File No. 121043

Committee Item No. 13
Board Item No. 23

COMMITTEE/BOARD OF SUPERVISORS

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Board of Supervisors Meeting Date November 20, 2012

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Completed by: Victor Young Date November 9, 2012
Completed by: Victor Young Date

Amendment of the Whole
in Committee. 11/14/12

FILE NO. 121043 RESOLUTION NO.

[Agreement - Workers' Compensation Third Party Administrator Services - Not to Exceed $26,288,201]

Resolution authorizing the San Francisco Municipal Transportation Agency and the Department of Human Resource to retroactively execute an agreement with Intercare Holdings Insurance Services, Inc., for Workers' Compensation Third Party Administrator services for an amount not to exceed $26,288,201 and for a term of three years from November 1, 2012, through October 31, 2015, with an option to extend the term for up to an additional two years.

WHEREAS, In order to maximize the operational and management efficiency and achieve cost-savings to the City, the San Francisco Municipal Transportation Agency (SFMTA) and the Department of Human Resource (DHR) agreed to enter into a joint agreement for the workers' compensation third party administrator services for the City's workers' compensation claims administration services; and

WHEREAS, On February 21, 2012, the SFMTA Board of Directors authorized the Director of Transportation to jointly issue a Request for Proposals for Workers' Compensation Claims Administration Services with the Department of Human Resources, to jointly conduct proposal evaluation, contract negotiation and contract formation for an initial term of three-years with a two-year contract extension option at the City's sole discretion; and

WHEREAS, On April 11, 2012, the City received proposals from TRISTAR Risk Management, Intercare Holdings Insurance Services and Sedgwick Claims Management Services; and

WHEREAS, A selection panel evaluated all three proposals and Intercare Holdings Insurance Services Inc. was selected as the highest ranked proposer; and

WHEREAS, The SFMTA and DHR have negotiated an agreement with Intercare. in the amount of $26,288,201, with a term of three years, and an option to extend the term for up to two additional years, a copy of which agreement is on file with the Clerk of the Board of Supervisors in File No. 121043; and

WHEREAS, On November 06, 2012, the SFMTA Board of Directors adopted Resolution No. 12-134, recommending approval of the agreement between Intercare and the City and County of San Francisco; now, therefore, be it

RESOLVED, That the Board of Supervisors authorizes the San Francisco Municipal Transportation Agency and the Department of Human Resources to retroactively execute an agreement with Intercare Holdings Insurance Services Inc. for third party administration services for the City's workers' compensation claims, in an amount not to exceed $26,288,201,for an initial term of three-years from November 1, 2012 through October 31, 2015, with a two-year contract extension option through October 31, 2017 at the City's sole discretion, and, be it

FURTHER RESOLVED, That the Department of Human Resources shall: 1) establish performance metrics for processing claims and collect data on the metrics over the initial three-year contract term with Intercare; 2) evaluate the costs and benefits of contracting for workers' compensation claims administration compared to processing these claims on an in-house basis prior to exercising the first one-year option to extend the contract from November 1, 2015, through October 31, 2016; and 3) based on the evaluation, determine whether to exercise the one-year option to extend or to perform such services on an in-house basis.

Item 13 File 12-1043	Department: Department of Human Resources and San Francisco Metropolitan Transportation Agency

EXECUTIVE SUMMARY

Legislative Objectives

The proposed resolution would authorize a contract between the City, on behalf of the San Francisco Municipal Transportation Agency (SFMTA) and the Department of Human Resources (DHR), and Intercare Holdings Insurance Services, Inc. (Intercare) for Workers' Compensation Third Party Administrator services for an amount not-to-exceed a five-year total of $26,500,000 including an initial term of three-years effective November 1, 2012 through October 31, 2015, and two one-year options to extend the contract through October 31, 2017.

Key Points

- DHR manages workers' compensation claims for City departments except for the San Francisco Municipal Transportation Agency (SFMTA), which manages workers' compensation claims for SFMTA employees. DHR currently processes two-thirds of their claims in-house and has a contract with Intercare to process the remaining one-third, which expired October 31, 2012. SFMTA currently has a third party administrator process all of SFMTA's workers' compensation claims whose contract expires November 30, 2012.
- On February 21, 2012, the SFMTA Board of Directors authorized the Director of Transportation to jointly issue a Request for Proposals (RFP) with DHR for a new agreement for Workers' Compensation Claims Administration Services. Intercare was selected as the highest ranked proposer based on their oral interview, cost of services and written proposal.

Fiscal Impacts

- The proposed year one contract budget from November 1, 2012 through October 31, 2013 is $4,954,603, which includes $2,413,022 for DHR claims and $2,541,581 for SFMTA claims. The contract budget will increase by 3% per year, for total contract amount of $15,314,182 over the initial three-year term of the contract and a not-to-exceed $26,500,000 contract amount over the total five-year term of the contract if the two one-year options to extend the contract are exercised.
- Intercare will begin service for SFMTA on December 1, 2012 rather than November 1, 2012 and end the first year October 31, 2013, which is eleven months. Because SFMTA will only pay Intercare for eleven months in the first year, or $2,329,782, which is $211,799 less than the contract budget for SFMTA in year one of $2,541,581, the Budget and Legislative Analyst recommends reducing the contract not-to-exceed amount by $211,799, from $26,500,000 to $26,288,201 for the five-year contract term.

Policy Considerations

- DHR has not evaluated the costs and benefits of managing workers' compensation claims in-house as compared to contracting with a third party administrator since first contracting with a third party administrator in 1994. In order to evaluate the costs and benefits of using in-house staff to administer workers' compensation claims compared to contracting with third party administrators to administer these claims, the Budget and Legislative Analyst recommends that DHR (1) establish performance metrics for processing claims and collect data on these metrics over the

proposed initial three-year contract term with Intercare; (2) evaluate the costs and benefits of contracting for workers' compensation claims administration as compared to processing these claims in-house prior to exercising the first one-year option to extend the contract from November 1, 2015 through October 31, 2016; and (3) based on this evaluation, determine whether to exercise the one-year option to extend or to perform such services in-house.

Recommendations

- Amend the proposed resolution to reduce the not-to-exceed amount by $211,799, from $26,500,000 to $26,288,201 for the five-year contract term.
- Amend the proposed resolution to provide for retroactive approval of the proposed contract as of November 1, 2012.
- Amend the proposed resolution to require that DHR (1) establish performance metrics for processing claims and collect data on these metrics over the proposed initial three-year contract term with Intercare; (2) evaluate the costs and benefits of contracting for workers' compensation claims administration as compared to processing these claims on an in-house basis prior to exercising the first one-year option to extend the contract from November 1, 2015 through October 31, 2016; and (3) based on this evaluation, determine whether to exercise the one-year option to extend the contract or to perform such services on an in-house basis.
- Approve the proposed resolution as amended.

MANDATE STATEMENT

In accordance with Charter Section 9.118(b), City contracts with anticipated expenditures of $10,000,000 or more, or amendments to such agreements with anticipated expenditures of more than $500,000 are subject to approval by the Board of Supervisors.

BACKGROUND

The Department of Human Resources (DHR) manages workers' compensation claims for City departments except for the San Francisco Municipal Transportation Agency (SFMTA), which manages workers' compensation claims for SFMTA employees. DHR currently processes two-thirds of their claims in-house and had a contract with Intercare Holdings Insurance Services, Inc. (Intercare) for Workers' Compensation Third Party Administrator services to process the remaining one-third of their claims, which expired October 31, 2012. SFMTA uses a third party administrator, Sedgwick, to process all of their workers' compensation claims, and Sedgwick's contract expires November 30, 2012.

On February 21, 2012, the SFMTA Board of Directors authorized the Director of Transportation to jointly issue a Request for Proposals (RFP) with DHR for Workers' Compensation Claims Administration Services and to jointly evaluate proposals, conduct negotiations, and draft a contract. On April 11, 2012, the City received three proposals which were evaluated by a selection panel composed of representatives from the SFMTA, DHR, and staff members of Risk Management Offices from the City of San Jose, the City of San Francisco and the University of San Francisco. Intercare was selected as the highest ranked proposer based on their oral interview, cost of services and written proposal.

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would authorize the City, on behalf of DHR and SFMTA, to execute a contract with Intercare for Workers' Compensation Third Party Administrator Services for three years, beginning retroactively on November 1, 2012 and ending October 31, 2015 with the option to extend for two, one-year terms. The City would pay Intercare an amount not-to-exceed $26,500,000. This amount is the total cost over a five-year term assuming that the City will extend the contract.

The Annual Fixed Fee for Intercare's services is based on the amount and type of claims received each year, which determines the number of staff that Intercare will require to process the DHR's and SFMTA's claims. Table 1 shows the amount and type of SFMTA's claims and DHR's claims that were processed by a third-party administrator for FY 2011-12.

Table 1
DHR and SFMTA's Indemnity and Medical Only Claims in FY 2011-12

Claim Type	City-wide (DHR)	SFMTA	Total Claims
Indemnity – New	666	589	1,255
Indemnity – Pending	1,273	1,264	2,537
Medical Only – New	905	108	1,010
Medical Only – Pending	175	76	251
Future Medical – Pending	521	382	903
TOTAL Claims	**3,540**	**2,419**	**5,959**

According to the contract, if the total number of indemnity claims increases or decreases by 5% or more, the Annual Fixed Fee for services will increase or decrease by the same percentage for the subsequent year. According to Mr. Dan Roach, SFMTA's Workers' Compensation Manager, this term was included in the contract because it is more likely that indemnity claims will decrease. SFMTA's indemnity claims have decreased by 4% from FY 2010-11 to FY 2011-12 and DHR's total indemnity claims have decreased by 6% from FY 2010-11 to FY 2011-12.

Intercare Holdings will provide both Workers' Compensation Claims Management services and Workers' Compensation Medical and Disability Claims Management services for DHR and SFMTA as listed below.

Workers' Compensation Claims Management

- Provide Contractor's current claims manual to City outlining performance and documentation guidelines, standards, procedures and practices.
- Record and process claims data within twenty-four hours of receiving new claim.
- Investigate causation of injury/illness and determine if the injury/illness arose out of employment/course of employment.
- Determine the compensability of injuries and illnesses claimed by City employees.
- Establish and maintain a diary system utilizing the City's current process.
- Evaluate, maintain and adjust the estimated costs of all anticipated benefits and expenses on each individual case.
- Promptly issue all payments and any notices of delay in decision and compensability determinations within the time frames required by law.
- Establish a Plan of Action ("POA") for the investigation, adjustment and prompt resolution of all indemnity cases as soon as possible.
- Close claims no later than 30 days from the date that the Contractor identified the claim for closure.

Workers' Compensation Medical and Disability Claims Management

- Manage medical treatment using the City's managed care utilization review criteria to reduce medical costs.

- Notify the City within 10 days if an injured worker's permanent restrictions preclude him or her from returning to their usual and customary occupation.
- Pay uncontested medical bills within the time frames established by the State of California Workers' Compensation laws.

FISCAL IMPACTS

Based on a competitive RFP process, the proposed contract's total not-to-exceed amount over the five-year term from November 1, 2012 through October 31, 2017, including two, one-year options to extend, is $26,500,000. DHR's and SFMTA's FY 2012-13 and FY 2013-14 budgets, previously approved by the Board of Supervisors, include appropriations for Workers' Compensation Third Party Administrator services.

