

From Comm. Bernstein on behalf of Homeless Encampments Subcommittee

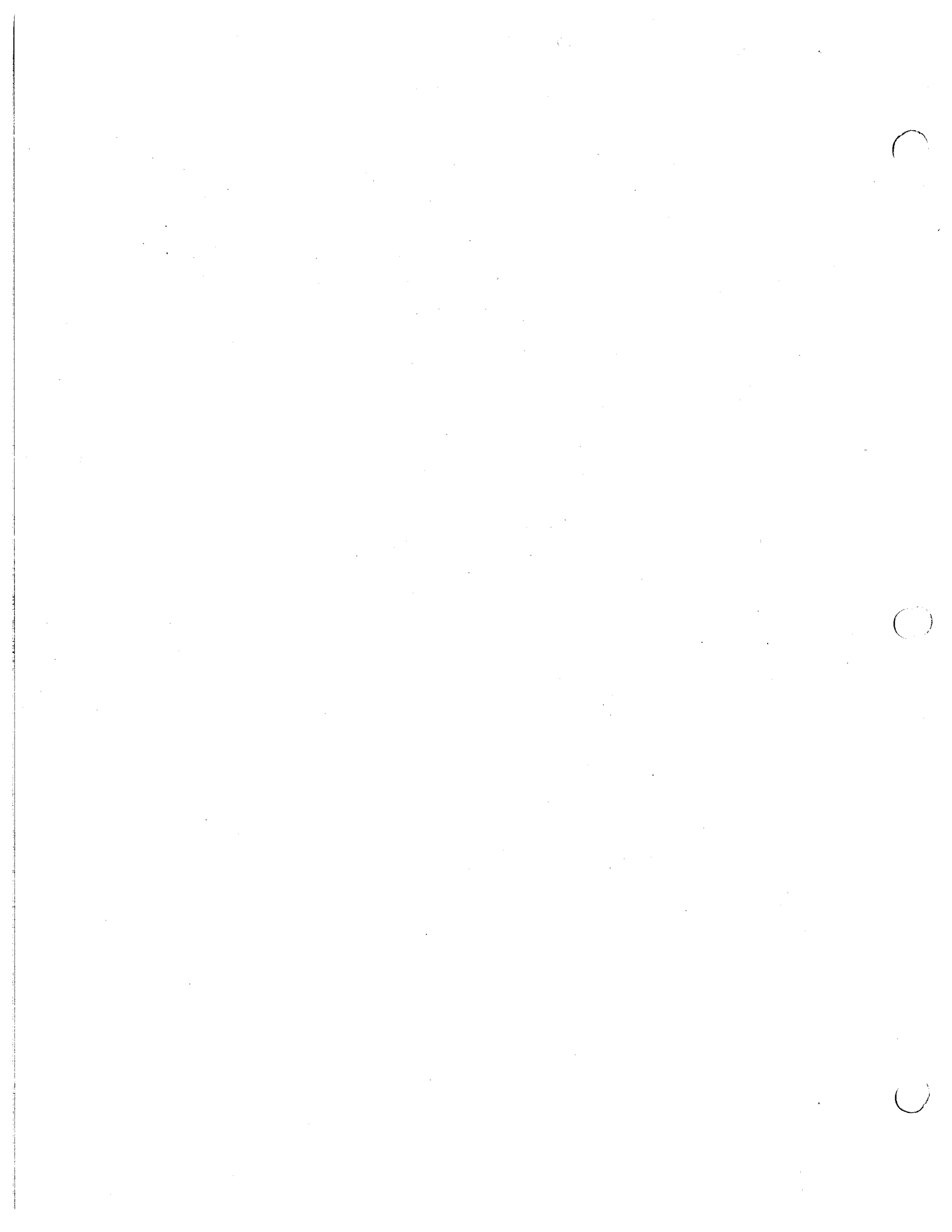
Dear Ms. Williams-Ridley,

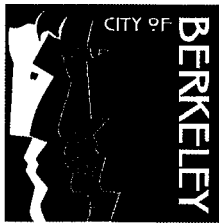
On February 7, 2017, the PRC alerted you to our concern that property was being unlawfully seized from homeless residents, particularly during city operations clearing homeless encampments. At that time, we expressed our strong concern that the City's failure to articulate clear guidelines articulating 1) the conditions under which property belonging to homeless people may be seized by city workers; 2) how such property would be identified; and 3) where and for how long such property would be stored was contributing to increased tension between the Berkeley Police Department and the homeless community. We urged you to immediately articulate a policy governing when and why homeless people's property could be seized, and what role, if any, BPD would play in such seizures.

Unfortunately, while community members have continued to raise concern with the PRC about the role of the police department in the seizure of property from homeless people, your office has failed to respond to our request. There continues to be no clear articulation of policy as to the conditions that justify seizure of non-abandoned property within homeless encampments, how such property will be identified, and where and for how long it will be stored. Additionally, the role of the police department in such seizures continues to be confusing to the public.

Therefore, we urge you to immediately promulgate a clear policy regarding the seizure of non-abandoned property belonging to homeless people. This policy should 1) identify the conditions that allow for the seizure of this property; 2) how such property will be identified; 3) where and for how long such property will be stored; 4) how the property may be regained by its owner; and 4) clearly articulate what city agencies are responsible for the seizure, tagging and storage of the property. We are particularly concerned that the role of BPD in such seizures, if any, be clearly articulated.

Thank you for your attention to this matter.





Office of the City Manager

ACTION CALENDAR
April 25, 2017

To: Honorable Mayor and Members of the City Council
 From: Dee Williams-Ridley, City Manager
 Submitted by: Andrew Greenwood, Chief of Police
 Subject: MOU Compendium Items: Item #3.6: Agreement with City & County of San Francisco for Distribution of UASI Grant Funds; Item #3.12: Berkeley Police Department Relationship with NCRIC as codified in BPD General Order N-17

RECOMMENDATION

Adopt a Resolution approving Police Department MOU Compendium revised Item # 3.6, Agreement with City & County of San Francisco for Distribution of UASI Grant Funds, and revised Item # 3.12, Relationship with Northern California Regional Intelligence Center (NCRIC).

SUMMARY

The City of Berkeley seeks the judicious use of funding from outside agencies to maximize services and resources for Berkeleyans in a manner that strengthens the community's values. On March 14, 2017 the Berkeley Police Department presented for City Council approval its agreements with other law enforcement agencies, police departments and/or private security. Council approved the majority of agreements but requested clarifying information, staff review, and analysis on the sections regarding NCRIC and grant funding from the Bay Area Urban Area Security Initiative (UASI), a consolidation of the separate San Francisco, San Jose and Oakland urban areas, through whom Bay Area law enforcement agencies apply for and receive federal UASI Grant Funding. Any City of Berkeley grant application from Bay Area UASI is separately presented to Council for approval, as required by Council Resolution No. 65901 adopted on September 18, 2012. The fiscal agent of Bay Area UASI and with which Berkeley has an agreement is the City and County of San Francisco, a sanctuary city whose policies regarding the relationship between local and federal law enforcement closely matches Berkeley's.

The Berkeley Police Department's use of the terrorism and criminal-related information sharing system known as NCRIC is governed by BPD's General Order N-17, which, most recently, fully incorporated recommendations from the Police Review Commission and, on October 27, 2015, was unanimously approved by the City Council.

BACKGROUND

On March 14, 2017, Council requested clarifying information, staff review, and analysis regarding agreements with Bay Area UASI (Item 3.6 in the compendium of BPD agreements) and NCRIC (Item 3.12).

Item 3.6: Staff determined the item cover page information was in need of revision in order to ensure accuracy, clarity and transparency. Upon review, staff determined the agreements originally attached to the item are no longer in effect, and therefore removed them.

Item 3.6: The most recent fiscal agent agreement provides for the City and County of San Francisco, the fiscal agent for allocated UASI grant funds, to distribute grant funds to the City of Berkeley. This fiscal agent agreement was entered into following City Council's December 13, 2016 action to adopt Resolution 67,785-NS, authorizing the City Manager to accept an Urban Area Security Initiative grant, and any amendments, in the amount not to exceed \$125,373.00, to fund the purchase of a Reinforced Panel Van.

Item 3.6 has been redrafted for clarity, incorporated herein as Exhibit A, and now includes a history of previous fiscal agent agreements which have been approved by Council, and equipment or training granted therefrom.

Item 3.12: Staff determined the item cover page information was in need of revision in order to ensure accuracy, clarity and transparency, and amended existing language accordingly, see Exhibit B. Current BPD General Order N-17 is provided for reference, see Attachment 2.

FISCAL IMPACTS OF RECOMMENDATION

FISCAL AGENT AGREEMENT

If revised Item 3.6 is approved, cost is neutral. The fiscal agent agreement arises from Council's previous approval to receive grant funds for a reinforced panel van. The vehicle allows residents and officers to be safely transported and is in accordance with community values to avoid using vehicles that have an overly military appearance.

Had Council not approved the application for, and approval to receive, \$125,373.00 in grant funds to purchase a reinforced panel van, effects on cost would be substantial. The inability to apply for and receive grant-funded equipment would impair the police department's ability to obtain equipment directly related to emergency preparedness, mitigation and response, thus reducing community resiliency. Community and employee safety would be adversely affected. Resources previously obtained through grant funding could not have been purchased, or the funds would have to come from the city's general fund, thus reducing general fund availability for other purposes.

NCRIC

If approved, cost would be neutral. If not approved, effect on cost cannot be calculated. Absence of, or reduced interaction with NCRIC would inhibit investigations. Public and employee safety would be adversely affected.

UASI-SPECIFIC BACKGROUND INFORMATION: UASI GRANT FUNDING, TRAINING, URBAN SHIELD, BERKELEY FIRE DEPARTMENT:

UASI GRANT FUNDING HISTORY

UASI is a grant program funded by the Department of Homeland Security. The funds are intended to serve urban areas, to address emergency preparedness, event mitigation and response, and reduce the risk of terrorism. Each area is comprised of regions. These regions govern the distribution of grant funds. The City of Berkeley is part of the East Bay region. Local East Bay law enforcement agencies may apply for grant funding for equipment (not weapons) to support disaster-and emergency-preparedness, event mitigation, and response. Once the local approval

authority determines allocations of grants to agencies, the recipient agency enters into an agreement with the City and County of San Francisco, which thereby acts as the fiscal agent to ensure grant compliance and reimburses authorized grant expenditures to the grantee agency. The City of Berkeley has taken the following actions with regards to seeking UASI grants:

- September 23, 2008: The City Council approved a UASI Grant Agreement which funded the department with \$256,661.00 for the purchase of a bomb robot and Urban Shield backfill expenses, Council Resolution **64,202-N.S.**
- May 5, 2009: The City Council approved a UASI Grant Agreement which funded the department with \$38,566.00 for the purchase of a portable x-ray system and the refurbishment of a decommissioned ambulance for transporting a bomb disposal unit, Council Resolution **64,431-N.S.**
- April 20, 2010: The City Council continued approval of the Legacy UASI Grant Agreement, Council Resolution **64,847-N.S.**
- November 8th, 2011: Action Calendar Item #23 was presented to City Council for the annual approval of existing agreements. The Council approved the majority of the agreements but requested additional information regarding five agreements including UASI and NCRIC, Council Resolution **65,505-N.S.**
 - February 14, 2012: an Action Calendar Item #14 was developed by BPD to address the remaining agreements including UASI and NCRIC. Council approved the remaining Mutual Aid MOUs but directed the CM to modify BPD General Order J-1 and adopt a resolution stating that the COB will not comply with ICE civil immigration detainees, except as to dangerous persons who will be held for no more than 48 hours.
 - May 15, 2012: an Action Calendar Item #41a was submitted to the Council with recommendations from the PRC to modify and accept the remaining mutual aid policies.
 - May 22, 2012: an Action Calendar Item #2a and #2b were submitted but were held over to June 19, 2012 Special Work Session and Special Meeting.
 - June 19, 2012: Action Items #1A, #1B, and #1C were submitted by the PRC, CM (BPD), and Council Member Arreguin.
- September 18, 2012: Action Item #10 – Council approved the Resolution which required Council review and approval for all grant applications for equipment, if the equipment was being provided to the Police Department through UASI funds; and directed the City Manager to direct the Police Department to continue to follow its own policies and procedures when participating in UASI training and to continue to send all UASI related training orders to the PRC for review, Council Resolution **65,901-N.S.**
- November 12, 2013: City Council approved a UASI Grant application to fund the department with \$85,793.00 for the purchase of a 3D Laser Scanner Measurement Device, Council Resolution **66,370-N.S.**
- October 28, 2014: City Council continued their approval of the previously submitted UASI Grant Agreement, Council Resolution **66,836-N.S.**

- November 18, 2014: City Council approved a UASI Grant application to fund the police department for the purchase of a Reinforced Panel Van, Council Resolution **66,851-N.S.**
- November 15, 2016: Consent Calendar Item #8 - City Council approved a UASI Grant application to fund the Department with \$68,999.00 for the purchase of a Portable Live Video X-ray System for bomb disposal, Council Resolution **67,737-N.S.**
- December 13, 2016: Consent Calendar Item #21 - Moved to Action Calendar. City Council approved the UASI Grant for \$125,373.00, for the purchase of a Reinforced Panel Van, Council Resolution **67,785-N.S.**
- April 25, 2017: request City Council approval to purchase the Reinforced Panel Van previously approved by City Council under Resolutions **66,851-N.S.** and **67,785-N.S.**, above.
- UASI Funding for emergency preparedness, Berkeley Fire Department - June 26, 2007: City Council adopted a Resolution which approved the CM signing an MOU with UASI to secure up to \$18,000.00 to purchase six disaster equipment caches for emergency preparedness. These caches were used for fraternity, sorority, and student cooperative housing units in Berkeley, Council Resolution **67,738-N.S.**
- UASI funding via Alameda County Office of Emergency Services: Berkeley Fire Department and the police department are currently moving towards using a service called AC Alert. AC Alert is a high speed telephonic communication service which will be used in conjunction with Nixle to push out different types of emergency information to the public. AC Alert was introduced by the Alameda Office of Emergency Service and is funded through UASI.

