

**MASTER AGREEMENT BETWEEN THE CITY AND  
COUNTY OF SAN FRANCISCO AND THE COUNTY OF  
MONTEREY FOR THE DISTRIBUTION OF UASI GRANT  
FUNDS**

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THIS AGREEMENT is made this **January 25, 2022** in the City and County of San Francisco, State of California, by and between the **COUNTY OF MONTEREY** ("MONTEREY") and the CITY

AND COUNTY OF SAN FRANCISCO, a municipal corporation ("San Francisco" or "City"), in its capacity as fiscal agent for the Approval Authority, as defined below, acting by and through the San Francisco Department of Emergency Management ("DEM").

***RECITALS***

WHEREAS, The United States Department of Homeland Security ("DHS") consolidated the separate San Jose, Oakland, and San Francisco Urban Areas into a combined Bay Area Urban Area ("UASI Region") for the purpose of application for and allocation and distribution of federal Urban Areas Security Initiative ("UASI") program grant funds; and

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

WHEREAS, The UASI General Manager is responsible for implementing and managing the policy and program decisions of the Approval Authority, directing the work of the UASI Management Team personnel, and performing other duties as determined and directed by the Approval Authority, and

WHEREAS, San Francisco has been designated as the grantee for UASI funds granted by the DHS through the California Office of Emergency Services ("Cal OES") to the UASI Region, with responsibility to establish procedures and execute subgrant agreements for the distribution of UASI program grant funds to jurisdictions selected by the Approval Authority to receive grant funding; and

WHEREAS, San Francisco has been designated to serve as the fiscal agent for the Approval Authority, and to establish procedures and provide all financial services for distribution of UASI program grant funds within the UASI Region; and

WHEREAS, Pursuant to grant allocation decisions by the Approval Authority, the UASI Management Team has asked San Francisco to distribute a portion of the regional UASI grant funds to MONTEREY on the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE 1 DEFINITIONS

1.1 **Specific Terms.** Unless the context requires otherwise, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

(a) **"ADA"** shall mean the Americans with Disabilities Act (including all rules and regulations there under) and all other applicable federal, state and local disability rights legislation, as the same may be amended, modified or supplemented from time to time.

(b) **"Authorized Expenditures"** shall mean expenditures for those purposes identified and budgeted in Appendix A, attached hereto and incorporated by reference as though fully set forth herein.

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

(d) **"Fiscal Quarter"** shall mean each period of three calendar months commencing on July 1, October 1, January 1, and April 1, respectively.

(e) **"Grant Funds"** shall mean any and all funds allocated or disbursed to MONTEREY (DUNS#: 023232635) under this Agreement. This Agreement shall specifically cover funds allocated or disbursed from Cal OES Grant No. 2018-0054, Cal OES ID No. 0759-95017, CFDA No. 97.067, per Cal OES award notice dated October 1, 2018.

(f) **"Grant Plan"** shall mean the plans, performances, events, exhibitions, acquisitions or other activities or matter, and the budget and requirements, described in Appendix A and the WebGrants system. If MONTEREY requests any modification to the Grant Plan, MONTEREY shall submit a written request to the UASI General Manager with the following information: Scope of change requested, reason for change, proposed plan for change, summary of approved and requested modifications to the Grant Plan, and any necessary approvals in support of change (e.g., EHP).

(g) **"Indemnified Parties"** shall mean: (i) San Francisco, including all commissions, departments including DEM, agencies, and other subdivisions of San Francisco; (ii) San Francisco's elected officials, directors, officers, employees, agents, successors, and assigns; and (iii) all persons or entities acting on behalf of the foregoing.

(h) **"Losses"** shall mean any and all liabilities, obligations, losses, damages, penalties, claims, actions, suits, judgments, fees, expenses and costs of whatsoever kind and nature (including legal fees and expenses and costs of investigation, of prosecuting or defending any Loss described above) whether or not such Loss be founded or unfounded, of whatsoever kind and nature.

(i) **"Reimbursement Request"** shall have the meaning set forth in Section 3.10(a).

1.2 **Additional Terms.** The terms "as directed," "as required" or "as permitted" and similar terms shall refer to the direction, requirement, or permission of City. The terms "sufficient," "necessary" or "proper" and similar terms shall mean sufficient, necessary or proper in the sole judgment of City. The terms "approval," "acceptable" or "satisfactory" or similar terms shall mean approved by, or acceptable or satisfactory to, City. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation." The use of the term "subcontractor," "subgrantee," "successor" or "assign" herein refers only to a subcontractor, subgrantee, successor or assign expressly permitted under Article 8.

**References to this Master Agreement.** References to this Master Agreement include: (a) any and all appendices, exhibits, schedules, and attachments hereto; (b) any and all statutes, ordinances, regulations or other documents expressly incorporated by reference herein; and (c) any and all amendments, modifications or supplements hereto made in accordance with Section 10.2. References to articles, sections, subsections or appendices refer to articles, sections or subsections of or appendices to this Agreement, unless otherwise expressly stated. Terms such as "hereunder," "herein" or "hereto" refer to this Agreement as a whole.

1.3 **Reference to laws.** Any reference in this Master Agreement to a federal or state statute, regulation, executive order, requirement, policy, guide, guideline, information bulletin, or instruction shall mean that statute, regulation, executive order, requirement, policy, guide, guideline, information bulletin, or instruction as is currently in effect and as may be amended, modified or supplemented from time to time.

