MEMORANDUM OF UNDERSTANDING
SILICON VALLEY REGIONAL COMMUNICATIONS SYSTEM

BETWEEN THE SILICON VALLEY REGIONAL INTEROPERABILITY AUTHORITY AND THE CITY OF MILPITAS

This Memorandum of Understanding ("MOU") is made and entered into this ___ day of _____, 2015, by and between the Silicon Valley Regional Interoperability Authority, a California Joint Powers Authority ("SVRIA"), and the City of Milpitas, a municipal corporation of the State of California ("AGENCY") (together "Parties").

RECITALS

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 executed a Joint Funding Agreement ("Joint Funding Agreement") 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.*, to jointly hire consultants to complete the conceptual design and implementation strategy for a regional interoperable communications network, to jointly purchase a radio and data communications system, to integrate this system or network with other nearby regional public safety communications systems, to participate in regional interoperability systems, to jointly fund activities and systems related to interoperability and to jointly apply for grants and funding to facilitate accomplishing these goals;

WHEREAS, in 2010, 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 Town of Los Gatos and the County of Santa Clara (collectively "MEMBERS") entered into a joint powers agreement ("JPA Agreement") to form the Silicon Valley Regional Interoperability Authority ("SVRIA"), with similar goals and purpose as commenced under the Joint Funding Agreement;

WHEREAS, paying entities, which are not MEMBERS of SVRIA ("PARTICPANTS") will execute this MOU;

WHEREAS, SVRIA continues to plan and develop a regional communications interoperability system that will require the financial commitment of SVRIA MEMBERS and PARTICIPANTS by and through this MOU to fund the construction, operation and maintenance of such system;

WHEREAS, grant and local funds have been provided to SVRIA directly or through MEMBERS to improve interoperability through the multi-stage build out of a three cell, multi-site P25 Phase 2 TDMA 700 MHz Trunked Radio Simulcast Communications System, to be known as the Silicon Valley Regional Communications System ("SVRCS");

WHEREAS, the County of Santa Clara (“County”) is the Fiscal Agent and the Contract Manager for SVRIA and the SVRCS build-out (“System”);

WHEREAS, in order to facilitate the construction of the SVRCS, the Parties wish to affirm their continued financial support for a regional interoperable communication system as agreed in this MOU;

WHEREAS, AGENCY and SVRIA enter into this MOU under which the SVRIA will own and operate the System for the benefit of AGENCY and other MEMBERS and PARTICIPANTS, which other MEMBERS and PARTICIPANTS will execute Memoranda of Understanding similar to this one (collectively, the "MOU’s"). MEMBERS and PARTICIPANTS will pay, a portion of the cost of the System, consisting of a buy-in cost based on the number of radios committed for use on the System (the "Construction and Implementation Payments"), and the cost of annual operation (the "Operation and Maintenance Payments"), (all Payments are referred to herein collectively as the "AGENCY Payments");

WHEREAS, this MOU is intended to establish a means of requiring the MEMBERS’ Payments and PARTICIPANTS’ payments ensuring the sound operation and financing of the System, and is not in itself an approval of the System or the grant of any land use entitlement potentially required to develop the System; and

WHEREAS, it is anticipated that users of the SVRCS will include entities that enter into a memorandum of understanding similar to this MOU, after the SVRCS is fully functional. (“FUTURE PARTICIPANTS”).

NOW, THEREFORE, for good and valuable consideration, the adequacy and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows.

SECTION 1. DEFINITIONS

AGENCY: The AGENCY entering into this MOU.

Construction: The complete planning, design, construction, acquisition, financing, improvement, repair, modification and installation of the SVRCS .

Construction and Implementation Payments: Payments made under this MOU for the purpose of building the SVRCS.

County: The County of Santa Clara.

FUTURE PARTICIPANTS 1: Entities who enter into a MOU and make their payment after June 30, 2016, but on or before July 1, 2017.

FUTURE PARTICIPANTS 2: Entities who enter into this MOU after July 1, 2017.

Joint Funding Agreement: Joint Funding Agreement is the agreement entered into by the predecessors to SVRIA in 2001 for the purposes of funding and implementing interoperability countywide.

JPA Agreement: The original agreement entered into by Members of the SVRIA in order to form the JPA.

Operations and Maintenance Payments: Payments made based upon this MOU for the ongoing operations and maintenance of the SVRCS.

MEMBERS: The members of the SVRIA under the Joint Powers Agreement.

MOU: This Memorandum of Understanding.

PARTICIPANTS: Parties to a memorandum of understanding similar to this MOU that are not members of SVRIA and enter into a MOU on or before June 30, 2016.

SVRCS or System: The three cell, multi-site System P25 Phase 2 TDMA 700 MHz Trunked Radio Simulcast Communications System, to be known as the Silicon Valley Regional Communications System. This includes the entire build out interoperable communications system envisioned by SVRIA.

SVRIA: The Silicon Valley Regional Interoperability Authority, formed in 2010 for the purposes of funding and implementing interoperability countywide and as a successor entity to the entity created under the Joint Funding Agreement.

