

**Council Meeting: August 19, 2008**

SUBJECT: Approval of Participation in the Memorandum of Understanding Between the Sunnyvale Department of Public Safety and the City of San Jose for the Purpose of the Silicon Valley Internet Crimes Against Children Training Reimbursement Grant and Approval of Budget Modification No. 3

REPORT IN BRIEF

As a member of the Silicon Valley Internet Crimes Against Children Task Force (SVICAC), the Department of Public Safety (DPS) is requesting Council approval to enter into a Memorandum of Understanding (MOU) with the City of San Jose (Attachment A) that will allow DPS to accept reimbursement for costs associated with the training of DPS employees.

Approval is also requested for Budget Modification No. 3 to accept and appropriate \$8,500 in grant funding from the City of San Jose, acting as the fiscal agent for SVICAC, to reimburse training costs related to task force objectives. This Agreement will remain in effect through December 31, 2013. Staff is requesting that Council allow continued participation in the SVICAC Training Costs Reimbursement Program, and the associated Special Project, as long as the goals, objectives and funding of the program remain unchanged.

BACKGROUND

The Internet Crimes Against Children (ICAC) Task Force Program was created to help state and local law enforcement agencies enhance their investigative capability and to arrest offenders who use the internet or other computer technology to sexually exploit children. The program is currently composed of fifty-seven (57) regional task force agencies and is funded by the United States Office of Juvenile Justice and Delinquency Prevention.

The San Jose Police Department is a Northern California ICAC Task Force Coordinator, acting as the lead agency and fiscal agent for the SVICAC. The SVICAC acts as a resource to provide investigative and technical support, as well as training opportunities to participating agencies. The SVICAC partnership assists with the development and enhancement of agency specific Internet Safety Programs and produces agency-specific Internet Safety brochures for distribution to the public.

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EXISTING POLICY

4.1 Law Enforcement Sub-Element

Goal 4.1A: Provide a safe and secure environment for people and property in the community.

Action Statement 4.1A.3a: Provide for quality preliminary investigations that will enhance the success of follow-up investigation and subsequent court presentation.

Action Statement 4.1A.3b: Provide for selective screening of cases to be investigated past the preliminary investigation stage.

Goal 4.1B: Provide community oriented services that are responsive to citizens' needs in traditionally non-criminal areas.

Policy 4.1D.2: Provide effective and efficient management of Public Safety resources in order to meet the needs of: The community, the internal organization, and those mandated by regional, State, and Federal agencies.

Action Statement 4.1D.2b: Develop proposals and apply for appropriate governmental grants.

DISCUSSION

As the internet has grown, investigations involving the need for sophisticated computer forensics have also increased. Many of the major criminal cases investigated by DPS involve some type of correspondence or data recovery from a computer system, cellular telephone or internet site. Some of these cases involve child sexual predators and/or child pornography distribution.

As the need for internet crime investigation increases so does the need for trained personnel that can access and recover data. The cost of training personnel to conduct computer investigations is expensive and requires Law Enforcement agencies to work together to more efficiently investigate these crimes. By organizing regional assets into task forces, the United States Office of Juvenile Justice and Delinquency Prevention has been able to maximize funding opportunities and bring comprehensive computer forensics to the local level to combat internet crimes, especially those directed at children.

Entering into the SVICAC MOU will enable DPS to participate in the SVICAC Training Cost Reimbursement Program and gain staff training that DPS would otherwise not be able to fund. In accordance with the MOU, the City of Sunnyvale will cover all upfront costs, including staff hours, associated with the training. Upon completion of travel and training, DPS will submit a Training Reimbursement Request Form to the City of San Jose for reimbursement of costs associated with class registration, airfare, airport

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shuttle, airport parking, meals/incidentals and lodging. The City of Sunnyvale will be reimbursed within the guidelines provided by the City of San Jose Travel Policy (Attachment A, Exhibit B). This policy is consistent with the City of Sunnyvale Travel Policy. However, meal reimbursement rates differ between the policies. The City of San Jose will reimburse employees a maximum of \$39.00/day while DPS provides employees a maximum of \$55.00/day. Staff feels that this \$16.00/day difference is insignificant to the overall reimbursement plan, and any difference between reimbursement amounts will be absorbed into the operating budget of Program 485.

FISCAL IMPACT

There is no net fiscal impact to the City for participating in this training, as expenditures related to the training will be reimbursed by grant funds. Budget Modification No. 3 has been prepared to recognize \$8,500 in grant revenue from the City of San Jose and appropriate it to a new special project.

