

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND
THE CITY OF MILPITAS GRANTING PROGRAM FUNDS FOR THE
DISTRIBUTION OF 2008 HOMELAND SECURITY GRANT FUNDS**

This agreement is made October 23, 2008, by and between the County of Santa Clara (County) and the City of Milpitas (City/Town) for the distribution of FY 2008 Homeland Security Grant Program Funds.

RECITALS

WHEREAS, the FY 2008 Homeland Security Grant Program is made up of three grant programs; the State Homeland Security Program (SHSP, CFDA #97.073), the Urban Area Security Initiative Grant Program (UASI, CFDA #97.008), and the Metropolitan Medical Response System Grant Program (MMRS, CFDA #97.071); and

WHEREAS, the SHSP Program supports the implementation of State Homeland Security Strategies to address the identified planning, organization, equipment, training, and exercise needs for acts of terrorism and other catastrophic events. In addition, SHSP supports the implementation of the National Preparedness Guidelines, the National Incident Management System (NIMS), and the National Response Framework (NRF);

WHEREAS, the UASI Program addresses the unique planning, organization, equipment, training, and exercise needs of high-threat, high density Urban Areas, and assists them in building an enhanced and sustainable capacity to prevent, protect against, respond to, and recover from acts of terrorism;

WHEREAS, the MMRS Program enables jurisdictions to further enhance and sustain a comprehensive regional mass casualty incident response capability during the first critical hours of an incident. The program prepares jurisdictions for response to all-hazards mass casualty incidents, including terrorism, naturally occurring events, and large-scale hazardous materials incidents;

WHEREAS, the State has designated the County of Santa Clara as the Operational Area for purposes of distributing SHSP Grant funds to the cities, special districts and other entities within the County. An Anti-Terrorism Approval Body (County Approval Authority) has been appointed for the purpose of approving the distribution of SHSP funds at the Operational Area level;

WHEREAS, the State has designated the County to distribute and administer MMRS grant funds to the City of San Jose;

WHEREAS, the City and County of San Francisco has designated the County to distribute and administer UASI grant funds at the Operational Area level;

WHEREAS, on November 20, 2008, the California Emergency Management Agency awarded the County a Fiscal Year 2008 Homeland Security Grant of \$4,064,764. The allocation of the SHSP grant funds, \$3,743,543, will be determined by the County Approval Authority in accordance with the grant guidelines.

WHEREAS, on October 23, 2008, the City and County of San Francisco awarded the County a Fiscal Year 2008 UASI grant allocation of \$2,296,341. The allocation of the UASI grant funds will be determined by the UASI Approval Authority in accordance with the grant guidelines.

The parties agree as follows:

THE AGREEMENT

Article I. Payment

1. Amount of Payment

The County will provide the City, unless otherwise specified, with the equipment, supplies and/or other resources set forth in Exhibit A, Project Funding, which is attached and incorporated into this Agreement. Specifications for such equipment shall be provided by the City's requesting agency to the County for the appropriate procurement process. City's requesting agency will be notified when the procurement process is complete for final approval of equipment prior to the order being placed. If, through previous agreement with the County, the City is to procure their own equipment, performance milestone dates will apply, refer to Article 2, Section 3.

The County may reallocate SHSP funds as specified in Article 1, section 3 of this Agreement. County does not guarantee a minimum payment to the City.

Funds in the amount of \$904,946 have been set aside for the training program and \$300,000 for the exercise program from the total Homeland Security grant to be allocated during the term of this Agreement. The Office of Emergency Services will allocate training and exercise funds to agencies as determined by the Training/Exercise Advisory Group.

Funds in the amount of \$220,000 have been allocated through UASI for approved training course expenses. City may be eligible for reimbursement through the County for authorized training courses.

Authorized personnel budgets are allowable within the Sheriff's Office, County Office of Emergency Services, Central Fire, and Public Health Emergency Medical Services. The personnel budget for these departments will reflect the expenditure authority. Actual reimbursements costs will be requested through the County Office of Emergency Services. Based on the preference of the Department/Agency, reimbursement requests may be requested on a monthly or quarterly basis. For

County Departments, reimbursement will be made via inter-county transfer. For all others, a county warrant will be issued.

2. Maximum Amount Payable

Subject to the availability of funds and the priorities established by the County Approval Authority, the maximum amount of SHSP Grant funds payable by the County to the City under this Agreement must not exceed the total amount of the FY08 Homeland Security Grant.