Termination Date: December 31, 2029, unless earlier terminated by the Parties.

User Count: Radio Subscriber count as provided by the Members or Participants as of April 13, 2015 and reflected in Exhibit "A".

SECTION 2. PURPOSES OF THE MOU

The purposes of this MOU are to:

2.1 Require payment by the AGENCY for its share of the regional SVRCS costs; and

2.2 Set forth the MEMBERS, PARTICIPANTS and the SVRIA's responsibilities for completion of the SVRCS build out.

2.3 Set forth SVRIA's obligations to maintain and operate the SVRCS.

SECTION 3. OPERATION OF THE SYSTEM

3.1 SVRIA has entered or will enter into purchase orders and contracts to supervise and

provide for, or cause to be supervised and provided for, the complete planning, design, construction, acquisition, financing, improvement, repair, modification and installation of the SVRCS (collectively, "Construction"). SVRIA will cause the Construction to be diligently performed in accordance with the specifications approved by the SVRIA.

3.2 SVRIA shall operate the System in conjunction with the MEMBERS for the duration of this MOU.

3.3 AGENCY shall have the right to use the System during the term of the MOU, unless AGENCY is in default on AGENCY Payments required hereunder after the applicable cure period set forth in Section 20.

3.4 The SVRCS shall only be used for public safety communications and other governmental uses for the MEMBERS' and PARTICIPANTS' benefit and convenience. SVRIA agrees to maintain and preserve the System in good repair and working order at all times, to operate the System in an efficient and economical manner, and to pay all the System's maintenance and operation costs as they become due. AGENCY acknowledges that SVRIA has complete ownership and the sole discretion to operate, control and manage the System. Nothing in this MOU shall be construed to limit SVRIA's discretion in the System's operation, control and management.

3.5 SVRIA agrees to use commercially reasonable efforts to hire the County of Santa Clara, City of San Jose and/or other contractors to operate and maintain the System**.**

3.6 AGENCY agrees to purchase the components it uses with the SVRCS service from or with the cooperation of SVRIA. AGENCY shall not use any components with the SVRCS service which SVRIA has not authorized for its use. AGENCY shall not use the SVRCS in any manner which may adversely affect the service provided by the System.

3.7 SVRIA shall attempt to obtain the land use permits, if any, that are required for Construction. In the event a particular permit cannot be reasonably obtained for a particular site, SVRIA will seek one or more reasonable alternate sites.

SECTION 4. MODIFICATION OF SYSTEM

SVRIA shall have the right to make additions, modifications and improvements to the System or any portion thereof. All additions, modifications and improvements to the System shall thereafter comprise part of the System and become subject to the MOU's provisions. Such additions, modifications and improvements shall not in any way damage the System, or cause the System to be used for purposes other than those authorized under the MOU's provisions, state and federal law. The System, upon completion of any additions, modifications and improvements made thereto pursuant to this Section, shall be of a value which is not substantially less than the value thereof immediately prior to the making of such additions, modifications and improvements.

SECTION 5. PAYMENT OF THE INITIAL PAYMENT AND AGENCY PAYMENTS

5.1 AGENCY shall make Construction and Implementation Payments on the dates in Section 22.1 and in the amounts shown in Exhibit "A". AGENCY shall make annual Operations and Maintenance Payments on the dates and in the amounts as calculated by the formula listed in Exhibit "B" or the amounts listed in Exhibit "B

5.2 AGENCY provided User Counts are contained in Exhibit "A". Agencies may increase its User Count after entering into this MOU by the payment of user charge based upon the following formula: Total User Count as shown on Exhibit "A" divided by the total Infrastructure Cost = New User Count Charge. Effective January 1, 2016 and each year thereafter the New User Count Charge shall be increased by an amount equivalent to the then-current User Count Charge multiplied by the percentage increase in the Consumer Price Index – Consolidated Metropolitan Statistical Area (CPI) covering San Francisco - Oakland - San Jose, as published by the Bureau of Labor Statistics, U.S. Department of Labor, between the most recent October and the preceding October. The increase in New User Charge shall be compounded. Agency Operations and Maintenance Costs shall be increased commensurate with the increase in User Counts. Should the Agency User Count decrease in any year Operations and Maintenance Payments will not be reduced except as described in Section 24.

SECTION 6. PARTICIPANTS AND FUTURE PARTICPANTS

6.1 PARTICIPANTS as listed in Exhibit "A" shall pay their pro rata share of the System costs in a timely fashion at the same time MEMBERS make their Payments on or before September 30, 2015. PARTICIPANTS, not listed in Exhibit "A" and join on or before June 30, 2016 shall pay their pro rata share at the time of execution.

6.2 FUTURE PARTICIPANTS 1 who enter into a MOU after June 30, 2016, but on or before July 1, 2017 shall make a special Construction and Implementation Payment to cover previously expended costs by MEMBERS and PARTICIPANTS as well as periodic payments at the times required of other MEMBERS and PARTICIPANTS during the term of this MOU. These special Construction and Implementation payments shall be utilized in part to recalculate payments for Construction and Implementation payments for all MEMBERS, PARTICIPANTS and FUTURE PARTICIPANTS 1 and for additional capacity or system enhancements or held in reserve for the same purpose.

