

MEMORANDUM OF UNDERSTANDING
BETWEEN

City of Oakland, City of San Jose, City and County of San Francisco, County of Alameda, County of Contra Costa, County of Marin, County of Monterey, County of San Mateo and County of Santa Clara, County of Sonoma

Comment [HTP1]: Per vote to add 5 new members

This Memorandum of Understanding (“MOU”) dated [date pending], sets forth the agreements of the City of Oakland, City of San Jose, City and County of San Francisco, County of Alameda, County of Contra Costa, County of Marin, County of Monterey, County of San Mateo and County of Santa Clara and County of Sonoma relating to the application for and allocation and distribution of federal Urban Areas Security Initiative (“UASI”) Program grant funds and other regional grant funds.

Comment [HTP2]: Same as above

This MOU is made with reference to the following facts and circumstances:

- A. The above named cities and counties (collectively and individually, the “Parties”) are committed to regional cooperation and coordination in building and sustaining capabilities to provide the greatest capability for prevention, protection, response, and recovery from threats or acts of terrorism and other catastrophic events in the Bay Area region in accordance with grant guidelines. The Bay Area UASI includes the jurisdictions as defined by the U.S. Department of Homeland Security.
- B. Beginning in 2006, the U.S. Department of Homeland Security (“DHS”) utilized a “core-city, core-county” concept to determine risk and allocate grant funds. The jurisdictions in the Bay Area UASI used that same concept to establish the Bay Area UASI Approval Authority (“Approval Authority”) as the Urban Area Working Group (“UAWG”) for the Bay Area UASI, comprised of representatives from the Urban Area’s core cities and counties. In 2008 and subsequent years, DHS used U.S. Census-determined Metropolitan Statistical Area as a component of its risk methodology and specified that the UAWG take a regional approach to establish representation and membership.
- C. In 2006, the core cities and counties of the Bay Area Urban Area – the City and County of San Francisco, the City of Oakland, the City of San Jose, the County of Alameda and the County of Santa Clara – approved a Memorandum of Understanding (“2006 MOU”), followed by a 2007 Memorandum of Understanding (“2007 MOU”), that established the objectives, governance structure, responsibilities, reporting structure, and financial agreements to be used in applying for UASI and other federal homeland security grant funding.
- D. The Parties wish to update the agreement regarding the objectives, governance structure, responsibilities, reporting structure and financial arrangements used by the Bay Area UASI in applying for, allocating and distributing UASI Program grant funding, and other regional grant funds as provided in this MOU, through the term of this Agreement. Certain governance and

43 process changes are taken from the 2006 MOU and 2007 MOU, to ensure that the Agreements
44 is consistent with grant program requirements.

45 ACCORDINGLY, the Parties agree as follows:

- 46
47
- 48 1. Bay Area UASI Region Approval Authority: The Bay Area UASI Region Approval Authority
49 (“Approval Authority”), shall continue for the purposes and on the terms and conditions
50 set forth below.
 - 51
52 a. Membership. The Parties shall appoint members to the Approval Authority as
53 follows:
 - 54
55
 - 56 b. Selection of Representatives. Each Party is responsible for selecting primary and
57 alternate representatives to the Approval Authority. Each Party shall select its own
58 representatives. Each Party shall designate its representatives, and may change a
59 representative designation, by written notice as specified under this MOU, to all
60 Parties and the General Manager.
 - 61
62 c. Membership Eligibility Requirements. Each Party must be willing and legally able to
63 accept and manage federal homeland security grant funds.
 - 64
65 d. Authority of Representatives. Each Party’s primary and alternate representatives
66 shall be authorized to take action for and speak on behalf of the Party.
 - 67
68 e. Attendance Requirement. If a Party fails to send a representative to two or more
69 Approval Authority meetings in a calendar year, the Approval Authority may remove
70 that Party as a member of the Approval Authority by a two-thirds vote.
 - 71
72 f. Purpose. The purpose of the Approval Authority is to provide effective direction and
73 governance for grant programs under the jurisdiction of the Approval Authority, and
74 to coordinate a regional approach to prevention, protection, response and recovery
75 to homeland security threats in accordance with DHS grant guidelines. To the
76 extent consistent with grant program requirements, the Approval Authority shall:
 - 77
78 i. Approve the UASI region homeland security strategy, which shall determine
79 the focus of the Bay Area UASI program.
 - 80
81 ii. Adopt a regional risk management framework to administer the UASI
82 Homeland Security Grant Program, and related grants, consistent with the
83 grant guidelines and direction provided by the U.S. Department of Homeland
84 Security (DHS) and the California Emergency Management Agency (Cal EMA).
 - 85
86 iii. Approve grant allocation methodologies.

