



Midpeninsula Regional  
Open Space District

R-23-56  
Meeting 23-14  
May 24, 2023

## AGENDA ITEM 6

### AGENDA ITEM

Highway 17 Wildlife and Trail Crossings Cooperative Agreement with the Santa Clara Valley Transportation Authority

### GENERAL MANAGER'S RECOMMENDATIONS

1. Authorize the General Manager to enter into a Cooperative Agreement with the Santa Clara Valley Transportation Authority for the Plans, Specifications and Estimates phase of the Highway 17 Wildlife and Trail Crossings project.
2. Authorize the General Manager to amend the Cooperative Agreement in the future to specifically allow: (i) the disbursement of future grant funds to cover project costs, if obtained after the execution of the original agreement, and (ii) a six-month extension of the agreement term, if necessary.

### SUMMARY

Together, the Highway 17 Wildlife Crossing (MAA20-001) and Regional Trail Crossing (MAA20-002) Projects (collectively the Highway 17 Project or Project) were one of the highest ranked priority actions during the Vision Plan Process in 2014. The Project supports the Midpeninsula Regional Open Space District's (District) goal of providing safe, regional wildlife and trail access across Highway 17 near the Lexington Reservoir just south of the towns of Monte Sereno and Los Gatos.

In October 2019, the Board of Directors (Board) approved moving forward with the environmental analysis of four crossing alternatives for the Highway 17 Project (R-19-136) as part of the Caltrans Project Approval and Environmental Document (PA&ED) phase. Work on the PA&ED phase is underway, and staff is currently working with the District's consultant (AECOM) to complete preliminary engineering designs and environmental review, anticipated to be completed in fall 2023. The Santa Clara Valley Transportation Authority (VTA) will be the project lead during the next Caltrans phase of work (Plans, Specifications and Estimates) (PS&E), which includes detailed designs and an analysis of right-of-way and other property acquisitions necessary to accomplish the Project (ROW Study).

The General Manager recommends entering into a Cooperative Agreement with VTA to complete the PS&E phase of the Project. Because the PS&E Cooperative Agreement only authorizes the expenditure of outside grant funds received for the Project, the General Manager's recommendation has no direct, immediate fiscal impact on the District's discretionary revenue.

## DISCUSSION

### *Background*

The Highway 17 Project proposes significant new transportation infrastructure outside of the District's open space preserves, including a wildlife undercrossing and multi-use trail overcrossing traversing State Route 17 near Lexington Reservoir. The District does not typically deliver transportation projects of this scale and does not have the ability to maintain infrastructure within the state highway system. Additionally, because the District is not a transportation agency, it is ineligible for federal transportation funds that could fund construction of the Project.

For these reasons, the District has explored partnership opportunities with Caltrans, VTA, and County of Santa Clara Roads and Airports to bring the project through final design and construction. As described in the February 9, 2022 Project Status Update [Informational Report](#), VTA was identified as the best suited partner because of their shared goals, ability to encumber federal transportation funds, technical expertise, and their experience in delivering transportation infrastructure projects through the Caltrans process.

On October 9, 2021, the General Manager submitted a letter to VTA requesting that VTA consider becoming the Project Sponsor during the PA&ED phase and enter into discussions with the District to become the Project Delivery Partner during the subsequent phase (PS&E).

On March 3, 2022, VTA's Board of Directors adopted a resolution (Resolution No. 2022.03.10) to approve VTA as a project sponsor, allowing federal funding to be programmed for the Project and positioning VTA to deliver the Highway 17 Project on the District's behalf. As a Project Delivery Partner, VTA would lead the PS&E and construction phases of the Highway 17 Project, working collaboratively with the District and Caltrans. VTA would manage a prime consultant to complete final designs and ROW Study work, develop an operation and maintenance agreement, and move the components of the Project within the Caltrans right-of-way through permitting and construction.

### *Proposed Cooperative Agreement with VTA for the PS&E phase*

VTA and the District have mutually agreed that entering into a Cooperative Agreement is the correct pathway to move the project forward into the PS&E phase of the Project. The proposed Cooperative Agreement with VTA as a Project Delivery Partner defines the scope of work, roles and responsibilities, and funding for PS&E. Through the Cooperative Agreement, the District would act as the lead funding agency and VTA would deliver the Project on the District's behalf.

Under the proposed Cooperative Agreement, VTA would be responsible for managing detailed designs and right-of-way studies, negotiating and executing a cooperative agreement with Caltrans for the PS&E phase, and obtaining necessary permits and approvals so that, subject to any identified property rights acquisitions, the Project is ready for bidding and construction (Attachment B). The District would be responsible for funding the costs of consultants during PS&E phase, including VTA's administrative costs to procure and manage its consultants. The District may directly manage an environmental consultant for any necessary updates to the environmental documents identified during the PS&E phase. The District would also actively participate and coordinate with VTA during the preparation of Requests for Proposals and selection of consultants and participate in Project Development Team meetings with Caltrans.

