

THIS PRINT COVERS CALENDAR ITEM NO.: 10.2

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Human Resources

BRIEF DESCRIPTION:

To approve Contract No. SFMTA-2024-52-LOC with Claremont Behavioral Services, Inc. (Claremont), to provide the Employee Assistance Program, Peer Assistance Program, Critical Incidents Program, As-needed Substance Abuse Professional Services, As-needed Conflict Resolution Training, and related professional services (collectively, Employee Assistance Services) for an amount not to exceed \$3,537,645 and a base term of five years with two options to extend the term by two years each for a total of four additional years.

SUMMARY:

- The Employee Assistance Services provide SFMTA employees with a voluntary, confidential way to seek assistance with a variety of family, health, and substance abuse issues to reduce stress, address work and life problems, and create a more productive and pleasant work environment. In addition, the Employee Assistance Services also ensure compliance with the SFMTA’s collective bargaining agreements with various labor organizations and the Department of Transportation’s mandated drug and alcohol rules and regulations.
- The current contract expires on November 30, 2024. A request for proposals was issued on May 23, 2024; Claremont submitted the only responsive proposal to the solicitation.
- SFMTA staff negotiated a not-to-exceed amount for the Employee Assistance Services of \$3,537,645 over nine years, including option periods.
- There is a five percent Local Business Enterprise (LBE) subcontracting participation requirement, and Claremont has committed to a 6.75 percent LBE participation.

ENCLOSURES:

1. SFMTAB Resolution
2. Contract No. SFMTA-2024-12-LOC

APPROVALS:

DIRECTOR  _____

DATE

September 10, 2024

SECRETARY  _____

September 10, 2024

ASSIGNED SFMTAB CALENDAR DATE: September 17, 2024

PURPOSE

Approving Contract No. SFMTA-2024-52-LOC with Claremont Behavioral Services, Inc. (Claremont), to provide the Employee Assistance Program, Peer Assistance Program, Critical Incidents Program, As-needed Substance Abuse Professional Services, and As-needed Conflict Resolution Training, and related professional services (collectively, Employee Assistance Services), for an amount not to exceed \$3,537,645 and a base term of five years with two options to extend the term by two years each for a total of four additional years.

STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES

This item supports the following Strategic Plan Goals:

- Goal 1: Identify and reduce disproportionate outcomes and resolve past harm towards marginalized communities.
- Goal 2: Create a work environment that is responsive, equitable and inclusive.
- Goal 3: Recruit, hire and invest in a diverse workforce.

Transit-First Policy:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.
10. The City and County shall encourage innovative solutions to meet public transportation needs wherever possible and where the provision of such service will not adversely affect the service provided by the Municipal Railway.

DESCRIPTION

The Employee Assistance Services provide SFMTA employees with a voluntary, confidential way to seek assistance with a variety of family, health, and substance abuse issues to reduce stress, address work and life problems, and create a more productive and pleasant work environment. The Employee Assistance Services also ensure compliance with the SFMTA’s agreements with various labor organizations and the Department of Transportation mandated drug and alcohol rules and regulations.

The Employee Assistance Services include the following programs and services:

- The Employee Assistance Program is designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns, including but not limited to health, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which adversely affect job performance.
- The Peer Assistance Program provides peer assistance services provided by SFMTA employees (Peer Assistants). Employees experiencing problems at home or work are more likely to make use of the Employee Assistance Program if their initial contact is with a peer rather than an outside counselor. The Peer Assistants’ familiarity with the workforce and

the workplace enhances the prospect for early intervention. Claremont provides clinical oversight and support for three full-time paid Peer Assistants, and up to eight volunteer Peer Assistants of the Peer Assistance Program. The SFMTA provides administrative oversight of the Peer Assistants through the Human Resources Workforce Development and Wellness Unit.

- The Critical Incidents Program provides support and counseling sessions with a licensed psychologist to employees that have experienced assaults, threats, and serious accidents that occur while on duty. The services are provided 24 hours per day, seven days per week. Counselors contact involved employees within two hours of a critical incident to offer services. Counselors also make follow-up calls within the first 24 to 48 hours following a critical incident.
- The Substance Abuse Professional Services are as-needed services to support the SFMTA's in-house licensed Substance Abuse Professional Services manager with initial evaluation and referral to an education, counseling or treatment program. The services monitor progress and completion of the program and return to duty assessment, and ensure compliance with the requirements of the Department of Transportation's random drug and alcohol testing policy.
- Conflict Resolution Training is as-needed training to provide staff training to address negotiation, mediation, diplomacy, creative peace building and resolving workplace conflicts.

The SFMTA's collective bargaining agreements with the following labor unions include requirements relating to Employee Assistance Services: Transport Workers Union (TWU), Local 250A and Local 200; International Brotherhood of Electrical Workers (IBEW), Local 6; Service Employees International Union (SEIU) Local 1021; International Association of Machinists and Aerospace Workers (IAM), Local 1414; Laborers, Local 261; Stationary Engineers, Local 39; Glaziers, Local 718; and Teamsters, Local 853. In addition to complying with the collective bargaining agreements with the unions listed above, the SFMTA provides Employee Assistance Services to all SFMTA employees including employees not covered by these unions.

The current contract (No. SFMTA-2016-45) was awarded to Claremont on October 21, 2016, by SFMTA Board Resolution No. 13-153. The agreement provides work-site based services for the Employee Assistance Program, Peer Assistance Program, Critical Incidents Program, and as-needed Conflict Resolution Training services. The current contract does not include Substance Abuse Professional Services, and expires on November 30, 2024.

The original value of Contract No. SFMTA-201645 was \$2,569,980 for a term beginning October 16, 2016, and expiring November 30, 2023 (a base term of three years and two options to extend the term for two years each). On October 2, 2023, the contract was modified by the Director of Transportation to extend the contract for one additional year until November 30, 2024, and increase the contract amount by \$367,140 to provide compensation for services provided during the extension of the term. The total value of the current contract is \$2,937,120. The contract was extended to allow the SFMTA to conduct a competitive solicitation for the Employee Assistance Services after the 2023 solicitation resulted in no responsive proposals, as further explained below.

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In March 2023, the SFMTA issued a Request for Proposals (RFP) No. SFMTA-2023-29 to procure the services of a qualified firm to operate and manage the Employee Assistance Services. However, the SFMTA did not receive any responsive proposals. The SFMTA contacted potential proposers that indicated they either did not offer all services requested in the solicitation, did not have the capacity to fulfill the Employee Assistance Services, or did not have the ability to prepare and submit a proposal while the solicitation was open. The SFMTA incorporated feedback and prepared a new solicitation, issuing RFP No. SFMTA-2024-52-LOC on May 23, 2024.

As part of the SFMTA's outreach effort, the SFMTA advertised RFP No. SFMTA-2024-52-LOC on the San Francisco City Partner Website and contacted 31 companies that either directly provide Employee Assistance Service or are Local Business Enterprises (LBEs) that could potentially provide services as subcontractors. In spite of these efforts, the SFMTA received two proposals, and Claremont, the current services provider, was the sole proposer responsive to all the requirements included in the RFP; the only other proposer did not meet the minimum qualifications regarding the licensing and certification requirements.

Claremont is a California corporation, well-regarded provider of employee assistance and trauma response counseling services. SFMTA staff negotiated with Claremont for a fair and reasonable price. In addition, Claremont offered to include related online mental health services application at no additional charge.

The price for all services for the first five years of the contract will be monthly flat fee of \$32,107, as compared with the current monthly flat fee of \$30,595 per month. In contract years six and seven (option years one and two), the monthly price will increase by three percent to \$33,071; further increasing by an additional three percent in contract years eight and nine (option years three and four) to \$34,063 per month. The contract amount will not exceed \$3,537,645 and will have a base term of five years with two options to extend the term by two years each for a total of four additional years.

The SFMTA Contract Compliance Office has established a five percent LBE subcontracting participation requirement for this contract and Claremont has committed to a 6.75 percent LBE subcontracting participation.

STAKEHOLDER ENGAGEMENT

The stakeholders are TWU, Local 250A; IBEW, Local 6; SEIU, Local 1021; IAM, Local 1414; Laborers, Local 261; Stationary Engineers, Local 39; TWU, Local 200; Glaziers, Local 718; and Teamsters, Local 853. These stakeholders were notified of the new contract through the Civil Service Commission and SFMTA Human Resources Division.

