

**AGREEMENT BETWEEN THE CITY AND COUNTY OF  
SAN FRANCISCO AND THE COUNTY OF SAN MATEO  
FOR THE DISTRIBUTION OF FY 2008 UASI REGIONAL FUNDS**

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THIS AGREEMENT is made this OCTOBER 23, 2008, in the City and County of San Francisco, State of California, by and between the COUNTY OF SAN MATEO ("San Mateo") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("San Francisco" or "City"), in its capacity as fiscal agent for the UASI Approval Authority, as defined below, acting by and through San Francisco's Department of Emergency Management ("DEM").

***RECITALS***

WHEREAS, The United States Department of Homeland Security ("DHS") consolidated the separate San Jose, Oakland, and San Francisco Urban Areas into a combined Bay Area Urban Area ("UASI Region") for the purpose of application for and distribution of federal Urban Areas Security Initiative ("UASI") Program grant funds; and

WHEREAS, The Bay Area UASI Region Approval Authority ("Approval Authority") was established as the Urban Area Working Group ("UAWG") for the UASI Region, to provide overall governance of the homeland security program across the UASI Region, to coordinate development and implementation of all UASI Program initiatives, and to ensure compliance with all UASI Program requirements; and

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

WHEREAS, San Francisco has been designated as the grantee for UASI funds granted by the DHS through the California Governor's Office of Homeland Security ("OHS") to the UASI Region, with responsibility to establish procedures and execute subgrant agreements for the distribution of UASI Program grant funds to jurisdictions selected by the Approval Authority to receive grant funding; and

WHEREAS, San Francisco has been designated to serve as the Fiscal Agent for the Approval Authority, and to establish procedures and provide all financial services for distribution of UASI Program grant funds within the UASI Region; and

WHEREAS, Pursuant to grant distribution decisions by the Approval Authority, the UASI Management Team has asked San Francisco to distribute a portion of the regional UASI grant funds to San Mateo on the terms and conditions set forth herein;

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

## ARTICLE 1 DEFINITIONS

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

(a) **“ADA”** shall mean the Americans with Disabilities Act (including all rules and regulations there under) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

(b) **“Authorized Expenditures”** shall mean expenditures for those purposes identified and budgeted in Appendix A, attached hereto and incorporated by reference as though fully set forth herein.

(c) **“Event of Default”** shall have the meaning set forth in Section 7.1.

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

(e) **“Grant Funds”** shall mean any and all funds allocated or disbursed to San Mateo under this Agreement.

(f) **“Grant Plan”** shall mean the plans, performances, events, exhibitions, acquisitions or other activities or matter described in Appendix A, any budget attached hereto as part of Appendix A, and the Grant Assurances included in Appendix B.

(g) **“Indemnified Parties”** shall mean: (i) San Francisco, including DEM and all commissions, departments, agencies, and other subdivisions of San Francisco; (ii) San Francisco’s elected officials, directors, officers, employees, agents, successors, and assigns; and (iii) all persons or entities acting on behalf of the foregoing.

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

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

1.2 **Additional Terms.** The terms “as directed,” “as required” or “as permitted” and similar terms shall refer to the direction, requirement, or permission of City. The terms “sufficient,” “necessary” or “proper” and similar terms shall mean sufficient, necessary or proper in the sole judgment of City. The terms “approval,” “acceptable” or “satisfactory” or similar terms shall mean approved by, or acceptable to, or satisfactory to City. The terms “include,” “included” or “including” and similar terms shall be deemed to be followed by the words “without limitation.” The use of the term “subcontractor,” “successor” or “assign” herein refers only to a subcontractor (“subgrantee”), successor or assign expressly permitted under Article 8.

1.3 **References to this Agreement.** References to this Agreement include: (a) any and all appendices, exhibits, schedules, attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 10.2.

References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as “hereunder,” herein or “hereto” refer to this Agreement as a whole.

1.4 **Reference to laws.** Any reference in this Agreement to a federal or state statute, regulation, executive order, requirement, policy, guide, guideline or instruction shall mean that statute, regulation, executive order, requirement, policy, guide, guideline or instruction as is currently in effect and as may be amended, modified or supplemented from time to time.

## **ARTICLE 2 ALLOCATION AND CERTIFICATION OF GRANT FUNDS; LIMITATIONS ON SAN FRANCISCO'S OBLIGATIONS**

2.1 **Risk of Non-Allocation of Grant Funds.** This Agreement is subject to all federal and state grant requirements and guidelines, including DHS and OHS UASI requirements, guidelines and instructions, decisionmaking of the OHS and the Approval Authority, and to the extent applicable the San Francisco Charter. 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. San Mateo acknowledges that grant decisions are subject to the discretion of the OHS and Approval Authority. San Mateo assumes all risk of possible non-allocation of funds, and such assumption is part of the consideration for this Agreement.