Table 2 below shows Intercare's Annual Fixed Fees in a not-to-exceed amount of $26,000,000, over the five-year contract term, including the two, one-year options to provide Intercare's Workers' Compensation Claims Management services and Workers' Compensation Medical and Disability Claims Management services. The Annual Fixed Fee for Year 1 is based on the number and type of claims received by DHR and SFMTA in FY 2011-12 (see Table 1).

Table 2
Intercare's Annual Fixed Fees per Service Year

Year	DHR	SFMTA	Total
1	$2,413,022	$2,541,581	$4,954,603
2	$2,485,413	$2,617,828	$5,103,241
3	$2,559,975	$2,696,363	$5,256,338
Subtotal for Three-Year Contract			**$15,314,182**
4 (Option1)	$2,636,774	$2,777,254	$5,414,028
5 (Option 2)	$2,715,878	$2,860,572	$5,576,450
Subtotal for Five-Year Contract			**26,304,660**
Ad Hoc & As-Needed Services	$97,670	$97,670	$195,340
Total Five-Year Not-to-Exceed Amount			**$26,500,000**

Since the SFMTA's existing third party administrator contract expires on November 30, 2012, according to Mr. Roach, Intercare will actually begin service for SFMTA on December 1, 2012 rather than November 1, 2012 and end the first year October 31, 2013, which is eleven months.

Therefore SFMTA will only pay Intercare for eleven months, or $2,329,782, of the Annual Fixed Fee for the first year, which is $211,799 less than the contract budget for SFMTA in year one of $2,541,581. Therefore, the Budget and Legislative Analyst recommends reducing the contract not-to-exceed amount by $211,799, from $26,500,000 to $26,288,201 for the five-year contract term.

Table 3 provides the details of Intercare's annual expenditures for DHR and SFMTA for Year 1 of the contract effective November 1, 2012 through October 31, 2013.

Table 3
Intercare's 12-Month Operating Budgeted Expenditures for Year 1

Items	DHR	SFMTA
Base Salaries	$1,361,043	$1,435,241
Benefits, 401k, payroll tax	254,988	268,344
Rent	105,084	108,360
Postage and Shipping	47,636	50,233
Equipment Expense (Phones, postage meters, copiers/fax machines)	34,026	35,881
Office Expense and Supplies	40,159	47,946
Depreciation	20,413	21,529
Telephone	20,557	21,529
Accounting/HR/IT and Executive oversight	287,814	298,360
Subtotal	$2,171,720	$2,287,423
Profit Margin (11.1% of Costs)	241,302	254,158
Total Budgeted Expenditures	**$2,413,022**	**$2,541,581***

*Intercare's annual operating budget expenditures for SFMTA in Year 1 of $2,541,581, as shown in Table 3 above, is for 12 months. However, as previously discussed, Intercare will provide only 11 months of services at an estimated cost of $2,329,782, which is $211,799 less than Intercare's annual operating budgeted expenditures of $2,541,581 for SFMTA for Year 1.

There are two types of workers' compensation claims: indemnity claims and medical only claims. Indemnity claims include medical payments and payment for lost time by the injured worker, including lost weekly wages and permanency. Medical only claims tend to be minor injuries that may or may not include lost time from the workplace. According to Mr. Roach, indemnity claims are more expensive to process than medical only claims because they are more complex, take longer to process and require a more experienced adjuster. As shown in Table 4 below, the average cost per claim is higher for SFMTA than DHR because SFMTA receives a higher percentage of indemnity claims relative to SFMTA's total number of claims. The average number of SFMTA claims per adjuster is 125 compared to 145 DHR claims per adjuster.

Table 4
DHR and SFMTA's Percentage of Indemnity Claims & Average Cost per Claim in FY 2011-12

Department	FY 11-12 Total Number of Claims	FY 11-12 Indemnity Claims	Percentage of Indemnity Claims	Average Cost per Claim	Total
DHR	3,540	1,939	54.8%	$682	$2,413,005
SFMTA	2,419	1,853	76.6%	$1,051	$2,541,571
				Total	**$4,954,576**

POLICY CONSIDERATIONS

DHR has not evaluated the costs and benefits of managing workers' compensation claims in-house rather than contracting with a third party administrator.

DHR has used an outside third-party administrator to process one-third of their workers' compensation claims since 1994. According to Mr. Brent Lewis, the DHR Chief Financial Officer, this policy was instituted because at the time, the City had more claims than their in-house claims adjusters could process and therefore needed additional adjusters.

According to Mr. Lewis, the use of third party administrators to process workers' compensation claims, rather than the use of in-house staff, has not been reviewed since 1994. According to Ms. Peggy Sugarman, DHR Workers' Compensation Director, an evaluation of the costs and benefits of using outside third party administrator's to process claims as compared to using DHR in-house staff to process claims would include a comparison of:

- The average cost to process a claim;
- Length of time a claim is open;
- Length of temporary disability of claimant;
- Number of cases denied and the legal parameters;
- Litigation rates; and
- Total cost per claim

The Budget and Legislative Analyst recommends that DHR (1) establish performance metrics for processing claims and collect data on these metrics over the proposed initial three-year contract term with Intercare; (2) evaluate the costs and benefits of contracting for workers' compensation claims administration as compared to processing these claims on an in-house basis prior to exercising the first one-year option to extend the contract from November 1, 2015 through October 31, 2016; and (3) based on this evaluation, determine whether to exercise the one-year option to extend the contract or to perform such services on an in-house basis.

RECOMMENDATIONS

1. Amend the proposed resolution to reduce the not-to-exceed amount by $211,799, from $26,500,000 to $26,288,201 for the five-year contract term.
2. Amend the proposed resolution to provide for retroactive approval of the proposed contract as of November 1, 2012.
3. Amend the proposed resolution to require that DHR (1) establish performance metrics for processing claims and collect data on these metrics over the initial three-year contract term with Intercare; (2) evaluate the costs and benefits of contracting for workers' compensation claims administration compared to processing these claims on an in-house basis prior to exercising the first one-year option to extend the contract from November 1, 2015 through October 31, 2016; and (3) based on this evaluation, determine whether to exercise the one-year option to extend or to perform such services on an in-house basis.
4. Approve the proposed resolution as amended.

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

November 9, 2012

TO: Budget and Finance Committee

FROM: Budget and Legislative Analyst

SUBJECT: November 14, 2012 Budget and Finance Committee Meeting

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October 22, 2012

The Honorable Members of the Board of Supervisors
City and County of San Francisco
City Hall, Room 244
1 Dr. Carlton Goodlett Place
San Francisco, CA 94102

Subject: Authorizing the San Francisco Municipal Transportation Agency (SFMTA) and the Department of Human Resource (DHR) to enter in an Agreement with Intercare Holdings Insurance Services, Inc., (Intercare) for Workers' Compensation Third Party Administrator services

Honorable Members of the Board of Supervisors:

The purpose of this briefing is to provide information to support the joint San Francisco Municipal Transportation Agency/ Department of Human Resources (SFMTA/DHR) request that the San Francisco Board of Supervisors authorize the SFMTA and DHR to enter into an agreement with Intercare Holdings Insurance Services, Inc. (Intercare), for Workers' Compensation Third Party Administrator Services, for a term of three years, with an option to extend the term up to two additional years and for an amount not to exceed $26,500,000.

Edwin M. Lee
Mayor

Tom Nolan
Chairman

Cheryl Brinkman
Vice-Chairman

Leona Bridges
Director

Malcolm Heinicke
Director

Jerry Lee
Director

Joél Ramos
Director

Cristina Rubke
Director

Edward D. Reiskin
Director of Transportation

Background

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

The SFMTA currently has a contract with Sedgwick Claims Management Services, Inc., and DHR currently contracts with Intercare for a portion of its claims management. DHR manages 67 percent of its claims with in-house staff.

Request for Proposal Process

After receiving SFMTA Board of Director approval on February 21, 2012, the SFMTA released a Request for Proposals on March 9, 2012 for a new agreement for Workers' Compensation Third Party Administrator services for the City's Workers' Compensation claims administration services. A pre-proposal conference was held on March 23, 2012. Eleven potential vendors attended the pre-proposal conference. Three proposals were submitted on April 23, 2012.

One South Van Ness Ave.
Seventh Floor
San Francisco, CA 94103

Tele: 415.701.4500

www.sfmta.com

The proposals submitted were reviewed, and were found to be responsive. A selection panel consisting of five members evaluated all three proposals using an approved selection evaluation plan consisting of scoring strengths and weaknesses of the written proposals and presentation/interview with each proposer. Intercare was selected as the highest ranked proposer, and negotiations were successfully conducted.

Summary of Contract Services:

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

Funding Impact

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

Year	SFMTA
Year 1	$2,541,581
Year 2	$2,617,828
Year 3	$2,696,363
Year 4 (Option)	$2,777,254
Year 5 (Option)	$2,860,572
TOTAL	**$13,493,598**
Year	DHR
Year 1	$2,413,022
Year 2	$2,491,749
Year 3	$2,573,060
Year 4	$2,657,040
Year 5	$2,743,777
TOTAL	**$12,878,648**

An additional amount of $127,754 is included in the total not-to-exceed contract of $26,500,000.for as needed services to be used only if authorized by the City.

SFMTA Board Action

On November 6, 2012 the SFMTA Board will be considering a resolution authorizing the Director of Transportation to execute the contract pending Board of Supervisor approval.

Recommendation

In order to maximize operational efficiency, quality of service and cost savings to the City by combining the Workers' Compensation Third Party Administrator Services into one contract, the SFMTA and DHR recommend that the Board of Supervisors authorize both departments to enter into an agreement with Intercare Holdings Insurance Services, Inc. for Workers' Compensation Third Party Administrator Services, for a term of three years, with the option to extend the term up to two additional years, for an amount not to exceed $26,500,000.

Thank you for your consideration of this proposed agreement. Should you have any questions, or require more information, please do not hesitate to contact SFMTA Worker's Compensation Manager, Dan Roach at 701.4351 or dan.roach@sfmta.com or DHR Chief Financial Officer, Brent Lewis at 557.4944 or brent.lewis@sfgov.org.

Sincerely,

Micki Callahan
Director of Human Resources

Edward D. Reiskin
Director of Transportation

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

Agreement between the City and County of San Francisco and Intercare Holdings Insurance Services, Inc. for Workers' Compensation Third Party Administrator for Claims

Contract No. SFMTA2011/12-13

This Agreement is made this XX day of November, 2012, in the City and County of San Francisco, State of California, by and between Intercare Holdings Insurance Services, Inc., hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting through its Department of Human Resources, hereinafter referred to as "DHR," and its Municipal Transportation Agency, hereinafter referred to as "SFMTA."

Recitals

WHEREAS, the City and County of San Francisco ("City") wishes to obtain Workers' Compensation Third-Party Administrator Services; and,

WHEREAS, a Request for Proposals ("RFP") was issued on March 9, 2012, and City selected Contractor pursuant to the RFP; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the services required by City as set forth under this Contract; and,

WHEREAS, approval for this professional service was obtained when the Civil Service Commission approved PSC number 4088-11/22 on February 10, 2012 and PSC number 4134-07/08 on June 29, 2012;

Now, THEREFORE, the parties agree as follows:

1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation. This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from November 1, 2012 to October 31, 2015 with the option, in the City's sole discretion, to extend the Agreement through October 31, 2017.

