

File No. 180971

Committee Item No. 5

Board Item No. \_\_\_\_\_

## COMMITTEE/BOARD OF SUPERVISORS

### AGENDA PACKET CONTENTS LIST

Committee: \_\_\_\_\_

Date: \_\_\_\_\_

Board of Supervisors Meeting

Date: November 1, 2018

#### Cmte Board

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| <input type="checkbox"/>            | <input type="checkbox"/> | Motion                                       |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution                                   |
| <input type="checkbox"/>            | <input type="checkbox"/> | Ordinance                                    |
| <input type="checkbox"/>            | <input type="checkbox"/> | Legislative Digest                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Budget and Legislative Analyst Report        |
| <input type="checkbox"/>            | <input type="checkbox"/> | Youth Commission Report                      |
| <input type="checkbox"/>            | <input type="checkbox"/> | Introduction Form                            |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/>            | <input type="checkbox"/> | MOU  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Information Form                       |
| <input type="checkbox"/>            | <input type="checkbox"/> | Grant Budget                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Subcontract Budget                           |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement                           |
| <input type="checkbox"/>            | <input type="checkbox"/> | Form 126 – Ethics Commission                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Award Letter                                 |
| <input type="checkbox"/>            | <input type="checkbox"/> | Application                                  |
| <input type="checkbox"/>            | <input type="checkbox"/> | Public Correspondence                        |

#### OTHER

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| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>BOS Reso No. 74-14</u> |
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Prepared by: John Carroll

Date: October 26, 2018

Prepared by: \_\_\_\_\_

Date: \_\_\_\_\_

1 [Contract Amendment - Health Advocates, LLC - Uncompensated Reimbursement  
2 Recovery Services - Not to Exceed \$18,014,546]

3 **Resolution retroactively approving a contract amendment for uncompensated**  
4 **reimbursement recovery services between Health Advocates, LLC and**  
5 **Department of Public Health, in the amount of \$18,014,546 for a total contract**  
6 **term of January 1, 2014, through December 31, 2021.**

7  
8 WHEREAS, The Department of Public Health (DPH) desires to capture revenue  
9 through an uncompensated reimbursement recovery contract with Health Advocates,  
10 LLC; and

11 WHEREAS, As the revenue collected under this contract would exceed  
12 \$1,000,000 and Section 9.118 of the San Francisco Charter requires that such contracts  
13 be approved by the Board of Supervisors; and

14 WHEREAS, A copy of the original agreement is on file with the Clerk of the  
15 Board of Supervisors in File No. 131240, which is hereby declared to be a part of this  
16 Resolution as if set forth fully herein; now, therefore, be it

17 RESOLVED, That the Board of Supervisors hereby authorizes the Director of  
18 Public Health and the Director of the Office of Contract Administration/Purchaser, on  
19 behalf of the City and County of San Francisco, to execute a contract with Health  
20 Advocates, LLC in the amount of \$18,014,546 for a total term of January 1, 2014,  
21 through June 30, 2022; and, be it

22 FURTHER RESOLVED, That within thirty (30) days of the contract being fully executed  
23 by all parties, the Director of Health and/or the Director of the Office of Contract  
24 Administration/Purchaser shall provide the final contracts to the Clerk of the Board for  
25 inclusion into the official File No. 180971.

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RECOMMENDED:

  
\_\_\_\_\_  
Greg Wagner  
Acting Director of Health

**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

October 26, 2018

**TO:** Budget and Finance Committee

**FROM:** Budget and Legislative Analyst



**SUBJECT:** November 1, 2018 Budget and Finance Committee Meeting

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<b>Item 5</b> <b>File 18-0971</b>	<b>Department:</b> Department of Public Health (DPH)
<b>EXECUTIVE SUMMARY</b>	
<p><b>Legislative Objectives</b></p> <ul style="list-style-type: none"> <li>• The proposed resolution would retroactively approve the first amendment to the uncompensated care reimbursement recovery services contract between the Department of Public Health (DPH) and Health Advocates, LLC, extending the contract by four years from January 2018 through December 2021 and increasing the not-to-exceed amount by \$11,714,146, from \$6,300,390 to \$18,014,546. Under the contract, Health Advocates screens patients for MediCal eligibility, and DPH pays Health Advocates a fixed fee for each screening and appeal. The fixed fee increases by 3 percent per year.</li> </ul> <p><b>Key Points</b></p> <ul style="list-style-type: none"> <li>• DPH entered into a contract with Health Advocates in 2014, following a competitive solicitation, for Health Advocates to screen DPH clients for MediCal eligibility. Under the contract, Health Advocates screens patients for Medi-Cal eligibility and assists with applications, bills Medi-Cal for DPH services, and represents patients during Medi-Cal appeals.</li> <li>• The original contract expired in December 2017. DPH is seeking retroactive approval because of the time needed to negotiate the contract with Health Advocates, as well as the City Attorney’s review of the contract. Health Advocates has continued to provide uncompensated reimbursement recovery services in 2018, with the understanding that there would be a new contract effective January 1, 2018. During this time, Health Advocates has not billed for services.</li> </ul> <p><b>Fiscal Impact</b></p> <ul style="list-style-type: none"> <li>• From 2018 through 2021, DPH estimates receiving \$40,000,000 in MediCal reimbursements and paying fees to Health Advocates of \$10,459,068 for net revenues of \$29,540,932.</li> <li>• Estimated feed payments of \$10.5 million under the proposed first amendment are more than actual fee payments of approximately \$6.3 million under the original contract due to the 3 percent per year increase in fees and the addition of MediCal screening for emergency department (ED) outpatient services.</li> </ul> <p><b>Recommendation</b></p> <ul style="list-style-type: none"> <li>• Approve the proposed resolution</li> </ul>	

**MANDATE STATEMENT**

City Charter Section 9.118(a) states that contracts entered into by a department, board, or commission that (i) have anticipated revenues of \$1 million or more, or (ii) have anticipated revenues of \$1 million or more and require modifications, are subject to Board of Supervisors approval.

**BACKGROUND**

The Department of Public Health (DPH) uses contract services to assist with Medi-Cal reimbursement for uninsured patients. Services include screening patients for Medi-Cal eligibility and assisting with applications, billing Medi-Cal for DPH services, and representing patients during Medi-Cal appeals. Services are performed both onsite and offsite.

In February 2013, DPH conducted a Request for Proposals (RFP) for uncompensated care reimbursement recovery services. The RFP provided for an original term of one year and nine one-year options to extend the contract, for a total term of up to 10 years. Three proposals were received and scored by a four-member panel as shown in Table 1.

**Table 1: Proposers and Scores from RFP**

<b>Proposal</b>	<b>Score</b>
Health Advocates, LLC	103.75
CompSpec	76.75
Firstsource	51.25

Health Advocates, which had contracted with DPH for uncompensated care reimbursement recovery services since 2001, was deemed the highest scoring responsive and responsible proposer. In March 2014, the Board of Supervisors approved a contract with Health Advocates, for a four-year term from January 2014 through December 2017 and an amount not to exceed \$6,300,390 (File 13-1240, Resolution 075-14). The contract expired December 31, 2017. According to Ms. Jacquie Hale, DPH Office of Contracts Management and Compliance Manger, DPH has been satisfied with Health Advocates’ performance. On December 17, 2017, the Health Commission approved extending the Health Advocates contract by an additional four years through 2021, for a total contract term of eight years.

**DETAILS OF PROPOSED LEGISLATION**

The proposed resolution would retroactively approve the First Amendment to the contract between DPH and Health Advocates, extending the contract from January 1, 2014 through December 31, 2021 and increasing the not-to-exceed amount by \$11,714,146, from \$6,300,390 to \$18,014,546.

According to Ms. Hale, DPH is seeking retroactive approval because of the time needed to negotiate the contract with Health Advocates, as well as the City Attorney’s review of the contract.

According to Mr. Mario Moreno, DPH Office of Contract Management and Compliance Director, Health Advocates has continued to provide uncompensated reimbursement recovery services in 2018, with the understanding that there would be a new contract effective January 1, 2018. During this time, Health Advocates has not billed for services. According to Mr. Moreno, approving the contract retroactively would allow DPH to recover approximately \$3.7 million in reimbursements from January through June 2018.

**FISCAL IMPACT**

The proposed resolution increases the contract’s not-to-exceed amount by \$11,714,156 from \$6,300,390 to \$18,014,546. The contract budget by year is shown in Table 2 below.

**Table 2: Contract Not-to-Exceed Amounts by Year**

<b>Contract Budget by Calendar Year</b>	<b>Amount</b>
<i>Initial Term</i>	
2014 to 2017	\$6,300,390
<i>Proposed First Amendment</i>	
2018	2,500,000
2019	2,575,000
2020	2,652,250
2021	<u>2,731,818</u>
First Amendment Subtotal	\$10,459,068
Contingency (12%)	<u>1,255,088</u>
Total First Amendment	\$11,714,156
<b>Total Contract</b>	<b>\$18,014,546</b>

Under the contract, Health Advocates is paid a fixed fee for each type of service. The fixed fee for each service in 2018 is approximately 3 percent more than the fixed fee for these services in 2017, and increases by approximately 3 percent per year in 2019, 2020, and 2021. Total estimated fee payments by DPH to Health Advocates are shown in Table 3 below. Estimated feed payments of \$10.5 million under the proposed first amendment are more than actual fee payments of approximately \$6.3 million under the original contract due to the 3 percent per year increase in fees and the addition of MediCal screening for emergency department (ED) outpatient services.

**Table 3: Estimated Fee Payments to Health Advocates under the First Amendment**

<b>Acute Care</b>	<b>CY 2018</b>	<b>CY 2019</b>	<b>CY 2020</b>	<b>CY 2021</b>	<b>Total</b>
Acute Care Screening Rate	\$1,914	\$1,971	\$2,030	\$2,091	
Acute Care Appeal Rate	\$2,472	\$2,546	\$2,623	\$2,701	
Acute ED Outpatient	\$1,350	\$1,391	\$1,433	\$1,476	
Number of Screenings	359	359	359	359	
Number of Appeals	100	100	100	100	
Number of ED Outpatient	854	854	854	854	
<b>Acute Care Subtotal*</b>	<b>\$2,087,452</b>	<b>\$2,150,106</b>	<b>\$2,214,518</b>	<b>\$2,281,042</b>	<b>\$8,733,118</b>
<b>Psychiatric Care</b>					
Psychiatric Care Screening Rate	\$2,472	\$2,546	\$2,623	\$2,701	
Psychiatric Care Appeal Rate	\$2,812	\$2,896	\$2,983	\$3,073	
Number of Screenings	143	143	143	143	
Number of Appeals	21	21	21	21	
<b>Psychiatric Care Subtotal</b>	<b>\$412,548</b>	<b>\$424,894</b>	<b>\$437,732</b>	<b>\$450,776</b>	<b>\$1,725,950</b>
<b>Total *</b>	<b>\$2,500,000</b>	<b>\$2,575,000</b>	<b>\$2,652,250</b>	<b>\$2,731,818</b>	<b>\$10,459,068</b>

Source: DPH

\*Rounded

Over the four-year term of the contract extension from 2018 through 2021, DPH anticipates receiving \$40,000,000 in MediCal reimbursements and paying fees to Health Advocates of \$10,459,068 for net revenues of \$29,540,932, as shown in Table 4 below.

**Table 4: Net Revenue Projections for DPH through Health Advocates Contract**

	<b>FY 2017-18*</b>	<b>FY 2018-19</b>	<b>FY 2019-20</b>	<b>FY 2020-21</b>	<b>FY 2021-22*</b>	<b>Total</b>
Acute Care Services	\$4,000,000	\$8,000,000	\$8,000,000	\$8,000,000	\$4,000,000	<b>\$32,000,000</b>
Psychological Care Services	1,000,000	2,000,000	2,000,000	2,000,000	1,000,000	<b>8,000,000</b>
Total Reimbursements	5,000,000	10,000,000	10,000,000	10,000,000	5,000,000	<b>40,000,000</b>
Estimated Payments to Health Advocates	1,250,000	2,537,500	2,613,625	2,692,034	1,365,909	<b>10,459,068</b>
<b>Total Net Revenues to DPH</b>	<b>\$3,750,000</b>	<b>\$7,462,500</b>	<b>\$7,386,375</b>	<b>\$7,307,966</b>	<b>\$3,634,091</b>	<b>\$29,540,932</b>

\*FY 2017-18 comprises a six-month period from January through June 2018. FY 2021-22 comprises a six-month period from July through December 2021.

**RECOMMENDATION**

Approve the proposed resolution.

City and County of San Francisco  
Office of Contract Administration  
Purchasing Division

First Amendment

THIS AMENDMENT (this "Amendment") is made as of November 1, 2017 in San Francisco, California, by and between Health Advocates, LLC. ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below);  
and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to extend the performance period to December 31, 2021, increase the contract amount, and update standard contractual clauses;

WHEREAS, approval for this Amendment was obtained when the Civil Service Commission approved Contract number 4119-09-10 on December 16, 2013;

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

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

1a. Agreement. The term "Agreement" shall mean the Agreement dated the 1<sup>st</sup> day of January 2014, between Contractor and City.

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

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

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

2a. Section 2. Section 2. Term of the Agreement of the Agreement currently reads as follows:

Subject to Section 1, the term of this Agreement shall be from January 1, 2014 to December 31, 2017.

**Such section is hereby amended in its entirety to read as follows:**

Subject to Section 1, the term of this Agreement shall be from January 1, 2014 to December 31, 2021.

**2b. Section 5. Section 5. Compensation of the Agreement currently reads as follows:** Compensation shall be made in monthly payments on or before the 15th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Department of Public Health, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Six Million Three Hundred Thousand Three Hundred Ninety Dollars (\$6,300,390). 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 Department of Public Health 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.

**Such section is hereby amended in its entirety to read as follows:**

Compensation shall be made in monthly payments on or before the 15th day of each month for work, as set forth in Section 4 of this Agreement, that the Director of the Department of Public Health, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed Eighteen Million Fourteen Thousand Five Hundred Forty Six Dollars (\$18,014,546). 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 Department of Public Health 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.

**2c. Insurance. Section 15 is hereby replaced in its entirety to read as follows:**

**15. Insurance.**

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

- 1) Workers' Compensation, in statutory amounts, with Employers' Liability Limits not less than \$1,000,000 each accident, injury, or illness; and
- 2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate 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.

4) Professional liability insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 each claim with respect to negligent acts, errors or omissions in connection with the Services.

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

d. 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.

e. 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.

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

g. The Workers' Compensation policy(ies) 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.

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

2d. Replacing "Earned Income Credit (EIC) Forms" Section with "Consideration of Criminal History in Hiring and Employment Decisions" Section. Section 32 "Earned Income Credit (EIC) Forms" is hereby replaced in its entirety to read as follows:

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

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

though fully set forth herein. The text of the Chapter 12T is available on the web at [www.sfgov.org/olse/fco](http://www.sfgov.org/olse/fco). A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

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

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

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

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

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

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

2e. Cooperative Drafting. Section 64 is hereby added to the Agreement, as follows:

64. 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.

2f. Sugar-Sweetened Beverage Prohibition. Section 65 is hereby added to this Agreement, as follows:

65. Sugar-Sweetened Beverage Prohibition. Contractor agrees that it will not sell, provide, or otherwise distribute Sugar-Sweetened Beverages, as defined by San Francisco Administrative Code Chapter 101, as part of its performance of this Agreement.

2g. Slavery Era Disclosure. Section 60 is hereby revised to the Agreement, as follows:

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." The affidavit is posted on the Office of Contract Administration's website at [www.sfgov.org/site/oca](http://www.sfgov.org/site/oca) under the "Slavery Era Disclosure" banner.

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.

2h. The Appendices listed below are amended as follows:

- a. Appendix A-1. Delete Appendix A-1, dated 04/01/2014, and replace in its entirety with Appendix A-1 dated, 11/1/2017, which includes Statement of Work.
- b. Appendix B. Delete Appendix B, and replace in its entirety with Appendix B dated, 11/1/2017, Calculation of Charges.
- c. Appendix B-1. Delete Appendix B-1, dated 04/01/2014, and replace in its entirety with Appendix B-1 dated, 11/1/2017, Rate Schedule.
- d. Appendix E. Delete Appendix E, and replace in its entirety with Appendix E, version "OCA&CAT v6.21.2017," which includes attestations for Compliance, Data Security, and Privacy, the latter each dated June 7, 2017.

3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after January 1, 2018.