ALTERNATIVES CONSIDERED

Staff has considered utilizing the Employee Assistance Program contract administered by the City's Health Service System Department (HSS EAP) for other City departments. However, the HSS EAP does not provide Peer Assistance Program referral services. In addition, HSS does not provide a physician referral network, which is a critical component of the SFMTA's Employee Assistance Services.

FUNDING IMPACT

This contract is funded with operating funds and was included in the FY24-25 and FY25-26 budgets and will be included in future Fiscal Year budgets.

Total Annual Fees	
Contract Year 1:	\$385,289
Contract Year 2:	\$385,289
Contract Year 3:	\$385,289
Contract Year 4:	\$385,289
Contract Year 5:	\$385,289
Contract Year 6 (First Option - Year 1):	\$396,848
Contract Year 7 (First Option - Year 1):	\$396,848
Contract Year 8 (Second Option - Year 1):	\$408,752
Contract Year 9 (Second Option - Year 2):	\$408,752
Contract Total	\$3,537,645

ENVIRONMENTAL REVIEW

On August 23, 2024, the SFMTA, under authority delegated by the Planning Department, determined that the Employee Assistance Program and Related Professional Services Agreement 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 of the SFMTA Board of Directors and is incorporated herein by reference.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFMTA received approval of the contract from the Civil Service Commission on July 26, 2024.

The Contract Compliance Office has reviewed this contract and has set a five percent Local Business Enterprise subcontracting participation goal for this contract.

The City Attorney's Office has reviewed this calendar item.

RECOMMENDATION

Staff recommends that the SFMTA Board of Directors approve Contract No. SFMTA-2024-52-LOC with Claremont Behavioral Services, Inc., to provide the Employee Assistance Program, Peer Assistance Program, Critical Incidents Program, As-needed Substance Abuse Professional Services, As-needed Conflict Resolution Training, and related professional services for an amount not to exceed \$3,537,645 and a base term of five years with two options to extend the term by two years each for a total of four additional years.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The Employee Assistance Program, Peer Assistance Program, Critical Incidents Program, As-needed Substance Abuse Professional Services, As-needed Conflict Resolution Training, and related professional services (collectively, Employee Assistance Services) provide employees of the San Francisco Municipal Transportation Agency (SFMTA) with a voluntary, confidential way to seek assistance with a variety of family, health, and substance abuse issues to reduce stress, address work and life problems, and create a more productive and pleasant work environment; and,

WHEREAS, The Employee Assistance Program is designed to assist in the identification and resolution of productivity problems associated with employees impaired by personal concerns, including but not limited to health, family, financial, alcohol, drug, legal, emotional, stress or other personal concerns which adversely affect job performance; and,

WHEREAS, The Peer Assistance Program provides peer assistance services provided by SFMTA employees whose familiarity with the workforce and the workplace enhances the prospect for early intervention; and,

WHEREAS, The Critical Incidents Program provides support and counseling sessions with a licensed psychologist to employees that have experienced assaults, threats, and serious accidents that occur while on duty; and,

WHEREAS, The Substance Abuse Professional Services are as-needed services to support the SFMTA's in-house licensed Substance Abuse Professional Services manager in providing initial evaluation and referral to an education, counseling or treatment program, monitoring the progress and completion of the program and return to duty assessment, and ensuring compliance with the requirements of the Department of Transportation's random drug and alcohol testing policy; and,

WHEREAS, Conflict Resolution Training provides staff training to address negotiation, mediation, diplomacy, creative peace building and resolving workplace conflicts; and,

WHEREAS, The SFMTA's collective bargaining agreements with the following labor unions include requirements relating to Employee Assistance Services: Transport Workers Union (TWU), Local 250A and Local 200; International Brotherhood of Electrical Workers (IBEW), Local 6; Service Employees International Union (SEIU) Local 1021; International Association of Machinists and Aerospace Workers (IAM), Local 1414; Laborers, Local 261; Stationary Engineers, Local 39; Glaziers, Local 718; and Teamsters, Local 853; and,

WHEREAS, In addition to complying with the collective bargaining agreements with the unions listed above, the SFMTA provides Employee Assistance Services to all SFMTA employees including employees not covered by these unions; and,

WHEREAS, The current contract (No. SFMTA-2016-45) was awarded to Claremont Behavioral Services, Inc. (Claremont) on October 21, 2016, by SFMTA Board Resolution No. 13-153; the contract excludes Substance Abuse Professional Services and expires on November 30, 2024; and,

WHEREAS, The SFMTA issued a Request for Proposals No. SFMTA-2024-52-LOC on May 23, 2024, for proposals from qualified firms to provide Employee Assistance Services; and,

WHEREAS, Claremont was the only firm that submitted a proposal responsive to all the requirements included in RFP No. SFMTA-2024-52-LOC; and,

WHEREAS, SFMTA staff negotiated a fair and reasonable price for the Employee Assistance Services; and,

WHEREAS, The SFMTA Contract Compliance Division established a five percent LBE subcontracting participation requirement for this contract and Claremont has committed to meeting 6.75 percent LBE subcontracting participation, meeting the Non-discrimination Equal Employment requirements of the contract, and complies with Article 131 (formerly Chapter 12B, Equal Benefits provision) of the San Francisco Administrative Code; and,

WHEREAS, On August 23, 2024, the SFMTA, under authority delegated by the Planning Department, determined that the Employee Assistance Program Services Agreement 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 approves Contract No. SFMTA-2024-52-LOC with Claremont Behavioral Services, Inc., to provide the Employee Assistance Program, Peer Assistance Program, Critical Incidents Program, As-needed Substance Abuse Professional Services, As-needed Conflict Resolution Training, and related professional services for an amount not to exceed \$3,537,645 and a base term of five years with two options to extend the term by two years each for a total of four additional years.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of September 17, 2024.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

**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

Claremont Behavioral Services, Inc.

for Employee Assistance Program and Related Professional Services

Contract No. SFMTA-2024-52-LOC

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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
Claremont Behavioral Services, Inc.
for Employee Assistance Program and Related Professional Services
Contract No. SFMTA-2024-52-LOC**

This Agreement for Employee Assistance Program and Related Professional Services is made as of _____, by and between Claremont Behavioral Services, Inc., a California corporation (Contractor), and the City and County of San Francisco (City), a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

Recitals

A. The SFMTA wishes to procure operations and management services for the Agency’s Employee Assistance Program (EAP), Peer Assistance Program (PAP), Critical Incidents Program, and Substance Abuse Professional Services (SAP), As-needed Conflict Resolution Training programs and related professional services (collectively, “the Services”).

B. This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on May 23, 2024, pursuant to which the SFMTA selected Contractor as the highest-qualified proposer.

C. The Local Business Enterprise (LBE) subcontracting participation percentage that the Contractor committed to for this Agreement is 6.75 percent.

D. Contractor represents and warrants that it is qualified to perform the Services required by City as set forth in this Agreement.

E. Approval for this Contract was obtained when the City’s Civil Service Commission approved Modification No. 1 to Contract No. 42856-22/23, on July 26, 2024, for the period commencing December 1, 2023, and ending November 29, 2033.

Now, THEREFORE, the SFMTA and Contractor agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement.

1.1 “**Agreement**” or “**Contract**” means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 “**CCO**” means the 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.

1.4 “**City Data**” means that data as described in Article 13 of this Agreement, which includes, without limitation, all data collected, used, maintained, processed, stored, or generated by or on behalf of the City in connection with this Agreement. City Data includes, without limitation, Confidential Employee Information.

1.5 “**CMD**” means the Contract Monitoring Division of the City.

1.6 “**Confidential Employee Information**” means confidential information concerning an employee or their family that an employee provides to Contractor in the course of providing the Services, including, but not limited to, personal-identifiable information (PII), protected health information (PHI), or individual financial information that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M). Confidential Employee Information includes, without limitation, City Data.

1.7 “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

1.8 “**Contractor**” or “**Consultant**” means Claremont Behavioral Services, Inc., 2 Park Plaza suite 1200, Irvine CA 92614

1.9 “**Controller**” means the Controller of the City.

1.10 “**C&P**” means SFMTA Contracts and Procurement.

1.11 “**Day**” (whether or not capitalized) means a calendar day, unless otherwise designated.

1.12 “**Deliverables**” means Contractor’s or its subcontractors’ work product, including any partially completed work product and related materials, resulting from the Services 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.

1.13 “**Director**” means the Director of Transportation of the SFMTA or his or her designee.

1.14 “**Effective Date**” means the date that the SFMTA notifies Contractor in writing that the Controller has certified the availability of funds for this Agreement (as provided in Section 3.1) and the SFMTA directs Contractor to commence performing the Services (“Notice to Proceed” or “NTP”).

