

**AGREEMENT BETWEEN THE CITY AND COUNTY OF
SAN FRANCISCO AND THE CITY OF SAN JOSE
FOR THE DISTRIBUTION OF FY 2018 UASI GRANT FUNDS**

THIS AGREEMENT is made this **NOVEMBER 1, 2018** in the City and County of San Francisco, State of California, by and between the **CITY OF SAN JOSE** ("SAN JOSE") and the **CITY AND COUNTY OF SAN FRANCISCO**, a municipal corporation ("San Francisco" or "City"), in its capacity as fiscal agent for the Approval Authority, as defined below, acting by and through the San Francisco 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 allocation and distribution of federal Urban Areas Security Initiative ("UASI") program grant funds; and

WHEREAS, The Bay Area Urban Area 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 grant 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 Office of Emergency Services ("Cal OES") 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 allocation 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 JOSE 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 JOSE (DUNS#: 063541874) under this Agreement. This Agreement shall specifically cover funds allocated or disbursed from Cal OES Grant Subaward No. 2018-0054, Cal OES ID No. 0759-95017, CFDA No. 97.067, per Cal OES award notice dated October 1, 2018.

(f) “**Grant Plan**” shall mean the plans, performances, events, exhibitions, acquisitions or other activities or matter, and the budget and requirements, described in Appendix A and the WebGrants system. If SAN JOSE requests any modification to the Grant Plan, SAN JOSE shall submit a written request to the UASI General Manager with the following information: Scope of change requested, reason for change, proposed plan for change, summary of approved and requested modifications to the Grant Plan, and any necessary approvals in support of change (e.g., EHP).

(g) “**Indemnified Parties**” shall mean: (i) San Francisco, including all commissions, departments including DEM, 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 3.10(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 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,” “subgrantee,” “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, and 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, information bulletin, or instruction shall mean that statute, regulation, executive order, requirement, policy, guide, guideline, information bulletin, 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 Cal OES requirements, guidelines, information bulletins, and instructions, the decision-making of the Cal OES and the Approval Authority, the terms and conditions of the grant award; the approved application, and to the extent applicable the budget and fiscal provisions of 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 JOSE acknowledges and agrees that grant decisions are subject to the discretion of the Cal OES and Approval Authority. Further, SAN JOSE acknowledges and agrees that the City shall have no obligation to disburse grant funds to SAN JOSE until City and SAN JOSE have fully and finally executed this Agreement. SAN JOSE acknowledges and agrees that if it takes any action, informal or formal, to appropriate, encumber or expend Grant Funds before final allocation decisions by Cal OES and the Approval Authority, and before this Agreement is fully and finally executed, it assumes all risk of possible non-allocation or non-reimbursement of funds, and such acknowledgement and agreement is part of the consideration of this Agreement.

2.2 **Certification of Controller; Guaranteed Maximum Costs.** No funds shall be available under this Agreement without 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 in the grant award and/or 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, and the UASI Management Team and its personnel, are not authorized to request SAN JOSE to perform services or to provide materials, equipment and supplies that would result in SAN JOSE 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 JOSE for services, materials, equipment or supplies that are provided by SAN JOSE 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, and the UASI Management Team and its personnel, are not authorized to offer or promise to SAN JOSE 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 **NOVEMBER 1, 2018** and shall end at 11:59 p.m. San Francisco time on **FEBRUARY 28, 2020**.

3.2 Maximum Amount of Funds. In no event shall the amount of Grant Funds disbursed hereunder exceed **ONE MILLION, FOUR HUNDRED FIFTY-FIVE THOUSAND, SEVEN HUNDRED SIXTEEN DOLLARS (\$1,455,716)**. The City will not automatically transfer Grant Funds to SAN JOSE upon execution of this Agreement. SAN JOSE must submit a Reimbursement Request under Section 3.10 of this Agreement, approved by the UASI Management Team and City, before the City will disburse Grant Funds to SAN JOSE.

3.3 Use of Funds.

(a) General Requirements. SAN JOSE shall use the Grant Funds received under this Agreement for the purposes and in the amounts set forth in the Grant Plan. SAN JOSE shall not use or expend Grant Funds for any other purpose, including but not limited to, for matching funds for other federal grants/cooperative agreements, lobbying or intervention in federal regulatory or adjudicatory proceedings, or to sue the federal government or any other government entity. SAN JOSE shall not permit any federal employee to receive Grant Funds.

(b) Modification of Grant Plan. Under Sections 1.1(f) and 10.2 of this Agreement, SAN JOSE may submit a written request to modify the Grant Plan. SAN JOSE shall not appropriate, encumber or expend any additional or reallocated Grant Funds pursuant to such a request for modification until (1) the General Manager or designee has provided written approval for the request and (2) the parties have finally executed a modification of this Agreement under Section 10.2, to reflect the modified Grant Plan. In addition, if the modification request requires approval from the Approval Authority and/or Cal OES, as determined by the General Manager, SAN JOSE shall not appropriate, encumber or expend any additional or reallocated Grant Funds pursuant to the modification request without approval from the Approval Authority and/or Cal OES.

(c) No Supplanting. SAN JOSE shall use Grant Funds to supplement existing funds, and not replace (supplant) funds that have been appropriated for the same purpose.

(d) Obligations. SAN JOSE must expend Grant Funds in a timely manner consistent with the grant milestones, guidance and assurances; and make satisfactory progress toward the goals, objectives, milestones and deliverables in this Agreement.

3.4 **Grant Assurances; Other Requirements; Cooperation with Monitoring.**

(a) SAN JOSE shall comply with all Grant Assurances included in Appendix B, attached hereto and incorporated by reference as though fully set forth herein. SAN JOSE shall require all subgrantees, contractors and other entities receiving Grant Funds through or from SAN JOSE to execute a copy of the Grant Assurances, and shall ensure that they comply with those Grant Assurances.

(b) In addition to complying with all Grant Assurances, SAN JOSE shall comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by Cal OES or the Approval Authority. SAN JOSE shall require and ensure that all subgrantees, contractors and other entities receiving Grant Funds through or from SAN JOSE comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by Cal OES or the Approval Authority.

