

**City and County of San Francisco  
Department of Emergency Management**

**Bay Area Urban Areas Security Initiative (UASI)**

**Request for Proposals (RFP) for**

**UASI Regional Training and Exercise Program  
Administration**

**RFP#: UASI 18-02**



**Date issued:**

**July 17, 2019**

**E-Question Period**

**July 17 – August 2, 2019**

**Proposal due:**

**August 27, 2019**

**Request for Proposals  
Bay Area UASI  
Regional Training and Exercise Program Administration**

**TABLE OF CONTENTS**

	<u>Page</u>
<b>I.</b> Introduction and Schedule .....	1
<b>II.</b> Scope of Work .....	3
<b>III.</b> Submission Requirements .....	7
<b>IV.</b> Evaluation and Selection Criteria .....	11
<b>V.</b> E-Question Period and Contract Award .....	14
<b>VI.</b> Terms and Conditions for Receipt of Submissions .....	14
<b>VII.</b> Contract Requirements .....	18
<b>VIII.</b> Protest Procedures .....	20

**Appendices:**

- I. City’s Administrative Requirement: Listing and Internet addresses of Forms related to Taxpayer Identification Number and Certification, to Business Tax Declaration, and to Chapters 12B and 12C of the S.F. Administrative Code
- II. Agreement for Professional Services Form P-600
- III. Proposals Statement Form (also available as separate Word file attachment)
- IV. Minimum Qualifications Form (also available as separate Word file attachment)

**Request for Proposals (RFP) for  
UASI Regional Training and Exercise Program Administration**

**I. Introduction and Schedule**

**A. General**

The City and County of San Francisco (“City” or “San Francisco”), through the Department of Emergency Management (DEM), the Urban Areas Security Initiative (UASI) is issuing this Request for Proposals (RFP) in search of a proposer (Proposer) that has the necessary qualifications to complete the work set forth in this RFP. Whether a Proposer has such qualifications will be determined through the evaluation process described in Section IV of this RFP. A contract or contact award is not a guarantee of funding for a program or the continuation of services.

**B. Background of the Bay Area UASI Program**

The Urban Areas Security Initiative (UASI) is a program administered by the federal Department of Homeland Security through its Homeland Security Grant Program within the Federal Emergency Management Agency (FEMA). Since its inception in 2003, the intent of the federal UASI program has been to enhance regional preparedness in major metropolitan areas in support of the National Preparedness Guidelines.

In connection with the application for and distribution of federal UASI grant funds, the United States Department of Homeland Security (“DHS”) consolidated the separate San Jose, Oakland, and San Francisco Urban Areas into a combined Bay Area Urban Area (“UASI Region”). The Bay Area UASI Region includes three major cities, twelve counties, over 100 incorporated cities, a number of special districts and transportation agencies, and several airports. The Bay Area UASI Region consists of the following counties: Alameda, Santa Clara, Santa Cruz, San Mateo, San Francisco, Marin, Sonoma, Napa, Solano, Contra Costa, San Benito, and Monterey; and three core cities: San Francisco, Oakland, and San Jose.

The Bay Area UASI is a regional program that provides financial assistance to improve the Bay Area’s capacity to prevent, protect against, respond to, and recover from terrorist incidents or related catastrophic events. Projects facilitated by the program enhance regional capability through regional collaboration and efficient allocation of resources.

The Bay Area UASI is governed by an eleven-member Approval Authority which provides policy direction and is responsible for final decisions regarding projects and funding.

The UASI Management Team functions as a unit within the San Francisco Department of Emergency Management. The Management Team is responsible for the administration and management of all potential and endorsed UASI funded projects in the Bay Area UASI Region. The Management Team serves as the point of contact for all inquiries/issues raised by regional stakeholders, while concurrently facilitating the Approval Authority, Regional Work Groups and other stakeholder meetings. The Management Team’s duties can include: monitoring grant compliance and resource allocation; conducting regional capability assessments; planning and strategic development, project development, monitoring and evaluation, and serving as a liaison

between the City and County of San Francisco (fiscal agent) and the subrecipient jurisdictions (grantees).

**C. Nature of the Proposed Work**

With oversight by the Bay Area UASI Approval Authority and direction from the Bay Area UASI Management Team, a selected contractor will administer a regional training and exercise program for the entire Bay Area UASI Region, which includes twelve (12) Bay Area Counties, and the core cities of San Francisco, San Jose and Oakland. Overall participation in the program is expected to be 30,000 – 50,000 individuals. The program will include coordination of a whole community Regional Training & Exercise Work Group to inform and oversee the following program components:

- (a) multi-discipline training courses for local government public safety staff;
- (b) regionwide multi-discipline exercises; and,
- (c) community preparedness activities specifically geared toward community-based organizations throughout the Bay Area.

Contractor will ensure that all efforts within the regional training and exercise program are consistent with the guiding principles of the Homeland Security Exercise Evaluation Program (HSEEP).

**D. Term and Amount of Proposed Contract**

The contract awarded from this RFP may have an original term of up to one (1) year with an estimated allocation of maximum of approximately Four Million Seven Hundred Thousand Dollars (\$4,700,000), contingent on funding availability. In addition, the City shall have eight (8) options to renew the term for a period of one (1) year each for a total of nine (9) years contract, **subject to the funding availability and satisfactory contractor performance, which the City may exercise in its sole and absolute discretion.** Funding may increase or decrease depending on the Federal funding availability.

A single qualified proposer will be selected to provide the services under this RFP. Throughout the course of the contract, the UASI Management Team will monitor the performance of the contractor in accordance with its policy and reserves the right to select an alternate primary contractor for non-performance.

**E. Schedule**

The anticipated schedule for selecting a contractor is:

<u>Proposal Phase</u>	<u>Date</u>
RFP is issued by the City	<b>July 17, 2019</b>
Deadline for submission of written questions or requests for clarification (E-questions)	<b>August 2, 2019</b>
Posting of written response to questions/ requests for clarification	<b>Week of August 12, 2019</b>
Proposals due	<b>August 27, 2019, 12:00 p.m. Noon</b>

	<u><i>Estimated Dates</i></u>
Initial Review	September 17, 2019
Technical Review	October 8, 2019
Notifications of contractor selection	November 15, 2019

#### **F. Contractor Unable to do Business with the City**

Contractor that does not comply with laws set forth in San Francisco's Municipal Codes may be unable to enter into a contract with the City. Some of the laws are included in this RFP, or in the sample terms and conditions attached.

## **II. Scope of Work**

Contractor will administer a comprehensive regional training and exercise program for the Bay Area UASI region. The Contractor will be responsible for utilizing allocated funds on a reimbursable basis in an equitable manner across the Bay Area UASI region. Contractor will adhere to funding recommendations and priorities agreed upon by the Regional Training & Exercise Program Work Group, the UASI Approval Authority, the UASI Management Team, and other stakeholders as appropriate. Contractor, as the program administrator will ensure the following guiding principles are complied with throughout the program:

### **A. Regional Training & Exercise Program Guiding Principles**

**1.** The program should coordinate and expand upon the existing Regional Training & Exercise Program Work Group. The program should conduct a transparent and inclusive process with the Work Group to determine training priorities, funding allocations, and a regionwide exercise plan. It should include representatives from the following:

- Local jurisdiction public safety disciplines (i.e. fire, law, EMS, public health, emergency management, public information, behavioral / mental health, cyber security)
- Community based organizations
- Voluntary Organizations Active in Disasters (VOADs) / Community Organizations Active in Disasters (COADs)
- UASI Work Group Chairs
- Association of Bay Area Health Officers (ABAHO)
- American Red Cross
- The Salvation Army
- Local chambers of commerce
- California Resiliency Alliance
- Local CERT Coordinators
- Cal OES (Coastal Region Emergency Services Coordinators and Headquarters Training & Exercise Division)
- Tribal entities
- Educational institutions
- BayRICS
- Northern California Regional Intelligence Center (NCRIC)
- State and Federal Military entities
- Federal Emergency Management Agency

- Communications operators (i.e. amateur radio volunteers)
- Medical Health Operational Area Coordinators (MHOACs)
- Hospital Coalitions
- Utilities
- Special Districts
- National Weather Service
- Bay Area Joint Information System

2. The program shall maintain a commitment to community preparedness activities designed and selected to support community-based organizations in development of their emergency preparedness, response, and recovery capabilities.

3. The program should prioritize training courses and exercises based on the gaps identified in the Bay Area Threats and Hazards Identification and Risk Assessment (THIRA), Stakeholder Preparedness Report (SPR) and any other requirements stated in the FY2019 Homeland Security Grant Program (HSGP) Notice of Funding Opportunity (NOFO).

4. The program should provide a balanced offering of training courses and exercise opportunities for all public safety disciplines as listed in principle 1.

5. The program should maintain an ongoing opportunity for whole community partners, as listed in principle 1, to coordinate regionally on training and exercise opportunities (i.e. via a standing agenda item at the Regional Training & Exercise Work Group meetings).

6. The program should provide public notification of relevant work group discussions, training courses, and scheduled exercises on an ongoing basis.

As applicable, services provided and deliverables prepared by the Contractor will conform to and be consistent with the California Standardized Emergency Management System (SEMS), the National Incident Management System (NIMS), the National Response Framework (NRF), National Disaster Recovery Framework (NDRF), National Preparedness Goal (NPG), National Emergency Communications Plan, and other related policies. All training and exercise products shall follow the guiding principles of the Homeland Security Exercise Evaluation Program (HSEEP).

