

**AGREEMENT BETWEEN THE CITY AND COUNTY OF  
SAN FRANCISCO AND THE CITY OF PLEASANTON  
FOR THE DISTRIBUTION OF FY 2012 UASI GRANT FUNDS**

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THIS AGREEMENT is made this **APRIL 1, 2013**, in the City and County of San Francisco, State of California, by and between the **CITY OF PLEASANTON** ("PLEASANTON") 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 Emergency Management Agency ("CalEMA") 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 PLEASANTON 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 PLEASANTON under this Agreement.

(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. If PLEASANTON requests any modification to the Grant Plan, PLEASANTON 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 CalEMA requirements, guidelines, information bulletins, and instructions, the decision-making of the CalEMA 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. PLEASANTON acknowledges and agrees that grant decisions are subject to the discretion of the CalEMA and Approval Authority. Further, PLEASANTON acknowledges and agrees that the City shall have no obligation to disburse grant funds to PLEASANTON until City and PLEASANTON have fully and finally executed this Agreement. PLEASANTON acknowledges and agrees that if it takes any action, informal or formal, to appropriate, encumber or expend Grant Funds before final allocation decisions by CalEMA 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 until prior written authorization certified by the San Francisco Controller. In addition, as set forth in Section 21.19 of the San Francisco Administrative Code:

(a) San Francisco's obligations hereunder shall not at any time exceed the amount approved 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 PLEASANTON to perform services or to provide materials, equipment and supplies that would result in PLEASANTON 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 PLEASANTON for services, materials, equipment or supplies that are provided by PLEASANTON 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 PLEASANTON 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 **APRIL 1, 2013** and shall end at 11:59 p.m. San Francisco time on **JANUARY 31, 2014.**

3.2 **Maximum Amount of Funds.** In no event shall the amount of Grant Funds disbursed hereunder exceed **SIXTY-FIVE THOUSAND DOLLARS (\$65,000)**. The City will not automatically transfer Grant Funds to PLEASANTON upon execution of this Agreement. PLEASANTON 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 PLEASANTON.

3.3 **Use of Funds.**

(a) **General Requirements.** PLEASANTON shall use the Grant Funds received under this Agreement for the purposes and in the amounts set forth in the Grant Plan. PLEASANTON 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. PLEASANTON 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, PLEASANTON may submit a written request to modify the Grant Plan. PLEASANTON 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 CalEMA, as determined by the General Manager, PLEASANTON 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 CalEMA.

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

(d) Obligations. PLEASANTON 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) PLEASANTON shall comply with all Grant Assurances included in Appendix B, attached hereto and incorporated by reference as though fully set forth herein. PLEASANTON shall require all subgrantees, contractors and other entities receiving Grant Funds through or from PLEASANTON 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, PLEASANTON shall comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, CalEMA grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by CalEMA or the Approval Authority. PLEASANTON shall require and ensure that all subgrantees, contractors and other entities receiving Grant Funds through or from PLEASANTON comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, CalEMA grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by CalEMA or the Approval Authority.

(c) PLEASANTON 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. PLEASANTON 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, CalEMA, San Francisco or the UASI Management Team. For ensuring compliance with non-supplanting requirements, upon request by City or the UASI Management Team, PLEASANTON 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.**

PLEASANTON 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 PLEASANTON 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. 44 CFR Part 13, *Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments*; and
  2. 2 CFR Part 215, *Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations* (formerly OMB Circular A-110).

- (b) Cost Principles:
  - 1. 2 CFR Part 225, *Cost Principles for State, Local, and Indian Tribal Governments* (formerly OMB Circular A-87);
  - 2. 2 CFR Part 220, *Cost Principles for Educational Institutions* (formerly OMB Circular A-21);
  - 3. 2 CFR Part 230, *Cost Principles for Non-Profit Organizations* (formerly OMB Circular A-122); and
  - 4. Federal Acquisition Regulations (FAR), Part 31.2 *Contract Principles and Procedures, Contracts with Commercial Organizations*.
- (c) Audit Requirements:
  - 1. OMB Circular A-133, *Audits of States, Local Governments, and Non-Profit Organizations*.

### 3.6 **Technology Requirements.**

(a) National Information Exchange Model ("NIEM"). PLEASANTON 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. PLEASANTON 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) PLEASANTON 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. PLEASANTON 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 PLEASANTON is using Grant Funds to purchase interoperable communication equipment, PLEASANTON shall consult DHS's SAFECOM's coordinated grant guidance, which outlines standards and equipment information to enhance interoperable communication. If PLEASANTON is using Grant Funds to acquire critical emergency supplies, prior to expending any Grant Funds, PLEASANTON shall submit to the UASI Management Team for approval by CalEMA 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. PLEASANTON 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) PLEASANTON shall ensure and independently verify that any subgrantee, contractor or other entity receiving Grant Funds through or from PLEASANTON 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 44 CFR Part 17. PLEASANTON shall obtain documentation of eligibility before disbursing Grant Funds to any subgrantee, contractor or other entity. PLEASANTON shall maintain documentary proof of this verification in its files. PLEASANTON 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. PLEASANTON 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) PLEASANTON shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from PLEASANTON complies with the requirements of 44 CFR Part 18, *New Restrictions on Lobbying*; and

(c) PLEASANTON shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from PLEASANTON complies with the requirements of 44 CFR Part 17, *Government-wide Requirements for a Drug-Free Workplace (Grants)*.

