1M
9/16/10

CITY OF FRESNO
City Clerk's Office (Original)

AGREEMENT
BETWEEN CITY OF FRESNO AND COUNTY OF MERCED
(PUBLIC SAFETY INTEROPERABLE COMMUNICATION GRANT)

This Agreement ("Agreement") is made and entered into this 1st day of September, 2010, by and between the City of Fresno, a California municipal corporation ("City"), and the County of Merced, a political subdivision of the State of California ("Agency").

RECITALS

A. City has received an award of $5,431,433.30 in grant funds under the federal Homeland Security Public Safety Interoperable Communication Grant Program ("PSIC Program"), administered by the State Office of Homeland Security ("OHS"), pursuant to Grant No. 2007-GS-H7-0008 ("Grant"), incorporated herein by reference.

B. City, through its police department, is responsible for administering the disbursement of Grant funds received pursuant to the Grant for the regional (i.e., seven county region under the Grant) interoperable communication projects.

C. Agency desires to undertake a project for the purchase and installation of interoperability equipment, more particularly described in the attached **Exhibit A** and incorporated by reference herein, ("Project") to be funded in part from the Grant funds up to a total of $254,568.91.

D. The parties agree that the Project will add to and enhance existing regional operational efforts and future goals for interoperable communications.

E. Agency, in performing governmental functions or cooperating and coordinating with City hereunder, shall do so in conformance with the PSIC Program.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises hereinafter contained to be kept and performed by the respective parties, it is mutually agreed as follows:

Section 1. Responsibilities of City. Contingent upon funding being available, City agrees to utilize up to a total of $254,568.91 of the Grant funds for the Project. City will coordinate the preparation and prompt submittal of documentation to OHS required under the Grant, draw down of Grant funds and remit to the Agency or its designated payee(s) ("Payee") any Grant funds received for the Project subject to the receipt of detailed invoices reimbursable pursuant to the terms and conditions of the Grant and approved for payment by Agency. Nothing in this Agreement shall commit the taxing authority or general fund of City.

Section 2. Responsibilities of Agency. Agency will be responsible for the purchase, contract administration, Project management and all costs and expenses of the Project. Agency may use Grant funds for costs and expenses reimbursable under the Grant up to a total of $254,568.91. Agency will be responsible for providing detailed invoices to the City for disbursement of monies from the Grant funds. Agency will remain responsible for any costs not reimbursable pursuant to the Grant. Agency will be responsible, at its sole cost and expense, for maintaining any equipment or improvement obtained pursuant to this Agreement in

accordance with the terms and conditions of the Grant. Any Payee of Agency shall be designated by Agency in writing following Agency's acceptance of delivery, or the partial or completed work, and Agency's approval for payment of the detailed invoice from the Payee. Agency agrees to use the Project as intended under the Grant and consistent with Grant requirements. Agency acknowledges and agrees that funding is dependant upon satisfactory performance and availability of funds.

Section 3. Term of Agreement and Termination.

(a) Term of Agreement. The term of this Agreement shall begin September 1, 2010 and end June 30, 2011 unless extended by mutual written agreement of the parties or terminated as provided herein.

(b) Termination.

(1) Non-Allocation of Funds – The terms and conditions of this Agreement are contingent on the approval of funds by the appropriating party; provided however, should sufficient funds not be allocated, (i) the Agreement may be modified at any time upon mutual written agreement of the parties, or (ii) this Agreement may be terminated at any time by the non-appropriating party giving at least 30 days' advance written notice of an intention to terminate to the other party.

(2) Breach of Contract – Either party may terminate this Agreement upon 30 days advance written notice to the other party, in the event the other party substantially fails to perform or comply with any of the terms or conditions hereof and such failure is not cured during such 30-day notification period. In no event shall any payment by City constitute a waiver by City of any breach of this Agreement or any default which may then exist on the part of the Agency. Neither shall such payment impair or prejudice any remedy available to City with respect to the breach or default.

(3) Without Cause - Under circumstances other than those set forth above, this Agreement may be terminated by either party upon the giving at least 30 days advance written notice of an intention to terminate to the other party.

(4) Notwithstanding the foregoing, this Agreement shall automatically suspend or terminate upon City's written notice to Agency of any of the following events: (i) Grant termination, (ii) any non-appropriation or non-allocation of Grant funding required in pursuit hereof, (iii) Agency's illegal or improper use of Project procured with Grant funds, (iv) Agency's failure to comply with any term of this Agreement, (iv) Agency's failure to comply with Federal Drug/Alcohol regulations, or (v) Agency's failure to comply with any applicable provisions of the Grant. City shall have the right to demand of Agency the repayment to City of any funds disbursed to Agency or its Payee under this Agreement, which were not expended either in accordance with the terms of this Agreement, or with the terms of the Grant. Agency shall promptly refund any such funds upon demand.