## **ARTICLE 2 ALLOCATION AND CERTIFICATION OF GRANT FUNDS; LIMITATIONS ON SAN FRANCISCO'S OBLIGATIONS**

2.1 **Risk of Non-Allocation of Grant Funds.** This Agreement is subject to all federal and state grant requirements and guidelines, including DHS and Cal OES requirements, guidelines, information bulletins, and instructions, the decision-making of the Cal OES and the Approval Authority, the terms and conditions of the grant award; the approved application, and to the extent applicable the budget and fiscal provisions of the San Francisco Charter. The Approval Authority shall have no obligation to allocate or direct disbursement of funds for this Agreement in lieu of allocations for new or other agreements. MONTEREY acknowledges and agrees that grant decisions are subject to the discretion of the Cal OES and Approval Authority. Further, MONTEREY acknowledges and agrees that the City shall have no obligation to disburse grant funds to MONTEREY until City and MONTEREY have fully and finally executed this Agreement. MONTEREY acknowledges and agrees that if it takes any action, informal or formal, to appropriate, encumber or expend Grant Funds before final allocation decisions by Cal OES and the Approval Authority, and before this Agreement is fully and finally executed, it assumes all risk of possible non-allocation or non-reimbursement of funds, and such acknowledgement and agreement is part of the consideration of this Agreement.

2.2 **Certification of Controller: Guaranteed Maximum Costs.** No funds shall be available under this Agreement without prior written authorization certified by the San Francisco Controller. In addition, as set forth in Section 21.19 of the San Francisco Administrative Code:

(a) San Francisco's obligations hereunder shall not at any time exceed the amount approved in the grant award and/or by the Approval Authority and certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by San Francisco ordinances governing emergency conditions, San Francisco and its employees and officers, and the UASI Management Team and its personnel, are not authorized to request MONTEREY to perform services or to provide materials, equipment and supplies that would result in MONTEREY performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies specified in this Agreement, unless this Agreement is amended in writing and approved as required by law to authorize the additional services, materials, equipment or supplies. San Francisco is not required to pay MONTEREY for services, materials, equipment or supplies that are provided by MONTEREY that are beyond the scope of the services, materials, equipment and supplies agreed upon herein and which were not approved by a written amendment to this Agreement having been lawfully executed by San Francisco.

(c) San Francisco and its employees and officers, and the UASI Management Team and its personnel, are not authorized to offer or promise to MONTEREY additional funding for this Agreement that would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. San Francisco is not required to honor any offered or promised additional funding that exceeds the maximum provided in this Agreement that requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

(d) The Controller is not authorized to make payments on any agreement for which funds have not been certified as available in the budget or by supplemental appropriation.

2.3 **SUPERSEDURE OF CONFLICTING PROVISIONS.** IN THE EVENT OF ANY CONFLICT BETWEEN ANY OF THE PROVISIONS OF THIS ARTICLE 2 AND ANY OTHER PROVISION OF THIS AGREEMENT, THE APPLICATION DOCUMENTS OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, THE TERMS OF THIS ARTICLE 2 SHALL GOVERN.

### **ARTICLE 3 PERFORMANCE OF THE MASTER AGREEMENT**

3.1 **Duration of Term.** The term of this Agreement shall commence on **DECEMBER 1, 2021** and shall end at 11:59 p.m. San Francisco time on **NOVEMBER 30, 2025.**

3.2 **Use of Funds.**

(a) General Requirements. MONTEREY shall use the Grant Funds received under this Agreement for the purposes and in the amounts set forth in the Grant Plan. MONTEREY shall not use or expend Grant Funds for any other purpose, including but not limited to, for matching funds for other federal grants/cooperative agreements, lobbying or intervention in federal regulatory or adjudicatory proceedings, or to sue the federal government or any other government entity. MONTEREY shall not permit any federal employee to receive Grant Funds.

(b) Modification of Grant Plan. Under Sections 1.1(f) and 10.2 of this Agreement, MONTEREY may submit a written request to modify the Grant Plan. MONTEREY shall not appropriate, encumber or expend any additional or reallocated Grant Funds pursuant to such a request for modification until (1) the General Manager or designee has provided written approval for the request and (2) the parties have finally executed a modification of this Agreement under Section 10.2, to reflect the modified Grant Plan. In addition, if the modification request requires approval from the Approval Authority and/or Cal OES, as determined by the General Manager, MONTEREY shall not appropriate, encumber or expend any additional or reallocated Grant Funds pursuant to the modification request without approval from the Approval Authority and/or Cal OES.

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

(d) Obligations. MONTEREY must expend Grant Funds in a timely manner consistent with the grant milestones, guidance and assurances; and make satisfactory progress toward the goals, objectives, milestones and deliverables in this Agreement.

### **3.3 Grant Assurances: Other Requirements: Cooperation with Monitoring.**

(a) MONTEREY shall comply with all Grant Assurances included in Appendix B, attached hereto and incorporated by reference as though fully set forth herein. MONTEREY shall require all subgrantees, contractors and other entities receiving Grant Funds through or from MONTEREY to execute a copy of the Grant Assurances and shall ensure that they comply with those Grant Assurances.

