

**COOPERATIVE AGREEMENT #8
BETWEEN
THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND THE CITY OF SAN JOSE FOR REIMBURSEMENT OF COSTS
FOR PUBLIC ART AT THE BERRYESSA BART STATION**

This Cooperative Agreement #8 (hereinafter "Agreement") is entered into between the Santa Clara Valley Transportation Authority, a public agency organized as a special district under California law ("VTA"), and the City of San José, a municipal corporation under the State of California (hereinafter "CITY"). This Agreement is entered into this ____ day of _____, 2012 (the "Effective Date"). Each of VTA and the CITY are sometimes hereinafter referred to as a "Party" and collectively as the "Parties."

SECTION 1: RECITALS

1.1 VTA intends to construct a sixteen (16) mile extension of the Bay Area Rapid Transit system ("BART") rail line into Santa Clara County, under the project entitled: Silicon Valley Rapid Transit Project ("SVRT").

1.2 VTA has undertaken a program of activities leading to the aforementioned extension of BART service, to be constructed by VTA and operated by the Bay Area Rapid Transit District, in an initial phase through the City of Milpitas to the Berryessa District of San José, entitled: Berryessa Extension Project (hereinafter the "Project").

1.3 VTA and CITY entered into a Master Agreement on June 22, 2010 ("Master Agreement") which describes the roles and responsibilities of the Parties with respect to the Project. Since that time, the parties have entered into a total of five (5) cooperative agreements, which are numbered 1, 2, 4, 6, and 7. Cooperative Agreement #5 was negotiated but never executed by the parties. This Cooperative Agreement #8 is made pursuant to the Master Agreement, and the terms, conditions, and obligations of the Master Agreement shall apply to this Agreement, unless explicitly stated otherwise herein.

1.4 The Parties desire to enter into this additional cooperative agreement under the Master Agreement to address the process for creating public art for the proposed Berryessa BART station, and reimbursement from VTA to CITY for costs related to the public art as specified in this Agreement.

SECTION 2: PUBLIC ART DEVELOPMENT PROCESS AND FUNDING

2.1 CITY and VTA mutually desire to incorporate a public art element into the design of the Berryessa Station. This section sets forth the agreement between the Parties regarding the approval and procurement of the artwork, management of the art development process, and installation of the work at the station.

2.2 The public art component for the Berryessa Station has been discussed by the CITY's Design Review Committee ("Committee"). The Committee has determined that the budget for public art at Berryessa Station should be utilized to produce a single, large artwork to be located near the station entrance, rather than numerous smaller works throughout the site.

2.3 The Parties agree that the following process will be used to guide the design of the public art piece:

2.3.1 The City of San José Public Art Program shall be the lead agency responsible for managing the activities of the artist. VTA hereby agrees to pay CITY in an amount not to exceed Four Hundred Eighty Thousand Dollars (\$480,000) for this purpose. CITY shall have the responsibility to manage this budget and arrange for acquisition and completion of an artwork acceptable to VTA within the budgeted funds, which shall include the budget elements specified in Section 2.3.2 below. VTA shall not be responsible for any cost overruns for public art above the budget amount stated herein.

2.3.2 The budget amount stated above shall include CITY's internal administrative costs for managing the public art process, design costs, fabrication, and delivery to the Berryessa station site. The CITY's administrative costs will

include but not be limited to staff and benefits costs as specified in Exhibit A, mileage costs incurred by such staff and costs of conducting artist selection panels. If the design of the artwork is such that it requires significant site work elements, including but not limited to a structural foundation or special utility services, then the differential cost of any upgraded sitework over and above what would have been required for the BART station shall be included in the total authorized cost for public art as stated in this Agreement.

2.3.3 City shall be permitted to work directly with VTA's designers immediately to ensure that the public art installation is accommodated to the maximum feasible extent in the design of the station campus. VTA shall direct its designers to cooperate with City staff in providing any site improvements required to support the art installation.

2.3.3 The artist's invoices shall be submitted to CITY for approval. Upon CITY approval, CITY shall invoice VTA. VTA shall pay the CITY invoice within thirty (30) days of the date of VTA receipt of the invoice. The aggregate amount of such invoices for public art shall not exceed the total authorized budget.

2.3.4 The CITY shall include VTA in all phases of the design review and community outreach and shall obtain written approval of the design concept prior to giving notice to proceed with fabrication of the artwork to the artist. CITY shall also obtain approval from VTA for the proposed location, size and foundation requirements of the artwork, which must be coordinated with other station improvements. The location and size of the artwork must not obstruct access to the station entrance or interfere with utility layouts or fire access.

SECTION 3: OBLIGATIONS OF THE PARTIES

3.1 CITY shall provide staff to perform the following tasks:

3.1.1 Coordinate artist selection process, including development of artist scope of work, issuance and dissemination of RFQ, appointment of artist selection panels which shall include representation of VTA and its design team, and facilitation of artist selection panel process.

