

**City and County of San Francisco
Office of Contract Administration
Purchasing Division
City Hall, Room 430
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and
the County of San Mateo**

This Agreement is made this **1st day of January, 2009**, in the City and County of San Francisco, State of California, by and between: the **County of San Mateo**, hereinafter referred to as “Contractor,” and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing.”

Recitals

WHEREAS, City has been designated to serve as the Fiscal Agent for the Bay Area SUASI Approval Authority (“Approval Authority”), and to establish procedures and provide all financial services for distribution of federal Urban Areas Security Initiatives (“UASI”) grant funds within the combined Bay Area Urban Area (“SUASI Region”); and

WHEREAS, The Bay Area SUASI General Manager is responsible for implementing and managing the policy and program decisions of the Approval Authority, directing the work of the SUASI Management Team personnel, and performing other duties as determined and directed by the Approval Authority; and

WHEREAS, Pursuant to program and grant distribution decisions by the Approval Authority, the SUASI Management Team has asked City, through the Department of Emergency Management (“Department”) to enter a contract to develop, manage, and maintain the Northern California Regional Intelligence Center (“NCRIC”), a multi jurisdiction fusion center, staffed with personnel from public and private entities; and

WHEREAS, Contractor is a public entity; and

WHEREAS, Contractor enters into this agreement as the fiduciary and fiscal agent of the Northern California High Intensity Drug Trafficking Area (“NCHIDTA”) and the Northern California Regional Terrorism Threat Assessment Center (“NCRTTAC”) Fusion Center doing business as the Northern California Regional Intelligence Center (“NCRIC”) performing duties as the NCRIC; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and

WHEREAS, Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4094-08/09 on February 2, 2009;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation

This Agreement is subject to all federal and state grant requirements and guidelines, including SUASI grant requirements, guidelines and instructions from the U.S. Department of Homeland Security (“DHS”) and the OHS, and decision making of the OHS and the Approval Authority. The Approval Authority shall have no obligation to allocate or direct disbursement of funds for this Agreement in lieu of allocations for new or other agreements. Contractor acknowledges that SUASI grant decisions are subject to the discretion of the OHS and Approval Authority. Contractor assumes all risk of possible non-allocation of funds, and such assumption is part of the consideration for this Agreement.

This Agreement is also subject to the budget and fiscal provisions of the City’s Charter and Codes. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not allocated or appropriated for the next succeeding fiscal year. If funds are allocated or appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are allocated or appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

2. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from **January 1, 2009 to June 30, 2009**. In addition, the City shall have four (4) options to extend the term for a period of up to one (1) year each extension, which the City may exercise in its sole, absolute discretion.

3. Effective Date of Agreement

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. Services Contractor Agrees to Perform

Contractor enters into this agreement as the fiduciary and fiscal agent of the NCHIDTA and the NCRTTAC Fusion Center doing business and performing duties as the NCRIC.

The Contractor agrees to perform the services provided for in Appendix A, “Description of Services,” attached hereto and incorporated by reference as though fully set forth herein.

5. Compensation

The breakdown of costs and the invoicing schedule associated with this Agreement appears in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though

fully set forth herein. In no event shall the amount of this Agreement exceed **NINE HUNDRED THOUSAND, FIVE HUNDRED TWENTY FOUR DOLLARS (\$900,524)**.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the SUASI Management Team and the Department as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

6. Guaranteed Maximum Costs

a. The City's obligation 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 laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

c. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

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

7. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City.

Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. Submitting False Claims; Monetary Penalties

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or

(e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Disallowance

If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

(1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

11. Payment Does Not Imply Acceptance of Work

The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the

unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment

City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. Independent Contractor

Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses.

Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under

this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

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

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

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must provide the following:

(1) Name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(2) 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.

c. All policies shall provide thirty (30) days' advance written notice to City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following individuals, at the addresses identified below:

Vicki Hennessy
Acting Executive Director
Department of Emergency Management
1011 Turk Street
San Francisco, CA 94102

Teresa Serata
Director, Strategy and Compliance
Bay Area SUASI
10 Lombard Street Suite 410
San Francisco, CA 94111

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance 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.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII 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. Failure to maintain insurance shall constitute a material breach of this Agreement.

h. Approval of the insurance by City shall not relieve or decrease the liability of Contractor hereunder.

i. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

j. Nothing in this Agreement shall preclude Contractor from self-insuring all or part of the insurance requirements in this Article. However, Contractor shall provide proof of self-insurance, in a form acceptable to San Francisco, in the amounts of each line of self-insurance.

16. Indemnification

Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim

which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City

CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF 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, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

19. Left Blank by Mutual Agreement of the Parties (Liquidated Damages)

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 57, 58 or 61.

