

**BUDGET CHANGE FORM**

Type of Change	From		To	
	Account	Amount	Account	Amount
Check one:				
<input checked="" type="checkbox"/> Budget Appropriation	100-3577	\$53,138	100-714-4113	\$21,777
<input type="checkbox"/> Budget Transfer			100-714-4225	9,380
			100-2940	21,981

**Explain the reason for the budget change:**

**Background:** Santa Clara County Health Department was awarded a \$6.9 million, two year grant through the Communities Putting Prevention to Work (CPPW) program to address tobacco use and exposure to second-hand smoke.

The Public Health Department has made \$450,000 available to cities in the county to participate in this effort of tobacco prevention. Each city is eligible for a base award of \$15,000 and an additional amount based on population. All activities must be completed by March 2, 2012. The Police Department submitted the grant application outlining two objectives: 1) Amend the current ordinance to strengthen no smoking provisions in certain public places, and 2) Direct enforcement involving decoy youth surveys and sting operations.

The Police Department has been notified the application has been accepted and we have been approved to receive \$53,138.

**Fiscal Impact:** None. The grant will cover all costs incurred for tobacco prevention efforts.

**Recommendation:**

1. Authorize the City Manager to accept the Santa Clara County Health Department "Communities Putting Prevention to Work" Grant in the amount of \$53,138.
2. Approve a budget appropriation in the amount of \$ 21,777 for the Police Department overtime budget and \$9,380 for the Police Department supplies budget from grant revenue.

Check if City Council Approval required.

Meeting Date: May 17, 2011

Itemization of funds, if needed:	Amount

Requested by:	Division Head:	Date:
	Department Head: <i>Dennis Z. Dubu</i>	Date: <i>5-10-11</i>
Reviewed by:	Finance Director: <i>D. C. Kane</i>	Date: <i>5/10/11</i>
Approved by:	City Manager:	Date:

Date approved by City Council, if required: \_\_\_\_\_ Confirmed by: \_\_\_\_\_

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA  
AND CITY OF MILPITAS FOR TOBACCO PREVENTION ORDINANCES**

This is an Agreement between the County of Santa Clara (“County”) and the City of Milpitas (“Contractor”) providing Tobacco Prevention Ordinances for City of Milpitas, is made effective May 20, 2011.

WHEREAS, the County received grant funds from the Centers for Disease Control and Prevention, for the purpose of implementing population-based approaches to tobacco prevention and control; and,

WHEREAS, Contractor submitted a Letter of Commitment (Exhibit D) to accept funding for and part-take in related research, ordinance development/legal analysis, public outreach and enforcement and compliance activities; and,

WHEREAS, Contractor’s letter of commitment has been accepted and by virtue of the parties’ execution of this Agreement, the Contractor will be awarded funding under the terms of this Agreement; and,

NOW, THEREFORE, the parties hereto agree as follows:

**Article 1. County’s Obligations.**

- 1.1. County will provide Contractor funding for tasks and deliverables in Exhibit A, Scope of Work and Exhibit D, Letter of Commitment, based on percent of total population as outlined in Exhibit E, Allocation of Funding by City, which are attached and incorporated into this Agreement. Compensation paid under this Agreement shall not exceed **\$53,138**.

**Article 2. Contractor’s Obligations.**

- 2.1 Contractor shall complete tasks and deliverables as stated in Exhibit A.
- 2.2 Contractor shall collect evaluation data and provide the results to the County.
- 2.3 Contractor shall maintain records adequate to demonstrate that funding received under this Agreement is used in accordance with this Agreement. These records shall be maintained during the term of this Agreement and for a period of three (3) years from termination of this Agreement or until all claims, if any, have been resolved, whichever period is longer, or longer if otherwise required under other provisions of this Agreement.
- 2.4 Contractor shall permit the County and its authorized representatives to monitor Contractor’s performance of this Agreement. To the extent permitted by law, such monitoring may include, but not be limited to, audits and review of records related to

Agreement w/ City of Milpitas for  
Tobacco Prevention Ordinance through  
March 2, 2012

this Agreement. Such monitoring shall be permitted at any time during Contractor's normal business hours upon no less than 24 hours advance notice.

- 2.5 Contractor shall designate a project director/coordinator responsible for overseeing the performance of this Agreement, and serving as County's primary contact for the purpose of monitoring this Agreement. County must be notified in writing of any change of the project director/coordinator.

### **Article 3. Term and Termination.**

- 3.1 Term of this Agreement.

This Agreement is effective from May 20, 2011 through March 2, 2012, unless terminated earlier in accordance with this Agreement.

- 3.2 Termination.

a. Termination for Cause. County may terminate this Agreement for cause upon written notice to Contractor. For purposes of this Agreement, cause includes, but is not limited to, any of the following: (a) material breach of this Agreement by Contractor, (b) violation by Contractor of any applicable laws, or (c) assignment by Contractor of this Agreement without the written consent of County. Such notice shall specify the reason for termination and shall indicate the effective date of such termination.

b. Termination for Convenience. Either party may terminate this Agreement without cause by giving the other party thirty (30) days written notice.

