

MEMORANDUM OF UNDERSTANDING
AMONG

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, County of Santa Clara, County of Sonoma

This Memorandum of Understanding (“MOU”) dated **DECEMBER 1, 2017**, 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, 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.

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

- A. The above named cities and counties (collectively, the “Parties” and individually, a “Party”) are committed to regional cooperation and coordination in building and sustaining capabilities to provide the greatest capability for prevention, protection, mitigation, 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 the 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 updated the 2007 MOU in 2011, and updated the 2011 MOU in 2013. Such updates pertained to the objectives, governance structure, membership, 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. The 2013 MOU is set to expire on December 1, 2017. The Parties intend that this MOU shall, upon its Effective Date, supersede and replace the 2013 MOU in its entirety.

45 ACCORDINGLY, the Parties agree as follows:
46

47 1. Bay Area UASI Region Approval Authority: The Bay Area UASI Region Approval Authority
48 ("Approval Authority") shall continue for the purposes and on the terms and conditions
49 set forth below.
50

51 a. Membership. The Parties shall appoint Members to the Approval Authority as
52 follows: City of Oakland, City of San Jose, City and County of San Francisco, County
53 of Alameda, County of Contra Costa, County of Marin, County of Monterey, County
54 of San Mateo, County of Santa Clara, and County of Sonoma.
55

56 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 the
60 General Manager.
61

62 b. Membership Eligibility Requirements. Each Party must be willing and legally able to
63 accept and manage federal homeland security grant funds.
64

65 c. 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 d. 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. In the event
71 of such a vote, the Party in question will not be eligible to vote on said issue.
72

73 e. Purpose. The purpose of the Approval Authority is to provide effective direction and
74 governance for grant programs under the jurisdiction of the Approval Authority, and
75 to coordinate a regional approach to prevention, protection, mitigation, response
76 and recovery to homeland security threats and hazards in accordance with DHS
77 grant guidelines. To the extent consistent with grant program requirements, the
78 Approval Authority shall:
79

- 80 i. Approve the Bay Area UASI Goals and Objectives and THIRA (Threat and
81 Hazards Identification and Risk Assessment), which shall provide focus to grant
82 investments
- 83 ii. Adopt a regional risk management framework to administer the UASI
84 Homeland Security Grant Program, and related grants, consistent with the
85 grant guidelines and direction provided by the U.S. Department of Homeland
86 Security (DHS) and the California Office of Emergency Services (Cal OES).
- 87 iii. Approve grant allocation methodologies.
- 88 iv. Approve all UASI Program and related grant applications.

- 89 v. Approve allocation and distribution of grant funds under the jurisdiction of the
90 Approval Authority.
- 91 vi. Approve an annual budget for the Bay Area UASI Management Team, based
92 on a July 1 – June 30 Fiscal Year.
- 93 vii. Approve the establishment, purpose, and membership of any advisory bodies
94 whose purpose is to advise the Approval Authority.
- 95
- 96 f. Representatives’ Roles and Responsibilities. Each Approval Authority
97 Representative shall:
- 98
- 99 i. Be prepared for and attend all Approval Authority meetings.
- 100 ii. Communicate with his or her jurisdiction’s management staff and
101 stakeholders about the discussions and decisions of the Approval Authority,
102 as permitted by law.
- 103
- 104 g. Urban Area Working Group (UAWG). The Approval Authority shall constitute the
105 primary UAWG for the UASI region, with support from the UASI General Manager
106 and UASI Management Team.
- 107
- 108 h. Other Federal Grants. The Approval Authority may decide to apply the agreements,
109 structures, processes and mechanisms specified in this MOU in applying for,
110 allocating and distributing other types of federal grant funding for the Bay Area UASI
111 region. Any such decision shall be by a two-thirds vote of the Approval Authority.
- 112
- 113 i. Voting. The Approval Authority shall vote according to the following procedures:
- 114
- 115 i. All votes of the Approval Authority shall require a majority vote for passage of
116 any item, unless a higher threshold is specified in this MOU or set by the
117 Approval Authority in its By-laws.
- 118 ii. Each Representative shall have one vote.
- 119 iii. Each Representative present at a meeting shall vote “yes” or “no” when a
120 question is put, unless excused from voting by a motion adopted by a majority
121 of the Members.
- 122 iv. Approval Authority Representatives shall disclose any conflict of interest
123 involved in their voting on an item, and shall, if necessary, request to be
124 excused from the vote on that item.
- 125
- 126 j. Quorum. A quorum shall consist of the majority of the Representatives on the
127 Approval Authority. A quorum is at least six voting Representatives. The Approval
128 Authority may not meet or conduct official business in the absence of a quorum.
- 129
- 130 2. City of Oakland Obligations. During the term of this MOU, Oakland shall designate one
131 primary individual and one alternate as a full voting Member of the Approval Authority.