(b) In addition to complying with all Grant Assurances, MONTEREY shall comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OES grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by Cal OES or the Approval Authority. MONTEREY shall require and ensure that all subgrantees, contractors and other entities receiving Grant Funds through or from MONTEREY comply with all applicable statutes, regulations, executive orders, requirements, policies, guides, guidelines, information bulletins, Cal OBS grant management memos, and instructions; the terms and conditions of the grant award; the approved application, and any conditions imposed by Cal OES or the Approval Authority.

(c) MONTEREY shall promptly comply with all standards, specifications and formats of San Francisco and the UASI Management Team, as they may from time to time exist, related to evaluation, planning and monitoring of the Grant Plan and compliance with this Agreement. MONTEREY shall cooperate in good faith with San Francisco and the UASI Management Team in any evaluation, inspection, planning or monitoring activities conducted or authorized by DHS, Cal OBS, San Francisco or the UASI Management Team. For ensuring compliance with non-supplanting requirements, upon request by City or the UASI Management Team, MONTEREY shall supply documentation certifying that a reduction of non-federal resources occurred for reasons other than the receipt or expected receipt of Grant Funds.

**3.4 Administrative, Programmatic and Financial Management Requirements.** MONTEREY shall establish and maintain administrative, programmatic and financial management systems and records in accordance with federal and State of California requirements. This provision requires, at a minimum, that MONTEREY comply with the following non-exclusive list of regulations commonly applicable to DHS grants, as applicable to this Agreement and the Grant Plan:

- (a) Administrative Requirements:
  - 1. 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133).
- (b) Cost Principles:
  - 1. 2 CFR Part 200, Subpart E - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133);
  - 2. Federal Acquisition Regulations (FAR), Part 31.2 *Contract Principles and Procedures, Contracts with Commercial Organizations*.

- (c) Audit Requirements:
  - 1. 2 CFR Part 200 Subpart F - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (formerly 44 CFR Part 13, OMB Circulars A-21, A-87, A-89, A-102, A-110, A-122, and A-133).

### **3.5 Technology Requirements.**

(a) National Information Exchange Model ("NIEM"). MONTEREY shall use the latest NIEM specifications and guidelines regarding the use of Extensible Markup Language ("XML") for all awards of Grant Funds.

(b) Geospatial Guidance. MONTEREY is encouraged to use Geospatial technologies, which can capture, store, analyze, transmit and/or display location-based information (i.e., information linked to a latitude and longitude), and to align any geospatial activities with the guidance available on the Federal Emergency Management Agency ("FEMA") website.

(c) Criminal Intelligence Systems Operating Policies. Any information technology system funded or supported by Grant Funds shall comply with 28 CFR Part 23, *Criminal Intelligence Systems Operating Policies*, if applicable.

(d) MONTEREY is encouraged to use the DHS guidance in *Best Practices for Government Use of CCTV: Implementing the Fair Information Practice Principles*, if Grant Funds are used to purchase or install closed circuit television (CCTV) systems or to support operational CCTV systems.

### **3.6 Procurement Requirements.**

(a) General Requirements. MONTEREY shall follow its own procurement requirements as long as those requirements comply with all applicable federal and State of California statutes, regulations, requirements, policies, guides, guidelines and instructions.

(b) Specific Purchases. If MONTEREY is using Grant Funds to purchase interoperable communication equipment, MONTEREY shall consult DHS's SAFECOM's coordinated grant guidance, which outlines standards and equipment information to enhance interoperable communication. If MONTEREY is using Grant Funds to acquire critical emergency supplies, prior to expending any Grant Funds, MONTEREY shall submit to the UASI Management Team for approval by Cal OBS a viable inventory management plan, an effective distribution strategy, sustainment costs for such an effort, and logistics expertise to avoid situations where funds are wasted because supplies are rendered ineffective due to lack of planning.

(c) Bond requirement. MONTEREY shall obtain a performance bond for any equipment items over \$250,000 or any vehicle, aircraft or watercraft financed with Grant Funds.

### **3.7 Subgrantee and Contractor Requirements.**

(a) MONTEREY shall ensure and independently verify that any subgrantee, contractor or other entity receiving Grant Funds through or from MONTEREY is not debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs, under Executive Orders 12549 and 12689, as implemented at 2 CFR Part 3000. MONTEREY shall obtain documentation of eligibility before disbursing Grant Funds to any subgrantee, contractor or other entity. MONTEREY shall maintain documentary proof of this verification in its files. MONTEREY shall establish procedures

for the effective use of the "Excluded Parties List System," to assure that it does not provide Grant Funds to excluded parties. MONTEREY shall also establish procedures to provide for effective use and/or dissemination of the list to assure that its grantees and subgrantees, including contractors, at any tier do not make awards in violation of the non-procurement debarment and suspension common rule.

(b) MONTEREY shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from MONTEREY complies with the requirements of 44 CFR Part 18, *New Restrictions on Lobbying*; and

(c) MONTEREY shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from MONTEREY complies with the requirements of 2 CFR Part 3001, *Requirements for Drug-Free Workplace (Financial Assistance)*.

