

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Human Resources

BRIEF DESCRIPTION:

Authorize the Director of Transportation to execute the first option to SFMTA Contract No. 2011/12-13 with Intercare Holdings Insurance Services, Inc. (Intercare), SFMTA's Workers' Compensation Third Party Administrator, to extend the contract by one year to October 31, 2016.

SUMMARY:

- In order to maximize operational efficiency, quality of service, and cost savings, the SFMTA issued a Request for Proposals for Workers' Compensation Claims Administration Services jointly with the Department of Human Resources and then executed a joint contract with the selected proposer, Intercare, for an initial term of three-years with an option to extend the contract for two additional years.
- The SFMTA Board approved the contract on November 6, 2012 and the San Francisco Board of Supervisors approved the contract on November 14, 2012.
- The Current Contract for Workers' Compensation Third Party Administrator Services with Intercare expires on October 31, 2015.
- The proposed extension is being requested to allow time to develop an RFP to conduct the competitive bidding process and allow for transition time (if needed) between vendors.

ENCLOSURES:

1. SFMTAB Resolution
2. First Amendment to the Workers' Compensation Third Party Administrator Services Agreement

APPROVALS:

DATE

DIRECTOR _____ 10/13/15

SECRETARY _____ 10/13/15

ASSIGNED SFMTAB CALENDAR DATE: October 20, 2015

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PURPOSE

Authorize the Director of Transportation to execute the first option to SFMTA Contract No. 2011/12-13 with Intercare, SFMTA's Workers' Compensation Third Party Administrator, to extend the contract by one year to October 31, 2016.

GOAL

The item will support the following strategic goals:

Goal 1: Create a safer transportation experience for everyone.

Objective 1.2 – Improve workplace safety and security.

Goal 3: Improve the environment and quality of life in San Francisco.

Objective 3.5 – Reduce capital and operating structural deficits.

DESCRIPTION

In order to maximize operational efficiency, quality of service, and cost savings, the SFMTA issued a Request for Proposals for Workers' Compensation Claims Administration Services jointly with the Department of Human Resources and then executed a joint contract with the selected proposer, Intercare for an initial term of three-years with an option to extend the contract for two additional years.

The SFMTA Board approved the contract under resolution number 12-134 on November 6, 2012 and the San Francisco Board of Supervisors approved the contract under resolution number 422-12 on November 14, 2012.

The Current Contract for Workers' Compensation Third Party Administrator Services with Intercare expires on October 31, 2015.

The proposed extension is being requested to allow time needed to develop an RFP to conduct the competitive bidding process and allow for transition time (if needed) between vendors.

SCOPE OF SERVICES

Intercare will continue to provide workers' compensation claims administration services for both SFMTA's and the DHR's workers' compensation programs. The scope of services for each department will be the same, and will include:

- Overall Claims Management
- Medical and Disability Claim Management, (which facilitates return to work and mitigates cost)
- Cost Containment and Contractor Liability
- Investigation and Discovery Standards
- Subrogation and Third Party Claim Settlement
- Litigation Support and Management
- Settlement of Employee Claims

PUBLIC OUTREACH

None.

ALTERNATIVES CONSIDERED

The alternative would be to not extend the agreement. However, Workers’ Compensation Claims Administration Services cannot be done by in-house staff and extending the time would allow staff to conduct an RFP process.

FUNDING IMPACT

SFMTA’s total budget for the first three years of the contract was \$7,855,772. The anticipated expenditure through October 31, 2015 is \$6,904,619. This results in a total savings of \$951,153.

Both SFMTA and DHR will be responsible for funding this service. The not to exceed amount for SFMTA is \$13,557,725 and for DHR is \$12,942,275, which includes the option years.

The extension is \$2,777,254 for this fourth year option.