UASI TRAININGS (NON-URBAN SHIELD, NON-SCENARIO BASED)

Below is a sample of training UASI has provided as free training opportunities to the Berkeley Police Department:

- Explosive ordinance awareness: Understanding and recognizing explosive devices
- Medical training: Triaging, first aid, etc. for mass casualty incidents
- Response to school shootings: Responding, getting medical attention to the victims
- Public Information training
- Disaster recovery: Obtaining federal resources
- Hazmat response training: Recognizing specific toxics and chemicals
- Campus emergency prevention: Preventing and responding to an emergency
- Incident command system training on various levels of disaster management

TRANSPARENCY IN TRAINING

All police department training courses are announced in Training Bulletins. All Training Bulletins are forwarded to the PRC for the Commission's information and review.

UASI / URBAN SHIELD

UASI funding supports Urban Shield, an internationally recognized training exercise that is designed to prepare civilian and public safety government employees for natural and man-made disasters. Trainings are designed for county and city communications staffs, tactical teams, explosive ordinance disposal teams, firefighters, and hostage negotiators. There are no other

training exercises that are comparable in scale or scope to Urban Shield's comprehensive, in depth, and large-scale training scenarios. In the City of Berkeley, Fire, Police, Emergency Services, Public Health and civilian staff use the training.

Urban Shield does not provide scenario-by-scenario trainers. Rather, individual teams bring their own training, tactics, and policies to each scenario, where they are then rated, and given the opportunity to review and discuss each scenario.

Any participating City staff engage in all scenarios while adhering to City policies, such as BPD and its Use of Force Policy. Responding to significant natural or man-made disasters inevitably requires collaboration with other agencies.

Urban Shield helps prepare our civilian and sworn staff to respond to critical incidents and multi-casualty incidents that may occur, and have occurred within our city. The Urban Shield exercise is the only available opportunity for our officers to work through realistic scenarios with role players who act as witnesses, victims, suspects and casualties. Urban Shield's scenarios can take place in airplanes, boats, trains and other types of infrastructure that we may not have access to until an emergency response is needed. The communications exercise in 2016, which civilian City staff participated in, focused on distributing potable water to 1.8 million households in the Bay Area following a catastrophic earthquake.

Terrorist, mass casualty, and active shooter incidents continue to occur in the US and around the world; without warning. Should such an event occur in Berkeley, Berkeley Police, Fire, and EMTs will be the first responders and as such address the threat, mitigate the impacts to the victims, and restore order to the community. To that end, it is vitally important for our officers and firefighters to be as prepared as possible when called upon to respond. The wide range of scenarios offered by Urban Shield support officers' preparedness and training for the worst imaginable circumstances.

Urban Shield's scenarios are based on real life events, including:

- Hospital Attack in Pakistan
August 8, 2016 Quetta, Pakistan - Mass shooting/suicide bombing - Suspects killed 70 and injured 130 others.
- Orlando Nightclub Shooting
June 12, 2016 Orlando, Florida - Mass shooting/Hostage situation - Suspect killed 49 people and wounded 53 others inside a nightclub.
- San Bernardino Attack
December 2, 2015 San Bernadino, California - Mass shooting/Attempted bombing. Two suspects killed 14 and injured 22 others.
- Planned Parenthood Shooting
November 27, 2015 Colorado Springs, Colorado - Mass shooting/Standoff - Suspect shot three people near a clinic including a police officer who responded to the scene. Nine other people were shot including 5 police officers and 4 civilians.
- Charlie Hebdo Shooting
January 7, 2015 Paris, France - Mass shooting - Two suspects killed 12 people in an office building.
- Sandy Hook Elementary School Shooting
December 14, 2012 Newtown, Connecticut - Mass shooting - Suspect fatally shot 20

children and six adult staff members.

- Aurora Theater Shooting
July 20, 2012 Aurora, Colorado - Mass shooting/Tear Gas/Explosive devices - Suspect shot and killed 12 people and 70 others were injured.
- Virginia Tech Shooting
April 16, 2007, Blacksburg, Virginia - Mass shooting/Bomb Threat/Mobile Suspect - Suspect shot and killed 32 people.
- Beslan School Siege
September 1, 2004 Beslan, Russia Chechan - Mass shooting/Hostage situation/Standoff - Rebels took approximately 1200 people hostage for three days. 330 were killed and more than 700 people were wounded.
- Columbine High School
April 20, 1999 Columbine, Colorado - Mass shooting/Over 99 explosive devices - Two teenagers killed 12 students and one teacher.

Our community is home to major science labs, prominent institutions, stadiums, entertainment venues, nightclubs, schools, movie theaters, churches, cafes, restaurants, as well as numerous outspoken leaders and activists; any number of which could be targeted. Attacks such as those listed occur without warning, and can occur at any time. Urban Shield is leading the country in preparing emergency responders to similar incidents.

Additional information regarding UASI and BPD participation in Urban Shield:

- BPD can invite PRC members or City Council members to Urban Shield to observe and evaluate the exercises, our team and the team's abilities.
- The Alameda County Board of Supervisors has created an Urban Shield Task Force to examine and report back to the Board regarding the Urban Shield Exercise. The Task Force includes numerous non-elected community members, including representatives of the Stop Urban Shield Coalition. Their report is expected in August.
- UASI's grant program provides funds for equipment and training, but not weapons.
- On October 28th, 2013, the Berkeley Police Department validated the use of its own tactics through the Urban Shield exercise and placed 1st out of 35 teams. The event was discussed in an in depth article in Berkeleyside, see attachment 3.
- On March 25, 2014 the PRC recommended council pass a proclamation recognizing BPD's 2013 Urban Shield Team. The Council passed a proclamation stating, "Urban Shield 2013 included training scenarios based on real-world emergencies and critical events. In Urban Shield 2013 the Berkeley Police Department's Special Response Team demonstrated its skill and dedication to its mission by finishing in first place among the thirty-five competing police teams....the Mayor and City Council of Berkeley, do hereby honor and celebrate the Berkeley Police Department's Special Response Team and its individual members for their victory in the Urban Shield 2013 exercise." (See Attachment 4)
- Last year, the Berkeley Police Department had the highest score of all Departments with part-time teams, and scored fifth overall.

- Participation in Urban Shield does not compromise policies regarding cooperation with ICE, per General Order J-1 (139).
- Every grant application made to UASI is brought to Council for review and approval.
- Equipment purchased through UASI grants is used in accordance with BPD policies, staffed by BPD personnel, and is not under the control of the federal government.
- The police department is not obliged to take part in any operation not in line with our community's values.

UASI / THE BERKELEY FIRE DEPARTMENT and OFFICE OF EMERGENCY SERVICES

BFD, OES, Public Health and civilian staff participate with UASI as follows:

- Berkeley OES has previously been on the Urban Shield Yellow Command Exercise Evaluation Team, which provides staff with exposure to complex, intense exercises and the opportunity to learn from the drills of others. These events include and work in collaboration with other law enforcement agencies to simulate the realities of first responders.
 - OES and civilian city staff have participated in the one day series of workshops. Sessions attended included lessons learned from the Water Point of Distribution exercise, Joint Information System planning, and learning from the responders to the San Bernardino shooting incident.
 - In 2017 and 2018 Yellow Command is focused on Regional Shelter Planning and will provide opportunities to test large scale shelter plans, which will be integral to the Bay Area's earthquake response.
 - In 2017 a new element is being added to Urban Shield to incorporate community disaster preparedness and CERT teams.
- UASI Mass Care and Sheltering Sub-Committee, which is the only source for regional planning for care and shelter concerns.
- UASI Emergency Management Working Group, which brings together regional partners to address emergency management, planning, and recovery issues.
- UASI Joint Information System Working Group, which is a platform for Public Information Officers throughout the Region to collaborate and assist each other during planned events and emergencies
- Medical and Public Health Workgroup
- Emergency Public Information and Warning Workgroup
- Training and Exercise Programs (Classes are provided free of charge throughout the region. Many are needed for EOC credentialing and would be expensive to attend without UASI funding) Training includes:
 - Emergency Management Training
 - Disaster Recovery, Planning, and Mitigation
 - Essential Emergency Management Concepts
 - Earthquake Response
 - PIO/JIC Training

- o Specialized Training developed based on identified emergency management needs

NCRIC-SPECIFIC BACKGROUND INFORMATION

NCRIC / SUMMARY

NCRIC is the Northern California Regional Intelligence Center. NCRIC holds a partnership with federal, state, and local public safety agencies and coordinates the sharing of criminal intelligence. BPD may receive and share confidential or "law enforcement sensitive" public safety oriented information with NCRIC to facilitate criminal investigations or to promote the safety of the community and/or law enforcement. There is not an actual agreement with NCRIC, but only the department's General Order N-17 which provides guidance on how and when BPD can obtain and share information with NCRIC

NCRIC / INFORMATION SHARING

There are currently 135 members of the police department who receive NCRIC's updates. The updates consist of general officer safety information, such as when a weapon is concealed in an unusual way, and descriptions of unusual occurrences across the state.

For 2016 there were a total of 124 Automated License Plate Recognition (ALPR) queries from twelve different police officers. The queries are an investigative tool to develop leads on suspect vehicles, and to identify and locate offenders after an incident has occurred.

For 2017, as of April 1, 2017, there have been 46 queries from eight different police officers.

All officers are required to submit their reason for their access, (e.g. a case number), and that information is later audited by the IT department at NCRIC.

NCRIC / Suspicious Activity Reports (SARS)

BPD submits SARS to NCRIC. The criteria for these reports is outlined in General Order N-17.

SARS Submittal History:

- 2012-2013: 11 reports (submitted to City Council in the 10/15/13 Report)
- 2014: 5 reports (submitted to City Council in the 10/28/14 Report)
- 2015: 2 reports (submitted to City Council in the 12/1/15 Report)
- 2016: 1 report (submitted to City Council in the 3/14/17 Report)

CURRENT SITUATION AND ITS EFFECTS

FISCAL AGENT AGREEMENT & NCRIC

Fiscal agent agreement(s) and BPD's policy with regards to NCRIC are two sections contained within BPD's Compendium of Memorandum of Understandings, which contains BPD's agreements with multiple local, state and federal agencies.

On March 14, 2017 the Council approved the entire Compendium with the exception of UASI and NCRIC and requested further information on both items. A detailed explanation has been set forth above.

RATIONALE FOR RECOMMENDATION

Section 3.6 has been revised for clarity, and now more specifically and accurately describes the fiscal agent agreement which is entered into after Council approves the request to apply for equipment, and approves receipt of grant funds to purchase the equipment through the regionally controlled Urban Area Security Initiative grant approval process. There is no other agreement with UASI.

- The UASI grant funding program is utilized on a case by case basis. Any application for a UASI grant is brought before council for approval.
- Equipment purchased through UASI Grants is under the sole control of the Berkeley Police Department. Equipment obtained through a UASI grant are not federally controlled, and are not controlled by any entity other than the Berkeley Police Department
- The Police Department operates in accordance with all City Council and Department General Orders and Policies as applicable.

Section 3.12 has been revised for clarity, and sets forth that the relationship between the NCRIC and the Berkeley Police Department as described within Berkeley Police Department General Order N-17. There is no other agreement with NCRIC.