### 3.9 **Monitoring Grant Performance.**

(a) City and the UASI Management Team are both authorized to perform periodic monitoring reviews of PLEASANTON'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) PLEASANTON is responsible for monitoring and auditing the grant activities of any subgrantee, contractor or other entity receiving Grant Funds through or from PLEASANTON. This requirement includes but is not limited to mandatory on-site verification visits.

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

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

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

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

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

3.11 **Disallowance**. PLEASANTON 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, PLEASANTON 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 PLEASANTON hereunder or under any other Agreement with PLEASANTON. Any such offset with respect to a portion of the disallowed amount shall not release PLEASANTON from PLEASANTON'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, PLEASANTON acknowledges its responsibility and agrees to sustain continuing programs beyond the Grant Funding period. PLEASANTON 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. PLEASANTON shall not initiate any project with the potential to impact environmental or historic properties or resources until CalEMA 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. PLEASANTON shall notify the UASI Management Team of any project that may require an EHP review. PLEASANTON agrees to provide detailed project information to FEMA, CalEMA and/or the UASI Management Team, to cooperate fully in the review, and to prepare any documents requested for the review. PLEASANTON 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, PLEASANTON 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, PLEASANTON shall notify the UASI Management Team and ensure monitoring of ground disturbance. If any potential archeological resources are discovered, PLEASANTON shall immediately cease construction in that area and notify the UASI Management Team, which will notify the appropriate State Historic Preservation Office. If PLEASANTON is using Grant Funds for a communication tower project, PLEASANTON shall complete its Federal Communication Commission ("FCC") EHP process before preparing its CalEMA/FEMA EHP materials, and shall include the FCC EHP materials in the CalEMA/FEMA submission.

(b) Any construction or other project that PLEASANTON initiates without the necessary EHP review and approval will not be eligible for reimbursement. Failure of PLEASANTON 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 CalEMA's EHP review will result in the denial of Reimbursement Requests.

3.14 **National Energy Conservation Policy and Energy Policy Acts**. PLEASANTON 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.** PLEASANTON 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 PLEASANTON purchases or acquires using Grant Funds. PLEASANTON 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.** PLEASANTON 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.** PLEASANTON 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.** PLEASANTON 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 PLEASANTON to be out of compliance with the Grant Assurances in Appendix B.

4.3 **Books and Records.** PLEASANTON 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, PLEASANTON 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. PLEASANTON shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than five (5) years after expiration of this Agreement or until any final audit by CalEMA has been fully completed, whichever is later.

4.4 **Inspection and Audit.** PLEASANTON 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 PLEASANTON under Section 4.3, and allow access and the right to examine those items. PLEASANTON 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 PLEASANTON 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 CalEMA shall have the same inspection and audit rights as the City and UASI Management Team. PLEASANTON shall cooperate with any federal or state audit.

4.5 **Audit Report.** If the amount specified in Section 3.2 of this agreement is \$500,000 or more, PLEASANTON shall submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with GAO's *Government Auditing Standards*, and OMB Circular A-133, *Audits of States, Local Governments and Non-Profit Organizations*. PLEASANTON shall submit its audit report to the UASI Management Team no later than six months after the end of PLEASANTON's fiscal year.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

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

(a) PLEASANTON 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 44 CFR Part 17.

(b) PLEASANTON 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) PLEASANTON complies with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §701 et seq., as implemented in 44 CFR Part 17, and will continue to provide a drug-free workplace as required under that Act and implementing regulations.

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

PLEASANTON 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, PLEASANTON 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, PLEASANTON certifies that it is in full NIMS

compliance, and that it has reported that compliance via the NIMSCAST. PLEASANTON shall provide documentation of its NIMS compliance to the UASI Management Team. PLEASANTON acknowledges that this certification is a material term of the Agreement.

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

6.1 **Indemnification.** PLEASANTON 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 PLEASANTON's performance of this Agreement, including, but not limited to, the following: (a) a material breach of this Agreement by PLEASANTON; (b) a material breach of any representation or warranty of PLEASANTON contained in this Agreement; (c) any personal injury or death caused, directly or indirectly, by any act or omission of PLEASANTON or its employees, subgrantees or agents; (d) any loss of or damage to property caused, directly or indirectly, by any act or omission of PLEASANTON or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by PLEASANTON, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to PLEASANTON by an Indemnified Party; (f) any tax, fee, assessment or other charge for which PLEASANTON 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 PLEASANTON 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.** PLEASANTON 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 PLEASANTON by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give PLEASANTON prompt notice of any Loss under Section 6.1 and PLEASANTON 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 PLEASANTON if representation of such Indemnified Party by the counsel retained by PLEASANTON would be inappropriate due to conflicts of interest between such Indemnified Party and PLEASANTON. An Indemnified Party's failure to notify PLEASANTON promptly of any Loss shall not relieve PLEASANTON of any liability to such Indemnified Party pursuant to Section 6.1, unless such failure materially impairs PLEASANTON's ability to defend such Loss. PLEASANTON shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if PLEASANTON 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 PLEASANTON'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.** PLEASANTON fails to perform or breaches any provision or covenant of this Agreement to be performed or observed by PLEASANTON 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.** PLEASANTON fails to perform or breaches any of the terms or provisions of Article 12.