3. **Effective Date of Agreement.** With respect to the services to be performed for the SFMTA, this Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing. With respect to the services to be performed for DHR, when the Controller has certified to the availability of funds and Contractor has been notified in writing, the Agreement shall be effective retroactively to November 1, 2012.

4. **Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Services to be Provided by Contractor," attached hereto and incorporated by reference as though fully set forth herein.

5. **Compensation.** Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Department Head(s), in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed Twenty-Six Million and Five Hundred Thousand Dollars ($26,500,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by DHR's Departmental Liaison, or SFMTA's Departmental Liaison, both of whom are identified in Appendix A, as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement. In no event shall City be liable for interest or late charges for any late payments.

6. **Guaranteed Maximum Costs.** The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification. Except as may be provided by laws governing emergency procedures, officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law. Officers and employees of the City are not authorized to offer or promise, nor is the City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller. The Department(s) is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

7. **Payment; Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the City, and must include a unique invoice number. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

8. **Submitting False Claims; Monetary Penalties.** Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code is available on the web at http://www.municode.com/Library/clientCodePage.aspx?clientID=4201. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the

contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

9. Left blank by agreement of the parties. (Disallowance)

10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

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

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

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

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

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

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the

requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

12. Qualified Personnel. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

13. Responsibility for Equipment. City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by City.

14. Independent Contractor; Payment of Taxes and Other Expenses

a. **Independent Contractor.** Contractor or any agent or employee of Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by City under this Agreement. Contractor or any agent or employee of Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor or any agent or employee of Contractor is liable for the acts and omissions of itself, its employees and its agents. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. **Payment of Taxes and Other Expenses.** Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City.

Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance

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

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

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

3) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable; and

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

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

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

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

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

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

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

d. All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the City address in the "Notices to the Parties" section.

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

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

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

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

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

j. If a subcontractor will be used to complete any portion of this agreement, the Contractor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Contractor listed as additional insureds.

16. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that

it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 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.

19. Left blank by agreement of the parties. (Liquidated Damages)

20. Default; Remedies

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

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

8.	Submitting False Claims; Monetary Penalties.
10.	Taxes
15.	Insurance
24.	Proprietary or confidential information of City
30.	Assignment
37.	Drug-free workplace policy
53.	Compliance with laws
57.	Protection of private information

2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten days after written notice thereof from City to Contractor.

3) Contractor (a) is generally not paying its debts as they become due, (b) 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, (c) makes an assignment for the benefit of its creditors, (d) 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 (e) takes action for the purpose of any of the foregoing.

4) A court or government authority enters an order (a) 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, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

b. 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, 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 all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. 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.

21. Termination for Convenience

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

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

1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

3) Terminating all existing orders and subcontracts.

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

5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

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

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

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

2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of City, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

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

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on 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 such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or

other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

22. Rights and Duties upon Termination or Expiration

This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8.	Submitting False Claims, Monetary Penalties
10.	Taxes
11.	Payment Does Not Imply Acceptance of Work
13.	Responsibility for Equipment
14.	Independent Contractor; Payment of Taxes and Other Expenses
15.	Insurance
16.	Indemnification
17.	Incidental and Consequential Damages
18.	Liability of City
24.	Proprietary or Confidential Information of City
26.	Ownership of Results
27.	Works for Hire
28.	Audit and Inspection of Records
48.	Modification of Agreement
49.	Administrative Remedy for Agreement Interpretation
50.	Agreement Made in California; Venue
51.	Construction
52.	Entire Agreement
56.	Severability
57.	Protection of Private Information

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and 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. This subsection shall survive termination of this Agreement.

23. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2

of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement. Contractor further acknowledges that it is aware of the requirements concerning the filing of Statements of Economic Interest, California Fair Political Practices Commission Form 700, under the requirements of California Government Code Section 87300 et seq. and the San Francisco Campaign and Governmental Conduct Code Section 3.1-102, and that Contractor shall ensure that its employees and subcontracts are aware of those requirements and comply with them.

24. Maintenance, Protection and Ownership of Confidential Information

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

b. **Confidential City Data, Records And Employee Privacy**

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

2) Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

c. **Confidentiality of Medical Information**

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

> An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or

causing to be disclosed to an employer, any medical information, as defined in subdivision (b) of Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows: 1) Medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is claimed, and the treatment provided for this condition, and 2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties.

Contractor shall provide to the City's Departmental Liaisons, such other City employees as City's Departmental Liaisons may designate, and to Deputy City Attorneys representing the City before the Workers' Compensation Appeals Board, and other persons working on a claim with a need to know such information, full access to all information, files, documents, and reports in Contractor's possession concerning the medical status or condition of a City employee. Contractor shall not disclose or otherwise discuss any City employee's medical condition with any other persons or provide any persons with documents pertaining to a City employee's medical condition, unless specifically directed to do so by City's Departmental Liaisons, or a court of competent jurisdiction.

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

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

And San Francisco Municipal Transportation Agency
Workers' Compensation Program
Attention: Dan Roach, Program Manager
One South Van Ness Avenue, 6th Floor
San Francisco, CA 94103
Email: Dan.Roach@sfmta.com

To Contractor: Agnes Hoeberling
Chief Operations Officer
Intercare Holdings Insurance Services, Inc.
6020 West Oaks Blvd., Suite 100
Rocklin, CA 95765
Email: ahoeberling@intercareins.com

Any notice of default must be sent by registered mail.

26. Ownership of Results. Any interest of Contractor or its subcontractors, in studies, reports, memoranda, computation sheets, computer data files and media or other documents prepared by Contractor or its subcontractors exclusively for the services to be performed under

the Agreement, shall become the property of and will be transmitted to the City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities, as long as the City and County of San Francisco are not identified and confidential City data is not made public.

27. Works for Hire. If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, 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 are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. 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 work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement, upon ten (10) days' prior written notice. 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 conferred upon City by this Section.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

30. Assignment. The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement.

31. 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.

32. Earned Income Credit (EIC) Forms. Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance

Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

33. Local Business Enterprise Utilization; Liquidated Damages

a. **The LBE Ordinance.** Contractor, shall comply with all the requirements of the Local Business Enterprise and Non-Discrimination in Contracting Ordinance set forth in Chapter 14B of the San Francisco Administrative Code as it now exists or as it may be amended in the future (collectively the "LBE Ordinance"), provided such amendments do not materially increase Contractor's obligations or liabilities, or materially diminish Contractor's rights, under this Agreement. Such provisions of the LBE Ordinance are incorporated by reference and made a part of this Agreement as though fully set forth in this section. Contractor's willful failure to comply with any applicable provisions of the LBE Ordinance is a material breach of Contractor's obligations under this Agreement and shall entitle City, subject to any applicable notice and cure provisions set forth in this Agreement, to exercise any of the remedies provided for under this Agreement, under the LBE Ordinance or otherwise available at law or in equity, which remedies shall be cumulative unless this Agreement expressly provides that any remedy is exclusive. In addition, Contractor shall comply fully with all other applicable local, state and federal laws prohibiting discrimination and requiring equal opportunity in contracting, including subcontracting.

b. **Compliance and Enforcement.** If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or $1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to

Administrative Code §14B.17. By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City. Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

c. **Subcontracting Goals.** The LBE subcontracting participation goal for this contract is 5% (five percent). Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor.

Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(d) Subcontract Language Requirements. Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors.

Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction.

Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(e) Payment of Subcontractors. Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount.

Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. Nondiscrimination; Penalties

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

b. **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from City) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. **Nondiscrimination in Benefits.** 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 bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

e. **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §§12B.2(h) and 12C.3(g) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the

provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

35. MacBride Principles—Northern Ireland. Pursuant to San Francisco Administrative Code §12F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

36. Tropical Hardwood and Virgin Redwood Ban. Pursuant to §804(b) of the San Francisco Environment Code, the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

37. Drug-Free Workplace Policy. Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

38. Resource Conservation. Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

39. Compliance with Americans with Disabilities Act. 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 the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons 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.

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

41. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least $250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the

manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

42. Limitations on Contributions. Through execution of this Agreement, Contractor acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Contractor acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Contractor further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Additionally, Contractor acknowledges that Contractor must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Contractor further agrees to provide to City the names of each person, entity or committee described above.

43. Requiring Minimum Compensation for Covered Employees

a. Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Contractor's obligations under the MCO is set forth in this Section. Contractor is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the

requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

c. Contractor shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Contractor shall maintain employee and payroll records as required by the MCO. If Contractor fails to do so, it shall be presumed that the Contractor paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Contractor's job sites and conduct interviews with employees and conduct audits of Contractor

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Contractor understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than $25,000, but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed $25,000 in the fiscal year.

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are

incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.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.

b. Notwithstanding the above, if the Contractor is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.

c. Contractor's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Contractor if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City when it enters into such a Subcontract and shall certify to the City that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Contractor shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Contractor based on the Subcontractor's failure to comply, provided that City has first provided Contractor with notice and an opportunity to obtain a cure of the violation.

e. Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Contractor's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

f. Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.

g. Contractor shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.

h. Contractor shall keep itself informed of the current requirements of the HCAO.

i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.

j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.

l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.

m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than $25,000 ($50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach $75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than $75,000 in the fiscal year.

45. First Source Hiring Program

a. Incorporation of Administrative Code Provisions by Reference.

The provisions of Chapter 83 of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with, and be bound by, all of the provisions that apply to this Agreement under such Chapter, including but not limited to the remedies provided therein. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 83.

b. First Source Hiring Agreement.

As an essential term of, and consideration for, any contract or property contract with the City, not exempted by the FSHA, the Contractor shall enter into a first source hiring agreement ("agreement") with the City, on or before the effective date of the contract or property contract. Contractors shall also enter into an agreement with the City for any other work that it performs in the City. Such agreement shall:

1) Set appropriate hiring and retention goals for entry level positions. The employer shall agree to achieve these hiring and retention goals, or, if unable to achieve these goals, to establish good faith efforts as to its attempts to do so, as set forth in the agreement. The agreement shall take into consideration the employer's participation in existing job training, referral and/or brokerage programs. Within the discretion of the FSHA, subject to appropriate modifications, participation in such programs maybe certified as meeting the requirements of this Chapter. Failure either to achieve the specified goal, or to establish good faith efforts will constitute noncompliance and will subject the employer to the provisions of Section 83.10 of this Chapter.

2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to provide qualified economically disadvantaged individuals for consideration for employment for entry level positions. Employers shall consider all applications of qualified economically disadvantaged individuals referred by the System for employment; provided however, if the employer utilizes nondiscriminatory screening criteria, the employer shall have the sole

discretion to interview and/or hire individuals referred or certified by the San Francisco Workforce Development System as being qualified economically disadvantaged individuals. The duration of the first source interviewing requirement shall be determined by the FSHA and shall be set forth in each agreement, but shall not exceed 10 days. During that period, the employer may publicize the entry level positions in accordance with the agreement. A need for urgent or temporary hires must be evaluated, and appropriate provisions for such a situation must be made in the agreement.

3) Set appropriate requirements for providing notification of available entry level positions to the San Francisco Workforce Development System so that the System may train and refer an adequate pool of qualified economically disadvantaged individuals to participating employers. Notification should include such information as employment needs by occupational title, skills, and/or experience required, the hours required, wage scale and duration of employment, identification of entry level and training positions, identification of English language proficiency requirements, or absence thereof, and the projected schedule and procedures for hiring for each occupation. Employers should provide both long-term job need projections and notice before initiating the interviewing and hiring process. These notification requirements will take into consideration any need to protect the employer's proprietary information.

