



CITY COUNCIL AGENDA REPORT

MEETING DATE: SEPTEMBER 4, 2007

ITEM NUMBER:

SUBJECT: AGREEMENT WITH THE COUNTY OF ORANGE FOR FY 06-07 HOMELAND SECURITY GRANT PROGRAM

DATE: August 30, 2007

FROM: POLICE DEPARTMENT / ADMINISTRATION DIVISION

PRESENTATION BY: CHRISTOPHER SHAWKEY, CHIEF OF POLICE

FOR FURTHER INFORMATION CONTACT: JOCELYN SCHAMBER 714-754-5193

RECOMMENDATION:

Adopt resolution authorizing the chief of police or his designee, on behalf of the Costa Mesa Police and Fire Departments, to enter an agreement with the County of Orange to reimburse training expenses and receive equipment under the Fiscal Year 06-07 Homeland Security Grant Program.

BACKGROUND:

The Homeland Security Appropriations Act provides funding and equipment to train first responders against the threat of terrorism. The Department of Homeland Security and the Office for Domestic Preparedness have consolidated several funding programs under the Homeland Security Grant Program. Funding programs included in the accompanying 2006 transfer agreement letter are the State Homeland Security Grant Program, which provides funding for specialized equipment, exercises, training, and planning costs associated with updating and implementing each State's Homeland Security Strategy; and the Law Enforcement Terrorism Prevention Program, which provides funds to improve information sharing, target hardening, etc. to prevent terrorism-related threats.

In response to its 2006 Homeland Security Grant Program application, the County of Orange received nearly \$6 million. On behalf of the Office of Homeland Security, the County of Orange will facilitate equipment distribution and training reimbursement to individual cities, including Costa Mesa. Receipt of equipment and training reimbursement from the county will require a transfer agreement letter signed by the chief of police or his designee.

ANALYSIS:

The Homeland Security Grant Program will fund approved training and equipment to prepare for and protect against terrorism.

Fiscal Year 06-07 benefits Costa Mesa is eligible to directly receive are:

1. MIR3 first responder callout system;
2. WebEOC emergency information management software;
3. Citizens Emergency Response Team equipment;
4. Personal protective equipment replenishment;
5. Emergency Response to Terrorism Incidents training reimbursement;
6. Command Officers Response to Terrorism training reimbursement; and
7. Terrorism Liaison Officer training reimbursement.

ALTERNATIVES CONSIDERED:

None.

FISCAL REVIEW:

Adoption of the resolution authorizing participation in the agreement with the County of Orange obligates the City to comply with the terms and conditions of the agreement with respect to how the funds are spent and the program administered in certain respects. Funds expended for this program outside the terms and conditions of the agreement may not be reimbursable.

LEGAL REVIEW:

According to the County, it is impossible to make changes to the agreement as the same uniform agreement is used for every city within the county. There are no egregious provisions that render the agreement objectionable. However, the following concerns should be noted:

1. Paragraph 7 – Indemnification – In this agreement, the City alone agrees to indemnify the County for any claims which might occur as a result of the City’s performance of the agreement. In other words, if the County is sued because of something the City does, or fails to do, that is related to the agreement, the City would be obligated to defend the County. Generally speaking, indemnification should always be mutual so that the City would be afforded the same protection as the County. In this case, however, the risk is minimal because of the retroactive nature of the agreement and the fact that it is merely a matter of reimbursement for equipment and services already purchased.
2. Paragraph 12 – Examination of Documents – As the agreement is drafted, the County is not required to provide any specific notice to the City of its intent to inspect documents related to the grant funds. Presumably, however, the County would be reasonable in its inspection and would provide notice in order for the City to make necessary preparations despite the lack of such a requirement. Thus, the absence of a notice requirement is not a major concern.
3. Paragraph 14 – Materiality of Breach – Under the agreement, the County may refuse to pay the City if the City has failed to perform any of its obligations under the agreement. Generally, this provision should be limited to failure to perform “material covenants,” meaning the most important obligations which constitute the substance of the agreement. As it is, the City could effectively forfeit its right to reimbursement if it failed to comply with even a minor, inconsequential requirement that is collateral to the main issues. However, the risk of the County refusing to pay based upon

what amounts to a technicality is small, and the City can protect itself by carefully reading and complying with all obligations under the agreement.

CONCLUSION:

Entering into the Fiscal Year 06-07 Homeland Security Grant Program will benefit the police and fire departments. Accepting grant funds and equipment will allow for greater terrorism preparedness for police and fire personnel without impacting the general fund.

CHRISTOPHER SHAWKEY
Police Chief

MIKE MORGAN
Fire Chief

MARC R. PUCKETT
Director of Finance

KIMBERLY HALL BARLOW
City Attorney

- ATTACHMENTS: 1 [Governing Body Resolution](#)
 2 [Agreement to Transfer Property or
 Funds for FY06 Homeland Security
 Grant Purposes](#)