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MEMORANDUM

TO: Alameda County Board of Supervisors
FROM: Glenn Katon
DATE: 3/12/2019
RE: ALCO BOS Consideration of UASI MOU at Mar. 12, 2019 Meeting

I. THE BOARD ONLY NEEDS TO VOTE ON MOU AS INITIALLY SUBMITTED

- A. Notwithstanding Items 31.1 and 31.2 of the Meeting Agenda, all the Board really needs to do is approve the MOU between Alameda County and the Bay Area Urban Area Approval Authority. Such approval will secure UASI funding and commit the County to the terms of the MOU.
- B. The Board does not need to approve or grapple with the terms in Sheriff Ahern's March 7, 2019 letter in order to commit to the MOU.
1. The assertion that adopting the terms of Ahern's March 7 letter is required to be in compliance with the MOU or UASI funding requirements is incorrect.
 - a. Approving the MOU will commit the County to the terms of the MOU and the funding requirements that necessarily follow. Sheriff Ahern's additional wish list should be considered and deliberated separately. There is no reason to force the Board to combine consideration of the MOU and Sheriff Ahern's terms and doing so imposes an artificial and unnecessary constraint on the Board.
- C. The Board does not need to re-examine or reconsider the Ad Hoc Committee's recommendations that have already been adopted.
1. If the Board approves the MOU, the County and Sheriff will be obligated to comply with the terms of that agreement even if some of the adopted Committee recommendations were inconsistent with the MOU. There is no need to take up possible inconsistencies now, when opponents of the recommendations have not identified any specific funding provisions that conflict with any recommendations.
 2. There has been no showing that any adopted Committee recommendation is inconsistent with the MOU, so the Board need not address a problem that has not been shown to exist.
 3. Bay Area UASI General Manager Craig Dziedzic's undated memo to Alameda County Undersheriff Rich Lucia asserts conclusions that certain Committee recommendations do not comply with DHS funding requirements, but does not

indicate any DHS provision that is supposedly inconsistent with any recommendation.

- a. The first section (“I.”) of the Dziedzic memo includes citation to funding requirements, but does not identify any such requirements that are inconsistent with an adopted Committee recommendation.
- b. Section II., however, makes conclusory assertions that the recommendations would somehow impermissibly modify Attachments A and B to the pending MOU, but does not identify any provision of those attachments that would be affected by the recommendations. Without identifying the purported modifications, this claim is meaningless.
- c. Paragraph 1 of Section III. asserts that SWAT team exercises are mandated by the THIRA/SPR and its provisions for “interdiction and disruption” of threats. The memo does not, however, identify any language from THIRA/SPR that mandates SWAT exercises. In fact, Committee member John Lindsay-Poland asked Dziedzic for a copy of the THIRA to evaluate this claim, but Dziedzic would not provide it to him without processing it as a Public Records Act request, casting doubt on Dziedzic’s claim. Moreover, the THIRA for 2016, in its section on “interdiction and disruption,” does not reference SWAT or tactical teams at all.
- d. Paragraph 2 of Section III. asserts that “the Ad Hoc Recommendations Fail to Address HSEEP Compliance Regarding UASI Funded Exercises.” The paragraph does not indicate why the recommendations should address HSEEP or how any recommendation might be inconsistent with HSEEP. Seven of the twelve recommendations which the memo listed as supposedly inconsistent with HSEEP (4, 9, 10, 11, 13, 20, 21) have been accepted by the Sheriff, unaltered, casting further doubt on this claim.
- e. Paragraph 3 of Section III. does not refer to any recommendation or funding requirement. Furthermore, in asserting that the grants are to counter terrorism, it omits a key provision of grant guidelines, which provides: “Multiple Purpose or Dual-Use of Funds: For both SHSP and UASI, many activities which support the achievement of target capabilities related to terrorism preparedness may simultaneously support enhanced preparedness for other hazards unrelated to acts of terrorism.”¹ BAUASI has used this “dual use” provision extensively to plan and implement exercises for earthquake and fire preparedness, including as part of Urban Shield.
- f. Section IV. of the Dziedzic memo refers to DHS audits and requirements to comply with laws, regulations, and guidance. It does not, however, specify how compliance with any recommendation would create a problem if the County/BAUASI were audited.

¹ U.S. Department of Homeland Security (DHS) Notice of Funding Opportunity (NOFO) Fiscal Year (FY) 2018 Homeland Security Grant Program, p. 61.