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

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

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 PLEASANTON and, on the date specified in such notice, this Agreement shall

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

(b) Upon receipt of the notice, PLEASANTON shall commence and perform, with diligence, all actions necessary on the part of PLEASANTON to effect the termination of this Agreement on the date specified by City and to minimize the liability of PLEASANTON 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, PLEASANTON 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 PLEASANTON 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 PLEASANTON 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 PLEASANTON.** PLEASANTON 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 PLEASANTON 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 PLEASANTON involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of PLEASANTON or a sale or transfer of substantially all of the assets of PLEASANTON 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 **PLEASANTON Retains Responsibility.** PLEASANTON 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 facsimile (if a facsimile number is provided below):

**If to San Francisco:**

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

**If to the UASI Management Team:**

UASI Management Team  
711 Van Ness Avenue, Suite #420  
San Francisco, CA 94102  
Attn: Catherine Spaulding, Assistant General Manager  
Facsimile No.: (415) 353-5247

If to PLEASANTON:

Livermore-Pleasanton Fire Department  
3560 Nevada Street  
Pleasanton, CA 94566  
Attn: Jane Moorhead, Deputy Chief  
Christine Teixeira, Management Analyst  
Facsimile No.: (925) 249-2397

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



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

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

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

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

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 PLEASANTON 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, PLEASANTON 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, PLEASANTON must provide the following information on PLEASANTON 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.

## **ARTICLE 11 INSURANCE**

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

11.11 **Authority to Self-Insure.** Nothing in this Agreement shall preclude PLEASANTON from self-insuring all or part of the insurance requirement in this Article. However, PLEASANTON 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, PLEASANTON agrees not to discriminate against any employee, San Francisco employee working with PLEASANTON or any subgrantee of PLEASANTON, applicant for employment with PLEASANTON or subgrantee of PLEASANTON, 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, PLEASANTON acknowledges that it is familiar with the provisions of Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement.

12.3 **Compliance with ADA.** PLEASANTON 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. PLEASANTON shall not discriminate against any person protected under the ADA in connection with all or any portion of the Grant Plan and shall comply at all times with the provisions of the ADA.

12.4 **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12.G, PLEASANTON 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. PLEASANTON agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by San Francisco's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, San Francisco may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit PLEASANTON from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider PLEASANTON'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 PLEASANTON:

SAN FRANCISCO DEPARTMENT OF  
EMERGENCY MANAGEMENT

By:

By:

\_\_\_\_\_  
ANNE KRONENBERG  
EXECUTIVE DIRECTOR

\_\_\_\_\_  
NELSON FIALHO  
CITY MANAGER

Federal Tax ID #: 94-6000397

**Approved as to Form:**

Dennis J. Herrera  
City Attorney

By:

\_\_\_\_\_  
Thomas Owen  
Deputy City Attorney

**Appendix A — Authorized Expenditures and Timelines**

ENTITY: **PLEASANTON (LIVERMORE-PLEASANTON FIRE DEPARTMENT)**

Total allocation to be spent on the following solution areas:

<u>UASI Project Letter and Title</u>	<u>Solution Area</u>	<u>Program Description</u>	<u>Projected Milestone Dates (to be completed on or about)</u>	<u>Deliverable Dates</u>	<u>Amount</u>
<b>Project D Enhance CBRNE Detection, Response and Decontamination Capabilities</b>	Equipment	<p>Funds to purchase a Prime Mover for the HazMat Team.</p> <p>AEL#s: 12TR-00-MOVR 10GE-00-GENR</p> <p>PLEASANTON 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.</p> <p>Reimbursement for equipment purchases require:</p> <ul style="list-style-type: none"> <li>• An approved EHP memo, if applicable.</li> <li>• A performance bond is required for any equipment item that exceeds \$250,000, or for any vehicle, aircraft, or watercraft.</li> <li>• 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, PLEASANTON must transmit the request to the UASI for request to the State.</li> <li>• Prior to reimbursement, PLEASANTON must submit all invoices, AEL numbers, and a list of all equipment ID numbers and the deployed locations.</li> <li>• Final deadline for submittal of claims is <b>1/3/2014</b>. There will be <b>NO EXTENSIONS</b>.</li> </ul>	<p>Create Specs: 7 days from project start date</p> <p>RFP Release: 14 days from project start date</p> <p>Contract Award: 35 days from project start date</p> <p>Issuance of PO: 42 days from project start date</p> <p>Receive Equipment: 90 days from project start date</p> <p>Project Completion: 100 days from project start date</p>	11/30/2013	Not to Exceed \$65,000
		<b>TOTAL ALLOCATION</b>			<b>NOT TO EXCEED: \$65,000</b>

- All requests for reimbursements must be submitted by January 3, 2014 unless an earlier deadline is set in this Appendix. There will be NO EXTENSIONS. PLEASANTON 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 2012 Homeland Security Grant Program, Guidance and Application Kit* dated May, 2012 <http://www.fema.gov/fy-2012-homeland-security-grant-program>
  - *California Supplement to Federal Program Guidance and Application Kit*: <http://www.calema.ca.gov/EMS-HS-HazMat/Pages/Homeland-Security-Grant-Program-Documents.aspx>
  - *Authorized Equipment List*: [www.rkb.us](http://www.rkb.us)
  - *Office of Justice Programs Financial and Administrative Guide for Grants*: <http://www.ojp.usdoj.gov/financialguide/>
  - *Cal EMA Rules and Regulations, including the Recipient Handbook*: <http://www.calema.ca.gov/GrantsMonitoring/Pages/Rules%20and%20Regulations.aspx>
- **Any equipment purchased under this Agreement must match the UASI 2012 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, ¶13.12.**
- **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 PLEASANTON - Livermore-Pleasanton Fire Department

