

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS AUTHORIZING THE POLICE CHIEF TO EXECUTE THE AGREEMENT WITH THE COUNTY OF SANTA CLARA AND THE CALIFORNIA OFFICE OF TRAFFIC SAFETY FOR THE AVOID THE 13 GRANT PROGRAM FOR LOCAL LAW ENFORCEMENT AGENCIES**

**WHEREAS**, the County of Santa Clara and the California Office of Traffic Safety (OTS) are administering the 2008-2012 Avoid the 13 grant program, which offers grant funds to reimburse local law enforcement agencies for overtime expenditures specifically directed towards Driving Under the Influence (DUI) enforcement; and

**WHEREAS**, the goals of the Avoid the 13 grant program are to apprehend drunk drivers and to reduce the number of people killed or injured in alcohol-related crashes; and

**WHEREAS**, the City of Milpitas Police Department has been approved for a grant of \$21,659.08 to provide DUI enforcement staffing on an overtime basis in the City of Milpitas in conjunction with countywide Avoid the 13 holiday campaigns between October 1, 2008 and January 31, 2012; and

**WHEREAS**, the acceptance of the Avoid the 13 grant requires the City of Milpitas to enter into a Memorandum of Understanding (MOU) with the County of Santa Clara; and

**WHEREAS**, said MOU is attached as Exhibit A and is made a part hereof.

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

1. The recitals set forth above are true and correct and incorporated by reference.
2. Authorize the Police Chief to accept the \$21,659.08 grant and execute for and on behalf of the City of Milpitas the MOU with the County of Santa Clara for the 2008-2012 Avoid the 13 grant program.

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2009, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Robert Livengood, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

# EXHIBIT A

## MEMORANDUM OF UNDERSTANDING

### BETWEEN

### THE COUNTY OF SANTA CLARA AND THE CITY OF MILPITAS

### HOLIDAY DRIVING UNDER THE INFLUENCE CAMPAIGN – AVOID THE 13

### FUNDED BY

### THE STATE OFFICE OF TRAFFIC AND SAFETY

THIS MEMORANDUM OF UNDERSTANDING, entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2008, by and between the COUNTY OF SANTA CLARA, hereinafter called "COUNTY" and the CITY OF MILPITAS, hereinafter called "MILPITAS", related to the Holiday Driving Under the Influence Campaign – Avoid the 13 Program hereinafter called "Avoid the 13 Program" funded by the State Office of Traffic Safety, hereinafter called "OTS."

### WITNESSETH:

WHEREAS, it is necessary and desirable that City Law Enforcement Agencies hereinafter called "City LEAs" be retained for the purpose of performing professional services for the *Avoid the 13 Program*; and

WHEREAS, MILPITAS is one of the participating City LEAs in the *Avoid the 13 Program*;

NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. Services to be Performed by MILPITAS.

During the term of **October 1, 2008 through January 31, 2012** the Milpitas Police Department, hereinafter "Milpitas PD", shall provide DUI enforcement staff on an overtime basis as Milpitas PD staffing levels allow for the *Avoid the 13 Program* during the holiday enforcement period of October 1, 2008 through January 31, 2012.

MILPITAS commits to participate in the annual campaign as Milpitas PD staffing levels allow and to encourage Milpitas PD officers to emphasize DUI enforcement during all phases of the grant. MILPITAS further agrees to participate in annual sobriety checkpoints as Milpitas PD staffing levels allow.

MILPITAS agrees to adhere to the OTS grant programmatic, financial and statistical reporting and understands that adhering to the requirements is necessary to be reimbursed for DUI enforcement activities conducted during the time periods of October 1, 2008 through January 31, 2012.

2. Payment.

A. Maximum Amount. In full consideration of the services provided during holiday enforcement periods, the amount that COUNTY shall be obligated to pay for services rendered under this Memorandum of Understanding shall not exceed TWENTY-ONE THOUSAND SIX HUNDRED FIFTY-NINE DOLLARS AND EIGHT CENTS (\$21,659.08) for the term of this Memorandum of Understanding. Funds are to be used solely for reimbursement of officer overtime incurred while staffing DUI Enforcement activities in support of the *Avoid the 13 Program* during the time period of October 1, 2008 through January 31, 2012.

B. Rate of Payment. MILPITAS will receive reimbursement for officer overtime through the *Avoid the 13 Program* for a total sum not to exceed Twenty-One Thousand Six Hundred Fifty-Nine Dollars and Eight Cents (\$21,659.08). The Sheriff or her designee will notify MILPITAS of the amount of funds available at the start of the fiscal year. The amount MILPITAS will receive will be based on actual staff hours worked on DUI enforcement for the *Avoid the 13 Program* and as invoiced in accordance with Paragraph C, Invoice Requirements, below. Funding is solely for reimbursement of officer overtime incurred during DUI enforcement activities conducted during the *Avoid the 13* enforcement period.