**BUDGET MODIFICATION NO. 3
FISCAL YEAR 2009/2009**

	<u>Current</u>	<u>Increase (Decrease)</u>	<u>Revised</u>
General Fund			
<u>Revenues:</u>			
Silicon Valley Internet Crimes Against Children Grant	\$0	\$8,500	\$8,500
<u>Expenditures:</u>			
New Project: Silicon Valley Internet Crimes Against Children Training	\$0	\$8,500	\$8,500

In addition to the \$8,500 appropriated for FY 2008/2009, this project will also be funded through FY 2013/2014 at the same level. However, this project will be considered revenue dependent, meaning that it will only be funded if grant revenues continue to be available. Should grant resources discontinue prior to the end of the Memorandum of Understanding, project expenditures will no longer be funded.

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PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center, and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Authorize the Department of Public Safety to enter into a Memorandum of Understanding with the City of San Jose, acting as a fiscal agent for the SVICAC, which would allow DPS to accept reimbursement for costs associated with training provided to DPS employee(s) and approved by SVICAC; and approve Budget Modification No. 3.
2. Do not authorize the Department of Public Safety to enter into a Memorandum of Understanding with the City of San Jose, acting as a fiscal agent for the SVICAC, which would allow DPS to accept reimbursement for costs associated with training provided to DPS employee(s) and approved by SVICAC; and do not approve Budget Modification No. 3.

RECOMMENDATION

Staff recommends Alternative #1. Authorize the Department of Public Safety to enter into the Memorandum of Understanding with the City of San Jose for the reimbursement of training costs incurred and approved by SVICAC; and approve Budget Modification No. 3.

Reviewed by:

Don Johnson, Chief, Public Safety
Prepared by: Doug Moretto, Captain

Reviewed by:

Mary J. Bradley, Director of Finance

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Approved by:

Amy Chan
City Manager

Attachments

- A. Memorandum of Understanding (with Exhibits) between the Sunnyvale Department of Public Safety and the City of San Jose (Internet Crimes Against Children Training Costs)

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF SAN JOSE
AND
SUNNYVALE DEPARTMENT OF PUBLIC SAFETY**

(INTERNET CRIMES AGAINST CHILDREN TRAINING COSTS)

This MEMORANDUM OF UNDERSTANDING is entered into on this ____ day of _____ 2008 by and between the City of San Jose, ("CITY") and Sunnyvale Dept. of Public Safety ("AGENCY") for the purpose of defining the terms and conditions of the reimbursement of Internet Crimes Against Children California State grant-related expenses by the CITY to the AGENCY to attend Silicon Valley Internet Crimes Against Children ("SVICAC") Task Force training events.

RECITALS

WHEREAS, the mission of the SVICAC Task Force is to identify, apprehend and prosecute Internet sexual predators who exploit children through the use of computers, and to sponsor community education efforts regarding the prevention of internet crimes against children. The SVICAC Task Force seeks to enhance the effectiveness of participating agencies by providing investigative training to participants; and

WHEREAS, the CITY is the lead agency in the SVICAC Task Force. The SVICAC Task Force includes investigators, supervisors, or prosecutors from various local, state, and federal law enforcement agencies who act as partners. All participants acknowledge that the SVICAC Task Force is a joint operation in which all agencies act as partners in joint efforts to address Internet crimes against children. The chain of command and supervision of the San Jose Police Department is responsible for the policy and general direction of the SVICAC Task Force. The SVICAC Task Force coordinator will periodically contact supervisors, investigators, and prosecutors from other participating agencies to keep them informed of training opportunities, unusual circumstances, problems and successes of the SVICAC Task Force; and

WHEREAS, the SVICAC Task Force seeks to provide funding for investigative training to participating agencies within annual budget capabilities; and

WHEREAS, the SVICAC Task Force will organize training events annually as funding permits. The purpose of these training events will be to provide participants with an understanding of proper handling of digital evidence from the initial seizure of the computer / media to acquisition, and then progress to analysis of the data;

NOW, THEREFORE, the AGENCY and the CITY agree, as follows:

SECTION 1. TERM

This Agreement shall become effective January 1, 2008 ("Effective Date"), and shall remain in effect through December 31, 2013, subject to funding availability, and subject to the provisions of Section 4 of this Agreement. Regardless of the date of execution of this Agreement, this Agreement will be effective as of the Effective Date.

