits of \$1,000,000 per accident.
 - d. Professional Liability: \$2,000,000 each occurrence/aggregate minimum limit per claim.
3. **Self-Insured Retention:** Any self-insured retention or deductible in excess of \$50,000 (\$100,000 if Contractor is a publicly-traded company) must be declared to and approved by VTA. If Contractor is a governmental authority such as a state, municipality or special district, self-insurance is permitted. To apply for approval for a level of retention in excess of the stipulated amounts stated herein, the Contractor must provide a current financial statement documenting the ability to pay claims falling within the self-insured retention. At the option of VTA, either: the insurer must reduce or eliminate such self-insured retention as respects VTA, its officers, officials, employees and volunteers; or the Contractor must procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

B. CLAIMS MADE PROVISIONS (NOT APPLICABLE TO GENERAL LIABILITY OR AUTOMOBILE LIABILITY): Claims-made coverage is never acceptable for General Liability or Auto Liability. Claims-made may be considered for Professional, Environmental/Pollution, or Cyber Liability. If coverage is written on a claims-made basis, the Certificate of Insurance must clearly state so. In addition to all other coverage requirements, such policy must provide that:

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

C. OTHER PROVISIONS: The policies are to contain, or be endorsed to contain, the following provisions:



1. General Liability and Automobile Liability:

- a. VTA, its officers, officials, employees and volunteers are to be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Contractor, including VTA's general supervision of the Contractor; products and completed operations of the Contractor and its subcontractors; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage must contain no special limitations on the scope of protection afforded to VTA, its officers, officials, employees, or volunteers. Additional Insured endorsements must provide coverage at least as broad as afforded by the combination of ISO CG 20 10 10 01 and CG 20 37 10 01.
- b. The Contractor's insurance coverage must be primary insurance as respects VTA, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by VTA, its officers, officials, employees, or volunteers must be excess of the Contractor's insurance and may not contribute with it.
- c. Any failure to comply with reporting provisions of the policies may not affect coverage provided to VTA, its officers, officials, employees, or volunteers.
- d. The Contractor's insurance must apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- e. The General Liability General Aggregate limit must apply per project, not per policy.
- f. The General Liability policy must be endorsed to remove the exclusion for railroad liabilities, with coverage at least as broad as afforded by ISO CG 24 17.

2. All Coverages:

- a. The insurer must agree to waive all rights of subrogation against VTA, its officers, officials, employees, and volunteers for losses arising from work performed by the Contractor and its subcontractors for VTA.
- b. If any coverage forms or endorsements required by this Contract are updated by their publishers, whether they be the insurance carrier(s), the Insurance Services office, or the American Association of Insurance Services, during the duration of this Contract, VTA reserves the right to require the Contractor to procure said coverage forms or endorsements using the updated versions upon the next renewal cycle.

D. ACCEPTABILITY OF INSURERS: Insurance and bonds must be placed with insurers with an A.M. Best's rating of no less than A VII (financial strength rating of no less than A and



financial size category of no less than VII), unless specific prior written approval has been granted by VTA.

- E. CERTIFICATES OF INSURANCE:** Contractor must furnish VTA with a Certificate of Insurance. The certificates for each insurance policy are to be signed by an authorized representative of that insurer. The certificates will be issued on a standard ACORD Form. The contractor must instruct their insurance broker/agent to submit all insurance certificates and required notices electronically in PDF format to Insurance.certificates@vta.org.

The certificates will (1) identify the underwriters, the types of insurance, the insurance limits, the deductibles and the policy term, (2) include copies of all the actual policy endorsements required herewith, and (3) in the “Certificate Holder” box include:

Santa Clara Valley Transportation Authority
Procurement, Contracts and Materials Management
3331 North First Street
San Jose, CA 95134
Contract No. S19203

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

All certificates and endorsements are to be received and approved by VTA before work commences. VTA reserves the rights to require complete, certified copies of all required insurance policies, at any time.

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

- F. MAINTENANCE OF INSURANCE:** If Contractor fails to maintain such insurance as is called for herein, VTA, at its option, may suspend payment for work performed and/or may order the Contractor to suspend work at Contractor’s expense until a new policy of insurance is in effect.



EXHIBIT A6 SMALL BUSINESS ENTERPRISE (SBE) REQUIREMENTS

A. SMALL BUSINESS ENTERPRISES:

1. It is VTA policy to ensure that Small Business Enterprise (“SBE”) firms, as defined in Federal Regulations at 13 CFR Part 121 and 49 CFR Part 26, have an equitable opportunity to participate in the performance of Contracts and subcontracts.

