

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Human Resources

BRIEF DESCRIPTION:

Authorize the Director of Transportation to issue, with the Department of Human Resources (DHR), a joint Request for Proposals for workers' compensation claims administration services for the City as a whole. The departments will jointly evaluate proposals and negotiate a contract for an initial contract term of three years with an option to extend for two one-year terms at the City's sole discretion.

SUMMARY:

- The SFMTA is a self-insured employer for workers' compensation and has assumed the responsibility for managing its workers' compensation claims since July 1, 2000 under the authority of San Francisco Charter Section 8A.104(c).
- Since November 1, 2012, the SFMTA and Department of Human Resources (DHR) has had a joint contract with Intercare Holdings Insurance Services, Inc. (Intercare) for workers' compensation claims administration.
- The current contract with Intercare expires on October 31, 2016.
- In order to maximize the operational efficiency and cost savings to the City, the SFMTA and the DHR have agreed to issue another joint request for proposals for workers' compensation claims administration services, aiming to achieve an optimal outcome of best services and lower cost.
- The proposed initial contract(s) will be three years with a two one year extension option for an annual fee of approximately 6.6 million dollars (\$3.3 million for SFMTA and DHR respectively).

ENCLOSURES:

1. SFMTAB Resolution
2. Request for Proposals

APPROVALS:

DATE

DIRECTOR _____ 6/2/16

SECRETARY R. Boomer _____ 6/2/16

ASSIGNED SFMTAB CALENDAR DATE: June 7, 2016

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PURPOSE

To request authority for the Director of Transportation, or his designee, to issue a joint Request for Proposals with the Department of Human Resources for the workers' compensation claims administration services, and jointly conduct proposal evaluation and contract negotiation.

GOAL

This RFP will fulfill the following goals and objectives of the SFMTA Strategic Plan:

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 3.5.11: Injury Rate-claims incurred during prior 12 months per 100 employees and reduce open inventory of workers' compensation claims.

Goal 4: Create a workplace that delivers outstanding service.

Objective 4.4: Improve relationships and partnerships with our stakeholders.

DESCRIPTION

Under the authority of San Francisco Charter Section 8A.104(c), the SFMTA assumed the responsibility for managing its workers' compensation claims on July 1, 2000. On February 21, 2012, the SFMTA issued an RFP for workers' compensation claims administration services and selected Intercare as the highest ranked proposer.

Intercare has been administering workers' compensation claims for the SFMTA and DHR for almost four years. The service includes processing, managing, investigating and paying workers' compensation claims, OSHA database management, Medicare injury/incident data reporting, and interface with the SFMTA's medical bill review service. The current monthly fee for performing all these services is \$304,682.83. The SFMTA's current contract with Intercare expires on October 31, 2016.

The Scope of Services

The successful proposer(s) will provide workers' compensation claims administration services for both SFMTA's and the DHR's workers' compensation programs. The proposed scope of services for each department will be the same, and will include:

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- Claims Management
- Medical and Disability Claims Management
- Cost Containment and Contractor Liability
- Investigation and Discovery Standards
- Subrogation and Third Party Claim Settlement
- Litigation Support and Management
- Settlement Authority and Standards
- Communications and Reporting

LBE Participation Subcontracting Goal

The LBE goal was waived by the City's Contract Monitoring Division due to a lack of LBE availability for the project's scope of work.

PUBLIC OUTREACH

As this program does not affect the public, no outreach was done.

ALTERNATIVES CONSIDERED

Conducting a joint RFP with DHR allows the City to realize cost savings and will streamline management of the City's workers' compensation services.

FUNDING IMPACT

Both SFMTA and DHR will be responsible for funding this service, and the monthly service fee rate will be the same for both departments. The annual service fee for the SFMTA is estimated at \$3.3 million, with a not-to-exceed three-year contract amount of \$10 million and a not-to-exceed total amount of \$16.5 million for a total five-year term if the two-year contract extension option is exercised by the City.

ENVIRONMENTAL REVIEW

On May 5, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the Workers' Compensation Claims Administration Services contract is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

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OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFMTA's request for approval to contract out workers' compensation claims administration services was heard and approved by the Civil Service Commission at its February 6, 2012 meeting.

Approval of the final contract by the San Francisco Board of Supervisors is required.

The City Attorney has reviewed this report.

RECOMMENDATION

SFMTA staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Director of Transportation or his designee to issue a joint Request for Proposals with DHR, and to jointly evaluate proposals and negotiate a contract(s) for the workers' compensation claims administration services.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA is a self-insured employer for workers' compensation under the San Francisco Charter Section 8A.104 (c), and has assumed the responsibility for managing its workers' compensation claims since July 1, 2000, and

WHEREAS, Since November 1, 2012, the SFMTA has been contracting with Intercare to manage the workers' compensation claims for the agency; and,

WHEREAS, An approval for this proposed professional service contract has been obtained from the Civil Service Commission at its February 6, 2012 commission meeting; and,

WHEREAS, In order to maximize the operational and management efficiency and realize cost savings to the City, the SFMTA and the DHR agreed to issue a joint request for proposals for the workers' compensation third administrator service, aiming to select the most qualified and most cost effective service provider(s) for the City's workers compensation claims administration services; and,

WHEREAS, On May 5, 2016, the SFMTA, under authority delegated by the Planning Department, determined that the Workers' Compensation Claims Administration Services contract is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; now therefore be it,

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation or his designee to issue a Request for Proposals for Workers' Compensation Claims Administration Services, to jointly conduct proposal evaluation, contract negotiation and contract formation for an initial term of three-years with two, one year contract extensions at the City's sole discretion.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of June 7, 2016.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**Request for Proposals for
Workers' Compensation Third Party Administrator for
Claims**

RFP No. SFMTA 2015-58

(CCO No. 16-1398)

Date Issued: **[Insert the date.]**
Pre-proposal Conference: **[Insert the date & time.]**
Proposal Due: **[Insert the date & time.] PT**

San Francisco Municipal Transportation Agency (SFMTA) Request for Proposals for Workers' Compensation Third Party Administrator for Claims

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San Francisco Municipal Transportation Agency
RFP for Workers' Compensation Third Party Administrator

I. Introduction and Schedule

A. General

San Francisco is the fourth largest city in California and serves as a center for business, commerce and culture for the West Coast. The City and County of San Francisco (“City”) established by Charter in 1850, is a legal subdivision of the State of California with the governmental powers of both a city and a county under California law.

The City has administered its self-insured Workers' Compensation Program through its DHR since 1932. In 2000, SFMTA was authorized by Proposition E to administer its own Workers' Compensation claims. Collectively, the two departments are responsible for the administration of workers' compensation benefits for all 31,500 City employees and Community College employees (approximately 26,000 employees under the DHR program and 5,500 employees under the SFMTA program).

The City invites proposals from qualified firms to provide third-party Workers' Compensation claims administration for the Municipal Transportation Agency (“SFMTA”) and/or the Department of Human Resources (“DHR”). Proposers **must** meet the Minimum Qualifications to be considered for evaluation.

Services shall include claims management, medical and disability management, cost containment, litigation support/management, performance metrics, ancillary services, and administrative management.

The contract shall have an original term of 3 years, with two options to extend the term for a period of one year each, which the SFMTA's Director of Transportation and DHR's Human Resources Director may exercise in its sole, absolute discretion.

B. Schedule

The anticipated schedule for selecting a consultant is:

<u>Phase</u>	<u>Date</u>
RFP is issued by the City:	[Insert Date]
Pre-proposal conference:	[Insert Date]
Deadline for submission of written questions or requests for clarification:	[Insert Date]
Proposals due:	[Insert Date]

<u>Phase</u>	<u>Tentative Date</u>
Oral interview of short listed firms *:	[Insert Date]
Contract Negotiations:	[Insert Date]
SFMTA Board meeting approval:	[Insert Date]
Contract Starts:	[Insert Date]

* The City reserves the right to decline to conduct oral interviews and select a firm based on the written proposals only.

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RFP for Workers' Compensation Third Party Administrator

II. Scope of Work

1. [Description of Services](#)

General Guide: This Scope of Work is a general guide to the work the City and County of San Francisco ("City"), acting through its Department of Human Resources ("DHR") and its Municipal Transportation Agency ("SFMTA"), expects to be performed, and is not a complete listing of all services that are required.

Compliance with Laws, Regulations, Requirements and Terms: The Scope of Work, as defined herein, is subject to change as necessitated by modifications to applicable provisions of the California Labor Code, the California Code of Regulations, the Rules of the Workers' Compensation Appeals Board ("WCAB"), and any other applicable state or federal laws or regulations. Services shall be performed in compliance with the laws and regulations of the State of California, including but not limited to the Division of Workers' Compensation ("DWC") Audit Unit, the Office of Self-Insured Plans ("SIP"), and the California Labor Code, in compliance with the San Francisco City Charter and Administrative Code, and in compliance with the terms of this RFP.

Overview of Services: Contractor shall provide all third party administration services for workers compensation claims filed by employees of those City departments designated by City ("the Assigned Departments"). The approximate volume of claims to be managed is currently 2633.

The City may, at its sole discretion, add or delete departments from the list of Assigned Departments, in writing, with 60 days' notice.

Contractor's third party administration of City's workers' compensation claims shall include, but not be limited to, all aspects of claims management.

Collectively, the services to be performed under this Agreement shall be referred to as "the Program."

Department Liaisons: Contractor's work for all Assigned Departments, with the exception of SFMTA, shall be coordinated through DHR. For the purposes of the Agreement, DHR's Departmental Liaison for Program-related issues, including review of performance and approval of invoices, shall be its Director, Workers' Compensation Division. DHR's Departmental Liaison for purposes of contract administration shall be its Deputy Director of Finance and Information Technology. Contractor's work for the SFMTA shall be coordinated directly through the SFMTA. For all purposes of this Agreement, SFMTA's Departmental Liaison shall be its Workers Compensation Program Manager.

Data Sharing: The Contractor's findings and data may be shared by the City with any City department and or contractor as deemed appropriate by the City.

