

**AGREEMENT BETWEEN THE CITY AND COUNTY OF
SAN FRANCISCO AND THE COUNTY OF SAN MATEO
FOR THE DISTRIBUTION OF FY 2004 UASI REGIONAL FUNDS**

THIS AGREEMENT is made this JANUARY 3, 2005, in the City and County of San Francisco, State of California, by and between THE COUNTY OF SAN MATEO ("the County") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("the City") acting by and through the San Francisco Office of Emergency Services ("SFOES").

WITNESSETH:

WHEREAS, San Francisco is a core city for purposes of the 2004 UASI grant program; and

WHEREAS, San Francisco desires to distribute a portion of the regional grant funds to the County of San Mateo on the terms and conditions set forth herein:

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1
DEFINITIONS**

1.1 **Specific Terms.** Unless the context requires otherwise, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

(a) "**Authorized Expenditures**" shall mean expenditures for those purposes identified and budgeted in appendix A.

(b) "**Event of Default**" shall have the meaning set forth in Section 7.1.

(c) "**Fiscal Quarter**" shall mean each period of three calendar months commencing on July 1, October 1, January 1, and April 1, respectively.

(d) "**Grant Funds**" shall mean any and all funds allocated or disbursed to the County under this Agreement.

(e) "**Grant Plan**" shall mean the budget attached hereto as part of Appendix A and the Grant Assurances included in Appendix B.

(f) "**Indemnified Parties**" shall mean: (I) the City, including SFOES and all commissions, departments, agencies, and other subdivisions of the City; (ii) the City's elected officials, directors, officers, employees, agents, successors, and assigns; and (iii) all persons or entities acting on behalf of the foregoing.

(g) **“Losses”** shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgements, fees, expenses, and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

(f) **“Reimbursement Request”** shall have the meaning set forth in Section 3.9.

ARTICLE 2
APPROPRIATION AND CERTIFICATION OF GRANT FUNDS;
LIMITATIONS ON CITY'S OBLIGATIONS

2.1 **Risk of Non-Appropriation of Grant Funds.** This Agreement is subject to the budget and fiscal provisions of the Charter. The City shall have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. The County acknowledges that City budget decisions are subject to the discretion of its Mayor and Board of Supervisors. The County assumes all risk of possible non-appropriation or non-certification of funds, and such assumption is part of the consideration for this Agreement.

2.2 **Certification of Controller; Guaranteed Maximum Costs.** No funds shall be available under this Agreement until prior written authorization certified by the Controller. In addition, as set forth in Section 21.10-1 of the San Francisco Administrative Code:

(a) The City's obligations hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request the County to perform services or to provide materials, equipment and supplies that would result in the County performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. The City is not required to pay the County for services, materials, equipment or supplies that are provided by the County which are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by the City.

(c) City and its employees and officers are not authorized to offer or promise to the County additional funding for this Agreement which would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. City is not required to honor any offered or promised additional funding which exceeds the maximum provided in this Agreement which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

(d) The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

2.3 **Automatic Termination for Nonappropriation of Funds.** This Agreement shall automatically terminate, without penalty, liability or expense of any kind to the City, at the end of any Fiscal Year if funds are not appropriated for the next succeeding Fiscal Year. If funds are appropriated for a portion of

any Fiscal Year, this Agreement shall terminate, without penalty, liability or expense of any kind to the City, at the end of such portion of the Fiscal Year.

2.4 **SUPERSEDURE OF CONFLICTING PROVISIONS.** IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 2 AND ANY OTHER PROVISION OF THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

ARTICLE 3 PERFORMANCE OF THE AGREEMENT

3.1 **Duration of Term.** The term of this Agreement shall commence on **JANUARY 3, 2005** and shall end at 11:59 p.m. San Francisco time on **NOVEMBER 30, 2005.**

3.2 **Maximum Amount of Funds.** In no event shall the amount of Funds disbursed hereunder exceed **ONE MILLION FIVE HUNDRED THOUSAND Dollars (\$1,500,000.00).**

3.3 **Use of Funds.** The County shall use the funds received under this agreement only for the purposes and in the amounts set forth in Appendix A and for no other purpose.

3.4 **Grant Assurances; Cooperation with Monitoring.** The County shall comply with all Grant Assurances included in Appendix B. The County shall promptly comply with all standards, specifications and formats of the City, as they may from time to time exist, related to evaluation, planning and monitoring of the Grant Plan and shall cooperate in good faith with the City in any evaluation, planning or monitoring activities conducted or authorized by the City.