In connection with its performance under this Contract, Contractor agrees to cooperate with VTA in meeting the **4.71** % SBE utilization goal set for this project.

2. VTA will monitor compliance with Contract requirements for SBE firms. Electronic submittal will be on a web-based online system (B2Gnow), accessed from any computer via the internet at the following website: <https://VTA.sbdb.com>. Contractor and its subcontractors will receive an email providing a Log-On identification, password, and instruction on how to use the system. All lower-tier subcontractors and vendors will be required to provide or verify SBE utilization documentation.
 3. Contractor will be required to submit quarterly for the base work, monthly as Additional Services are incorporated into the contract, SBE utilization reports electronically to the VTA Office of Business Diversity Programs. These reports shall be submitted electronically by the Contractor and will document when payments to subcontractors were made, the dollar value of the payments to SBE firms, and the percentage of the contract completed.
- B.** At the conclusion of this Contract, Contractor shall submit a final SBE utilization report electronically to the VTA Office of Business Diversity Programs to: OSDB.OSDB@VTA.org by indicating a final audit where requested in the B2Gnow system. This final report will document when payments to subcontractors were made, the dollar value of payments to SBE firms, and the percentage of the Services completed.



EXHIBIT A7 PREVAILING WAGE REQUIREMENTS

- A. CALIFORNIA PREVAILING WAGE LAW:** This Contract is a “public work” as defined in Section 1720 through 1720.6 of the California Labor Code (“Labor Code”) and is therefore subject to the requirements of Labor Code Section 1720 et seq. requiring the payment of prevailing wages and compliance with other applicable requirements. Contractors and subcontractors of all tiers who perform work under this Contract are required to comply with these requirements.
- B. RESERVED**
- C. DIR REGISTRATION:** Contractor and subcontractors of all tiers used for the Contract must be registered with the DIR pursuant to Labor Code Section 1725.5 (with limited exceptions from this requirement for bid purposes only under Labor Code section 1771.1(a)) prior to (i) submission of the bid or Proposal and/or (ii) execution of the Contract, as applicable. Those who fail to register and maintain their status as a public works contractor are not permitted to perform work hereunder.
- D. SUBCONTRACTOR LISTING:** Contractor must provide VTA with a list of all subcontractors of every tier, for any dollar amount. Contractor must not allow any unidentified subcontractor of any tier to perform work under this Contract.
- E. APPLICABLE RATES:** Workers employed under the Contract must be paid at the rates at least equal to the prevailing wage rates as adopted. If Contractor uses a craft or classification not shown on the prevailing wage determinations, Contractor may be required to pay the wage rate of that craft or classification most closely related to it as shown in the general determinations effective at the time of Contract award.
- 1. CALIFORNIA PREVAILING WAGE RATES:** The applicable California prevailing wage rates can be found at www.dir.ca.gov and are on file with the Contracts Office at VTA, which will be available to any interested party upon request. Contractor is also required to have a copy of the applicable prevailing wage rates posted and/or available at the jobsite or material staging area.
 - 2. SPECIAL PREVAILING WAGE RATES:** Special prevailing wage rates generally apply to work performed on weekends, holidays, and for certain shift work. Depending on the location of the project and the amount of travel incurred by workers on the project, certain travel and subsistence payments may also be required. Contractor is on notice, and responsible for ensuring that its subcontractors of all tiers are on notice, that information about such special rates, holidays, premium pay, shift work, and travel and subsistence requirements can be found at www.dir.ca.gov.
 - 3. RESERVED**



F. APPRENTICES: In the performance of work under this Contract, Contractor is responsible for compliance with Labor Code Section 1777.5, pertaining to the employment of registered apprentices.

G. CERTIFIED PAYROLLS:

- 1. SUBMISSION TO VTA:** In the performance of work under this Contract, Contractor is responsible for its compliance, as well as that of its subcontractors of every tier, with Labor Code Section 1776. On a weekly basis, Contractor will present to VTA all applicable and necessary certified payrolls (for itself and all applicable subcontractors of every tier) for the time period covering the immediately preceding week. The term “certified payroll” includes all required documentation to comply with the mandates set forth in Labor Code Section 1720 et seq, as well as any additional documentation requested by VTA.
- 2. SUBMISSION TO THE CALIFORNIA DEPARTMENT OF INDUSTRIAL RELATIONS (“DIR”):** In addition to submitting the certified payrolls and related documentation to VTA, on a weekly basis Contractor and subcontractors of all tiers must submit certified payroll and related documents electronically to the DIR. Failure to submit payrolls to the DIR when mandated by the Contract will also result in the withholding of progress, retention, and final payment, if applicable.
- 3. FLOW DOWN:** Contractor will incorporate into every lower-tier subcontract and purchase order these instructions where labor compliance documentation is required.