(c) SAN JOSE 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 compliance with this Agreement. SAN JOSE shall cooperate in good faith with San Francisco and the UASI Management Team in any evaluation, inspection, planning or monitoring activities conducted or authorized by DHS, Cal OES, San Francisco or the UASI Management Team. For ensuring compliance with non-supplanting requirements, upon request by City or the UASI Management Team, SAN JOSE shall supply documentation certifying that a reduction of non-federal resources occurred for reasons other than the receipt or expected receipt of Grant Funds.

3.5 **Administrative, Programmatic and Financial Management Requirements.** SAN JOSE shall establish and maintain administrative, programmatic and financial management systems and records in accordance with federal and State of California requirements. This provision requires, at a minimum, that SAN JOSE comply with the following non-exclusive list of regulations commonly applicable to DHS grants, as applicable to this Agreement and the Grant Plan:

(a) Administrative Requirements:

1. 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133).

(b) Cost Principles:

1. 2 CFR Part 200, Subpart E - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133);
2. Federal Acquisition Regulations (FAR), Part 31.2 *Contract Principles and Procedures, Contracts with Commercial Organizations.*

(c) Audit Requirements:

1. 2 CFR Part 200 Subpart F - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133).

3.6 **Technology Requirements.**

(a) National Information Exchange Model ("NIEM"). SAN JOSE shall use the latest NIEM specifications and guidelines regarding the use of Extensible Markup Language ("XML") for all awards of Grant Funds.

(b) Geospatial Guidance. SAN JOSE is encouraged to use Geospatial technologies, which can capture, store, analyze, transmit and/or display location-based information (i.e., information linked to a latitude and longitude), and to align any geospatial activities with the guidance available on the Federal Emergency Management Agency ("FEMA") website.

(c) Criminal Intelligence Systems Operating Policies. Any information technology system funded or supported by Grant Funds shall comply with 28 CFR Part 23, *Criminal Intelligence Systems Operating Policies*, if applicable.

(d) SAN JOSE is encouraged to use the DHS guidance in *Best Practices for Government Use of CCTV: Implementing the Fair Information Practice Principles*, if Grant Funds are used to purchase or install closed circuit television (CCTV) systems or to support operational CCTV systems.

3.7 **Procurement Requirements.**

(a) General Requirements. SAN JOSE shall follow its own procurement requirements as long as those requirements comply with all applicable federal and State of California statutes, regulations, requirements, policies, guides, guidelines and instructions.

(b) Specific Purchases. If SAN JOSE is using Grant Funds to purchase interoperable communication equipment, SAN JOSE shall consult DHS's SAFECOM's coordinated grant guidance, which outlines standards and equipment information to enhance interoperable communication. If SAN JOSE is using Grant Funds to acquire critical emergency supplies, prior to expending any Grant Funds, SAN JOSE shall submit to the UASI Management Team for approval by Cal OES a viable inventory management plan, an effective distribution strategy, sustainment costs for such an effort, and logistics expertise to avoid situations where funds are wasted because supplies are rendered ineffective due to lack of planning.

(c) Bond requirement. SAN JOSE shall obtain a performance bond for any equipment items over \$250,000 or any vehicle, aircraft or watercraft financed with Grant Funds.

3.8 **Subgrantee and Contractor Requirements.**

(a) SAN JOSE shall ensure and independently verify that any subgrantee, contractor or other entity receiving Grant Funds through or from SAN JOSE is not debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs, under Executive Orders 12549 and 12689, as implemented at 2 CFR Part 3000. SAN JOSE shall obtain documentation of eligibility before disbursing Grant Funds to any subgrantee, contractor or other entity. SAN JOSE shall maintain documentary proof of this verification in its files. SAN JOSE shall establish procedures for the effective use of the "Excluded Parties List System," to assure that it does not provide Grant Funds to excluded parties. SAN JOSE shall also establish procedures to provide for effective use and/or

dissemination of the list to assure that its grantees and subgrantees, including contractors, at any tier do not make awards in violation of the non-procurement debarment and suspension common rule.

(b) SAN JOSE shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from SAN JOSE complies with the requirements of 44 CFR Part 18, *New Restrictions on Lobbying*; and

(c) SAN JOSE shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from SAN JOSE complies with the requirements of 2 CFR Part 3001, *Requirements for Drug-Free Workplace (Financial Assistance)*.

3.9 **Monitoring Grant Performance.**

(a) City and the UASI Management Team are both authorized to perform periodic monitoring reviews of SAN JOSE's performance under this Agreement, to ensure that the Grant Plan goals, objectives, performance requirements, timelines, milestone completion, budgets and other criteria are being met. Programmatic monitoring may include the Regional Federal Preparedness Coordinators, or other federal or state personnel, when appropriate. Monitoring may involve a combination of desk-based reviews and on-site monitoring visits, inspection of records, and verifications of grant activities. These reviews will involve a review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The reviews may include, but are not limited to:

1. Evaluating eligibility of expenditures;
2. Comparing actual grant activities to those approved by the Approval Authority and specified in the Grant Plan;
3. Ensuring that any advances have been deposited in an interest bearing account and disbursed in accordance with applicable guidelines; and
4. Confirming compliance with: Grant Assurances; information provided on performance reports and payment requests; and needs and threat assessments and strategies.

(b) SAN JOSE is responsible for monitoring and auditing the grant activities of any subgrantee, contractor or other entity receiving Grant Funds through or from SAN JOSE. This requirement includes but is not limited to mandatory on-site verification visits.

(c) If after any monitoring review, the DHS or Cal OES makes findings that require a Corrective Action Plan by SAN JOSE, the City shall place a hold on all Reimbursement Requests from SAN JOSE until the findings are resolved.

3.10 **Disbursement Procedures.** San Francisco shall disburse Grant Funds to SAN JOSE as follows:

(a) SAN JOSE 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 JOSE 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 JOSE 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 through DEM 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 JOSE submits a Reimbursement Request that is in all respects acceptable to the UASI Management Team and to City.