1.15 “**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.

1.16 “**Party**” and “**Parties**” mean the SFMTA and Contractor, either collectively or individually.

1.17 “**Project Manager**” means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.

1.18 “**Purchase Order**” means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

1.19 “**San Francisco Municipal Transportation Agency**” or “**SFMTA**” means the agency of City with jurisdiction over transportation in San Francisco, as provided in Article VIII A of the City’s Charter.

1.20 “**Services**” means the work performed by Contractor under this Agreement as 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.

1.21 “**Term**” means the period in which Contractor shall perform the Services; the Term commences on the Effective Date and continues for the period of Term stated in Article 2.

Article 2 Term of the Agreement

2.1 The term of this Agreement shall commence on the Effective Date and expire five years from the Effective Date, unless earlier terminated as otherwise provided herein.

2.2 The SFMTA has two options to extend the Term of the Agreement for a period of two years each, for a total Term not to exceed nine years (five years base Term and four years extended Term). The City may extend this Agreement beyond the expiration date by exercising an option at the Director of Transportation’s issuing written notice to the Contractor that the SFMTA is exercising its option to extend the term of the Agreement. The term extension shall be memorialized in a written unilateral contract modification signed by the Director of Transportation and the C&P Manager.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation.

3.1.1 This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller in the form of a Purchase Order, 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.

3.1.2 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).

3.2 Authorization to Commence Work. Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a Purchase Order, or notice to proceed. Such authorization may be for a partial or full scope of work.

3.3 Compensation

3.3.1 Calculation of Charges and Contract Not to Exceed Amount. The amount of this Agreement shall not exceed Three Million Five Hundred Thirty-Seven Thousand, Six Hundred Forty-Five Dollars (\$3,537,645), the breakdown of which appears in Appendix B (Calculation of Charges). The City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement. Compensation under this Agreement is limited to the Services specifically described in Appendix A (Scope of Services) and the resulting Monthly Flat Fees described in Appendix B. Any services not described in Appendix A for which Contractor seeks additional compensation beyond the Monthly Flat Fees described in Appendix B must be approved in accordance with Section 11.5 of this Agreement prior to the performance of said services.

3.3.2 Payment Limited to Satisfactory Services. Contractor is not entitled to any payments until the SFMTA approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Services, even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by the 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 the SFMTA, and include a unique invoice number and a specific invoice date. City will make payment as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of goods delivered, or Services performed, sales/use tax (if applicable), contract payment terms, and contract price. As a prerequisite for SFMTA's payment for Services, Contractor shall include the Monthly Services Report with each invoice. See Section 9.1) Invoices that do not include all required information or contain inaccurate information will not be processed for payment. The SFMTA may withhold payment

for Services until Contractor provides a complete and accurate Monthly Services Report for the period for which Contractor seeks payment.

3.3.5 LBE Payment and Utilization Tracking System. LBE Subcontracting Participation Requirements apply to this Agreement. Contractor shall: (a) within 3 business days of the SFMTA's payment of any invoice to Contractor, pay LBE subcontractors as provided under Chapter 14B.7(H)(9); and (b) within 10 business days of the SFMTA's payment of any invoice to Contractor, confirm its payment to subcontractors using the B2GNow System (<https://sfmta.diversitycompliance.com/>) unless instructed otherwise by CMD or CCO. Failure to submit all required payment information to the B2GNow System with each payment request may result in the withholding of 20% of subsequent payments due.

3.3.6 Payment of Compensation

(a) The City utilizes a commercial product through its banking partner to pay City contractors electronically. Contractors shall sign up to receive electronic payments to be paid under this Agreement. To sign up for electronic payments, visit [SF City Partner at sfgov.org](https://sfcitypartner.sfgov.org).

(b) At the option of City, Contractor may be required to submit invoices directly in the City's financial and procurement system. Refer to <https://sfcitypartner.sfgov.org/pages/training.aspx> for more information.

3.3.7 Payment Terms

(a) **Payment Due Date:** Unless the SFMTA notifies the Contractor that a dispute exists, Payment shall be made within 30 Days, measured from (1) the delivery of goods and/or the rendering of services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date on which City has issued a check to Contractor or, if Contractor has agreed to electronic payment, the date on which City has posted the electronic payment to Contractor. The SFMTA is not required to provide notice of dispute for any period for which Contractor has not provided a Monthly Services Report.

(b) **Reserved. (Payment Discount Terms)**

(c) No additional charge shall accrue against City in the event City does not make payment within any time specified by Contractor.

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 copies 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 less 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. Any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section.

3.6 Reserved. (Payment of Prevailing Wages)

Article 4 Services and Resources

4.1 Services Contractor Agrees to Perform. Contractor agrees to perform the Services stated in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request and the City is not required to compensate 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 represents and warrants that it is qualified to perform the Services required by City, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. 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 sufficient resources for timely completion within the project schedule. The SFMTA reserves the right to require the Contractor to reassign any individual on the Contractor's project team if the SFMTA is unsatisfied with that person's performance or that person fails to demonstrate the required qualifications or expertise. The SFMTA reserves the right to review and approve any replacement of team members, and the right to reject invoices submitted related to work performed by replacement team members that the SFMTA did not approve.

4.3 Subcontracting

4.3.1 Contractor may subcontract portions of the Services only upon prior written approval of the SFMTA. 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.

4.3.2 The SFMTA's execution of this Agreement constitutes its approval of the subcontractors listed below.

- Harm Reduction Therapy Center

4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses

4.4.1 Independent Contractor. For the purposes of this Section 4.4, “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 is an independent contractor and is wholly responsible for the manner and means by which it performs the Services and work required 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 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 is liable for its acts and omissions. 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 of its agents or employees. 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 is not performing in accordance with the requirements of this Section, 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 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 this Section 4.4.2 shall be solely limited to 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 hold 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.

4.4.3 SFMTA Peer Assistants Are Not Contractor’s Employees. SFMTA employees that the SFMTA assigns to work under Contractor’s supervision as Peer Assistants are not employees of Contractor. Contractor’s supervision of SFMTA employee Peer Assistants

is limited to training and instructing the Peer Assistants as to appropriate ways to counsel SFMTA employees and to direct SFMTA employees to Services resources and information as describe in Appendix A, Section I.C (Peer Assistance Program). Contractor does not have the authority to hire, terminate, discipline or otherwise determine the terms and conditions of any Peer Counselor’s employment. If Contractor has any concerns about a Peer Assistant’s performance of assigned work or behavior in the workplace, Contractor shall contact the SFMTA’s representative listed in Section 11.1.1 (Parties Liaisons).

4.5 Assignment. The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by the SFMTA 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.

4.7 Reserved. (Liquidated Damages) .

4.8 Reserved. (Bonding Requirements)

4.9 Reserved. (Fidelity Bond)

4.10 Emergency - Priority 1 Service. In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded 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) Commercial General Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations.

(b) Commercial Automobile Liability Insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence, “Combined Single Limit” for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

(c) Workers’ Compensation, in statutory amounts, with Employers’ Liability Limits not less than One Million Dollars (\$1,000,000) each accident, injury, or illness.

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than Ten Million Dollars (\$10,000,000) for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Reserved. (Technology Errors and Omissions Coverage)

(f) Cyber and Privacy Insurance with limits of not less than Twenty Million Dollars (\$20,000,000) per claim. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of City Data or Confidential Employee 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.

(g) Reserved. (Pollution Liability Coverage)

5.1.2 Additional Insured

(a) The Commercial General Liability policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

(b) The Commercial Automobile Liability Insurance policy must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

5.1.3 Reserved. (Pollution Auto Liability Insurance Additional Insured Endorsement) **Waiver of Subrogation.** The Workers' Compensation Liability Insurance policy(ies) shall include a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

5.1.4 Primary Insurance

(a) The Commercial General Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) Reserved. (Pollution Liability Insurance Primary Insurance Endorsement)

5.1.5 Other Insurance Requirements

(a) Thirty days' advance written notice shall be provided to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment, for which no less than 10 Days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1.2 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page.

(b) 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 Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

(d) 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.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required, 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.

(f) 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 and waive subrogation in favor of the City, where required.

5.2 Indemnification.

5.2.1 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 liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, 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 personal 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; except to the extent that such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are 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.

5.2.2 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.

5.2.3 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.