H. FAILURE TO COMPLY: VTA or the DIR may impose penalties upon Contractor and subcontractors of any tier for failure to comply with prevailing wage requirements. This Contract is subject to compliance monitoring and enforcement by the DIR.



EXHIBIT A8 DESIGN PROFESSIONAL SERVICES SPECIAL TERMS AND CONDITIONS

(Revised 05/2019)

A. DEFINITIONS: In addition to other definitions set forth elsewhere in the Contract, the following definitions will apply to this Exhibit.

Contractor Intellectual Property means all Intellectual Property developed by Contractor and/or its subcontractors of any tier either (i) prior to the Effective Date, or (ii) independently of the Contract, or (iii) any Intellectual Property that is an improvement, continuation, or adaptation of Intellectual Property subject to (i) and/or (ii) herein, and is authored, created, invented, and/or put into practice under and/or for the purposes of the Project and incorporated into the Design Intellectual Property, Deliverable(s), Instruments of Service, and/or Services.

Deliverable(s) means, whether singular or plural, items and/or services provided or to be provided by Contractor under this Contract identified as a deliverable by designation, number, or context, in any scope of work, a schedule, or any document associated with the foregoing.

Design Intellectual Property means all Intellectual Property authored, created, developed, and/or invented under or for the purposes of the Contract and/or any Deliverable(s), Instruments of Service, and/or Services, excluding Intellectual Property that is (i) an improvement, continuation, or adaptation of Contractor Intellectual Property and (ii) authored, created, invented, and/or put into practice under and/or for the purposes of the Project.

Instruments of Service means all physical, electronic, and/or mechanical embodiments of, and documents disclosing, Intellectual Property. Without limiting the generality of the foregoing, Instruments of Service includes embodiments, documents, and/or Deliverables incorporating concepts, inventions (whether or not protected under patent laws), works of authorship, information, new or useful art, combinations, discoveries, formulae, algorithms, specifications, manufacturing techniques, technical developments, systems, computer architecture, artwork, models, designs, procedures, processes, and methods of doing business, and any other media, materials, plans, reports, project plans, work plans, training materials, and other tangible objects produced by Contractor under this Contract. Without limiting the generality of the foregoing, Instruments of Service include architectural plans, models, or drawings, formal or informal, complete or incomplete, and regardless of whether such is useful or instructive to VTA.



Intellectual Property means all current and future legal and/or equitable rights and interests in know-how, patents (including applications), copyrights (including moral rights), trademarks (registered and unregistered), service marks, trade secrets, designs (registered and unregistered), utility models, circuit layouts, business and domain names, inventions, solutions embodied in technology, and other intellectual activity. Without limiting the generality of the foregoing, Intellectual Property includes original architectural design in any tangible medium of expression, including a constructed building or structure, or architectural plans, models, or drawings.

VTA Intellectual Property means any Intellectual Property that is owned by, controlled by, or licensed to, VTA.

Third Party Intellectual Property means any Intellectual Property that is not owned by Contractor and is not VTA Intellectual Property.

Project means the SR 17 Corridor Congestion Relief Project.

B. INTELLECTUAL PROPERTY RIGHTS:

- 1. OWNERSHIP:** Except for Contractor Intellectual Property, Contractor acknowledges and agrees that all Design Intellectual Property, in any medium, is specially ordered or commissioned by VTA, including works made for hire in accordance with Section 101 of the Copyright Act of the United States, and VTA shall be the owner and legal author thereof. To the extent that Design Intellectual Property does not qualify as a work made for hire in accordance with Section 101 of the Copyright Act, Contractor hereby irrevocably and exclusively assigns all right, title, and interest to Design Intellectual Property (including all patent, copyright, trademark, trade secret, and any other intellectual property right therein) to VTA immediately upon creation, authorship, development, or invention without any restriction, limitation, or condition precedent thereto. Contractor agrees to execute such further documents and to do such further acts, at VTA's expense, as may be necessary to perfect, register, or enforce VTA's ownership of such rights, in whole or in part. If Contractor fails or refuses to execute any such documents, Contractor hereby appoints VTA as Contractor's attorney-in-fact (this appointment to be irrevocable and a power coupled with an interest) to act on Contractor's behalf and to execute such documents.
- 2. VARA:** VTA acknowledges that Contractor may have rights pursuant to Section 106A ("VARA") of the Copyright Act of the United States related to the Design Intellectual Property and that Contractor may, in its sole discretion, elect to disclaim authorship or other attribution related to the Design Intellectual Property or Instruments of Service. Contractor hereby forever waives and agrees never to assert against VTA, its successors,