2. Program Requirements

Program Objectives:

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- Timely administration, processing and adjustment of claims and related liens
- Responsive, timely claims handling, assistance and communications with City staff and injured employees and/or their representatives from start to end of a claim.
- Identification of potentially fraudulent claims and notification to the City of those claims.
- Cooperative assistance to the City Attorney.
- Demonstrable cost containment and claim closure performance.
- Improvements in efficiency through technology or program design.
- Ongoing recommendations for program improvements including assessment of preventable injuries based on claim frequency and severity.
- Complete data analysis including monthly reporting in Excel and PowerPoint formats as directed by the City.

Integration with Existing Services: The City has existing vendors for related Workers' Compensation services, including investigation services, medical bill and utilization review services, claims administration software, and check processing services. The Contractor must work with the City to integrate its services with the City's existing contracted services and the electronic claims management software, currently iVOS.

Responsibility for Claims: Upon receipt of the City's Notice to Proceed, Contractor agrees to perform the following services for the City:

- Assume responsibility for claims from Assigned Departments initiated prior to this Agreement and for claims reported during the term of this Agreement.

Use City's electronic claims management software, currently iVOS, upon contract award.

- Program Services: The Contractor shall perform the services and comply with the requirements listed below.

A. CLAIMS MANAGEMENT

1. Claims manual: Provide Contractor's current claims manual ("Claims Manual") to City outlining performance and documentation guidelines, standards, procedures and practices. Where Contractor's manual differs from the requirements described in this RFP this RFP shall prevail.
2. Claim entry turnaround: Record, date-stamp and process claims data, with twenty-four (24) hour turnaround on new claim entry from receipt of notification of claim, Employer's First Report of Injury, Doctor's First Report, (whichever is received first). Three-point contact (employee, employer and medical provider) shall be completed within twenty-four (24) hours of receipt of new claim entry. Reserves, Plans of Action, and all proper coding shall be completed within seven (7) working days of receipt of any documents such as Notification of Claim, Employer's Report of Injury, or Doctor's First Report of Injury.

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3. Investigate causation of injury/illness and determine if the injury/illness arose out of employment/course of employment, also known as "AOE/COE." Acceptance, delay, and denial of claims shall be done within the required timeframes under the California Labor Code
Determine the compensability of injuries and illnesses claimed by City employees in a timely, appropriate manner and in accordance with State of California Workers' Compensation laws. Seek authorization when indicated for compensability determinations.
4. Match documentation and review process: Match all priority mail, including but not limited to, Declarations of Readiness to Proceed, WCAB Awards and Orders, medical reports, and legal correspondence requiring immediate action to the claim file and review for appropriate action no later than the next calendar day following receipt. For all non-priority mail, match to claim file and review for appropriate action within 5 calendar days of receipt. All documents must be scanned and must be assigned to appropriate claim and category within two (2) working days of receipt.
5. Establish and maintain a diary system utilizing the City's current process (business workflow requirements and timelines) to review all cases on a regular basis. Specifically, reviews shall be conducted and documented in the claim file as follows:
 - a. Delayed claims shall be reviewed for status of discovery, denial or acceptance every fourteen (14) days;
 - b. Claims in which temporary disability benefits are being paid shall be reviewed every third payment;
 - c. Medical only claims shall be reviewed every ninety (90) days at a minimum;
 - d. Claims in which permanent disability advances are being paid shall be reviewed every thirty (30) days at a minimum;
 - e. All indemnity claims in which no indemnity is currently being paid shall be reviewed once every 45 days at a minimum;
 - f. Future medical claims (claims in which future medical care has been awarded) shall be reviewed every 90 days at a minimum;
 - g. Every indemnity claim in which temporary disability indemnity is being paid shall be reviewed every 120 days at a minimum. The initial review of such indemnity claims shall be conducted within five (5) working days of the temporary disability threshold being met. Supervisory review forms must be included as a permanent part of the file, and must be completed as part of this review.
6. Evaluate, maintain and adjust the estimated costs of all anticipated benefits and expenses on each individual case ("reserves"). Establish initial reserves within two (2) working days of Contractor's receipt of the claim. Evaluate and adjust reserves within thirty (30) days of receipt of supporting

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documentation. Reserves shall take into consideration all potential payments. Review all reserves for adequacy on a regular 45-day diary schedule and make adjustments, as necessary, to reflect newly discovered information and/or adverse case developments. State in the claims notes the basis for all initial reserves, reserve revisions, and payments using the appropriate reserve analysis forms. Whenever there is a reserve change (by increase or reduction) of \$50,000 or more, obtain approval from the City and send the City an email reserve alert including explanation for the change within two (2) working days of the change.

7. In cases where a DWC-1 claim form is not submitted with the Employers' Report, served a claim form within one business day to the injured employee and annotate in the file that the form was served.
8. Establish a Plan of Action ("POA") for the investigation, adjustment and prompt resolution of all indemnity cases as soon as possible, but not to exceed seven (7) working days from receipt of the first report of injury (DWC-1, Employer's Report, or Doctor's First Report of Injury, whichever is received first). Clearly document the POA in the file and update the POA at a minimum of every 90 days until a settlement is reached and the claim is converted to a future medical claim, after which time update the POA at a minimum of every six (6) months. The POA shall be based upon the facts and complexities of each individual case.
9. Close claims no later than 30 days from the date that the Contractor identified the claim for closure.
10. Perform the necessary business practices in connection with each qualified claim or loss, including the preparation of export files for payment processing, DWC Notices, State mandated reports including the submission of Workers' Compensation Information System Electronic Data Interchange transmissions, EAMS submissions to the WCAB, and other documents that may be needed to finalize a claim.
11. Comply with City's policy to maximize paperless processing, including: (a) input of all documents into City's electronic claims management software, currently iVOS electronically; (b) index and assign documents to the proper claim; and (c) store documents in accordance with City guidelines.
12. Promptly issue all payments, any notices of delay in decision, and compensability determinations within the time frames required by law.
13. Notify City by e-mail within 48 hours of receipt of any medical report finding a City employee to be permanent and stationary and/or releasing a City employee to return to work. The purpose of said notice is to allow the

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City to return the employee to work as expeditiously as possible and determine what modifications or accommodations, if any, may be required to facilitate the employee's return to work.

14. Negotiate and settle claims within the threshold amount(s) as provided by the City. Threshold amounts may be increased or decreased at the City's sole discretion.
15. Review and adjust to final conclusion all claims in accordance with City, State, and Federal law, City labor agreements, Public Employees' Retirement System and San Francisco Employee Retirement Services rules, and the Claims Manual.
16. Meet all file content and documentation requirements of the DWC Audit Unit. Document all communications in each file, including all three-point contacts (employee, employer, and medical provider), phone conversations, discussions, and meetings held on each claim.

B. MEDICAL AND DISABILITY CLAIMS MANAGEMENT

1. Medical Provider Network ("MPN") - Require all claimants to treat within the City and County of San Francisco MPN unless properly predesignated or as provided by law.
2. Manage all claims in accordance with all CCSF/SFMTA policies including utilization review and pharmacy benefit management.

C. MEDICAL COST CONTAINMENT

1. Coordinate cost containment efforts.
2. Identify cases for utilization review, pharmacy benefit management, and nurse case management.
3. Review and analyze appropriate charges.
4. Identify cases for potential fraud investigation.
5. Identify recovery opportunities, such as subrogation and apportionment.
6. Seek other recoveries.
7. Minimize penalties.
8. May provide pharmacy benefit management services for use by the City.

D. Contractor Liability

1. Denial/Delay of Benefits. Contractor shall be solely liable for all payments of penalty awards, required self-imposed penalties, interest, settlements of penalty claims and petitions for penalties, and regulatory fines, fees and assessments arising out of Contractors' negligent or unreasonable denial, unreasonable or negligent delay, or late provision of workers' compensation benefits to claimants in Contractor's performance of the Agreement. Such penalties shall include, but are not limited to, penalties and fees arising under the California Labor Code and the California Code of Regulations. Contractor shall report all payments of penalties and interest to City on a monthly basis. Contractor shall reimburse City on a monthly basis for all such penalty and interest payments made with City funds.
2. Denial/Delay of Interest Payments. Contractor shall be solely liable for all payments of penalty awards, required self-imposed penalties, interest, and settlements of penalty claims and petitions for all penalties and regulatory fines and assessments arising out of Contractors' unreasonable or negligent denial of or late payment of interest on delayed workers' compensation benefits to claimants arising out of Contractor's performance of the Agreement. Such penalties include but are not limited to penalties and fees arising under the California Labor Code and the California Code of Regulations. Contractor shall report all payments of penalties and interest to City on a monthly basis. Contractor shall reimburse City on a monthly basis for all such penalty and interest payments made with City funds.
3. Confirmation of Claimant's Weekly Wages. Contractor is solely liable for all payments of penalty awards, required self-imposed penalties, interest, settlements of penalty claims and petitions for all penalties, and regulatory fines and assessments arising out of Contractors' failure to determine a claimant's average weekly wage as of the date of injury and at the time that wage-loss benefits are requested. Such penalties and fees include but are not limited to penalties arising under the California Labor Code and the California Code of Regulations. Contractor shall report all payments of penalties and interest to City on a monthly basis. Contractor shall reimburse City on a monthly basis for all such penalty and interest payments made with City funds.
4. Late Payment of Bills. Contractor shall be solely liable for all payments of penalty awards, required self-imposed penalties, interest, settlement payments of penalty claims and petitions for all penalties, and regulatory fines and assessments arising out of Contractors' failure to pay bills and invoices of medical service providers within the time requirements of the California Labor Code, California Code of Regulations, and WCAB Rules.
5. Failure to Timely Deny Claim. Contractor's timely determination of claim compensability is an essential function and duty that is necessary and material under the Agreement. Contractor shall indemnify and reimburse the City for costs of claims (including but not limited to indemnity, medical care and associated allocated expenses) that become compensable by operation of law, when such compensability was caused by Contractor's failure to meet a mandated deadline for delaying or denying a claim (including, but not limited to, application of the 90-day provision of the California Labor Code), and such claim would not otherwise have been compensable. Determination of whether a claim would otherwise have been compensable shall be determined by an independent third

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party selected by the mutual agreement of the parties.

6. **Claim Resolution.** Claims shall be resolved based on the primary treating physician report when possible. Otherwise, the medical legal process will be utilized as indicated.

7. **Sanctions, Attorneys' Fees and Costs.** Contractor is liable for any sanctions and costs awarded to a claimant arising out of Contractor's negligent performance of the Agreement. Such sanctions and costs shall include, but are not limited to, sanctions and costs that the WCAB may award under the California Labor Code, the California Code of Regulations, and the WCAB Rules.

