

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING AN AGREEMENT BETWEEN THE CITY OF MILPITAS AND THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY FOR THE FUNDING OF A SOLE SOURCE PURCHASE OF A SPECIALIZED URBAN SEARCH AND RESCUE TRAILER FROM L.N. CURTIS & SONS

WHEREAS, the Milpitas BART station is currently under construction and is projected to be completed in late 2016 and operational in late 2017, and as such the Milpitas Fire Department is currently preparing for enhanced emergency response operations within the area of the Milpitas BART station and tracks; and

WHEREAS, the need for an increased technical rescue capacity has been identified as an area that will require additional resources from the Milpitas Fire Department due to the unique challenges within the BART guide way and station; and

WHEREAS, the Santa Clara Valley Transportation Authority has agreed to fund the purchase of a specialized urban search and rescue trailer for utilization by the City of Milpitas; and

WHEREAS, the Milpitas Fire Department has identified the Paratech Urban Search & Rescue Trailer as the appropriate comprehensive rescue trailer equipped to perform lifting and stabilization in significant technical incidents; and

WHEREAS, the sole vendor for Paratech Incorporated’s products and support, including the Paratech Urban Search & Rescue Trailer, is L.N. Curtis & Sons, fire equipment supplier. L.N. Curtis & Sons is also the only authorized trade-in and warranty repair work center in the Bay Area region for Paratech Incorporated’s products, as confirmed in their sole distributor letter attached hereto as Exhibit A; and

WHEREAS, the Paratech Urban Search & Rescue Trailer and equipment is compatible with existing Milpitas Fire Department rescue equipment, as well as rescue equipment that is currently part of the fire agency mutual aid system in Santa Clara County including Paratech shore and struts which are part of the Santa Clara County Fire Department technical rescue cache; and

WHEREAS, it is essential for interoperability that all mutual aid equipment match Santa Clara County Fire Department standards; and

WHEREAS, funding for the purchase of the Paratech Urban Search & Rescue Trailer will be wholly reimbursed by the Santa Clara Valley Transportation Authority as set out in the proposed Cooperative Agreement attached hereto as Exhibit B; and

WHEREAS, Section I-2-3.09 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the Purchasing Agent determines that there is only one source for the required supply or service; and

WHEREAS, after conducting a good faith review of the available sources and pursuant to Milpitas Municipal Code Section I-2-3.09, the Purchasing Agent has determined that L.N. Curtis & Sons is the sole source distributor in California of Paratech Incorporated products, including the Paratech Urban Search & Rescue Trailer and that there is no comparable product currently available.

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence

submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The City Council hereby approves the Cooperative Agreement with Santa Clara Valley Transportation Authority attached hereto as Exhibit B, and the Purchasing Agent is authorized to purchase from L.N. Curtis & Sons, a California corporation, as a sole source procurement, a Paratech Urban Search & Rescue Trailer for an amount not to exceed \$165,359.81 pursuant to said Cooperative Agreement.

PASSED AND ADOPTED this ____ day of _____, 2015, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

Mary Lavelle, City Clerk

Jose S. Esteves, Mayor

APPROVED AS TO FORM:

Gary M. Baum, Interim City Attorney

COOPERATIVE AGREEMENT
BETWEEN THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY
AND THE CITY OF MILPITAS RELATING TO THE BART SILICON VALLEY
BERRYESSA EXTENSION

This Cooperative Agreement between the Santa Clara Valley Transportation Authority and the City of Milpitas Relating to the Milpitas Bay Area Rapid Transit Station (“Agreement”) is entered into by and between the City of Milpitas, a general law city of the State of California (hereafter referred to as “City”) and the Santa Clara Valley Transportation Authority, a public transit district (hereafter referred to as “VTA”) (collectively, the “Parties”). This Agreement is effective as of the last date set forth by the Parties executing this Agreement.

RECITALS

WHEREAS, the Bay Area Rapid Transit (“BART”) system comprises a network of four heavy-rail rapid transit lines serving several urbanized counties (San Francisco, Alameda, Contra Costa, and San Mateo) of the San Francisco Bay Area. At present, the southern terminus of the system is in the City of Fremont in Alameda County. VTA has undertaken a program of activities leading to extension of BART service into Santa Clara County with BART stations in Milpitas and San Jose.

