

DATE: January 13, 2009
TO: Mayor and City Council
FROM: Technology Services Director
SUBJECT: East Bay Regional Communication System Authority Participation

RECOMMENDATION

That the Council adopts the attached resolution approving continued participation in the East Bay Regional Communication System Authority, and confirming the expenditure of \$25,000 for FY 2009 membership.

BACKGROUND

The City of Hayward joined the East Bay Regional Communication System Authority (EBRCS) in 2007 as one of the charter members. The fee for original participation was \$75,000 annually, and was approved as part of the FY 2008 and FY 2009 Budget Adoption process. The fee is calculated based on \$100 per each operational radio unit in the participating entity, which for Hayward has been 750 units (times \$100 per unit equals \$75,000).

The Council held a work session discussion concerning continued participation in the EBRCS on October 7, 2008. During the meeting it was decided that the question of continued participation would be referred back to the Council Technology Applications Committee (CTAC) for further discussion. Some of the issues that the Council felt warranted further discussion were:

- Whether the City should continue with our participation in EBRCS
- What benefits will result in further participation
- The costs of participation
- Board membership for Hayward
- What are the future fiduciary responsibilities
- What are the funding sources that can be expected/explored
- Regional initiatives for cooperation

DISCUSSION

The CTAC met on October 29, 2008 and again on November 19, 2008 to discuss the continued participation of the City of Hayward in the EBRCS. With the assistance of Mr. Bill McCammon, the Executive Director of EBRCS, these meetings consisted of a thorough review and discussion of the questions posed by Council in their referral as defined above supported by

documentation provide by EBRCSA. The report to CTAC and the documentation provided by Mr. McCammon are in Attachment A to this report. At the November 19, 2008 meeting, the CTAC voted 2-to-1 in favor of continued participation.

As a result, staff is recommending that Council approves continued participation in EBRCS and confirms \$25,000 for the FY 2009 membership. This annual fee has been reduced from the original \$75,000 for two reasons:

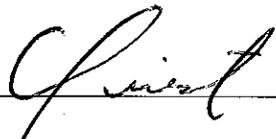
1. The initial calculation for the City was based on 750 radio units. Due to the specific count conducted by the City's Communication Manager, the actual unit count has been reduced to 500. The adjusted count resulted from removal of units not in actual use by the City. Therefore the recurring annual fiduciary responsibility for the City of Hayward has been reduced to \$50,000 (500 units times \$100 equals \$50,000.)
2. In FY 2008, the City made an overpayment of \$25,000 and the FY 2009 fee has been adjusted to reflect this overpayment. Therefore, while the membership fee remains at \$50,000, the City is only required to make a \$25,000 cash payment. In subsequent years, if the City continues participation, membership will be \$50,000.

FISCAL IMPACT

There is minimal fiscal impact to the City because \$75,000 was approved for each of FY 2008 and FY 2009 in the budget approval process. Therefore, there is a net decrease in expenditures of \$50,000 from that actually budgeted.

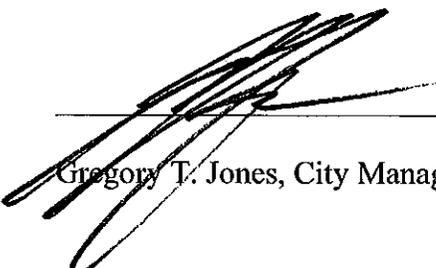
• Paid in FY 2008	\$75,000
• FY 2008 reduced membership fee	\$50,000
• FY 2009 Membership fee	\$50,000
• Less overpayment in FY 2008	(\$25,000)
• Net Due for Membership in FY 2009	\$25,000

Prepared by:



Clancy Priest, Technology Services Director

Approved by:



Gregory T. Jones, City Manager

Attachments: November 19, 2008 Report to CTAC
Draft Resolution



CITY OF
HAYWARD
HEART OF THE BAY

DATE: November 19, 2008
TO: Council Technology Application Committee
FROM: Clancy Priest, Technology Services Director
SUBJECT: East Bay Regional Communication System (EBRCS) Discussion Continuation

RECOMMENDATION

That the Committee reads and reviews the attached information.

BACKGROUND

The Council held a work session discussion concerning continued participation in the EBRCS on October 7, 2008. During the meeting it was decided that the question of continued participation would be referred back to the CTAC for further discussion. (See attachment A)

The CTAC met on October 29, 2008 and discussed the continued participation of the City of Hayward in the EBRCS. (See attachment B) That meeting will be continued, at the request of the members, with the review and discussion of certain documentation provide by Mr. Bill McCammon, the Executive Director of EBRCS. (See attachment C)

The CTAC is scheduled to have this continuation meeting on November 19, 2008 at 4:00pm to 5:30pm in City conference room 2A.

Prepared by:

A handwritten signature in cursive script, appearing to read "Priest", written over a horizontal line.

Clancy Priest, Technology Services Director

Approved by:

A handwritten signature in cursive script, appearing to read "Gregory T. Jones", written over a horizontal line.

Gregory T. Jones, City Manager

Attachments to November 19, 2008 Report to CTAC:

A - (items from the 10-07-08 Council work session)

A-1 East Bay Regional Communication System (EBRCS) Participation report.

A-2 Daniel Borenstein Article

A-3 Daniel Borenstein Article response

A-4 Councilmember Quirk's response

B - (items from the 10-29-08 CTAC meeting)

B-1 CTAC 10-29-08 Report

C - (items request at the 10-29-08 CTAC meeting)

C-1 FINAL Subgrantee MOU

C-2 EBRCSA Statement of Revenue

C-3 Alameda County Site Upgrade Costs

C-4 EBRCSA-063008 Accrual Basis

C-5 EBRCSA Grant Overview – Alameda County

C-6 EBRCSA Grant Overview – CoCoCo

C-7 Final 2007 SUASI MOU 112007

C-8 Funding Grants as of 111108

November 19, 2008

Report to CTAC

Attachment(s) A

ATTACHMENT A-1



CITY OF
HAYWARD
HEART OF THE BAY

WS 2

DATE: October 7, 2008
TO: Mayor and City Council
FROM: Interim Police Chief
SUBJECT: East Bay Regional Communication System (EBRCS) Participation

RECOMMENDATION

That Council receives and reviews this report.

SUMMARY

In 2007, the East Bay Regional Communications System Agency (EBRCS), a joint powers agency, was formed to procure, install and maintain a digital 800/700 MHz P25 trunked radio system for both Alameda and Contra Costa Counties. There are 39 member agencies that have joined the EBRCS, including Hayward. In Alameda County, the cities of Oakland, Piedmont, and Berkeley have not joined EBRCS and are performing needs assessment to determine their participation. Hayward just recently completed a system upgrade and has the newest radio system in Alameda County (outside of the new EBRCS system).

The EBRCS has awarded the contract to Motorola, who has already begun to install equipment for the new system. CTA Communication Consultants was retained by EBRCS and the City of Oakland to provide an independent verification of the Motorola system design and to make funding recommendations to EBRCS. The EBRCS has estimated the cost of infrastructure to be \$68,116,171. The EBRCS has received or is receiving \$33,974,135 in Federal grants or earmarks. This leaves an estimated unfunded cost of \$34,142,036.

While Hayward is committed to providing interoperability, the City currently can provide interoperability without discarding the recent equipment upgrades. By continuing to use the new equipment for the next couple of years, Hayward can get more return on its investment and begin to save for the transition to a new system.

BACKGROUND

Organization: In 2003, the City of Oakland and Alameda and Contra Costa Counties began meeting to discuss how to improve interoperability between the counties and the cities contained therein. Meanwhile, Alameda County's trunked 800 MHz radio system was beginning to experience serious maintenance problems. Due to the age of the equipment and availability of parts, it was becoming very hard to maintain.

In 2005, Alameda County released a Request for Proposal (RFP) for a new P25¹ 800 MHz trunked system to replace their Motorola SmartNet System. The RFP was written to replace Alameda County's system only. Since the RFP was an Alameda County only procurement, other agencies were not involved in the procurement of the new system. Alameda County's RFP required that the new system be backward compatible with their current proprietary SmartNet System. This was required to provide for smoother migration for current users. However, that requirement eliminated other vendors, since the SmartNet system was a Motorola proprietary system. Alameda County eventually entered into negotiations with Motorola and awarded them the contract.

Motorola began delivering the initial system in late spring of 2006. Part of the Motorola procurement included a comprehensive system design. This was based on Alameda County's primary concern to improve their current system. Knowing that Contra Costa had a desire for a county wide system, Motorola offered to provide a two-county system design.

Contra Costa County and its staff began discussions with Alameda County on the conceptual design and formation of a two county radio system. Contra Costa County was very concerned that (a) the original Alameda County RFP was not competitive, and that (b) the system design would not meet the needs of its users.

Based on their concerns, Contra Costa County hired CTA Communications, Inc., a consultant, to render a third-party opinion on the viability of the Motorola design and pricing. CTA's report seemed to support the plan of a two-county radio system. However, the report identified system design concerns for Contra Costa County. CTA also discussed that the pricing that Motorola provided was "high."

Both counties realized from the onset that they would need some form of joint governance in order for the system to grow. On September 11, 2007, the East Bay Regional Communications System Authority (EBRCS) was formed as a joint powers authority among both counties and all but three (3) of the cities within Alameda County: Oakland, Piedmont, and Berkeley, and the City of Orinda in Contra Costa County. Currently there are thirty five (35) member agencies

¹ Project 25 (P25) is a set of standards produced through the joint efforts of the Association of Public Safety Communications Officials International (APCO), the National Association of State Telecommunications Directors (NASTD), selected Federal Agencies, and the National Communications System (NCS), and standardized under the Telecommunications Industry Association (TIA)... The P25 suite of standards involves digital Land Mobile Radio (LMR) services for local, state, and national (federal) public safety organizations and agencies. Although developed primarily for North American public safety services, P25 technology and products are not limited to public safety alone and have also been selected and deployed in other private system application, worldwide.⁽¹⁾

consisting of 29 cities and 4 special districts (see attachment). The Board of Directors is made up of 23 representatives allocated among the various entities as follows:

EBRCS

The Board of Directors: 23 members made up of equal representation from both counties.

- | | |
|---|--------------------------------------|
| (2) Police Chiefs Association* | (1) Alameda County (CAO) |
| (2) County Fire Chiefs Assn* | (1) Contra Costa County (CAO) |
| (1) Special District | (2) County Sheriffs* |
| (3) City Managers Contra Costa County** | |
| (3) City Managers Alameda County** | |
| (3) Elected Officials Alameda County*** | |
| (3) Elected Officials Contra Costa County*** | |
| (2) One member of each Board of Supervisors | |

*one representative from Contra Costa and one from Alameda

**selection to be determined by each County's City Managers Association

*** selection to be determined by the Mayor's conference of each County

Under the direction of the board, the JPA hired Retired Fire Chief Bill McCammon as Executive Director. According to the EBRCS Bylaws, the Executive Director is appointed by a majority of the Board of Directors.

Base Technology: In the 1990's, the Association of Public Safety Communications Officials (APCO) appointed a committee to explore the possibility of establishing an open, standards-based protocol for digital radio systems. This committee became known as the Project 25 Committee.

P25 created an open standard, which allows equipment adhering to the standard to be compatible regardless of the manufacturer. Until the creation of P25, some radio systems used proprietary protocols to communicate with the base stations. This did not always allow equipment from different manufacturers to be compatible across radio systems. This created incompatible systems and large communication gaps for public safety personnel.

The P25 standard also created the opportunity for competition and more favorable purchasing, since equipment can be purchased from more than one manufacturer. P25 is a work in progress. Although several standards have been created, the Committee is still in the process of defining some interfaces including the Console Subsystem Interface (CSSI) and the Inter RF Subsystem Interface (ISSI). These interfaces will further expand the capability of a digital network by using internet protocol (IP) technology to allow systems to interconnect from base station to base station.

In early 2008, the P25 Compliance Assessment Program (CAP) was developed to assure that equipment being advertised as P25 compliant actually was. The P25 CAP has four (4) long-term goals: (1) ensure that the technologies meet the needs of field end users; (2) assist governments in making informed purchasing decisions regarding P25 equipment; (3) provide standard testing procedures across all vendors; and (4) support the eventual implementation of standards-based infrastructure for first-responder communications. (See Exhibit 1 from Homeland Security.)

In 2004-2005, the Alameda County Grand Jury noted that most agencies in the county had a concern about "interoperability" (i.e., the ability of first responders in all jurisdictions within the County to communicate with one another using a common platform.) The Grand Jury Report for that year noted:

"Investigation by the Alameda County Grand Jury of local agencies discovered a common concern regarding interoperability. Mutual Aid in the mitigation of local incidents depends on quick response from the nearest district. Communication is hampered when the assisting districts cannot identify the needs of the local department managing the incident because of the differences in communication equipment. The injection of a terrorist attack or major disaster would compound this problem. Interagency cooperation and coordination are critical. The disparity in communication systems of individual rescue agencies is a hindrance. Coordination for saving lives and property in a disaster could be hampered. One problem with achieving interoperability in the Bay Area is various agencies using different radio systems. In addition, available airwave systems for public safety agencies are almost depleted."

The Alameda County Grand Jury again reviewed the issue of interoperability and the new JPA. The 2006-2007 report states:

"Both national and state reports were in general agreement that governmental organizations created to improve interoperability should develop a vision with specific supporting goals and objectives. The decision-making process should include as many affected jurisdictions as possible, rely on their assessment of local needs and vulnerabilities, enhance communication, coordination, and cooperation among them, provide for dispute resolution, and prevent turf wars. Both of these reports also agreed that moving directly to an optimum system at their respective level is not financially feasible, and that solutions must be found which allow affected jurisdictions to "leverage existing systems while migrating gracefully but expediently to the ideal." The California Statewide Integrated Public Safety Communications Strategic Plan emphasized that training and exercises that practice communications interoperability are essential to ensuring that the technology works and that responders use it effectively during emergency operations.