2.2 **Certification of Controller; Guaranteed Maximum Costs.** No funds shall be available under this Agreement until prior written authorization certified by the San Francisco Controller. In addition, as set forth in Section 21.19 of the San Francisco Administrative Code:

(a) San Francisco's obligations hereunder shall not at any time exceed the amount approved by the Approval Authority and certified by the Controller for the purpose and period stated in such certification.

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

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

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

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

### **ARTICLE 3 PERFORMANCE OF THE AGREEMENT**

3.1 **Duration of Term.** The term of this Agreement shall commence on **OCTOBER 23, 2008** and shall end at 11:59 p.m. San Francisco time on **NOVEMBER 30, 2010.**

3.2 **Maximum Amount of Funds.** In no event shall the amount of Grant Funds disbursed hereunder exceed **THREE HUNDRED FIFTY FOUR THOUSAND, NINE HUNDRED SIXTY TWO DOLLARS (\$354,962).**

3.3 **Use of Funds.** San Mateo shall use the Grant Funds received under this Agreement for the purposes and in the amounts set forth in Appendix A only, and for no other purpose. San Mateo shall expend the Grant Funds in accordance with the Budget, if any, and shall obtain the prior written approval of the UASI Management Team before transferring expenditures from one line item to another within any Budget.

3.4 **Grant Assurances; Cooperation with Monitoring.** San Mateo shall comply with all Grant Assurances included in Appendix B, attached hereto and incorporated by reference as though fully set forth herein. San Mateo shall promptly comply with all standards, specifications and formats of San Francisco and the UASI Management Team, as they may from time to time exist, related to evaluation, planning and monitoring of the Grant Plan and shall cooperate in good faith with San Francisco and the UASI Management Team in any evaluation, planning or monitoring activities conducted or authorized by San Francisco or the UASI Management Team.

3.5 **Record-Keeping.** San Mateo shall establish and maintain administrative, , programmatic and fiscal management records in accordance with federal and state requirements, and:

(a) Maintain financial management systems that support grant activities in accordance with federal and state requirements, including but not limited to requirements in 28 Code of Federal Regulations ("C.F.R.") Part 66.20, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part II, Chapter 3.

(b) Maintain an equipment tracking system that complies with federal and state requirements, including but not limited to requirements in 28 C.F.R. Parts 66.32 and 66.33, and the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 6.

(c) Retain records in accordance with federal and state requirements, including but not limited to requirements in the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 12.

3.6 **Procurement Requirements.** San Mateo shall follow its own procurement requirements as long as those requirements comply with all applicable federal and state statutes, regulations, requirements, policies, guides, guidelines and instructions, including but

not limited to requirements in the Office of Justice Programs Financial and Administrative Guide for Grants, Part III, Chapter 10.

3.7 **Certification Requirements.** San Mateo shall ensure that any subgrantees or contractors with which San Mateo enters any agreement comply with the certification requirements under 28 C.F.R. Part 67, *Government-wide Debarment and Suspension (Non-Procurement)*; 28 C.F.R. Part 69, *New Restrictions on Lobbying*; and 28 C.F.R. Part 83, *Government-wide Requirements for a Drug-Free Workplace (Grants)*. San Mateo shall independently verify that any subgrantee, contractor or other entity receiving Grant Funds is not debarred or suspended by the federal government and maintain proof of this verification in their files.

3.8 **Monitoring Grant Performance.** City and the UASI Management Team are both authorized to perform periodic reviews of San Mateo's grant performance, including on-site visits and verifications of grant activities. These reviews may include, but are not limited to:

- (a) Eligibility of expenditures;
- (b) Comparing actual grant activities to those approved by the Approval Authority and specified in Appendix A and/or the Budget;
- (c) Ensuring that any advances have been deposited in an interest bearing account and disbursed in accordance with applicable guidelines; and
- (d) Confirming compliance with: Grant Assurances; information provided on performance reports and payment requests; and needs and threat assessments and strategies.

San Mateo is responsible for monitoring and auditing the grant activities of any of San Mateo's subrecipients, including mandatory on-site verification visits.

3.9 **Disbursement Procedures.** San Francisco shall disburse Grant Funds to San Mateo as follows:

(a) San Mateo shall submit to the UASI Management Team, in the manner specified for notices pursuant to Article 9, a document ("Reimbursement Request") substantially in the form attached as Appendix C, attached hereto and incorporated by reference as though fully set forth herein. The UASI Management Team shall serve as the primary contact for San Mateo regarding any Reimbursement Request.

(b) The UASI Management Team will review all Reimbursement Requests for compliance with this Agreement and all applicable guidelines and requirements. The UASI Management Team will return to San Mateo any Reimbursement Request that is submitted and not approved by the UASI Management Team, with a brief statement of the reason for the rejection of the Reimbursement Request.

(c) The UASI Management Team will submit any Reimbursement Request that is approved by the UASI Management Team to DEM. City shall review the Reimbursement Request for compliance with this Agreement and all applicable guidelines and requirements. City shall return to the UASI Management Team any Reimbursement Request that is not approved by City, with a brief explanation of the reason for the rejection of the Reimbursement Request.