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

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

CITY

CONTRACTOR

Recommended by:

Health Advocates, LLC

  
Barbara A. Garcia, MPA  
Director of Health  
Department of Public Health

  
Steve Levine  
21540 Plummer Street, Suite B  
Chatsworth, CA 91311

City vendor number: 70234  
Supplier ID#: 0000018958

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:   
Glenn M. Lead  
Deputy City Attorney

Approved:

  
Jaci Fong  
Director of the Office of Contract  
Administration, and Purchaser

Appendix A-1  
STATEMENT OF WORK

**CONTRACTOR:** Health Advocates, LLC (CONTRACTOR)  
21540 Plummer Street, Suite B  
Chatsworth, CA 91311

**CONTRACT TERM:** January 1, 2014 through December 31, 2021

**COMPENSATION:** COMPREHENSIVE FIXED FEE PER DISCHARGE.

**CONTRACTOR** will be paid in accordance with the contingency and/or fixed rates outlined in Appendix B-1.

**I. OVERVIEW**

Pursuant to the terms of this Agreement, the **CONTRACTOR** shall provide various services in relation to patients seen at Zuckerberg San Francisco General Hospital (ZSFG) and other San Francisco Department of Public Health facilities. The overall purpose of this Agreement is for the **CONTRACTOR** to help increase compensation received by DPH facilities for clinical services provided to the patients through improving patient access to various third party sources of payment and through improving the success of claims by DPH-related facilities for such reimbursement. The fee structure of the Agreement is such that, with limited exceptions, **CONTRACTOR** is compensated only for: successful efforts to enroll the patient in third party payor programs that result in payment that would not have otherwise been received; successful efforts to improve claims submitted by an DPH-associated clinical facility for reimbursement; or successful efforts otherwise to improve reimbursement to DPH facilities for care provided. There are additional options for payment to **CONTRACTOR** for hourly services rendered in limited circumstances that are not tied to successful financial outcomes.

**II. SCOPE OF WORK (ELIGIBILITY)**

The eligibility scope of work includes the following services and requirements:

- A. The DPH Director of Patient Finance or designee will review all inpatient admissions where **ZSFG Eligibility Workers** have been unsuccessful in identifying a source of payment. After determining that staff has exhausted all reasonable efforts the case may be referred to **CONTRACTOR**, regarding eligibility enrollment. Alternatively DPH may refer outpatient cases and patients directly to **CONTRACTOR** for various reasons for the purpose of securing source of payment. In relation to all such referrals **CONTRACTOR** will make reasonable efforts to assist in enrolling the patient in benefits, including but not limited, to making home calls, assisting the applicant to secure required documentation, providing interpreter services and transportation, etc., so that the applicant can complete the application, appeal, and/or fair hearing process. Referrals shall be at the discretion of managers authorized to make such referrals.
  
- B. **CONTRACTOR** will assist patient with enrollment in Medi-Cal and other possible sources of third-party reimbursements such as California Children Services (CCS), Victims of Crime (VoC), employment-related workers compensation coverage, Veterans Benefits, COBRA, Qualified

Health Plans and other coverage under the Affordable Care Act, undetected insurance, insurance reinstatement, or other potential benefit programs.

- C. When **CONTRACTOR** establishes third-party eligibility (Medi-Cal, Workers' Compensation, California Children's Services, Victim of Crime, etc.) **CONTRACTOR** will provide to **CITY** supporting evidence of Notice of Eligibility or Letter of Authorization (whichever applies).
- D. For referrals for which Medi-Cal was denied or those for which Medi-Cal applications were not initiated, **CONTRACTOR** will provide written explanation of why an application was not initiated or why a Fair Hearing was not pursued, and if a Fair Hearing was pursued, why it was unsuccessful. This information will be provided on the monthly Close report provided by **CONTRACTOR**.
- E. **CONTRACTOR** may be responsible for billing and follow-up of payment on approved Medi-Cal cases. Cases to be billed by **CONTRACTOR** shall be at the discretion of the Director of Patient Finance. **CONTRACTOR** will not be required to bill and secure Medi-Cal payments for referred mental health inpatients. Community Mental Health Services is responsible for billing and securing payments on retroactive Medi-Cal eligible mental health inpatients to the State. **CONTRACTOR** understands that the Contract Administrator or designee for the services will act as a liaison only on behalf of **CONTRACTOR** for referrals to **CITY's** Community Mental Health Services. For retroactive Medi-Cal approved past twelve (12) months **CONTRACTOR** will provide necessary Eligibility Letters of Authorization (LOA Form MC-190) to San Francisco Community Mental Health Services. Community Mental Health Services is responsible for billing to the State and securing payments on retroactive Medi-Cal eligible mental health inpatients to the State. Contract Administrator for this contract or designee will act as a liaison only on behalf of **CONTRACTOR** for referrals to **CITY's** Community Mental Health Services.
- F. **CONTRACTOR** will represent ZSFG interests in advocating for reimbursement for services provided to patients where an existing third party payor has a relationship with the patient. Such efforts to obtain increased reimbursement are conducted on behalf of ZSFG/DPH pursuant to the authorization signed by the patient in the Terms of Admission authorizing the care at issue.
- G. **CONTRACTOR** will represent ZSFG interests in advocating for reimbursement for services provided to patients where the patient's care may relate to alleged third-party liability (such as alleged tortfeasor). In such contexts, **CONTRACTOR** may file a lien to secure ZSFG/DPH to recover costs associated with the patient's care in relation to threatened or existing litigation involving the patient's interests. In this context, **CONTRACTOR** will coordinate with the San Francisco Treasurer & Tax Collector Bureau of Delinquent Revenue (BDR) to ensure that such liens are handled in accordance with City procedures and BDR processes, and **CONTRACTOR** shall follow all written guidelines provided by BDR.
- H. **CONTRACTOR** will perform a timely review of referred cases and potential Fair Hearing cases. Cases determined to be Medi-Cal ineligible due to no linkage with no other potential source of payment shall be returned to **CITY** as soon as the screening, application or Fair Hearing process is completed, together with a Close report indicating why the account was being closed. If no Medi-Cal application, Fair Hearing or lien is initiated within three (3) months following the month of referral for inpatient admissions, or forty-five (45) days for emergency department outpatient visits, **CONTRACTOR** may request authorization from ZSFG Director of Patient Finance, Eligibility Manager or designee to work case for additional time. **CITY** reserves the right to

engage other consultants to perform a second review of returned accounts after they appear on the CONTRACTOR's Close report.

- I. To the extent that ZSFG is able to obtain offsets based on fixed fee rates for Medi-Cal enrollment and appeal services provided under this Agreement, CONTRACTOR shall provide requested information to ZSFG about work under this Agreement in order for CITY to seek such offsets without additional cost to CITY.
- J. CONTRACTOR represents the interests of individual patients during the eligibility and enrollment, appeal, and/or fair hearing process and typically acts pursuant to an Authorized Representative Form executed by the patient. However, in some situations, CONTRACTOR may pursue insurance-related efforts pursuant to the Conditions of Admission previously executed by the patient on admission to ZSFG at the time services were rendered. CONTRACTOR, may receive personally identifying information, protected health information or other private information directly from the patient.
- K. To the extent that CONTRACTOR engages in post-appeal work on Medi-Cal appeals to help complete the appeal and fair hearing process, such work is included in the compensation CONTRACTOR will receive, if any, for such work. No additional compensation is due for this kind of post appeal work.
- L. The Director of Utilization Review may refer select Treatment Authorization (TAR) denials, together with copies of the medical records, to CONTRACTOR for administrative appeals where justified and substantiated by medical records, regulation, law or where such justification is anticipated to be present. CONTRACTOR shall make the final determination if there is merit for an administrative appeal or further action. CONTRACTOR shall be responsible for initiating and for follow through of Treatment Authorization approvals appeals with ZSFG's Utilization Review Department.

### III. PERFORMANCE REQUIREMENTS – TARGETS (ELIGIBILITY)

- A. CONTRACTOR will be expected to maximize revenues for CITY as outlined by this Agreement. Collection targets are 1,900 days per year. One ED case is the equivalent of one day.
- B. It is understood that conditions beyond CONTRACTOR's control may impact this target, e.g., Welfare and Immigration reform, mandated Managed Care, declining inpatient census, timely referrals and/or changing State and Federal regulations, and that this target may be adjusted to reflect these occurrences. CONTRACTOR must meet performance targets, as mutually established. Expected performance will be set to no less than the preceding prior year's collection performance.

### IV. PERFORMANCE REQUIREMENTS – STAFFING RESOURCES (ELIGIBILITY)

CONTRACTOR shall provide services pursuant to the following requirements:

CONTRACTOR is relieved of any fixed or minimum staffing commitments included elsewhere in this Agreement pending mutual discussion of equitable adjustments to staffing based upon experience with the implementation of Healthcare Reform. CONTRACTOR's eligibility and enrollment staff assigned to perform work under this Agreement will be trained, bilingual, Eligibility workers, Spanish

speaking as priority and Chinese speaking preferred (but other languages are permitted as appropriate to the context).

- A. Eligibility worker minimum background requirements
  - i. Trained, bilingual, on-site eligibility workers including Spanish speaking as a priority and Chinese speaking on-site eligibility workers.
  - ii. The goal is to include eligibility worker with a minimum of one (1) to two (2) years public or teaching hospital or Department of Social Services experience.
  - iii. Additionally, personnel identified in (i) and (ii) above must have **three (3) or more years** of actual experience in qualifying patients for Medi-Cal in a public and/or teaching hospital setting.
  
- B. The eligibility workers will:
  - i. Screen 100% of all unsponsored patient admissions after City Eligibility Staff have interviewed and determined if Medi-Cal coverage or potential reimbursement sources exist.
  - ii. Secure authorization to represent the patient and complete Medi-Cal applications or applications for other programs such as Victims of Crime at the bedside or, if appropriate, at the patient's residence or wherever the patient may be located after discharge.
  - iii. Represent the patient in Fair Hearings or appeals proceedings, if initial applications are denied.
  - iv. Appeal Medi-Cal Field Office or other Pre-Treatment Authorization Program denials for care.
  - v. Investigate possible third party liability or Workers' Compensation reimbursement. File liens to protect the City and County's interest whenever appropriate or possible subject to limitations on liens and the authorization of BDR as outlined below.
  - vi. Referred accounts may be recalled or cancelled in writing after review and approval by ZSFG Eligibility Management.
  
- C. A supervisor with a minimum of **three (3) years** of eligibility worker experience and **three (3) or more years** of experience identifying and securing payment from programs such as Victims of Crime and/or Workers' Compensation and/or California Children's Services must be on-site at least **four (4) hours** per day to oversee the operations of the contract program, supervise on-site eligibility staff, coordinate with on-site lead worker, supervise field workers and be available to meet with City management and staff on a mutually agreed upon schedule.
  
- D. As needed **CONTRACTOR** will utilize "Field Workers" who will be dedicated to case management of homeless or transient patients for whom Medi-Cal applications are pending. The Field Worker will also assist patients with transportation to and from Appeals and Hearings, assist patients in obtaining necessary documents, and provide direct support of any means to help with the Medi-Cal application process.

**For cases assigned by the Director of Utilization Management, CONTRACTOR shall be responsible for assisting the ZSFG Utilization Review Department to pursue retroactive treatment authorization for service, and billing Medi-Cal for payment of retroactive treatment authorizations.**

- E. **CONTRACTOR** shall prepare weekly, monthly, quarterly and annual status, accounts receivable and other reports, as required by **CITY**.
- F. **CONTRACTOR** will provide on-site dial-up access of **CONTRACTOR's** systems, for **CONTRACTOR's** staff, for the status of cases referred during its regular business hours.
- G. **CONTRACTOR** must have on staff (or through formal agreements with consultants) individuals with appropriate expertise of a minimum of three (3) years, who have appeared on behalf of clients/patients before an Administrative Law Judge for the purpose of appealing denied Medi-Cal/Disability claims. **CONTRACTOR** must show that it has attorneys at law, admitted to the California Bar on staff or available to file legal action, if necessary, to secure benefits and reimbursement for their clients; however no such legal work is permitted under this Agreement absent authorization in advance from the San Francisco City Attorney and a separate engagement agreement for such work.
- Only when authorized by the San Francisco City Attorney and pursuant to a separate engagement agreement for each individual engagement, **CONTRACTOR** shall utilize duly licensed attorneys employed or retained by **CONTRACTOR** who will prepare and file legal actions, as necessary, and when justified, to obtain reimbursement for medical treatment.
- H. **CONTRACTOR** shall provide a qualified Project Manager, who will oversee the operations of the contract program, supervise assigned and on-site staff, and be available to meet with **CITY** management and staff on a mutually agreed upon schedule.
- I. Performance under this contract shall be overseen by a **CONTRACTOR's** Partner or Manager employed by **CONTRACTOR** and by DPH's Director of Patient Finance.
- J. **CITY** retains the right to request replacement of any of **CONTRACTOR's** staff assigned to perform work under this Agreement, and such replacement shall be effectuated by **CONTRACTOR** as soon as reasonable possible. In the event one of the **CONTRACTOR's** staff violates any state or federal privacy law or is otherwise excluded from handling state or federal patient issues, **CONTRACTOR** will immediately take steps to ensure that such staff does no further work under this Agreement. **CONTRACTOR** shall also immediately notify **CITY** of any such violation of privacy law, disbarment, or other exclusion of one of its staff who has provided services under this agreement.
- K. **CONTRACTOR's** on-site staff is expected to maintain regular office hours, providing coverage, as necessary, for lunch and rest breaks, dress and behave in a professional manner, respect the rights of patients, the public and **CITY** employees, and ensure patient confidentiality is maintained at all times. **CONTRACTOR** is responsible for managing its on-site staff to ensure professional work ethics are adhered to at all times.
- L. **CONTRACTOR** shall provide its on-site staff with all required office equipment, including telephones, computers, printers, fax machines, copy machines, desks, chairs and courier

services. CITY provides only limited office space and access to records and patients relating only to the cases referred.

M. **CONTRACTOR's** on-site employees and other staff who work with patients must provide proof of negative TB (tuberculosis) tests or have staff obtain and pass TB tests from CITY Employee Health prior to their first day of work, as well as any other immunizations required by the Department of Public Health. If testing is performed by CITY, **CONTRACTOR** shall be billed and pay CITY for related tests, x-rays, etc. Also on-site staff may be required to have periodic TB testing or other ZSFG, Health and Safety required immunizations, as well as attend all ZSFG mandatory training including training designed to protect ZSFG staff from infection exposure and injury.

N. **CONTRACTOR** must provide the following services at no additional charge:

- i. In-service training to Hospital staff on government program changes
- ii. Telephone and personal consultation with attorneys and healthcare experts for answers to any questions, which have an impact on CITY 's accounts receivables
- iii. Information systems technology to enhance or insure monitoring of Host's system for referred Medi-Cal cases, including support of programming.
- iv. Assistance with implementing major program changes related to the State/Federal Medi-Cal Medicaid program, including State and County programs.

#### V. PERFORMANCE REQUIREMENTS –MONITORING (ELIGIBILITY)

A. **CONTRACTOR's** designated management will meet with CITY management bi-monthly to provide oral and written assessments of **CONTRACTOR's** performance, including account audits and statistical analysis. These meetings also will provide the opportunity to address any concerns and/or project recommendations.

B. **CONTRACTOR** will provide CITY with a means of measuring its efforts through **CONTRACTOR's** management reports. In particular, **CONTRACTOR's** Status Report and case notes shall serve as an audit trail of all activity applied to each account and the Remittance Report shall serve as an audit for all payments received.

C. **CONTRACTOR** will provide CITY with a monthly Status Report reflecting those accounts which are still active and a monthly Close report reflecting accounts closed during the reporting month, which will include in alpha sequence, patient name, account number, referral date, account amount, latest activity and/or the reason for closing the account. **CONTRACTOR** also will provide weekly Acknowledgement Reports, verifying each referral, monthly Remittance Reports summarizing all payments and statistical analysis reports.

D. **CONTRACTOR** will provide three (3) hard copies and/or e-mail files of the following weekly or monthly reports, within fifteen (15) days from the close of the calendar month, that include the following data:

- i. Client Status Report - detailed listing and status/aging of outstanding accounts
- ii. Close Report - cases cancelled/closed and reason for closing
- iii. Acknowledgement Report – a weekly detailed listing of accounts referred to **CONTRACTOR** by CITY in the prior calendar month

- iv. Invoices and Remittance Reports (See Appendix A, Section I.2.E.)
- v. Other reports as required by CITY

E. In order to meet the revenue targets as indicated in Appendix A Section III.A regular reviews will be conducted. Review will include:

- i. Monthly revenue analysis
- ii. Monthly analysis of referral trends
- iii. Monthly review of DSS performance on pending cases
- iv. Quarterly review of overall performance
- v. Quarterly review of CITY 's DSS staff productivity
- vi. Meetings, as necessary, with local and State program representatives
- vii. Ongoing review and reporting to CITY and CITY Administration on CONTRACTOR's performance

#### VI. PERFORMANCE REQUIREMENTS (ADDITIONAL SERVICES)

All services provided under this Agreement are subject to the following additional requirements as applicable to the services being provided.