WHEREAS, the Milpitas BART station is currently under construction and is projected to be completed in late 2016 and operational in late 2017.

WHEREAS, the Milpitas Fire Department is currently preparing for enhanced emergency response operations within the area of the Milpitas BART station and tracks (“BART Corridor”) due to the future opening of the BART system within the City in 2017.

WHEREAS, after reviewing the potential impacts of both the construction phase and the operations phase of the BART system with the City, the need for an increased technical rescue capacity has been identified as an area that will require additional resources from the Milpitas Fire Department due to the unique challenges within the BART guideway and station.

WHEREAS, the technical rescue requirements along the BART system in Milpitas will require an increased capability for lifting and stabilization of equipment and obstructions in potential rescue operations for patient extrication in the current construction zone and the forthcoming BART/VTA station and track facilities.

WHEREAS, after diligent research, the Milpitas Fire Department has identified the Paratech Urban Search & Rescue trailer as the appropriate comprehensive rescue trailer equipped to perform lifting and stabilization in significant technical incidents. The inventory includes airbags, stabilization shores, and equipment for the cutting of metal rail cars as further described in Exhibit A of this Agreement.

WHEREAS, the cost for the Paratech Urban Search & Rescue trailer (“Paratech Trailer”) as provided through the only local authorized distributor (L.N. Curtis and Sons) is One Hundred Sixty-Five Thousand and Three Hundred Fifty Nine Dollars and Eight One cents (\$165,359.81).

WHEREAS, the City desires to purchase the Paratech Trailer and VTA desires to fully reimburse the City for the purchase as further described in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and conditions herein contained, the Parties agree to the following:

1. **Purchase and Use of Paratech Trailer.** City agrees to purchase the Paratech Trailer as further described in Exhibit A. The Paratech Trailer shall be owned by City and operated by the Milpitas Fire Department. City agrees to maintain the Paratech Trailer for its usable life and use it, as necessary, for emergency responses within the BART system. The expected usable life span of the Paratech Trailer is ten years (10) from the time of deployment with the Milpitas Fire Department.
2. **VTA Reimbursement of City.** VTA shall fully reimburse the City up to the amount of the price of the Paratech Trailer, but in no event to exceed One Hundred Sixty-Five Thousand and Three Hundred Fifty-Nine Dollars and Eighty One cents (\$165,359.81) (“Purchase Price”) upon receipt of an invoice and evidence of purchase as set forth in Section 3, below. This total price includes sales tax as outlined in Exhibit A.
3. **Invoicing.** City shall provide VTA with an invoice showing the amount owed by VTA for purchase of the Paratech Trailer. Said invoice shall be accompanied by evidence showing payment for and delivery of the Paratech Trailer to City.

Invoices shall be sent to:

Santa Clara Valley Transportation Authority
Carolyn Gonot
3331 North First Street
San José, CA 95134-1906

No later than thirty (30) days after City has submitted an invoice containing the aforementioned evidence of acquisition, VTA shall remit the amount necessary to cover the costs of the purchase of the Paratech Trailer up to the Purchase Price. Payment to City shall be made by check or wire payment to:

City of Milpitas
Finance Department
455 East Calaveras Blvd.
Milpitas, CA 95035

Or in any other method acceptable to both Parties.

4. VTA’s reimbursement of the Purchase Price to City shall fully satisfy any and all obligations of VTA for providing emergency response equipment to the City related to the implementation of BART service within the City.
5. **Hold Harmless and Indemnification** Pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify, defend and hold the other Party, its

officers, employees and agents, harmless from any damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying Party, its officers, employees, contractors or agents, under or in connection with any of the obligations set forth in this Agreement. Neither Party, nor any officer, employee or agent thereof, shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other Party hereto, its officers, employees or agents, under or in connection with any work, authority or jurisdiction delegated to such other Party under this Agreement.