3. Reallocation of SHSP Grant Funds

For the purpose of maximizing the resources available for disaster preparedness within the Operational Area, the City agrees that the County Approval Authority may reallocate funds under this agreement to the City or to another applicant if County determines that a City is unable to utilize the amount allocated under this Agreement.

County may base its determination on factors that include, but are not limited to the following: delivery timelines, fund expenditure capabilities, and timeliness of expenditure. County will notify the City in writing of any determination to reallocate funds, by issuing a "Notice of Reallocation." The funds will be put forth to the County Approval Authority for reallocation. The City agrees that the County has the authority to increase or decrease the maximum amount payable under this Agreement as specified in the Notice of Reallocation document and County has the authority to amend Exhibit A accordingly. Upon issuance, the Notice of Reallocation will automatically become part of this Agreement.

Article II. Use of Funds.

1. Scope of Services

- (a) If the City has been allocated funding for a project, Exhibit A, "SHSP Project Funding," will serve as the basis for the project. A further detailed description may be necessary and will be requested by the County if needed to be incorporated by reference herein. If future funding is allocated, the City will provide a detailed description of the approved project to be attached hereto and incorporated by reference herein.
- (b) The City will use the funds granted under this Agreement only for the purpose of obtaining equipment, training and exercise and implementing applicable programs authorized under the Fiscal Year 2008 Homeland Security Grant Program.
- (c) The City will use funds and equipment granted under this Agreement in a manner consistent with:

1. the applications submitted by the County to the State for the grant under this Agreement;
 2. the grant guidance issued by the State for the grant under this Agreement; and
 3. the notifications issued by the State of the approval of the grant under this Agreement.
- (d) The documents described in Article II 1(c) (1)-(3) of this Agreement (collectively the “State Grant Requirements”) are on file with the County and the granting agencies of the State, and are hereby incorporated into this Agreement. The City hereby acknowledges that it has received a copy of the State Grant Requirements.

2. Master Grant Obligations

- (a) The City agrees to comply with all applicable requirements and assurances contained in the State Grant Requirements and attached as Exhibit B, “Grant Assurances”. The City may designate vendors or sub-recipients to fulfill these obligations, including all State Grant Requirements and Grant Assurances.
- (b) If any provisions of this Agreement conflict with the State Grant Requirements, the provisions of the State Grant Requirements will control.
- (c) The City shall establish and maintain administrative, programmatic and fiscal management records in accordance with federal and state requirements, and:
1. Maintain financial management systems that support grant activities in accordance with federal and state requirements, including but not limited to requirements in 44 Code of Federal Regulations (“C.F.R.”) Part 13.20, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part II, Chapter 3.
 2. The County of Santa Clara will provide and affix equipment tracking numbers for all equipment purchased through our procurement process. Using the County issued tracking number, the city/town will maintain an equipment tracking ledger that tracks the equipment within their city/town and complies with federal and state requirements, including but not limited to requirements in 44 C.F.R. Parts 13.32 and 13.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6.
- (d) The city/town will ensure that any subrecipients or contractors with which the city/town enters any agreement comply with the certification requirements under 44 C.F.R. Part 13.35, “Sub-Awards to Debarred and Suspended Parties”.

3. Performance and Reporting Requirements

(a) If previously approved by the County and the City is conducting the purchasing process, the City will comply with the performance milestone dates as indicated on Attachment A.

(b) Performance reports, indicating the status of outstanding projects are due to the County representative identified in Section 5.1 as follows:

Performance Period 1 (July 1, 2009 – December 31, 2009) – due by January 15, 2010

Performance Period 2 (January 1, 2010 – June 30, 2010) – due by July 15, 2010

Performance Period 3 (July 1, 2010 – December 31, 2010) – due January 15, 2011

(c) The County will provide the City with a report template, (Exhibit C) and the City will utilize the template.

(d) Payments made by County to the City are conditioned upon the timely receipt of applicable, accurate and complete reports to be submitted by the City.

(e) The City will notify the County representative identified in Section 5.1, within 15 days, when the City has completed all performance obligations for these grants.

(f) City will provide single audit reports to County by July 31st of every fiscal year.

4. Disallowances

(a) During the term of this Agreement, County is not obligated to honor any claim for payment that is submitted more than three months following the date of the service for which payment is requested.

