

MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY AND COUNTY OF SAN FRANCISCO; CITY OF OAKLAND;
CITY OF SAN JOSE; ALAMEDA COUNTY; AND SANTA CLARA COUNTY

This Memorandum of Understanding (“MOU”) dated for convenience of reference as of July 1, 2007, sets forth the agreements of the City and County of San Francisco, California (“San Francisco”), the City of Oakland, California (“Oakland”), the City of San Jose, California (“San Jose”), Alameda County, California (“Alameda”), and Santa Clara County, California (“Santa Clara”), relating to the application for and allocation and distribution of federal Urban Areas Security Initiative (“UASI”) Program grant funds.

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

- A. The above named cities and counties (collectively and individually, the “Parties”) are committed to regional cooperation and coordination in building and sustaining capabilities to provide the highest feasible level of prevention, protection, response, and recovery from threats or acts of terrorism and other catastrophic events in the Bay Area region.
- B. On January 3, 2006, the United States Department of Homeland Security (“DHS”) announced that it had combined the Parties and other Bay Area governmental entities into a combined Bay Area “Urban Area” or Super-UASI region (“SUASI region”) for the purpose of application for and distribution of Fiscal Year 2006 UASI Program grant funds. DHS continued that SUASI region structure for application and distribution of Fiscal Year 2007 UASI Program grant funds. The Parties anticipate that DHS will continue to use the SUASI region structure for UASI Program grants in future fiscal years.
- C. For the Fiscal Year 2006 UASI Program, DHS required each Urban Area to establish an Urban Area Working Group (“UAWG”) to act as an executive steering committee to provide overall governance of the homeland security program across the regional area encompassed within the defined Urban Area, to coordinate development and implementation of all UASI Program initiatives, and to ensure that all programmatic requirements associated with participation in the UASI Program were fulfilled. DHS continued the UAWG requirement in the Fiscal Year 2007 UASI Program.
- D. For the Fiscal Year 2006 UASI Program, DHS required also that the UAWG provide either direct or indirect representation for all the jurisdictions that comprise the Urban Area. DHS continued that requirement in the Fiscal Year 2007 UASI Program.
- E. DHS also required the UAWG to develop a methodology for allocating UASI Program funds throughout the SUASI region. That requirement continued into Fiscal Year 2007.
- F. In Fiscal Year 2006, the Parties committed to cooperate for the purposes of applying for, allocating and distributing the Fiscal Year 2006 UASI Program funds, and entered into a

Memorandum of Understanding Between City and County of San Francisco; City of Oakland; City of San Jose; Alameda County; and Santa Clara County, dated July 1, 2006 ("2006 MOU").

G. The 2006 MOU created a layered governance structure, including an Approval Authority, an Advisory Group and a Management Team, assisted by various working groups based on the initiatives described in the SUASI region's Fiscal Year 2006 grant submission.

H. The Parties wish to renew and update their existing agreements regarding the SUASI region mission, governance structure, responsibilities, reporting structure and financial arrangements, and to use the agreements, structures, processes and mechanisms agreed to below in applying for, allocating and distributing UASI Program grant funding for the Urban Area for Fiscal Year 2007 and future fiscal years.

ACCORDINGLY, the Parties agree as follows:

- I. Bay Area SUASI Region Approval Authority: The Bay Area SUASI Region Approval Authority ("Approval Authority"), created by the Parties in the 2006 MOU, shall continue for the purposes and on the terms and conditions set forth below.
 - a. Membership. The Parties shall appoint members to the Approval Authority as follows:
 - i. City and County of San Francisco, CA – 2 members, each with full voting authority.
 - ii. City of Oakland, CA – 1 member with full voting authority.
 - iii. City of San Jose, CA – 1 member with full voting authority.
 - iv. Alameda County, CA – 1 member with full voting authority.
 - v. Santa Clara County, CA – 1 member with full voting authority.
 - vi. The Parties shall invite the California Governor's Office of Emergency Services ("OES") Coastal Region to appoint 1 advisory member to the Approval Authority. The OES member shall have authority to vote only in the event of a tie vote among the other voting members. The role of the OES member shall be to facilitate Approval Authority and Management Team coordination with the State of California homeland security and emergency preparedness departments and services.
 - b. Selection of Representatives. Each Party is responsible for selecting its own representative(s) to the Approval Authority.
 - c. Purpose. The purpose of the Approval Authority is to provide effective UASI Program direction and governance and to coordinate UASI Program development and implementation for the SUASI region. The Approval Authority shall be responsible for

developing the SUASI region homeland security strategy, developing investment identifications and justifications, establishing funding allocation methodologies, approving all UASI Program grant applications, approving all UASI-funded projects and programs, and making the final decisions on allocation and distribution of UASI Program grant funds.