(2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

(3) Contractor (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) 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 (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All 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 exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of the SUASI Management Team. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by the SUASI Management Team.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At the direction of the SUASI Management Team, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to the SUASI Management Team's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that the SUASI Management Team designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the SUASI Management Team may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to the SUASI Management Team an invoice, which shall set forth each of the following as a separate line item:

(1) The actual cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment.

(2) The actual cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(3) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, any profit on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8 through 11, 13 through 18, 24, 26, 27, 28, 48 through 52, 56, and 57, 61 and Appendix C.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which,

if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

24. Proprietary or Confidential Information of City

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

25. Notices to the Parties

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To City:

San Francisco Department of Emergency Management
Attn: Vicki Hennessy
1011 Turk Street
San Francisco, CA 94102
Facsimile No.: (415) 558-3864

To the SUASI Management Team:

SUASI Management Team
Attn: Teresa Serata
10 Lombard Street Suite 410
San Francisco, CA 94111
Facsimile No.: (415) 705-8513

To Contractor:

San Mateo County
Sheriff's Office of Emergency Services
C/o Northern California Regional Intelligence Center
Attn: Captain Ronald Brooks
P.O. Box 36102
San Francisco, CA 94102
Facsimile No.: (415) 436-7484

Any notice of default must be sent by registered mail.

26. Ownership of Results

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records

Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. All subcontractors identified in Appendix A are approved. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. Earned Income Credit (EIC) Forms

Deleted in consideration of Contractor's public entity status.

33. Local Business Enterprise Utilization; Liquidated Damages

Deleted in consideration of Contractor's public entity status and use of federal grant funds.

34. Nondiscrimination; Penalties

Deleted in consideration of Contractor's public entity status.

35. MacBride Principles—Northern Ireland

Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this Agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban

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

37. Drug-Free Workplace Policy

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided

under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

40. Sunshine Ordinance

In accordance with San Francisco Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

41. Public Access to Meetings and Records

Deleted in consideration of Contractor's public entity status.

42. Limitations on Contributions

Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126.

43. Requiring Minimum Compensation for Covered Employees

Deleted in consideration of Contractor's public entity status.

44. Requiring Health Benefits for Covered Employees

Deleted in consideration of Contractor's public entity status.

45. First Source Hiring Program

Deleted in consideration of Contractor's public entity status.

46. Prohibition on Political Activity with City Funds

In accordance with San Francisco Administrative Code Chapter 12.G, Contractor may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Contractor agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Contractor from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Contractor's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic

Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement

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.

49. Administrative Remedy for Agreement Interpretation

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Purchasing who shall decide the true meaning and intent of the Agreement.

50. Agreement Made in California; Venue

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

51. Construction

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

52. Entire Agreement

This contract sets forth the entire Agreement between the parties regarding the services provided for in Appendix A, and supersedes all other oral or written provisions regarding those services. This contract may be modified only as provided in Section 48.

53. Compliance with Laws

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

54. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney. There is no expectation that Contractor will provide any legal services under this Agreement.

55. Left Blank by Mutual Agreement of Parties (Supervision of Minors)

56. 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.

57. Protection of Private Information

Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contractor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Graffiti Removal

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the

Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

59. Food Service Waste Reduction Requirements

Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision. There is no expectation that Contractor will provide or prepare any food for City under this Agreement, or provide any services covered by the requirements of San Francisco Environmental Code Chapter 16.

60. Left Blank by Mutual Agreement of the Parties (Slavery Era Disclosure)

61. Homeland Security Grant Program Requirements

Contractor agrees to be bound by the terms and conditions of the document entitled "U.S. Department of Homeland Security's Urban Area Security Initiative Grant Program Requirements for Procurement Contracts, " attached hereto as Appendix C and fully incorporated herein.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY	CONTRACTOR
Recommended by:	COUNTY OF SAN MATEO
_____ Vicki Hennessy Acting Executive Director Department of Emergency Management	_____ Mark Church President, Board of Supervisors
Approved as to Form:	City vendor number: 20775-04
Dennis J. Herrera City Attorney	
By: _____ Katharine Hobin Porter Deputy City Attorney	
Approved:	
_____ Naomi Kelly Director of the Office of Contract Administration, and Purchaser	

Appendices:

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: U.S. Department of Homeland Security's Urban Areas Security Initiative Grant Program Requirements For Procurement Contracts
- C-1: Certification Regarding Debarment, Suspension, Ineligibility And Voluntary Exclusion – Lower Tier Covered Transactions
- C-2: Certification Regarding Lobbying

Appendix A

Services to be Provided by Contractor

1. Description of Services

A. Overview of Services and Deliverables.

As described in further detail in Section 1.B. below, Contractor shall perform high-quality professional services as follows:

1. Contractor shall establish, operate, manage and maintain the NCRIC, a collaborative Bay Area regional fusion center established effective January 1, 2009 to allow information sharing in an effort to prevent, protect against and respond to terrorist acts in the region. The NCRIC shall be staffed by Contractor's employees, as well as personnel from other governmental entities and from contractors. Contractor shall ensure that all NCRIC operations, policies and procedures conform with and incorporate fusion center best practices as found in, at a minimum:

- a. "The Strategic Business Plan Concept of Operations California State Terrorism Threat Assessment System" – 2008
- b. "Baseline Capabilities for State and Major Urban Area Fusion Centers – A Supplement to the Fusion Center Guidelines" – 2008
- c. "Privacy and Civil Liberties Policy Development Guide - 2008"
- d. "National Strategy for Information Sharing – Successes and Challenges in Improving Terrorism-Related Information Sharing" – 2007
- e. "The National Infrastructure Protection Plan and the Sector-Specific Plans" - 2007
- f. "Fusion Center Guidelines – Developing and Sharing Information and Intelligence in a New Era" – 2006
- g. "Applying Security Practices to Justice Information Sharing" - 2004
- h. "The National Criminal Intelligence Sharing Plan" – 2003

2. The NCRIC program is administered through and responsible to the NCHIDTA Executive Committee and the UASI Management Team. The NCHIDTA Executive Committee is composed of executives from Bay Area Sheriff's Departments, Police Departments, District Attorneys Offices, the United States Attorney's Office, Federal Law Enforcement Agencies, and the California Department of Justice.

3. The NCRIC shall support and cover the fifteen Bay Area counties in the Northern District of California (Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Francisco, San Mateo, San Benito, Santa Clara, Santa Cruz and Sonoma). The NCRIC shall provide analytic and technical resources to collect, evaluate, analyze and disseminate timely information related to terrorist threats to government and private sector agencies that have a legal need and right to know the information. The NCRIC services shall include providing a platform for interagency cooperation, communication, training and technical/equipment support to the jurisdictions located in the NCRIC area. The NCRIC shall also provide training and vulnerability assessments to governmental and private sector Critical Infrastructure and Key Resource ("CI/KR") facilities in an effort to mitigate the potential exploitation of vulnerabilities by terrorist groups.

4. Contractor shall ensure that all personnel performing work in the NCRIC will, prior to commencing any activity requiring a security clearance, obtain the appropriate federal clearance.

5. Contractor shall operate the NCRIC at a facility provided by the federal government. Neither Contractor nor City shall be responsible for costs or expenses related to use of that facility for the NCRIC.

6. By no later than June 30, 2009, Contractor shall provide proof of a Privacy Protection Policy, setting a policy and procedures ensuring that NCRIC activities protect the privacy, civil liberties, and other legal rights of all individuals. The policy shall be consistent with 28 CFR Part 23 and the Department Of Justice’s Global “Privacy and Civil Liberties Policy Development Guide” – 2008. (See Task 1 below.)

B. Specific Services, Deliverables and Timelines

Contractor shall perform the following tasks and produce the following deliverables, on the schedule set forth below.

Task	Description	Deliverable	Schedule/Due Date
1.	<p>1a. Contractor shall designate an individual to serve as the Privacy Officer for the NCRIC.</p> <p>1b. Contractor, through its Privacy Officer, shall develop a Privacy Protection Policy for the NCRIC, setting a policy and procedures ensuring that NCRIC activities protect the privacy, civil liberties, and other legal rights of all individuals. Contractor, through its Privacy Officer, shall implement and enforce that Policy.</p>	<p>1a. Designate a Privacy Officer for the NCRIC.</p> <p>1b. Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the Privacy Protection Policy delivered to UASI Management Team.</p>	<p>1a. 06/30/09</p> <p>1b. 06/30/09</p>
2.	In consultation with the UASI Management Team, Contractor shall develop a Regional Strategic Business Plan Concept of Operations (CONOP) for the exchange of homeland security and criminal information between federal, state, local and tribal public safety agencies. The CONOP shall include the lawful exchange of homeland security information with Critical Infrastructure/Key Resource (CI/KR) facilities. The CONOP shall conform with and incorporate best practices as found in, at a minimum the documents described in paragraph A.1 of this Appendix.	Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the CONOP delivered to UASI Management Team.	06/30/09
3.	In consultation with the UASI Management Team, Contractor shall develop a Standard Operating Procedures (SOP) Manual that establishes and delineates the various job functions of the personnel assigned to the NCRIC. The SOP Manual shall conform to and incorporate best practices as found in, at a minimum the documents described in paragraph A.1	Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the SOP Manual delivered to UASI management team.	06/30/09