##### A. RAC Review and Appeal Process

In relation to RAC reviews and appeals referred to CONTRACTOR by ZSFG, CONTRACTOR shall provide services as follows:

- i. CONTRACTOR will manage the RAC review and appeal process for assigned accounts from request for intervention through resolution based upon the City's policy.
- ii. CONTRACTOR Nurse(s), Physician(s), and/or Coding professional(s) will perform audits on behalf of the City for assigned claims that the RAC has requested recoupment via the demand letter.
- iii. CONTRACTOR will prepare and submit any necessary correspondence including letters of appeal, grievance, and/or resubmission to request reconsideration of a claim. All applicable timely filing/appeal deadlines will be met.
- iv. CONTRACTOR will note account activity in the City's patient accounting software system.
- v. Where appropriate and as needed to obtain correct payment, CONTRACTOR will prepare accounts for Administrative Law Judge hearing. Any formal legal consultation or action shall be done in accordance with the requirements described above.
- vi. CONTRACTOR will provide a *Root Cause Analysis Report* broken down by RAC denial type, area of the hospital, and reason for denial on a mutually agreed upon reporting schedule.
- vii. City will provide CONTRACTOR remote access to information needed to determine correct expected payments and account status. These items include, but are not limited to, contracts, information systems, medical records and documents, payor correspondence, UB04s, itemized statements, and remittance advices.
- viii. In relation to any RAC referrals to CONTRACTOR, City agrees to provide all applicable correspondence and/or communication to CONTRACTOR in timely manner (usually within 48 hours of receipt by City). This ensures that CONTRACTOR has the requisite time to respond to the appropriate entity.

- ix. **CONTRACTOR** will utilize *RAC Appeal Status* reporting. This robust and interactive report allows for real time visibility of accounts throughout the appeals process. This will be provided on a mutually agreed upon reporting schedule.

**B. Denials Management Services**

**In relation to denials management services referred to CONTRACTOR by ZSFG – which are services for any claims denied** post-billing for Medicare, Medicaid Managed Care, Managed Care or Commercial acute or behavioral health accounts- **CONTRACTOR** shall provide services as follows:

- i. **CONTRACTOR** will manage the retrospective clinical denials management process for assigned accounts from request for intervention through resolution based upon **City's** policy.
- ii. **CONTRACTOR** will prepare and submit any necessary letters to request reconsideration of a claim by a payor:
- iii. **Where appropriate and as needed to obtain correct payment**, **CONTRACTOR** will prepare accounts for grievance based on the **City's** policy. However, any such work that requires formal legal consultation or action shall be done in accordance with the requirements described above.
- iv. **CONTRACTOR** Nurse(s), Physician(s), and/or Coding professional(s) will perform audits on behalf of the **City** for assigned claims that have paid less than expected for reasons believed to be clinically related, documenting support for billed charges, medical necessity, and/or appropriate levels of care in an effort to facilitate correct payment.
- v. **City** will provide **CONTRACTOR** access to information needed to determine correct expected payments and account status such as, but not limited to, contracts, information systems, medical records, UB04s, itemized statements, and remittance advices.
- vi. **CONTRACTOR** will use the **City's** systems to note account activity.
- vii. **CONTRACTOR** will utilize proprietary "Account Tracking" reporting. This robust and interactive report allows for real time visibility of accounts approaching timely filing deadlines.
- viii. **CONTRACTOR** will provide a *Root Cause Analysis Report* broken down by type of denial, area of the hospital, and reason for denial on a mutually agreed upon reporting schedule.

**VII. ADDITIONAL OBLIGATIONS OF CITY AND/OR CONTRACTOR**

In relation to all services provided under this Agreement, **City** and/or **CONTRACTOR** shall provide or perform the following:

A. Quarterly reconciliation of all cases referred by ZSFG Eligibility Manager, Director of Patient Finance or Director of Utilization Management or their designees utilizing Acknowledgements, Referral, Status and Close reports.

B. **CITY** will identify accounts referred to **CONTRACTOR** by adding an identifier to the account in the **CITY** Financial Management System (INVISION or other systems). For reconciliation purposes, a report of open/active referred accounts will be provided to **CONTRACTOR** on a monthly basis. **CITY** agrees to remove the aforementioned identifier within fifteen (15) business days of being notified by **CONTRACTOR** that the account has been closed by **CONTRACTOR**. Failure by **CITY** to remove this identifier will suspend the quarterly reconciliation of referred accounts.

C. Once a case referred to **CONTRACTOR** is certified for Medi-Cal or other program eligibility, **CONTRACTOR** will assist **CITY** to obtain all necessary Treatment Authorizations as requested by ZSFG.

D. **CONTRACTOR** will receive copies of all Medi-Cal remittance advices (R/A), program payment tapes or **CITY** payment transaction reports to determine when their accounts have been paid. **CONTRACTOR** shall be entitled to its fee for all payments received more than seven (7) business days after the initial referral of an account.

E. **CONTRACTOR** will submit an invoice for services bi-monthly within fifteen (15) days from the close of each bi-monthly period. The invoice must include the following:

- i. **CONTRACTOR's** name and mailing address
- ii. Current Contract Number
- iii. Date of Invoice
- iv. Invoice Number
- v. Period of Billing
- vi. Amount of ACTUAL Net Payments Received (prior to deductions of fees)
- vii. Fee due in accordance with the terms and conditions of this Agreement
- viii. A detail of accounts for which **CONTRACTOR** has perfected eligibility or obtained approval for payment. The detail must be separated by Payor Type and must include the following:
  - a) Patient Name
  - b) Patient Account Number
  - c) **CONTRACTOR's** account number
  - d) Dates of Service
  - e) Remittance or payment date
  - f) Payment amount
  - g) Balance due after payment, if any
  - l) MediCal Approval Date
  - h) Fees due to **CONTRACTOR**

F. **CITY** agrees that upon termination or cancellation of this Agreement, **CONTRACTOR** has the right of completion to final disposition on each case previously referred by **CITY**, including but not limited to, collection of liens, completion of eligibility, TAR and billing, appeals, and litigation, etc., and shall be entitled to its fees on all monies paid to **CITY**. However, on termination for cause for breach by **CONTRACTOR**, **CONTRACTOR** shall have no right to complete to final disposition such cases absent express written consent by **City** on a case by case assessment.

G. **CITY** reserves the right to audit each invoice for accuracy and verification of the cases that were referred to **CONTRACTOR**. Any disputed amounts will be adjusted from the invoice

and negotiated between the parties, and the undisputed portion shall be paid immediately. Any adjusted amounts will be included on a separate invoice when **CONTRACTOR** is successful in substantiating the disputed amounts. No dispute shall be raised if an account has been referred to **CONTRACTOR**, has not been recalled in writing within five (5) business days of the referral and payment was received more than seven (7) business days after the initial referral of an account.

H. **CONTRACTOR** will not be paid in advance of collections of funds except as expressly authorized for successful Medi-Cal enrollments as evidenced per the requirements of this Agreement. Should **CONTRACTOR** receive any payments directly, **CONTRACTOR** agrees to immediately submit full payment of all received amounts to **CITY** and **CONTRACTOR** can thereafter invoice **CITY** for any amounts owed under this Agreement.

I. **CONTRACTOR** will invoice their contingency fees based only on NET payments received by **CITY** (subject to any applicable caps listed in this Agreement) and will not be reimbursed for any expenses incurred in connection with their performance under this contract.

J. **CONTRACTOR** will pursue Fair Hearings and Appeals for eligibility, treatment authorization, and/or insurance denials on any and all appropriate cases within the statute of limitations as provided by regulation or law. No unique Departmental approval is required for these actions.

K. **CONTRACTOR** will coordinate with other **CITY** departments or agencies on referred patient cases to avoid overlap of patient cases already assigned to other agencies or **CITY** departments.

O. **OBJECTIVE:** The objective of this contract is to maximize revenues from all sources covered under this Agreement. Other objectives include:

- i. Provide assistance to **CITY** in gathering meaningful data reflecting patient financial mix; estimating future revenues from expanded eligibility programs; developing statistical data needed for government program reporting requirements and analyzing program impacts on staffing.
- ii. Increase staff productivity and knowledge through training and support.

## **VIII. LEGAL LIMITATIONS**

### **A. Express limitation on legal work by **CONTRACTOR**; administrative proceedings permitted**

**CONTRACTOR's** work in the above contexts potentially involves different types of advocacy, including but not limited to working with third party payors/insurers, participating in administrative processes established by law, and becoming a party to formal proceedings in state or federal courts of law. **CONTRACTOR** has been advised and understands that representation of the City, ZSFG, and/or DPH in a context that requires legal expertise is controlled by the San Francisco City Charter and other City requirements. **In no event is **CONTRACTOR** permitted to file or pursue with any state, federal, or other court of law any formal litigation, writ, probate petition or related work, or appeal pursuant to this Agreement. Additionally, any other context in relation to which **CONTRACTOR** utilizes legal counsel to take action on behalf of patients, the City, ZSFG, or any City department, employee, or agent is**

prohibited. Similarly, CONTRACTOR shall not participate in any mediation or arbitration on behalf of anyone pursuant to this Agreement where representation by an attorney or substantial work by an attorney is included. Any type of formal legal representation outlined in this paragraph may only be done with (1) the advance written authorization of the San Francisco City Attorney's Office and (2) execution of a separate engagement agreement prior to commencement of the work.

To the extent that CONTRACTOR participates in administrative processes, including those involving an Administrative Law Judge, or other processes (such as filing hospital liens) that may have a legal aspect, CONTRACTOR is permitted to pursue those options under this Agreement without prior written authorization of the San Francisco City Attorney and separate engagement agreement so long as CONTRACTOR does not: use an attorney to prepare or file any paperwork/pleadings/briefs; and does not use an attorney to make arguments, contact parties, or otherwise act on behalf of the patient and/or the City or any City department, employee, or agent. Specific details regarding these limitations are further outlined below.

To the extent that CONTRACTOR's non-legal team needs to consult CONTRACTOR's attorneys for a simple question and the non-legal team does not otherwise utilize CONTRACTOR's attorneys to handle a matter, such communication is permitted under this Section. Similarly, to the extent that on occasion CONTRACTOR utilizes one of its attorneys solely for the purpose of contacting an insurance company, or their counsel, to facilitate coverage by the insurer and CONTRACTOR's attorney does not otherwise serve as legal representation for CONTRACTOR during the engagement, such communications prior to litigation and arbitration processes are permitted under this Section.

To the extent that CONTRACTOR's work on a specific case requires ongoing consultation with its own legal counsel and/or participation in formal legal proceedings outside United States jurisdictions, CONTRACTOR shall treat such work as being subject to the limitations outlined in this Section and obtain prior written authorization of the San Francisco City Attorney's Office and a separate engagement agreement.

**B. Preparation and filing of liens permitted as authorized by BDR or other City department**

To the extent that CONTRACTOR wishes to assert or file any lien (including but not limited to a hospital lien) to secure the right of ZSFG or any other City department to recover amounts due, CONTRACTOR has been advised and understands that such liens are subject to other City processes, such as actions by BDR. CONTRACTOR has also been advised that hospital liens are subject to and governed by Article 3 of the San Francisco Health Code, including Sections 124 through 124.5. CONTRACTOR agrees that any such liens shall only be filed and pursued with the express permission of BDR or any other City department that has authorization to control such processes. BDR and CONTRACTOR shall enter into a written understanding of the processes associated with the filing and recovery of hospital liens, and CONTRACTOR's work in relation to such liens shall at all times comply with those agreed-upon processes.

**C. Non-participation in proceedings against the City**

If at any point during its assessment process and/or representation of a particular patient CONTRACTOR determines that the patient may have a claim or other legal remedy against the City of San Francisco or any City department, employee, or agent (each a "City-related Claim"), CONTRACTOR shall immediately stop work on such representation and advise the patient it cannot proceed. In no circumstance may CONTRACTOR assist any patient or other individual

pursue any City-related Claim under this Agreement or in relation to any other work it performs for patients under its other work outside of this engagement. The limitations in this paragraph do not apply to efforts by **CONTRACTOR** to pursue Medi-Cal enrollment or appeals/fair hearings for Medi-Cal coverage under this Agreement, which are expressly permitted notwithstanding any role that any City Human Services Agency employee plays in relation to the Medi-Cal enrollment and appeal process.

Appendix B  
Calculation of Charges

1. Method of Payment

A. Contractor shall submit monthly invoices in the format agreed upon in the Original Agreement, by the fifteenth (15th) working day of each month for reimbursement of the actual costs for Services of the immediately preceding month. All costs associated with the Services shall be reported on the invoice each month. All costs incurred under this Agreement shall be due and payable only after Services have been rendered and in no case in advance of such Services.

2. Program Budgets and Final Invoice

A. Program Budgets are listed below and are attached hereto.

Budget Summary

Appendix B-1 – Fees (Rates) Schedule

B. Contractor understands that, of the maximum dollar obligation listed in section 3.3.1 of this Agreement, \$1,255,088 is included as a contingency amount and is neither to be used in Program Budgets attached to this Appendix, or available to Contractor without a modification to this Agreement executed in the same manner as this Agreement or a revision to the Program Budgets of Appendix B, which has been approved by Contract Administrator. Contractor further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable City and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by Controller. Contractor agrees to fully comply with these laws, regulations, and policies/procedures.

January 1, 2014 – December 31, 2014	\$1,500,000
January 1, 2015 – December 31, 2015	\$1,500,000
January 1, 2016 – December 31, 2016	\$1,500,000
January 1, 2017 – December 31, 2017	\$1,500,000
January 1, 2018 – December 31, 2018	\$2,500,000
January 1, 2019 – December 31, 2019	\$2,575,000
January 1, 2020 – December 31, 2020	\$2,652,250
January 1, 2021 – December 31, 2021	\$2,731,818
<hr/>	
Sub-total:	\$16,459,068
Contingency 2014-2017	\$300,390
Contingency 2018-2021	\$1,255,088
<hr/>	
<b>TOTAL: January 1, 2014 – December 31, 2021</b>	<b>\$18,014,546</b>

C. Contractor agrees to comply with its Program Budgets of Appendix B in the provision of Services. Changes to the budget that do not increase or reduce the maximum dollar obligation of the City

are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. Contractor agrees to comply fully with that policy/procedure.

D. A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of the Agreement, and shall include only those costs incurred during the referenced period of performance. If costs are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to City.

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

## APPENDIX B-1

### Rate Schedule

**General Note** - The impact of Healthcare Reform on hospital's reimbursement, changes to eligibility processing/qualifications, and potential changes to referrals to Health Advocates (HA) are not presently known. HA is inviting and encouraging discussion with the Department of Public Health (DPH) regarding appropriate refinements to services and fees provided under this agreement as new information becomes available.

#### Section I - COMPREHENSIVE FIXED FEE PER DISCHARGE

YEAR Referrals Date	A1	A2	B1	B2	C1	C2	D1	D2
	Acute Screening & Applications	Outpatient ED & Acute Fair Hearing & Appeals	Psych Screening & Applications	Psych Fair Hearing & Appeals	Acute Pending Applications (non-HPE) Follow-up	Fair Hearing Follow-up on C1 Accounts	HPE Intake (optional)	Outpatient ED Screenings, Applications & Follow-up
1/1/18 - 12/31/18	\$1,971	\$2,546	\$2,546	\$2,895	\$1,391	\$1,739	\$98	\$1,391
1/1/19 - 12/31/19	\$1,971	\$2,546	\$2,546	\$2,895	\$1,391	\$1,739	\$98	\$1,391
1/1/20 - 12/31/20	\$2,036	\$2,623	\$2,623	\$2,983	\$1,433	\$1,791	\$101	\$1,433
1/1/21 - 12/31/21	\$2,091	\$2,701	\$2,701	\$3,073	\$1,476	\$1,845	\$104	\$1,476

#### A. Scope of Service for fixed fee rate

- A.1 - Acute Medical – Screen patients, Medi-Cal application filed and approve.
- A.2 - Acute Inpatient and Outpatient Medical - Screen patients, MediCal application filed, approved through fair hearing /appeals, and claims submission to MediCal fee-for-service (FFS) program.
- B.1 Acute Psych – Screen patients, Medi-Cal application filed and approved.
- B.2 Acute Psych - Screen patients, MediCal application filed, approved through fair hearing /appeals. HA will refer to Behavioral Health Services (BHS) to submit claims for payment to State Dept of Mental Health.
- C1. Acute Pending Application - Referred Acute inpatient cases with pending MediCal applications for follow-up by

HA to obtain MediCal approval.

- C2. Referred denied MediCal applications for appeals follow-up. HA will bill Acute Medical claims for payment to MediCal FFS program. Patients approved for managed Care MediCal, SFGH will bill claims for payment.
- D1. Hospital Presumptive Eligibility (HPE) Intake (optional) – screening and completion of Hospital Presumptive Eligibility application intake for submission to the State by DPH staff. This service does not include applications that are denied or rejected by the State. A minimum of (5) referrals per day per FTE is required.
- D2. Outpatient ED Screenings, Applications & Follow-up - Screening of referred outpatient cases, submission of MediCal applications, and follow up on cases with pending MediCal applications.