The goal of promoting wide membership in order to facilitate public funding would seem to argue for inclusion, or at least provision for collaboration and coordination with as many potential members and subscribers as possible. There is conflicting information on the extent of inclusion and coordination prior to adopting the JPA. Whatever the case, from here forward, every attempt should be made to be as inclusive as possible.

The Grand Jury believes that the ultimate goal of radio communications interoperability is worthy, particularly in view of the Bay Area's susceptibility to flood, fire, major earthquake, and possible terrorist attack. Once individual cities have the opportunity to decide whether to

join the JPA, future Grand Juries should closely monitor the cost of the EBRCS and its implementation. While there is a general, although not unanimous, feeling that high levels of interoperability are desirable for disasters such as 9/11 and Katrina, a lesser degree of capability may be sufficient for day-to-day police and fire operations. Federal grants should be aggressively pursued. Independent cost analysis should be obtained to determine if there are costs savings. Competitive bidding should be utilized. Comprehensive operating procedures including training and regularly scheduled exercises should be developed.

Ultimately, the public will benefit from a truly inclusive JPA that will provide the capability to deal at an acceptable level with major disasters anywhere in the Bay Area, as well as ongoing daily interactions in local jurisdictions. This system will hopefully include the potential for long range integration into a statewide system, backward compatibility allowing cities to enter the system using present equipment effectively, and a capability to upgrade to the ideal level, as local conditions and financial circumstances permit."

The EBRCS System: Motorola has been awarded a contract to build the EBRCS P25 system. The system proposed by Motorola will consist of five (5) geographic zones and 32 transmitter sites spread throughout the two counties. These five (5) zones will work as sub-systems within the larger system. This design will allow for more efficient use of available frequencies between the two counties.

Hayward will be located in the Alameda County West Cell. The current system design has identified the following sites to provide coverage to the City of Hayward –Walpert Ridge, San Leandro Hills, Garin Water Tank, and Coyote Hills. Each of these sites will transmit at the same time providing radio coverage from South Oakland to San Jose. Each of the users within each of the sub systems should have complete system access in their local area coverage. Coverage while roaming outside of your home area has not been completely defined. However, the goal will be to provide at least some level of radio coverage while roaming within the two county system footprint.

Motorola has produced coverage maps using these proposed sites. Based on Motorola's maps, coverage in most of Hayward appears to be within normal limits. However, the map also shows some coverage gaps in the commercial west end and along the Mission Blvd. area. While these maps give a good predicted coverage area, true tests will need to be conducted when the system goes live.

The new system was designed to use both 800 MHz and 700 MHz frequencies. 800 MHz frequencies are currently being used in the Alameda County System. They are owned and licensed to Alameda County and ready to be used. The 700 MHz frequencies² are scheduled to become available in February 2009. The 700 MHz frequencies will supplement the current 800 MHz channels. Most of the new 800 MHz radio equipment is compatible with both frequency ranges.

² The 700 MHz spectrum was previously used for analog television broadcasting, specifically UHF channels 52 through 69. The FCC has ruled that the impending switch to digital television will make these frequencies no longer necessary for broadcasters, due to the improved spectral efficiency of digital broadcasts, thus placing them up for auction and use by others.

The EBRCS is interested in utilizing both the Walpert Ridge and Garin Water Tank sites in the new P25 System. For the Walpert Ridge Site, the EBRCS would like to replace one of the older communications buildings with a newer, more stable facility. This new building will house the new P25 EBRCS equipment. The EBRCS has also identified that the power on the site will need to be upgraded to a 400 Amp service.

At the Garin site the EBRCS, would like to co-locate their equipment in our existing communications building. Their engineers have determined that there is sufficient space for their equipment to be co-located with ours. The electrical service at Garin will also need to be upgraded to a 200 Amp service. The EBRCS would also like to add an additional 20 ft extension onto our 60 foot communications tower. This extension is required to provide sufficient clearance from the new water tank that will be installed at a later date.

Both of these sites are very important in Motorola's system design. In fact, Motorola's current system design has already identified the use of both of these Hayward sites in the new system. These sites provide coverage not only to Hayward but to some of the surrounding areas. The Garin site will be very critical to the coverage in Union City, Newark and North Fremont.

However, Hayward is still waiting for an official agreement from the EBRCS. Currently, the EBRCS has begun planning for some upgrades to each of the sites. If use is granted, Executive Director Bill McCammon has verbally agreed to perform the necessary power upgrades for both Garin and Walpert Ridge, presumably at no cost to the City of Hayward. Mr. McCammon has also discussed that the EBRCS would be willing to pay their proportionate share of all utility and maintenance costs for the sites. However, the EBRCS does not appear willing to pay for the use of any property from member agencies (i.e., lease the tower and other sites they want to use.)

DISCUSSION

City of Hayward's Current System: In 2002, the City of Hayward's Public Safety Radio Network was failing, and the safety of the public and employees was being affected. In 2005, the City of Hayward began upgrading its entire Public Safety Radio Network. The project included upgrading the following: the microwave radio system, site infrastructure, base stations, antennas, dispatch consoles, replacement radios for the Police Department, and level three interoperability enhancements.

The City of Hayward operates a Conventional UHF Simulcast Public Safety Network. The system supports both Police and Fire operations for the City of Hayward and Fire operations for the Community of Fairview. The system is operated using four radio towers strategically placed throughout the City: Garin Ridge, Walpert Ridge, Hesperian (water pump station), and the Police facility. The primary site is the police facility located on West Winton Avenue. This site houses the primary controllers and provides an interface to the Public Safety Communications Center co-located in the police facility. Each of the remote sites is connected via a microwave system. This system was designed to provide protected and reliable connectivity to the other remote sites. This new microwave system also serves as the backbone for the city's wireless network.

The City of Hayward has completed the Public Safety Radio Upgrade it began in 2005. The following system and sub-systems have been upgraded as a result of this project:

1. Installation of new site in South Hayward on Garin Ridge.
2. Provide enhanced portable coverage with 97% coverage and 92 % reliability throughout coverage area
3. Provide new digital microwave system with expanded capacity to support digital data network
4. Provide new dispatch consoles for dispatch center, providing each position with radio capabilities. These consoles will provide the following enhancements
 - a. Improved radio interoperability
 - b. Provide Police and Fire Fighter Emergency Assistance Alerts
 - c. Provide expanded radio identification features
5. Expand dispatch consoles for each position in the Communications Center
6. Provide the Police Department with upgraded portable radios which will
 - a. Allow for consistent portable radio configurations
 - b. Allow for emergency officer down function for each radio

We have finally finished the last phase of the installation which included the interoperability patch with the Alameda County GSA System. This final phase provides interoperability with Alameda County, Union City, Fremont, San Leandro, Newark, CSU East Bay, and BART (In progress).

This interoperability must be managed in the Public Safety Communications Center. In the Communications Center, the Communication's Supervisor can patch a Hayward channel to a channel of one of our neighbors. When this patch is activated users can talk between systems without having to swap radios. This will allow us to patch statewide mutual aid channels or other common channels together during emergency situations.

On the EBRCS System, users will share the same frequencies. It is envisioned that every portable radio will be programmed similarly allowing for users to switch to any other participating agency's channels without dispatcher intervention. From a field user's position, this would allow for more flexibility since they would have control over which talk group they can join. It may not be operationally necessary for that to occur. From an end user perspective, both solutions provide a means for a Hayward officer or fire fighter to have the ability to communicate with its neighbors, who may use a different system.

Benefits and Impacts of Remaining in EBRCS: Hayward's presence on the EBRCS has several benefits from a design and implementation perspective. Our presence in the design process is allowing us to provide input to Motorola early in the process, and influencing the placement of equipment and sites as feasible. As the EBRCS becomes more active, they will be relying on participating agencies to determine the policies and practices of the JPA. Being a part of the development is definitely in the interest of any potential or current member.

From a radio coverage perspective, there is a benefit to having larger roaming capabilities that will be offered by being a part of a large regional system. This expanded "footprint" will definitely provide some flexibility for our employees.

Operationally, a trunked radio system uses frequencies much more efficiently than a conventional system, like Hayward. This efficiency allows for more talk groups and system capacity. Interoperability will be enhanced since every individual user will have the ability to talk to any other participating agency without dispatcher intervention.

The EBRCS system model is a state of the art digital system. This system has the potential to allow some enhanced capabilities including the use of both data and voice on the network. Again, the JPA will need to make the decision on what specific features they ultimately decide to implement.

However, there is some concern about a digital system. There is still a lot of discussion among public safety, especially fire departments, over the use of a digital system for mission critical communication. Most recently the International Association of Fire Chiefs (IAFC) studied the differences between analog and digital radio systems. In their report the IAFC found that analog communication was more intelligible than digital in six of nine high noise environment tests (i.e., communications \ could be heard better by those dependent on them in the field.)

It is assumed that the EBRCS system, like many new installations, will have design or implementation problems. For public safety, communication failures can be disastrous. Minimizing failures and providing predictable reliable communications is essential. There is rarely much benefit being one of the first users of a new digital system. In fact, it may be stressful to first responders as the system stabilizes.

There is a risk that the current Motorola system design may need to be expanded. While Motorola would argue that they will be able to provide sufficient coverage for the participating agencies, Motorola is making an assumption that every agency will be agreeable to the coverage the system is set to provide. Some agencies will be satisfied with system coverage. However, there will be some agencies that will not. As mentioned earlier, Motorola's coverage study shows some areas for concern in the commercial west area of Hayward and along the Mission Blvd. corridor. Hayward will not accept a lower level of coverage than what it has through its current system. What has not been determined is who will pay to provide this "enhanced" coverage. It can be assumed that eventually all members of the JPA will pay for the increased costs either individually or co-operatively.

The 2007 CTA report identified that the cost of the system appeared to be less competitive than they have seen in comparable installations. The report also identified that there may be infrastructure costs that were not identified as either equipment or services. However, it should be noted that the EBRCS is in the process of re-negotiating the purchase of the remaining equipment. It is hoped that the EBRCS may realize more competitive pricing in this 2nd phase of procurement.

Based on data provided by the EBRCS, dated August 2008, there remains \$34,143,036 in unfunded project costs. This assumes that the project does not exceed its contingency funding of \$5,556,999.

In any case, it is not unreasonable to expect that unfunded costs will need to be shared by participating agencies.

Currently EBRCS is billing participating agencies a \$100 per-unit, per-year fee. These monies are being used to support administrative costs and matching fund requirements. However, it's safe to assume that as administrative costs begin to increase, per unit fees will also need to increase. CTA Consultants has been retained by the EBRCS to provide a funding plan for the future.

Impacts and Risks of Leaving EBRCS: As mentioned above, leaving EBRCS could provide Hayward less of an influence in the process. However, based on the Alameda County Grand Jury 2007 report, staff believes that the EBRCS will continue to be inclusive and collaborate with as many potential users as possible. While it may not allow for a seat on any decision making board, it could allow Hayward continued influence on a technical and operational level.

However, as mentioned earlier, Hayward is in the unique position of having a new radio system. This system, while not trunked, provides for reliable and effective communications within our borders and surrounding areas. Leaving the EBRCS is not as critical for us as it is for some of our neighbors. Current members of the Alameda County 800 MHz system are becoming very anxious about the condition and performance of the current system. However, many of those agencies have been purchasing P25 compatible radios for the last year. This will allow them to phase in the costs of replacement units.

Hayward does not have that benefit. For Hayward, other than the digital microwave, none of the current equipment is compatible with the new P25 system.³ Therefore, joining the EBRCS for Hayward will likely require the replacement of all current radio equipment with new equipment compatible with the EBRCS system. While the costs for this equipment vary, it is not unreasonable to believe these costs to be in excess of \$1,000,000.

Another factor is the risk of loss of momentum. The reality is there are many others looking at the synergy of the project. As mentioned above, there are already cities that are not part of the EBRCS. Hayward would be the first participating agency to drop its membership. While we have conditions that are unique to Hayward, we may open the door for other agencies to leave EBRCS. Currently Hayward is paying more to support EBRCS than any other participating agency. Hayward's lack of participation will impact other agencies, since it's assumed that they would need to compensate for our lack of financial support.

Currently the EBRCS is considering establishing a founding members group and a new members group. It's unknown how EBRCS might treat Hayward if we were to request to join at a later date.

Considering the financial impact, the condition of Hayward's Public Safety Communication Network, and that interoperability patches that the City has installed, it seems a strong possibility

³ Motorola offered the City exceptional pricing and financing at a time that the old radios were failing. Staff made the determination that it was not in the best interests of first responder safety to wait any longer on radio replacement, and that given the likely implementation schedule of EBRCS, we would get good value from the equipment before it had to be replaced going into the two-county system.

that Hayward should remove itself from EBRCS. This will allow Hayward the opportunity to get more return on the investment the City just completed.

However, if the City does make this decision, it is imperative that Hayward should continue to cooperate and collaborate with the EBRCS as much as possible. Assuming that EBRCS would allow it, Hayward could continue to participate on the various technical committees that currently are associated with the two-county system.