### **3.8 Monitoring Grant Performance.**

(a) City and the VASI Management Team are both authorized to perform periodic monitoring reviews of MONTEREY's performance under this Agreement, to ensure that the Grant Plan goals, objectives, performance requirements, timelines, milestone completion, budgets and other criteria are being met. Programmatic monitoring may include the Regional Federal Preparedness Coordinators, or other federal or state personnel, when appropriate. Monitoring may involve a combination of desk-based reviews and on-site monitoring visits, inspection of records, and verifications of grant activities. These reviews will involve a review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed. The reviews may include, but are not limited to:

1. Evaluating eligibility of expenditures;
2. Comparing actual grant activities to those approved by the Approval Authority and specified in the Grant Plan;
3. Ensuring that any advances have been deposited in an interest-bearing account and disbursed in accordance with applicable guidelines; and
4. Confirming compliance with: Grant Assurances; information provided on performance reports and payment requests; and needs and threat assessments and strategies.

(b) MONTEREY is responsible for monitoring and auditing the grant activities of any subgrantee, contractor or other entity receiving Grant Funds through or from MONTEREY. This requirement includes but is not limited to mandatory on-site verification visits.

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

3.9 **Disbursement Procedures.** San Francisco shall disburse Grant Funds to MONTEREY as follows:

(a) MONTEREY shall submit to the VASI Management Team, in the manner specified for notices pursuant to Article 9, a document ("Reimbursement Request") substantially in the form attached as Appendix C, attached hereto and incorporated by reference as though fully set forth herein. The VASI Management Team shall serve as the primary contact for MONTEREY regarding any Reimbursement Request.

The UASI Management Team will review **all** Reimbursement Requests for compliance with this Agreement and all applicable guidelines and requirements. The UASI Management Team will return to MONTEREY any Reimbursement Request that is submitted and not approved by the UASI Management Team, with a brief statement of the reason for the rejection of the Reimbursement Request.

(b) The UASI Management Team will submit any Reimbursement Request that is approved by the UASI Management Team to DEM. City through DEM shall review the Reimbursement Request for compliance with this Agreement and all applicable guidelines and requirements. City shall return to the UASI Management Team any Reimbursement Request that is not approved by City, with a brief explanation of the reason for the rejection of the Reimbursement Request.

(c) If a rejection relates only to a portion of the expenditures itemized in any Reimbursement Request, City shall have no obligation to disburse any Grant Funds for any other expenditures itemized in such Reimbursement Request unless and until MONTEREY submits a Reimbursement Request that is in all respects acceptable to the UASI Management Team and to City.

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

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

3.11 **Sustainability.** Grant Funded programs that contain continuing personnel and operating expenses, over and above planning and implementation costs, must be sustained once the Grant Funding ends. If Equipment is purchased with grant funds, the equipment must be sustained through the useful life of equipment. By executing this Agreement, MONTEREY acknowledges its responsibility and agrees to sustain continuing programs beyond the Grant Funding period. MONTEREY acknowledges and agrees that this sustainability requirement is a material term of the Agreement.

### 3.12 **EHP Requirements.**

(a) Grant Funded projects must comply with the federal Environmental and Historic Preservation ("EHP") program. MONTEREY shall not initiate any project with the potential to impact environmental or historic properties or resources until Cal OES and FEMA have completed EHP reviews and approved the project. Examples of projects that may impact EHP resources include communications towers, physical security enhancements, new construction, and modifications to buildings, structures and objects that are 50 years old or greater. MONTEREY shall notify the UASI Management Team of any project that may require an EHP review. MONTEREY agrees to provide detailed project information to FEMA, Cal OES and/or the UASI Management Team, to cooperate fully in the review, and to prepare any documents requested for the review. MONTEREY shall comply with all conditions placed on the project as the result of the EHP review and implement any treatment or mitigation measures deemed necessary to address potential adverse impacts. With prior approval of the UASI Management Team, MONTEREY may use Grant Funds toward the costs of preparing documents and/or implementing treatment or mitigation measures. Any change to the approved project scope of work will require re-



evaluation for compliance with EHP requirements. If ground disturbing activities occur during project implementation, MONTEREY shall notify the UASI Management Team and ensure monitoring of ground disturbance. If any potential archeological resources are discovered, MONTEREY shall immediately cease construction in that area and notify the UASI Management Team, which will notify the appropriate State Historic Preservation Office. If MONTEREY is using Grant Funds for a communication tower project, MONTEREY shall complete its Federal Communication Commission ("FCC") EHP process before preparing its Cal OES/FEMA BHP materials, and shall include the FCC EHP materials in the Cal OES/FEMA submission.

(b) Any construction or other project that MONTEREY initiates without the necessary EHP review and approval will not be eligible for reimbursement. Failure of MONTEREY to meet federal, State, and local BHP requirements, obtain applicable permits, or comply with any conditions that may be placed on the project as the result of FEMA's and/or Cal OES's EHP review will result in the denial of Reimbursement Requests.

3.13 **National Energy Conservation Policy and Energy Policy Acts.** MONTEREY shall comply with the following requirements:

(a) Grant Funds may not be used in contravention of the Federal buildings performance and reporting requirements of Executive Order 13123, part 3 of Title V of the National Energy Conservation Policy Act (42 USC §8251 et seq.), or Subtitle A of Title I of the Energy Policy Act of 2005; and

(b) Grant Funds may not be used in contravention of Section 303 of the Energy Policy Act of 1992 (42 USC §13212).

3.14 **Royalty-Free License.** MONTEREY understands and agrees that FEMA reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and authorize others to use, for federal government purposes: (a) the copyright in any work developed using Grant Funds; and (b) any rights of copyright that MONTEREY purchases or acquires using Grant Funds. MONTEREY shall consult with the UASI Management Team and FEMA regarding the allocation of any patent rights that arise from, or are purchased with, Grant Funds.