5.2.4 Under no circumstance will City indemnify or hold harmless Contractor.

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 (CALCULATION OF CHARGES AND CONTRACT NOT TO EXCEED AMOUNT) 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 Contractor to Pay All Taxes. 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 Possessory Interest Taxes. Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. 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 San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. 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.

7.3 Withholding. Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

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 (Notice of Termination). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective (Termination Date).

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 Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Completing performance of any Services that the SFMTA requires Contractor to complete prior to the Termination Date.

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(d) At the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts cancelled. Upon such assignment, the SFMTA shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the cancellation of such orders and subcontracts.

(e) Subject to the SFMTA's approval, settling all outstanding liabilities and all claims arising out of the cancelled orders and subcontracts.

(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 the SFMTA has or may acquire an interest.

8.1.3 Within 30 Days after the Termination Date, Contractor shall submit to the 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 provided prior to the Termination Date, for which the SFMTA has not already made 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 the 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 and returning material or equipment, 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 such materials and not otherwise recovered by or credited to the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Services or other work.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date, except for those costs specifically listed 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, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Services covered by Contractor's final invoice; (ii) any claim which the 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 the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 Payment Obligation. City'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
10.10	Alcohol and Drug-Free Workplace
11.11	Compliance with Laws
Article 13	Confidential Employee Information and City Data Security

(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 is not cured within 10 days after written notice thereof from the SFMTA to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(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, 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 Default Remedies. 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 in accordance with 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
3.4	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
8.2.2	Default Remedies
9.2	Ownership of Records and Results
9.5	Works for Hire; Rights in Deliverables
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.11	Compliance with Laws
11.12	Severability
Article 13	Confidential Employee Information and City Data Security

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 Monthly Services Reports; Rights In Records, Data and Deliverables

9.1 Monthly Services Report and Additional Reports. With each invoice for payment for the Services, Contractor shall provide the SFMTA a Monthly Services Report. The Monthly Services Report shall include monthly, quarterly, and annual PAP and Critical Incident Responses and EAP services utilization reports, user satisfaction reports. EAP utilization reports shall include total cases with cases reported by categories reported. The SFMTA may from time to time request that Contractor update the Monthly Services Report format. As directed by the SFMTA, Contractor shall also provide additional reports to the SFMTA concerning Contractor's

performance of the Services, including but not limited to the nature and types of counseling sessions, the subject matter of classes and presentations, the number of attendees, first-time attendees, repeat attendees, and suggestions in improvements to outreach and information programs to increase employee awareness of and participation in the Services. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

9.2 Ownership of Records and Results. Any Deliverables, including Monthly Services Reports, drawings, plans, specifications, studies, reports, memoranda, computation sheets, computer files and media, claims records and files, payment records, or other documents prepared by Contractor or its subcontractors (collectively, the “Records”), shall upon their creation become the property of the City. Contractor and its subcontractors shall have no title, interest or claim to the Records.

9.3 Transmission of Records. If the City so directs, Contractor shall transmit said Records to the City without condition or delay. Contractor’s or any subcontractor’s refusal to release any Records as directed by the City for any reason, including but not limited to any dispute as to payment for Services, shall be a material breach of this Agreement for which the City may immediately pursue any legal or equitable remedy.

9.4 Retention and Destruction of Records. If authorized by the City, Contractor may retain and use copies of Records that do not contain Confidential Employee Information or data concerning individual City employees for reference and as documentation of its experience and capabilities. Contractor shall not retain Confidential Employee Information concerning a SFMTA employee beyond four years from the last date that Contractor provided of Services to the employee, unless otherwise required by applicable California or federal law.

9.5 Works for Hire; Rights in Deliverables. 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, datasets and data 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 http://www.amlegal.com/codes/client/san-francisco_ca.

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 Consideration of Salary History. Contractor shall comply with San Francisco Labor and Employment Code Article 141 (formerly San Francisco Administrative Code Chapter 12K), the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (1) asking such applicants about their current or past salary or (2) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Article 141. Information about and the text of Article 141 is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of Article 141, irrespective of the listing of obligations in this Section.

10.5 Nondiscrimination Requirements

10.5.1 Non Discrimination in Contracts. Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132 (formerly Chapters 12B and 12C of the San Francisco Administrative Code). Contractor shall incorporate by reference in all subcontracts the provisions of Articles 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

10.5.2 Nondiscrimination in the Provision of Employee Benefits. San Francisco Labor and Employment Code Article 131.2 (formerly San Francisco Administrative Code 12B.2) applies to this Agreement. 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 Labor and Employment Code Article 131.2.

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. Contractor shall utilize LBE Subcontractors for at least 6.75% of the Services except as otherwise authorized in writing by the CCO. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor’s LBE subcontracting commitments.

10.7 Minimum Compensation Ordinance. If San Francisco Labor and Employment Code Article 111 (formerly Administrative Code Chapter 12P) applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Labor and Employment Code Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

10.8 Health Care Accountability Ordinance. If San Francisco Labor and Employment Code Article 121 (formerly Administrative Code Chapter 12Q) applies to this contract, Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Article 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

10.9 First Source Hiring Program. Contractor must comply with all of the applicable 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 its obligations under Section 1.126 of the City’s Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any

department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (ii) a candidate for that City elective office, or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract and has provided the names of the persons required to be informed to the City department with whom it is contracting.

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 Article 142 (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Labor and Employment Code (Article 142), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Article 142 are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Article 142 is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of Article 142, 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 Article 142.

10.14.2 The requirements of Article 142 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. Article 142 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 Nonprofit Contractor Requirements. .

10.15.1 Good Standing. If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation

demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General’s Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

10.15.2 Public Access to Nonprofit Records and Meetings. If

Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries), and receives a cumulative total per year of at least \$250,000 in City or City-administered funds, Contractor must comply with the City’s Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

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. (Distribution of Beverages and Water)

10.18 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.

10.19 Reserved. (Preservative-Treated Wood Products)

Article 11 General Provisions

11.1 Parties’ Liaisons and Notices to the Parties.

11.1.1 Parties Liaisons. Contractor’s liaison with the SFMTA to address Services is:

Jean Santullo or Designee
Employee Wellness Manager
Human Resources Division
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 6th Floor
San Francisco, CA 94103
E-Mail: Jean.Santullo@sfmta.com

SFMTA’s liaison with the Contractor to address Program Services is:

Foulishia Jean
Strategic Account Manager
Claremont Behavioral Services, Inc.
2 Park Plaza, Suite 1200
Irvine, CA 92614
E-Mail: foulishia.jean@uprisehealth.com

11.1.2 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: Jean Santullo
Employee Wellness Manager
Human Resources Division
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 6th Floor
San Francisco, CA 94103
E-Mail: Jean.Santullo@sfmta.com

To Contractor: Peter Strimaitis
Chief Executive Officer
Claremont Behavioral Services, Inc.
2 Park Plaza, Suite 1200
Irvine, CA 92614
E-Mail: peter.strimaitis@uprisehealth.com

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least 10 Days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 Compliance with Laws Requiring Access for People with Disabilities.

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 Reserved.

11.3 Incorporation of Recitals. The matters recited above are hereby incorporated into and made part of this Agreement.

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 §7920 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 must submit the Contract Modification Form (CMD Form 10) along with the required supporting documentation to the CCO and obtain prior CCO approval for 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%, and then for any subsequent amendment, modification, supplement, or change order that would result in a cumulative increase of the last CCO approved value by more than 20%.

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. Disputes will not be subject to binding arbitration. 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 Included Appendices.. The documents appended to this Agreement, listed below, are incorporated into and state material requirements of this Agreement:

- A: Scope of Services
- B: Calculation of Charges
- C: Business Associate Agreement
- D: Confidentiality Agreement

11.11 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.

11.12 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.

11.13 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.

11.14 Order of Precedence. . The Parties agree that this Agreement, including all appendices, sets forth the Parties' complete agreement. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms in this Agreement shall take precedence, followed by the procurement issued by the department (if any), Contractor's proposal, and Contractor's printed terms, respectively. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

11.15 Notification of Legal Requests. Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests, and other legal requests (Legal Requests) related to any City Data under this Agreement, and in no event later than 24 hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

11.16 Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

Article 12 SFMTA Specific Terms

12.1 Large Vehicle Driver Safety Training Requirements

12.1.1 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.

12.1.2 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.