4) Set appropriate record keeping and monitoring requirements. The First Source Hiring Administration shall develop easy-to-use forms and record keeping requirements for documenting compliance with the agreement. To the greatest extent possible, these requirements shall utilize the employer's existing record keeping systems, be nonduplicative, and facilitate a coordinated flow of information and referrals.

5) Establish guidelines for employer good faith efforts to comply with the first source hiring requirements of this Chapter. The FSHA will work with City departments to develop employer good faith effort requirements appropriate to the types of contracts and property contracts handled by each department. Employers shall appoint a liaison for dealing with the development and implementation of the employer's agreement. In the event that the FSHA finds that the employer under a City contract or property contract has taken actions primarily for the purpose of circumventing the requirements of this Chapter, that employer shall be subject to the sanctions set forth in Section 83.10 of this Chapter.

6) Set the term of the requirements.

7) Set appropriate enforcement and sanctioning standards consistent with this Chapter.

8) Set forth the City's obligations to develop training programs, job applicant referrals, technical assistance, and information systems that assist the employer in complying with this Chapter.

9) Require the developer to include notice of the requirements of this Chapter in leases, subleases, and other occupancy contracts.

c. **Hiring Decisions**

Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is "qualified" for the position.

d. **Exceptions**

Upon application by Employer, the First Source Hiring Administration may grant an exception to any or all of the requirements of Chapter 83 in any situation where it concludes that compliance with this Chapter would cause economic hardship.

e. **Liquidated Damages**

Contractor agrees:

1) To be liable to the City for liquidated damages as provided in this section;

2) To be subject to the procedures governing enforcement of breaches of contracts based on violations of contract provisions required by this Chapter as set forth in this section;

3) That the contractor's commitment to comply with this Chapter is a material element of the City's consideration for this contract; that the failure of the contractor to comply with the contract provisions required by this Chapter will cause harm to the City and the public which is significant and substantial but extremely difficult to quantify; that the harm to the City includes not only the financial cost of funding public assistance programs but also the insidious but impossible to quantify harm that this community and its families suffer as a result of unemployment; and that the assessment of liquidated damages of up to $5,000 for every notice of a new hire for an entry level position improperly withheld by the contractor from the first source hiring process, as determined by the FSHA during its first investigation of a contractor, does not exceed a fair estimate of the financial and other damages that the City suffers as a result of the contractor's failure to comply with its first source referral contractual obligations.

4) That the continued failure by a contractor to comply with its first source referral contractual obligations will cause further significant and substantial harm to the City and the public, and that a second assessment of liquidated damages of up to $10,000 for each entry level position improperly withheld from the FSHA, from the time of the conclusion of the first investigation forward, does not exceed the financial and other damages that the City suffers as a result of the contractor's continued failure to comply with its first source referral contractual obligations;

5) That in addition to the cost of investigating alleged violations under this Section, the computation of liquidated damages for purposes of this section is based on the following data:

(a) The average length of stay on public assistance in San Francisco's County Adult Assistance Program is approximately 41 months at an average monthly grant of $348 per month, totaling approximately $14,379; and

(b) In 2004, the retention rate of adults placed in employment programs funded under the Workforce Investment Act for at least the first six months of employment was 84.4%. Since qualified individuals under the First Source program face far fewer barriers to employment than their counterparts in programs funded by the Workforce Investment Act, it is reasonable to conclude that the average length of employment for an individual whom the First Source Program refers to an employer and who is hired in an entry level position is at least one year;

Therefore, liquidated damages that total $5,000 for first violations and $10,000 for subsequent violations as determined by FSHA constitute a fair, reasonable, and conservative attempt to quantify the harm caused to the City by the failure of a contractor to comply with its first source referral contractual obligations.

6) That the failure of contractors to comply with this Chapter, except property contractors, may be subject to the debarment and monetary penalties set forth in Sections 6.80 et seq. of the San Francisco Administrative Code, as well as any other remedies available under the contract or at law; and

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of $5,000 for every new hire for an Entry Level Position improperly withheld from the first source hiring process. The assessment of liquidated damages and the evaluation of any defenses or mitigating factors shall be made by the FSHA.

f. **Subcontracts**

Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of Chapter 83 and shall contain contractual obligations substantially the same as those set forth in this Section.

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

47. Preservative-treated Wood Containing Arsenic. Contractor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Contractor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Contractor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director

of HRC 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% (HRC Contract Modification Form).

49. Administrative Remedy for Agreement Interpretation. Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to City who shall decide the true meaning and intent of the Agreement.

50. 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.

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

52. Entire Agreement. This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 48, "Modification of Agreement."

53. Compliance with Laws. Contractor shall keep itself fully informed of the City's Charter, codes, ordinances 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.

54. 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.

55. Left blank by Agreement of the Parties. (Supervision of Minors)

56. 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.

57. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Contractor agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Contractor.

58. Left blank by agreement of parties. (Graffiti Removal)

59. Food Service Waste Reduction Requirements. Effective June 1, 2007, Contractor agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Contractor agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of one hundred dollars ($100) liquidated damages for the first breach, two hundred dollars ($200) liquidated damages for the second breach in the same year, and five hundred dollars ($500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply with this provision.

60. Slavery Era Disclosure

a. Contractor acknowledges that this contract shall not be binding upon the City until the Director receives the affidavit required by the San Francisco Administrative Code's Chapter 12Y, "San Francisco Slavery Era Disclosure Ordinance."

b. In the event the Director of Administrative Services finds that Contractor has failed to file an affidavit as required by Section 12Y.4(a) and this Contract, or has willfully filed a false affidavit, the Contractor shall be liable for liquidated damages in an amount equal to the Contractor's net profit on the Contract, 10 percent of the total amount of the Contract, or $1,000, whichever is greatest as determined by the Director of Administrative Services. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to the City upon demand and may be set off against any monies due to the Contractor from any Contract with the City.

c. Contractor shall maintain records necessary for monitoring their compliance with this provision.

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, 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.

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

CITY AND COUNTY OF SAN FRANCISCO	CONTRACTOR
Department of Human Resources Recommended by: _____ Micki Callahan Human Resources Director **Office of Contract Administration** Approved: _____ Jaci Fong Director of the Office of Contract Administration, and Purchaser **San Francisco Municipal Transportation Agency** _____ Edward Reiskin Director of Transportation APPROVED AS TO FORM: Dennis J. Herrera City Attorney By: _____ Mariam Morley Deputy City Attorney	**Intercare Holdings Insurance Services, Inc.** By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off. I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles. _____ Agnes Hoeberling Chief Operating Officer 6020 West Oaks Boulevard, Suite 100 Rocklin, Ca 95765 City vendor number: 59287 Federal ID #95-4465745

AUTHORIZED BY: MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS Resolution No: _____ Adopted: _____ Attest: _____ Roberta Boomer, Secretary to the SFMTA Board of Directors AUTHORIZED BY: Board of Supervisors Resolution No: _____ Adopted: _____ Attest: _____ Clerk of the Board	

Appendices

A: Scope of Work

B: Calculation of Charges

B-DHR: Calculation of Charges for Services Pertaining to Department of Human Resources

B-MTA: Calculation of Charges for Services Pertaining to Municipal Transportation Agency

C: Confidentiality Agreement

Appendix A – Scope of Work

1. Description of Services

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

1.2 Compliance with Laws, Regulations, Requirements and Terms: The Scope of Work, as defined herein, is subject to change as necessitated by modifications to applicable provisions of the California Labor Code, the California Code of Regulations, the Rules of the WCAB, and any other applicable state or federal laws or regulations. Services shall be performed in compliance with the laws and regulations of the State of California, including the Division of Workers' Compensation ("DWC") Audit Unit, the Office of Self-Insured Plans ("SIP"), and the California Labor Code, in compliance with the San Francisco City Charter and Administrative Code, and in compliance with the terms of this Agreement.

1.3 Overview of Services: Contractor shall provide all third party administration services for workers compensation claims filed by employees of the following City departments ("Assigned Departments")

Dept. #, Department Name
002 Assessor-Recorder
019 Building Inspection
017 Child Support Services
003 City Attorney
030 Civil Service Commission
081 Community Health Network
009 Controller
080 Department of Elections
061 Fine Arts Museums
070 General Services Administration
033 Human Resources
045 Human Services
012 Juvenile Probation
063 Law Library
025 Mayor's Office
082 Population Health and Prevention
005 Public Defender
082 Public Health
041 Public Library
090 Public Works
042 Recreation & Parks
044 Retirement System
075 Telecommunications & Information Services
086 SFMTA

With the exception of the SFMTA, City departments may be added to or deleted from the list of Assigned Departments by agreement, in writing, between DHR and Contractor.

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

- Claim value estimation, reserves, payments, and recoveries
- Subrogation
- Filing reports with the State of California and excess insurance providers
- Attendance at Workers' Compensation Appeals Board hearings
- Negotiations and settlement of claims for amounts pre-approved by the City
- Litigation support/management
- Independent medical exams and rehabilitation services
- Claims data administration, maintenance and reporting

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

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

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

2. Program Requirements

2.1 Program Objectives:

- Timely administration, processing and adjustment of claims in accordance with Section 1.2 above.
- Responsive, timely claims handling, assistance and communications with City staff and injured employees and/or their representatives from start to end of a claim.
- Identification of fraudulent claims and notification to the City of those claims.
- Cooperative assistance to the City Attorney.
- Demonstrable cost containment and claim closure performance.
- Improvements in efficiency through technology or program design.

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

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

- Assume responsibility for claims from Assigned Departments initiated prior to this Agreement and for claims initially reported during the term of this Agreement.
- Assume responsibility for administering all claims during the duration of its Agreement.
- Use City's iVOS claims management system upon contract award.

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

A. CLAIMS MANAGEMENT

1. **Claims manual:** Provide Contractor's current claims manual ("Claims Manual") to City outlining performance and documentation guidelines, standards, procedures and practices. Where Contractor's manual differs from the requirements described in this Agreement, this Agreement shall prevail.

2. **Claim entry turnaround:** Record, date-stamp and process claims data, with twenty-four (24) hour turnaround on new claim entry from receipt of notification of claim, employers' report of injury, doctor's first report, (whichever is received first). Three-point contact (employee, employer and medical provider) shall be completed within twenty-four (24) hours of receipt of new claim entry. Reserves, Plans of Action and all proper coding shall be completed within seven (7) working days of receipt of any of these documents.

3. **Investigate causation of injury/illness and determine if the injury/illness arose out of employment/course of employment, also known as "AOE/COE."** Acceptance, delay and denial of claims shall be done within the required timeframes under the California Labor Code.

4. **Determine the compensability of injuries and illnesses** claimed by City employees in a timely, appropriate manner and in accordance with State of California Workers' Compensation laws.

5. **Match documentation and review process**: Match all priority mail, including but not limited to, Declarations of Readiness to Proceed, Workers' Compensation Appeals Board ("WCAB") Awards and Orders, medical reports, and legal correspondence requiring immediate action to the claim file and review for appropriate action no later than the following day. For all non-priority mail match to claim file and review for appropriate action within 5 days. All documents must be scanned and must be assigned to appropriate claim and category within two (2) working days.