### **Article 4. Miscellaneous**

- 4.1 Independent Contractor.

Contractor will perform all work and services described herein as an independent contractor and not as an officer, agent, servant or employee of County. None of the provisions of this Agreement is 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 provisions of this Agreement. 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 or as is explicitly provided herein. Contractors will be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any.

4.2 Assignment.

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

4.3 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.

4.4 Amendments.

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

4.5 Waiver.

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

4.6 Notices.

To Contractor:  
Daryl Sequeira  
Milpitas Police Department  
1275 N. Milpitas Blvd.  
Milpitas, CA 95035

To County:  
Kathy Yu  
Public Health Department, CDIP  
1400 Parkmoor Avenue, Suite 120B  
San Jose, CA 95126

4.7 Severability.

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions and provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

4.8 Governing Law.

This Agreement shall be construed and its performance enforced under California law.

#### 4.9 Non-Discrimination.

The County of Santa Clara is an equal opportunity employer. Contractor must comply with all applicable Federal, State, and local laws and regulations including Santa Clara County's equal opportunity requirements. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; the Rehabilitation Act of 1973 (Sections 503 and 504); California Labor Code sections 1101 and 1102. Contractor must 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 affiliation, or marital status in the recruitment, selection for training including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation.

#### 4.10 County No-Smoking Policy.

Contractor and its employees, agents and subcontractors, shall 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 health 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.

#### 4.11 Debarment and Suspension Certification.

Contractor guarantees that it, its employees, contractors, subcontractors or agents (collectively "Contractor") are not suspended, debarred, excluded, or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor must within 30 calendar days advise the County if, during the term of this Agreement, Contractor becomes suspended, debarred, excluded or ineligible for participation in Medicare, Medi-Cal or any other federal or state funded health care program, as defined by 42. U.S.C. 1320a-7b(f), or from receiving Federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the Federal General Services Administration. Contractor will indemnify, defend and hold the County harmless for any loss or damage resulting from the conviction, debarment, exclusion or ineligibility of the Contractor.

#### 4.12 Budget Contingency.

This Agreement is contingent upon the appropriation of sufficient funding by the County for the services covered by this Agreement. If funding is reduced or deleted by the County 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.

#### 4.13 Beverage Nutritional Criteria.

Contractor shall 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.

#### 4.14 Counterparts.

This Agreement 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.

#### 4.15 Assignment of Clayton Act, Cartwright Act Claims

Contractor hereby assigns to the County all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the Contractor for sale to the County pursuant to this Agreement.

### **Article 5. Indemnification**

Contractor shall indemnify, defend, and hold harmless the County, its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the sole negligence or sole willful misconduct of the County. Contractor shall further reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation enforcing this provision. This provision shall survive termination of the agreement between the County and Contractor.

### **Article 6. Contractor Insurance Requirements**

Without limiting the indemnification of either party to this Agreement, each party shall maintain or cause to be maintained the following insurance coverage: (1) a policy of commercial general liability with limits of liability not less than one million dollars (\$1,000,000) per occurrence and one million dollars (\$1,000,000) annual aggregate; (ii) a policy of workers' compensation providing statutory

Agreement w/ City of Milpitas for  
Tobacco Prevention Ordinance through  
March 2, 2012

coverage; and (iii) such other insurance or self-insurance as shall be necessary to insure it against any claim or claims for damages arising under the Agreement.. Each party to this Agreement shall provide a Certificate of Insurance certifying that coverage as required herein has been obtained. The requirements of this section may be satisfied by the provision of similar coverage through a self-insurance program.

**Signed:**

PUBLIC HEALTH DEPARTMENT

CITY OF MILPITAS

by \_\_\_\_\_  
Dan Peddycord, Director      Date  
Public Health Department

by \_\_\_\_\_  
Thomas C. Williams, City Manager      Date  
City of Milpitas

Approved as to Form and Legality:

\_\_\_\_\_  
Juniper Lesnik Downs      Date  
Acting Lead Deputy County Counsel

Approved:

\_\_\_\_\_  
Emily Harrison      Date  
Deputy County Executive

Exhibits to this MOU:

- Exhibit A: Scope of Work
- Exhibit B: Line Item Budget and Budget Justification
- Exhibit C: Program Requirements
- Exhibit D: Letter of Commitment
- Exhibit E: Allocation of funding by City

Agreement w/ City of Milpitas for  
Tobacco Prevention Ordinance through  
March 2, 2012

Program Requirements

	<u>Item</u>	<u>Deadline</u>
<input type="checkbox"/>	Quarterly Reports Invoice Narrative of accomplishments Report 1512 Information (for CDC)  Cost Study	July 1 (service period 4/1 – 6/30) October 1 (service period 7/1 – 9/30) January 1 (service period 10/1 – 12/31) April 1 (service period 1/1/12 – 3/31/12)  July 31 (service period 4/1 – 6/30) October 31 (service period 7/1 – 9/30) January 31 (service period 10/1 – 12/31)
<input type="checkbox"/>	Quarterly Meetings/Trainings	TBD