
CONTRACT
BETWEEN
SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND
BENTHEM CROUWEL ARCHITECTS
FOR
A&E CONSULTING SERVICES – SAN JOSE DIRIDON PROJECT

CONTRACT NO. S17235

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

- A. SERVICES TO BE PERFORMED:** Contractor shall furnish all technical and professional labor, and materials to perform the services described in Exhibit A (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, 2017 (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 B for the Services.

Total compensation for the Services provided hereunder is a fixed fee of €41,000 or \$48,800 USD.

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. Any assignment, transfer, change or subcontract in violation of this Contract shall be void.

Authorized subcontractor:

Arcadis, NV - Design Consultant
Gustav Mahlerplein 97-103
1082 MS Amsterdam
The Netherlands
T: +31 (0)20 2011 011

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 in accordance with the terms of this Contract for the Services satisfactorily performed prior to the effective date and time of termination or suspension. 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 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. **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.
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:

Heidi Samuels, Deputy Director
Interim Manager of Procurement, Contracts and Materials
3331 N. First Street, Bldg. A
San Jose, CA 95134-1927
heidi.samuels@vta.org

Contractor:

Daniel K.J.M. Jongtien, Partner
Bentham Crouwel Architects
General Vetterstraat 61
NL-1059 BT Amsterdam
+31 20 642 0150
djongtien@benthamcrouwel.NL

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:

Trish Kane, Contracts Manager
3331 N. First Street, Bldg. A
San Jose, CA 95134-1927
trish.kane@vta.org

Contractor:

Daniel K.J.M. Jongtien, Partner
Bentham Crouwel Architects
General Vetterstraat 61
NL-1059 BT Amsterdam
+31 20 642 0150
djongtien@benthamcrouwel.NL

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 agree to the Guest Release Agreement set forth in Exhibit C.

N. INDEMNITY AND DEFENSE OF CLAIMS:

1. To the greatest extent permitted by law, Contractor shall indemnify and hold harmless Santa Clara Valley Transportation Authority (hereinafter "VTA"), its board members, officers, agents, employees, and consultants (collectively, the "Indemnitees") from any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) arising out of, pertaining to, or caused by, the negligence, recklessness, or willful misconduct of Contractor and/or its agents, employees, or subcontractors, whether such claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs (including attorneys' and experts' fees and costs) are based upon a contract, or for personal injury, death or property damage or upon any other legal or equitable theory whatsoever. 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, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs to the extent caused by the sole or active negligence or willful misconduct of VTA or its agents, servants or independent contractors who are directly responsible to VTA or from damages for defects in designs furnished by those persons.
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, claim, or demand brought against any Indemnitee founded upon, alleging, or implicating any claims, liabilities, losses, injuries, damages, expenses, fines, penalties, liens, stop notices, or fees and costs covered by Contractor's indemnity obligation set forth in subparagraph (a) 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 by the

sole or active negligence or willful misconduct by VTA or its agents, servants or independent contractors who are directly responsible to VTA, VTA shall promptly reimburse Contractor for costs of defending the Indemnitees in such action incurred by Contractor, but only in proportion to the sole or active negligence or willful misconduct of VTA or its agents, servants or independent contractors who are directly responsible to VTA.

3. This indemnity and defense of claims provision will survive the expiration or termination of this Contract and remain in full force and effect.

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

*Santa Clara Valley
Transportation Authority*

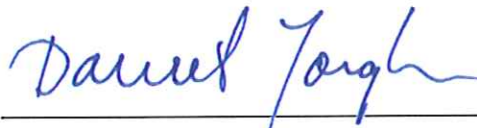


Trish Kane
Contracts Manager



Date

Bentham Crowel Architects



Daniel K.J.M. Jongh
Partner

August 31, 2017

Date

Approved as to Form

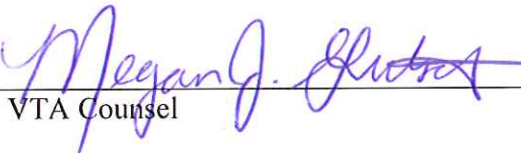

VTA Counsel

EXHIBIT A SCOPE OF SERVICES

Due to the limited information about the San Jose Diridon Project (“project”), the Contractor is required to meet with VTA and project stakeholders and visit the project site prior to providing design services. This phase of the scope is deemed the “initial phase”.