B. These fixed fee rates are based upon MediCal approvals (not referrals) and apply as defined in Sections D and E immediately below. This is a comprehensive fee that includes all screening, applications, follow-up on pending applications, submission of acute medical claims to MediCal or other payers, and Fair Hearings and Appeals as requested in Section C - "Services Solicited" of the RFP. HA is not responsible for billing Psych accounts and will refer these accounts to BHS to submit claims for payment to State Department of Mental Health.

C. Payment of fixed fee rates for inpatient MediCal FFS accounts billed by HA is contingent on increased reimbursement to DPH as a result of HA's eligibility efforts. If MediCal denies the claim in full or in part for reasons unrelated to HA's eligibility efforts, HA shall still be compensated for their efforts. For all other account types, e.g., inpatient accounts not billed by HA, MediCal Managed Care accounts where DPH has received capitation, outpatient ED, referrals for post-acute care coverage, and acute mental health referrals, payment of fixed fee rate is based on successful MediCal approval only.

D. HA shall be compensated at the highest applicable rate, based on the level of service required to obtain MediCal approval, which may be different from the level of effort anticipated at the time of referral.

E. In instances where Medi-Cal approval which is achieved through the Fair Hearing/Appeals process results in MediCal coverage for multiple accounts referred to HA, HA will be compensated at the applicable Fair Hearing rate (A2, B2 or C2) for each referral.

## Section II – Contingency-based Fees

### Contingency Fees for Third Party Payer (includes Insurance, COBRA, TPL, Workers' Comp) accounts

Third party referral for outpatient or outpatient ER pre-legal cases will be at 16% of all sums collected

Third party referral for inpatient pre-legal cases will be at 20% with a fee cap of \$100,000 per case (includes liens filed) and,

20% of all sums collected with a fee cap of \$500,000 on referred cases paid as an outcome of litigation including arbitration, Administrative Law Judge, or judicial proceedings. City/County will reimburse preapproved administrative costs incurred by HA to reinstate or establish COBRA or Insurance Exchange benefits.

### Contingency fees for third party

HA is relieved of any fixed or minimum staffing commitments included elsewhere in this Agreement pending mutual discussion of equitable adjustments to staffing based upon experience with the implementation of Healthcare Reform.

## Section III Rates for Additional Services

### A. RAC Review and Appeals

- 1st and 2nd level (Initial Review, Reconsideration Letter, and Appeal): \$400/account
- 3rd Level Appeal, Administrative Law Judge (ALJ): + \$350 /account
- 4th Level Appeal, Departmental Appeal Board (DAB): + \$ 195/account
- 5th Level Appeal, Preparation for District Court: + \$ 195/account

### B. Non-RAC Denials Management Services

- Twenty five percent (25%) of all sums recovered

### C. Clinical Authorization Denials: Pre-Billing

- \$75 per approved day for accounts reimbursed on a per diem basis
- \$400 per account for accounts reimbursed on a DRG basis

### D. Utilization Management/Process Improvement Consulting and Education or Special Projects

- RN UM Consultant/Educator \$115/hour
- Consulting/Educating Project Director \$175/hour

### Travel

- All travel will be preapproved and will be paid by City for professional consulting service only.

### Special Considerations

- Some items listed in Appendix A-1 and B-1 may require the use of subcontractor(s), at bidders discretion.



## San Francisco Department of Public Health

## Business Associate Agreement

This Business Associate Agreement (“BAA”) supplements and is made a part of the contract by and between the City and County of San Francisco, the Covered Entity (“CE”), and Contractor, the Business Associate (“BA”) (the “Agreement”). To the extent that the terms of the Agreement are inconsistent with the terms of this BAA, the terms of this BAA shall control.

**RECITALS**

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

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

**1. Definitions.**

- a. **Breach** means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402], as well as California Civil Code Sections 1798.29 and 1798.82.
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.



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

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

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

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

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

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

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

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

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

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



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

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

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

## 2. Obligations of Business Associate.

a. **Attestations.** Except when CE's data privacy officer exempts BA in writing, the BA shall complete the following forms, attached and incorporated by reference as though fully set forth herein, SFDPH Attestations for Privacy (Attachment 1) and Data Security (Attachment 2) within sixty (60) calendar days from the execution of the Agreement. If CE makes substantial changes to any of these forms during the term of the Agreement, the BA will be required to complete CE's updated forms within sixty (60) calendar days from the date that CE provides BA with written notice of such changes. BA shall retain such records for a period of seven years after the Agreement terminates and shall make all such records available to CE within 15 calendar days of a written request by CE.

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

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

d. **Permitted Disclosures.** BA shall disclose Protected Information only for the purpose of performing BA's obligations for, or on behalf of, the City and as permitted or required under the Agreement and BAA, or as required by law. BA shall not disclose Protected Information in any manner that would constitute a violation of the



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Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information as necessary (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes relating to the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches, security incidents or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2 (n) of this BAA, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)]. BA may disclose PHI to a BA that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit Protected Information on its behalf, if the BA obtains satisfactory assurances, in accordance with 45 C.F.R. Section 164.504(e)(1), that the subcontractor will appropriately safeguard the information [45 C.F.R. Section 164.502(e)(1)(ii)].

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

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

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

**h. Accounting of Disclosures.** Within ten (10) calendar days of a request by CE for an accounting of disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents and subcontractors shall make available to CE the information required to



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provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935 (c) as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents and subcontractors for at least seven (7) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure [45 C.F.R. 164.528(b)(2)]. If an individual or an individual's representative submits a request for an accounting directly to BA or its agents or subcontractors, BA shall forward the request to CE in writing within five (5) calendar days.

i. **Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within (5) days of request by CE to enable CE to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains Protected Information in electronic format, BA shall provide such information in electronic format as necessary to enable CE to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. 164.524.

j. **Amendment of Protected Information.** Within ten (10) days of a request by CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA and its agents and subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment or other documentation to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

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

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



## San Francisco Department of Public Health

## Business Associate Agreement

what constitutes "minimum necessary" to accomplish the intended purpose in accordance with HIPAA and HIPAA Regulations.

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

**n. Notification of Breach.** BA shall notify CE within 5 calendar days of any breach of Protected Information; any use or disclosure of Protected Information not permitted by the BAA; any Security Incident (except as otherwise provided below) related to Protected Information, and any use or disclosure of data in violation of any applicable federal or state laws by BA or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BA to have been, accessed, acquired, used, or disclosed, as well as any other available information that CE is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BA shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 42 U.S.C. Section 17932; 45 C.F.R. 164.410; 45 C.F.R. Section 164.504(e)(2)(ii)(C) 45 C.F.R. Section 164.308(b)]

**o. Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(iii), if the BA knows of a pattern of activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the contractual arrangement with its subcontractor or agent, if feasible. BA shall provide written notice to CE of any pattern of activity or practice of a subcontractor or agent that BA believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Contract or this BAA within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

### 3. Termination.

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

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



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

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

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

4. **Amendment to Comply with Law.**

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

5. **Reimbursement for Fines or Penalties.**

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

APPENDIX E



San Francisco Department of Public Health  
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Attachment 2 – SFDPH Data Security Attestation, version 06-07-2017

Office of Compliance and Privacy Affairs  
San Francisco Department of Public Health  
101 Grove Street, Room 330, San Francisco, CA 94102  
Email: [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org)  
Hotline (Toll-Free): 1-855-729-6040

Contractor Name:	Health Advocates, LLC.	Contractor City Vendor ID	1000002744
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**PRIVACY ATTESTATION**

**INSTRUCTIONS:** Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by SFPDH must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by SFPDH.

**Exceptions:** If you believe that a requirement is Not Applicable to you, see instructions below in Section IV on how to request clarification or obtain an exception.

**I. All Contractors.**

DOES YOUR ORGANIZATION...		Yes	No*
A	Have formal Privacy Policies that comply with the Health Insurance Portability and Accountability Act (HIPAA)?		
B	Have a Privacy Officer or other individual designated as the person in charge of investigating privacy breaches or related incidents?		
	If yes: Name & Title: _____ Phone #: _____ Email: _____		
C	Require health information Privacy Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFPDH privacy training materials are available for use; contact OCPA at 1-855-729-6040.]		
D	Have proof that employees have signed a form upon hire and annually thereafter, with their name and the date, acknowledging that they have received health information privacy training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]		
E	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access SFPDH's health information?		
F	Assure that staff who create, or transfer health information (via laptop, USB/thumb-drive, handheld), have prior supervisorial authorization to do so AND that health information is only transferred or created on encrypted devices approved by SFPDH Information Security staff?		

**II. Contractors who serve patients/clients and have access to SFPDH PHI, must also complete this section.**

If Applicable: DOES YOUR ORGANIZATION...		Yes	No*
G	Have (or will have if/when applicable) evidence that SFPDH Service Desk (628-206-SERV) was notified to de-provision employees who have access to SFPDH health information record systems within 2 business days for regular terminations and within 24 hours for terminations due to cause?		
H	Have evidence in each patient's / client's chart or electronic file that a Privacy Notice that meets HIPAA regulations was provided in the patient's / client's preferred language? (English, Cantonese, Vietnamese, Tagalog, Spanish, Russian forms may be required and are available from SFPDH.)		
I	Visibly post the Summary of the Notice of Privacy Practices in all six languages in common patient areas of your treatment facility?		
J	Document each disclosure of a patient's/client's health information for purposes other than treatment, payment, or operations?		
K	When required by law, have proof that signed authorization for disclosure forms (that meet the requirements of the HIPAA Privacy Rule) are obtained PRIOR to releasing a patient's/client's health information?		

**III. ATTEST:** Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

ATTESTED by Privacy Officer or designated person	Name: (print)	Signature	Date
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**IV. \*EXCEPTIONS:** If you have answered "NO" to any question or believe a question is Not Applicable, please contact OCPA at 1-855-729-6040 or [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org) for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below.

EXCEPTION(S) APPROVED by OCPA	Name (print)	Signature	Date
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Contractor Name:	<b>Health Advocates, LLC.</b>	Contractor City Vendor ID	<b>1000002744</b>
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**DATA SECURITY ATTESTATION**

**INSTRUCTIONS:** Contractors and Partners who receive or have access to health or medical information or electronic health record systems maintained by SFPDH must complete this form. Retain completed Attestations in your files for a period of 7 years. Be prepared to submit completed attestations, along with evidence related to the following items, if requested to do so by SFPDH.

**Exceptions:** If you believe that a requirement is Not Applicable to you, see instructions in Section III below on how to request clarification or obtain an exception.

**I. All Contractors.**

DOES YOUR ORGANIZATION...		Yes	No*
A	Conduct assessments/audits of your data security safeguards to demonstrate and document compliance with your security policies and the requirements of HIPAA/HITECH at least every two years? [Retain documentation for a period of 7 years]		
B	Use findings from the assessments/audits to identify and mitigate known risks into documented remediation plans?		
	Date of last Data Security Risk Assessment/Audit:		
	Name of firm or person(s) who performed the Assessment/Audit and/or authored the final report:		
C	Have a formal Data Security Awareness Program?		
D	Have formal Data Security Policies and Procedures to detect, contain, and correct security violations that comply with the Health Insurance Portability and Accountability Act (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH)?		
E	Have a Data Security Officer or other individual designated as the person in charge of ensuring the security of confidential information?		
	If yes: Name & Title: Phone #: Email:		
F	Require Data Security Training upon hire and annually thereafter for all employees who have access to health information? [Retain documentation of trainings for a period of 7 years.] [SFPDH data security training materials are available for use; contact OCPA at 1-855-729-6040.]		
G	Have proof that employees have signed a form upon hire and annually, or regularly, thereafter, with their name and the date, acknowledging that they have received data security training? [Retain documentation of acknowledgement of trainings for a period of 7 years.]		
H	Have (or will have if/when applicable) Business Associate Agreements with subcontractors who create, receive, maintain, transmit, or access SFPDH's health information?		
I	Have (or will have if/when applicable) a diagram of how SFPDH data flows between your organization and subcontractors or vendors (including named users, access methods, on-premise data hosts, processing systems, etc.)?		

**II. ATTEST:** Under penalty of perjury, I hereby attest that to the best of my knowledge the information herein is true and correct and that I have authority to sign on behalf of and bind Contractor listed above.

ATTESTED by Data Security Officer or designated person	Name: (print)	Signature	Date
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**III. \*EXCEPTIONS:** If you have answered "NO" to any question or believe a question is Not Applicable, please contact OCPA at 1-855-729-6040 or [compliance.privacy@sfdph.org](mailto:compliance.privacy@sfdph.org) for a consultation. All "No" or "N/A" answers must be reviewed and approved by OCPA below.

EXCEPTION(S) APPROVED by OCPA	Name (print)	Signature	Date
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**ACORD**

**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
8/30/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSUREN(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> USI Insurance Services LLC-CL Lic # 0G11911 21700 Oxnard Street, Suite 1200 Woodland Hills, CA 91367	CONTACT NAME: Leslie Martin PHONE (A/C No. Ext): 818 251-3063 FAX (A/C No.): 818-362-8890 EMAIL ADDRESS: Leslie.Martin@usi.com													
	<table border="1"> <tr> <th>INSURER(S) APPROVED COVERAGE</th> <th>NAIC #</th> </tr> <tr> <td>INSURER A: Continental Insurance Company</td> <td>95289</td> </tr> <tr> <td>INSURER B: Continental Casualty Company</td> <td>29443</td> </tr> <tr> <td>INSURER C: Redwood Fire and Casualty Insur</td> <td>11673</td> </tr> <tr> <td>INSURER D: Evanston Insurance Company</td> <td>35378</td> </tr> <tr> <td>INSURER E: National Union Fire Ins Pittsbu</td> <td>19445</td> </tr> <tr> <td>INSURER F: Federal Insurance Company</td> <td></td> </tr> </table>	INSURER(S) APPROVED COVERAGE	NAIC #	INSURER A: Continental Insurance Company	95289	INSURER B: Continental Casualty Company	29443	INSURER C: Redwood Fire and Casualty Insur	11673	INSURER D: Evanston Insurance Company	35378	INSURER E: National Union Fire Ins Pittsbu	19445	INSURER F: Federal Insurance Company
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INSURER F: Federal Insurance Company														
<b>INSURED</b> Health Advocates LLC & Leibovic Law Group 21540 Plummer Street, Unit B Chatsworth, CA 91311														

COVERAGES      CERTIFICATE NUMBER:      REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

LINE	TYPE OF INSURANCE	ADDITIONAL COVERED PERIOD	POLICY NUMBER	START DATE (MM/DD/YYYY)	EXPIRY DATE (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input checked="" type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:	X	4016850299	09/01/2017	09/01/2018	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$500,000 MED EXP (Any one person) \$15,000 PERSONAL & ADY INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPROP AGG \$2,000,000 \$
B	AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	4016850271	09/01/2017	09/01/2018	COMBINED SINGLE LIMIT (Per occurrence) \$1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per occurrence) \$ Comp/Coil \$Ded: \$2,000
E	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$0		0011553497	09/01/2017	09/01/2018	EACH OCCURRENCE \$15,000,000 AGGREGATE \$15,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS LIABILITY ANY EMPLOYERS OPERATIONS EXCLUSIVE OFFICERS EXCLUDED? Y/N (If yes, describe under DESCRIPTION OF OPERATIONS below) N N/A		HEWC07071	09/01/2017	09/01/2018	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTHER EL EACH ACCIDENT \$1,000,000 EL DISEASE - EA EMPLOYEE \$1,000,000 EL DISEASE - POLICY LIMIT \$1,000,000
D	Professional Liab Claims Made Form		LA009073	09/01/2017	09/01/2018	\$3,000,000 Each Claim \$3,000,000 Aggregate \$250,000 Deductible

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
 Certificate Holder is named as an additional insured as respects to the business operations of the named insured. Blanket Additional Insured applies as per written contract or written agreement, per attached Additional Insured - Your Work Endorsement form #CNA750760X(01/15). Additional Insured also applies to Auto Policies per Auto Liability Extended Coverage Endorsement - EA Plus form #SCA23500D (Ed.10/11).

