



# Memorandum

**TO:** Honorable Mayor &  
City Council Members

**FROM:** Lee Price, MMC  
City Clerk

**SUBJECT:** The Public Record  
September 24 – 30, 2010

**DATE:** October 1, 2010

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## ITEMS TRANSMITTED TO THE ADMINISTRATION

### ITEMS FILED FOR THE PUBLIC RECORD

- (a) Letter from Supervisor Ken Yeager (County of Santa Clara) dated September 10, 2010 to Mayor Reed and Council regarding vessel sanitation and the mooring of abandoned boats at the Alviso Marina/Slough requesting that the City of San Jose adopt an ordinance to address the issue.
- (b) Letter from the San José Downtown Association to Roelof van Ark (Chief Executive Officer, California High Speed Rail) dated September 29, 2010 requesting that the City of San José include an underground option in the California High Speed Rail Authority Project's Environmental Impact Report.
- (c) Notification from San Francisco Bay Stakeholder Advisory Group to the State Water Resource Control Board's Estuarine Nutrient Numeric Endpoint Project dated September 28, 2010 transmitting the October 4, 2010 Meeting Agenda.
- (d) Notification from the City Selection Committee for Santa Clara County to Mayor Reed and Council transmitting the October 14, 2010 Meeting Agenda
- (e) Notification letter from T-Mobile West Corporation as successor in interest to Omnipoint Communications, Inc. d/b/a/ T-Mobile (U-3056-C) to Consumer Protection and Safety Division dated September 14, 2010 for T-Mobile Site No. SF24554D
- (f) Notification letter from T-Mobile West Corporation as successor in interest to Omnipoint Communications, Inc. d/b/a/ T-Mobile (U-3056-C) to Consumer Protection and Safety Division dated September 14, 2010 for T-Mobile Site No. SF44742B
- (g) Notification letter from T-Mobile West Corporation as successor in interest to Omnipoint Communications, Inc. d/b/a/ T-Mobile (U-3056-C) to Consumer Protection and Safety Division dated September 14, 2010 for T-Mobile Site No. SF54215D
- (h) Letter from Nancy Donaldson to Mayor Reed and Council dated September 23, 2010 requesting support for Branham High School's Disneyland Grad Night.
- (i) Letter from David Wall to Helene Popehager (Foreperson, Santa Clara Civil Grand Jury) dated September 30, 2010 regarding "Is the San José City Council 'Contracting Out' the Legislative Process via a Third Party Entity." (Attachment on file in the Office of the City Clerk)
- (j) Letter from David Wall to Mayor Reed and Council dated September 30, 2010 regarding "The Ghetto Life: Update on the SCEP."
- (k) Letter from David Wall to Attorney General Edmond G Brown, Jr. dated September 30, 2010 regarding "Corruption in San José Municipal Government or just a Comedy of Serious Errors." (Attachment on file in the Office of the City Clerk)

Honorable Mayor and City Council Members  
October 1, 2010  
Subject: The Public Record: September 24 – September 30, 2010  
Page 2 of 2



Lee Price, MMC  
City Clerk

LP/tld

Distribution: Mayor/Council  
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BOARD OF SUPERVISORS  
COUNTY OF SANTA CLARAKEN YEAGER  
PRESIDENT, BOARD OF SUPERVISORS  
SUPERVISOR, FOURTH DISTRICTRECEIVED  
San Jose City Clerk

2010 SEP 30 A 8:32



September 10, 2010

Honorable Chuck Reed  
Mayor, City of San Jose  
San Jose City Hall  
200 East Santa Clara Street  
San Jose, CA 95113Dear Mayor ~~Reed~~ <sup>Chuck</sup>:

I am writing to you about the issue of vessel sanitation and the mooring of abandoned boats at the Alviso Marina/Slough.

To provide background, on December 1, 2009, the Board of Supervisors, at the request of Supervisor Dave Cortese, directed the County Administration to prepare information regarding options, including an ordinance for enforcing vessel sanitation, mooring, and expediency of handling the disposition of abandoned vessels; and to provide a jurisdictional analysis. On April 15, 2010, County Administration presented a report-back to the Board's Housing, Land Use, Environment, and Transportation Committee (HLUET).

The jurisdictional analysis of this report-back determined that the local agency with jurisdiction over the Alviso Slough was the City of San Jose, as Alviso is within its boundaries. Further, it was determined that the City of San Jose possesses the legal authority to enforce State Law or a City-adopted ordinance. The County of Santa Clara only has regulatory authority in the unincorporated areas, and its ordinance would only apply to those areas. The unincorporated areas along the Bay are limited to approximately four bayland parcels, which are either owned by the Federal government or the Santa Clara Valley Water District. The County's Department of Parks and Recreation's jurisdiction is limited to the boundaries of the Alviso Marina County Park or land within its control. There is a very small area of the slough, adjacent to the launch ramp docks, which is within its control. Currently, there are no abandoned vessels on County Park property.

The Board of Supervisors subsequently approved the Administration's recommendation, as the County does not possess legal jurisdiction over the Alviso Slough, to be directed to request that the City of San Jose adopt its own ordinance. Our County Counsel has prepared a draft ordinance (please see attached) that could be modified for use by the City of San Jose. Additionally, the

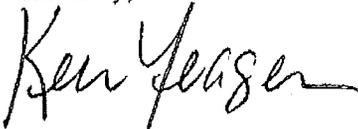
adoption of a City ordinance would fulfill the intent of the San Jose Bay Front Clean-Up Committee.

The San Jose Bay Front Clean-Up Committee was formed in 1995 to consider the possibilities for clean-up of the Alviso Slough and to address concerns about illegally moored boats along the slough. The Committee was comprised of representatives from Federal, State, and local agencies, which included the San Jose Police Department, the Santa Clara Valley Water District, and the County Parks and Recreation Department. The Committee identified 35 boats as abandoned. None of these abandoned boats were on County Park property, and the Parks Department's involvement was limited to allowing the Park's parking lot to be used at the location for dumpsters, temporary staging of equipment, and the removed boats themselves. The San Jose Police Department undertook eviction and identified the vessels as abandoned. In 1998, the 15 remaining boats were removed by crane. The City of San Jose was to follow up by adopting a mooring ordinance to give the San Jose Police Department greater authority to cite individuals who illegally dock along the banks of local waterways.

Both County Executive Jeff Smith and City Manager Deb Figone did not think that this matter warranted inclusion as a formal discussion item at the annual City/County meeting, to be held on October 15, 2010. Both are confident that this can be resolved between City and County staff. Our Administration has contacted Assistant City Manager Ed Shikada to discuss this matter further.

I am hopeful that resolution of this issue is forthcoming, as I am sure both you, your Council and the Alviso Community are as well.

Sincerely,



Ken Yeager  
President, Board of Supervisors  
Supervisor, Fourth District

c: Board of Supervisors  
San Jose City Council  
Ed Shikada, Assistant City Manager

Attachment – Draft Vessel Sanitation and Mooring Ordinance

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF SANTA CLARA ADDING  
DIVISION B32 TO THE COUNTY OF SANTA  
CLARA ORDINANCE CODE RELATED TO  
VESSEL AND WATER SAFETY

Summary

This ordinance adds provisions regulating  
vessels and water safety.

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CLARA  
ORDAINS AS FOLLOWS:

SECTION 1. Division B32 is hereby added to Title B of the County of Santa  
Clara Ordinance Code to read as follows:

Division B32

VESSELS AND WATER SAFETY

Chapter I. General Provisions

**Sec. B32-1. Applicability.**

Subject to federal and state statutes and regulations, this division applies to and governs all public waters in this county, including lakes and rivers or portions of them, over which this county has police power jurisdiction exclusively and/or concurrently with the United States and/or the State of California. The provisions in this division are in addition to any provisions that may govern waterways on land owned or controlled by the County, including waterways on or through County park lands.

**Sec. B32-2. Definitions.**

Unless the context otherwise requires, the words and phrases used in this division have the meanings given them in Chapter 5 of Division 3 (Section 650 et seq.) of the California Harbors and Navigation Code. The following words have the following meanings for purposes of this division:

(a) "Floating home" or "floating structure" means a structure that has the following characteristics:

(1) It is a stationary structure in, on, or above the water that is:

(A) Permanently grounded; or

(B) Supported by a flotation system and held in place by piling or mooring devices; or

(C) Placed on or otherwise affixed to a foundation, dock, piling, walkway, gangway, pier, barge or other permanent structure.

(2) It is incapable of being used for self-propelled navigation.

(3) It is designed and built to be used, or is modified to be used, or is used, to serve purposes or provide services typically associated with a structure on or other improvement to real property. The term "floating home" or "floating structure" includes a structure that is used as a residence, place of business or office with public access, hotel or motel, restaurant or lounge, clubhouse, meeting facility, storage or parking facility, mining platform, or similar facility or structure represented as such. Incidental or limited movement of a structure upon water or resting partially or entirely on the bottom does not preclude the structure from being classified as a floating home or floating structure for purposes of this ordinance code. Registration of a structure as a vessel with the California Department of Motor Vehicles does not preclude the structure from being classified as a floating home or floating structure for purposes of this ordinance code. A houseboat or liveaboard that is permanently moored or grounded and is incapable of self-propelled navigation is a floating home for purposes of this ordinance code. Floating homes and floating structures are expressly excluded from the definition of the term "vessel" provided in this section.

(b) "Garbage" has the meaning set forth in Health and Safety Code Section 117475.

(c) "Houseboat" means a liveaboard that has either a pontoon or flat-bottomed hull configuration and has a permanent enclosed superstructure with sleeping and cooking facilities.

(d) "Liveaboard" means any vessel, supported by means of flotation and capable of being used for self-propelled navigation, that is used or designed to be used or fitted out to be used for human habitation.

(e) "Moor" means to make fast, tie up or otherwise secure a vessel other than by anchoring. "Moor" includes to attach to a dock, pilings, walkway, gangway, pier, or other structure, or to tie up to any natural object or feature.

(f) "Sewage" has the meaning set forth in Harbors and Navigation Code Section 775.5(d).

(g) "Shore" means that part of the land in immediate contact with a waterway, including the area between high-tide and low-tide marks or between high-water and low-water marks.

(h) "To anchor" means to secure a vessel within a waterway by dropping an anchor, anchors or other ground tackle to the bottom of the waterway.

(i) "Vessel" means every description of watercraft used or capable of being used as a means of transportation on the water, except: a seaplane on the water; or, a watercraft specifically designed to operate on a permanently fixed course, the movement of which is restricted to a fixed track or arm to which the watercraft is attached or by which the watercraft is controlled. A "vessel" includes a barge, a dredge, a towboat and its tow, a houseboat and a liveaboard.

(j) "Waterway" means any water, lake, river, creek, canal, lagoon, bay, inlet, slough, channel, or tributary situated within the county, or any water area situated within the county providing access for vessels from one place to another.

### Sec. B32-3. Prohibitions.

(a) No person owning, possessing, or in charge of any vessel shall permit the vessel to be operated or located in violation of this division.

(b) All houseboats and liveaboards are subject to all applicable provisions of this division and to all other applicable provisions of this Code and state and federal laws and regulations.

(c) A floating home or floating structure is not allowed at any location in the County unless it meets all applicable zoning, building, health, sanitation, and other applicable provisions of this Code, and meets all applicable provisions of state and federal laws and regulations.

### Sec. B32-4. Establishment of Marked Areas.

The Board of Supervisors by resolution as to waters under its jurisdiction, and/or the authorized representative of any other public agency as to waters under its jurisdiction, may designate and cause to be appropriately marked boat launching areas, areas designed exclusively for swimming, areas where swimming is prohibited, areas where boats are prohibited, areas of restricted speed or "slow areas," and other boating and personnel control signs and devices, and may change these designations from time to time as the

public safety and welfare may require. All persons shall comply with these designations when so marked.

#### **Sec. B32-5. Exemption for Water Shows and Boat Races.**

This division does not prohibit or restrict the operation of any vessel, aquaplane, or water skier actually participating in a water show, race or regatta that was previously authorized in writing and actively supervised by a public agency or its duly authorized agent having jurisdiction over the waters involved.

#### **Sec. B32-6. Enforcement.**

(a) The County may enforce the provisions of this division by any remedy allowed under this Code or any other remedy allowed by law or equity, except that violations of state or federal law incorporated into this division shall be enforced as provided pursuant to the applicable state or federal law.

(b) A violation of any provision of this Division constitutes a public nuisance.

(c) The Sheriff is authorized to enforce this division.

(d) Whenever this chapter grants a power to the Sheriff, the power may be exercised by a deputy of the Sheriff or by a person authorized by law, unless otherwise provided.