Article 13 Confidential Employee Information and City Data Security

13.1 Protection of Confidential Employee Information and City Data

13.1.1 Contractor understands and agrees that in its performance of the Services or in contemplation thereof, Contractor will have access to Confidential Employee Information, City Data, or otherwise confidential or proprietary information that is legally protected or otherwise private. Said Confidential Employee Information includes electronic data and files and paper documents that contain information concerning City employees' work history, employment issues, reports and statements concerning employees' physical and mental health, emotional distress, marriage and family issues, and other confidential information that the law requires be kept confidential or that an employee may reasonably expect to be kept confidential. City Data includes information concerning employees' use of the program, the program's effectiveness, and other information that is proprietary to the City.

13.1.2 Contractor understands and agrees that the disclosure of said Confidential Employee Information and City Data to third parties or the public may be damaging to City employees or the City. Contractor shall hold all City Data and Confidential Employee Information in strict confidence and not to copy, reproduce, sell, transfer, or otherwise dispose of, give or disclose such City Data or Confidential Employee Information to third-parties other than its employees, agents, or authorized subcontractors who have a need to know in connection with the Services or this Agreement or to use such City Data or Confidential Employee Information for any purposes whatsoever other than the performance of the Services and compliance with this Agreement and applicable laws. Contractor agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all City Data and Confidential Employee Information confidential. Contractor agrees to include all of the terms and conditions regarding Confidential Employee Information contained in this Agreement in all subcontractor or agency contracts providing the Services.

13.1.3 Unauthorized use of City Data by Contractor, subcontractors, or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

13.1.4 Contractor shall not use or disclose Confidential Employee Information unless specifically authorized in writing by the employee. Contractor shall not disclose City Data except as expressly authorized by the City or as provided in this Agreement. While some City Data may be included in documents that are subject to various public records disclosure laws, the City shall determine whether that information must be released in its sole discretion; Contractor shall not make public or otherwise release said information. Any work using, or sharing or storage of Confidential Employee Information or of City Data outside the United States is subject to prior written authorization by the City.

13.1.5 Contractor shall develop safeguards to manage the Confidential Employee Information to ensure this information is used solely for the performance of the Services and to

prevent all unauthorized uses. Contractor and any subcontractors or agents shall use Confidential Employee Information only in accordance with all applicable local, state and federal laws restricting the access, use and disclosure of Confidential Employee Information and only as necessary in the performance of this Agreement. Contractor's failure to comply with any requirements of City, State or federal laws restricting access, use and disclosure of Confidential Employee Information shall be deemed a material breach of this Agreement. Contractor's obligations set forth herein shall survive the termination or expiration of this Agreement.

13.2 Access to Confidential Employee Information and City Data. Access to City Data and Confidential Employee Information must be strictly controlled and limited to Contractor's staff assigned to perform the Services on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use City Data solely for performing the Services and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors, or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized. Contractor shall require each of its employees that perform the Services to execute a Confidentiality Agreement using the form set out in Appendix D which is incorporated by reference as though fully set forth herein.

13.3 Ownership of Confidential Employee Information and City Data. The Parties agree that as between them, all rights, including all intellectual property rights, in and to the City Data and any derivative works of the City Data is the exclusive property of the City. Contractor is provided a limited non-exclusive license to use the City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party.

13.4 Statutes and Regulations. Contractor shall conform its business practices to and shall comply with all federal and State statutory and regulatory requirements concerning the use, transmission and storage of Confidential Employee Information and other data and information that Contractor generates or to which it has access concerning the medical condition, status, evaluation and treatment of City employees and other Confidential Employee Information. Said statutory requirements include but are not limited to California Civil Code sections 56.20-56.245, 1798.29 and 1798.82, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and San Francisco Administrative Code section 12M, as applicable.

13.5 Data Privacy and Information Security Program. Without limiting Contractor's obligation of confidentiality as described herein, Contractor shall establish and maintain a data privacy and information security program, including physical, technical, administrative, and organizational safeguards, that is designed to: (i) ensure the security and confidentiality of Confidential Employee Information and City Data; (ii) protect against any anticipated threats or hazards to the security or integrity of the Confidential Employee Information and City Data; (iii) protect against unauthorized disclosure, access to, or use of the City Data; (iv) ensure the proper disposal of Confidential Employee Information and City Data;

and, (v) ensure that all of Contractor's employees, agents, and subcontractors, if any, comply with all of the foregoing.

13.6 Data Transmission. Contractor shall ensure that all electronic transmission or exchange of system and application data with City and/or any other parties expressly designated by City shall take place via encrypted secure means (e.g., HTTPS or SFTP or most current industry standard established by NIST). Contractor shall also ensure that all City Data exchanged shall be used expressly and solely for the purposes of performing the Services. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor shall ensure that no City Data of any kind shall be copied, modified, destroyed, deleted, transmitted, exchanged, or otherwise passed to other vendors or interested parties except on a case-by-case basis as specifically agreed to in writing by City. Contractor is prohibited from accessing or storing City Data outside the continental United States, which prohibition includes hosting of applications on servers located outside the continental United States.

13.7 Cooperation to Prevent Disclosure of Confidential Employee Information. Contractor shall use its best efforts to assist the City in identifying and preventing any unauthorized use or disclosure of any City Data and Confidential Employee Information. Without limiting the foregoing, Contractor shall advise the City immediately in the event Contractor learns or has reason to believe that any person who has had access to City Data or Confidential Employee Information has violated or intends to violate the terms of this Agreement, and Contractor will cooperate with the City in seeking injunctive or other equitable relief against any such person.

13.8 Remedies for Breach of Obligation of Confidentiality. Contractor acknowledges that breach of its obligation of confidentiality may give rise to irreparable injury to the City, which damage may be inadequately compensable in the form of monetary damages. Accordingly, City may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available, to include, at the sole election of City, the immediate termination of this Agreement, without liability to City.

13.9 City's Right to Terminate for Deficiencies. City reserves the right, at its sole election, to immediately terminate this Agreement, in whole or part, without limitation and without liability, if City reasonably determines that Contractor fails or has failed to meet its obligations under this Article 13. Contractor's failure to comply with any requirements of City, State or federal laws restricting access, use and disclosure of Confidential Employee Information shall be deemed a material breach of this Agreement, for which City may terminate the Agreement. In addition to termination or any other remedies set forth in this Agreement or available in equity or law, the City may bring a false claim action against Contractor pursuant to the City's Administrative Code, or debar Contractor.

13.10 Business Associate Agreement. This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 (HIPAA). A Business Associate Agreement (BAA) executed by the Parties is attached as Appendix C.

13.11 Disposition of Confidential Information. Upon request of City or termination or expiration of this Agreement, Contractor shall promptly, but in no event later than 30 Days,

return all City Data given to or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall within 10 Days clear or purge all City Data from its servers, any hosted environment Contractor has used in performance of this Agreement, including its subcontractors' environment(s), work stations that were used to process the data or for production of the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five Days of the purge. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88, or the most current industry standard.

13.12 Loss or Unauthorized Access to City's Data; Security Breach Notification.

Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

Article 14 MacBride And Signature

14.1 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.

Signatures on the following page.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in San Francisco, California on the date first mentioned above.

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Jeffrey P. Tumlin Director of Transportation</p> <p>Authorized By: Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Secretary to the Board</p> <p>Approved as to Form:</p> <p>David Chiu City Attorney</p> <p>By: _____ Annie Smiddy Deputy City Attorney</p>	<p>CONTRACTOR</p> <p>Claremont Behavioral Services, Inc.</p> <hr/> <p>Robert Shaw Chief Financial Officer</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 Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000022729</p>
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Appendices:

- A: Scope of Services
- B: Calculation of Charges
- C: Business Associate Agreement
- D: Confidentiality Agreement

Appendix A Scope of Services

I. Description of Services

The Contractor agrees to perform the following Services:

A. Employee Assistance Program

The Contractor shall provide a worksite-based employee assistance program designed to assist in the identification and resolution of productivity problems associated with work-related and non-work-related issues, such as health, mental, marital, family, financial, alcohol, drug, legal, emotional, relationship stress or other personal concerns which may adversely affect SFMTA employee job performance.