Name of Authorized Agent: Jim Miquel, Fire Chief

Address: 3560 Nevada Street

City: Pleasanton State: CA Zip Code: 94566

Telephone Number: (925) 454-2361

Fax Number: (925) 249-2397

E-Mail Address: jmiquel@lpfire.org

As the duly authorized representative of PLEASANTON, I certify that the PLEASANTON:

1. Will assure that grant funds will support efforts related to providing an integrated mechanism to enhance the coordination of national priority efforts to prevent, respond to, and recover from terrorist attacks, major disasters and other emergencies.
2. Has the legal authority to apply for Federal assistance and has the institutional, managerial and financial capability to ensure proper planning, management and completion of the grant provided by the U.S. Department of Homeland Security (DHS)/Federal Emergency Management Agency (FEMA) and sub-granted through the State of California, California Emergency Management Agency (Cal EMA).
3. Will assure that grant funds are used for allowable, fair, and reasonable costs only and will not be transferred between grant programs (for example: State Homeland Security Program, Urban Area Security Initiative, Citizen Corps Program, and Metropolitan Medical Response System) or fiscal years.
4. Will comply with any cost sharing commitments included in the FY2012 Investment Justifications submitted to DHS/FEMA/Cal EMA, where applicable.
5. Will give the Federal government, the General Accounting Office, the Comptroller General of the United States, the State of California, the Office of Inspector General, through any authorized representative, access to, and the right to examine, all paper or electronic records, books, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards and/or awarding agency directives.
6. Agrees that funds utilized to establish or enhance State and Local fusion centers must support the development of a statewide fusion process that corresponds with the Global Justice/Homeland Security Advisory Council (HSAC) Fusion Center Guidelines, follow the Federal and State approved privacy policies, and achieve (at a minimum) baseline level of capability as defined by the Fusion Capability Planning Tool.

7. Will provide progress reports, and other such information as may be required by the awarding agency, including the Initial Strategy Implementation Plan (ISIP) within 45 (forty-five) days of the award, and update via the Grant Reporting Tool (GRT) twice each year.
8. Will initiate and complete the work within the applicable time frame after receipt of approval from Cal EMA.
9. Will maintain procedures to minimize the time elapsing between the award of funds and the disbursement of funds.
10. Will comply with all provisions of DHS/FEMA's codified regulation 44, Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, including the payment of interest earned on advances.
11. Will comply with all provisions of 48 CFR, 31.2, Federal Acquisition Regulations (FAR), Contracts with Commercial Organizations.
12. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes, or presents the appearance of, personal or organizational conflict of interest, or personal gain for themselves or others, particularly those with whom they have family, business, or other ties.
13. Understands and agrees that Federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation, or policy, at any level of government, without the express prior written approval from DHS/FEMA/Cal EMA.
14. Agrees that, to the extent contractors or subcontractors are utilized, will use small, minority-owned, women-owned, or disadvantaged business concerns and contractors or subcontractors to the extent practicable.
15. Will notify Cal EMA of any developments that have a significant impact on award-supported activities, including changes to key program staff.
16. Will comply, if applicable, with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of structures.
17. Will comply with all Federal and State Statues relating to Civil Rights and Nondiscrimination. These include, but are not limited to:
  - a. Title VI of the Civil Rights Act of 1964 (P.L. 88-352), as amended, which prohibits discrimination on the basis of race, color or national origin.
  - b. Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683 and 1685-1686), which prohibits discrimination on the basis of gender.
  - c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps.
  - d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age.

- e. The Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse.
  - f. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
  - g. §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records.
  - h. Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing.
  - i. Title 44 Code of Federal Regulations (CFR) Parts 7, 16, and 19 relating to nondiscrimination.
  - j. The requirements on any other nondiscrimination provisions in the specific statute(s) under which the application for Federal assistance is being made.
  - k. Will, in the event that a Federal or State court or Federal or State administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, gender, or disability against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights, Office of Justice Programs.
  - l. Will provide an Equal Employment Opportunity Plan, if applicable, to the Department of Justice Office of Civil Rights within 60 days of grant award.
  - m. Will comply, and assure the compliance of all its subgrantees and contractors, with the nondiscrimination requirements and all other provisions of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1.
18. Will comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq. [P.L. 91-646]) which provides for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or Federally assisted programs. These requirements apply to all interested in real property acquired for project purposes regardless of Federal participation in purchases. Will also comply with Title 44 CFR, Part 25, Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally-assisted programs.
19. Will comply, if applicable, with the flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is ten thousand dollars (\$10,000) or more.
20. Will comply with all applicable Federal, State, and Local environmental and historical preservation (EHP) requirements. Failure to meet Federal, State, and Local EHP requirements and obtain applicable permits may jeopardize Federal funding. Will comply with all conditions placed on any project as the result of the EHP review; any change to the scope of work of a project will require reevaluation of compliance with these EHP requirements.