6. **Notices.** Any notice required to be given by either party, or which either party may wish to give, shall be in writing and served either by personal delivery or sent by certified or registered mail, postage prepaid, addressed as follows:

To VTA: Santa Clara Valley Transportation Authority
Carolyn Gonot
3331 North First Street
San José, CA 95134-1906

To City: City of Milpitas
455 E. Calaveras Boulevard
Milpitas, CA 95035
Attention: Fire Chief

7. **Severability.** If any term, provision, covenant, or condition of this Agreement is held by a jurisdictional court to be invalid, void, or unenforceable, the rest of the Agreement shall remain in full force and effect.
8. **Amendments.** This Agreement may not be modified except by written instrument executed and approved in the same manner as this Agreement.
9. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties related to the subject matter set forth herein, and supersedes all understandings, offers, negotiations and other agreements, oral or written, concerning the subject matter contained herein. There are no representations or understandings of any kind not set forth herein. Any amendments, modifications or waivers of any of the terms and conditions of this Agreement must be in writing and executed by both Parties.
10. **Ambiguities.** The Parties hereto acknowledge and agree that this Agreement has been negotiated and drafted by legal counsel for each party and that each party has had an opportunity to review this Agreement as well as consult with its legal counsel regarding the meaning of its terms. Consequently, the doctrine that ambiguities in an agreement should be resolved against the drafting party shall not be employed in connection with this Agreement, and this Agreement shall be interpreted in accordance with its fair meaning.

11. **Successors and Assign.** This Agreement shall be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.
12. **Governing Laws.** This Agreement shall be governed by the laws of the State of California, and be binding on and inure to the benefit of the successors and permitted assignees of the respective Parties.
13. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.
14. **Non-Waiver.** The failure of either party to insist upon the strict performance of any of the terms, covenants, and conditions of this Agreement will not be deemed a waiver of any right or remedy that a party may have, and will not be deemed a waiver of the right to require strict performance of all of the terms, covenants, and conditions thereafter.
15. **Exhibits.** The Exhibits attached hereto are incorporated herein by this reference:

WITNESS THE EXECUTION HEREOF on the day and year last written below.

SANTA CLARA VALLEY TRANSPORTATION AUTHORITY

By: _____
Nuria Fernandez
General Manager

Date: _____

APPROVED AS TO FORM:

By: _____
General Counsel

CITY OF MILPITAS

By: _____
Tom Williams, City Manager

Date: _____

APPROVED AS TO FORM:

By: _____
Gary M. Baum, Interim City Attorney

EXHIBIT A

COOPERATIVE AGREEMENT BETWEEN THE SANTA CLARA VALLEY TRANSPORTATION AUTHORITY AND THE CITY OF MILPITAS RELATING TO THE BART SILICON VALLEY BERRYESSA EXTENSION

(phone) 510-839-5111
(toll free) 800-443-3556
(fax) 510-839-5325
oaksales@lncurtis.com

L.N.CURTIS & SONS
TOOLS FOR HEROES* since 1929

Pacific North Division
1800 Peralta Street
Oakland, California 94607
www.LNCURTIS.com

QUOTATION

DATE 08/12/14	TERMS NET 30 DAYS	F.O.B. DEST	KL	BASE CODE	QUOTATION NO. 1324960-00
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TO: CITY OF MILPITAS FIRE DEPT
ATTN:
777 S. MAIN ST
MILPITAS, CA 95035

This quotation subject to acceptance within 30 days. Shipment contingent upon strikes, fire, accidents or other delays beyond reasonable control for the company. L.N. Curtis and Sons retains ownership and title to all equipment until fully paid for in legal money of the United States of America. All prices quoted subject to applicable Federal, State, County or City Taxes and Licenses.

