



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Kimberly Shunk
Jennifer A. Maguire

SUBJECT: SEE BELOW

DATE: November 17, 2008

Approved

Date

COUNCIL DISTRICT: City-Wide

SNI AREA: N/A

SUBJECT: ADOPTION OF APPROPRIATION ORDINANCE AND FUNDING SOURCES RESOLUTION AMENDMENTS IN THE GENERAL FUND AND ADOPTION OF A RESOLUTION AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE AN AGREEMENT WITH THE COUNTY OF SANTA CLARA TO ACCEPT PROGRAM FUNDS FOR THE 2007 METROPOLITAN MEDICAL RESPONSE SYSTEM (MMRS) GRANT IN THE AMOUNT OF \$258,145 AND THE 2007 COMMUNITY EMERGENCY RESPONSE TRAINING (CERT) GRANT IN THE AMOUNT OF \$52,922

RECOMMENDATION

1. It is recommended that the City Council adopt the following appropriation ordinance and funding sources resolution amendments in the General Fund:
 - a. Establish a city-wide appropriation to the Office of Emergency Services (OES) for the 2007 Metropolitan Medical Response System (MMRS) grant in the amount of \$258,145;
 - b. Establish a city-wide appropriation to the Office of Emergency Services (OES) for the 2007 Community Emergency Response Training (CERT) grant in the amount of 52,922; and,
 - c. Increase the estimate for Revenue from the Federal Government by \$311,067.
2. Adopt a resolution authorizing the City Manager to negotiate and execute an agreement with the County of Santa Clara to accept program funds from the County for the 2007 MMRS and CERT grants in the amounts identified above.

OUTCOME

Council approval of the recommended appropriation actions will enable OES to:

1. Accept and appropriate 2007 MMRS grant funding totaling \$258,145 from the County of Santa Clara for the purchase of pharmaceuticals and training equipment, and funding for a 2009 exercise in addition to management and administration costs; and,
2. Accept and appropriate 2007 CERT grant funding totaling \$52,922 from the County of Santa Clara in support of training San José residents in emergency preparedness and response through the San José *Prepared!* program.

BACKGROUND

The Federal Department of Homeland Security (DHS) and the Federal Emergency Management Agency (FEMA) have awarded grants under a variety of new and renewed programs. The State of California is the grantee for these awards. These agencies have designated Operational Areas within each state as the sub-grantees for the per capita share of MMRS and CERT grants, which is the method in which these funds are awarded. The County of Santa Clara is the Operational Area in California that includes the City of San José.

The funds from the 2007 MMRS grant will continue San José's existing program, designed to protect first responders from bio-terrorism events. San José's Metropolitan Medical Task Force, funded through this grant, is a partnership consisting of San José's Fire and Police Departments, the Office of Emergency Services, County of Santa Clara Public Health, American Medical Response (AMR), the contracted medical transport provider for the County, and hospitals.

The funds from the 2007 CERT grant will provide funding support for the San José *Prepared!* program that provides free two-hour classes for interested San José residents in emergency preparedness, a more extensive 20-hour class that covers preparedness and response, and quarterly newsletters.

ANALYSIS

2007 MMRS Grant:

The 2007 MMRS grant funds will be used for the purchase of pharmaceuticals and training equipment, and to develop and implement a deployment of Metropolitan Medical Response Teams exercise planned for calendar year 2009.

2007 CERT Grant:

The 2007 CERT grant funds will be used to support an expansion of the San José *Prepared!* program in training more residents in emergency preparedness and response via its two-hour and 20-hour classes. At present, the two-hour class is available in English, Spanish, and Vietnamese.

This fall, it will be conducted for residents with hearing impairment using a sign language interpreter. Soon after, it will be available in Chinese. Therefore, the 2007 CERT grant will be used for printing class materials, publishing and mailing the San José *Prepared!* quarterly newsletters, community outreach, and other activities in alignment with grant goals.

EVALUATION AND FOLLOW-UP

No additional follow-up action with the City Council is expected at this time.

PUBLIC OUTREACH

- Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater. **(Required: Website Posting)**
- Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criterion 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

This memorandum does not meet any of the above criteria, but it will be posted on the City's website for the December 9, 2008 Council agenda.

COORDINATION

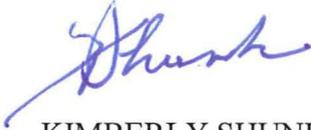
This memorandum has been coordinated with the San José Fire Department for input to the spending plan developed for the 2007 MMRS grant, the City Attorney's Office, and the Department of Planning, Building and Code Enforcement.

COST SUMMARY/IMPLICATIONS

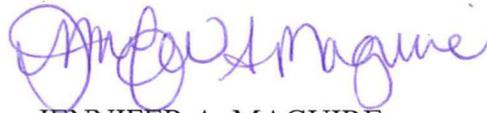
The City of San José will be reimbursed by the County of Santa Clara for grant-related expenditures in amounts not to exceed \$258,145 from the 2007 MMRS grant and \$52,922 from the 2007 CERT grant. There are no matching funds or in-kind services required for this grant.

CEQA

Not a project.