(See Attached Descriptions)

<b>CERTIFICATE HOLDER</b> San Francisco General Hospital 1001 Potrero Ave San Francisco, CA 94110	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Natalie B...</i>
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## DESCRIPTIONS (Continued from Page 1)

**E. Cyber Policy: #018573446/Carrier: National Union Fire Ins. Co./Policy Dates: 09-01-17 to 09-01-18**

**Media Content: \$5,000,000/Retention: \$100,000/Retro Date: 6-3-10/Continuity Date: 9-1-13**

**Security and Privacy Liability: \$5,000,000/Retention: \$100,000/Retro Date: 6-3-10/Continuity Date: 9-1-13**

**Regulatory Action Sublimit of Liability: \$5,000,000/Retention: \$100,000/Retro Date: 6-3-10/**

**Continuity Date: 9-1-13**

**Network Interruption: \$5,000,000/Retention: \$100,000/Waiting Hours Period: 12 Hours**

**Event Management: \$500,000/Retention: \$100,000/Continuity Date: 9-1-13**

**Cyber Extortion: \$5,000,000/Retention: \$100,000/Continuity Date: 9-1-13**

**Privacy Event Services Coverage 1,000,000 records with 100 minimum persons affected.**

**F. Crime Policy: #82368845/Carrier: Federal Ins. Co. - Chubb/Policy Dates: 9-1-17 to 9-1-18**

**Client Coverage: \$1,000,000/Retention: \$10,000**

Additional insured status is valid only if there is a written contract between the insured and the certificate holder, and such contract is in effect.



CNA PARAMOUNT

**Additional Insured - Your Work Endorsement**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

It is understood and agreed that:

I. WHO IS AN INSURED is amended to include as an Insured any person or organization whom a Named Insured is required to add as an additional insured on this Coverage Part under a written contract or written agreement, provided such contract or agreement:

(1) is currently in effect or becomes effective during the term of this Coverage Part; and

(2) was executed prior to:

(a) the bodily injury or property damage; or

(b) the offense that caused the personal and advertising injury,

for which such additional insured seeks coverage.

II. The insurance provided to such additional insured is limited as follows:

a. The insurer will not provide such additional insured:

(1) coverage any broader than the narrowest coverage:

(a) required by such contract or agreement; or

(b) afforded to the Named Insured under this Coverage Part; or

(c) described in paragraph b. below; or

(2) a higher limit of insurance than the lesser of the amount:

(a) required by such contract or agreement; or

(b) afforded to the Named Insured under this Coverage Part

Any coverage granted by this endorsement shall apply solely to the extent permissible by law.

b. Such additional insured is an Insured solely for bodily injury, property damage or personal and advertising injury for which such additional insured is liable because of the Named Insured's acts or omissions. The coverage granted by this paragraph does not apply to any person or organization:

(1) for bodily injury, property damage, or personal and advertising injury arising out of the rendering or failure to render any professional services;

(2) who is specifically scheduled as an additional insured on another endorsement to this Coverage Part; nor

(3) for bodily injury or property damage included within the products-completed operations hazard except to the extent all of the following apply:

a. this Coverage Part provides such coverage;

b. the written contract or agreement described in the opening paragraph of this endorsement requires the Named Insured to provide the additional insured such coverage; and

c. the bodily injury or property damage results from your work that is the subject of the written contract or agreement, and such work has not been excluded by endorsement to this Coverage Part.

**III. ADDITIONAL INSURED - PRIMARY AND NON-CONTRIBUTORY TO ADDITIONAL INSURED'S INSURANCE**

The Other Insurance Condition in the COMMERCIAL GENERAL LIABILITY CONDITIONS Section is amended to add the following paragraph:

CNA7507B0X (1-15)

Page 1 of 2

The Continental Insurance Co.

Insured Name: HEALTH ADVOCATES, LLC.

Policy No: 4016880268

Endorsement No: B

Effective Date: 09/01/2016



CNA PARAMOUNT

**Additional Insured - Your Work Endorsement**

If the Named Insured has agreed in writing in a contract or agreement that this insurance is primary and non-contributory relative to an additional insured's own insurance, then this insurance is primary, and the Insurer will not seek contribution from that other insurance. Otherwise, and notwithstanding anything to the contrary elsewhere in this Condition, the insurance provided to such person or organization is excess of any other insurance available to such person or organization. For the purpose of this Provision, the additional insured's own insurance means insurance on which the additional insured is a named insured.

All other terms and conditions of the Policy remain unchanged.

This endorsement, which forms a part of and is for attachment to the Policy issued by the designated Insurers, takes effect on the effective date of said Policy at the hour stated in said Policy, unless another effective date is shown below, and expires concurrently with said Policy.

CNA75075XX (1-15)

Page 2 of 2

The Continental Insurance Co.

Insured Name: HEALTH ADVOCATES, LLC.

Policy No: 4016880268

Endorsement No: 8

Effective Date: 09/01/2016

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- (1) Owned by an "insured"; and
- (2) In or on the covered "auto."

This coverage applies only in the event of a total theft of your covered "auto."

This insurance is excess over any other collectible insurance and no deductible applies.

**F. Rental Reimbursement**

The following is added to Section III, Paragraph A.4.:

d. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto." Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto." No deductibles apply to this coverage.

- 1. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:

- (a) The number of days reasonably required to repair or replace the covered "auto"; or,
- (b) 15 days.

- 2. Our payment is limited to the lesser of the following amounts:

- (a) Necessary and actual expenses incurred; or,
- (b) \$25 per day subject to a maximum of \$375.

- 3. This coverage does not apply while there are spars or reserve "autos" available to you for your operations.

- 4. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the Physical Damage Coverage Extension.

**G. Hired "Autos"**

The following is added to Section III, Paragraph A.:

**5. Hired "Autos"**

If Physical Damage coverage is provided under this policy, and such coverage does not extend to Hired Autos, then Physical Damage coverage is extended to:

- a. Any covered "auto" you lease, hire, rent or borrow without a driver; and
- b. Any covered "auto" hired or rented by your "employee" without a driver, under a contract

in that individual "employee's" name, with your permission, while performing duties related to the conduct of your business.

- c. The most we will pay for any one "accident" or "loss" is the actual cash value, cost of repair, cost of replacement or \$75,000 whichever is less minus a \$500 deductible for each covered auto. No deductible applies to "loss" caused by fire or lightning.

- d. The physical damage coverage as is provided by this provision will be limited to the types of physical damage coverage(s) provided on your owned "autos."

- e. Such physical damage coverage for hired "autos" will:

- (1) Include loss of use, provided it is the consequence of an "accident" for which the Named Insured is legally liable, and as a result of which a monetary loss is sustained by the leasing or rental concern.
- (2) Such coverage as is provided by this provision G.5.(1) will be subject to a limit of \$750 per "accident."

**H. Airbag Coverage**

The following is added to Section III, Paragraph B.3.

The accidental discharge of an airbag shall not be considered mechanical breakdown.

**I. Electronic Equipment**

Section III, Paragraphs B.4.c and B.4.d. are deleted and replaced by the following:

- c. Physical Damage Coverage on a covered "auto" also applies to "loss" to any permanently installed electronic equipment including its antennas and other accessories
- d. A \$100 per occurrence deductible applies to the coverage provided by this provision.

**J. Diminution in Value**

The following is added to Section III, Paragraph B.6.

Subject to the following, the "diminution in value" exclusion does not apply to:

- a. Any covered "auto" of the private passenger type you lease, hire, rent or borrow, without a driver for a period of 30 days or less, while performing duties related to the conduct of your business; and
- b. Any covered "auto" of the private passenger type hired or rented by your "employee" without a driver for a period of 30 days or less.



City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685

Agreement between the City and County of San Francisco and  
Health Advocates, LLC

This Agreement is made this 1<sup>st</sup> day of January 2014, in the City and County of San Francisco, State of California, by and between: **Health Advocates, LLC, 14721 Califa Street, Sherman Oaks, CA 91411** hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing."

Recitals

WHEREAS, the Department of Public Health, Community Health Network, ("Department") wishes to Uncompensated Care Reimbursement Recovery Services; and,

WHEREAS, a Request for Proposal ("RFP") was issued on November 28, 2012, and City selected Contractor as the highest qualified scorer 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 Agreement was obtained when the Civil Service Commission approved Contract number 4119-09/10 on December 16, 2013;

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 January 1, 2014 to December 31, 2017.

3. **Effective Date of Agreement.** This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

4. **Services Contractor Agrees to Perform.** The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," 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 15th day of each month for work, as set forth in Section 4 of this Agreement, that the **Director of the Department of Public Health**, in his or her sole discretion, concludes has been performed as of the 30th day of the immediately preceding month. In no event shall the amount of this Agreement exceed **Six Million Three Hundred Thousand Three Hundred Ninety Dollars (\$6,300,390)**. 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 **Department of Public Health** 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 Controller 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 Controller, and must include a unique invoice number and must conform to Appendix F. 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. Disallowance.** If Contractor claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement. By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

**10. Taxes.** 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. 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.

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

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.

#### **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.     | 37. Drug-free workplace policy,       |
| 10. Taxes   | 53. Compliance with laws              |
| 15. Insurance                                       | 55. Supervision of minors             |
| 24. Proprietary or confidential information of City | 57. Protection of private information |
| 30. Assignment                                      | 58. Graffiti removal                  |
- And, item 1 of Appendix D attached to this Agreement

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.                 | 26. Ownership of Results                                |
| 9. Disallowance   | 27. Works for Hire                                      |
| 10. Taxes   | 28. Audit and Inspection of Records                     |
| 11. Payment does not imply acceptance of work                   | 48. Modification of Agreement.                          |
| 13. Responsibility for equipment                                | 49. Administrative Remedy for Agreement Interpretation. |
| 14. Independent Contractor; Payment of Taxes and Other Expenses | 50. Agreement Made in California; Venue                 |
| 15. Insurance   | 51. Construction  |
| 16. Indemnification   | 52. Entire Agreement                                    |
| 17. Incidental and Consequential Damages                        | 56. Severability  |
| 18. Liability of City   | 57. Protection of private information                   |
| 24. Proprietary or confidential information of City             | And, item 1 of Appendix D attached to this Agreement.   |

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.

**24. Proprietary or Confidential Information of City**

a. 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. Contractor shall maintain the usual and customary records for persons receiving Services under this Agreement. Contractor agrees that all private or confidential information concerning persons receiving Services under this Agreement, whether disclosed by the City or by the individuals themselves, shall be held in the strictest confidence, shall be used only in performance of this Agreement, and shall be disclosed to third parties only as authorized by law. Contractor understands and agrees that this duty of care shall extend to confidential information contained or conveyed in any form, including but not limited to documents, files, patient or client records, facsimiles, recordings, telephone calls, telephone answering machines, voice mail or other telephone voice recording systems, computer files, e-mail or other computer network communications, and computer backup files, including disks and hard copies. The City reserves the right to terminate this Agreement for default if Contractor violates the terms of this section.

c. Contractor shall maintain its books and records in accordance with the generally accepted standards for such books and records for five years after the end of the fiscal year in which Services are furnished under this Agreement. Such access shall include making the books, documents and records available for inspection, examination or copying by the City, the California Department of Health Services or the U.S. Department of Health and Human Services and the Attorney General of the United States at all reasonable times at the Contractor's place of business or at such other mutually agreeable location in California. This provision shall also apply to any subcontract under this Agreement and to any contract between a subcontractor and related organizations of the subcontractor, and to their books, documents and records. The City acknowledges its duties and responsibilities regarding such records under such statutes and regulations.

d. The City owns all records of persons receiving Services and all fiscal records funded by this Agreement if Contractor goes out of business. Contractor shall immediately transfer possession of all these records if Contractor goes out of business. If this Agreement is terminated by either party, or expires, records shall be submitted to the City upon request.

e. All of the reports, information, and other materials prepared or assembled by Contractor under this Agreement shall be submitted to the Department of Public Health Contract Administrator and shall not be divulged by Contractor to any other person or entity without the prior written permission of the Contract Administrator listed in Appendix A.

**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:	Office Of Contract Management And Compliance Department Of Public Health 1380 Howard Street, Room 419c San Francisco, California 94103	FAX: (415) 554-2555 E-Mail: Junko.Craft@Sfdph.Org
And:	Diana Guevara CHN Patient Financial Services 1001 POTRERO AVE. SAN FRANCISCO, CA 94110	FAX: 415 206-4192 E-Mail: Dguevara@Sfdph.Org
To CONTRACTOR:	AL LEIBOVIC 14721 Califa Street SHERMAN OAKS, CA 91411	FAX: 818-995-9599 E-Mail: Al@Healthadvocates.Com

Any notice of default must be sent by registered mail.

**26. Ownership of Results.** Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**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**

a. 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. 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.

b. Contractor shall annually have its books of accounts audited by a Certified Public Accountant and a copy of said audit report and the associated management letter(s) shall be transmitted to the Director of Public Health or his /her designee within one hundred eighty (180) calendar days following Contractor's fiscal year end date. If Contractor expends \$500,000 or more in Federal funding per year, from any and all Federal awards, said audit shall be conducted in accordance with OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations. Said requirements can be found at the following website address: <http://www.whitehouse.gov/omb/circulars/a133/a133.html>. If Contractor expends less than \$500,000 a year in Federal awards, Contractor is exempt from the single audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal Agency, pass-through entity and General Accounting Office. Contractor agrees to reimburse the City any cost adjustments necessitated by this audit report. Any audit report which addresses all or part of the period covered by this Agreement shall treat the service components identified in the detailed descriptions attached to Appendix A and referred to in the Program Budgets of Appendix B as discrete program entities of the Contractor.

c. The Director of Public Health or his / her designee may approve of a waiver of the aforementioned audit requirement if the contractual Services are of a consulting or personal services nature, these Services are paid for through fee for service terms which limit the City's risk with such contracts, and it is determined that the work associated with the audit would produce undue burdens or costs and would provide minimal benefits. A written request for a waiver must be submitted to the

DIRECTOR ninety (90) calendar days before the end of the Agreement term or Contractor's fiscal year, whichever comes first.

d. Any financial adjustments necessitated by this audit report shall be made by Contractor to the City. If Contractor is under contract to the City, the adjustment may be made in the next subsequent billing by Contractor to the City, or may be made by another written schedule determined solely by the City. In the event Contractor is not under contract to the City, written arrangements shall be made for audit adjustments.

**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.

**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 Purchasing) 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](http://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](http://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's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration 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 Controller 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.

**49. Administrative Remedy for Agreement Interpretation – *DELETED BY MUTUAL AGREEMENT OF THE PARTIES***

**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. Supervision of Minors *DELETED BY MUTUAL AGREEMENT OF THE PARTIES***

**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 Contractor 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. Graffiti Removal.** Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual

pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti. Contractor shall remove all graffiti from any real property owned or leased by Contractor in the City and County of San Francisco within forty eight (48) hours of the earlier of Contractor's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require a Contractor to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Contractor to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

**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. *DELETED BY MUTUAL AGREEMENT OF THE PARTIES***

**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.

**62. Dispute Resolution Procedure. *DELETED BY MUTUAL AGREEMENT OF THE PARTIES***

**63. Additional Terms.** Additional Terms are attached hereto as Appendix D and are incorporated into this Agreement by reference as though fully set forth herein.



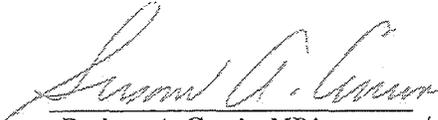
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

CITY

CONTRACTOR

Recommended by:

Health Advocates, LLC

  
\_\_\_\_\_  
Barbara A. Garcia, MPA / Date 10-23-13  
Director of Health

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.

Approved as to Form:

Dennis J. Herrera  
City Attorney

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.

By:   
\_\_\_\_\_  
Kathy Murphy / Date 10/25/13  
Deputy City Attorney

  
\_\_\_\_\_  
Al Leibovic / Date 10/15/13  
President

Approved:

14721 Califa Street  
Sherman Oaks, CA 91411

  
\_\_\_\_\_  
Jaci Fong / Date 5/8/2014  
Director of the Office of Contract Administration and Purchaser

City vendor number: 70234

Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges
- C: N/A
- D: Additional Terms
- E: HIPAA Business Associate Agreement
- F: Invoice
- G: Emergency Response
- H: MAA(Medi-Cal Administrative Activities)

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**Appendix A**  
**Services to be provided by Contractor**

**1. Terms**

A. Contract Administrator:

In performing the Services hereunder, Contractor shall report to Diana Guevara, Contract Administrator for the City, or his / her designee.

B. Reports:

Contractor shall submit written reports as requested by the City. The format for the content of such reports shall be determined by the City. The timely submission of all reports is a necessary and material term and condition of this Agreement. All reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

C. Evaluation:

Contractor shall participate as requested with the City, State and/or Federal government in evaluative studies designed to show the effectiveness of Contractor's Services. Contractor agrees to meet the requirements of and participate in the evaluation program and management information systems of the City. The City agrees that any final written reports generated through the evaluation program shall be made available to Contractor within thirty (30) working days. Contractor may submit a written response within thirty working days of receipt of any evaluation report and such response will become part of the official report.

D. Possession of Licenses/Permits:

Contractor warrants the possession of all licenses and/or permits required by the laws and regulations of the United States, the State of California, and the City to provide the Services. Failure to maintain these licenses and permits shall constitute a material breach of this Agreement.