L.N. CURTIS AND SONS

By JOHN CASSANI

QUANTITY	UNIT	PART NUMBER	DESCRIPTION	UNIT PRICE	TOTAL PRICE
1	EA	22000CSTMSMT7DEMO	PARA SMT7 US&R RED TRAILER PKG, DEMO	150000.00	150000.00
			* PER ATTACHED INVENTORY LIST.		
1	EA	VEHICLE WRAP	AND LETERING	2055.00	2055.00
			*LNC&S PAYS THE FREIGHT TO THE DESTINATION.		
			*THANK YOU FOR THE OPPORTUNITY TO QUOTE!		
			Sub Total		152055.00
			Sales Tax		13304.81
			Total		165359.81

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March 27, 2015

Milpitas Fire Department
Attn: Chief Rick Frawley
777 S. Main Street
Milpitas, CA 95035

Dear Chief Frawley,

I am pleased to inform you that L.N. Curtis & Sons is Paratech's Sole Source provider of Paratech products and product orientation and familiarization for the following product groups in the state of California: Rescue Support Systems, Vehicle Stabilization Kits, MAXIFORCE® Air Lifting Bags, Rescue Air Cushions, Leak Sealing Systems, Powered Impact Tools and SMT™s (Special Mission Tender).

All domestic emergency service product inquiries in this state are referred to L.N. Curtis & Sons. In addition, L.N. Curtis & Sons is the only authorized trade-in and warranty evaluation center in this area. They are well trained and properly equipped to service your requirements for Paratech products. I am quite proud of our long standing relationship with L.N. Curtis & Sons and I know they will serve you well before and after the sale.

I appreciate your interest in our fine products and along with L.N. Curtis & Sons, look forward to providing you with the most advanced and highest quality equipment available for today's hazardous rescue operations. Your safety is our business, so please feel free to call me at any time.

Sincerely,

A handwritten signature in black ink, appearing to read "Hans Frank Normolle". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Hans Frank Normolle
Chief Sales Officer
Paratech, Inc.

City of Milpitas, California

BUDGET CHANGE FORM

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one: <input type="checkbox"/> Budget Appropriation <input type="checkbox"/> Budget Transfer	269-3578	\$165,359.81	269-812-4851	\$165,359.81

Explain the reason for the budget change:

Background: The Milpitas BART station is currently under construction and is projected to be completed in late 2016 and operational in late 2017. As such, the Milpitas Fire Department is currently preparing for enhanced emergency response operations within the area of the Milpitas BART station and tracks. After reviewing the potential impacts of both the construction phase and the operations phase of the BART system, the need for an increased technical rescue capacity has been identified as an area that will require additional resources from the Milpitas Fire Department due to the unique challenges within the BART guideway and station.

The Milpitas Fire Department has identified the Urban Search & Rescue Trailer by Paratech, Inc. as the appropriate comprehensive rescue trailer equipped to perform lifting and stabilization in significant technical incidents. The inventory includes airbags, stabilization shores, and equipment for the cutting of metal rail cars.

The sole vendor for Paratech, Inc. products and support, including the Paratech Urban Search & Rescue Trailer, in California is LN Curtis & Sons, a fire equipment supplier. LN Curtis & Sons is also the only authorized trade-in and warranty repair work center in the Bay Area region for Paratech Inc. products.

The Paratech, Inc. Urban Search & Rescue Trailer and equipment is compatible with existing Milpitas FD rescue equipment as well as rescue equipment that is currently part of the fire agency mutual aid system in Santa Clara County. Paratech, Inc. shores and struts are part of the Santa Clara County Fire technical rescue cache. It is essential for interoperability that all mutual aid equipment matches Santa Clara County Fire Standards. Section I-2-3.09 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the Purchasing Agent determines that there is only one source for the required supply or service.

Fiscal Impact: None. The funding for the purchase of the rescue trailer will be reimbursed by the Santa Clara Valley Transportation Authority.

Recommendations:

1. Approve the agreement with the Santa Clara Valley Transportation Authority for the funding of a sole source purchase of a specialized urban search and rescue trailer from L.N. Curtis & Sons for a total cost of \$165,359.81.
2. Approve a budget appropriation of \$165,359.81 into the Fire Department budget.

Check if City Council Approval required.

Meeting: August 4th 2015

Itemization of funds, if needed:		Amount
Requested by:	Division Head: Robert Mihovich, Fire Chief	Date: July 21, 2015
	Department Head:	Date:
Reviewed by:	Finance Director: <i>rc for Emma Karler</i>	Date: <i>7/21/15</i>
Approved by:	City Manager:	Date:
Date approved by City Council, if required:		Confirmed by:

FI/24786/V

Form 30-222 (Rev. 1/92)