SECTION 2. AGENCY RESPONSIBILITIES

The AGENCY agrees to:

1. Within 15 days of written notification to the AGENCY's Programmatic Contact as specified in Section 6, from the SVICAC Task Force of an upcoming training event, the AGENCY agrees to notify the SVICAC Task Force coordinator of their intent to attend the training session by completing and submitting the attached Training Request Form (Exhibit C).
2. Pay all approved expenditures for the training sessions attended by AGENCY personnel as approved by the CITY's SVICAC Task Force Coordinator on the Travel Request Form.
3. Adhere to the allowable and maximum per person costs thereto as specified in (Exhibit A).
4. Comply with provisions 6.2 through 7.3.4 of the CITY's travel policy (Exhibit B).
5. Upon completion of travel, submit the attached Training Reimbursement Request Form (Exhibit D) within 45 days to the CITY's grants administrator as specified in Section 6 of this Agreement for the purpose of obtaining reimbursement of travel expenses. This submittal shall include an invoice, itemized receipts, all supporting documentation, and proof of AGENCY payment.

SECTION 3. CITY RESPONSIBILITIES

The CITY agrees to:

1. Notify in writing each participating AGENCY Programmatic Contact as specified in Section 6, of the details regarding training events for the year. This notification will take place at least 45 days prior to the training event. See January 1 through December 31, 2008 Training Schedule (Exhibit A).
2. Adhere to provisions 6.2 through 7.3.4 of the CITY's travel policy (Exhibit B), as prescribed in section 2236.21 of the *2006 Recipient Handbook* in developing the allowable reimbursable travel costs and maximums thereto as indicated in the Training Schedule (Exhibit A).

3. Upon receipt of the completed Training Request Form (Exhibit C), the CITY will notify the AGENCY within 15 days acknowledging receipt of the request and whether or not the request is approved or disapproved. Approval of the training request will be subject to and dependent upon availability of funds.
4. Upon receipt of the completed Reimbursement Request Form (Exhibit D), and all appropriate attachments and supporting documentation, the CITY will process the reimbursement within 45 days of receipt and mail payment to the address indicated on the Reimbursement Request Form.

SECTION 4. TERMINATION

1. 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.
2. 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.

SECTION 5. AMENDMENTS

No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representative(s) of the parties.

SECTION 6. NOTICES

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, return receipt requested, addressed to the other party at the address set forth below or at such other address as the party may designate in writing:

CITY:

Sgt. Randall Schriefer
SVICAC Task Force Coordinator
San Jose Police Department
Sexual Assaults Investigation Unit/
Child Exploitation Detail
201 W. Mission St.
San Jose, Ca 95110

Rick Cheney
Grants Administrator
San Jose Police Department
Fiscal Unit
201 W. Mission St.
San Jose, CA 95110

Phone: 408-277-4102
Fax: 408-971-8031
Email: randall.schriefer@sanjoseca.gov

Phone: 408-277-4488
Fax: 408-277-3775
Email: rick.cheney@sanjoseca.gov

AGENCY:

Programmatic Contact:

Fiscal Contact:

SECTION 7. 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.

SECTION 8. ASSIGNMENT

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

SECTION 9. ENTIRE AGREEMENT

This document, including Exhibits A through D, 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.

SECTION 10. 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.

SECTION 11. 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.

WITNESS THE EXECUTION HEREOF on the day and year hereinabove written.

CITY:

APPROVED AS TO FORM:

CITY OF SAN JOSE,
a municipal corporation

By _____
CARL B. MITCHELL
Senior Deputy City Attorney

By _____
CHRISTINE SHIPPEY
Assistant City Manager

AGENCY:

By _____

Agency/Dept Head
Authorized to Expend Grant Funds

Exhibit A

Training Schedule

January 1 through December 31, 2008

Budgeted Training Expenses (Per Person)	COST
<p><u>Computer Forensic Analysis Training</u> Date / Location / Vendor to be determined</p> <p><i>Allowable Costs:</i> Registration Airfare Airport Shuttle Meals & Incidentals Lodging Airport parking</p>	<p>\$ 3,230.00*</p>
<p><u>Encase Advanced Internet Examinations Training</u> Date / Location / Vendor to be determined</p> <p><i>Allowable Costs</i> Registration Airfare Airport Shuttle Meals & Incidentals Lodging Airport parking</p>	<p>\$ 3,230.00*</p>
<p><u>Neutrino Cell Phone Forensics Training</u> Date / Location / Vendor to be determined</p> <p><i>Allowable Costs</i> Registration Airfare Airport Shuttle Meals & Incidentals Lodging Airport parking</p>	<p>\$ 1,800.50*</p>
<p>*Note: All travel expenditures are also subject to travel policy provisions and maximums as indicated in Exhibit B.</p>	

Exhibit B

City of San Jose Travel Policy

(Selected relevant portions thereto for the sole purpose of providing informational guidance for this Memorandum of Understanding)

DEFINITIONS OF TRAVEL

Local Travel: Travel within the State of California and within sixty (60) miles from City Hall that does not require airfare and/or an overnight stay.