21. Will comply with all provisions of DHS/FEMA's codified regulation 44, Part 10, Environmental Considerations.
22. Agrees not to undertake any project having the potential to impact the EHP resources without the prior written approval of DHS/FEMA/Cal EMA, including, but not limited to, ground disturbance, construction, modification to any structure, physical security enhancements, communications towers, any structure over 50 years old, and purchase and/or use of any sonar equipment. The subgrantee must comply with all conditions and restrictions placed on the project as a result of the EHP review. Any construction-related activities initiated without the necessary EHP review and approval will result in a noncompliance finding, and may not be eligible for reimbursement with DHS/FEMA/Cal EMA funding. Any change to the scope of work will require re-evaluation of compliance with the EHP. If ground-disturbing activities occur during the project implementation, the subgrantee must ensure monitoring of the disturbance. If any potential archeological resources are discovered, the subgrantee will immediately cease activity in that area and notify DHS/FEMA/Cal EMA and the appropriate State Historic Preservation Office.
23. Any construction activities that have been initiated prior to the full environmental and historic preservation review could result in non-compliance finding. Subgrantees must complete the FEMA EHP Screening Form (OMB Number 1660-0115/FEMA Form 024-0-01) and submit it, with all supporting documentation, to the GPD EHP team at GPDEHPinfo@fema.dhs.gov for review.
24. Grantees should submit the FEMA EHP Screening Form for each project as soon as possible upon receiving their grant award. The Screening Form for these types of projects is available at:  
[www.fema.gov/doc/government/grant/bulletins/info329\\_final\\_screening\\_memo.doc](http://www.fema.gov/doc/government/grant/bulletins/info329_final_screening_memo.doc)
25. Will ensure that the facilities under its ownership, lease or supervision, which shall be utilized in the accomplishment of this project, are not on the Environmental Protection Agency's (EPAs) List of Violating Facilities, and will notify Cal EMA and the Federal Grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating if a facility to be used in the project is under consideration for listing by the EPA.
26. Will provide any information requested by DHS/FEMA/Cal EMA to ensure compliance with applicable laws, including the following:
  - a. Institution of environmental quality control measures under the Archaeological and Historic Preservation Act, Endangered Species Act, and Executive Orders on Floodplains (11988), and Environmental Justice (EO12898) and Environmental Quality (EO11514).
  - b. Notification of violating facilities pursuant to EO 11738.
  - c. 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.).
  - d. Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.).

- e. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523).
  - f. California Environmental Quality Act (CEQA). California Public Resources Code Sections 21080-21098. California Code of Regulations, Title 14, Chapter 3 Section 15000-15007.
  - g. 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.
  - h. Applicable provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501 et seq.) which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.
27. Will comply with Standardized Emergency Management System (SEMS) requirements as stated in the California Emergency Services Act, Government Code, Chapter 7 of Division 1 of Title 2, Section 8607.1(e) and CCR Title 19, Sections 2445, 2446, 2447, and 2448.
28. Agrees that all publications created or published with funding under this grant shall prominently contain the following statement: *“This document was prepared under a grant from FEMA's Grant Programs Directorate, U.S. Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA's Grant Programs Directorate or the U.S. Department of Homeland Security.”* The recipient also agrees that, when practicable, any equipment purchased with grant funding shall be prominently marked as follows: *“Purchased with funds provided by the U.S. Department of Homeland Security.”*
29. Acknowledges that DHS/FEMA reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use, for Federal government purposes: a) the copyright in any work developed under an award or sub-award; and b) any rights of copyright to which a recipient or sub-recipient purchases ownership with Federal support.
30. The recipient agrees to consult with DHS/FEMA/Cal EMA regarding the allocation of any patent rights that arise from, or are purchased with, this funding and has requested through the State of California, Federal financial assistance to be used to perform eligible work approved in the submitted application for Federal assistance and after the receipt of Federal financial assistance, through the State of California, agrees to the following:
- a. Promptly return to the State of California all the funds received which exceed the approved, actual expenditures as accepted by the Federal or State government.
  - b. In the event the approved amount of the grant is reduced, the reimbursement applicable to the amount of the reduction will be promptly refunded to the State of California.
  - c. Property/equipment purchased under the HSGP reverts to Cal EMA if the grant funds are deobligated/disallowed and/or not promptly repaid.
  - d. HSGP funds used for the improvement of real property must be promptly repaid following deobligation/disallowment of costs or Cal EMA reserves the right to place a lien on the property for the amount owed.

- e. Separately account for interest earned on grant funds, and will return all interest earned, in excess of \$100 per Federal Fiscal Year.
31. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. Sections 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
  32. Will comply with provisions of the Hatch Act (5 U.S.C. Sections 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.
  33. Will comply, if applicable, with the Laboratory Animal Welfare Act of 1966 (P. L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
  34. Will comply with the minimum wage and maximum hour provisions of the Federal Fair Labor Standards Act (29 U.S.C. 201), as they apply to employees of institutions of higher education, hospitals, and other non-profit organizations.
  35. Agrees that "Classified national security information," as defined in Executive Order (EO) 12958, as amended, means information that has been determined pursuant to EO 12958 or any predecessor order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.. No funding under this award shall be used to support a contract, subaward, or other agreement for goods or services that will include access to classified national security information if the award recipient has not been approved for and has access to such information.
  36. Agrees that where an award recipient has been approved for and has access to classified national security information, no funding under this award shall be used to support a contract, subaward, or other agreement for goods or services that will include access to classified national security information by the contractor, subawardee, or other entity without prior written approval from the DHS Office of Security, Industrial Security Program Branch (ISPB), or, an appropriate official within the Federal department or agency with whom the classified effort will be performed. Such contracts, subawards, or other agreements shall be processed and administered in accordance with the DHS "Standard Operating Procedures, Classified Contracting by States and Local Entities," dated July 7, 2008; EOs 12829, 12958, 12968, as amended; the National Industrial Security Program Operating Manual (NISPOM); and/or other applicable implementing directives or instructions. All security requirement documents are located at: <http://www.dhs.gov/xopnbiz/grants/index.shtm>
  37. Immediately upon determination by the award recipient that funding under this award will be used to support such a contract, subaward, or other agreement, and prior to execution of any actions to facilitate the acquisition of such a contract, subaward, or other agreement, the award recipient shall contact ISPB, or the applicable Federal department or agency, for approval and processing instructions.