The initial phase of work shall include an on-site visit to San Jose that will include two days of meetings with VTA and the project stakeholders. The purpose of this visit and these meetings is to gain insight in the following areas of concern:

- Identify the main objective of the project.
- The key requirements of the project.
- The current situation and status of the project.
- Identify and understand the stakeholder structure.
- Identify and understand the common interests.
- Identify the conflicts of interest within stakeholders on the project.

VTA shall manage the preparation and scheduling of attendees for the two days of meetings.

Contractor shall prepare questions regarding input and explain approaches that Contractor has applied on other projects.

While in San Jose, Contractor will visit to the project site to better understand the existing station and different modalities.

Timeline: The initial visit shall occur the first week of September.

Team composition: The attendees during the initial site visit will include Daniel Jongtien (architect) and a junior architect.

Deliverable: Contractor shall provide, no later than October 15, 2017, an Action Plan for the design work following the initial visit. The Action Plan shall include a proposal, a scope of services, a timeline, and a proposed fee.

EXHIBIT B
COMPENSATION, INVOICING and PAYMENT

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

A. COMPENSATION: This is a fixed fee Contract with a maximum value of €41,000 or \$48,800 USD, within which Contractor agrees to complete the Services defined in Section A of the Contract. Contractor is not authorized to provide Services hereunder exceeding the above-stated amount.

- 1. PAYMENT FOR SERVICES AND TRAVEL:** The Services and travel expenses are incorporated herein as a fixed fee and shall be invoiced in accordance with the following schedule.

First Payment – 20% at the initial phase of the Contract
Final Payment – 80% at the conclusion of this phase of the Contract.

B. INVOICING:

- 1. INVOICE FORMAT:** VTA shall pay Contractor on the basis of invoices submitted every month for the Services performed during the preceding month. Invoices shall be in a form acceptable to VTA and each invoice must include:
- Contract Number.
 - % of fixed fee
- 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 purpose of this provision the date of the invoice shall be the date of receipt by VTA.
- 3. INVOICE SUBMITTAL:** Contractor must submit invoices by e-mail to VTAAccountsPayable@vta.org. Invoices shall be in a PDF, Word, or Excel format.

Should VTA contest any portion of an invoice, that portion shall be held for resolution, and the uncontested balance shall be processed for payment. VTA may, at any time, conduct an audit of any and all records kept by Contractor related to the Services performed under this Contract. Any overpayment uncovered in such an audit may be charged against the Contractor 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
Services is satisfactorily completed



CONTRACTOR GUEST RELEASE AGREEMENT
Contract No. S17235 between VTA and Bethem Crouwel Architects

DKY M Jonghien (hereinafter referred to as ("Contractor Guest")) has requested and has been given permission to come upon designated portions of the property of the Santa Clara Valley Transportation Authority ("VTA") at location(s) herein referred to as ("VTA's Premises") for the purpose of: furnishing all technical and professional labor and materials to satisfactorily perform site inspections and attend meetings between September 3 and 8, 2017 in connection with Contractor's work under VTA Contract No. S17235 as such work pertains to Diridon Station in San José.

Contractor Guest acknowledges and understands that no warranty, either express or implied, is made by the VTA as to the condition of VTA's Premises. Contractor Guest acknowledges that any and all activities on any property such as the VTA's Premises have known and unknown hazards and risks and could result in injury, death and/or property damage to the person involved in these activities. The many possibilities and sources of injury or damage are acknowledged by Contractor Guest, and [he/she] comes on VTA's Premises with full knowledge that hazards and risks may exist.

As a part of the consideration for being allowed by the VTA to enter VTA's Premises, CONTRACTOR GUEST HEREBY RELEASES VTA from liability for personal injury (including wrongful death) or property damage suffered by CONTRACTOR GUEST which is caused, in whole or in part, by any activity or condition on VTA's Premises, except to the extent that the injury or damage is caused, in whole or in part, by the gross negligence of the VTA or its employees. CONTRACTOR GUEST understands that neither he/she, nor his/her heirs or personal representatives will be able to sue the VTA, its agents, employees, officers, directors, attorneys, successors and assigns, associated companies, its parent, subsidiary, or affiliated corporations, partnerships, or other entities, their lessors, lessees, licensors, licensees, and any and all transit entities or companies owned, operated or controlled by or allied with them, their respective agents, servants and employees, together with their respective successors for any injury or property damage that CONTRACTOR GUEST suffers while on VTA's Premises, except to the extent that the injury or damage is caused, in whole or in part, by the gross negligence of the VTA or its employees.

CONTRACTOR GUEST HAS READ THIS RELEASE AGREEMENT AND UNDERSTANDS IT. HE/SHE IS SIGNING IT FREELY AND VOLUNTARILY AFTER HAVING HAD THE OPPORTUNITY TO HAVE LEGAL COUNSEL REVIEW IT.

Signed this 25 day of August 2017 at Amsterdam, NL

Daniel Y Jonghien
Signature of Contractor Guest

DKY M Jonghien
Printed Name of Contractor Guest

[Signature]
Signature of Witness

LT DELLING
Printed Name of Witness



CONTRACTOR GUEST RELEASE AGREEMENT
Contract No. S17235 between VTA and Bethem Crowel Architects

Dkym Jonghien (hereinafter referred to as ("Contractor Guest") has requested and has been given permission to come upon designated portions of the property of the Santa Clara Valley Transportation Authority ("VTA") at location(s) herein referred to as ("VTA's Premises") for the purpose of: furnishing all technical and professional labor and materials to satisfactorily perform site inspections and attend meetings between September 3 and 8, 2017 in connection with Contractor's work under VTA Contract No. S17235 as such work pertains to Diridon Station in San José.

Contractor Guest acknowledges and understands that no warranty, either express or implied, is made by the VTA as to the condition of VTA's Premises. Contractor Guest acknowledges that any and all activities on any property such as the VTA's Premises have known and unknown hazards and risks and could result in injury, death and/or property damage to the person involved in these activities. The many possibilities and sources of injury or damage are acknowledged by Contractor Guest, and [he/she] comes on VTA's Premises with full knowledge that hazards and risks may exist.

As a part of the consideration for being allowed by the VTA to enter VTA's Premises, CONTRACTOR GUEST HEREBY RELEASES VTA from liability for personal injury (including wrongful death) or property damage suffered by CONTRACTOR GUEST which is caused, in whole or in part, by any activity or condition on VTA's Premises, except to the extent that the injury or damage is caused, in whole or in part, by the gross negligence of the VTA or its employees. CONTRACTOR GUEST understands that neither he/she, nor his/her heirs or personal representatives will be able to sue the VTA, its agents, employees, officers, directors, attorneys, successors and assigns, associated companies, its parent, subsidiary, or affiliated corporations, partnerships, or other entities, their lessors, lessees, licensors, licensees, and any and all transit entities or companies owned, operated or controlled by or allied with them, their respective agents, servants and employees, together with their respective successors for any injury or property damage that CONTRACTOR GUEST suffers while on VTA's Premises, except to the extent that the injury or damage is caused, in whole or in part, by the gross negligence of the VTA or its employees.

CONTRACTOR GUEST HAS READ THIS RELEASE AGREEMENT AND UNDERSTANDS IT. HE/SHE IS SIGNING IT FREELY AND VOLUNTARILY AFTER HAVING HAD THE OPPORTUNITY TO HAVE LEGAL COUNSEL REVIEW IT.

Signed this 25 day of August 2017 at Amsterdam, NE

Daniel Y. Jonghien
Signature of Contractor Guest

Dkym Jonghien
Printed Name of Contractor Guest

[Signature]
Signature of Witness

LT DELLING
Printed Name of Witness