(d) If a rejection relates only to a portion of the expenditures itemized in any Reimbursement Request, City shall have no obligation to disburse any Grant Funds for any other expenditures itemized in such Reimbursement Request unless and until San Mateo submits a Reimbursement Request that is in all respects acceptable to the UASI Management Team and to City.

(e) For Reimbursement Requests approved by both the UASI Management Team and City, City shall disburse Grant Funds by check payable to San Mateo, sent via U.S. mail in accordance with Article 9, unless City otherwise agrees in writing, in its sole discretion. City shall make disbursements of Grant Funds no more than once during each FISCAL QUARTER.

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

3.11 **Deadline for Final Requests for Reimbursement**. All requests for reimbursements must be submitted by September 30, 2010, unless an earlier deadline is set in Appendix A.

#### **ARTICLE 4 REPORTING REQUIREMENTS; AUDITS**

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

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

4.3 **Books and Records**. San Mateo shall establish and maintain accurate files and records of all aspects of the Grant Plan and the matters funded in whole or in part with Grant Funds during the term of this Agreement. Without limiting the scope of the foregoing, San Mateo shall establish and maintain accurate financial books and accounting records relating to Authorized Expenditures and to Grant Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Grant Funds. San Mateo shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after final disbursement under this Agreement or until any final audit has been fully completed, whichever is later.

4.4 **Inspection and Audit**. San Mateo shall make available to the UASI Management Team and to City, and to UASI Management Team and City employees and authorized representatives, during regular business hours all of the files, records, books, invoices,

documents, payrolls and other data required to be established and maintained by San Mateo under Section 4.3. San Mateo shall permit the UASI Management Team and City, and to UASI Management Team and City employees and authorized representatives to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of the UASI Management Team and City pursuant to this Section shall remain in effect so long as San Mateo has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 4.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

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

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

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

5.3 **NIMS Compliance**. To be eligible to receive FY08 grant funds, San Mateo must meet National Incident Management System ("NIMS") compliance requirements. San Mateo is considered to be in full NIMS compliance if it has adopted and/or implemented the FY 2007 compliance activities, as determined by the National Incident Management System Capability Assessment Support Tool ("NIMSCAST") or other accepted means. By executing this Agreement, San Mateo certifies that it is in full NIMS compliance. San Mateo acknowledges that this certification is a material term of the Agreement.

## **ARTICLE 6 INDEMNIFICATION AND GENERAL LIABILITY**

6.1 **Indemnification**. San Mateo shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by San Mateo's performance of this Agreement, including, but not limited to, the following: (a) a material breach of this Agreement by San Mateo; (b) a material breach of any representation or warranty of San Mateo contained in this Agreement; (c) any personal injury or death caused, directly or indirectly, by any act or omission of San Mateo or its employees, subgrantees or agents; (d) any loss of or damage to property caused, directly or indirectly, by any act or omission of San Mateo or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by San Mateo, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to San Mateo by an Indemnified Party; (f) any tax, fee, assessment or other charge for which San Mateo is responsible under Section 10.4; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished to such Indemnified Party in connection with this Agreement. The foregoing indemnity shall include,

without limitation, reasonable fees of attorneys, consultants and experts and related costs and San Francisco's costs of investigating any claims against San Francisco.

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

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

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

## ARTICLE 7

### EVENTS OF DEFAULT AND REMEDIES; TERMINATION FOR CONVENIENCE

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

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

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



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

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

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

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

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

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

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

7.3 **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 San Mateo written notice of termination. The notice shall specify the date on which termination shall become effective.

(b) Upon receipt of the notice, San Mateo shall commence and perform, with diligence, all actions necessary on the part of San Mateo to effect the termination of this Agreement on the date specified by City and to minimize the liability of San Mateo and City to third parties as a result of termination. All such actions shall be subject to the prior approval of the UASI Management Team.

(c) Within 30 days after the specified termination date, San Mateo shall submit to the UASI Management Team an invoice for all Authorized Expenses incurred through the termination date. For Authorized Expenses incurred after receipt of the notice of termination, City will only reimburse San Mateo if the Authorized Expenses received prior approval from the UASI Management Team as specified in subparagraph (b).

(d) In no event shall City be liable for costs incurred by San Mateo or any of its subcontractors or subgrantees after the termination date specified by City.

(e) City's payment obligation under this Section shall survive termination of this Agreement.

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

## **ARTICLE 8 ASSIGNMENTS**

8.1 **No Assignment by San Mateo.** San Mateo shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of San Mateo hereunder without the prior written consent of City; provided, however, that any subcontracts specifically referenced in Appendix A shall not require the consent of City. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of San Mateo involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of San Mateo or a sale or transfer of substantially all of the assets of San Mateo shall be deemed an assignment for purposes of this Agreement.

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

8.3 **San Mateo Retains Responsibility.** San Mateo shall in all events remain liable for the performance by any assignee, subgrantee or contractor of all of the covenants terms and conditions contained in this Agreement.

