County of Santa Clara  
Office of the County Executive

CE04 060512
DATE: June 5, 2012
TO: Board of Supervisors
FROM: Sylvia Gallegos  
Deputy County Executive

SUBJECT: Approval of Fourth Memorandum of Understanding with the Arts Council Silicon Valley

RECOMMENDED ACTION
Consider recommendations relating to fourth Memorandum of Understanding (MOU) with the Arts Council Silicon Valley.

Possible action:

a. Accept staff report;
b. Accept Arts Council Silicon Valley’s report pursuant to current year MOU;
c. Approve Fourth Memorandum of Understanding with the Arts Council Silicon Valley; and
d. Adopt Resolution designating Arts Council Silicon Valley as the County of Santa Clara's authorized partner in the California Arts Council’s State/Local Partnership program. (Roll Call Vote)

FISCAL IMPLICATIONS
There is no impact to the General Fund as a result of entering into a fourth MOU with the Arts
Council Silicon Valley. The recommended action would allocate $325,000 in Transient Occupancy Tax revenue to the Arts Council Silicon Valley.

REASONS FOR RECOMMENDATION
At the June 19, 2009 budget hearing, the Board of Supervisors adopted its FY2010 budget. As part of this action, the Board approved FY2010 Transient Occupancy Tax (TOT) funding in the amount of $325,000 for the Arts Council Silicon Valley (Arts Council). The Board also directed the Administration to negotiate and execute a memorandum of understanding with the Arts Council for FY2010 that sets forth the deliverables the community would receive during the fiscal year as a result of the County’s TOT contribution.

In FY2011 and FY2012 as well, the County has continued the practice of entering into MOUs to set forth the terms for the use of County TOT revenue. The MOUs have increased accountability by specifying the County’s expectations of the arts deliverables that would be accomplished by the Arts Council as well as increasing transparency about the County’s use of TOT revenue.

Fourth MOU with the Arts Council
The fourth MOU is structured consistently with previous year versions. Several features of the FY2013 MOU are as follows:

• The MOU’s term would end on June 30, 2013.

• The Arts Council will submit to the County no later than May 31, 2013 a written report documenting and summarizing the expenditure of County funding by the Arts Council during Fiscal Year 2012-2013 and providing the numbers of people served through its programs and activities wholly or partially funded by the County.

• All funding from the County to the Arts Council under this MOU would be used solely to support arts and cultural programs and activities within the geographic boundaries of Santa Clara County.

• Administrative costs would be capped at 15% of the County funding.

Resolution Designating the Arts Council as Our Authorized Partner
Each year, the Board has approved a resolution designating the Arts Council as the County’s authorized partner in the California Arts Council’s State/Local Partnership Program. Most recently, the Board approved a resolution at the June 21, 2011 Board meeting. The attached resolution affirms the Board’s wish to designate the Arts Council as the County’s authorized partner.

FY2012 Arts Council Report

Pursuant to the MOU, the Arts Council submitted its annual report to the County (Attachment A). In FY2011-12, the Arts Council awarded $344,100 in Partners grants to 75 small and mid-size arts organizations and 6 individual artists in Santa Clara County. The Partners Grants Program is funded by the County of Santa Clara, Adobe Systems, the California Arts Council, the National Endowment for the Arts, The William and Flora Hewlett Foundation, and the David and Lucile Packard Foundation.

The Arts Council also supports arts activities reflective of our multicultural region – with an emphasis on small, community-based, and volunteer-driven organizations – through the Community Arts Fund. In FY2011-12, the Arts Council awarded 40 grants totaling $126,075.

The Regional Arts Fund provides general operating assistance to encourage professional and semi-professional arts groups in the valley. This year, the Arts Council awarded 35 grants totaling $188,025.

Six local artists received Artist Laureates prizes of $5,000 each.

ArtsConnect supported five artists working with more than 150 at-risk youth age 13 - 18 from COE’s Alternative Schools, Alternative Placement Academy, Juvenile Hall, and Muriel Wright and James Ranches. The artists teach a variety of artistic disciplines, and the resulting art is displayed in a month-long exhibit and a reception was held on May 10, 2012.

The Arts Council also coordinates the selection of a County Poet Laureate for one-year terms.

The Arts Council supports other endeavors as well that may be found in the attached annual report to the County. There is also an accounting on page 9 of the report that sets forth the specific use of the County’s funding.
CHILD IMPACT
Approval of funding to the ACSV would have a positive effect on children through arts programs serving children. Indeed, there is funding through ArtsConnect to serve approximately 150 at-risk youth age 13 - 18 from COE’s Alternative Schools, the Alternative Placement Academy, group homes, Juvenile Hall, and James Ranch.