	of this Appendix.		
4.	<p>4a. Contractor shall create a written Performance Plan for the NCRIC for the period of January 1 through June 30, 2009. The Plan shall define expectations and performance measures, and criteria to determine the effectiveness of the NCRIC operations. Contractor shall submit the Plan to the NCHIDTA Executive Committee and the UASI Management Team.</p> <p>4b. Contractor shall develop a written Performance Plan for the NCRIC for the period July 1, 2009 through June 30, 2010. This Performance Plan shall meet the requirements described in Task 4a above.</p>	<p>4a. Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the Written Performance Plan for January 1- June 30, 2009 submitted to both the NCHIDTA Executive Committee and UASI Management Team.</p> <p>4b. Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the Written Performance Plan for July 1, 2009 - June 30, 2010 submitted to both the NC HIDTA Executive Committee and UASI Management Team.</p>	<p>4a. 06/30/09</p> <p>4b. 06/30/09</p>
5.	<p>Contractor shall coordinate outreach to public safety agencies and CI/KR facilities in the Counties of Alameda, Contra Costa, Del Norte, Humboldt, Lake, Marin, Mendocino, Monterey, Napa, San Francisco, San Mateo, San Benito, Santa Clara, Santa Cruz and Sonoma to encourage, promote and ensure information sharing. Contractor shall prepare and submit a quarterly report documenting its outreach efforts, as a component of the quarterly Performance Plan report due under Task 4.</p>	<p>Quarterly report on outreach activity included in quarterly Performance Plan reports.</p>	<p>06/30/09,</p>
6.	<p>6a. Contractor shall develop and support a secure web based system. NCRIC management will determine which governmental personnel will be allowed to access the system.</p> <p>The web based system shall include a method to allow external partners to</p>	<p>6a. Operational and functioning secure web based system.</p> <p>6b. Review and update information.</p>	<p>6a. 06/30/09</p>

	<p>access and provide information in relevant areas. The system shall be designed to store and share state and local criminal intelligence information in compliance with 28 CFR Part 23 and any other applicable legal requirements.</p> <p>6b. Contractor shall ensure that the website information is current by reviewing and as necessary updating the information in the system.</p>		
7.	<p>7a. Contractor shall identify and inventory key homeland security and criminal intelligence data sources and resources available to the homeland security and law enforcement community in the Bay Area region. Contractor shall communicate that information by posting it on the secure web based system designed under Task 14.</p> <p>7b. Contractor shall ensure the information is current by reviewing and as necessary updating it.</p>	<p>7a. Post access information related to data sources on a secure web based system.</p> <p>7b. Review and update information.</p>	7a. 06/30/09
8.	<p>8a. Contractor shall create a notification protocol list of key leaders and partner agencies within the region.</p> <p>8b. Contractor shall develop a Notification Plan to use various systems, including e-mail, Short Message Service (SMS), and voice messaging, to communicate routine and crisis information to the key leaders and partner agencies in the region (as identified in Task 10a). Contractor shall incorporate the plan into the NCRIC SOP Manual developed under Task 3 above.</p>	<p>8a. Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of notification protocol list due to UASI Management Team.</p> <p>8b. Notification Plan developed and incorporated into the NCRIC SOP Manual.</p>	10a. 06/30/09 10b. 06/30/09
9.	<p>Contractor shall develop an information-flow process to identify how information is communicated between various groups and personnel (e.g. incoming and outgoing avenues of information - such as TLOs, fusion centers, California Emergency Management Agency (CalEMA), Regional Terrorism Threat Assessment Centers (RTTACs), etc.; communication mechanisms – such as Homeland Security Information Network (HSIN),</p>	<p>Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the information flow schematic due to UASI Management Team and incorporated into SOP Manual.</p>	06/30/09

	Cal JRIES, FBI National Data Exchange (NDex), FBI Law Enforcement On-Line (LEO), FBI eGuardian, etc. Contractor shall incorporate the information flow schematic into the NCRIC SOP Manual developed under Task 3 above.		
10.	Contractor shall designate an individual to serve as the NCRIC Security Officer, responsible for developing, implementing, and enforcing a NCRIC Security Measures Plan.	Designate a Security Officer for the NCRIC.	06/30/09
11	Contractor, through its Security Officer, shall develop, document and establish a Security Measures Plan for the NCRIC facility. The plan shall address, at a minimum: physical security, information systems security, and personnel and visitor security. This plan shall be consistent with “Applying Security Practices to Justice Information Sharing” – 2004.	Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the Security Measures Plan due to UASI Management Team.	06/30/09
12.	<p>12a. Contractor shall develop a Training Plan to ensure that NCRIC personnel and partners understand the intelligence process and the NCRIC's mission, functions, plans, and procedures. The plan shall identify the basic training needs of the NCRIC personnel and identify specialized training needed. This plan shall include a professional development plan to enhance analysts' critical thinking, research, writing, presentation, and reporting skills.</p> <p>12b. Contractor shall implement the Training Program and ensure all NCRIC personnel begin training within 60 days of assignment to NCRIC. Contractor shall maintain a training file of personnel assigned to the NCRIC documenting their training.</p> <p>12c. Contractor shall incorporate the Training Program into the SOP Manual developed under Task 3.</p>	<p>12a. Develop Training Plan.</p> <p>12b. Implement Training Plan and begin to train all new personnel within 60 days of assignment to the NCRIC.</p> <p>12c. Incorporate Training Program into SOP Manual.</p>	12a-c. Beginning 04/30/09
13.	13a. Contractor shall implement a Training Program specifically focusing on 28 CFR Part 23 and the California Attorney General's Criminal Intelligence File Guidelines to ensure all assigned NCRIC personnel understand how data contained in intelligence	13a. Develop a Training Plan regarding 28 CFR Part 23 and the California Attorney General's Criminal Intelligence File	<p>13a-c. Beginning 04/30/09</p> <p>13d. Within 60 days of release of the final new</p>