8. **Incorrect Payment of Indemnity.** Contractor is liable for and must reimburse City for overpayments of temporary disability indemnity where Contractor negligently continues to pay temporary disability indemnity to a claimant in the face of an uncontested medical report determining claimant to be permanent and stationary, or where Contractor has negligently continued to pay temporary disability indemnity in the face of a written notice that the Claimant has returned to work. Contractor is liable for and must reimburse City for overpayments of permanent disability indemnity where Contractor has negligently failed to estimate reasonably a claimant's level of permanent disability or has failed to rate properly a medical report listing factors of permanent disability.

9. **Failure to Issue/Late Issued Return to Work Notices.** Contractor shall be liable and shall reimburse the City for the monetary difference in awards where, but for Contractor's failure to timely issue a return to work notice, the City would have been entitled to a Labor Code 4658(d) decrease, or where Contractor's failure to timely issue a return to work notice caused a Labor Code 4658(d) increase to the City's financial detriment.

10. **Failure to Issue/Late Issued Supplemental Job Displacement Vouchers.** Contractor shall be liable and shall reimburse the City for any penalties, payments, and/or any and or litigation costs incurred by the City arising from Contractors late issuance of Supplemental Job Displacement Vouchers as required by Labor Code 4658.5 (b) and 4658.7(b).

11. **Late Payment of Medical Bills.** Contractor shall pay uncontested medical bills within the time frames established by the California Labor Code and any other California Workers' Compensation laws. Any penalties or fines assessed against Contractor by the DWC Audit Unit, or resulting from Contractor's delay in paying within state-mandated time frames shall be the responsibility of Contractor.

12. **Contractor Not Liable for Errors and Omissions of Prior TPA Contractor.** Contractor shall not be liable for penalties (including but not limited to penalties arising under the California Labor Code) arising from the errors and omissions of City's prior TPA Contractor, where such error and omissions occurred prior to the Effective Date. However, Contractor shall take appropriate action to communicate such errors and omissions of City's prior TPA Contractor to City, and shall remedy those errors and omissions promptly.

13. **Disputes Concerning Contractor's Liability.** If Contractor believes that a penalty, interest payment, sanction, fine or allocated expense is the responsibility of City under the Agreement, Contractor shall provide City with a written explanation. City and Contractor shall attempt to resolve disputes concerning their respective responsibility for claims, penalties, interest payments, sanctions, fines and allocated expenses under the Agreement by informal negotiation prior to

pursuing legal remedies.

E. INVESTIGATION AND DISCOVERY STANDARDS

1. **Witness Statements.** Investigate questionable claims by obtaining statements from anyone who may have knowledge of the injury, including the claimant, witnesses, co-workers, and supervisors, within ten calendar days of notice of claim to Contractor, unless the file reflects an explanation for unavoidable delay in obtaining same.
2. **Three Point Contact.** Establish a "three point contact" (i.e. telephone contact by claims examiner with injured employee, employer and medical provider) within twenty-four (24) hours of Contractor's receipt of notice of claim. Additionally, verify disability status with the treating physician and/or employer's medical facility prior to making any indemnity payment.
3. **Confirmation of Employment Status.** When Form 5020, Employer's First Report of Injury, does not accompany the DWC-1 Form (employee's Claim Form), verify that the claimant is a City employee by contacting the claimant's employer to confirm employment status prior to authorizing benefits, as well as to identify any potential issues known to the City.
4. **Reports from Treating Doctors.** If disability continues for more than twenty-one (21) days, obtain a medical report at a minimum of every forty-five (45) days to justify continuing indemnity payments. If Contractor does not receive a report every 45 days, Contractor shall notify in writing the treating physician of the requirements of Section 9785 of Title 8 of the California Code of Regulations, and shall provide the physician with a copy of that section. If the treating physician does not provide a medical report within ten (10) days of that notification, Contractor shall discontinue payment of temporary disability indemnity and shall notify the injured worker for the reason of the suspension of benefits according to the California Labor Code.
5. **Sub Rosa Surveillance**
 - a. Where the existence or extent of disability is in question, an activity check/surveillance may be referred to the City's Investigator or Panel.
 - b. Referrals for either activity checks and/or surveillance (sub rosa) must be based upon specific information discovered for mitigation purposes, and not based upon any subjective criteria.
6. **Compensability Investigations.** Perform a compensability evaluation for each new claim filed. If the initial evaluation or investigation warrants it, perform a more in-depth investigation to ascertain whether the claimed injury is industrial and compensable under the California Labor Code. For all stress/psychiatric claims, interview employee's supervisor and/or manager

and review employee's personnel file.

7. Insurance Index Searches. Where an Insurance Index search reveals prior claims, lawsuits or court actions that may relate to the injured worker's claim, obtain copies of the court records or claim records, and medical records. As appropriate, refer the claim for further investigation.

F. SUBROGATION AND THIRD PARTY CLAIM SETTLEMENT

Identify claims with third party liability/subrogation potential, make subrogation referrals when a third party may be responsible for a claimed injury, work with the City Attorney's Office to coordinate the resolution of subrogation liens, and ensure all credits are properly adjusted.

G. LITIGATION SUPPORT AND MANAGEMENT

Legal counsel for City workers' compensation claims and litigation is to be provided exclusively by the City Attorney's Office. Contractor is primarily responsible for managing City workers' compensation claims. Contractor shall:

1. Refer litigated cases to City Attorney while continuing claims management of these cases and continuing to perform all case administration functions.
2. Provide litigation support for the City Attorney's efforts.
3. Substantiate and refer subrogation cases to the City Attorney.
4. Prepare and forward all legally required notifications.
5. Seek legal advice and assistance as early as possible for discussion and resolution of high exposure cases.

H. SETTLEMENT AUTHORITY

1. Claim Settlement Valuation. Settlement valuation shall be made promptly, based on information included in the file and in accordance with industry standards. Emphasis shall be placed on early settlement of claims, in accordance with the authority levels as extended by the City.
2. Settlement Negotiations. Prior to formal litigation before the WCAB, settlement negotiations with represented and/or unrepresented injured workers shall be actively pursued by the Contractor.
3. Settlement Authority. Requests for settlement authority must be submitted no less than five (5) days prior to any Mandatory Settlement Conference if permanent disability is to be addressed. All requests for settlement authority shall be in writing in a format prescribed by City and shall include complete documentation of potential liability based upon all relevant evidence.

I. PERFORMANCE STANDARDS, COMMUNICATIONS AND REPORTING

The Contractor shall:

1. Maintain a one-business-day response time turnaround for responses to phone or e-mail communications from the City, and a five-business-day turnaround time for responses to written communications.
2. Maintain a Northern California office for claims processing (within a 150-mile radius of San Francisco).
3. Provide the City with prompt notification of any changes to the Claims Manual.
4. Make records available upon 10 days written notice for audit by various City departments and agents, and by state agencies charged with enforcement of the provisions of the California Labor Code.
5. Meet with the City to discuss cases selected by the City and/or Contractor as requiring special adjusting or management attention.
6. Conduct a claim review with specified City Departments quarterly to review claims identified by the City.
7. Report quarterly, or as indicated below, on the following metrics:
 - a. High exposure claims.
 - b. New claim volume and closures.
 - c. Claim cost analytics.
 - d. Claims delayed in quarter.
 - e. Claims denied in quarter.
 - f. Caseload staffing and caseload mix.
 - g. Contract compliance and performance metrics in meeting Program objectives, including reduction of the City's workers' compensation costs, lost time, and number of claims filed.
 - h. Statistical information, analyses and recommendations pertaining to proposed legislation or rules and regulations that may affect the City's workers' compensation Program and costs.
 - i. Monthly reports that will include data on loss control/statistical analysis, payments, recoveries and cost allocation by City departments.
 - j. Estimation of claim value and required reserves.
8. Meet with the City and physician members of the Medical Provider Network,

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as indicated or upon request by the City to ensure effective communication.

9. Prepare and handle correspondence and communication with claimants, medical providers, attorneys and City, state and federal agencies.
10. Prepare reports to City, state and federal agencies in accordance with required deadlines.
11. Notify the State of California's Office of Self Insurance Plans of any change of Third Party Administrator, as required by California Code of Regulations, upon contract completion.
12. Maintain and provide forms and benefit notices as required by California law.
13. Provide temporary disability benefit information as required by City payroll personnel.
14. Ensure that City Liaison(s) approve, in advance, any and all City department requests made directly to Contractor prior to Contractor performing such requests.
15. File storage and maintenance. The Contractor shall provide file and record storage. Claims file data to be maintained by Contractor shall include but not be limited to the following: adjuster file notes, diaries, documentation of events and telephone calls, plans of action, reserves, and payment records of indemnity, medical, and allocated claims expenditures. All files will remain the property of the City and shall not be disposed of without prior authorization from the City.

Program Staffing Organization and Performance: The Contractor shall:

- A. Provide a dedicated unit for City's workers' compensation claims, including exclusive Program assignment of claims and direct supervisory staff.
- B. Provide an experienced, dedicated account manager (or program manager) to provide oversight to the Program.
- C. Ensure that the key personnel for the City's Program, as delineated below, have the following experience:
 1. Claims Supervisors must have at least one year experience supervising claims for public employers; a minimum of five years' experience in adjusting indemnity claims under the California Labor Code; and certification in accordance with the requirements of the California Department of Insurance.