E. Adequate Resources:

Contractor agrees that it has secured or shall secure at its own expense all persons, employees and equipment required to perform the Services required under this Agreement, and that all such Services shall be performed by Contractor, or under Contractor's supervision, by persons authorized by law to perform such Services.

F. Infection Control, Health and Safety:

(1) Contractor must have a Bloodborne Pathogen (BBP) Exposure Control plan as defined in the California Code of Regulations, Title 8, Section 5193, Bloodborne Pathogens (<http://www.dir.ca.gov/title8/5193.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, training, immunization, use of personal protective equipment and safe needle devices, maintenance of a sharps injury log, post-exposure medical evaluations, and recordkeeping.

(2) Contractor must demonstrate personnel policies/procedures for protection of staff and clients from other communicable diseases prevalent in the population served. Such policies and procedures shall include, but not be limited to, work practices, personal protective equipment, staff/client Tuberculosis (TB) surveillance, training, etc.

(3) Contractor must demonstrate personnel policies/procedures for Tuberculosis (TB) exposure control consistent with the Centers for Disease Control and Prevention (CDC) recommendations for health care facilities and based on the Francis J. Curry National Tuberculosis Center: Template for Clinic Settings, as appropriate.

(4) Contractor is responsible for site conditions, equipment, health and safety of their employees, and all other persons who work or visit the job site:

(5) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as BBP and TB and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

(6) Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

(7) Contractor assumes responsibility for procuring all medical equipment and supplies for use by their staff, including safe needle devices, and provides and documents all appropriate training.

(8) Contractor shall demonstrate compliance with all state and local regulations with regard to handling and disposing of medical waste.

G. Aerosol Transmissible Disease Program, Health and Safety:

(1) Contractor must have an Aerosol Transmissible Disease (ATD) Program as defined in the California Code of Regulations, Title 8, Section 5199, Aerosol Transmissible Diseases (<http://www.dir.ca.gov/Title8/5199.html>), and demonstrate compliance with all requirements including, but not limited to, exposure determination, screening procedures, source control measures, use of personal protective equipment, referral procedures, training, immunization, post-exposure medical evaluations/follow-up, and recordkeeping.

(2) Contractor shall assume liability for any and all work-related injuries/illnesses including infectious exposures such as Aerosol Transmissible Disease and demonstrate appropriate policies and procedures for reporting such events and providing appropriate post-exposure medical management as required by State workers' compensation laws and regulations.

(3) Contractor shall comply with all applicable Cal-OSHA standards including maintenance of the OSHA 300 Log of Work-Related Injuries and Illnesses.

(4) Contractor assumes responsibility for procuring all medical equipment and supplies for use by their staff, including Personnel Protective Equipment such as respirators, and provides and documents all appropriate training.

H. Acknowledgment of Funding:

Contractor agrees to acknowledge the San Francisco Department of Public Health in any printed material or public announcement describing the San Francisco Department of Public Health-funded Services. Such documents or announcements shall contain a credit substantially as follows: "This program/service/activity/research project was funded through the Department of Public Health, City and County of San Francisco."

2. **Description of Services**

Detailed description of services are listed below and are attached hereto

Appendix A-1 Statement of Work

## Appendix A-1

### STATEMENT OF WORK

**CONTRACTOR:** Health Advocates, LLC (HEALTH ADVOCATES)  
14721 Califa Street  
Sherman Oaks, CA 91411

**CONTRACT TERM:** January 1, 2014 through December 31, 2017

**COMPENSATION:** COMPREHENSIVE FIXED FEE PER DISCHARGE.

HEALTH ADVOCATES will be paid in accordance with the contingency and/or fixed rates outlined below.

Contingent fixed fees are scheduled as follows:

**General Note** - The impact of Healthcare Reform on hospital's reimbursement, changes to eligibility processing/qualifications, and potential changes to referrals to HA are not presently known. HA is inviting and encouraging discussion with DPH regarding appropriate refinements to services and fees provided under this agreement as new information becomes available.

#### Section I - COMPREHENSIVE FIXED FEE PER DISCHARGE

##### A. ELIGIBILITY SERVICES

	A1 Acute Screening & Applications ( >138% FPL)	A2 Acute Fair Hearing & Appeals	B1 Psych Screening & Applications ( > 138% FPL)	B2 Psych Fair Hearing & Appeals	C1 Pending Applications (non-HPE) Follow-up	C2 Fair Hearing Follow-up on C1 Accounts
1/1/14 - 12/31/14	\$1,700	\$2,160	\$2,160	\$2,460	\$1,200	\$1,500
1/1/15 - 12/31/15	\$1,751	\$2,240	\$2,240	\$2,550	\$1,236	\$1,545
1/1/16 - 12/31/16	\$1,804	\$2,320	\$2,320	\$2,640	\$1,273	\$1,591
1/1/17 - 12/31/17	\$1,858	\$2,400	\$2,400	\$2,730	\$1,311	\$1,639

#### **HA Scope of Service for fixed fee rate:**

A1. Acute Medi-Cal – Screen patients, Medi-Cal application filed and approve.

A2 Acute Medi-Cal - Screen patients, Medi-Cal application filed, approved through Fair Hearing /Appeals. HA will bill Acute Medical claims for payment to Medi-Cal FFS program. Patients approved for managed Care Medi-Cal, SFGH will bill claims for payment.

B1. Acute Psych – Screen patients, Medi-Cal applications filed and approved.

B2 Acute Psych - Screen patients, Medi-Cal applications filed and approved through Fair Hearings /Appeals. HA will refer to CBHS to submit claims for payment to State Dept. of Mental Health.

C1 Referred (non HPE) cases for Medi-Cal application follow-up to obtain Medi-Cal approvals.

C2 Referred Fair Hearing follow-up on accounts referred from C1.

HA will bill Acute Medical claims for payment to Medi-Cal FFS program. Patients approved for managed Care Medi-Cal. SFGH will bill claims for payment. HA will refer to CBHS to submit claims for payment to State Dept. of Mental Health.

These rates are based upon Approvals (not Referrals or Payments) and apply to each Discharge. This is a comprehensive fee that includes all screening, application Medi-Cal Billings on acute accounts only (excludes Billing on Psych Accounts) and Fair Hearings as requested in Section C - "Services Solicited" of the RFP.

ACA Fast-Trak Service (optional) - The fee is \$95 per referred account. This includes patient screening and completing an on-line application via the CALHEERS or other web portal or processing via Hospital's Presumptive Eligibility and assumes an immediate on-line approval on initial submission.

This service does not include applications that are denied or rejected by CalHEERS or that require any document verification follow-up via or outside the web portal with a minimum required level of (5) referrals per day per FTE.

**B. Third Party Payer - Based on Contingency fee:**

Fee for Third Party Payer (includes Insurance, COBRA, TPL, Workers' Comp) accounts, 20% of all sums collected with a fee cap of \$100,000 on pre-legal cases (includes liens filed) and, 20% of all sums collected with a fee cap of \$500,000 on referred cases paid as an outcome of litigation including arbitration, Administrative Law Judge, or judicial proceedings.

**Section II**

**A. Additional Services**

**A. RAC Review and Appeals**

- 1st and 2nd level (Initial Review, Reconsideration Letter, and Appeal): **\$400/account**
- 3rd Level Appeal, Administrative Law Judge (ALJ): **+ \$350 /account**
- 4th Level Appeal, Departmental Appeal Board (DAB): **+ \$ 195/account**
- 5th Level Appeal, Preparation for District Court: **+ \$ 195/account**

**Please note – non contingent fees**

**B. Non-RAC Denials Management Services**

- Twenty five percent (25%) of all sums recovered

**C. Clinical Authorization Denials: Pre-Billing**

- \$75 per approved day for accounts reimbursed on a per diem basis
- \$400 per account for accounts reimbursed on a DRG basis

**D. Utilization Management/Process Improvement Consulting and Education or Special**

### Projects

- RN UM Consultant/Educator \$115/hour
- Consulting/Educating Project Director \$175/hour

### Travel

- All travel will be preapproved and will be paid by City for professional consulting service only.

### Special Considerations

- Some items listed in Appendix A-1 and B-1 may require the use of subcontractor(s), at Contractors discretion.

## I. PERFORMANCE REQUIREMENTS (ELIGIBILITY)

### **I. HEALTH ADVOCATES will provide the following:**

HA is relieved of any fixed or minimum staffing commitments included elsewhere in this Agreement pending mutual discussion of equitable adjustments to staffing based upon experience with the implementation of Healthcare Reform.

Staff assigned will be trained, bilingual, Eligibility workers, Spanish speaking as priority and Chinese speaking preferred.

- A.
- i. Trained, bilingual, on-site eligibility workers including Spanish speaking as a priority and Chinese speaking on-site eligibility workers.
  - ii. The goal is to include eligibility worker with a minimum of one (1) to two (2) years public or teaching hospital or Department of Social Services.
  - iii. Additionally, personnel identified in (i) and (ii) above must have **three (3) or more years** of actual experience in qualifying patients for Medi-Cal in a public and/or teaching hospital setting.
- B. The eligibility workers will:
- i. Screen 100% of all unsponsored patient admissions after SFGH Eligibility Staff have interviewed and determined if Medi-Cal or the potential for other reimbursement sources exist.
  - ii. Secure authorization to represent the patient and complete Medi-Cal applications or applications for other programs such as Victims of Crime at the bedside or, if appropriate, at the patient's residence or wherever the patient may be located after discharge.
  - iii. Represent the patient in Fair Hearings or appeals proceedings, if applications are denied.
  - iv. Appeal Medi-Cal Field Office or other Pre-Treatment Authorization Program denials for care.
  - v. Investigate possible third party liability or Workers' Compensation reimbursement. File liens to protect the City and County's interest whenever appropriate or possible.
  - vi. Referred accounts may be recalled in writing only within five (5) business days of the referral date.
- C. A supervisor with a minimum of **three (3) years** eligibility worker experience and **three (3) or more years** experience identifying and securing payment from programs such as Victims of Crime and/or Workers' Compensation and/or California Children's Services must be on-site at least **four (4) hours** per day to oversee the operations of the contract program, supervise on-site eligibility staff, coordinate with on-site

- lead worker, supervise field workers and be available to meet with DPH management and staff on a mutually agreed upon schedule.
- D. "Field Workers" dedicated to case management of homeless or transient patients for whom Medi-Cal applications are pending. The Field Worker will also assist patients with transportation to and from Appeals and Hearings, assist patients in obtaining necessary documents, and provide direct support of any means to help with the Medi-Cal application process.
- E. HEALTH ADVOCATES will be responsible for billing and securing Medi-Cal payment on newly approved Medi-Cal patients, assisting the Utilization Review Department to pursue retroactive treatment authorization for service, and billing Medi-Cal for payment of such services.
- F. HEALTH ADVOCATES must conduct criminal background checks on all personnel who will be assigned to provide services, and provide the results of such background checks to the Contractor Administrator.
- G. HEALTH ADVOCATES shall prepare weekly, monthly, quarterly and annual status, accounts receivable and other reports, as required by SFGH.
- H. HEALTH ADVOCATES shall provide its on-site staff with all required office equipment, including telephones, computers, printers, fax machines, copy machines, desks, chairs and courier services. SFGH provides only limited office space and access to records and patients relating only to the cases referred.
- I. HEALTH ADVOCATES must provide the following services at no additional charge:
- i. In-service training to Hospital staff on government program changes.
  - ii. Telephone and personal consultation with attorneys and healthcare experts for answers to any questions, which have an impact on SFGH's accounts receivables.
  - iii. Information systems technology to enhance or insure monitoring of Host's system for referred Medi-Cal cases, including support of programming.
  - iv. Assistance with implementing major program changes related to the State/Federal Medi-Cal Medicaid program, including State and County programs.
- J. HEALTH ADVOCATES must have on staff or through formal agreements with individuals with legal expertise of a minimum of **three (3) years**, who have appeared on behalf of clients/patients before an Administrative Law Judge for the purpose of appealing denied Medi-Cal/Disability claims. HEALTH ADVOCATES must show that it has attorneys at law, admitted to the California Bar on staff or available to file legal action, if necessary, to secure benefits and reimbursement for their clients.
- K. In consultation with the City Attorney's Office, licensed attorneys employed by HEALTH ADVOCATES will prepare and file legal actions, as necessary, and when justified, to obtain reimbursement for medical treatment.
- L. Provide a qualified Project Manager, who will oversee the operations of the contract program, supervise assigned and on-site staff, and be available to meet with DPH management and staff on a mutually agreed upon schedule.
- M. Performance under this contract shall be overseen by a HEALTH ADVOCATES Partner or Manager and SFGH Assistant Administrator for Patient Finance.

N. DPH retains the right to request replacement of any of HEALTH ADVOCATES' employees assigned to DPH's contract.

O. HEALTH ADVOCATES' on-site staff is expected to maintain regular office hours, providing coverage, as necessary, for lunch and rest breaks, dress and behave in a professional manner, respect the rights of patients, the public and DPH employees, paying close attention to patient confidentiality at all times. HEALTH ADVOCATES is responsible for managing its on-site staff to ensure professional work ethics are adhered to at all times.

P. HEALTH ADVOCATES' on-site employees must provide proof of negative TB (tuberculosis) tests for employees or have employees obtain and pass TB tests from SFGH Employee Health prior to first day of work, as well as any other immunizations required by the Department of Public Health. If testing is performed by SFGH, HEALTH ADVOCATES shall be billed for tests, x-rays, etc. Also its on-site employees may be required to have periodic tuberculosis testing or other Hospital, Health and Safety required immunizations, as well as attend mandatory training designed to protect staff from infection exposure and injury.

Q. HEALTH ADVOCATES will be expected to maximize revenues for DPH. Collection targets are established as follows:

<u>CONTRACT YEARS</u>	<u>COLLECTION TARGETS</u>
January 2014 through December 2014	1,800 cases per year
January 2015 through December 2015	1,850 cases per year
January 2016 through December 2016	1,900 cases per year
January 2017 through December 2017	1,900 cases per year

It is understood that conditions beyond HEALTH ADVOCATES' control may impact this target, e.g., Welfare and Immigration reform, mandated Managed Care, declining inpatient census, timely referrals and/or changing State and Federal regulations, and that this target may be adjusted to reflect these occurrences.

HEALTH ADVOCATES must meet performance targets, as mutually established. Expected performance will be set to no less than DPH's prior year's collection performance.

R. HEALTH ADVOCATES will not be required to bill and secure Medi-Cal payments for referred mental health inpatients. For retroactive Medi-Cal approved past twelve (12) months HEALTH ADVOCATES will provide necessary Eligibility Letters of Authorization (LOA Form MC-190) to Community Mental Health. Community Mental Health Services is responsible for billing and securing payments on retroactive Medi-Cal eligible mental health inpatients to the State. Contract Administrator for this contract or designee will act as a liaison only on behalf of HEALTH ADVOCATES for referrals to DPH's Community Mental Health Services.

## II. PERFORMANCE REQUIREMENTS (ADDITIONAL SERVICES)

- Contractor will manage the RAC review and appeal process for assigned accounts from request for intervention through resolution based upon the City's policy.
- Contractor Nurse(s), Physician(s), and/or Coding professional(s) will perform audits on behalf of the City for assigned claims that the RAC has requested recoupment via the demand letter.

- Contractor will prepare and submit any necessary correspondence including letters of appeal, grievance, and/or resubmission to request reconsideration of a claim. All applicable timely filing/appeal deadlines will be met.
- Contractor will note account activity in the City's patient accounting software system.
- Where appropriate and needed to obtain correct payment, Contractor will prepare accounts for Administrative Law Judge hearing and/or legal action by City or Legal Counsel based on the City's policy.
- Contractor will provide a *Root Cause Analysis Report* broken down by RAC denial type, area of the hospital, and reason for denial on a mutually agreed upon reporting schedule.
- City will provide Contractor remote access to information needed to determine correct expected payments and account status. These items include, but are not limited to, contracts, information systems, medical records and documents, payor correspondence, UB04s, itemized statements, and remittance advices.
- City agrees to provide all applicable correspondence and/or communication to Contractor in timely manner (usually within 48 hours of receipt by City). This ensures that Contractor has the requisite time to respond to the appropriate entity.
- Contractor will utilize *RAC Appeal Status* reporting. This robust and interactive report allows for real time visibility of accounts throughout the appeals process. This will be provided on a mutually agreed upon reporting schedule.

Denials Management Services will include the following services for any claims denied post-billing for Medicare, Medicaid Managed Care, Managed Care or Commercial acute or behavioral health accounts:

- Contractor will manage the retrospective clinical denials management process for assigned accounts from request for intervention through resolution based upon City's policy.
- Contractor will prepare and submit any necessary letters to request reconsideration of a claim by a payor.
- Where appropriate and needed to obtain correct payment, Contractor will prepare accounts for grievance by City or Legal Counsel based on the City's policy.
- Contractor Nurse(s), Physician(s), and/or Coding professional(s) will perform audits on behalf of the City for assigned claims that have paid less than expected for reasons believed to be clinically related, documenting support for billed charges, medical necessity, and/or appropriate levels of care in an effort to facilitate correct payment.
- City will provide Contractor access to information needed to determine correct expected payments and account status such as, but not limited to, contracts, information systems, medical records, UB04s, itemized statements, and remittance advices.