DHS Office of Security ISPB contact information:  
Telephone: 202-447-5346  
Email: [DD254AdministrativeSecurity@dhs.gov](mailto:DD254AdministrativeSecurity@dhs.gov)  
Mail: Department of Homeland Security  
Office of the Chief Security Officer  
ATTN: ASD/Industrial Security Program Branch  
Washington, D.C. 20528

38. Agrees with the requirements regarding Data Universal Numbering System (DUNS) Numbers, meaning if recipients are authorized to make subawards under this award, they must notify potential sub-recipients that no entity (see definition in paragraph C of this award term) may receive or make a subaward to any entity unless the entity has provided its DUNS number. For purposes of this award term, the following definitions will apply:
- a. "Data Universal Numbering System (DUNS)" number means the nine digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet, currently at <http://fedgov.dnb.com/webform>
  - b. "Entity", as it is used in this award term, means all of the following, as defined at 2 CFR part 25, subpart C, as a Governmental organization, which is a State, local government, or Indian Tribe; or a foreign public entity; or a domestic or foreign nonprofit organization; or a domestic or foreign for-profit organization; or a Federal agency, but only as a sub-recipient under an award or subaward to a non-Federal entity.
  - c. "Subaward" means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible sub-recipient. It does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. 210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations") and may be provided through any legal agreement, including an agreement that you consider a contract.
  - d. "Sub-recipient" means an entity that receives a subaward from you under this award; and is accountable to you for the use of the Federal funds provided by the subaward.
39. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. Section 276a to 276a-7), the Copeland Act (40 U.S.C. Section 276c and 18 U.S.C. Sections 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 327-333), regarding labor standards for Federally-assisted construction sub-agreements.
40. Agrees 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 any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement.

- b. If any other funds than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or an employee of Congress, or employee of a Member of Congress in connection with the Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its instructions.
  - c. The undersigned shall require that the language of this certification be included in the award documents for all sub awards at all tiers including subgrants, contracts under grants and cooperative agreements, and subcontract(s) and that all sub recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
41. Agrees that funds awarded under this grant will be used to supplement existing funds for program activities, and will not supplant (replace) non-Federal funds.
  42. Agrees that equipment acquired or obtained with grant funds:
    - a. Will be made available pursuant to applicable terms of the California Disaster and Civil Defense Master Mutual Aid Agreement in consultation with representatives of the various fire, emergency medical, hazardous materials response services, and law enforcement agencies within the jurisdiction of the applicant, and deployed with personnel trained in the use of such equipment in a manner consistent with the California Law Enforcement Mutual Aid Plan or the California Fire Services and Rescue Mutual Aid Plan.
    - b. Is consistent with needs as identified in the State Homeland Security Strategy and will be deployed in conformance with that Strategy.
  43. Will comply with all applicable Federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars A102 and A-133, E.O. 12372 and the current Administrative Requirements, Cost Principles, and Audit Requirements.
  44. Will comply with all provisions of 2 CFR, including: Part 215 Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A-110); Part 225 Cost Principles for State, Local and Indian Tribal Governments (OMB Circular A-87); Part 220 Cost Principles for Educational Institutions (OMB Circular A-21); Part 230 Cost Principles for Non-Profit Organizations (OMB Circular A-122).
  45. Will comply with Subtitle A, Title II of the Americans with Disabilities Act (ADA) 1990.
  46. Agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this agreement.



47. Will comply with Federal Acquisition Regulations (FAR), part 31.2 Contract Cost Principles and Procedures, Contracts with Commercial Organizations.
48. Will comply with the financial and administrative requirements set forth in the current edition of the DHS Financial Management Guide.
49. Agrees that all allocations and use of funds under this grant will be in accordance with the FY 2012 Homeland Security Grant Program Funding Opportunity Announcement, and the California Supplement to the FY 2012 Homeland Security Grant Program Funding Opportunity Announcement. All allocations and use of funds under this grant will be in accordance with the Allocations, and use of grant funding must support the goals and objectives included in the State and/or Urban Area Homeland Security Strategies as well as the investments identified in the Investment Justifications which were submitted as part of the California FY2012 Homeland Security Grant Program application. Further, use of FY12 funds is limited to those investments included in the California FY12 Investment Justifications submitted to DHS/FEMA/Cal EMA and evaluated through the peer review process.
50. Will not make any award or permit any award (subgrant or contract) to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension". As required by Executive Order 12549, Debarment and Suspension, and implemented at 44 CFR Part 17, for prospective participants in primary covered transactions, the applicant certifies that it and its principals:
  - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, sentenced to a denial of Federal benefits by a State or Federal court, or voluntarily excluded from covered transactions by any Federal department or agency.
  - 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 (1)(b) of this certification; and have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and
  - d. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.
51. Will comply with all applicable requirements of all other Federal and State laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this program.
52. Will comply with the administrative requirements that apply to most DHS award recipients through a grant or cooperative agreement arise from two sources: - Office of Management