3.5 **EEOP Requirements.** The County shall, if required, submit an Equal Employment Opportunity Plan (EEOP) to the Department of Justice's Office of Civil Rights (OCR) in accordance with the OCR letter dated July 29, 2002, with a copy of the cover letter to SFOES.

3.6 **Record-Keeping.** The County shall establish and maintain property, programmatic and financial records in accordance with the grant record requirements, and:

Maintain financial management systems that support grant activities in accordance with Title 28, Code of Federal Regulations (CFR), Part 66.20, and DOJ Financial Guide, Part II, Chapter 3.

Maintain an equipment tracking system that includes the components identified in 28 CFR Parts 66.32 and 66.33, and DOJ Financial Guide, Part III, Chapter 6.

Retain records in accordance with retention requirements contained in Part Four—Performance Period Activities—Record Retention Requirements, of the OES FY04 UASI Grant Guide for Local Governments.

3.7 **Procurement Requirements.** The County shall follow its own procurement requirements as long as those requirement meet the federal requirements at a minimum. Federal procurement requirements for this grant may be found in: OMB Circular A-102; Title 28, CFR, Part 66.36; and DOJ Financial Guide, Part III, Chapter 10.

3.8 **Monitoring Grant Performance.** SFOES may perform periodic reviews of the County's grant performance, including on-site visits. These reviews may include, but are not limited to:

Comparing actual grant activities to those specified in Appendix A; and,

Confirming compliance with: Grant Assurances; information provided on performance reports; Urban Area Homeland Strategies; and, Transit Security and Emergency Preparedness Plans.

3.9 **Disbursement Procedures.** Funds shall be disbursed to the County as follows:

(a) The County shall submit to SFOES, in the manner specified for notices pursuant to Article 9, a document (a "Reimbursement Request") substantially in the form attached as Appendix C. Any Reimbursement Request that is submitted and is not approved by SFOES shall be returned by SFOES to the County with a brief statement of the reason for SFOES' rejection of such Reimbursement Request. If any such rejection relates only to a portion of the expenditures itemized in such Reimbursement Request, SFOES shall have no obligation to disburse any Funds for any other expenditures itemized in such Reimbursement Request unless and until the County submits a Reimbursement Request that is in all respects acceptable to SFOES.

(b) SFOES shall make all disbursements of Grant Funds pursuant to this Section by check payable to the County, sent via U.S. mail in accordance with Article 9, unless SFOES otherwise agrees in writing, in its sole discretion. SFOES shall make disbursements of Grant Funds no more than once during each **FISCAL QUARTER.**

3.10 **Disallowance.** The County agrees that if it claims or receives reimbursement from SFOES for an expenditure which is later disallowed by the state or federal government, the County shall promptly refund the disallowed amount to SFOES upon SFOES' request. At its option, SFOES may offset all or any portion of the disallowed amount against any other payment due to the County hereunder. Any such offset with respect to a portion of the disallowed amount shall not release the County from the County's obligation hereunder to refund the remainder of the disallowed amount.

ARTICLE 4 REPORTING REQUIREMENTS; AUDITS

4.1 **Regular Reports.** The County shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by the SFOES, in form and substance satisfactory to SFOES. Such reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

4.2 **Notification of Defaults or Changes in Circumstances.** The County shall notify SFOES immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 5 to be false or misleading at any time during the term of this Agreement.

4.3 **Books and Records.** The County shall establish and maintain accurate files and records of all aspects of the Grant Plan and the matters funded in whole or in part with Grant Funds during the term of this Agreement. Without limiting the scope of the foregoing, the County shall establish and maintain accurate financial books and accounting records relating to Authorized Expenditures and to Grant Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time

records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Grant Funds. The County shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final payment under this Agreement or until any final audit has been fully completed, whichever is later.