SENIOR IMPACT
Approval of funding to the ACSV would have a positive effect on those seniors who enjoy the arts. Through the County’s funding, a large number of community arts organizations are supported, including the American Beethoven Society, the Cambodian Cultural Dance Troupe, the City of Cupertino’s Shakespeare in the Park, the Montalvo Arts Center, the Rainbow Women’s Chorus, and so forth.

SUSTAINABILITY IMPLICATIONS
Approval of funding for ACSV would have a neutral effect on sustainability.

BACKGROUND
In 1980, the State of California implemented its legislatively approved State-Local Partnership Program with the California Arts Council, the State’s arts agency. Santa Clara County was the largest county in the state that did not have an existing organization with which the new state program could align itself. Accordingly, a new organization was developed to assume the responsibility of local coordination, planning, and decision-making related to countywide arts and cultural activities.

In April 1980, the County Board of Supervisors designated the Music and Arts Foundation of Santa Clara County to convene a 39-member group to supervise the planning and needs assessment of the arts in the county. After more than a year of meetings and discussion, the group recommended that a new nonprofit corporation be created, rather than a government agency, to be called the Cultural Arts Council of Santa Clara County. A set of by-laws was drawn up and approved by the Board of Supervisors on February 23, 1982, and the Articles of Incorporation were filed. Incorporation was approved in 1983, and a Board of Directors was fully constituted in February 1983.
Since 1988, the Board has voted to support arts and cultural activities by allocating to the Arts Council the projected TOT revenue. For FY2013, the Office of Budget and Analysis has budgeted an estimated $325,000 in TOT revenue proceeds.

**History Related to the Transient Occupancy Tax**

The County is authorized to adopt a TOT pursuant to the California Revenue and Taxation Code, and the County Board of Supervisors adopted such a tax on August 26, 1986. The TOT is codified in Section A30-48 et seq. of the County’s Ordinance Code. The TOT rate is 8%, and has not changed since the Board’s adoption of the ordinance in 1986.

Section A30-61 provides that “the proceeds derived from the transient occupancy tax shall be deposited in the County’s general fund and shall be expended for general operating expenses incurred by the County or for the capital improvement or such other legal uses and purposes as determined by the Board of Supervisors.” The TOT adopted by the Board in 1986 was a general tax because revenues raised from the TOT is placed in the general fund and used for expenditures for any and all governmental purposes.

On November 4, 1986, California’s voters approved Proposition 62, which requires voter approval of all taxes imposed by local government, including increases to such taxes. Proposition 62 provided that any tax imposed after August 1, 1985, but prior to November 1986 was subject to a ratification election within two years of the effective date of Proposition 62. The County’s TOT was adopted within this timeframe; thus, it was subject to a ratification election, which required a majority vote.

The County’s TOT was submitted to voters as Measure A for ratification on November 8, 1988. Measure A was approved by 61.6% of the voters voting in the election. The ballot materials reaffirmed the TOT in accordance with Proposition 62. Measure A did not change the plain language of the TOT in the County Ordinance Code, thus, voters reaffirmed that all proceeds are to be deposited in the general fund for general purposes. The Measure A ballot question also modified the use of TOT revenue by providing that “[t]he proceeds of this tax, to the extent of the first $500,000.00, to which there shall be added annually an adjustment for changes in the cost of living and population, shall be used to promote art and culture in Santa Clara County. The balance of the proceeds of this tax shall be used for human services needs in Santa Clara County.” The County Counsel ballot measure analysis provided that a “yes” vote would result in “the utilization of the proceeds of such tax, to the extent of the first $500,000 received annually, for the promotion of art and culture within the county, with any tax proceeds received annually above that amount being limited to human service needs in
Santa Clara County."

**The Use of the Transient Occupancy Tax**

By approving Measure A, voters approved the use of TOT revenue for arts and cultural purposes and human needs. The plain language of Measure A states that the first $500,000 annually of the TOT be used for the purpose of promoting arts and culture and by approving Measure A, voters directed the County to use the first $500,000 of TOT revenue annually for the purpose of arts and culture. While a special tax generally requires a super-majority vote (66.6%), Measure A was a Prop. 62 “ratification election,” and only required a majority vote.

**ATTACHMENTS**

- Attachment A - Arts Council FY12 Report to the County
- Attachment B - Fourth MOU with the Arts Council and Exhibit A – Scope of Work
- Attachment C - Arts Council Resolution