Year	Amount
SFMTA	
Year 1	\$2,541,581
Year 2	\$2,617,828
Year 3	\$2,696,363
Year 4 (Option)	\$2,777,254
Year 5 (Option)	\$2,860,572
*As-Need Services	\$64,127
TOTAL	\$13,557,725
DHR	
Year 1	\$2,413,022
Year 2	\$2,491,749
Year 3	\$2,573,060
Year 4	\$2,657,040
Year 5	\$2,743,777
*As-Need Services	\$64,127
TOTAL	\$12,942,275

ENVIRONMENTAL REVIEW

On 10/5/15, the Municipal Transportation Agency determined that the proposed SFMTA Contract No. 2011/12-13 with Intercare Holdings Insurance Services, Inc. (Intercare), SFMTA's Workers' Compensation Third Party Administrator is not a "project" for purposes of environmental review under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c).

The Planning Department's concurrence is on file with the Secretary to the SFMTA Board of Directors.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The Board of Supervisors approved the contract with the options for the SFMTA under Resolution 422-12 on November 14, 2012.

The Board of Supervisors approved the contract for the DHR for the base term and required DHR to submit a Cost Benefit Analysis of contracting out the administration of workers' compensation claims compared to processing in-house prior to exercising the first option to the contract.

DHR's analysis concluded that it was cheaper to contract out this work rather than to process it in-house.

The City Attorney's Office has reviewed this report.

RECOMMENDATION

SFMTA staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Director of Transportation to execute the first option to SFMTA Contract No. 2011/12-13 with Intercare, SFMTA's Workers' Compensation Third Party Administrator, to extend the contract by one year to October 31, 2016.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, In order to maximize operational efficiency, quality of service, and cost savings, the SFMTA issued a Request for Proposals for Workers' Compensation Claims Administration Services jointly with the Department of Human Resources and executed a joint contract with Intercare Holdings Insurance Services, Inc. ("Intercare") for an initial term of three-years with an option to extend the contract for two additional years; and,

WHEREAS, The SFMTA Board approved the contract under resolution number 12-134 on November 6, 2012 and the San Francisco Board of Supervisors approved the contract under resolution number 422-12 on November 14, 2012; and,

WHEREAS, The Current Contract for Workers' Compensation Third Party Administrator Services with Intercare expires on October 31, 2015; and,

WHEREAS, Approval to exercise the one-year option is being requested to allow time to develop an RFP to conduct the competitive bidding process and allow for transition time (if needed) between vendors;

WHEREAS, The SFMTA Contract No. 2011/12-13 with Intercare Holdings Insurance Services, Inc. (Intercare), SFMTA's Workers' Compensation Third Party Administrator does not constitute a project under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Section 15060(c); now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute the first option to SFMTA Contract No. 2011/12-13 with Intercare, SFMTA's Workers' Compensation Third Party Administrator, to extend the contract by one year to October 31, 2016.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of October 20, 2015.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

City and County of San Francisco
(Department of Human Resources and Municipal Transportation Agency)

First Amendment to Agreement

Contract No. SFMTA2011/12-13

THIS AMENDMENT (this “Amendment”) is made as of September 1, 2015, in San Francisco, California, by and between Intercare Holdings Insurance Services, Inc. (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting through its Department of Human Resources, hereinafter referred to as “DHR,” and its Municipal Transportation Agency, hereinafter referred to as “SFMTA.”

RECITALS

- A. City and Contractor have entered into the Agreement (as defined below).
- B. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to exercise the City’s option to extend the existing contract for one additional year and update standard contractual clauses.

NOW, THEREFORE, Contractor and the City agree as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term “Agreement” shall mean the Agreement dated November 1, 2012, between Contractor and City,

1b. Contract Monitoring Division Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modifications to the Agreement. The Agreement is modified as follows:

2a. Section 2. Section 2, “Term of the Agreement,” is replaced in its entirety to read as follows:

2. Term of the Agreement.

Subject to Section 1, the term of this Agreement shall be from November 1, 2012 to October 31, 2016 with the option, in the City's sole discretion, to extend the Agreement through October 31, 2017.