(e) If SAN JOSE is not in compliance with any provision of this Agreement, City may withhold disbursement of Grant Funds until SAN JOSE has taken corrective action and currently complies with all terms and conditions of the Agreement.

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

3.12 **Sustainability.** Grant Funded programs that contain continuing personnel and operating expenses, over and above planning and implementation costs, must be sustained once the Grant Funding ends. If Equipment is purchased with grant funds the equipment must be sustained through the useful life of equipment. By executing this Agreement, SAN JOSE acknowledges its responsibility and agrees to sustain continuing programs beyond the Grant Funding period. SAN JOSE acknowledges and agrees that this sustainability requirement is a material term of the Agreement.

3.13 **EHP Requirements.**

(a) Grant Funded projects must comply with the federal Environmental and Historic Preservation ("EHP") program. SAN JOSE shall not initiate any project with the potential to impact environmental or historic properties or resources until Cal OES and FEMA have completed EHP reviews and approved the project. Examples of projects that may impact EHP resources include: communications towers, physical security enhancements, new construction, and modifications to buildings, structures and objects that are 50 years old or greater. SAN JOSE shall notify the UASI Management Team of any project that may require an EHP review. SAN JOSE agrees to provide detailed project information to FEMA, Cal OES and/or the UASI Management Team, to cooperate fully in the review, and to prepare any documents requested for the review. SAN JOSE shall comply with all conditions placed on the project as the result of the EHP review, and implement any treatment or mitigation measures deemed necessary to address potential adverse impacts. With prior approval of the UASI Management Team, SAN JOSE may use Grant Funds toward the costs of preparing documents and/or implementing treatment or mitigation measures. Any change to the approved project scope of work will require re-evaluation for compliance with EHP requirements. If ground disturbing activities occur during project implementation, SAN JOSE shall notify the UASI Management Team and ensure monitoring of ground disturbance. If any potential archeological resources are discovered, SAN JOSE shall immediately cease construction in that area and notify the UASI Management Team, which will notify the appropriate State Historic Preservation Office. If SAN JOSE is using Grant Funds for a communication tower project, SAN JOSE

shall complete its Federal Communication Commission (“FCC”) EHP process before preparing its Cal OES/FEMA EHP materials, and shall include the FCC EHP materials in the Cal OES/FEMA submission.

(b) Any construction or other project that SAN JOSE initiates without the necessary EHP review and approval will not be eligible for reimbursement. Failure of SAN JOSE to meet federal, State, and local EHP requirements, obtain applicable permits, or comply with any conditions that may be placed on the project as the result of FEMA’s and/or Cal OES’s EHP review will result in the denial of Reimbursement Requests.

3.14 **National Energy Conservation Policy and Energy Policy Acts.** SAN JOSE shall comply with the following requirements:

(a) Grant Funds may not be used in contravention of the Federal buildings performance and reporting requirements of Executive Order 13123, part 3 of Title V of the National Energy Conservation Policy Act (42 USC §8251 et seq.), or Subtitle A of Title I of the Energy Policy Act of 2005; and

(b) Grant Funds may not be used in contravention of Section 303 of the Energy Policy Act of 1992 (42 USC §13212).

3.15 **Royalty-Free License.** SAN JOSE understands and agrees 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 using Grant Funds; and (b) any rights of copyright that SAN JOSE purchases or acquires using Grant Funds. SAN JOSE shall consult with the UASI Management Team and FEMA regarding the allocation of any patent rights that arise from, or are purchased with, Grant Funds.

3.16 **Publication Statements.** SAN JOSE shall ensure that all publications created or developed under this Agreement prominently contain the following statement: “This document was prepared under a grant from the Federal Emergency Management Agencies Grant Programs Directorate (FEMA/GPD) within the US 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/GPD or the US Department of Homeland Security.”

ARTICLE 4 REPORTING REQUIREMENTS; AUDITS

4.1 **Regular Reports.** SAN JOSE 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 JOSE 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; (b) any change of circumstances that would cause any of the representations or warranties contained in Article 5 to be false or misleading at any time during the term of this Agreement; and (c) any change of circumstances or events that would cause SAN JOSE to be out of compliance with the Grant Assurances in Appendix B.

4.3 **Books and Records.** SAN JOSE 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. Without limiting the scope of the foregoing, SAN JOSE 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 JOSE 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 three (3) years after expiration of this Agreement or until any final audit by Cal OES has been fully completed, whichever is later.

4.4 **Inspection and Audit.** SAN JOSE 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 JOSE under Section 4.3, and allow access and the right to examine those items. SAN JOSE shall permit the UASI Management Team and City, and 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 JOSE has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 4. The DHS, the Comptroller General of the United States or designee, and Cal OES shall have the same inspection and audit rights as the City and UASI Management Team. SAN JOSE shall cooperate with any federal or state audit.

4.5 **Audit Report.** If the amount specified in Section 3.2 of this agreement is \$750,000 or more, SAN JOSE shall submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with GAO's *Government Auditing Standards*, and 2 CFR Part 200 Subpart F - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. SAN JOSE shall submit its audit report to the UASI Management Team no later than six months after the end of SAN JOSE's fiscal year.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

SAN JOSE 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 JOSE 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 JOSE certifies that it is eligible to receive federal funds, and specifically certifies as follows:

(a) SAN JOSE is not suspended, debarred or otherwise excluded from participation in federal assistance programs, as required by Executive Order 12549 and 12689, "Debarment and Suspension" and implemented at 2 CFR Part 3000.

(b) SAN JOSE complies with 31 U.S.C. §1352, *Limitation on use of appropriated funds to influence federal contracting and financial transactions*, as implemented at 44 CFR Part 18 and 6 CFR Part 9.

(c) SAN JOSE complies with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §701 et seq., as implemented in 2 CFR Part 3001, and will continue to provide a drug-free workplace as required under that Act and implementing regulations.

(d) SAN JOSE is not delinquent in the repayment of any federal debt. See OMB Circular A-129.

SAN JOSE acknowledges that these certifications of eligibility to receive federal funds are material terms of the Agreement.