- 85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
- iv. Approve all UASI Program and related grant applications.
 - v. Approve allocation and distribution of grant funds under the jurisdiction of the Approval Authority.
 - vi. Approve an annual budget for the Bay Area UASI Management Team, based on a July 1 – June 30 Fiscal Year.
 - vii. Approve the establishment, purpose, and membership of any advisory bodies whose purpose is to advise the Approval Authority.
 - i. Representatives Roles and Responsibilities. Each Approval Authority representative shall: Be prepared for and attend all Approval Authority meetings.
 - ii. Communicate with his or her jurisdiction’s management staff and stakeholders about the discussions and decisions of the Approval Authority, as permitted by law.
 - g. Urban Area Working Group (UAWG). The Approval Authority shall constitute the primary UAWG for the UASI region, with support from the UASI General Manager and UASI Management Team.
 - h. Other Federal Grants. The Approval Authority may decide to apply the agreements, structures, processes and mechanisms specified in this MOU in applying for, allocating and distributing other types of federal grant funding for the Bay Area UASI region. Any such decision shall be by unanimous vote of the Approval Authority and may include a special designation of an alternative fiscal agent.
 - i. Voting. The Approval Authority shall vote according to the following procedures:
 - i. All votes of the Approval Authority shall require a majority vote for passage of any item, unless a higher threshold is specified in this MOU or set by the Approval Authority in its By-Laws.
 - ii. Each representative shall have one vote.
 - iii. Each representative present at a meeting shall vote “yes” or “no” when a question is put, unless excused from voting by a motion adopted by a majority of the members.
 - iv. Approval Authority representatives shall disclose any conflict of interest involved in their voting on an item, and shall, if necessary, request to be excused from the vote on that item.
 - j. Quorum. A quorum shall consist of the majority of the representatives on the Approval Authority. A quorum is six members. The Approval Authority may not meet or conduct official business in the absence of a quorum.

- 126 2. City and County of San Francisco Obligations. During the term of this MOU, San
127 Francisco will provide the following services to the Approval Authority:
128 a. Designate 2 primary representatives and 2 alternates as full voting members of the
129 Approval Authority.
130 b. Serve as the UASI region point of contact with the U.S. Department of Homeland
131 Security (DHS) and California Emergency Management Agency (Cal EMA) in
132 connection with grants under the jurisdiction of the Approval Authority.
- 133 3. Serve as the Fiscal Agent for grant funds under the jurisdiction of the Approval
134 AuthorityCity of Oakland Obligations. During the term of this MOU, Oakland shall
135 designate 1 primary individual and 1 alternate as a full voting member of the Approval
136 Authority.
137
- 138 4. City of San Jose Obligations. During the term of this MOU, San Jose shall designate 1
139 primary individual and 1 alternate as a full voting member of the Approval Authority.
140
- 141 5. Alameda County Obligations. During the term of this MOU, Alameda County shall
142 designate 1 primary individual and 1 alternate as a full voting member of the Approval
143 Authority.
144
- 145 6. Santa Clara County Obligations: During the term of this MOU, Santa Clara County shall
146 designate 1 primary individual and 1 alternate as a full voting member of the Approval
147 Authority.
148
- 149 7. Contra Costa County Obligations. During the term of this MOU, Contra Costa County
150 shall designate 1 primary individual and 1 alternate as a full voting member of the
151 Approval Authority.
152
- 153 8. Marin County Obligations: During the term of this MOU, Marin County shall designate 1
154 primary individual and 1 alternate as a full voting member of the Approval Authority.
155
- 156 9. San Mateo County Obligations: During the term of this MOU, San Mateo County shall
157 designate 1 primary individual and 1 alternate as a full voting member of the Approval
158 Authority.
159
- 160 10. Sonoma County Obligations: During the term of this MOU, Sonoma County shall
161 designate 1 primary individual and 1 alternate as a full voting member of the Approval
162 Authority.
163
- 164 11. Monterey County Obligations: During the term of this MOU, Monterey County shall
165 designate 1 primary individual and 1 alternate as a full voting member of the Approval
166 Authority.