	<p>systems are collected, stored and disseminated.</p> <p>13b. Contractor shall implement this Training Program and ensure all NCRIC personnel are trained within 30 days of assignment to the NCRIC. Contractor shall maintain a training file of personnel assigned to the NCRIC documenting this training.</p> <p>13c. Contractor shall incorporate the Training Program into the SOP Manual developed under Task 3.</p> <p>13d. When new guidelines are approved and available from the U.S. Department of Justice – Bureau of Justice Assistance and the California Department of Justice – Contractor shall ensure the updated guidelines are incorporated into the Training Program and SOP Manual.</p>	<p>Guidelines.</p> <p>13b. Implement the 28 CFR Part 23 and the California Attorney General’s Criminal Intelligence File Guidelines Training Plan and ensure all NCRIC personnel receive that training within 30 days of assignment to the NCRIC.</p> <p>13c. Incorporate Training Program into SOP Manual.</p> <p>13d. Update Training Program to incorporate new guidelines from the U.S. Department of Justice – Bureau of Justice Assistance and the California Department of Justice.</p>	<p>training guidelines.</p>
14.	<p>14a. Contractor shall develop a common database where all NCRIC personnel can access the following information:</p> <ol style="list-style-type: none"> 1) Catalog of fusion center members, contact information, and their areas of responsibility. Contractor shall ensure this information is current at least every 6 months. 2) Fusion center chain of command and organizational charts. Contractor shall ensure this information is current at least every 6 months. 3) General information regarding ongoing and planned operations. Contractor shall ensure this information is current at least on a weekly basis. 4) Calendar of events, training opportunities, etc. Contractor shall ensure this information is current at least on a weekly basis. 5) Administrative announcements. 	<p>14a. Database developed.</p> <p>14b. Provide NCRIC personnel with access to database.</p>	<p>14a. 06/30/09</p> <p>14b. 06/30/09</p>

	<p>Contractor shall ensure this information is current at least on a weekly basis.</p> <p>6) A tracking system for internal and external support requests. Contractor shall ensure this information is current on a daily basis.</p> <p>14b. Contractor shall provide NCRIC personnel training and access to the database.</p>		
15.	<p>Contractor shall develop contingency and continuity-of-operations plans to ensure sustained operations of information technology systems and other mission critical functions and ensure performance of these functions, if necessary, at an alternate location. Contractor shall incorporate these plans into the NCRIC SOP Manual developed under Task 3, above.</p>	<p>Two (2) hard copies and one electronic version (in PDF and Microsoft Word 97-2003 format) of contingency and continuity-of-operations plans due to UASI Management Team and incorporated into NCRIC SOP Manual.</p>	06/30/09
16.	<p>Contractor shall develop, implement and maintain a Suspicious Activity and Incident Reporting Process (SAR) Plan in a manner consistent with the "Findings and Recommendations of the Suspicious Activity Report (SAR) Support and Implementation Project." Specifically, the NCRIC shall have the ability to receive, process, document, analyze and share SARs in a manner that complies with the Information Sharing Environment (ISE) ISE-SAR functional standard through the FBI's eGuardian System.</p>	<p>Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the SAR Plan due to UASI Management Team and incorporated into the NCRIC SOP Manual.</p>	06/30/09
17.	<p>17a. Contractor will assign a NCRIC Terrorism Liaison Officer (TLO) Coordinator.</p> <p>17b. Contractor shall develop and implement a TLO Program Plan for the Bay Area region and incorporate that Plan into the NCRIC SOP Manual created under Task 3 above.</p>	<p>17a. Designate a NCRIC TLO Coordinator for the region.</p> <p>17b. Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the TLO Program Plan due to UASI Management Team and</p>	<p>17a. 06/30/09</p> <p>17b. 06/30/09</p>