1. Required EAP Services

The Contractor shall provide the following EAP services:

- a) Direct one-to-one, in-person and virtual counseling utilizing only Licensed Professionals (Licensed Clinical Social Workers (LCSW), licensed clinical psychologists or clinical psychiatrists, Licensed Marriage and Family Therapists, or licensed psychiatrists)) for purposes of identifying, evaluating and recommending assistance for employees and their families on matters, including but not limited to, health, marital, family, financial, alcohol, drug, legal, emotional, stress, and other personal concerns that may interfere with the employee's ability to perform their work. Knowledge or certification in Diversity, Equity and Inclusion (DEI) practices is recommended. Each SFMTA employee will be entitled to up to five counseling sessions per year. The Contractor must make additional sessions available to the employee, but the SFMTA will not pay for those additional sessions; the employee must either pay for those additional sessions or petition his/her health insurance provider to pay for additional sessions. The Contractor must provide counseling within twenty-four hours of an employee's urgent request. All other counseling sessions must be held within seventy-two hours of the employee's request. A counseling session must not be shorter than one hour (60 minutes).
- b) A twenty-four-hour/seven day a week/three-hundred sixty-five day a year toll-free telephone line to provide SFMTA employees access to live counselors with a guaranteed response time of no more than sixty seconds. The purpose of this toll-free line is to provide access to EAP resources. Phone consultations shall not count as a counseling session for purposes of the paragraphs above.
- c) Consultations with labor and management representatives for purposes of developing organizational policies and procedures necessary for effective program implementation.
- d) Training and orientation of SFMTA employees regarding the purpose, scope, nature and use of the EAP.
- e) Training of labor and management staff to develop the knowledge and skills necessary to effectively utilize the program and increase employee access to the EAP.

- f) Act as liaison between employees, the treating Licensed Professional, and the SFMTA.
- g) Prepare and provide monthly, quarterly, and annual EAP services utilization reports, user satisfaction reports and other reports as needed. EAP utilization reports include total cases with cases reported by categories reported.
- h) Attendance of the EAP Director or its delegated representative to monthly meetings required by the SFMTA for the administration of the Contract.
- i) Other EAP-related duties as the SFMTA may assign from time to time.
- j) Conform its work with the Employee Assistance Program Association (EAPA) Code of Ethics and requirements of “Certified Employee Assistance Professionals,” as defined therein.

2. **As-Needed Substance Abuse Professional Services**

The Contractor shall provide the following As-Needed Substance Abuse Professional Services:

- a) As-needed Substance Abuse Professional services, which include initial assessment, monitoring of progress in primary treatment and return to duty assessment and release, as may be required.
- b) Referral to rehabilitation services providers, which shall include professional local community resources (e.g., free or sliding scale resources) that promote and are effective in addressing mental health issues.

3. **Life Management Services**

The Contractor shall provide to SFMTA employees the following Life Management Services:

- a) The Contractor shall provide consultations, referrals, and resources for each of the Legal, Financial, Work/Life and convenience services detailed below. These Life Management Services will not be considered as in-person counseling sessions and will not count towards the employee allotted five in-person counseling sessions described in Section I.A.1.a above.
- b) The Contractor shall provide to SFMTA employees legal services and referrals to legal services providers, as described below. But the Contractor shall not provide to any SFMTA employee legal services or referrals to legal services providers concerning any dispute or action between the SFMTA employee (and/or any SFMTA employee’s family member) and the City, including but not limited to legal disputes concerning employment, labor relations, personal injury, and workers compensation. Contractor shall provide the following:
 - i. Unlimited 30-minute Consultations, Referrals and Resources with attorneys concerning the following legal matters: family/domestic law, consumer/contract issues, personal injury, traffic tickets, DUI, estate planning, elder law, housing and real estate matters, bankruptcy and other legal matters that do not involve the SFMTA as an interested party.

- ii. Contractor shall not provide Legal Services to any SFMTA employee concerning any legal dispute between an SFMTA employee (and/or any family member of an employee) and the City, including but not limited to legal disputes concerning employment, labor relations, and workers' compensation matters.
- iii. Provide a twenty-five percent discount off the attorney's regular rates for additional legal and mediation services.
- iv. Free Simple Will-Kits.

4. Finance Services

The Contractor shall provide to SFMTA employees the following Finance Services:

- a) Unlimited 30-to-60-minute consultations, referrals and resources with Certified Credit Counselors, Certified Financial Planners, or licensed Certified Public Accountants.
- b) Financial matter consultations, referrals and resources shall include credit counseling, debt and budgeting assistance, estate planning, tax planning, retirement and college planning, and other investment subjects and tax issues.
- c) Financial matter Consultations may be conducted by telephonic or in-person.
- d) Free Credit Reports (limited to one report per year per employee).

5. Work-Life Services

The Contractor shall provide the following Work-Life Services to SFMTA employees:

- a) Unlimited Consultations, Referrals and Resources with work-life and dependent care specialists.
- b) Elder Care and Disabled Adult Care services including consulting on and referrals to care providers and/or support services for: elder care and disabled adult issues, hospitalization, nursing home/in-home care, assisted living facilities, meal/nutrition programs, Medicare/insurance, transportation, emergency response services, and caregiver support. Childcare and Parenting services, including consulting on and referrals to family day care homes, infant centers, pre-schools, before/after school programs, sick/emergency care, in-home options, and care for special needs children.
- c) The Contractor shall also provide relocation information assistance, such as referral to real estate agents, moving companies and other relocation direct service providers.
- d) Pet Care services, including consulting on and referrals to vets, animal hospitals, pet services, groomers/boarders, transportation services, pet insurance, and obedience classes. Contractor shall also provide educational materials concerning pet care topics, including tip sheets and checklists.
- e) Adoption Assistance services, including consulting and advice on adoption options and the adoption process, and referrals to public and private adoption agencies, adoption

support organizations, single parent adoptions, adopting special needs children, stepparent adoptions, and international adoptions. Contractor shall also provide educational materials including tipsheets and resource listings.

- f) School Selection services, including consulting on public vs. private schools, advantages/disadvantages of each option, selecting an appropriate school, home schooling and referrals to elementary and secondary public/private schools and after school programs. Contractor shall also provide educational materials including school age tip sheets, checklists and resource listings.
- g) College Assistance services, including consulting on private colleges vs. state universities, graduate programs, college admissions process and referrals to state/private colleges and universities, test preparation courses, financial aid, educational consultants. Contractor shall also provide CollegeGuidebook and SAT information.
- h) Community services, including referrals to low or no cost community resources such as support groups, 12-step meetings, medical and mentalhealth information and resources, and inpatient and outpatient treatmentfacilities.
- i) Convenience services to help with daily living, health and wellbeing. Services include home repair locator (plumbers, electricians, etc.), movingservices, travel assistance, entertainment services, fitness and wellness centers, children's health resources, alternative medicine, diet and nutritionprograms, physician searches, women's health resources, chronic conditionssupport groups.

6. Other EAP-Related Tools and Materials

The Contractor shall provide the following EAP-related tools and materials:

- a) **Self-Help Website and optional mobile Application (App) to access services:** Unlimited access to a self-help website and optional mobile App which shall include information on a variety of health and mental health topics, self-assessments, and a full menu of EAP services.
- b) **Employee Orientations and Materials:** Onsite/telephone meetings, video/DVD, on-line, and written materials to ensure SFMTA employees understand how to access EAP services.
- c) **Newsletters and Promotional Materials:** EAP promotional materials including brochures, posters, wallet cards, magnets and quarterly newsletters.

7. **Equity Considerations.** Contractor shall perform the Services described in Section 1-6, above, in a manner that is inclusive of all employees sensitive to issues of inclusion and equity to highlight, better understand, and effectively respond to the range of experiences held by individuals and families with diverse values, beliefs, and sexual orientations, in addition to backgrounds that vary by race, ethnicity, religion, and language.