FISCAL AND ECONOMIC IMPACT

Costs to EBRCS: In their proposal, Motorola estimated the cost at \$68,116,171 for both counties. However, that estimate did not include buildings or upgrades to any infrastructure. The CTA Consultants' report in April 2007 estimated that there is a potential for another \$20,000,000 in upgrades for infrastructure between the two counties.

This contract award did not provide for any portable or mobile radios. Each member agency is responsible for the purchase of their portables and mobiles. Estimates from CTA's 2007 report estimates that between the two counties those radios could cost as much as \$37,000,000. There is some discussion that the JPA may offer a lease/purchase option to help member agencies meet the replacement costs of portable and mobile radios.

Based on data from the EBRCS, the JPA has only received \$33,974,135 in grants from Homeland Security Grants and Federal earmarks. This leaves unfunded costs at \$34,142,036. The JPA, through the Bay Area Super Urban Area Security Initiative SUASI, is continuing to apply for grant funding each year. However, based on the trend of lower allotments, it is reasonable to believe that grant funding will not be able to fund the entire project.

Costs to the City of Hayward: Currently EBRCS is billing Hayward \$75,000 annually. Staff is reviewing the potential to lower this cost to approximately \$45,000. While EBRCS has not committed to its future funding amounts, it is safe to assume that there will be an increase in fees as the system becomes active. Any estimate on the potential costs would be inaccurate. We must wait for the EBRCS report before making any assumptions.

However, there is an expectation that participating agencies will go "live" when the system becomes operational in their jurisdictional coverage area. For Hayward, EBRCS is moving quickly to install equipment. This feasibly places us at a late 2009 or early 2010 implementation.

When an agency goes "live" on the system, there will be a monthly or annual system fee for each unit. Again, CTA Consulting is in the process of identifying those funding requirements. It is reasonable to assume that those fees will be between \$20 - \$60 per month per piece of equipment. Based on the current number of users, Hayward could pay \$108,000 - \$324,000 annually.

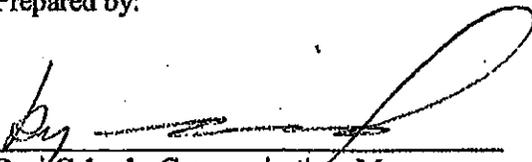
Based on current estimates from Motorola representatives, it is not unreasonable for Hayward to expect upward of \$1,800,000 in new equipment purchases for just mobiles and portables.

SCHEDULE

Meeting information is posted at <http://www.ebrcsa.org>

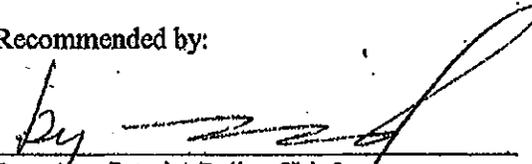
Meetings of EBRCS are generally at the Office of Homeland Security and Emergency Services, located at 4985 Broder Boulevard, Dublin. It is likely that EBRCS leadership and members will be looking for a response from Hayward at next meeting as to continued membership.

Prepared by:



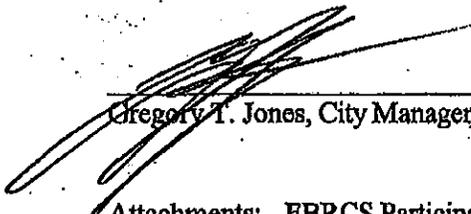
Desi Calzada, Communications Manager

Recommended by:



Ron Ace, Interim Police Chief

Approved by:



Gregory T. Jones, City Manager

Attachments: EBRCS Participants
EBRCS Financial Overview
EBRCS Board Members

East Bay Regional Communications System Authority

Participating Counties:	
Alameda County	http://www.acgov.org
Contra Costa County	http://www.co.contra-costa.ca.us
Participating Cities:	
City of Alameda	http://www.ci.alameda.ca.us
City of Albany	http://www.albanyca.org
City of Antioch	http://www.ci.antioch.ca.us
City of Brentwood	http://www.ci.brentwood.ca.us
City of Clayton	http://www.ci.clayton.ca.us
City of Concord	http://www.ci.concord.ca.us
Town of Danville	http://www.ci.danville.ca.us
City of Dublin	http://www.ci.dublin.ca.us
City of El Cerrito	http://www.el-cerrito.org
City of Emeryville	http://www.ci.emeryville.ca.us
City of Fremont	http://www.ci.fremont.ca.us
City of Hayward	http://www.ci.hayward.ca.us
City of Hercules	http://www.ci.hercules.ca.us
City of Lafayette	http://www.ci.lafayette.ca.us
City of Livermore	http://www.ci.livermore.ca.us
City of Martinez	http://www.cityofmartinez.org
Town of Moraga	http://www.ci.moraga.ca.us
City of Newark	http://www.ci.newark.ca.us
City of Oakley	http://www.ci.oakley.ca.us
City of Pinole	http://www.ci.pinole.ca.us
City of Pittsburg	http://www.ci.pittsburg.ca.us
City of Pleasant Hill	http://www.ci.pleasant-hill.ca.us
City of Pleasanton	http://www.ci.pleasanton.ca.us
City of Richmond	http://www.ci.richmond.ca.us
City of San Leandro	http://www.ci.san-leandro.ca.us
City of San Pablo	http://www.ci.san-pablo.ca.us
City of San Ramon	http://www.ci.san-ramon.ca.us
City of Union City	http://www.ci.union-city.ca.us
City of Walnut Creek	http://www.ci.walnut-creek.ca.us
Non Participating Cities:	
City of Oakland	http://www.oaklandnet.com
City of Piedmont	http://www.ci.piedmont.ca.us
City of Berkeley	http://www.ci.berkeley.ca.us
City of Orinda	http://www.ci.orinda.ca.us
Participating Special Districts:	
East Bay Regional Park District	http://www.ebparks.org
Kensington Police Community Services District	http://www.kensingtonpolicecsd.org
Rodeo-Hercules Fire Protection District	http://www.rhfd.org
San Ramon Valley Fire Protection District	http://www.srvfpd.dst.ca.us

**East Bay Regional Communications System Authority (EBRCSA)
Financial Overview August 2008**

GRANTS RECEIVED/PENDING

Year	Grant/ Fund End Date	Source	Alameda County	Contra Costs County	Total	Status
2004		UASI	\$5,400,000	\$0.00	\$5,400,000	Received
2004		SHSGP	\$5,519,819	\$150,000	\$5,669,819	Received
2005		UASI	\$1,479,114	\$737,732	\$2,216,846	Received
2005		SHSGP	\$0.00	\$346,854	\$346,854	Received
2006	03/2008	UASI	\$2,000,000	\$1,000,000	\$3,000,000	Received
2006	03/2008	SHSGP	\$1,300,000	\$835,000	\$2,135,000	Received
2007	09/2010	SHSGP	\$1,457,912	\$831,755	\$2,289,667	Received
2007	03/2010	UASI	\$645,426	\$551,426	\$1,196,852	In Process
2007	09/2010	COPS	\$500,000	\$1,500,000	\$2,000,000	In Process
2007	09/2010	COPS*			\$500,000	In Process
2008	03/2009	Earmark			\$808,000	In Process
2008		SHSGP	\$1,858,767	\$850,000	\$2,708,767	In Process
2008	06/2011	PSIG**			\$4,966,666	Requested
2008		PSIG**			\$1,281,666	Requested
GRAND TOTAL					\$33,974,135	

* A local match is required in order to receive the grant allocation.
** The City of Oakland may receive a portion of this funding.

ESTIMATED INFRASTRUCTURE PROJECT COSTS

* Motorola Proposal less Microwave	\$55,589,990
Contingency @ 10%	\$5,558,999
Harris Microwave	\$6,989,182
Total Estimated Project Costs	\$68,138,171

* The Motorola proposal was requested by Alameda County. Motorola is currently under contract with Alameda County for \$18 million to build existing infrastructure. A new bid will be issued for the final phases of the project, which will change the total infrastructure cost.

** This cost is for infrastructure and does not include the cost of subscriber units required to operate on the system.

PROJECTED FUNDING GAP

Total Estimated Infrastructure Project Costs	\$68,138,171
Grants Received/Pending	\$33,974,135
Total Estimated Unfunded Project Costs	\$34,164,036

As of 9/2/08

EBRCSA CURRENT BOARDMEMBERS

County Representatives

Scott Haggerty, President, Alameda County Board of Supervisors

Susan Bonilla, Supervisor, Contra Costa County

Warren Rupf, Sheriff, Contra Costa County

Greg Ahern, Sheriff, Alameda County

Susan Muranishi, County Administrator, Alameda County

David Twa, County Administrator, Contra Costa County

City Representatives

Jennifer Hosterman, Mayor, City of Pleasanton

Beverly Johnson, Mayor, City of Alameda

Janet Lockhart, Mayor, City of Dublin

Leonard McNeil, Councilmember, City of San Pablo

Bill Shinn, Mayor, City of Concord (Currently serving as Board Chair)

Abram Wilson, Mayor, City of San Ramon

Brock Arner, City Manager, City of San Pablo

Linda Barton, City Manager, City of Livermore

Joe Calabrigo, Town Manager, Town of Danville

June Catalano, City Manager, City of Pleasant Hill

Larry Cheeves, City Manager, City of Union City

John Jermanis, City Manager, City of San Leandro

Public Safety Representatives

Dale Attarian, Police Chief, City of San Leandro

Scott Kirkland, Police Chief, City of El Cerrito

Keith Richter, Fire Chief, Contra Costa County Fire Department

Bill Cody, Fire Chief, Livermore/Pleasanton Fire Department

Special District Representative

Tim Anderson, Police Chief, East Bay Regional Park District

ATTACHMENT A-2

Daniel Borenstein: Radio bids were not competitive

By Daniel Borenstein
Columnist

Article Launched: 09/06/2008 11:07:13 PM PDT

WHEN YOU GO to buy a television or remodel your house, it's usually a good idea to compare prices. The same applies when government goes shopping with your tax dollars.

Unfortunately, that didn't happen when East Bay counties and cities started buying equipment and constructing a new emergency communications system that by one estimate will cost \$110 million. Officials leading the effort to build the East Bay Regional Communications System now admit they erred by not obtaining competitive bids. In the meantime, millions of dollars were wasted.

Even critics of the project agree that the project's goal is a good one: to provide police, firefighters and other emergency officials across Alameda and Contra Costa counties with a radio system that will allow them to talk to each other in times of crisis.

That might seem basic, but the current myriad systems means, for example, that police officers in Clayton, Concord, Martinez, Pittsburg, Pleasant Hill and Walnut Creek cannot directly communicate with firefighters in their cities. And Richmond police officers lose communication with their dispatcher when they travel to Martinez to take a prisoner to the county jail.

In Alameda County, Oakland police cannot communicate with their counterparts in neighboring cities or with the Alameda County Sheriff's Department.

In the East Bay, no incident better demonstrated the dangers of poor cross-agency communication better than the 1991 Oakland Hills fire in which firefighters from surrounding communities responded, but couldn't radio each other. Elsewhere in the country, communication gaps during 9/11 and Hurricane Katrina highlighted the need for universal communication systems.

As a result, the federal government has made millions of dollars available for upgrading radio systems. But the story of how the money has been spent so far in the East Bay is a bit troubling.

The program was spearheaded by Alameda County, which sought in 2005 to upgrade its radio system. Recognizing that the program would be more likely to receive federal homeland security funding if it included a regional approach, the county also asked for a proposal to link the communication systems throughout the East Bay.

But the county received only one bid, from Motorola. The reason, Contra Costa officials tell me, was because only that company could meet the bid specifications for a universal system that would also be compatible with Alameda County's existing Motorola dispatch equipment.

Subsequently, Alameda County used that proposal to solicit participation from other East Bay jurisdictions.

Eventually, 29 cities, the two counties and four special districts joined a newly formed governmental consortium, the East Bay Regional Communications System Authority.

The authority has a 23-member board and an executive director, William McCammon, who used to be Alameda County fire chief. Working off the Motorola bids and plans, and purchasing Motorola equipment, the authority has started building communication cells in West Contra Costa, Livermore Valley and the Oakland-Berkeley area. Thus far, it has received \$18.5 million in federal money.

If this all seems a bit backwards, that's because it is.

For starters, the system should have been planned from the onset to meet the needs of all the East Bay communities, not Alameda County's special requirement that the system be compatible with its own. That probably would have led to multiple bids and some pricing competition.

Second, the system should have been designed by an outside consultant, not the vendor who was the sole bidder to provide the equipment.

Third, the program should have a solid budget, something that doesn't exist to this day.

Credit Contra Costa with shining a light on the problems. The county hired an outside consultant, CTA Communications from Lynchburg, Va., which reviewed the Motorola bid and concluded that the price for equipment and services was about \$11.5 million too high.

McCammon acknowledges the CTA study is correct. The authority has paid too much. "To CTA's comment, I agree with it," he told me. "I didn't have the experience or the background before to understand that."

Unfortunately, work has already started on 14 of the 34 transmitter sites needed for the system using Motorola equipment. McCammon says it was either spend the federal money or lose it.

Does that mean the authority is locked into using Motorola equipment for the rest of the project? McCammon isn't sure. That's why the authority has followed Contra Costa's lead and hired CTA to review the system. The consulting firm is to make recommendations on where the authority should go from here. It's report is expected in about two to three months.

Daniel Borenstein is a staff columnist and editorial writer. Reach him at (925) 943-8248 or dborenstein@bayareanewsgroup.com.

ATTACHMENT A-3

Work Session
10/7/08
5:35 PM

Response to Daniel Borenstein article in the Contra Costa Times 9/6/08

Daniel Borenstein wrote an article that appeared in the Contra Costa Times and other ANG newspapers that was critical of the EBRCSA project and the cost. I would like to provide some clarification as there were several inaccuracies in the article. The main focus of the article revolves around the initial RFP that Alameda County issued and the subsequent contract with Motorola.