and Budget (OMB) Circular A-102, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (also known as the "A-102 Common Rule"), found under FEMA regulations at Title 44, Code of Federal Regulations (CFR) Part 13, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments." - OMB Circular A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, relocated to 2 CFR Part 215. The requirements for allowable costs/cost principles are contained in the A-102 Common Rule, OMB Circular A-110 (2 CFR § 215.27), DHS program legislation, Federal awarding agency regulations, and the terms and conditions of the award. The four costs principles circulars are as follows: - OMB Circular A-21, Cost Principles for Educational Institutions, relocated to 2 CFR Part 220. - OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments, relocated to 2 CFR Part 225. - OMB Circular A-122, Cost Principles for Non-Profit Organizations, relocated to 2 CFR Part 230. – OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations.

53. Will acknowledge, agree, and require any sub-recipients, contractors, successors, transferees, and assignees acknowledge and agree-to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.
- a. Recipients must cooperate with any compliance review or complaint investigation conducted by DHS and/or Cal EMA.
  - b. Recipients must give DHS/Cal EMA access to and the right to examine and copy records, accounts, and other documents and sources of information related to the grant and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS/Cal EMA regulations and other applicable laws or program guidance.
  - c. Recipients must submit timely, complete, and accurate reports to the appropriate DHS/Cal EMA officials and maintain appropriate backup documentation to support the reports.
  - d. Recipients must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.
  - e. If, during the past three years, the recipient has been accused of discrimination on the grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status, the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the DHS/Cal EMA awarding office and the DHS Office of Civil Rights and Civil Liberties.
  - f. In the event any court or administrative agency makes a finding of discrimination on grounds of race, color, national origin (including limited English proficiency), sex, age, disability, religion, or familial status against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the DHS Component and/or awarding office. The United States has the right to seek judicial enforcement of these obligations.
54. Agrees that none of the funds provided under an award may be expended by the recipient to pay any person to influence, or attempt 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 any Federal action concerning the award or renewal of any Federal contract, grant, loan, cooperative agreement. These lobbying prohibitions can be found at 31 U.S.C. § 1352.

55. Will comply with requirements to acknowledge 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.
56. Will comply with requirements that publications or other exercise of copyright for any work first produced under Federal financial assistance awards hereto related unless the work includes any information that is otherwise controlled by the Government (e.g., classified information or other information subject to national security or export control laws or regulations). For any scientific, technical, or other copyright work based on or containing data first produced under this award, including those works published in academic, technical or professional journals, symposia proceedings, or similar works, the recipient grants the Government a royalty-free, nonexclusive and irrevocable license to reproduce, display, distribute copies, perform, disseminate, or prepare derivative works, and to authorize others to do so, for Government purposes in all such copyrighted works. The recipient shall affix the applicable copyright notices of 17 U.S.C. § 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under an award.
57. Will obtain DHS's approval 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.
58. Will comply with the requirements 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.
59. Will comply with the requirements of the Preference for U.S. Flag Air Carriers: Travel supported by U.S. Government funds requirement, which states preference for the use of 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 B138942.
60. Will comply with the requirements of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq.), which requires that all organizations receiving grants from any Federal agency agree to maintain a drug-free workplace. The recipient must notify the awarding office if an employee of the recipient is convicted of violating a criminal drug statute. Failure to comply with these requirements may be cause for debarment. These regulations are codified at 2 CFR 3001.
61. Will comply with the requirements of the government-wide award term which implements Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. § 7104), located at 2 CFR Part 175. This is implemented in accordance with OMB

Interim Final Guidance, Federal Register, Volume 72, No. 218, November 13, 2007. In accordance with Section 106(g) of the TVPA, as amended, requires the agency to include a condition that authorizes the agency to terminate the award, without penalty, if the recipient or a sub-recipient engages in severe forms of trafficking in persons during the period of time that the award is in effect, procures a commercial sex act during the period of time that the award is in effect; or uses forced labor in the performance of the award or subawards under the award. Full text of the award term is provided at 2 CFR § 175.15.

62. Will comply with the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.
63. Will comply with Title VIII of the Civil Rights Act of 1968, which prohibits recipients from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (42 U.S.C. § 3601 et seq.), as implemented by the Department of Housing and Urban Development at 24 CFR 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 CFR § 100.201).
64. Will comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, which prohibits recipients from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12101-12213).
65. Will comply with the requirements of the Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving Federal financial assistance.
66. Will comply with the requirements of Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 et seq.), which provides that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving Federal financial assistance. These regulations are codified at 44 CFR Part 19.
67. Will comply with the requirements of Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin and resulting agency guidance, national origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI, recipients must take reasonable steps to ensure that LEP persons have meaningful access to your programs. Meaningful access may entail providing language assistance services, including oral and written translation, where necessary. Recipients are encouraged to consider the need for language services for LEP persons served or encountered both in developing budgets and in conducting programs and activities. For assistance and information regarding LEP obligations, go to <http://www.lep.gov>.