- 132 3. City of San Jose Obligations. During the term of this MOU, San Jose shall designate one
133 primary individual and one alternate as a full voting Member of the Approval Authority.
134
- 135 4. City and County of San Francisco Obligations. During the term of this MOU, San
136 Francisco will provide the following services to the Approval Authority:
137 a. Designate two primary Representatives and two alternates as full voting Members
138 of the Approval Authority.
139 b. Serve as the UASI region point of contact with the U.S. Department of Homeland
140 Security (DHS) and California Office of Emergency Services (Cal OES) in connection
141 with grants under the jurisdiction of the Approval Authority.
142 c. Serve as the Fiscal Agent for grant funds under the jurisdiction of the Approval
143 Authority during the term of this MOU, notwithstanding that another Party may
144 indicate its desire to become the Fiscal Agent and may become the Fiscal Agent
145 pursuant to the process determined in the By-laws.
146
- 147 5. Alameda County Obligations. During the term of this MOU, Alameda County shall
148 designate one primary individual and one alternate as a full voting Member of the
149 Approval Authority.
150
- 151 6. Contra Costa County Obligations. During the term of this MOU, Contra Costa County
152 shall designate one primary individual and one alternate as a full voting Member of the
153 Approval Authority.
154
- 155 7. Marin County Obligations: During the term of this MOU, Marin County shall designate
156 one primary individual and one alternate as a full voting Member of the Approval
157 Authority.
158
- 159 8. Monterey County Obligations: During the term of this MOU, Monterey County shall
160 designate one primary individual and one alternate as a full voting Member of the
161 Approval Authority.
162
- 163 9. San Mateo County Obligations: During the term of this MOU, San Mateo County shall
164 designate one primary individual and one alternate as a full voting Member of the
165 Approval Authority.
166
- 167 10. Santa Clara County Obligations: During the term of this MOU, Santa Clara County shall
168 designate one primary individual and one alternate as a full voting Member of the
169 Approval Authority.
170
- 171 11. Sonoma County Obligations: During the term of this MOU, Sonoma County shall
172 designate one primary individual and one alternate as a full voting Member of the
173 Approval Authority.
174
- 175 12. Obligations of All Parties. All Parties shall:

- 176 a. Participate in the implementation of regional projects and initiatives within the Bay
177 Area Urban Area that are consistent with the mission and decisions of the Approval
178 Authority, including participation in the Risk Management Program on an annual
179 basis.
180 b. Provide personnel with subject-matter expertise to participate on working groups
181 established by the Approval Authority and/or the General Manager. Such personnel
182 shall be authorized to take action for and speak on behalf of the Party.
183

184 13. General Manager.
185

- 186 a. The Approval Authority shall establish the minimum qualifications for the General
187 Manager position, and may establish desired and preferred qualifications.
188 b. The Approval Authority shall select a General Manager.
189 c. The General Manager shall be an employee or contractor of the Fiscal Agent.
190 d. While the City and County of San Francisco is the Fiscal Agent, the General Manager
191 will be an employee, and not a contractor, of San Francisco.
192 e. The employing jurisdiction is responsible for the work of the General Manager, and
193 for directing and managing that work consistent with the duties determined and
194 established by the Approval Authority. Nothing in this Agreement is intended to
195 interfere with the right of the employing jurisdiction to take employment action
196 regarding the employee assigned as General Manager, including but not limited to
197 imposing discipline up to and including termination of employment.
198 f. The individual selected by the Approval Authority shall be assigned to work full-time
199 as the General Manager. The General Manager position shall be funded through
200 grant funds.
201 g. Nothing in this MOU is intended to interfere with the right of the Approval Authority
202 to remove the General Manager from his or her role as the General Manager of the
203 Bay Area UASI Management Team.