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2. Senior Claims Examiners must have a minimum of five years' experience in adjusting indemnity claims under the California Labor Code and certification in accordance with the requirements of the California Department of Insurance.
3. Claims Examiners (non-senior) must have a minimum of three years of experience in adjusting indemnity claims under the California Labor Code and certification in accordance with the requirements of the California Department of Insurance.
4. Claims Assistants assigned to provide support to claim examiners must have a minimum of one year experience as claims assistants in the California workers' compensation system.
- D. Be responsible for providing sufficient and competent staff to fulfill its obligations in compliance with the California law, including coverage of labor shortages, strikes, and absences.
- E. Maintain an average indemnity caseload size for each Senior Claims Examiner and Claims Examiner of no greater than 125 for SFMTA/ 135 for DHR open, active indemnity claims (this does not apply to future medical or medical only claims).
- F. Provide direct Claims Supervisors at a ratio of one Claims Supervisor to no more than four Claims Examiners.
- G. Provide an adequate ratio of support staff, i.e. one Claims Assistant to no more than four examiners.
- H. Obtain prior written authorization from City for any and all staffing structure changes, including, but not limited to temporary assignments, new hires, promotions, staff departures, and staff absences for any reason. Provide a staffing plan for performance of contractor's responsibilities under the Agreement for City review and approval at least five business days prior to making changes to staff structure. If City claims examiner caseload exceeds either 125 for SFMTA or 135 for DHR open, active indemnity claims for 90 consecutive days, the parties shall meet and confer within 30 days thereafter to establish a plan to reduce Examiner caseload size below the claim threshold. Staffing shall be reduced upon City's instruction, based on caseload size, with 60 days' notice to Contractor.
- I. Ensure that Claims Supervisors adjust claims identified by the Program Manager for special handling, such as claims involving HIV, Hepatitis, or potential conflict of interest cases, or claims presenting other factors of complexity and/or high-liability for which a Senior Claims Examiner or Claims Examiner would not be qualified. Claims Supervisors shall not adjust more than twenty (20) open claims without written authorization from the City.
- J. Agree that the City, in its sole discretion, has the right to approve or disapprove

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any staff person assigned to the Program throughout the contract term.

- K. Provide separate staffing for SFMTA's and DHR's programs to meet the requirements herein.

Program Oversight Requirements: The Contractor shall provide a structure for and manage the performance of the activities described in this scope of work. The structure shall include:

- A. Program plan that details the tasks and deliverables, provides a Program organizational structure describing roles and responsibilities, and creates a timeline illustrating deliverable due dates and Program tasks by start and finish dates.
- B. "Kick-off" meeting with the City's team. Prior to the meeting, the Contractor shall provide the City's team with the draft agenda and draft Program plan to solicit the City team's input. The Contractor shall develop the final agenda and other materials as required to ensure the following meeting objectives are met:
- Confirmation of the Program goals, tasks, deliverables, timeline, and roles and responsibilities of Program participants (summarized in the Program plan).
 - Protocol for Program communications.
 - Identification of City resources that may be needed to complete the Program successfully, including data and assistance in obtaining information.
- C. Upon receipt of notice from City of termination of this Agreement, or thirty (30) days' prior to the expiration of the Agreement, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to minimize the liability of Contractor and City to claimants and to other third parties as a result of termination or expiration of the Agreement.
- D. A Program plan that addresses other topics, as needed, to maximize the success of the Program.

3. As-Needed Services

Subject to the City's approval, the contract(s) awarded under the Agreement may be amended to include City-requested as-needed services from the Contractor in accordance with City requirements. Such as-needed services and related costs will be negotiated for a fixed, not-to-exceed price at blended hourly rates. Upon advance Department Liaison approval, the Contractor shall provide as-needed claims management consultation services, which may include consultation on claims that are not administered by the Contractor. This could include temporary emergency claims management services in case of catastrophic event as defined by the Disaster Services Council established under the California Emergency Services Act that renders City unable to temporarily process workers' compensation claims in any capacity.

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III. Submission Requirements

A. Time and Place for Submission of Proposals

Proposals must be received by [Insert the time.] PT on [Insert the date.]. Proposals must be in an electronic format and either sent by email to Katherine.kwok@sfmta.com or on USB/CD delivered to:

Katherine Kwok
SFMTA Contracts & Procurement
1 S. Van Ness Ave., 6th Fl.
San Francisco, CA 94103-5417

B. Format

Proposers shall submit the following files:

- Entire proposal including a Table of Contents
- Completed Appendix A
- Completed Appendix G
- Any other forms that require completion such as Appendices D, E, and F.

For emailed proposals, proposer is fully responsible for ensuring receipt by time due. The City shall not accept submissions that are not delivered at the time of the due date of proposals, even in cases of known email system failure. If using email, proposers are encouraged to submit proposals twenty-four hours in advance of the time stated above.

C. Content

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

1. Introduction and Executive Summary

Submit a letter of introduction and executive summary of the proposal. The letter must be signed by a person authorized by your firm to obligate your firm to perform the commitments contained in the proposal. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

2. Project Approach

Address and integrate the relevant components described in this RFP, Section II: Scope of Work. Describe the services and activities that your firm proposes to provide to the City. Include the following information:

- a. Your plan to assure successful delivery of the City's Program Objectives (refer to Program Objectives on page 4);
- b. Integration of your services with the City's existing vendors for related workers' compensation services, including investigation services, medical bill and

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utilization review services, and check processing services (refer to Integration with Existing Services on page 4);

- c. Program services for claims management, medical and disability claims management, cost containment and contractor liability, investigation and discovery standards, subrogation and third-party claim settlement, litigation support and management, settlement authority and standards, communications and reporting, and program kick-off and oversight (refer to Program Services on page 4).

3. Firm and Staff Qualifications / References

Provide information on your firm's background and qualifications which addresses the following:

- a. Firm and staff's history and structure;
- b. A brief description of your firm, as well as how any joint venture or association would be structured; and
- c. Competitive advantages; and
- d. Program staffing structure (refer to Program Staffing Organization and Performance on page 14); and
- e. A description of two of your firm's programs for public or private employer clients in California, of which at least one is similar in size and scope to the City's program. The description should include: client / reference email addresses and telephone numbers; scope; staffing; approach; and project summary. Descriptions should be limited to 2 page(s) for each project. If joint contractors or subcontractors are proposed, provide the above information for each.

4. Fee or Cost Proposal

The City:

- Intends to award a contract to the proposer(s) that will deliver the best overall services sought by this RFP to the City inclusive of qualifications and cost considerations.
- Reserves the right to accept other than the lowest cost and to reject all Proposals that are not responsive to this RFP.
- Reserves the right to negotiate a firm fixed price based on a firm fixed price for an annual Program flat fee or per-claim unit fee and a firm, fixed, blended hourly rate for as-needed services.
- Recognizes that estimating costs may be difficult and is asking Proposers to state their assumptions and to use previous experience with programs similar in size and scope to the Program as described in this RFP.

Provide your Fee Proposal in a spreadsheet or table format.

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Indicate if an annual cost of living adjustment (COLA) has been applied and is included in the total. If a COLA is not included in the fee proposal, the City will assume the Proposer is willing to forgo the annual COLA during the contract term.

A. Per-Claim Unit Fee Proposal for All RFP Services, excluding As-Needed Services

Provide a blended per-claim unit fee based on indemnity, medical only, and future medical claims, and state whether any volume discount is offered.

Services within the current RFP scope, excluding as-needed services, will be assumed to be included in the Per-Claim Unit Fee Proposal (see Appendix G). The Per-Claim Unit Fee Proposal shall include all costs for the current RFP scope (the following list is not considered exhaustive): travel, lodging, meals, claims handling costs, salaries, fringe benefits, overhead, profit margins, contract transition charges, retention incentives, and other applicable and eligible costs related to the services procured under this RFP. *Additional and separate cost reimbursement will not be provided by the City.*

B. Blended Hourly Rates for As-Needed Services

Provide blended hourly rates for all team members associated with this Program.

The blended hourly rate provided shall apply to any and all as-needed services requested by the City for the full contract period under this RFP, as applicable. The blended hourly rate shall include the costs of any travel, lodging, meals, miscellaneous and any other expenses related to the completion of services. *Additional and separate cost reimbursement will not be provided by the City.*

IV. Evaluation and Selection Criteria

A. Minimum Qualifications

The Proposer must:

1. Demonstrate that it is certified by the State of California to administer self-insured workers' compensation claims.
2. Demonstrate that it has performed third party administration services for a minimum of two clients during the last 5 years.
3. Demonstrate compliance with:
 - a. Statements on Standards for Attestation Engagements ("SSAE") No. 16, *Reporting on Controls at a Service Organization* (AT sec 801) AND
 - b. Service Organization Control ("SOC") Standard 2, American Institute of Certified Public Accountants Guide on *Reporting on Controls at a Service Organization Relevant to Security, Availability, Processing Integrity, Confidentiality, or Privacy*
4. The Key Personnel proposed for the City's Program must have the following experience:
 - a. Program Account Manager must have:
 - ✓ At least 5 years minimum experience as a Program Account Manager, including two years minimum experience with public agencies
 - b. Claims Supervisors must have:
 - ✓ At least one year experience supervising claims for public employers;
 - ✓ Minimum of five years of experience in adjusting indemnity claims under the California Labor Code; and
 - ✓ Certification in accordance with the requirements of the California Department of Insurance.
 - c. Senior Claims Examiners must have:
 - ✓ Minimum of five years of experience in adjusting indemnity claims under the California Labor Code; and
 - ✓ Certification in accordance with the requirements of the California Department of Insurance.
 - d. Claims Examiners (non-senior) must have:
 - ✓ Minimum of one year of experience in adjusting indemnity claims under the California Labor Code; and
 - ✓ Certification in accordance with the requirements of the California Department of Insurance.

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- e. Claims Assistants assigned to provide support to claim examiners must have:
 - ✓ Minimum of one year experience as claims assistant under the California Labor Code

Any proposal that does not demonstrate that the proposer meets these minimum requirements by the deadline for submittal of proposals will be considered non-responsive and will not be eligible for award of the contract.

B. Selection Criteria

The proposals will be evaluated by a selection committee comprised of parties with expertise in third-party administration of workers' compensation claims. The City intends to evaluate the proposals generally in accordance with the criteria itemized below. All firms that have a statistical chance of being the successful proposer may be interviewed by the committee to make the final selection.

1. Project Approach (50 points)

- a. Understanding of items described in the Program Objectives and Responsibility for Claims sections of this RFP. Integration with existing medical bill and utilization review services.
- c. Approach to providing Program Services:
 - Claims Management (includes audit report findings)
 - Medical and Disability Claims Management
 - Cost Containment and Contractor Liability
 - Investigation and Discovery Standards
 - Subrogation and Third-Party Claim Settlement
 - Litigation Support and Management
 - Settlement Authority and Standards
 - Communications and Reporting
 - Program Kick-Off and Oversight
 - Data analytics

2. Firm and Staff Qualifications (40 points)

- a. Proposer's Firm history and structure.
- b. Proposer's background and experience in providing program services to employer clients in California (as demonstrated in Prior/Existing Program Descriptions)
- c. Proposer's competitive advantages.
- d. Proposer's ability to demonstrate that it meets program staffing structure requirements.
- e. Proposer's program staffing structure.
- f. Program staff qualifications.