## **B. Services**

The Scope of Work for the Regional Training and Exercise program administrator may include, but is not limited to, the following services:

### **1. Regularly convene and facilitate the Regional Training & Exercise Program Work Group as noted in the above guiding principle A.**

Work Group should provide subject-matter expertise and input to strategic policy decisions on regional training and exercise activities. Contractor will facilitate consensus and follow the recommendations and funding priority requests made by the Work Group. Meetings should be held no less than monthly in-person with a webinar option for virtual attendance. Contractor will be responsible for preparing and distributing agendas in advance, facilitating the discussion, and documenting the conversation in a meeting summary.

### **Major Deliverables will include, but are not limited to:**

- Work Group meeting agendas (monthly)

- Work Group meeting summaries, including list of attending members (monthly)

**2. Develop a regional multi-year training and exercise plan with input and oversight from the Work Group.**

The plan should span at least three years and articulate the training courses to be offered each year as well as the exercise program. The plan should equally benefit all public safety disciplines and include a strategy for building community preparedness throughout the Bay Area. It should include target benchmarks for assessing the success of training offered for each discipline. Selected exercises should test capabilities built through the training courses, UASI funded regional capability building projects, and be designed to test capabilities specifically documented in the Bay Area THIRA/SPR.

**Major Deliverables will include, but are not limited to:**

- Multi-Year Training and Exercise Plan (covering three years, updated annually)

**3. Administration of training courses**

- Procure and coordinate logistics for selected training courses (This includes selection of a host agency, confirmation of a feasible training site, development of course flyer with registration information, etc.).
- Develop, host, and/or maintain a website (the Training & Exercise Program Website) with an integrated database covering multiple platforms for coordinating training course registration and communications with participants. This includes management of wait lists and tracking of certificates earned by participants.

**Major Deliverables will include, but are not limited to:**

- Integrated program website with online registration system
- Course planning and logistics facilitation
- Course evaluation and improvement processes

**4. Administration of regionwide exercises**

- Per HSEEP and the regional multi-year training and exercise plan, establish exercise planning teams for each identified exercise. Members for these exercise planning teams should come from the Regional Training & Exercise Work Group and be augmented as appropriate based on the focus of each exercise.
- Following HSEEP guidelines, facilitate exercise planning meetings, design, conduct, and evaluate at least one major regionwide multi-discipline exercise to test Bay Area wide training and exercise objectives.
- Regionwide exercise(s) should provide opportunities for all public safety disciplines to participate.
- Utilize the aforementioned Training & Exercise Program Website to coordinate with exercise planning teams, host exercise materials such as situation manuals and after action reports, serve as a registration system for exercise participants, etc.
- 

**Major Deliverables will include, but are not limited to:**

- Exercise planning schedules and planning team rosters
- Planning meeting agendas and summaries
- Exercise After Action Reports (AAR) and improvement plans
- Ongoing tracking of regional progress on implementing corrective actions

**5. Administration of community preparedness activities**

- Contractor will facilitate agreement on priorities for community preparedness activities to be conducted throughout the Bay Area based on Work Group requests, research coordinated by the UASI Management Team, and other provided input.
- Contractor will work with a liaising entity through a separate competitive procurement process, conducted by the UASI Management Team, to procure and implement the agreed upon community preparedness activities. These may include, but are not limited to:
  - Support to community-based organizations in developing organizational disaster plans (via training courses or facilitated workshops)
  - Seminars / workshops to develop local government coordination with community-based organizations (CBOs) regarding emergency roles and responsibilities
  - Personal preparedness training for CBO staff
  - First aid training for CBO staff (i.e. Stop the Bleed, hands-only CPR)
  - Incident Command System training for CBO staff
  - Training for continuity of operations planning for CBO staff
  - Active shooter response training for CBO staff
  - Training on disaster reimbursement policies / protocols for CBO staff
  - Training on integration of access and functional needs populations for CBO staff

**Note:** The term CBO in this document includes non-profit organizations, faith-based organizations, voluntary organizations active in disasters (VOADs), community organizations active in disasters (COADs), and other like established entities.

**Major Deliverables will include, but are not limited to:**

- Scheduling and logistics facilitation of community preparedness activities

**6. Program management**

- Provide monthly reports to the UASI Management Team summarizing the courses offered, upcoming courses, status of the exercise program (planning processes and regional exercise calendar), funds expended to date, etc.
- Track the number of activities provided to, and the number of participants from each of the major emergency response disciplines.
- Provide ongoing subject matter expertise and recommendations for improving the effectiveness of the Program.
- Serve as liaison to and promote regional collaboration with training and exercise stakeholders including state and federal partners such as Cal OES and FEMA. (This may include development of a regional exercise calendar noting local, operational area, regional, state, and federal planned exercises that engage any of the Bay Area UASI jurisdictions.)
- Provide written/verbal status reports and presentations to the UASI Management Team, Approval Authority, regional work groups, stakeholders, and various other oversight/advisory bodies, as needed.
- Develop a program manual to document the systems, policies, procedures, and processes in place for UASI jurisdictions to engage with, benefit from, and participate in the Program. This guidance should clarify at a minimum:
  - how training courses are selected
  - how to engage with the Work Group
  - how to become a host agency for training courses and/or exercises

- how to register for a training course
- Disseminate an annual report that details the goals and objectives of the regional training and exercise program and provides an assessment of the success of the regional training and exercise program, including the most current version of the multi-year training and exercise plan.

**Major Deliverables will include, but are not limited to:**

- Roster of Regional Training & Exercise Work Group members with representation per guiding principle 1
- Monthly summary report including: training courses conducted, number of attendees and overall evaluation/feedback of each course, upcoming training courses; community preparedness activities conducted, number of attendees and overall evaluation/feedback of each activity, upcoming activities; funds expended to date; status of exercise planning and conduct; recommendations for program improvement
- Bay Area Regional Training & Exercise Program Manual
- Annual report assessing success of the program and recommendations for improvements
- Presentations as requested (i.e. program briefings to the UASI Approval Authority)
- Analysis of program website effectiveness

### **III. Submission Requirements**

#### **Time and Place for Submission**

Proposals must be received by **12:00 P.M. NOON PST**, on **August 27, 2019**. Proposals may be delivered in person and left with the Bay Area UASI Management Team staff, or mailed to:

**Yoshimi Saito, Contract Specialist  
Bay Area UASI  
711 Van Ness Ave. Suite 420  
San Francisco, CA 94102**

All items must be submitted in a sealed envelope clearly marked **RFP# UASI 18-02: UASI Regional Training and Exercise Program Administration** to the above location.

Postmarks will not be considered in judging the timeliness of submissions. Late submissions will not be considered. Proposals that are submitted by fax or email will not be accepted.

#### **Format**

Proposers must submit the following:

- Six (6) hardcopies of the Proposal (refer to the ‘Content of Proposals’ below)
- One (1) electronic copy (USB stick) of the entire contents of the Proposals

Proposers should carefully follow the format and instructions outlined below, observing format requirements where indicated. Proposals must contain the information itemized below and in the

order indicated. Proposals submitted which do not include the following items may be deemed non-responsive and may not be considered for evaluation. **All parts, pages, figures, and tables should be numbered and clearly labeled.**

## **Content of Proposals**

Proposers interested in responding to this RFP must submit the following information, in the order specified below:

### **1. Proposals Statement Form (Appendix III; also available as separate Word File)**

This form must be used as the front cover of your proposal. Proposer must complete the following information of this form:

- RFP Terms and Conditions Acceptance
- City's Administrative Requirements
- Acknowledgement of U.S. Department of Homeland Security Urban Areas Security Initiative Grant Program Requirements

### **2. Minimum Qualifications (MQ) Form (Appendix VI; also available as separate Word File)**

Proposer must complete this form to demonstrate and to meet the established Minimum Qualifications in page 11 to 12 of this RFP, under the Section IV-Evaluation Criteria-Minimum Qualifications.

### **3. Reference Letters (up to 1 page per reference; maximum of 3 References)**

Provide references for the projects that comprise your minimum qualifications as listed in section IV Evaluation Criteria – Minimum Qualifications on pages 11 to 12 of this RFP. Proposer's references will be used to confirm and verify that proposer has met the minimum qualifications. The reference should be **at least two (2) but no more than three (3) total references**. By including these references, proposers are representing that the references are familiar with proposer's work and experience, and references will be truthful in any representations.

### **4. Introduction and Executive Summary (up to 2 pages)**

Submit a letter of introduction and executive summary of the Proposal. Include in the letter the name of the Proposer's project manager, that person's physical location, and an explanation of that person's role in overseeing the Regional Training & Exercise Program. The letter must be signed by a person authorized to obligate the Proposer to perform the commitments contained in the Proposal. Submission of the letter will constitute a representation by the Proposer that the Proposer is willing and able to perform the commitments contained in the Proposal.