6.3 FUTURE PARTICIPANTS 2 who enter into a MOU after July 1, 2017 shall make a special Construction and Implementation Payment as well as periodic payments at the times required of other MEMBERS and PARTICIPANTS and FUTURE PARTICIPANTS 1 during the term of this MOU. These special Construction and Implementation payments shall be utilized in part to recalculate Operations and Maintenance payments for all MEMBERS, PARTICIPANTS and FUTURE PARTICPANTS 1 and FUTURE PARTICIPANTS 2 and for additional capacity or system enhancements or held in reserve for the same purpose.

SECTION 7. SOURCE OF PAYMENTS: BUDGET AND APPROPRIATION

7.1 AGENCY shall make the AGENCY Payments from any source of legally available AGENCY funds. AGENCY agrees to include all AGENCY Payments in each proposed annual AGENCY budget during the term of this MOU. AGENCY shall make the necessary annual appropriations for Construction and Implementation payments in FY 2015 – 2016, 2016 – 2017 and 2017 – 2018. AGENCY Payments may be made at any time prior to the deadline for such Payment; there are no prepayment penalties under this MOU.

7.2 Notwithstanding paragraph 7.1, in accordance with Article XVI, Section 18 of the California Constitution, if in any fiscal year subsequent to the execution of this MOU the AGENCY fails to appropriate money for the purpose of funding this MOU, this MOU shall terminate, without penalty effective upon the close of business on the last day of the fiscal year for which funding has been appropriated.

SECTION 8. OPERATION AND MAINTENANCE PAYMENTS

In addition the Payments required in this MOU, AGENCY shall continue to make MEMBER Assessment payments as required under the JPA Agreement through the end of fiscal year 2017 – 2018.At the start of fiscal year 2018 – 2019, AGENCY shall begin to make Operation and Maintenance Payments as listed in Exhibit “B”, in lieu of Member Assessments so long as the SVRCS is operating.

SECTION 9. ROLE OF GRANT FUNDING

In the event that grant funding can be utilized to reduce the overall System costs, the cost reduction will be apportioned to the SVRCS on behalf of all MEMBERS and PARTICIPANTS in a pro rata fashion for the benefit of the System.

SECTION 10. CONSTRUCTION BUDGET CONTINGENCY

SVRIA has established a 20% construction budget contingency within the System budget. SVRIA shall use these funds for the SVRCS, if unexpected construction costs or increased costs occur. If at the conclusion of System Construction, contingency funds remain, such funds shall be transferred to SVRIA for use as a reserve for Operations and Maintenance costs.

SECTION 11. RECEIPT AND DEPOSIT OF AGENCY PAYMENTS

SVRIA agrees that it will deposit the AGENCY Payments with the SVRIA’s fiscal agent, the County, for the benefit of the SVRCS.

SECTION 12. COMPLIANCE WITH MOU

Time is of the essence with respect to the AGENCY Payments and the performance of SVRIA under this MOU. AGENCY shall observe and perform all the agreements,

conditions, covenants and terms contained herein. SVRIA shall observe and perform all the agreements, conditions, covenants and terms contained herein. It is expressly understood and agreed by the Parties that each of the agreements, conditions, covenants and terms contained herein is an essential and material term of the MOU and the operation of the System by SVRIA.

SECTION 13. ACCESS TO SYSTEM

Upon reasonable notice to SVRIA, AGENCY or its authorized representative shall have the right at all reasonable times to enter, examine and inspect the System or any part thereof. AGENCY, any Authorized Representative of AGENCY and AGENCY's successors or assigns shall further have such rights of access to the System or any component thereof as may be reasonably necessary to cause the proper maintenance of the System in the event of failure by the SVRIA to perform its obligations hereunder; provided, however, that neither AGENCY nor any of their assigns shall have any obligation to cause such proper maintenance.

SECTION 14. INSURANCE

14.1 SVRIA shall procure and maintain, or cause to be procured and maintained, throughout the term of this MOU, casualty insurance against loss or damage to the System. This insurance shall, as nearly as practicable, cover loss or damage that is normally covered by such insurance with extended coverage. This insurance shall not be required to cover loss or damage caused by seismic activity. This insurance shall be subject to deductibles as are customarily maintained by public agencies with respect to works and properties of a like character. The insurance may be maintained as part of or in conjunction with any other insurance coverage carried by SVRIA, and may be maintained in whole or in part in the form of the participation by SVRIA in a joint powers authority or other program providing pooled insurance. MEMBERS, PARTICIPANTS, FUTURE PARTICIPANTS 1 and FUTURE PARTICIPANTS 2 as each approves the MOU and makes their payment shall be named as additional insured on SVRIA's liability coverage insurance.