- Berkeley Police Department General Order N-17 outlines policy and procedures for participating with NCRIC, and provides detailed language for the Suspicious Activity Report (SAR) process:
 - Under N-17 Section 5, "Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs."
 - Under N-17 Section 6, "SARs must not be submitted based on ideology, social or political opinion or advocacy of religious beliefs or association with a particular group..."
- The police department operates in accordance with all City Council and Department General Orders and Policies as applicable.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSONS

Andrew Greenwood, Chief of Police, 510-981-5700

Attachments/Exhibits:

1. Resolution
 - Exhibit A: Revised Face Sheet for MOU Compendium Item 3.6 - Fiscal Agent Agreement(s)
 - Exhibit B: Revised Face Sheet for MOU Compendium Item 3.12 - NCRIC
2. Berkeley PD General Order N-17: SUSPICIOUS ACTIVITY REPORTING AND RELATIONSHIP WITH THE NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER
3. Berkeleyside Article
4. City Council Proclamation
5. 2016 UASI Grant Fund Agreement
6. March 14, 2017 Council Report

RESOLUTION NO. ##,###-N.S.

APPROVING POLICE DEPARTMENT MOU COMPENDIUM REVISED AND UPDATED ITEMS 3.6 AND 3.12, AS OF APRIL 25, 2017, WHICH EXPRESS TERMS AND CONDITIONS OF ALL CURRENT FISCAL AGENT AGREEMENTS RESULTING FROM COUNCIL-APPROVED GRANT FUNDING FROM THE URBAN AREA SECURITY INITIATIVE GRANT APPROVAL AUTHORITY, AND INFORMATION SHARING, COOPERATION AND ASSISTANCE BETWEEN THE BERKELEY POLICE DEPARTMENT AND THE NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER, AS DESCRIBED IN BERKELEY POLICE DEPARTMENT GENERAL ORDER N-17

WHEREAS, the Berkeley Police Department has established written agreements and policies; and

WHEREAS, such agreements and policies are needed to enhance investigative resources and emergency services provided to the citizens of Berkeley, creating a safer environment for all; and

WHEREAS, this agreement and policy have been in existence and approved by City Council on numerous previous occasions as described above, and is now further clarified and more accurately described.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the Council approves the Police Department MOU Compendium's revised Items: 3.6, Agreement with Fiscal Agent for Distribution of Urban Area Security Initiative Grant Funds, and revised item 3.12, Relationship with Northern California Regional Intelligence Center (NCRIC) as codified in police department General Order N-17, as set forth in City Manager Report dated April 25, 2017, a copy of which is attached hereto, marked Exhibit A and B and made part hereof.

BE IT FURTHER RESOLVED that record copies of aforementioned documents to be on file in the Office of the City Clerk, and be available electronically via the City of Berkeley website.

CITY COUNCIL REVIEW/APPROVAL BINDER

**BERKELEY POLICE DEPARTMENT
AGREEMENTS, LETTERS AND UNDERSTANDINGS RE
MUTUAL AID, INFORMATION SHARING AND COOPERATION
WITH OTHER LAW ENFORCEMENT, MILITARY ENTITIES, AND
PRIVATE SECURITY ORGANIZATIONS
(Berkeley Municipal Code §2.04)**

Item #	3.6 (2017 Revision)
Title:	AGREEMENT WITH THE CITY & COUNTY OF SAN FRANCISCO FOR THE DISTRIBUTION OF UASI GRANT FUNDS
Type:	Agreement with Fiscal Agent to receive reimbursement
Compendium Approvals:	Initial: April 10, 2010 / Current: April 25, 2017
Summary:	The Urban Area Security Initiative provides for a grant funding program which is managed by the Department of Homeland Security, supported by FEMA, and with the City and County acting as the fiscal agent through which grant funding is distributed. The funds are provided to support emergency and disaster preparedness and response. This agreement is entered into after Council has authorized the City Manager to apply for, and receive, grants. Upon Council approval for the City Manager to receive the funds, the City Manager executes the agreement with the Fiscal Agent.
Rationale:	The Police Department's application for grant in UASI's grant funding program allows the department to purchase expensive and necessary equipment that promotes public safety and serves the law enforcement mission. Participation in UASI's grant funding program facilitates supports the goals of local and regional preparedness and emergency response to disasters and acts of violence.
Cost:	Item 3.6 is intended to provide information regarding a fiscal agent agreement. With the December 13, 2016 action, Council approved the receipt of grant funds and directed the City Manager to enter into the current Fiscal Agent agreement.
Current Fiscal Agent Agreement	Fiscal Agent Agreement ending February 28, 2018, provides for reimbursement of a maximum of \$125,373 to support the purchase of a reinforced panel van.
Previous Fiscal Agent Agreements (No longer attached)	<ol style="list-style-type: none"> 1. Fiscal Agent Agreement and amendment, ending December 31, 2009, provided for the reimbursement of a total amount not to exceed \$258,267 to support the purchase of a robot for the Emergency Ordinance Disposal team, EOD related training, and reimbursement for expenses associated with operating a scenario training site during an Urban Shield exercise. 2. Fiscal Agent Agreement ending November 30, 2010, provided for the reimbursement of a total amount not to exceed \$39,066 to support the purchase of a portable X-Ray device for the Emergency Ordinance Disposal team, and refurbishment of a vehicle for EOD team purposes.
Recommendation:	Continued Approval
Implementation:	The Police Department will continue to operate in accordance with all City Council and Department general orders and policies as applicable.

CITY COUNCIL REVIEW/APPROVAL BINDER

**BERKELEY POLICE DEPARTMENT
AGREEMENTS, LETTERS AND UNDERSTANDINGS RE
MUTUAL AID, INFORMATION SHARING AND COOPERATION
WITH OTHER LAW ENFORCEMENT, MILITARY ENTITIES, AND
PRIVATE SECURITY ORGANIZATIONS
(Berkeley Municipal Code §2.04)**

Item #	3.12 (2017 Revision)
Title:	BERKELEY POLICE DEPARTMENT RELATIONSHIP WITH NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER (NCRIC) AS GOVERNED BY GENERAL ORDER N-17
Type:	Written Policy: BPD General Order N-17
Compendium Approvals:	Initial: April 10, 2010 / Current: April 25, 2017
Summary:	<p>Berkeley Police Department General Order N-17 governs the relationship between the Berkeley Police Department and NCRIC.</p> <p>NCRIC facilitates the legal sharing of terrorism and criminal-oriented information. In this effort, NCRIC produces/disseminates intelligence, conducts training, and provides investigative and analytical case support to federal, state and local law enforcement agencies. NCRIC strives to ensure the protection of privacy and civil liberties of citizens in its assistance to local, state and federal agencies with their mission of protecting the communities they serve from the threats and dangers of terrorist, gang, narcotics and organized criminal activities. Local Terrorism Liaison Officers (TLOs) facilitate information sharing and investigative collaboration.</p> <p>The Police Department has a comprehensive policy regarding the provision of a Suspicious Activity Report to NCRIC, including several steps of review, and the reporting to City Council, in redacted form, of all SARs submitted to NCRIC.</p> <p>The Police Department may receive and share confidential or "law enforcement sensitive" public safety-oriented information with NCRIC to facilitate criminal investigation or to promote the safety of the community and/or law enforcement. The Police Department has designated sworn employees to act as TLO's in addition to their normal assigned duties, as described within General Order N-17)</p>
Rationale:	<p>Police Department interaction with NCRIC, governed by General Order N-17, promotes public safety and serves the law enforcement mission.</p> <p>Transparency of Suspicious Activity Reporting to NCRIC is accomplished through reporting redacted SARs with City Council.</p>
Cost:	<p><i>If Approved:</i> Cost will be neutral. Approval will continue to support current law enforcement activity, funded in existing budget.</p> <p><i>If Not Approved:</i> Effect on cost cannot be calculated. Absence of or reduced interaction would inhibit investigations and impact successful prosecution. Public and employee safety would be adversely affected. Increased local enforcement responsibility would increase local costs.</p>
Recommendation:	Continued Approval
Implementation:	The Police Department will continue to operate in accordance with all City Council and Department general orders and policies as applicable.

BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

**SUBJECT: SUSPICIOUS ACTIVITY REPORTING AND RELATIONSHIP WITH THE
NORTHERN CALIFORNIA REGIONAL INTELLIGENCE CENTER**

PURPOSE

- 1 - The terrorist attacks of September 11, 2001, and subsequent attacks throughout the world have demonstrated the necessity of an organized and integrated information sharing system at all levels of law enforcement. In order to prevent, prepare for, respond to, and investigate potential acts of terrorism and other violent criminal threats, it is necessary to establish an efficient system of communication whereby critical information can be quickly disseminated within the Berkeley Police Department (BPD) and to various local, state and federal law enforcement agencies.
- 2 - National guidelines have been developed and implemented throughout the United States through the National Criminal Intelligence Sharing Plan, the Findings and Recommendations of the Suspicious Activity Report Support and Implementation Project and the Nationwide Suspicious Activity Reporting Initiative (NSI) to establish a means for the sharing of information, known as Suspicious Activity Reporting (SAR). The information sharing plan was developed by law enforcement agencies to establish an all-crimes approach to gathering, processing, reporting, analyzing, and sharing of suspicious activity related to potential terrorism and crime. By maximizing information from citizens, law enforcement, and public safety officials, criminal acts can be detected and disrupted and incidents that have occurred can be properly investigated.
- 3 - The Berkeley Police Department will continue to attempt to detect crime before it occurs, including terrorism, through various means such as Suspicious Activity Reporting (SAR). The SAR program will provide a format for the Department to accurately and appropriately gather record, analyze and share suspicious activity or, in cases of named or identified individuals or groups, information that gives rise to a reasonable suspicion of criminal activity, including those activities related to foreign or domestic terrorism.

LIMITATIONS

- 4 - If the information gathered is developed into criminal intelligence, the Department will ensure that the information privacy and legal rights of all persons will be recorded and maintained in strict compliance with existing federal, state and Department guidelines regarding criminal intelligence systems as defined in (28 Code of Federal Regulations (CFR), Part 23 including subsections 23.20 (a) and 23.20(b)), the California Constitution and the California Attorney General's Model Standards and Procedures for Maintaining Criminal Intelligence Files and Criminal Intelligence Operational Activities and the California State Threat Assessment System Concept of Operations.

BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

- (a) A project shall collect and maintain criminal intelligence information concerning an individual only if there is reasonable suspicion that the individual is involved in criminal conduct or activity and the information is relevant to that criminal conduct or activity.
 - (b) A project shall not collect or maintain criminal intelligence information about the political, religious or social views, associations, or activities of any individual or any group, association, corporation, business, partnership, or other organization unless such information directly relates to criminal conduct or activity and there is reasonable suspicion that the subject of the information is or may be involved in criminal conduct or activity.
- 5 - Non-violent civil disobedience is specifically exempted from SARs reporting, and such activities shall not be reported as SARs.
 - 6 - SARs must not be submitted based on ideology, social or political opinion or advocacy of religious beliefs or association with a particular group. Criminal activity that would not ordinarily result in a SAR does not become worthy of a SAR when the subject's speech or expression indicates a particular ideological viewpoint or association.

POLICY

- 7 - Effective immediately, all sworn BPD personnel will document incidents with an actual or potential terrorism nexus or other suspected criminal activity and submit those proposed Suspicious Activity Reports as outlined in this policy. All Department members will adhere to the procedures and responsibilities described in this policy whenever potential terrorism related activity is encountered, observed or reported.

DEFINITIONS

- 8 - Suspicious Activity: Behavior that may be indicative of intelligence gathering or pre-operational planning related to terrorism, or criminal activity. Suspicious behavior must have a criminal predicate (defined below), and must rise to the level of reasonable suspicion (defined below) in order to be reportable as a SAR in circumstances involving a named or identified individual or group.
- 9 - Criminal Predicate: The standard by which the determination as to whether information may be used to create a SAR is made in circumstances involving a named or identified individual or group. It means that there exists a "reasonable suspicion" based on the analysis of legally obtained information that the subject of the information is or may be involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct. For the purposes of this order, infraction violations will not be considered sufficient to establish a criminal predicate. The underlying offense must amount

BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

to a misdemeanor or felony.

- 10 - Reasonable Suspicion: Information which, when viewed in its totality, leads a person with appropriate training, specialized knowledge, and/or experience to conclude that a person, association of persons, or organization is involved in definable criminal conduct and/or activity that supports, encourages, or otherwise aids definable criminal conduct.