### **5. Project Approach (up to 6 pages)**

Describe how your team will conduct the six (6) services detailed in the Section II. Scope of Work, B. Services of this RFP while complying with the stated guiding principles. Throughout this section, be clear about anticipated staff assignments and their daily physical locations. Include the following information:

- **Overall Methodology:** Provide an overview of the Proposer's methodology for completing the six services while complying with the stated guiding principles. This should include an organizational chart depicting the staffing plan for each of the six services, how the staff will coordinate across services, and how the team will be supervised.
- **Work Group Facilitation:** Provide a detailed explanation including staff roles and responsibilities for accomplishing Service #1. This should include how the Proposer will approach work group facilitation to build consensus, implement agreed upon priorities, and manage an annual cycle of public safety training courses, community preparedness activities, and regionwide exercise(s). Describe how the Proposer will provide logistics (i.e. webinar capability) for the meetings and list the deliverables to be provided.
- **Multi-Year Training and Exercise Plan (MYTEP):** Provide a detailed explanation including staff roles and responsibilities for accomplishing Service #2. This should include how the Proposer will leverage the Work Group, other UASI stakeholders, the UASI management team, and additional partners as appropriate to conduct a thorough and transparent planning process that:
  - closes identified regional capability gaps including training related to under-represented diverse populations impacted by disasters, including children, seniors, individuals with disabilities or access and functional needs, individuals with diverse culture and language use, individuals with lower economic capacity and other underserved populations
  - expends program funds in an equitable manner throughout the region

Describe the approach for updating this plan annually and implementing improvements based on stakeholder input.

- **Administration of Training Courses:** Provide a detailed explanation including staff roles and responsibilities for accomplishing Service #3. This should include:
  - a description of the Proposer's website management / development capabilities and approach to establishing / maintaining an online registration system / user portal for program participants
  - the proposed approach for prioritizing and selecting training courses to offer through the program (i.e. work group engagement and division of allocated funds by discipline)
  - the process for procuring training vendors to conduct the breadth and variety of training courses in demand through this program
  - the process for selecting host agencies for training courses in an equitable manner throughout the region
  - the process for promoting training courses and ensuring courses have full attendance to maximize the regional investment
- **Administration of Regionwide Exercises:** Provide a detailed explanation including staff roles and responsibilities for accomplishing Service #4. This should include:
  - the proposed approach for prioritizing and selecting regionwide exercises to design, conduct, and evaluate through the program (i.e. work group engagement,

- gaps noted in THIRA/SPR, coordination with UASI regional capability building efforts, coordination with trainings conducted)
- the process for establishing exercise planning teams for each exercise (i.e. subcommittees to the work group)
- the proposed approach for sharing exercise evaluations, lessons learned, and identified capabilities with the Bay Area UASI's annual THIRA/SPR preparation
- **Administration of Community Preparedness Activities:** Provide a detailed explanation including staff roles and responsibilities for accomplishing Service #5. This should include:
  - the proposed strategy for working with the UASI selected liaising entity and procurement of appropriate community preparedness activity providers
  - the proposed approach for implementing a community preparedness strategy (as outlined in the MYTEP), evaluating it, and making recommendations for the following year's community preparedness activities
- **Program Management:** Provide a detailed explanation including staff roles and responsibilities for accomplishing Service #6: This should include:
  - the proposed systems, policies, procedures, and processes for operating the Regional Training & Exercise Program to include decision making procedures regarding the balancing of funds across public safety training courses, community preparedness activities, and regionwide exercises.
  - the proposed schedule for meeting with and regularly briefing the UASI Management Team / General Manager on the successes and challenges of program operations
  - availability to provide subject matter expertise and representation as requested (i.e. for Approval Authority or Board of Supervisor meetings)

## **6. Proposer Qualifications (up to 2 pages)**

Provide information on the Proposer's team composition, organizational structure, team member physical locations, and recent experience in providing similar services to those requested through this RFP. Present the anticipated time commitment (hours per week) for each staff member assigned a responsibility in administering the program.

Describe the proposed staff's direct experience with Training and Exercise program planning and administration, work group facilitation, and familiarity with Bay Area public safety agencies. Include the staff names, titles, physical locations, years of experience, and list of relevant project experience.

Describe the Proposer's understanding of and experience with first responder training requirements, public safety discipline certification programs, such as those within the Emergency Management profession, and how the Training & Exercise Program will accommodate participants seeking specific certifications.

Staff resumes may be provided to support this section. Each must be limited to one-page and only include experience pertinent to the services requested through this RFP. Resumes will not count toward the page limit of this section.

## **7. Budget Proposal (up to 5 pages)**

Proposer must submit a budget narrative and a detailed budget worksheet, which should include the following information:

- a. Total estimated cost for each of the six (6) services in Section II. Scope of Work, B. Services of this RFP
- b. Describe in detail how allocated dollars are proposed to be utilized
- c. Name, hourly rate of all staff members anticipated to conduct services

The actual budget is subject to negotiation upon contract award and input from the Regional Training & Exercise Work Group. The City reserves the right to accept other than the lowest priced offer and to reject any submittals that are not responsive to this request.

#### **8. Pending Litigation (no page limit)**

If applicable, briefly describe any pending litigation related to consulting services provided by the Proposer within the past three (3) years of this RFP issue date.

### **IV. Evaluation and Selection Criteria**

#### **Minimum Qualifications**

A Proposer must meet the following minimum qualifications by the deadline for submittal of submissions:

1. Must be able to execute Appendix C of the City's contract, U.S. Department of Homeland Security's Urban Areas Security Initiative Grant Program Requirements for Procurement Contracts (see the Appendix II – Agreement for Professional Services Form P-600)
2. Proven familiarity with Bay Area public safety agencies and relevant training requirements / certifications via references and related projects within the last 5 years
3. Proven understanding of the California Standardized Emergency Management System, Master Mutual Aid Compact, and regional response structure via integration of these concepts in the proposed project approach
4. Proven success in facilitating multi-discipline work groups to build consensus via references and related projects within the last 5 years
5. Proven success with experience developing and implementing a Multi-Year Training and Exercise Plan proven via references and related projects within the last 5 years
6. Proven success in coordinating & administering public safety training courses proven via references and related projects within the last 5 years
7. Proven success in developing & evaluating multi-discipline large scale exercises proven via references and related projects within the last 5 years
8. Proven success of program management capabilities demonstrated in the proposed project approach and validated via references and related projects within the last 5 years

9. Proven success working with multiple jurisdictions and public entities in a concurrent manner within the last 5 years
10. Proven success of technical capabilities for website design, hosting, and maintenance within the last 5 years

**Any proposer that does not comply with all of the Minimum Qualifications will not be considered for evaluation by the Evaluation Team.**

### **Desirable Qualifications**

The following are desirable qualifications for Proposers and the key staff:

1. Experience with federal Homeland Security Grant programs
2. Experience working with policy-making bodies and County-based projects, including major cities, at the regional level

### **Selection Process**

The UASI Management Team will coordinate the Evaluation Team composed of the UASI Approval Authority members responsible for evaluating and rating the Proposals. The team may also conduct reference checks and facilitate interviews, if desired by the Evaluation team and/or the City.

The Evaluation Team will evaluate the strength of the Proposals based on the following criteria (point allocations are subject to change based on need for oral interviews).

#### **1. Screening of Minimum Qualifications (Pass/Fail)**

Each Proposal will be reviewed by the UASI Management Team for initial determinations on whether the Proposer meets the minimum qualifications referenced in Section IV of this RFP. Proposals will not be scored during the screening of Minimum Qualifications. This screening is simply a pass or fail determination as to whether the Proposer has met the minimum qualifications. A Proposal that fails to meet the minimum qualifications will not be eligible for consideration in the evaluation process. The City reserves the right to request clarifications from Proposers prior to rejecting a Proposal for failure to meet the minimum qualifications. Clarifications are limited exchanges between the City and Proposer for the purpose of clarifying certain aspects of the Proposal and will not provide a Proposer the opportunity to revise or modify its Proposals. Only Proposals that meet the minimum qualifications will proceed to the next evaluation phases.

#### **2. Project Approach (45 Points)**

The proposal demonstrates:

- a. Understanding of the project and methodology
- b. Innovative methods for performing the stated services
- c. Effectiveness of program staff

**3. Proposer Qualifications (30 Points)**

The proposal demonstrates:

- a. Expertise of the Proposer to provide the applicable services, including desirable qualifications
- b. Depth and breadth of experience of the Proposer and key staff with the type of work under this RFP
- c. Demonstrated familiarity with Bay Area public safety agencies;
- d. Staff availability and accessibility
- e. Regional Collaborations
- f. Reference Letters

**4. Budget Proposal – (20 Points)**

The proposal provides:

- a. Clear, logical, reasonable and detailed budget worksheets by service
- b. Descriptions of budget narratives which support the project dollars within the budget worksheets
- c. Budget narratives that include concise descriptions of proposed funding utilization and the resources necessary to implement the services

**5. Responsiveness to the City’s Requirements – (5 Points)**

Pending litigation that would affect the Proposer’s capability to undertake the work described in Section II

**Total Points Possible: 100 Points**

(Bidder Rating Discount will not be considered due to the requirements governing the Federal funds for this RFP.)

**Oral Interviews (If necessary)**

Oral interviews may or may not be conducted. The City has sole and absolute discretion over whether interviews will be conducted. Following the evaluation of the written Proposals, if interviews are to be conducted, the Proposers receiving the highest scores in the subject areas will be invited to an oral interview. The interviews, if conducted, will consist of standard questions asked of each of the Proposers, as well as specific questions regarding each individual submission.