- Contractor will use the City's systems to note account activity.
- Contractor will utilize proprietary "Account Tracking" reporting. This robust and interactive report allows for real time visibility of accounts approaching timely filing deadlines.
- Contractor will provide a *Root Cause Analysis Report* broken down by type of denial, area of the hospital, and reason for denial on a mutually agreed upon reporting schedule.

**2. HEALTH ADVOCATES and DPH will continue to provide/perform the following:**

- A. Quarterly reconciliation of all cases referred by SFGH Eligibility Manager, Director of Patient Finance or Director of Utilization Management or their designees utilizing Acknowledgements, Referral, Status and Close reports.
- B. SFGH will identify accounts referred to HEALTH ADVOCATES by adding an identifier to the account in the SFGH Financial Management System (INVISION). For reconciliation purposes, a report of open/active referred accounts will be provided to HEALTH ADVOCATES on a monthly basis. SFGH agrees to remove the aforementioned identifier within fifteen (15) business days of being notified by HEALTH ADVOCATES that the account has been closed by HEALTH ADVOCATES. Failure by SFGH to remove this identifier will suspend the quarterly reconciliation of referred accounts.
- C. Once a case referred to HEALTH ADVOCATES is certified for Medi-Cal or other program eligibility, HEALTH ADVOCATES will assist SFGH to obtain all necessary Treatment Authorizations.
- D. HEALTH ADVOCATES will receive copies of all Medi-Cal remittance advices (R/A), program payment tapes or SFGH payment transaction reports to determine when their accounts have been paid. HEALTH ADVOCATES shall be entitled to its fee for all payments received more than seven (7) business days after the initial referral of an account.
- E. HEALTH ADVOCATES will submit an invoice for services bi-monthly within fifteen (15) days from the close of each bi-monthly period. The invoice must include the following:
  - 1) HEALTH ADVOCATES' name and mailing address
  - 2) Current Contract Number
  - 3) Date of Invoice
  - 4) Invoice Number
  - 5) Period of Billing
  - 6) Amount of ACTUAL Net Payments Received (prior to deductions of fees)
  - 7) Fee due in accordance with the terms and conditions of this Agreement
  - 8) A detail of accounts for which HEALTH ADVOCATES has perfected eligibility or obtained approval for payment. The detail must be separated by Payor Type and must include the following:
    - a) Patient Name
    - b) Patient Account Number

- c) HEALTH ADVOCATES' account number
- d) Dates of Service
- e) Remittance or payment date
- f) Payment amount
- g) Balance due after payment, if any
- h) Fees due to HEALTH ADVOCATES

- F. DPH agrees that upon termination or cancellation of this Agreement, HEALTH ADVOCATES has the right of completion to final disposition on each case previously referred by DPH, including but not limited to, collection of liens, completion of eligibility, TAR and billing, appeals, and litigation, etc., and shall be entitled to its fees on all monies paid to DPH.
- G. DPH reserves the right to audit each invoice for accuracy and verification of the cases that were referred to HEALTH ADVOCATES. Any disputed amounts will be adjusted from the invoice and negotiated between the parties, and the undisputed portion shall be paid immediately. Any adjusted amounts will be included on a separate invoice when HEALTH ADVOCATES is successful in substantiating the disputed amounts. No dispute shall be raised if an account has been referred to HEALTH ADVOCATES, has not been recalled in writing within five (5) business days of the referral and payment was received more than seven (7) business days after the initial referral of an account.
- H. HEALTH ADVOCATES will not be paid in advance of collections of funds. Should HEALTH ADVOCATES receive any payments directly, HEALTH ADVOCATES agrees to immediately submit full payment to DPH.
- I. HEALTH ADVOCATES will invoice their contingency fees based only on NET payments received by DPH and will not be reimbursed for any expenses incurred in connection with their performance under this contract.

**3. HEALTH ADVOCATES agrees to perform under the terms of Section II, Scope of Work, and stipulates to the following, relative to the practice of law under the terms of the contract:**

- A. HEALTH ADVOCATES will not pursue any claim against any City Department or file any legal actions on behalf of represented clients in pursuit of reimbursement for services rendered without the express approval of the Department and the City Attorney's Office, with the exception of Social Security Disability (SSD), Social Security Supplemental Security Income (SSI), Conservatorships and Letters of Administrators, etc., required to qualify patients for public or private benefits.
- B. HEALTH ADVOCATES will pursue Fair Hearings and Appeals for eligibility, treatment authorization, and/or insurance denials on any and all appropriate cases within the statute of limitations as provided by regulation or law. No unique Departmental approval is required for these actions.
- C. HEALTH ADVOCATES will coordinate with other CITY departments or agencies on referred patient cases to avoid overlap of patient cases already assigned to other agencies or CITY departments.

**II. SCOPE OF WORK**

- A. SFGH, Director of Patient Finance or Eligibility Manager will review all inpatient admissions where SFGH Eligibility Workers have been unsuccessful in identifying a source of payment. After determining that staff has exhausted all reasonable efforts the case may be referred to HEALTH ADVOCATES, which will make reasonable efforts, including but not limited, to making home calls, assisting the applicant to secure required documentation, providing interpreter services and transportation, etc., so that the applicant can complete the application, Fair Hearing or Appeal process. Referrals shall be at the discretion of managers authorized to make such referrals.

- B. The Director of Utilization Review may refer select Treatment Authorization (TAR) denials, together with copies of the medical records, to HEALTH ADVOCATES for administrative appeals or legal action where justified and substantiated by medical records, regulation or law. HEALTH ADVOCATES shall make the final determination if there is legal merit for an administrative appeal or further legal action. HEALTH ADVOCATES shall be responsible for initiating and for follow through of Treatment Authorization approvals with SFGH's Utilization Review Department.
- C. When HEALTH ADVOCATES establishes third-party eligibility (Medi-Cal, Workers' Compensation, California Children's Services, Victim of Crime, etc.) HEALTH ADVOCATES will provide to SFGH supporting evidence of Notice of Eligibility or Letter of Authorization (whichever applies).
- D. For referrals for which Medi-Cal was denied or those for which Medi-Cal applications were not initiated, HEALTH ADVOCATES will provide written explanation of why an application was not initiated or why a Fair Hearing was not pursued, and if a Fair Hearing was pursued, why it was unsuccessful. This information will be provided on the monthly Close report provided by HEALTH ADVOCATES.
- E. HEALTH ADVOCATES shall be responsible for billing and follow-up of payment on approved Medi-Cal cases. HEALTH ADVOCATES will not be required to bill and secure Medi-Cal payments for referred mental health inpatients. Community Mental Health Services is responsible for billing and securing payments on retroactive Medi-Cal eligible mental health inpatients to the State. HEALTH ADVOCATES understands that the Contract Administrator or designee for the services will act as a liaison only on behalf of HEALTH ADVOCATES for referrals to DPH's Community Mental Health Services.
- F. HEALTH ADVOCATES will perform a timely review of referred cases and potential Fair Hearing cases. Cases determined to be Medi-Cal ineligible due to no linkage with no other potential source of payment shall be returned to DPH as soon as the screening, application or Fair Hearing process is completed, together with a Close report indicating why the account was being closed. If no Medi-Cal application, Fair Hearing or lien is initiated within three (3) months following the month of treatment, the case shall be closed and returned immediately. SFGH reserves the right to engage other consultants to perform a second review of returned accounts after they appear on the HEALTH ADVOCATES' Close report.
- G. HEALTH ADVOCATES is to provide on-site dial-up access of HEALTH ADVOCATES' systems for the status of cases referred, during its regular business hours.
- H. HEALTH ADVOCATES' designated management will meet with DPH management bi-monthly to provide oral and written assessments of HEALTH ADVOCATES' performance, including account audits and statistical analysis. These meetings also will provide the opportunity to address any concerns and/or project recommendations.
- I. HEALTH ADVOCATES will provide DPH with a means of measuring our efforts through our management reports. In particular, HEALTH ADVOCATES' Status Report and case notes shall serve as an audit trail of all activity applied to each account and the Remittance Report shall serve as an audit for all payments received.
- J. HEALTH ADVOCATES will provide DPH with a monthly Status Report reflecting those accounts which are still active and a monthly Close report reflecting accounts closed during the reporting month, which will include in alpha sequence, patient name, account number, referral date, account amount, latest activity and/or the reason for closing the account. HEALTH ADVOCATES also will provide

weekly Acknowledgement Reports, verifying each referral, monthly Remittance Reports summarizing all payments and statistical analysis reports.

K. HEALTH ADVOCATES will provide three (3) hard copies and/or e-mail files of the following weekly or monthly reports, within fifteen (15) days from the close of the calendar month, that include the following data:

- i. Client Status Report - detailed listing and status/aging of outstanding accounts
- ii. Close Report - cases cancelled/closed and reason for closing
- iii. Acknowledgement Report – a weekly detailed listing of accounts referred to HEALTH ADVOCATES by DPH in the prior calendar month
- iv. Invoices and Remittance Reports (See Appendix A, Section I.2.E.)
- v. Other reports as required by DPH

L. HEALTH ADVOCATES agrees to provide at no additional cost:

- i. Inservice trainings and/or procedural updates to hospital staff on government program changes on new/revised public assistance programs.
- ii. Assistance with interpretations of new/revised regulations and laws affecting eligibility and billing. Telephone and personal consultation with attorneys and healthcare experts and other professional/legal assistance deemed appropriate by both parties to be in our mutual interest and benefit for answers to any questions, which have an impact on DPH's accounts receivables.
- iii. Assistance with implementing major program changes such as Managed Care for Medi-Cal.
- iv. Information systems specialists, programmers and equipment necessary to keep an on line database tracking system current.

### III. GOALS, OBJECTIVES AND REVIEWS

A. The objective of this contract is to maximize revenues from all sources covered under this Agreement. Other objectives include:

- i. Provide assistance to DPH in gathering meaningful data reflecting patient financial mix; estimating future revenues from expanded eligibility programs; developing statistical data needed for government program reporting requirements and analyzing program impacts on staffing.
- ii. Increase staff productivity and knowledge through training and support.

B. A specific goal is to increase approved Medi-Cal days and meet and/or exceed revenue targets as indicated in Appendix A, Section I. I.Q.

C. Reviews will include:

- i. Monthly revenue analysis
- ii. Monthly analysis of referral trends
- iii. Monthly review of DSS performance on pending cases
- v. Quarterly review of overall performance
- vi. Quarterly review of DPH 's DSS staff productivity
- vii. Meetings, as necessary, with local and State program representatives
- viii. Ongoing review and reporting to DPH and DPH Administration on HEALTH ADVOCATES' performance

**Appendix B**  
**Calculation of Charges**

**1. Method of Payment**

A. Invoices furnished by CONTRACTOR under this Agreement must be in a form acceptable to the Contract Administrator and the CONTROLLER and must include the Contract Progress Payment Authorization number or Contract Purchase Number. All amounts paid by CITY to CONTRACTOR shall be subject to audit by CITY. The CITY shall make monthly payments as described below. Such payments shall not exceed those amounts stated in and shall be in accordance with the provisions of Section 5, COMPENSATION, of this Agreement.

Compensation for all SERVICES provided by CONTRACTOR shall be paid in the following manner. For the purposes of this Section, "General Fund" shall mean all those funds which are not Work Order or Grant funds. "General Fund Appendices" shall mean all those appendices which include General Fund monies.

(1) Fee For Service (Monthly Reimbursement by Certified Units at Budgeted Unit Rates)

CONTRACTOR shall submit monthly invoices in the format attached, Appendix F, and in a form acceptable to the Contract Administrator, by the fifteenth (15<sup>th</sup>) calendar day of each month, based upon the number of units of service that were delivered in the preceding month. All deliverables associated with the SERVICES defined in Appendix A times the unit rate as shown in the appendices cited in this paragraph shall be reported on the invoice(s) each month. All charges incurred under this Agreement shall be due and payable only after SERVICES have been rendered and in no case in advance of such SERVICES.

(2) Cost Reimbursement (Monthly Reimbursement for Actual Expenditures within Budget):

CONTRACTOR shall submit monthly invoices in the format attached, Appendix F, and in a form acceptable to the Contract Administrator, by the fifteenth (15<sup>th</sup>) calendar day of each month for reimbursement of the actual costs for SERVICES of the preceding month. All costs associated with the SERVICES shall be reported on the invoice each month. All costs incurred under this Agreement shall be due and payable only after SERVICES have been rendered and in no case in advance of such SERVICES.

B. Final Closing Invoice

(1) Fee For Service Reimbursement:

A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of each fiscal year of the Agreement, and shall include only those SERVICES rendered during the referenced period of performance. If SERVICES are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to CITY. CITY'S final reimbursement to the CONTRACTOR at the close of the Agreement period shall be adjusted to conform to actual units certified multiplied by the unit rates identified in Appendix B attached hereto, and shall not exceed the total amount authorized and certified for this Agreement.

(2) Cost Reimbursement:

A final closing invoice, clearly marked "FINAL," shall be submitted no later than forty-five (45) calendar days following the closing date of each fiscal year of the Agreement, and shall include only those costs incurred during the referenced period of performance. If costs are not invoiced during this period, all unexpended funding set aside for this Agreement will revert to CITY.

C. Payment shall be made by the CITY to CONTRACTOR at the address specified in the section entitled "Notices to Parties."

D. Upon the effective date of this Agreement, contingent upon prior approval by the CITY'S Department of Public Health of an invoice or claim submitted by Contractor, and of each year's revised Appendix A (Description of Services) and each year's revised Appendix B (Program Budget and Cost Reporting Data Collection Form), and within each fiscal year, the CITY agrees to make an initial payment to CONTRACTOR not to exceed twenty-five per cent (25%) of the General Fund and Prop 63 portion of the CONTRACTOR'S allocation for the applicable fiscal year.

CONTRACTOR agrees that within that fiscal year, this initial payment shall be recovered by the CITY through a reduction to monthly payments to CONTRACTOR during the period of October 1 through March 31 of the applicable fiscal year, unless and until CONTRACTOR chooses to return to the CITY all or part of the initial payment for that fiscal year. The amount of the initial payment recovered each month shall be calculated by dividing the total initial payment for the fiscal year by the total number of months for recovery. Any termination of this Agreement, whether for cause or for convenience, will result in the total outstanding amount of the initial payment for that fiscal year being due and payable to the CITY within thirty (30) calendar days following written notice of termination from the CITY.

## 2. Program Budgets and Final Invoice

A. Program Budgets are listed below and rates schedule is attached hereto.

Budget Summary

Appendix B-1 Fees (Rates) Schedule

### B. *COMPENSATION*

Compensation shall be made in monthly payments on or before the 30<sup>th</sup> day after the DIRECTOR, in his or her sole discretion, has approved the invoice submitted by CONTRACTOR. The breakdown of costs and sources of revenue associated with this Agreement appears in Appendix B, Cost Reporting/Data Collection (CR/DC) and Program Budget, attached hereto and incorporated by reference as though fully set forth herein. The maximum dollar obligation of the CITY under the terms of this Agreement shall not exceed Six Million Three Hundred Thousand Three Hundred Ninety Dollars (\$6,300,390) for the period of January 1, 2014 through December 31, 2017.

CONTRACTOR understands that, of this maximum dollar obligation, \$720,000 is included as a contingency amount and is neither to be used in Appendix B, Budget, or available to CONTRACTOR without a modification to this Agreement executed in the same manner as this Agreement or a revision to Appendix B, Budget, which has been approved by the Director of Health. CONTRACTOR further understands that no payment of any portion of this contingency amount will be made unless and until such modification or budget revision has been fully approved and executed in accordance with applicable CITY and Department of Public Health laws, regulations and policies/procedures and certification as to the availability of funds by the Controller. CONTRACTOR agrees to fully comply with these laws, regulations, and policies/procedures.

(1) For each fiscal year of the term of this Agreement, CONTRACTOR shall submit for approval of the CITY'S Department of Public Health a revised Appendix A, Description of Services, and a revised Appendix B, Program Budget and Cost Reporting Data Collection form, based on the CITY'S allocation of funding for SERVICES for the appropriate fiscal year. CONTRACTOR shall create these Appendices in compliance with the instructions of the Department of Public Health. These Appendices shall apply only to the fiscal year for which they were created. These Appendices shall become part of this Agreement only upon approval by the CITY.