Additionally, under the Cooperative Agreement the District will retain the right to review and comment on submittals and deliverables, and work with VTA to arrive at agreements. Ultimately, Caltrans has final approval authority of deliverables as the agency who owns the right-of-way.

The proposed Cooperative Agreement specifies that the District would contribute District-awarded grant funds to pay for the PS&E costs. The awarded grants are being administered by the Wildlife Conservation Board (WCB), California Department of Parks and Recreation (CDPR), the Gordon and Betty Moore Foundation, and an anonymous private funder. VTA would invoice the District on a quarterly basis for the reimbursement of allowable costs. In the event of cost overruns, VTA and the District are obligated to work together to seek additional grant funds to cover the shortfall. The Cooperative Agreement does not require the District to contribute its own funds unless approved in advance by the Board.

The term of the proposed Cooperative Agreement is through December 31, 2026, with a built-in one-year extension clause if additional time is needed to complete the tasks identified in the scope of work.

In order to provide added flexibility during the PS&E Phase, the General Manager requests Board authorization to amend the Cooperative Agreement specifically to: (i) authorize the disbursement of future new grant funds that might be secured after execution of the contract, and (ii) extend the agreement further for an additional six-month term, for a contract term ending June 30, 2028. All other amendments, including those requiring the District to contribute its own funds directly or extending the agreement beyond June 30, 2028, would require approval by the Board of Directors.

VTA and the District anticipate executing future additional cooperative agreements, or amendments to the proposed PS&E Cooperative Agreement, that address the actual acquisition and disposition of right-of-way and real property interests as well as the construction phase. These future agreements are not part of this report or the proposed Agreement, and would require the General Manager to return to the Board for approval.

## FISCAL IMPACT

Disbursement of funds under the proposed Cooperative Agreement would come from grants awarded to the District specifically for the Project that are administered by WCB, CDPR, the Gordon and Betty Moore Foundation, and a private fund.

The following table outlines the *Measure AA Portfolio 20 South Bay Foothills — Wildlife Passage and Ridge Trail Improvements* allocation, costs-to-date, projected future project expenditures and projected portfolio balance remaining.

<b>MAA20 South Bay Foothills — Wildlife Passage and Ridge Trail Improvements Portfolio Allocation:</b>	<b>\$13,966,000</b>
Grant Income (through FY26):	\$5,380,497
Additional Grants/Fund 40 Allocation:	\$18,100,000
<b>Total Portfolio Allocation:</b>	<b>\$37,446,497</b>
Life-to-Date Spent (as of 4/4/23):	(\$2,307,332)
Encumbrances:	(\$297,909)

Remaining FY23 Project Budgets:	(\$50,522)
Future MAA20 project costs (projected through FY26):	(\$34,619,101)
<b>Total Portfolio Expenditures:</b>	<b>(\$37,274,864)</b>
<b>Portfolio Balance Remaining (Proposed):</b>	<b>\$171,633</b>

The following table outlines the Measure AA Portfolio 20 allocation, projected life of project expenditures and projected portfolio balance remaining.

<b>MAA20 South Bay Foothills — Wildlife Passage and Ridge Trail Improvements Portfolio Allocation:</b>	<b>\$13,966,000</b>
Grant Income (through FY26):	\$5,380,497
Additional Grants/Fund 40 Allocation:	\$18,100,000
<b>Total Portfolio Allocation:</b>	<b>\$37,446,497</b>
Projected Project Expenditures (life of project):	
20-001 Wildlife Corridor: Highway 17 Crossing	(\$12,627,672)
20-002 Bay Area Ridge Trail: Highway 17 Crossing	(\$24,428,192)
20-004 Spooky Knoll Trail/new Hwy 17 Trail Connections	(\$219,000)
<b>Total Portfolio Expenditures:</b>	<b>(\$37,274,864)</b>
<b>Portfolio Balance Remaining (Proposed):</b>	<b>\$171,633</b>