4.4 **Inspection and Audit**. The County shall make available to SFOES, its employees and authorized representatives, during regular business hours all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by the County under Section 4.3. The County shall permit SFOES, its employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of SFOES pursuant to this Section shall remain in effect so long as the County has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 4.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

The County represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

5.1 **No Misstatements**. No document furnished or to be furnished by the County to SFOES in connection with this Agreement, any Reimbursement Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

5.2 **Eligibility to Receive Federal Funds**. By executing this Agreement, the County certifies that the County is not suspended, debarred or otherwise excluded from participation in federal assistance programs. The County acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

ARTICLE 6 INDEMNIFICATION AND GENERAL LIABILITY

6.1 **Indemnification**. The County shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by: (a) a material breach of this Agreement by the County; (b) a material breach of any representation or warranty of the County contained in this Agreement; (c) any personal injury caused, directly or indirectly, by any act or omission of the County or its employees, subgrantees or agents; (d) any property damage caused, directly or indirectly by any act or omission of the County or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by the County, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to the County by an Indemnified Party; (f) any tax, fee, assessment or other charge for which the County is responsible under Section 10.5; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. The County's obligations under the immediately preceding sentence shall apply to any Loss that is caused in whole or in part by the active or passive negligence of any Indemnified Party, but shall exclude any Loss caused solely by the willful misconduct of the Indemnified Party. The foregoing

indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and the City's costs of investigating any claims against the City.

6.2 **Duty to Defend; Notice of Loss.** The County acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 6.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 6.1, regardless of whether the allegations asserted in connection with such Loss are or may be groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to the County by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give the County prompt notice of any Loss under Section 6.1 and the County shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of the County if representation of such Indemnified Party by the counsel retained by the County would be inappropriate due to conflicts of interest between such Indemnified Party and the County. An Indemnified Party's failure to notify the County promptly of any Loss shall not relieve the County of any liability to such Indemnified Party pursuant to Section 6.1, unless such failure materially impairs the County's ability to defend such Loss. The County shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if the County contends that such Indemnified Party shares in liability with respect thereto.

6.3 **Incidental and Consequential Damages.** Losses covered under this Article 6 shall include any and all incidental and consequential damages resulting in whole or in part from the County's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

6.4 **LIMITATION ON LIABILITY OF CITY.** CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF GRANT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GRANT FUNDS, THE GRANT PLAN OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

ARTICLE 7 EVENTS OF DEFAULT AND REMEDIES

7.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

(a) **False Statement.** Any statement, representation or warranty contained in this Agreement, in any Reimbursement Request, or in any other document submitted to SFOES under this Agreement is found by SFOES to be false or misleading.

(b) **Failure to Perform Other Covenants.** The County fails to perform or breaches any provision or covenant of this Agreement to be performed or observed by the County as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

(c) **Failure to Comply with Applicable Laws.** The County fails to perform or breaches any of the terms or provisions of Article 12.

(d) **Voluntary Insolvency.** The County (i) is generally not paying its debts as they become due, (ii) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (iii) makes an assignment for the benefit of its creditors, (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of the County or of any substantial part of the County's property or (v) takes action for the purpose of any of the foregoing.

(e) **Involuntary Insolvency.** Without consent by the County, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to the County or with respect to any substantial part of the County's property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of the County.

7.2 **Remedies Upon Event of Default.** Upon and during the continuance of an Event of Default, SFOES may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** SFOES may terminate this Agreement by giving a written termination notice to the County and, on the date specified in such notice, this Agreement shall terminate and all rights of the County hereunder shall be extinguished. In the event of such termination, the County will be paid for Authorized Expenditures in any Reimbursement Request that was submitted and approved by SFOES prior to the date of termination specified in such notice.

(b) **Withholding of Grant Funds.** SFOES may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether the County has previously submitted a Reimbursement Request or whether SFOES has approved the disbursement of the Grant Funds requested in any Reimbursement Request. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to the County after cure of applicable Events of Default shall be disbursed without interest.

(c) **Return of Grant Funds.** SFOES may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by the County in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

7.3 **Remedies Nonexclusive.** Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to SFOES at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

**ARTICLE 8
ASSIGNMENTS**

8.1 **No Assignment by the County.** The County shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of the County hereunder without the prior written consent of SFOES. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of the County involuntarily or by operation of law without the prior written consent of SFOES. A change of ownership or control of the County or a sale or transfer of substantially all of the assets of the County shall be deemed an assignment for purposes of this Agreement.

8.2 **Agreement Made in Violation of this Article.** Any agreement made in violation of Section 8.1 shall confer no rights on any person or entity and shall automatically be null and void.