		incorporated into the NCRIC SOP Manual.	
18.	<p>18a. Contractor shall designate a Vulnerability Assessment Coordinator for the Bay Area region.</p> <p>18b. Contractor shall develop a Critical Infrastructure / Key Resources (CI/KR) Vulnerability Assessment Program Plan for the Bay Area region and incorporate that Plan into the NCRIC SOP manual created under Task 3 above.</p> <p>18c. Contractor shall conduct CI/KR surveys and assessments throughout the region based on the Vulnerability Assessment Program Plan. On a quarterly basis, the Vulnerability Assessment Coordinator shall report the number of sites and manpower hours utilized to conduct assessments in the Performance Plan reports under Task 4, above.</p>	<p>18a. Vulnerability Assessment Coordinator designated.</p> <p>18b. CI/KR training and meeting information available on the secure web based system.</p> <p>18c. Two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of the Vulnerability Assessment Program Plan due to UASI Management Team and incorporated into the NCRIC SOP Manual.</p> <p>18d. Report included in Performance Plan quarterly report.</p>	<p>18a. 06/30/09</p> <p>18b. 06/30/09</p> <p>18c. 06/30/09</p> <p>18d. 06/30/09, 6/30/09</p>
19.	<p>Contractor shall provide, at a minimum, the following services to facilitate the Bay Area region's exchange of homeland security information and protection of CI/KR facilities:</p> <ol style="list-style-type: none"> 1) Weekly updates through the NCRIC weekly conference call on threats and operational activities to homeland security and law enforcement personnel in the region. 2) Threat trend-assessment reports as needed 3) Briefings as needed to CI/KR facility managers of the 18 sectors identified by DHS, regarding services available, vulnerability mitigation and general threat information. 4) Bulletins as needed based on specific threats to CI/KR facilities and disseminate the information to 	<p>Reports, bulletins, products, services and briefings to the NCRIC regional partners and the UASI Management Team.</p>	<p>Beginning 4/30/09</p>

	<p>those facilities that have a need and right to know the information based on 28 CFR Part 23.</p> <p>5) Products and services in response to emerging or current threats on an as-needed basis as determined by NCRIC management or as requested by those agencies to which the NCRIC provides services (e.g. risk assessments, SARs, alerts, warnings, notifications, situational awareness reporting, etc.)</p>		
20.	<p>Contractor shall develop and submit an annual budget for the NCRIC for the period 7/1/09 through 6/30/10, and provide it to the UASI Management Team for review and approval. The budget shall include costs itemized for salaries (each position will require a salary breakdown), equipment (including the specific equipment needed using the Authorized Equipment List), training (with a specific breakdown) and travel (with a specific breakdown).</p>	<p>Provide two (2) hard copies and an electronic version (in PDF and Microsoft Word 97-2003 format) of 7/1/09 through 6/30/10 annual budget to the UASI Management Team.</p>	06/30/09

2. Reports

Contractor shall submit written reports as requested by the UASI Management Team. The UASI Management Team shall determine the format for the content of such reports. Contractor's timely submission of all reports is a necessary and material term and condition of this Agreement. Contractor shall submit the reports, including any copies, on recycled paper and printed on double-sided pages to the maximum extent possible.

3. Department Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the UASI Management Team will be Dave Hober.

**Appendix B
Calculation of Charges**

City shall reimburse Contractor for the following costs incurred under this Agreement. City shall pay only the amount actually incurred by Contractor:

A. Personnel and Associated Costs

1. Personnel from Other Jurisdictions

Contractor shall reimburse the following jurisdictions for the salary and benefits of personnel assigned to the NCRIC:

- City of Oakland,
- City of Palo Alto.
- City of San Jose, and
- Santa Clara County.

Reimbursement shall be for the purposes and in the amounts specified in Chart 1, below. Once Contractor reimburses the jurisdictions, Contractor shall submit a reimbursement request to the City for payment of the amount reimbursed. The request must conform to the requirements of Section 7 of the Agreement and Section C of this Appendix B.

CHART 1

Jurisdiction/ Agency	Description	Dates	Not to Exceed Amount
City of Oakland - Fire Department	NCRIC Fire Liaison / Information Officer (Engineer)	01/01/09 to 06/30/09	\$110,435
City of Palo Alto - Police Department	NCRIC – Intelligence Officer / Liaison (Police Officer)	01/01/09 to 06/30/09	\$82,353
City of San Jose - Police Department	NCRIC Assistant Deputy Director (Police Lieutenant)	01/01/09 to 06/30/09	\$104,553
Santa Clara County - Sheriff's Office	NCRIC – Intelligence Officer / Liaison (Deputy Sheriff)	01/01/09 to 06/30/09	\$79,381
		TOTAL NOT TO EXCEED	\$376,722

2. Contractor's Personnel

Contractor may expend the following amounts for the purposes specified in Chart 2, below. Once Contractor expends those amounts, Contractor shall submit a reimbursement request to the City

for payment of the amount expended. The request must conform to the requirements of Section 7 of the Agreement and Section C of this Appendix B.