(e) All notices and decisions issued by the Sheriff pursuant to this division will be transmitted to the registered vessel owner by first class mail and by posting at a conspicuous place on the vessel, or by personal service by the Sheriff.

(f) The Office of the County Counsel or Office of the District Attorney may bring a civil action against any person who has violated or is violating any provision of this Division.

**[Q: Admin. penalties/hearing process?]**

#### **Sec. B32-7. Vessel Removal.**

(a) If the Sheriff determines a vessel is moored or anchored in violation of this division, the Sheriff may issue a notice to remove. The notice will provide a date by which the vessel's owner must remove the vessel from the waterway.

(b) If the vessel's owner does not remove the vessel or cause the vessel to be removed after receiving a notice to remove, the Sheriff may remove and store the vessel. The vessel may be redeemed upon proof of ownership and payment of all costs incident

to recovery, movement, impounding, and storage or may be disposed of in accordance with Section B32-8.

**Sec. B32-8. Vessel Disposition.**

(a) A vessel removed and stored by the Sheriff may be disposed of in accordance with the provisions of Article 4 of Chapter 2 of Division 3 of the Harbors and Navigation Code (Boaters Lien Law). The owner of the vessel will be civilly liable to the county for all costs, fees, damages and expenses incurred by the county in removing, storing and selling the vessel. These costs are a lien upon the vessel and the proceeds of the sale.

(b) Wrecked and abandoned vessels are subject to disposal in accordance with Chapter 3 of Division 3 of the Harbors and Navigation Code.

**Sec. B32-9. Charges.**

Charges imposed by the County for services under this division, including the recovery, movement, impounding, and storage of vessels, will be in accordance with the fee schedule adopted by the Board of Supervisors.

**Chapter II. Speed Zones**

**Sec. B32-10. Speed Designated.**

The areas designated in this chapter and in Harbors and Navigation Code Section 655.2 are speed zones. No person shall operate any vessel, or permit it to be operated, in a speed zone at a speed in excess of five miles per hour.

**Sec. B32-11. Wakes.**

No person shall operate any vessel, or permit it to be operated, in a speed zone in such a manner that the vessel's speed creates a wake that causes or raises a white crest from the moving vessel.

**Sec. B32-12. Slow Areas.**

Any area designated as a "slow area" by resolution of the Board of Supervisors is a speed zone.

**Sec. B32-13. Near Vessels Sixteen Feet or Smaller in Length.**

The area within one hundred feet of any vessel sixteen feet in length or smaller, except for a personal watercraft, that is likely to be endangered by the wake of a passing vessel, is a speed zone.

**Sec. B32-14. Near Swimming Floats or Diving Platforms.**

The area within two hundred feet of any swimming float or diving platform, except special floats used for water skiing, is a speed zone. Special skiing floats shall be clearly marked and permits issued for their establishment, and the area of their use shall be designated by the Board of Supervisors.

Chapter III. Restrictions

**Sec. B32-15. Swimming Prohibitions.**

No person shall swim in any area designated as a "no swimming" area, or outside the boundaries of a marked swimming area, or in a location or in a manner likely to create a condition hazardous to himself or to any other person or object.

**Sec. B32-16. Prohibited Activities in or Near Designated Swimming Areas.**

No person shall operate any vessel, or ride, pull or tow any aquaplane or water skis, within any designated swimming area or within twenty feet of the exterior boundaries thereof.

**Sec. B32-17. Prohibited Activities in or Near Dams or No Boating Areas.**

No person shall operate any vessel within five hundred feet of any dam owned or operated by a public agency, or within any area designated as a "no boating" area by the appropriate regulatory agency, where signs have been erected giving notice of the prohibition.

**Sec. B32-18. No Motorboats on Small Lakes.**

No person shall operate a motorboat on a lake containing less than three hundred surface acres where signs have been erected at intervals of not over one-quarter mile around the lake giving notice of the prohibition.

**Sec. B32-19. Discharge of Firearms.**

No person shall shoot any firearm, or gun operated by spring or compressed gas, from any vessel or across or over any portion of any navigable body of water; but this does not prohibit the otherwise lawful shooting of a shotgun to kill waterfowl.

**Sec. B32-20. Night Aquaplaning or Waterskiing.**

No person shall operate a vessel, vehicle or other motive power which is pulling or towing any aquaplane or water skier, nor shall any person ride any aquaplane or water skis, between sunset and the following sunrise.

**Sec. B32-21. Passengers.**

No person shall operate, or permit the operation of, any vessel while anyone is anywhere thereon not designed or intended for use by passengers, nor shall anyone ride in such a manner.

**Sec. B32-22. Sanitation and Pollution.**

A person shall not do any of the following:

(a) Place, deposit or dump any garbage on or adjacent to the bulkheads, docks, piers, gangways, or wharves of any waterway where the material is likely to be washed or otherwise deposited into a waterway by tides, floods, storms, waves or accidental displacement.

(b) Cause any mooring line, water hose, electrical cable or other service line to extend across a dock, pier, or gangway so as to create a hazardous condition that could cause accident or injury, or cause any obstacles such as ladders, tools, canvas, vessels, boat gear, or other materials or equipment to obstruct free passage along any dock, pier or gangway; or create any other hazardous condition on a dock, pier or gangway that could cause accident or injury.

(c) Heave or store on any dock, pier, gangway, or wharf of a waterway any empty tanks or containers previously used for flammable or combustible liquids, unless free from explosive vapors, except that empty safety containers may be kept in storage.

(d) Violate any of the following sanitation and pollution statutes: Fish and Game Code Section 5650; Fish and Game Code Section 5652; Harbors and Navigation Code Section 131; Harbors and Navigation Code Section 133; Harbors and Navigation Code Section 780; Health and Safety Code Section 5411.5; Health and Safety Code Section 117480; Health and Safety Code Section 117515; or any other sanitation or pollution statute.

**Sec. B32-23. Sunken Vessels.**

(a) Whenever a vessel is sunk in a waterway, the owner must mark the vessel immediately with a buoy or daymark during the day and with a light at night, in accordance with Title 33 Code of Federal Regulations, Part 64. The markings must be maintained until the sunken vessel or obstruction is removed. Removal of the vessel must commence immediately and be completed in a timely manner. The owner must immediately notify the sheriff of the sunken vessel and provide all other notifications required by law.

(b) A vessel that is not properly marked, or a vessel where removal does not commence immediately and is not completed in a timely manner, is subject to removal, storage, and disposal in accordance with Section B32-7.

#### **Sec. B32-24. Waterskiing.**

(a) No person shall operate any vessel that is pulling or towing water skis, an aquaplane, or a similar device, nor shall any person ride water skis, an aquaplane, or a similar device, in any of the special use areas designated in subsection (b) of this section. This prohibition is in effect on the following days:

(1) Every Saturday and Sunday from the Saturday before Memorial Day through the Sunday before Labor Day.

(2) Every Memorial Day, July 4th, and Labor Day.

(b) The following waterways are designated as special use areas:

(1) [insert].

(2) [insert].

(c) The Sheriff is authorized to place regulatory markers giving notice of the restrictions specified in subsection (a) at the boundaries of the special use areas designated in subsection (b). The County Parks and Recreation Department is authorized to place regulatory markers giving notice of the restrictions specified in subsection (a) at the boundaries of the special use areas designated in subsection (b) for County park lands or other lands under the Department's control.

### **Chapter IV. Mooring Regulations**

#### **Sec. B32-25. General Restrictions.**

Except as otherwise permitted by this chapter, no vessel shall be moored, anchored, grounded, placed or otherwise located in any waterway for a period exceeding ninety-six hours.

#### Sec. B32-26. Mooring Locations.

A vessel, other than a houseboat or liveboard, may be moored at the following locations to the extent permitted by law:

- (a) A permitted dock;
- (b) A permitted marina, provided the vessel is moored in compliance with all applicable permit conditions imposed on the marina.

#### Sec. B32-27. Houseboats and Liveboards.

(a) A houseboat or liveboard may be moored in a permitted marina if all of the following requirements are met:

- (1) The houseboat or liveboard is equipped with one of the following:
  - (A) An operable coast guard certified marine sanitation device;
  - (B) A self-contained portable toilet or other on-board portable sewage reception system that prevents the overboard discharge of treated or untreated excrement, sewage or other waste matter or contaminant of any kind;
  - (C) A legal connection to a permitted public sewer system.
- (2) The houseboat or liveboard is capable of self-propelled navigation.
- (3) The houseboat or liveboard is moored in compliance with all applicable permit conditions imposed on the marina.
- (4) The houseboat or liveboard is moored in compliance with all applicable state and federal laws.

(b) A houseboat or liveboard may be moored at a permitted dock to the extent permitted by law if all of the following requirements are met:

- (1) The houseboat or liveboard is equipped with one of the following:
  - (A) An operable coast guard certified marine sanitation device;

(B) A self-contained portable toilet or other on-board portable sewage reception system that prevents the overboard discharge of treated or untreated excrement, sewage, or other waste matter or contaminant of any kind.

(2) The houseboat or liveaboard is capable of self-propelled navigation.

(3) The houseboat or liveaboard does not obstruct navigation.

(4) The houseboat or liveaboard is moored in compliance with all applicable state and federal laws.

(c) A houseboat or liveaboard may be anchored in a waterway for up to thirty consecutive days if all of the following requirements are met:

(1) The houseboat or liveaboard is equipped with one of the following:

(A) An operable coast guard certified marine sanitation device;

(B) A self-contained portable toilet or other on-board portable sewage reception system that prevents the overboard discharge of treated or untreated excrement, sewage, or other waste matter or contaminant of any kind.

(2) The houseboat or liveaboard is capable of self-propelled navigation.

(3) The houseboat or liveaboard does not obstruct navigation.

(4) The houseboat or liveaboard is moored in compliance with all applicable state and federal laws.

#### **Sec. B32-28. Property Owners.**

No person shall cause or allow a vessel to be moored to his or her property in violation of this chapter.

#### **Sec. B32-29. Services.**

No person shall furnish or supply electrical service, natural gas or fresh water, or provide a sewer connection, to any vessel moored in violation of this chapter.

#### **Sec. B32-30. Equipment.**

(a) Any vessel moored or anchored shall be moored or anchored in such a manner to prevent breakaway resulting in sanitation damage or pollution.

(b) Mooring lines at docks and marinas shall be installed in a manner that will maintain a moored vessel within its berth and prevent the vessel from posing a safety hazard to the berth or to adjoining vessels.

**Sec. B32-31. Lights.**

Any vessel anchored or moored between sunset and sunrise shall display lights as prescribed by federal and state laws, rules and regulations regarding anchor lights in inland waters.

**Sec. B32-32. Bouys.**

No vessel may be moored at a buoy in violation of Harbors and Navigation Code Section 307 or Harbors and Navigation Code Section 308.

**PASSED AND ADOPTED** by the Board of Supervisors of the County of Santa Clara, State of California on \_\_\_\_\_ by the following vote:

**AYES:**  
**NOES:**  
**ABSENT:**  
**ABSTAIN:**

\_\_\_\_\_  
Ken Yeager, President  
Board of Supervisors

**ATTEST:**

\_\_\_\_\_  
Maria Marinós, Clerk of the Board of Supervisors

**APPROVED AS TO FORM AND LEGALITY:**

\_\_\_\_\_  
Lizanne Reynolds, Deputy County Counsel

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2010 SEP 29 P 4:49



**SAN JOSE DOWNTOWN  
ASSOCIATION**

28 N. FIRST STREET  
SUITE 1000  
SAN JOSE, CA 95113  
TEL: 408-279-1775  
FAX: 408-279-1904  
WWW.SJDOWNTOWN.COM

September 29, 2010

Roelof van Ark  
Chief Executive Officer  
California High Speed Rail Authority  
925 L Street, Suite 1425  
Sacramento, CA 95814

Dear Mr. Van Ark,

Neighborhood and business groups in central San Jose urge the California High Speed Rail Authority (CHSRA) to include an underground option for San Jose in the project's Environment Impact Report.