## **ARTICLE 9 NOTICES AND OTHER COMMUNICATIONS**

9.1 **Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited

in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below):

If to San Francisco:

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

If to the UASI Management Team:

UASI Management Team  
10 Lombard Street, Suite 410  
San Francisco, CA 94111  
Attn: Teresa Serata, Director of Strategy and Compliance  
Facsimile No.: (415) 705-8513

If to San Mateo:

Sheriff's Office of Emergency Services  
400 County Center  
Redwood City, CA 94063  
Attn: Kathleen Pape  
Facsimile No.: (650) 363-1868

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

9.3 **Change of Address.** From time to time any party hereto may designate a new address or recipient for notice for purposes of this Article 9 by written notice to the other party and the UASI Management Team.

## **ARTICLE 10 MISCELLANEOUS**

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

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

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

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

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

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

- Appendix A, Authorized Expenditures
- Appendix B, Grant Assurances
- Appendix C, Form of Funding Request

10.7 **Certified Resolution of Signatory Authority.** Upon request of San Francisco, San Mateo shall deliver to San Francisco a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of San Mateo.

10.8 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

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

10.10 **Survival of Terms.** The obligations of San Mateo and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 4.3 and 4.4, Article 6, this Article 10, and the Grant Assurances of Appendix B.

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

10.12 **Sustainability.** Consistent with the FY08 UASI grant guidelines, programs that contain continuing personnel and operating expenses, over and above planning and implementation, must commit to sustainment of the program once the Grant Funding ends. By executing this Agreement, San Mateo acknowledges its responsibility to sustain continuing programs beyond the Grant Funding period, and that this sustainability requirement is a material term of the Agreement.

10.13 **Sustainability of Intelligence Gathering Activities.** Beginning with FY08, UASI Grant Funds used to hire new staff and/or contractor positions to serve as intelligence analysts will be allocated only for a total of two years. If San Mateo participates in the Northern California Regional Intelligence Center (NCRIC), a funded program under the FY08 UASI Grant, or uses UASI Grant Funds for new intelligence analyst positions, San Mateo shall be responsible for supporting its share of the sustainment costs for the NCRIC or the analysts after that initial two-year period from non-federal funding sources. By executing this Agreement, San Mateo certifies that if it participates in the NCRIC or otherwise creates new intelligence analyst positions with grant funds, it shall sustain operational funds for NCRIC or the new positions after the initial two years from non-federal funds. San Mateo acknowledges that this certification is a material term of the Agreement.

## **ARTICLE 11 INSURANCE**

**11.1 Types and Amounts of Coverage.** Without limiting San Mateo's liability pursuant to Article 6 of this Agreement, San Mateo shall maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

(b) 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

(c) 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.

**11.2 Additional Requirements for General and Automobile Coverage.** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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

(b) 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.

**11.3 Additional Requirements Regarding Workers' Compensation.** Regarding Workers' Compensation, San Mateo hereby agrees to waive subrogation which any insurer of San Mateo may acquire from San Mateo by virtue of the payment of any loss. San Mateo agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the San Mateo, its employees, agents and subcontractors.

**11.4 Additional Requirements for All Policies.** All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in Article 9, Notices and Other Communications.

**11.5 Required Post-Expiration Coverage.** Should any of the required insurance be provided under a claims-made form, San Mateo 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 Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

**11.6 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs.** 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.

**11.7 Lapse in Insurance.** Should any required insurance lapse during the term of this Agreement, requests for reimbursement originating after such lapse may not be processed, in the City's sole discretion, 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.

**11.8 Evidence of Insurance.** Before commencing any operations or expending any Grant Funds under this Agreement, San Mateo 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.

**11.9 Effect of Approval.** Approval of the insurance by City shall not relieve or decrease the liability of San Mateo hereunder.

**11.10 Insurance for Subcontractors and Evidence of this Insurance.** If a subcontractor or subgrantee will be used to complete any portion of this Agreement, San Mateo shall ensure that the subcontractor or subgrantee shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the San Mateo as additional insureds.

**11.11 Authority to Self-Insure.** Nothing in this Agreement shall preclude San Mateo from self-insuring all or part of the insurance requirement in this Article. However, San Mateo shall provide proof of self-insurance, in a form acceptable to San Francisco, in the amounts of each line of self-insurance.

## **ARTICLE 12 COMPLIANCE**

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

**12.2 Conflict of Interest.** Through its execution of this Agreement, San Mateo acknowledges that it is familiar with the provisions of 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 City if it becomes aware of any such fact during the term of this Agreement.

**12.3 Compliance with ADA.** San Mateo acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. San Mateo shall not discriminate against any person protected under the ADA in connection with all or any portion of the Grant Plan and shall comply at all times with the provisions of the ADA.

**12.4 Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, San Mateo 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. San Mateo agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by San Francisco'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, San Francisco may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit San Mateo from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider San Mateo's use of profit as a violation of this section.