- d. UAWG. The Approval Authority, along with the Management Team and any advisory and working groups created by the General Manager, shall constitute the UAWG for the SUASI region.
 - e. Quorum. The Approval Authority shall hold meetings and conduct business only when a quorum is present. A quorum shall mean a majority of the members of the Approval Authority with full voting authority (i.e., at least four of the six members with full voting authority). The presence of the OES representative shall not count towards the quorum requirement.
 - f. Decisionmaking. Unless otherwise specified herein, all decisions of the Approval Authority requiring a vote of the Authority shall require the affirmative vote of a majority of the full-voting members of the Authority (i.e., at least four affirmative votes). Each full-voting member present at a meeting shall vote “yes” or “no” when a question is put, unless excused from voting by a motion adopted by a majority of the full-voting members present.
 - g. Voting Authority. Except as provided herein, each member of the Approval Authority shall have one vote on all issues requiring a vote of the Approval Authority under this Agreement. These issues shall include (i) developing the SUASI region homeland security strategy, (ii) developing investment identifications and justifications, (iii) establishing funding allocation methodologies, (iv) approving the grant application, (v) approving UASI Program grant-funded programs, (vi) approving allocation and distribution of UASI Program grant funds, and (vii) other issues as determined by the Approval Authority. The California OES member shall have one vote, but may vote only in the event of a tie vote between the members with full voting authority.
 - h. Other Federal Grants. The Approval Authority may decide to apply the agreements, structures, processes and mechanisms specified in this MOU in applying for, allocating and distributing other types of federal grant funding for the SUASI region. Any such decision shall be by unanimous vote of the Approval Authority.
2. City and County of San Francisco Obligations. During the term of this MOU, San Francisco will provide the following services to the Approval Authority:
 - a. Designate 2 individuals as full voting members of the Approval Authority.
 - b. Chair meetings of the Approval Authority.

- c. Serve as the SUASI region point of contact with the federal DHS and the California Office of Homeland Security (“OHS”) in connection with UASI Program grant funding.
 - d. Serve as the Fiscal Agent for the Approval Authority, and establish procedures and provide all financial services for distribution of UASI Program grant funds within the SUASI region.
 - e. Serve as the grantee for UASI funds granted by the DHS and OHS to the SUASI region, and 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.
3. City of Oakland Obligations. During the term of this MOU, Oakland will provide the following services to the Approval Authority:
 - a. Designate 1 individual as a full voting member of the Approval Authority.
 4. City of San Jose Obligations. During the term of this MOU, San Jose will provide the following services to the Approval Authority:
 - a. Designate 1 individual as a full voting member of the Approval Authority.
 5. Alameda County Obligations. During the term of this MOU, Alameda will provide the following services to the Approval Authority:
 - a. Designate 1 individual as a full voting member of the Approval Authority.
 6. Santa Clara County Obligations. During the term of this MOU, Santa Clara will provide the following services to the Approval Authority:
 - a. Designate 1 individual as a full voting member of the Approval Authority.
 7. General Manager for the SUASI Region Program.
 - a. Subject to subsection (b) below, the Approval Authority has the authority by vote of the Authority to select, evaluate, discipline and remove a General Manager for the SUASI Program. The Approval Authority may establish by vote of the Authority the minimum qualifications for the General Manager position, as well as desired and preferred qualifications.
 - b. The General Manager shall be an employee, consultant or contractor of a Party or another governmental entity within the SUASI region, and shall be assigned to work full-time as the SUASI Program General Manager. The General Manager position shall be funded through grant funds to the extent funds are available and allocated by the Approval Authority for that purpose.

- c. The General Manager shall be responsible for implementing and managing the policy and program decisions of the Approval Authority, and performing other duties as determined and directed by the Approval Authority. The Approval Authority may establish by vote of the Authority additional job functions, duties and responsibilities for the General Manager position.
 - d. The General Manager shall establish a process to ensure either direct or indirect representation for all jurisdictions that comprise the Urban Area. The process developed by the General Manager shall ensure direct representation for at least the following jurisdictions: Marin County, Sonoma County, Napa County, Solano County, Contra Costa County, Alameda County, Santa Clara County, Santa Cruz County, San Mateo County, the City and County of San Francisco, the City of Oakland, and the City of San Jose.
 - e. The General Manager may establish discipline specific and/or geographically determined working groups to make comprehensive assessments and recommendations that address the target capability strengths and weaknesses on a regional basis. The Parties shall provide adequate personnel to participate on and support any working groups established by the General Manager.
 - f. The General Manager shall coordinate and collaborate with the Bay Area Metropolitan Medical Response Systems, the Bay Area Transportation Security Working Group, the Bay Area Citizen Corps Councils, the Area Maritime Security Committee, and any other stakeholders identified by the Approval Authority or Management Team. As appropriate, the General Manager may invite stakeholders to participate in any advisory or working groups established by the General Manager.
8. Management Team for the SUASI Region Program.
- a. In consultation with the Approval Authority, the General Manager shall select, direct and manage a Management Team to support the Approval Authority and the SUASI region's initiatives and projects, and shall make reasonable efforts to balance regional representation on the Team. The members of this Team shall be employees, consultants, or contractors of the Parties or other governmental entities within the SUASI region, and shall be assigned to serve full-time on the Management Team. The salaries of the employees, consultants or contractors selected to serve on the Management Team shall be funded through grant funds to the extent funds are available and allocated by the Approval Authority for that purpose.
 - b. In addition to the members of the Management Team selected under subparagraph (a) above, the Fiscal Agent shall identify and designate an employee, consultant or contractor of the Fiscal Agent to serve as a member of the Management Team, to act as the liaison to the Fiscal Agent for the Management Team. The salary of that employee, consultant or contractor shall be funded through grant funds to the extent funds are available and allocated by the Approval Authority for that purpose.