3. Fee or Cost Proposal (10 points)

The proposal with the lowest total fee will receive the maximum 10 points. Each of the other proposer's fee proposals will be scored by dividing the lowest fee proposal by each other proposer's respective fee proposal, and then multiplying by 10. See the following illustration as an example for assessing the fees for the professional service component:

Proposer	Proposed Fee	Calculation of Points	Points Assigned
Proposer A	\$100,000	Full 10 points	10
Proposer B	\$120,000	\$100,000 divided by \$120,000 multiplied by 10	8.33
Proposer C	\$150,000	\$100,000 divided by \$150,000 multiplied by 10	6.67

4. Oral Interview (20 points)

Following the evaluation of the written proposals, all firms that have a statistical chance of being the successful proposer will be interviewed by the committee to make the final selection. The interview will consist of standard questions asked of each of the proposers. **The City reserves the right to decline to hold oral interviews and select a firm based on the written proposal only.**

Each member of the Selection Committee will separately score each firm's oral interview and presentation (20 points maximum). Individual evaluation scores from all Selection Committee members will be added together and then divided by the number of Selection Committee members to obtain an average interview evaluation score per firm.

The City will add the points from the oral presentation to the total points accumulated in the written proposal total. The firm with the highest total of points will be considered the overall winner.

V. Pre-proposal Conference and Contract award

A. Pre-Proposal Conference

Proposers are encouraged to attend a pre-proposal conference on [Insert the date.], at [Insert the time.] to be held at [Insert the location & address.]. All questions will be addressed at this conference and any available new information will be provided at that time. If you have further questions regarding the RFP, please contact the individual designated in Section VI.B.

B. Contract Award

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

VI. Terms and Conditions for Receipt of Proposals

A. Errors and Omissions in RFP

Proposers are responsible for reviewing all portions of this RFP. Proposers are to promptly notify the City, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFP. Any such notification should be directed to the City promptly after discovery, but in no event later than five working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

B. Inquiries Regarding RFP

Inquiries regarding the RFP and all oral notifications of an intent to request written modification or clarification of the RFP, must be directed to:

katherine.kwok@sftma.com

Please include "SFMTA 2015-58" in the subject line of your email.

C. Objections to RFP Terms

Should a proposer object on any ground to any provision or legal requirement set forth in this RFP, the proposer must, not more than ten calendar days after the RFP is issued, provide written notice to the City setting forth with specificity the grounds for the objection. The failure of a proposer to object in the manner set forth in this paragraph shall constitute a complete and irrevocable waiver of any such objection.

D. Change Notices

The City may modify the RFP, prior to the proposal due date, by issuing Proposal Addendum(s), which will be posted on the website. The proposer shall be responsible for ensuring that its proposal reflects any and all Proposal Addendum(s) issued by the City prior to the proposal due date regardless of when the proposal is submitted. Therefore, the City recommends that the proposer consult the website frequently, including shortly before the proposal due date, to determine if the proposer has downloaded all Bid Addendum(s).

E. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

F. Revision of Proposal

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

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

At any time during the proposal evaluation process, the City may require a proposer to provide oral or written clarification of its proposal. The City reserves the right to make an award without further clarifications of proposals received.

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G. Errors and Omissions in Proposal

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

H. Financial Responsibility

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

I. Proposer's Obligations under the Campaign Reform Ordinance

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

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

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

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

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any city officer or employee about a particular contract, or a city officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a city officer or employee to promote himself or herself as a candidate for a contract; and (2) a city officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

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

1. Criminal. Any person who knowingly or willfully violates section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.

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2. Civil. Any person who intentionally or negligently violates section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
3. Administrative. Any person who intentionally or negligently violates section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

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

J. Communications Prior to Contract Award

It is the policy of the City that only City staff identified in the RFP as contacts for this competitive solicitation are authorized to respond to comments or inquiries from Proposers or potential Proposers seeking to influence the contractor selection process or the award of the contract. This prohibition extends from the date the RFP is issued until the date when the contractor selection is finally approved by the SFMTA Board of Directors and, if required, by the San Francisco Board of Supervisors.

All firms and subcontractor(s) responding to this RFP are hereby notified that they may not contact any SFMTA staff member, other than a person with whom contact is expressly authorized by this RFP for the purpose of influencing the contractor selection process or the award of the contract from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of the SFMTA and, if required, by the San Francisco Board of Supervisors. This prohibition does not apply to communications with SFMTA staff members regarding normal City business not regarding or related to this RFP.

All firms and subcontractor(s) responding to this RFP are hereby notified that any written communications sent to one or more members of the SFMTA Board of Directors concerning a pending contract solicitation shall be distributed by the SFMTA to all members of the SFMTA Board of Directors and the designated staff contact person(s) identified in the RFP.

Except as expressly authorized in the RFP, where any person representing a Proposer or potential Proposer contacts any City staff for the purpose of influencing the content of the competitive solicitation or the award of the contract between the date when the RFP is issued and the date when the final selection is approved by the SFMTA Board of Directors, and, if required, by the San Francisco Board of Supervisors, the Proposer or potential Proposer shall be disqualified from the selection process. However, a person who represents a Proposer or potential Proposer may contact City elected officials and may contact the Director of Transportation of the SFMTA if s/he is unable to reach the designated staff contact person(s) identified in the RFP or wishes to raise concerns about the competitive solicitation.

Additionally, the firms and subcontractor(s) responding to this RFP will not provide any gifts, meals, transportation, materials or supplies or any items of value or donations to or on behalf of any City staff member from the date the RFP is issued to the date when the contract award is approved by the Board of Directors of the SFMTA and if required, by the San Francisco Board of Supervisors.

All lobbyists or any agents representing the interests of proposing prime contractors and subcontractor(s) shall also be subject to the same prohibitions.

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An executed Attestation of Compliance (See Appendix D) certifying compliance with this section of the RFP will be required to be submitted signed by all firms and named subcontractor(s) as part of the response to this RFP. Any proposal that does not include the executed Attestation of Compliance as required by this section will be deemed non-responsive and will not be evaluated. Any Proposer who violates the representations made in such Attestation of Compliance, directly or through an agent, lobbyist or subcontractor will be disqualified from the selection process.

K. Sunshine Ordinance

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

L. Public Access to Meetings and Records

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

M. Reservations of Rights by the City

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

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
5. Procure any materials, equipment or services specified in this RFP by any other means; or

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6. Determine that no project will be pursued.

N. No Waiver

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

O. Local Business Enterprise Goals and Outreach

The requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance") shall apply to this RFP.

1. LBE Subconsultant Participation Goals

The LBE subconsulting participation goal for this contract has been waived. SFMTA intends to discuss with the successful proposer, for inclusion in the Contract, a process for the Contractor to outreach to LBE firms in situations where the Contractor is in need of procuring goods or services from a vendor where 1) no vendor to provide the goods or services was identified in the Contractor's proposal submitted in response to the RFP, or 2) no vendor to provide the goods or services has been designated by the City.

2. LBE Participation

Due to the estimated value of this Contract, the LBE rating discount provisions under the LBE Ordinance shall not apply to this RFP.

3. CMD Forms to be Submitted with Proposal

a. All proposals submitted must include the following SFGSA's Contract Monitoring Division (CMD) Forms contained in the CMD Attachment 2: 1) CMD Contract Participation Form, 2) CMD Non-Discrimination Affidavit, and 3) CMD Employment Form. If these forms are not returned with the proposal, the proposal may be determined to be non-responsive and may be rejected.

b. Please submit one electronic copy of the above forms with your proposal. The forms should be a separate electronic file on the media that you submit (see III.A).

If you have any questions concerning the CMD Forms, you may call Maria Cordero, SFMTA Contract Compliance Office at (415)701-5239.

P. Employment Non-Discrimination and Economically Disadvantaged Workforce Hiring Provisions

1. General

As a condition of contract award, consultants and subconsultants shall comply with the nondiscrimination in employment provisions required by Chapter 12B of the Administrative

Code and the hiring of economically disadvantaged persons as required by the City's First Source Hiring Program, Chapter 83 of the Administrative Code.

2. Nondiscrimination Provisions

a. Prior to the award of the contract, the consultant must agree that it does and will not, during the time of the contract or any contract amendment, discriminate in the provision of benefits between its employees with spouses and employees with domestic partners.

b. The consultant and subconsultants on this contract will not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or AIDS/HIV status, weight, height, or association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under this chapter. Discrimination on the basis of sex includes sexual harassment as defined in Section 16.9-25(b) of the Code. The consultant, contractor or subconsultant/subcontractor will take action to ensure that applicants are employed, and that employees are treated equally during employment, without regard to the fact or perception of their race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability, weight, height, or AIDS/HIV status. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rate of pay or other forms of compensation; and selection for training, including apprenticeship.

3. Non-Compliance with Chapter 12B Prior to Contract Award

The consultant and any subconsultants must be in compliance with the nondiscrimination provisions of Chapter 12B, on all existing City contracts prior to award of this contract. Prior to the award of this contract, the City has the authority to review the consultant's and subconsultant's prior performance to ensure compliance with the nondiscrimination provisions of Chapter 12B.

If the City determines that there is cause to believe that a consultant or subconsultant is not in compliance with the nondiscrimination provisions of Chapter 12B, the City shall attempt to resolve the non-compliance through conciliation.

- a. If the non-compliance cannot be resolved, the City shall submit to the consultant or subconsultant a written Finding of Non-compliance.
- b. The City shall give the consultant or subconsultant an opportunity to appeal the Finding.
- c. The City may stay the award of any contract to a consultant where the consultant or any subconsultant is the subject of an investigation by written notice to the City.

4. Complaints of Discrimination after Contract Award

- a. A complaint of discrimination in employment initiated by any party after contract award shall be processed in accordance with CCO procedures.

San Francisco Municipal Transportation Agency
RFP for Workers' Compensation Third Party Administrator

- b. A finding of discrimination may result in imposition of appropriate sanctions, including:
 - (i) There may be deducted from the amount payable to the consultant or subconsultant under this contract a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the contract.
 - (ii) The contract may be canceled, terminated or suspended in part by the City.
 - (iii) The consultant, subconsultant or vendor may be determined ineligible to perform work or supply products on any City contract for a period not to exceed two years.