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

CITY AND COUNTY OF SAN FRANCISCO:

COUNTY OF SAN MATEO:

SAN FRANCISCO DEPARTMENT OF  
EMERGENCY MANAGEMENT

By:

By:

\_\_\_\_\_  
VICKI HENNESSY  
ACTING EXEC. DIRECTOR

\_\_\_\_\_  
MARK CHURCH, PRESIDENT  
BOARD OF SUPERVISORS

Federal Tax ID #: 94-6000532

**Approved as to Form:**

Dennis J. Herrera  
City Attorney

By:

\_\_\_\_\_  
Katharine Hobin Porter  
Deputy City Attorney



**Appendix A — Authorized Expenditures and Timelines**

ENTITY: **SAN MATEO COUNTY**

Total allocation to be spent on the following solution areas:

| <b>UASI Project Title</b>                   | <b>Solution Area</b> | <b>Program Description</b>  | <b>Deliverable Dates</b> | <b>Amount</b>            |
|---|----------------------|---|--------------------------|--------------------------|
| <b>Project C Training</b>                   | Training             | Training course expenses to include backfill/overtime, travel, tuition, per diem or other grant eligible expenses. All expenses must be pre-approved by the UASI Director of Strategy and Compliance or designee prior to scheduling. Invoices for all training expenses must be submitted by no later than 6/30/10   | 1/01/09 – 06/30/10       | Not to Exceed: \$21,962  |
| <b>Project L Information Sharing System</b> | Equipment            | West Bay Information Sharing System. Purchase equipment as per the Financial Management Workbook. All purchases must be pre-approved by the Interoperability and Info Sharing Grants Program Manager, Heather Tannehill-Plamondon. This funding will include at a minimum: <ul style="list-style-type: none"> <li>• The development of a project plan with dated milestones which will be submitted to the UASI Management team by 10/31/09;</li> <li>• The utilization of a collaborative governance structure representing the justice agencies in this region (comprised of San Mateo County, government entities with San Mateo County, and the City and County of San Francisco) to direct spending and sustainability,</li> </ul> | 3/01/09 – 06/30/10       | Not to Exceed: \$333,000 |

|  |  |   |  |                             |
|--|--|---|--|-----------------------------|
|  |  | <p>governance documents submitted to UASI Management Team by 3/31/10;</p> <ul style="list-style-type: none"> <li>• That MOUs shall be executed establishing the sharing environment between the justice agencies in the region and with other nodes, MOUs submitted to UASI Management Team by 3/31/10;</li> <li>• The establishment of a West Bay COPLINK node which will accommodate all justice agencies in the region; connectivity of the San Mateo County Sheriff's Office, the San Francisco Police Department, the San Francisco Sheriff's Department, the San Mateo Police Department and as many other justice agencies in the region to the COPLINK node as possible, connectivity to be established no for Phase 1 agencies no later than 6/30/10;</li> <li>• That the West Bay COPLINK (Fusion Center) node be connected to the three COPLINK nodes that reside in the Regional Terrorism Threat Assessment Centers in Los Angeles, San Diego and Sacramento; connectivity established no later than 6/30/10.</li> </ul> |  |                             |
|  |  | TOTAL ALLOCATION  |  | NOT TO EXCEED:<br>\$354,962 |

- **All requests for reimbursements must be submitted by September 30, 2010 unless an earlier deadline is set in this Appendix.**

- **Authorized expenditures must fall into one of the following categories: Planning, Organization, Equipment, Training, or Exercises. Descriptions of authorized expenditures are in the following documents:**
  - *FY 2008 Homeland Security Grant Program, Guidance and Application Kit* dated February 2008: [http://www.ohs.ca.gov/pdf/fy08\\_hsgp\\_guide.pdf](http://www.ohs.ca.gov/pdf/fy08_hsgp_guide.pdf)
  - *California Supplement to Federal Program Guidance and Application Kit*: <http://www.ohs.ca.gov/pdf/FY%2008%20HSGP%20California%20Supplement%205-7-08.pdf>
  - *Authorized Equipment List*: [www.rkb.us](http://www.rkb.us)
  - *Office of Justice Programs Financial and Administrative Guide for Grants*: <http://www.ojp.usdoj.gov/financialguide/>
- **Any equipment purchased under this Agreement must match the UASI 2008 Grant Application Workbook. Any modification to the inventory list in that Workbook must receive prior written approval from by the Bay Area UASI Program Manager.**
- **No Management and Administration expenses are allowed, unless expressly identified and authorized in this Appendix.**
- **Sustainability requirements may apply to some or all of the grant funded projects or programs authorized in this Appendix. See Agreement, ¶¶10.12, 10.13.**

