MEMORANDUM OF UNDERSTANDING
BETWEEN THE COUNTY OF SANTA CLARA AND ARTS COUNCIL SILICON VALLEY REGARDING FISCAL YEAR 2012-2013 FUNDING FOR THE PROMOTION OF ARTS AND CULTURE IN SANTA CLARA COUNTY

This is a Memorandum of Understanding (MOU) regarding Fiscal Year 2012-2013 funding for the promotion of arts and culture in Santa Clara County and is made and entered into this ___ day of __________, 2012, by and between the County of Santa Clara (County), a political subdivision of the State of California and Arts Council Silicon Valley (ACSV), a 501(c)(3) nonprofit public benefit corporation.

RECITALS

WHEREAS, the ACSV is dedicated to creating and fostering a dynamic local arts environment by providing funding, advocacy and support services to arts organizations and artists in Santa Clara County;

WHEREAS, the ACSV also serves a critical role in fostering art among youth throughout the county, including youth who are clients of the County government;

WHEREAS, the County Board of Supervisors adopted a Transient Occupancy Tax (TOT) in 1986, the proceeds of which are deposited in the County’s general fund pursuant to County of Santa Clara Code section A30-61;

WHEREAS, in accordance with Proposition 62, the County’s TOT was submitted to County voters as Measure “A” for ratification on November 8, 1988, and was approved by more than a majority of voters;

WHEREAS, County voters directed that the first $500,000 annually collected from the TOT, adjusted for changes in the cost of living and population, be used to promote art and culture in the county and the balance of the proceeds be used for human services needs;

WHEREAS, the County has previously fulfilled the intent and direction of the voters to use the first $500,000 annually of TOT revenue through its annual support of the ACSV;

WHEREAS, prior to 2009, the County and ACSV had no written agreement regarding the County’s allocation of TOT revenue to the ACSV and the ACSV’s use of the TOT revenue to support arts and culture in the county;

WHEREAS, in August 2009, the County and the ACSV entered into an MOU for FY 2009-2010;

WHEREAS, as projected for FY 2012-2013, it is desirable to enter into this written MOU, which establishes the County’s intent to provide $325,000.00 of TOT revenue to the ACSV and the ACSV’s obligation to allocate the TOT revenue based on certain deliverables set forth in this written MOU; and

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WHENAS, it is also understood by the County and ACSV that not more than 15% of the
County’s funding will be used by ACSV to cover management and administrative costs;

WHENAS, the County and the ACSV agree that this written MOU will benefit the
residents of the county by promoting arts and culture, which is of great importance in continuing
to improve the quality of life for all Santa Clara County residents;

NOW, THEREFORE, the parties agree to the following:

1. Memorandum of Understanding.

The County and the ACSV agree that the foregoing recitals of the MOU are the basis for
and incorporated into this MOU by this reference.

2. County Funding.

Within ten days of the effective date of this MOU, the County will electronically transfer
to the ACSV THREE HUNDRED TWENTY FIVE THOUSAND DOLLARS ONLY
($325,000.00) of revenue from the County’s TOT to be used by the ACSV in Fiscal Year
2012-2013 in the manner provided herein.

3. Term.

The effective date of this MOU is the date it is fully executed. The MOU will terminate
on June 30, 2013, unless terminated sooner by the County or the ACSV in accordance
with Section 7 of this MOU.

4. County Responsibilities and Obligations.

4.1 The County will be solely responsible for the payment of TOT revenue to the
ACSV. The County acknowledges that funding to the ACSV from TOT revenue will
fulfill the purpose, intent, and direction of voters pursuant to Measure “A.”

4.2 The County will permit the ACSV to participate in the Voluntary Property Tax
Insert Program administered by the Office of the Assessor.

4.3 The County will include the ACSV in the Combined Giving Campaign
administered by the Finance Agency.

4.4 The County designated the ACSV as the County’s authorized partner in the
California Arts Council’s State/Local Partnership Program in June 2012, and the County
Board of Supervisors will again consider such designation in 2013.