While we continue to support high-speed rail, the decision on the alignment through downtown San Jose requires further study. The San Jose City Council meeting Sept. 14 on this issue raised a new set of questions deserving timely answers:

1. We did not hear CHSRA staff nor City of San Jose Department of Transportation (CSJ DOT) staff present any "fatal flaws" for continued study of underground options. CHSRA staff stated that a San Jose tunnel was "unfeasible and impractical." The unfeasible justification centered on cost. CHSRA and CSJ DOT staff reports to the San Jose City Council nearly doubled the underground project costs from \$1.3 billion in June to \$2.5 billion, while aerial costs were announced at \$500 million. CHSRA staff's explanation on Sept. 14 assigned the tunnel's cost escalation primarily "to accommodate future development."
  - a) What are the specific "accommodations" CHSRA staff estimated that added more than \$1 billion to San Jose's underground costs?
  - b) What alternative "accommodations" did CHSRA consider other than a mat foundation covering the entire site for San Jose's underground option?
  - c) Do the cost comparisons (tunnel versus aerial) include the potential value of future 'air rights' for development on top of a tunnel alignment?
  - d) Are there any corresponding potential development rights for the aerial scenario?
  - e) Is the cost of an 'iconic' above ground station included in the aerial cost estimate?

f) If San Jose insists on world-class quality station and aerial structure architecture, who would pay for the additional cost?

g) The aerial alignment will likely have significant ongoing maintenance costs associated with graffiti removal, homeless encampments, rail wear on the "S" turn and "wheel squeal" noise abatement. Have these recurring expenses been factored into a net present value "cost" when compared to the underground option?

2. The BART project has selected tunnels and a subway station in the very same vicinity that CHSRA does not want to continue study for a tunnel and station. CHSRA has used "unstable soils" as one of its reasons for stating the tunnel is unfeasible while clearly it was feasible for BART.

a) How is it possible BART finds underground feasible but not CHSRA?

b) What soil sampling did CHSRA conduct *in addition* to those samples drawn for BART?

c) Where were the CHSRA samples taken?

d) What are the differences with the nearby tunnel recommended for further study by CHSRA just north of this area near the San Jose/Santa Clara border?

3. On Sept. 14, CHSRA and CSJ DOT staff said the tunnel option would take seven years of construction and "tear up the city." Our BART project managers explicitly demonstrated how they could shorten construction and minimize impacts for the San Jose underground route that utilizes bored tunnels and cut and cover stations.

a) How did CHSRA staff arrive at the construction period for the underground option, and likewise, its estimates for the aerial construction?

b) What analysis was done on construction strategies that could shorten the timeline and construction impacts?

4. CHSRA staff also reported on Sept. 14 that "80 property easements" are needed for the underground option.

a) Please elucidate the characteristics of these easements, such as whether they are deep underground easements and how they might impact existing or future property use.

b) Additionally, what sort of financial compensation is associated with these easements?

c) In the Sept. 14 meeting, your staff did not elaborate on the "about 10" property takings needed for the aerial option, nor did your staff indicate the number of property takings required by the aerial alignment north of Diridon, which looks like a much bigger number than 10 with some potential larger acquisitions required. How were all these property acquisitions for the aerial structure from Taylor to Tamien accounted for in your preliminary design, public outreach and cost estimates?

5. The City of San Jose requested on several occasions – both in writing and in person at CHSRA board meetings – that CHSRA study a "best" underground alignment.

a) CHSRA staff rejected both the deep tunnel and shallow tunnel options in its June report.

How and when was it determined that these two tunnel alignments were the "best" underground alignments and that no other alignment would resolve any of the concerns, such as conflict with the Native American burial site at Tamien?

- b) CHSRA staff on Sept. 14 said they had completed "almost 15 percent engineering" on San Jose's tunnel options. Was this level of engineering work included for both the shallow and deep tunnel alignments in the June Alternative Analysis report?
- c) Which underground alignment did CHSRA staff ultimately conclude the "best option" as requested by San Jose and why was it deemed the "best?"

6. Because the City of San Jose has been asking CHSRA since Dec. 2009 to seek and analyze a "best" underground alignment and CHSRA now recommends no further study of the "best" underground option – or any other underground options – we are concerned about the integrity of the EIR process.

- a) How will the EIR not be defective and at risk of legal actions by interested parties outside of San Jose who are determined to undermine the entire project?
- b) Since federal law mandates a full EIR must include all viable options, how will the project's EIR be complete if CHSRA eliminates San Jose's underground options *before* the study?

7. The CHSRA Alternative Analysis report and appendix released the same morning of the Authority's June 3 board meeting eliminated all alignment options through Central San Jose except the so-called SR87/I280 aerial route, preferred by CHSRA and CSJ DOT staff.

- a) For what reasons does CHSRA choose to release recommendations and reports *after* public hearings are underway?
- b) How does this benefit the public participation process and foster collaborative decision-making?
- c) For what reasons does CHSRA release reports without sufficient supporting empirical data for the decision (aerial alignment) contained within the report?
- d) How will the lack of specific detail in the CHSRA's released documents to date on San Jose's alignment options inform or place at risk the subsequent EIR process?

8. CHSRA staff indicated that the tunnel option would be detrimental to development in the Diridon Area. Most metropolitan areas have unitized the joint public-private development approach to preserve future development opportunities and build substantial structures on top of tunnels and underground stations.

- a) Why is this development approach utilized around the world not viable in San Jose?
- b) Everyone encourages transit-oriented development around stations. How did CHSRA staff reach its conclusion that such development would be enhanced by the aerial structure more than the underground option when experience tells us differently (San Francisco Transbay Terminal, etc.)?

9. As for an underground option in San Jose being "impractical," the preponderance of responses given at the Sept. 14 council meeting were about timing: potential delay to the

project in order to study the underground, plus potential delays to the funding stream. Given our understanding the San Jose to San Francisco section is in the initial project phase (not San Jose to Merced):

- a) How are the San Jose to Merced decisions impacted? For instance, how does the timing on the northern SF-SJ route drive the decisions on the southern alignment?
- b) How will the delays that are apparent from city council actions on the Peninsula for the SF-SJ section allow more time to study options in San Jose?
- c) Earlier this month, Caltrain officials suggested phasing construction to allow more time to study trenching and tunneling along the Peninsula in those communities that requested it. How would this approach allow for further comprehensive study of a tunnel alignment in San Jose?

10. Impractical can mean many things, which is why it would seem the environmental factors are critical to study at this stage of the project. Neighborhood groups throughout Central San Jose are particularly interested in these elements. While we understand the EIR has yet to be released and the analysis in the EIR may differ, the **attached chart** is an example of issues that could be vetted in the EIR, particularly as it pertains to the tunnel in comparison to the aerial. The **second attachment** is a copy of the summary from the scoping document submitted to CHSRA in April 2009 for a tunnel option that CHSRA withdrew prior to the release of your June 2010 Alternatives Analysis.

- a) For what reasons and when did CHSRA staff reject these and other underground options in San Jose, such as the deep and shallow tunnel alignments?
- b) For what reason did CHSRA not combine elements from multiple alignments to achieve a "best" underground option for San Jose?
- c) For what reason did CHSRA not evaluate other areas besides Tamien Station for a tunnel portal since it is well known the area is a sensitive archeological site?

11. The incremental cost estimates given for accommodating a shared underground BART station with high-speed rail were \$140 million in your June report. It is our understanding this estimate was for the shallow tunnel high-speed rail option (HSR running above BART tracks).

- a) How does this incremental underground cost, if at all, include the potential efficiencies from BART and high-speed rail sharing station construction and infrastructure? Please include the criteria assumptions and computations you used to make your estimate.

12. By virtue of splitting the two Bay Area high-speed rail sections at Diridon Station, it is difficult for San Jose to receive a complete picture of the project in our city.

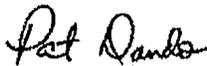
- a) How will future planning documents about the north and south of Diridon Station areas provide improved transparency, accountability and increased coordination?
- b) At what point will a comprehensive look at the Diridon Station Area – north and south – be prepared and offered for local public input prior to the completion of the EIR process?

Thank you for addressing our questions and the continued consideration of a tunnel option for San Jose.

Sincerely,



Art Bernstein  
San Jose Downtown Association



Pat Dando  
San Jose Silicon Valley Chamber of Commerce



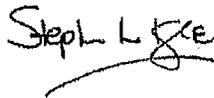
Helen Chapman  
Shasta Hanchett Park Neighborhood Association



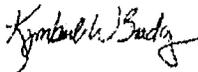
David Dearborn  
Willow Glen Neighborhood Association



Pete Kolstad  
Market Almaden Neighborhood Association



Steve Kline  
Burbank/Del Monte Neighborhood Action Coalition



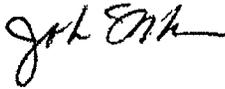
Kymerli Brady  
San Jose Downtown Residents Association



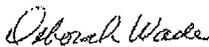
Robert Sippel  
Rose Garden Preservation Neighborhood Association



Phil Hood  
Delmas Park Neighborhood Association



John Urban  
Newhall Neighborhood Association



Debbie Wade  
Greater Gardner



Clay Reigel  
College Park Neighborhood Association

- cc. CHSRA Board members  
Mayor Chuck Reed and San Jose City Council Members  
Honorable Zoe Lofgren, 16th District, U.S. House of Representatives  
Honorable Mike Honda, 15th District, U.S. House of Representatives  
California State Senator Elaine Alquist, District 13  
California Assemblymember Joe Coto, Assembly District 23  
Supervisor George Shirakawa, District 2, Santa Clara County  
Debra Figone, San Jose City Manager  
Harry Mavrogenes, San Jose Redevelopment Agency Executive Director

attachments: CEQA chart; tunnel summary report

# Reasons to Keep HSR Tunnel Option in the Mix

David Dearborn, Author, 5100m Tunnel Option

Over 87-280

Modified 5100m Tunnel

Socio Economics		
Neighborhoods	○	●
Environmental Justice	⊙	●
Eminent Domain	○	●
Land Takes	○	○
Traffic & Mobility	⊙	●
Biological Resources		
Riparian Corridors	⊙	●
Guadalupe River	⊙	●
Los Gatos Creek	○	○
Noise & Vibration	⊙	●
Construction Impacts	⊙	●
Sound Mitigation	⊙	●
Cumulative & Secondary Impacts	⊙	●
Parks, Recreation & Open Space	⊙	●
Transportation & Circulation	⊙	●
Local Growth & Development	⊙	●
Station Planning	⊙	⊙
Land Use & Property	⊙	●
EMI / EMF	○	●
Security & Public Safety	○	●
Blight, Land Remnants & Misuse	⊙	●
Aesthetics & Visual Quality	⊙	●
Hydrology & Water Resources	●	⊙
Geology & Seismicity	○	⊙
Conventional Design Standards	●	●
Construction Hazards / Risk	⊙	⊙
Alignment Construction Costs	○	⊙
Station Construction Costs	●	⊙
HSR - BART Transfer Ease	⊙	●
Trainset Speed	⊙	●

- Little to No Impact
- Some Impact
- ⊙ Will Impact
- ⊙ Significant Impact

## 5100m Overview

Transforming San Jose from "The Bedroom Community" of the South Bay to a world-class urban city requires looking forward.

50 years, 100 years from now, will the country's first HSR system have a route that represents California's commitment to the future?

The 5100m alignment gets its name from the tunnel which begins just north of Curtner Avenue, crossing at right angles under the Guadalupe River north of Willow Street, and unobtrusively beneath highly valued TOD and RDA land to Diridon Station. It will:

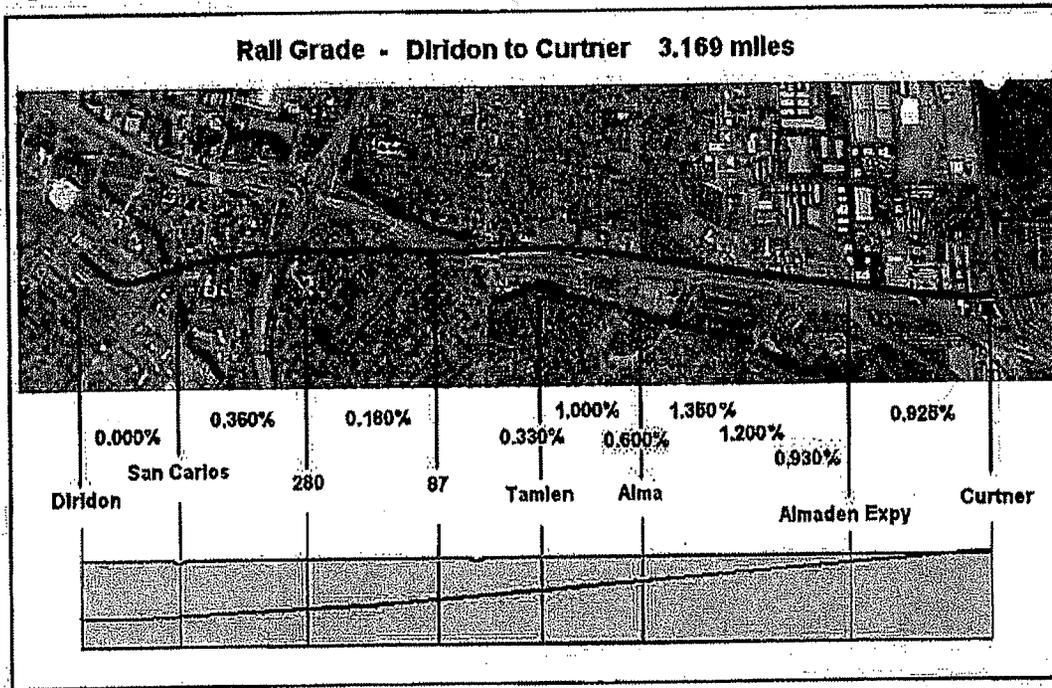
- Facilitate the faster, lighter weight and more energy efficient train sets of the future.
- Reflect appreciation for San Jose's history, livability and its sense of community for 1.5 to 2.0 million people.
- Facilitate increased degrees of freedom in land use planning as San Jose continues to grow.

