

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND  
THE CITY OF MILPITAS GRANTING PROGRAM FUNDS FOR THE  
DISTRIBUTION OF 2010 HOMELAND SECURITY GRANT FUNDS**

This agreement is made May 16, 2011, by and between the County of Santa Clara (County) and the City of Milpitas (City) for the distribution of 2010 Homeland Security Grant Program Funds.

**RECITALS**

WHEREAS, the State Homeland Security Program (SHSP, CFDA #97.073) 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 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, on October 25, 2010, the California Emergency Management Agency awarded the County a 2010 Homeland Security Grant of \$3,784,772. The allocation of the SHSP grant funds, \$3,784,772, will be determined by the County Approval Authority in accordance with the grant guidelines; and

NOW THEREFORE, the parties agree as follows:

**THE AGREEMENT**

**Article I. Payment**

**1. Payment Eligibility**

Unless otherwise approved in advance by the Grants Administrator, County Office of Emergency Services, only an actual cash disbursement by the City for a claimed expense is eligible for reimbursement by the County for projects as approved and specified in Exhibit A, SHSGP Allocated Project Funding, which is attached and hereby incorporated into this Agreement.

**2. Amount of Payment**

The County will provide the City, unless otherwise specified, with the equipment, supplies and/or other resources as set forth in Exhibit A, SHSGP Allocated Project

Funding. 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 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 \$681,886 have been set aside for the training program and \$147,500 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.

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. Reimbursement for actual cash disbursements 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 2010 Homeland Security Grant as allocated by the County Approval Authority.

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 without liability and County has the authority to amend Exhibit A, "SHSGP Allocated Project Funding," 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, "SHSGP Allocated 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 2010 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 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 sub-recipients 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 Exhibit A, “SHSGP Allocated Project Funding.”

(b) Performance reports, indicating the status of outstanding projects are due to the County representative identified in Article V, Section 1 as follows:

Performance Period 1 (May 31, 2011 – December 31, 2011) – due by January 15, 2012

Performance Period 2 (January 1, 2012 – June 30, 2012) – due by July 15, 2012

Performance Period 3 (July 1, 2012 – December 31, 2012) – due January 15, 2013

(c) The County will provide the City with a report template (Exhibit C, “Performance Report”), 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, including supporting documents, to be submitted by the City.

(e) The City will notify the County representative identified in Article V, Section 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 31<sup>st</sup> of every fiscal year.

**4. Disallowances**

- (a) Unless otherwise approved in advance by Grants Administrator, County Office of Emergency Services, the County will not process any claims for reimbursement submitted by City without proof of actual cash disbursement by City for expenses claimed.
- (b) 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.
- (c) All requests for reimbursement must be submitted by December 31, 2012. County will not process any claims submitted after this date.

**Article III. Term and Termination.**

**1. Term of Agreement**

This Agreement is effective from May 16, 2011 through December 31, 2012.

**2. Termination**

- (b) 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:

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

To the County:

Roslyn Fuller  
Administrative Services & 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 GILROY

By \_\_\_\_\_  
Emily Harrison  
Deputy County Executive

Date

By \_\_\_\_\_  
Thomas C. Williams  
City Manager

Date

Approved as to Form and Legality:

Approved as to Form and Legality:

\_\_\_\_\_  
Kimberly Thomas Rapp  
Deputy County Counsel

\_\_\_\_\_  
City Attorney

Exhibit A 2010 SHSP Project Funding  
Exhibit B Grant Assurances  
Exhibit C Performance Report Template