CHART 2

Agency	Description	Dates	Not to Exceed Amount
Sheriff's Office	NCRIC – Intelligence Officer / Liaison (SMCO – Deputy Sheriff)	01/01/09 to 06/30/09	\$93,290
Sheriff's Office	NCRIC – Critical Infrastructure (three (3) contract Crime Analyst positions).	Position 1 04/01/09 to 06/30/09 Position 2 05/01/09 to 06/30/09 Position 3 05/01/09 to 06/30/09	\$52,174
Sheriff's Office	NCRIC – Critical Infrastructure (one (1) "Private Sector Outreach" contract position)	01/01/09 to 06/30/09	\$80,838
Sheriff's Office	NCRIC – Support <ul style="list-style-type: none"> • One (1) IT Service Contract • One (1) RMS Integration Contract • One (1) Web Service Contract 	01/01/09 to 06/30/09	\$187,000
		TOTAL NOT TO EXCEED	\$413,302

3. Training, Travel and Overtime

Contractor shall reimburse the following jurisdictions for eligible travel, training and overtime work (as described in Chart 3, below) by personnel assigned to the NCRIC:

- City of Oakland,
- City of Palo Alto.
- City of San Jose, and
- Santa Clara County.

Contractor may also expend funds for eligible travel, training and overtime work (as described in Chart 3, below) by Contractor's personnel assigned to the NCRIC. Once Contractor reimburses other jurisdictions or expends amounts on Contractor's personnel, Contractor shall submit a reimbursement request to the City for payment of the amount reimbursed or expended. The request must conform to the requirements of Section 7 of the Agreement and Section C of this Appendix B.

CHART 3

Agency	Description	Dates	Not to Exceed Amount
Assigned	Approved Training Expenses:	01/01/09 to	Not to exceed:

NCRIC personnel from any participating agency	Reimbursements for UASI grant eligible and Bay Area UASI pre-approved training expenses. Grant eligible training expenses are published in the FY 2007 Homeland Security Grant Program Guidance. The amount shown is a placeholder only, is subject to prior approval by the Bay Area UASI Program Manager and must not exceed this amount.	06/30/09	\$50,000
As specified	Approved Travel Expenses: Reimbursements for UASI grant eligible and Bay Area UASI pre-approved travel expenses. All travel charges are for counter-terrorism assignments only and must be approved by a NCRIC manager. The following agencies are eligible for travel: <ul style="list-style-type: none"> • San Jose Police Department • Santa Clara County Sheriff Office • Palo Alto Police Department • Oakland Fire Department • San Mateo County Sheriff Office:1 deputy and 3 analysts • San Francisco Police Department • San Francisco Sheriff Office • San Francisco Fire Department • San Francisco Department of Emergency Management 	01/01/09 to 06/30/09	Not to exceed: \$10,500
Assigned NCRIC personnel from any participating agency	Overtime reimbursement for personnel assigned to the NCRIC under this Agreement and engaged in counter-terrorism assignments. All overtime must be approved by a NCRIC manager who supervises each NCRIC employee.	01/01/09 to 06/30/09	Not to exceed: \$50,000
		TOTAL NOT TO EXCEED	\$110,500

The total not to exceed amount for personnel salaries, benefits, training, travel and overtime is **NINE HUNDRED THOUSAND, FIVE HUNDRED TWENTY FOUR DOLLARS (\$900,524)**

C. Invoice/Reimbursement Request Requirements

Contractor shall include the following documentation with each reimbursement request:

- (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).

All invoices/reimbursement requests must be submitted by no later than September 30, 2009, unless an earlier date is specified.

Appendix C
**U.S. DEPARTMENT OF HOMELAND SECURITY'S URBAN AREAS SECURITY INITIATIVE
GRANT PROGRAM REQUIREMENTS FOR PROCUREMENT CONTRACTS**

A. DEFINITIONS

“Agreement” means the agreement between City and Contractor to which this document (U.S. Department of Homeland Security's Urban Areas Security Initiative Grant Program Requirements for Procurement Contracts) is attached and incorporated or for which Contractor has submitted a bid or proposal.

“City” means the City and County of San Francisco.

“Contractor” means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from Homeland Security.

“Homeland Security Directive” includes any Homeland Security circular, notice, order or guidance providing information about Homeland Security programs, application processing procedures, and Project management guidelines.

“Government” means the United States of America and any executive department or agency thereof.

“Homeland Security” means the United States Department of Homeland Security or its Office of Domestic Preparedness.

“Third Party Subcontract” means a subcontract at any tier entered into by Contractor or a subcontractor, financed in whole or in part with Federal assistance originally derived from Homeland Security.

“SUASI Program Guidelines” means the applicable Homeland Security's *Urban Areas Security Initiative Grant Program, Program Guidelines and Application Kit*.