6. **Establish and maintain a diary system** utilizing the City's current process (business workflow requirements and timelines) to review all cases on a regular basis. Specifically, reviews shall be conducted and documented in the claim file as follows:
   a. Delayed claims shall be reviewed for status of discovery, denial or acceptance every fourteen (14) days;
   b. Claims in which temporary disability benefits are being paid shall be

reviewed every third (3rd) payment;

c. Medical only cl aims shall be reviewed every ninety (90) days or less;
d. Claims in which permanent disability advances are being paid shall be reviewed at a minimum of every thirty (30) days;
e. All indemnity claims in which no indemnity is currently being paid shall be reviewed at a minimum of once every 45 days;
f. Future medical claims (claims in which future medical care has been awarded) shall be reviewed at a minimum of every 90 days;
g. Review every indemnity claim in which temporary disability indemnity has been paid for more than 120 days. The initial review shall be conducted within five (5) working days of the temporary disability threshold being met. Supervisory review forms must be included as a permanent part of the file, and must be completed as part of this review.

7. **Evaluate, maintain and adjust the estimated costs of all anticipated benefits and expenses on each individual case ("reserves")**. Establish initial reserves within two (2) working days of Contractor's receipt of the claim. Evaluate and adjust reserves within thirty (30) days of receipt of supporting documentation. Reserves shall take into consideration all potential payments. Review all reserves for adequacy on a regular 45-day diary schedule and make adjustments, as necessary, to reflect newly discovered information and/or adverse case developments. State in the claims notes the basis for all initial reserves, reserve revisions, and payments using the appropriate reserve analysis forms. Whenever there is a reserve change (by increase or reduction) of $50,000 or more, obtain approval from the City and send the City an email reserve alert including explanation for the change within two (2) working days of the change.

8. **In cases where a DWC-I claim form is not submitted with the Employers' Report, send a claim form within one business day** to the injured employee and annotate in the file that the form was sent.

9. **Establish a Plan of Action ("POA")** for the investigation, adjustment and prompt resolution of all indemnity cases as soon as possible, but not to exceed seven (7) working days from receipt of the first report of injury (DWC-I, Employer's Report, or Doctor's First Report of Injury, whichever is received first). Clearly document the POA in the file and update the POA at a minimum of every 90 days until a settlement is reached and the claim is converted to a future medical claim, after which time update the POA at a minimum of every six (6) months. The POA shall be based upon the facts and complexities of each individual case.

10. **Close claims no later than 30 days** from the date that the Contractor identified the claim for closure.

11. **Perform the necessary business practices in connection with each qualified claim or loss**, including the preparation and issuance of payments, DWC Notices, State mandated Electronic Data Interchange transmissions, EAMS submissions to the WCAB, and other documents that may be needed to finalize a claim.

12. **Comply with City's policy to maximize paperless processing**, including (a) input of all documents into City's IVOS electronically; (b) index and assign documents to proper claim; and (c) store documents in accordance with City guidelines.

13. **Prior to making payments, verify that claim payment amounts are reconciled with what was negotiated with the treatment provider.**

14. **Promptly issue all payments and any notices of delay in decision and compensability determinations** within the time frames required by law.

15. **Notify City by e-mail within 48 hours of receipt of any medical report finding a City employee to be permanent and stationary and/or releasing a City employee to return to work.** The purpose of said notice is to return the employee to work as expeditiously as possible and determine what modifications or accommodations, if any, may be required to effect the employee's return to work. The content of said notice shall comply with the California Labor Code.

16. **Provide advance notice and rationale to the City for any claim identified for denial, or when reversing an initial denial.**

17. **Negotiate and settle claims within the threshold amount(s) stated in Section G, Settlement Authority and Standards, subsection 4, below.**

18. **Review and adjust to final conclusion all claims in accordance with City, State, and Federal law, and City labor agreements, Public Employees' Retirement System and San Francisco Employee Retirement Services rules, and the Claims Manual.**

19. **Meet all file content and documentation requirements of the State of California Division of Workers' Compensation (DWC) Audit Unit.** Document all communications in each file, including all three-point contacts (employee, employer, medical provider), phone conversations, discussions, and meetings held on each claim. Ensure that claim files are available for inspection by the City within 24 hours, upon request.

B. MEDICAL AND DISABILITY CLAIMS MANAGEMENT

1. **Manage medical treatment using City's managed care utilization review criteria to reduce medical costs.** Requests for medical treatment shall be referred for review based on the following criteria:

   a. All requests for surgery
   b. Authorization requests for pain management
   c. Authorization requests for physical therapy beyond 24 visits
   d. Authorization requests for non-emergency (non-life threatening) hospitalization
   e. Requests for transfer from one hospital to another
   f. Experimental or little-used procedures
   g. Catastrophic Injury Claims (defined as cases requiring hospitalization greater than 24 hours, burns, multiple fractures, complex orthopedic

injuries, head trauma, complex neurological injuries, complications from surgery, any employee requiring time in intensive care, more than one employee injured in a single incident)

h. Other criteria, as agreed upon with City

2. **Forward bills submitted by medical providers to City's selected medical bill review vendor(s) for application of any and all medical fee schedules, Preferred Provider Organizations, and any other negotiated reductions prior to payment.**

3. **Utilize medical case management nurses on an exception basis, only for catastrophic claims or claims involving complex medical issues,** focusing on reducing unnecessary and/or excessive treatment, improving communication, providing assistance and support to injured employees and returning employees to work as quickly as possible.

4. **Actively work with physicians and City departments to facilitate employee participation in early return to work programs.**

5. **Notify the City within 10 days if an injured worker's permanent restrictions preclude him or her from returning to their usual and customary occupation.**

6. **Pay uncontested medical bills** within the time frames established by the State of California Workers' Compensation laws. Any penalties or fines assessed against Contractor resulting from Contractor's delay in paying within state mandated time frames shall be the responsibility of Contractor.

C. COST CONTAINMENT

1. **Coordinate cost containment efforts**

2. **Identify cases for utilization review and case management**

3. **Review and analyze appropriate charges**

4. **Identify cases for potential fraud investigation**

5. **Identify recovery opportunities, such as subrogation and apportionment**

6. **Seek other recoveries**

7. **Minimize penalties**

D. Contractor Liability

1. Denial/Delay Of Benefits. Contractor shall be solely liable for all payments of penalty awards, required self-imposed penalties, interest, settlements of penalty claims and petitions for penalties, and regulatory fines, fees and assessments arising out of Contractors' negligent or unreasonable denial, unreasonable or negligent delay, or late provision of workers' compensation benefits to claimants in Contractor's performance of the Agreement. Such penalties shall include, but

are not limited to, penalties and fees arising under the California Labor Code and the California Code of Regulations. Contractor shall report all payments of penalties and interest to City on a monthly basis. Contractor shall reimburse City on a monthly basis for all such penalty and interest payments made with City funds.

2. Interest. Contractor shall be solely liable for all payments of penalty awards, required self-imposed penalties, interest, and settlements of penalty claims and petitions for all penalties and regulatory fines and assessments arising out of Contractors' unreasonable or negligent denial of or late payment of interest on delayed workers' compensation benefits to claimants arising out of Contractor's performance of the Agreement. Such penalties include but are not limited to penalties and fees arising under the California Labor Code and the California Code of Regulations. Contractor shall report all payments of penalties and interest to City on a monthly basis. Contractor shall reimburse City on a monthly basis for all such penalty and interest payments made with City funds.

3. Confirmation of Claimant's Weekly Wages. Contractor is solely liable for all payments of penalty awards, required self-imposed penalties, interest, settlements of penalty claims and petitions for all penalties, and regulatory fines and assessments arising out of Contractors' failure to determine a claimant's average weekly wage as of the date of injury and at the time that wage-loss benefits are requested. Such penalties and fees include but are not limited to penalties arising under the California Labor Code and the California Code of Regulations. Contractor shall report all payments of penalties and interest to City on a monthly basis. Contractor shall reimburse City on a monthly basis for all such penalty and interest payments made with City funds.

4. Late Payment of Bills. Contractor shall be solely liable for all payments of penalty awards, required self-imposed penalties, interest, settlement payments of penalty claims and petitions for all penalties, and regulatory fines and assessments arising out of Contractors' failure to pay bills and invoices of medical service providers within the time requirements of the California Labor Code, California Code of Regulations, and Workers' Compensation Appeals Board ("WCAB") Rules.

5. Failure to Timely Deny Claim. Contractor's timely determination of claim compensability is an essential function and duty that is necessary and material under the Agreement. Contractor shall indemnify and reimburse the City for costs of claims (including but not limited to indemnity, medical care and associated allocated expenses) that become compensable by operation of law, when such compensability was caused by Contractor's failure to meet a mandated deadline for delaying or denying a claim (including, but not limited to, application of the 90-day provision of the California Labor Code), and such claim would not otherwise have been compensable. Determination of whether a claim would otherwise have been compensable shall be determined by an independent third party selected by the mutual agreement of the parties.

6. Defense Medical Reports.

a. Obtaining Ratable Medical Reports is an essential function and material duty of Contractor under the Agreement. Except as provided for in this Appendix A, Contractor shall timely obtain a Ratable Medical Report from a reputable physician for every claim in which a claimant's treating physician or QME reports permanent disability of 35 percent or greater, or reports more than 24 weeks total temporary disability. In

cases where the injured worker is unrepresented, Contractor shall object to the findings of the treating physician and direct the injured worker through the panel QME Process. For any claim in which Contractor and the City's Workers' Compensation Manager agree (and such agreement is memorialized in writing) that the treating physician's report or claimant's QME report accurately represents the level of disability, the procurement of an additional or any further Ratable Medical Reports is not required, and Contractor is relieved of liability under this Section 2.4(D)(6).

b. For purposes of this Agreement, a Ratable Medical Report is a report containing sufficient information that the Disability Evaluation Unit of the WCAB can evaluate the report and issue an advisory permanent disability rating.

c. Where Contractor fails to obtain a Ratable Medical Report as required under this Section 2.4(d)(6), Contractor shall reimburse the City for (or at Contractor's option shall directly assume full liability for) all costs and allocated expenses of the claim from the date of the mandatory settlement conference, including but not limited to temporary disability indemnity, permanent disability indemnity, medical costs, and vocational rehabilitation costs. The parties stipulate that the shifting of liability from City to Contractor is a measure of liquidated damages and is not an actual or constructive penalty, as it would be difficult, if not impossible, to calculate actual damages incurred by City should Contractor fail to obtain a Ratable Medical Report under this Section 2.4(D)(6).

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

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

9. Incorrect Payment of Vocational Rehabilitation Maintenance Allowance. Where Contractor fails to send required vocational rehabilitation notices to a claimant, or fails to respond timely to a request for vocational rehabilitation benefits, and due to Contractor's negligent act or omission City is thereby liable for payment of Vocational Rehabilitation Maintenance Allowance ("VRMA") at the temporary disability indemnity rate, Contractor is liable for and shall reimburse City the difference between VRMA paid at the applicable temporary disability indemnity rate and the amount of payment that should have been made at the applicable usual VRMA rate.

10. Late Payment of Medical Bills. Contractor shall pay uncontested medical bills within the time frames established by the California Labor Code and

any other California Workers' Compensation laws. Any penalties or fines assessed against Contractor by the DWC Audit Unit, or resulting from Contractor's delay in paying within state-mandated time frames shall be the responsibility of Contractor.