- c. The Management Team, under the direction of the General Manager, shall perform the follow functions and duties:
 - i. Oversee and execute all administrative tasks associated with application for and distribution of UASI Program grant funds and programs.
 - ii. Coordinate, monitor and as appropriate manage all UASI Program grant-funded projects and programs approved by the Approval Authority.
 - iii. Maintain all records associated with the activities of the Approval Authority, Management Team and any advisory and working groups, including but not limited to records regarding UASI Program grant application, funding and disbursement processes.
 - iv. Work with any advisory and working groups, as well as appropriate Bay Area stakeholders, to obtain input and make recommendations to the Approval Authority on application, allocation and distribution of UASI Program grant funds, and policy and programmatic objectives.
 - v. Coordinate and manage any advisory and working groups, and serve as the liaison between those groups.
 - d. The Approval Authority may establish by vote of the Authority additional functions, duties and responsibilities for the Management Team.
9. Grants and Contracts Awarded for UASI Grant-Funded Projects. All grants and contracts awarded using UASI Program grant funds received by the SUASI region shall conform to all applicable federal and state grant and contracting requirements. Grants and contracts shall be awarded for particular projects and program, as follows:
- a. The Approval Authority shall determine the projects and programs to be funded, and shall decide which jurisdictions in the SUASI region will receive grants funds (“subrecipients”), the amount of funds allocated and the projects or programs to be funded. A jurisdiction may decline to receive grant funds for a project allocated to that jurisdiction by the Approval Authority. If a jurisdiction does so, the Management Team shall notify the Approval Authority, which shall reallocate the grant funds for that project to an alternative subrecipient.
 - b. San Francisco shall be the primary grantee of UASI Program grant funds. The Management Team shall inform San Francisco of the Approval Authority’s grant allocation determinations, and request that San Francisco disburse the funds pursuant to the Approval Authority’s direction.
 - c. San Francisco shall disburse grant funds to subrecipients pursuant to guidelines and requirements established by San Francisco in its capacity as fiscal agent and primary subgrantee.

- d. Each subrecipient shall be responsible for all aspects of the UASI grant-funded projects and programs allocated to that jurisdiction by the Approval Authority, including contracting, project management, ensuring compliance with federal and state grant requirement and decisions of the Approval Authority, equipment purchase, installation and maintenance, and any permitting, environmental or other requirements necessary for any project or program approved by Approval Authority for that jurisdiction.
 - e. Before issuing any Request for Proposal related to a UASI grant-funded project or program, a subrecipient shall coordinate with the Management Team to ensure that the Request For Proposal, including the scope of work, meets the SUASI Program requirements for the project or program. After approval from the Management Team, each subrecipient shall select a contractor and issue the contract under its own contracting authority and process. In addition, subrecipients shall coordinate with the Management Team as requested by the Management Team, to allow the Management Team to coordinate, monitor and as appropriate manage UASI grant-funded projects and programs across the SUASI region.
 - f. For regional projects, the Management Team shall ensure coordination of the projects and programs allocated to the individual subrecipient jurisdictions.
10. Fiscal Agent. All requests for funding or reimbursement from the Fiscal Agent shall meet guidelines and requirements established by the Fiscal Agent. The guidelines shall include requirements for record keeping, internal audits, signature authority for approval of reimbursement requests, submission of financial reports, and compliance with professional accounting standards. The Fiscal Agent shall be entitled to reasonable costs for services performed. Periodically, the Fiscal Agent may submit request for payment, which the Approval Authority shall review and approve within thirty (30) days.
11. Indemnification. In lieu of and notwithstanding the pro rata risk allocation that might otherwise be imposed between the Parties pursuant to Government Code Section 895.6, the Parties agree that all Losses (as defined below) incurred by a Party in connection with this MOU or the activities contemplated by this MOU shall not be shared pro rata but instead the Parties agree that pursuant to Government Code Section 895.4, each of the Parties hereto shall fully indemnify and hold each of the other Parties, including, without limitation, their officers, board members, employees and agents, harmless from any Losses imposed for injury (as defined by Government Code Section 810.8) arising in connection with the negligent acts or omissions or willful misconduct of the indemnifying party, including, without limitation, its officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such Party under this Agreement. No Party, including, without limitation, any officer, board member, employee or agent thereof, shall be responsible for any Losses occurring by reason of the negligent acts or omissions or willful misconduct of other Parties hereto, including, without limitation, their officers, board members, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such other Parties under this Agreement. For purposes of this Section, Losses shall mean any and all claims, demands, losses, liabilities,