Section 4. Indemnification. Agency shall be solely liable for, and shall indemnify, defend and hold harmless City and each of its officers, officials, employees, agents and volunteers ("Indemnitees") from, any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by any of the Indemnitees, the Agency or any other person, and from any and all claims, demands and actions in law or equity (including attorney's

fees and litigation expenses), arising directly or indirectly from the negligent or intentional acts or omissions of the Agency or any of its officers, officials, employees, agents or volunteers in the performance of this Agreement.

If Agency should subcontract all or any portion of the Project, Agency shall require each subcontractor to indemnify, hold harmless and defend City and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

Section 5. Insurance. It is understood and agreed that each party maintains insurance policies or self-insurance programs to fund their respective liabilities. Agency agrees that such programs or policy coverage for Workers' Compensation shall contain a waiver of subrogation as to the City and each of its officers, officials, agents, employees and volunteers. Evidence of insurance, certificates of insurance or other similar documentation shall not be required of any party under this Agreement.

If Agency should subcontract all or any portion of the Project, Agency shall require each subcontractor to provide the same insurance protection in favor of City and each of its officers, officials, employees, agents and volunteers as required by Agency to be provided by subcontractor in favor of Agency including, without limitation, endorsement of any commercial general liability or auto liability insurance policy to cover City and each of its officers, officials, employees, agents and volunteers as additional insureds under the policy; and endorsement of the workers' compensation insurance policy to contain a waiver of subrogation as to the City and each of its officers, officials, agents, employees and volunteers.

Section 6. Independent Contractor. The parties are acting in an independent capacity. Each party agrees that it, including any and all of its officers, agents, and employees, shall have absolutely no right to employment rights and benefits available to the other party's employees. Each party shall be solely liable and responsible for providing to, or on behalf of, its own officers, agents, and employees all legally and contractually required employee benefits. In addition, each party shall be solely responsible and save the other party harmless from all matters relating to payment of the party's employees, including, but not limited to, compliance with applicable social security withholding and all other regulations governing such matters. Further and without limitation, Agency will be responsible for its own actions in completing the Project under this Agreement and City shall not be liable for any civil liability that may arise from the completion of the Project by the Agency.

Section 7. Maintenance of Records. Agency shall maintain all books, documents, papers, accounting records, and other evidence pertaining to the performance of this Agreement and any expenses. Agency shall make such materials available at its offices at all reasonable times during the Agreement period and for three years from the date of expiration or termination of the Agreement. City and any duly authorized representative of the state or federal government that has provided funding for any acquisition or activities under this Agreement shall have access to any books, records, and documents of the Agency that are pertinent to the Agreement for audits, examinations, excerpts, and transactions, and copies thereof shall be furnished if requested. This paragraph shall survive expiration or termination of this Agreement.

Section 8. Non-waiver. Waiver of any breach or default hereunder will not constitute a continuing waiver, or a waiver of any subsequent breach, of either the same or another provision of this Agreement.

Section 9. Severability. If any provision of this Agreement is held invalid or unconstitutional, such decision shall have no affect on the validity of the remaining provisions of the Agreement and such remaining provisions shall continue to remain in full force and effect.

Section 10. Interpretation. The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

Section 11. Governing Law. The interpretation and enforcement of this Agreement will be governed by the laws of the State of California and where applicable, by federal law. The parties agree to submit any disputes arising under this Agreement to a court of competent jurisdiction located in Fresno County, California.

Section 12. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. It is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

Section 13. Assignment and Binding. Neither party shall assign or transfer its rights or obligations under this Agreement without the written consent of the other party. Subject to the preceding sentence, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each party's respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

Section 14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

Section 15. Compliance with Laws and Grant. In completing the Project under this Agreement, Agency shall at all times comply with all applicable laws of the United States, the State of California and its respective jurisdiction, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

Section 16. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

Section 17. Extent of Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by each party.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,
a California municipal corporation

By: _____
Jerry P. Dyer, Chief of Police
Fresno Police Department

ATTEST:
REBECCA E. KLISCH
City Clerk

By: Sherri L Badertscher
Deputy 11/17/10

No signature of City Attorney required. Standard Document #FPD 3.0 has been used without modification, as certified by the undersigned.