8. Services for Management and Labor

The Contractor shall provide the following services to SFMTA Management and Labor Unions:

- a) **Dedicated Account Management, Program Implementation and Evaluation:** Contractor shall provide a dedicated Account Manager assigned to the SFMTA with a responsibility for understanding SFMTA culture, challenges, and resources; to assist in identifying problem departments and employees, and developing special programs as needed; to integrate the EAP into relevant management practices and policies, service planning, employee orientations, and coordinate the distribution of EAP promotional materials. The Contractor's Account Manager will be available to attend any meetings as requested. The Contractor's Account Manager will meet with SFMTA's Program Manager at least once per quarter to review the Program.
- b) **Administrative Support:** Contractor shall provide one full-time Administrative Assistant (40 hours per week) to be located at a SFMTA facility. The Administrative Assistant responsibility will be to answer PAP office phones, provide clerical assistance, greet walk-in clients and other administrative tasks as assigned by Contractor's Program clinical supervisor in coordination with the SFMTA Program Manager.
- c) **Program Utilization Reports:** The Contractor shall provide SFMTA management with monthly reports addressing utilization data, trainings, consultations, and general observations on a routine. The Contractor shall aggregate the monthly reports into quarterly and annual reports to the SFMTA, and as the SFMTA may otherwise request. These reports will not identify specific individuals that have used EAP services or information that otherwise violates privacy laws.
- d) **Management and Labor Training and Orientations:** The Contractor shall provide manager orientations in-person, by telephone or video. The Contractor shall also provide a brief (7 minute) manager orientation video.
- e) **Management and Labor Training and Orientations:** The Contractor shall provide manager orientations in-person, by telephone or video. The Contractor shall also provide a brief (7 minute) manager orientation video.
- f) **Employer and Union Representative Consultations:** The Contractor shall provide SFMTA Managers, Human Resources and Union representatives unlimited telephone consultations with qualified counselors and industrial psychologists to facilitate referral of employees that the SFMTA has identified as experiencing difficulties in the workplace or who otherwise may benefit from EAP services. The SFMTA will only receive confirmation that the employee has attended EAP sessions when an employee signs a Release of Information form allowing the disclosure.
- g) **Formal Organizational Counseling Referrals:** The Contractor shall provide Formal Organizational Counseling Referrals resulting from consultations with SFMTA Human Resources, managers or labor regarding an employee who the SFMTA identifies as experiencing difficulties in the workplace or who may otherwise benefit from EAP services where an employee appears to have a personal problem that is affecting his or her work. In these cases, the Contractor shall notify the SFMTA to confirm the employee's participation in counseling. The Contractor's reporting to the SFMTA will only occur when the employee signs a Release of Information agreement, legally permitting the Contractor to report limited information to the SFMTA Liaison.

- h) **EAP Policy Consultations:** The Contractor shall collaborate with the SFMTA on the integration of the EAP into existing SFMTA policies and procedures.
- i) **Health Fair Participation:** Contractor shall provide EAP, work-life, health and wellness information for SFMTA sponsored Health Fairs.

B. Critical Incidents Program

As set out below, the Contractor shall provide counseling and critical incident debriefing to SFMTA employees involved in “critical incidents,” which are defined as work-related assaults, threats of bodily harm, serious accidents, or personal traumatic life events.

The Contractor shall provide the following Critical Incidents Program services:

1. A twenty-four-hour/seven day per week counseling on-call hot-line service for critical incident response. The number for the hotline shall be the same as the telephone line used for the EAP.
2. The Contractor or Peers will contact (or make good faith efforts to contact) any employee involved in a critical incident (within no more than two hours after the SFMTA provides notice to the Contractor or Peers that a critical incident has occurred) to inform the employee of the Critical Incidents Program and offer program services. In the event that contact is not made, the Contractor or Peers will notify the SFMTA Liaison or her designee, in writing (i.e., via e-mail) as to the reason why contact was not made.
3. Follow-up in person or by telephone within the first twenty-four and forty-eight hours following a critical incident regardless of whether the employee has elected to use the program after the initial contact. In the event that contact is not made, the Contractor shall notify the SFMTA Liaison or her designee, in writing (i.e., via e-mail) as to the reason why contact was not made.
4. Provide up to five one-on-ones in person or virtual counseling sessions per critical incident for the employee with a fully qualified and licensed psychologist following any critical incident, and assist employees in securing additional counseling visits with other qualified counselors under the employee’s health plan, or other providers, if necessary.
5. As needed, up to five on-site or virtual group sessions for critical incidents counseling to assist in the identification and resolution of productivity problems associated with work-related and non-work-related issues such as health, mental, marital, family, financial, alcohol, drug, legal, emotional, relationship stress or other personal concerns which may adversely affect SFMTA employee job performance.
6. Assess the employee’s ability to return to work following a critical incident and consult with the SFMTA regarding the employee's fitness for duty and ability to return to work.
7. Review and recommend changes in SFMTA’s current critical incident policies and procedures.
8. Perform other critical incident related duties as the SFMTA may assign from time-to-time.

C. Peer Assistance Program

The Contractor shall administer a Peer Assistance Program (PAP) to work in conjunction with and support of the EAP and Critical Incidents Program. The PAP is based on the expectation that employees experiencing problems at home or work are more likely to make use of the EAP if their initial contact is with a peer rather than an outside counselor, and that the Peer Assistants' familiarity with the workforce and the workplace enhance the prospect for early intervention. There are currently three fulltime Peer Assistants, and the Agency may choose to engage up to four peers and eight (8) volunteers drawn from the ranks of SFMTA employees to whom the Contractor shall provide clinical supervision.

The Contractor must provide the following PAP services:

1. Establish guidelines for PAP volunteers as to Program parameters, procedures, and policies concerning provision of services, client contact and training.
2. Clinical supervision of the Peer Assistants, including the presence of a qualified license clinical professional (PAP Coordinator) who is supervised by an EAP Manager, for no less than twenty hours each week (onsite and remote), and supplemented by twenty-four-hour telephone access to other clinical resources when the PAP Coordinator is not available, or when additional clinical input is required. This telephone hotline can be the same as the EAP telephone line.
3. Support and provide ongoing training of Peer Assistants so that each may obtain a certification as a Certified Employee Assistance Professional.
4. Coordinate Union and SFMTA joint outreach programs to SFMTA employees.
5. Provide SFMTA employees with a twenty-four-hour/seven day a week/three-hundred sixty-five day a year toll-free telephone staffed hotline to live counselors with a guaranteed response time of no more than sixty seconds. This telephone hotline can be the same as the EAP telephone line.
6. Develop and adhere to documented internal quality management standards for PAP services for SFMTA review and audit.
7. Assist the SFMTA in the selection of Peer Assistants.
8. Create and maintain a statistical database by which the SFMTA may evaluate the effectiveness of the PAP and generate monthly or as-needed reports on and audit program service statistics.
9. Individual Case Handling: PAP will refer employees as appropriate to the Contractor's EAP for on-going counseling, as well as provide support and case management services.
10. Critical Incident Response: The Contractor shall train Peer Assistants in Critical Incident Stress Debriefing/Management (CISD/CISM), as a supplement to the Contractor's and Peers' CIP requirement detailed in Section I.B above.
11. Organizational Consultations: SFMTA and Union representatives may contact a Peer Assistant to request that the PAP contact an employee who appears to be having difficulties

in the workplace or otherwise needing assistance that a Peer Assistant may appropriately provide.

D. Conflict Resolution Training

Contractor shall provide Conflict Resolution Training to staff identified by SFMTA as described below. The training shall address negotiation, mediation, diplomacy and creative peace building and other means of resolving workplace conflicts.

Contractor shall provide the following Conflict Resolution Training services:

1. 80 scheduled training sessions, each lasting two hours, to SFMTA employees selected by the SFMTA.
2. Participants will learn the five methods of conflict resolution and how to arrive at the best method for resolving a specific conflict. The focus of the training is on helping SFMTA employees defuse conflicts with the public, before they escalate into verbal altercations and assaults.

E. Digital Mental Health Services

Contractor shall provide the following digital application services to the SFMTA.

Unlimited Access to the Platform for SFMTA Employees: “Platform” means the features of the Plan’s web-based software platform and mobile applications that are listed below (including any modification, release or substitute as may be provided to from time to time):

1. Navigation platform and digital library
2. Evidenced-based clinical assessment that generates a personal well-being and stress score
3. Self-directed Cognitive Behavioral Therapy courses
4. Engagement messages and materials (digital)
5. Progress tracking within the individual’s profile to review wellbeing and stress scores mapped over time
6. Up to five scheduled, telephonic coaching sessions per SFMTA employee.
7. Live Care Navigator – A (non-clinician) staffed employee with Claremont/Uprise Health who is available via chat function within the application. The care navigator is available to respond during regular business hours and can assist SFMTA employees in identifying resources, describing services, and navigating the platform.
8. Telephonic Proactive Outreach

II. Services Provided by Attorneys

Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

III. Reports

Contractor shall submit written reports as requested by the SFMTA. Format for the content of such reports shall be determined by the SFMTA. The timely submission of all reports is a necessary and material term and condition of this Agreement.

IV. Department Liaison

In performing the Services provided for in this Agreement, Contractor's liaison with the SFMTA will be:

Jean Santullo
Employee Wellness Manager
Human Resources Division
San Francisco Municipal Transportation Agency
1 South Van Ness Avenue, 6th Floor
San Francisco, CA 94103
E-Mail: Jean.Santullo@sfmta.com

V. Contractor Liaison

In performing the Services provided for in this Agreement, the SFMTA's liaison with the Contractor shall be:

Foulishia Jean
Strategic Account Manager
Claremont Behavioral Services, Inc.
2 Park Plaza, Suite 1200
Irvine, CA 92614
E-Mail: foulishia.jean@uprisehealth.com

Appendix B Calculation of Charges

A. Compensation for Services

In accordance with Section 3.3 (Compensation) of this Agreement, the SFMTA shall compensate Contractor for Services performed to the SFMTA’s satisfaction as described in this Appendix B. Total Compensation for all Services provided under this Agreement, including Services provided during the two two-year extensions (that the SFMTA may exercise as options) shall not exceed \$3,537,644.70, as set out in the table below.