68. Will comply with the requirements of 42 U.S.C. § 7401 et seq. and Executive Order 11738, which provides for the protection and enhancement of the quality of the nation's air resources to promote public health and welfare and for restoring and maintaining the chemical, physical, and biological integrity of the nation's waters is considered research for other purposes.
69. Will comply with the requirements of the Federal regulations at 45 CFR Part 46 and the requirements in DHS Management Directive 026-04, Protection of Human Subjects, prior to implementing any work with human subjects. The regulations specify additional protections for research involving human fetuses, pregnant women, and neonates (Subpart B); prisoners (Subpart C); and children (Subpart D). The use of autopsy materials is governed by applicable State and local law and is not directly regulated by 45 CFR Part 46.
70. Will comply with the requirements of the National Environmental Policy Act (NEPA), as amended, 42 U.S.C. § 4331 et seq., which establishes national policy goals and procedures to protect and enhance the environment, including protection against natural disasters. To comply with NEPA for its grant-supported activities, DHS requires the environmental aspects of construction grants (and certain non-construction projects as specified by the Component and awarding office) to be reviewed and evaluated before final action on the application.
71. Will comply with the requirements of Section 1306(c) of the National Flood Insurance Act, as amended, which provides for benefit payments under the Standard Flood Insurance Policy for demolition or relocation of a structure insured under the Act that is located along the shore of a lake or other body of water and that is certified by an appropriate State or local land use authority to be subject to imminent collapse or subsidence as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels. These regulations are codified at 44 CFR Part 63.
72. Will comply with the requirements of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4001 et seq.), which provides that no Federal financial assistance to acquire, modernize, or construct property may be provided in identified flood-prone communities in the United States, unless the community participates in the National Flood Insurance Program and flood insurance is purchased within one year of the identification. The flood insurance purchase requirement applies to both public and private applicants for DHS support. Lists of flood-prone areas that are eligible for flood insurance are published in the Federal Register by FEMA.
73. Will comply with the requirements of Executive Order 11990, which provides that federally funded construction and improvements minimize the destruction, loss, or degradation of wetlands. The Executive Order provides that, in furtherance of Section 101(b)(3) of NEPA (42 U.S.C. § 4331(b)(3)), Federal agencies, to the extent permitted by law, must avoid undertaking or assisting with new construction located in wetlands unless the head of the agency finds that there is no practicable alternative to such construction, and that the proposed action includes all practicable measures to minimize harm to wetlands that may result from such use. In making this finding, the head of the agency may take into account economic, environmental, and other pertinent factors. The public disclosure requirement

described above also pertains to early public review of any plans or proposals for new construction in wetlands. This is codified at 44 CFR Part 9.

74. Will comply with the 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. Among other things, it prescribes criminal penalties for possession of any biological agent, toxin, or delivery system of a type or in a quantity that is not reasonably justified by a prophylactic, protective, bona fide research, or other peaceful purpose. The act also establishes restrictions on access to specified materials. "Restricted persons," as defined by the act, may not possess, ship, transport, or receive any biological agent or toxin that is listed as a select agent.
75. Understands the reporting of subawards and executive compensation rules, including first tier subawards to Cal EMA.
  - a. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009,
  - b. Where and when to report: you must report on each obligating action described in the following paragraphs to Cal EMA. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2011, the obligation must be reported by no later than December 31, 2011.)
  - c. What to report: You must report the information about each obligating action that the submission instructions posted in Information Bulletin 350, to Cal EMA. To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>. Subgrantees must report sub-recipient executive total compensation to Cal EMA by the end of the month following the month during which you make the subaward. Exemptions include: If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report on subawards, and the total compensation of the five most highly compensated executives of any sub-recipient.
  - d. Reporting Total Compensation of Recipient Executives: You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if
    - i. The total Federal funding authorized to date under this award is \$25,000 or more;
    - ii. In the preceding fiscal year, you received 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section

6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)

- iv. Sub-recipient Executives. Unless you are exempt as provided above, for each first-tier sub-recipient under this award, you shall report the names and total compensation of each of the sub-recipient's five most highly compensated executives for the sub-recipient's preceding completed fiscal year, if in the sub-recipient's preceding fiscal year, the sub-recipient received 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and the public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

76. Understands that failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

The undersigned represents that he/she is authorized by PLEASANTON to execute these Grant Assurances for and on behalf of PLEASANTON.

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

Printed Name of Authorized Agent: Jim Miguel

Title: Fire Chief Date: \_\_\_\_\_

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

**REIMBURSEMENT REQUEST**

\_\_\_\_\_, 2013

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

Re: FY 12 UASI Grant Reimbursement Request

Pursuant to Section 3.10 of the "Agreement between the City and County of San Francisco and the City of PLEASANTON for the Distribution of FY 2012 UASI Grant Funds" (the "Agreement"), dated APRIL 1, 2013, between the City of PLEASANTON ("PLEASANTON") and the City and County of San Francisco, PLEASANTON 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:                   \$ \_\_\_\_\_

PLEASANTON certifies that:

- (a) The total amount of funds requested pursuant to this Funding Request will be used to reimburse PLEASANTON 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 PLEASANTON is in compliance with all Grant Assurances in Appendix B of the Agreement;
- (d) No Event of Default has occurred and is continuing; and
- (e) The undersigned is an officer of PLEASANTON authorized to execute this Reimbursement Request on behalf of PLEASANTON.

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

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

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

## SCHEDULE 1 TO REQUEST FOR REIMBURSEMENT

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

<b>Project</b>	<b>Payee</b>	<b>Amount</b>	<b>Description</b>
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The following are attached as part of this Schedule 1:

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