PROCEDURES

- 11 - Examples of behaviors that could be reported as a SAR are as follows (all of these behaviors have been verified as behaviors which have preceded and been linked to actual terrorist incidents as well as common criminal acts):

DEFINED CRIMINAL ACTIVITY AND POTENTIAL TERRORISM NEXUS ACTIVITY	
ISE-SAR CRITERIA GUIDANCE Category Description	
Breach/Attempted Intrusion	Unauthorized personnel attempting to or actually entering a restricted area or protected site. Impersonation of authorized personnel (e.g. police/security, janitor).
Misrepresentation	Presenting false or misusing insignia, documents, and/or identification, to misrepresent one's affiliation to cover possible illicit activity.
Theft/Loss/Diversion	Stealing or diverting something associated with a facility/infrastructure (e.g., badges, uniforms, identification, emergency vehicles, technology or documents {classified or unclassified}, which are proprietary to the facility).
Sabotage/Tampering/ Vandalism	Damaging, manipulating, or defacing part of a facility/infrastructure or protected site.
Cyber Attack	Compromising, or attempting to compromise or disrupt an organization's information technology infrastructure.
Expressed or Implied Threat	Communicating a spoken or written threat to damage or compromise a facility/infrastructure.
Aviation Activity	Operation of an aircraft in a manner that reasonably may be interpreted as suspicious, or posing a threat to people or property. Such operation may or may not be a violation of Federal Aviation Regulations.
POTENTIAL CRIMINAL OR NON-CRIMINAL ACTIVITY REQUIRING ADDITIONAL FACT	

BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

INFORMATION DURING INVESTIGATION ¹	
Eliciting Information	Questioning individuals at a level beyond mere curiosity about particular facets of a facility's or building's purpose, operations, security procedures, etc., that would arouse suspicion in a reasonable person.
Testing or Probing of Security	Deliberate interactions with, or challenges to, installations, personnel, or systems that reveal physical, personnel or cyber security capabilities.

- 12 - **Examples of behavior which cannot be reported as a SAR unless:** 1) the activity rises to the level of criminal conduct, or 2) the person taking part in the activity is not identified, and therefore, not subject to possible investigation by state and federal investigative agencies:

Recruiting	Building of criminal operations teams and contacts, personnel data, banking data or travel data
Photography	Taking pictures or video of facilities, buildings, or infrastructure in a manner that would arouse suspicion in a reasonable person. Examples include taking pictures or video of infrequently used access points, personnel performing security functions (patrols, badge/vehicle checking), security-related equipment (perimeter fencing, security cameras), etc.

- 13 - **Employee's Responsibilities:** All personnel are reminded that Constitutional rights will be honored at all times and nothing in this policy diminishes Constitutional protections. Personnel are specifically reminded of Fourth Amendment protections and that persons cannot be arrested without probable cause, detained without reasonable suspicion, and that evidence cannot be seized except pursuant to a warrant or an existing recognized exception to the warrant requirement. Any BPD employee receiving any information regarding suspicious activity potentially related to terrorism shall:

- (a) Notify their direct supervisor.

¹ Note: These activities may be considered First Amendment-protected activities and should not be reported in a SAR or ISE-SAR absent articulable facts and circumstances that support the source agency's suspicion that the behavior observed is not innocent, but rather reasonably indicative of criminal activity associated with terrorism, including evidence of pre-operational planning related to terrorism. Race, ethnicity, national origin, or religious affiliation should not be considered as factors that create suspicion (although these factors may be used as specific suspect descriptions).

BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

- (b) Notify a department Terrorism Liaison Officer (TLO)
 - (c) Document the incident as described in this policy.
- 14 - Responsibilities of Supervisors: Upon notification that personnel have received information regarding a potential SAR, the BPD Supervisor shall:
 - (a) Determine if any further law enforcement response is needed, will consult with a BPD (TLO) if available and determine if immediate notifications to the Chief of Police, and/or the City Manager or his/her designee is required.
 - (b) Provide the information in written form to the TLO for consideration of SAR submittal.
 - (c) Review the reports and ensure the proper reporting has been completed.
- 15 - Responsibilities of the TLO and TLO Coordinator (TLOC): Terrorism Liaison Officers (TLOs) have received training in the identification, handling and reporting of potential terrorism related incidents. TLOs will be available as a resource for SAR related incidents.
 - (a) TLOs will review proposed SARs from officers, and supervisors, and forward them to the TLO Coordinator (TLOC) for further review. If the report meets sufficient criteria for submission as a SAR, the TLOC will submit it to the Operations Division Commander or his designee for submission approval.
 - (b) The TLOC shall maintain a written log of all SARs submitted, and prepare an annual report to be provided to City Council.
- 16 - Responsibilities of the Operations Division Commander:
 - (a) Review of proposed SARs, and approval/rejection as appropriate.
 - (b) Forward all SARs to the City Manager and Chief for review
 - (c) Ensure that a written log is maintained and an annual report prepared by the TLOC.
- 17 - Responsibilities of the NCRIC: It is the policy of the NCRIC to make every effort to accurately and appropriately gather, record, analyze, and disseminate information that could indicate activity or intentions related to threats to homeland security and submit such information to the Federal Bureau of Investigation –

BERKELEY POLICE DEPARTMENT

ISSUE DATE: November 9, 2016

GENERAL ORDER N-17

Joint Terrorism Task Force (FBI-JTTF) and the Nationwide Suspicious Activity Reporting (SAR) Initiative (NSI) in the form of an NSI suspicious activity report. These efforts shall be carried out in a manner that protects the information and the privacy, civil rights, and civil liberties of individuals. Suspicious activity information shall be recorded and maintained in strict compliance with existing federal and state guidelines.

- 18 - The NSI has established a unified process for reporting, tracking, and assessing terrorism-related SARs throughout the nation. The NSI adheres to the guidelines established by the Intelligence Reform and Terrorism Prevention Act and the Information Sharing Environment Suspicious Activity Reporting (ISE-SAR) Functional Standard. These guidelines call for all terrorism-related suspicious activity reporting to be routed through designated fusion centers for appropriate vetting and review before the information can be shared within the nationwide system. The NCRIC as a component of California's State Threat Assessment System has been designated as the review agents for all terrorism-related suspicious activity reporting in the region.
- 19 - The NCRIC will then make the decision to share the SAR information with the NSI based on the standards established by the NSI. The NCRIC is also responsible for ensuring that all TLOs, line officers and other first responders in the region have received appropriate training in the collection and reporting of terrorism-related suspicious activities and the responsibilities related to protection of privacy, civil rights and civil liberties of individuals. The NCRIC also works closely with the NSI Program Management Office to ensure a statewide implementation of suspicious activity reporting.
- 20 - Reporting a SAR: All Suspicious Activity Reports (SARs) will be submitted through the www.ncric.org website. When the SAR involves a criminal act or attempted criminal act, a written BPD police report shall be submitted (and BPD case number created) identifying the suspected criminal behavior and referencing the systems and personnel notified of the SAR.

Berkeley Article

Berkeley Police team wins local Urban Shield contest

By Emilie Raguso
Nov. 8, 2013, 4 p.m.

Berkeley Police Urban Shield team. Photo: Berkeley Police Association

A team of Berkeley Police officers took first place at a recent Bay Area competition to gauge their preparedness in a 48-hour series of grueling emergency response drills, authorities said this week.

The fifth annual Bay Area Urban Shield event, which is organized by the Alameda County sheriff's department, took place Oct. 25-28 in locations around the region.

The federally-funded program is managed by the National Incident Management System and the Standard Emergency Management System, according to organizers. The program was created to train first responders in how to handle disaster scenarios in the communities they serve. Police and fire first responders in many cities, such as San Francisco, Austin and Dallas, along with international teams from Brazil, Israel, France and other countries, have participated.

Sgt. Christian Stines, president of the Berkeley Police Association, said Berkeley's team of participants this year bested 34 other SWAT and emergency responder teams from around the globe to score highest in this year's contest.

The team was made up of eight officers, including negotiators and members of logistics and tactical teams, who are among a couple dozen members of Berkeley's overall special response team. Officers volunteered to participate in the contest to represent the department.

The exercises are "designed to protect buildings and its inhabitants, in mass casualty incidents, in active shooter scenarios, like what occurred at Oikos University in Oakland, and in hostage rescue exercises," Stines said.

Drills were modeled on events like the U.S. embassy attack in Benghazi, the Navy shipyard attack in September, the Boston Marathon bombing and the shooting at Sandyhook Elementary in Newtown. Competitions were staged in locations throughout Northern California, including San Francisco, Redwood City, Livermore and Brentwood. Emergency responders worked together to address each incident, and teams were scored on their participation.

This year, two drills took place on the Bay Bridge. In one, terrorists had stolen a FedEx van and were using it to launch a chemical and biological assault on bystanders. Scenarios have also taken place inside the Caldecott Tunnel or at local airports.

Berkeleyside Article

"We get the chance to do things that we don't normally do, or couldn't normally do, in Berkeley," said Stines. "All of those were just great experiences, to feel like we're capable of handling those different situations."

He said teamwork, practice and commitment throughout the year contributed to Berkeley's success in the contest.

"Team leaders have put in a tremendous amount of personal time, whether that's through going to conferences, ordering T-shirts for the group, or dropping off coffee at training events," he said. "Everybody, from top to bottom, has really contributed a lot of personal time to ensure that we're a top notch team."

The Berkeley Police special response team has been around since 1976, and achieved international recognition for its handling of the Henry's restaurant hostage incident in 1990.

Many of the groups that participate in Urban Shield are full-time SWAT members, said Stines. In Berkeley, it's an ancillary duty, with officers training for SWAT-type exercises just twice a month. Despite that, the team's focus on "modernizing and really looking toward the best tactics and best practices" gave Berkeley an edge.

Stines, who did not participate this year but has been involved in Urban Shield exercises in the past, described the competition as "brutal," both physically and psychologically.

"To be awake for 48 hours, it's just difficult," he said. "You're obstacle course running, and climbing over water, and climbing through tunnels in the dark. By the end of it you're pretty much a zombie."

There are no significant breaks throughout the competition, though participants undergo several brief medical checks for safety.

"You may get some rest driving from the Livermore scenario to the Redwood City scenario, but otherwise you're on, pretty much constantly, for those 48 hours," said Stines.

Participants also get a first-hand look at new technologies that might help in crime fighting, such as a tool that provides a 360-degree view of a room before first responders go inside.

And, though much of the equipment and training may well have been designed for military contexts, Stines said local forces always translate that into what would make sense in a civilian environment.

"We're able to adapt the lessons that they've learned from armed conflicts and use those things to prevent problems in Berkeley," he said.

Critics of the program say it promotes the increasing militarization of local police forces. At a recent Berkeley City Council meeting in October, members of local watchdog group Copwatch said the city should not participate in events like it.

"It is not about disaster preparedness. It's a game," Copwatch founder Andrea Prichett told council members, who were considering what type of law enforcement mutual aid agreements the city should approve. She said that, though events like Urban Shield tout anti-terrorism and disaster preparedness training, "it makes a joke of both activities."

"This police department is getting away from us," Prichett told the council.

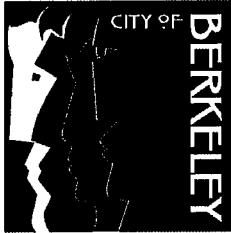
Among roughly a dozen speakers who criticized the program or expressed concerns about the protection of civil liberties, one said events like Urban Shield help build the "framework for the police state," and provide a dangerous precedent as far as what surveillance technologies are used in local communities.

Others said, instead of focusing on terrorism or disaster response, police end up using their tactical skills to target activists involved with anti-war or Occupy-type movements, quash constitutionally protected forms of protest and criminalize demonstrators.

Berkeleyside Article

Stines said he disagreed with that assessment.

"If you looked at, in the 70s, with the huge number of veterans coming home, there was a lot more military culture in our police department at that point," he said. "Now, there's quite the reverse of that. There are a whole lot of really educated cops, even if they are veterans, who have spent enough time in civilian culture to parse what's good and appropriate in the community. We're even better at being able to tell the difference now than we have been in the past."



Police Review Commission (PRC)

ACTION CALENDAR

March 25, 2014

To: Honorable Mayor and Members of the City Council
From: Police Review Commission
Submitted by: Kiran Shenoy, Chair, Police Review Commission
Subject: Proclamation for Berkeley Police Department's Special Response Team

RECOMMENDATION

Issue a proclamation congratulating the Berkeley Police Department's Special Response Team and its individual members on their first-place finish in the 2013 Urban Shield competition.

FISCAL IMPACTS OF RECOMMENDATION

None.