## PRIOR BOARD AND COMMITTEE REVIEW

- February 24, 2016: Award of contract to Trail People to proceed with the conceptual design and feasibility study ([R-16-18](#), [meeting minutes](#))
- August 24, 2016: Caltrans cooperative agreement for the Project Initiation Document phase ([R-16-105](#), [meeting minutes](#))
- October 12, 2016: Contract Amendment with Trail People for additional Caltrans analysis ([R-16-126](#), [meeting minutes](#))
- November 9, 2016: Resolution and approval of a Caltrans cooperative agreement ([R-16-147](#), [meeting minutes](#))
- June 27, 2018: Advancement of eight alternatives to the Caltrans PSR-PDS phase and approval of a contract amendment with Trail People ([R-18-66](#), [meeting minutes](#))
- October 24, 2018: FYI noticing the Board of an upcoming public meeting for feedback on crossing alternatives ([FYI memo](#), [meeting minutes](#))
- February 13, 2019: FYI Final Revised Alternatives Report ([FYI memo](#), [meeting minutes](#))
- September 17, 2019: Planning & Natural Resources Committee, Crossing alternatives, Caltrans Project Study Report, environmental review, public outreach and funding ([R-19-124](#), [meeting minutes](#))
- October 23, 2019: Approval of the Caltrans PSR-PDS document and Cooperative Agreement to begin the PA&ED phase ([R-19-136](#), [meeting minutes](#))
- May 27, 2020: Award of Contract to AECOM for the PA&ED phase, CEQA/NEPA ([R-20-53](#), [meeting minutes](#))

- December 9, 2020: Application for Grant Funding from the Wildlife Conservation Board ([R-20-144](#), [meeting minutes](#))
- August 25, 2021: Contract Amendment with AECOM ([R-21-113](#), [meeting minutes](#))
- February 9, 2022: FYI Highway 17 Wildlife and Regional Trail Crossings Project Status Update ([FYI memo](#), [meeting meetings](#))
- May 25, 2022: FYI Highway 17 Crossings Design Aesthetics ([FYI Memo](#), [meeting minutes](#))
- September 13, 2022: Legislative, Funding, and Public Affairs Committee, Guiding Principles for the Design Enhancements of the Highway 17 Crossings (R-22-91, [meeting minutes](#))
- October 26, 2022: Guiding Principles for Highway 17 Crossings Design Enhancements ([R-22-118](#), [meeting minutes](#))

## PUBLIC NOTICE

Public notice was provided as required by the Brown Act.

## CEQA COMPLIANCE

This item does not constitute a project subject to the California Environmental Quality Act (CEQA). The District is currently conducting environmental review for construction of the Project to satisfy CEQA and NEPA (National Environmental Policy Act). Board consideration of the environmental review is tentatively scheduled for Fall 2023.

## NEXT STEPS

If approved by the Board, the General Manager will sign the proposed Cooperative Agreement with VTA to begin the PS&E phase of the project. VTA will begin the RFP process in Spring 2023 to competitively select a consultant to prepare detailed designs of Project components within the Caltrans right-of-way. To allow for an uninterrupted transition from the current phase of the project to the next, VTA, in coordination with the District, would also begin working with Caltrans on the development and execution of a separate cooperative agreement (between VTA and Caltrans) for the PS&E phase.

The current overall Highway 17 Project schedule for construction of the multi-use trail overcrossing, connecting trails, wildlife undercrossing, and associated directional fencing is as follows:

<b>Milestones</b>	<b>Tentative Timeline</b>
Board consideration of CEQA and NEPA review Caltrans PA&ED approval	Fall 2023
PS&E	2023 - 2025
Bidding and Construction (funding dependent)	2026 - 2028

Attachments:

1. Project Area Map
2. Highway 17 Wildlife and Trail Crossings Cooperative Agreement with the Santa Clara Valley Transportation Authority

Responsible Department Heads:

Jane Mark, AICP, Planning Manager

Kirk Lenington, Natural Resources Manager

Prepared by:

Jared Hart, AICP, Senior Planner

Julie Andersen, Senior Resource Management Specialist

Aaron Peth, Planner III

Deborah Hirst, Grants Program Manager

Contact person:

Jared Hart, AICP, Senior Planner, Planning Department

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Created By: apeth



### Highway 17 Project Overview

- Midpen Preserves
- Other Protected Lands
- Private Property
- Crossing Alternative
- Existing Trail
- Existing Los Gatos Creek Trail
- Existing Juan Bautista de Anza Trail
- Existing Bay Area Ridge Trail

Miles 0 0.25 0.5

September 2022

While the District strives to use the best available digital data, these data do not represent a legal survey and are merely a graphic illustration of geographic features.

**COOPERATIVE AGREEMENT #1 BETWEEN  
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY AND  
MIDPENINSULA REGIONAL OPEN SPACE DISTRICT  
FOR STATE ROUTE 17 BIKE/PED TRAIL AND WILDLIFE CROSSING PROJECT  
PS&E AND ROW STUDY PHASES**

This COOPERATIVE AGREEMENT #1 (“**Agreement**”) dated \_\_\_\_\_ is made and entered into by and between SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency organized as a special district under California law (“**VTA**”) and MIDPENINSULA REGIONAL OPEN SPACE DISTRICT, an independent special district of the State of California (“**Midpen**”). Hereinafter, VTA and Midpen may be individually referred to as a “**Party**” or collectively as the “**Parties**.”