State Proj #	Disc.		Requesting Agency	Title	Funded Amount	State Required Performance Milestone Reports Due Date		
B	GA	Planning	SCCo OES	Training/Exercise Coordinator	\$ 5,000			
B	GA	Tmg	SCCo OES	Training/Exercise Coordinator	\$ 55,000			
B	GA	Exer	SCCo OES	Training/Exercise Coordinator	\$ 30,000			
B	EMS	Planning	SCCo EMS	Contractor	\$ 50,000			
C	All	Tmg	All	Training - supply costs	\$ 57,000			
C	All	Tmg	All	Training - Overtime	\$ 203,759			
C	All	Tmg	All	Training - Backfill	\$ 203,757			
C	All	Tmg	All	Training - Travel	\$ 217,370			
D	All	Exer	All	Exercise - supply costs	\$ 26,000			
D	All	Exer	All	Exercise - Overtime	\$ 57,875			
D	All	Exer	All	Exercise - Backfill	\$ 57,875			
D	All	Exer	All	Exercise - Travel	\$ 5,750			
E	EMG	Planning	SCCo OES	CADRE Network	\$ 194,000			
E	EMG	Planning	SCCo OES	EVC	\$ 100,000			
E	EMG	Equip	SCCo OES	Animal Preparedness	\$ 12,000			
F	Law	Equip	All Law	Ballistic Helmets w/Faceshields	\$ 590,273	11/30/2011		
F	Fire	Equip	Co. Fire	Scott Cap-1 CBRN Canister, NIOSH Approved	\$ 25,000	11/30/2011		
F	Fire	Equip	Co. Fire	NFPA 1994 Calcs 3 CBRN Terrorism Incident Protective Coverall Ensemble	\$ 45,000	11/30/2011		
F	Fire	Equip	Mt. View Fire	Level A Suit with Flash Protection	\$ 12,000	11/30/2011		
F	Fire	Equip	Mt. View Fire	Level B Suit	\$ 8,400	11/30/2011		
G	PCS	Equip	County Communications	VoIP Telecommunications System	\$ 406,000			
G	EMS	Equip	EMS	Portable Radios	\$ 50,000			
G	Law	Equip	Los Altos PD	Antenna Combining Equipment, Base Station Antenna	\$ 15,077			
G	Law	Equip	Los Altos PD	UHF Voting Receiver/Comparator	\$ 37,145			
G	Law	Equip	Los Altos PD	Base Station Radios	\$ 145,739			
G	Law	Equip	Los Altos PD	Battery Back-Up Power System	\$ 12,455			
G	Law	Equip	Los Altos PD	Installation	\$ 31,695			
G	Law	Equip	Los Altos PD	Shipping Charges	\$ 2,889			
G	Law	Equip	City of Palo Alto	Innergy IPS200 Portable Charging Stations	\$ 5,400			
G	Law	Equip	City of Palo Alto	Sytech RIOS SR-4003 Portable Interoperability System (for RTU-1000)	\$ 17,000			
G	Fire	Equip	So. County Fire	Base Radio Stations	\$ 60,000			
G	Fire	Equip	So. County Fire	Base Radio Stations	\$ 35,000			
G	Fire	Equip	So. County Fire	Antenna/Tower	\$ 10,000			
G	Fire	Equip	So. County Fire	Repeaters	\$ 20,000			
G	Fire	Equip	So. County Fire	Satellite Telephones w/indoor use antenna & adapter/charger	\$ 15,000			
G	Fire	Equip	City of Santa Clara Fire	Kenwood Mobile Radios	\$ 15,000			
G	Fire	Equip	City of Santa Clara Fire	Bendix King Portable Radios	\$ 6,200			
G	Fire	Equip	City of Santa Clara Fire	Individual/Portable Radio Receivers	\$ 10,585			
H	EMS	Equip	EMS	Mobile Command Vehicle	\$ 75,000	11/30/2011		
H	Law	Equip	Sheriff's Office	Command Boards	\$ 12,000	11/30/2011		