BACKGROUND

The 2013 Urban Shield event was hosted by the Alameda County Sheriff's Office from October 25-28. Urban Shield is a federally-funded program that supports full-scale, multidisciplinary Homeland Security/Disaster Preparedness exercises for first responders. These exercises involve competitive training scenarios that incorporate elements of real-world emergencies and major critical incidents. The Berkeley Police Department (BPD) was among the many police and fire agencies throughout the Bay Area and the state that participated in Urban Shield. BPD's Special Response Team scored a first-place victory over the other 34 police department participants in the first responder exercise.

On December 11, 2013, the Police Review Commission voted 7-0-1-0 (Cardoza/Berstein, Ayes: Allen, Cardoza, Lowhurst, Perezvelez, Rogers, Shenoy, Sherman; Noes: None; Abstain: Bernstein; Absent: None) to recommend to the City Council to issue a proclamation congratulating BPD's Special Response Team and its individual members on their first-place finish in the 2013 Urban Shield competition.

CITY MANAGER

The City Manager concurs with the content and recommendations of the Commission's Report.

CONTACT PERSON

Katherine J. Lee, Commission Secretary, (510) 981-4950

ATTACHMENTS

1. Proclamation



HONOR THE BERKELEY POLICE DEPARTMENT'S SPECIAL RESPONSE TEAM AND ITS INDIVIDUAL MEMBERS FOR THEIR VICTORY IN URBAN SHIELD 2013

WHEREAS, Urban Shield is a federally funded forty-eight hour competitive training exercise, for first responders, including firefighters, EMS and police; and

WHEREAS, Urban Shield 2013 duration training scenarios based on real-world emergencies and critical events such as the embassy attack in Benghazi, the Boston Marathon and the Sandy Hook school shooting; and

WHEREAS, Participating teams from police departments came from around California plus two from Texas and one from Brazil; and

WHEREAS, The event attracted public officials as observers from countries around the world including the Netherlands, the United Arab Emirates, Colombia and Switzerland; and

WHEREAS, Thirty-four other police departments were represented by teams with equivalent missions to that of Berkeley's Special Response Team; and

WHEREAS, In Urban Shield 2013 the Berkeley Police Department's Special Response Team demonstrated its skill and dedication to its mission by finishing in first place among the thirty-five competing police teams.

NOW THEREFORE BE IT RESOLVED that we, the Mayor and City Council of Berkeley; do hereby honor and celebrate the Berkeley Police Department's Special Response Team and its individual members for their victory in the Urban Shield 2013 exercise.

<u>Tom Bates</u>	<u>Linda Maio</u>	<u>Daryl Moore</u>
<u>Maxwell D. Ch...</u>	<u>Lena Aragoni</u>	<u>[Signature]</u>
<u>Josue Acunaf</u>	<u>Krista Worthington</u>	<u>[Signature]</u>

**AGREEMENT BETWEEN THE CITY AND COUNTY OF
SAN FRANCISCO AND THE CITY OF BERKELEY
FOR THE DISTRIBUTION OF FY 2016 UASI GRANT FUNDS**

THIS AGREEMENT is made this **NOVEMBER 1, 2016** in the City and County of San Francisco, State of California, by and between the **CITY OF BERKELEY** ("BERKELEY") 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 BERKELEY 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 BERKELEY (DUNS#: 076529924) under this Agreement. This Agreement shall specifically cover funds allocated or disbursed from Cal OES Grant No. 2016-0102, Cal OES ID No. 075-95017, CFDA No. 97.067, per Cal OES award notice dated September 16, 2016.

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

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

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

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

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

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

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

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

2.1 **Risk of Non-Allocation of Grant Funds.** This Agreement is subject to all federal and state grant requirements and guidelines, including DHS and 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. BERKELEY acknowledges and agrees that grant decisions are subject to the discretion of the Cal OES and Approval Authority. Further, BERKELEY acknowledges and agrees that the City shall have no obligation to disburse grant funds to BERKELEY until City and BERKELEY have fully and finally executed this Agreement. BERKELEY 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 BERKELEY to perform services or to provide materials, equipment and supplies that would result in BERKELEY 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 BERKELEY for services, materials, equipment or supplies that are provided by BERKELEY 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 BERKELEY additional funding for this Agreement that would exceed the maximum amount of funding provided for herein. Additional funding for this Agreement in excess of the maximum provided herein shall require lawful approval and certification by the Controller. San Francisco is not required to honor any offered or promised additional funding that exceeds the maximum provided in this Agreement that requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

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

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

ARTICLE 3 PERFORMANCE OF THE AGREEMENT

3.1 **Duration of Term.** The term of this Agreement shall commence on **NOVEMBER 1, 2016** and shall end at 11:59 p.m. San Francisco time on **FEBRUARY 28, 2018.**

3.2 **Maximum Amount of Funds.** In no event shall the amount of Grant Funds disbursed hereunder exceed **ONE HUNDRED TWENTY-FIVE THOUSAND, THREE HUNDRED SEVENTY-THREE DOLLARS (\$125,373)**. The City will not automatically transfer Grant Funds to BERKELEY upon execution of this Agreement. BERKELEY must submit a Reimbursement Request under Section 3.10 of this Agreement, approved by the UASI Management Team and City, before the City will disburse Grant Funds to BERKELEY.

3.3 **Use of Funds.**

(a) **General Requirements.** BERKELEY shall use the Grant Funds received under this Agreement for the purposes and in the amounts set forth in the Grant Plan. BERKELEY 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. BERKELEY 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, BERKELEY may submit a written request to modify the Grant Plan. BERKELEY 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, BERKELEY 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.** BERKELEY shall use Grant Funds to supplement existing funds, and not replace (supplant) funds that have been appropriated for the same purpose.

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

3.4 **Grant Assurances; Other Requirements; Cooperation with Monitoring.**

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

(c) BERKELEY 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. BERKELEY 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 OES, San Francisco or the UASI Management Team. For ensuring compliance with non-supplanting requirements, upon request by City or the UASI Management Team, BERKELEY shall supply documentation certifying that a reduction of non-federal resources occurred for reasons other than the receipt or expected receipt of Grant Funds.

3.5 **Administrative, Programmatic and Financial Management Requirements.** BERKELEY 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 BERKELEY 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).

3.6 Technology Requirements.

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

3.7 Procurement Requirements.

(a) General Requirements. BERKELEY 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, including the most recent restrictions on the purchase of general purpose equipment (see FY 2016 HGSP Notice of Funding Opportunity ("NOFO") at pgs. 27-28) and on purchases of specified controlled equipment (see NOFO at pg. 59).

(b) Specific Purchases. If BERKELEY is using Grant Funds to purchase interoperable communication equipment, BERKELEY shall consult DHS's SAFECOM's coordinated grant guidance, which outlines standards and equipment information to enhance interoperable communication. If BERKELEY is using Grant Funds to acquire critical emergency supplies, prior to expending any Grant Funds, BERKELEY shall submit to the UASI Management Team for approval by Cal OES 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. BERKELEY shall obtain a performance bond for any equipment items over \$250,000 or any vehicle, aircraft or watercraft financed with Grant Funds.

3.8 Subgrantee and Contractor Requirements.

(a) BERKELEY shall ensure and independently verify that any subgrantee, contractor or other entity receiving Grant Funds through or from BERKELEY 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. BERKELEY shall obtain documentation of eligibility before disbursing Grant Funds to any subgrantee, contractor or other entity. BERKELEY shall maintain documentary proof of this verification in its files. BERKELEY 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. BERKELEY 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) BERKELEY shall ensure that any subgrantee, contractor or other entity receiving Grant Funds through or from BERKELEY complies with the requirements of 44 CFR Part 18, *New Restrictions on Lobbying*; and

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

3.9 Monitoring Grant Performance.

(a) City and the UASI Management Team are both authorized to perform periodic monitoring reviews of BERKELEY'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) BERKELEY is responsible for monitoring and auditing the grant activities of any subgrantee, contractor or other entity receiving Grant Funds through or from BERKELEY. 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 BERKELEY, the City shall place a hold on all Reimbursement Requests from BERKELEY until the findings are resolved.

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

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

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

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

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

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

3.11 **Disallowance.** BERKELEY 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, BERKELEY 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 BERKELEY hereunder or under any other Agreement with BERKELEY. Any such offset with respect to a portion of the disallowed amount shall not release BERKELEY from BERKELEY's obligation hereunder to refund the remainder of the disallowed amount.

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

3.13 **EHP Requirements.**

(a) Grant Funded projects must comply with the federal Environmental and Historic Preservation ("EHP") program. BERKELEY 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. BERKELEY shall notify the UASI Management Team of any project that may require an EHP review. BERKELEY 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. BERKELEY 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, BERKELEY 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, BERKELEY shall notify the UASI Management Team and ensure monitoring of ground disturbance. If any potential archeological resources are discovered, BERKELEY shall immediately cease construction in that area and notify the UASI Management Team, which will notify the appropriate State Historic Preservation Office. If BERKELEY is using Grant Funds for a communication tower project, BERKELEY shall complete its Federal Communication Commission ("FCC") EHP process before preparing its Cal OES/FEMA EHP materials, and shall include the FCC EHP materials in the Cal OES/FEMA submission.

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

3.14 **National Energy Conservation Policy and Energy Policy Acts.** BERKELEY shall comply with the following requirements:

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

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

3.15 **Royalty-Free License.** BERKELEY 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 BERKELEY purchases or acquires using Grant Funds. BERKELEY shall consult with the UASI Management Team and FEMA regarding the allocation of any patent rights that arise from, or are purchased with, Grant Funds.

3.16 **Publication Statements.** BERKELEY 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.** BERKELEY 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.** BERKELEY 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 BERKELEY to be out of compliance with the Grant Assurances in Appendix B.

4.3 **Books and Records.** BERKELEY 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, BERKELEY 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. BERKELEY 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.** BERKELEY 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 BERKELEY under Section 4.3, and allow access and the right to examine those items. BERKELEY 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 BERKELEY 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. BERKELEY 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, BERKELEY 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 for Federal Awards*. BERKELEY shall submit its audit report to the UASI Management Team no later than six months after the end of BERKELEY's fiscal year.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES

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

(a) BERKELEY 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) BERKELEY 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) BERKELEY 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.

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

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

ARTICLE 6 INDEMNIFICATION AND GENERAL LIABILITY

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

Party and BERKELEY. An Indemnified Party's failure to notify BERKELEY promptly of any Loss shall not relieve BERKELEY of any liability to such Indemnified Party pursuant to Section 6.1, unless such failure materially impairs BERKELEY's ability to defend such Loss. BERKELEY shall seek the Indemnified Party's prior written consent to settle or compromise any Loss if BERKELEY 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 BERKELEY'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.** BERKELEY fails to perform or breaches any provision or covenant of this Agreement to be performed or observed by BERKELEY 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.** BERKELEY fails to perform or breaches any of the terms or provisions of Article 12.

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

(e) **Involuntary Insolvency.** Without consent by BERKELEY, a court or government authority enters an order, and such order is not vacated within ten (10) days, (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to BERKELEY or with respect to any substantial part of BERKELEY'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 BERKELEY.

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

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

(c) Within 30 days after the specified termination date, BERKELEY 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 BERKELEY 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 BERKELEY or any of its contractors or subgrantees after the termination date specified by City.

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

7.4 **Remedies Nonexclusive.** Each of the remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The remedies contained herein are in addition to all other remedies available to City at

law or in equity by statute or otherwise and the exercise of any such remedy shall not preclude or in any way be deemed to waive any other remedy.

**ARTICLE 8
ASSIGNMENTS**

8.1 **No Assignment by BERKELEY.** BERKELEY 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 BERKELEY 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 BERKELEY involuntarily or by operation of law without the prior written consent of City. A change of ownership or control of BERKELEY or a sale or transfer of substantially all of the assets of BERKELEY 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 **BERKELEY Retains Responsibility.** BERKELEY shall in all events remain liable for the performance by any subgrantee contractor, or assignee of all of the covenants, terms and conditions in this Agreement.

**ARTICLE 9
NOTICES AND OTHER COMMUNICATIONS**

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

If to San Francisco:

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

If to the UASI Management Team:

UASI Management Team
711 Van Ness Avenue, Suite #420
San Francisco, CA 94102
Attn: Catherine Spaulding, Assistant General Manager
Facsimile No.: (415) 353-5246

If to BERKELEY:

City of Berkeley, Police Department
2100 Martin Luther King, Jr. Way
Berkeley, CA 94704
Attn: Spencer Fomby
Facsimile No.: (510) 981-5744

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 **BERKELEY to Pay All Taxes.** BERKELEY 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, BERKELEY 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 BERKELEY.