There is only one opportunity to get this right.

There will be no going back.

San Jose is the 10<sup>th</sup> largest city planning for a world-class multi-modal transit hub, mall and urban center.

**Figure 1,**



**Note:** Final 5100m track grade and depth at Diridon designed as appropriate for final station design.

Chart 1.

From (ft)	To	Dist From To	Grade Elev at "from" point	Cost Elemnt	drop ft	% grade	Track below Curtnet at "To"	Track below Grade ft
Curtnet	Curtnet + 300m	984	134	A	9.1	0.920%	9.1	9.1
Curtnet + 300m	Almaden Expy	1,312	133	B	12.2	0.930%	21.3	20.3
Almaden Expy	Almaden Expy + 200m	656	132	B	8.1	0.930%	27.4	25.4
Almaden Expy + 200m	Almaden Expy + 700m	1,640	127	C	19.7	1.200%	47.0	40.0
Almaden Expy + 700m	Alama	1,312	121	D E	17.7	1.350%	64.8	51.8
Alma	Tamlen	984	115	D E	5.9	0.600%	70.7	61.7
Tamlen	Willow	1,312	116	D E	13.1	1.000%	83.8	64.8
Willow	87S flyover to 280N	3,281	111	D E	32.8	1.000%	116.6	93.6
87S flyover to 280N	San Carlos near Josefa	3,281	99	D E	32.8	1.000%	149.4	114.4
San Carlos near Josefa	Station Rail South entry	1,640	96	D E	6.8	0.400%	156.0	120.0
Station Rail South entry	Diridon platform	328	97	D E	0.0	0.000%	156.0	119.0

A	at grade - plus or minus 3.1m (10 feet)
B	trench - 3.1m to 6m inside (10 - 26 feet)
C	covered trench -
D	tunnel - double track HSR mined soft soil
E	tunnel - twin single track <6mi mined soft soil

### 5100m EIR / EIS Discussion

#### **Socio Economics, Neighborhoods & Environmental Justice:**

None -- buried underground

#### **Eminent Domain:**

None/ very small -- mostly public land and underground

#### **Land Taking:**

None/ very small -- mostly public land and underground (negotiated easement rights only)

#### **Traffic & Mobility:**

None -- only at and around station; no road/street closures required; no rebuilding of overpasses or grade separations

#### **Biological Resources & Riparian Corridors:**

None -- No rail bed, structures, construction, vibration, displacement, mitigation or modifications required. ROW buried well below the Guadalupe River and Los Gatos water ways and riparian corridors. No impact on migratory fish, reptiles, birds, mammals, insects, grasses, plants, habitat, and other

#### **Noise & Vibration:**

None -- no surface structures or at grade rail beds in or through historic neighborhoods or densely populated core city areas as ROW is well under ground in areas of greatest concern

#### **Construction Impacts:**

Significantly fewer -- only south of Tamlen and tunnel entrance; no pile driving; no earth moving equipment; no concrete, steel and materials trucks; no cranes and overhead equipment; no road closures; no construction mitigation issues

#### **Sound Mitigation:**

None-to-nil -- buried under ground; no sound walls required

**Cumulative & Secondary Impacts:**

None to nonexistent -- Combined HSR, Caltrain & other heavy rail are buried and under ground; simultaneous or cumulative noise and vibration is underground and fully mitigated

**Parks Recreation & Open Space:**

None taken -- Preserves, protects and enhances opportunities for parks, trails and open space -- Preserves, protects and enhances visual, aesthetic value and eliminates sound pollution for same -- Reference Scoping input letter from Dr. Laurence Lowell Ames and others

**Transportation & Circulation:**

Walking and Bike Trails -- No mitigation require -- HSR, Caltrain & other passenger and light freight heavy rail is underground providing increased opportunity for greater carbon free mobility within and about the city... for work related commuting, general mobility and recreation and health maintenance -- See Scoping letter from Dr. Larry Ames

Auto & Public transportation -- No mitigation required -- HSR, Caltrain, Amtrak, ACE and UPRR rail can follow this alignment underground through San Jose

**Local Growth:**

No Impact -- Track ROW and associated space and imposition considerations are non-existent -- buried under ground

**Station Planning:**

No to little impact -- 5100m is an underground option that offers greater architectural freedom in planning the new Diridon multi-modal transit mall -- Options for separate bore(s) for through passage are possible.

**Land Use & Property:**

Little-to-No Impact -- HSR, Caltrain and other heavy rail is buried under ground -- 5100m offers greater degrees of freedom for Land Use planning -- Little to No Impact on Property values due to above ground alignment options

**EMI / EMF:**

None -- Buried and under ground

**Security & Public Safety:**

None -- 5100m is buried and underground

**Blight, Land Remnants & Misuse:**

None -- 5100m alignment is buried and underground; No land remnants to provide shelter or opportunity for misuse, unauthorized use or undesired or illegal behavior

**Aesthetics & Visual Quality:**

No Impact -- 5100m is buried underground -- No supporting structures -- No sound or security barriers -- No visible overhead wires or suspension structures -- No cleaning or aesthetics mitigation or maintenance concerns -- No impact of such on perceived or real property values

**Hydrology & Water Resources:**

None to Little -- See Appendix

**Geology & Seismicity:**

None to Little -- Current bore designs and construction technology mitigate this issue -- The difficulty of boring 5100m has been referred to by some... "like a hot knife through butter"  
See Appendix

**5100m Speed Considerations**

- This high speed alignment removes 30 seconds from every HSR train stopping at San Jose, and even more for through trains
- Larger radii, gentle grade, enhanced security and reduced mitigation allow the highest possible speeds with the least challenges.
- This proposal reserves the smaller turn radius for entry to the Diridon station where slower speed is needed for station arrival.

--- April 2009 ---

**San Francisco Bay Stakeholder Advisory Group to the State Water Resource Control Board's Estuarine Nutrient Numeric Endpoint Project**

**Meeting Agenda**

October 4, 2010

1—3:30 PM

RECEIVED

San Francisco Bay

2010 SEP 28 P 3: 114

Location: San Francisco Bay Regional Water Quality Control Board, Meeting Room 10, Second Floor, 1515 Clay Street, Oakland, CA 94612 (Point of contact: Naomi Feger, 510-622-2328)

Travel information can be obtained at

[http://www.waterboards.ca.gov/sanfranciscobay/about\\_us/directions.shtml](http://www.waterboards.ca.gov/sanfranciscobay/about_us/directions.shtml)

**Meeting Goals:**

- 1) Introduce the San Francisco Bay NNE conceptual framework and work plan
- 2) Presentation, organization and discussion of the San Francisco Bay SAG
- 3) Select San Francisco Bay SAG members and alternates

**Agenda:**

- 1:00 – 2:00    Introductions, meeting goals, project objectives, conceptual framework, and general workplan [Rik Rasmussen (SWRCB), Naomi Feger (SF Bay WB) Martha Sutula (SCCWRP), and Lester McKee (SFEI)]
  - Provide broad perspective on NNE background, development, conceptual framework, near-term workplan goals and project organization
  
- 2:00 – 2:30    Discussion of roles and responsibilities of the San Francisco Bay SAG and selection of members and alternates [Brock Bernstein]
  - Discuss role of San Francisco Bay SAG and process for selection of members and alternates among stakeholder subgroups
  - Timeline for workplan and future San Francisco Bay SAG meetings.
  - Proposal for alternating location of San Francisco Bay SAG meetings.
  
- 2:30- 3:00    Breakout groups: election of spokesperson and alternates within each stakeholder group
  
- 3:00 – 3:15    Summary of elected spokespersons and alternates (Brock Bernstein)
  
- 3:15 – 3:30    Next steps (Rik Rasmussen)

RECEIVED  
San Jose City Clerk

2010 SEP 28 P 3: 14

**NOTICE and AGENDA**  
**CITY SELECTION COMMITTEE**  
**6:50 P.M. Thursday, October 14, 2010**  
Sunnyvale City Hall, West Conference Room  
456 West Olive Avenue, Sunnyvale, CA

**NOTICE OF MEETING**

NOTICE IS HEREBY GIVEN, pursuant to the requirement of law, that the City Selection Committee for Santa Clara County will meet in special session Thursday, October 14, 2010 at 6:50 p.m. at Sunnyvale City Hall, Sunnyvale, CA, in accordance with the following agenda items.

**AGENDA**

- 1. Call to Order/Roll Call**
- 2. Consent Calendar**
  - a. Draft Minutes of the meeting of September 9, 2010
- 3. Communication Received:**
  - a. **Silicon Valley Regional Interoperability Authority – (Job Description):**  
Director and Alternate Appointments to fill terms expiring October 2013 by a City Council Member from a city that does not have a member on the Board of Directors.
    - i. Letter of interest received from Laura Macias, Mountain View for Director Appointment.
    - ii. No expression of interest received for Alternate Director.
- 4. Appointments**
  - a. **Silicon Valley Regional Interoperability Authority Board of Directors** – one appointment
  - b. **Silicon Valley Regional Interoperability Authority Board of Directors Alternate** – one appointment
- 5. Adjournment**

**Note:** City Selection Committee rules specify that each city’s representative to the Committee is the city’s Mayor or his/her designee from the city’s council.

**Minutes**  
**SANTA CLARA COUNTY CITY SELECTION COMMITTEE**  
**Sunnyvale City Hall**  
**September 9, 2010**

The regular meeting of the Santa Clara County City Selection Committee was called to order at 6:50 p.m. with SCCCA President David Casas presiding.

**1. Call to Order/Roll Call**

**Present:**

Jason Baker, Campbell  
Kris Wang, Cupertino  
David Casas, Los Altos  
Ginger Summit, Los Altos Hills  
Joe Pirzynski, Los Gatos  
Don Perry, Monte Sereno  
Ronit Bryant, Mountain View  
Larry Klein, Palo Alto  
Kathleen King, Saratoga  
Sam Liccardo, San Jose

**Also Present:**

Scott Haywood, VTA  
Betsy Shotwell, City of San Jose  
Raania Mohsen, SCCCA Exec. Dir.  
Maha Elgenaidi, Islamic Network Group  
Doug Schmitz, City Manager, Los Altos  
Jamie McLeod, Santa Clara  
Howard Miller, Saratoga

- 2. Consent Calendar:** Minutes of the meeting of May 13, 2010: Kris Wang noted that she was present at the meeting. Raania agreed to add her name to the minutes. Motion (Pirzynski)/Second (Liccardo) to accept the minutes.
- 3. Communications received:** Letter of interest was noted.
- 4. Appointments:**  
**Recycling & Waste Reduction Commission:** Evan Low, Campbell, was re-appointed to the West Valley Cities Seat, a term expiring September, 2016. Motion (Liccardo)/Second (Bryant). Carried unanimously.
- 5. Adjournment.** The meeting was adjourned at 6:55 p.m.

Respectfully submitted:  
Raania Mohsen, Executive Director

Honorable David Casas

Chair, Santa Clara County Cities Association

September 27, 2010

Dear Mayor Casas and Executive Board,

I am submitting to you my application for the Santa Clara County Cities Association Seat on the Silicon Valley Regional Interoperability Council.

In my prior application for the North County, I had mentioned my long time interests, and some expertise in the topics of telecommunications and interoperability with my past professional background. After having the ability to attend the first two meetings of the SVRIA to participate as an alternate for the North County, I remain very interested and available for appointment. Since that time, I have also been serving on a Working Group Initiative at Carnegie Mellon Silicon Valley with a focus on standards for communications and disaster management responsiveness. Especially given our latest local disaster in San Bruno, interoperability remains a challenge to be addressed sooner rather than later.

I believe that I might offer another voice to the group for the SCCCA and I sincerely hope that you will consider my application for acceptance. Thanks very much for your thoughtful consideration.