Alameda County issued an RFP to replace its existing 800 MHz radio system and included language that the new system must be P25 compliant and have connectivity with the existing legacy system. The RFP also requested a two county design to provide a system that could serve the users in Alameda and Contra Costa counties. The RFP was not written as a sole source RFP, and it was anticipated that multiple vendors would bid on the system. There were at least two vendors, Motorola and MA/COM, that were capable of responding to the RFP. There was only one respondent to the RFP, Motorola. Alameda County entered into a contract with Motorola to purchase up to \$16 million in infrastructure and complete the two county design. Motorola delivered the two county design and both counties began purchasing infrastructure.

Prior to establishment of the EBRCSA, Contra Costa County expressed concern about the bidding process and the two county design. Contra Costa County sent representatives from the County Administrator's Office and County Counsel to review the Alameda County procurement process. They concluded that Alameda County followed an appropriate procurement process, and subsequently Contra Costa County joined the EBRCSA.

Contra Costa also contracted with CTA Communications to review the Motorola two county design to determine if there were any fatal flaws, and make a determination as to whether the projected costs were appropriate and reasonable. County Administrator John Cullen's staff report to the Board of Supervisors dated March 20, 2007, stated "In summary, CTA did not identify any fatal flaws in the EBRCS design (they do provide some ideas for improving the system design); and they did find that some of the costs are reasonable, while others are higher than expected (CTA does provide ideas for lowering future costs)."

The EBRCSA Task Force also initiated a review of the two county design through the Department of Homeland Security's Interoperable Communications Technical Advisory Program (ICTAP). The ICTAP review was a technical review that made some recommendations for the future build out. ICTAP was very strident in their support of the EBRCSA and stated in the report that "All regional agencies and jurisdictions must seriously consider joining the EBRCSA. While financial considerations may hinder migration of some users to the EBRCSA, their future plans should support migration to the system."

As we moved forward, the EBRCSA Board requested that we hire a consulting firm to review the system design and evaluate how the build out of the system might be completed. Through a competitive process administered by Alameda County, a selection committee made up of EBRCSA members selected CTA Communications. The EBRCSA has contracted with CTA to complete the study. CTA has completed their initialization interviews with system users and completed a detailed design review meeting with Motorola with the final report due by the end of the year.

In his article, Mr. Borenstein was critical of the system design and its ability to serve all users. Dr. Ken Ballard of CTA Communications conducted the meeting with Motorola's design engineers and was very impressed with the coverage and design decisions that have been made to date. While there are some decisions that still remain to complete the build out, Dr. Ballard did not recommend any changes to the existing build out. The goal of CTA's current study is to provide information for the Board's use in making the remaining decisions about the system design and procurement.

Mr. Borenstein was also critical of the costs of the original proposal and the lack of a solid budget. The original proposal for the system build out was reviewed by CTA in the Contra Costa study, and they concluded that some of the costs (installation and vendor services) are higher than expected while some costs (equipment) are within range. Mr. Borenstein stated that the costs are \$11 million dollars higher than they should be, assuming total system build out using the existing Motorola contract. The CTA report stated that, given that only one vendor responded, the costs were approximately \$6 million higher than expected, if we were to purchase the entire system using the current contract. It is important to note that we have not purchased all of the equipment and/or services in the original proposal and are proposing to contract with CTA to bid out and/or negotiate the contract to complete the system build out. All of the equipment that has been purchased is currently being installed and will be used in the final system build out. The existing Motorola contract will expire October 31, 2008, and will only be renewed for one year.

The total amount of grant funding received to date by Alameda and Contra Costa counties allocated for interoperability is \$20,705,332. The funding has been used to procure and install microwave equipment, upgrade existing facilities, as well as purchase equipment from Motorola. Approximately \$11,900,000 of equipment and services have been purchased from Motorola using the contract. CTA's report concluded that the overall costs, given that one vendor responded, were approximately 12.5% higher due to the cost of "Vendor Services," which equates to approximately \$1,487,500. Contra Costa has assumed some of the installation costs, which places the equipment purchases (CTA concluded equipment costs are within range) as a higher percentage of the overall expenditures. Given that Contra Costa is doing the installation the number is considerably smaller.

We are working at this time with the Bay Area SUASI to establish a competitive procurement process for infrastructure using multiple vendors. Given the amount of infrastructure that will be needed to build out the East Bay, West Bay and South Bay systems, we expect to see exceptional pricing.

Mr. Borenstein raised the issue of no "solid budget," which has been raised by the Board as well. The second phase of the CTA study will include the development of specifications for the final procurement of infrastructure which will provide more defined total system build-out costs. The work that CTA will be doing for Oakland will assist the EBRCSA in determining the operational maintenance and replacement costs of the system. The determination of system build out costs along with the ongoing operation, maintenance, and replacement costs will provide the detail necessary to complete the the overall budget for the complete system.

While there are savings that might have been realized if multiple vendors responded, the fact is that only one vendor responded and provided the two county design. The \$20,705,332 of homeland security grants that have been received by both counties to date have been used to purchase infrastructure based on the two county design. Having the design has allowed the counties to utilize homeland security funds that would have been used for other programs and projects.

ATTACHMENT A-4

Bill Quirk

The EBRCSA system will provide true interoperability, greater functionality, at a lower cost than a standalone system. Staying with an analogue system will deny the City true interoperability. It has been 7 years since 9/11. The wait has been too long already. The grand jury supported the regionalized approach to providing public safety communications. I suggest that this matter be taken up by the Council technology to iron out the problems. Leaving EBRCSA will create more problems than it solves.

The future of communications is digital. Even analogue radios are run by digital systems. The concern about digital radio noise is overstated; the manufacturers have developed solutions to deal with the noise issue that appeared in the first generation of digital radios.

The Federal Government will only provide grant funds to regional communications systems. Leaving EBRCSA would cost Hayward access to Federal funds.

I believe that to get access to Federal funds that Oakland and Berkeley will join EBRCSA. CTA Communications is under contract to complete a study for the City of Oakland to answer questions the city had about their existing system and make recommendation as to how the City could join the EBRCSA. The City of Berkeley has a study under way to determine whether they should join the EBRCSA.

While some coverage issues have been identified in Hayward, the EBRCSA and representatives from the agencies involved are working with Motorola to develop a solution.

The EBRCSA will not push users on to the system before it has been thoroughly tested and ready for system users. We will not be the first City to use a P25 system.

The EBRCSA is not locked into the existing Motorola contract and will be working with CTA Communications to develop a set of specifications that can be bid for the remaining infrastructure. The bid will be out at yearend.

The purchase of radios is not limited to Motorola, any vendor that makes P25 compliant radios will work on the system, there at least 4 different vendors today.

The amount of money paid to the EBRCSA is determined by the City of Hayward given the number of radios the City chooses to operate on the system. By not including the public works radios, the amount could be reduced from \$75,000 to \$45,000.

The monthly user fee has not been determined yet. CTA Communications will be developing a cost model as part of their work. Nationally the costs average between 20-30 dollars per month

Representation on the EBRCSA Board is determined by the organizations. There is nothing precluding the Alameda County Mayor's Conference from appointing a City Council member to the Board. One of the Board members, and one of the Alternates from Contra Costa are city Council members.

November 19, 2008

Report to CTAC

Attachment(s) B



CITY OF
HAYWARD
HEART OF THE BAY

DATE: October 29, 2008
TO: Council Technology Application Committee
FROM: Clancy Priest, Technology Services Director
SUBJECT: East Bay Regional Communication System (EBRCS) Discussion

RECOMMENDATION

That the Committee discusses and provides Council a recommendation regarding EBRCS.

BACKGROUND

The City of Hayward joined the EBRCS in 2007 as one of the charter members. The fee for participation is currently \$75,000.00 annually. This fee was calculated by the number of operational radio units of the participating entity. The initial calculation for the City was 750 units at \$100.00 per unit. This fee is a recurring annual fiduciary responsibility for each member agency.

DISCUSSION

The Council held a work session discussion concerning continued participation in the EBRCS on October 7, 2008. During the meeting it was decided that the question of continued participation would be referred back to the CTAC for further discussion. Some of the issues that the Council felt warrants further discussion were:

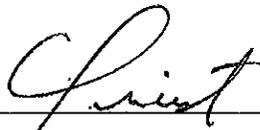
- Whether the City should continue with our participation in EBRCS
- What benefits will result in further participation
- The costs of participation
- Board membership for Hayward
- What are the future fiduciary responsibilities
- What are the funding sources that can be expected/explored
- Regional initiatives for cooperation

Bill McCammon, Executive Director of EBRCS, is scheduled to attend to address questions the CTAC may have.

FISCAL IMPACT

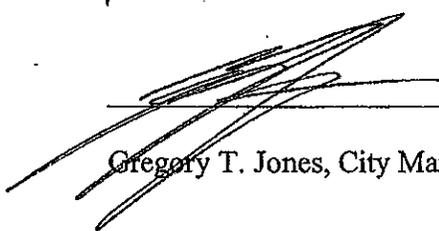
A recurring \$75,000.00 annual fee for continued participation, plus the future cost of a replacement radio system that will function with the proposed EBRCS infrastructure.

Prepared by:



Clancy Priest, Technology Services Director

Approved by:



Gregory T. Jones, City Manager

Attachment:

East Bay Regional Communication System work session report.

November 19, 2008

Report to CTAC

Attachment(s) C

**AGREEMENT BETWEEN THE CITY AND COUNTY OF
SAN FRANCISCO AND RECIPIENT JURIS
FOR THE DISTRIBUTION OF FY 2007 UASI REGIONAL FUNDS**

THIS AGREEMENT is made this DATE, in the City and County of San Francisco, State of California, by and between ADD NAME OF RECIPIENT JURISDICTION ("Provide Defined Term") and the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation ("San Francisco"), in its capacity as fiscal agent for the SUASI Approval Authority, as defined below, acting by and through San Francisco's 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 ("SUASI Region") for the purposes of application for and distribution of federal Urban Areas Security Initiative ("UASI") Program grant funds; and

WHEREAS, The Bay Area SUASI Region Approval Authority ("Approval Authority") was established as the Urban Area Working Group ("UAWG") for the SUASI Region, to provide overall governance of the homeland security program across the SUASI Region, to coordinate development and implementation of all UASI Program initiatives, and to ensure compliance with all UASI Program requirements; and

WHEREAS, The SUASI General Manager is responsible for implementing and managing the policy and program decisions of the Approval Authority, directing the work of the SUASI 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 Governor's Office of Homeland Security ("OHS") to the SUASI Region, with responsibility to establish procedures and execute subgrant agreements for the distribution of UASI 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 grant funds within the SUASI Region; and

WHEREAS, Pursuant to grant distribution decisions by the Approval Authority, the SUASI Management Team has asked San Francisco to distribute a portion of the regional UASI grant funds to RECIPIENT JURIS 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 thereunder) 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.

(c) "**Event of Default**" shall have the meaning set forth in Section 7.1.

(d) "**Grant Funds**" shall mean any and all funds allocated or disbursed to RECIPIENT JURIS under this Agreement.

(e) "**Grant Plan**" shall mean the plans, performances, events, exhibitions, acquisitions, personnel, services or other activities or matter described in Appendix A, any budget attached hereto as part of Appendix A, and the Grant Assurances in Appendix B.

(f) "**Indemnified Parties**" shall mean: (i) San Francisco, including DEM and all commissions, departments, 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.

(g) "**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.

(h) "**Reimbursement Request**" shall have the meaning set forth in Section 3.9(a).

1.2 **Additional Terms.** Unless expressly stated otherwise, the terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement, or permission of DEM. Unless expressly stated otherwise, the terms "sufficient," "necessary" or "proper" and similar terms shall mean sufficient, necessary or proper in the sole judgment of DEM. Unless expressly stated otherwise, the terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, or acceptable to, or satisfactory to DEM. Unless expressly stated otherwise, the terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation." Unless expressly stated otherwise, the use of the term "subcontractor," "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, 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

subsection's of or appendices to this Agreement, unless otherwise expressly stated. Terms such as "hereunder," herein or "hereto" refer to this Agreement as a whole.

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 OHS UASI requirements, guidelines and instructions, decisionmaking of the OHS and the Approval Authority, and to the extent applicable 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. RECIPIENT JURIS acknowledges that UASI grant decisions are subject to the discretion of the OHS and Approval Authority. RECIPIENT JURIS assumes all risk of possible non-allocation of funds, and such assumption is part of the consideration for 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 21:10-1 of the San Francisco Administrative Code:

(a) San Francisco's obligations hereunder shall not at any time exceed the amount approved 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 are not authorized to request RECIPIENT JURIS to perform services or to provide materials, equipment and supplies that would result in RECIPIENT JURIS 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 RECIPIENT JURIS for services, materials, equipment or supplies that are provided by RECIPIENT JURIS 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 are not authorized to offer or promise to RECIPIENT JURIS 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 **STARTING DATE** and shall end at 11:59 p.m. San Francisco time on **ENDING DATE**.

3.2 **Maximum Amount of Funds.** In no event shall the amount of Grant Funds disbursed hereunder exceed **AMOUNT, IN WORDS** Dollars (**\$AMOUNT, IN NUMBERS**).

3.3 **Use of Funds.** RECIPIENT JURIS shall use the Grant Funds received under this Agreement for the purposes and in the amounts set forth in Appendix A only, and for no other purpose. RECIPIENT JURIS shall expend the Grant Funds in accordance with the Budget, if any, and shall obtain the prior written approval of the SUASI Management Team before transferring expenditures from one line item to another within any Budget.