II. AGENDA ITEM 31.1 (AD HOC COMMITTEE RECOMMENDATIONS)

If the Board considers Item 31.1 notwithstanding the assertion that doing so is unnecessary, the discussion will be driven by the memo dated March 12, 2019 (of a March 6 meeting) from the Ad Hoc Committee to the Board. The memo reports the results of an effort to reach consensus on the recommendations among Committee members, Sheriff Ahern, Craig Dziedzic, and representatives from County Counsel's office.

III. AGENDA ITEM 31.2 (SHERIFF'S RECOMMENDATIONS)

If the Board considers Item 31.2 notwithstanding the assertion that doing so is unnecessary, ¶ G is the only section that should be opposed. That section requires reconsideration of the Board's adoption of Committee recommendations.

IV. SHERIFF'S MARCH 7, 2019 LETTER TO THE BOARD

The Sheriff's letter should not be considered directly by the Board, since the Sheriff's agenda items are included in Item 31.2. If the letter is addressed, the two issues that present a problem are ¶ 7 of the Recommendations, which mirrors ¶ G, above, and the continued use of the Urban Shield name.

V. THE HYPOCRISY OF CLAIMING THE RECOMMENDATIONS WOULD PUT ALAMEDA COUNTY OUT OF COMPLIANCE WITH UASI FUNDING REQUIREMENTS

Although opponents of the recommendations have not identified any UASI funding requirement that is inconsistent with an adopted recommendation, the attempts to override the Board's judgment based upon such claims should be viewed with great skepticism. If the Sheriff or Bay Area UASI were genuinely concerned about compliance, they would have an outside firm conduct an audit of compliance with the myriad funding requirements. We know that noncompliance has been occurring:

- A. Repeated failure to demonstrate, as required by grant guidelines², how the program will "Engage and/or impact the whole community, including children, older adults, pregnant women, and individuals with limited English proficiency, individuals with disabilities and others with access and functional needs." In fact, the Ad Hoc Committee recommendations include strategies for addressing this failure.
- B. Ongoing failure to maintain the required composition of the Urban Area Working Group, which must include "members advocating on behalf of youth, older adults, individuals with disabilities, individuals with limited English proficiency and others with access and functional needs, socio-economic factors and cultural diversity" as well as representatives of educational institutions, public health officials, hospitals, and a Whole Community Citizens Corps.³

² FY2018 DHS grant NOFO, p. 12.

³ See FY2018 NOFO, p. 55.

1. When asked at the March 6 meeting about the failure to comply with the UAWG membership requirements, Craig Dziedzic stated that some requirements were met through “indirect representation.” However, this response reveals a troubling disregard the County’s funding obligations. The allowance for “direct and indirect” representation in the NOFO document is for other types of members: “Membership in the UAWG must provide either *direct or indirect* representation for all relevant jurisdictions and response disciplines (including law enforcement, fire service, EMS, hospitals, public health, and emergency management) that comprise the defined Urban Area. It must also be inclusive of local Whole Community Citizen Corps Council and tribal representatives. (Emphasis added.)”⁴

In stark contrast, members advocating on behalf of youth, etc., listed above, “must” be included in UAWGs and there is no provision for “indirect” representation as there is with the types of first responders listed.

- C. The Sheriff’s failure to obtain from FEMA Environmental and Historical Preservation Screening required by grant guidelines before setting off dozens of explosions in an Urban Shield exercise in a bird sanctuary in Alameda.⁵

If Sheriff Ahern and Mr. Dziedzic were truly concerned about compliance with funding requirements, that concern would be reflected for all uses of UASI funds, not just the recommendations of the Ad Hoc Committee they do not like.

VI. RECOMMENDATIONS THAT “INHIBIT” MOU TERMS OR UASI FUNDING REQUIREMENTS

County Counsel has apparently commented that recommendations that “inhibit” MOU terms or UASI funding requirements are not valid. First, this assertion is meaningless in the abstract. Second, a recommendation is either inconsistent with a term or requirement or it is not. There is no legal prohibition against “inhibiting” a contract, only “breaching” a contract. If the County meets its obligations under the MOU and applicable funding requirements, the fact that a recommendation may change the manner in which the County complies does not affect the validity of the recommendation at all.

⁴ *Id.* at 54.

⁵ Explained in detail: <https://medium.com/@tracyrosenberg/how-fema-blew-up-a-wildlife-refuge-35-times-b07f9b69040c>