**RECITALS**

- A. **WHEREAS**, the California Department of Transportation (“**Caltrans**”), VTA, and Midpen have been pursuing a project to environmentally clear, design, permit and construct a wildlife undercrossing and a separate regional multi-use trail overcrossing of Highway 17 near Lexington Reservoir, south of the Town of Los Gatos in Santa Clara County (hereinafter referred to as the “**Project**”);
- B. **WHEREAS**, the Project is in the Project Approval and Environmental Document (“**PA&ED**”) phase and the Parties anticipate executing a series of Cooperative Agreements and/or amendments to this Agreement as the Project progresses through later phases to further define their cooperative efforts as additional information is developed; and
- C. **WHEREAS**, Midpen is currently working with Caltrans in PA&ED to environmentally clear the Project; and
- D. **WHEREAS**, Midpen has secured five grants to date totaling \$9.13 million for the Project’s PA&ED and design phases, two of which, totaling approximately \$6 million, have been allocated to the design and other activities covered by this Agreement; and
- E. **WHEREAS**, on March 3, 2022 the VTA Board of Directors adopted a resolution (Resolution No. 2022.03.10) to approve VTA as a project sponsor for the Project allowing separate federal funding to be programmed for the Project and to position VTA to deliver the Project on Midpen’s behalf; and
- F. **WHEREAS**, the Project aligns with VTA’s and Midpen’s strategic plan goals by partnering to effectively deliver a capital project that provides safety benefits to vehicular traffic, pedestrians, and wildlife and closes a gap in the regional trail network.
- G. **WHEREAS**, VTA and Midpen have agreed that, once the Project is environmentally



cleared, VTA will serve as the Project sponsor for purposes of programming and using federal funds on the Project as well as the implementing agency primarily responsible for managing the Project through completion and acceptance, including the following phases (each a “Phase”): (i) Design, Plans, Specifications, and Estimates (“**PS&E**”), (ii) plans and studies for the acquisition of additional right-of-way and/or property rights necessary to carry out the Project (“**ROW Study**”), and (iii) construction; and

- H. **WHEREAS**, the Parties wish to specify via this Agreement the terms and conditions and their respective obligations in regard to the performance and funding of the PS&E Phase and the ROW Study Phase of the Project;

**NOW, THEREFORE**, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

### **AGREEMENT**

1. **PS&E and ROW Study Phases.** This Agreement will govern the PS&E Phase and the ROW Study Phase of the Project. Subsequent activities and phases of the Project, such as potential property acquisitions and agreements and the construction phase will be governed by future cooperative agreements and/or amendments to this Agreement; provided, however, that neither VTA nor Midpen are committing through this Agreement to any future activities or phases of the Project other than those expressly addressed herein.
2. **VTA Scope of Work.** VTA activities undertaken pursuant to this Agreement (“**Scope of Work**”) will include but will not be limited to: (i) obtaining all necessary permits and approvals required from all governmental or regulatory agencies and/or entities having jurisdiction over the Project; (ii) negotiating and executing cooperation or similar agreements with Caltrans and other stakeholders as necessary to carry out the work; (iii) coordinating with Midpen on all major decisions that might impact schedule, cost or other material aspects of the Project, including inviting Midpen to all Project Development Team meetings; and (iv) performing and/or supervising and managing the design and real property activities necessary to complete the PS&E and ROW Study Phases so that, subject to any property right acquisitions identified during the ROW Study Phase, the Project is ready for public bidding and construction. A detailed Scope of Work is included in Exhibit A, attached hereto and incorporated herein by reference.
3. **Midpen’s Role in PS&E and ROW Study Phases.** Midpen will provide staff to participate in the PS&E and ROW Study Phases, coordinate with VTA and provide necessary and appropriate coordination with all Midpen departments. Midpen is not required to take on an administrative role or hire consultants for the PS&E and ROW Study Phases, provided that Midpen will prepare and manage any additional environmental studies that may be needed as a result of the PS&E and ROW Study Phases. Midpen will issue, if required, necessary permits to VTA and its consultants for the Project at no cost where the work meets Midpen’s permit requirements. After reasonable opportunity to review required Project submittals and deliverables and

subject to Midpen's reasonable discretion, Midpen will provide timely reviews, comments, and approvals of Project documents. Midpen's administrative costs incurred to procure and manage consultants or administer and participate in the PS&E and ROW Study Phases are not allowable costs against Midpen's Contribution (as defined in Section 4 below).