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

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

E. INVESTIGATION AND DISCOVERY STANDARDS

1. **Witness Statements.** Investigate questionable claims by obtaining statements from anyone who may have knowledge of the injury, including the claimant, witnesses, co-workers, and supervisors, within ten calendar days of notice of claim to Contractor, unless the file reflects an explanation for unavoidable delay in obtaining same

2. **Three Point Contact.** Establish a "three point contact" (i.e. telephone contact by Claims Examiner with injured employee, employer and medical provider) within twenty-four (24) hours of Contractor's receipt of notice of claim. Additionally, verify disability status with the treating physician and/or employer's medical facility prior to making any indemnity payment.

3. **Confirmation of Employment Status.** When Form 5020, Employer's First Report of Injury, does not accompany the DWC-1 Form (employee's Claim Form), verify that the claimant is a City employee by contacting the claimant's employer to confirm employment status prior to authorizing benefits.

4. **Reports from Treating Doctors.** If disability continues for more than twenty-one (21) days, obtain a medical report at a minimum of every forty-five (45) days to justify continuing indemnity payments. If Contractor does not receive a report every 45 days, Contractor shall notify in writing the treating physician of the requirements of section 9785 of the California Code of Regulations, and shall provide the physician with a copy of that section. If the treating physician does not provide a medical report within ten (10) days of that notification, Contractor shall discontinue payment of temporary disability indemnity and shall notify the injured worker for the reason of the suspension of benefits according to the California Labor Code.

5. **Sub Rosa Surveillance**

a. Where the existence or extent of disability is in question, an activity check/surveillance may be referred to the City's Investigator or Panel.

b. Referrals for either activity checks and/or surveillance (sub rosa) must be based upon specific information discovered for mitigation purposes, and not based upon any subjective criteria

6. **Compensability Investigations.** Perform a compensability evaluation for each new claim filed. If the initial evaluation or investigation warrants it, perform a more in-depth investigation to ascertain whether the claimed injury is industrial and compensable under the California Labor Code. For all stress/psychiatric claims, interview employee's supervisor and/or manager and review employee's personnel file.

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

8. **Selection of Agreed Medical Examiners (AME) and Qualified Medical Evaluators.** The purpose of referring a City employee alleging industrial injury to an outside medical expert shall be to ascertain; (a) whether the alleged injury occurred; (b) whether the alleged injury is work-related; (c) the nature and extent of the alleged injury; and (d) the need for medical treatment. All medical-legal evaluations are subject to the requirements of California Labor Code. All requests for agreement of use of an AME must be made to the City prior to agreement with applicant's attorney.

F. SUBROGATION AND THIRD PARTY CLAIM SETTLEMENT

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

G. LITIGATION SUPPORT AND MANAGEMENT

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

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

H. SETTLEMENT AUTHORITY AND STANDARDS

1. **Rating Permanent Disability.** Determine the nature and extent of permanent disability or need for further medical care following the receipt of

a medical report indicating a likelihood of permanent disability. Permanent disability advances shall be made in accordance with the California Labor Code.

2. **Claim Settlement Valuation.** Settlement valuation shall be made promptly, based on information included in the file and in accordance with industry standards. Emphasis shall be placed on early settlement of claims.

3. **Settlement Negotiations.** Prior to formal litigation before the Workers' Compensation Appeals Board, settlement negotiations with represented injured workers shall be actively pursued by the Contractor. All negotiations shall be handled or managed in consultation with, and/or with appropriate advance notice to and approval of, if applicable, the Department Liaisons.

4. **Settlement Authority.** All recommendations for settlements by Stipulations or Compromise and Release must be submitted to the City for approval based upon the following guidelines: (a) all SFMTA case settlements must be submitted to SFMTA for approval, pending later assignment of settlement authority;(b) City-wide cases (DHR) must be submitted to DHR if the amount of settlement value is greater than $25,000. Requests for settlement authority must be submitted no less than five (5) days prior to any Mandatory Settlement Conference if permanent disability is to be addressed. All requests for settlement authority shall be in writing in a format prescribed by City and shall include complete documentation of potential liability based upon all relevant evidence.

I. PERFORMANCE STANDARDS, COMMUNICATIONS AND REPORTING

The Contractor shall:

1. **Maintain a one business day phone or e-mail response time turnaround with the City with a five (5) business day response time turnaround for written responses.**

2. **Maintain a Northern California office for claims processing (within a 150-mile radius of San Francisco).**

3. **Provide the City with prompt notification of any changes to the Claims Manual.**

4. **Make records available upon 10 days prior written notice for audit by various City departments and agents, and by state agencies charged with enforcement of the provisions of the California Labor Code.**

5. **Meet with the City no less than monthly to discuss cases selected by the City and/or Contractor as requiring special adjusting or management attention.**

6. **Meet with the City every quarter to review:**

   a. **High exposure claims**

b. Claims delayed in quarter
c. Claims denied in quarter
d. Caseload staffing and caseload mix
e. Contract compliance and performance metrics in meeting Program objectives, including reduction of the City's workers' compensation costs, lost time, and number of claims filed.
f. Statistical information, analyses and recommendations pertaining to proposed legislation or rules and regulations that may affect the City's workers' compensation Program and costs.
g. Monthly reports that will include data on loss control/statistical analysis, payments, recoveries and cost allocation by City departments.
h. Estimation of claim value and required reserves.

7. Meet with the City and physician members of the Medical Provider Network, as indicated or upon request by the City to ensure effective communication.

8. Prepare and handle correspondence and communication with claimants, medical providers, attorneys and City, State and Federal agencies.

9. Prepare reports to City, State and Federal agencies in accordance with required deadlines.

10. Notify the State of California's Office of Self Insured Plans of any change of Third Party Administrator, as required by California Code of Regulations.

11. Maintain and provide forms and benefit notices as required by statute.

12. Provide temporary disability benefit information as required by City payroll personnel.

13. Ensure that Department Liaison(s) approve, in advance, any and all City department requests made directly to Contractor prior to Contractor performing such requests.

14. File storage and maintenance. The Contractor shall provide file and record storage. Claims file data to be maintained by Contractor shall include but not be limited to the following: adjuster file notes, diaries, documentation of events and telephone calls, plans of action, reserves, and payment records of indemnity, medical, and allocated claims expenditures. All files will remain the property of the City and shall not be disposed of without prior authorization from the City.

2.5 Additional Requirements re Program Services for SFMTA: In addition to the Program Requirements set forth in Sections 2.1- 2.4, above, Contractor shall perform services under this Agreement for SFMTA in accordance with the requirements of Attachment 1 to this Appendix A, which is attached hereto and incorporated by reference as though fully set forth herein.

2.6 Program Staffing Organization and Performance: The Contractor shall:

A. **Provide a dedicated unit for City's Workers' Compensation claims,** including exclusive Program assignment of claims and direct supervisory staff.

B. **Provide an experienced, dedicated Account Manager (or Claims Manager)** to provide oversight to the Program.

C. **Ensure that the Key Personnel for the City's Program, as delineated below, have the following experience:**

1. Claims Supervisors must have at least one year experience supervising claims for public employers; a minimum of five years experience in adjusting indemnity claims under the California Labor Code; and certification in accordance with the requirements of the Department of Insurance, State of California.
2. Senior Claims Examiners must have a minimum of five years experience in adjusting indemnity claims under the California Labor Code and certification in accordance with the requirements of the Department of Insurance, State of California.
3. Claims Examiners (non-senior) must have a minimum of three years of experience in adjusting indemnity claims under the California Labor Code and certification in accordance with the requirements of the Department of Insurance, State of California.
4. Claims Assistants assigned to provide support to claim examiners must have a minimum of one year experience as claims assistants under the California Labor Code

D. **Be responsible for providing sufficient and competent staff** to fulfill its obligations in compliance with the California law, including coverage of labor shortages, strikes, and absences.

E. **Maintain an average indemnity caseload size for each Senior Claims Examiner and Claims Examiner of no greater than 125 for SFMTA/145 for DHR open, active indemnity claims** (this does not apply to future medical or medical only claims).

F. **Provide direct Claims Supervisors at a ratio of one Claims Supervisor to no more than four Claims Examiners.**

G. **Provide an adequate ratio of support staff,** i.e. one Claims Assistant to no more than four examiners.

H. **Obtain prior written authorization from City for any and all staffing structure changes**, including, but not limited to temporary assignments, new hires, promotions, staff departures or staff absences for any reason. Provide a staffing plan for coverage of Program within five (5) business days to City for review and approval. If City claims examiner caseload exceeds either 125 for SFMTA or 145 for DHR open, active indemnity claims for 90 consecutive days, the parties shall meet and confer within 30 days thereafter to establish a plan to reduce Examiner caseload size below the claim threshold.

I. **Ensure that Claims Supervisors may adjust claims identified by the Claims Manager for special handling**, such as claims involving HIV, Hepatitis, or potential conflict of interest cases, or claims presenting other factors of complexity and/or high-liability for which a Senior Claims Examiner or Claims Examiner would not be qualified. Claims Supervisors shall not adjust more than twenty (20) open claims without written authorization from the City.

J. **Agree that the City, in its sole discretion, has the right to approve or disapprove any staff person assigned to the Program** throughout the contract term.

K. Each Program requires separate staffing to meet the requirements herein.

2.7 Program Oversight Requirements: The Contractor will be expected to provide a structure for and manage the performance of the activities described in this Appendix A. The structure shall include:

A. Program plan that details the tasks and deliverables, provides a Program organizational structure describing roles and responsibilities, and creates a timeline illustrating deliverable due dates and Program tasks by start and finish dates.

B. "Kick-off" meeting with the City's team. Prior to the meeting, the Contractor shall provide the City's team with the draft agenda and draft Program plan to solicit the City team's input. The Contractor shall develop the final agenda and other materials as required to ensure the following meeting objectives are met:

- Confirmation of the Program goals, tasks, deliverables, timeline, and roles and responsibilities of Program participants (summarized in the Program plan).
- Protocol for Program communications.
- Identification of City resources that may be needed to complete the Program successfully, including data requests and assistance in obtaining information.

C. Upon receipt of notice from City of termination of this Agreement, or at least thirty (30) days' prior to the expiration of this Agreement, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to minimize the liability of Contractor and City to claimants and to other third parties as a result of termination or expiration of the Agreement.

D. A Program plan that addresses other topics, as needed, to maximize the success of the Program.

3. As-Needed Services

Subject to the City's approval, the contract(s) awarded under this Agreement may be amended to include City-requested as-needed services from the Contractor in accordance with City requirements. Such as-needed services and related costs will be negotiated for a fixed, not-to-exceed price at the blended hourly rates detailed in Appendix B to this Agreement.

Upon advance Department Liaison approval, the Contractor shall provide as-needed claims management consultation services, which may include consultation on claims that are not administered by the Contractor.

Appendix B – Calculation of Charges - DHR

In accordance with Section 5 of this Agreement, the Contractor's fees are detailed below, inclusive of all costs required to complete the scope of work specified in Appendix A. In no event shall the total costs under this Agreement exceed the not to exceed amount provided in Section 5 of this Agreement.

Compensation is based on the following caseloads and an average of 145 indemnity cases per adjuster.

Claim Type	City-wide (DHR)
Indemnity – New	666
Indemnity – Pending	1,273
Medical Only – New	905
Medical Only – Pending	175
Future Medical – Pending	521
TOTAL	**3,540**

Fees (*includes 3% annual cost of living adjustment (COLA)

Year	Annual Fixed Fee*
Year 1	$2,413,022
Year 2	$2,485,413
Year 3	$2,559,975
Year 4	$2,636,774
Year 5	$2,715,878
TOTAL	**$12,811,062**

At the end of first year of the Agreement and every year thereafter, if the total number of indemnity claims increases by 5% or more, the annual fixed fee shall increase by same percentage for the subsequent year. If the number of indemnity claims decreases by 5% or more the annual fixed fee shall be reduced by same percentage.