204 14. UASI Management Team.
205

- 206 a. In consultation with the Approval Authority, the General Manager may select
207 employees of the Parties or independent contractors to serve on the Management
208 Team. The salaries of those employees assigned to serve on the Management Team
209 shall be funded through grant funds. Nothing in this MOU is intended to interfere
210 with the right of an employing jurisdiction to take employment action regarding an
211 employee assigned to the Management Team, including but not limited to imposing
212 discipline up to and including termination of employment.
213 b. The General Manager is responsible for the work of employees assigned to the
214 Management Team, and for directing and managing that work consistent with the
215 general duties determined and established by the General Manager with the
216 employing jurisdiction.
217

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

- 223
- 224 a. Fiscal Agent. The City and County of San Francisco shall be the Fiscal Agent for the
225 Bay Area UASI, notwithstanding that another Party may indicate its desire to
226 become the Fiscal Agent and may become the Fiscal Agent pursuant to the process
227 determined in the By-laws. The Fiscal Agent shall serve as the sub-grantee for funds
228 granted by DHS and Cal OES to the Bay Area Urban Area. The Fiscal Agent shall
229 provide all financial services and establish procedures and execute sub- recipient
230 agreements for the distribution of grant funds to jurisdictions selected by the
231 Approval Authority to receive grant funds. The Parties understand that until the
232 Fiscal Agent and a sub-recipient jurisdiction fully and finally execute a sub-recipient
233 agreement, the Fiscal Agent shall have no obligation to disburse grant funds to that
234 jurisdiction. The Parties acknowledge and agree that grant decisions are subject to
235 the discretion and decision-making of Cal OES and the Approval Authority. A Party
236 or other sub recipient jurisdiction that takes any action, informal or formal, to
237 appropriate, encumber or expend grant funds before final allocation decisions by Cal
238 OES and the Approval Authority, and before a sub recipient agreement is fully and
239 finally executed with the Fiscal Agent, assumes all risk of possible non-allocation or
240 non-reimbursement of funds.
- 241 b. All requests for funding or reimbursement from the Fiscal Agent shall meet any
242 guidelines and requirements established by the Fiscal Agent. The guidelines may
243 include requirements for record keeping, internal audits, signature authority for
244 approval of reimbursement requests, submission of financial reports, and
245 compliance with professional accounting standards. The Fiscal Agent may recover
246 eligible costs for legal, financial, and other services through the grants administered
247 by the Fiscal Agent.
- 248 c. A Member who is a signatory to this Memorandum of Understanding and who has
249 met all the requirements to hold a seat on the Approval Authority may request to be
250 considered by the remaining Members of the Approval Authority to assume the role
251 of Fiscal Agent at any time during the term of this Memorandum of Understanding.
252 The Approval Authority shall consider the application, along with any applications of
253 other Members, according to the process contained in the By-laws.
- 254 d. The City and County of San Francisco, as the Fiscal Agent, will file a performance
255 evaluation for the General Manager with input from the Approval Authority, on an
256 annual basis pursuant to the Human Resources Rules of the City and County of San
257 Francisco.

258

259 16. By-laws. The Approval Authority shall promulgate By-laws to govern implementation of
260 this MOU, and to set duties and responsibilities for the General Manager and
261 Management Team. The By-laws shall be consistent with the terms of this MOU.

Wherever the By-laws conflict with the MOU, the MOU controls. The By-laws may be adopted and amended by a two-thirds vote of the Approval Authority.