Comment [HTP3]: Per vote to list CCSF as fiscal agent

167

168

169

12. Obligations of All Parties. All Parties shall:

170

- a. Participate in the implementation of regional projects and initiatives within the Bay Area Urban Area that are consistent with the mission and decisions of the Approval Authority, including participation in the Risk and Capability Assessment process on an annual basis.
- b. Provide personnel with subject-matter expertise to participate on any advisory groups or working groups established by the Approval Authority and/or the General Manager. Such personnel shall be authorized to take action for and speak on behalf of the Party.

171

172

173

174

175

176

177

178

13. California Emergency Management Agency: During the term of this MOU, CALEMA will designate 1 individual to serve in an advisory capacity and to ensure consistency in strategies and initiatives that support homeland security programs.

179

180

181

182

Comment [HTP4]: Per vote to have CalEMA as an Advisor not a voting member

183

14. General Manager.

184

- a. The Approval Authority shall establish the minimum qualifications for the General Manager position, and may establish desired and preferred qualifications.
- b. The Approval Authority shall select a General Manager.
- c. The General Manager shall be an employee or contractor of the Fiscal Agent.
- d. While the City and County of San Francisco is the Fiscal Agent, the General Manager will be an employee of San Francisco, not a contractor.
- e. The employing jurisdiction is responsible for the work of the General Manager, and for directing and managing that work consistent with the duties determined and established by the Approval Authority. Nothing in this Agreement is intended to interfere with the right of the employing jurisdiction to take employment action regarding the employee assigned as General Manager, including but not limited to imposing discipline up to and including termination of employment.
- f. The individual selected by the Approval Authority shall be assigned to work full-time as the General Manager. The General Manager position shall be funded through grant funds.
- g. Nothing in this agreement is intended to interfere with the right of the Approval Authority to remove the General Manager from their role as the General Manager.

185

186

187

188

189

190

191

192

193

194

195

196

197

198

199

200

Comment [HTP5]: Per vote to include language as identified by Santa Clara County for GM

201

15. UASI Management Team.

202

- a. In consultation with the Approval Authority, the General Manager shall select individuals for assignment to the Management Team. The members of this Team shall be employees of the Parties, and assigned to work full-time on the Management Team. The salaries of the employees assigned to serve on the Management Team shall be funded through grant funds. Nothing in this Agreement is intended to interfere with the right of an employing jurisdiction to take

203

204

205

206

207

208

209 employment action regarding an employee assigned to the Management Team,
210 including but not limited to imposing discipline up to and including termination of
211 employment.
212 b. The employing jurisdiction is responsible for the work of employees assigned to the
213 Management Team, and for directing and managing that work consistent with the
214 duties determined and established by the General Manager.
215

216 16. Grants and Contracts Awarded for UASI Grant-Funded Projects. On behalf of, and by a
217 vote of the Approval Authority, the Fiscal Agent may apply for federal grant funding for
218 the UASI region. All grants and contracts awarded using UASI Program grant funds
219 received by the UASI region shall conform to all applicable federal and state grant and
220 contracting requirements.
221

222 17. Fiscal Agent. **The City and County of San Francisco shall be the Fiscal Agent for the Bay**
223 **Area UASI.**

- 224 a. The Fiscal Agent shall serve as the sub-grantee for funds granted by DHS and Cal
225 EMA to the Bay Area Urban Area. The Fiscal Agent shall provide all financial services
226 and establish procedures and execute sub recipient agreements for the distribution
227 of grant funds to jurisdictions selected by the Approval Authority to receive grant
228 funds. The Parties understand that until the Fiscal Agent and a sub recipient
229 jurisdiction fully and finally execute a sub recipient agreement, the Fiscal Agent shall
230 have no obligation to disburse grant funds to that jurisdiction. The Parties
231 acknowledge and agree that grant decisions are subject to the discretion and
232 decision-making of the Cal EMA and Approval Authority. A Party or other sub
233 recipient jurisdiction that takes any action, informal or formal, to appropriate,
234 encumber or expend Grant Funds before final allocation decisions by Cal EMA and
235 the Approval Authority, and before a sub recipient agreement is fully and finally
236 executed with the Fiscal Agent, assumes all risk of possible non-allocation or non-
237 reimbursement of funds.
238 b. All requests for funding or reimbursement from the Fiscal Agent shall meet any
239 guidelines and requirements established by the Fiscal Agent. The guidelines may
240 include requirements for record keeping, internal audits, signature authority for
241 approval of reimbursement requests, submission of financial reports, and
242 compliance with professional accounting standards. The Fiscal Agent may recover
243 eligible costs for legal, financial, and other services through the grants administered
244 by the Fiscal Agent.
245 c. A member agency who is a signatory to this Memorandum of Understanding and
246 who has met all the requirements to hold a seat on the Approval Authority may
247 request to be considered by the remaining members of the Approval Authority to
248 assume the role of Fiscal Agent at any time during the term of this Memorandum of
249 Understanding. The Approval Authority shall consider the application, along with