The percentage increase or decrease in indemnity claims for the year shall be calculated by comparing the baseline number from the previous year with the number of pending indemnity claims as of the "calculation date" -- the last day of the twelfth full month after the effective date of the Agreement. The baseline number for the purposes of the first year of the Agreement shall be the number of new and pending indemnity claims set forth above. The number of pending indemnity claims on each calculation date shall be the baseline number for the succeeding calculation date.

Example:

Contact award on November 15, 2012. Number of Indemnity claims, New & Pending equals 1,939.

On November 30, 2013, number of pending **indemnity claims equals 1,800.**

Percent decrease 7.7%

Annual Price for year 2 equals $2,491,749 - **$191,864 (7.7%) = $2,299,885**
Total annual fixed fee for year 2 equals **$2,299,885.**

Blended Hourly Rates for As-Needed Services to be used with prior approval by DHR

Account Manager	$105.96
Claims Supervisor	$76.29
Claims Adjuster – IND	$62.98
Claims Adjuster – FM	$46.62
Claims Adjuster – MO	$38.99
Claims Assistant	$32.36
Clerical	$23.65

No Separate Cost Reimbursement
Services, excluding as-needed services, will be assumed to be included in the Annual Fixed Fee. The Annual Fixed Fee shall include all costs (the following list is not considered exhaustive): travel, lodging, meals, claims handling costs, salaries, fringe benefits, overhead, profit margins, contract transition charges, banking charges, retention incentives, and other applicable and eligible costs related to the services under this Agreement. *Additional and separate cost reimbursement will not be provided by the City.*

Payments will be made by DHR to Contractor:

1) After DHR has accepted as satisfactory, in DHR's sole and absolute discretion, the services rendered by the Contractor to DHR in accordance with this Agreement;

2) After a written summary of task completion has been provided to DHR by Contractor as part of the Contractor's payment request;

3) Within 30 days after the DHR has received Contractor's undisputed invoice; and

4) Provided that insurance documentation is current in accordance with Section 15 of the Agreement.

Appendix B – Calculation of Charges - SFMTA

In accordance with Section 5 of this Agreement, the Contractor's fees are detailed below, inclusive of all costs required to complete the scope of work specified in Appendix A. In no event shall the total costs under this Agreement exceed the not to exceed amount provided in Section 5 of this Agreement.

Compensation is based on the following caseloads and an average of 125 indemnity cases per adjuster.

Claim Type	SFMTA
Indemnity – New	589
Indemnity – Pending	1,264
Medical Only – New	108
Medical Only – Pending	76
Future Medical – Pending	382
TOTAL	**2,419**

Annual Fixed Fee (includes 3% annual cost of living adjustment (COLA)

Year	SFMTA
Year 1	$2,541,581
Year 2	$2,617,828
Year 3	$2,696,363
Year 4 (Option)	$2,777,254
Year 5 (Option)	$2,860,572
TOTAL	**$13,493,598**

At the end of first year of the Agreement and every year thereafter, if the total number of indemnity claims increases by 5% or more, the annual fixed fee shall increase by same percentage for the subsequent year. If the number of indemnity claims decreases by 5% or more the annual fixed fee shall be reduced by same percentage.

The percentage increase or decrease in indemnity claims for the year shall be calculated by comparing the baseline number from the previous year with the number of pending indemnity claims as of the "calculation date" -- the last day of the twelfth full month after the effective date of the Agreement. The baseline number for the purposes of the first year of the Agreement shall be the number of new and pending indemnity claims set forth above. The number of pending indemnity claims on each calculation date shall be the baseline number for the succeeding calculation date.

See Appendix B - Calculation of Charges – DHR for example of annual adjustment.

Blended Hourly Rates for As-Needed Services to be used with prior approval by SFMTA

Account Manager	$105.96
Claims Supervisor	$76.29
Claims Adjuster – IND	$62.98

Claims Adjuster – FM	$46.62
Claims Adjuster – MO	$38.99
Claims Assistant	$32.36
Clerical	$23.65
Total	

No Separate Cost Reimbursement
Services, excluding as-needed services, will be assumed to be included in the Annual Fixed Fee. The Annual Fixed Fee shall include all costs (the following list is not considered exhaustive): travel, lodging, meals, claims handling costs, salaries, fringe benefits, overhead, profit margins, contract transition charges, banking charges, retention incentives, and other applicable and eligible costs related to the services under this Agreement. *Additional and separate cost reimbursement will not be provided by the City.*

Payments will be made by SFMTA to Contractor:

1) After the SFMTA has accepted as satisfactory, in its sole and absolute discretion, the services rendered by the Contractor to the SFMTA in accordance with this Agreement;

2) After a written summary of task completion has been provided to the SFMTA by Contractor as part of the Contractor's payment request;

3) Within 30 days after the SFMTA has received Contractor's undisputed invoice; and

4) Provided that insurance documentation is current in accordance with Section 15 of the Agreement.

Attachment 1 to Appendix A – SFMTA: Client Services Instructions

I. Compensability determinations

Contractor shall complete a compensability template for each new claim with compensability issues outlined in the manner required by SFMTA and submit within three days of receipt of claim to the SFMTA Workers' Compensation Manager. All delayed claims shall be reviewed with the SFMTA Workers' Compensation Manager prior to acceptance or denial.

II. GUIDELINES for Referral to Medical Case Management

Cases meeting the following "Red Flag" criteria should be referred to medical case management. Referral shall be made following the guidelines below.

GUIDELINES FOR REFERRAL

• CATASTROPHIC INJURIES
(amputations, burns fractures, head injuries, spinal cord)

• HOSPITALIZATION CASES
(with potential complications, e.g.,: diabetes, CHF, HTN)

• 3 OR MORE PRIOR WORKERS' COMPENSATION CLAIMS

• ANY CLAIM WITH COMPLEX MEDICAL ISSUES
(e.g., drug use, multiple treaters, no change in condition, excessive lost time.)

• ASSAULT CASES WITH MORE THAN SIX WEEKS OF DISABILITY

• INAPPROPRIATE MEDICAL TREATMENT
(e.g., overutilization, failure to provide reports, six months with no change in medical condition)

• ANY CASE WHERE THE ADJUSTER FEELS THE MEDICAL OR MEDICAL/PSYCHOLOGICAL/SOCIAL ISSUES WILL INTERFERE WITH APPROPRIATE TREATMENT OR DELAY APPROPRIATE RECOVERY WILL BE REVIEWED FOR CONSIDERATION.

CASES THAT SHOULD NOT BE REFERRED TO NURSE CASE MANAGEMENT:

• Minor Injuries (minor laceration, minor sprains, etc.)
• Medical-only cases
• Delayed cases
• Denied cases
• Litigated cases where cooperation from an applicant attorney is unlikely.
• Cases where the safety of the nurse may be jeopardized.

REFERRAL PROCESS

The Referral Form – (either electronic or manual) is to be completed with the contact numbers of the adjuster, the claimant and the medical provider.

• Check the box for Field on all cases.

• Send or fax the last 90 days of medical reports as well as any recent AME /QME reports to the person listed on the vendor contact sheet.

• Complete the Comments Section and indicate the purpose of case management. (Complete the Special Instructions section on the electronic form.)

• Example: Field Case Management: RN to meet with the treating physician and the injured worker to determine the post –op treatment plan. (R rotator cuff repair on 3/27/01). Identify PPO vendors for PT and DME, identify work restrictions and obtain target date for return to work (RTW) modified duty and full duty.

• Send or fax the original referral form to the person listed on the vendor contact list, submit a copy of the referral form to your supervisor. DO NOT FAX CASES DIRECTLY TO THE CASE MANAGER.

• The Contractor will utilize Medical Case Management vendors designated in SFMTA's approved vendor list exclusively. .

Supervisors – Responsibilities

• Maintain copies of all referrals to Medical Case Manager.
• Staff complex medical management cases with adjuster.

Adjusters – Responsibilities

• Refer the case to the vendor contact via fax or email. Provide copies of the Referral Form to the Supervisor.
• Monitor the case.
• Review all reports and invoices from the vendor.
• Review and document information from case management reports every 30 days.
• Maintain telephone contact with Case Manager as needed.
• Monitor Medical Case Manager for case closure.

Medical Case Manager – Responsibilities

• Confirm receipt of the case by phone, fax or email.
If a case is litigated, obtain authorization from the attorney to contact the injured worker.
If contact with the injured worker is not authorized by the attorney, meet only with the medical providers.

• Maintain confidentiality of all claims.

1. Physician Contact

• Evaluate and assess the injured worker's medical condition.
• Determine the medical diagnosis and treatment plan.
• Utilize standard treatment guidelines per ACOEM and other evidence-based, nationally recognized methods and guidelines.
• Direct care to PPO providers whenever possible.
• Outline the objective and subjective barriers to RTW.
• Work with the physician to develop a treatment plan.

• Monitor vendors – including but not limited to physical therapy and occupational therapy providers.
• Determine areas of overutilization of treatment. Provide alternative resources to maximize treatment time.
• Obtain work restrictions from the physician for modified duty or full duty.
• Assess the ergonomic needs of the injured worker.
• Recommend specialty referrals for consultations or treatment.
• Catastrophic case management: Assess the needs of the injured worker and provide appropriate resources and interventions.

2. Employee Contact

• Meet with the employee within 2 days of assignment.
• Complete the initial evaluation.
• Provide education and resources for the injured workers – utilize PPO vendors.
• Determine the barriers to RTW and facilitate RTW.
• Meet with the doctor and the employee to facilitate patient understanding and compliance with the treatment plan.
• Provide discharge planning post operatively and utilize PPO providers.
• Review the RTW restrictions.

3. Employer Contact

• Make contact at the recommendation of adjuster.
• Work with the employer to facilitate return to work.
• To assess RTW for any medical contraindications or difficulty with work restrictions.

4. Adjuster Contact

• Contact adjuster initially to confirm receipt of the file, within 24 hours of receipt of file.
• After initial meeting with the claimant:
Report any change in injured worker's status. (e.g. injured worker requires more surgery, released to RTW, exacerbated the injury).
Submit a written report every 30 days, and verbal report as requested by adjuster.
• When injured worker is P/S:
Provide a clear plan of action with target dates.
To report new medical-legal issues (e.g. file became litigated, injured worker changed jobs)

5. Case Closure

Criteria for closure include:
• Completion of goals stated in case referral.
• 30 days after RTW (modified or full duty).
• Injured worker is QIW and ready to participate in Vocational Rehabilitation.
• Refer to adjuster for resolution of medical-legal issues at the discretion of the adjuster.

6. Reporting

- Send original of reports and invoices to the adjuster.
- Provide written reports, or email reports every 30 days to adjuster.
- Case Manager report must include goals and target dates.
- Report format: bullet point, not narrative.
- Quarterly log provided by vendor to the Claims Manager.
- Vendor Annual Cost savings analysis to the Claims Manager.

III. LITIGATION MANAGEMENT STANDARDS

1. Legal counsel is provided by the City Attorney only.

2. On workers' compensation cases, legal counsel by the City Attorney should be sought as early as Contractor determines it is necessary given the complexity of the claim. Presence of any of the following issues indicate that a claim is complex: a claim alleging violation of California Labor Code section 132(a), AOE/COE disputes, death benefits, serious and willful misconduct; a concurrent civil action or administrative proceeding including appeals to the civil service commission, EEOC/DFEH charges, and matters before the Retirement Board. In any event, claims shall be referred to the City Attorney no later than upon Contractor's receipt of a Declaration of Readiness to Proceed.