14.2 SVRIA shall maintain or cause to be maintained throughout the MOU's term, a standard comprehensive general insurance policy or policies whose minimums are at least one million ($1,000,000) dollars per occurrence to protect SVRIA, AGENCY, and their respective members, officers, agents, employees, designated volunteers and assigns. The policy or policies shall provide for indemnification of said Parties against direct or contingent loss or liability for damages for bodily and personal injury, death or property damage occasioned by reason of operating the System as required by the JPA Agreement. Such policy or policies shall provide coverage in such liability limits and be subject to such deductibles as SVRIA shall deem adequate and prudent. This insurance may be maintained as part of or in conjunction with any other insurance coverage carried by SVRIA. Any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth in this Agreement shall be deemed to be the minimum amount of insurance required under this Agreement and shall be available to the Parties.

14.3 Insurance required to be maintained by subparagraphs 14.1 or 14.2 above, may be obtained under a self-insurance program. SVRIA's coverage shall be primary insurance with respect to the Agency; and Agency's insurance shall be excess of SVRIA's insurance and shall not contribute with it.

14.4 INSURANCE: AGENCY shall, at its own expense maintain in effect, a program of self-insurance and/or insurance of general liability coverage, including automobile liability, in the amount of at least one million ($1,000,000) dollars per occurrence and in the aggregate as well as statutory California Workers' Compensation coverage. The coverage shall remain in effect during the entire term of this MOU. AGENCY shall provide evidence upon the request of SVRIA that the required insurance coverage is in effect.

14.5 SVRIA shall require that errors and omissions insurance in the amount of at least one million ($1,000,000) dollars per claim for any architects or engineers retained for the design and construction of the system.

SECTION 15. BOOKS AND ACCOUNTS

15.1 SVRIA will keep complete and accurate financial records for the System. SVRIA shall keep such records separate from all other SVRIA financial records. Upon reasonable notice to SVRIA, AGENCY may inspect the SVRIA's System financial records.

15.2 Not more than two hundred and ten (210) days after the close of each fiscal year, SVRIA will prepare:

15.2.1 System financial statements in accordance with Generally Accepted Accounting Principles.

15.2.2 An Accountant's Report based thereon, prepared by an Independent Certified Public Accountant who examined such financial statements.

15.2.3 A summary statement of the System's financial condition. SVRIA shall furnish a copy of the summary statement to AGENCY.

15.3 Not more than two hundred and ten (210) days after the completion of all work associated with SVRCS Construction, the SVRIA shall prepare and submit a final report to AGENCY disclosing SVRIA's disbursements of the funds provided by all MEMBERS, PARTICIPANTS and FUTURE PARTICIPANTS.

SECTION 16. PAYMENT OF TAXES AND COMPLIANCE WITH GOVERNMENTAL REGULATIONS

SVRIA will pay and discharge all taxes, assessments and other governmental charges, if any, which may hereafter be lawfully imposed upon the System when due. SVRIA will conform to the valid requirements of any governmental agency with authority relative to the Construction or the System. Without limiting the foregoing, SVRIA shall comply with

all applicable laws and written policies and regulations of the federal, state and local governments in the construction and operation of the SVRCS and the performance of SVRIA under this MOU.

SECTION 17. FURTHER ASSURANCES

SVRIA and AGENCY will each adopt, deliver, execute and make any and all further assurances, instruments and resolutions as may be reasonably necessary or proper to carry out the intention or to facilitate the Parties' performance of this MOU.

SECTION 18. SVRIA REPRESENTATIONS AND WARRANTIES

SVRIA represents and warrants to AGENCY as follows:

18.1 Due Organization and Existence. SVRIA is a joint exercise of powers authority duly organized and validly existing under the JPA Agreement and the laws of the State of California. SVRIA has the full legal right, power and authority under the laws of the State of California to enter into this MOU and to carry out all of its obligations herein.

18.2 Due Execution. SVRIA's representatives, who sign this MOU, are authorized to sign pursuant to a resolution adopted by the SVRIA's Board of Directors.

18.3 Valid, Binding and Enforceable Obligations. This MOU has been authorized and executed by SVRIA and constitutes the legal, valid and binding agreement of SVRIA, enforceable against SVRIA in accordance with its terms.

SECTION 19. AGENCY REPRESENTATIONS AND WARRANTIES

AGENCY represents covenants and warrants to SVRIA as follows:

19.1 Due Organization and Existence. AGENCY is a public body, corporate and politic, duly organized and validly existing under the laws of the State of California. It has full legal right, power and authority to enter into this MOU and to carry out all of its obligations herein.

19.2 Due Execution. AGENCY's representatives, who sign this MOU, are authorized to sign pursuant to an official action taken by AGENCY's governing body.

19.3 Valid, Binding and Enforceable Obligation. This MOU has been authorized and executed by AGENCY and constitutes the legal, valid and binding agreement of AGENCY, enforceable against AGENCY in accordance with its terms.

SECTION 20. EVENTS OF DEFAULT

The following events are Events of Default hereunder:

20.1 Failure by AGENCY to abide by or perform any of its obligations in this MOU within the thirty (30) day period from the date of AGENCY's receipt of SVRIA's written notice

specifying such failure and requesting that it be remedied. Such failure shall not constitute an Event of Default if AGENCY diligently and in good faith, commences to cure the failure within such thirty (30) day period and thereafter completes the cure of such failure within a reasonable period of time. If AGENCY does not complete the cure of the Event of Default in a reasonable time or fails to diligently attempt such cure, SVRIA may terminate this MOU.