5.3 NIMS Compliance. To be eligible to receive Grant Funds, SAN JOSE must meet National Incident Management System ("NIMS") compliance requirements, and report full NIMS compliance via the National Incident Management System Capability Assessment Support Tool ("NIMSCAST"). By executing this Agreement, SAN JOSE certifies that it is in full NIMS compliance, and that it has reported that compliance via the NIMSCAST. SAN JOSE shall provide documentation of its NIMS compliance to the UASI Management Team. SAN JOSE acknowledges that this certification is a material term of the Agreement.

ARTICLE 6 INDEMNIFICATION AND GENERAL LIABILITY

6.1 Indemnification. SAN JOSE 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 JOSE's performance of this Agreement, including, but not limited to, the following: (a) a material breach of this Agreement SAN JOSE; (b) a material breach of any representation or warranty of SAN JOSE contained in this Agreement; (c) any personal injury or death caused, directly or indirectly, by any act or omission of SAN JOSE 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 JOSE or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by SAN JOSE, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to SAN JOSE by an Indemnified Party; (f) any tax, fee, assessment or other charge for which SAN JOSE 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 by SAN JOSE or its employees, subgrantees or agents 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 JOSE 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 JOSE by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give SAN JOSE prompt notice of any Loss under Section 6.1 and SAN JOSE 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 JOSE if representation of such Indemnified Party by the counsel retained by SAN JOSE would be inappropriate due to conflicts of interest between such Indemnified Party and SAN JOSE. An Indemnified Party's failure to notify SAN JOSE promptly of any Loss shall not relieve SAN JOSE of any liability to such Indemnified Party pursuant to Section 6.1, unless such failure materially impairs SAN JOSE's ability to defend such Loss. SAN JOSE shall seek the Indemnified

Party's prior written consent to settle or compromise any Loss if SAN JOSE 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 JOSE'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, certification 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 JOSE fails to perform or breaches any provision or covenant of this Agreement to be performed or observed by SAN JOSE 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 JOSE fails to perform or breaches any of the terms or provisions of Article 12.

(d) **Voluntary Insolvency.** SAN JOSE (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 JOSE or of any substantial part of SAN JOSE's property or (v) takes action for the purpose of any of the foregoing.

(e) **Involuntary Insolvency.** Without consent by SAN JOSE, 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 JOSE or with respect to any substantial part of SAN JOSE'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 JOSE.

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 JOSE and, on the date specified in such notice, this Agreement shall terminate and all rights of SAN JOSE hereunder shall be extinguished. In the event of such termination, City will pay SAN JOSE 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 JOSE 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 JOSE 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 JOSE 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 JOSE written notice of termination. The notice shall specify the date on which termination shall become effective.

(b) Upon receipt of the notice, SAN JOSE shall commence and perform, with diligence, all actions necessary on the part of SAN JOSE to effect the termination of this Agreement on the date specified by City and to minimize the liability of SAN JOSE 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 JOSE 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 JOSE 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 JOSE or any of its contractors 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 JOSE.** SAN JOSE 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 JOSE hereunder without the prior written consent of the UASI Management Team; provided, however, that any contractor or subgrantee specifically referenced in Appendix A shall not require the consent of Management Team. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of SAN JOSE involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of SAN JOSE or a sale or transfer of substantially all of the assets of SAN JOSE 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 JOSE Retains Responsibility.** SAN JOSE shall in all events remain liable for the performance by any subgrantee contractor, or assignee of all of the covenants, terms and conditions 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 e-mail:

If to San Francisco:

San Francisco Department of Emergency Management
1011 Turk Street
San Francisco, CA 94102
Attn: Mary Ellen Carroll, Executive Director
Maryellen.carroll@sfgov.org

If to the UASI Management Team:

UASI Management Team
711 Van Ness Avenue, Suite #420
San Francisco, CA 94102
Attn: Craig Dziedzic, General Manager
craig.dziedzic@sfgov.org

If to SAN JOSE:

City of San Jose
San Jose Police Department
201 W. Mission Street
San Jose, CA 95110
Attn: Lisa Perez, Fiscal & Personnel Division Manager
Lisa.perez@sanjoseca.gov

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; provided, however, that the General Manager or designee may establish alternate procedures for modification of the Appendix A and the Grant Plan.

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 JOSE to Pay All Taxes.** SAN JOSE 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 and Timelines
- Appendix B, Grant Assurances
- Appendix C, Form of Reimbursement Request

10.7 **Certified Resolution of Signatory Authority.** Upon request of San Francisco, SAN JOSE 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 JOSE.

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.

10.9 **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 JOSE 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 JOSE 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 **Disclosure of Subawards and Executive Compensation.** Pursuant to the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282) as amended by Section 6202(a) of the Government Funding Transparency Act of 2008 (P.L. 110-252), full disclosure to the public of entities or organizations receiving federal funds is now required. As defined by the Office of Management and Budget (OMB), all new Federal awards of \$25,000 or more as of October 1, 2010, are subject to FFATA reporting requirements. The Transparency Act definition of “Federal awards” includes not only prime awards for grantees, cooperators, and contractors, but also awards to sub-recipients. If applicable, SAN JOSE must provide the following information on SAN JOSE letterhead within 30 days of receipt of this Agreement.

1. Subawards greater than \$25,000:
 - a) Name of entity receiving award;
 - b) Amount of award;
 - c) Funding agency;

- d) The Catalog of Federal Domestic Assistance program number;
 - e) Award title (descriptive of the purpose of the funding action);
 - f) Location of the entity and primary location of performance including city, state, and Congressional district;
 - g) Dun & Bradstreet (D&B) DUNS Number of the entity, and its parent if applicable; and,
 - h) Total compensation and names of top five executives (same thresholds as for prime recipients).
2. The Total compensation and names of the top five executives if:
- a) 80% or more of annual gross revenues are from Federal awards (contracts, sub-contracts and Federal financial assistance), and \$25,000,000 or more in annual gross revenues from Federal awards; and,
 - b) Compensation information is not already available through reporting to the Securities and Exchange Commission.

10.13 **Cooperation with UASI Programs and Activities.**

(a) Subject to reasonable terms and conditions, SAN JOSE agrees to participate in UASI-sponsored exercises, and to make available equipment acquired with Grant Funds for use as part of such exercises.

