

**JOINT POWERS AGREEMENT FOR THE
SILICON VALLEY REGIONAL INTEROPERABILITY AUTHORITY**

Restatement _____, 2016

THIS JOINT POWERS AGREEMENT FOR THE SILICON VALLEY REGIONAL INTEROPERABILITY AUTHORITY (the "**Agreement**") originally entered into as of November 2009, ("**Effective Date**") by and among the public agencies executing this Agreement (collectively, "**Members**" and individually, "**Member**") and restated as of this ____ day of _____ 2016 ("Restatement Date")

RECITALS

- A. **WHEREAS**, in 2001, the Cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, Santa Clara, San Jose, Saratoga, and Sunnyvale; the Towns of Los Gatos and Los Altos Hills; the South Santa Clara County Fire District; the County of Santa Clara; San Jose State University; and the Santa Clara Valley Water District (collectively, the "**Network Participants**") entered into an agreement to exercise their joint contracting and purchasing powers pursuant to Government Code Section 6502 (the "**Joint Funding Agreement**"), so as to jointly hire consultants for the conceptual design and implementation strategy for an interoperable communications network, to jointly purchase a radio and data communications system or network to provide interoperability for the Network Participants, to integrate this system or network with other nearby regional public safety communications systems, to participate in regional interoperability projects, to jointly fund activities and projects related to interoperability; and to jointly apply for grants and funding to facilitate the accomplishment of these goals;
- B. **WHEREAS**, the campaign to accomplish the above goals came to be known as the Silicon Valley Regional Interoperability Project ("**SVRIP**");
- C. **WHEREAS**, the SVRIP has been very successful but many new projects and opportunities have arisen and the joint exercise of powers under the Joint Funding Agreement is no longer sufficient to address the expanded opportunities and objectives of the SVRIP;
- D. **WHEREAS**, the undersigned desire to create an independent joint powers authority to implement and operate the SVRIP and other projects, and to formally articulate the goals and purposes of the Authority;
- E. **WHEREAS**, a SVRIP Executive Director, employed by the City of San Jose consistent with the Joint Funding Agreement, has been appointed by the SVRIP steering committee to assist in the formation and operation of the Authority;
- F. **WHEREAS**, pursuant to the Joint Exercise of Powers Act, Title 1, Division 7, Chapter 5, of the California Government Code, Government Code Section 6500 *et seq.*, two or more public agencies may by agreement jointly exercise any power common to the contracting agencies; and
- G. **WHEREAS**, the Members have determined that the public interest will be served by the joint exercise of their common powers through this Agreement and the creation of a joint powers authority for the purposes described herein; and.
- H. **Whereas, the Santa Clara Valley Transportation Authority has requested to become a Member of the Joint Powers Authority and the Board of Directors**

desires to include their membership in an amendment of the Joint Powers Agreement.

NOW THEREFORE, in consideration of the promises, terms, conditions, and covenants contained herein, the Members agree as follows:

ARTICLE 1 – DEFINITIONS

1. Certain terms used in this Agreement shall be defined as follows:

- 1.1. **"Agency"** or **"Public Agency"** shall have the meaning provided in Government Code Section 6500.
- 1.2. **"Agreement"** shall mean this Agreement that establishes the Silicon Valley Regional Interoperability Authority.
- 1.3. **"Annual Operating Costs"** shall mean the day to day expenses of the Authority (other than systems maintenance expenses) which shall include without limitation, personnel (except systems maintenance personnel), overhead, legal and accounting services, and similar costs for the fiscal year; as such term may be further defined in the policies of the Authority
- 1.4. **"Annual Systems Maintenance Costs"** shall mean consulting and maintenance services for existing hardware and software; systems maintenance personnel costs; system site/facility maintenance; parts, software/firmware, labor and equipment for regular maintenance; and noncapital replacements for the fiscal year; as such term may be further defined in the policies of the Authority.
- 1.5. **"Authority"** shall mean the Silicon Valley Regional Interoperability Authority.
- 1.6. **"Board"** shall mean the Board of Directors which is the governing body of the Silicon Valley Regional Interoperability Authority.
- 1.7. **"Central County Agencies"** shall include the City of Santa Clara, the City of Sunnyvale, and the City of Milpitas.
- 1.8. **"Overhead"** shall mean the Authority's ongoing necessary administrative costs (such as system site/facility rent, office rent, utilities, office supplies, and insurance) which are not separately budgeted as part of a specific project, program, or service.
- 1.9. **"Members"** shall mean the public agencies which are signatories to this Agreement prior to the Effective Date. Unless otherwise indicated, actions or approvals of a Member are deemed to be those of the legislative body of the Member, plus the addition of the Santa Clara Valley Transportation Authority ("VTA") as of the Restatement Date.
- 1.10. **"Multiple Agency Directorship"** shall mean any seat on the Board of Directors which represents more than one Member.