## Appendix B-- Grant Assurances

Name of Jurisdiction: County of San Mateo, Office of the Sheriff

Name of Authorized Agent: Edmund Barberini, Lieutenant

Address: 400 County Center

City: Redwood City State: CA Zip Code: 94063

Telephone Number: (650) 363-4790

Fax Number: (650) 363-1868

E-Mail Address: ebarberini@co.sanmateo.ca.us

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

1. Has the legal authority to apply for federal assistance, and has the institutional, managerial and financial capability to ensure proper planning, management and completion of the grant provided by the federal Department of Homeland Security (DHS) and subgranted through the State of California, Governor's Office of Homeland Security (OHS).
2. Will assure that grant funds are only used for allowable, fair, and reasonable costs and will not transfer funds between programs (State Homeland Security Program, Urban Area Security Initiative, Citizen Corps Program, and Metropolitan Medical Response System).
3. Will give the federal government, the General Accounting Office, the Comptroller General of the United States, the State of California, through any authorized representative, access to and the right to examine all paper or electronic records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or awarding agency directives.
4. Agrees that funds utilized to establish or enhance state and local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines and achievement of a baseline level of capability as defined by the Fusion Capability Planning Tool.
5. Will provide progress reports and such other information as may be required by the DHS, FEMA or OHS, including the Initial Strategy Implementation Plan (ISIP), within 45 (forty-five) days of the award, and update via a report in the Grant Reporting Tool (GRT) twice each year.
6. Will initiate and complete the work within the applicable time frame after receipt of approval from OHS.

7. Will comply with FEMA's codified regulation 44 Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, including Part 13.1 regarding the payment of interest earned on advances.
8. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain for themselves or others, particularly those with whom they have family, business or other ties.
9. Agrees that to the extent contractors or subcontractors are utilized, grantees and subgrantees shall use small, minority, women-owned, or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
10. Will comply with 2 C.F.R. § 215.25, and will notify OHS of any developments that have a significant impact on award-supported activities, including changes to key program staff.
11. Will comply, if applicable, with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.), which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
12. Understands and agrees that Federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express prior written approval from FEMA.
13. Will comply with all federal statutes relating to Civil Rights and Nondiscrimination. These include but are not limited to:
  - a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, which prohibits discrimination on the basis of race, color or national origin.
  - b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of gender.
  - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps.
  - d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age.
  - e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255) as amended, relating to nondiscrimination on the basis of drug abuse.
  - f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism;
  - g. §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.
  - h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing.
  - i. Title 28 C.F.R. Part 42, Subparts C, D, E and G.
  - j. Title 28 C.F.R. Part 35.
  - k. Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made.
  - l. Title 44 C.F.R. Parts 7, 16, and 19 relating to nondiscrimination.
  - m. The requirements on any other nondiscrimination statute(s) that may apply to the application.

14. Will, in the event a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, gender, or disability against a recipient of funds, forward a copy of the finding to the Office of Civil Rights, Office of Justice Programs.
15. Will provide an Equal Employment Opportunity Plan, if applicable, to the Department of Justice Office of Civil Rights within 60 days of grant award.
16. Will comply, and assure the compliance of all its subgrantees and contractors, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789(d), or the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; and the provision of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1.
17. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq. (P.L. 91-646), which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs. These requirements apply to all interested in real property acquired for project purposes regardless of federal participation in purchases. Will also comply with Title 44 C.F.R. Part 25, Uniform Relocation Assistance and Real Property Acquisition for Federal and federally-assisted programs.
18. Will comply, if applicable, with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234), which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 (ten thousand dollars) or more.
19. Will comply with all applicable Federal, State, and local environmental and historical preservation (EHP) requirements. Failure to meet Federal, State, and local EHP requirements and obtain applicable permits may jeopardize Federal funding. Will comply with all conditions placed on any project as the result of the EHP review; any change to the scope of work of a project will require re-evaluation of compliance with these EHP requirements.
20. Agrees not to undertake any project having the potential to impact the EHP resources without the prior written approval of FEMA/OHS, including but not limited to communications towers, physical security enhancements, new construction and modifications to buildings that are 50 (fifty) years old or more. Any construction related activities initiated prior to full environmental and historic preservation (EHP) review will result in a non-compliance finding. If ground disturbing activities occur during the project implementation, the recipient must ensure monitoring of the ground disturbance and if any potential archeological resources are discovered, the recipient will immediately cease activity in that area and notify OHS/FEMA and the appropriate State Historic Preservation Office.
21. Will ensure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of this project are not listed in the Environmental Protection

Agency's (EPA) list of Violating Facilities, and will notify OHS and the Federal Grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