4. **Midpen's Financial Contribution.** Midpen agrees to contribute \$5.7 million of the funds from the grants identified in Exhibit B, attached hereto and incorporated herein by reference ("**Grant Funding**") to the Scope of Work and other activities required by this Agreement ("**Midpen's Contribution**"). Midpen's Contribution does not include any amount other than \$5.7 million of the Grant Funding, except to the extent approved by Midpen in its sole discretion. Midpen will determine which grants or portions of grants constitute Midpen's Contribution.
5. **Use of Midpen's Contribution.** The Parties will use Midpen's Contribution and the interest earned thereon only for Allowable Costs (as defined below).

Upon execution of the Agreement, VTA will invoice Midpen for \$1,000,000 of Midpen's Contribution ("**Initial Invoice**"), and upon receipt, will deposit Midpen's Contribution into an interest-bearing account to be used solely for Allowable Costs in accordance with this Agreement ("**Initial Deposit**"). Midpen will make the Initial Deposit within thirty (30) calendar days after receipt of VTA's Initial Invoice. The Initial Deposit and any interest thereon, will remain in the account and will not be drawn down until the remainder of Midpen's Contribution has been paid to VTA unless approved in advance by VTA and Midpen. Any unspent funds from the Initial Deposit shall be returned to Midpen at the expiration or earlier termination of this Agreement.

For any Allowable Costs incurred pursuant to this Agreement, VTA will invoice Midpen on a quarterly basis. All VTA invoices must contain sufficient information to determine whether the amount deemed due and payable is accurate, including, without limitation, a brief description of services performed, the date services were performed, the number of hours spent and by whom, a brief description of any costs incurred and a VTA representative's signature.

The Parties' respective performance of the Agreement will be in compliance with all applicable Grant Funding requirements. The Parties acknowledge that they have reviewed and are familiar with the requirements contained in the Grant Funding agreements and that the terms and conditions of the Grant Funding are incorporated into this Agreement as if fully set forth herein.

## 6. **Costs.**

- (a) **Allowable Costs.** For purposes of this Agreement, "**Allowable Costs**" means the actual, direct costs and expenses to perform tasks and activities under this Agreement provided such costs and expenses are directly related to and reasonably necessary for a Party's performance of their obligations under this Agreement. Subject to other requirements in this Agreement, Allowable Costs shall include:

- i. VTA's administrative costs to procure and manage consultants;
- ii. VTA's actual costs for retaining consultants to perform the Scope of Work;
- iii. VTA's staff costs to perform the Scope of Work;

**(b) Project Cost Updates.** VTA will manage the PS&E and ROW Study Phase work to control costs and provide timely project deliverables. VTA will monitor actual Project expenditures to ensure that Midpen's Contribution is used only for Allowable Costs.

**(c) Additional Funds.** Midpen will not be obligated to provide any funding greater than Midpen's Contribution and VTA will not perform any work for which there are no funds allocated and will cease work before Midpen's Contribution is fully depleted. If VTA determines that any amounts exceeding Midpen's Contribution will be required to complete the Scope of Work, VTA will so notify Midpen no less than ninety (90) calendar days before such costs are expected to be incurred in order to allow VTA and Midpen time to negotiate and present an amendment increasing such reimbursement to the Midpen Board for consideration, if necessary. With the notice, VTA will provide Midpen with a summary of the reasons for the need for additional funds as well as a projection of how much additional funding will be required. The Parties will thereafter negotiate in good faith to amend this Agreement to provide such additional funds as are necessary to complete the Scope of Work, including, without limitation, applying for and assisting one another with securing additional grant funds. The Parties hereby agree that such assistance will include taking all actions reasonably necessary or expedient to securing such grant funds.

**7. Term of Agreement.** This Agreement will become effective upon full execution and will remain in effect through the earlier of (i) **December 31, 2026**, or (ii) completion of the Scope of Work. If the PS&E and ROW Study phases of the Project are delayed beyond December 31, 2026, or cancelled completely, either Party may terminate this Agreement, which can be accomplished by either Party giving 30-days written notice of such termination to the other Party. Upon such termination, any unused portion of Midpen's Contribution will be returned.

Upon written request of VTA, Midpen may extend the term of the Agreement for up to twelve (12) months after the initial termination date, upon written notice to VTA and without formal amendment of this Agreement.

**8. Audit and Record Retention.** Midpen may audit the expenses incurred in the performance of this Agreement. VTA will retain all records related to the Project for three (3) years after the completion of the Project or such longer period as may be required by Grant Funding. During this period, VTA will make these records available to Midpen for inspection within a reasonable time, upon Midpen's written request. VTA will repay any portion of Midpen's Contribution used for expenses other than Allowable Costs as determined by the audit.

