

**THIRD AMENDMENT  
TO  
COOPERATIVE AGREEMENT #6  
BETWEEN THE CITY OF SAN JOSE  
AND  
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY  
FOR THE SILICON VALLEY BERRYESSA EXTENSION PROJECT**

This third amendment to COOPERATIVE AGREEMENT #6 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 ("VTA"), collectively referred to herein as the "Parties".

**RECITALS**

- A. WHEREAS, on March 13, 2012, CITY and VTA entered into an agreement entitled "COOPERATIVE AGREEMENT #6 BETWEEN THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY AND THE CITY OF SAN JOSE FOR THE REIMBURSEMENT OF COSTS RELATED TO DEVELOPMENT OF 65% TO 100% CONSTRUCTION DOCUMENTS AND PROJECT CONSTRUCTION COORDINATION FOR THE SILICON VALLEY BERRYESSA EXTENSION PROJECT" ("Agreement"); and
- B. WHEREAS, on January 23, 2015, CITY and VTA entered into a First Amendment to the Agreement to extend the term to June 30, 2015 ("First Amendment"); and
- C. WHEREAS, on June 24, 2015, CITY and VTA entered into a Second Amendment to the Agreement to increase the compensation and extend the term to December 31, 2018 ("Second Amendment"); and
- D. WHEREAS, the Parties now desire to further amend the Agreement to increase the compensation and extend the term of CITY services for the Silicon Valley Berryessa Extension Project ("Project");

NOW, THEREFORE, the Parties agree to further amend the amended Agreement as follows:

**SECTION 1.** The first paragraph of the Agreement that was previously numbered Section 3.14 is amended as follows:

3.1.4 In no event, shall the cumulative reimbursement for the time period from the Effective Date through December 31, 2019 exceed One Million Two Hundred Thousand Dollars (\$1,200,000).

**SECTION 2.** A new Section, numbered Section 3.15, is hereby added to the Agreement. This Section shall read as follows:

3.1.5 Reimbursement for the period from January 1, 2019 through December 31, 2019 shall be on the basis of the schedule of hourly rates attached as Exhibit B-2 to this Agreement, which is subject to reasonable change by CITY.

**SECTION 3.** The second paragraph of the Agreement that was previously also numbered as Section 3.14 is hereby renumbered as Section 3.16 and shall continue to read as follows:

3.16 CITY shall maintain a separate accounting of staff time directly attributable as follows.

**SECTION 4** Section 6.1 of the Agreement is amended and restated to read as follows:

6.1 The total amount payable by VTA to CITY under this Agreement for reimbursement of costs related to development of the 65 percent to 100 percent construction and documents, project construction, CITY acceptance and close out activities shall not exceed One Million Two Hundred Thousand Dollars (\$1,200,000).

**SECTION 5.** Section 8.5 of the Agreement is amended and restated to read as follows:

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

**SECTION 6.** EXHIBIT A, **Task 3 Construction Coordination, CITY RESPONSIBILITIES**, is amended to replace reference to “Allen Baquilar” with “Manjit Banwait.” All other terms and conditions set forth in Exhibit A shall remain the same.

**SECTION 7.** The Agreement shall be amended to include a new Exhibit entitled EXHIBIT B-2, which exhibit is attached and incorporated into this Third Amendment.

**SECTION 8.** Except as herein modified, all other provisions of the Agreement, including any exhibits and subsequent amendmnts therego, shall remain in full force and effect. All references to the Agreement in this Amendment shall refer to the Agreement as amended (indluding by this Third Amendment) unless otherwise specifically set forth or otherwise indicated by context.

**SECTION 9.** 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 this Amendment, all of the terms and provisionsof the Agreement are hereby amended to the extent necessary to kgive effect to the prupose and intend of this Amendment.

**SECTION 10.** Unless specifically defined herein, the capitalized terms used in this Amendment shall have the meanings defined in the Agreement.

**SECTION 11.** If any provision of the Agreement, as amended by this Amendment isheld 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 imn any way.

**SECTION 12.** This Amendment shall be governed by, and interpreted in accordance with, the laws of th State of California.

*Signature of parties on the following page.*

**WITNESS THE EXECUTION HEREOF** the day and year first hereinbelow 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-2 - REVISED**  
**SCHEDULE OF HOURLY RATES**  
**2019**

- A. CITY's hourly billing rates for the period of January 1, 2019 through December 31, 2019 that will be used in calculating time and materials work are specified below.

<b><u>Job Category</u></b>	<b><u>Hourly Billing Rate (\$/hour)</u></b>
	<u>FY2018-19</u>
Division Manager	\$199.64
<u>Senior Engineer</u>	<u>\$166.29</u>
<u>Associate Engineer</u>	<u>\$138.49</u>

- B. Based on the CITY's estimate for part-time salary and benefits for two (2) positions over seven (7) years, and the Technical Team hourly participation, total reimbursable expenses to be paid by VTA to CITY under this Agreement for the period ending December 31, 2019 shall not exceed One Million Two Hundred Thousand Dollars (\$1,200,000).