In-State Travel: Travel within the State of California that is beyond sixty (60) miles from City Hall and/or requires airfare and/or an overnight stay.

Out-of-State Travel: Any travel outside of the State of California or international travel.

Emergency Travel: Travel by Police Department personnel in-state or out-of-state which must be undertaken on such short notice that normal travel processing in accordance with this section is not possible.

6.2 Travel Expenses

Where two or more employees are authorized to attend the same event and ground transportation is to be utilized during any portion of travel, the department shall coordinate travel arrangements to maximize the use of such ground transportation by the employees involved in order to minimize the expense to the City. Refusal by employees involved to coordinate travel arrangements may be the basis for non-payment of transportation reimbursement. Payment for the use of any particular mode of transportation is determined by the Director of Finance based on the least total cost to the City.

Payment for travel expenses is limited as follows:

6.2.1 Private Vehicle

6.2.1.1 When an employee uses their private vehicle for transportation to and from a point of destination, payment is at the City's mileage reimbursement rate. (See City Policy Manual section 1.8.3, Private Vehicle Mileage Reimbursement Policy)

6.2.1.2 When an employee uses their private vehicle for transportation to and from scheduled carrier services (airport, etc.) or for intra-City transportation, payment is at the City mileage reimbursement rate. (See City Policy Manual section 1.8.3, Private Vehicle Mileage Reimbursement Policy)

6.2.1.3 When, for personal reasons, an employee elects to travel by private vehicle to and from a point of destination rather than flying, the employee will be reimbursed for the least

Exhibit B (Continued)

expensive mode of transportation. Employees shall provide documentation for the lowest cost of public transportation along with the Travel Request. In addition, parking and taxis may be reimbursed if these expenses would have been provided as reimbursements if the employee had used public transportation and the expenses would be reimbursed in other sections of this policy.

6.2.2 Scheduled Carrier Service

Employees shall fly coach class on the lowest cost flight(s) available. Any additional cost incurred for deviation from the most direct route will not be reimbursed unless incurred for the benefit of the City, as determined by the Director of Finance. The City will pay only the most direct route necessary to accomplish the purpose of the City travel. Any additional costs because of a route change for the convenience of the employee will be paid by the employee. Employees that choose to use their personal frequent flyer miles for City business shall not be reimbursed for the value of the tickets.

6.2.3 All Other Modes of Transportation

Employees shall choose the lowest cost for all other modes of transportation.

6.2.4 Rental Cars

Rental cars are only allowed for business reasons (i.e.: travel to and from a hotel and a conference) and with prior approval by the Department Director and/or the City Manager/designee, or Council Appointee/designee. If a rental car is approved, it is the employee's responsibility to reduce the total cost of car rental by reducing optional costs related to appropriate size for number of employees using the car, other vehicle options, and re-fueling the rental car prior to returning the rental car, if additional charges will apply for re-fueling.

6.2.5 Meals Provided at Event

When meals are provided as part of the cost of an event, employees will not be reimbursed per diem or for actual expenses for the same meals. In exceptional cases, where the employees can justify a legitimate business reason to not partake of the provided meal, the employee may submit written justification as to why he or she should be reimbursed for the cost of a separate meal. The Director of Finance shall decide if reimbursement is appropriate on a case by case basis.

6.2.6 Incidental Expenses

Incidental expenses include reasonable fees and tips given to porters, baggage carriers, bellhops, hotel maids, stewards or stewardesses and others on ships, and hotel servants in foreign countries, transportation between places of lodging or business and places where meals are taken if suitable meals cannot be obtained at the temporary duty site,

Exhibit B (Continued)

and mailing costs associated with filing travel vouchers. Itemized receipts are not required to be submitted when using the applicable per diem rate for reimbursement of meals and incidental expenses.

Reimbursement requests for actual incidental expenses require an itemized list of the incidental expenses. The request for reimbursement of incidental expenses must include a listing of the date, type of expense, and expense amount. The maximum amount of reimbursement shall be 150% of the standard CONUS (Continental United States) per diem rate for Incidentals, established by the United States General Services Administration. Please refer to Section 7.1.3.