**9. Parties' Representatives.** VTA's General Manager, or their designee, will be VTA's representative for all purposes under this Agreement. Midpen's General Manager, or their designee, will be the representative of Midpen for all purposes under this Agreement. Each Party may change its respective designee by providing written notice to the other Party as provided herein.

**10. Indemnification.**

- a. Neither VTA nor any officer or employee thereof will be responsible for any costs, expenses, damages or liability occurring by reason of Midpen's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction associated with this Agreement. In addition, pursuant to Government Code Section 895.4, Midpen will fully indemnify, defend and hold VTA harmless from any liability imposed for injury (as defined by Government Code §810.8) to the extent occurring by reason of Midpen's negligence, recklessness, or willful misconduct under or in connection with any work, authority or jurisdiction delegated to Midpen under this Agreement.
- b. Neither Midpen nor any officer or employee thereof will be responsible for any costs, expenses, damages or liability occurring by reason of VTA's negligence, recklessness, or willful misconduct in the completion of any work associated with this Agreement. In addition, pursuant to Government Code Section 895.4, VTA will fully indemnify, defend and hold Midpen harmless from any liability imposed for injury (as defined by Government Code §810.8) to the extent occurring by reason of VTA's negligence, recklessness, or willful misconduct in the completion of the work, undertaken by VTA pursuant to this Agreement.

**11. No Waiver.** The failure of either Party to insist upon the strict performance of any of the terms of this Agreement will not be deemed a waiver of any right or remedy that either Party may have, and will not be deemed a waiver of their right to require strict performance of all of the terms thereafter.

**12. Notice.** Any notice required to be given by either Party, or which either Party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority  
Chief Engineering & Program Delivery Officer  
3331 North First Street, Bldg. A  
San José, CA 95134-1906

To Midpen: Midpeninsula Regional Open Space District  
Engineering & Construction Department Manager  
5050 El Camino Real  
Los Altos, CA 94022-1404

Notice will be deemed effective on the date personally delivered or, if mailed, three (3) days after deposit in the United States mail.

- 13. Dispute Resolution.** If a question arises regarding interpretation of this Agreement or its performance, or the alleged failure of a Party to perform, the Party raising the question or making the allegation will give written notice thereof to the other Party. The Parties will promptly meet at the staff level in an effort to resolve the issues raised. If the Parties fail to resolve the issues raised at the staff level, they will raise the issues at the management level, if the issues remain unresolved, alternative forms of dispute resolution, including mediation or arbitration, may be pursued by mutual agreement, however there will be no affirmative duty on either Party to participate in such alternative forms of dispute resolution. It is the intent of the Parties to the extent possible that litigation be avoided as a method of dispute resolution.
- 14. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained herein and supersedes all prior or contemporaneous agreements, representations, and understandings of the Parties relative thereto.
- 15. Time of the Essence.** Time is of the essence with respect to the performance of every provision of this Agreement in which time of performance is a factor. The Parties acknowledge that timely performance of services is essential to maintaining the overall Project schedule and agree to work in a collaborative manner to minimize any delays.
- 16. Amendments.** No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by both of the Parties hereto, and no oral understanding or agreement not incorporated herein will be binding on any of the Parties hereto.
- 17. Warranty of Authority to Execute Agreement.** Each Party to this Agreement represents and warrants that each person whose signature appears hereon has been duly authorized and has the full authority to execute this Agreement on behalf of the entity that is a Party to this Agreement.
- 18. Severability.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, will to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any person or circumstance, will remain in full force and effect and will in no way be affected, impaired or invalidated thereby.
- 19. Governing Law / Venue.** The laws of the State of California will govern this Agreement, as well as any dispute that might arise between VTA and Midpen, without regard to conflict of law provisions. The Parties agree that venue for any lawsuit or legal action arising from this Agreement shall be in Santa Clara County, California.
- 20. Captions.** The captions and subject headings of this Agreement are included for convenience only and will not affect the interpretation or construction of this Agreement.

**21. Survival.** The provisions in Sections 8, 10, 13, 18, 19 and 21 shall survive the expiration or termination of this Agreement.

**22. Counterparts / Electronic Signature.**

This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, but such counterparts together will constitute one and the same instrument.

Each Party (i) has agreed to permit the use, from time to time and when allowed by law, of electronic signatures in order to expedite the transaction contemplated by this Agreement, (ii) intends to be bound by electronic signature, (iii) is aware that the other will rely on the electronic signature, and (iv) acknowledges such reliance and waives any defenses (other than fraud) to the enforcement of any document based on the fact that a signature was sent electronically. As used herein, the term “electronic signature” includes any signature sent via email in portable document format (“.pdf”).