2b. Section 15. Section 15, "Insurance," is replaced in its entirety to read as follows:

15. Insurance.

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

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

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

(3) 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; and

(4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim and not less than \$5,000,000 aggregate annual limit with respect to negligent acts, errors or omissions in connection with professional services to be provided under this Agreement; and

(5) Commercial Crimes Insurance covering employee dishonesty, forgery or alteration, theft, disappearance and destruction, embezzlement, mail theft or fraud, wire theft or fraud, and electronic theft or fraud, inclusive, with limits not less than \$5,000,000, covering all of Contractor's employees; and

(6) A Fidelity Bond with limits not less than one million dollars (\$1,000,000).

b. Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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

(2) 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.

c. Regarding Worker's Compensation, Contractor hereby agrees to waive subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver subrogation. The Worker's Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

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

f. 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.

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

h. Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Failure to maintain insurance shall constitute a material breach of this Agreement.

i. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

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

2c. Section 32. Section 32, "Earned Income Credit (EIC) Forms," is replaced in its entirety to read as follows:

32. Consideration of Criminal History in Hiring and Employment Decisions.

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

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

c. Contractor shall incorporate by reference in all subcontracts the provisions of Chapter 12T, and shall require all subcontractors to comply with such provisions. Contractor’s failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

d. Contractor or Subcontractor shall not inquire about, require disclosure of, or if such information is received, base an Adverse Action on an applicant’s or potential applicant for employment’s, or employee’s: (1) Arrest not leading to a Conviction, unless the Arrest is undergoing an active pending criminal investigation or trial that has not yet been resolved; (2) participation in or completion of a diversion or a deferral of judgment program; (3) a Conviction that has been judicially dismissed, expunged, voided, invalidated, or otherwise rendered inoperative; (4) a Conviction or any other adjudication in the juvenile justice system; (5) a Conviction that is more than seven years old, from the date of sentencing; or (6) information pertaining to an offense other than a felony or misdemeanor, such as an infraction.

e. Contractor or Subcontractor shall not inquire about or require applicants, potential applicants for employment, or employees to disclose on any employment application the facts or details of any conviction history, unresolved arrest, or any matter identified in subsection 32d, above. Contractor or Subcontractor shall not require such disclosure or make such inquiry until either after the first live interview with the person, or after a conditional offer of employment.

f. Contractor or Subcontractor shall state in all solicitations or advertisements for employees that are reasonably likely to reach persons who are reasonably likely to seek employment to be performed under this Agreement, that the Contractor or Subcontractor will consider for employment qualified applicants with criminal histories in a manner consistent with the requirements of Chapter 12T.

g. Contractor and Subcontractors shall post the notice prepared by the Office of Labor Standards Enforcement (OLSE), available on OLSE's website, in a conspicuous place at every workplace, job site, or other location under the Contractor or Subcontractor's control at which work is being done or will be done in furtherance of the performance of this Agreement. The notice shall be posted in English, Spanish, Chinese, and any language spoken by at least 5% of the employees at the workplace, job site, or other location at which it is posted.

h. Contractor understands and agrees that if it fails to comply with the requirements of Chapter 12T, the City shall have the right to pursue any rights or remedies available under Chapter 12T, including but not limited to, a penalty of \$50 for a second violation and \$100 for a subsequent violation for each employee, applicant or other person as to whom a violation occurred or continued, termination or suspension in whole or in part of this Agreement.

3. Effective Date. Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.

4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

CITY AND COUNTY OF SAN FRANCISCO

Department of Human Resources
Recommended by:

Micki Callahan
Human Resources Director

Office of Contract Administration
Approved:

Jaci Fong
Director of Office of Contract Administration

San Francisco Municipal Transportation
Agency

Edward D. Reiskin
Director of Transportation

San Francisco Municipal Transportation
Agency

Board of Directors

Resolution No. _____

Dated: _____

Attest:

Secretary, SFMTA Board of Directors

Approved as to Form:

Dennis J. Herrera
City Attorney

By:

Mariam Morley
Deputy City Attorney

CONTRACTOR

Intercare Holdings Insurance Services, Inc.

Agnes Hoerberling
Chief Operating Officer
6020 West Oaks Boulevard, Suite 100
Rocklin, CA 95765

City vendor number: **59287**

Federal ID #95-4465745