3.15 **Publication Statements.** MONTEREY shall ensure that all publications created or developed under this Agreement prominently contain the following statement: "This document was prepared under a grant from the Federal Emergency Management Agencies Grant Programs Directorate (FEMA/GPD) within the US Department of Homeland Security. Points of view or opinions expressed in this document are those of the authors and do not necessarily represent the official position or policies of FEMA/GPD or the US Department of Homeland Security."

#### **ARTICLE 4 REPORTING REQUIREMENTS; AUDITS**

4.1 **Regular Reports.** MONTEREY shall provide, in a prompt and timely manner, financial, operational and other reports, as requested by the UASI Management Team or by City, in form and substance satisfactory to the UASI Management Team or City. Such reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages, to the maximum extent possible.

4.2 **Notification of Defaults or Changes in Circumstances.** MONTEREY shall notify the UASI Management Team and City immediately of (a) any Event of Default or event that, with the passage of time, would constitute an Event of Default; (b) any change of circumstances that would cause any of the representations or warranties contained in Article 5 to be false or misleading at any time during the term

of this Agreement, and (c) any change of circumstances or events that would cause MONTEREY to be out of compliance with the Grant Assurances in Appendix B.

4.3 **Books and Records.** MONTEREY shall establish and maintain accurate files and records of all aspects of the Grant Plan and the matters funded in whole or in part with Grant Funds. Without limiting the scope of the foregoing, MONTEREY shall establish and maintain accurate financial books and accounting records relating to Authorized Expenditures and to Grant Funds received and expended under this Agreement, together with all invoices, documents, payrolls, time records and other data related to the matters covered by this Agreement, whether funded in whole or in part with Grant Funds. MONTEREY shall maintain all of the files, records, books, invoices, documents, payrolls and other data required to be maintained under this Section in a readily accessible location and condition for a period of not less than three (3) years after expiration of this Agreement or until any final audit by Cal OES has been fully completed, whichever is later.

4.4 **Inspection and Audit.** MONTEREY shall make available to the UASI Management Team and to City, and to UASI Management Team and City employees and authorized representatives, during regular business hours, all of the files, records, books, invoices, documents, payrolls and other data required to be established and maintained by MONTEREY under Section 4.3 and allow access and the right to examine those items. MONTEREY shall permit the UASI Management Team and City, and UASI Management Team and City employees and authorized representatives, to inspect, audit, examine and make excerpts and transcripts from any of the foregoing. The rights of the UASI Management Team and City pursuant to this Section shall remain in effect so long as MONTEREY has the obligation to maintain such files, records, books, invoices, documents, payrolls and other data under this Article 4. The **DHS**, the Comptroller General of the United States or designee, and Cal OES shall have the same inspection and audit rights as the City and UASI Management Team. MONTEREY shall cooperate with any federal or state audit.

4.5 **Audit Report.** If the amount specified in Section 3.2 of this agreement is \$750,000 or more, MONTEREY shall submit an organization-wide financial and compliance audit report. The audit must be performed in accordance with GAO's *Government Auditing Standards*, and 2 CFR Part 200 Subpart F - *Uniform Administrative Requirements, Cost Principles, and Audit Requirements/or Federal Awards*. MONTEREY shall submit its audit report to the UASI Management Team no later than six months after the end of MONTEREY's fiscal year.

## ARTICLES REPRESENTATIONS AND WARRANTIES

MONTEREY represents and warrants each of the following as of the date of this Agreement and at all times throughout the term of this Agreement:

5.1 **No Misstatements.** No document furnished or to be furnished by MONTEREY to the UASI Management Team or to City in connection with this Agreement, any Reimbursement Request or any other document relating to any of the foregoing, contains or will contain any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading, under the circumstances under which any such statement shall have been made.

5.2 **Eligibility to Receive Federal Funds.** By executing this Agreement, MONTEREY certifies that it is eligible to receive federal funds, and specifically certifies as follows:

(a) MONTEREY is not suspended, debarred or otherwise excluded from participation in federal assistance programs, as required by Executive Order 12549 and 12689, "Debarment and Suspension" and implemented at 2 CFR Part 3000.

(b) MONTEREY complies with 31 U.S.C. §1352, *Limitation on use of appropriated funds to influence federal contracting and financial transactions*, as implemented at 44 CFR Part 18 and 6 CFR Part 9.

(c) MONTEREY complies with the Drug-Free Workplace Act of 1988, as amended, 41 U.S.C. §701 et seq., as implemented in 2 CFR Part 3001, and will continue to provide a drug-free workplace as required under that Act and implementing regulations.

**MONTEREY** is not delinquent in the repayment of any federal debt. **See OMB** Circular A-129.

MONTEREY acknowledges that these certifications of eligibility to receive federal funds are material terms of the Agreement.

5.3 **NIMS Compliance.** To be eligible to receive Grant Funds, MONTEREY must meet National Incident Management System ("NIMS") compliance requirements, and report full NIMS compliance via the National Incident Management System Capability Assessment Support Tool ("NIMSCAST"). By executing this Agreement, MONTEREY certifies that it is in full NIMS compliance, and that it has reported that compliance via the NIMSCAST. MONTEREY shall provide documentation of its NIMS compliance to the UASI Management Team. MONTEREY acknowledges that this certification is a material term of the Agreement.