**ARTICLE 9
NOTICES AND OTHER COMMUNICATIONS**

9.1 **Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below):

If to the SFOES or the City: **SAN FRANCISCO OFFICE OF EMERGENCY SERVICES**
1011 TURK STREET
San Francisco, CA **94102**
Attn: **ANNEMARIE CONROY, DIRECTOR**
Facsimile No. **(415) 431-7500**

If to the County: _____

Attn: _____
Facsimile No. _____

9.2 **Effective Date.** All communications sent in accordance with Section 9.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

9.3 **Change of Address.** From time to time any party hereto may designate a new address for purposes of this Article 9 by notice to the other party.

**ARTICLE 10
MISCELLANEOUS**

10.1 **No Waiver**. No waiver by SFOES or the City of any default or breach of this Agreement shall be implied from any failure by SFOES or the City to take action on account of such default if such default persists or is repeated. No express waiver by SFOES or the City shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by the City or the Agency of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by SFOES or the City of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

10.2 **Modification**. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

10.3 **Administrative Remedy for Agreement Interpretation**. Should any question arise as to the meaning or intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director of SFOES who shall decide the true meaning and intent of the Agreement. Such decision shall be final and conclusive.

10.4 **Governing Law; Venue**. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

10.5 **The County to Pay All Taxes**. The County shall pay to the appropriate governmental authority, as and when due, any and all taxes, fees, assessments or other governmental charges, including possessory interest taxes and California sales and use taxes, levied upon or in connection with this Agreement, the Grant Plan, the Grant Funds or any of the activities contemplated by this Agreement.

10.6 **Headings**. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

10.7 **Entire Agreement**. This Agreement sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. The following Appendices are attached to and a part of this Agreement:

Appendix A, Authorized Expenditures
Appendix B, Definition of Grant Plan
Appendix C, Form of Funding Request

10.8 **Certified Resolution of Signatory Authority**. Upon request of the City, the County shall deliver to the City a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the secretary or assistant secretary of the County.

10.9 **Severability**. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and

shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

10.10 **Successors; No Third-Party Beneficiaries.** Subject to the terms of Article 8, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 6, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

10.11 **Survival of Terms.** The obligations of the County and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 4.3 and 4.4, Article 6, and this Article 10.

10.12 **Further Assurances.** From and after the date of this Agreement, the County agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

ARTICLE 11 INSURANCE

11.1 **Types and Amounts of Coverage.** Without limiting the County's liability pursuant to Article 10, the County shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident.

(b) Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

11.2 **Additional Requirements for General and Automobile Coverage.** Commercial General Liability and Business Automobile Liability insurance policies shall:

(a) Name as additional insured City and its officers, agents and employees.

(b) Provide that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, except with respect to limits of liability.

11.3 **Additional Requirements for All Policies.** All policies shall provide at least thirty (30) days' advance written notice to City of cancellation or reduction in coverage mailed to City's address for notices pursuant to Article 9.

11.4 **Required Post-Expiration Coverage.** Should any of the insurance required hereunder be provided under a claims-made form, the County shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

11.5 **General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs.** Should any of the insurance required hereunder be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

11.6 **Evidence of Insurance.** Before commencing any operations under this Agreement, the County shall furnish to City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request. Before commencing any operations under this Agreement, the County shall do the following: (a) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon City request. Nothing in this Agreement shall preclude the County from self-insuring all or part of the insurance requirements in this Article. However, the County shall provide proof of self-insurance, in a form acceptable to the City, in the amounts of each line of self-insurance.

11.7 **Effect of Approval.** Approval of any insurance by City shall not relieve or decrease the liability of the County hereunder.

ARTICLE 12 COMPLIANCE

12.1 **Nondiscrimination.** In the performance of this Agreement, the County agrees not to discriminate against any employee, City and County employee working with such grantee or subgrantee, applicant for employment with such grantee or subgrantee, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

12.2 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to § 804(b) of the San Francisco Environment Code, City urges the County not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

12.3 **Compliance with ADA.** The County acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. The County shall not discriminate against any

person protected under the ADA in connection with all or any portion of the Grant Plan and shall comply at all times with the provisions of the ADA.