H	Law	Equip	Sheriff's Office	Portable Light Tower	\$ 20,000	11/30/2011		
H	Fire	Equip	County Fire	Portable Light Towers	\$ 40,000	11/30/2011		
H	Fire	Equip	Co. Fire	Stihl TS700 Saws	\$ 4,800	11/30/2011		
H	Fire	Equip	Co. Fire	Hilti Diamond Blades	\$ 20,550	11/30/2011		
H	Fire	Equip	Co. Fire	ICS 880GC 14" Chain Saw	\$ 10,000	11/30/2011		
H	Fire	Equip	Co. Fire	Spare Bars & Chains	\$ 5,000	11/30/2011		
H	Fire	Equip	Co. Fire	Pomeroxy Core Drill Kit	\$ 12,000	11/30/2011		
H	Fire	Equip	Co. Fire	Pomeroxy 2.5" OD Drill Bits	\$ 1,600	11/30/2011		
H	Fire	Equip	Co. Fire	Pomeroxy 3" OD Drill Bits	\$ 1,000	11/30/2011		
H	Fire	Equip	Co. Fire	XAIR Compressor Kits	\$ 25,000	11/30/2011		
H	Fire	Equip	Co. Fire	Heavy Duty Electrical Cords & Adapters	\$ 4,000	11/30/2011		
H	Fire	Equip	Co. Fire	Hilti Dry Diamond Coring System	\$ 8,800	11/30/2011		
H	Fire	Equip	Co. Fire	Hilti Bits	\$ 2,250	11/30/2011		
H	Fire	Equip	Co. Fire	Stihl MS 460 R Rescue Saws	\$ 5,000	11/30/2011		
I	Fire	Equip	City of Santa Clara Fire	Weather Surveillance Equipment	\$ 15,888	11/30/2011		
I	Fire	Equip	Mt. View Fire	Hazardous Gas Detection Equipment	\$ 30,640	11/30/2011		
J	EMS	Equip	EMS	Triage Tags	\$ 11,000			
					\$ 3,155,772			
A	Other		OES	M/A - Grants Manager	\$ 100,000			
A	EMS		EMS	Salary Costs for CMTF EMS Position	\$ 160,000			
A	Fire		SCCO FIRE	Salary Costs for CMTF Fire Position	\$ 192,000			
A	Law		Sheriff's Office	Salary Costs for CMTF Law Position	\$ 177,000			
					\$ 629,000			\$ 3,784,772
K	MMRS		City of San Jose	Diazepam 10mg Autoinjectors (15/case) - 60 cases	\$25,687	11/30/2011		
K	MMRS		City of San Jose	Airway Bags - 20 each	\$6,420	11/30/2011		
K	MMRS		City of San Jose	Stryker 6252 Stair Pro Custom - 12 each	\$33,728	11/30/2011		
K	MMRS		City of San Jose	Stryker Stair Chair Locking Rear Lift Handles - 12 each	\$418	11/30/2011		
K	MMRS		City of San Jose	Stryker Stair Chair Polypropylene-Restraint Set - 12 each	\$696	11/30/2011		
K	MMRS		City of San Jose	Stryker Stair Chair Removable Head Support 6252 - 12 each	\$747	11/30/2011		
K	MMRS		City of San Jose	Laerdal ALS Simulator - 5 each	\$58,651	11/30/2011		
K	MMRS		City of San Jose	Laerdal VitalSim - 5 each	\$13,638	11/30/2011		
K	MMRS		City of San Jose	Intro ALS Simadv Custsite - 1 each	\$3,923	11/30/2011		
K	MMRS		City of San Jose	ALS Simulator Extended Warranty - 1 year	\$7,072	11/30/2011		
K	MMRS		City of San Jose	ALS Simulator Bleeding Trauma Module - 1 module	\$2,192	11/30/2011		
K	MMRS		City of San Jose	ALS Simulator MegaCode Trauma Module Set - 1 module	\$2,192	11/30/2011		
K	MMRS		City of San Jose	Planning Position	152,553	11/30/2011		
K	MMRS		City of San Jose	Mgmt/Admin	9,522	11/30/2011		