(b) To the extent permitted by law, SAN JOSE agrees to share with the Approval Authority informational work products (such as plans, reports, data, etc.) created or acquired using Grant Funds.

ARTICLE 11 INSURANCE

11.1 **Types and Amounts of Coverage.** Without limiting SAN JOSE's liability pursuant to Article 6 of this Agreement, SAN JOSE 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 JOSE hereby agrees to waive subrogation which any insurer of SAN JOSE may acquire from SAN JOSE by virtue of the payment of any loss. SAN JOSE 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 JOSE, 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 JOSE 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 JOSE 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 JOSE 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 JOSE 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 JOSE as additional insureds.

11.11 **Authority to Self-Insure.** Nothing in this Agreement shall preclude SAN JOSE from self-insuring all or part of the insurance requirement in this Article. However, SAN JOSE 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 JOSE agrees not to discriminate against any employee, San Francisco employee working with SAN JOSE or any subgrantee of SAN JOSE, applicant for employment with SAN JOSE or subgrantee of SAN JOSE, 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 JOSE 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. SAN JOSE agrees that it will promptly notify City in writing of all violations of State or Federal criminal law involving fraud, bribery, or gratuities affecting or involving the use of Grant Funds.

12.3 **Compliance with ADA.** SAN JOSE 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 JOSE 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 12G, SAN JOSE 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 JOSE agrees to comply with San Francisco Administrative Code Chapter 12G and any implementing rules and regulations promulgated by San Francisco's Controller. The terms and provisions of Chapter 12G 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 JOSE from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider SAN JOSE's use of profit as a violation of this section.

12.5 **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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:

CITY OF SAN JOSE:

SAN FRANCISCO DEPARTMENT OF
EMERGENCY MANAGEMENT

By:

By:

MARY ELLEN CARROLL
EXECUTIVE DIRECTOR

LELAND WILCOX
CHIEF OF STAFF,
OFFICE OF THE CITY MANAGER

Federal Tax ID #: 94-6000419

Approved as to Form:

Dennis J. Herrera
City Attorney

Approved as to Form:

Richard Doyle
City Attorney

By:

Leila Mongan
Deputy City Attorney

By:

Carl B. Mitchell
Senior Deputy City Attorney

Appendix A — Authorized Expenditures and Timelines

ENTITY: **SAN JOSE**

SJOEM

Total allocation to be spent on the following solution areas:

<u>IJ Number and Title</u>	<u>Program Description</u>	<u>Due Dates</u>	<u>Solution Areas</u>	<u>Amount</u>
<i>Project Title: Planning Staff - Emergency Communications Coordinator – San Jose Office of Emergency Management</i>				
IJ-4: Strengthen Communications Capabilities	Funds for an Emergency Management Coordinator to coordinate & develop critical incident communication modes and redundancies, policies and protocols for use, coordination with multi-jurisdictional agencies.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Planning	PROJECT NOT TO EXCEED \$95,000
<i>Project Title: Long Range Acoustical Devices for Public Alert and Warning - San Jose Office of Emergency Management</i>				
IJ-4: Strengthen Communications Capabilities	Funds for long-range acoustical devices (L-RADs) for pre-positioning neighborhood-level emergency public notification equipment throughout the city in support of improved alert & warning capability for all hazards.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Equipment AEL #: 13IT-00-ALRT	PROJECT NOT TO EXCEED \$142,313
<i>Project Title: Emergency Logistics Equipment Package for Type I Vehicular Commodity Point of Distribution (POD) - San Jose Office of Emergency Management</i>				

J-4: Strengthen Communications Capabilities	Funds for trailer-based emergency logistics equipment packages with updated contents to support a Type I-III vehicular and pedestrian C-PODs to support critical logistics activities in San José.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Equipment AEL #s: 01ZA-03-EYEP 03OE-03-LTPA 04HW-01-INHW 06CP-02-BRDG 10GE-00-GENR 14SW-01-WALL 19MH-00-BULK 21GN-00-OCEQ	PROJECT NOT TO EXCEED \$101,403
<i>Project Title: Planning Staff - Senior Emergency Services Planner - Community Resilience and Preparedness – San Jose Office of Emergency Management</i>				
IJ-7: Enhance Community Resilience	Funds for a Senior Emergency Services Planner to coordinate, develop and manage a coordinated CERT program and other community-based programs, develop policies and procedures for the implementation of necessary actions, draft coordinated Community Based Emergency Response Plan.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Planning	PROJECT NOT TO EXCEED \$105,000
<i>Project Title: Field and EOC Applications - San Jose Office of Emergency Management</i>				

IJ-9: Enhance Multi-Jurisdictional All Hazards Incident Planning, Response, & Recovery Capabilities	<p>Funds to develop Esri apps that can be deployed quickly in the field to assist the EOC with damage assessment & situational awareness to facilitate re-establishing critical infrastructure, & support response and recovery operations. This will include developing field fillable PDF forms & dashboards for operational response & incident analytics. San Jose would engage a consultant for the work. This effort would be coordinated with FEMA, CalOES & the regions OP Area. The deliverable will be one or more digital apps & fillable pdf forms loaded on those apps, product documentation, testing results, and app(s) guide and staff training.</p>	<p>Project Completion date: 12/31/2019</p> <p>Final deadline for Claim Submittal: 1/31/2020</p>	<p>Planning</p>	<p>PROJECT NOT TO EXCEED \$75,000</p>
<i>Project Title: Critical GIS Dataset Information - San Jose Office of Emergency Management</i>				
IJ-9: Enhance Multi-Jurisdictional All Hazards Incident Planning, Response, & Recovery Capabilities	<p>Funds to develop up-to-date datasets in GIS layers to provide vital information for damage assessment & facilitate re-establishing critical infrastructure, & support response and recovery operations. These datasets would also feed other regional systems for situational awareness in the event of an incident, including potential acts of terrorism. San Jose would engage a consultant for the work.</p>	<p>Project Completion date: 12/31/2019</p> <p>Final deadline for Claim Submittal: 1/31/2020</p>	<p>Planning</p>	<p>PROJECT NOT TO EXCEED \$75,000</p>
<i>Project Title: Planning Staff - Senior Emergency Services Planner – San Jose Office of Emergency Management</i>				

