



March 16, 2011

Dear Approval Authority Members,

At the Approval Authority Meeting of March 1, 2011, Teresa Reed submitted two letters for consideration by the Approval Authority under Item #4. The letters specifically requested that the UASI management respond to the Bullet Points in writing. That is the purpose of this letter.

Letter #1

- **Any possible fiscal or legal risk the Bay Area UASI will face if the reallocation of the \$6.2M is not retroactively approved,**

There is no risk to the Bay Area UASI, refer to current Master MOU Indemnification Language.

- **Any possible fiscal or legal risk the County of Alameda will face if the reallocation of the \$6.2M is not retroactively approved,**

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



- **A detailed description and accounting of all money expended on equipment and personnel cost to date,**

Contract Amount with Motorola: \$5,588,794

Change Order #1 with Motorola: \$114,743

Change Order #2 with Motorola: \$23,434

Total: \$5,726,971

Invoices Paid to date: \$ 2,041,916

Performance Bond for Project: \$41,916 (The performance bond was purchased for the full project and will be re-negotiated for the smaller scope. It is unknown what the final cost of the bond will be, but it will be a cost expected to be paid within the \$2.2M)

- **A detailed description of the amount of the \$6.2M actually available for reallocation, this total will take into account all funds expended, encumbered and/or obligated,**

It is expected that the final outstanding change orders will be paid to bring the total invoices paid to date to \$2,180,093, plus the new cost of the Performance Bond.

- **Terms in the existing Motorola contract with EBRCSA which gives the UASI Mgt Team staff confidence it can be renegotiated,**

There are no terms in the contract, EBRCSA entered into dialogue with Motorola to determine how the Pilot Project could still be viable but be scaled back to make \$4M available. The parties are working collaboratively.

- **A legal opinion determining potential conflict of interest held by the County of Alameda, Approval Authority member and ability to participate in any vote, discussion or any other activity regarding this matter.**

The legal counsel for Alameda County has indicated they will not provide a written legal opinion. If the UASI Approval Authority chooses to hire legal counsel for the body, that individual can provide the opinion being requested. In the meantime, Rich Lucia, stated “that legal counsel’s opinion was that since the UASI votes on regional assets he should vote. If he was to recuse himself from this vote then he would need to have recused himself for any vote that dealt with dollars to Alameda County and that each member should do the same and that hasn’t been the practice of the board”.



Supplemental Letter (\$2M conditions in writing):

- **Extension of the performance period that is more realistic for the City of San Jose;**

The UASI Management Team cannot provide any extensions beyond what are defined within the State and Federal Guidelines:

Below are the deadlines for the current grant performance period.

3/31/11- Identified Interoperable Communications Project plans are necessary to be included in the Modification Request for approval by the State.

(Project plan, with equipment info and EHP forms completed)

9/30/11-The Project must be “finished”* and paid for

11/30/11-The Reimbursement Claim must be to the UASI

7/30/12-A Performance Bond on the project* will extend the completion date to the end of the States Performance Period.

*The Performance Bond is required on any project that exceeds \$250,000 and is allowable to the end of the States Performance Period on the Grant, so likely due to the dollar value of the project(s) they will need the bond, and it will be the insurance to hold them for the longer period of time.

- **UASI Management Team obtain approval to change the grant expenditure category to allow the City of San Jose greater flexibility for use of funds; and**
The City of San Jose may use the identified \$2M for a Project within the broad category of the Interoperable Communications (voice or data) Investment Justification.
- **Amendment to the FY09 UASI MOU be received within 30 days**
The UASI Management team is committed to providing the FY09 UASI MOU amendment within 30 days of receiving the required project documentation and approval of the modification. (Requested by 3/31/11, as to make it into the next grant modification request.)

Respectfully,

Laura Phillips, General Manager