20.2 Failure by SVRIA to abide by or perform any of its obligations in this MOU within the thirty (30) day period from the date of SVRIA's receipt of AGENCY's written notice specifying such failure and requesting that it be remedied. Such failure shall not constitute an Event of Default if SVRIA diligently and in good faith, commences to cure the failure within such thirty (30) day period and thereafter completes the cure of such failure within a reasonable period of time. If SVRIA does not complete the cure of the Event of Default in a reasonable time or fails to diligently attempt such cure, AGENCY may terminate this MOU.

20.3 AGENCY files a petition seeking arrangement or reorganization under federal bankruptcy laws or similar state law, or if a court of competent jurisdiction shall approve a petition filed against AGENCY seeking arrangement or reorganization under the federal bankruptcy laws or similar state law, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of such AGENCY or of the whole or a substantial part of its property. Notwithstanding the foregoing, such filing shall not constitute an Event of Default if AGENCY continues to pay its AGENCY Payments on time.

20.4 SVRIA files a petition seeking arrangement or reorganization under federal bankruptcy laws or similar state law, or if a court of competent jurisdiction shall approve a petition filed against SVRIA seeking arrangement or reorganization under the federal bankruptcy laws or similar state law, or if under the provisions of any other law for the relief or aid of debtors any court of competent jurisdiction shall assume custody or control of SVRIA.

SECTION 21. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved in this MOU is exclusive of any other remedy, and each such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing in law or in equity or by statute or otherwise, and all such remedies may be exercised without exhausting and without regard to any other remedy.

SECTION 22. AGENCY'S OBLIGATIONS

22.1 AGENCY's Payment. AGENCY shall pay to the SVRIA money in the amount stated on the SVRIA invoice in an approximate amount as specified in Exhibit "A" to the SVRIA to fully offset the AGENCY's portion of the regional SVRCS cost. Payments shall commence in fiscal year 2015 – 2016 unless otherwise designated in Exhibit "A". These payments shall be made by September 30, 2015 and by each succeeding September 30 and shall

last for a minimum of three fiscal years as delineated in Exhibit A. Operation and Maintenance Payments, as shown in Exhibit “B”, shall commence on September 30, 2018 and continue throughout the term of the MOU. AGENCY shall make these payments on or before September 30 of each successive fiscal year. Operations and Maintenance costs for future years may increase, but such increase will be limited to actual costs and reserve requirements.

22.2 AGENCY’s Role in SVRCS. During the Construction and Operation of the SVRCS:

22.2.1 AGENCY shall provide technical support including testing during the System Construction and delivery.

22.2.2 AGENCY shall participate in System meetings with SVRIA and its contractor(s).

22.2.3. AGENCY shall coordinate with SVRIA for the System upgrade and maintenance work at all AGENCY facilities.

22.2.4 AGENCY shall assist SVRIA with the final acceptance of the SVRCS by testing System performance, evaluating workmanship and verifying installed equipment inventories.

22.2.5 AGENCY's costs to administer and participate in usage of the SVRCS will not be reimbursed through the SVRCS grant funds, the JPA Agreement or by SVRIA.

SECTION 23. SVRIA'S OBLIGATIONS

In consideration of AGENCY’s Payment, SVRIA shall fulfill the obligations listed below:

23.1 Tasks. SVRIA shall perform and be responsible for the following tasks for completing the SVRCS , including, but not limited to:

23.2.1 Serve as System Manager for the SVRCS, or retain a qualified contractor(s) to serve as System Manager for the SVRCS,

23.2.2 Fulfill CEQA requirements, if any.

23.2.3 Implement Construction in accordance with UASI and SHSGP Grant guidelines.

SECTION 24. TERM OF MOU

24.1 This MOU commences upon the full execution of the MOU ("Effective Date") and shall expire on December 31, 2029. The MOU shall be automatically extended for two (2) additional three-year periods. One year prior to each expiration date, SVRIA shall inform each Member or Participant of the approaching automatic extension of the term of the MOU. Any Member or Participant may notify the SVRIA in writing within one

hundred and eighty (180) days of such notice, that it does not agree to the extension of the term of the MOU. The Operations and Maintenance payments for the remaining MEMBERS or PARTICIPANTS shall be adjusted based upon actual User Count as of June 30 of the year in which the MOU terminates starting in, 2029, and at the expiration of the first three year extension period. All financial commitments of AGENCY for Payments while AGENCY is a MEMBER and/or while this MOU applies to AGENCY shall extend past the termination date unless the commitments have been satisfied prior to that date.

24.2 This MOU shall not commence unless and until the City of San Jose and the County of Santa Clara have approved this MOU and budgeted funding for the first year of the MOU. If any Member or Participant terminates this MOU then the SVRIA shall meet and confer in good faith concerning the continued operation of SVRCS and possible amendment to this Agreement.