By: _____
Jeffrey Motoyasu
Lieutenant
Fresno Police Department

COUNTY OF MERCED,
a political sundivision of the State of California

By: _____ OCT 19 2010
Jerry O'Banion,, Chairman
Board of Supervisors

APPROVED AS TO LEGAL FORM:
James Fincher
Merced County Legal Counsel

By: _____

Addresses:

City:
City of Fresno
Attention: Courtney Espinoza, SCSO
P. O. Box 1271
Fresno, CA 93715-1271
Phone: (559) 621-2495
FAX: (559) 457-1541

Attachment:
Exhibit A – Project Description

Exhibit A
Agreement
Between City of Fresno and County of Merced
(PSIC Program)

Project Description

This project is to purchase and install two (2) multiple-band repeaters, one each at two sites serving Merced County. The intent is to implement a Multi-Band Command Channel(s) and a Gateway Device for radio communications and interoperability during multi-discipline, multi-jurisdictional incidents.

City of FRESNO REPORT TO THE CITY COUNCIL

AGENDA ITEM NO.	1M
COUNCIL MEETING	09/16/10
APPROVED BY	
DEPARTMENT DIRECTOR	
CITY MANAGER	

September 16, 2010

FROM: JERRY P. DYER, Chief of Police
Police Department

BY: SHARON SHAFFER, Deputy Chief
Support Division Commander

SUBJECT: AUTHORIZE THE CHIEF OF POLICE TO ENTER INTO AGREEMENTS AND ANY EXTENSIONS WITH THE COUNTIES OF KERN, TULARE, KINGS, MADERA, MERCED AND MARIPOSA; THE CENTRAL CALIFORNIA EMERGENCY MEDICAL SERVICES (EMS) AGENCY; AND, EX POST FACTO, WITH THE NORTH CENTRAL FIRE PROTECTION DISTRICT, AND TO ACT AS THE FUNDING PASS-THROUGH AGENCY FOR THE FISCAL YEAR 2007 CYCLE PUBLIC SAFETY INTEROPERABLE COMMUNICATION (PSIC) GRANT PROGRAM ($5.4 MILLION), SUB-GRANTED FROM THE STATE OF CALIFORNIA EMERGENCY MANAGEMENT AGENCY AND ADMINISTERED BY THE U.S. DEPARTMENT OF HOMELAND SECURITY

RECOMMENDATIONS

It is recommended that Council authorize the Chief of Police to enter into agreements and any extensions with the counties of Kern, Tulare, Kings, Madera, Merced and Mariposa; the Central California Emergency Medical Services (EMS) Agency; and, ex post facto, with the North Central Fire Protection District (collectively identified as the California Statewide Interoperability Executive Committee (CalSIEC) Central Planning Area (CPA), subject to approval as to form by the City Attorney's Office. These agreements will allow the Fresno Police Department (Department) to act as the pass-through agency for FY 2007 Public Safety Interoperable Communications (PSIC) grant funding ($5.4 million federal funding available for this project).

EXECUTIVE SUMMARY

In 2007 Council authorized the Department to apply for funding through the U.S. Department of Commerce and U.S. Department of Homeland Security under the FY 2007 Public Safety Interoperable Communications (PSIC) grant program. The Department was subsequently awarded approximately $5.4 million in grant funding to support development and/or enhancements to interoperable communications among first responder agencies (Law/Fire/EMS) throughout the seven-county Central Planning Area (CPA). The Department has maintained management and administrative responsibility for this grant, and has worked closely with participating agencies to determine critical needs and an equitable distribution of grant funds. An executive committee representative of all seven counties, the EMS Agency and the North Central Fire Protection District worked for more than a year on this program, and recently voted to distribute funding as follows (rounded to the nearest dollar for purposes of this report):

Kern County - $335,809; Tulare County - $913,208; Kings County - $771,401; Fresno County - $481,674; Madera County - $33,834; Merced County - $254,568; Mariposa County - $268,072; Central California EMS Agency - $446,402; North Central Fire Protection District (authorized by committee in 2009) - $491,503.

Presented to City Council
Date 9/16/10
Disposition Rec. approved

PSIC grant funds have been split into two distinct portions. The first portion, $1,833,652, has been designated for projects within the City and County of Fresno to enhance interoperable communications projects originally funded through the 2004 Urban Areas Security Initiative (UASI) grant. This funding has directly benefited the City through the enhancement of existing interoperability connections with Ethernet connectivity, firewalls and secure routers (approximately $460,000), additional technology improvements to the existing Mobile Command Center (approximately $370,000), planning and administrative costs (approximately $58,000) and training for Police and Information Services Department personnel (approximately $15,000). Decision-making regarding the funding of projects within the Fresno Urban Area is the function of the Fresno Urban Area Work Group (FUAWG), which is represented by elected members of the first responder disciplines in Fresno County (municipal law enforcement, county law enforcement, municipal fire, county fire, and health/EMS). The FUAWG meets to discuss funding of new and existing projects, and makes recommendations to the designated Points of Contact (POC's) for final spending authority. The UASI POC's are Fresno Police Chief Jerry Dyer and Fresno County Sheriff Margaret Mims.