5. Trainees – First Source Hiring Program

- a. **Trainee Requirements:** Consultants are required to comply with the City's First Source Program, Administrative Code Section 83, which fosters employment opportunities for economically disadvantaged individuals. Consultants are required to notify the First Source Program of all open, entry-level positions and consider all program referrals fairly and equally. In addition, the City requires consultants to hire a minimum number of professional service trainees in the area of the consultant's expertise. These hires count toward the First Source Hiring requirements. Trainees may be obtained through the City's One Stop Employment Center, which works with various employment and job training agencies/organizations or other employment referral source.

Number of Trainees

Project Fees	To Be Hired
\$0 – \$499,999	0
\$500,000 – \$899,999	1
\$900,000 – \$1,999,999	2
\$2,000,000 – \$4,999,999	3
\$5,000,000 – \$7,999,999	4
\$8,000,000 – \$10,999,999	5
\$11,000,000 – \$13,999,999	6
(> = \$14M, for each additional \$3 million in consultant fees, add one additional trainee)	

- b. The trainee must be hired by the prime consultant or by any subconsultant on the project team.
- c. No trainee may be counted towards meeting more than one contract goal.
- d. A trainee must meet qualifications for enrollment established under the City's First Source Hiring Program as follows:
 - (i) "Qualified" with reference to an economically disadvantaged individual shall mean an individual who meets the minimum bona fide occupational qualifications provided by the prospective employer to the San Francisco

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Workforce Development System in the job availability notices required by the Program, and

- (ii) "Economically disadvantaged individual" shall mean an individual who is either: (1) eligible for services under the Workforce Investment Act of 1988 (WIA) (29 U.S.C.A 2801 et seq.), as determined by the San Francisco Private Industry Council; or (2) designated "economically disadvantaged" for the First Source Hiring Administration, as an individual who is at risk of relying upon, or returning to, public assistance.
- e. On-the-job Training (to be provided by the consultant): The consultant shall hire the trainee on a full-time basis for at least 12 months or on a part-time basis for 24 months, with prior approval offering him/her on-the-job training which allows the trainee to progress on a career path.
- f. A summary of a job description and training for the trainee with the rate of pay should be submitted for approval.
- g. The trainee's commitment does not require that he/she is used only on this project, but also on other projects under contract to the Architect, Engineering, or Professional firm, which is appropriate for the trainee's skill development.

VII. Contract Requirements

A. Standard Contract Provisions

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

Proposers are urged to pay special attention to the requirements of Administrative Code Chapters 12B and 12C, Nondiscrimination in Contracts and Benefits, (§ 34 in the Agreement); the Minimum Compensation Ordinance (§ 43 in the Agreement); the Health Care Accountability Ordinance (§ 44 in the Agreement); the First Source Hiring Program (§ 45 in the Agreement); and applicable conflict of interest laws (§ 23 in the Agreement), as set forth in paragraphs B, C, D, E and F below.

B. Nondiscrimination in Contracts and Benefits

The successful proposer will be required to agree to comply fully with and be bound by the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Generally, Chapter 12B prohibits the City and County of San Francisco from entering into contracts or leases with any entity that discriminates in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of employees. The Chapter 12C requires nondiscrimination in contracts in public accommodation. Additional information on Chapters 12B and 12C is available on the CMD's website at <http://sfgsa.org/index.aspx?page=6058>.

C. Minimum Compensation Ordinance (MCO)

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

For the amount of hourly gross compensation currently required under the MCO, see www.sfgov.org/olse/mco. Note that this hourly rate may increase on January 1 of each year and that contractors will be required to pay any such increases to covered employees during the term of the contract.

Additional information regarding the MCO is available on the web at <http://sfgsa.org/index.aspx?page=403>.

D. Health Care Accountability Ordinance (HCAO)

The successful proposer will be required to agree to comply fully with and be bound by the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in S.F. Administrative Code Chapter 12Q. Contractors should consult the San Francisco Administrative

San Francisco Municipal Transportation Agency
RFP for Workers' Compensation Third Party Administrator

Code to determine their compliance obligations under this chapter. Additional information regarding the HCAO is available on the web at <http://sfgsa.org/index.aspx?page=407>.

E. First Source Hiring Program (FSHP)

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

Contractors should consult the San Francisco Administrative Code to determine their compliance obligations under this chapter. Additional information regarding the FSHP is available on the web at <http://www.workforcedevelopmentsf.org/businessservices/> and from the First Source Hiring Administrator, Lillie.Ellison@sfgov.org or call (415) 701-4883.

F. Conflicts of Interest

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

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

G. Prevailing Wage and Employee Retention

Contractor is required to provide prevailing wages and benefits and transitional employment and retention for the prior contractor's employees as required by San Francisco Administrative Code, Chapter 21, Section 21C.7. The Code Section may be reviewed at

http://library.amlegal.com/nxt/gateway.dll?f=templates&fn=default.htm&vid=amlegal:sanfrancisco_ca

VIII. Protest Procedures

A. Protest of Non-Responsiveness Determination

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

The City reserves the right to proceed in the proposal selection process with the responsive proposers during the five-day protest period. The City will cease the proposal selection process only when it receives a notification of decision that is in favor of the protester.

B. Protest of Contract Award

Within five working days of the City's issuance of a notice of intent to award the contract, any firm that has submitted a responsive proposal and believes that the City has incorrectly selected another proposer for award may submit a written notice of protest. Such notice of protest must be received by the City on or before the fifth working day after the City's issuance of the notice of intent to award.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent the proposer, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify facts and evidence sufficient for the City to determine the validity of the protest.

The City reserves the right to proceed in contract negotiation with the highest scored proposer during the five-day protest period. The City will cease contract negotiation only when it receives a notification of decision that is in favor of the protester.

C. Delivery of Protests

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

Katherine.kwok@sfmta.com

Appendix A
City and County of San Francisco
Contract Monitoring Division
CMD Attachment 2
Requirements for Architecture, Engineering and Professional Services
Contracts, for contracts \$55,000 and over

Appendix A is a separate file to be downloaded from the online posting for this RFP in the San Francisco Office of Contract Administration's (OCA) Bids and Contracts Database.

You may access the database at the following link:

<http://mission.sfgov.org/OCABidPublication/>

Select "Consultants and Professional Services" in the drop-down Category menu and find the listing for this RFP.

Appendix B Standard Forms

The requirements described in this Appendix are separate from those described in Appendix A. Before the City can award any contract to a contractor, that contractor must file three standard City forms (items 1-3 on the chart). Because many contractors have already completed these forms, and because some informational forms are rarely revised, the City has not included them in the RFP package. Instead, this Appendix describes the forms, where to find them on the Internet (see bottom of page 2), and where to file them. If a contractor cannot get the documents off the Internet, the contractor should call (415) 554-6248 or email Purchasing

(purchasing@sfgov.org) and Purchasing will fax, mail or email them to the contractor.

If a contractor has already filled out items 1-3 (see note under item 3) on the chart, **the contractor should not do so again unless the contractor's answers have changed.** To find out whether these forms have been submitted, the contractor should call Vendor File Support in the Controller's Office at (415) 554-6702.

If a contractor would like to apply to be certified as a local business enterprise, it must submit item 4. To find out about item 4 and certification, the contractor should call the Contract Monitoring Division at (415) 581-2319.

Item	Form name and Internet location	Form	Description	Return the form to; For more info.
1.	Request for Taxpayer Identification Number and Certification www.sfgov.org/oca/purchasing/forms.htm www.irs.gov/pub/irs-fill/fw9.pdf	W-9	The City needs the contractor's taxpayer ID number on this form. If a contractor has already done business with the City, this form is not necessary because the City already has the number.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702
2.	Business Tax Declaration www.sfgov.org/oca/purchasing/forms.htm	P-25	All contractors must sign this form to determine if they must register with the Tax Collector, even if not located in San Francisco. All businesses that qualify as "conducting business in San Francisco" must register with the Tax Collector.	Controller's Office Vendor File Support City Hall, Room 484 San Francisco, CA 94102 (415) 554-6702

Item	Form name and Internet location	Form	Description	Return the form to; For more info.
3.	S.F. Administrative Code Chapters 12B & 12C Declaration: Nondiscrimination in Contracts and Benefits www.sfgov.org/oca/purchasing/forms.htm – In Vendor Profile Application	CMD-12B-101	Contractors tell the City if their personnel policies meet the City’s requirements for nondiscrimination against protected classes of people, and in the provision of benefits between employees with spouses and employees with domestic partners. Form submission is not complete if it does not include the additional documentation asked for on the form. Other forms may be required, depending on the answers on this form. Contract-by-Contract Compliance status vendors must fill out an additional form for each contract.	Contract Monitoring Division 30 Van Ness, Suite 200 San Francisco, CA 94102 (415) 581-2310
4.	CMD LBE Certification Application www.sfgov.org/oca/purchasing/forms.htm – In Vendor Profile Application	CMD	Local businesses complete this form to be certified by CMD as LBEs. Certified LBEs receive a bid discount pursuant to Chapter 14B when bidding on City contracts. To receive the bid discount, you must be certified by CMD by the proposal due date.	Contract Monitoring Division 30 Van Ness, Suite 200 San Francisco, CA 94102 (415) 581-2319

Where the forms are on the Internet

Office of Contract Administration

Homepage: www.sfgov.org/oca/

Purchasing forms: Click on “Required Vendor Forms” under the “Information for Vendors and Contractors” banner.

City Administrator’s Contract Monitoring Division

Homepage: www.sfgsa.org

Click on “Departments, Divisions, Offices” on the left side, then click on “Contract Monitoring Division” in the middle of the page.

Equal Benefits forms: Click on “Important Forms and Documents” under the “Equal Benefits Compliance (12B)” header.

LBE certification form: Click on “Forms and Attachments for Prime Bidding on City Contracts” under the “LBE Certification and Compliance” header.

Appendix C

Sample Agreement for Professional Services (Form P-600)

Appendix C is a separate file to be downloaded from the online posting for this RFP in the San Francisco Office of Contract Administration's (OCA) Bids and Contracts Database.

You may access the database at the following link:

<http://mission.sfgov.org/OCABidPublication/>

Select "Consultants and Professional Services" in the drop-down Category menu and find the listing for this RFP.