SECTION 25. OWNERSHIP, MAINTENANCE, INSURANCE AND MANAGEMENT

County, as Fiscal Agent for the UASI and SHSGP Grants, shall own, maintain, insure, and manage all infrastructure equipment and upgrades installed as part of the SVRCS upon the System's final acceptance by the County, until such time as SVRIA assumes ownership, maintenance, insurance, and management responsibilities. If the SVRIA purchases dispatch consoles, subscriber radios and other related equipment and/or accessories on AGENCY's behalf, such equipment shall be transferred from the SVRIA to AGENCY following SVRIA's receipt of AGENCY's full reimbursement of costs.

SECTION 26. RELATIONSHIP OF THE PARTIES

Each Party shall perform the work and services described herein as an independent contractor and not as an officer, agent, servant or employee of the other Party. None of the MOU's provisions are intended to create, nor shall be deemed or construed to create, any relationship between the Parties other than that of independent parties contracting with each other for purpose of effecting the MOU's provisions. The Parties are not, and will not be construed to be in a relationship of joint venture, partnership or employer-employee. Neither Party has the authority to make any statements, representations or commitments of any kind on behalf of the other Party, or to use the name of the other Party in any publications or advertisements, except with the written consent of the other Party.

SECTION 27. MODIFICATION

The Parties may modify this MOU only through a written document, signed by both Parties.

SECTION 28. SEVERABILITY

The MOU's provisions are severable, and if for any reason, a Court with proper jurisdiction determines a clause, sentence, or paragraph of this MOU to be invalid such invalidity shall

not affect other provisions of this MOU, which shall be given effect without the invalid provision.

SECTION 29. TERMINATION

29.1 This MOU may be terminated upon six months written notice to SVRIA. Should AGENCY terminate this Agreement AGENCY shall have no interest or claim in the assets of the SVRIA absent an SVRIA approved written agreement which contains express provisions to the contrary. The terminating AGENCY shall be obligated to pay a pro rata share of its payments up to the date of termination.

29.2 If the Agreement is terminated pursuant to Section 29.1 or Section 7.2 then SVRIA may remove any SVRCS equipment and relocate the equipment to support the balance of the system. Should the equipment need to be removed or relocated after termination the costs of relocation or removal shall be borne by the terminating party.

29.3 Nothing contained in this MOU or the JPA Agreement requires that AGENCY remain as a MEMBER, however the JPA Agreement does contain terms for withdrawal from the JPA.

SECTION 30. SURVIVAL

30.1 After the MOU's termination or expiration, those provisions which by their nature or context are intended to survive beyond termination or expiration, and all provisions regarding indemnification and limitations of liability, will survive indefinitely or until the expiration of the time period specified elsewhere in this MOU with respect to the provision in question.

30.2 Upon the MOU's termination or expiration, as between the Parties, the SVRIA retains all right, title and interest in and to the SVRCS.

SECTION 31. ASSIGNMENT

This MOU shall be binding upon and shall inure to the benefit of the successors of the Parties. With the exception of asset transfer to SVRIA, and if applicable, AGENCY as detailed herein, no Party may assign any rights or obligations hereunder without the written consent of the other Party, except as provided herein.

SECTION 32. NO WAIVER

No waiver by either Party of any breach or default of any of the covenants or agreements herein shall be deemed to be a waiver as to any subsequent and/or similar breach or default.

SECTION 33. INDEMNIFICATION

33.1 SVRIA agrees to indemnify, defend and hold harmless the AGENCY, its officers, agents and employees to the fullest extent allowed by law from any and all claims, actions, causes of action, losses, damages, liabilities and costs of every nature, including all claims, actions, causes of action, losses, damages, liabilities for property damage, bodily injury, or death, and all costs of defending any claim, action or cause of action, caused by, arising out of, or resulting from, or alleged to have been caused by, arise out of, or result from, in whole or in part, SVRIA's performance under this Agreement, except for any claims, actions, causes of action, losses, damages, costs or liabilities proximately caused by the sole negligence or willful misconduct of AGENCY.

33.2 The foregoing indemnity provision is intended to fully allocate the parties' risk of liability to third-parties; and there shall be no rights to indemnity or contribution, in law or equity or otherwise between the parties that are not set forth in this section. SVRIA waives all rights to subrogation for any matters covered by this provision. SVRIA's responsibility for such defense and indemnity obligations as set forth in this provision shall survive the termination or completion of this MOU for the full period of time allowed by law.

SECTION 34. FORCE MAJEURE

"Force Majeure Event" means any circumstances or occurrence which is beyond the reasonable control of a Party including, but not limited to, acts of God, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic, strike, lock-out or other form of industrial action (other than those relating solely to any Party's own workforce). If a Force Majeure Event affects either Party, that Party shall promptly notify the other Party of the nature and extent of the Event. No Party shall be liable for any loss or damage suffered or incurred by the other Party arising from the first Party's delay in performing or failure to perform its obligations under the MOU to the extent that and for so long as the delay or failure results from any Force Majeure Event, provided the same arises without the fault or negligence of the first Party. Each Party shall use its commercially reasonable efforts to minimize the effects of any Force Majeure Event on the operation of this MOU and the System.