B. FEDERAL CHANGES

Contractor shall at all times comply with all applicable regulations, policies, procedures and Homeland Security Directives, including without limitation those listed directly or by reference in the Master Agreement between the City and Homeland Security or in the SUASI Program Guide, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this Agreement.

Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

C. ACCESS TO RECORDS

Contractor agrees to provide the City, Homeland Security, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions.

Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case Contractor agrees to maintain same until the City, Homeland Security, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. 28 C.F.R. §§ 66.36(i), 70.53.

Contractor agrees to include paragraphs A, B, and C above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

D. DEBARMENT AND SUSPENSION

Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension." Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549. 28 C.F.R. § 66.35; 28 C.F.R. Part 67.

Contractor agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Attachment 1, Contractor is the "prospective lower tier participant."

The Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.

E. NO FEDERAL GOVERNMENT OBLIGATIONS TO CONTRACTOR

City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

F. CONTRACT WORK HOURS AND SAFETY STANDARDS *(applicable to non-construction contracts in excess of \$2,500 that employ laborers or mechanics; 28 C.F.R. § 66.36(i)(6))*

Compliance: Contractor agrees that it shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-330) as amended and as supplemented by Department of Labor regulations (29 C.F.R. Part 5), which are incorporated herein.

Overtime: No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such

laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

Violation; liability for unpaid wages; liquidated damages - In the event of any violation of the clause in Paragraph B of this section, the contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph B of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph B of this section.

Withholding for unpaid wages and liquidated damages - City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph C of this section.

Subcontracts - Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

G. NOTICE OF REPORTING REQUIREMENTS

Contractor acknowledges that it has read and understands the reporting requirements of Homeland Security stated in 28 C.F.R. §§ 66.40 et seq., 70.50-70.52 and Part III of Chapter 11 of the United States Department of Justice's Office of Justice Programs *Financial Guide*, and agrees to comply with any such applicable requirements.

Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

H. NOTICE OF REQUIREMENTS PERTAINING TO COPYRIGHTS

Contractor agrees that Homeland Security shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

(1) The copyright in any work developed with the assistance of funds provided under this Agreement;

(2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 28 C.F.R. §§ 66.34, 66.36(i)(8)-(9).

Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

I. PATENT RIGHTS (*applicable to contracts for experimental, research, or development projects financed by Homeland Security. 28 C.F.R. §§ 66.36(i)(8), 70.48(e), Part 70, Appendix A.*)

General. If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the Homeland Security.

Unless the Government later makes a contrary determination in writing, irrespective of the Contractor's status (large business, small business, state government or instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through Homeland Security, those rights in that invention due the Government described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 C.F.R. Part 401.

Contractor also agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by Homeland Security.

J. ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act. 28 C.F.R. § 66.36(i)(13).

Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

K. CLEAN WATER REQUIREMENTS (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.*)

Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA regional office.

Contractor also agrees to include these requirements in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by Homeland Security. 28 C.F.R. § 66.36(i)(12).

L. CLEAN AIR (*applicable to all contracts and subcontracts in excess of \$100,000, including indefinite quantities where the amount is expected to exceed \$100,000 in any year.*)

Contractor agrees to comply with applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to Homeland Security and the appropriate EPA Regional Office.

Contractor also agrees to include these requirements in each third party subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by Homeland Security.

M. TERMINATION FOR CONVENIENCE OF CITY (*All contracts in excess of \$10,000. 28 C.F.R. § 66.37*)

See the terms and conditions of the Agreement TERMINATION FOR DEFAULT

Contractor's failure to perform or observe any term, covenant or condition of this document (U.S. Department of Homeland Security's Urban Areas Security Initiative Grant Program Requirements for Procurement Contracts) shall constitute an event of default under this Agreement.

Each of the following shall also constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of the Agreement: 8, 10, 15, 24, 30, 37, 53, 55, 59, or 61.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.
- (3) Contractor (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) 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 (c) ordering the dissolution, winding-up or liquidation of Contractor.

On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All 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 exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

N. LOBBYING

Contractor shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

Contractor agrees to the provisions of Attachment 2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).

Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by Homeland Security. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

O. INCORPORATION OF HOMELAND SECURITY TERMS

The preceding provisions include, in part, certain standard terms and conditions required by Homeland Security, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by Homeland Security, as set forth in 28 C.F.R. Parts 66 and 70 are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all Homeland Security mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests that would cause City to be in violation of the Homeland Security terms and conditions.

Appendix C
Attachment 1

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND
VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

Instruction for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that is certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 C.F.R. part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is

proposed for debarment under 48 C.F.R. part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion – Lower Tier Covered Transactions

1. The prospective lower tier participant certifies, by submission of its proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Contractor Signature

Date

Appendix C
Attachment 2

CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) 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 an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other 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 employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loan, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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.

Contractor Signature

Date