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

6.1 **Indemnification.** MONTEREY shall indemnify, protect, defend and hold harmless each of the Indemnified Parties from and against any and all Losses arising from, in connection with or caused by MONTEREY's performance of this Agreement, including, but not limited to, the following: (a) a material breach of this Agreement MONTEREY; (b) a material breach of any representation or warranty of MONTEREY contained in this Agreement; (c) any personal injury or death caused, directly or indirectly, by any act or omission of MONTEREY or its employees, subgrantees or agents; (d) any loss of or damage to property caused, directly or indirectly, by any act or omission of MONTEREY or its employees, subgrantees or agents; (e) the use, misuse or failure of any equipment or facility used by MONTEREY, or by any of its employees, subgrantees or agents, regardless of whether such equipment or facility is furnished, rented or loaned to MONTEREY by an Indemnified Party; (f) any tax, fee, assessment or other charge for which MONTEREY is responsible under Section 10.4; or (g) any infringement of patent rights, copyright, trade secret or any other proprietary right or trademark of any person or entity in consequence of the use by any Indemnified Party of any goods or services furnished by MONTEREY or its employees, subgrantees or agents to such Indemnified Party in connection with this Agreement. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and San Francisco's costs of investigating any claims against San Francisco.

6.2 **Duty to Defend; Notice of Loss.** MONTEREY acknowledges and agrees that its obligation to defend the Indemnified Parties under Section 6.1: (a) is an immediate obligation, independent of its other obligations hereunder; (b) applies to any Loss which actually or potentially falls within the scope of Section 6.1, regardless of whether the allegations asserted in connection with such Loss are or may be

groundless, false or fraudulent; and (c) arises at the time the Loss is tendered to MONTEREY by the Indemnified Party and continues at all times thereafter. The Indemnified Party shall give MONTEREY prompt notice of any Loss under Section 6.1 and MONTEREY shall have the right to defend, settle and compromise any such Loss; provided, however, that the Indemnified Party shall have the right to retain its own counsel at the expense of MONTEREY if representation of such Indemnified Party by the counsel retained by MONTEREY would be inappropriate due to conflicts of interest between such Indemnified Party and MONTEREY. An Indemnified Party's failure to notify MONTEREY promptly of any Loss shall not relieve MONTEREY of any liability to such Indemnified Party pursuant to Section 6.1, unless such failure materially impairs MONTEREY's ability to defend such Loss. MONTEREY shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if MONTEREY contends that such Indemnified Party shares in liability with respect thereto.

6.3 **Incidental and Consequential Damages.** Losses covered under this Article 6 shall include any and all incidental and consequential damages resulting in whole or in part from MONTEREY's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that any Indemnified Party may have under applicable law with respect to such damages.

6.4 **LIMITATION ON LIABILITY OF SAN FRANCISCO.** CITY'S OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AGGREGATE AMOUNT OF GRANT FUNDS ACTUALLY DISBURSED HEREUNDER. NOTWITHSTANDING ANY OTHER PROVISION CONTAINED IN THIS AGREEMENT OR ANY OTHER DOCUMENT OR COMMUNICATION RELATING TO THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE GRANT FUNDS, THE GRANT PLAN OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## ARTICLE 7

### EVENTS OF DEFAULT AND REMEDIES; TERMINATION FOR CONVENIENCE

7.1 **Events of Default.** The occurrence of any one or more of the following events shall constitute an "Event of Default" under this Agreement:

(a) **False Statement.** Any statement, representation, certification or warranty contained in this Agreement, in any Reimbursement Request, or in any other document submitted to the UASI Management Team or to City under this Agreement is found by the UASI Management Team or by City to be false or misleading.

(b) **Failure to Perform Other Covenants.** MONTEREY fails to perform or breaches any provision or covenant of this Agreement to be performed or observed by MONTEREY as and when performance or observance is due and such failure or breach continues for a period of ten (10) days after the date on which such performance or observance is due.

(c) **Failure to Comply with Applicable Laws.** MONTEREY fails to perform or breaches any of the terms or provisions of Article 12.

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

(e) **Involuntary Insolvency.** Without consent by MONTEREY, a court or government authority enters an order, and such order is not vacated within ten {1 0} days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to MONTEREY or with respect to any substantial part of MONTEREY'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 MONTEREY.

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

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

(b) **Withholding of Grant Funds.** City may withhold all or any portion of Grant Funds not yet disbursed hereunder, regardless of whether MONTEREY has previously submitted a Reimbursement Request or whether the UASI Management Team and/or City has approved the disbursement of the Grant Funds requested in any Reimbursement Request. Any Grant Funds withheld pursuant to this Section and subsequently disbursed to MONTEREY after cure of applicable Events of Default shall be disbursed without interest.

(c) **Return of Grant Funds.** City may demand the immediate return of any previously disbursed Grant Funds that have been claimed or expended by MONTEREY in breach of the terms of this Agreement, together with interest thereon from the date of disbursement at the maximum rate permitted under applicable law.

### 7.3 **Termination for Convenience.**

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

(b) Upon receipt of the notice, MONTEREY shall commence and perform, with diligence, all actions necessary on the part of MONTEREY to affect the termination of this Agreement on the date specified by City and to minimize the liability of MONTEREY and City to third parties as a result of termination. AH such actions shall be subject to the prior approval of the UASI Management Team.