SECTION 35. SUCCESSOR IS DEEMED INCLUDED IN ALL REFERENCES TO PREDECESSOR

Whenever SVRIA or AGENCY is named or referred to herein, such reference shall be deemed to include the successor to the powers, duties and functions that are presently vested in SVRIA or AGENCY, and all agreements and covenants required hereby to be performed by or on behalf of SVRIA or AGENCY shall bind and inure to the benefit of the respective successors thereof whether so expressed or not; provided; however, that SVRIA shall not provide service from the System to any successor to AGENCY until such successor accepts in writing, AGENCY's obligations.

SECTION 36. WAIVER OF PERSONAL LIABILITY

No board member, officer, attorney or employee of AGENCY or SVRIA shall be individually or personally liable under the MOU.

SECTION 37. NOTICES

37.1 All deliveries, notices, requests, demands, or other communications provided for or required by this MOU shall be in writing and shall be deemed to have been given when sent by registered or certified mail, return receipt requested or when sent by overnight carrier;.

Notices shall be addressed to:

SVRIA:

Heather Tannehill-Plamondon
Executive Director, SVRIA
601 El Camino Real
Santa Clara, CA 95050

Telephone: 408-615-5571
Email:hplamondon@svria.org

AGENCY:
City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035
Attn: City Manager

Telephone: 408-586-3050
Email: twilliams@ci.milpitas.ca.gov

37.2 A Party may change its Notice contact or Notice address by written Notice to the other Party. Such change becomes effective no sooner than ten (10) days after the date of such Notice.

SECTION 38. TITLES AND HEADINGS

The titles, numbers and headings of paragraphs, sections, subsections, and exhibits are for convenience only and are not intended to affect the MOU's construction or interpretation.

SECTION 39. ENTIRE AGREEMENT

This MOU and attached exhibits incorporate all the agreements, covenants, and

understandings between the Parties concerning the subject matter hereof, and all such agreements, covenants, and understandings have been merged into this MOU. No prior agreement or understanding, verbal or otherwise, of the Parties or their agents shall be valid or enforceable unless embodied in this MOU.

SECTION 40. COUNTERPARTS

This MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

SECTION 41. GOVERNING LAW

California law governs the MOU's performance and interpretation.

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SECTION 42. VENUE

If a Party to this MOU brings a lawsuit connected to the System, the Parties agree that venue shall be exclusively vested in the State Courts of the County of Santa Clara.

IN WITNESS OF, the Parties have executed the MOU through their duly authorized representatives as of the last date set forth below.

Signed:

SVRIA

By: _____
Chair of Board of Directors

Date: _____, 2015

Attest:

By: _____

Date: _____, 2015

Approved as to Form and Legality:

By: _____
Gary M. Baum
General Counsel, SVRIA
Date: _____, 2015

AGENCY

By: _____
Name, or Designee

Date: _____, 2015

Approved as to Form and Legality:

By: _____
Name, or Designee

(title)_____

Date: _____, 2015

MOU SVRIA SVRCS clean version Milpitas (26) 4-14-15

Exhibit A

Cost per agency Breakdown							
	User Count		FY14/15	FY15/16	FY16/17	FY17/18	Infrastructure Cost
San Jose	2,750	26.46%		$2,545,720	$ 2,545,720	$2,545,720	$ 7,637,159
Santa Clara County	2,130	20.49%		$1,971,776	$ 1,971,776	$1,971,776	$ 5,915,327
VTA	2,000	19.24%		$1,851,432	$ 1,851,432	$1,851,432	$ 5,554,297
Santa Clara	791	7.61%	$354,639	$ 614,029	$ 614,029	$ 614,029	$ 2,196,725
Palo Alto	690	6.64%		$ 638,744	$ 638,744	$ 638,744	$ 1,916,233
Sunnyvale	455	4.38%		$ 421,201	$ 421,201	$ 421,201	$ 1,263,603
Mountain View	310	2.98%		$ 286,972	$ 286,972	$ 286,972	$ 860,916
Gilroy	304	2.92%		$ 281,418	$ 281,418	$ 281,418	$ 844,253
Milpitas	249	2.40%		$ 230,503	$ 230,503	$ 230,503	$ 691,510
Campbell	189	1.82%		$ 174,960	$ 174,960	$ 174,960	$ 524,881
Los Gatos	140	1.35%		$ 129,600	$ 129,600	$ 129,600	$ 388,801
Morgan Hill	135	1.30%		$ 124,972	$ 124,972	$ 124,972	$ 374,915
Los Altos	90	0.87%		$ 83,314	$ 83,314	$ 83,314	$ 249,943
SJSU	86	0.83%		$ 79,612	$ 79,612	$ 79,612	$ 238,835
South County Fire	31	0.30%		$ 28,697	$ 28,697	$ 28,697	$ 86,092
Foothill/DeAnza	23	0.22%		$ 21,291	$ 21,291	$ 21,291	$ 63,874
West Valley/Mission	22	0.21%		$ 20,366	$ 20,366	$ 20,366	$ 61,097
	10,395	100.00%					**$ 28,868,460**
4/30/2015 FINAL	10,395		$354,639	$9,504,607	$ 9,504,607	$9,504,607	**$ 28,868,460**