- 1.11. **"Northwest County Agencies"** shall include the City of Mountain View, the City of Palo Alto, the City of Los Altos and the Town of Los Altos Hills.
- 1.12. **Restatement Date shall mean the date that this Agreement is formally unanimously agreed to by all of the Member Agencies.**
- 1.13. **"Smaller Member"** shall mean any Member whose population is less than 15,000.
- 1.14. **"South County Agencies"** shall include the City of Gilroy and the City of Morgan Hill.
- 1.15. **"Southwest County Agencies"** shall include the City of Cupertino, the City of Campbell, the City of Saratoga, the Town of Los Gatos and the City of Monte Sereno.
- 1.16. **"Working Committee"** shall mean the committee described in Article 6 of this Agreement.

ARTICLE 2 – CREATION AND PURPOSES

- 2. The Silicon Valley Regional Interoperability Authority is created as described in this Article.
 - 2.1. Creation of Authority and Jurisdiction. Pursuant to the Joint Exercise of Powers Act, the Members hereby create the Silicon Valley Regional Interoperability Authority, a public entity separate and distinct from each of the Members, to exercise the powers common to the Members and as otherwise granted by the Joint Exercise of Powers Act. The jurisdiction of the Authority shall be all territory within the geographic boundaries of the Members; however the Authority may undertake any action outside such geographic boundaries as is necessary or incidental to the accomplishment of its purposes.
 - 2.2. Purpose of Authority. The purpose of the Authority is to enhance and improve communications, data sharing and other technological systems, tools and processes for protection of the public and public safety and to facilitate related local and regional cooperative efforts.
 - 2.3. Purpose of Agreement. The purpose of this Agreement is to create the Authority; to facilitate the implementation of the Authority's projects, systems and services; to provide for the Authority's acquisition of real, personal and intangible property; to provide for the Authority's administration, planning, design, financing, regulation, permitting, environmental evaluation, public outreach, construction, operation, and maintenance of the Authority's projects, systems and services; and to provide for any necessary or convenient related support services.

ARTICLE 3 – POWERS

3. The Authority shall have all powers necessary or reasonably convenient to carry out the purposes herein, subject to the limitations in this Article.
 - 3.1. The Authority shall have all powers necessary or reasonably convenient to carry out the purposes herein, including, but not limited to, the following powers:
 - 3.1.1. To obtain and secure funding from any and all available public and private sources including local, state, and federal government, including but not limited to, bond issuances, lease purchase agreements, grants, public and private contributions, public and private loans, and other funds;
 - 3.1.2. To manage and operate any projects, systems, and services transferred or assigned to the Authority and fulfill any existing obligations incurred under the Joint Funding Agreement that are transferred or assigned to the Authority;
 - 3.1.3. To plan, design, finance, acquire, construct, operate, regulate, and maintain systems, equipment, facilities, buildings, structures, software, databases, and improvements;
 - 3.1.4. To lease real, personal and intangible property;
 - 3.1.5. To acquire, hold, or dispose of real, personal or intangible property by negotiation, dedication or eminent domain;
 - 3.1.6. To own, lease, sublease, acquire, operate, maintain and dispose of materials, supplies, and equipment of all types including, but not limited to intangible property such as radio frequencies;
 - 3.1.7. To conduct studies, tests, evaluations, investigations, and similar activities;
 - 3.1.8. To develop and/or adopt standards and specifications;
 - 3.1.9. To obtain permits, rights, licenses and approvals, including FCC licenses;
 - 3.1.10. To enter into agreements;
 - 3.1.11. To contract for services from Members, including but not limited to in-kind services;
 - 3.1.12. To employ consultants, contractors, and staff and to adopt personnel rules and regulations;
 - 3.1.13. To adopt bylaws, rules and regulations;
 - 3.1.14. To delegate certain powers;
 - 3.1.15. To acquire and maintain insurance of all types;
 - 3.1.16. To accept, hold, invest, manage, and expend monies pursuant to the Joint Exercise of Powers Act;

- 3.1.17. To work with elected officials and local, regional, state and federal agencies, including joint powers agencies and consortia, to pursue funding, enter agreements, and otherwise act to carry out the purposes of the Authority;
 - 3.1.18. To incur debts, liabilities or obligations, provided that no debt, liability, or obligation shall constitute a debt, liability or obligation of the Members, either jointly or severally;
 - 3.1.19. To charge for services, programs, and/or system use by means of subscriber fees or similar charges;
 - 3.1.20. Subject to applicable legal authority, to cause assessments, fees or charges to be levied in accordance with applicable State and Federal law;
 - 3.1.21. To issue bonds and sell or lease any type of real or personal property for purposes of debt financing;
 - 3.1.22. To sue and be sued;
 - 3.1.23. To conduct public outreach and education;
 - 3.1.24. To participate in pilot and demonstration projects;
 - 3.1.25. To reimburse Authority officers, employees and officials for expenses incurred as permitted by law; and
 - 3.1.26. To exercise all powers incidental to the foregoing.
 - 3.1.27. In addition to those powers common to each of the members and the powers conferred by the Joint Exercise of Powers Act, the Authority shall have those powers that may be conferred upon it by subsequently enacted legislation.
- 3.2. Limitation on Eminent Domain Power. The Authority's power of eminent domain shall be exercised to acquire real property only in the manner prescribed by the California Code of Civil Procedure, including the requirements of Sections 1245.230 and 1245.240 of the Code of Civil Procedure (as such statutes and requirements may be amended) which provide that prior to the exercise of such power the Board adopt, by a 2/3 vote of the entire Board, a resolution finding that (1) the public interest and necessity require the proposed project; (2) the proposed project is planned or located in the manner that will be most compatible with the greatest public good and the least private injury; and (3) the property described in the resolution is necessary for the proposed project. Further, the Authority shall not exercise such power in the jurisdiction of a municipal or county Member in absence of a resolution approved by a majority of the Member's governing body evidencing the Member's consent to the Authority's exercise of eminent domain.
- 3.3. No Authority Taxing Power. The Authority shall not exercise any power it possesses to impose taxes on the public, although it may receive the proceeds of taxes imposed by other entities.