**V. E-Question Period and Contract Award**

**A. E-Question Period**

All questions concerning this RFP, scope of services or requirements must be submitted in writing by email only during the **E-Question Period, ending August 2, 2019, 12:00 p.m. PST**, and directed to: [yoshimi.saito@sfgov.org](mailto:yoshimi.saito@sfgov.org)

**No questions or requests for interpretation will be accepted after 12:00 p.m., PST on August 2, 2019.** It is the responsibility of the Proposer to check for any RFP Addendums, Q&A postings, and other updates which will be posted on the City Partner Bid Opportunity website:

<https://sfcitypartner.sfgov.org/pages/Events-BS3/event-search.aspx>

and the Bay Area UASI website:

<http://www.bayareauasi.org/>

**B. Contract Award**

The City will select a proposer with whom the UASI Management staff shall commence contract negotiations. The selection of any proposal shall not imply acceptance by the City of all terms of the proposal, which may be subject to further negotiations and approvals before the City may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time the City, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer.

**VI. Terms and Conditions for Receipt of Submissions**

**A. Errors and Omissions in RFP**

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the UASI Management Team, in writing, if the Proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the UASI Management Team promptly after discovery, but in no event later than **1:00 P.M., August 20, 2019**. Modifications and clarifications will be made by addenda as provided below.

**B. Inquiries Regarding RFP**

All inquiries regarding the RFP, and any request for written modification or clarification of the RFP, must be submitted via e-mail only to:

[yoshimi.saito@sfgov.org](mailto:yoshimi.saito@sfgov.org)

**C. Objections to RFP Terms**

Should a Proposer object on any ground to any provision or legal requirement set forth in this RFP, the Proposer must, not more than ten (10) calendar days after the RFP is issued, provide written notice to the UASI Management Team c/o Yoshimi Saito, delivered as noted above setting forth with specificity the grounds for the objection. The failure of a Proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

**D. Change Notices**

The City may modify the RFP, prior to the submission due date, by issuing Change Notices, which will be posted on the City's Supplier Portal at: <https://sfcitypartner.sfgov.org/pages/Events-BS3/event-search.aspx> and the Bay Area UASI website at: [www.bayareauasi.org](http://www.bayareauasi.org) The Proposer shall be responsible for ensuring that its Proposal reflects any and all Change Notices issued by the City prior to the Proposal due date regardless of when the Proposal is submitted. Therefore, the City recommends that the Proposer consult the website frequently, including shortly before the submission due date, to determine if the Proposer has downloaded all Change Notices.

**E. Term of Submission**

Submission of a Proposal signifies that the Proposer's qualifications, services and prices are valid for 180 calendar days from the Proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

**F. Revision of Submission**

A Proposer may revise a Proposal on the Proposer's own initiative at any time before the deadline for submission. The Proposer must submit the revised submission in the same manner as the original. A revised submission must be received on or before the due date.

In no case will a statement of intent to submit a revised submission, or commencement of a revision process, extend the due date for any Proposer.

At any time during the evaluation process, the City may require a Proposer to provide oral or written clarification of its submission. The City reserves the right to establish a Pool without further clarifications of submissions received.

**G. Errors and Omissions in Submission**

Failure by the City to object to an error, omission, or deviation in the Proposal will in no way modify the RFP or excuse the Proposer from full compliance with the specifications of the RFP or any contract awarded pursuant to the RFP.

## **H. Financial Responsibility**

The City accepts no financial responsibility for any costs incurred by a Proposer in responding to this RFP. Submissions of the RFP will become the property of the City and may be used by the City in any way deemed appropriate.

## **I. Proposer's Obligations under the Campaign Reform Ordinance**

Proposers must comply with Section 1.126 of the S.F. Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a Proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the Proposer is prohibited from making contributions to:

- the officer's re-election campaign
- a candidate for that officer's office
- a committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract.

The negotiation period ends when a contract is awarded or not awarded to the contractor.

Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

1. **Criminal.** Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
2. **Civil.** Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. **Administrative.** Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the

Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, Proposers should contact the San Francisco Ethics Commission at (415) 581-2300.

**J. Sunshine Ordinance**

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFPs and all other records of communications between the City and persons or Proposers seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request. Proposer understands that any writing presented under this RFP may be subject to public disclosure.

**K. Public Access to Meetings and Records**

If a Proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, the Proposer must comply with Chapter 12L. The Proposer must include in its submission (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to Proposer's meetings and records, and (2) a summary of all complaints concerning the Proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the Proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in Proposer's Chapter 12L submissions shall be grounds for rejection of the PROPOSAL and/or termination of any subsequent agreement reached on the basis of the PROPOSAL.

**L. Reservations of Rights by the City**

The issuance of this RFP does not constitute an agreement by the City that any contract will actually be entered into by the City. The City expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, Proposal, or Proposal procedure;
2. Reject any or all submissions;
3. Reissue a Request for Qualifications or a Request for Proposals;
4. Prior to submission deadline for responses, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be

provided under this RFP, or the requirements for contents or format of the submissions;

5. Procure any materials, equipment or services specified in this RFP by any other means; or
6. Determine that no project will be pursued.

Pre-qualification to receive an RFP does not preclude the City from subsequently concluding, based upon analysis of additional information which may come to his attention or upon further analysis of the information upon which his approval was based, that an interested Proposer(s) is not qualified to perform the required services of those responding to this RFP. Further, no approval shall limit or impair the reservation by the City of the unqualified right, in its sole and absolute discretion, to reject all Proposals, or to accept that Proposal, if any, which in its judgment will under all circumstances best serve the public interest.

The City reserves the right to withhold from the Proposer(s) and anyone else until the selection process is completed, all information which might undermine the competitive selection process utilized by this RFP, including the number of Proposer(s) received, and the names of the other Proposers, and the scoring of any initial rounds of selection.

#### **M. No Waiver**

No waiver by the City of any provision of this RFP shall be implied from any failure by the City to recognize or take action on account of any failure by a Proposer to observe any provision of this RFP.

#### **N. Local Business Enterprise Goals and Outreach**

*Due to the funding source for this project (Federal Homeland Security Grant), the Local Business Enterprise (LBE) provisions of Chapter 14B of the San Francisco Administrative Code are not applicable to this project. However, the City strongly encourages Proposals from qualified LBEs and the utilization of LBEs as subcontractors to the greatest extent feasible.*

### **VII. Contract Requirements**

#### **A. Standard Contract Provisions**

The successful Proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix B. Failure to timely execute the contract, or to furnish any and all insurance certificates and policy endorsement, surety bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The City, in its sole discretion, may select another Proposer and may proceed against the original selectee for damages.

#### **B. Nondiscrimination in Contracts and Benefits**

The successful Proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally,

Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the CMD's website at [www.sfcmd.org](http://www.sfcmd.org).

### **C. Minimum Compensation Ordinance (MCO)**

The successful Proposer will be required to agree to comply fully with and be bound by the provisions of the Minimum Compensation Ordinance (MCO), as set forth in S.F. Administrative Code Chapter 12P. Generally, this Ordinance requires contractors to provide employees covered by the Ordinance who do work funded under the contract with hourly gross compensation and paid and unpaid time off that meet certain minimum requirements. For the contractual requirements of the MCO, see §43.

For the amount of hourly gross compensation currently required under the MCO, see [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco). Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract. Additional information regarding the MCO is available on the web at [www.sfgov.org/olse/mco](http://www.sfgov.org/olse/mco).

### **D. Health Care Accountability Ordinance (HCAO)**

The successful Proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at [www.sfgov.org/olse/hcao](http://www.sfgov.org/olse/hcao).

### **E. First Source Hiring Program (FSHP)**

If the contract is for more than \$50,000, then the First Source Hiring Program (Admin. Code Chapter 83) may apply. Generally, this ordinance requires contractors to notify the First Source Hiring Program of available entry-level jobs and provide the Workforce Development System with the first opportunity to refer qualified individuals for employment.

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at <http://www.workforcedevelopmentsf.org/> and from the First Source Hiring Administrator, (415) 701-4848.

### **F. Conflicts of Interest**

The successful Proposer will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. The successful Proposer will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such fact during the term of the Agreement.

Individuals who will perform work for the City on behalf of the successful Proposer might be deemed consultants under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful Proposer that the City has selected the Proposer.

## **VIII. Protest Procedures**

### **A. Protest of Non-Responsiveness Determination**

Within five (5) working days of the City's issuance of a notice of non-responsiveness, any Proposer that has submitted a Proposal and believes that the City has incorrectly determined that its submission is non-responsive may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth (5<sup>th</sup>) working day following the City's issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

### **B. Protest of Non-Responsible Determination**

Within five (5) working days of the City's issuance of a notice of intent to award the contract, any Proposer that has submitted a responsive Proposal and believes that the City has incorrectly selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award. The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the Proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

### **C. Delivery of Protests**

All protests must be received by the due date. If a protest is mailed, the protestor bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date the City received the protest. Protests or notice of protests made orally (e.g., by telephone) or by FAX will not be considered. Protests must be delivered to:

**Yoshimi Saito, Contracts Specialist**  
**Bay Area UASI**  
**711 Van Ness Ave. Suite 420**  
**San Francisco, CA 94102**  
**yoshimi.saito@sfgov.org**

## APPENDIX I – STANDARD FORMS

### **A. How to become Eligible to Do Business with the City:**

Before the City can award any contract to a vendor, all vendors must meet the minimum requirements described below. There may be additional requirements placed upon a vendor depending on the type of good or service to be purchased.

### **B. Mandatory Online Submission:**

At a minimum, in order to become eligible to do business with the City, a Bidder must submit the following documents via the City’s supplier portal located at <https://sfcitypartner.sfgov.org/> :

1. Access the City Partner PeopleSoft website portal to register as a bidder and attach an IRS Form W-9.
2. Use the online website <http://newbusiness.sfgov.org/vendor> to complete the Business tax Registration.
3. Submit Declaration of Nondiscrimination in Contracts and Benefits (CMD-12B-101) through the supplier portal. 12B Compliance information: <https://sfgov.org/cmd/forms-resources>

### **C. Supplier Eligibility and Invoice Payment:**

Contractor must have a City-issued Supplier ID number, have all compliance submitted and approved by the City, and have an executed contract or purchase order before payments can be made. Once a Supplier ID number has been assigned, an email notification will be provided by the City's Supplier Support Division. This notification will include instructions on how to sign up to receive payments through the City's supplier portal located at <https://sfcitypartner.sfgov.org/> .

### **D. Supplemental Forms:**

Additional forms and requirements after contract award. These forms are not required at time of Proposal submission.

<b>Form:</b>	<b>Required If:</b>
Minimum Compensation Ordinance (MCO) Declaration (  pdf)	You have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department or departments and have more than 5 employees, including employees of any parent, subsidiaries and subcontractors.
Health Care Accountability Ordinance (HCAO) Declaration (  pdf)	You have at least \$25,000 (\$50,000 for non-profit organizations) in cumulative annual business with a City department or departments and have more than 20 employees (more than 50 employees for nonprofit)

	organizations), including employees of any parent, subsidiaries or subcontractors.
Insurance Requirements ( <a href="#">pdf</a> )	The solicitation requires the successful proposer to demonstrate proof of insurance.
Payment (Labor and Material) Bond ( <a href="#">pdf</a> )	The solicitation requires the awarded vendor to post a Payment (Labor and Material) bond.
Performance Bond ( <a href="#">pdf</a> )	The solicitation requires the awarded vendor to post a Performance bond.
Local Business Enterprise Program Application ( <a href="#">Contract Monitoring Division</a> )	You desire to participate in the City’s Local Business Enterprise Program which helps certain financially disadvantaged businesses increase their ability to compete effectively for City contracts

For further guidance, refer to the City’s supplier training videos that are located online at: <https://sfcitypartner.sfgov.org/> .

**APPENDIX II – AGREEMENT FOR PROFESSIONAL SERVICE**

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

**Agreement between the City and County of San Francisco and**

This Agreement is made this [insert day] day of [insert month], [insert year], in the City and County of San Francisco (“City”), State of California, by and between [name and address of Contractor] (“Contractor”) and City.

**Recitals**

WHEREAS, the Department of Emergency Management (“Department”) wishes to [insert short description of services required]; and,

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through Request for Qualifications (RFP) #: UASI-xx-xx issued on [insert date], in which City selected Contractor as the highest qualified scorer pursuant to the RFP; and

WHEREAS, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, the City’s Civil Service Commission approved Contract number [insert PSC number] on [insert date of Civil Service Commission action];

Now, THEREFORE, the parties agree as follows:

**Article 1 Definitions**

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and “Department of Emergency Management”.

1.3 "CMD" means the Contract Monitoring Division of the City.

1.4 "Confidential Information" means confidential City information including, but not limited to, personally-identifiable information (“PII”), protected health information (“PHI”), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information,

including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

1.5 "Contractor" or "Consultant" means [name and address of contractor].

1.6 "Deliverables" means Contractor's work product resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix A.

1.7 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

1.8 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.9 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.10 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

## **Article 2 Term of the Agreement**

2.1 The term of this Agreement shall commence on [start date] and expire on [expiration date], unless earlier terminated as otherwise provided herein.

2.2 The City has [number of options] options to renew the Agreement for a period of [one year or other time span] each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **Article 3 Financial Matters**

3.1 **Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.** This Agreement is subject to all federal and state grant requirements and guidelines, including but not limited to UASI grant requirements, guidelines and instructions from the U.S. Department of Homeland Security ("DHS") and the California Office of Emergency Services ("CalOES"), and decision making of DHS, CalOES and the Approval Authority. 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. Contractor acknowledges that grant decisions are subject to the discretion of DHS, CalOES and

the Approval Authority. Contractor assumes all risk of possible non-allocations of funds, and such assumption is part of the consideration for this Agreement. This Agreement is also subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

**3.2 Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

### **3.3 Compensation.**

**3.3.1 Payment.** Contractor shall provide an invoice to the City on a monthly basis for Services completed in the immediate preceding month, unless a different schedule is set out in Appendix B, "Calculation of Charges." Compensation shall be made for Services identified in the invoice that the [insert title of department head], in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement exceed [insert whole dollar amount in numbers and words -- no pennies and no ".00"]. The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. A portion of payment may be withheld until conclusion of the Agreement if agreed to by both parties as retainage, described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

**3.3.2 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until Department of Emergency Management approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this

Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

**3.3.3 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.3.4 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City as specified in 3.3.6 or in such alternate manner as the Parties have mutually agreed upon in writing.

**3.3.5 Reserved. (LBE Payment and Utilization Tracking System.)**

**3.3.6 Getting paid by the City for goods and/or services.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

**3.3.7 Grant Funded Contracts.**

(a) **Disallowance.** If Contractor requests or receives payment from City for Services, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other agreement between Contractor and City.

(b) **Grant Terms.** The funding for this Agreement is provided in full or in part by a Federal or State Grant to the City. As part of the terms of receiving the funds, the City is required to incorporate some of the terms into this Agreement. The incorporated terms may be found in Appendix C, "Grant Terms." To the extent that any Grant Term is inconsistent with any other provisions of this Agreement such that Contractor is unable to comply with both the Grant Term and the other provision(s), the Grant Term shall apply.

(c) Contractor shall insert each Grant Term into each lower tier subcontract. Contractor is responsible for compliance with the Grant Terms by any subcontractor, lower-tier subcontractor or service provider.

3.4 **Audit and Inspection of Records.** Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not fewer than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any Federal agency having an interest in the subject matter of this Agreement shall have the same rights as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

3.6 **Reserved. (Payment of Prevailing Wages.)**

#### **Article 4 Services and Resources**

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A, "Scope of Services." Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5, "Modification of this Agreement."

4.2 **Qualified Personnel.** Contractor shall utilize only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

4.3 **Subcontracting.**

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of

the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

4.3.2 City's execution of this Agreement constitutes its approval of the subcontractors listed below.

#### **4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.4.1 **Independent Contractor.** For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 **Payment of Employment Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and

offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to this Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

4.5 **Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved in the same manner as this Agreement in accordance with the Administrative Code. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (i) reputable and capable, financially and otherwise, of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (ii) not forbidden by applicable law from transacting business or entering into contracts with City; and (iii) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

4.6 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

5.1.1 **Required Coverages.** Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

(a) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and

**(if Contractor will provide services for vulnerable clients such as minors and/or the elderly,)**

“Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; policy must include Abuse and Molestation coverage.”

(c) Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

**→ Contractors that must be State-licensed as professionals to perform services, i.e., architects, engineers, certified public accountants, attorneys, brokers, etc., must provide professional liability insurance, also known as errors-and-omissions coverage. If the Contractor is such a professional, then include subsection (d) below.**

(d) Professional Liability Insurance, applicable to Contractor’s profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

**→ Contractors that will provide the following services, must provide Technology Errors and Omissions Liability coverage: Application Service Providers, Computer Consultants/Engineers, Data Processing or Programming, Data Hosting Services, Internet Services, Software Developers and Computer Systems Management or Data Analysis Services. If Contractor provides such services, then include subsections (e) (including (i) and (ii)) below.**

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 for each claim and each loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses into, or otherwise causing damage to the City’s or third person’s computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

**→ Contracts for hardware or software that create or increase the risk of loss of confidential data must include a requirement for Cyber and Privacy Insurance.**

(f) Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than \$1,000,000 per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information

or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

5.1.3 Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

5.1.4 All policies shall be endorsed to provide thirty (30) days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties."

5.1.5 Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

5.1.6 Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

5.1.7 Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

5.1.8 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.9 The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.10 If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds.

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter.

Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF 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, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor,

or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

6.3 **Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7      Payment of Taxes**

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

7.2.1 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest.

7.2.2 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

7.2.3 Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

7.2.4 Contractor further agrees to provide such other information as may be requested by the City to enable the City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount

required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

8.1.1 City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

8.1.2 Upon receipt of the notice of termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by City.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(d) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(e) Completing performance of any Services that City designates to be completed prior to the date of termination specified by City.

(f) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.

8.1.3 Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all Services under this

Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

(c) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 City's payment obligation under this Section shall survive termination of this Agreement.

**8.2 Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

(a) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

3.5	Submitting False Claims.	10.10	Alcohol and Drug-Free Workplace
4.5	Assignment	10.13	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	12.1	Homeland Security Grant Program Requirements (incl. Appendix C)
		Article 13	Data and Security

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by

ordinance or statute and incorporated by reference herein, and such default is not cured within ten days after written notice thereof from City to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (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 Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor'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 Contractor.

8.2.2 On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

8.2.3 All 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 exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent by registered mail to the address set forth in Article 11.

8.3 **Non-Waiver of Rights.** The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**8.4 Rights and Duties upon Termination or Expiration.**

8.4.1 This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services	9.1	Ownership of Results
3.3.7(a)	Grant Funded Contracts – Disallowance	9.2	Works for Hire
3.4	Audit and Inspection of Records	11.6	Dispute Resolution Procedure
3.5	Submitting False Claims	11.7	Agreement Made in California; Venue
Article 5	Insurance and Indemnity	11.8	Construction
6.1	Liability of City	11.9	Entire Agreement
6.3	Liability for Incidental and Consequential Damages	11.10	Compliance with Laws
Article 7	Payment of Taxes	11.11	Severability
8.1.6	Payment Obligation	12.1	Homeland Security Grant Program Requirements (incl. Appendix C)
		Article 13	Data and Security

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City.

**Article 9 Rights In Deliverables**

9.1 **Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

9.2 **Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any

Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca/](http://www.amlegal.com/codes/client/san-francisco_ca/) .

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

### **10.5 Nondiscrimination Requirements.**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and

12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. Contractor does not as of the date of this Agreement, and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

**10.7 Minimum Compensation Ordinance.** If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

**10.8 Health Care Accountability Ordinance.** If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of the Chapter 12Q, as well as the Health Commission's minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

**10.9 First Source Hiring Program.** Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed

from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) or California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq.

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor’s board of directors; Contractor’s chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Reserved. (Slavery Era Disclosure.)**

**10.13 Reserved. (Working with Minors.)**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions.**

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, “City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions,” of the San Francisco Administrative Code (“Chapter 12T”), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

10.14.2 The requirements of Chapter 12T shall only apply to a Contractor's or Subcontractor's operations to the extent those operations are in furtherance of the performance of this Agreement, shall apply only to applicants and employees who would be or are performing work in furtherance of this Agreement, and shall apply when the physical location of the employment or prospective employment of an individual is wholly or substantially within the City of San Francisco. Chapter 12T shall not apply when the application in a particular context would conflict with federal or state law or with a requirement of a government agency implementing federal or state law.

10.15 **Public Access to Nonprofit Records and Meetings.** If Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

10.16 **Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.17 **Reserved. (Distribution of Beverages and Water.)**

10.18 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.19 **Reserved. (Preservative Treated Wood Products.)** Contractor shall comply with the provisions of San Francisco Environment Code Chapter 13, which requires that each Contractor purchasing preservative-treated wood products on behalf of the City, shall only purchase such products from the list of alternatives adopted by the Department of the Environment pursuant to Section 1302 of Chapter 13, unless otherwise granted an exemption by the terms of that Chapter.

## Article 11    General Provisions

11.1            **Notices to the Parties.** Unless otherwise indicated in this Agreement, all written communications sent by the Parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To City:	Name
	Title, Department
	Address
	Email
To Contractor:	Name
	Title
	Contractor
	Address
	Email

Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

11.2            **Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

11.3            **Incorporation of Recitals.** The matters recited above are hereby incorporated into and made part of this Agreement.

11.4            **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

11.5            **Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1, "Notices to Parties," regarding change in personnel or place, and except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (CMD Contract Modification Form).

11.6            **Dispute Resolution Procedure.**

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of

services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 Agreement Made in California; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**11.8 Construction.** All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**11.11 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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, and both Parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No Party shall be considered the drafter of

this Agreement, and no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated [Insert Date of Proposal]. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

**11.14 Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to all data given to Contractor by City in the performance of this Agreement ("City Data" or "Data"), or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

## **Article 12 Department Specific Terms**

**12.1 Homeland Security Grant Program Requirements.** Contractor agrees to be bound by the terms and conditions of the document entitled "Grant Terms - Contract Provisions for Non-Federal Entity Contracts under Federal Awards," attached hereto as Appendix C and fully incorporated herein.

## **Article 13 Data and Security**

### **13.1 Nondisclosure of Private, Proprietary or Confidential Information.**

**13.1.1 Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**13.1.2 Confidential Information.** In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such

information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

**13.2 Payment Card Industry (“PCI”) Requirements.** Contractors providing services and products that handle, transmit or store cardholder data, are subject to the following requirements:

13.2.1 Applications shall be compliant with the Payment Application Data Security Standard (PA-DSS) and validated by a Payment Application Qualified Security Assessor (PA-QSA). A Contractor whose application has achieved PA-DSS certification must then be listed on the PCI Councils list of PA-DSS approved and validated payment applications.

13.2.2 Gateway providers shall have appropriate Payment Card Industry Data Security Standards (PCI DSS) certification as service providers (<https://www.pcisecuritystandards.org/index.shtml>). Compliance with the PCI DSS shall be achieved through a third party audit process. The Contractor shall comply with Visa Cardholder Information Security Program (CISP) and MasterCard Site Data Protection (SDP) programs.

13.2.3 For any Contractor that processes PIN Debit Cards, payment card devices supplied by Contractor shall be validated against the PCI Council PIN Transaction Security (PTS) program.

13.2.4 For items 13.2.1 to 13.2.3 above, Contractor shall provide a letter from their qualified security assessor (QSA) affirming their compliance and current PCI or PTS compliance certificate.

13.2.5 Contractor shall be responsible for furnishing City with an updated PCI compliance certificate 30 calendar days prior to its expiration.

13.2.6 Bank Accounts. Collections that represent funds belonging to the City and County of San Francisco shall be deposited, without detour to a third party’s bank account, into a City and County of San Francisco bank account designated by the Office of the Treasurer and Tax Collector.

**13.3 Business Associate Agreement.** This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). A Business Associate Agreement (“BAA”) executed by the parties is attached as Appendix [[Letter C/D/E etc.](#)].

1.

#### **13.4 Management of City Data and Confidential Information**

13.4.1 **Access to City Data.** City shall at all times have access to and control of all data given to Contractor by City in the performance of this Agreement (“City Data” or “Data”), and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

13.4.2 **Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any

work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**13.4.3 Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within forty-eight (48) hours return all Confidential Information which includes all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall within ten (10) business days purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five (5) business days of the purge.

## **Article 14    MacBride And Signature**

**14.1 MacBride Principles - Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

**CONTRACTOR**

Recommended by:

[company name]

\_\_\_\_\_  
**Name**  
**Title**  
**Department of Emergency Management**

\_\_\_\_\_  
**[name of authorized representative]**  
**[title]**  
**[optional: address]**  
**[optional: city, state, ZIP]**

City Supplier Number: **[Supplier ID]**

Approved as to Form:

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
**[name of Deputy City Attorney]**  
Deputy City Attorney

Approved:  
Alaric Degrafinried  
Director of the Office of Contract Administration,  
and Purchaser

By: \_\_\_\_\_  
Name: \_\_\_\_\_

**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: Grant Terms – Contract Provisions for Non-Federal Entity Contracts under Federal Awards
- C-1: Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tire covered Transactions
- C-2: Certification Regarding Lobbying

**Appendix A**  
**Services to be Provided by Contractor**

**Scope of Services**

**1. Description of Services**

- Project Background
- Project Scope
- Project Deliverables
- Project Timeline

**2. Reports**

Contractor shall submit written reports as requested by the UASI Management Team. The UASI Management Team shall determine the format for the content of such reports. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

**3. Department Liaison**

In performing the services provided for in this Agreement, Contractor's liaison with the Bay Area UASI Management Team will be [XXXXXX].

**Appendix B  
Calculation of Charges**

<b>Deliverable</b>	<b>Target Completion Dates</b>	<b>Cost</b>
<b>&lt;Title&gt;</b>		
<u>Deliverable 1:</u>		
<b>&lt;Title&gt;</b>		
<u>Deliverable 2:</u>		
<b>&lt;Title&gt;</b>		
<u>Deliverable 3:</u>		
<b>Total Cost</b>		

Actual Cost Reimbursement:

- Personnel and Hourly Rate
- Actual costs for contractor meals, accommodations, mileage, long distance and cellular phone charges, postage, vehicle rental, etc., subject to the approval of City.
- Any other applicable rates or charges under the Agreement.

## **Appendix C Grant Terms**

### **Contract Provisions for Non-Federal Entity Contracts under Federal Awards**

#### **I. Definitions**

- A. Agreement** means the agreement between City and Contractor to which this document (Contract Provisions for Non-Federal Entity Contracts under Federal Awards) is attached and incorporated or for which Contractor has submitted a bid or Proposal.
- B. City** means the City and County of San Francisco.
- C. Contractor** means the individual or entity awarded a third party contract financed in whole or in part with Federal assistance originally derived from the Federal awarding agency.
- D. Government** means the United States of America and any executive department or agency thereof.
- E. Federal awarding agency** means the Federal agency that provides a Federal award to a non-Federal entity.
- F. Third Party Subcontract** means a subcontract at any tier entered into by Contractor or subcontractor, financed in whole or in part with Federal assistance originally derived from the Federal awarding agency.

#### **II. Federal Changes**

- A.** Contractor shall at all times comply with all applicable regulations, policies, procedures and Federal awarding agency directives, including without limitation those listed directly or by reference in the Master Agreement between the City and the Federal awarding agency or in the Grant Program Guidelines, as they may be amended or promulgated from time to time during the term of this Agreement. Contractor's failure to so comply shall constitute a material breach of this contract.
- B.** The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by the Federal awarding agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **III. Access to Records**

- A.** The Contractor agrees to provide the City, the Federal awarding agency, Inspectors General, the Comptroller General of the United States or any their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The right also includes timely and

reasonable access to personnel for the purpose of interview and discussion related to such documents. 2 CFR §200.336.

- B. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Contractor agrees to maintain all books, records, accounts and reports required under this Agreement for a period of not less than three years after the later of: (a) the date of termination or expiration of this Agreement or (b) the date City makes final payment under this Agreement, except in the event of litigation or settlement of claims arising from the performance of this Agreement, in which case, Contractor agrees to maintain same until the City, the Federal awarding agency, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. The rights of access in this section are not limited to the required retention period but last as long as the records are retained. 2 CFR §200.333 and 2 CFR §200.336.

#### **IV. No Federal Government Obligations to Contractor**

- A. The City and Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Government, the Government is not a party to this contract and shall not be subject to any obligations or liabilities to the City, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by the Federal awarding agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **V. Notice of Reporting Requirements**

- A. Contractor acknowledges that it has read and understands the reporting requirements of the Office of Management and Budget stated in 2 CFR §200.328, and agrees to comply with any such applicable requirements.
- B. The Contractor agrees to include the above clause in each third party subcontract financed in whole or in part with Federal assistance provided by the Federal awarding agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

#### **VI. Termination for Convenience of City (*applicable to all contracts in excess of \$10,000; 2 CFR §200 Appendix II(b)*)**

- A. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise

this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective

- B.** Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by City and to minimize the liability of Contractor and City to third parties as a result of termination. All such actions shall be subject to the prior approval of the City. Such actions shall include, without limitation:
- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.
  - (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
  - (3) Terminating all existing orders and subcontracts.
  - (4) At City's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
  - (5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
  - (6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.
  - (7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.
- C.** Within 30 days after the specified termination date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:
- (1) The reasonable cost to Contractor, without profit, for all services and other work City directed Contractor to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice. Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which City has or may acquire an interest.
  - (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

- (3) The reasonable cost to Contractor of handling material or equipment returned to vendor, delivered to the City or otherwise disposed of as directed by the City.
- D. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs related to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).
- E. In arriving at the amount due to Contractor under this Section, City may deduct:
  - (1) All payments previously made by City for work or other services covered by Contractor's final invoice;
  - (2) Any claim which City may have against Contractor in connection with this Agreement;
  - (3) Any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and
  - (4) In instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.
- F. City's payment obligation under this Section shall survive termination of this Agreement.

**VII. Termination for Default** (*applicable to all contracts in excess of \$10,000; 2 CFR §200 Appendix II(b)*)

Contractor's failure to perform or observe any term, covenant or condition of this document (Contract Provisions for Non-Federal Entity Contracts under Federal Awards) shall constitute an event of default under this Agreement.

- A. Each of the following shall also constitute an event of default ("Event of Default") under this Agreement:
  - (1) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.
  - (2) Contractor (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its

creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(3) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) 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 (c) ordering the dissolution, winding-up or liquidation of Contractor.

B. On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

C. All 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 exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

**VIII. Equal Employment Opportunity Compliance** *(applicable to all construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees; 2 CFR §200 Appendix II(c))*

Contractor agrees to comply with Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Part 60).

**IX. Davis-Bacon Act Compliance** *(applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation; 2 CFR §200 Appendix II(d))*

Contractor agrees to comply with the Davis-Bacon Act (40 U.S.C. 3141-3418) as supplemented by Department of Labor regulations (29 CFR Part 5).

**X. Copeland Anti-Kickback Act Compliance** (*applicable to construction contracts in excess of \$2,000 awarded by grantees and subgrantees when required by Federal grant program legislation; 2 CFR §200 Appendix II(d)*)

Contractor agrees to comply with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145) as supplemented in Department of Labor regulations (29 CFR Part 3).

**XI. Contract Work Hours and Safety Standards** (*applicable to all contracts awarded by grantees and subgrantees in excess of \$100,000, which involve the employment of mechanics or laborers; 2 CFR §200 Appendix II(e)*)

**A. Compliance:** Contractor agrees that it shall comply with Sections 3702 and 3704 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701–3708) as supplemented by Department of Labor regulations (29 CFR Part 5), which are incorporated herein.

**B. Overtime:** No contractor or subcontractor contracting for any part of the work under this Agreement which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

**C. Violation; liability for unpaid wages; liquidated damages:** In the event of any violation of the provisions of Paragraph B, the Contractor and any subcontractor responsible therefore shall be liable to any affected employee for his unpaid wages. In additions, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph B in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of eight hours or in excess of his standard workweek of forty hours without payment of the overtime wages required by paragraph B.

**D. Withholding for unpaid wages and liquidated damages:** The City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set for in paragraph C of this section.

**E. Subcontracts:** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this section.

**XII. Notice of Requirements Pertaining to Copyrights**

**A.** Contractor agrees that the Federal awarding agency shall have a royalty-free, nonexclusive, and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for government purposes:

(1) The copyright in any work developed with the assistance of funds provided under this Agreement;

(2) Any rights of copyright to which Contractor purchases ownership with the assistance of funds provided under this Agreement. 2 CFR §200.315.

**B.** The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by the Federal awarding agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XIII. Rights to Inventions Made Under a Contract or Agreement** (*applicable to contracts for experimental, developmental, or research work projects; 2 CFR §200 Appendix II(f) and 2 CFR §200.315*)

**A. General.** If any invention, improvement, or discovery is conceived or first actually reduced to practice in the course of or under this Agreement, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the City and Contractor agree to take actions necessary to provide immediate notice and a detailed report to the Federal awarding agency.

**B.** Unless the Government later makes a contrary determination in writing, irrespective of Contractor's status (a large business, small business, state government or state instrumentality, local government, nonprofit organization, institution of higher education, individual), the City and Contractor agree to take the necessary actions to provide, through the Federal awarding agency, those rights in that invention due the Federal Government as described in U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Proposers Under Government Grants, Contracts and Cooperative Agreements," 37 CFR, Part 401.

**C.** The Contractor agrees to include paragraphs A and B above in each third party subcontract for experimental, developmental, or research work financed in whole or in part with Federal assistance provided by the Federal awarding agency. It is further

agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XIV. Energy Conservation Requirements**

- A. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.
- B. The Contractor agrees to include paragraph A above in each third party subcontract financed in whole or in part with Federal assistance provided by Federal awarding agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XV. Clean Air and Water Requirements** *(applicable to all contracts and subcontracts in excess \$150,000, including indefinite quantities where the amount is expected to exceed \$150,000 in any year; 2 CFR §200 Appendix II(g))*

- A. Contractor agrees to comply with all applicable standards, orders, or requirements issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387).
- B. Contractor agrees to report each violation of these requirements to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to the Federal awarding agency and the appropriate EPA regional office.
- C. The Contractor agrees to include paragraph A and B above in each third party subcontract exceeding \$150,000 financed in whole or in part with Federal assistance provided by the Federal awarding agency.

**XVI. Debarment and Suspension** *(applicable to all contracts and subcontracts; 2 CFR §200 Appendix II(h))*

- A. Contractor represents and warrants that it is not debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension." Contractor agrees that neither Contractor nor any of its third party subcontractors shall enter into any third party subcontracts for any of the work under this Agreement with a third party subcontractor who is debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549 and 12689. 2 CFR §180.220.
- B. Contractor agrees to the provisions of Attachment 1, Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions, attached hereto and incorporated herein. For purposes of this Agreement and Attachment 1, Contractor is the “prospective lower tier participant.”

- C. The Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by the Federal awarding agency. It is further agreed that the paragraphs shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XVII. Byrd Anti-Lobbying Requirements**

- A. Contractor shall not use or pay any funds received under this Agreement to influence or attempt to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. 2 CFR 200, Appendix II(i).
- B. Contractor agrees to the provisions of Attachment 2, Certification Regarding Lobbying, attached hereto and incorporated herein (applicable for contracts or subcontracts in excess of \$100,000).
- C. Contractor agrees to include paragraphs A and B above in each third party subcontract financed in whole or in part with Federal assistance provided by Federal awarding agency. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**XVIII. Procurement of Recovered Materials** *(applicable to all contracts and subcontracts for the procurement of recovered materials; 2 CFR §200 Appendix II(h))*

Contractor agrees to comply with all applicable standards, orders, or requirements issued pursuant to section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as supplemented by the Environmental Protection Agency regulations (40 CFR Part 247).

**XIX. Incorporation of Uniform Administrative Requirements**

The preceding provisions include, in part, certain standard terms and conditions required by the Federal awarding agency, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the Federal awarding agency, as set forth in 2 CFR Part 200, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all of the Federal awarding agency's mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. Contractor shall not perform any act, fail to perform any act, or refuse to comply with any City requests that would cause City to be in violation of the Federal awarding agency's terms and conditions.

**Appendix C**  
**Attachment 1**

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND  
VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

*(Lower Tier refers to the agency or contractor receiving Federal funds, as well as any subcontractors that the agency or contractor enters into contract with using those funds)*

As required by Executive Order 12549 and 12689, Debarment and Suspension, as defined at 2 CFR 200 Appendix II, City may not enter into contract with any entity that is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal Government from participating in transactions involving Federal funds. You are required to sign the certification below which specifies that neither you nor your principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by the Federal agency. It also certifies that you will not use, directly or indirectly, any of these funds to employ, award contracts to, engage the services of, or fund any contractor that is debarred, suspended, or ineligible under 2 CFR 200.

**Instruction for Certification**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to whom this Proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.
4. The terms *covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, Proposal, and voluntarily excluded*, as used in this clause, have the meaning set out in the Definition and Coverage sections of rules implementing Executive Order 12549 and 12689. You may contact the person to which this Proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this agreement that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 2 CFR 200.213, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this Proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and

Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 2 CFR 200.213, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 2 CFR 200.213, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction originated may pursue available remedies, including suspension and/or debarment.

***Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions***

1. The prospective lower tier participant certifies, by submission of its Proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this Proposal.

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Contractor Signature

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Date

**Appendix C**  
**Attachment 2**

**CERTIFICATION REGARDING LOBBYING**

*(Certification for Contracts, Grants, Loans, and Cooperative Agreements)*

The undersigned certifies, to the best of his or her knowledge and belief, that:

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

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Contractor Signature

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Date

**APPENDIX III – PROPOSALS STATEMENT FORM**  
**RFP# UASI 18-02**  
**UASI Regional Training and Exercise Program Administration**  
**INSERT PROPOSER NAME HERE**

**1. Section VI RFP Terms and Conditions Acceptance**

Submission of a proposal indicates a Proposer’s acceptance of the terms and conditions contained in this RFP unless clearly and specifically noted otherwise in the Proposal. The City may discontinue its selection, contract negotiations, or contract award processes with any Proposer if it is determined that the Proposer has not accepted the RFP terms and conditions contained herein.

**EACH PROPOSER AS PART OF ITS RESPONSE MUST SUBMIT THIS DOCUMENT SIGNED BY A REPRESENTATIVE(S) AUTHORIZED BY THE PROPOSER TO MAKE REPRESENTATIONS FOR THE PROPOSER AND TO OBLIGATE THE PROPOSER TO PERFORM THE COMMITMENTS CONTAINED IN ITS PROPOSAL.**

Acknowledged and agreed:

\_\_\_\_\_  
Signature of Authorized Representative:

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Firm Name

\_\_\_\_\_  
Address, City, State

\_\_\_\_\_  
Phone Number

\_\_\_\_\_  
Date

**APPENDIX III – PROPOSALS STATEMENT FORM**  
**RFP# UASI 18-02**  
**UASI Regional Training and Exercise Program Administration**  
**INSERT PROPOSER NAME HERE**

**2. Appendix I- City’s Administrative Requirements**

- **Proposer need to register for the Bidder’s ID in order to submit proposals. Register at <https://sfcitypartner.sfgov.org/pages/BidderRegistration-BS3/bidder-registration-1.aspx>**
- The awarded Proposer must fulfill the City’s administrative requirements for doing business with the City and become a compliant vendor in order to sign a contract with City. Fulfillment is defined as completion, submission, and approval by applicable City agencies of the forms and requirements referenced at <https://sfcitypartner.sfgov.org/pages/become-a-supplier.aspx>. The steps listed on the website will need to be completed and the firm will have to become a compliant supplier in order to sign a contract with City. City recommends that non-compliant Proposers get started on this process as soon as possible. Although the Supplier ID is not a requirement for Proposal submission.
- Provide Proposer information below.

Respondent's City Bidder’s ID #	<i>[Insert Bidder’s ID – required for proposal submission]</i>
Respondent's City Supplier ID #	<i>[Insert Supplier ID, if applicable]</i>
Contact Name	<i>[Insert contact name]</i>
Email	<i>[Insert email]</i>
Phone Number	<i>[Insert phone number]</i>

**APPENDIX III – PROPOSALS STATEMENT FORM**  
**RFP# UASI 18-02**  
**UASI Regional Training and Exercise Program Administration**  
**INSERT PROPOSER NAME HERE**

**3. Acceptance of U.S. Department of Homeland Security Urban Area Initiative Grant Program Requirements (Minimum Qualifications #1)**

A representation that the Proposer acknowledge and accepts all the requirements described in **Article 12 and Appendix C of Agreement for Professional Services Form P-600 (Appendix II of the RFP)**.

- I acknowledge and agree that my entity accepts all of the U.S. Department of Homeland Security Urban Areas Security Initiative Grant Program Requirements as part of my response

Acknowledged and agreed:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

**APPENDIX IV – MINIMUM QUALIFICATIONS (MQ) FORM**  
**RFP# UASI 18-02: UASI Regional Training and Exercise Program Administration**

**INSERT PROPOSER NAME**

**Note that all documents under this RFP process are subject to public disclosure. Please exclude confidential or proprietary information, as appropriate.**

*Instructions are provided in blue and may be deleted.* Note that responses of “To be provided upon request” or “To be determined” or the like, or that do not otherwise provide the information requested (e.g., left blank) are not acceptable.

**Minimum Qualifications (RFP Page 11 to 12)**

Proposers must provide a prior project reference demonstrating their ability to meet each minimum qualification listed. Proposers should include **at least two (2) but no more than three (3) total references**. At least one of the projects referenced must meet multiple minimum qualifications.

Include below references (limited to three) and their relevant information. Contacts for each project are required. **Please attach a letter from each reference for the project(s) that comprise your minimum qualifications. Each letter should be no more than one (1) page, and signed by the authorized representative.**

**APPENDIX IV – MINIMUM QUALIFICATIONS (MQ) FORM**  
**RFP# UASI 18-02: UASI Regional Training and Exercise Program Administration**

**INSERT PROPOSER NAME**

<b>Reference 1</b>	<b>Contact Name and Job Title</b>	<i>[Insert name and job title]</i>
	<b>Organization Name</b>	<i>[Insert organization name]</i>
	<b>Project Name</b>	<i>[Insert project name]</i>
	<b>Phone Number</b>	<i>[Insert phone number]</i>
	<b>Email</b>	<i>[Insert email address]</i>

<b>Reference 2</b>	<b>Contact Name and Job Title</b>	<i>[Insert name and job title]</i>
	<b>Organization Name</b>	<i>[Insert organization name]</i>
	<b>Project Name</b>	<i>[Insert project name]</i>
	<b>Phone Number</b>	<i>[Insert phone number]</i>
	<b>Email</b>	<i>[Insert email address]</i>

<b>Reference 3</b>	<b>Contact Name and Job Title</b>	<i>[Insert name and job title]</i>
	<b>Organization Name</b>	<i>[Insert organization name]</i>
	<b>Project Name</b>	<i>[Insert project name]</i>
	<b>Phone Number</b>	<i>[Insert phone number]</i>
	<b>Email</b>	<i>[Insert email address]</i>

**APPENDIX IV – MINIMUM QUALIFICATIONS (MQ) FORM**  
**RFP# UASI 18-02: UASI Regional Training and Exercise Program Administration**

**INSERT PROPOSER NAME**

MQ#	Minimum Qualifications	List of proof documentations
1.	Must be able to execute Appendix C of the City’s contract, U.S. Department of Homeland Security Urban Areas Security Initiative Grant Program	<input type="checkbox"/> Completed and signed: Appendix III – Proposal Statement Form, #3 Acceptance of U.S. Department of Homeland Security’s Urban Areas Security Initiative Grant Program Requirements
2.	Proven familiarity with Bay Area public safety agencies and relevant training requirements /certifications via references and related projects within the last 5 years.	<i>Which reference meets this minimum qualification? Reference (1, 2, or 3): [insert reference #]</i>
3.	Proven understanding of the California Standardized Emergency Management System, Master Mutual Aid Compact, and regional response structure via integration of these concepts in the proposed project approach.	<i>Which reference meets this minimum qualification? Reference (1, 2, or 3): [insert reference #]</i>
4.	Proven success in facilitating multi-discipline work groups to build consensus via references and related projects within the last 5 years.	<i>Which reference meets this minimum qualification? Reference (1, 2, or 3): [insert reference #]</i>
5.	Proven success with experience developing and implementing a Multi-Year Training and Exercise Plan proven via references and related projects within the last 5 years.	<i>Which reference meets this minimum qualification? Reference (1, 2, or 3): [insert reference #]</i>
6.	Proven success in coordinating & administering public safety training courses proven via references and related projects within the last 5 years.	<i>Which reference meets this minimum qualification? Reference (1, 2, or 3): [insert reference #]</i>
7.	Proven success in developing & evaluating multi-discipline large scale exercises proven via references and related projects within the last 5 years.	<i>Which reference meets this minimum qualification? Reference (1, 2, or 3): [insert reference #]</i>
8.	Proven success of program management capabilities demonstrated in the proposed project approach and validated via references and related projects within the last 5 years.	<i>Which reference meets this minimum qualification? Reference (1, 2, or 3): [insert reference #]</i>
9.	Proven success working with multiple jurisdictions and public entities in a concurrent manner within the last 5 years.	<i>Which reference meets this minimum qualification? Reference (1, 2, or 3): [insert reference #]</i>
10.	Proven success of technical capabilities for website design, hosting, and maintenance within the last 5 years.	<i>Which reference meets this minimum qualification? Reference (1, 2, or 3): [insert reference #]</i>