WITNESS THE EXECUTION HEREOF the day and year first hereinabove set forth.

“Midpen”  
Midpeninsula Regional Open Space District  
a public agency

“VTA”  
Santa Clara Valley Transportation Authority  
a California special district

\_\_\_\_\_  
Ana Ruiz  
General Manager

\_\_\_\_\_  
Carolyn M. Gonot  
General Manager/CEO

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

APPROVED AS TO FORM:

\_\_\_\_\_  
Hilary Stevenson  
General Counsel

\_\_\_\_\_  
Victor Pappalardo  
Deputy General Counsel

## EXHIBIT A SCOPE OF WORK

The Scope of Work for this Agreement will consist of the following tasks and deliverables for the PS&E and ROW Study Phases of the Project:

### **I. Tasks Applicable to All Phases**

- (a) **Tasks.** VTA will be responsible for the following tasks that apply to all phases under this Agreement:
- i. Prepare a Project Management Plan (“**PMP**”) for the PS&E and ROW Study Phases to further refine the scope of work required during the PS&E and ROW Study Phases. The PMP will address, at a minimum: (i) VTA and consultant staffing plans, including designations of positions and general assignments as well as billing rates; (ii) cost estimates for PS&E and ROW Study activities; (iii) a detailed description of Project tasks by each Phase; and (iv) a schedule for the PS&E and ROW Study Phases. The PMP will also contain an approvals matrix that identifies key deliverables and the entity responsible for approving each. VTA will be primarily responsible developing the PMP, but will coordinate with Midpen and provide draft plans for Midpen’s review and approval prior to finalizing. Following finalization, VTA will manage and update the PMP, as necessary, and provide Midpen the opportunity to review and approve any updates before finalizing.
  - ii. Serve as project manager for the Project.
  - iii. Coordinate with Caltrans, permitting agencies, Midpen and other relevant stakeholders as necessary to allow for timely reviews and approvals of Project.
- (b) **Deliverables.** VTA will provide the following deliverables to complete the activities applicable to all phases in accordance with each deliverable’s milestone:
- i. Draft PMP
  - ii. Final PMP

### **II. PS&E Phase**

- (a) **Tasks.** VTA will perform and/or be responsible for the following tasks to complete the PS&E Phase:
- i. Completion of all activities identified in the PMP necessary to provide the PS&E deliverables;
  - ii. Coordination with Midpen to allow for Midpen’s review and approval of the deliverables for which Midpen has approval authority under the PMP, including aesthetic design treatments, trail signage and open space site amenities;
  - iii. Coordination and cooperation with Midpen on submission of grant applications and grant requirements for PS&E, ROW and Construction Phases;
- (b) **Deliverables.** VTA will provide the following deliverables to complete the



PS&E Phase in accordance with each deliverable's milestone:

- i. Conceptual Design
- ii. Detailed Design
- iii. Final Design
- iv. Details and Specifications and Costs including:
  - a. Permits and schedule for obtaining Caltrans approval of final PS&E
  - b. Cost estimate for Construction phase including construction capital and support cost

### **III. ROW Study Phase**

**(a) Tasks.** VTA will perform and/or be responsible for the following tasks to complete the ROW Study Phase:

- i. In conjunction with the PS&E activities, identify and evaluate what additional property interests or agreements, including additional Caltrans right-of-way, are necessary to complete the Project. This task includes, without limitation: obtaining title reports and appraisals; conducting environmental and other real property-related research and investigations, as necessary; and outreach and negotiations for utility relocation work.
- ii. Develop proposals and alternatives for the acquisition, transfer and disposition of necessary property interests for the Project.
- iii. Identify and conduct outreach and negotiations with property owners, as necessary or appropriate.

**(b) Deliverables.** VTA will provide the following deliverables to complete the ROW Study Phase in accordance with each deliverable's milestone:

- i. Final ROW Requirement/Certificate of Sufficiency
- ii. Appraisal Reports
- iii. Draft Utility Relocation Plans and Agreements (Utility Relocations) as applicable
- iv. Draft ROW Certification

**IV. VTA Staffing.** VTA will provide VTA staff necessary to perform services for the Project as specified in this Scope of Work. VTA must maintain a separate accounting of staff time directly attributable to the Project. Only the VTA staff positions identified in the attached Exhibit A-1 are authorized to perform services on the Project, unless Midpen approves other VTA staff positions in advance through the PMP process.