Contractor shall submit to the SFMTA an invoice for the Monthly Flat Fee for the Services rendered by Contractor in the immediately preceding month. The SFMTA will not prepay for Services.

	Monthly Flat Fee	Annual Fee
Contract Year 1:	\$32,107.40	\$385,288.80
Contract Year 2:	\$32,107.40	\$385,288.80
Contract Year 3:	\$32,107.40	\$385,288.80
Contract Year 4:	\$32,107.40	\$385,288.80
Contract Year 5:	\$32,107.40	\$385,288.80
Contract Year 6 (First Option - Year 1):	\$33,070.62	\$396,847.46
Contract Year 7 (First Option - Year 1):	\$33,070.62	\$396,847.46
Contract Year 8 (Second Option - Year 1):	\$34,062.74	\$408,752.89
Contract Year 9 (Second Option - Year 2):	\$34,062.74	\$408,752.89
Contract Total		\$3,537,644.70

Compensation under this Agreement is limited to the Services specifically described in Appendix A and the resulting Monthly Flat Fees described in this Appendix B. Any services not described in Appendix A for which Contractor seeks additional compensation beyond the Monthly Flat Fees described in this Appendix B must be approved in accordance with Section 11.5 of this Agreement prior to the performance of said services.

No invoices for Services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

Appendix C Business Associate Agreement

This Business Associate Agreement (BAA) supplements and is made a part of the agreement by and between the City and County of San Francisco, the Covered Entity (CE), and Claremont Behavioral Services, Inc. (Contractor and the Business Associate (BA)), dated _____ (Agreement). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

RECITALS

- A.** CE, by and through its Municipal Transportation Agency (SFMTA), wishes to disclose certain information to BA pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (PHI) (defined below).
- B.** For purposes of the Agreement and this BAA, CE requires Contractor, even if Contractor is also a covered entity under HIPAA, to comply with the terms and conditions of this BAA as a BA of CE.
- C.** CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the HITECH Act), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws, including, but not limited to, California Civil Code §§ 56, et seq., California Health and Safety Code § 1280.15, California Civil Code §§ 1798, et seq., California Welfare & Institutions Code §§5328, et seq., and the regulations promulgated there under (the California Regulations).
- D.** As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into an agreement containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(a) and (e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.
- E.** BA enters into agreements with CE that require the CE to disclose certain identifiable health information to BA. The parties desire to enter into this BAA to permit BA to have access to such information and comply with the BA requirements of HIPAA, the HITECH Act, and the corresponding Regulations.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

1. Definitions

a. Breach means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.

b. Breach Notification Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Part 164, Subpart D.

c. Business Associate is a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information received from a covered entity, but other than in the capacity of a member of the workforce of such covered entity or arrangement, and shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.

d. Covered Entity means a health plan, a health care clearinghouse, or a health care provider who transmits any information in electronic form in connection with a transaction covered under HIPAA Regulations, and shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

e. Data Aggregation means the combining of Protected Information by the BA with the Protected Information received by the BA in its capacity as a BA of another CE, to permit data analyses that relate to the health care operations of the respective covered entities, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

f. Day means a calendar day, unless otherwise indicated.

g. Designated Record Set means a group of records maintained by or for a CE, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

h. Electronic Protected Health Information means Protected Health Information that is maintained in or transmitted by electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to, 45 C.F.R. Section 160.103. For the purposes of this BAA, Electronic PHI includes all computerized data, as defined in California Civil Code Sections 1798.29 and 1798.82.

i. Electronic Health Record means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

j. Health Care Operations shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

k. Privacy Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

l. Protected Health Information or PHI means any information, including electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Sections 160.103 and 164.501. For the purposes of this BAA, PHI includes all medical information and health insurance information as defined in California Civil Code Sections 56.05 and 1798.82.

m. Protected Information shall mean PHI provided by CE to BA or created, maintained, received or transmitted by BA on CE's behalf.

n. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, and shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.

o. Security Rule shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

p. Unsecured PHI means PHI that is not secured by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute, and shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. Obligations of Business Associate

a. User Training. The BA shall provide, and shall ensure that BA subcontractors provide, training on PHI privacy and security, including HIPAA and HITECH and its regulations, to each employee or agent that will access, use or disclose Protected Information, upon hire and/or prior to accessing, using or disclosing Protected Information for the first time, and at least annually thereafter during the term of the Agreement. BA shall maintain, and shall ensure that BA subcontractors maintain, records indicating the name of each employee or agent and date on which the PHI privacy and security trainings were completed. BA shall retain, and ensure that BA subcontractors retain, such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 Days of a written request by CE.

b. Permitted Uses. BA may use, access, and/or disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE [45 C.F.R. Sections 164.502, 164.504(e)(2). and 164.504(e)(4)(i)].

c. Permitted Disclosures. BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in

accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

d. Prohibited Uses and Disclosures. BA shall not use or disclose Protected Information other than as permitted or required by the Agreement and BAA, or as required by law. BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the Protected Information solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(vi)]. BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

e. Appropriate Safeguards. BA shall take the appropriate security measures to protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the CE, and shall prevent any use or disclosure of PHI other than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including, but not limited to, 45 C.F.R. Sections 164.306, 164.308, 164.310, 164.312, 164.314 164.316, and 164.504(e)(2)(ii)(B). BA shall comply with the policies and procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316, and 42 U.S.C. Section 17931. BA is responsible for any civil penalties assessed due to an audit or investigation of BA, in accordance with 42 U.S.C. Section 17934(c).

f. Business Associate's Subcontractors and Agents. BA shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of BA, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph 2.f. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2) through (e)(5); 45 C.F.R. Section 164.308(b)]. BA shall mitigate the effects of any such violation.

g. Accounting of Disclosures. Within 10 Days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief

description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five Days.

h. Access to Protected Information. BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within five Days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

i. Amendment of Protected Information. Within 10 Days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five Days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

j. Governmental Access to Records. BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BA shall provide CE a copy of any Protected Information and other documents and records that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.

k. Minimum Necessary. BA, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the intended purpose of such use, disclosure, or request. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary" to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

l. Data Ownership. BA acknowledges that BA has no ownership rights with respect to the Protected Information.

m. Notification of Breach. BA shall notify CE within five Days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification

of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited to, 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]

n. Breach Pattern or Practice by Business Associate's Subcontractors and Agents. Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA within five Days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

3. Termination

a. Material Breach. A breach by BA of any provision of this BAA, as determined by CE, shall constitute a material breach of the Agreement and this BAA and shall provide grounds for immediate termination of the Agreement and this BAA, any provision in the AGREEMENT to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii).]

b. Judicial or Administrative Proceedings. CE may terminate the Agreement and this BAA, effective immediately, if (i) BA is named as defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

c. Effect of Termination. Upon termination of the Agreement and this BAA for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA and its agents and subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections and satisfy the obligations of Section 2 of this BAA to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(J)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

d. Civil and Criminal Penalties. BA understands and agrees that it is subject to civil or criminal penalties applicable to BA for unauthorized use, access or disclosure or Protected Information in accordance with the HIPAA Regulations and the HITECH Act including, but not limited to, 42 U.S.C. 17934 (c).

e. Disclaimer. CE makes no warranty or representation that compliance by BA with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations or corresponding California law provisions will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

4. Amendment to Comply with Law

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations and other applicable state or federal laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the updated standards and requirements of HIPAA, the HITECH Act, the HIPAA regulations or other applicable state or federal laws. CE may terminate the Agreement upon 30 Days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this BAA when requested by CE pursuant to this section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

5. Reimbursement for Fines or Penalties

In the event that CE pays a fine to a state or federal regulatory agency, and/or is assessed civil penalties or damages through private rights of action, based on an impermissible use or disclosure of PHI by BA or its subcontractors or agents, then BA shall reimburse CE in the amount of such fine or penalties or damages within 30 Days from City's written notice to BA of such fines, penalties or damages

Appendix D
Confidentiality Agreement