22. Will provide any information requested by FEMA/OHS to insure compliance with applicable laws including the following:
  - a. Institution of environmental quality control measures under the National Environmental Policy Act, National Historical Preservation Act, Archaeological and Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (EO11988), Wetlands (11990) and Environmental Justice (12898) and Environmental Quality (EO11514).
  - b. Title 44 C.F.R. Parts 9 and 10, referencing floodplain management and environmental considerations.
  - c. Notification of violating facilities pursuant to E.O. 11738.
  - d. Assurance of project consistency with the approved state management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.).
  - e. Conformity of federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.).
  - f. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523).
  - g. California Environmental Quality Act (CEQA), California Public Resources Code §§ 21080-21098, and Title 14 C.C.R. Chapter 3 §§ 15000-15007.
  - h. Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
  - i. Applicable provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 U.S.C. 3501 et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.
  - j. Will comply with all conditions placed on any project as the result of the EHP review; any change to the scope of work of a project will require re-evaluation of compliance with these EHP requirements.
  - k. Agrees not to undertake any project having the potential to impact the EHP resources without the prior written approval of FEMA/OHS, including but not limited to communications towers, physical security enhancements, new construction and modifications to buildings that are 50 (fifty) years old or more.
23. Will comply with Standardized Emergency Management System (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, § 8607.1(e) and Title 19 C.C.R. §§ 2445, 2446, 2447 and 2448.
24. Agrees that all publications created or published with funding under this grant shall prominently contain the following statement: *"This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security."* The recipient also agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: *"Purchased with funds provided by the U.S. Department of Homeland Security."*

25. Has requested through the State of California, federal financial assistance to be used to perform eligible work approved in the submitted application for federal assistance and after the receipt of federal financial assistance, through the State of California, agree to the following:
  - a. Promptly return to the State of California all the funds received which exceed the approved, actual expenditures as accepted by the federal or state government.
  - b. In the event the approved amount of the grant is reduced, the reimbursement applicable to the amount of the reduction will be promptly refunded to the State of California.
  - c. Separately account for interest earned on grant funds, and will return all interest earned, in excess of \$100 per federal fiscal year.
26. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
27. Will comply with provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
28. Will comply, if applicable, with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
29. Will comply, if applicable, with the Laboratory Animal Welfare Act of 1966 (P. L. 89-544, as amended, 7 U.S.C. § 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
30. Will comply with the minimum wage and maximum hour provisions of the Federal Fair Labor Standards Act (29 U.S.C. § 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.
31. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.
32. Agrees that:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of San Mateo, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - b. If any other funds than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or an employee of Congress, or employee of a Member of Congress in connection with the federal grant or cooperative agreement,



- San Mateo shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
- c. San Mateo shall require that the language of this certification be included in the award documents for all subawards at all tiers including subgrants, contracts under grants and cooperative agreements, and subcontract(s) and that all subrecipients shall certify and disclose accordingly.
  - d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. 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.
33. Agrees that equipment acquired or obtained with grant funds:
    - a. Will be made available pursuant to applicable terms of the California Disaster and Civil Defense Master Mutual Aid Agreement in consultation with representatives of the various fire, emergency medical, hazardous materials response services, and law enforcement agencies within the jurisdiction of the applicant, and deployed with personnel trained in the use of such equipment in a manner consistent with the California Law Enforcement Mutual Aid Plan or the California Fire Services and Rescue Mutual Aid Plan.
    - b. Is consistent with needs as identified in the State Homeland Security Strategy and will be deployed in conformance with that Strategy.
  34. Agrees that funds awarded under this grant will be used to supplement existing funds for program activities, and will not supplant (replace) non-federal funds.
  35. Will comply with all applicable Federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars A-21, A-87, A102, A-110, A-122, and A-133, E.O. 12372 and the current Administrative Requirements, Cost Principles, and Audit Requirements. Will also comply with Title 28 C.F.R. Parts 66 and 70, that govern the application, acceptance and use of Federal funds for federally assisted projects.
  36. Will comply with provisions of 28 C.F.R. applicable to grants and cooperative agreements, Including:
    - a. Part 18, Administrative Review Procedures.
    - b. Part 20, Criminal Justice Information Systems.
    - c. Part 22, Confidentiality of Identifiable Research and Statistical Information.
    - d. Part 23, Criminal Intelligence Systems Operating Policies.
    - e. Part 30, Intergovernmental Review of Department of Justice Programs and Activities.
    - f. Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services.
    - g. Part 38, Equal Treatment of Faith-based Organizations.
    - h. Part 63, Floodplain Management and Wetland Protection Procedures.
    - i. Part 42, Nondiscrimination/Equal Employment Opportunities Policies and Procedures.
    - j. Part 61, Procedures for Implementing the National Environmental Policy Act.
    - k. Part 64, Floodplain Management and Wetland Protection Procedures; and Federal laws or regulations applicable to Federal Assistance Programs.
    - l. Part 66, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
    - m. Part 67, Government-Wide Debarment and Suspension (Non-Procurement).
    - n. Part 69, New Restrictions on Lobbying.