Best regards,

Laura Macias, Councilmember, City of Mountain View

[lauramacias@juno.com](mailto:lauramacias@juno.com), [laura.macias@mountainview.gov](mailto:laura.macias@mountainview.gov), 650-417-1263

RD:SSG

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

**NOVEMBER 18, 2009**

THIS JOINT POWERS AGREEMENT FOR THE SILICON VALLEY REGIONAL INTEROPERABILITY AUTHORITY (the "**Agreement**") is entered into as of this \_\_\_\_ day of \_\_\_\_\_ 20 \_\_\_\_, ("**Effective Date**") by and among the public agencies executing this Agreement (collectively, "**Members**" and individually, "**Member**").

**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.

**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.
  - 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. **"Smaller Member"** shall mean any Member whose population is less than 15,000.

- 1.13. **"South County Agencies"** shall include the City of Gilroy and the City of Morgan Hill.
- 1.14. **"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.
- 1.15. **"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 3.3 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. 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 nine (9) 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.

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 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., five (5) 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. Recommendations for amendments to the bylaws will be developed by Working Committee and forwarded to Board for consideration.

- 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 eleven (11) 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.
- 6.9.2. 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 Date, six (6) 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.

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).

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.

RD:SSG

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

City of Campbell

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Cupertino

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Gilroy

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Los Altos

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Town of Los Altos Hills

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RD:SSG

Town of Los Gatos

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Milpitas

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Monte Sereno

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Morgan Hill

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Mountain View

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RD:SSG

City of Palo Alto

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of San Jose

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Santa Clara

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

County of Santa Clara

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

City of Saratoga

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RD:SSG

City of Sunnyvale

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Approved as to form:

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

RD:SSG

## **BYLAWS OF THE SILICON VALLEY REGIONAL INTEROPERABILITY AUTHORITY**

Preamble. These Bylaws are procedural rules for the Silicon Valley Regional Interoperability Authority. They include the procedural rules for the Board of Directors. The Working Committee may adopt separate procedural rules not inconsistent with these Bylaws. The Bylaws will be adopted pursuant to the joint powers agreement for the Silicon Valley Regional Interoperability Authority dated April 20, 2010 and are intended to be interpreted in concert with that agreement and all applicable laws.

### ARTICLE I

1.1 Bylaws. The Silicon Valley Regional Interoperability Authority (“SVRIA” or “the Authority”) is a public entity created by the joint powers agreement for the Silicon Valley Regional Interoperability Authority dated April 20, 2010 (“the Agreement” or “the SVRIA-JPA”) entered into by its public entity members of the Authority pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title I of the Government Code (“Joint Exercise of Powers Act”). Pursuant to Section 5.5 of the Agreement, these Bylaws were adopted by the Authority’s Board of Directors by Resolution No. 2010- \_\_\_\_\_ adopted \_\_\_\_\_, 2010.

1.2 Definitions. Any capitalized undefined term shall have the meaning that is provided in the Agreement.

### ARTICLE II

2.1 Board of Directors. Pursuant to Article 5 of the Agreement, the Authority is governed by a nine (9) member Board of Directors (“Board”), each such member shall

be referred to as a "Director". Each Director represents one or more of the public entities who are party to the Agreement (each a "Member Agency").

2.1 Alternates. Pursuant to Article 5 of the Agreement, each Director may have an alternate. At any Board meeting where a Director is absent and his or her alternate is present in the absent Director's stead, the alternate shall be deemed a Director.

2.2 Terms. Directors' terms shall be three (3) years unless the appointment is made to fill a mid-term vacancy, in which case the term shall be shortened accordingly.

2.3 Appointment and Removal. The Secretary is authorized to contact the Member Agencies to request written confirmation of the appointments (and removals) and electoral status of any Directors and Alternates. A Director who represents more than one Member Agency pursuant to the Agreement ("Multiple Agency Directorship") shall be deemed to be appointed by a majority of those Member Agencies.

2.4 Board Meetings

a. Ralph M. Brown Act. All meetings of the Board shall comply with the Ralph M. Brown Act ("the Brown Act", Govt. Code Section 54950 *et seq.*).

b. Time and Place of Board Meetings. The Board shall adopt a resolution setting the time and place for regular Board Meetings ("Board meeting resolution"). Unless otherwise specified in a notice to Directors, the time and place for holding regular meetings of the Board shall be as listed in the current Board meeting resolution. Meetings may also be held at locations within the jurisdiction of any Member Agency or as otherwise permitted by the Brown Act. Special meetings may be called by the Chair and as otherwise permitted under the Brown Act.

c. Notice of Meetings. Notice shall be given of each Board meeting in accordance with the Brown Act.

d. Disclosure of Closed Session Information. In accordance with Government Code Section 54956.96, a Director may disclose information obtained in a closed session of the Board that has direct financial or liability implications for the Member Agency that is represented by that Director. Such disclosure is limited to: (i) Disclosure to legal counsel for that Member Agency for the purposes of determining if the matter has direct financial or legal liability implications for that Member Agency; and (ii) disclosure in a closed session of that Member Agency to members of the legislative body of that Member Agency. The legislative body of any Member Agency is authorized to meet in closed session, upon the advice of its legal counsel, to receive, discuss, and take action concerning information obtained by its Director in a closed session of the Board in accordance with Government Code Section 54956.96.

## 2.5 Officers of the Board.

a. Officers. The officers of the Board shall be a Chairperson, a Vice Chairperson, and a Secretary. The Board shall elect a Chairperson and Vice Chairperson from the Directors. The Board shall appoint a Secretary as provided in the Agreement. Upon Board authorization, additional officers may be elected or appointed. No officer shall be a voting member of the Board unless such officer is a Director. Unless otherwise expressly provided in writing no officer shall be deemed an employee of the Authority.

b. Pro-Tem Officers. The Board may elect pro-tem officers as needed to serve when elected or appointed officers are not available or the election/appointment process is delayed. In the absence of the Chairperson and Vice Chairperson, the meeting

may be called to order by any Director and a Chairperson Pro Tem may be elected to conduct the meeting.

c. Annual Election.

Except for during the 2010-2011 fiscal year through which the term of all then current officers shall continue, an annual election for the Chairperson and Vice Chairperson and the appointment of the Secretary shall be conducted during the first meeting of the fiscal year unless deferred by the Board. The Chairperson, Vice Chairperson and Secretary may serve for multiple successive terms.

2.6 Quorum. A quorum of the Board for the transaction of business shall be at five Directors. Less than a quorum may act to adjourn a meeting to another time and place.

2.7 Rules of Order. Any contested point of procedure not determined by law or these rules shall be determined by the latest available edition of Roberts Rules of Order Revised, provided such determination is consistent with the Brown Act.

2.8 Voting. Every action of the Board shall be taken by resolution, motion, election, or unanimous consent. Resolutions shall be accorded a roll call vote. In the absence of a request for a roll call vote, action may be taken by voice or hand vote. Any negative vote or abstention shall be recorded in the minutes. No action may be taken by the Board without an affirmative vote of at least five Directors. Where a 2/3 vote is required, no action may be taken without an affirmative vote of at least six Directors.

2.9 Duties of Officers. In addition to the duties specified by applicable law, the SVRIA-JPA, other provisions of these bylaws, and resolutions or motions of the Board, the officers of the Authority shall have the following duties:

a. The Chairperson shall preside at all meetings of the Board when he or she is present. The Chairperson shall make all appointments except as otherwise provided by resolution, the Agreement or applicable law.

b. The Vice Chairperson shall preside at all meetings of the Board when he or she is present and the Chairperson is absent.

c. The Secretary shall cause minutes of all open meetings of the Board to be kept and shall cause a copy of the draft minutes to be forwarded to each Director and the Members within thirty (30) days. The Chair and Secretary shall sign minutes after they have been approved by the Board. The Secretary shall keep the minutes and files of the Authority, authenticate its acts, and administer oaths of office. The Secretary shall keep a correct roll of each Director, and his or her alternate.

### ARTICLE III

#### 3.1 Executive Director.

The Executive Director shall report to and take direction from the Board and shall have such authority as is specified herein, in the Agreement, and by resolution of the Board.

a. 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 either be paid or reimbursed by the Authority. The Executive Director may be appointed as the Secretary of the Board.

b. The Executive Director shall have the following duties and responsibilities, provided that all such responsibilities and duties shall be implemented in a manner and to an extent that is not inconsistent with the Budget, the adopted Authority

policies or rules, the Agreement, any direction from the Board or Working Committee and applicable law:

i. The Executive Director shall attend all Board meetings and shall serve as the custodian of records for the Authority.

ii. The Executive Director shall be responsible for the Authority's general management and administration including administering financial purchasing and contracting policies; and for direction and development of the Authority's operations and procedures on a daily basis, including overseeing all recordkeeping and all facilities maintenance.

iii. The Executive Director shall serve as Authority spokesperson.

iv. The Executive Director shall coordinate, prepare and direct all grant applications, acquisitions of equipment, financial services, and meeting administration.

v. The Executive Director working through member agencies, shall be responsible for coordinating implementing any Authority employment practices, including the administration of all approved policies regarding employee compensation, leave, and other personnel matters.

vi. The Executive Director is authorized to execute on, behalf of the Authority, agreements, applications and other documents on behalf of the Authority, provided that the amount of Authority funds expended thereby may not exceed \$5,000 or be inconsistent with the Budget.

3.2 General Counsel. The General Counsel, if any, shall provide legal advice and assistance to the Board and to Authority staff, as requested, and shall provide liaison for

the Board and Authority staff with the principal attorneys of each of the Member Agencies.

3.3 Employees. Otherwise expressly provided by Authority policy, the Authority shall have no employees although it may obtain Staff services provided by the employees of its Member Agencies.

#### ARTICLE IV

5.1 Amendments. Proposed amendments to these bylaws must be reviewed by the Working Committee prior to action by the Board.



T-MOBILE WEST CORPORATION a  
Delaware Corporation  
1855 Gateway Boulevard, 9<sup>th</sup> Floor  
Concord, CA 94520

September 21, 2010

Anna Hom  
Consumer Protection and Safety Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

RECEIVED  
San Jose City Clerk  
2010 SEP 21 A 10:31A

**RE: T-Mobile West Corporation as successor in interest to Omnipoint Communications, Inc. d/b/a T-Mobile (U-3056-C).  
Notification Letter for T-Mobile Site No. SF24554D**

This letter provides the Commission with notice pursuant to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California (CPUC) that with regard to the project described in Attachment A:

- (a) T-Mobile has obtained all requisite land use approval for the project described in Attachment A.
- (b) No land use approval is required because

\_\_\_\_\_

A copy of this notification letter is being sent to the local government agency identified below for its information. Should the Commission or the local government agency have any questions regarding this project, or if anyone disagrees with the information contained herein, please contact Joni Norman, Senior Development Manager for T-Mobile, at (925) 521-5987, or contact Ms. Anna Hom of the CPUC Consumer Protection and Safety Division at 415-703-2699.

Sincerely,

Joni Norman  
Sr. Development Manager  
T-MOBILE WEST CORPORATION a Delaware corporation

Enclosed: Attachment A

CC:  
Debra Figone, City Manager, City of San Jose, 200 East Santa Clara St., San Jose CA 95113  
Joseph Horwedel, Planning Dir, City of San Jose, 200 East Santa Clara St., San Jose CA 95113  
Lee Price, City Clerk, City of San Jose, 200 East Santa Clara St., San Jose CA 95113

**ATTACHMENT A**

**1. Project Location**

Site Identification Number: SF24554D  
Site Name: Pole Cap Osh  
Site Address: Behind 5300 block of Graves Avenue  
County: Santa Clara  
Assessor's Parcel Number: Public ROW, in back of 381-36-027  
Latitude: 37° 17' 41" N  
Longitude: 121° 59' 48" W

**2. Project Description**

Number of Antennas to be installed: Three (3) Panel, One (1) GPS  
Tower Design: Existing Utility Pole  
Tower Appearance: Antennas on pole extension, behind radome  
Tower Height: 48.2'  
Size of Building: N/A

**3. Business Addresses of all Governmental Agencies**

City of San Jose Debra Figone, City Manager 200 East Santa Clara St. San Jose, CA 95113	City of San Jose Joseph Horwedel, Planning Director 200 East Santa Clara St. San Jose, CA 95113	City of San Jose Lee Price, City Clerk 200 East Santa Clara San Jose, CA 95113
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**4. Land Use Approvals**

Date Zoning Approval Issued: September 21, 2010

Land Use Permit #: F10033

If Land use Approval was not required: N/A



T-MOBILE WEST CORPORATION a  
Delaware Corporation  
1855 Gateway Boulevard, 9<sup>th</sup> Floor  
Concord, CA 94520

September 21, 2010

Anna Hom  
Consumer Protection and Safety Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

RECEIVED  
San Jose City Clerk  
2010 SEP 27 A 10:31

**RE: T-Mobile West Corporation as successor in interest to Omnipoint Communications, Inc. d/b/a T-Mobile (U-3056-C).  
Notification Letter for T-Mobile Site No. SF44742B**

This letter provides the Commission with notice pursuant to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California (CPUC) that with regard to the project described in Attachment A:

- (a) T-Mobile has obtained all requisite land use approval for the project described in Attachment A.
- (b) No land use approval is required because

\_\_\_\_\_

A copy of this notification letter is being sent to the local government agency identified below for its information. Should the Commission or the local government agency have any questions regarding this project, or if anyone disagrees with the information contained herein, please contact Joni Norman, Senior Development Manager for T-Mobile, at (925) 521-5987, or contact Ms. Anna Hom of the CPUC Consumer Protection and Safety Division at 415-703-2699.