- 3.4. Restriction on Exercise of Powers. Pursuant to Section 6509 of the Joint Exercise of Powers Act, the Authority has designated a general law city as the Member for determination of the restrictions upon the Authority in exercising the common powers under this Agreement and the City of Cupertino shall serve as such Member. In the event that the City of Cupertino ceases to be a Member, the Board may designate by resolution another general law city Member as the Member for determination of the restrictions upon the Authority in exercising the common powers.
- 3.5. Unless expressly provided to the contrary herein, the Authority does not intend, by virtue of Section 3.4 or this Agreement, to subject itself to the internal policies or ordinances of any Member (e.g., Member purchasing or sunshine ordinances).

ARTICLE 4 – MEMBERSHIP

4. The Members of the Authority are the public agencies who enter into this Agreement prior to the Effective Date plus the addition of VTA as of the Restatement Date. In the event a city or town listed as represented by a Multiple Agency Directorship does not enter into this Agreement prior to the Effective Date, the city or town will not be a Member and the listed entities in the applicable Multiple Agency Directorship will be deemed amended to reflect this fact without further action. Admission of a new Member shall not require amendment to this Agreement, however, after the Effective Date new Members may be admitted only pursuant to the procedures described in Sections 4.1 and 4.2. Members may withdraw pursuant to the procedures described in Sections 4.3.
- 4.1. A Public Agency may be considered for membership in the Authority after the Effective Date, by presenting an adopted resolution of the Public Agency's governing body to the Board which includes a request to become a Member of the Authority.
- 4.2. The Authority shall accept new Members upon a majority affirmative vote of the entire Board, payment of any Board determined fees and charges, including a pro-rata share of organization, planning, project, and other costs and charges and upon satisfaction of any conditions established by the Board as a prerequisite for membership. At the time of admission, the Board shall adopt a resolution assigning the new Member to be represented by one of the existing Multiple Agency Directorships and amend the listed entities in the applicable Multiple Agency Directorship shall be amended to reflect this fact. Each proposed Member shall also enter into a membership agreement, upon the date of execution of which it shall be bound to the terms of this Agreement as a Member.
- 4.3. Withdrawal. Any Member may withdraw from this Agreement upon at least 6 (six) months written notice to the Authority and the Members. Any Director who is an elected official of the withdrawing Member and any Working Committee member who is an official, officer or employee of the withdrawing Member shall be deemed to have resigned as of the date of receipt of the written notice.

- 4.3.1. A withdrawing Member shall have no interest or claim in the assets of the Authority absent an Authority approved written agreement which contains express provisions to the contrary.
- 4.3.2. Any withdrawing Member shall be obligated to pay an equitable share, consistent with the cost sharing principles herein, of all debts, liabilities and obligations of the Authority incurred prior to the effective date of the withdrawal; as such share is determined by the Board, as a condition precedent to such withdrawal.
- 4.3.3. Provided, however, that the withdrawing Member's obligations under Section 4.3.2 shall not extend to debts, liabilities and obligations of the Authority that are secured or otherwise committed pursuant to specific project, service, or program agreements ("**limited scope agreements**") that expressly omit the withdrawing Member. The specific pro-rata share of the withdrawing Member of the debts, liabilities and obligations of the Authority that are secured or otherwise committed pursuant to a limited scope agreement shall be determined by the terms of those agreements and the withdrawing Member shall comply with all withdrawal terms of such agreement.
- 4.3.4. A withdrawing or withdrawn Member's payment obligation with respect to its share of debts, liabilities and obligations shall survive withdrawal of the Member and survive termination of this Agreement.
- 4.3.5. If a Member who is represented by a Multiple Agency Directorship withdraws, the listed entities in the applicable Multiple Agency Directorship may be amended to reflect this fact by a resolution of the Board.

ARTICLE 5 – BOARD OF DIRECTORS; ORGANIZATION

5. The Authority shall be governed by a Board of Directors (the "**Board**") consisting of eleven (11) Directors. The term of a Director's appointment shall be three (3) years although Directors may be appointed for a shorter term consistent with the Board's bylaws. Directors may be appointed to multiple successive terms. An alternate shall be appointed for each Director. Alternates shall serve as Directors in the absence of their respective Directors and shall exercise all rights and privileges thereof. Notwithstanding the above, each Director and each alternate for such Director shall serve at the pleasure of the Member(s) they represent and may be removed by such Member(s) at any time without any right to notice thereof.
 - 5.1. Directors and alternates shall be appointed by the represented Member(s) as follows and, at the time of such appointment and for the duration of such appointment, each shall be an elected official of a Member:
 - 5.1.1. Two Directors shall represent the County of Santa Clara.
 - 5.1.2. Two Directors shall represent the City of San Jose.

- 5.1.3. One Director shall represent the Central County Agencies.
- 5.1.4. One Director shall represent the Northwest County Agencies.
- 5.1.5. One Director shall represent the South County Agencies.
- 5.1.6. One Director shall represent the Southwest County Agencies.
- 5.1.7. One Director shall be appointed by the City Selection Committee (as formed pursuant to Government Code Section 50270 *et seq.*) for Santa Clara County. The Director shall be an elected official of a Member who does not have an elected official on the Board at the time of appointment. The Director appointed in this manner may be removed by the Member that he or she serves.
- 5.1.8 Two Directors shall be appointed by the Santa Clara Valley Transportation Authority ("VTA") Board of Directors. One Director shall be the VTA's General Manager or his or her designated Executive Level Staff Member. The other VTA Director shall be an elected member of the VTA Board of Directors or an elected VTA Policy Advisory Committee Member. The elected Director shall not be from a City or Town with a current member on the Board of Directors of the Authority. Future Directors appointed to any seat may not be from the cities or town already represented by the VTA Directors.

Each directorship described in Sections 5.1.3 through 5.1.6 shall be a Multiple Agency Directorship and an action by a majority of the represented Members shall appoint and remove such Directors. If the Director (or his or her Alternate) shall fail to attend 70% of the meetings of the Board during the fiscal year, the Directorship shall be deemed vacant and the Authority shall send notice of the vacancy to the represented Member(s). If a Director shall cease to be an elected official of a Member, his or her seat shall be deemed vacant. If a Director shall cease to be an employee of VTA, his or her seat shall be deemed vacant. If the City Selection Committee or the represented Members of a Multiple Agency Directorship fail to select a Director within ninety (90) days of a vacancy, the Board may appoint an interim Director from the elected officials of the represented Members (or of those Members who do not have an elected official on the Board in the case of the City Selection Committee's directorship) to serve until the appointment of the new Director is completed.

- 5.2. Each member of the Board shall have one vote. A majority of the members of the entire Board shall constitute a quorum for the transaction of business. Except where a supermajority is required by statute, this Agreement or a

resolution of the Board, actions of the Board shall require the affirmative vote of a majority of the entire Board (i.e., six (6) affirmative votes).

- 5.3. The Board shall elect annually a Chair from among its membership to preside at meetings and shall appoint a Secretary who may, but need not, be a Director. The Board may, from time to time, elect such other officers as the Board shall deem necessary or convenient to conduct the affairs of the Authority.
- 5.4. Meetings. The Board shall hold at least two regular meetings each year. The Board shall by resolution establish the date, hour and location at which its regular meetings shall be held. All meetings of the Board shall be held in accordance with the Ralph M. Brown Act, Government Code Section 54950 *et seq.* The Secretary shall cause minutes of all open meetings of the Board to be kept and shall cause a copy of the minutes to be forwarded to each Director and the Members within thirty (30) days.
- 5.5. Bylaws. The Board, at its initial meeting, shall adopt by resolution rules of procedure ("**bylaws**"), not inconsistent with the provisions of this Agreement, to govern the conduct of its meetings. Such rules of procedure shall be in accordance with the Ralph M. Brown Act. Amendments to the Bylaws shall be reviewed by the Working Committee and comments from the Working Committee, if any, shall be presented to the Board at the time of Board consideration of the amendments.
- 5.6. Political Reform Act Compliance. Directors of the Board, members of the Working Committee and designated officials and employees shall comply with the Political Reform Act of 1974, Government Code Section 81000 *et seq.*
- 5.7. Executive Director. The Executive Director shall report to and take direction from the Board and shall have such authority as is specified by resolution of the Board. Where authorized by the Working Committee, the Executive Director may sign agreements, applications and other documents on behalf of the Authority. The Executive Director shall be designated as a Government Code Section 6505.1 officer who has charge of, handles, and has access to, the Authority's property and shall file with the Authority an official bond in the amount set by the Board. The premiums for such bond may be paid or reimbursed by the Authority.
 - 5.7.1. The SVRIP Executive Director shall serve as the Authority's Executive Director during the term of the existing employment agreement between the City of San Jose and the SVRIP Executive Director or until an Executive Director is selected pursuant to Section 6.7.
- 5.8. General Counsel. The Authority shall have a General Counsel. The General Counsel shall report to and take direction from the Board. The Board may designate one of the Authority's or a Member's employees as General Counsel or contract for such legal services with an independent contractor.
- 5.9. Policies. The Board may, upon the recommendation of the Working Committee, adopt policies regarding personnel, conflicts of interest and other matters that are necessary or convenient for the efficient operation of the Authority.

- 5.10. In addition to such duties as may be necessary or desirable for the implementation of this Agreement, the Board shall have the duty to do the following within the times specified or, if no time is specified, within a reasonable time:
- 5.10.1. The Board shall hold an initial Board meeting within sixty (60) days of the Effective Date, and adopt an initial budget, work plan, initial policies, and bylaws with or without a Working Committee recommendation;
 - 5.10.2. The Board shall adopt a work plan for each fiscal year;
 - 5.10.3. The Board shall select a General Counsel;
 - 5.10.4. The Board shall direct the Working Committee to evaluate the need for such insurance protection as is necessary to protect the interests of the Authority and its Members, and acquire and maintain if necessary, liability, errors and omissions, property and/or other insurance.

ARTICLE 6 – WORKING COMMITTEE

6. Pursuant to Government Code Section 6508, the Authority delegates certain powers related to program development, policy formulation and program implementation to the Working Committee described herein. Specifically, the Working Committee shall have the composition, powers and duties described in this Article and the implied powers necessary therefor.
- 6.1. The Working Committee shall ensure that a budget and work plan are timely prepared and by March 31 of each year, shall review and recommend the budget and work plan to the Board for approval. Copies of the recommended budget and work plan shall be promptly sent to the Members and the Directors. The budget shall indicate the anticipated sources of revenues and the anticipated uses of such revenues. The work plan shall outline the activities and priorities of the Authority for the following year.
 - 6.2. The Working Committee may apply for and accept all grants and sub-grants that are consistent with the approved work plan, provided that either (a) the amount of matching funds required, if any, does not exceed that threshold provided in the approved work plan and budget, or (b) a Member or other entity volunteers to provide the matching funds without a guarantee of reimbursement.
 - 6.3. The Working Committee may take action to implement or modify any projects, programs or services, provided the projects, programs or services are consistent with the budget and the parameters and thresholds in the work plan. Any projects, programs and services that are not consistent with the work plan and budget shall be reviewed by the Working Committee and recommended to the Board for approval.
 - 6.4. The Working Committee shall let for bid, if required, and award all contracts consistent with the approved work plan, provided that the amount of funds

required, if any, does not exceed that threshold provided in the approved work plan and budget. The Working Committee may approve any contract amendment, provided that the additional costs to the Authority for such amendment do not exceed the threshold provided in the Authority's contracting policy and sufficient funds are available in the approved budget.

6.5. The Working Committee shall approve all agreements with Members and other public agencies and all other contracts that are consistent with applicable law and the approved work plan.

6.6. The Working Committee shall recommend a conflict of interest policy and personnel rules, when necessary, and any amendments of those policies to the Board for approval.

6.7. The Working Committee shall adopt policies regarding purchasing and consultants. In addition, the Working Committee may adopt policies on other issues that are necessary or convenient for the efficient operation of the Authority.

6.8. The Working Committee shall recommend an Executive Director, subject to the Board's approval and approval of the contract between the Authority and Executive Director.

6.9. The Working Committee shall have thirteen (13) Committee Members, unless such number is increased by a resolution adopted by an affirmative vote of 2/3 of the entire Board. Each Committee Member shall serve at the pleasure of the appointing entity identified in Section 6.9.1 and may be removed at any time by that appointing entity without notice. Each Committee Member must be an official, officer, or employee of a Member, but no single Member may have more than three (3) Working Committee Members serving at one time. A Committee Member may also be removed by the Member who he or she serves upon notice to the Authority. If a Committee Member shall fail to attend 70% of the meetings of the Working Committee during the fiscal year, his or her seat shall be deemed vacant and the Authority shall send notice of the vacancy to the appointing entity. If a Committee Member shall cease to be an official, officer, or employee of a Member, his or her seat shall be deemed vacant. If an appointing entity shall fail to appoint a Committee Member within ninety (90) days of a vacancy, the Working Committee may, by majority vote, appoint an interim Committee Member from the officials, officers, or employees of the Members to serve until the appointment of the new Committee Member is completed.

6.9.1. Working Committee Members shall be appointed by the following entities (or successor entities approved pursuant to a resolution of the Working Committee) as follows:

6.9.1.1. Two City Managers appointed by the Santa Clara County/City Managers Association.

6.9.1.2. One fire chief appointed by the Santa Clara County Fire Chiefs Association.

- 6.9.1.3. One police chief appointed by the Santa Clara County Police Chiefs Association.
- 6.9.1.4. The Santa Clara County Executive or his or her designee.
- 6.9.1.5. Two members appointed by the San Jose City Manager.
- 6.9.1.6. The Director of Communications for Santa Clara County or his or her designee.
- 6.9.1.7. One communications manager appointed by the Public Safety Communications Managers Association (of Santa Clara County).
- 6.9.1.8. Two at-large members appointed by the Working Committee.
- 6.9.1.9. Two Committee Members appointed by VTA's General Manager.
- 6.9.2. Meetings of the Working Committee shall be conducted in compliance with the Ralph M. Brown Act. The Working Committee may adopt by resolution rules of procedure, not inconsistent with the provisions of this Agreement, to govern the conduct of its meetings.
- 6.9.3. A majority of the Committee Members shall constitute a quorum for the transaction of business and actions of the Working Committee shall require the affirmative vote of a majority of the entire Working Committee (i.e., as of the Effective Restatement Date, seven (7) Committee Members).

ARTICLE 7 – FISCAL MATTERS AND FUNDING

- 7. The Authority shall comply with the fiscal and recordkeeping requirements of the Joint Exercise of Powers Act and shall take such other actions as necessary or desirable to address the fiscal, funding and budgeting needs of the Authority.
 - 7.1. Treasurer and Auditor. The Treasurer and Auditor/Controller of Santa Clara County, respectively, are designated the Treasurer and Auditor of the Authority with the powers, duties, and responsibilities specified in the Joint Exercise of Powers Act, including, without limitation, Sections 6505 and 6505.5 thereof; provided however, the Board may revoke this designation by adopting a resolution appointing one or more of the Authority's or a Member's officers or employees to either or both of the positions of Treasurer or Auditor as provided in Sections 6505.6 of the Joint Exercise of Powers Act.
 - 7.2. Accounts and Reports. The Board shall establish and maintain such funds and accounts as may be required by generally accepted public accounting practice. The books and records of the Authority shall be open to inspection at all reasonable times to the Members and their respective representatives. The accounts shall be prepared and maintained by the Treasurer and/or Auditor of the Authority. The Auditor shall, within one hundred twenty (120) days after the close of each fiscal year, cause an independent audit of all financial activities for

such fiscal year to be prepared in accordance with Government Code Section 6505. The Authority shall promptly deliver copies of the audit report to each Director and the Members.

- 7.3. Budget. The Board shall adopt an initial budget consistent with Section 5.10 and adopt subsequent budgets no later than April 30th of each year thereafter. Adoption of the budget shall require an affirmative vote of 2/3 of the entire Board.
- 7.4. Fiscal Year. The fiscal year of the Authority shall be the period from July 1st of each year to and including the following June 30th.
- 7.5. Debts, Liabilities and Obligations. The debts, liabilities, and obligations of the Authority shall not constitute debts, liabilities, or obligations of the Members, either jointly or severally.
- 7.6. Initial Contribution for Annual Operating Costs. Within thirty (30) days of the Effective Date, each Member except the City of Los Altos Hills and the City of Monte Sereno shall make an initial operating costs contribution of \$13,157 to the Authority. The City of Los Altos Hills and the City of Monte Sereno shall each make an initial operating costs contribution of \$8,000. Notwithstanding the above, any Member who has already contributed the identified amount pursuant to the Joint Funding Agreement for the 2009-2010 fiscal year need not make such initial operating costs contribution. Within thirty (30) days of the Restatement Date, the VTA shall make a contribution towards operating costs of \$13,157 to the Authority.
- 7.7. Initial Contribution for Annual Maintenance Costs. Within thirty (30) days of the Effective Date, each Member shall make an initial systems maintenance contribution of the amount required pursuant to the City Manager's Association approved maintenance assessment formula.
 - 7.7.1. The City Managers' Association approved maintenance assessment formula provides the following population allocation percentages: Campbell - 2.21%, Cupertino - 3.02% , Gilroy - 2.60%, Los Altos - 1.60%, Los Altos Hills - 0.48%, Los Gatos - 1.67%, Milpitas – 3.76%, Monte Sereno - 0.20% , Morgan Hill - 2.02%, Mountain View – 4.16%, Palo Alto – 3.50% , San Jose – 53.47%, Santa Clara – 6.12%, Saratoga - 1.76%, and Sunnyvale – 7.66%; and unincorporated Santa Clara County - 5.78%.
 - 7.7.2. The following contributions are due based on the above percentages: Campbell - \$3,315, Cupertino - \$4,530, Gilroy - \$3,900, Los Altos - \$2,400, Los Altos Hills - \$720, Los Gatos - \$2,505, Milpitas – \$5,640, Monte Sereno - \$300, Morgan Hill - \$3,030, Mountain View – \$6,240, Palo Alto – \$5,250 , San Jose – \$80,205, Santa Clara – \$9,180, Saratoga - \$2,640, and Sunnyvale – \$11,490, and unincorporated Santa Clara County - \$8,670.
 - 7.7.3. Notwithstanding the above, any Member who has already contributed the identified amount pursuant to the Joint Funding Agreement

for the 2009-2010 fiscal year need not make such initial maintenance contribution.

7.8. Annual Operating Costs. Each year, the Working Committee shall propose projected Annual Operating Costs, which projected costs shall be adopted by the Board prior to or during approval of the budget.

7.8.1. Population Share. Half of the adopted Annual Operating Costs shall be allocated to the Members based on their respective population (the "Population Share"). Each Member shall pay a portion of the Population Share which shall be determined based on that Member's population. The Population Share, each Member's share of the Population Share shall be determined pursuant to the funding policy adopted by the Board at its initial meeting, as may be amended. The funding policy shall specify the accepted method for calculating each Member's population (e.g., census data). Notwithstanding the foregoing, on or after the Restatement Date, the Working Committee shall commission or obtain a cost allocation study which considers usage, overhead, and other reasonable cost factors and with that data shall propose, subject to the adoption of the Board, an allocation methodology for the VTA that is not based on population.

7.8.2. Membership Share. Half of the adopted Annual Operating Costs shall be allocated to the Members based on the principle that Members share these costs equally, except that the Smaller Members shall pay 60% of a Full Share (the "Membership Share"). Each Member except the Smaller Members shall pay an equal full share of the adopted Annual Operating Costs (Full Share") the Smaller Members shall pay 60% of a Full Share. The total of all shares shall be 100% of the Membership Share. A Full Share shall be calculated according to the formula implementing the above principle contained in the funding policy adopted by the Board at its initial meeting, as may be amended.

7.9. Annual Systems Maintenance Costs. Each year, the Working Committee shall propose projected Annual Systems Maintenance Costs, which projected costs shall be approved by the Board prior to or during approval of the budget.

7.9.1. Each Member shall pay a share of the adopted Annual Systems Maintenance Costs based on the principle that Members shall share systems maintenance costs based on system and service usage and that until sufficient data is available regarding Member usage, Member population data is an acceptable proxy for usage.

7.9.2. Each Member's share of the adopted Annual Systems Maintenance Costs shall be calculated according to the formula implementing the principles in Section 7.9.1 contained in the funding policy adopted by the Board at its initial meeting, as may be amended.

7.10. Other Projects, Programs and Services. In the event that a project, program, service, or reserve fund is approved which has costs that are not

Annual Operating Costs or the Annual Systems Maintenance Costs, the Working Committee shall either (a) develop a proposed cost allocation formula for the non-overhead costs based on the principle that costs shall be assessed to Members based on usage but, if usage data or projected usage data is not available, until sufficient data is available, Member population and entity type data are acceptable proxies for usage or (b) conduct or obtain a cost allocation study which considers usage, overhead, and other reasonable cost factors. The Board shall approve any such proposed cost allocation.

7.11. Limited Scope Agreements. Where a project or program is intentionally designed to be limited in scope such that it only provides benefits to particular Members, the Authority may enter into specific project or program agreements that provide for cost sharing by the particular affected Members; provided however, both the Board and Working Committee must approve such agreements.

7.12. Contributions on Behalf of Members. Special Districts or other parties may tender to the Authority those contributions due from a Member on that Member's behalf.

ARTICLE 8 –GENERAL PROVISIONS

8. The following general provisions apply to this Agreement.

8.1. Term and Termination. This Agreement shall be effective as of the Effective Date. It shall remain in effect until the purposes of the Authority are fully accomplished, or until terminated by the vote of a majority of the governing bodies of the Members; provided, however, that this Agreement may not be terminated, until (a) all bonds or other instruments of indebtedness issued by the Authority and the interest thereon, if any, have been paid in full or provision has been made for payment in full and (b) all outstanding obligations and liabilities of the Authority have been paid in full or provision has been made for payment in full, except as set forth in Section 8.2.

8.2. Disposition of Property upon Termination. In the event of termination of the Authority pursuant to Section 8.1 herein and where there will be a successor public entity which will carry on the functions of the Authority and assume its assets and liabilities, the assets of the Authority shall be transferred to the successor public entity. If upon termination pursuant to Section 8.1, there is no successor public entity which will carry on the functions of the Authority and assume its assets, the assets shall be returned to the Members as follows: (a) all real property and any improvements thereon shall be conveyed to the Member which owned the property prior to the formation of the Authority, and (b) all other assets shall be divided among the Members in proportion to their respective contributions during the term of this Agreement. If upon termination pursuant to Section 8.1, there is a successor public entity which will carry on some of the functions of the Authority and assume some of

the assets, the Authority's Board shall allocate the assets between the successor public entity and the Members.

8.3. Indemnification. To the fullest extent allowed by law, the Authority shall defend, indemnify, and save harmless the Members and their governing bodies, officers, agents, and employees from all claims, losses, damages, costs, injury, and liability of every kind, nature, and description directly or indirectly arising from the performance of any of the activities of the Authority or the activities undertaken pursuant to this Agreement.

8.4. Liability of Board, Officers and Employees. The Directors, Working Committee Members, officers, and employees of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers, and in the performance of their duties pursuant to this Agreement. They shall not be liable to the Members for any mistake of judgment or other action made, taken, or omitted by them in good faith, nor for any action made, taken, or omitted by any agent, employee, or independent contractor selected with reasonable care, nor for loss incurred through the investment of the Authority's funds, or failure to invest the same.

8.5. To the extent authorized by California law, no Director, Working Committee Member, officer, or employee of the Authority shall be responsible for any action made, taken, or omitted, by any other Director, Working Committee Member, officer, or employee. No Director, Working Committee Member, officer, or employee of the Authority shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement, except as required herein pursuant to Government Code Section 6505.1. The funds of the Authority shall be used to defend, indemnify, and hold harmless the Authority and each Director, Working Committee Member, officer, or employee of the Authority for actions taken in good faith and within the scope of his or her authority. Nothing herein shall limit the right of the Authority to purchase insurance to provide coverage for the foregoing indemnity.

8.6. Successors: Assignment. This Agreement shall be binding upon and shall inure to the benefit of the successors of the Members. No Member may assign any rights or obligations hereunder without the unanimous consent of the governing bodies of the other Members; provided, further, that no such assignment may be made if it would materially and adversely affect (a) the rating of bonds issued by the Authority, or (b) bondholders holding such bonds.

8.7. Amendments. This Agreement may be amended only upon approval of all the governing bodies of the Members. So long as any bonds of the Authority are outstanding and unpaid, or funds are not otherwise set aside for the payment or redemption thereof in accordance with the terms of such bonds and the documentation relating thereto, this Agreement shall not be amended, modified or otherwise revised, changed or rescinded, if, in the judgment of the Board, such action would (a) materially and adversely affect (1) the rating of bonds issued by the Authority, or (2) bondholders holding such bonds, or (b) limit or reduce the

obligations of the Members to make, in the aggregate, the payments which are for the benefit of the owners of such bonds.

8.8. No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the Authority and its Members. No third party shall be deemed a beneficiary of this Agreement or have any rights hereunder against the Authority or its Members.

8.9. Dispute Resolution. In the event that any party to this Agreement should at any time claim that another party (or parties) has breached or is breaching this Agreement, the complaining party shall file with the governing body of claimed breaching party, and with the Authority, a written claim of said breach, describing the alleged breach and otherwise giving full information respecting the same. The Board shall thereupon, at a reasonable time and place, specified by it, give each of these parties to the dispute an opportunity to be heard on the matter, and shall, upon conclusion of said hearing, give the Members a full report of its findings and recommendations. Said report, findings and recommendations shall be deemed advisory only, shall not in any way bind any of the parties to the dispute, and shall not be deemed to establish any facts, either presumptively or finally. Upon receipt of said report and recommendations, if any party to the dispute should be dissatisfied with or disagree with the same, that party shall provide written notice to the other parties within ten (10) business days, and the parties to the dispute or their representatives shall meet at a reasonable time and place to be determined by them, for the purpose of resolving their differences. No action for breach of this Agreement, and no action for any legal relief because of any such breach or alleged breach of this Agreement shall be filed or commenced by any party unless and until such party has first given to the other parties a reasonable time, after the parties to the dispute have met to resolve their differences, within which to cure any breach or alleged breach.

8.10. Notices. Any notices to Members required by this Agreement shall be delivered or mailed, U.S. first class, postage prepaid, addressed to the principal office of the respective Members. Notices under this Agreement shall be deemed given and received at the earlier of actual receipt, or the second business day following deposit in the United States mail, as required above. Any Member may amend its address for notice by notifying the other Members pursuant to this Section.

8.11. Severability. Should any part, term, or provision of this Agreement be decided by the courts to be illegal or in conflict with any law of the State of California, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining portions or provisions shall not be affected thereby.

8.12. Liberal Construction. The provisions of this Agreement shall be liberally construed as necessary or reasonably convenient to achieve the purposes of the Authority.

8.13. Headings. The headings used in this Agreement are for convenience only and have no effect on the content, construction, or interpretation of the Agreement.

8.14. Counterparts. This Agreement may be executed in any number of counterparts, and by different parties in separate counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument.

8.15. Non-Waiver. No waiver of the breach or default of any of the covenants, agreements, restrictions, or conditions of this Agreement by any Member shall be construed to be a waiver of any succeeding breach of the same or other covenants, agreements, restrictions, or conditions of this Agreement. No delay or omission of exercising any right, power or remedy in the event of breach or default shall be construed as a waiver thereof, or acquiescence therein, or be construed as a waiver of a variation of any of the terms of this Agreement or any applicable agreement.

8.16. Agreement Complete. The foregoing constitutes the full and complete Agreement of the parties. There are no oral understandings or agreements not set forth in writing above. Any such agreements merge into this Agreement.

This document continues on the following page.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

City of Campbell	Approved as to form:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Approved as to form:	Approved as to form:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
City of Cupertino	Approved as to form:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
City of Gilroy	Approved as to form:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
City of Los Altos	Approved as to form:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____

<p>Town of Los Altos Hills</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Town of Los Gatos</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>City of Milpitas</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>City of Monte Sereno</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>City of Morgan Hill</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Approved as to form:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p> <p>Approved as to form:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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<p>City of Mountain View</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Approved as to form:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
<p>City of Palo Alto</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Approved as to form:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
<p>City of San Jose</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Approved as to form:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
<p>City of Santa Clara</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Approved as to form:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
<p>County of Santa Clara</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>Approved as to form:</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>

City of Saratoga	Approved as to form:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
City of Sunnyvale	Approved as to form:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Santa Clara Valley Transportation Authority	Approved as to form:
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____