3. Contractor shall assist the City Attorney in the preparation of litigated cases, negotiation of workers' compensation settlements and subrogation actions. After a case is referred to the City Attorney, action by Contractor on the claim (including action on vocational rehabilitation issues) shall be subject to the direction of, and shall be coordinated with the City Attorney.

4. In all cases filed before a Board outside of San Francisco, upon receipt of the application Contractor shall file a Notice of Representation and an Answer identifying the City Attorney as counsel of record, even if the claim has not yet been referred for legal counsel.

5. All notices of hearing shall be promptly forwarded to the City Attorney within 2 business days of receipt. Any notice for hearing set for a date within fourteen (14) calendar days of the date of receipt by Contractor shall be hand-delivered or sent via facsimile to the City Attorney on the day of receipt.

6. The case file referred to the City Attorney will include an outline of the case status, compensability, and value, the work to be done and in what time-frame, and will be routed through Contractor's Claims Manager. At the time the case is referred to the City Attorney, Contractor shall provide a complete copy of the entire file containing all necessary claims information, including but not limited to all documents in the following categories: 1) medical records, 2) correspondence, 3) pleadings,4) payment summaries (indemnity and medical benefits), 5) investigations (reports and surveillance videotapes), and (6) vocational rehabilitation. Contractor will update counsel on a regular basis with all necessary claims information. Contractor shall send the City Attorney courtesy copies of all correspondence with the Workers' Compensation Appeals Board and applicant's counsel.

7. Upon request of Contractor's supervisory or higher-level staff, the City Attorney's written opinion as to compensability, value and settlement/defense strategy will be obtained.

8. No later than 30 days prior to any litigation events, the claims adjuster and City Attorney's representative shall meet to discuss possible settlement, litigation preparation, strategy, and similar matters.

The Workers' Compensation Manager may also participate in these meetings. It is the responsibility of Contractor to schedule litigation strategy meetings with the City Attorney and Workers' Compensation Manager.

9. Itemized legal bills will be reviewed for accuracy and allocated to individual cases at least monthly. A report of legal expenses will be provided to the Workers' Compensation Manager on a monthly basis.

10. Contractor shall obtain and communicate to the City Attorney written documentation of settlement authority up to the estimated value of a claim, before the date of the WCAB appearance during which settlement will be negotiated. Upon request of the City Attorney, the adjuster or a responsible supervisor who is familiar with the case shall be on telephone standby for any WCAB hearing

11. All DWC notices and Transitional Work letters are to be copied to the SFMTA's' Workers' Compensation Coordinator and its Reasonable Accommodations Coordinator.

IV. VOCATIONAL REHABILITATION STANDARDS

(a) Contractor will provide some services relating to claims for vocational rehabilitation as required by the California workers' compensation law, including, but not limited to:

• completion of required notices and forms;

• identifying and referring all rehabilitation cases to City; and

• identifying and referring all rehabilitation cases to City-approved Vocational Rehabilitation Coordinators.

(b) Rehabilitation services described above will be provided by claims examiners or a rehabilitation professional whose primary function is to manage Contractor's rehabilitation caseload. All rehabilitation activity will be fully documented in the file.

(c) Once deemed medically eligible, referral to Vocational Rehabilitation Coordinator must be made within 5 days of notice. City's Vocational Rehabilitation Coordinator will monitor and audit Contractor's vocational rehabilitation program to ensure quality and compliance with the requirements of the Labor Code.

(d) Contractor is to use City-approved Vocational Rehabilitation Coordinators exclusively. The City will provide Contractor with a current list of approved vendors, updated as necessary.

V. BILL REVIEW AND UTILIZATION REVIEW

Contractor will use the SFMTA's managed care vendor(s) exclusively for Medical Bill Review and Utilization review. The SFMTA will provide Contractor with the vendor's demographic data, and Contractor shall be responsible for development or adoption of a data interface to facilitate electronic data exchange with vendor(s) as indicated.

VI. OTHER OUTSIDE VENDORS

The Contractor is to use City-approved vendors for the following services:

1. Outside Investigations. Contractor will use the City's preferred or contracted vendor(s) exclusively for all assigned outside investigation referrals. The City will provide Contractor with the vendor's demographic data, and Contractor shall

ensure referrals are consistent with the City's referral criteria, which are subject to change and will be provided under separate cover.

2. Ergonomic Evaluations and Equipment: The City will provide Contractor with a current list of approved vendors, updated as necessary.

3. Copy Service: The City will provide Contractor with a current list of approved vendors, updated as necessary.

VII. MPN Conversion

Contractor shall provide administrative support for SFMTA with the DWC and employees as needed for implementation of the City's Medical Provider Network. Contractor, upon completion of conversion of SFMTA's program to the City's Medical Provider Network, shall manage medical treatment for all claimants within the scope of the MPN as indicated

VIII. Transitional Work Program

Contractor shall work closely with SFMTA's Transitional Work Coordinators to facilitate early and prompt return to work for all claimants released to work with temporary work restrictions.

VIII. Examiner Review Standards

Contractor shall ensure that assigned Claims Examiners shall complete and maintain claims summaries (Action Plan) in the format to be provided no less than every 60 days.

Appendix C – Confidentiality Agreement

CITY AND COUNTY OF SAN FRANCISCO ("CITY")

CONTRACTOR EMPLOYEE ACKNOWLEDGMENT
AND CONFIDENTIALITY AGREEMENT

GENERAL INFORMATION

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

EMPLOYEE ACKNOWLEDGMENT

I understand that Intercare Holdings Insurance Services, Inc., is my sole employer for purposes of this employment.

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

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

CONFIDENTIALITY AGREEMENT

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

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

CONFIDENTIALITY AGREEMENT

I agree that I will not divulge to any unauthorized person, data obtained while performing work pursuant to the contract between Intercare Holdings Insurance Services, Inc., and the City and County of San Francisco ("City").

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

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

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

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

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

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

Signature_____

Printed Name_____

Position/Title_____

Date_____

OFFICE OF THE MAYOR
SAN FRANCISCO

EDWIN M. LEE
MAYOR

TO: Angela Calvillo, Clerk of the Board of Supervisors
FROM: Mayor Edwin M. Lee
RE: Workers' Compensation Third Party Administrator
DATE: October 23nd, 2012

Attached for introduction to the Board of Supervisors is the Resolution authorizing the San Francisco Municipal Transportation Agency (SFMTA) and the Department of Human Resource (DHR) to execute an agreement with Intercare Holdings Insurance Services, Inc., (Intercare) for Workers' Compensation Third Party Administrator services for an amount not to exceed $$26,500,000 and for a term of three years, with an option to extend the term for up to an additional two years.

I request that this item be calendared in Budget and Finance Committee.

Should you have any questions, please contact Jason Elliott (415) 554-5105.

121043

1 DR. CARLTON B. GOODLETT PLACE, ROOM 200
SAN FRANCISCO, CALIFORNIA 94102-4681
TELEPHONE: (415) 554-6141

File No. 121043

FORM SFEC-126:
NOTIFICATION OF CONTRACT APPROVAL
(S.F. Campaign and Governmental Conduct Code § 1.126)

City Elective Officer Information *(Please print clearly.)*	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

Contractor Information *(Please print clearly.)*	
Name of contractor: **Intercare Holding Insurance Services Inc.**	
Please list the names of (1) members of the contractor's board of directors; (2) the contractor's chief executive officer, chief financial officer and chief operating officer; (3) any person who has an ownership of 20 percent or more in the contractor; (4) any subcontractor listed in the bid or contract; and (5) any political committee sponsored or controlled by the contractor. ***Use additional pages as necessary.*** See attached	
Contractor address: 6020 West Oaks Boulevard, Suite 100, Rocklin CA 95765	
Date that contract was approved: *(By the SF Board of Supervisors)*	Amount of contracts: $26,500,000
Describe the nature of the contract that was approved: Third Party administration for Workers' Compensation claims DHR and SFMTA	
Comments:	

This contract was approved by (check applicable):

☐the City elective officer(s) identified on this form

☑ a board on which the City elective officer(s) serves: San Francisco Board of Supervisors
Print Name of Board

☐ the board of a state agency (Health Authority, Housing Authority Commission, Industrial Development Authority Board, Parking Authority, Redevelopment Agency Commission, Relocation Appeals Board, Treasure Island Development Authority) on which an appointee of the City elective officer(s) identified on this form sits

_____
Print Name of Board

Filer Information *(Please print clearly.)*	
Name of filer: Angela Calvillo, Clerk of the Board	Contact telephone number: (415) 554-5184
Address: City Hall, Room 244, 1 Dr. Carlton B. Goodlett Pl., San Francisco, CA 94102	E-mail: Board.of.Supervisors@sfgov.org

_____ _____
Signature of City Elective Officer (if submitted by City elective officer) Date Signed

_____ _____
Signature of Board Secretary or Clerk (if submitted by Board Secretary or Clerk) Date Signed

(1) Members of the contractor's board of directors

George "Mac" McCleary, Chairman of the Board
Jay Golding
William Galtney
John Scarborough
Charles Davidson
Agnes Hoeberling

(2) Contractor's chief executive officer, chief financial officer and chief operating officer

Chief Executive Officer - George "Mac" McCleary
Chief Financial Officer - Sandra Hall
Chief Operating Officer - Agnes Hoeberling

(3) Any person who has an ownership of 20 percent or more in the contractor:

None

(4) Any subcontractor listed in the bid or contract:

Star Reporting Service Inc.
Behmke Reporting and Video Services, Inc.
Thomas Chen Associates Inc.

(5) Any political committee sponsored or controlled by the contractor:

None

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. 12-134

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

WHEREAS, In order to maximize the operational and management efficiency and achieve cost savings to the City, the SFMTA and the Department of Human Resources (DHR) agreed to enter into a joint agreement for the workers' compensation Third Party Administrator services for the City's workers' compensation claims administration services; and

WHEREAS, On February 21, 2012, the SFMTA Board of Directors authorized the Director of Transportation to jointly issue a Request for Proposals for Workers' Compensation Claims Administration Services with DHR, to jointly conduct proposal evaluation, contract negotiation and contract formation for an initial term of three-years with two-year contract extension option at the City's sole discretion; and

WHEREAS, On April 23, 2012, the City received proposals from TRISTAR Risk Management, Intercare Holdings Insurance Services and Sedgwick Claims Management Services; and

WHEREAS, A selection panel evaluated all three proposals and Intercare Holdings Insurance Services was selected as the highest ranked proposer; and

WHEREAS, An approval for this professional services contract was obtained from the Civil Service Commission at its February 10, 2012 commission meeting through Notice of Action for Personal Service Contract Number 4088-11-22; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract #SFMTA 2011/12-13 with Intercare Holdings Insurance Services, Inc., as a Workers' Compensation Third Party Administrator for both the SFMTA and Department of Human Resources, in a total amount not to exceed $26,500,000 of which the SFMTA will pay $13,557,725 and the Department of Human Resources will pay $12,942,275, for a contract term from November 1, 2012 to October 31, 2015, with an option to extend through October 31, 2017 at the City's sole discretion.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of November 6, 2012.

R. Boomer

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency