

**THIRD AMENDMENT TO COOPERATIVE AGREEMENT #7  
BETWEEN  
THE CITY OF SAN JOSE  
AND  
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
FOR THE REIMBURSEMENT OF ENCROACHMENT PERMIT FEES AND  
ADDITIONAL SERVICES COSTS RELATED TO THE CONSTRUCTION OF THE  
SILICON VALLEY BERRYESSA EXTENSION PROJECT**

THIS THIRD AMENDMENT TO COOPERATIVE AGREEMENT #7 is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between the CITY OF SAN JOSE, a municipal corporation of the State of California ("CITY"), and the SANTA CLARA VALLEY TRANSPORTATION AUTHORITY, a public agency organized as a special district under California law ("VTA"), collectively referred to herein as the "Parties".

**RECITALS**

A. WHEREAS, on June 28, 2012, CITY and VTA entered into an agreement entitled "COOPERATIVE AGREEMENT #7 BETWEEN THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY AND THE CITY OF SAN JOSE FOR THE REIMBURSEMENT OF ENCROACHMENT PERMIT FEES AND ADDITIONAL SERVICES COSTS RELATED TO THE CONSTRUCTION OF THE SILICON VALLEY BERRYESSA EXTENSION PROJECT" ("Agreement"); and

B. WHEREAS, on December 22, 2016, CITY and VTA entered into a First Amendment to the Agreement to extend the term to June 30, 2017 ("First Amendment"); and

C. WHEREAS, on October 3, 2017, CITY and VTA entered into a Second Amendment to the Agreement to extend the term to June 30, 2018 ("Second Amendment"); and

D. WHEREAS, the Parties now desire to further amend the Agreement to increase the compensation and retroactively extend the term to the anticipated completion date of CITY services for the Silicon Valley Berryessa Extension Project ("Project");

NOW, THEREFORE, the Parties agree to amend the AGREEMENT as follows:

**SECTION 1.** Section 3.2 of the AGREEMENT is amended and restated to read as follows:

The total reimbursement from VTA to CITY under this Agreement shall not exceed Four Million One Hundred Thousand Dollars (\$4,100,000.00) ("Total Reimbursement Amount"). Prior to submittal to the CITY of the encroachment permit application for any part of the Project or prior to any request for additional CITY services to be paid at an hourly rate as set forth in EXHIBITS A and B, VTA shall deposit Five Hundred Thousand Dollars (\$500,000.00) into CITY's designated interest-bearing account. CITY shall draw down on the VTA's deposit for encroachment permit services for the Project and for additional CITY services billed on a time and materials basis as set forth in EXHIBITS A and B, subject to VTA approval of CITY monthly invoices as described in Section 3.4 below. VTA shall make additional deposits of Five Hundred Thousand Dollars (\$500,000.00) increments immediately upon being notified by CITY that the deposit account balance is less than One Hundred Thousand Dollars (\$100,000.00) or prior to any request for services that may decrease the balance under One Hundred Thousand Dollars (\$100,000.00). Interest earned, if any, on the deposited amount shall be the property of VTA. A deposit may be less than Five Hundred Thousand Dollars (\$500,000) if such deposit would fully deplete the Total Reimbursement Amount.

**SECTION 2.** Section 3.3 of the AGREEMENT is amended to read as follows:

In the event that the total amounts to be paid by VTA to CITY for the Project under this Agreement are less than the amount deposited by VTA as set forth in Section 3.2, CITY shall return such amount to VTA. If the total amounts required for the Project under this Agreement are more than the Total Reimbursement Amount, then a written amendment to this Agreement under section 6.4 herein will be required to increase the Total Reimbursement Amount under this Agreement prior to performance of any services for which such increased authorization is required.

**SECTION 3.** Section 6.5 of the AGREEMENT is amended and restated to read as follows:

Term. This Agreement shall be effective as of January 1, 2012 and shall remain in effect until December 31, 2019 or until earlier termination.

**SECTION 4.** EXHIBIT B, "SCHEDULE OF ENCROACHMENT PERMIT SERVICES COSTS AND HOURLY RATES," is amended and replaced with revised EXHIBIT B, which exhibit is attached and incorporated into this Third Amendment.

**SECTION 5.** Except as herein modified, all other provisions of the AGREEMENT, including any exhibits and subsequent amendments thereto, shall remain in full force and effect. All references to the Agreement in this Amendment shall refer to the Agreement as amended by the Amendment unless otherwise specifically set forth or otherwise indicated by context.