4.5 The County will continue to partner with the ACSV to implement and support the
County Poet Laureate Program.

5. ACSV Responsibilities and Obligations.

5.1 The ACSV understands and agrees that this MOU and the terms and conditions
contained herein are for Fiscal Year 2012-2013 and will expire on June 30, 2013. The
ACSV further understands and agrees that this MOU in no way obligates the County to
make any payments of TOT revenue to the ACSV in subsequent fiscal years, and the
County Board of Supervisors retains sole discretion to determine how TOT revenue
should be distributed to promote arts and culture in the county.

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5.2 All funding from the County to the ACSV under this MOU will be used solely to support programs and activities of the ACSV within geographic boundaries of Santa Clara County, including those programs and activities identified in Section 5.3. Not more than 15% of the County’s funding will be used by ACSV to cover management and administrative costs.

5.3 The funding from the County to the ACSV will be used to support the ACSV programs and activities identified in Exhibit “A” – Project Scope, attached hereto and incorporated herein by reference. The ACSV will be solely responsible for administering the programs and activities identified in Exhibit “A.” The County funding will be used solely to support the ACSV’s mission of promoting and funding the arts in the county.

5.4 No later than May 1, 2013, the ACSV will submit to the County a written report documenting and summarizing the expenditures of County funding by the ACSV during Fiscal Year 2012-2013 and explaining the numbers of people served through its programs and activities wholly or partially funded by the County.

5.5 The ACSV will provide the County with a copy of the ACSV’s annual Audited Financial Statements and IRS Form 990 on or before December 1, 2012.

5.6 The ACSV agrees to indemnify, defend, and hold harmless the County and its officers, employees, and agents from any claim, liability, injury, loss, or damage arising out of this MOU, excepting only loss, injury, or damage caused by the sole negligence or willful misconduct of personnel employed by the . The ACSV will reimburse the County for all costs, attorneys’ fees, expenses, and liabilities incurred with respect to any litigation in which the ACSV is obligated to indemnify, defend, and hold harmless the County under this MOU.

5.7 This MOU in no way restricts the ACSV from participating in similar agreements, activities, and or receiving funding from other public or private entities.

5.8 The ACSV will comply with the County’s No Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

5.9 ACSV will not use County funds to purchase beverages that do not meet the County’s nutritional beverage criteria. The six categories of nutritional beverages that meet these criteria are (1) water with no additives; (2) 100% fruit juices with no added sugars, artificial flavors or colors (limited to a maximum of 10 ounces per container); (3) dairy milk, non-fat, 1% and 2% only, no flavored milks; (4) plant derived (i.e., rice, almond, soy, etc.) milks (no flavored milks); (5) artificially-sweetened, calorie-reduced beverages that do not exceed 50 calories per 12-ounce container (teas, electrolyte replacements); and (6) other non-caloric beverages, such as coffee, tea, and diet sodas. These criteria may be waived in the event of an emergency or in light of medical necessity.

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Any notices required or permitted must be in writing and may (a) be personally delivered; (b) be mailed by depositing such notice in the United States mail, first class postage prepaid; or (c) be sent by reputable overnight delivery service addressed as follows or to such other place as the County and the ACSV hereto may designate by subsequent written notice to the other:

If to the County: Sylvia Gallegos
Deputy County Executive
Office of the County Executive
70 West Hedding, East Wing, 11th Floor
San Jose, CA 95110
Voice: 408-299-5106
E-mail: sylvia.gallegos@ceo.sccgov.org

If to the ACSV: Nancy Glaze
Executive Director
Arts Council Silicon Valley
4 North Second Street, Suite 500
San Jose, CA 95113-1305
Voice: 408-998-2787 ext. 205
E-mail: nglaze@artscouncil.org

7. Termination.

7.1 The County and the ACSV may by written mutual agreement terminate this MOU prior to its expiration. Within thirty (30) calendar days of such termination, the ACSV will return to the County any unspent portion of the County Fiscal Year 2012-2013 funding.

7.2 The County may terminate this MOU for its convenience at any time upon thirty (30) calendar day’s written notice to the ACSV.