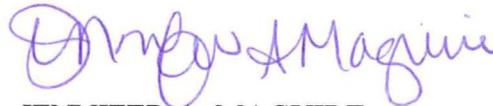
KIMBERLY SHUNK
Director, Office of Emergency Services



JENNIFER A. MAGUIRE
Director, City Manager's Budget Office

For questions, please contact Cay Denise MacKenzie at 277-4595.

I hereby certify that there will be available for appropriation in the General Fund in the Fiscal Year 2008-2009 moneys in excess of those heretofore appropriated therefrom, said excess being at least \$311,067.



JENNIFER A. MAGUIRE
Director, City Manager's Budget Office

**AGREEMENT BETWEEN THE COUNTY OF SANTA CLARA AND
THE CITY OF SAN JOSE GRANTING PROGRAM FUNDS FOR THE FISCAL YEAR
2007 HOMELAND SECURITY GRANT PROGRAM**

BACKGROUND

The Cities of Campbell, Cupertino, Gilroy, Los Altos, Milpitas, Monte Sereno, Morgan Hill, Mountain View, Palo Alto, San Jose, Santa Clara, Saratoga, Sunnyvale, the Towns of Los Gatos, Los Altos Hills, and the County of Santa Clara ("County"), are parties to the 1994 Operational Area Interim Agreement.

The Emergency Preparedness Council ("EPC") is the advisory body of the Santa Clara Operational Area in matters affecting disaster preparedness throughout the Operational Area. EPC membership includes an elected city council member from each city in the Operational Area and one member of the Board of Supervisors of the County of Santa Clara.

The County Emergency Services/Civil Defense Ordinance empowers the EPC to serve as the Santa Clara County Operational Area Council ("OAC") with governing body authority to carry out the responsibilities of the OAC.

The OAC has appointed an Anti-terrorism Approval Body (to be known hereafter as the "Approval Authority") for the purpose of approving the distribution of federal funds at the operational area level. The Approval Authority has the final authority for determining the OAC's distribution of Homeland Security funds. The Approval Authority consists of the County Public Health Officer, the County Fire Chief, a municipal fire chief, the County Sheriff, and a municipal police chief.

On October 9, 2007, the State Office of Homeland Security awarded the County a Fiscal Year 2007 Homeland Security Grant for the following programs: \$3,152,924 State Homeland Security Security Grant Program and \$258,145 Metropolitan Medical Response System Program; for a total of \$3,411,069 for the purpose of enhancing the ability of the State, urban areas, and local jurisdictions, to prevent, deter, respond to and recover from threats and incidents of terrorism. The allocation of the grant funds will be determined by the Approval Authority in accordance with the grant guidelines. The performance period for this grant expires on March 31, 2010.

THE AGREEMENT

Article I. Payment

1. Amount of Payment

The County will provide the City with the equipment, supplies and/or other resources set forth in Exhibit A, Project Funding, which is attached and incorporated into this Agreement (if applicable). 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 once the procurement process is complete for final approval of equipment prior to the order being placed.

The County may reallocate 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 \$315,292 have been set aside for the training program and \$110,850 for the exercise program from the total Homeland Security grant to be allocated during the term of this agreement. The Office of Emergency Services shall 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. 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 service priorities established by the Approval Authority, the maximum amount of Homeland Security Grant funds payable by the County to the City under this Agreement must not exceed the total amount of the FY07 Homeland Security Grant

3. Reallocation of Homeland Security Grant Funds

For the purpose of maximizing the resources available for disaster preparedness within the Operational Area, the City agrees that the 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 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, 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 and implementing applicable programs authorized under the Fiscal Year 2007 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. The City may designate vendors or sub-recipients to fulfill these obligations.
- (b) If any provisions of this Agreement conflict with the State Grant Requirements, the provisions of the State Grant Requirements will control.

3. Reporting

- (a) If the City is conducting the purchasing processes, the City will prepare progress reports for the duration of the term of this Agreement. The reports must include the status of all activities, including equipment purchases (if applicable).
- (b) The reports are due to the County representative identified in Article 5, section 1 as follows:

Performance Period 1 (July 1, 2008 - December 31, 2008) – due by January 15, 2008

Performance Period 2 (January 1, 2009 – June 30, 2009) – due by July 15, 2009

Performance Period 3 (July 1, 2009 – December 31, 2009) – due by January 15, 2010

- (c) The County will provide the City with a report template, (Exhibit B) 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 Article 5 section 1, within 15 days, when the City has completed all performance obligations for these grants.

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) Final invoice will be due within ten (10) days following the expiration date of the Performance Period of each applicable grant. 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 9, 2007 through February 28, 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 shall give written notice of the breach to the breaching party, specifying the breach. The breaching party shall not be deemed in default hereunder and the non-breaching party shall 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 shall return funding in accordance with grant guidelines.

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:

Kimberly Shunk
Director of Emergency Services, City of San Jose
855 N. San Pedro Street, #404
San Jose, CA 95110

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 shall 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 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.

Signed:

COUNTY OF SANTA CLARA

CITY OF SAN JOSE

By _____ date
Peter Kutras Jr.
County Executive

By _____ date
Deanna Santana
Deputy City Manager

Approved as to Form and Legality:

Approved as to Form and Legality:

Jennifer Sprinkles
Deputy County Counsel

Carl B. Mitchell
Senior Deputy City Attorney

Exhibit A FY07 Project Funding
Exhibit B Report Template