(c) Within 30 days after the specified termination date, MONTEREY shall submit to the UASI Management Team an invoice for all Authorized Expenses incurred through the termination date. For Authorized Expenses incurred after receipt of the notice of termination, City will only reimburse MONTEREY if the Authorized Expenses received prior approval from the UASI Management Team as specified in subparagraph (b).

(d) In no event shall City be liable for costs incurred by MONTEREY or any of its contractors or subgrantees after the termination date specified by City.

(e) City's payment obligation under this Section shall survive termination of this Agreement.

7.4 **Remedies Nonexclusive.** Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

## ARTICLES ASSIGNMENTS

8.1 **No Assignment by MONTEREY.** MONTEREY shall not, either directly or indirectly, assign, transfer, hypothecate, subcontract or delegate all or any portion of this Agreement or any rights, duties or obligations of MONTEREY hereunder without the prior written consent of the UASI Management Team; provided, however, that any contractor or subgrantee specifically referenced in Appendix A shall not require the consent of Management Team. This Agreement shall not, nor shall any interest herein, be assignable as to the interest of MONTEREY involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of MONTEREY or a sale or transfer of substantially all of the assets of MONTEREY shall be deemed an assignment for purposes of this Agreement.

8.2 **Agreement Made in Violation of this Article.** Any agreement made in violation of Section 8.1 shall confer no rights on any person or entity and shall automatically be null and void.

8.3 **MONTEREY Retains Responsibility.** MONTEREY shall in all events remain liable for the performance by any subgrantee contractor, or assignee of all of the covenants, terms and conditions in this Agreement.

## ARTICLE 9 NOTICES AND OTHER COMMUNICATIONS

9.1 **Requirements.** Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via e-mail:

If to San Francisco:

San Francisco Department of Emergency Management  
1011 Turk Street  
San Francisco, CA 94102  
Attn: Mary Ellen Carroll, Executive Director  
[Maryellen.carroll@sfgov.org](mailto:Maryellen.carroll@sfgov.org)

If to the UASI Management Team:

UASI Management Team  
711 Van Ness Avenue, Suite #420  
San Francisco, CA 94102  
Attn: Craig Dziedzic, General Manager  
[craig.dziedzic@sfgov.org](mailto:craig.dziedzic@sfgov.org)

If to MONTEREY:

Office of the Emergency Services  
1322 Natividad Road  
Salinas, CA 93906  
Attn: Gerry Malais  
MalaisG@co.monterey.ca.us

9.2 **Effective Date.** All communications sent in accordance with Section 9.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

9.3 **Change of Address.** From time to time any party hereto may designate a new address or recipient for notice for purposes of this Article 9 by written notice to the other party and the UASI Management Team.

**ARTICLE 10  
MISCELLANEOUS**

10.1 **No Waiver.** No waiver by San Francisco of any default or breach of this Agreement shall be implied from any failure by the UASI Management Team or San Francisco to take action on account of such default if such default persists or is repeated. No express waiver by San Francisco shall affect any default other than the default specified in the waiver and shall be operative only for the time and to the extent therein stated. Waivers by San Francisco of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition. The consent or approval by the UASI Management Team or San Francisco of any action requiring further consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar act.

10.2 **Modification.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement; provided, however, that the General Manager or designee may establish alternate procedures for modification of the Appendix A and the Grant Plan.

10.3 **Governing Law; Venue.** The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

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

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

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

- Appendix A, Authorized Expenditures and Timelines
- Appendix B, Grant Assurances
- Appendix C, Form of Reimbursement Request

10.7 **Certified Resolution of Signatory Authority.** Upon request of San Francisco, MONTEREY shall deliver to San Francisco a copy of the corporate resolution(s) authorizing the execution, delivery and performance of this Agreement, certified as true, accurate and complete by the appropriate authorized representative of MONTEREY.

10.8 **Severability.** Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

10.9 **Successors; No Third-Party Beneficiaries.** Subject to the terms of Article 8, the terms of this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their successors and assigns. Nothing in this Agreement, whether express or implied, shall be construed to give any person or entity (other than the parties hereto and their respective successors and assigns and, in the case of Article 6, the Indemnified Parties) any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

10.10 **Survival of Terms.** The obligations of MONTEREY and the terms of the following provisions of this Agreement shall survive and continue following expiration or termination of this Agreement: Sections 4.3 and 4.4, Article 6, this Article 10, and the Grant Assurances of Appendix B.

10.11 **Further Assurances.** From and after the date of this Agreement, MONTEREY agrees to do such things, perform such acts, and make, execute, acknowledge and deliver such documents as may be reasonably necessary or proper and usual to complete the transactions contemplated by this Agreement and to carry out the purpose of this Agreement in accordance with this Agreement.

10.12 **Disclosure of Subawards and Executive Compensation.** Pursuant to the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282) as amended by Section 6202(a) of the Government Funding Transparency Act of 2008 (P.L. 110-252), full disclosure to the public of entities or organizations receiving federal funds is now required. As defined by the Office of Management and Budget (OMB), all new Federal awards of \$25,000 or more as of October 1, 2010, are subject to FFATA reporting requirements. The Transparency Act definition of "Federal awards" includes not only prime



awards for grantees, cooperators, and contractors, but also awards to sub-recipients. If applicable, MONTEREY must provide the following information on MONTEREY letterhead within 30 days of receipt of this Agreement.