**V. Consultants.** VTA may retain consultants to perform any of the activities set forth in this Scope of Work. VTA will select consultants through VTA's typical competitive procurement processes. VTA will allow Midpen to participate in the selection of any consultants, including, without limitation, determining the professional areas of expertise for which consultants are procured, the content of RFPs, and participation in the evaluation panel for each consultant procurement. VTA will be responsible for managing any consultants it hires and will ensure that each consultant's work meets applicable laws and standards of performance specified in the consultant agreements, including, if

necessary, pursuing claims for and resolving design errors and omissions. VTA will consult with Midpen prior to settling claims and disputes if such settlement has the potential to impact Project cost or schedule. All reports, designs, drawings, plans, specifications, schedules, studies, memoranda, and other documents assembled for or prepared by or for; in the process of being assembled or prepared by or for; or furnished to VTA or Midpen under any consultant contract executed pursuant to this Agreement (“**Work Product**”) are the joint property of the Parties. Each Party is entitled to copies of and access to all Work Product during the progress of the Project and upon completion of the Scope of Work or termination of this Agreement. Each Party may retain and use copies of all Work Product produced pursuant to any consultant agreement entered into in furtherance of the Project.

**VI. Other Project Management Duties.** VTA will include Midpen staff as an active participant within VTA's project management process to the same extent that Caltrans, MTC or other governmental partners are included, as appropriate and in accordance with the Scope of Work and PMP. VTA will hold periodic Project Development Team meetings as agreed upon by the Project team to assess Project progress and any separate meetings with Midpen as necessary to address Project issues that affect Midpen's interests as they arise.

**EXHIBIT A-1  
CLASSIFICATIONS OF VTA'S TECHNICAL STAFF**

The classifications of VTA's technical staff authorized to bill on the Project are set forth below. Any additional classifications must be approved by Midpen through the PMP process.

1. Assistant Counsel / Sr. Assistant Counsel / Deputy General Counsel/ General Counsel
2. Contracts Manager (Compliance)
3. Contracts Compliance Officer
4. SBE/DBE Coordinator / Manager
5. Contract Compliance (Inspector)
6. Contracts Manager (Professional Service Procurement)
7. Contract Administrator I, II, III (Professional Service Procurement)
8. Contracts Manager (Construction Contract Procurement)
9. Contract Administrator I, II, III (Construction Contract Procurement)
10. Public Community Outreach Manager / Public Community Outreach Specialist
11. Environmental Manager
12. Sr. Environmental Planner / Environmental Project Manager
13. Environmental Analyst I, II, III
14. Sr. Real Estate Agent / Real Estate Agent
15. Sr. Transportation Planner (Bike/ped)/ Transportation Planner I, II, III (Bike/Ped)
16. Sr. Transportation Planner (Traffic Forecast / Modeling)
17. Transportation Planner (Traffic Forecast / Modeling)
18. Sr. Transportation Engineer (Traffic) / Traffic Engineer
19. Utility Coordinator Manager / Utility Coordinator
20. Survey Manager / Sr. Surveyor / Surveyor
21. Sr. Engineer (Hazardous Waste) / Assistant Engineer (Hazardous Waste)
22. Sr. Scheduler / Scheduler
23. Sr. Planner (Programing & Grants) / Planner I, II, III (Programming & Grants)
24. Highway Capital Program Manager
25. Sr. Management Analyst (Highway) / Management Analysis (Highway)
26. Sr. Project Manager (Highway) / Project Manager (Highway)
27. Project Engineer (Highway)
28. Sr. Cost Estimator / Cost Estimator
29. Encroachment Permit Coordinator / ROW Coordinator
30. Construction Manager
31. Resident Engineer
32. Structures Representative
33. Office Engineer
34. Construction Inspector (Civil) / Construction Inspector (Structure)
35. Sr. Construction Scheduler / Construction Scheduler
36. Document Controller / Document Specialist
37. Sr. Environmental Engineer / Construction Environmental Engineer/Inspector
38. Team Lead (Value Engineering) / Value Analysis Engineer

**EXHIBIT B  
GRANT FUNDING**

The Parties agree to carry out their obligations under this Agreement in compliance with the following grants, each as may be amended from time to time:

- California Department of Parks and Recreation - Highway 17 Trail Crossing Plans - \$2,000,000 (Contract Number C5054044)
- Wildlife Conservation Board - Highway 17 Wildlife and Trail Crossings Planning and Design - \$4,000,000 of \$5,000,000 total award (Grant Agreement Number WC2080DC)
  - PS&E Phase - \$4,000,000
  - PA&ED Phase - \$1,000,000 (this portion of the grant is identified for reference purposes only and covers the PA&ED Phase, which is not addressed by this Agreement)