Exhibit B

	User Count		Operations and Maitenance (FY18/19)	Operations and Maitenance (FY19/20)	Operations and Maitenance (FY20/21)	Operations and Maitenance (FY21/22)	Operations and Maitenance (FY22/23)	Operations and Maitenance (FY23/24)	Operations and Maitenance (FY24/25)	Operations and Maitenance (FY25/26)	Operations and Maitenance (FY26/27)	Operations and Maitenance (FY27/28)	Operations and Maitenance (FY28/29)
San Jose	2,750	26.46%	$1,001,627	$1,001,627	$ 990,977	$1,008,358	$1,026,516	$ 1,045,593	$1,065,552	$ 1,086,436	$ 1,108,335	$ 1,131,250	$ 1,152,476
Santa Clara County	2,130	20.49%	$775,806	$775,806	$ 767,557	$ 781,019	$ 795,083	$ 809,860	$ 825,318	$ 841,494	$ 858,456	$ 876,205	$ 892,645
VTA	2,000	19.24%	$728,456	$728,456	$ 720,711	$ 733,351	$ 746,557	$ 760,432	$ 774,947	$ 790,135	$ 806,062	$ 822,727	$ 838,164
Santa Clara	791	7.61%	$288,104	$288,104	$ 285,041	$ 290,040	$ 295,263	$ 300,751	$ 306,491	$ 312,499	$ 318,798	$ 325,389	$ 331,494
Palo Alto	690	6.64%	$251,317	$251,317	$ 248,645	$ 253,006	$ 257,562	$ 262,349	$ 267,357	$ 272,597	$ 278,091	$ 283,841	$ 289,167
Sunnyvale	455	4.38%	$165,724	$165,724	$ 163,962	$ 166,837	$ 169,842	$ 172,998	$ 176,300	$ 179,756	$ 183,379	$ 187,170	$ 190,682
Mountain View	310	2.98%	$112,911	$112,911	$ 111,710	$ 113,669	$ 115,716	$ 117,867	$ 120,117	$ 122,471	$ 124,940	$ 127,523	$ 129,915
Gilroy	304	2.92%	$110,725	$110,725	$ 109,548	$ 111,469	$ 113,477	$ 115,586	$ 117,792	$ 120,101	$ 122,521	$ 125,055	$ 127,401
Milpitas	249	2.40%	$90,693	$90,693	$ 89,728	$ 91,302	$ 92,946	$ 94,674	$ 96,481	$ 98,372	$ 100,355	$ 102,430	$ 104,351
Campbell	189	1.82%	$68,839	$68,839	$ 68,107	$ 69,302	$ 70,550	$ 71,861	$ 73,232	$ 74,668	$ 76,173	$ 77,748	$ 79,207
Los Gatos	140	1.35%	$50,992	$50,992	$ 50,450	$ 51,335	$ 52,259	$ 53,230	$ 54,246	$ 55,309	$ 56,424	$ 57,591	$ 58,671
Morgan Hill	135	1.30%	$49,171	$49,171	$ 48,648	$ 49,501	$ 50,393	$ 51,329	$ 52,309	$ 53,334	$ 54,409	$ 55,534	$ 56,576
Los Altos	90	0.87%	$32,781	$32,781	$ 32,432	$ 33,001	$ 33,595	$ 34,219	$ 34,873	$ 35,556	$ 36,273	$ 37,023	$ 37,717
San Jose State	86	0.83%	$31,324	$31,324	$ 30,991	$ 31,534	$ 32,102	$ 32,699	$ 33,323	$ 33,976	$ 34,661	$ 35,377	$ 36,041
South County Fire	31	0.30%	$11,291	$11,291	$ 11,171	$ 11,367	$ 11,572	$ 11,787	$ 12,012	$ 12,247	$ 12,494	$ 12,752	$ 12,992
Foothill/DeAnza	23	0.22%	$8,377	$8,377	$ 8,288	$ 8,434	$ 8,585	$ 8,745	$ 8,912	$ 9,087	$ 9,270	$ 9,461	$ 9,639
West Valley /Mission	22	0.21%	$8,013	$8,013	$ 7,928	$ 8,067	$ 8,212	$ 8,365	$ 8,524	$ 8,691	$ 8,867	$ 9,050	$ 9,220
	10,395	100.00%	$3,786,150	$3,786,150	$3,745,893	$3,811,593	$3,880,229	$ 3,952,343	$4,027,786	$ 4,106,729	$ 4,189,508	$ 4,276,125	$ 4,356,358
April 30, 2015	10,395		$3,786,150	$3,786,150	$3,745,893	$3,811,593	$3,880,229	$ 3,952,343	$4,027,786	$ 4,106,729	$ 4,189,508	$ 4,276,125	$ 4,356,358