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 BERKELEY 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, BERKELEY 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, BERKELEY must provide the following information on BERKELEY 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, BERKELEY agrees to participate in UASI-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, BERKELEY 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 BERKELEY's liability pursuant to Article 6 of this Agreement, BERKELEY 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, BERKELEY hereby agrees to waive subrogation which any insurer of BERKELEY may acquire from BERKELEY by virtue of the payment of any loss. BERKELEY agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the BERKELEY, 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, BERKELEY 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, BERKELEY 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 BERKELEY 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, BERKELEY 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 BERKELEY as additional insureds.

11.11 **Authority to Self-Insure.** Nothing in this Agreement shall preclude BERKELEY from self-insuring all or part of the insurance requirement in this Article. However, BERKELEY 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, BERKELEY agrees not to discriminate against any employee, San Francisco employee working with BERKELEY or any subgrantee of BERKELEY, applicant for employment with BERKELEY or subgrantee of BERKELEY, 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, BERKELEY 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. BERKELEY 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.** BERKELEY 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. BERKELEY 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, BERKELEY 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. BERKELEY 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 BERKELEY from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider BERKELEY's use of profit as a violation of this section.


12.5 **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

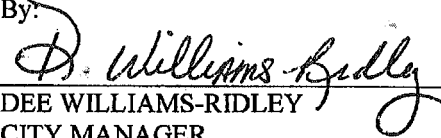
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

CITY AND COUNTY OF SAN FRANCISCO:

CITY OF BERKELEY:

SAN FRANCISCO DEPARTMENT OF
EMERGENCY MANAGEMENT

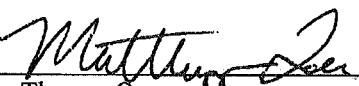
By: 
ANNE KRONENBERG *with Debra*
EXECUTIVE DIRECTOR *for KB*

By: 
DEE WILLIAMS-RIDLEY
CITY MANAGER

Federal Tax ID #: 94-6000229

Approved as to Form:

Dennis J. Herrera
City Attorney

By: 
~~Thomas Owen~~ *Matthew Lee*
Deputy City Attorney

Appendix A — Authorized Expenditures and Timelines

ENTITY: BERKELEY

Total allocation to be spent on the following solution areas:

<u>UASI Project Letter and Title</u>	<u>Program Description</u>	<u>Projected Milestone Dates (to be completed on or about)</u>	<u>Deliverable Dates</u>	<u>Solution Area and Budget</u>	<u>Amount</u>
Project Title: Armored Tactical Van					
Project A Information Analysis and Sharing	Funds to purchase an Armored Tactical Van for Berkeley Police Department.	Obtain Quotes: 11/01/2016 Issuance of PO: 12/31/2016 Obtain Controlled Equipment Approval: 03/31/2017 Receive Equipment: 09/29/2017 Deploy Equipment: 10/30/2017	Project Completion date: 12/31/2017 Final deadline for Claim Submittal: 01/31/2018	Equipment Not to Exceed: \$125,373 AEL # 12VE-00-MISS	PROJECT NOT TO EXCEED \$125,373
		TOTAL ALLOCATION			NOT TO EXCEED: \$125,373

EQUIPMENT

Reimbursement for Equipment Requires:

- An approved EHP memo, if applicable.
- A performance bond is required for any equipment item that exceeds \$250,000, or for any vehicle, aircraft, or watercraft, regardless of the cost. Failure to obtain and submit a performance bond to the UASI may result in disallowance of cost.
- As allowable under Federal guidelines, procurement of equipment must follow local policies and procedures for competitive purchasing (provided they are not in conflict with Federal regulations which supersede them). If sole source approval is needed, BERKELEY must transmit the request to the UASI for request to the State.

- Prior to reimbursement, BERKELEY must submit all invoices, AEL numbers, and a list of all equipment ID numbers and the deployed locations.
- BERKELEY must inventory, type, organize and track all equipment purchased in order to facilitate the dispatch, deployment, and recovery of resources before, during, and after an incident.

-
- **All requests for reimbursements must be submitted by January 31, 2018, unless an earlier deadline is set in this Appendix. BERKELEY should submit reimbursement requests on a quarterly basis, as applicable.**
 - **Authorized expenditures must fall into one of the following categories: Planning, Organization, Equipment, Training, or Exercises. Descriptions of authorized expenditures are in the following documents:**
 - *FY 2016 Homeland Security Grant Program Notice of Funding Opportunity:* http://www.fema.gov/media-library-data/1455569937218-3daa3552913b8affe0c6b5bc3b448635/FY_2016_HSGP_NOFO_FINAL.pdf
 - *California Supplement to the Federal Funding Opportunity Announcement, dated July 2016, available at <http://www.caloes.ca.gov/GrantsManagementSite/Documents/FY16%20HSGP%20CA%20State%20Supplement%2020160727.pdf> as "FY 2016 Homeland Security Grant Program California State Supplement to the Federal Notice of Funding Opportunity."*
 - *Authorized Equipment List:* <http://beta.fema.gov/authorized-equipment-list>
 - *Cal OES Rules and Regulations, including the Recipient Handbook:* <http://www.caloes.ca.gov/GrantsManagementSite/Documents/2014%20Recipient%20Handbook.pdf>
 - **Any equipment purchased under this Agreement must match the UASI 2016 Grant Application Workbook. Any modification to the inventory list in that Workbook must receive prior written approval from by the Bay Area UASI Program Manager.**
 - **No Management and Administration expenses are allowed, unless expressly identified and authorized in this Appendix.**
 - **Sustainability requirements may apply to some or all of the grant funded projects or programs authorized in this Appendix. See Agreement, ¶3.12.**
 - **All EHP documentation must be submitted and approved prior to any expenditure of funds requiring EHP submission.**

Appendix B-- Grant Assurances

Name of Jurisdiction: CITY OF BERKELEY
Name of Authorized Agent: Andrew Greenwood, Interim Chief of Police
Address: Police Department, 2100 Martin Luther King, Jr. Way
City: Berkeley State: California Zip Code: 94704
Telephone Number: (510) 981-5900
Fax Number: (510) 981-5744
E-Mail Address: police@cityofberkeley.info

As the duly authorized representative of BERKELEY, I hereby certify that BERKELEY has the legal authority to apply for federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay any non-federal share of project cost) to ensure proper planning, management and completion of the project described in this application, within prescribed timelines.

I further acknowledge that BERKELEY is responsible for reviewing and adhering to all requirements within the:

- (a) Applicable Federal Regulations (see below);
- (b) Federal Program Notice of Funding Opportunity (NOFO);
- (c) California Supplement to the NOFO; and
- (d) Federal and State Grant Program Guidelines.

Federal Regulations

Government cost principles, uniform administrative requirements and audit requirements for federal grant programs are set forth in Title 2, Part 200 of the Code of Federal Regulations (CFR) and updates are issued by the Office of Management and Budget (OMB) and can be found at <http://www.whitehouse.gov/omb/>.

Significant state and federal grant award requirements (some of which appear in the documents listed above) are set forth below. BERKELEY hereby agrees to comply with the following:

1. Proof of Authority

BERKELEY will obtain written authorization from the city council, governing board or authorized body in support of this project. This written authorization must specify that BERKELEY and the city council, governing board, or authorized body agree:

- (a) To provide all matching funds required for the grant project and that any cash match will be appropriated as required.
- (b) Any liability arising out of the performance of this agreement shall be the responsibility of BERKELEY and the city council, governing board or authorized body.

- (c) Grant funds shall not be used to supplant expenditures controlled by the city council, governing board or authorized body.
- (d) The official executing this agreement is, in fact, authorized to do so.

This Proof of Authority must be maintained on file and readily available upon request.

2. Period of Performance

BERKELEY will initiate work after approval of the award and complete all work within the period of performance specified in the grant.

3. Lobbying and Political Activities

As required by Section 1352, Title 31 of the U.S. Code (U.S.C.), for persons entering into a contract, grant, loan or cooperative agreement from an agency or requests or receives from an agency a commitment providing for the United States to insure or guarantee a loan, BERKELEY certifies that:

- (a) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of 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.
- (b) 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.
- (c) 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, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

BERKELEY will also comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and §§7324- 7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

Finally, BERKELEY agrees that federal funds will not be used, directly or indirectly, to support the enactment, repeal, modification or adoption of any law, regulation or policy without the express written approval from the California Governor's Office of Emergency Services (Cal OES) or the federal awarding agency.

4. Debarment and Suspension

As required by Executive Orders 12549 and 12689, and 2 CFR §200.212 and codified in 2 CFR Part 180, Debarment and Suspension, BERKELEY will provide protection against

waste, fraud, and abuse by debaring or suspending those persons deemed irresponsible in their dealings with the federal government. BERKELEY certifies that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
- (b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and
- (d) Have not within a three-year period preceding this application had one or more public transaction (federal, state, or local) terminated for cause or default.

Where BERKELEY is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

5. Non-Discrimination and Equal Employment Opportunity

BERKELEY will comply with all federal statutes relating to non-discrimination. These include, but are not limited to, the following:

- (a) Title VI of the Civil Rights Act of 1964 (Public Law (P.L.) 88-352 and 42 U.S.C. §2000d et. seq.) which prohibits discrimination on the basis of race, color, or national origin and requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services;
- (b) Title IX of the Education Amendments of 1972, (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex in any federally funded educational program or activity;
- (c) Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. §794), which prohibits discrimination against those with disabilities or access and functional needs;
- (d) Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability and requires buildings and structures be accessible to those with disabilities and access and functional needs;(42 U.S.C. §§ 12101-12213.);
- (e) Age Discrimination Act of 1975, (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (f) Public Health Service Act of 1912 (42 U.S.C. §§ 290), relating to confidentiality of patient records regarding substance abuse treatment;
- (g) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §3601 et seq.), relating to nondiscrimination in the sale, rental or financing of housing;
- (h) Executive Order 11246, which prohibits federal contractors and federally assisted construction contractors and subcontractors, who do over \$10,000 in Government business in one year from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin;

- (i) Executive Order 11375, which bans discrimination on the basis of race, color, religion, sex, sexual orientation, gender identification, or national origin in hiring and employment in both the United States federal workforce and on the part of government contractors;
- (j) California Public Contract Code §10295.3, which prohibits discrimination based on domestic partnerships and those in same sex marriages;
- (k) Any other nondiscrimination provisions in the specific statute(s) under which application for federal assistance is being made; and
- (l) The requirements of any other nondiscrimination statute(s) which may apply to the application.

In addition to the items listed in (a) through (n), BERKELEY will comply with California's Fair Employment and Housing Act (FEHA). FEHA prohibits harassment and discrimination in employment because of ancestry, race, color, religious creed (including religious dress and grooming practices), sex (which includes pregnancy, childbirth, breastfeeding and medical conditions related to pregnancy, childbirth, or breastfeeding), gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, mental and physical disability, genetic information, medical condition, age, pregnancy, denial of medical and family care leave, or pregnancy disability leave (California Government Code §§ 12940, 12945, 12945.2), military and veteran status, and/or retaliation for protesting illegal discrimination related to one of these categories, or for reporting patient abuse in tax supported institutions.

6. Drug-Free Workplace

As required by the Drug-Free Workplace Act of 1988 (41 U.S.C. §701 et seq.), BERKELEY certifies that it will maintain a drug-free workplace and a drug-free awareness program as outlined in the Act.

7. Environmental Standards

BERKELEY will comply with state and federal environmental standards, which may be prescribed pursuant to the following, as applicable:

- (a) California Environmental Quality Act (CEQA) (California Public Resources Code §§ 21000- 21177), to include coordination with the city or county planning agency;
- (b) CEQA Guidelines (California Code of Regulations, Title 14, Division 6, Chapter 3, §§ 15000- 15387);
- (c) Federal Clean Water Act (CWA) (33 U.S.C. § 1251 et seq.), which establishes the basic structure for regulating discharges of pollutants into the waters of the United States and regulating quality standards for surface waters;
- (d) Federal Clean Air Act of 1955 (42 U.S.C. § 7401) which regulates air emissions from stationary and mobile sources;
- (e) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order 12898 on the Environmental Justice Act, and Executive Order 11514 on Environmental Quality;
- (f) Notification of Environmental Protection Agency (EPA) violating facilities pursuant to Executive Order 11738;
- (g) Protection of wetlands pursuant to Executive Order 11990;
- (h) Evaluation of flood hazards in floodplains in accordance with Executive Order 11988;

- (i) Assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §1451 et seq.);
- (j) Conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §7401 et seq.);
- (k) Executive Order 11738 instituted to assure that each federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each federal agency empowered to extend federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act and the Federal Water Pollution Control Act Executive Order Executive Order 11990 which requires preservation of wetlands;
- (l) The Safe Drinking Water Act of 1974, (P.L. 93-523);
- (m) The Endangered Species Act of 1973, (P.L. 93-205);
- (n) Wild and Scenic Rivers Act of 1968 (16 U.S.C. §1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

BERKELEY shall not be: 1) in violation of any order or resolution promulgated by the State Air Resources Board or an air pollution district; 2) subject to a cease and desist order pursuant to § 13301 of the California Water Code for violation of waste discharge requirements or discharge prohibitions; or 3) determined to be in violation of federal law relating to air or water pollution.