Sincerely,

Joni Norman  
Sr. Development Manager  
T-MOBILE WEST CORPORATION a Delaware corporation

Enclosed: Attachment A

CC:  
Debra Figone, City Manager, City of San Jose, 200 East Santa Clara St., San Jose CA 95113  
Joseph Horwedel, Planning Dir, City of San Jose, 200 East Santa Clara St., San Jose CA 95113  
Lee Price, City Clerk, City of San Jose, 200 East Santa Clara St., San Jose CA 95113

**ATTACHMENT A**

**1. Project Location**

Site Identification Number: SF4472B  
Site Name: Pole Cap Payne  
Site Address: In front of 4150 Payne Avenue  
County: Santa Clara  
Assessor's Parcel Number: Public ROW, in front of 477-30-073  
Latitude: 37° 18' 02.85" N  
Longitude: 121° 58' 33" W

**2. Project Description**

Number of Antennas to be installed: Three (3) Panel, One (1) GPS  
Tower Design: Replacement Wooden Utility Pole  
Tower Appearance: Antennas on pole, behind radome  
Tower Height: 67'  
Size of Building: N/A

**3. Business Addresses of all Governmental Agencies**

City of San Jose Debra Figone, City Manager 200 East Santa Clara St. San Jose, CA 95113	City of San Jose Joseph Horwedel, Planning Director 200 East Santa Clara St. San Jose, CA 95113	City of San Jose Lee Price, City Clerk 200 East Santa Clara San Jose, CA 95113
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**4. Land Use Approvals**

Date Zoning Approval Issued: September 21, 2010  
Land Use Permit #: F10029  
If Land use Approval was not required: N/A

T-Mobile

PUBLIC RECORD 9  
T-MOBILE WEST CORPORATION a  
Delaware Corporation  
1855 Gateway Boulevard, 9<sup>th</sup> Floor  
Concord, CA 94520

September 21, 2010

Anna Hom  
Consumer Protection and Safety Division  
California Public Utilities Commission  
505 Van Ness Avenue  
San Francisco, CA 94102

RECEIVED  
San Jose City Clerk  
2010 SEP 21 A 10: 311

**RE: T-Mobile West Corporation as successor in interest to Omnipoint Communications, Inc. d/b/a T-Mobile (U-3056-C).  
Notification Letter for T-Mobile Site No. SF54215D:**

This letter provides the Commission with notice pursuant to the provisions of General Order No. 159A of the Public Utilities Commission of the State of California (CPUC) that with regard to the project described in Attachment A:

- (a) T-Mobile has obtained all requisite land use approval for the project described in Attachment A.
- (b) No land use approval is required because

A copy of this notification letter is being sent to the local government agency identified below for its information. Should the Commission or the local government agency have any questions regarding this project, or if anyone disagrees with the information contained herein, please contact Joni Norman, Senior Development Manager for T-Mobile, at (925) 521-5987, or contact Ms. Anna Hom of the CPUC Consumer Protection and Safety Division at 415-703-2699.

Sincerely,



Joni Norman  
Sr. Development Manager  
T-MOBILE WEST CORPORATION a Delaware corporation

Enclosed: Attachment A

CC:

Debra Figone, City Manager, City of San Jose, 200 East Santa Clara Street, San Jose, CA 95113  
Joseph Horwedel, Planning Director, City of San Jose, 200 East Santa Clara Street, San Jose, CA 95113  
Lee Price, City Clerk, City of San Jose, 200 East Santa Clara Street, San Jose, CA 95113

**ATTACHMENT A**

**1. Project Location**

Site Identification Number: SF54215D

Site Name: Pole Cap Rotterdam Lane

Site Address: Across from 5637 Rotterdam Lane, San Jose 95118

County: Santa Clara

Assessor's Parcel Number: City of San Jose Right of Way (R.O.W.)

Latitude: 37° 14' 25.57" N (NAD 83)

Longitude: 121° 53' 25.25" W (NAD 83)

**2. Project Description**

Number of Antennas to be installed: Three (3)

Tower Design: Collocation on wooden utility pole

Tower Appearance: Collocation on wooden utility pole with radome.

Tower Height: 51' - 11"

Size of Building: Not applicable

**3. Business Addresses of all Governmental Agencies**

City of San Jose Debra Figone, City Manager 200 E. Santa Clara St. San Jose, CA 95113	City of San Jose Joseph Horwedel, Planning Director 200 E. Santa Clara St. San Jose, CA 95113	City of San Jose Lee Price, City Clerk 200 E. Santa Clara St. San Jose, CA 95113
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**4. Land Use Approvals**

Date Zoning Approval Issued: 09/16/10

Land Use Permit #: F10025

RECEIVED  
San Jose City Clerk

2010 SEP 29 A 9:48

**From:** Nancy Donaldson [mailto:nancydonaldson72@yahoo.com]  
**Sent:** Thursday, September 23, 2010 11:52 AM  
**To:** Agendadesk  
**Subject:** Regarding school district issues- parent of Branham High School & Branham volunteer Treasurer

Dear City Council,

September 23, 2010

The only thing that should be after the graduation ceremony from the high school, is going home to spend time with family parties? The grad night committee does not need to plan anything on top of the busy graduation day? One event a day, already takes up a lot of time and energy. Do to the fact that so many people have family and friends coming from out of town. Families wanting to spend time with the graduates, We (parents) feel we would have low student participation for an event on the same (Graduation) night? Beside the fact of having family fly in from many different places to see the student graduation.

By doing this grad night two weeks or more prior to the graduation, and possible more parents available to chaperone. Open to any and all suggestion, but ultimately for the students and achieve the highest student participation. Through my discussion from parent and family most agree that prior to graduation would be easier than after the night of graduation... We are hoping to achieve support from the city council in this discussion, in supporting the grad night with schools of San Jose to hold Disneyland Grad Night a few weeks prior to the Graduation ceremony. Save the ceremony day for students to spend with friends and family like has always been traditional.

I have looked in to other counties planning this same event, and they have had smooth and safe trips. They also celebrate before the actual graduation date. We should be the leader in schools, sense we are one of the top cities (Silicon Valley) in California. This event is to honor the hard work of the students, and should be put to there best interest. These students that have earned this trip, have worked really hard for this day!

The Disneyland grad night is supported by Disneyland to take place only on Thursdays. The trip is a after school trip, flying out of San Jose Airport in the evening? We leave on the Thursday day after school. Returning in San Jose Airport, that Friday morning. Please help me as a parent change the councils mind, as event taking place before actual graduation day. Also advise me of any other suggestions you feel could make this a normal tradition safe trip each year for our seniors?

Sincerely,

Nancy L. Donaldson ( Mother of six children )  
and Volunteer Branham High School Treasurer  
Volunteer of Farnham Elementary,  
Volunteering of Sheet Metal Union Local #104 / Phone banking / precent walking

David S. Wall  
 P.O. Box 7621  
 San José, California 95150  
 Phone / Fax (408)-295-5999

RECEIVED  
 San Jose City Clerk

SENT VIA HAND DELIVERY

2010 SEP 30 P 12:33

September 30, 2010

Ms. Helene I. Popenhager  
 Foreperson  
 2010-2011 Santa Clara County Civil Grand Jury  
 191 North First Street  
 San José, CA 95113

**Re: Is the San José City Council "Contracting Out" the legislative process via a third party entity?**

**Is the San José City Council's association with CPLE subverting the "legislative process"?**

**Did City Council create a "Conflict of Interest" involving the Chief of the San José Police?**

Enclosed for your perusal are copies of four (4) sets of documents. Three (3) City of San José, California public record documents; two (2) from the [September 16, 2010 Public Safety Finance Strategic Support Committee meeting, Item d(1)] published by the Consortium for Police Leadership in Equity, one (1) letter written by myself, dated [September 20, 2010 addressed to Mayor Reed and Members San José City Council] and one (1) letter dated [June 29, 2009 addressed to Mr. Eric Holder, Jr.] from the Major Cities Chiefs Association.

The City of San José has entered into a "Memorandum of Understanding" with the Consortium for Police Leadership in Equity (herein CPLE). The CPLE is a third party entity recently founded. CPLE has been given access to several Police Departments throughout the nation. Whether or not the express opinions of CPLE represent valid statements of fact are suspect due in chief to their stated objectives and apparent "half-truths".

The work product of CPLE is then used by jurisdictions to influence and or to become the basis of public policy without direct voter knowledge or support thus serving to subvert the legislative process and the laws of our nation.

The San José City Council continues to "censor" from the "Public Record" a report entitled, "Safe Because We Are Fair – How Cross-Deputization Undermines Police Officer and Community Safety", published by a principal of CPLE during the [September 16, 2010 Public Safety Finance Strategic Support Committee meeting, Item d(1)]. This ongoing censorship denies public record information to citizens thereby quashes opinions and debate of an informed citizenry who wish to participate and or voice direction in the operations of our government.

I sincerely believe that corrupt influences to the legislative process are now at play as a direct and proximate cause of decisions and related activities, emanating from the relationship between the San José City Council with CPLE.

(attachment on file in the Office of the City Clerk)

*Respectfully submitted,*

**Cc: Foreman: Santa Clara County Grand Jury  
 Mayor Reed and City Council  
 City Attorney / City Auditor / City Manager**

*David S. Wall*  
 09.30.10

David S. Wall  
 P.O. Box 7621  
 San José, California 95150  
 Phone / Fax (408)-295-5999

RECEIVED  
 San Jose City Clerk

September 30, 2010

2010 SEP 30 P 12: 33

Mayor Reed and Members San José City Council  
 200 East Santa Clara Street  
 San José, California 95113-1905

**Re: THE GHETTO LIFE: UPDATE ON THE SCEP**

On Monday (09.27.10), after the Committee for Economic development meeting, in which manure was spread by highly paid and benefited administrative officials so charged for "making money for the City" yet not performing to standard (by not making any money for the City), I ventured over to North Tenth Street @ Horning Street to "take the pulse" of the SCEP (Shopping Cart Entitlement Program). I arrived on station at approximately 1510 hours and found seventeen (17) stolen and abandoned shopping carts. *A 6% decrease as to the number of stolen and abandoned shopping carts from last week is hereby recorded.*

**The "perennial garbage pile"** (PGP) is more like a "scattering of garbage" that will, within days become like the PGP of old.

**The "perennial growing debris field"** (PGDF) along the northbound railroad tracks has been diminished in stature. The ever so long arm of Mayor Reed must be the causative agent for the cleaning of the tracks. But, the encampments are still present and accounted for with all their festering contagions.

The travel trailer, "*The Golden Falcon*" CA # JT 9621 has moved, again.

**Ownership of the stolen and abandoned shopping carts is as follows;**

"Unmarked" (5), OSH (2), Mi Pueblo (1), Safeway (1), Dollar Tree (1), Safeway "The Market" (1), 99 Ranch Market (1), SaveMart (1), FoodMaxx (1), T J Maxx Home Goods (1), Silver Creek Grocery (1), and Target (1).

\*"Unmarked stolen and abandoned shopping carts have been "purposefully altered" to shield true identity. \*\*\*special note\*\*\* the overall cleanliness of shopping carts picked up off the streets and returned to stores should be addressed by some governmental agency. Unsuspecting customers may use excrement coated shopping carts without their knowledge. Shopping carts picked up off the street are "filthy" and are potential reservoirs of microbial agents waiting to spread contagion(s).

**Public Safety Hazard on North Tenth Street has been abated as of this SCEP report.**

As reported for the past several weeks, illegally parked vehicles that habitually parked in front of; "T&A Supply, Inc., 1045 North Tenth Street", in the parking strip; create a "blind spot" placing motorists and pedestrians in jeopardy. As of the date and time this SCEP report was taken, the aforementioned safety hazard to the public has been abated. Mayor Reed reaches out to D3 and protects public safety.