or licensees any other rights pursuant to VARA not specifically identified in the preceding sentence that Contractor may have in Design Intellectual Property or Instruments of Service even after expiration or termination of this Contract. Subject to the right pursuant to VARA described above, Contractor specifically waives any and all rights, title, and interest to Design Intellectual Property and acknowledges VTA's ownership thereof including without limitation any know-how, trade secrets, or design elements.

3. LICENSE GRANT TO CONTRACTOR: VTA hereby grants to Contractor a limited, non-exclusive license to use, exploit, manufacture, distribute, reproduce, adapt, and display the VTA Intellectual Property, Design Intellectual Property, and all Instruments of Service, as appropriate, solely in connection with and limited to the Allowed Uses (hereinafter referred to as "Design License"). "Allowed Uses" are: (a) incorporation into the Project and (b) performance, provision, furnishing, and discharge of the Services under the Contract. Any rights not specifically granted by VTA to Contractor under this **Section B.3. License Grant to Contractor** are reserved to VTA. This Design License will expire upon the termination or expiration of the Contract.

4. CONTRACTOR INTELLECTUAL PROPERTY:

i. Contractor Intellectual Property/License: Contractor hereby grants to VTA an irrevocable, perpetual, non-exclusive, transferable, fully paid-up right and license to make, sell, use, execute, reproduce, adapt, display, perform, distribute, make derivative works of, export, disclose, and otherwise disseminate or transfer any and all rights in and to the Contractor Intellectual Property that is required by, incorporated in, or exercised as part of, the Design Intellectual Property and/or Instruments of Service. The license granted under this **Section B.4.i. Contractor Intellectual Property/License** permits VTA to authorize its Contractors (including but not limited to any replacement design professional firm(s)), contractors, subcontractors, sub-subcontractors, and suppliers, to reproduce applicable portions of the Instruments of Service, solely for purposes related to the Project. Any rights not specifically granted by Contractor to VTA under this **B.4.i. Contractor Intellectual Property/License** are reserved to Contractor.

ii. Identification of Contractor Intellectual Property: Contractor shall identify and disclose to VTA all Contractor Intellectual Property required by, incorporated in, or exercised as part of, the Design Intellectual Property, including using reasonable efforts to provide, to the extent reasonably available: (i) full and specific information detailing Contractor Intellectual Property claimed; (ii) date of authorship, creation, and/or invention; (iii) date of application(s); (iv) application number(s) and registering entity(ies); (v) date of registration(s); (vi) registration number(s) and registering entity(ies), if any; and (vii) owner including person or entity name and address.



5. THIRD PARTY INTELLECTUAL PROPERTY:

- i. Third Party Intellectual Property/License:** Contractor will not create any Design Intellectual Property and/or Instruments of Service that require, incorporate, or exercise any Third Party Intellectual Property, unless VTA provides advance written approval of such. If VTA provides such approval, Contractor shall either (a) demonstrate it already has or (b) secure: an irrevocable, perpetual license(s) in the name of VTA to make, sell, use, execute, reproduce, adapt, display, perform, distribute, make derivative works of, export, disclose, and otherwise disseminate or transfer any and all rights in and to the Third Party Intellectual Property that is required by, incorporated in, or exercised as part of, the Design Intellectual Property and/or Instruments of Service, including a representation and warranty that the Third Party Intellectual Property does not infringe the rights, including Intellectual Property rights, of any other person or entity.