**California Emergency Management Agency**

***FY2010 Grant Assurances***  
(All HSGP Applicants)

Name of Applicant: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

E-Mail Address: \_\_\_\_\_

As the duly authorized representative of the applicant, I certify that the applicant named above:

1. Will assure that grant funds will support efforts related to providing an integrated mechanism to enhance the coordination of national priority efforts to prevent, respond to, and recover from terrorist attacks, major disasters and other emergencies.
2. Has the legal authority to apply for Federal assistance and has the institutional, managerial and financial capability to ensure proper planning, management and completion of the grant provided by the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) and sub-granted through the State of California, California Emergency Management Agency (Cal EMA).
3. Will assure that grant funds are used for allowable, fair, and reasonable costs only and will not be transferred between grant programs (for example: State Homeland Security Program, Urban Area Security Initiative, Citizen Corps Program, and Metropolitan Medical Response System) or fiscal years.
4. Will comply with any cost sharing commitments included in the FY2010 Investment Justifications submitted to DHS/FEMA/Cal EMA, where applicable.
5. Will give the Federal government, the General Accounting Office, the Comptroller General of the United States, the State of California, the Office of Inspector General, through any authorized representative, access to, and the right to examine, all paper or electronic records, books, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards and/or awarding agency directives.
6. Agrees that funds utilized to establish or enhance State and Local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines, follow the Federal and State approved privacy policies, and achieve (at a minimum) baseline level of capability as defined by the Fusion Capability Planning Tool.

7. Will provide progress reports, and other such information as may be required by the awarding agency, including the Initial Strategy Implementation Plan (ISIP) within 45 (forty-five) days of the award, and update via the Grant Reporting Tool (GRT) twice each year.
8. Will initiate and complete the work within the applicable time frame after receipt of approval from Cal EMA.
9. Will maintain procedures to minimize the time elapsing between the award of funds and the disbursement of funds.
10. Will comply with all provisions of DHS/FEMA's codified regulation 44, Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, including the payment of interest earned on advances.
11. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes, or presents the appearance of, personal or organizational conflict of interest, or personal gain for themselves or others, particularly those with whom they have family, business, or other ties.
12. Understands and agrees that Federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express prior written approval from DHS/FEMA/Cal EMA.
13. Agrees that, to the extent contractors or subcontractors are utilized, will use small, minority-owned, women-owned, or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
14. Will notify Cal EMA of any developments that have a significant impact on award-supported activities, including changes to key program staff.
15. Will comply, if applicable, with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of structures.
16. Will comply with all Federal and State Statutes relating to Civil Rights and Nondiscrimination. These include, but are not limited to:
  - a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, which prohibits discrimination on the basis of race, color or national origin.
  - b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of gender.
  - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps.
  - d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age.
  - e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse.
  - f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.

- g. §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.
  - h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing.
  - i. Title 44 Code of Federal Regulations (CFR) Parts 7, 16, and 19 relating to nondiscrimination.
  - j. The requirements on any other nondiscrimination provisions in the specific statute(s) under which the application for Federal assistance is being made.
  - k. Will, in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds or race, color, religion, national origin, gender, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights, Office of Justice Programs.
  - l. Will provide an Equal Employment Opportunity Plan, if applicable, to the Department of Justice Office of Civil Rights within 60 days of grant award.
  - m. Will comply, and assure the compliance of all its subgrantees and contractors, with the nondiscrimination requirements and all other provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1.
17. Will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq. [P.L. 91-646]) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interested in real property acquired for project purposes regardless of Federal participation in purchases. Will also comply with Title 44 CFR, Part 25, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted programs.
18. Will comply, if applicable, with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is ten thousand dollars (\$10,000) or more.
19. Will comply with all applicable Federal, State, and Local environmental and historical preservation (EHP) requirements. Failure to meet Federal, State, and Local EHP requirements and obtain applicable permits may jeopardize Federal funding. Will comply with all conditions placed on any project as the result of the EHP review; any change to the scope of work of a project will require reevaluation of compliance with these EHP requirements.
20. Agrees not to undertake any project having the potential to impact the EHP resources without the prior written approval of DHS/FEMA/Cal EMA, including, but not limited to, ground disturbance, construction, modification to any structure, physical security enhancements, communications towers, and purchase and/or use of any sonar equipment. The subgrantee must comply with all conditions placed on the project as a result of the EHP review. Any construction-related activities initiated without the necessary EHP review and approval will result in a noncompliance finding, and may not be eligible for reimbursement with DHS/FEMA/Cal EMA funding. Any change to the scope of work will require re-evaluation of compliance with the EHP. If ground-disturbing activities occur during the project implementation, the subgrantee must ensure monitoring of the disturbance. If any potential archeological resources are

discovered, the subgrantee will immediately cease activity in that area and notify DHS/FEMA/Cal EMA and the appropriate State Historic Preservation Office.