damages (including foreseeable and unforeseeable consequential damages to the extent arising from third party claims), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses (including, without limitation, reasonable attorneys' fees and costs, and consultants' fees and costs) of whatever kind or nature, known or unknown, contingent or otherwise.

12. Term. This MOU shall take effect on the Effective Date as described in Section 17 below and shall extend until December 31, 2010, unless sooner terminated as provided below ("Term").
13. Termination. Any Party may terminate this MOU in the event that another Party breaches a material provision hereof and the breaching Party does not cure the breach complained of within thirty (30) days following receipt of written notice of the breach. In addition, any Party may terminate its participation in this Agreement by providing 30-days advance written notice of its termination to all Parties; the Agreement shall continue in effect between with the remaining Parties.

In addition, the Approval Authority may terminate this MOU at any time, for convenience and without cause, by unanimous vote. Any such action of the Approval Authority shall specify the date on which the termination shall become effective.
14. Jurisdiction and Venue. The laws of the State of California shall govern the interpretation and performance of this MOU. Venue for any litigation relating to the formation, interpretation or performance of this MOU shall be in San Francisco, CA.
15. Modification. This MOU 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 MOU.
16. Interpretation. This MOU shall be deemed to have been prepared equally by all Parties and its individual provisions shall not be construed or interpreted more favorably for one Party on the basis that the other Parties prepared it.
17. Effective Date. Upon approval by the governing bodies of each of the Parties, this MOU shall become effective retroactive to July 1, 2007.
18. Complete Agreement. This is a complete agreement and supersedes any prior oral or written agreements of the Parties regarding the process for applying for and distributing UASI Program grant funding for the SUASI region. Specifically, this agreement supersedes the 2006 MOU.
19. Notice.

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

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

Laura Phillips, Executive Director
Department of Emergency Management
1011 Turk Street
San Francisco, CA 94102
(415) 558-3800
Laura.phillips@sfgov.org

and

Gary Massetani, Deputy Chief of Administration
Fire Department
698 Second Street
San Francisco, CA 94107
(415) 558-3411
Gary.massetani@sfgov.org

If to the City of Oakland, to:

Renee A. Domingo, Director of Emergency Services
1605 Martin Luther King Jr. Way, 2nd Floor
Oakland, CA 94612
(510) 238-3939
RADomingo@oaklandnet.com

If to the City of San Jose, to:

Kimberly Shunk, Emergency Preparedness Director
855 N. San Pedro St. #404
San Jose, CA 95110-1718
(408) 277-4595
kimberly.shunk@sanjoseca.gov

If to Alameda County, to:

Richard T. Lucia, Undersheriff
Alameda County Sheriff's Office
1401 Lakeside Drive 12th Floor
Oakland, CA 94612
(510) 272-6868 Office
rlucia@acgov.org

If to Santa Clara County, to:

Bruce H. Lee, Interim Director
Office of Emergency Services
55 W. Younger Avenue
San Jose, CA 95110
(408) 808-7802
bruce.lee@oes.sccgov.org

If to State of California, OES, to:

John Anderson, FAIA, Regional Administrator
Governor's Office of Emergency Services
Coastal Region and
CISN & Earthquake Program
1300 Clay Street, Suite 400
Oakland, California 94612
(510) 286-0888
john_anderson@oes.ca.gov

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

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

The undersigned approve the terms and conditions of this MOU.

City and County of San Francisco, California

Signature: 

By: _____

Title: _____

City of Oakland, California

Signature: [Handwritten Signature]

By: _____

Title: OES Director

City of San Jose, California

Signature: Nadine Nader

By: _____ Nadine Nader

Title: Assistant to the City Manager

APPROVED AS TO FORM
[Handwritten Signature]
Brian Doyle
Senior Deputy City Attorney
City of San Jose

Alameda County, California

Signature: Gregory J. Allen

By: _____

Title: Sheriff

Approved as to Form
RICHARD E. WINNIE, County Counsel
By: Nancy Fetter

Santa Clara County, California

Signature: [Handwritten Signature]

By: BRUCE H. LEE

Title: INTERIM OES DIRECTOR