- ii. Identification of Third Party Intellectual Property:** Contractor shall identify and disclose to VTA all Third Party Intellectual Property required by, incorporated in, or exercised as part of, the Design Intellectual Property and/or Instruments of Service, including using reasonable efforts to provide, to the extent reasonably available: (i) full and specific information detailing Third Party Intellectual Property claimed; (ii) date of authorship, creation, and/or invention; (iii) date of application(s); (iv) application number(s) and registering entity(ies); (v) date of registration(s); (vi) registration number(s) and registering entity(ies), if any; and (vii) owner, including person or entity name and address.

- 6. PAYMENTS INCLUSIVE:** Contractor acknowledges and agrees that the total compensation paid for the Services pursuant to **Contract Section []. COMPENSATION and Exhibit [] (Compensation, Invoicing and Payment)** includes all royalties, fees, costs, and expenses arising from or related to the Design Intellectual Property, Instruments of Service, and any licenses granted hereunder.

C. NON-INTELLECTUAL PROPERTY RIGHTS: Unless otherwise specified by VTA in writing, Contractor shall deliver to VTA all Instruments of Service, documents, results, and related materials created in the development of Design Intellectual Property as soon as reasonably practicable, but in no event later than the effective date of Contract expiration or termination. Contractor and Contractor's subcontractors and Contractors grant to VTA all physical ownership and possession of the Instruments of Service created under and for the purpose of the Contract. Contractor acknowledges and agrees that all Instruments of Service, documents, results, and related materials created in the development of Design Intellectual Property will be owned by VTA upon creation regardless of when they may be physically delivered to VTA.



D. STANDARDS OF CARE; REPRESENTATIONS AND WARRANTIES:

1. LICENSES, CERTIFICATIONS, REGISTRATIONS, OTHER APPROVALS:

- i.** All Services and/or Deliverables furnished by Contractor will be performed by, or under the supervision of, persons who (i) hold all necessary licenses, certifications, registrations, permits, or approvals to practice in the State of California; (ii) are experienced, competent, and skilled in their respective trades or professions; (iii) are professionally qualified to perform the Services; and (iv) will assume professional responsibility for the accuracy and completeness of the Deliverables, including designs, plans, and other documents prepared or checked by them. Contractor shall perform the Services with the degree of skill and judgment normally exercised by firms performing services of a similar nature. Contractor represents that it is sufficiently organized and financed to perform the Services.
- ii.** In addition to the other rights and remedies that VTA may have, VTA, at its option, may require Contractor, at Contractor's expense, to re-perform any Services that fail to meet the above standards.

2. POWER, AUTHORITY, AND QUALIFICATION:

- i.** Contractor is a **[INSERT ORGANIZATION TYPE]**, duly organized and validly existing under the laws of **[INSERT STATE]**, having the requisite power and all required licenses to carry on its present and proposed activities. Contractor has the full power, right, and authority to execute and deliver this Contract and to perform each and all of the obligations of Contractor provided for under this Contract. Contractor is duly qualified to do business and is in good standing in the State of California as of the Effective Date, and will remain duly qualified and in good standing throughout the Contract term and for as long as any obligations remain outstanding under the Contract.
- ii.** The execution, delivery, and performance of this Contract has been duly authorized by all necessary action of Contactor's governing body. Each person executing this Contract has been duly authorized to execute and deliver each such document on behalf of Contractor.

3. COMPLIANCE WITH APPLICABLE LAW: As of the Effective Date, Contractor is not in breach of any applicable law that would have a material adverse effect on the Services or the performance of any of its obligations under the Contract.

4. NO PENDING LEGAL ACTION: As of the Effective Date, there is no action, suit, proceeding, investigation, or litigation pending and served on Contractor which challenges Contractor's



authority to execute, deliver, or perform, or the validity or enforceability of, this Contract, or which challenges the authority of the representative of Contractor executing this Contract; and Contractor has disclosed to VTA before the Effective Date any pending and un-served or threatened action, suit, proceeding, investigation, or litigation with respect to such matters of which Contractor is aware.

5. NON-INFRINGEMENT: Contractor represents and warrants that the Design Intellectual Property, Instruments of Service, and any Contractor Intellectual Property required by, incorporated in, or exercised as part of, the Design Intellectual Property does not infringe upon any right, title, or interest of any person or entity including, without limitation, Intellectual Property rights under applicable United States law or international treaties to which the United States is a member or signatory party. Contractor further represents and warrants that, prior to any delivery of any Design Intellectual Property, Instruments of Service, or Contractor Intellectual Property to VTA, Contractor has conducted a diligent and comprehensive search and evaluation to ensure non-infringement of such upon any right, title, or interest of any person or entity including, without limitation, Intellectual Property rights under applicable United States law or international treaties to which the United States is a member or signatory party.