**SECTION 6.** In the event of any conflict between the provisions of this Amendment and the provisions of the AGREEMENT, the provisions of this Amendment shall prevail. Whether or not specifically amended by the Amendment, all of the terms and provisions of the AGREEMENT are hereby amended to the extent necessary to give effect to the purpose and intent of this Amendment.

**SECTION 7.** Unless specifically defined herein, the capitalized terms used in this Amendment shall have the meanings defined in the AGREEMENT.

**SECTION 8.** In any provision of the AGREEMENT, as amended by this Amendment is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall continue in full force without being impaired or invalidated in any way.

**SECTION 9.** This Amendment shall be governed by, and interpreted in accordance with, the laws of the State of California.

*Signatures of parties on following page.*

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

"VTA"

APPROVED AS TO FORM:

SANTA CLARA VALLEY  
TRANSPORTATION AUTHORITY, a  
public agency

By: \_\_\_\_\_  
VICTOR PAPPALARDO  
Senior Assistant Counsel

By: \_\_\_\_\_  
NURIA FERNANDEZ  
General Manager

Date: \_\_\_\_\_

"CITY"

APPROVED AS TO FORM:

CITY OF SAN JOSE, a municipal  
corporation

By: \_\_\_\_\_  
JON CALEGARI  
Deputy City Attorney

By: \_\_\_\_\_  
TONI TABER  
City Clerk

Date: \_\_\_\_\_

## EXHIBIT B [REVISED]

### SCHEDULE OF ENCROACHMENT PERMIT SERVICES COSTS AND HOURLY RATES

- A. CITY's current estimate for encroachment services for the Project is set forth below:

#### ENCROACHMENT PERMIT SERVICES ESTIMATE BASED ON PUBLIC WORKS PERMIT FEES (ATTACHMENT A)

Improvement Location	Improvement Cost	Estimate
<u>C700 Contract</u>		
Trade Zone Boulevard	\$ 4,166,722	\$ 239,339
Hostetter Road	3,212,777	208,279
Sierra/Lundy	19,757,719	1,045,133
Berryessa Road	714,600	129,915
Mabury Road	2,083,200	269,902
Berryessa Station Way Bridge	6,350,000	335,604
C700 Contract Total	\$ 36,285,018	\$ 2,228,172
<u>C720 Contract</u>		
Berryessa Station Way	\$ 4,390,000	\$ 462,283
Mabury Road at Lenfest	430,000	65,212
Off-Site Improvements	654,400	198,275
C720 Contract Total	\$ 5,474,400	\$ 725,770
<b>Total</b>		<b>\$ 2,953,942</b>

The estimated encroachment permit payments are based on information provided by VTA of probable extent of City Infrastructure as described in the pre proposal plans. The estimated payments will be adjusted according to the approved engineer's estimate on the final plans based on the applicable fees at the time of submittals. It should be noted that estimated encroachment permit payments exclude third party utilities, dewatering permits, fire review/permits, building review/permits and sewer connection and discharge fees.

The encroachment permit fees set forth above generally include the following from the City's standard permit fee list:

- Benchmark Maintenance Fee
- Engineering and Inspection Fee
- Material Testing Fee
- Pavement Design Fee
- RCP Quality Assurance Fee
- Signal Inspection Fee

- Signal Review Fee
- Traffic Signal Controller Fee
- Streetlight Inspection Fee
- Streetlight Review Fee
- Underground Service Alert Fee
- Record Retention Fee
- Street Name Signs
- Geometric Design Fee

B. The CITY's current hourly rates for Additional CITY Services are set forth below, subject to change by CITY:

**SCHEDULE OF HOURLY RATES – REVISED (FY 18-19)**

<b><u>Job Category</u></b>	<b><u>Hourly Billing Rate (\$/hour)*</u></b>
Senior Engineer	\$166.29
Associate Engineer	\$138.49
Principal Construction Inspector	\$130.98
Engineer I/II	\$120.25
Principal Engineering Technician	\$113.62
Senior construction Inspector	\$114.12
Senior Engineering Technician	\$102.01
Associate construction Inspector	\$101.54
Associate Engineering Technician	\$93.03

\*Additional classifications and hourly rates are published by CITY in its Schedule of Fees.