8. Audits

For subrecipients expending \$750,000 or more in federal grant funds annually, BERKELEY will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and Title 2 of the Code of Federal Regulations, Part 200, Subpart F Audit Requirements.

9. Access to Records

In accordance with 2 CFR §200.336, BERKELEY will give the awarding agency, the Comptroller General of the United States and, if appropriate, the state, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award. BERKELEY will require any subrecipients, contractors, successors, transferees and assignees to acknowledge and agree to comply with this provision.

10. Conflict of Interest

BERKELEY will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

11. Financial Management

False Claims for Payment BERKELEY will comply with 31 U.S.C §3729 which sets forth that no subgrantee, recipient or subrecipient shall submit a false claim for payment, reimbursement or advance.

12. Reporting - Accountability

BERKELEY agrees to comply with applicable provisions of the Federal Funding Accountability and Transparency Act (FFATA) (P.L. 109-282), specifically (a) the reporting of subawards obligating \$25,000 or more in federal funds and (b) executive compensation data for first-tier subawards. This includes the provisions of FFATA, which includes requirements for executive compensation, and also requirements implementing the Act for the non-federal entity at 2 CFR part 25 Financial Assistance Use of Universal Identifier and Central Contractor Registration and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

13. Whistleblower Protections

BERKELEY also must comply with statutory requirements for whistleblower protections at 10 U.S.C. § 2409, 41 U.S.C. § 4712, and 10 U.S.C. § 2324, 41 U.S.C. § 4304 and § 4310.

14. Human Trafficking

BERKELEY will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. § 7104) which prohibits grant award recipients or a subrecipient from: (1) engaging in trafficking in persons during the period of time that the award is in effect; (2) procuring a commercial sex act during the period of time that the award is in effect; or (3) using forced labor in the performance of the award or subawards under the award.

15. Labor Standards

BERKELEY will comply with the following federal labor standards:

- (a) Comply with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), as applicable, and the Copeland Act (40 U.S.C. § 3145 and 18 U.S.C. § 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally-assisted construction contracts or subcontracts.
- (b) Comply with the Federal Fair Labor Standards Act (29 U.S.C. § 201 et al.) as they apply to employees of institutes of higher learning (IHE), hospitals and other non-profit organizations.

16. Worker's Compensation

BERKELEY must comply with provisions which require every employer to be insured to protect workers who may be injured on the job before commencing performance of the work of this Agreement, as per the workers compensation laws set forth in California Labor Code §§ 3700 et seq.

17. Property-Related

If applicable to the type of project funded by this federal award, BERKELEY will:

- (a) Comply with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchase.

- (b) Comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires subrecipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- (c) Assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. § 469a-1 et seq.).
- (d) Comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4831 and 24 CFR Part 35) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

18. Certifications Applicable Only to Federally-Funded Construction Projects

For all construction projects, BERKELEY will:

- (a) Not dispose of, modify the use of, or change the terms of the real property title or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the federal awarding agency directives and will include a covenant in the title of real property acquired in whole or in part with federal assistance funds to assure nondiscrimination during the useful life of the project.
- (b) Comply with the requirements of the awarding agency with regard to the drafting, review and approval of construction plans and specifications.
- (c) Provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progressive reports and such other information as may be required by the assistance awarding agency or State.

19. Use of Cellular Device While Driving is Prohibited

BERKELEY is required to comply with California Vehicle Code sections 23123 and 23123.5. These laws prohibit driving a motor vehicle while using an electronic wireless communications device to write, send, or read a text-based communication. Drivers are also prohibited from the use of a wireless telephone without hands-free listening and talking, unless to make an emergency call to 911, law enforcement, or similar services.

20. Freedom of Information Act

BERKELEY acknowledges that all information submitted in the course of applying for funding under this program, or provided in the course of an entity's grant management activities that are under Federal control, is subject to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, and the California Public Records Rights Act, California Government Code section 6250 et seq. BERKELEY should consider these laws and consult its own State and local laws and regulations regarding the release of information when reporting sensitive matters in the grant application, needs assessment, and strategic planning process.

HOMELAND SECURITY GRANT PROGRAM - PROGRAM SPECIFIC ASSURANCES / CERTIFICATIONS

21. Reporting Accusations and Findings of Discrimination

If during the past three years the recipient has been accused of discrimination on any basis the recipient must provide a list of all such proceedings, pending or completed, including outcome and copies of settlement agreements to the OHS financial assistance office and the OHS Office of Civil Rights and Civil Liberties (CRCL) by e-mail at crcl@hq.dhs.gov or by mail at U.S. Department of Homeland Security Office for Civil Rights and Civil Liberties Building 410, Mail Stop #0190 Washington, D.C. 20528.

In the event any court or administrative agency makes a finding of discrimination against the recipient, or the recipient settles a case or matter alleging such discrimination, recipients must forward a copy of the complaint and findings to the OHS Component financial assistance office and the CRCL office by e-mail or mail at the addresses listed above.

The United States has the right to seek judicial enforcement of these obligations.

22. Acknowledgment of Federal Funding from DHS

All recipients must acknowledge their use of federal funding when issuing statements, press releases, requests for proposals, bid invitations, and other documents describing projects or programs funded in whole or in part with federal funds.

23. Activities Conducted Abroad

All recipients must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

24. Best Practices for Collection and Use of Personally Identifiable Information (PII)

OHS defines personally identifiable information (PII) as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. All recipients who collect PII are required to have a publically-available privacy policy that describes standards on the usage and maintenance of PII they collect. Award recipients may also find as a useful resource the OHS Privacy Impact Assessments: Privacy Guidance and Privacy template respectively.

25. Copyright

All recipients must affix the applicable copyright notices of 17 U.S.C. §§ 401 or 402 and an acknowledgement of Government sponsorship (including award number) to any work first produced under federal financial assistance awards.

26. Energy Policy and Conservation Act

All recipients must comply with the requirements of 42 U.S.C. § 6201 which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

27. Federal Debt Status

All recipients are required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. See OMB Circular A-129.

28. Fly America Act of 1974

All recipients must comply with Preference for U.S. Flag Air Carriers: (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942

29. Hotel and Motel Fire Safety Act of 1990

In accordance with Section 6 of the Hotel and Motel Fire Safety Act of 1990, all recipients must ensure that all conference, meeting, convention, or training space funded in whole or in part with federal funds complies with the fire prevention and control guidelines of the Federal Fire Prevention and Control Act of 1974, as amended, 15 U.S.C. §2225a.

30. Non-supplanting Requirements

All recipients who receive awards made under programs that prohibit supplanting by law must ensure that federal funds do not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

32. Patents and Intellectual Property Rights

Unless otherwise provided by law, recipients are subject to the Bayh-Dole Act, Pub. L. No. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq. All recipients are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. § 401.14.

33. SAFECOM

All recipients who receive awards made under programs that provide emergency communication equipment and its related activities must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

34. Terrorist Financing

All recipients must comply with Executive Order 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism. It is the legal responsibility of recipients to ensure compliance with the Order and laws.

35. Reporting of Matters Related to Recipient Integrity and Performance

If the total value of BERKELEY's currently active grants, cooperative agreements, and procurement contracts from all federal assistance office exceeds \$10,000,000 for any period of time during the period of performance of this federal award, BERKELEY must comply with the requirements set forth in the government-wide Award Term and Condition for Recipient Integrity and Performance Matters located at 2 C.F.R. Part 200, Appendix XII,

the full text of which is incorporated here by reference in the terms and conditions of your award.

36. USA Patriot Act of 2001

All recipients must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. §§ 175-175c.

IMPORTANT

The purpose of the assurance is to obtain federal and state financial assistance, including any and all federal and state grants, loans, reimbursement, contracts, etc. BERKELEY recognizes and agrees that state financial assistance will be extended based on the representations made in this assurance. This assurance is binding on BERKELEY, its successors, transferees, assignees, etc. Failure to comply with any of the above assurances may result in suspension, termination, or reduction of grant funds.

All appropriate documentation, as outlined above, must be maintained on file by BERKELEY and available for Cal OES or public scrutiny upon request. Failure to comply with these requirements may result in suspension of payments under the grant or termination of the grant or both and the subrecipient may be ineligible for award of any future grants if the Cal OES determines that any of the following has occurred: (1) the recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

All of the language contained within this document must be included in the award documents for all subawards at all tiers, including contracts under grants and cooperative agreements and subcontracts. All recipients are bound by the Department of Homeland Security Standard Terms and Conditions 2016, Version 6.0, hereby incorporated by reference, which can be found at: <https://www.dhs.gov/sites/default/files/publications/Fiscal%20Year%202016%20DHS%20General%20Terms%20and%20Conditions.pdf>

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

Signature of Authorized Agent: *Dee Williams-Riley*

Printed Name of Authorized Agent: Dee Williams-Riley

Title: City Manager Date: 11/17/17

Appendix C -- Form of Reimbursement Request

REIMBURSEMENT REQUEST

_____, 2017

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

Re: FY 16 UASI Grant Reimbursement Request

Pursuant to Section 3.10 of the "Agreement between the City and County of San Francisco and the City of BERKELEY for the Distribution of FY 2016 UASI Grant Funds" (the "Agreement"), dated NOVEMBER 1, 2016, between the City of BERKELEY ("BERKELEY") and the City and County of San Francisco, BERKELEY hereby requests reimbursement as follows:

Total Amount of Reimbursement Requested in this Request: \$ _____

Maximum Amount of Funds Specified in Section 3.2 of the Agreement: \$ _____

Total of All Funds Disbursed Prior to this Request: \$ _____

BERKELEY certifies that:

- (a) The total amount of funds requested pursuant to this Reimbursement Request will be used to reimburse BERKELEY for Authorized Expenditures, which expenditures are set forth on the attached Schedule 1, to which are attached true and correct copies of all required documentation of such expenditures.
- (b) After giving effect to the disbursement requested pursuant to this Reimbursement Request, the Funds disbursed as of the date of this disbursement will not exceed the maximum amount set forth in Section 3.2 of the Agreement, or the not to exceed amounts specified in Appendix A for specific projects and programs.

- (c) The representations, warranties and certifications made in the Agreement are true and correct in all material respects as if made on the date hereof, and BERKELEY is in compliance with all Grant Assurances in Appendix B of the Agreement. Furthermore, by signing this report, BERKELEY certifies to the best of their knowledge and belief that the report is true, complete and accurate and expenditures, disbursements, and cash receipts are for the purpose and objectives set forth in the terms and conditions of the federal award. BERKELEY is aware that any false, fictitious or fraudulent information or the omission of any material fact, may subject BERKELEY to criminal civil or administrative penalties for fraud, false statements, false claims or otherwise.
- (d) No Event of Default has occurred and is continuing.
- (e) The undersigned is an officer of BERKELEY authorized to execute this Reimbursement Request on behalf of BERKELEY.

Signature of Authorized Agent: _____

Printed Name of Authorized Agent: _____

Title: _____ Date: _____

SCHEDULE 1 TO REQUEST FOR REIMBURSEMENT

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

Project	Payee	Amount	Description	If final claim for project, check box
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>
				<input type="checkbox"/>

The following are attached as part of this Schedule 1 (Please check items that are applicable):

Planning:

- Invoice/Payroll Charges
- Payroll Register
- Cleared Check Payment
- Job Description
- Functional Timesheets
- Deliverables/Progress Reports

Organization:

- Invoice/Payroll Charges
- Payroll Register
- Cleared Check Payment
- Job Description
- Functional Timesheets
- Deliverables/Progress Reports

Equipment:

- Invoice
- Cleared Check Payment
- Purchase Order
- Packing Slip
- EHP Approval
- EOC Approval
- Watercraft or Aviation
- Sole Source
- Performance Bond
- Equipment Ledger (Please submit electronic copy to Grants Specialist)

Training:

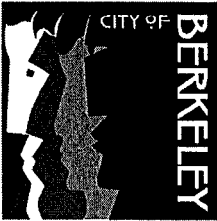
- Invoice
- Cleared Check Payment
- Training Feedback Number
- EHP Approval
- Certificates/Proof of Participation
- Sign In Sheet
- Agenda

Exercise:

- Invoice
- Cleared Check Payment
- After Action Report
- EHP Approval
- Overtime Authorization

For inquiries/questions, please contact:

_____ Phone #: _____ Email: _____
 Print Name



Office of the City Manager

PUBLIC HEARING
March 14, 2017

To: Honorable Mayor and Members of the City Council
 From: *DWR* Dee Williams-Ridley, City Manager
 Submitted by: Andrew Greenwood, Interim Chief of Police
 Subject: Agreements, with Other Law Enforcement Agencies, Police Departments
 or Private Security Organizations

RECOMMENDATION

Conduct a public hearing, and upon conclusion, adopt a Resolution approving agreements, understandings or policies existing or revised as of August 4, 2016 between the Berkeley Police Department and other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations in order to maintain the current level of police resources and emergency services. Review attached Suspicious Activity Report and Mutual Aid requests/responses provided annually per City Council request.