21. Will ensure that the facilities under its ownership, lease or supervision, which shall be utilized in the accomplishment of this project, are not on the Environmental Protection Agency's (EPAs) List of Violating Facilities, and will notify Cal EMA and the Federal Grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating if a facility to be used in the project is under consideration for listing by the EPA.
22. Will provide any information requested by DHS/FEMA/Cal EMA to ensure compliance with applicable laws, including the following:
  - a. Institution of environmental quality control measures under the National Environmental Policy Act, National Historical Preservation Act, Archaeological and Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), Wetlands (11990) and Environmental Justice (EO12898) and Environmental Quality (EO11514).
  - b. Notification of violating facilities pursuant to EO 11738.
  - c. Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.).
  - d. Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.).
  - e. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523).
  - f. California Environmental Quality Act (CEQA). California Public Resources Code Sections 21080-21098. California Code of Regulations, Title 14, Chapter 3 Section 15000-15007.
  - g. Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
  - h. Applicable provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.
23. Will comply with Standardized Emergency Management System (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, Section 8607.1(e) and CCR Title 19, Sections 2445, 2446, 2447, and 2448.
24. Agrees that all publications created or published with funding under this grant shall prominently contain the following statement: *"This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."* The recipient also agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: *"Purchased with funds provided by the U.S. Department of Homeland Security."*
25. Acknowledges that DHS/FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: a) the copyright in any work developed under an award or sub-award; and b) any rights of copyright to which a recipient or sub-recipient purchases ownership with Federal support.

26. The recipient agrees to consult with DHS/FEMA/Cal EMA regarding the allocation of any patent rights that arise from, or are purchased with, this funding.
27. Has requested through the State of California, Federal financial assistance to be used to perform eligible work approved in the submitted application for Federal assistance and after the receipt of Federal financial assistance, through the State of California, agrees to the following:
  - a. Promptly return to the State of California all the funds received which exceed the approved, actual expenditures as accepted by the Federal or State government.
  - b. In the event the approved amount of the grant is reduced, the reimbursement applicable to the amount of the reduction will be promptly refunded to the State of California.
  - c. Separately account for interest earned on grant funds, and will return all interest earned, in excess of \$100 per Federal Fiscal Year.
28. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Sections 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
29. Will comply with provisions of the Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
30. Will comply, if applicable, with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
31. Will comply, if applicable, with the Laboratory Animal Welfare Act of 1966 (P. L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
32. Will comply with the minimum wage and maximum hour provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.
33. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. Section 276a to 276a-7), the Copeland Act (40 U.S.C. Section 276c and 18 U.S.C. Sections 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-333), regarding labor standards for Federally-assisted construction sub-agreements.
34. Agrees that:
  - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.
  - b. If any other funds than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or an employee of Congress, or employee of a Member

of Congress in connection with the Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.

- c. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subgrants, contracts under grants and cooperative agreements, and subcontract(s) and that all sub recipients shall certify and disclose accordingly.
  - d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
35. Agrees that equipment acquired or obtained with grant funds:
- a. Will be made available pursuant to applicable terms of the California Disaster and Civil Defense Master Mutual Aid Agreement in consultation with representatives of the various fire, emergency medical, hazardous materials response services, and law enforcement agencies within the jurisdiction of the applicant, and deployed with personnel trained in the use of such equipment in a manner consistent with the California Law Enforcement Mutual Aid Plan or the California Fire Services and Rescue Mutual Aid Plan.
  - b. Is consistent with needs as identified in the State Homeland Security Strategy and will be deployed in conformance with that Strategy.
36. Agrees that funds awarded under this grant will be used to supplement existing funds for program activities, and will not supplant (replace) non-Federal funds.
37. Will comply with all applicable Federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars A102 and A-133, E.O. 12372 and the current Administrative Requirements, Cost Principles, and Audit Requirements.
38. Will comply with all provisions of 2 CFR, including: Part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110); Part 225 Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87); Part 220 Cost Principles for Educational Institutions (OMB Circular A-21); Part 230 Cost Principles for Non-Profit Organizations (OMB Circular A-122).
39. Will comply with Subtitle A, Title II of the Americans with Disabilities Act (ADA) 1990.
40. Agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.
41. Will comply with Federal Acquisition Regulations (FAR), part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations.
42. Will comply with the financial and administrative requirements set forth in the current edition of the DHS Financial Management Guide.