"Yard waste" which appears to have been "illegally dumped" (southeast corner of Horning Street @ North Tenth Street) has finally been picked up, although residue was left, ready to enter the storm drain.

But, the "twin peaks of trash", (t.v.'s, etc.)" on North 11<sup>th</sup> Street @ Horning Street which has not been removed for several weeks is still present. It is rumored that the "twin peaks of trash" (which are actually two (2) small mountains trash) are left on the public street intentionally so that his Honor, Councilmember Liccardo can "practice aerobatics" on his BMX bicycle with his friends after they check out the "affordable housing slum" being built on North 10<sup>th</sup> Street @ E. Hedding Street.

Respectfully submitted,

*David S. Wall*  
 09.30.10

Cc: City Attorney / City Auditor / City Manager

David S. Wall  
P.O. Box 7621  
San José, California 95150  
Phone / Fax (408)-295-5999

RECEIVED  
San Jose City Clerk

SENT VIA FIRST CLASS MAIL

2010 SEP 30 P 12: 29

September 30, 2010

Attorney General Edmond G. Brown, Jr.  
Attorney General's Office  
California Department of Justice  
Attn: Public Inquiry Unit P.O. Box 944255  
Sacramento, CA 94244-2550

**Re: Corruption in San José Municipal Government or just a comedy of serious errors?**

**Did City Council create a "Conflict of Interest" involving the Chief of the San José Police?**

Enclosed for your perusal are copies of four (4) sets of documents. Three (3) City of San José, California public record documents; two (2) from the [September 16, 2010 Public Safety Finance Strategic Support Committee meeting, Item d(1)] published by the Consortium for Police Leadership in Equity, one (1) letter written by myself, dated [September 20, 2010 addressed to Mayor Reed and Members San José City Council] and one (1) letter dated [June 29, 2009 addressed to Mr. Eric Holder, Jr.] from the Major Cities Chiefs Association.

I am requesting that you read the documents and consider investigating the City of San José's municipal government for either corrupt activity of a local government gone "bad" or to determine that the lack of objectivity by, Mayor Reed and Members of the City Council has set in motion, a comedy of serious errors of judgment.

*Respectfully submitted,*

(attachment on file in the Office of the City Clerk)

David S. Wall  
09.30.10

///  
///  
///

**Cc: Foreman: Santa Clara County Grand Jury  
Mayor Reed and City Council / City Attorney / City Auditor / City Manager**

Consortium for Police Leadership in Equity  
San Jose Quarterly Update  
September 16, 2010

1

On May 5, 2009, the San Jose City Council endorsed the partnership between the Consortium for Police Leadership in Equity (CPLÉ) and the San Jose Police Department regarding research designed to improve racial equity in policing. The Memorandum of Understanding (MOU), a legal document which lays out the scope of work to be undertaken by the CPLÉ, was officially signed and ratified by the University of California (serving as the academic and legal home of the CPLÉ) and the City of San Jose in August of 2009. Since this time, the CPLÉ has collaborated with the San Jose Police Department and San Jose City officials to carry out an ambitious research agenda.

The CPLÉ has continued to make significant progress on our research efforts since our last quarterly update in May. The CPLÉ is pleased to report the following updates regarding the projects with the San Jose Police Department (SJPD):

*Research Project Updates*

*Assessing Racial Disparities in Police Treatment*

*Building Police - Community Trust*

*Update on consent search research*

*Officer Safety Report*

*Community Outreach*

*Research Project Updates*

The CPLÉ is conducting research intended to inform the SJPD with respect to ways in which SJPD might ensure the equitable delivery of police services to all members of the community. The CPLÉ is undertaking five distinct research projects to achieve these goals, involving a variety of methodologies and analysis techniques, across four institutions – University of California, Los Angeles (UCLA); University of California, Berkeley (Berkeley); Stanford University; and State University of New York, Stony Brook (SUNY, Stony Brook). While coordinating multiple research projects across various research institutions is normally a multi-year process, we are instituting an accelerated research timeline to provide San Jose with informative results as soon as possible. Below we highlight the progress made on each of CPLÉ's ongoing research initiatives.

*Assessing Racial Disparities in Police Treatment*

The CPLÉ is currently conducting a three pronged approach aimed at assessing potential disparities in police treatment. As we have reported previously, there is continued scholarly debate regarding the assessment of racial equity in law enforcement. Studying population benchmarking alone (i.e. the notion that stops of a racial group should be proportional to the racial group's representation in a given population) is a notoriously imprecise technique for measuring racial bias. To solve this problem, the CPLÉ is using a modified population-benchmarking analysis in combination with two other measures to measure the racial distribution of police stops and arrests. We will

briefly outline those projects and update our progress below.

*Population Benchmarking Analysis:* The CPLE is currently conducting a population benchmarking analysis of arrests for different racial groups in San Jose over a 20 year period. Specifically, the CPLE is focusing on comparing arrest categories that community members find concerning (e.g. public intoxication arrests, resisting arrest, and disturbing the peace arrests) vs. arrest categories that are less concerning categories (e.g. battery).

To further this analysis, the CPLE recommended and requested that the SJPD pair existing incident data with source of contact initiation data (i.e. Type I and Type II data). This breakdown indicates whether a police/suspect interaction resulted from a civilian call for service (Type 1) or was officer initiation (Type 2). This type of data is a way to gauge the relative effectiveness and equitable distribution of law enforcement services that stem from officers' instincts and training, as opposed to calls for service from the community. It may also be the case that collecting this data could serve as an early warning system on both equity-related issues, and a host of other concerns (e.g. excessive use of force and citizen complaints).

The CPLE has received this data from the SJPD for all cases in 2008 and 2009. Specifically, we received approximately 30,000 arrest incidents that were categorized by priorities with numbers ranging from 1 to 6. This breakdown indicates whether a police/suspect interaction resulted from a call for service (Priorities 1-4) or was officer initiation (Priorities 5 and 6). Our next step in the research processes is to hand code the racial breakdown of the suspect in each case, as this information is not currently coded in the same system. This coding is a very time intensive process but we are working closely with the San Jose Police's Crime Analysis Unit to first start with a sample of a couple hundred cases before proceeding with the full analysis. The Crime Analysis Unit is also working on an automated program to assist in coding the remaining cases.

It is worth noting that this form of analysis is not possible in a plurality of other police departments because of the way in which data is collected and because the police department lacks the executive will to conduct the research. That is, because data about whether or not an incident originates from an officer's instincts or a call for service is often kept separately from the ultimate disposition of a police contact (i.e. an arrest record), creating a database that permits racial comparisons of the kind outlined above requires time-intensive hand coding. No department in the nation has previously committed the necessary resources to permit this kind of analysis before San Jose.

*Attitude/Behavior Matching:* In addition to the population benchmarking analyses described above, which focus on aggregate trends, the CPLE is also conducting a more fine grained, individual level analysis in order to study racial equity in the behavior of

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individual officers. Specifically, the CPLE is measuring officers' psychological profiles, and then pairing officer profiles with their performance history. The goal is not to reveal any biases of individual officers, as officer identities will be kept confidential. Rather, the goal is to understand what relationship, if any, officer attitudes have on officer behavior. This method allows CPLE to study the connections between racial attitudes and policing behavior. That is, if prejudiced attitudes are associated with disproportionate stops of particular racial groups, then this reveals a problem for the SJPD to address.

The first CPLE officer data collection for this research initiative was conducted from April 9, 2010 through April 12, 2010. During this data collection, the CPLE collected attitude data from a significant number of San Jose police officers. Officers completed various computerized tasks and responded to a variety of survey measures. This attitude data collection represents the first step in the project. The second step of the process is to gather the behavioral data for the officers. The behavioral data will then be matched with the results from the attitude assessment. A CPLE data collection team is scheduled to assist Lt. Thomas Sims and the SJPD data collection team from September 14–17, 2010.

The CPLE would like to thank the SJPD for their assistance in organizing this intensive data collection. Members of the police department assisted with logistical concerns, officer recruitment, and general troubleshooting. We also thank the individual officers who consented to take part in the research project. CPLE researchers were responsible for all data collection.

*Intragroup Differentiation Analysis:* The analyses indicated in points 1 and 2 above focus on between group differences in treatment. That is, are Latinos receiving different treatment compared to Whites? However, disparate treatment may also occur within a particular racial group. That is, are certain types of Latinos being treated differently compared to other Latinos? A second, but related question is "what is the role that citizens play in interactions?" The CPLE will answer such questions using an Intragroup Differentiation Analysis. Specifically, the CPLE will study factors that may exacerbate any observed inequalities in treatment and outcomes for group members within the same racial or ethnic group. The specific focus of this project will be an investigation of how officer and suspect racial phenotypic stereotypicality, expectations of hyper-masculine responses (regarding an officer and/or a suspect), and actual hyper-masculine responses may influence police-community interactions. Using arrest records, booking photographs, and experimental designs, CPLE researchers are assessing the role of racial phenotype, expectations of masculine displays, and actual masculine displays in the creation of racial inequality.

Since the last quarterly update, the CPLE has requested three years of suspect booking photographs that are associated with a use of force incident, which includes approximately 2,500 cases. CPLE researchers will then code the arrest photographs on various dimensions and match those scores to the use of

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force that occurred during the interaction. After these analyses, the CPLE will design laboratory studies to follow up on the results. The SJPD is currently in the process of accessing the requested data in association with the Santa Clara County Sheriff's Department. As the booking photographs are dispersed between the two departments, the Santa Clara County Sheriff's Office will supplement the booking photographs that are missing from the SJPD's records. This is another very time intensive process and, again, a CPLE data collection team is scheduled to assist Lt. Thomas Sims and the SJPD data collection team from September 14-17, 2010.

Across these three levels of analysis, the CPLE will offer the most comprehensive analysis of potential disparate outcomes in treatment that has ever been conducted in association with police departments. Ranging from aggregate trends to individual level analyses, as well as both intergroup and intragroup level comparisons, this multilevel, mixed methods analysis will produce the clearest picture regarding potential bias. These methods will be used in concert for the first time and we will be able to see what type of analysis is most predicative of bias. From these results, any intervention work deemed necessary can be properly targeted and implemented.

*Building Police - Community Trust*

In addition to the above research plan addressing potential bias in policing, CPLE researchers Dr. Jennifer L. Eberhardt and Dr. Art Aron have also made considerable progress on their proposed project. Dr. Eberhardt and Dr. Aron's research will focus on ways to promote positive feelings between police and community members in San Jose. Building on previous research on how cross-race friendships promote positive attitudes toward outgroups, the research aims to enhance outgroup compassion between community members and police. Specifically, the research program involves testing a social-psychological intervention that pairs police officers with community members, and guides those pairs through an interaction program designed to promote feelings of closeness and friendship. The research will test the effectiveness of this approach toward improving police-community relations.

Dr. Eberhardt has recently met with Chief Davis and is in the process of expanding this project to a five-city initiative, in which San Jose will serve as the central hub. We are currently in final negotiations to determine the five nearby cities. Once again, San Jose will lead the way in this innovative multi-city collaboration. During our community outreach efforts, multiple community members have expressed their enthusiasm for participating in this event and we look forward to scheduling these sessions. The CPLE would like to thank Chief Davis for his support in helping launch this multi-city initiative.

*Update on Consent Search Research*

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At our last quarterly the CPLE had the pleasure of introducing CPLE researcher Dr. Jack Glaser to the San Jose research team. Dr. Glaser received his Ph.D. in Psychology from Yale University in 1999 and joined the faculty of the Goldman School of Public Policy at the University of California, Berkeley in 2000. He is a social psychologist whose primary research interest is in stereotyping, prejudice, and discrimination. Dr. Glaser researches the implications of subtle forms of bias and stereotyping for discrimination law and law enforcement. Additionally, Professor Glaser conducts research on very extreme manifestations of intergroup bias, including hate crimes. Dr. Glaser is a leading national expert on the use of base rates analyses in assessing racial profiling and bias. Dr. Glaser is currently assisting the Oakland Police Department on similar issues of racial profiling and bias. His expertise and advanced quantitative skills will significantly complement the current research team in place at the San Jose research site.

Since his introduction to the San Jose team, Dr. Glaser has had meetings with various members of the SJPd, including members of the Crime Analysis Unit. In order to familiarize himself with the department, he will be conducting an onsite visit in the upcoming weeks. Following these visits, Dr. Glaser will begin his research initiatives.