6.2.7 Personal Phone Calls

The City will reimburse employees for personal phone calls up to \$10 per day with proper documentation (i.e. hotel statement showing phone usage).

6.2.8 Parking

Actual costs will be reimbursed when supported by itemized receipts. Staff should use lowest cost alternative for parking within a reasonable area from destination.

6.2.9 Alcoholic Beverages

Under no circumstances will expenses for alcoholic beverages be reimbursed by the City except as specified below.

6.2.9.1 Reimbursement or Expenditures for Alcoholic Beverages Exceptions

Purchases of alcoholic beverages may be expended or reimbursed for very limited economic development functions and events only with the prior approval of the City Manager. A Department or Office Director requesting an expenditure or reimbursement for the purchase of alcoholic beverages for a City sponsored event shall send a memorandum to the City Manager, prior to the purchase of any alcoholic beverages, explaining why the purchase of said beverages is appropriate and necessary for a specific event. Payment for expenditures or reimbursement for the purchase of alcoholic beverages will not be made without prior written approval from the City Manager. Notwithstanding these exceptions, all City employees must comply with the Substance Abuse Program & Policy (City Policy Manual Section 1.4.2 or as included in the applicable MOA) and the Alcohol Use at City Facilities Policy (City Policy Manual Section 1.4.4).

6.2.10 Personal Expenses

Personal expenses such as in-room movies or other entertainment costs such as games, etc are not eligible for reimbursement.

6.2.11 Excess Baggage Charges

Exhibit B (Continued)

Excess baggage charges are generally not eligible for reimbursement. A valid business related justification must be provided for these charges with a valid airline receipt for the excess baggage charge for the day of employee travel.

6.2.12 Laundry and Dry Cleaning

Laundry services and Dry Cleaning are generally not eligible for reimbursement. In rare circumstances of an extended business trip over 7 calendar days and where the employee is required to conduct City business in excess of 5 days, reasonable laundry expenses may be reimbursed for necessary business wear. If the business trip extends over 7 days, due to personal extension (see section 6.1) no laundry services or dry cleaning expenses will be reimbursed. The Director of Finance or designee shall decide if reimbursement is appropriate on a case by case basis.

7.3 Meals and Incidental Expenses

7.3.1 Per Diem

The per diem allowance applies only to meals and incidental expenses. Incidental expenses are defined in section 6.2.6 above. If an employee submits meal and incidental expenses on a per diem basis, no receipts are required. An employee can only be reimbursed beyond the applicable per diem rate for parking fees and personal phone calls as specified in this policy.

The City shall use the standard CONUS (Continental United States) per diem rate established by the United States General Services Administration for meals and incidental expenses unless traveling to a non-standard area (the standard CONUS per diem rate is \$39 as of June 2, 2006). If the travel destination is to a non-standard area, the per diem rate for meals and incidental expense for that area is to be used. The Domestic Per Diem Rates Schedule (<http://www.gsa.gov/>) shall be used to determine if a travel destination is listed as a non-standard area and to determine the appropriate per diem rate. Employees may be reimbursed for approved expenses incurred beyond the per diem rate when supported by itemized receipts.

To determine if a travel destination is in a standard or non-standard area, click on the Domestic Per Diem Rates Schedule above. Select the state that your travel destination is in, and then scroll down to find your destination. If your destination is listed, it is considered a non-standard area, and the rate listed in the M&IE Rate column is to be used. If your destination is not listed, it is considered a standard area, and the standard CONUS per-diem rate is to be used.

Exhibit B (Continued)

7.3.2 Prorating Per Diem

The per diem allowance shall be prorated in accordance with established federal guidelines. On the first and last day of travel, an employee is allowed 75% of the applicable per diem.

7.3.3 Local Travel

Employees traveling locally may not request per diem reimbursement for meals and incidentals. For this trip category, only reasonable meal and parking expenses shall be reimbursed at actual cost when supported by itemized receipts. Upon verification and processing by the Finance Department, any amount owed to the employee will be reimbursed on the employee' next pay check.

7.3.4 Reimbursement for Actual Expenses

Actual costs for meals shall be reimbursed when supported by itemized receipts up to 150% of the applicable Per Diem rate for Meals. Actual cost of incidental expenses shall be reimbursed when supported by itemized list up to 150% of the applicable Per Diem rate for Incidentals.