Comment [HTP6]: Per vote to list CCSF as Fiscal Agent

250 any applications of other members, according to the process contained in the By-
251 Laws.

- 252 d. The City and County of San Francisco, as the Fiscal Agent will file a performance
253 evaluation for the General Manager on an annual basis pursuant to the Human
254 Resources Rules of the City and County of San Francisco.

Comment [H7]: Per minutes of 7/14/11 meeting

- 255
256 18. By-Laws. The Approval Authority shall promulgate By-Laws to govern implementation
257 of this MOU, and to set duties and responsibilities for the General Manager and
258 Management Team. The By-Laws shall be consistent with the terms of this MOU.
259 Wherever the By-Laws conflict with the MOU, the MOU controls. The By-laws may be
260 adopted and amended by a two-thirds vote of the Approval Authority.

- 261
262 19. Indemnification. In lieu of and notwithstanding the pro rata risk allocation that might
263 otherwise be imposed between the Parties pursuant to Government Code Section
264 895.6, the Parties agree that all Losses (as defined below) incurred by a Party in
265 connection with this MOU or the activities contemplated by this MOU shall not be
266 shared pro rata but instead the Parties agree that pursuant to Government Code Section
267 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties,
268 including, without limitation, their officers, board members, employees and agents,
269 harmless from any Losses imposed for injury (as defined by Government Code Section
270 810.8) arising in connection with the negligent acts or omissions or willful misconduct of
271 the indemnifying party, including, without limitation, its officers, board members,
272 employees or agents, under or in connection with or arising out of any work, authority
273 or jurisdiction delegated to such Party under this Agreement. No Party, including,
274 without limitation, any officer, board member, employee or agent thereof, shall be
275 responsible for any Losses occurring by reason of the negligent acts or omissions or
276 willful misconduct of other Parties hereto, including, without limitation, their officers,
277 board members, employees or agents, under or in connection with or arising out of any
278 work, authority or jurisdiction delegated to such other Parties under this Agreement.
279 For purposes of this Section, Losses shall mean any and all claims, demands, losses,
280 liabilities, damages (including foreseeable and unforeseeable consequential damages to
281 the extent arising from third party claims), liens, obligations, interest, injuries, penalties,
282 fines, lawsuits and other proceedings, judgments and awards and costs and expenses
283 (including, without limitation, reasonable attorneys' fees and costs, and consultants'
284 fees and costs) of whatever kind or nature, known or unknown, contingent or
285 otherwise.

- 286
287 20. Conflicts of Interest. If and when a Party identifies an actual or potential conflict of
288 interest among one or more of the Parties, that Party shall send written notification to
289 all Parties. The Party with the actual or potential conflict shall respond to the notice
290 within three business days. The response shall indicate whether the Party agrees or
291 disagrees that a conflict exists. If the Party agrees, that Party may take appropriate

292 action to cure the conflict, if possible, and shall describe its corrective actions in its
293 response. If a Party disagrees, or cannot to cure an actual conflict, the Approval
294 Authority shall meet on the conflict within not less than 30 calendar days of the initial
295 notice, in an effort to resolve the conflict. The Approval Authority shall schedule a
296 special meeting if necessary to meet this timeline. All notices under this section shall be
297 provided under Section 28, Notices.
298

299 21. Effective Date and Term. This MOU shall take effect on the **December 1, 2011** and shall
300 remain in effect until **December 1, 2013** , unless sooner terminated as provided below
301 (“Term”).
302

Comment [H8]: Confirm this date works?

303 22. Termination.