*Officer Safety Report*

The CPLE, in collaboration with the Salt Lake City and San Jose Police Departments, surveyed officers in order to determine how they believed passage of laws requiring municipal police to enforce immigration laws would affect their relationship with the communities they serve and their personal safety. The CPLE's Board of Directors released a report of these findings at the first annual summer conference on August 25 and 26, 2010 in New York City.

The survey was given to 61 officers at the San Jose Police Department and 106 officers in Salt Lake City Police Department. SJPd officers completed surveys during the course of their shift and officers were recruited through department-wide announcements and volunteered to participate without receiving compensation. No identifying information was taken. The report is appended to this quarterly updated and excerpted below:

The report explores the opinions of those who will face the daily realities of cross-deputization policy: the officers who must rely on the respect they have earned in their communities in order to do their jobs. Ultimately, the impact of so-called "cross-deputization" laws will come down to thousands of individual interactions between law enforcement and civilians, and comparatively little attention has been focused on this issue. Consequently, there is little data available regarding how officers feel that enforcing the law will affect their job satisfaction and their ability to protect the public's safety.

For instance, it is possible that police officers—regardless of their personal beliefs

about the policy—will feel safer and more respected on the streets as a result of cross-deputization policy. However, it is also possible that officers, again, regardless of their personal beliefs about the policy, will feel less safe and less respected on the streets as a result of this policy. Knowing about how officers feel about their own safety and the respect they will receive from their communities is crucial not just because it is important to honor the men and women who serve and protect our neighborhoods. Respect from civilians is critical to an officer maintaining control in any civilian contact, maintaining the civility of any given interaction, and most importantly, minimizing the chances that force becomes necessary. Consequently, maintaining an officer's sense of personal safety and respect are vital to ensuring public safety. If a social policy augments officers' sense of safety and respect within the communities they police, then it may serve to enhance public safety. Similarly, if the policy endangers those feelings of safety and respect, it likely compromises public safety—a dire concern for law enforcement, communities, and policy-makers alike. The following research was designed to answer this question and inform future considerations of immigration policy and municipal law enforcement.

The data from this report reveal that, regardless of their personal beliefs about immigration policy, officers are concerned that enforcing immigration laws will cost them both public respect and personal safety. It is also worth noting that officers also say that they will feel less satisfied with their jobs. This was particularly true of non-White officers who are often called upon to play crucial liaison roles within their own racial and ethnic communities. Together with previous research on community responses to cross-deputization, these data suggest that there are serious public safety concerns associated with the implementation of cross-deputization policies.

Again, the CPLE would like to thank the San Jose Police Department for their assistance in organizing this data collection. Members of the police department assisted with logistical concerns, officer recruitment, and general troubleshooting. We also thank the individual officers who consented to take part in the research project. CPLE researchers were responsible for all data collection. The CPLE will likely conduct a subsequent officer data collection to increase the total number of officers involved in the study.

### *Community Outreach*

The CPLE has continued to reach out to the San Jose community in hopes of responding to the issues and needs of community members. We are making significant progress in building up community involvement in the CPLE's research plan with the San Jose Police Department. During this quarter, the CPLE has conducted a number of interviews with San Jose council members in addition to members of neighborhood associations and community activists from various segments within the San Jose community. We also thank the various city officials who provided recommendations for community members to contact and interview.

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These interview themes will help guide the CPLE's future research plans and data collection. Their responses are helping inform our community survey that the CPLE will be conducting in the upcoming months. The CPLE hopes to directly respond to the concerns of the community in its efforts with the San Jose Police Department.

The CPLE looks forward to its continued collaboration with the San Jose Police Department, the San Jose City Officials, and the San Jose Community members and will report back further updates on research progress during the next quarterly update meeting.

David S. Wall  
P.O. Box 7621  
San José, California 95150  
Phone / Fax (408)-295-5999

RECEIVED  
San Jose City Clerk

September 20, 2010

2010 SEP 20 P 2:31

Mayor Reed and Members San José City Council  
200 East Santa Clara Street  
San José, California 95113-1905

**Re: Does the Chief of the San José Police Department have a CONFLICT OF INTEREST?**

**Say it ain't so, Chief Davis, photographed in uniform, on "CPLE Advisory Board".**

**Is the Chief on CPLE's payroll? Is the Chief currying favor with CPLE?**

**Were any recent promotions to SJPD Command Staff predicated on support of CPLE principles?**

**How can an independent, non-biased, scientific study by CPLE be conducted on SJPD?**

**Should the Chief be removed immediately from Command?**

**Is this why my (09.16.10) letter to President Obama was censored by Office of City Clerk?**

Copied from the Consortium for Police Leadership in Equity webpage:

Posted Sep 12, 2010 @ 1:14 pm in News

The Consortium for Police Leadership in Equity is fortunate to benefit from the wisdom of law enforcement executives committed to the principles of equity and progress. The Chiefs Advisory Board was created to aid CPLE researchers in negotiating intricate law enforcement issues. The CPLE is honored to have the following Chiefs serve on the Chiefs Advisory Board:

Chief Chris Burbank, Salt Lake City Police Department  
**Chief Robert Davis, San Jose Police Department**  
Chief Charles McClelland, Houston Police Department  
Chief Gerald Whitman, Denver Police Department

**I am sure the Federal Bureau of Investigation (FBI) is going to love this letter.**

A San José Police Chief acting in concert with the Consortium for Police Leadership in Equity in the capacity on the CPLE's "Chiefs Advisory Board", photographed in uniform, while there is an active psychological research "program" ongoing in SJPD, trying to establish "racial bias" (amongst other items on CPLE's agenda), does this rise of the level of CONFLICT OF INTEREST? How on earth could this be allowed? **CPLE is interjecting "bias" into SJPD!**

Should the FBI also investigate possible issues of **Bribery** of San José government officials?

*Respectfully submitted,*

Cc: President Barack Obama / City Attorney / City Auditor / City Manager

*David S. Wall*  
09.20.10



## MAJOR CITIES CHIEFS ASSOCIATION

Atlanta, Georgia  
Austin, Texas  
Baltimore City, Maryland  
Baltimore Co., Maryland  
Boston, Massachusetts  
Buffalo, New York  
Calgary, Alberta  
Charlotte-Mecklenburg, North Carolina  
Chicago, Illinois  
Cincinnati, Ohio  
Cleveland, Ohio  
Columbus, Ohio  
Dallas, Texas  
Denver, Colorado  
Detroit, Michigan  
Edmonton, Alberta  
El Paso, Texas  
Fairfax County, Virginia  
Fort Worth, Texas  
Honolulu, Hawaii  
Houston, Texas  
Indianapolis, Indiana  
Jacksonville, Florida  
Kansas City, Missouri  
Las Vegas Metro, Nevada  
Long Beach, California  
Los Angeles, California  
Los Angeles Co., California  
Louisville, Kentucky  
Memphis, Tennessee  
Miami-Dade, Florida  
Milwaukee, Wisconsin  
Minneapolis, Minnesota  
Montgomery Co., Maryland  
Montreal, Quebec  
Nashville, Tennessee  
Nassau Co., New York  
New Orleans, Louisiana  
New York City, New York  
Newark, New Jersey  
Oakland, California  
Oklahoma City, Oklahoma  
Ottawa, Ontario  
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San Antonio, Texas  
San Diego, California  
San Francisco, California  
San Jose, California  
Seattle, Washington  
St. Louis, Missouri  
Suffolk Co., New York  
Toronto, Ontario  
Tucson, Arizona  
Tulsa, Oklahoma  
Vancouver, British Columbia  
Virginia Beach, Virginia  
Washington, DC  
Winnipeg, Manitoba

June 29, 2009

Mr. Eric H. Holder, Jr.  
Attorney General  
United States Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Attorney General Holder:

The purpose of this letter is to bring to your attention the fact that the Major Cities Chiefs Association, at its meeting held in June 2009, voted to provide a letter of formal support for the work of the recently formed Consortium on Police Leadership in Equity (CPLÉ). The CPLÉ is comprised of a group of world-class social science researchers who are willing to conduct objective research on a number of important topics for law enforcement agencies. As detailed on the consortium's website, "At the core of CPLÉ's mission, as well as those [police] departments associated with it, is a deep concern for equity and inclusiveness within the police department itself and between the police department and the community it polices. The CPLÉ serves as a sort of matchmaker, pairing police departments with world-class researchers. Though many CPLÉ researchers specialize in issues surrounding race and gender, a wide swath of research interests are represented and can be harnessed to serve the specific equity issues any given department is combating (<http://cple.psych.ucla.edu/about-the-cple/>)."

Because of CPLÉ's philosophy and approach in addressing racial and gender-equity issues as they pertain to law enforcement, many police departments in our nation's largest cities either have engaged already in joint research with CPLÉ or have signed on to do so. Indeed, when questions continue to be raised in communities across our country about whether or not police departments engage in racial profiling, it is extremely beneficial to have world-class researchers bring their expert research skills to bear in providing objective analysis in addressing such concerns.

The objectivity of these established scholars is further supported by the fact that the CPLÉ will not accept money from participating law enforcement partners. This arrangement insures the independence of CPLÉ research projects, builds community support, and grows our basic understanding of equity in law enforcement. It is a model that deserves the support of funding agencies committed to social equity. It is also a model that has already begun reshaping scholarship and practice related to racial profiling and gender representation in law enforcement, and it has the potential to do much more.



## MAJOR CITIES CHIEFS ASSOCIATION

Atlanta, Georgia  
Austin, Texas  
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Boston, Massachusetts  
Buffalo, New York  
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Charlotte-Mecklenburg, North Carolina  
Chicago, Illinois  
Cincinnati, Ohio  
Cleveland, Ohio  
Columbus, Ohio  
Dallas, Texas  
Denver, Colorado  
Detroit, Michigan  
Edmonton, Alberta  
El Paso, Texas  
Fairfax County, Virginia  
Fort Worth, Texas  
Honolulu, Hawaii  
Houston, Texas  
Indianapolis, Indiana  
Jacksonville, Florida  
Kansas City, Missouri  
Las Vegas Metro, Nevada  
Long Beach, California  
Los Angeles, California  
Los Angeles Co., California  
Louisville, Kentucky  
Memphis, Tennessee  
Miami-Dade, Florida  
Milwaukee, Wisconsin  
Minneapolis, Minnesota  
Montgomery Co., Maryland  
Montreal, Quebec  
Nashville, Tennessee  
Nassau Co., New York  
New Orleans, Louisiana  
New York City, New York  
Newark, New Jersey  
Oakland, California  
Oklahoma City, Oklahoma  
Ottawa, Ontario  
Philadelphia, Pennsylvania  
Phoenix, Arizona  
Pittsburgh, Pennsylvania  
Portland, Oregon  
Prince George's Co., Maryland  
Salt Lake City, Utah  
San Antonio, Texas  
San Diego, California  
San Francisco, California  
San Jose, California  
Seattle, Washington  
St. Louis, Missouri  
Suffolk Co., New York  
Toronto, Ontario  
Tucson, Arizona  
Tulsa, Oklahoma  
Vancouver, British Columbia  
Virginia Beach, Virginia  
Washington, DC  
Winnipeg, Manitoba

While CPLE has already proven beneficial in helping to address concerns of racial profiling and organizational equity—particularly in Denver, where Chief Gerry Whitman's leadership allowed the CPLE to be founded—there are additional areas of emphasis for the organization, including the following:

- Police Use of Force
- Immigration Policy Enforcement
- Drug Policy Enforcement
- Organizational Equity
- Youth Offenders
- Media and Community Relations

Considering the gravity and importance of these issues, it is easy to see why chiefs from the Major City Chiefs Association are both supportive of CPLE's mission and anxious to work with it to determine what leadership moves the chiefs can make to ensure that law enforcement policies and procedures work to ensure racial and gender equity within our departments and within our communities.

In conclusion, please accept this letter as a formal letter of support for the efforts of the Consortium on Police Leadership in Equity. To the extent possible, we would encourage support for CPLE from the various agencies residing within the Department of Justice. Please let us know if you have any additional questions regarding the work that CPLE is already engaged in with some of our member police departments. Such questions may be directed to Chief Robert L. Davis of the San Jose, California Police Department, who is currently serving as the First Vice-President of the Major Cities Chiefs Association and has already engaged in a research effort with CPLE. He may be reached at (408) 277-4212, or by e-mail at [Robert.Davis@sanjoseca.gov](mailto:Robert.Davis@sanjoseca.gov). Thank you in advance for your review of this letter of support.

All the best,

William J. Bratton  
Chief of Police, Los Angeles Police Department  
President, Major Cities Chiefs' Association

c: Laurie O. Robinson, Assistant Attorney General, Office of Justice Programs  
Loretta King, Assistant Attorney General, Civil Rights Division