(b) All requests for reimbursement must be submitted by December 31, 2010. County will not process any claims submitted after this date.

Article III. Term and Termination.

1. Term of Agreement

This Agreement is effective from October 23, 2008 through December 31, 2010.

2. Termination

(a) Either party may terminate this Agreement for cause upon written notice to the other. Cause includes, but is not limited to a material breach of this Agreement, or a violation of any applicable laws.

(b) Opportunity to cure. The non-breaching party will give written notice of the breach to the breaching party, specifying the breach. The breaching party will not be deemed in default hereunder and the non-breaching party will not institute proceedings or exercise any remedies against the breaching party unless the breach has not been cured, corrected or remedied within thirty (30) days after the giving of such notice of breach or within such longer period as may be reasonably

required to cure, correct or remedy the breach, provided the breaching party has commenced such cure, correction or remedy within such thirty (30) day period and diligently and continuously pursues such cure, correction or remedy.

(c) If this Agreement is terminated, the City will return funding in accordance with grant guidelines.

(d) Budget Contingency

This Agreement is contingent upon the appropriation of sufficient funding by the state and County for the services covered by this Agreement. If funding is reduced or deleted for the services covered by this Agreement, the County has the option to either terminate this Agreement with no liability occurring to the County or to offer an amendment to this Agreement indicating the reduced amount.

Article IV. Liabilities.

1. Mutual Indemnification

In lieu of and notwithstanding the pro rata risk allocation which might otherwise be imposed between the parties pursuant to Government Code Section 895.6, the parties agree that all losses or liabilities incurred by a party shall not be shared pro rata but instead the County and the City agree that pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, their officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this Agreement. No party, nor any officer, board member, 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 other parties hereto, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other parties under this Agreement.

Article V. Miscellaneous.

1. Notice

All notices required by this Agreement will be deemed given when in writing and delivered personally or deposited in the United States mail, postage prepaid, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

To the City:

Ruben Grijalva, Fire Chief
City of Milpitas Fire Department
777 S. Main Street
Milpitas, CA 95035

To the County:

Diane Stambaugh, Grants Manager
County of Santa Clara, Office of Emergency Services
55 W. Younger Ave., Suite 450
San Jose, CA 95110

2. Compliance and Nondiscrimination

The parties will comply with all applicable Federal, State, and local laws and regulations. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended, the Americans with Disabilities Act of 1990, the Rehabilitation Act of 1973 (Sections 503 and 504), the California Fair Employment and Housing Act (Government Code sections 12900 et seq.), and California Labor Code sections 1101 and 1102. The parties will not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor will the parties discriminate in the provision of services provided under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

3. Governing Law

This Agreement has been executed and delivered in, and will be construed and enforced in accordance with, the laws of the State of California.

4. **Assignment**

The parties may not assign this Agreement or the rights and obligations hereunder without the specific written consent of the other.

5. **Entire Agreement**

This document represents the entire Agreement between the parties with respect to the subject matter hereof. All prior negotiations and written and/or oral agreements between the parties with respect to the subject matter of this Agreement are merged into this Agreement.

6. **Amendments**

This Agreement may only be amended by an instrument signed by the parties.

7. **Counterparts**

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

8. **Severability**

If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

9. **Waiver**

No delay or failure to require performance of any provision of this Agreement will constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party must be in writing, and will apply solely to the specific instance expressly stated.

10. **Conflict of Interest**

In accepting this Agreement, City covenants that it presently has no interest and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of services under this Agreement. City is responsible for assuring compliance of its subcontractors, if any, with the requirements of this provision.

11. **Certified Resolution of Signature Authority**

Upon request of Santa Clara County, City will deliver to Santa Clara County a copy of the resolution(s) authorizing the execution, delivery and performance of this Agreement, certified

as true, accurate and complete by the appropriate authorized representative of City.

Signed:

COUNTY OF SANTA CLARA

CITY OF MILPITAS

By _____ date _____
Gary Graves
Acting County Executive

by _____ date _____
Thomas C. Williams
City Manager

Approved as to Form and Legality:

Approved as to Form and Legality:

Susan Swain
Lead Deputy County Counsel

City Attorney

- Exhibit A FY08 Project Funding
- Exhibit B Grant Assurances
- Exhibit C Report Template