IJ-9: Enhance Multi-Jurisdictional All Hazards Incident Planning, Response, & Recovery Capabilities	Funds for a Senior Emergency Services Planner to coordinate and develop a mass care plan for San Jose including policies and procedures for the implementation of necessary actions.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Planning	PROJECT NOT TO EXCEED \$105,000
<i>Project Title: Planning Staff - Emergency Services Planner – San Jose Office of Emergency Management</i>				
IJ-9: Enhance Multi-Jurisdictional All Hazards Incident Planning, Response, & Recovery Capabilities	Funds for an Emergency Services Planner to coordinate & develop a critical logistics plan including policies and procedures for activation of the plan with pre-packaged & pre-positioned packages of critical logistics for deployment.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Planning	PROJECT NOT TO EXCEED \$87,000
<i>Project Title: Planning Staff - Incident Management Coordinator – San Jose Office of Emergency Management</i>				
IJ-9: Enhance Multi-Jurisdictional All Hazards Incident Planning, Response, & Recovery Capabilities	Funds for an Incident Management Coordinator to coordinate & develop critical logistics contracts for emergency commodities and develop critical logistics policies and protocols.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Planning	PROJECT NOT TO EXCEED \$103,000
<i>Project Title: Planning Staff - Senior Emergency Services Planner - Community Planning – San Jose Office of Emergency Management</i>				

IJ-9: Enhance Multi-Jurisdictional All Hazards Incident Planning, Response, & Recovery Capabilities	Funds for a Senior Emergency Service Planner to facilitate the development of critical logistics and support systems for each of the city council districts, focusing on securing C-POD distribution sites, researching and documenting resources, equipment & supplies for distribution sites, and identifying needed agreements.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Planning	PROJECT NOT TO EXCEED \$105,000
		TOTAL SAN JOSE OFFICE OF EMERGENCY MANAGEMENT ALLOCATION		SJOEM TOTAL NOT TO EXCEED: <u>\$993,716</u>

SJPD & SJFD

Total allocation to be spent on the following solution areas:

<u>IJ Number and Title</u>	<u>Program Description</u>	<u>Due Dates</u>	<u>Solution Areas</u>	<u>Amount</u>
<i>Project Title: Interoperability Manager – San Jose Police Department</i>				
IJ-4: Strengthen Communications Capabilities	Funds for an Interoperability Manager to oversee numerous interoperability projects involving all levels of government to ensure complementary efforts across projects and leveraging of funding streams to promote the interoperable communication needs of the south bay.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Planning	PROJECT NOT TO EXCEED \$150,000
<i>Project Title: P25 Subscribers – San Jose Police Department</i>				

IJ-4: Strengthen Communications Capabilities	Funds for P25 dual band radios.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Equipment AEL#: 06CP-01-PORT	PROJECT NOT TO EXCEED \$250,000
<i>Project Title: Radiation Isotope Identifier Detector - San Jose Fire Department</i>				
IJ-9: Enhance Multi-Jurisdictional All Hazards Incident Planning, Response, & Recovery Capabilities	Funds for a radiation Isotope Identifier Detector rapidly identify radiological sources and will reduce the amount of false alarms and false positives inherent in our current radiation detectors. This portable device can continuously scan for radiological sources. This unit interfaces with our current radiation detectors aiding in our ability to locate the source. Information gathered will be reported to DOE assistance program and FBI WMD coordinator.	Project Completion date: 12/31/2019 Final deadline for Claim Submittal: 1/31/2020	Equipment AEL #: 07RD-01-RIID	PROJECT NOT TO EXCEED \$62,000
		TOTAL SAN JOSE POLICE DEPARTMENT & FIRE DEPARTMENT ALLOCATION		SJPD & SJFD TOTAL NOT TO EXCEED: <u>\$462,000</u>
		TOTAL SAN JOSE ALLOCATION		TOTAL NOT TO EXCEED: <u>\$1,455,716</u>

PLANNING

Reimbursement for Planning Requires:

- **Personnel** – Prior to any expenditure for personnel, SAN JOSE must submit completed job descriptions to the UASI detailing the planning activities the personnel will complete and the deliverables to be produced. Prior to reimbursement, SAN JOSE must submit the following: all functional time sheets, payroll documentation showing payment of salaries and benefits, or cancelled checks; work product or certification that work was completed including a statement of completed activities.
- **Contracts** – All contracts must be pre-approved by the UASI prior to execution. In addition, SAN JOSE must satisfy the following guidelines:
 - Procurement of contractual services must follow local policies and procedures for competitive purchasing (provided they are not in conflict with Federal regulations which supersede them). If sole source approval is needed, SAN JOSE must transmit a sole source request to the UASI for submission to the State.
 - The contract must have a clearly stated scope of work and deliverables, deadlines for completion of work, and a schedule of contract payments.
 - All services must be performed and paid within the grant performance period.
- **Travel** - travel for planning activities must be pre-approved in accordance with the Bay Area UASI Travel Policy (adopted by the Approval Authority in August 2017) prior to scheduling. Invoices must include all backup documentation, including conference agendas, programs, brochures, lodging receipts, per diem calculations, airfare receipts/boarding passes, mileage calculations, other transportation receipts, and proof of payment.

EQUIPMENT

Reimbursement for Equipment Requires:

- An approved EHP memo, if applicable.
- A performance bond is required for any equipment item that exceeds \$250,000, or for any vehicle, aircraft, or watercraft, regardless of the cost. Failure to obtain and submit a performance bond to the UASI may result in disallowance of cost.
- As allowable under Federal guidelines, procurement of equipment must follow local policies and procedures for competitive purchasing (provided they are not in conflict with Federal regulations which supersede them). If sole source approval is needed, SAN JOSE must transmit the request to the UASI for request to the State.
- Prior to reimbursement, SAN JOSE must submit all invoices, AEL numbers, and a list of all equipment ID numbers and the deployed locations.
- SAN JOSE must inventory, type, organize and track all equipment purchased in order to facilitate the dispatch, deployment, and recovery of resources before, during, and after an incident.