Appendix D

Attestation of Compliance

To be completed by all Proposing Firms and All Individual Subcontractors

(Please check each box, sign this form and submit it with your response.)

Name of individual completing this form: _____

The form is submitted on behalf of firm: _____

Name of RFP: **SFMTA 2015-58**

1. I attest that I and all members of the firm listed above will and have complied to date with Section VI.J of the above RFP. Yes

2. I understand that if my firm or any members of the firm listed above are found to be in violation of Section VI.J of the above RFP, this will disqualify my firm and any Proposal in which my firm is named from further consideration. Yes

I have entered required responses to the above questions to the best of my knowledge and belief.

Signature: _____

Date: _____

Appendix E

To be completed by all Proposing Firms and All Individual Subcontractors

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

By signing and submitting its Proposal, the Proposer or proposed subcontractor certifies as follows:

- (1) _____
(Proposer or Proposed Subcontractor Business Name)
certifies to the best of its knowledge and belief that it and its principals:
- a. Are not presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from contracting with any federal, state or local governmental department or agency;
 - b. Have not within a three-year period preceding the date of this Proposal 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) contract; 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 (1)b of this certification; and
 - d. Have not within a three-year period preceding the date of this Proposal had one or more public contracts (federal, state, or local) terminated for cause or default.
- (2) Where the firm executing this RFP Appendix E is unable to certify to any of the statements in this certification, such firm shall attach a detailed explanation of facts that prevent such certification.
- (3) The certification in this clause is a material representation on fact relied upon by the San Francisco Municipal Transportation Agency (SFMTA).

As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name

Authorized Representative Name (print)

Authorized Representative Title (print)

Authorized Representative Signature

Date

Appendix F

To be completed by all Proposing Firms and All Individual Subcontractors

Certification Regarding Lobbying

(Proposer or Proposed Subcontractor Business Name)

Certifies that it will not and has not paid any person or organization for influencing or attempting to influence a member of the San Francisco Municipal Transportation (“SFMTA”) Agency Board of Directors, or an officer or employee of the SFMTA in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in this Request for Proposals. The Proposer or proposed subcontractor submitting this certification shall also disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals.

This certification is a material representation of fact upon which reliance was placed for the purposes of the SFMTA’s evaluation of Proposals and award of a contract pursuant to the Request for Proposals. Submission of this certification is a prerequisite for submitting a Proposal responsive to the Request for Proposals.

Following submission of Proposals with this signed certification, any firm who 1) pays any person or organization for influencing or attempting to influence a member of the San Francisco Municipal Transportation Agency Board of Directors, or an officer or employee of the SFMTA in connection with the contract to be awarded pursuant to this Request for Proposals, except as expressly authorized in the RFP, 2) fails to disclose the name of any lobbyist registered under Article II of the San Francisco Campaign and Governmental Conduct Code who has made lobbying contacts on its behalf with respect to the contract to be awarded pursuant to this Request for Proposals, or 3) pays or agrees to pay to any SFMTA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA any fee or commission, or any other thing of value contingent on the award of a contract, will disqualify any Proposal in which that firm is named as a prime contractor, joint venture partner or subcontractor from the selection process.

By signing and submitting its proposal, the Proposer or proposed subcontractor also certifies to the SFMTA that the Proposer or proposed subcontractor has not paid, nor agreed to pay, and will not pay or agree to pay, any fee or commission, or any other thing of value contingent on the award of a contract to any SFMTA employee or official or to any member of the selection panel or other person involved in the making of the contract on behalf of the SFMTA. As the authorized certifying official, I hereby certify that the above-specified certifications are true.

Business Name

Authorized Representative Name (print)

Authorized Representative Title (print)

Authorized Representative Signature

Date

Appendix G

*To be completed by all Proposing Firms and Submitted as a Separate Electronic File;
Do Not Include the Fee or Cost Proposal in Your Main Proposal Document File*

Fee or Cost Proposal

The City

- Intends to award a contract to the Proposer(s) that will deliver the best overall services sought by this RFP to the City inclusive of qualifications and cost considerations.
- Reserves the right to accept other than the lowest cost and to reject all Proposals that are not responsive to this RFP.
- Reserves the right to negotiate a firm fixed price based on a firm fixed price for an annual Program flat fee or per-claim unit fee and a firm, fixed, blended hourly rate for as-needed services.
- Recognizes that estimating costs may be difficult and is asking Proposers to state their assumptions and to use previous experience with programs similar in size and scope of the services described in this RFP.

Provide your Fee Proposal in a spreadsheet or table format.

Indicate if an annual cost of living adjustment (COLA) has been applied and is included in the total. If a COLA is not included in the fee proposal, the City will assume the Proposer is willing to forgo the annual COLA during the contract term.

A. Per-Claim Unit Fee Proposal for All RFP Services, excluding As-Needed Services

Provide a blended per-claim unit fee based on indemnity, medical only and open inventory claims, and state whether any volume discount is offered.

Services within the current RFP scope, excluding as-needed services, will be assumed to be included in the Per-Claim Unit Fee Proposal. The Per-Claim Unit Fee Proposal shall include all costs for the current RFP scope (the following list is not considered exhaustive): travel, lodging, meals, claims handling costs, salaries, fringe benefits, overhead, profit margins, contract transition charges, banking charges, retention incentives, and other applicable and eligible costs related to the services procured under this RFP. *Additional and separate cost reimbursement will not be provided by the City.*

B. Blended Hourly Rates for As-Needed Services

Provide blended hourly rates for all team members associated with this Program.

The blended hourly rate provided shall apply to any and all as-needed services requested by the City for the full contract period under this RFP, as applicable. The blended hourly rate shall include the costs of any travel, lodging, meals, miscellaneous and any other expenses related to the completion of services. *Additional and separate cost reimbursement will not be provided by the City.*

**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, California 94103**

Agreement between the City and County of San Francisco and

[Insert name of Contractor]

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**City and County of San Francisco
Municipal Transportation Agency
One South Van Ness Ave. 7th floor
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and
[Insert name of contractor]
Contract No. SFMTA 2015-58**

This Agreement is made this [insert day] day of [insert month], 20 [insert year], in the City and County of San Francisco, State of California, by and between [name and address of Contractor] (“Contractor”) and City.

Recitals

- A. The SFMTA wishes to obtain Workers’ Compensation Third-Party Administrator Services.*
 - B. The SFMTA issued a Request for Proposals (RFP) on [insert date], and selected Contractor as the highest qualified scorer pursuant to the RFP.*
 - C. There is no Local Business Entity (LBE) subcontracting participation requirement for this Agreement.*
 - D. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.*
 - E. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4088-11/12 on February 6, 2012.*
- Now, THEREFORE, the parties agree as follows:*

Article 1 Definitions

The following definitions apply to this Agreement:

- 1.1** “**Agreement**” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements that are specifically incorporated into this Agreement by reference as provided herein.
- 1.2** “**CCO**” means SFMTA Contract Compliance Office.
- 1.3** “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).
- 1.4** “**CMD**” means the Contract Monitoring Division of the City.
- 1.5** “**Contractor**” or “**Consultant**” means [insert name and address of contractor].
- 1.6** “**C&P**” means SFMTA Contracts and Procurement.

1.7 “Deliverables” means Contractor’s work product resulting from the Services that are provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

1.8 “Effective Date” means the date upon which the City’s Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

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

1.10 “Party” and “Parties” mean the City and Contractor either collectively or individually.

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

1.12 “San Francisco Municipal Transportation Agency” or “SFMTA” means the agency of City with jurisdiction over all surface transportation in San Francisco.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the latter of: (i) [insert Contractor’s start date]; or (ii) the Effective Date and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

2.2 The City has two options to renew the Agreement for a period of one year each. The City may extend this Agreement beyond the expiration date by exercising an option, which the SFMTA’s Director of Transportation and DHR’s Human Resources Director may exercise in their sole, absolute discretion, and by modifying this Agreement as provided in Section 11.5, “Modification of this Agreement.”

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City’s obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year,

this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

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

3.3 Compensation.

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

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay at no cost to the City.

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

3.3.4 Invoice Format. Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1, "Notices to the Parties," or in such alternate manner as the Parties have mutually agreed upon in writing.



3.3.5 Reserved (LBE Payment and Utilization Tracking System)

3.3.6 Getting Paid for Goods and/or Services from the City.

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

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

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

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

Article 4 Services and Resources

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

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

4.3 Subcontracting. Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All Subcontracts must incorporate the terms of Article 10 “Additional Requirements Incorporated by Reference” of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. City’s execution of this Agreement constitutes its approval of the subcontractors listed below.

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

4.4.1 Independent Contractor. For the purposes of this Article 4, “Contractor” shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor’s performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor’s work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor’s compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor’s receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

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

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

4.5 Assignment. The Services to be performed by Contractor are personal in character, and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

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

Article 5 Insurance and Indemnity

5.1 Insurance.

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

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

(b) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate 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.

(d) Professional liability insurance, applicable to Contractor’s profession, with limits not less than \$10,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Contractor shall maintain throughout the term of this contract, at no expense to the City, a blanket fidelity bond or a Crime Policy (Employee Dishonesty Coverage) that includes coverage for employee dishonesty, forgery and alteration, theft of money and securities, and theft via electronic means, endorsed to cover third party fidelity, covering all officers and employees in an amount not less than \$1,000,000 (One million dollars) with any deductible not to exceed \$50,000 and including City as additional obligee or loss payee as its interest may appear.

(f) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:

(i) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

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

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

5.1.2 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.

5.1.3 All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1, entitled "Notices to the Parties." All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

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

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

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

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

5.2 Indemnification. Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or

equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City.

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

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

5.2.1 Limitations. No insurance policy covering the Contractor's performance under this Agreement shall operate to limit the Contractor's Liabilities under this provision. Nor shall the amount of insurance coverage operate to limit the extent of such Liabilities. The Contractor assumes no liability whatsoever for the sole negligence, active negligence, or willful misconduct of any Indemnitee or the contractors of any Indemnitee.

5.2.2 Copyright Infringement. Contractor shall also indemnify, defend and hold harmless all Indemnitees from all suits or claims for infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark, or any other proprietary right of any person or persons in consequence of the use by the City, or any of its boards, commissions, officers, or employees of articles, work or deliverables supplied in the performance of Services. Infringement of patent rights, copyrights, or other proprietary rights in the performance of this Agreement, if not the basis for indemnification under the law, shall nevertheless be considered a material breach of contract.