C. Invoice Requirements. Invoices shall include dates and hours worked, officer's name, officer's overtime salary rate with allowable benefits, number of hours worked, and total dollars requested for overtime reimbursement. The only benefit costs that OTS will reimburse are OASDI (Social Security), State Workers' Compensation and Medicare. MILPITAS and/or MILPITAS LEA overhead costs are not allowable costs and will not be reimbursed. Invoices shall also include the statistics required by OTS as outlined in Paragraph 3, Statistical Reporting.

D. Time Limit for Submitting Invoices. MILPITAS shall submit an invoice for services to the Santa Clara County Sheriff's Office, hereinafter "Sheriff's Office" for payment. COUNTY shall not be obligated to pay MILPITAS for the services covered by any invoice if MILPITAS presents the invoice to the Sheriff's Office more than forty-five (45) days after the date MILPITAS renders the services, or more than forty-five (45) days after this Memorandum of Understanding terminates, whichever is earlier.

3. Statistical Reporting

MILPITAS shall collect and report to COUNTY, the number of DUI Checkpoints paid with funds from this MOU. For each checkpoint, the following information must be collected and reported: number of vehicles passing through checkpoint, number of vehicles screened, number of field sobriety tests conducted, number of DUI arrests, number of criminal arrests, and number of vehicles impounded.

Additionally, MILPITAS shall collect and report the number of DUI arrests made, number of DUI-related traffic collisions resulting in an injury, number of people injured in a DUI-related traffic collision, number of DUI-related fatal collisions, number of fatalities resulting from a DUI-related traffic collision, and the number of DUI warrant arrests made during the enforcement period of October 1, 2008 through January 31, 2012.

4. Availability of Funds.

Payment of all services provided pursuant to this Memorandum of Understanding is contingent upon OTS funding the *Avoid the 13 Grant* with the COUNTY. In the event that OTS does not fund COUNTY's grant, COUNTY shall not be liable for any payment whatsoever. COUNTY may terminate this Memorandum of Understanding in accordance with the provisions of Section 8 below for unavailability of OTS funds.

5. Liability.

MILPITAS waives all claims and recourse against the County, including the right of contribution for loss or damage to property and personal injury to MILPITAS (including but not limited to its employees or agents) or third parties and releases the County from any and all liability related to or in any way connected to MILPITAS activities under this Memorandum of Understanding. MILPITAS agrees to indemnify County and hold it harmless for any loss or damage suffered by County as a result of activities under this Memorandum of Understanding.

6. Alteration of Memorandum of Understanding.

This Memorandum of Understanding is entire and contains all of the terms and conditions agreed upon by the parties. No alteration or variation shall be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement shall be binding on the parties hereto.

7. Records.

A. Access. MILPITAS agrees to provide to COUNTY, the Sheriff's Office, to any Federal or State department having monitoring or reviewing authority, to Sheriff's Office authorized representatives and/or their appropriate audit agencies upon reasonable notice, access to and the right to examine and audit all records and documents necessary to determine compliance with relevant Federal, State and local statutes, rules and regulations and this

Memorandum of Understanding, and to evaluate the quality, appropriateness and timeliness of services performed, for a period of at least three (3) years from the termination date of this Memorandum of Understanding, or until audit findings are resolved, whichever is greater.

B. Retention. COUNTY shall maintain and preserve in its possession all records relating to this Memorandum of Understanding for a period of at least three (3) years from the termination date of this Memorandum of Understanding, or until audit findings are resolved, whichever is greater.

8. Compliance with Applicable Laws.

All services to be performed by COUNTY and MILPITAS pursuant to this Memorandum of Understanding shall be performed in accordance with all applicable Federal, State, County and Municipal laws, ordinances and regulations.

9. Term of the Agreement.

Subject to compliance with the terms and conditions of this Memorandum of Understanding, the term of this Memorandum of Understanding shall be from **OCTOBER 1, 2008 THROUGH JANUARY 31, 2012.** This Memorandum of Understanding may be terminated by COUNTY or MILPITAS at any time upon seven (7) days written notice to the other party.

In witness whereof, the parties have executed this Memorandum of Understanding on the day and year last written below.

COUNTY OF SANTA CLARA

CITY OF MILPITAS

  
LAURIE SMITH                      Date  
Sheriff

By \_\_\_\_\_ Date  
Dennis Graham                      Chief of Police