17. Indemnification. In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all Losses (as defined below) incurred by a Party in connection with this MOU or the activities contemplated by this MOU shall not be shared pro rata but instead the Parties agree that pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, including, without limitation, their officers, board members, employees and agents, harmless from any Losses imposed for injury (as defined by Government Code Section 810.8) arising in connection with the negligent acts or omissions or willful misconduct of the indemnifying Party, including, without limitation, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such Party under this Agreement. No Party, including, without limitation, any officer, board member, employee or agent thereof, shall be responsible for any Losses occurring by reason of the negligent acts or omissions or willful misconduct of other Parties hereto, including, without limitation, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other Parties under this Agreement. For purposes of this Section, Losses shall mean any and all claims, demands, losses, liabilities, damages (including foreseeable and unforeseeable consequential damages to the extent arising from third party claims), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable attorneys' fees and costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.
18. Conflicts of Interest. If and when a Party identifies an actual or potential conflict of interest among one or more of the Parties, that Party shall send written notification to all Parties. The Party with the actual or potential conflict shall respond to the notice within three business days. The response shall indicate whether the Party agrees or disagrees that a conflict exists. If the Party agrees, that Party may take appropriate action to cure the conflict, if possible, and shall describe its corrective actions in its response. If a Party disagrees, or cannot cure an actual conflict, the Approval Authority shall meet on the conflict within not less than 30 calendar days of the initial notice, in an effort to resolve the conflict. The Approval Authority shall schedule a special meeting if necessary to meet this timeline. All notices under this section shall be provided under Section 28, Notices.
19. Effective Date and Term. This MOU shall take effect on **December 1, 2017** ("Effective Date") and shall remain in effect through **November 30, 2021**, unless sooner terminated as provided below ("Term").

306 20. Termination.

- 307
- 308 a. Any Party may terminate its participation in this MOU by providing 30 days’
- 309 advance written notice of its termination to all Parties and the General Manager.
- 310 That Party shall fulfill any grant-related or contractual obligations to the Fiscal
- 311 Agent. This MOU shall continue in effect between the remaining Parties.
- 312 b. The Approval Authority may terminate any Party’s participation in this MOU by a
- 313 two-thirds vote, due to failure of the Party to meet the membership eligibility
- 314 requirements under Section 1 of this MOU. A Party whose membership in the MOU
- 315 is terminated must still fulfill any grant-related or contractual obligations to the
- 316 Fiscal Agent.
- 317 c. The Approval Authority may terminate this MOU at any time, for convenience and
- 318 without cause, by unanimous vote. Any such action of the Approval Authority shall
- 319 specify the date on which the termination shall be effective, which date shall be at
- 320 least six months from the date of the Approval Authority’s action to terminate the
- 321 MOU.
- 322

323 21. Jurisdiction and Venue. The laws of the State of California shall govern the

324 interpretation and performance of this MOU. Venue for any litigation relating to the

325 formation, interpretation or performance of this MOU shall be in San Francisco, CA.

326

327 22. Modification. This MOU may not be modified, nor may compliance with any of its terms

328 be waived, except by written instrument executed and approved in the same manner as

329 this MOU.

330

331 23. Cooperative Drafting. This MOU has been drafted through a cooperative effort of the

332 Parties, and all Parties have had an opportunity to have the MOU reviewed and revised

333 by legal counsel. No Party shall be considered the drafter of this MOU, and no

334 presumption or rule that an ambiguity shall be construed against the Party drafting the

335 clause shall apply to the interpretation or enforcement of this MOU.

336

337 24. Survival of Terms. The obligations of the Parties and the terms of the following

338 provisions of this Agreement shall survive and continue following expiration or

339 termination of this Agreement: Section 17.

340

341 25. Complete Agreement. This is a complete agreement and supersedes any prior oral or

342 written agreements of the Parties regarding the subject matter of this MOU, including

343 but not limited to the process for applying for and distributing grant funding for the

344 Bay Area Urban Area. Without limiting the foregoing, this MOU supersedes the

345 Memorandum of Understanding dated December 1, 2006 and the 2007 MOU, the 2011

346 MOU, and the 2013 MOU.

347

348 26. Severability. Should the application of any provision of this MOU to any particular facts

349 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.