Article 6 Liability of the Parties

6.1 Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "PAYMENT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF

WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

6.2 Liability for Use of Equipment. City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

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

Article 7 Payment of Taxes

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

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

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

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

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

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

Article 8 Termination and Default

8.1 Termination for Convenience

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

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

- (a)** Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by SFMTA.
- (b)** Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.
- (c)** At SFMTA's direction, assigning to SFMTA any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (d)** Subject to SFMTA's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.
- (e)** Completing performance of any Services that SFMTA designates to be completed prior to the date of termination specified by SFMTA.

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

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

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

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of SFMTA, that Contractor would have made a profit had all Services under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

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

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

rejected Services, the difference between the invoiced amount and SFMTA’s estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 SFMTA’s payment obligation under this Section shall survive termination of this Agreement.

8.2 Termination for Default; Remedies.

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

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

3.5	Submitting False Claims.
4.5	Assignment
Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.4	Nondisclosure of Private, Proprietary or Confidential Information
10.10	Alcohol and Drug-Free Workplace
10.13	Working with Minors
11.10	Compliance with Laws

(b) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default continues for a period of ten days after written notice thereof from to Contractor.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) files, or consents by answer or otherwise to the filing against it of a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors’ relief law of any jurisdiction; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor’s property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor’s property, (ii) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or

other debtors' relief law of any jurisdiction or (iii) ordering the dissolution, winding-up or liquidation of Contractor.

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

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

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

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

8.4 Rights and Duties upon Termination or Expiration.

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

3.3.2	Payment Limited to Satisfactory Services
3.3.7(a)	Grant Funded Contracts - Disallowance
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity

6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
10.4	Nondisclosure of Private, Proprietary or Confidential Information
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability

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

Article 9 Rights In Deliverables

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

9.2 Works for Hire. If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor’s copyrights to such Deliverables to the City, agrees to provide any material and execute any documents

necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

Article 10 Additional Requirements Incorporated by Reference

10.1 Laws Incorporated by Reference. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at www.sfgov.org under "Government."

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

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

10.4 Maintenance, Protection and Ownership of Confidential Information

aProprietary or Confidential Information of City. Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Contractor agrees that all information disclosed by City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

b. **Litigation by the City Attorney, and Privileged and Confidential Communications and Information.** Contractor understands and agrees that, in the performance of the work or services under this Agreement or in

contemplation thereof, Contractor shall interact with the City Attorney's Office and may have access to privileged and/or private and/or confidential information which may be subject to, among other protections, the attorney-client privilege and/or work-product privilege. Contractor shall not disclose such information without the written authorization and consent of the City Attorney's Office. Should Contractor make any such disclosure at any time and/or for any reason without obtaining prior written authorization and consent by the City Attorney's Office, Contractor shall be liable for any and all damages and shall defend and indemnify the City to the fullest extent of the law.

c. Confidential City Data, Records And Employee Privacy

1) Contractor understands and agrees that, in the performance of the Services to be provided under this Agreement or in contemplation thereof, Contractor will have access to private or confidential information concerning City employees, injuries, and accidents, including but not limited to employee medical records, personnel documents and records, injury reports and data, incident and/or accident reports and data. Contractor agrees that it shall maintain such records in the strictest confidence and privacy. Contractor shall impose these same requirements on its employees and subcontractors that it assigns to perform the Services under this Agreement. Contractor shall require each of its employees performing work under this Agreement to execute a confidentiality agreement in the form of "Appendix C," which is attached hereto and incorporated by reference as though fully set forth herein.

d. Confidentiality of Medical Information

Contractor agrees that in performance of the Agreement, it will comply with and abide by California Labor Code section 3762(c), which states:

"An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or causing to be disclosed to an employer, any medical information, as defined in subdivision (b) of Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows: 1) Medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is claimed, and the treatment provided for this condition, and 2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties."

Except as to those employees and agents specified by the City to administer its workers' compensation claims, Contractor shall not provide to any other City employees, departments, agents and/or representatives access to information in violation of California Labor Code section 3762(c).

Contractor acknowledges and understands that the Office of the City Attorney is not subject to the limitations defined by Labor Code Section 3762(c). Contractor shall therefore provide to Deputy City Attorneys and their staff and/or designees full and unrestricted access to any and all information, files, documents, and reports in

Contractor's possession concerning City employees.

10.5 Nondiscrimination Requirements

10.5.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

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

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

10.7 Minimum Compensation Ordinance. Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 Health Care Accountability Ordinance. Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

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

10.10 Alcohol and Drug-Free Workplace. City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any

Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

10.11 Limitations on Contributions. By executing this Agreement, Contractor acknowledges that it is familiar with Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

10.12 Reserved. (Slavery Era Disclosure).

10.13 Reserved. (Working with Minors)

10.14 (Consideration of Criminal History in Hiring and Employment Decisions)

10.14.1 Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T, "City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions," of the San Francisco Administrative Code ("Chapter 12T"), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at

<http://sfgov.org/olse/fco>. 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.

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

10.15 Reserved. (Public Access to Nonprofit Records and Meetings)

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

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

Article 11 General Provisions

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

To City: City and County of San Francisco
Department of Human Resources
Workers' Compensation Program
Attention: Brent Lewis, Director of Finance and IT
One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103
Email: Brent.Lewis@sfgov.org

And San Francisco Municipal Transportation Agency
Workers' Compensation Program

Attention: Dan Roach, Program Manager
One South Van Ness Avenue, 6th Floor
San Francisco, CA 94103
Email: Dan.Roach@sfmta.com

To Contractor: **[insert name of contractor, mailing address, and e-mail address]**
Any notice of default must be sent by registered mail. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

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

11.3 Reserved. (Payment Card Industry (PCI) Requirements)

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

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

11.6 Dispute Resolution Procedure.

11.6.1 Negotiation; Alternative Dispute Resolution. The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.35, Contractor may submit to the Project Manager a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the contracting officer shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute

resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

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

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

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

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

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

11.11 Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (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.

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

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

11.13 Order of Precedence. Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor’s proposal dated [Insert Date of Proposal]. The RFP and Contractor’s proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement and any implementing task orders shall control over the RFP and the Contractor’s proposal.

Article 12 MacBride Principles And Signature

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

Article 13 Large Vehicle Driver Safety Training Requirements

13.1 Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA’s Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA’s approved standards for large vehicle urban driving safety. The SFMTA’s approved standards for large vehicle urban driving safety is available for download at www.SFMTA.com/largevehicletainingstandards. This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, “large vehicle” means any single vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

13.2 By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor’s failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to

Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ [Deputy City Attorney's Name] Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary Board of Supervisors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Clerk of the Board</p>	<p>CONTRACTOR</p> <p>[company name]</p> <hr/> <p>[name of authorized representative] [title] [optional: address] [optional: city, state, ZIP]</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Article 13: Large Vehicle Driver Safety Training Requirements.</p> <p>City vendor number: [vendor number]</p>
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Appendices

- A: Scope of Services
- B: Calculation of Charges

C: Confidentiality Agreement

Appendix A
Scope of Services

TO BE COMPLETED AFTER CONTRACT NEGOTIATIONS

Appendix B

Calculation of Charges

TO BE COMPLETED AFTER CONTRACT NEGOTIATIONS

Appendix C – Confidentiality Agreement

CITY AND COUNTY OF SAN FRANCISCO ("CITY")

CONTRACTOR EMPLOYEE ACKNOWLEDGMENT
AND CONFIDENTIALITY AGREEMENT

GENERAL INFORMATION

Your employer, **INSERT CONTRACTOR NAME** has entered into a contract with the City and County of San Francisco ("City") to provide workers' compensation third party administration services to City. Therefore, we need your signature on this employee acknowledgment and confidentiality agreement.

EMPLOYEE ACKNOWLEDGMENT

I understand that **INSERT CONTRACTOR NAME** is my sole employer for purposes of this employment.

I understand and agree that I am not an employee of the City for any purpose and that I do not have and will not acquire any rights or benefits of any kind from the City during the period of this employment.

I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any agreement between my employer and City.

CONFIDENTIALITY AGREEMENT

As an employee of **INSERT CONTRACTOR NAME** you may be involved with work pertaining to City services, and if so, you may have access to confidential data pertaining to persons or entities represented by the Office of the City Attorney. The City Attorney's office has a confidential attorney/client relationship with its clients. All personnel who perform services pursuant to this agreement are bound by that confidential relationship, which is set forth in California Evidence Code, Article 3, and the California Code of Professional Responsibility. In addition, City has a legal obligation to protect all confidential data in its possession, especially data concerning health, criminal and welfare recipient needs. You, too, shall protect the confidentiality of all data, as well as all information protected by the attorney/client privilege. Consequently, you must sign this Confidentiality Agreement for City.

Please read the Agreement and take due time to consider it prior to signing.

CONFIDENTIALITY AGREEMENT

I agree that I will not divulge to any unauthorized person, data obtained while performing work pursuant to the contract between INSERT CONTRACTOR NAME and the City and County of San Francisco ("City").

I agree to adhere to the provisions of the Confidentiality of Medical Information Act, California Civil Code Section 56 et seq.

I have been informed by my employer of Article 9 of Chapter 4 of Division 3 (Commencing with 6150) of the California Business and Professions Code (i.e. State Bar Act provisions regarding unlawful solicitations as a runner or capper for attorneys), which states:

"It is unlawful for any person, in his individual capacity or in his capacity as a public or private employee, or for any firm, corporation or partnership or association to act as a runner or capper for any such attorneys to solicit any business for such attorneys..."

I agree to forward all requests for the release of information received by me to my immediate supervisor.

I agree to report any and all violations of the above by any other person and/or by myself to my immediate supervisor, and I agree to ensure that said supervisor reports such violations to the City Attorney for City. I agree to return all confidential materials to my immediate supervisor upon termination of my employment with INSERT CONTRACTOR NAME or upon completion of the presently assigned work task, whichever occurs first.

I acknowledge that violation of this Agreement & Acknowledgment may subject me to civil and/or criminal action and that City will seek all possible legal redress.

Signature_____

Printed Name_____

Position/Title_____

Date_____