- All requests for reimbursements must be submitted by January 31, 2020, unless an earlier deadline is set in this Appendix. SAN JOSE should submit reimbursement requests on a quarterly basis, as applicable.
- 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 2018 Homeland Security Grant Program Notice of Funding Opportunity: https://www.fema.gov/media-library-data/1526578809767-7f08f471f36d22b2c0d8afb848048c96/FY_2018_HSGP_NOFO_FINAL_508.pdf
- California Supplement to the Federal Funding Opportunity Announcement, dated September 2018, available at <http://www.caloes.ca.gov/GrantsManagementSite/Documents/FY%202018%20HSGP%20State%20Guidance.pdf> as “FY 2018 Homeland Security Grant Program California Supplement to the Federal Notice of Funding Opportunity.”
- Authorized Equipment List: <http://www.fema.gov/authorized-equipment-list>
- Cal OES Rules and Regulations, including the Recipient Handbook: <http://www.caloes.ca.gov/GrantsManagementSite/Documents/2018%20Subrecipient%20Handbook.pdf>
- **Any equipment purchased under this Agreement must match the UASI 2018 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, ¶3.12.**
- **All EHP documentation must be submitted and approved prior to any expenditure of funds requiring EHP submission.**

Appendix B-- Grant Assurances

Name of Jurisdiction: CITY OF SAN JOSE

Name of Authorized Agent: Leland Wilcox, Chief of Staff

Address: 200 East Santa Clara Street

City: San Jose State: CA Zip Code: 95113

Telephone Number: (408) 535-8100

Fax Number: (408) 920-7007

E-Mail Address: Leland.Wilcox@sanjoseca.gov

As the duly authorized representative of SAN JOSE, I hereby certify that SAN JOSE has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management, and completion of the project described in this application, within prescribed timelines.

I further acknowledge that SAN JOSE is responsible for reviewing and adhering to all requirements within the:

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) California Supplement to the NOFO; and
- (d) Federal and State Grant Program Guidelines.

Federal Regulations

Government cost principles, uniform administrative requirements, and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (C.F.R.). Updates are issued by the Office of Management and Budget (OMB) and can be found at <http://www.whitehouse.gov/omb/>.

Significant state and federal grant award requirements (some of which appear in the documents listed above) are set forth below. SAN JOSE hereby agrees to comply with the following:

1. Proof of Authority

SAN JOSE will obtain written authorization from the city council, governing board, or authorized body in support of this project. This written authorization must specify that SAN JOSE and the city council, governing board, or authorized body agree:

- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required;
- (b) Any liability arising out of the performance of this agreement shall be the responsibility of SAN JOSE and the city council, governing board, or authorized

- body;
- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board, or authorized body, and
 - (d) The official executing this agreement is, in fact, authorized to do so.

This Proof of Authority must be maintained on file and readily available upon request.

2. Period of Performance

SAN JOSE will initiate work after approval of the award and complete all work within the period of performance specified in the grant.

3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the United States Code (U.S.C.), for persons entering into a contract, grant, loan, or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, SAN JOSE certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- (b) If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.
- (c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

SAN JOSE will also 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.

Finally, SAN JOSE 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 without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 C.F.R. § 200.213 and codified in 2

C.F.R. Part 180, Debarment and Suspension, SAN JOSE will provide protection against waste, fraud, and abuse by debarment or suspending those persons deemed irresponsible in their dealings with the federal government. SAN JOSE certifies that it and its principals, subgrantees, recipients or subrecipients:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) 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;
- (c) 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 (2)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where SAN JOSE is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

5. Non-Discrimination and Equal Employment Opportunity

SAN JOSE will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:

- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. § 2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794), which prohibits discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs (42 U.S.C. §§ 12101-12213);
- (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd—2), relating to confidentiality of patient records regarding substance abuse treatment;
- (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing as

implemented by the Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units—i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)—be designed and constructed with certain accessible features (See 24 C.F.R. § 100.201);

- (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification or national origin;
- (i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- (j) California Public Contract Code § 10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;
- (k) DHS policy to ensure the equal treatment of faith-based organizations, under which all applicants and recipients must comply with equal treatment policies and requirements contained in 6 C.F.R. Part 19;
- (l) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- (m) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in (a) through (m), SAN JOSE will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, familial status, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code §§12940, 12945, 12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), SAN JOSE certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

7. Environmental Standards

SAN JOSE will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources; Institution of environmental quality control measures under the National Environmental Policy Act (NEPA) of 1969 (P.L. 91-190); the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA; and Executive Order 12898 which focuses on the environmental and human health effects of federal actions on minority and low-income populations with the goal of achieving environmental protection for all communities;
- (e) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;
- (f) Executive Order 11514 which sets forth national environmental standards;
- (g) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order 11990 which requires preservation of wetlands;
- (h) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- (i) The Endangered Species Act of 1973, (P.L. 93-205);
- (j) 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.);
- (k) Conformity of Federal Actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.);
- (l) 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.

SAN JOSE shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

8. Audits

For subrecipients expending \$750,000 or more in federal grant funds annually, SAN JOSE will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations,

9. Access to Records

In accordance with 2 C.F.R. § 200.336, SAN JOSE will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. SAN JOSE will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

10. Conflict of Interest

SAN JOSE 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.

11. Financial Management

False Claims for Payment

SAN JOSE will comply with 31 U.S.C §§ 3729-3733 which sets forth that no subgrantee, recipient, or subrecipient shall submit a false claim for payment, reimbursement or advance.

12. Reporting - Accountability

SAN JOSE agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 C.F.R. Part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 C.F.R. Part 170 Reporting Subaward and Executive Compensation Information.