1. Subawards greater than \$25,000:
  - a) Name of entity receiving award;
  - b) Amount of award;
  - c) Funding agency;
  - d) The Catalog of Federal Domestic Assistance program number;
  - e) Award title (descriptive of the purpose of the funding action);
  - f) Location of the entity and primary location of performance including city, state, and Congressional district;
  - g) **Dun & Bradstreet (D&B) DUNS** Number of the entity, and its parent if applicable; and,
  - h) Total compensation and names of top five executives (same thresholds as for prime recipients).
  
2. The Total compensation and names of the top five executives if:
  - a) 80% or more of annual gross revenues are from Federal awards (contracts, sub-contracts and Federal financial assistance), and \$25,000,000 or more in annual gross revenues from Federal awards; and,
  - b) Compensation information is not already available through reporting to the Securities and Exchange Commission.

**10.13 Cooperation with UASI Programs and Activities.**

(a) Subject to reasonable terms and conditions, MONTEREY agrees to participate in DASI-sponsored exercises, and to make available equipment acquired with Grant Funds for use as part of such exercises.

(b) To the extent permitted by law, MONTEREY agrees to share with the Approval Authority informational work products (such as plans, reports, data, etc.) created or acquired using Grant Funds.

**ARTICLE 11  
INSURANCE**

11.1 **Types and Amounts of Coverage.** Without limiting MONTEREY' s liability pursuant to Article 6 of this Agreement, MONTEREY shall maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

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

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

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

11.2 **Additional Requirements for General and Automobile Coverage.** Commercial General Liability and Commercial Automobile Liability insurance policies must be endorsed to provide:

(a) Name as Additional insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) That such policies are primary insurance to any other insurance available to the Additional insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

11.3 **Additional Requirements Regarding Workers' Compensation.** Regarding Workers' Compensation, MONTEREY hereby agrees to waive subrogation which any insurer of MONTEREY may acquire from MONTEREY by virtue of the payment of any loss. MONTEREY agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the MONTEREY, its employees, agents and subcontractors.

11.4 **Additional Requirements for All Policies.** All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in Article 9, Notices and Other Communications.

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

11.6 **General Annual Aggregate Limit/Inclusion of Claims Investigation or Legal Defense Costs.** Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

11.7 **Lapse in Insurance.** Should any required insurance lapse during the term of this Agreement, requests for reimbursement originating after such lapse may not be processed, in the City's sole discretion, until the City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

11.8 **Evidence of Insurance.** Before commencing any operations or expending any Grant Funds under this Agreement, MONTEREY shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

11.9 **Effect of Approval.** Approval of the insurance by City shall not relieve or decrease the liability of MONTEREY hereunder.

11.10 **Insurance for Subcontractors and Evidence of this Insurance.** If a subcontractor or subgrantee will be used to complete any portion of this Agreement, MONTEREY shall ensure that the subcontractor or subgrantee shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the MONTEREY as additional insureds.

11.11 **Authority to Self-Insure.** Nothing in this Agreement shall preclude MONTEREY from self-insuring all or part of the insurance requirement in this Article. However, MONTEREY shall provide proof of self-insurance, in a form acceptable to San Francisco, in the amounts of each line of self-insurance.

## **ARTICLE 12 COMPLIANCE**

12.1 **Nondiscrimination.** In the performance of this Agreement, MONTEREY agrees not to discriminate against any employee, San Francisco employee working with MONTEREY or any subgrantee of MONTEREY, applicant for employment with MONTEREY or subgrantee of MONTEREY, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations, on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), or association with members of such protected classes, or in retaliation for opposition to discrimination against such classes.

12.2 **Conflict of interest.** Through its execution of this Agreement, MONTEREY acknowledges that it is familiar with the provisions of Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify City if it becomes aware of any such fact during the term of this Agreement. MONTEREY agrees that it will promptly notify City in writing of all violations of State or Federal criminal law involving fraud, bribery, or gratuities affecting or involving the use of Grant Funds.

12.3 **Compliance with ADA.** MONTEREY acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through a grantee or contractor, must be accessible to the disabled public. MONTEREY shall not discriminate against any person protected under the ADA in connection with all or any portion of the Grant Plan and shall comply at all times with the provisions of the ADA.

12.4 **Prohibition on Political Activity with City Funds.** In accordance with San Francisco Administrative Code Chapter 12G, MONTEREY may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. MONTEREY agrees to comply with San Francisco Administrative Code Chapter 12G and any implementing rules and regulations promulgated by San Francisco's Controller. The terms and provisions of Chapter 12G are incorporated herein by this reference. In the event Contractor violates the provisions of this section, San Francisco may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit MONTEREY from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider MONTEREY's use of profit as a violation of this section.

12.5 **Submitting False Claims: Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San

Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

CITY AND COUNTY OF SAN FRANCISCO:

COUNTY OF MONTEREY:

SAN FRANCISCO DEPARTMENT OF  
EMERGENCY MANAGEMENT

OFFICE OF EMERGENCY SERVICES

By:

By:

\_\_\_\_\_  
Mary Ellen Carroll  
EXECUTIVE DIRECTOR

\_\_\_\_\_  
Gerry R Malais  
EMERGENCY SERVICES MANAGER

Federal Tax ID#: 94-6000524

**Approved as to Form:**

**Approved as to Form:**

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

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

City Attorney

Anne Brereton  
Deputy County Counsel