6. NON-PROJECT USE AND MODIFICATION:

i. Disclaimer of Suitability for Non-Project Use: Contractor does not represent that the Instruments of Service, as prepared and delivered by Contractor, are suitable for reuse by VTA or other parties for any purposes other than the Project. Reuse of the Instruments of Service by VTA for any purpose unrelated to the Project will be at VTA's sole risk without any liability to Contractor.

ii. VTA Non-Project Use: If VTA uses the Instruments of Service for purposes other than the Project, VTA shall indemnify, defend, and hold harmless Contractor from all third-party claims, damages, and expenses, including reasonable attorneys' fees, to the extent that the claim(s) is/are caused by such use by VTA.

iii. VTA Independent Modification: If VTA independently modifies the Instruments of Service without Contractor's involvement or consent, VTA shall indemnify, defend, and hold harmless Contractor from all third-party claims, damages, and expenses, including reasonable attorneys' fees, to the extent that the claim(s) is/are caused by such modification by VTA.

E. INDEMNIFICATION AND DEFENSE OF CLAIMS:



1. GENERAL INDEMNIFICATION AND DEFENSE OF CLAIMS:

- i. **Indemnification:** Subject to the limitations in **Section E.3. Limitation on Indemnification and Defense of Claims** below, and to the greatest extent permitted by law, Contractor will indemnify, defend, and hold harmless VTA, its board members, officers, agents, employees, and Contractors (collectively, the “Indemnitees”) from any claims, causes of action, suits, legal or administrative proceedings, judgment, settlement monies (regardless of stated purpose or designation), liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys’ and experts’ fees and costs) (each a “Claim” and collectively “Claims”), to the extent that the Claims arise out of, pertain to, are caused by, or relate to the negligence, recklessness, or willful misconduct of Contractor and/or its agents, employees, or subcontractors, whether such Claims are based upon a contract, or for personal injury, death, or property damage, or upon any other legal or equitable theory whatsoever.

- ii. **Defense:** Subject to the limitations in **Section E.3. Limitation on Indemnification and Defense of Claims** below, and to the greatest extent permitted by law, Contractor will, at its own expense, and upon written request by VTA or any individual Indemnitee, immediately defend any suit, action, proceeding, dispute, or demand brought against any Indemnitee founded upon, alleging, or implicating any Claims covered by Contractor’s indemnity obligation set forth in subparagraph (i) immediately above, regardless of whether Contractor and/or any of its agents, employees, or subcontractors was in fact negligent or reckless or engaged in willful misconduct. In the event a court of competent jurisdiction determines that any suit, action, claim, or demand brought against any Indemnitee was caused in any part by VTA or its agents, servants, or independent contractors who are acting on behalf of VTA, VTA shall promptly reimburse Contractor for the costs of defending the Indemnitees in such action incurred by Contractor, but only in proportion to the liability of VTA or its agents, servants, or independent contractors who are acting on behalf of VTA. In no event will the cost to defend charged to Contractor exceed Contractor’s proportionate percentage of fault. However, notwithstanding the previous sentence, in the event that one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution, Contractor must meet and confer with other parties regarding unpaid defense costs.

2. INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION AND DEFENSE OF CLAIMS:

- i. **Indemnification:** Subject to the limitations in **Section E.3. Limitation on Indemnification and Defense of Claims** below, and to the greatest extent permitted



by law, Contractor will indemnify, defend, and hold harmless the Indemnitees from and against any and all Claims which may be suffered by, incurred by, accrued against, charged to, or recoverable by a third party from any Indemnitee, by reason of any such Claim arising out of or relating to any actual or alleged infringement of any Intellectual Property rights by any (i) Design Intellectual Property, (ii) Instruments of Service, (iii) Contractor Intellectual Property, or (iv) use of any of the aforementioned.