- 304 a. Any Party may terminate its participation in this MOU by providing 30-days advance
305 written notice of its termination to all Parties and the General Manager. That Party
306 shall fulfill any grant-related or contractual obligations to the Fiscal Agent. This MOU
307 shall continue in effect between the remaining Parties.
308 b. The Approval Authority may terminate any Party’s participation in this MOU by a
309 two-thirds vote, due to failure of the Party to meet the membership eligibility
310 requirements under Section 1 of this MOU. A party whose membership in the MOU
311 is terminated must still fulfill any grant-related or contractual obligations to the
312 Fiscal Agent.
313 c. The Approval Authority may terminate this MOU at any time, for convenience and
314 without cause, by unanimous vote. Any such action of the Approval Authority shall
315 specify the date on which the termination shall be effective, which date shall be at
316 least 6 months from the date of the Approval Authority’s action.
317

318 23. Jurisdiction and Venue. The laws of the State of California shall govern the
319 interpretation and performance of this MOU. Venue for any litigation relating to the
320 formation, interpretation or performance of this MOU shall be in San Francisco, CA.
321

322 24. Modification. This MOU may not be modified, nor may compliance with any of its terms
323 be waived, except by written instrument executed and approved in the same manner as
324 this MOU.

325 25. Cooperative Drafting. This MOU has been drafted through a cooperative effort of the
326 Parties, and all Parties have had an opportunity to have the MOU reviewed and revised
327 by legal counsel. No Party shall be considered the drafter of this MOU, and no
328 presumption or rule that an ambiguity shall be construed against the Party drafting the
329 clause shall apply to the interpretation or enforcement of this MOU.
330

331 26. Survival of Terms. The obligations of the Parties and the terms of the following
332 provisions of this Agreement shall survive and continue following expiration or
333 termination of this Agreement:

Comment [H9]: Need Counsel to provide based on agreed upon changes to total doc

334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375

- 27. Complete Agreement. This is a complete agreement and supersedes any prior oral or written agreements of the Parties regarding the subject matter of this MOU, including but not limited to the process for applying for and distributing grant funding for the Bay Area Urban Area. This MOU supersedes the Memorandum of Understanding between City and County of San Francisco, City of San Jose, City of Oakland, Alameda County, and Santa Clara County, dated July 1, 2007.
- 28. Severability. Should the application of any provision of this MOU 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 MOU 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.
- 29. Counterparts. This MOU may be executed in several counterparts, each of which is an original and all of which constitutes but one and the same instrument.
- 30. Notice.
 - a. Any notices required hereunder shall be given as follows:

[Placeholder here for all contact information]
 - b. Notices shall be deemed given when received if given in person, by facsimile or by electronic means (if a record of receipt is kept by the sending party showing the date and time of receipt) or three (3) days following deposit in the United States Mail, postage prepaid, to the addressees set forth in subsection (a) above.
 - c. Any Party may change its contact individual and/or address for notice by giving written notice of the change to the other Parties and the General Manager.

Comment [H10]: This list needs to be collected.

The individuals executing this MOU represent and warrant that they have the legal capacity and authority to do so on behalf of their respective legal entities.

The undersigned approve the terms and conditions of this MOU.

City and County of San Francisco, California

Signature: _____
By: _____
Title: _____

376 **City and County of San Francisco, California**

377

378 Signature: _____

379 By: _____

380 Title: _____

381

382 **City of Oakland, California**

383

384 Signature: _____

385 By: _____

386 Title: _____

387

388 **City of San Jose, California**

389 Signature: _____

390 By: _____

391 Title: _____

392

393 **Alameda County, California**

394

395 Signature: _____

396 By: _____

397 Title: _____

398

399 **Santa Clara County, California**

400

401 Signature: _____

402 By: _____

403 Title: _____

404

405

406 **Contra Costa County, California**

407

408 Signature: _____

409 By: _____

410 Title: _____

411

412 **Marin County, California**

413

414 Signature: _____

415 By: _____

416 Title: _____

417

418 **San Mateo County, California**

419

420 Signature: _____

421 By: _____

422 Title: _____

423

424 **Sonoma County, California**

425

426 Signature: _____

427 By: _____

428 Title: _____

429

430 **Monterey County, California**

431

432 Signature: _____

433 By: _____

434 Title: _____

435

436

DRAFT