3.1.2 Obtain VTA approval of recommended artist prior to award of artist's contract.

3.1.3 Negotiate agreement for artist's services between artist and CITY.

3.1.4 Manage community outreach and stakeholder meetings in accordance with City policies and VTA's Construction Education and Outreach Plan for the Project.

3.1.5 Coordinate artist's design services, acting as the interface between the artist and VTA. Coordination shall include managing communication among the artist, VTA, site designers, management of the public art budget, supervising the artist's design, fabrication and installation process.

3.1.6 Manage the design review process and any required CITY and VTA approvals including the Arts Commission's Public Art Committee.

3.1.7 Facilitate approval of the art work location at the BART station by VTA's design consultants and construction contractor and VTA's approval of the design at appropriate times in the development process to insure that VTA's design team can include the artwork in the on-going design of the station.

3.1.8 Monitor the creation of the approved artwork by the artist through fabrication.

3.1.9 Manage the installation of the artwork in coordination with VTA's construction contractor(s).

3.1.10 Provide VTA with Bill of Sale transferring ownership of artwork to VTA upon completion thereof.

3.2 VTA shall perform the following:

3.2.1 Review and approve the design and location of the proposed artwork within sixty (60) days of its formal submission to VTA by the City, unless the parties agree to a different timeframe, in writing.

3.2.2 Direct VTA's contractor to provide space for the artwork in the layout of the station plaza, include artwork infrastructure in construction package, and perform the actual installation of the artwork in coordination with the artist.

3.2.3 Provide schedule milestones to CITY for completion of design and installation of the artwork.

3.2.4 Pay the CITY's invoices related to this section as described above, not to exceed the maximum authorized budget amount.

3.3 Ownership of Artwork. VTA shall take ownership of the artwork from City at upon completion thereof and transfer of artwork to VTA by City via bill of sale as required under Section 3.1.10.

SECTION 4: MISCELLANEOUS

4.1 Representatives. Notwithstanding the provisions of the Master Agreement:

4.1.1 The General Manager of VTA or his designee is hereby made the representative of VTA for all purposes under this Agreement.

4.1.2 The City Manager or her designee is hereby made the representative of CITY for all purposes under this Agreement.

4.2 Waiver. The failure of either party to insist upon the strict performance of any of the terms, covenant and conditions of this Agreement shall not be deemed a waiver of any right or remedy that either party may have, and shall not be deemed a waiver of their right to require strict performance of all of the terms, covenants, and conditions thereafter.

4.3 Notice. Notwithstanding the provisions of the Master Agreement, any notice related to this agreement required to be given by either party, or which either party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority

Carolyn Gonot, Chief SVRT Program Officer
3331 North First Street, Bldg. A
San José, CA 95134-1906

To CITY: City of San José, Office of Cultural Affairs
Barbara Goldstein, Public Art Director,
200 East Santa Clara Street, 8th Floor
San José, CA 95113-1905

Either party may change the above address for notification upon written notice to the other.

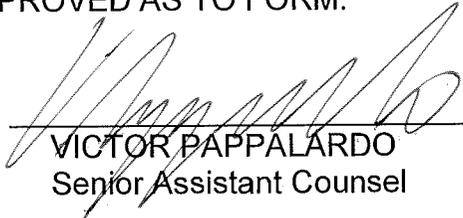
4.4 Amendments. Future amendments to this Agreement must be in writing Parties and executed by the parties' authorized representatives.

4.5 Term. This Agreement shall be effective as of the effective date stated above, and shall remain in effect until December 31, 2016 or until earlier termination.

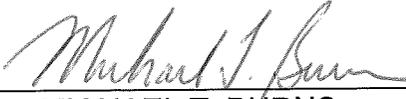
4.6 Termination. Notwithstanding the provisions of the Master Agreement, either party may terminate this Agreement at any time, for any reason, upon giving thirty (30) days written notice to the other party. Within sixty (60) days after termination of this Agreement, CITY shall submit a final invoice for expenses it has incurred as of the effective date of the termination. VTA shall pay such final invoice within thirty (30) calendar days after receipt.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by their duly authorized officers as set forth below.

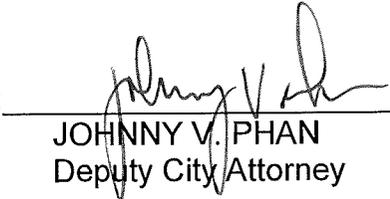
APPROVED AS TO FORM:

By: 
VICTOR PAPPALARDO
Senior Assistant Counsel

SANTA CLARA VALLEY
TRANSPORTATION AUTHORITY

By: 
MICHAEL T. BURNS
General Manager

APPROVED AS TO FORM:

By: 
JOHNNY V. PHAN
Deputy City Attorney

CITY OF SAN JOSE

By: _____
DENNIS HAWKINS
City Clerk

EXHIBIT A
SCHEDULE OF HOURLY RATES

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

<u>Job Category</u>	<u>Hourly Billing Rate (\$/hour)*</u>
Section Manager	\$ 82.02
Senior Program Coordinator	\$ 71.54
Staff Specialist	\$ 51.01

*Additional classifications and hourly rates are published by the City in its Schedule of Fees.