27. 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.

28. Notice.

a. Any notices required hereunder shall be given as follows:

If to the **City and County of San Francisco**, to:

Anne Kronenberg, Executive Director
Department of Emergency Management
1011 Turk Street
San Francisco, CA 94102
(415) 558-2745

Anne.kronenberg@sfgov.org

and

Raemona Williams, Deputy Chief of Administration
San Francisco Fire Department
698 Second Street
San Francisco, CA 94107
(415) 558-3411

raemona.williams@sfgov.org

If to the **City of Oakland**, to:

Cathey Eide, Emergency Services Manager
Oakland Fire Department
1605 Martin Luther King Jr. Way, 2nd Floor
Oakland, CA 94612
(510) 238-6069

ceide@oaklandnet.com

If to the **City of San Jose**, to:

Raymond Riordan, Director
Office of Emergency Services
855 N. San Pedro St. 4th Floor
San José, CA 95110
(408) 794-7055

ray.riordan@sanjoseca.gov

392 If to **Alameda County**, to:
393 Richard T. Lucia, Undersheriff
394 Alameda County Sheriff's Office
395 1401 Lakeside Drive 12th Floor
396 Oakland, CA 94612
397 (510) 272-6868
398 rlucia@acgov.org
399
400 If to **Contra Costa County**, to:
401 Mike Casten, Undersheriff
402 Contra Costa County Sheriff's Office
403 651 Pine Street, 7th Floor
404 Martinez, CA 94553
405 (925) 335-1512
406 mcast@so.cccounty.us
407
408 If to **Marin County**, to:
409 Robert Doyle, Sheriff
410 Marin County Sheriff's Office
411 1600 Los Gamos Dr. #200
412 San Rafael, CA 94903
413 (415) 473-7250
414 S_Doyle@marinsheriff.org
415
416 If to **Monterey County**, to:
417 Gerry Malais, Emergency Services Manager
418 Office of Emergency Services
419 1414 Natividad Road
420 Salinas, CA 93906
421 (831) 796-1901
422 malaig@co.monterey.ca.us
423
424 If to **San Mateo County**, to:
425 Trisha Sanchez, Undersheriff
426 San Mateo County Sheriff's Office
427 400 County Center, 3rd Floor
428 Redwood City, CA 94063
429 (650) 599-1662
430 tsanchez@smcgov.org
431
432 If to **Santa Clara County**, to:
433 Ken Kehmna, Fire Chief
434 Santa Clara County Fire Department
435 70 W. Hedding Street

San Jose, CA 95110
(408) 378-4010
ken.kehmnna@cnt.sccgov.org

If to **Sonoma County**, to:
Christopher Helgren, Emergency Manager
Sonoma County Fire and Emergency Services Department
2300 County Center Drive, Suite 220B
Santa Rosa, CA 95403
(707) 565-1152
Christopher.Helgren@sonoma-county.org

- 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 General Manager.

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.

461 **City of Oakland, California**

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463 Signature: _____

464 By: _____

465 Title: _____

466

467 **City of San Jose, California**

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469 Signature: _____

470 By: _____

471 Title: _____

472

473 **City and County of San Francisco, California**
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475 Signature: _____
476 By: _____
477 Title: _____
478

479 **County of Alameda, California**
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481 Signature: _____
482 By: _____
483 Title: _____
484

485 **County of Contra Costa, California**

486

487 Signature: _____

488 By: _____

489 Title: _____

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491 **County of Marin, California**
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493 Signature: _____
494 By: _____
495 Title: _____
496

497 **County of Monterey, California**
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499 Signature: _____
500 By: _____
501 Title: _____
502

503 **County of San Mateo, California**
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505 Signature: _____
506 By: _____
507 Title: _____
508

509 **County of Santa Clara, California**

510

511 Signature: _____

512 By: _____

513 Title: _____

514

515

516 **County of Sonoma, California**
517
518 Signature: _____
519 By: _____
520 Title: _____
521