13. Whistleblower Protections

SAN JOSE also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

14. Human Trafficking

SAN JOSE will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

SAN JOSE will comply with the following federal labor standards:

- (a) The Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 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 contracts or subcontracts, and

- (b) The Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

16. Worker's Compensation

SAN JOSE must comply with provisions which require every employer to be insured to protect workers who may be injured on the job at all times during the performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

17. Property-Related

If applicable to the type of project funded by this federal award, SAN JOSE will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide 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 interests in real property acquired for project purposes regardless of federal participation in purchase;
- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more;
- (c) Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §469a-1 et seq.); and
- (d) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, SAN JOSE will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project;
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications; and
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

19. Use of Cellular Device While Driving is Prohibited

Applicants are required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

20. California Public Records Act and Freedom of Information Act

SAN JOSE acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Act, California Government Code section 6250 et seq. The Applicant should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

HOMELAND SECURITY GRANT PROGRAM - PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Reporting Accusations and Findings of Discrimination

If during the past three years the recipient has been accused of discrimination on any basis the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS Financial Assistance Office and the DHS Office for Civil Rights and Civil Liberties (CRCL) by e-mail at CRCL@hq.dhs.gov or by mail at U.S. Department of Homeland Security, Office for Civil Rights and Civil Liberties, Building 410, Mail Stop #0190, Washington, D.C. 20528.

In the courts or administrative agencies make a finding of discrimination on grounds of race, color, national origin (including LEP), sex, age, disability, religion, or familial status against the recipient, or the recipients settle a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Financial Assistance Office and the CRCL by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

22. Acknowledgment of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

23. Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

24. Best Practices for Collection and Use of Personally Identifiable Information (PII)

DHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a

publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template a useful resource respectively.

25. Copyright

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.

26. Duplication of Benefits

Any cost allocable to a particular federal financial assistance award provided for in 2 C.F.R. Part 200, Subpart E may not be charged to other federal financial assistance awards to overcome fund deficiencies, to avoid restrictions imposed by federal statutes, regulations, or federal financial assistance award terms and conditions, or for other reasons. However, these prohibitions would not preclude recipients from shifting costs that are allowable under two or more awards in accordance with existing federal statutes, regulations, or the federal financial assistance award terms and conditions.

27. Energy Policy and Conservation Act

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

28. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

29. Fly America Act of 1974

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

30. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all Applicants must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. § 2225a.

31. Non-supplanting Requirement

All recipients who receive federal financial assistance awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

32. Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-

517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

33. SAFECOM

All recipients who receive federal financial assistance awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

34. Terrorist Financing

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. Recipients are legally responsible to ensure compliance with the Order and laws.

35. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all federal assistance offices exceeds \$10,000,000 for any period of time during the period of performance of this federal financial assistance award, you must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII, the full text of which is incorporated here by reference in the award terms and conditions.

36. USA Patriot Act of 2001

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175–175c.

37. Use of DHS Seal, Logo, and Flags

All recipients must obtain permission from their DHS Financial Assistance Office, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

IMPORTANT

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. SAN JOSE recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on SAN JOSE, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by SAN JOSE and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers. All recipients are bound by the Department of Homeland Security Standard Terms and Conditions 2018, Version 8.1, hereby incorporated by reference, which can be found at: <https://www.dhs.gov/publication/fy15-dhs-standard-terms-and-conditions>.

The undersigned represents that he/she is authorized by SAN JOSE to enter into this agreement for and on behalf of the said Applicant.

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

Appendix C -- Form of Reimbursement Request

REIMBURSEMENT REQUEST

_____, 2019

UASI Management Team
711 Van Ness Avenue, Suite 420
San Francisco, CA 94102

Re: FY 18 UASI Grant Reimbursement Request

Pursuant to Section 3.10 of the "Agreement between the City and County of San Francisco and the CITY OF SAN JOSE for the Distribution of FY 2018 UASI Grant Funds" (the "Agreement"), dated NOVEMBER 1, 2018, between the CITY OF SAN JOSE ("SAN JOSE") and the City and County of San Francisco, SAN JOSE 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 JOSE certifies that:

- (a) The total amount of funds requested pursuant to this Reimbursement Request will be used to reimburse SAN JOSE 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, and SAN JOSE is in compliance with all Grant Assurances in Appendix B of the Agreement. Furthermore, by signing this report, SAN JOSE certifies to the best of their knowledge and belief that the report is true, complete and accurate and expenditures, disbursements, and cash receipts are for the purpose and objectives set forth in the terms and conditions of the federal award. SAN JOSE is aware that any false, fictitious or fraudulent information or the omission of any material fact, may subject SAN JOSE to criminal civil or administrative penalties for fraud, false statements, false claims or otherwise.
- (d) No Event of Default has occurred and is continuing.
- (e) The undersigned is an officer of SAN JOSE authorized to execute this Reimbursement Request on behalf of SAN JOSE.

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:

Project	Payee	Amount	Description	If final claim for project, check box
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

The following are attached as part of this Schedule 1 (Please check items that are applicable):

Planning:

- ☐ Invoice/Payroll Charges
- ☐ Payroll Register
- ☐ Cleared Check Payment
- ☐ Job Description
- ☐ Functional Timesheets
- ☐ Deliverables/Progress Reports

Organization:

- ☐ Invoice/Payroll Charges
- ☐ Payroll Register
- ☐ Cleared Check Payment
- ☐ Job Description
- ☐ Functional Timesheets
- ☐ Deliverables/Progress Reports

Equipment:

- ☐ Invoice
- ☐ Cleared Check Payment
- ☐ Purchase Order
- ☐ Packing Slip
- ☐ EHP Approval
- ☐ EOC Approval
- ☐ Watercraft or Aviation
- ☐ Sole Source
- ☐ Performance Bond
- ☐ Equipment Ledger (Please submit electronic copy to Grants Specialist)

Training:

- ☐ Invoice
- ☐ Cleared Check Payment
- ☐ Training Feedback Number
- ☐ EHP Approval
- ☐ Certificates/Proof of Participation
- ☐ Sign In Sheet
- ☐ Agenda

Exercise:

- ☐ Invoice
- ☐ Cleared Check Payment
- ☐ After Action Report
- ☐ EHP Approval
- ☐ Overtime Authorization

For inquiries/questions, please contact:

_____ Phone #: _____ Email: _____
Print Name