- o. Part 70, Uniform Administrative Requirements for Grants and Cooperative Agreements (including sub-awards) with Institutions of Higher Learning, Hospitals and other Non-Profit Organizations.
  - p. Part 83, Government-Wide Requirements for a Drug Free Workplace (grants).
- 37. Will comply with Subtitle A, Title II of the Americans with Disabilities Act (ADA) of 1990.
- 38. Agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.
- 39. Will maintain procedures to minimize the time elapsing between the award of funds and the disbursement of funds.
- 40. Will comply with the financial and administrative requirements set forth in the current edition of the Office of Justice Programs (OJP) Financial Guide and the current US Department of Homeland Security (DHS) Financial Management Guide.
- 41. Agrees that all allocations and use of funds under this grant will be in accordance with the federal FY 2008 Homeland Security Grant Program Guidance and Application Kit, and the California Supplement to the FY 2008 Homeland Security Grant Program Guidance and Application Kit. All allocations and use of funds under this grant will be in accordance with the Allocations, and use of grant funding must support the goals and objectives included in the State and/or Urban Area Homeland Security Strategies as well as the investments identified in the Investment Justifications which were submitted as part of the California FY2008 Homeland Security Grant Program application. Further, use of FY08 funds is limited to those investments included in the California FY08 Investment Justifications submitted to DHS/FEMA and evaluated through the peer review process.
- 42. Acknowledges that FEMA reserves a royalty-free, non exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: (a) the copyright in any work developed under an award or sub-award; and (b) any rights of copyright to which a recipient or sub-recipient purchases ownership with Federal support. The recipient agrees to consult with GPD regarding the allocation of any patent rights that arise from, or are purchased with, this funding.
- 43. Will not make any award or permit any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Orders 12549 and 12689, "Debarment and Suspension."
- 44. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 C.F.R. Part 67, for prospective participants in primary covered transactions, as defined at 28 C.F.R. Part 67 § 67.510.
  - a. San Mateo certifies that it and its principals:
    - (i) Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency.
    - (ii) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public

(Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.

- (iii) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and (d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

b. Where San Mateo is unable to certify to any of the statements in this certification, it shall attach an explanation to this application.

45. Agrees to comply with the Drug-Free Workplace Act of 1988, and implemented at 28 C.F.R. Part

67, Subpart F, for grantees, as defined at 28 C.F.R. Part 67 §§ 67.615 and 67.620 and certifies that it will or will continue to provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in San Mateo's workplace and specifying the actions that will be taken against employees for violation of such prohibition.
- (b) Establishing an on-going drug-free awareness program to inform employees about:
  - (1) The dangers of drug abuse in the workplace.
  - (2) San Mateo's policy of maintaining a drug-free workplace.
  - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
  - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a).
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:
  - (1) Abide by the terms of the statement; and
  - (2) Notify San Mateo in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction.
- (e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to:

Department of Justice, Office of Justice Programs,  
ATTN: Control Desk,  
633 Indiana Avenue, N.W.,  
Washington, D.C. 20531.

Notice shall include the identification number(s) of each affected grant.

- (f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted.
  - (1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency.
  - (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).
46. Will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this program.
47. Understands that failure to comply with any of the above assurances may result in suspension, termination or reduction of grant funds.

As the duly authorized representative of San Mateo, I hereby certify that San Mateo will comply with the above certifications.

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

Signature of Authorized Agent: \_\_\_\_\_

Printed Name of Authorized Agent: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

**Appendix C -- Form of Reimbursement Request**

**REIMBURSEMENT REQUEST**

\_\_\_\_\_, 2009

UASI Management Team  
10 Lombard Street, Suite 410  
San Francisco, CA 94111

Re: FY 08 UASI Grant Reimbursement Request

Pursuant to Section 3.9 of the Agreement Between the City and County of San Francisco and the County of San Mateo for the Distribution of FY 2008 UASI Regional Funds (the "Agreement"), dated October 23, 2008, between the County of San Mateo ("San Mateo") and the City and County of San Francisco, San Mateo hereby requests reimbursement as follows:

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

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

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

San Mateo certifies that:

- (a) The total amount of funds requested pursuant to this Funding Request will be used to reimburse San Mateo for Authorized Expenditures, which expenditures are set forth on the attached Schedule 1, to which are attached true and correct copies of all required documentation of such expenditures.
- (b) After giving effect to the disbursement requested pursuant to this Reimbursement Request, the Funds disbursed as of the date of this disbursement will not exceed the maximum amount set forth in Section 3.2 of the Agreement, or the not to exceed amounts specified in Appendix A for specific projects and programs.

- (c) The representations, warranties and certifications made in the Agreement are true and correct in all material respects as if made on the date hereof;
- (d) No Event of Default has occurred and is continuing; and
- (e) The undersigned is an officer of San Mateo authorized to execute this Reimbursement Request on behalf of San Mateo.

Signature of Authorized Agent: \_\_\_\_\_

Printed Name of Authorized Agent: \_\_\_\_\_

Title: \_\_\_\_\_ Date: \_\_\_\_\_

## SCHEDULE 1 TO REQUEST FOR REIMBURSEMENT

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

| <b>Payee</b> | <b>Amount</b> | <b>Description</b> |
|--------------|---------------|--------------------|
|--------------|---------------|--------------------|

The following are attached as part of this Schedule 1:

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