FISCAL IMPACTS OF RECOMMENDATION

The fiscal impact of not approving these inter-agency agreements and understandings is difficult to determine. Without inter-agency cooperation and assistance, major costs would be incurred in the event of critical incidents or disasters (i.e., major criminal investigations, riot situations, earthquakes, fires, terrorist attacks).

One example of a tangible fiscal impact includes the use of the Alameda County Sheriff's Office laboratory for analysis of seized illegal drugs and forensic examination of other evidence. The City does not have facilities capable of performing this service and, therefore, contracts with the County and private facilities for particular evidence analysis services. Notwithstanding other forensic analysis services, Alameda County's laboratory is the primary examiner of drug evidence for the Police Department. As analysis of seized drugs and other evidence is required for prosecution of offenders, the City's agreement with the Alameda County Sheriff's Office must be approved for the work to continue. Conveying all analytical and forensic services to a private laboratory would increase costs.

Approval of a given agreement will continue to support current law enforcement activity, funded in the existing budget. Non-approval may create a specific budget savings, but will increase related investigative costs. Costs associated with the adverse effect on involved victims and families, and public safety should offenders go unprosecuted, cannot be calculated.

The cost, or lack thereof, of each agreement or understanding is set forth in the summary of each in the attached binder.

BACKGROUND

Berkeley Municipal Code §§2.04.150 – 2.04.210 require that the Police Department must obtain City Council approval of agreements, understandings or policies regarding mutual aid, information sharing, and cooperation and assistance between the Berkeley Police Department and other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations. These provisions came into effect under Ord. 4640 NS §1, 1973, requiring annual City Council approval.

The last City Council approval was on December 15, 2015. This presentation puts the Police Department in compliance with Ordinance requirement. In addition, the Police Department has established an annual review process, and intends to present agreements and understandings for Council approval each calendar year.

Agreements, understandings or policies associated with this Consent Item were shared with the Police Review Commission prior to Council presentation, and were subject to their review from August 2016 through the present.

CURRENT SITUATION AND ITS EFFECTS

A majority of these agreements have been in effect for a number of years and are routinely reviewed and updated. As a result, daily law enforcement functions run smoothly. Difficulties that might arise are easily dealt with due to the mutual cooperation and understanding between agencies. Were it not for these agreements and general operational understandings, efficiency and effectiveness of service delivery would suffer.

This year, agreements 1-4 (Alameda County District Attorney's Office, Victim/Witness Assistance Division and 4-5 (Bay Area Women Against Rape), have been refreshed to reflect current dates. There have been no substantive changes to the content of these agreements.

Agreement 1-18 (Hayward PD – Avoid the 21) has been added to allow for BPD participation in grant funded DUI enforcement. Agreement 1-19 (Burlington Northern Santa Fe Railway) has been added to allow BPD to enforce trespassing laws on BNSF owned property.

RATIONALE FOR RECOMMENDATION

The Berkeley Police Department provides law enforcement services to the citizens of Berkeley. It does so under the guidance of federal, state and local statutes. Maximum investigative resources must be available to ensure a just system of law enforcement. That cannot be accomplished without the cooperation of other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations.

It takes large numbers of personnel and significant logistical resources to effectively and successfully contain and manage major critical incidents or disasters. Only through a system of mutual aid established by the State and coordinated through the County can we hope to respond in a suitable manner. Furthermore, Federal law requires that National Incident Management System (NIMS) guidelines must be followed to be eligible for Federal Emergency Management Agency (FEMA) disaster funding and/or reimbursement.

In addition, many agencies or entities such as the University of California, Bay Area Rapid Transit, East Bay Regional Parks, California Highway Patrol and Union Pacific Railroad, have concurrent jurisdiction over areas, buildings or structures located within Berkeley's city limits. Agreements are needed to ensure smooth cooperation between all these agencies. In some cases, written agreements are required to comply with State law.

ENVIRONMENTAL SUSTAINABILITY

There are no identifiable environmental effects or opportunities associated with the subject of this report.

CONTACT PERSON:

Andrew Greenwood, Interim Chief of Police, 510-981-5900

Attachments

1. Resolution
Exhibit A: Compendium Agreements, Understandings and Policies Binder
Binder Section # / Title
Section 1 – Local Agencies
Section 2 – State Agencies
Section 3 – Federal Agencies
Section 4 – Private Security Entities
Section 5 – Military Entities
Section 6 – Other Mutual Aid/Cooperative Activity Policies
2. Public Hearing Notice
3. SARS Report, per Council Direction September 2012
4. Mutual Aid Report, per Council Direction November 2012

RESOLUTION NO. ##,####-N.S.

APPROVING AGREEMENTS, LETTERS AND MEMORANDA OF UNDERSTANDING OR POLICIES, REVISED AND UPDATED AS OF JULY 15, 2015, WHICH EXPRESS TERMS AND CONDITIONS OF MUTUAL AID, INFORMATION SHARING, COOPERATION AND ASSISTANCE BETWEEN THE BERKELEY POLICE DEPARTMENT AND ALL OTHER LOCAL, STATE AND FEDERAL LAW ENFORCEMENT, MILITARY AND/OR INTELLIGENCE AGENCIES, POLICE DEPARTMENTS OR PRIVATE SECURITY ORGANIZATIONS

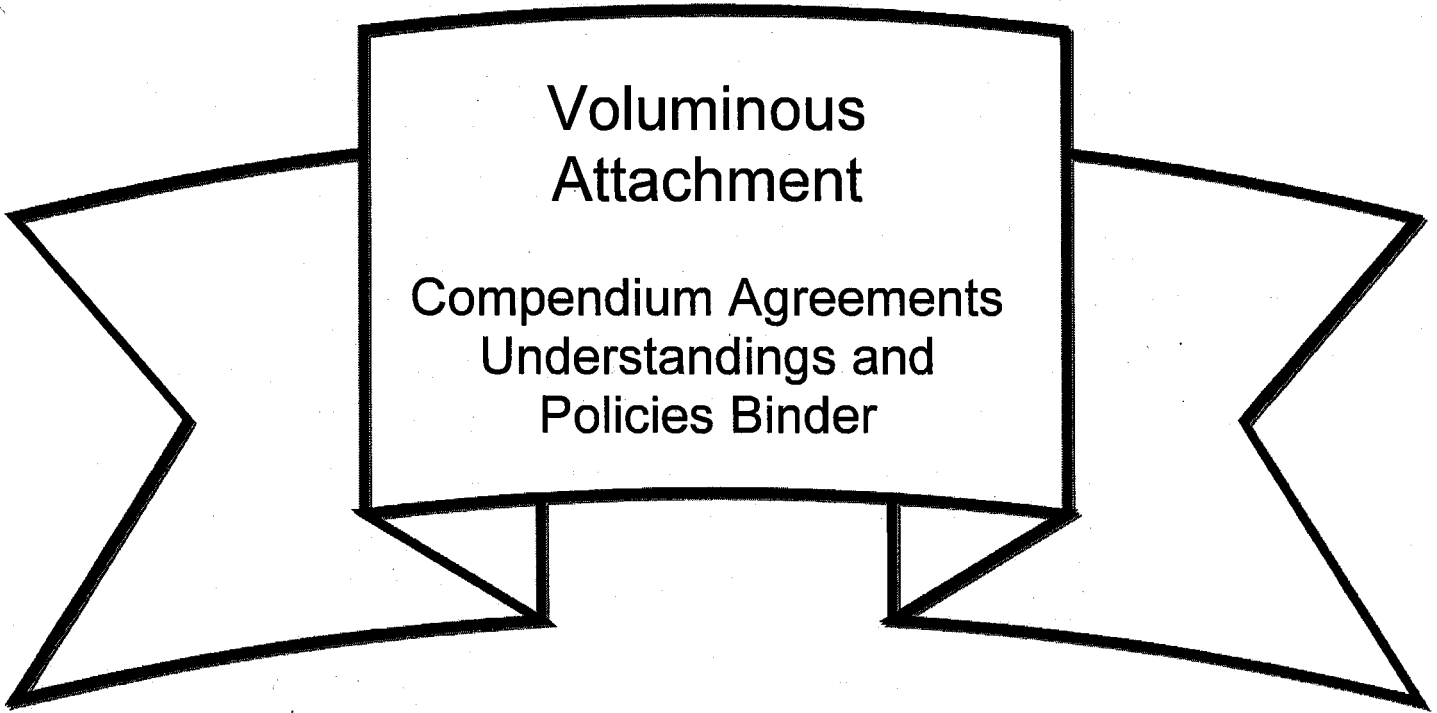
WHEREAS, the Berkeley Police Department has established written and verbal agreements, understandings and policies with other law enforcement agencies, police departments and other private security organizations; and

WHEREAS, such agreements, understandings and policies are needed to enhance investigative resources and emergency services provided to the citizens of Berkeley, creating a safer environment for all; and

WHEREAS, many of these agreements, understandings and policies have been in existence and approved by City Council since 1974.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley approves the agreements, understandings and policies existing between the Berkeley Police Department and other law enforcement agencies as set forth in City Manager Report dated March 14, 2017, a copy of which is attached hereto, marked Exhibit A and made part hereof.

BE IT FURTHER RESOLVED that record copies of aforementioned documents to be on file in the Office of the City Clerk, and be available electronically via the City of Berkeley website.



Attachment 1, Exhibit A to this report is on file and available for review at the City Clerk Department, or can be accessed from the City of Berkeley Website.

City Clerk Department
2180 Milvia Street
Berkeley, CA 94704
(510) 981-6900

or from:

The City of Berkeley, City Council's Web site
<http://www.cityofberkeley.info/citycouncil/>

NOTICE OF PUBLIC HEARING BERKELEY CITY COUNCIL

Police Department Agreements with Other Law Enforcement Agencies, Police Departments or Private Security Organizations

Notice is hereby given by the City Council of the City of Berkeley that on **March 14, 2017** the Police Department is requesting a public hearing, and at the conclusion of the hearing, adoption of a Resolution approving agreements, understandings or policies between the Police Department and other local, state and federal law enforcement agencies, military and/or intelligence agencies, police departments and private security organizations, as required by Berkeley Municipal Code 2.04.150, et. seq. The hearing will be held in the City Council chambers, 2134 Martin Luther King, Jr. Way.

A copy of the agenda material for this hearing will be available on the City's website at www.CityofBerkeley.info as of **March 2, 2017**.

For further information, please contact **Sergeant Speelman** of the Berkeley Police Department's Professional Standards Division at 510-981-5974.

Written comments should be mailed or delivered directly to the City Clerk, 2180 Milvia Street, Berkeley, CA 94704, in order to ensure delivery to all Councilmembers and inclusion in the agenda packet.

Communications to the Berkeley City Council are public record and will become part of the City's electronic records, which are accessible through the City's website. **Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to the City Council, will become part of the public record.** If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the City Clerk. If you do not want your contact information included in the public record, please do not include that information in your communication. Please contact the City Clerk at 981-6900 or clerk@cityofberkeley.info for further information.

If you challenge the above in court, you may be limited to raising only those issues you or someone else raised at the public hearing described in this notice, or in written correspondence delivered to the City of Berkeley at, or prior to, the public hearing. Background information concerning this proposal will be available at the City Clerk Department and posted on the City of Berkeley webpage at least 10 days prior to the public hearing.

Published: March 3 and March 10, 2017 – The Berkeley Voice
California Government Code §6062(a)

I hereby certify that the Notice for this Public Hearing of the Berkeley City Council was posted at the display case located near the walkway in front of Council Chambers, 2134 Martin Luther King Jr. Way, as well as on the City's website, on March 2, 2017.

SUSPICIOUS ACTIVITY REPORT

1/28/16

BPD officers arrested a man for domestic battery (273.5 PC). During the booking process he claimed to be a Sovereign Citizen and made several threats to BPD officers including, "Punk ass bitch! Let me catch you without your uniform," and "Don't let me catch you outside by yourself." During the booking process he claimed, "I see you guys every day from my balcony".

MUTUAL AID REQUESTS

There were no mutual aid requests during this time period.