- ii. Defense:** Subject to the limitations in **Section E.3. Limitation on Indemnification and Defense of Claims** below, and to the greatest extent permitted by law, Contractor will, at its own expense, and upon written request by VTA, or any individual Indemnitee, 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, or fees and costs covered by Contractor's indemnity obligation set forth in subparagraph (i) immediately above, regardless of whether any of the (i) Design Intellectual Property, (ii) Instruments of Service, or (iii) Contractor Intellectual Property did, in fact, infringe upon any Intellectual Property rights.
- iii. Additional Remedies:** If any part of the (i) Design Intellectual Property, (ii) Instruments of Service, or (iii) Contractor Intellectual Property is, or in Contractor's judgment may become, the subject of any infringement Claim, or is likely to be claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property right, Contractor will, at its expense and option, do one of the following: (a) procure for VTA the necessary right (including without limitation payment of any settlement monies, royalty, or license fee) to continue using such (i) Design Intellectual Property, (ii) Instruments of Service, or (iii) Contractor Intellectual Property, whether on its own and/or as incorporated into any Instruments of Service, the Project, or any building structure (regardless of construction status or operational status); (b) except when the Claim concerns a building structure (regardless of construction status or operational status), replace or modify the infringing portion of the (i) Design Intellectual Property, (ii) Instruments of Service, or (iii) Contractor Intellectual Property, so it becomes non-infringing; or (c) if (i) the Claim does not involve a building structure (regardless of construction status or operational status) and (ii) none of the foregoing are commercially reasonable, take back the infringing Instruments of Service and refund to VTA a pro-rated amount of any fees paid for the infringing portion of the Instruments of Service. If, in the sole opinion of VTA, the return of such infringing Instruments of Service makes the retention of other Instruments of Service acquired from Contractor under this Contract impractical, incomplete, or otherwise rendered useless for purposes of the Project, VTA will then have the option of terminating this Contract, or applicable portions hereof, without penalty. Contractor will take back such Instruments of Service and refund any fees VTA has paid Contractor.



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- iv. **Limitation on Infringement Indemnification and Defense of Claims:** Contractor shall have no liability or obligation under **Section E.2. Intellectual Property Infringement Indemnification and Defense of Claims** with respect to any Claim to the extent the Claim is based upon (a) any reuse of the Instruments of Service by VTA for any purpose unrelated to the Project, or (b) modifications, alterations, combinations, or enhancements of the Instruments of Service by any person or entity other than, and independent of, Contractor, and at the request of VTA, but only to the extent of such modifications, alterations, combinations, or enhancements.
- v. **Procedures:** Contractor's obligations under **Section E.2. Intellectual Property Infringement Indemnification and Defense of Claims** are conditioned on the following: VTA must (a) promptly notify Contractor, in writing, of any Claim subject to **Section E.2. Intellectual Property Infringement Indemnification and Defense of Claims** of which VTA has actual knowledge (provided that failure to do so will only release Contractor from this indemnity and defense of claims obligation to the extent that such failure led to material prejudice); (b) in writing, grant Contractor control of the defense of any such Claim and of all negotiations for its settlement or compromise, subject to VTA's right to participate in the defense of such Claim (at VTA's own expense), and provided that no such settlement or compromise may impose any liability or other obligations on VTA; and (c) reasonably cooperate with Contractor to facilitate the settlement or defense of the Claim.
3. **LIMITATION ON INDEMNIFICATION AND DEFENSE OF CLAIMS:** Nothing in **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** is intended to impose on Contractor a duty to defend, indemnify, or hold harmless that is prohibited by applicable law. Contractor's obligations under **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** do not extend to Claims to the extent caused by the sole or active negligence or willful misconduct of VTA or its agents, servants, or independent contractors who are acting on behalf of VTA or from damages for defects in designs furnished by those persons. Furthermore, to the extent that Contractor's Services giving rise to a Claim under **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** are subject to California Civil Code Section 2782.8, Contractor's obligations under **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** shall be limited, to the extent required by Civil Code Section 2782.8, to any liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of Contractor, and in no event shall the cost to defend charged to Contractor exceed Contractor's proportionate percentage of fault.
4. **SURVIVAL:** All of the requirements of **Section E. INDEMNIFICATION AND DEFENSE OF CLAIMS** will survive the expiration or termination of this Contract and remain in full force and effect.



XI. APPENDICES

ALL APPENDICES ARE AVAILABLE FOR DOWNLOADING FROM VTA WEBSITE

Appendix A1 – Project Location Map – SR 17 Corridor

Appendix A2 – Conceptual Drawings – SR 17 Corridor

Appendix B – VTA’s 2009 adopted Multi-Modal Design Practices and Principles

Appendix C – VTA’s 2017 adopted Complete Streets Resolution and Policy

Appendix D – VTA’s 2017 adopted 2016 Measure B Complete Streets Reporting
Requirements

Appendix E – Preliminary Project Milestone Schedule