3.4 **Grant Assurances; Cooperation with Monitoring.** RECIPIENT JURIS shall comply with all Grant Assurances included in Appendix B. RECIPIENT JURIS shall promptly comply with all standards, specifications and formats of San Francisco and the SUASI Management Team, as they may from time to time exist, related to evaluation, planning and monitoring of the Grant Plan and shall cooperate in good faith with San Francisco and the SUASI Management Team in any evaluation, planning or monitoring activities conducted or authorized by OHS, San Francisco, the Approval Authority, or the SUASI Management Team.

3.5 **Record-Keeping.** RECIPIENT JURIS shall establish and maintain property, programmatic and financial records in accordance with the grant record requirements, and:

(a) Maintain financial management systems that support grant activities in accordance with federal requirements, including but not limited to Title 28, Code of Federal Regulations (CFR), Part 66.20, and DOJ Financial Guide, Part II, Chapter 3.

(b) Maintain an equipment tracking system that complies with federal requirements, including but not limited to the components identified in 28 CFR Parts 66.32 and 66.33, and DOJ Financial Guide, Part III, Chapter 6.

(c) Retain records in accordance with retention requirements contained in the following: (i) U.S. Department of Homeland Security FY2007 Homeland Security Grant Program: Program Guidance and Application Kit, dated January 2007, including but not limited to Section III.I.1 Administrative Requirements, Freedom of Information Act; and (ii) California Governor's Office of Homeland Security FY2007 Homeland Security Grant Program, California Supplement to Federal Program Guidance and Application Kit, revised June 1, 2007.

3.6 **Procurement Requirements.** RECIPIENT JURIS shall follow its own procurement requirements as long as those requirements comply with all applicable federal statutes, regulations, policies, guidelines and requirements, including those specified in the Grant Assurances, Appendix B, paragraph 26.

3.7 **Certification Requirements.** RECIPIENT JURIS shall ensure that any subgrantees or contractors with which RECIPIENT JURIS enters any agreement that involves expenditure of

Grant Funds comply with the certification requirements under 28 C.F.R. part 67, *Government-wide Debarment and Suspension (Non-procurement)*; 28 C.F.R. part 69, *New Restrictions on Lobbying*; and 28 C.F.R. 83, *Government-wide Requirements for Drug-Free Workplace (Grants)*. RECIPIENT JURIS shall independently verify that any subgrantee, contractor or other entity receiving Grant Funds is not debarred by the federal government.

3.8 Monitoring Grant Performance. DEM and the SUASI Management Team are both equally and independently authorized to perform periodic reviews of RECIPIENT JURIS's grant performance, including on-site visits and verifications of grant activities. These reviews may include, but are not limited to:

- (a) Eligibility of expenditures;
- (b) Comparing actual grant activities to those approved by the Approval Authority and specified in Appendix A and/or the Budget;
- (c) Ensuring that any advances have been deposited in an interest bearing account and disbursed in accordance with applicable guidelines; and
- (d) Confirming compliance with: Grant Assurances; information provided on performance reports and payment requests; and needs and threat assessments and strategies.

3.9 Disbursement Procedures. San Francisco shall disburse Grant Funds to RECIPIENT JURIS as follows:

(a) The SUASI Management Team shall serve as the primary contact for RECIPIENT JURIS regarding any Reimbursement Request. RECIPIENT JURIS shall submit to the SUASI Management Team, in the manner specified for notices pursuant to Article 9, a document ("Reimbursement Request") substantially in the form attached as Appendix C. With each Reimbursement Request, RECIPIENT JURIS shall include documentation verifying expenditures and services, and supporting the reimbursement request, including but not limited to purchase orders, vendor invoices, cancelled checks indicating payment, functional timesheets, and state approvals for training. RECIPIENT JURIS must submit all Reimbursement Requests under this Agreement before the termination of this Agreement as specified in Section 3.1.

(b) RECIPIENT JURIS and the SUASI Management Team shall agree upon a mutually acceptable schedule for RECIPIENT JURIS to submit Reimbursement Requests. In addition, at any time, SUASI Management Team may request that the RECIPIENT JURIS submit a Reimbursement Request within 30 calendar days of the request by the Management Team.

(c) The SUASI Management Team will review all Reimbursement Requests for compliance with all applicable guidelines and requirements. The SUASI Management Team will return to RECIPIENT JURIS any Reimbursement Request that is submitted and not approved by the SUASI Management Team, with a brief statement of the reason for the rejection of the Reimbursement Request.

(d) The SUASI Management Team will submit any Reimbursement Request that is approved by the SUASI Management Team to DEM. DEM shall review the Reimbursement Request for compliance with all applicable guidelines and requirements. DEM shall return to

the SUASI Management Team any Reimbursement Request that is not approved by DEM, with a brief explanation of the reason for the rejection of the Reimbursement Request.

(e) If a rejection relates only to a portion of the expenditures itemized in any Reimbursement Request, DEM shall have no obligation to disburse any Grant Funds for any other expenditures itemized in the Reimbursement Request unless and until RECIPIENT JURIS submits a Reimbursement Request that is in all respects acceptable to the SUASI Management Team and to DEM.

(f) For Reimbursement Requests approved by both the SUASI Management Team and DEM, DEM shall disburse Grant Funds by check payable to RECIPIENT JURIS, sent via U.S. mail in accordance with Article 9, unless DEM otherwise agrees in writing, in its sole discretion. DEM shall make reasonable efforts to disburse Grant Funds to RECIPIENT JURIS within 45 days of DEM's final approval of the Reimbursement Request.

3.10 Disallowance. RECIPIENT JURIS agrees that if it claims or receives reimbursement from DEM for an expenditure that is later disallowed by the state or federal government, RECIPIENT JURIS shall promptly refund the disallowed amount to DEM upon DEM's request. At its option, DEM may offset all or any portion of the disallowed amount against any other payment due to RECIPIENT JURIS hereunder. Any such offset with respect to a portion of the disallowed amount shall not release RECIPIENT JURIS from RECIPIENT JURIS's obligation hereunder to refund the remainder of the disallowed amount.

ARTICLE 4

REPORTING REQUIREMENTS; AUDITS

4.1 Regular Reports. RECIPIENT JURIS shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by DEM, in form and substance satisfactory to DEM. 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. RECIPIENT JURIS shall notify the SUASI Management Team and DEM immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; and (b) any change of circumstances that would cause any of the representations and warranties contained in Article 5 to be false or misleading at any time during the term of this Agreement.

4.3 Books and Records. RECIPIENT JURIS 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 during the term of this Agreement. Without limiting the scope of the foregoing, RECIPIENT JURIS 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. RECIPIENT JURIS 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 final disbursement under this Agreement or until any final audit has been fully completed, whichever is later.

4.4 Inspection and Audit. RECIPIENT JURIS shall make available to the SUASI Management Team and to DEM, and to SUASI Management Team and DEM 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 RECIPIENT JURIS under Section 4.3. RECIPIENT JURIS shall permit the SUASI Management Team and DEM, and SUASI Management Team and DEM employees and authorized representatives, to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of the SUASI Management Team and DEM pursuant to this Section shall remain in effect so long as RECIPIENT JURIS has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 4.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

RECIPIENT JURIS 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 RECIPIENT JURIS to the SUASI Management Team or to DEM 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, RECIPIENT JURIS certifies that RECIPIENT JURIS is not suspended, debarred or otherwise excluded from participation in federal assistance programs. RECIPIENT JURIS acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

ARTICLE 6 INDEMNIFICATION AND GENERAL LIABILITY

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

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 or warranty contained in this Agreement, in any Reimbursement Request, or in any other document submitted to the SUASI Management Team or to DEM under this Agreement is found by the SUASI Management Team or by DEM to be false or misleading.

(b) **Failure to Perform Other Covenants.** RECIPIENT JURIS fails to perform or breaches any provision or covenant of this Agreement to be performed or observed by RECIPIENT JURIS 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.** RECIPIENT JURIS fails to perform or breaches any of the terms or provisions of Article 12.

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

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

7.2 Remedies Upon Event of Default. Upon and during the continuance of an Event of Default, DEM may do any of the following, individually or in combination with any other remedy:

(a) **Termination.** DEM may terminate this Agreement by giving a written termination notice to RECIPIENT JURIS and, on the date specified in such notice, this Agreement shall terminate and all rights of RECIPIENT JURIS hereunder shall be extinguished. In the event of such termination, DEM will pay RECIPIENT JURIS for Authorized Expenditures in any Reimbursement Request that was submitted and approved by the SUASI Management Team and by DEM prior to the date of termination specified in such notice.

(b) **Withholding of Grant Funds.** DEM may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether RECIPIENT JURIS has previously submitted a Reimbursement Request or whether the SUASI Management Team and/or DEM 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 RECIPIENT JURIS after cure of applicable Events of Default shall be disbursed without interest.

(c) **Return of Grant Funds.** DEM may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by RECIPIENT JURIS 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 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 DEM 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 the RECIPIENT JURIS.** RECIPIENT JURIS 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 RECIPIENT JURIS hereunder without the prior written consent of DEM; provided, however, that those subcontracts specifically referenced in Appendix A shall not require the consent of DEM. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of RECIPIENT JURIS involuntarily or by operation of law without the prior written consent of DEM. A change of ownership or control of RECIPIENT JURIS or a sale or transfer of substantially all of the assets of RECIPIENT JURIS 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 **RECIPIENT JURIS Retains Responsibility.** RECIPIENT JURIS shall in all events remain liable for the performance by any assignee, subgrantee or contractor of all of the covenants terms and conditions contained 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 DEM or San Francisco:

San Francisco Department Of Emergency Management
1011 Turk Street
San Francisco, CA 94102
Attn: Laura Phillips, Executive Director
Facsimile No. (415) 431-7500

If to the SUASI Management Team:

SUASI Management Team
1300 Clay Street, Ste. 400
Oakland, CA 94612
Attn: Fiscal Agent Liaison
Facsimile No.: (510)

If to RECIPIENT JURIS:

Attn: _____
Facsimile No. _____

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 SUASI Management Team.

ARTICLE 10 MISCELLANEOUS

10.1 **No Waiver.** No waiver by DEM or San Francisco of any default or breach of this Agreement shall be implied from any failure by the Approval Authority, SUASI Management Team, DEM or San Francisco to take action on account of such default if such default persists or is repeated. No express waiver by DEM or 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 DEM or 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 DEM 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.

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 **RECIPIENT JURIS to Pay All Taxes.** RECIPIENT JURIS 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 Reimbursement Request

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

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.

10.10 **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 RECIPIENT JURIS 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, RECIPIENT JURIS 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.

ARTICLE 11 INSURANCE

11.1 **Types and Amounts of Coverage.** Without limiting RECIPIENT JURIS's liability pursuant to Article 10, RECIPIENT JURIS shall maintain in force, during the full term of this Agreement, insurance in the following amounts and coverages:

- (a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than one million dollars (\$1,000,000) each accident.

(b) Commercial General Liability Insurance with limits not less than one million dollars (\$1,000,000) each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(c) Commercial Automobile Liability Insurance with limits not less than one million dollars (\$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 Business Automobile Liability insurance policies shall:

(a) Name as additional insured City and its officers, agents and employees.

(b) Provide 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, except with respect to limits of liability.

11.3 Additional Requirements for All Policies. All policies shall provide at least thirty (30) days' advance written notice to City of cancellation or reduction in coverage mailed to City's address for notices pursuant to Article 9.

11.4 Required Post-Expiration Coverage. Should any of the insurance required hereunder be provided under a claims-made form, RECIPIENT JURIS shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or termination of this Agreement, to the effect that, should occurrences during the term hereof give rise to claims made after expiration or termination of the Agreement, such claims shall be covered by such claims-made policies.

11.5 General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs. Should any of the insurance required hereunder 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.

11.6 Evidence of Insurance. Before commencing any operations under this Agreement, RECIPIENT JURIS shall furnish to City certificates of insurance, and additional insured policy endorsements, in form and with insurers satisfactory to City, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon City's request. Before commencing any operations under this Agreement, RECIPIENT JURIS shall do the following: (a) furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VII 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, and (b) furnish complete copies of policies promptly upon City request.

11.7 Effect of Approval. Approval of any insurance by City shall not relieve or decrease the liability of RECIPIENT JURIS hereunder.

11.8 Authority to Self-Insure. Nothing in this Agreement shall preclude RECIPIENT JURIS from self-insuring all or part of the insurance requirements in this Article. However, RECIPIENT

JURIS 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, RECIPIENT JURIS agrees not to discriminate against any employee, San Francisco employee working with RECIPIENT JURIS or any subgrantee of RECIPIENT JURIS, applicant for employment with RECIPIENT JURIS or subgrantee of RECIPIENT JURIS, 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, RECIPIENT JURIS 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 DEM if it becomes aware of any such fact during the term of this Agreement.

12.3 Compliance with ADA. RECIPIENT JURIS 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. RECIPIENT JURIS 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, RECIPIENT JURIS 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. RECIPIENT JURIS 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 RECIPIENT JURIS from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider RECIPIENT JURIS's use of profit as a violation of this section.

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: [RECIPIENT JURISDICTION]:

SAN FRANCISCO DEPARTMENT OF
EMERGENCY MANAGEMENT

By:

LAURA PHILLIPS
EXEC. DIRECTOR

By:

Print Name:

Title:

Federal Tax ID #:

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Deputy City Attorney

Appendix A — Authorized Expenditures

Total Allocation to be spent on the following solution areas:	Not to exceed: \$amount
Solution Area: Description of all services, personnel and equipment under this solution area	Not to exceed: \$amount
Solution Area: Description of all services, personnel and equipment under this solution area	Not to exceed: \$amount
Solution Area: Description of all services, personnel and equipment under this solution area	Not to exceed: \$amount

Appendix B-- Grant Assurances

Name of RECIPIENT JURIS: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Telephone Number: (____) _____

Fax Number: (____) _____

E-Mail Address: _____

As the duly authorized representative of RECIPIENT JURIS, I certify that RECIPIENT JURIS:

1. Has the legal authority to apply for and receive federal assistance, and has the institutional, managerial and financial capability to ensure proper planning, management and completion of the grant provided by the federal Department of Homeland Security and sub-granted through the State of California.
2. Will assure that grant funds are only used for allowable, fair, and reasonable costs.
3. Will give the federal government, the General Accounting Office, the Comptroller General of the United States, the State of California, through any authorized representative, access to and the right to examine all paper or electronic records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or awarding agency directives.
4. Will provide progress reports and such other information as may be required by the awarding agency, the Approval Authority, SUASI Management Team and DEM.
5. Will initiate and complete the work under this Agreement within the applicable time frame after receipt of approval of the awarding agency, the Approval Authority, SUASI Management Team or DEM.
6. 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.
7. 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 residence structures.
8. Will comply with all federal statutes relating to 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 sex;
 - 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. Sections 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 28, Code of Federal Regulations, Part 42, Subparts C, D, E and G;
 - j. Title 28, CFR, Part 35;
 - k. Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made, and
 - l. The requirements on any other nondiscrimination statute(s) that may apply to the Agreement.
9. Will comply, or has already complied, 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 provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of federal or federally assisted programs. These requirements apply to all interested in real property acquired for project purposes regardless of federal participation in purchases.
10. 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 \$10,000 or more.
11. Will comply with environmental standards that may be prescribed pursuant to the following:
- a. Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514;
 - b. Notification of violating facilities pursuant to EO 11738;

- c. Protection of wetlands pursuant to EO 11990;
 - d. Evaluation of flood hazards in floodplains in accordance with EO 11988;
 - e. 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.);
 - f. Conformity of federal actions to State (Clean Air) Implementation Plans under Section FY06 Homeland Security Grant Program Page 45 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.);
 - g. Protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and
 - h. Protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
 - i. California Environmental Quality Act (CEQA). California Public Resources Code Sections 21080-21098. California Code of Regulations, Title 14, Chapter 3 Section 15000-15007.
12. Will comply with the 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.
 13. Will assist the awarding agency, the Approval Authority, SUASI Management Team and DEM in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and preservation of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
 14. 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 O.K. Title 19, Sections 2445, 2446, 2447 and 2448.
 15. Has requested through the State of California, the Approval Authority, and San Francisco, federal financial assistance to be used to perform eligible work approved in the Approval Authority's and RECIPIENT JURIS's application for federal assistance. Will, after the receipt of federal financial assistance, through the State of California, agree to do the following:
 - a. Promptly return to the State of California all the funds received that 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, promptly refund the reimbursement applicable to the amount of the reduction to the State of California.
 - c. Separately account for interest earned on grant funds, and return all interest earned, in excess of \$100 per federal fiscal year.

16. 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).
17. 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.
18. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
19. 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. FY06 Homeland Security Grant Program Page 46
20. 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.
21. 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.
22. 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."
23. Certifies that:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of RECIPIENT JURIS, 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 funds other than federal appropriated funds have been paid or will be paid, by or on behalf of RECIPIENT JURIS, 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, RECIPIENT JURIS 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 subawards at all tiers including subgrants, subcontract(s), and contracts under grants, loans and cooperative agreements, and that all subrecipients shall certify and disclose accordingly.

- d. This certification is a material representation of fact upon which reliance was placed when this Agreement 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.
24. Agrees that equipment acquired or obtained with grant funds:
- a. Will be made available under 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.
 - b. Is consistent with needs as identified in the State Homeland Security Strategy and will be deployed in conformance with that Strategy.
 - c. Will be made available pursuant to applicable terms of the California Disaster and Civil Defense Master Mutual Aid Agreement 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.
25. 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.
26. Will comply with all applicable Federal statutes, regulations, policies, guidelines and requirements, including OMB Circulars A-21, A-87, A102, A-110, A-122, and A-133, E.O. 12372 and Uniform Administrative Requirements for Grants and Cooperative Agreements contained in Title 28, Code of Federal Regulations, Part 66 or 70, that govern the application, acceptance and use of Federal funds for this federally-assisted project.
27. Will comply, and assure the compliance of all its subgrantees and contractors, with the nondiscrimination requirements of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, 42 U.S.C. 3789(d), or the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provision of the current edition of the Office of Justice Programs Financial and Administrative Guide for Grants, M7100.1, and all other applicable Federal laws, orders, circulars, or regulations.
28. Will comply with provisions of 28 CFR applicable to grants and cooperative agreements, including:
- a. Part 18, Administrative Review Procedures;
 - b. Part 20, Criminal Justice Information Systems;
 - c. Part 22, Confidentiality of Identifiable Research and Statistical Information;
 - d. Part 23, Criminal Intelligence Systems Operating Policies;
 - e. Part 30, Intergovernmental Review of Department of Justice Programs and Activities;

- f. Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services;
 - g. Part 38, Equal Treatment of Faith-based Organizations;
 - h. Part 63, Floodplain Management and Wetland Protection Procedures;
 - i. Part 42, Nondiscrimination/Equal Employment Opportunities Policies and Procedures;
 - j. Part 61, Procedures for Implementing the National Environmental Policy Act;
 - k. Part 64, Floodplain Management and Wetland Protection Procedures; and Federal laws or regulations applicable to Federal Assistance Programs;
 - l. Part 66, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments;
 - m. Part 67, Government-Wide Debarment and Suspension (Non-Procurement);
 - n. Part 69, New Restrictions on Lobbying;
 - o. Part 70, Uniform Administrative Requirements for Grants and Cooperative Agreements (including sub-awards) with Institutions of Higher Learning, Hospitals and other Non-Profit Organizations; and
 - p. Part 83, Government-Wide Requirements for a Drug Free Workplace (grants).
29. Will ensure that the facilities under its ownership, lease or supervision that shall be utilized in the accomplishment of this project are not listed in the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the Federal Grantor agency, the SUASI Management Team and DEM of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.
 30. Will comply with Subtitle A, Title II of the Americans with Disabilities Act (ADA) 1990.
 31. Will, in the event 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, sex, or disability against a recipient of funds, forward a copy of the finding to the Office of Civil Rights, Office of Justice Programs, to the SUASI Management Team and DEM.
 32. Will provide an Equal Employment Opportunity Plan, if applicable, to the Department of Justice Office of Civil Rights within 60 days of grant award.
 33. Will comply with the financial and administrative requirements set forth in the current edition of the Office of Justice Programs (OJP) Financial Guide.
 34. Will comply, if applicable, with the provision of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 U.S.C. 3501 et seq.), which prohibits the expenditure of most new Federal funds within the units of the Coastal Barrier Resources System.

35. Will comply with all applicable requirements of all other federal laws, executive orders, regulations, program and administrative requirements, policies and any other requirements governing this program.

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

37. As required by Executive Order 12549, Debarment and Suspension, and implemented at 28 CFR Part 67, as defined at 28 CFR Part 67, Section 67.510:

A. Certifies that RECIPIENT JURIS and its principals:

- (1) 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;
- (2) Have not within a three-year period preceding this Agreement 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;
- (3) 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 (A)(2) of this certification; and
- (4) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. If unable to certify to any of the statements in this certification, RECIPIENT JURIS shall attach an explanation to this Agreement.

37. As required by the Drug-Free Workplace Act of 1988, and implemented at 28 CFR Part 67, Subpart F, for grantees, as defined at 28 CFR Part 67 Sections 67.615 and 67.620

A. Certifies that it will or will continue to provide a drug-free workplace by:

- (1) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in RECIPIENT JURIS's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (2) Establishing an on-going drug-free awareness program to inform employees about:
 - (a) The dangers of drug abuse in the workplace;
 - (b) RECIPIENT JURIS's policy of maintaining a drug-free workplace;

- (c) Any available drug counseling, rehabilitation, and employee assistance programs; and
- (d) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (3) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (1);
- (4) Notifying the employee in the statement required by paragraph (1) that, as a condition of employment under the grant, the employee will
 - (a) Abide by the terms of the statement; and
 - (b) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;
- (5) Notifying the SUASI Management Team and DEM, in writing, within 10 calendar days after receiving notice under subparagraph (4)(b) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to:

Department of Justice, Office of Justice Programs,
ATTN: Control Desk,
633 Indiana Avenue, N.W., Washington, D.C. 20531.
- Notice shall include the identification number(s) of each affected grant;
- (6) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (4)(b), with respect to any employee who is so convicted
 - (a) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - (b) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (7) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (1), (2), (3), (4), (5), and (6).

As the duly authorized representative of RECIPIENT JURIS, I hereby certify that RECIPIENT JURIS will comply with the above certifications.

The undersigned represents that he/she is authorized by RECIPIENT JURIS to enter into this agreement for and on behalf of RECIPIENT JURIS.

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

Appendix C -- Form of Reimbursement Request

REIMBURSEMENT REQUEST

_____, 2008

SUASI Management Team
1300 Clay Street, Ste. 400
Oakland, CA 94612

Re: FY 07 UASI Grants Reimbursement Request

Pursuant to Section 3.9 of the Agreement Between the City and County of San Francisco and RECIPIENT JURIS for the Distribution of FY 2007 UASI Regional Funds (the "Agreement"), dated _____ [date], between FULL NAME OF RECIPIENT JURIS ("RECIPIENT JURIS") and the City and County of San Francisco ("San Francisco"), RECIPIENT JURIS 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: \$ _____

RECIPIENT JURIS certifies that:

- (a) The total amount of funds requested pursuant to this Funding Request will be used to reimburse RECIPIENT JURIS 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.

(c) The representations and warranties made in the Agreement are true and correct in all material respects as if made on the date hereof;

(d) No Event of Default has occurred and is continuing; and

(e) The undersigned is an officer of RECIPIENT JURIS authorized to execute this Reimbursement Request on behalf of RECIPIENT JURIS.

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:

Payee	Amount	Description
-------	--------	-------------

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).

ATTACHMENT C-2

**East Bay Regional Communications System
Statement of Revenues and Expenditures
July 1, 2008 through September 30, 2008**

	July 01, '08 - Sept 30, '08 Cash Basis
Revenues	
Operating revenue	
Radio Subscription	334,200.00
Total Operating Revenues	<u>334,200.00</u>
Total revenues	<u>334,200.00</u>
Expenditures	
General & Admin Expenses	
Administrative Secretary	4,253.25
Executive Director	57,900.00
Legal Support	8,829.00
Website development	4,308.00
Miscellaneous expenses	665.00
Liability Insurance	13,077.00
Total General & Admin Expenses	<u>89,032.25</u>
Total Expenditures	<u>89,032.25</u>
Revenues over (under) expenditures	<u><u>245,167.75</u></u>

GSA Microwave and Radio site preparation cost estimates

Alameda County Site Upgrade Cost Estimates

	Site est.	Consul. est.	Const. est.	Grant est.	Notes	
1	Coyote Hills	\$ 385,218	\$ 27,300	\$ 350,900	\$ 212,300	Grant est. - shelt, gen, ATS, waveguide ancillary equip & installation / art \$7018
2	Crane Ridge	\$ 41,800	\$ 12,100	\$ 29,700	\$ 11,000	If new shelter, gen & ATS is required - \$270,774, grant est. \$170,500
3	Dublin EOC	\$ 15,400	\$ 5,500	\$ 9,900	\$ 14,300	Grant est. - waveguide ancillary equip. & installation
4	GDJ	\$ 19,800	\$ 5,500	\$ 14,300	\$ 16,500	Grant est. - waveguide ancillary equip. & installation
5	Lakeside	\$ 66,000	\$ 13,200	\$ 52,800	\$ 16,500	If new gen. & ATS is required - \$220,196, grant est. \$148,500
6	SL COMM	\$ 13,200	\$ 2,200	\$ 11,000	\$ 4,400	Grant est. - waveguide ancillary equip. & installation
7	SL Hills	\$ 114,400	\$ 5,500	\$ 108,900	\$ 16,500	Grant est. - waveguide ancillary equip. & installation
8	SRJ	\$ 5,500	\$ 5,500	\$ -	\$ 5,500	consultant fee
9	Sunol Ridge	\$ 152,942	\$ 28,400	\$ 122,100	\$ 77,000	Grant est. - gen & waveguide ancillary equip. & installation / art \$2442
	Total est.	\$ 814,260	\$ 105,200	\$ 699,600	\$ 374,000	Total estimate range \$814,260 - \$1,305,230, grant est. \$374,000 - \$665,500 Total site costs include 2% (\$9460) for public art requirement

ATTACHMENT C-3

ATTACHMENT C-4

East Bay Regional Communications System Authority Statement of Revenues and Expenditures and Changes in Fund Balance For the year ended June 30, 2008

	<u>Jul '07 - Jun '08</u> <u>Accrual Basis</u>
Revenues	
Operating revenue	
Radio Subscription	741,600.00
Interest Revenue -Fund 43250	8,419.92
Total Operating Revenues	<u>750,019.92</u>
 Total revenues	 <u><u>750,019.92</u></u>
 Expenditures	
General & Admin Expenses	
Administrative Secretary	14,561.75
Executive Director	87,000.00
Legal Support	42,147.17
Website Development	22,500.00
Total General & Admin Expenses	<u>166,208.92</u>
 Total Expenditures	 <u><u>166,208.92</u></u>
 Revenues over (under) expenditures	 <u><u>583,811.00</u></u>

ATTACHMENT C-5

EBRCSA Financial Overview - Alameda County

VENDOR	DESCRIPTION	AMOUNT
FUNDING SOURCE: 04 UASI YEAR: 2004		
Harris Microwave	52 Hops	\$ 5,420,000.00
FUNDING SOURCE: 03 SHSGP YEAR: 2003		
Motorola	Skyline Site P25 Repeater Site Equipment	\$ 193,530.00
FUNDING SOURCE: 04 SHSGP YEAR: 2004		
Motorola	Master Site Controller: Includes P25 Prepeater site Equipment, 10 Ch - San Leandro Hills, Prime Site Simulcast Equipment - San Leandro Hills, LBL Berkeley site, Console Integration and upgrad, Two County design; Twelve subscribers	\$ 5,326,289.30
Meyers/Nave	Legal Services	\$ 15,000.00
	TOTAL	\$ 5,341,289.30
FUNDING SOURCE: 05 UASI YEAR: 2005		
Motorola	Doolan Site Prime Site Coyote Hills	\$1,347,694
FUNDING SOURCE: 06 SUASI YEAR: 2006		
Motorola	Design services Chg Order 6	\$ 171,116.96
Motorola	LBL DDD Delivery	\$ 24,987.50
Motorola	Chg Order-7 (Labor)	\$ 92,694.00
Harris Stratex	Installation Services Two County 52 hops	\$ 1,299,977.00
Motorola	Garin and Sunol P25 Repeater Sites	\$ 561,224.54
	TOTAL	\$ 2,150,000.00
FUNDING SOURCE: 06 SHSGP YEAR: 2006		
Motorola	Design Milestone #4 Phase I	\$ 258,566.98
Motorola	Labor Milestone #4 Phase II	\$ 77,362.02
Motorola	Garin and Sunol P25 Repeater Sites	\$ 1,037,702.42
Meyers/Nave	Legal Services	\$ 8,137.00
Harris Stratex	Installation Services	\$ 280,867.06
McCammon	Planning	\$ 180,230.30
	TOTAL	\$ 1,842,865.78
FUNDING SOURCE: 07 SHSGP YEAR: 2007		
McCammon	Planning	\$ 44,690.29
Ford Motor Co.	Equipment	\$ 25,611.00
Motorola	Installation Services	\$ 77,362.02
Harris Stratex	Microwave Equipment	\$ 72,479.63
Spent	SUBTOTAL	\$ 220,142.94
	Total Allocated	\$ 1,758,000.00
FUNDING SOURCE: 07 SUASI YEAR: 2007		
MOU Pending	CTA Study	\$ 143,687.00
	Operational Expenses	\$ 164,278.00
	P25 Equipment/Site Development	\$ 337,459.00
	TOTAL	\$ 645,425.00
FUNDING SOURCE: 07 COPS YEAR: 2007		
Motorola	P25 Equipment to be Determined	\$ 500,000.00
FUNDING SOURCE: 08 COPS Earmark YEAR: 2007		
Thermabond	2 Communications Shelters	\$ 200,000.00
Harris Stratex	Britt. Loop Redesign and Equipment	\$ 289,182.00
Motorola	P25 Radios	\$ 48,616.00
	TOTAL	\$ 537,798.00

ATTACHMENT C-6

EBRCSA Financial Overview - Contra Costa County

VENDOR	DESCRIPTION	AMOUNT
FUNDING SOURCE: 04 SHSGP YEAR: 2004		
Motorola	2 power supplies, 2 GTR Base stations	\$ 223,293.22
FUNDING SOURCE: 05 UASI YEAR: 2005		
Motorola	Two 10 channel cells, no power	\$ 737,731.68
FUNDING SOURCE: 05 SHSGP YEAR: 2005		
Motorola	One 10 channel Prime site and RF equipment with power	\$ 309,294.00
FUNDING SOURCE: 06 SHSGP YEAR: 2006		
Motorola	One 10 channel Prime site and RF equipment with power, Testing Equipment, P26 Hardware & Software	\$828,898.71
FUNDING SOURCE: 06 SUASI YEAR: 2006		
Motorola	Equipment staging, Services	\$ 1,000,000.00
FUNDING SOURCE: 07 SHSGP YEAR: 2007		
Thermobond	Shelters (3)	\$ 835,000.00
FUNDING SOURCE: 07 COPS YEAR: 2007		
Motorola	West side Microwave, RF for Nichol Knob	\$ 1,500,000.00
FUNDING SOURCE: 07 SUASI YEAR: 2007		
	Total Allocated	\$ 551,425.00
FUNDING SOURCE: 07 PSIC YEAR: 2007		
	Total Allocated	\$ -
FUNDING SOURCE: 08 SHSGP YEAR: 2008		
	Total Allocated	\$ 850,000.00

ATTACHMENT C-7

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

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

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

A. The above named cities and counties (collectively and individually, the "Parties") are committed to regional cooperation and coordination in building and sustaining capabilities to provide the highest feasible level of prevention, protection, response, and recovery from threats or acts of terrorism and other catastrophic events in the Bay Area region.

B. On January 3, 2006, the United States Department of Homeland Security ("DHS") announced that it had combined the Parties and other Bay Area governmental entities into a combined Bay Area "Urban Area" or Super-UASI region ("SUASI region") for the purpose of application for and distribution of Fiscal Year 2006 UASI Program grant funds. DHS continued that SUASI region structure for application and distribution of Fiscal Year 2007 UASI Program grant funds. The Parties anticipate that DHS will continue to use the SUASI region structure for UASI Program grants in future fiscal years.

C. For the Fiscal Year 2006 UASI Program, DHS required each Urban Area to establish an Urban Area Working Group ("UAWG") to act as an executive steering committee to provide overall governance of the homeland security program across the regional area encompassed within the defined Urban Area, to coordinate development and implementation of all UASI Program initiatives, and to ensure that all programmatic requirements associated with participation in the UASI Program were fulfilled. DHS continued the UAWG requirement in the Fiscal Year 2007 UASI Program.

D. For the Fiscal Year 2006 UASI Program, DHS required also that the UAWG provide either direct or indirect representation for all the jurisdictions that comprise the Urban Area. DHS continued that requirement in the Fiscal Year 2007 UASI Program.

E. DHS also required the UAWG to develop a methodology for allocating UASI Program funds throughout the SUASI region. That requirement continued into Fiscal Year 2007.

F. In Fiscal Year 2006, the Parties committed to cooperate for the purposes of applying for, allocating and distributing the Fiscal Year 2006 UASI Program funds, and entered into a Memorandum of Understanding Between City and County of San Francisco; City of

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

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

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

ACCORDINGLY, the Parties agree as follows:

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

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

2. City and County of San Francisco Obligations. During the term of this MOU, San Francisco will provide the following services to the Approval Authority:
 - a. Designate 2 individuals as full voting members of the Approval Authority.
 - b. Chair meetings of the Approval Authority.
 - c. Serve as the SUASI region point of contact with the federal DHS and the California Office of Homeland Security ("OHS") in connection with UASI Program grant funding.
 - d. Serve as the Fiscal Agent for the Approval Authority, and establish procedures and provide all financial services for distribution of UASI Program grant funds within the SUASI region.
 - e. Serve as the grantee for UASI funds granted by the DHS and OHS to the SUASI region, and establish procedures and execute subgrant agreements for the distribution of UASI Program grant funds to jurisdictions selected by the Approval Authority to receive grant funding.
3. City of Oakland Obligations. During the term of this MOU, Oakland will provide the following services to the Approval Authority:
 - a. Designate 1 individual as a full voting member of the Approval Authority.
4. City of San Jose Obligations. During the term of this MOU, San Jose will provide the following services to the Approval Authority:
 - a. Designate 1 individual as a full voting member of the Approval Authority.
5. Alameda County Obligations. During the term of this MOU, Alameda will provide the following services to the Approval Authority:
 - a. Designate 1 individual as a full voting member of the Approval Authority.
6. Santa Clara County Obligations. During the term of this MOU, Santa Clara will provide the following services to the Approval Authority:
 - a. Designate 1 individual as a full voting member of the Approval Authority.
7. General Manager for the SUASI Region Program.
 - a. Subject to subsection (b) below, the Approval Authority has the authority by vote of the Authority to select, evaluate, discipline and remove a General Manager for the SUASI Program. The Approval Authority may establish by

vote of the Authority the minimum qualifications for the General Manager position, as well as desired and preferred qualifications.

- b. The General Manager shall be an employee, consultant or contractor of a Party or another governmental entity within the SUASI region, and shall be assigned to work full-time as the SUASI Program General Manager. The General Manager position shall be funded through grant funds to the extent funds are available and allocated by the Approval Authority for that purpose.
- c. The General Manager shall be responsible for implementing and managing the policy and program decisions of the Approval Authority, and performing other duties as determined and directed by the Approval Authority. The Approval Authority may establish by vote of the Authority additional job functions, duties and responsibilities for the General Manager position.
- d. The General Manager shall establish a process to ensure either direct or indirect representation for all jurisdictions that comprise the Urban Area. The process developed by the General Manager shall ensure direct representation for at least the following jurisdictions: Marin County, Sonoma County, Napa County, Solano County, Contra Costa County, Alameda County, Santa Clara County, Santa Cruz County, San Mateo County, the City and County of San Francisco, the City of Oakland, and the City of San Jose.
- e. The General Manager may establish discipline specific and/or geographically determined working groups to make comprehensive assessments and recommendations that address the target capability strengths and weaknesses on a regional basis. The Parties shall provide adequate personnel to participate on and support any working groups established by the General Manager.
- f. The General Manager shall coordinate and collaborate with the Bay Area Metropolitan Medical Response Systems, the Bay Area Transportation Security Working Group, the Bay Area Citizen Corps Councils, the Area Maritime Security Committee, and any other stakeholders identified by the Approval Authority or Management Team. As appropriate, the General Manager may invite stakeholders to participate in any advisory or working groups established by the General Manager.

8. Management Team for the SUASI Region Program.

- a. In consultation with the Approval Authority, the General Manager shall select, direct and manage a Management Team to support the Approval Authority and the SUASI region's initiatives and projects, and shall make reasonable efforts to balance regional representation on the Team. The members of this Team shall be employees, consultants, or contractors of the Parties or other governmental entities within the SUASI region, and shall be assigned to serve full-time on the Management Team. The salaries of the employees, consultants

or contractors selected to serve on the Management Team shall be funded through grant funds to the extent funds are available and allocated by the Approval Authority for that purpose.

- b. In addition to the members of the Management Team selected under subparagraph (a) above, the Fiscal Agent shall identify and designate an employee, consultant or contractor of the Fiscal Agent to serve as a member of the Management Team, to act as the liaison to the Fiscal Agent for the Management Team. The salary of that employee, consultant or contractor shall be funded through grant funds to the extent funds are available and allocated by the Approval Authority for that purpose.
 - c. The Management Team, under the direction of the General Manager, shall perform the follow functions and duties:
 - i. Oversee and execute all administrative tasks associated with application for and distribution of UASI Program grant funds and programs.
 - ii. Coordinate, monitor and as appropriate manage all UASI Program grant-funded projects and programs approved by the Approval Authority.
 - iii. Maintain all records associated with the activities of the Approval Authority, Management Team and any advisory and working groups, including but not limited to records regarding UASI Program grant application, funding and disbursement processes.
 - iv. Work with any advisory and working groups, as well as appropriate Bay Area stakeholders, to obtain input and make recommendations to the Approval Authority on application, allocation and distribution of UASI Program grant funds, and policy and programmatic objectives.
 - v. Coordinate and manage any advisory and working groups, and serve as the liaison between those groups.
 - d. The Approval Authority may establish by vote of the Authority additional functions, duties and responsibilities for the Management Team.
9. Grants and Contracts Awarded for UASI Grant-Funded Projects. All grants and contracts awarded using UASI Program grant funds received by the SUASI region shall conform to all applicable federal and state grant and contracting requirements. Grants and contracts shall be awarded for particular projects and program, as follows:
- a. The Approval Authority shall determine the projects and programs to be funded, and shall decide which jurisdictions in the SUASI region will receive grants funds ("subrecipients"), the amount of funds allocated and the projects or

programs to be funded. A jurisdiction may decline to receive grant funds for a project allocated to that jurisdiction by the Approval Authority. If a jurisdiction does so, the Management Team shall notify the Approval Authority, which shall reallocate the grant funds for that project to an alternative subrecipient.

- b. San Francisco shall be the primary grantee of UASI Program grant funds. The Management Team shall inform San Francisco of the Approval Authority's grant allocation determinations, and request that San Francisco disburse the funds pursuant to the Approval Authority's direction.
 - c. San Francisco shall disburse grant funds to subrecipients pursuant to guidelines and requirements established by San Francisco in its capacity as fiscal agent and primary subgrantee.
 - d. Each subrecipient shall be responsible for all aspects of the UASI grant-funded projects and programs allocated to that jurisdiction by the Approval Authority, including contracting, project management, ensuring compliance with federal and state grant requirements and decisions of the Approval Authority, equipment purchase, installation and maintenance, and any permitting, environmental or other requirements necessary for any project or program approved by Approval Authority for that jurisdiction.
 - e. Before issuing any Request for Proposal related to a UASI grant-funded project or program, a subrecipient shall coordinate with the Management Team to ensure that the Request For Proposal, including the scope of work, meets the SUASI Program requirements for the project or program. After approval from the Management Team, each subrecipient shall select a contractor and issue the contract under its own contracting authority and process. In addition, subrecipients shall coordinate with the Management Team as requested by the Management Team, to allow the Management Team to coordinate, monitor and as appropriate manage UASI grant-funded projects and programs across the SUASI region.
 - f. For regional projects, the Management Team shall ensure coordination of the projects and programs allocated to the individual subrecipient jurisdictions.
10. Fiscal Agent. All requests for funding or reimbursement from the Fiscal Agent shall meet guidelines and requirements established by the Fiscal Agent. The guidelines shall include requirements for record keeping, internal audits, signature authority for approval of reimbursement requests, submission of financial reports, and compliance with professional accounting standards. The Fiscal Agent shall be entitled to reasonable costs for services performed. Periodically, the Fiscal Agent may submit request for payment, which the Approval Authority shall review and approve within thirty (30) days.

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

12. Term. This MOU shall take effect on the Effective Date as described in Section 17 below and shall extend until December 31, 2010, unless sooner terminated as provided below ("Term").

13. Termination. Any Party may terminate this MOU in the event that another Party breaches a material provision hereof and the breaching Party does not cure the breach complained of within thirty (30) days following receipt of written notice of the breach. In addition, any Party may terminate its participation in this Agreement by providing 30-days advance written notice of its termination to all Parties; the Agreement shall continue in effect between with the remaining Parties.

In addition, the Approval Authority may terminate this MOU at any time, for convenience and without cause, by unanimous vote. Any such action of the Approval Authority shall specify the date on which the termination shall become effective.

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

15. Modification. This MOU may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this MOU.
16. Interpretation. This MOU shall be deemed to have been prepared equally by all Parties and its individual provisions shall not be construed or interpreted more favorably for one Party on the basis that the other Parties prepared it.
17. Effective Date. Upon approval by the governing bodies of each of the Parties, this MOU shall become effective retroactive to July 1, 2007.
18. Complete Agreement. This is a complete agreement and supersedes any prior oral or written agreements of the Parties regarding the process for applying for and distributing UASI Program grant funding for the SUASI region. Specifically, this agreement supersedes the 2006 MOU.
19. Notice.
 - a. Any notices required hereunder shall be given as follows:

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

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

and

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

If to the City of Oakland, to:

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

If to the City of San Jose, to:

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

If to Alameda County, to:

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

If to Santa Clara County, to:

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

If to State of California, OES, to:

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

- b. Notices shall be deemed given when received if given in person, by facsimile or by electronic means (if a record of receipt is kept by the sending party showing the date and time of receipt) or three (3) days following deposit in the United States Mail, postage prepaid, to the address set forth above.

- c. Any Party may change its contact individual and/or address for notice by giving written notice of the change to the other Parties and the SUASI Program General Manager.

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

The undersigned approve the terms and conditions of this MOU.

City and County of San Francisco, California

Signature: _____

By: _____

Title: _____

City of Oakland, California

Signature: _____

By: _____

Title: _____

City of San Jose, California

Signature: _____

By: _____

Title: _____

Alameda County, California

Signature: _____

By: _____

Title: _____

Santa Clara County, California

Signature: _____

By: _____

Title: _____

ATTACHMENT C-8

East Bay Regional Communications System Authority (EBRCSA) Financial Overview August 2008

GRANTS RECEIVED/PENDING

Year	Grant Fund End Date	Source	Alameda County	Contra Costa County	Total	Status
2004		UASI	\$5,400,000	\$0.00	\$5,400,000	Received
2004		SHSGP	\$5,519,819	\$223,293	\$5,743,112	Received
2005		UASI	\$1,347,694	\$737,732	\$2,085,426	Received
2005		SHSGP	\$0.00	\$309,294	\$309,294	Received
2006	03/2008	SUASI	\$2,150,000	\$1,000,000	\$3,150,000	Received
2006	03/2008	SHSGP	\$1,842,866	\$828,899	\$2,671,765	Received
2007	03/2010	SHSGP	\$1,758,000	\$835,000	\$2,593,000	Received
2007	03/2010	SUASI	\$645,425	\$551,425	\$1,196,850	In Process
2007	09/2010	COPS	\$500,000	\$1,500,000	\$2,000,000	In Process
2007	09/2010	COPS*			\$500,000	In Process
2008	03/2009	Earmark			\$808,000	In Process
2008		SHSGP	\$1,358,767	\$850,000	\$2,208,767	In Process
2008	06/2011	PSIC**			\$4,966,666	Requested
2008		PSIC*			\$1,241,666	Requested
GRAND TOTAL					\$34,874,546	

* A local match is required in order to receive the grant allocation.

** The City of Oakland may receive a portion of this funding.

ESTIMATED INFRASTRUCTURE PROJECT COSTS

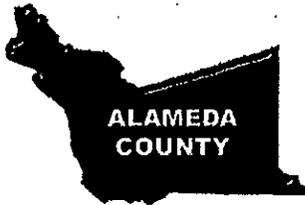
*Motorola Proposal less Microwave	\$55,569,990
Contingency @ 10%	\$5,556,999
Harris Microwave	\$6,989,182
** Total Estimated Project Costs	\$68,116,171

* The Motorola proposal was requested by Alameda County. Motorola is currently under contract with Alameda County for \$16 million to build existing infrastructure. A new bid will be issued for the final phases of the project, which will change the total infrastructure cost.

** This cost is for infrastructure and does not include the cost of subscriber units required to operate on the system.

PROJECTED FUNDING GAP

Total Estimated Infrastructure Project Costs	\$68,116,171
Grants Received/Pending	\$34,874,546
Total Estimated Unfunded Project Costs	\$33,241,625



**East Bay Regional
Communications
System Authority**



Participating agencies include Alameda and Contra Costa Counties and the following cities and special districts: Alameda, Albany, Antioch, Brentwood, Clayton, Concord, Danville, Dublin, El Cerrito, Emeryville, Fremont, Hayward, Hercules, Livermore, Martinez, Moraga, Newark, Oakley, Pinole, Pittsburg, Pleasant Hill, Pleasanton, Richmond, San Leandro, San Pablo, San Ramon, Union City, Walnut Creek, East Bay Regional Park District, Kensington Police Community Services District, Rodeo-Hercules Fire Protection District and San Ramon Valley Fire Protection District

AGENDA ITEM 2.4

**AGENDA STATEMENT
BOARD OF DIRECTORS MEETING DATE: February 15, 2008**

TO: Board of Directors
East Bay Regional Communications System Authority

FROM: William J. McCammon, Interim Executive Director
East Bay Regional Communications System Authority

SUBJECT: Adoption of the 2008/2009 EBRCSA Budget and Authorization of a Member Agency Assessment

RECOMMENDATIONS:

1. Adopt Resolution approving the 2008/2009 Budget for the EBRCSA.
2. Authorize the Interim Executive Director to assess the member agencies \$100 per radio to assist with the Federal Matching requirements, and operational overhead costs for the 2008/2009 Budget year.

SUMMARY/DISCUSSION:

There are three main revenue sources for the EBRCSA. The revenue used to build infrastructure and pay for allowable overhead for the EBRCSA has come almost exclusively from Federal Homeland Security grants. The two counties have also been paying for infrastructure improvements as the sites are installed. The third revenue source is the contributions made by member agencies of \$100 per radio. It is anticipated in the 2008-09 budget year that most of the revenue will be derived from the Homeland Security grants and Federal earmarks. The revenue as in the past will be focused on the continued build out of the infrastructure.

The expenses budgeted for the continued infrastructure build out, the Radio Engineering Consultant, Executive Director, administrative support, and legal support are all allowable under the grant(s) guidelines and will continue to be funded using Homeland Security grant funds. The

cost for the Radio Engineering Consultant was budgeted at \$1 million; the actual costs to be expended in the 2008/2009 fiscal year have not been determined. We received 6 responses to the RPF, and the selection committee is still in the RFP evaluation process. The RPF is divided in phases so that it may run over multiple fiscal years. The Finance Committee recommended placing \$1 million in the budget.

There are three specific budgeted expenses that are not allowed under the grant guidelines, the local match requirements for the COPS and PSIC grants, insurance costs, and other reoccurring costs such as web site hosting which is an ongoing operational cost. The match requirements for the COPS grant is \$500,000 and for the PSIC grant is \$1,241,666. The match requirements are very specific that local revenue must be expended in support of the grants. Federal dollars from other grants can't be used to provide the match. The match can be in-kind cost for staff time as well as equipment purchases. We are in the process of identifying time spent to date in meetings and specific staff time spent in support of the COPS and PSIC grants. During the grant time frames of 18 months for the COPS grant and 36 months for PSIC all allowable in-kind costs will be accounted for and used to support the local match requirements. While we expect to account for a portion of the match using in-kind staff costs, it is anticipated that some equipment will be purchased with radio subscriber fees to meet the match requirements.

The insurance costs are not known at this point, as the firm we are working with has not given a cost estimate. The Marin Emergency Radio Authority (MERA) budgeted \$39,000 this year for insurance; \$50,000 was included as a place holder in the EBRCSA budget until the exact cost is known. The web site development and maintenance will be discussed at the next month's Operations Committee meeting. If the Committee agrees to move forward with the development of the new web site, the costs for development are allowable under the grant guidelines, and the maintenance will be paid for using the radio subscriber fees.

The Finance Committee reviewed the budget and recommended a second assessment of \$100 per radio to member agencies in the 2008/2009 budget year to cover the cost of the grant matching requirements as well as operational costs that are not reimbursable using the Homeland Security grants. The timing is critical as member agencies are in the process of developing their 2008/2009 budgets. It was also discussed that the Interim Executive Director would provide a breakdown of the costs and progress to date for the member agencies and be available to meet with City Managers and elected officials from the member agencies to discuss the need for the second assessment.

It is recommended by the Finance Committee that the Board of Directors adopt the 2008/2009 budget as presented and authorize the Interim Executive Director to assess the member agencies a second assessment of \$100 per radio to be made in the 2008/2009 budget year. The assessment is intended to be used to meet the Federal matching requirements of the PSIC and COPS grants as well as to fund those expenses that are not allowable under the grant guidelines.

RESOLUTION NO. 08-xx

**A RESOLUTION OF THE
EAST BAY REGIONAL COMMUNICATIONS SYSTEM AUTHORITY

APPROVING THE BUDGET FOR 2008/2009 AND
AUTHORIZING MEMBER ASSESSMENTS**

WHEREAS, the Interim Executive Director has prepared, and the Finance Committee has reviewed and recommended, the Budget for the EBRCSA for 2008/2009, as attached to the Staff Report; and

WHEREAS, the Finance Committee has recommended that each member agency of the EBRCSA be assessed \$100 per radio for 2008/2009, in order to cover the cost of grant match requirements and operational expenses not reimbursable from grant funds; and

WHEREAS, the Board of Directors of the EBRCSA has reviewed the budget recommendations and approves of them.

NOW, THEREFORE, BE IT RESOLVED THAT the Board of Directors of the East Bay Regional Communications System Authority hereby: (1) assesses each member agency \$100 per radio for 2008/2009; (2) adopts said Budget for 2008/2009; and (3) authorizes the Interim Executive Director to meet with member agencies as necessary to implement the radio assessment.

On motion of xx, seconded by xx, the foregoing Resolution was passed and adopted this ___th day of _____, 200_, by the following votes:

AYES:

NOES:

ABSTENTIONS:

ABSENT:

ATTEST: _____
Fawn Holman, EBRSCA Secretary

East Bay Regional Communications System Authority

Budget Fiscal Year 2008/2009

Revenue

*Member Agency Radio Fees 07/08	770,000	
*Member Agency Radio Fees 08/09	770,000	
Grants:		
SUASI 2007	2,600,000	
SHSGP 2007	2,267,912	
COPS	2,000,000	
PSIC	4,966,666	
Earmark	808,000	
Total Grants Received	12,642,578	
	Total Revenue	\$14,182,578

*\$100 per Radio

Expenses

Executive Director	200,000	
Administrative Support	55,000	
Legal Support	25,000	
Insurance	50,000	
Web Site Development/Maintenance	30,000	
Radio Engineering Consultant	1,000,000	
*COPS Match (requires local funding)	500,000	
*PSIC Match (requires local funding)	1,241,666	
Site Development	11,000,000	
	Total Expenses	\$14,101,666

DRAFT

HAYWARD CITY COUNCIL

RESOLUTION NO. _____

Introduced by Council Member _____

mae

1/8/09

RESOLUTION AUTHORIZING THE CITY OF HAYWARD'S CONTINUING MEMBERSHIP AND PARTICIPATION IN THE EAST BAY RADIO COMMUNICATION SYSTEM AUTHORITY FOR FY 2009

BE IT RESOLVED by the City Council of the City of Hayward that the City Manager is authorized to continue the City's membership and participation in the East Bay Radio Communication System Authority for FY 2009 and to expend \$25,000 for the City's membership fee for FY 2009.

IN COUNCIL, HAYWARD, CALIFORNIA _____, 2009

ADOPTED BY THE FOLLOWING VOTE:

AYES: COUNCIL MEMBERS:
MAYOR:

NOES: COUNCIL MEMBERS:

ABSTAIN: COUNCIL MEMBERS:

ABSENT: COUNCIL MEMBERS:

ATTEST: _____
City Clerk of the City of Hayward

APPROVED AS TO FORM:

City Attorney of the City of Hayward