8. Entire Agreement.

This MOU constitutes the only agreement and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof. Exhibit “A” is a material part of this MOU and is incorporated by reference. This MOU, including Exhibit “A,” may not be amended or modified, except in writing signed by all parties to this MOU.


The County and the ACSV agree to cooperate with each other and to execute and deliver, or cause to be executed and delivered, all such other instruments and documents, and to take all such other actions as may be reasonably requested of them from time to time, in order to effectuate the provisions and purposes of this MOU.

10. Waiver.

Any waiver by the County or the ACSV hereto of a breach of any of the terms of this MOU shall not be construed as a waiver of any succeeding breach of the same or other term of this MOU.

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11. **Binding.**

This MOU shall be binding upon the successors and assigns of the County and the ACSV.

12. **Interpretation.**

This MOU shall be interpreted and construed in accordance only by the contents thereof, and there shall be no presumption or standard of construction in favor or against either the County or the ACSV. The invalidity or unenforceability of any provision of this MOU or the applicability or inapplicability to the County or the ACSV, as determined by a court, will in no way affect the validity or enforceability of any of the remaining provisions hereof or their applicability to the other party. This MOU will be construed according to and governed by the laws of the State of California.

13. **Counterparts.**

This MOU may be executed in one or more counterparts, all of which together shall constitute one and the same agreement.
14. Authority to Execute.

All parties signing below indicate they have authority to sign this MOU on behalf of his or her respective party.

IN WITNESS WHEREOF, the County and the ACSV hereto have executed this MOU on the dates written below.

COUNTY OF SANTA CLARA,
A political subdivision of the State of California

By: _______________________________ By: _______________________________
   GEORGE SHIRAKAWA                NANCY GLAZE
   PRESIDENT                        EXECUTIVE DIRECTOR
   Board of Supervisors             Arts Council Silicon Valley

Date: _______________  Date: _______________

ATTEST:

LYNN REGADANZ, INTERIM CLERK
Board of Supervisors

APPROVED AS TO FORM AND LEGALITY:

ELIZABETH G. PIANCA
Deputy County Counsel
Exhibit “A”

Scope of Work
for
MOU between the County of Santa Clara and Arts Council Silicon Valley
For Fiscal Year 2012-2013

I. Funding in the Arts

County funding may be used to support any of the following Arts Council Silicon Valley (ACSV) grant programs:

1. Community Arts Fund (CAF) to support activities by small, community-based, volunteer-driven organizations and to support activities that reflect the diversity of the County.

2. Regional Arts Fund (RAF) to support the activities of professional and semi-professional arts organizations.

3. Artist Laureates (AL) to support monetary awards to individual artists for career accomplishments.

4. Director’s Leadership Grants to be used at the discretion of the Executive Director to support artists, events, or programs that fall outside the normal grant process.

5. ArtsConnect to support teaching artists working in 5 – 10 sites including alternative schools, group homes, and juvenile hall.

II. Technical, Professional, and Organizational Development Services in the Arts

County funding may be used to support any of the following technical assistance and professional/organizational development services for arts and cultural organizations in Santa Clara County:

1. Grant workshops to support organizations and artists applying for Arts Council grants. Workshops include basics in good grant writing as well as guidance on application process.

2. One-on-one assistance by ACSV staff to first-time applicant organizations in preparation of applications.

3. Capacity building workshops to help organizations build and improve their financial stability and administrative infrastructure.
III. **Marketing and Promotion of the Arts/Audience Development**

County funding may be used to support LiveSV (formerly Artsopolis Marketing Partnership), the leading online provider of Silicon Valley cultural event and activity information.

IV. **Events and Convenings**

County funding may be used to support meetings and convenings throughout Santa Clara County to educate, inform, and involve arts and cultural groups, their board members, funders, and interested parties in current and timely issues about the arts, including but not limited to:

1. Legislative briefings, economic impact study presentations, special guest presentations, and focus groups.

2. ACSV support and assistance with the County's Poet Laureate Program. ACSV will manage and administer the application and selection process; and will work collaboratively with the County and the Poet Laureate on publicity regarding Poet laureate activities.