12.4 Prohibition on Political Activity with City Funds. In accordance with S. F. Administrative Code Chapter 12.G, no funds appropriated by the City and County of San Francisco for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event the County, or any staff member in association with The County, engages in any Political Activity, then (i) the County shall keep and maintain appropriate records to evidence compliance with this section, and (ii) the County shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. The County agrees to cooperate with any audit by the City or its designee in order to ensure compliance with this section. In the event the County violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between the County and City, (ii) prohibit the County from bidding on or receiving any new City contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to the County under this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

CITY:

**SAN FRANCISCO OFFICE OF
EMERGENCY SERVICES**

COUNTY:

COUNTY OF SAN MATEO

By: _____
ANNEMARIE CONROY, DIRECTOR

By: _____

Print Name: _____

Title: _____

Federal Tax ID #: _____

Approved as to Form:

Dennis J. Herrera
City Attorney

By: _____
Deputy City Attorney

Appendix A—Authorized Expenditures

San Mateo		
Equipment	Interoperable Communications WiFi System	\$ 350,000
Equipment	SAR Mobile Command Post	\$ 100,000
Equipment	Terrorism Early Warning Community Alert System	\$ 350,000
Equipment	CBRNE Response Vehicle to deploy SWAT	\$ 243,000
Equipment	Emergency Alert Notification System	\$ 6,000
Equipment	Bomb Robot	\$ 140,000
Training	WMD Training	\$ 6,000
Planning	WMD Training	\$ 50,000
Equipment	PW Personal Air Purifier Respirators (PAPR)	\$ 25,000
Equipment	FIRE Breathing Support Vehicle	\$ 180,000
Equipment	EMS: Pharmaceuticals for stockpile	\$ 50,000
	San Mateo Total	\$ 1,500,000

Appendix B-- Grant Assurances

As the duly authorized representative of the County of San Mateo, I certify that the Grantee:

1. Has the legal authority to apply for federal assistance, and has the institutional, managerial and financial capability to ensure proper planning, management and completion of the grant provided by the federal Department of Homeland Security and subgranted through the State of California.
2. Will assure that grant funds are only used for allowable, fair and reasonable costs.
3. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or awarding agency directives.
4. Will provide progress reports and such other information as may be required by the awarding agency.
5. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
6. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain for themselves or others, particularly those with whom they have family, business or other ties.
7. Will comply, if applicable, with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
8. Will comply with all federal statutes relating to nondiscrimination. These include but are not limited to:
 - a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, which prohibits discrimination on the basis of race, color or national origin;
 - b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of sex;
 - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) which prohibits discrimination on the basis of handicaps;
 - d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107) which prohibits discrimination on the basis of age;
 - e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) as amended, relating to nondiscrimination on the basis of drug abuse;
 - f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and

Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records;

- g. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing;
 - h. Title 28, Code of Federal Regulations, Part 42, Subparts C, D, E and G;
 - i. Title 28, CFR, Part 35;
 - j. Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made, and
 - k. The requirements on any other nondiscrimination statute(s) which may apply to the application.
9. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs. These requirements apply to all interested in real property acquired for project purposes regardless of federal participation in purchases.
10. Will comply, if applicable, with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following:
- a. institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - b. notification of violating facilities pursuant to EO 11738;
 - c. protection of wetlands pursuant to EO 11990;
 - d. evaluation of flood hazards in floodplains in accordance with EO 11988;
 - e. assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.);
 - f. conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.);
 - g. protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and

- h. protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
- 12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et. seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- 13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
- 14. Will comply with Standardized Emergency Management System (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, Section 8607.1(e) and CCR Title 19, Sections 2445, 2446, 2447 and 2448.
- 15. Has requested through the State of California, federal financial assistance to be used to perform eligible work approved in the applicant's application for federal assistance. Will, after the receipt of federal financial assistance, through the State of California, agree to the following:
 - a. Promptly return to the State of California all the funds received which exceed the approved, actual expenditures as accepted by the federal or state government.
 - b. In the event the approved amount of the grant is reduced, the reimbursement applicable to the amount of the reduction will be promptly refunded to the State of California.
 - c. Separately account for interest earned on grant funds, and will return all interest earned, in excess of \$100 per federal fiscal year.
- 16. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Sections 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- 17. Will comply with provisions of the Hatch Act (5 U.S.C. Sections 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
- 18. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- 19. Will comply, if applicable, with the Laboratory Animal Welfare Act of 1966 (P. L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- 20. Will comply with the minimum wage and maximum hour provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.

21. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. Section 276a to 276a-7), the Copeland Act (40 U.S.C. Section 276c and 18 U.S.C. Sections 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-333), regarding labor standards for federally assisted construction sub-agreements.
22. Will not make any award or permit any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension."
23. Agrees that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
 - b. If any other funds than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or an employee of Congress, or employee of a Member of Congress in connection with the federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
 - c. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subgrants, contracts under grants and cooperative agreements, and subcontract(s) and that all sub recipients shall certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
24. Agrees that equipment acquired or obtained with grant funds:
 - a. Will be made available under the California Disaster and Civil Defense Master Mutual Aid Agreement in consultation with representatives of the various fire, emergency medical, hazardous materials response services, and law enforcement agencies within the jurisdiction of the applicant.
 - b. Is consistent with needs as identified in the Terrorism Annex to the State's Emergency Plan, and will be deployed in conformance with that plan.
 - c. Will be made available pursuant to applicable terms of the California Disaster and Civil Defense Master Mutual Aid Agreement and deployed with personnel trained in the use

of such equipment in a manner consistent with the California Law Enforcement Mutual Aid Plan or the California Fire Services and Rescue Mutual Aid Plan.

25. Agrees that funds awarded under this grant will be used to supplement existing funds for program activities, and will not supplant (replace) funds that have been appropriated for the same purpose.
26. Will comply with all applicable federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars A-87 and A-133, E.O. 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements contained in Title 28, Code of Federal Regulations, Part 66, that govern the application, acceptance and use of Federal funds for this federally-assisted project.
27. Will comply, and assure the compliance of all its subgrantees and contractors, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 USC 3789(d), or the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provision of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1, and all other applicable Federal laws, orders, circulars, or regulations.
28. Will comply with provisions of 28 CFR applicable to grants and cooperative agreements, including Part 18, Administrative Review Procedures; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination/Equal Employment Opportunities Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 64, Floodplain Management and Wetland Protection Procedures; and Federal laws or regulations applicable to Federal Assistance Programs.
29. Will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of this project are not listed in the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal Grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
30. Will comply with Subtitle A, Title II of the Americans with Disabilities Act (ADA) 1990.
31. Will, in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds or race, color, religion, national origin, sex, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights, Office of Justice Programs.
32. Will provide an Equal Employment Opportunity Plan, if applicable, to the Department of Justice Office of Civil Rights within 60 days of grant award.
33. Will comply with the financial and administrative requirements set forth in the current edition of the Office of Justice Programs (OJP) Financial Guide.

34. Will comply, if applicable, with the provision of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.
35. Will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this program.
36. Understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of grant funds.

The undersigned represents that he/she is authorized by the County of San Mateo to enter into this agreement for and on behalf of the said applicant.

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

Appendix C--Form of Reimbursement Request

REIMBURSEMENT REQUEST

_____, 200_____

San Francisco Office of Emergency Services
1011 Turk Street
San Francisco, CA 94102

Re: FY 04 UASI Grants

Pursuant to Section 3.9 of the Agreement Between the City and County Of San Francisco and the County Of San Mateo for the Distribution of FY 2004 UASI Regional Funds (the "Agreement"), dated September 1, 2004, between the County of San Mateo ("the County") and the City and County of San Francisco (the "City"), the County hereby requests reimbursement as follows:

Total Amount of
Reimbursement Requested
in this Request: \$ _____

Maximum Amount of
Funds Specified in
Section 3.2 of the
Agreement: \$ _____

Total of All Funds
Disbursed Prior to this
Request: \$ _____

The County certifies that:

(a) The total amount of funds requested pursuant to this Funding Request will be used to reimburse the County for Authorized Expenditures, which expenditures are set forth on the attached Schedule 1, to which is attached true and correct copies of all required documentation of such expenditures.

(b) After giving effect to the disbursement requested pursuant to this Reimbursement Request, the Funds disbursed as of the date of this disbursement will not exceed the maximum amount set forth in Section 2.2.

(d) The representations and warranties made in the Agreement are true and correct in all material respects as if made on the date hereof;

(e) No Event of Default has occurred and is continuing; and

(f) The undersigned is an officer of the County authorized to execute this Reimbursement Request on behalf of the County.

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

SCHEDULE 1 TO REQUEST FOR REIMBURSEMENT

The following is an itemized list of Authorized Expenditures for which reimbursement is requested:

Payee	Amount	Description
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The following are attached as part of this Schedule 1:

- (i) an invoice for each item of expenditure for which reimbursement is requested;
- (ii) the front and the back of canceled checks or other written evidence documenting the payment of each invoice;
- (iii) for expenditures which are wages or salaries, payroll registers containing a detailed breakdown of earnings and withholdings, together with both sides of canceled payroll checks evidencing payment thereof (unless payment has been made electronically).