43. Agrees that all allocations and use of funds under this grant will be in accordance with the FY 2010 Homeland Security Grant Program Guidance and Application Kit, and the California Supplement to the FY 2010 Homeland Security Grant Program Guidance and Application Kit. All allocations and use of funds under this grant will be in accordance with the Allocations, and use of grant funding must support the goals and objectives included in the State and/or Urban Area Homeland Security Strategies as well as the investments identified in the Investment Justifications which were submitted as part of the California FY2010 Homeland Security Grant Program application. Further, use of FY10 funds is limited to those investments included in the California FY10 Investment Justifications submitted to DHS/FEMA/Cal EMA and evaluated through the peer review process.
44. Will not make any award or permit any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension".
45. As required by Executive Order 12549, Debarment and Suspension, and implemented at 44 CFR Part 17, for prospective participants in primary covered transactions,
  - a. The applicant certifies that it and its principals:
    - i. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency.
    - ii. Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
    - iii. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and
  - b. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.
46. Agrees to comply with the Drug-Free Workplace Act of 1988, and certifies that it will or will continue to provide a drug-free workplace by:
  - a. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
  - b. Establishing an on-going drug-free awareness program to inform employees about:
    - i. The dangers of drug abuse in the workplace;
    - ii. The grantee's policy of maintaining a drug-free workplace;
    - iii. Any available drug counseling, rehabilitation, and employee assistance programs; and

- iv. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- c. Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
- d. Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will
  - i. Abide by the terms of the statement; and
  - ii. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
- e. Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to:
  - Department of Justice, Office of Justice Programs
  - ATTN: Control Desk
  - 633 Indiana Avenue, N.W.
  - Washington, D.C. 20531
- f. Notice shall include the identification number(s) of each affected grant.
- f. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted.
  - i. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
  - ii. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
- g. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

47. Will comply with all applicable requirements of all other Federal and State laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this program.

48. Understands that failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

The undersigned represents that he/she is authorized by the above named applicant to enter into this agreement for and on behalf of the said applicant.

Signature of Authorized Agent: \_\_\_\_\_

Printed Name of Authorized Agent: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Performance Report**  
**FISCAL YEAR 2010 Homeland Security Grant Program**

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Reporting City: \_\_\_\_\_

Performance Period: from \_\_\_\_\_ to \_\_\_\_\_  
(see Agreement with County for Performance Period date)

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Mailing Instructions: Please complete the performance report and return it by \_\_\_\_\_  
to: (see Agreement with County for Performance Period dates)

Santa Clara County Office of Emergency Services  
Attention: Roslyn Fuller  
55 West Younger Ave, Suite 450  
San Jose CA, 95110

Questions regarding the completion of this performance report should be directed to Santa Clara County Office of Emergency Services (408 )808-7811. Questions can also be sent via email to [roslyn.fuller@oes.sccgov.org](mailto:roslyn.fuller@oes.sccgov.org). Reports can be faxed to (408)294-4689, with a hard copy of the report mailed to the above address.

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***Part I –City Contact Information***

Authorized person who is responsible for completing this form:

Name \_\_\_\_\_

Title \_\_\_\_\_

Mailing Address \_\_\_\_\_

Phone \_\_\_\_\_ Fax \_\_\_\_\_

e-mail \_\_\_\_\_

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**Part II – Project Activities**

Directions: Complete the following items to reflect activities completed in your city during this reporting period.

1. Project Title: \_\_\_\_\_

2. Please explain the actions/processes being taken and estimated completion date.

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**Part III – Signature of Preparer**

I certify that I have prepared this report with the most timely and accurate information available.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_