The second portion, $3,597,781.30, has been designated for the seven counties (Fresno, Mariposa, Merced, Madera, Kings, Tulare and Kern), the District and the Central California EMS Agency, and will enhance interoperable communications throughout the CalSIEC Central Planning Area. In developing projects for funding, the Central Planning Area must consider the needs of local units of government and their needs for tactical interoperable communications. The Central Planning Area must coordinate within the seven counties to utilize these funds in a manner that will benefit the Planning Area as a whole. An Executive Committee for the Central Planning Area, which is comprised of members from government agencies in all seven counties, the District and the EMS Agency, facilitates the direction for regional interoperability throughout the region. Unlike the Fresno Urban Area Work Group, the Central Planning Area Executive Committee members make their final spending decisions by unanimous vote.

FISCAL IMPACT

There is no fiscal impact. The position directly involved in this funding pass-through process (one Management Analyst II) is funded from the PSIC grant and does not impact the City or Police Department general funds.

JPD:RWG:CLE:vrg
09/07/10

Attachment: Agreement - FPD 3.0 Standardized

In addition to the funding amounts noted above, the Fresno Urban Area (defined as the County of Fresno with the City of Fresno as the core metropolitan area) was awarded $1,833,652 in direct PSIC funding from the California Emergency Management Agency to support and enhance current interoperability systems. From this funding, the City of Fresno received approximately $884,000 to support or enhance interoperable communications between the Police Department and surrounding agencies within the County. An additional $107,000 in PSIC funding was recently made available to hire a full time Management Analyst II to manage ongoing grant projects throughout the performance period of this grant, raising the amount of PSIC funding awarded directly to the City to $991,000.

In order to act as the pass-through agency for this grant funding, the Department must enter into an agreement with each participating county, North Central Fire Protection District and the Central California EMS Agency that specifically identifies the roles and responsibilities of each party. The Police Department, working with the City Attorney's Office, developed a standardized agreement that can be used for each county and the Central California EMS Agency. The language of each agreement will be identical, with the exception of the name of the participating county or agency, specific dollar amount, and particulars of the project(s) being funded within each county or agency. The separate agreement with North Central Fire Protection District (District) is similar, except that the District is also required to provide a matching cash amount of $115,750.80 and has allocated this amount in their budget.

In order to expedite the procurement, installation and testing of equipment purchased by each participating county, District and agency, and to ensure that the goals and objectives of this grant can be met by the imposed milestone date of January 1, 2011, the Police Department is requesting Council authority to enter into an agreement with each participating county, District and agency, in a form approved by the City Attorney's Office. The District's project necessitated additional time and the Department proceeded to contract with the District on August 3, 2009, and is preparing to renew to extend the time for completion of the District project funded by the Grant. The Department, for this reason, is requesting Council authorize the Chief, ex post facto, to enter into such contract and renew same with an extension of time for completion.

BACKGROUND

In 2004 the National Commission on Terrorist Attacks Upon the United States (9/11 Commission) published their final report, outlining issues that significantly contributed to the Nation's vulnerability. One of the critical issues involved the ability for first responder agencies using disparate radio platforms to communicate with each other (tactical interoperable communications). The Department of Homeland Security has made interoperable communications a priority, focusing a great deal of federal grant funding in this area.

In 2007 the U.S. Department of Commerce funded the Public Safety Interoperable Communications (PSIC) grant, making nearly one billion dollars available to enhance tactical interoperable communications among first responders nationwide. The Department of Homeland Security is the administering agency for this grant funding, and has made the funding available to all states and territories. The funding awarded to California is administered through the California Emergency Management Agency (CalEMA).

Under the Public Safety Interoperable Communications grant program, only California Statewide Interoperable Executive Committee (CalSIEC) Planning Areas were eligible to apply for funding. The CalSIEC Central Planning Area includes Mariposa, Merced, Madera, Fresno, Tulare, Kings and Kern Counties. The City of Fresno (Fresno Police Department) was awarded funding under the FY 2007 PSIC grant, and serves as the management and administrative agency. The Department is part of, and works cooperatively with, the Central Planning Area Executive Committee to make decisions regarding the use of PSIC funds to support interoperable communications efforts throughout our seven-county region. The amount awarded to the Central CalSIEC Planning Area totaled $5,431,433.30.