(2) CONTRACTOR understands that, of the maximum dollar obligation stated above, the total amount to be used in Appendix B, Budget and available to CONTRACTOR for the entire term of the contract is as follows, notwithstanding that for each fiscal year, the amount to be used in Appendix B, Budget and available to CONTRACTOR for that fiscal year shall conform with the Appendix A, Description of Services, and a Appendix B, Program Budget and Cost Reporting Data Collection form, as approved by the CITY's Department of Public Health based on the CITY's allocation of funding for SERVICES for that fiscal year.

January 1, 2014 through December 31, 2014	\$1,395,097.50
January 1, 2015 through December 31, 2015	\$1,395,097.50
January 1, 2016 through December 31, 2016	\$1,395,097.50
January 1, 2017 through December 31, 2017	\$1,395,097.50
January 1, 2014 through December 31, 2017	\$5,580,390.00

(3) CONTRACTOR understands that the CITY may need to adjust sources of revenue and agrees that these needed adjustments will become part of this Agreement by written modification to CONTRACTOR. In event that such reimbursement is terminated or reduced, this Agreement shall be terminated or proportionately reduced accordingly. In no event will CONTRACTOR be entitled to compensation in excess of these amounts for these periods without there first being a modification of the Agreement or a revision to Appendix B, Budget, as provided for in this section of this Agreement.

C. CONTRACTOR agrees to comply with its Budget as shown in Appendix B in the provision of SERVICES. Changes to the budget that do not increase or reduce the maximum dollar obligation of the CITY are subject to the provisions of the Department of Public Health Policy/Procedure Regarding Contract Budget Changes. CONTRACTOR agrees to comply fully with that policy/procedure.

D. No costs or 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 the DIRECTOR 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.

E. In no event shall the CITY be liable for interest or late charges for any late payments.

F. CONTRACTOR understands and agrees that should the CITY'S maximum dollar obligation under this Agreement include State or Federal Medi-Cal revenues, CONTRACTOR shall expend such revenues in the provision of SERVICES to Medi-Cal eligible clients in accordance with CITY, State, and Federal Medi-Cal regulations. Should CONTRACTOR fail to expend budgeted Medi-Cal revenues herein, the CITY'S maximum dollar obligation to CONTRACTOR shall be proportionally reduced in the amount of such unexpended revenues. In no event shall State/Federal Medi-Cal revenues be used for clients who do not qualify for Medi-Cal reimbursement.

## APPENDIX B-1 Rate Schedule

**General Note** - The impact of Healthcare Reform on hospital's reimbursement, changes to eligibility processing/qualifications, and potential changes to referrals to HA are not presently known. HA is inviting and encouraging discussion with DPH regarding appropriate refinements to services and fees provided under this agreement as new information becomes available.

### Section I COMPREHENSIVE FIXED FEE PER DISCHARGE

	<u>A1.</u>	<u>A2</u>	<u>B.1.</u>	<u>B2.</u>	<u>C1.</u>	<u>C2..</u>
	Acute Screening & Applications (>138% FPL)	Acute Fair Hearing & Appeals	Psych Screening & Applications (> 138% FPL)	Psych Fair Hearing & Appeals	MAGI Application Follow-up (< 138% FPL)	HPE Application Follow-up (< 138% FPL)
1/1/14 - 12/31/14	\$1,700	\$2,160	\$2,160	\$2,460	\$1,200	\$1,500
1/1/15 - 12/31/15	\$1,751	\$2,240	\$2,240	\$2,550	\$1,236	\$1,545
1/1/16 - 12/31/16	\$1,804	\$2,320	\$2,320	\$2,640	\$1,273	\$1,591
1/1/17 - 12/31/17	\$1,858	\$2,400	\$2,400	\$2,730	\$1,311	\$1,639

HA Scope of Service for fixed fee rate;

A.1. Acute Medical – Screen patients, MediCal application filed and approve.

A.2. Acute Medical - Screen patients, MediCal application filed, approved through fair hearing /appeals

HA will bill Acute Medical claims for payment to MediCal FFS program. Patients approved for managed Care MediCal, SFGH will bill claims for payment.

B.1. Acute Psych – Screen patients, MediCal application filed and approve.

B.2. Acute Psychl - Screen patients, MediCal application filed, approved through fair hearing /appeals

HA will refer to CBHS to submit claims for payment to State Dept of Mental Health.

C1. Referred cases for MediCal application for follow-up to obtain MediCal approval.

C2. Referred denied MediCal applications for appeals follow-up.

HA will bill Acute Medical claims for payment to MediCal FFS program. Patients approved for managed Care MediCal, SFGH will bill claims for payment.

HA will refer to CBHS to submit claims for payment to State Dept of Mental Health.

These rates are based upon Approvals (not Referrals or Payments) and apply to each Discharge. This is a comprehensive fee that includes all screening, application Medi-Cal Billings on acute accounts only (excludes Billing on Psych Accounts) and Fair Hearings as requested in Section C - "Services Solicited" of the RFP.

D. ACA Fast-Trak Service (optional) - The fee is \$95 per referred account, this includes patient screening and completing an on-line application via the CALHEERS web portal or processing via Hospital's Presumptive Eligibility and assumes an immediate approval on initial submission.

This service does not include applications that are denied or rejected by CalHEERS or that require any document verification follow-up via or outside the web portal. with a minimum required level of (5) referrals per day per FTE.

E. Fee for Third Party Payer (includes Insurance, COBRA, TPL, Workers' Comp) accounts,

16% of all sums collected with a fee cap of \$100,000 on pre-legal cases (includes liens filed) and,

20% of all sums collected with a fee cap of \$500,000 on referred cases paid as an outcome of litigation

including arbitration, Administrative Law Judge, or judicial proceedings. City/County will reimburse

preapproved administrative costs incurred by HA to reinstate or establish COBRA or Insurance Exchange benefits.

Contingency fees for third party

F. HA is relieved of any fixed or minimum staffing commitments included elsewhere in this Agreement pending mutual discussion of equitable adjustments to staffing based upon experience with the implementation of Healthcare Reform.

## Section II

### A. RAC Review and Appeals

- 1st and 2nd level (Initial Review, Reconsideration Letter, and Appeal): \$400/account
- 3rd Level Appeal, Administrative Law Judge (ALJ): + \$350 /account
- 4th Level Appeal, Departmental Appeal Board (DAB): + \$ 195/account
- 5th. Level Appeal, Preparation for District Court: + \$ 195/account

### B. Non-RAC Denials Management Services

- Twenty five percent (25%) of all sums recovered

### C. Clinical Authorization Denials: Pre-Billing

- \$75 per approved day for accounts reimbursed on a per diem basis
- \$400 per account for accounts reimbursed on a DRG basis

### D. Utilization Management/Process Improvement Consulting and Education or Special Projects

- RN UM Consultant/Educator \$115/hour
- Consulting/Educating Project Director \$175/hour

#### Travel

- All travel will be preapproved and will be paid by City for professional consulting service only.

#### Special Considerations

- Some items listed in Appendix A-1 and B-1 may require the use of subcontractor(s), at bidders discretion.

**Appendix C  
Insurance Waiver**

**RESERVED**

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**[Use as appropriate and only if an insurance waiver has been signed and granted by the Risk Manager.]**

**Appendix D  
Additional Terms**

**I. HIPAA**

The parties acknowledge that CITY is a Covered Entity as defined in the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore required to abide by the Privacy Rule contained therein. The parties further agree that CONTRACTOR falls within the following definition under the HIPAA regulations:

- A Covered Entity subject to HIPAA and the Privacy Rule contained therein; or
- A Business Associate subject to the terms set forth in Appendix E;
- Not Applicable, CONTRACTOR will not have access to Protected Health Information.

**2. THIRD PARTY BENEFICIARIES**

No third parties are intended by the parties hereto to be third party beneficiaries under this Agreement, and no action to enforce the terms of this Agreement may be brought against either party by any person who is not a party hereto.

## Appendix E

### BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum is entered into to address the privacy and security protections for certain information as required by federal law. City and County of San Francisco is the Covered Entity and is referred to below as "CE". The CONTRACTOR is the Business Associate and is referred to below as "BA".

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#### RECITALS

- A. CE wishes to disclose certain information to BA pursuant to the terms of the Contract, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Addendum.

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

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
  - h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
  - i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
  - j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; and (ii) that identifies the individual or with respect to where there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
  - k. **Protected Information** shall mean PHI provided by CE to BA or created or received by BA on CE's behalf.
  - l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
  - m. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).
2. **Obligations of Business Associate**
- a. **Permitted Uses.** BA shall not use Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and Addendum. Further, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information (i) for the proper management and administration of BA, (ii) to carry out the legal responsibilities of BA, or (iii) for Data Aggregation purposes for the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
  - b. **Permitted Disclosures.** BA shall not disclose Protected Information except for the purpose of performing BA's obligations under the Contract and as permitted under the Contract and Addendum. BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) a *written* agreement from such third party to immediately notify BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C.

Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

- c.* **Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates 42 U.S.C. Section 17935(a). BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Contract.
- d.* **Appropriate Safeguards.** BA shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931]
- e.* **Reporting of Improper Access, Use or Disclosure.** BA shall report to CE in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 10 calendar days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.R.R. Section 164.308(b)].
- f.* **Business Associate's Agents.** BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI. If BA creates, maintains, receives or transmits electronic PHI on behalf of CE, then BA shall implement the safeguards required by paragraph c above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g.* **Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h.* **Amendment of PHI.** Within ten (10) days of receipt of a request from CE for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BA or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligation under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected

Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors shall be the responsibility of CE [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- i.* **Accounting Rights.** Within ten (10) calendar days of notice by CE of a request for an accounting for disclosures of Protected Information or upon any disclosure of Protected Information for which CE is required to account to an individual, BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BA or its agents or subcontractors, BA shall within five (5) calendar days of a request forward it to CE in writing. It shall be CE's responsibility to prepare and deliver any such accounting requested. BA shall not disclose any Protected Information except as set forth in Sections 2.b. of this Addendum [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph h shall survive the termination of this Agreement.
- j.* **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BA's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BA shall provide to CE a copy of any Protected Information that BA provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k.* **Minimum Necessary.** BA (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l.* **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.
- m.* **Business Associate's Insurance.** BA shall maintain a sufficient amount of insurance to adequately address risks associated with BA's use and disclosure of Protected Information under this Addendum.

- n. **Notification of Breach.** During the term of the Contract, BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
- o. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS. BA shall provide written notice to CE of any pattern of activity or practice of the CE that BA believes constitutes a material breach or violation of the CE's obligations under the Contract or Addendum or other arrangement within five (5) calendar days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- p. **Audits, Inspection and Enforcement.** Within ten (10) calendar days of a written request by CE, BA and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether BA has complied with this Addendum; provided, however, that (i) BA and CE shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) CE shall protect the confidentiality of all confidential and proprietary information of BA to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by BA. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems, books, records, agreements, policies and procedures does not relieve BA of its responsibility to comply with this Addendum, nor does CE's (i) failure to detect or (ii) detection, but failure to notify BA or require BA's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Contract or Addendum, BA shall notify CE within ten (10) calendar days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

### 3. Termination

- a. **Material Breach.** A breach by BA of any provision of this Addendum, as determined by CE, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other

security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

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

#### 4. **Limitation of Liability**

Any limitations of liability as set forth in the contract shall not apply to damages related to a breach of the BA's privacy or security obligations under the Contract or Addendum.

#### 5. **Disclaimer**

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

#### 6. **Certification**

To the extent that CE determines that such examination is necessary to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine BA's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which BA's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this Addendum.

#### 7. **Amendment**

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

**8. Assistance in Litigation or Administrative Proceedings**

BA shall make itself, and any subcontractors, employees or agents assisting BA in the performance of its obligations under the Contract or Addendum, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

**9. No Third-Party Beneficiaries**

Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

**10. Effect on Contract**

Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

**11. Interpretation**

The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the Contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

**12. Replaces and Supersedes Previous Business Associate Addendums or Agreements**

This Business Associate Addendum replaces and supersedes any previous business associate addendums or agreements between the parties hereto.

**Appendix F**  
**Invoice**

## Appendix G

### Emergency Response

CONTRACTOR will develop and maintain an Agency Disaster and Emergency Response Plan containing Site Specific Emergency Response Plan(s) for each of its service sites. The agency-wide plan should address disaster coordination between and among service sites. CONTRACTOR will update the Agency/site(s) plan as needed and CONTRACTOR will train all employees regarding the provisions of the plan for their Agency/site(s). CONTRACTOR will attest on its annual Community Programs' Contractor Declaration of Compliance whether it has developed and maintained an Agency Disaster and Emergency Response Plan, including a site specific emergency response plan for each of its service sites. CONTRACTOR is advised that Community Programs Contract Compliance Section staff will review these plans during a compliance site review. Information should be kept in an Agency/Program Administrative Binder, along with other contractual documentation requirements for easy accessibility and inspection.

In a declared emergency, CONTRACTOR'S employees shall become emergency workers and participate in the emergency response of Community Programs, Department of Public Health. Contractors are required to identify and keep Community Programs staff informed as to which two staff members will serve as CONTRACTOR'S prime contacts with Community Programs in the event of a declared emergency.

AMENDED IN COMMITTEE  
3/5/14

FILE NO. 131240

RESOLUTION NO. 75-14

1 [Contract Agreement - Department of Public Health and Health Advocates, LLC - Not to  
2 Exceed \$6,300,390]

3 **Resolution retroactively approving a contract between the Department of Public Health**  
4 **and Health Advocates, LLC, to provide uncompensated care reimbursement recovery**  
5 **services for the period of January 1, 2014, through December 31, 2017, for an amount**  
6 **not to exceed \$6,300,390.**

7  
8 WHEREAS, The Department of Public Health desires to capture revenue through an  
9 uncompensated reimbursement recovery contract; and

10 WHEREAS, The Department of Public Health conducted a competitive solicitation for  
11 these services which resulted in the selection of Health Advocates, LLC; and

12 WHEREAS, The revenue collected by this contract is anticipated to exceed  
13 \$1,000,000; and

14 WHEREAS, Section 9.118 of the San Francisco Charter requires contracts having  
15 anticipated revenue of \$1,000,000 or more to be approved by the Board of Supervisors by  
16 resolution; now, therefore, be it

17 RESOLVED, That the Board of Supervisors hereby authorizes the Director of Public  
18 Health and the Director of the Office of Contract Administration and Purchaser, on behalf of  
19 the City and County of San Francisco, to execute a contract with Health Advocates, LLC for  
20 the period of January 1, 2014, through December 31, 2017, to provide uncompensated care  
21 reimbursement recovery services, for a cost not to exceed \$6,300,390; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors hereby authorizes the Director  
23 of Public Health and the Director of the Office of Contract Administration and Purchaser to  
24 make amendments to this contract, as needed.  
25

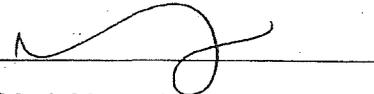
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RECOMMENDED:



Barbara A. Garcia  
Director of Health

APPROVED:



Mark Morewitz  
Health Commission Secretary



City and County of San Francisco  
Tails  
Resolution

City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

File Number: 131240

Date Passed: March 11, 2014

Resolution retroactively approving a contract between the Department of Public Health and Health Advocates, LLC, to provide uncompensated care reimbursement recovery services for the period of January 1, 2014, through December 31, 2017, for an amount not to exceed \$6,300,390.

March 05, 2014 Budget and Finance Sub-Committee - AMENDED

March 05, 2014 Budget and Finance Sub-Committee - RECOMMENDED AS AMENDED

March 11, 2014 Board of Supervisors - ADOPTED

Ayes: 9 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar and Tang

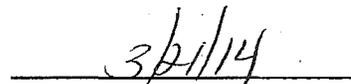
Excused: 2 - Wiener and Yee

File No. 131240

I hereby certify that the foregoing  
Resolution was ADOPTED on 3/11/2014 by  
the Board of Supervisors of the City and  
County of San Francisco.

  
Angela Calvillo  
Clerk of the Board

  
Mayor

  
Date Approved

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

<b>City Elective Officer Information</b> <i>(Please print clearly.)</i>	
Name of City elective officer(s): Members, Board of Supervisors	City elective office(s) held: Members, Board of Supervisors

<b>Contractor Information</b> <i>(Please print clearly.)</i>	
Name of contractor: Health Advocates, LLC	
<i>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.</i>	
<b>President:</b> Al Leibovic, <b>CEO</b> Aaron Leibovic, <b>COO</b> , Steve Levine, <b>CFO</b> William Russell	
Contractor address: 14721 Califa Street, Sherman Oaks, CA 91411	
Date that contract was approved:	Amount of contract: Not to exceed \$18,014,546
Describe the nature of the contract that was approved: Uncompensated reimbursement recovery services	
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 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

<b>Filer Information</b> <i>(Please print clearly.)</i>	
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



City and County of San Francisco  
London Breed, Mayor

# San Francisco Department of Public Health

Greg Wagner  
Acting Director of Health

October 1, 2018

Angela Calvillo, Clerk of the Board  
Board of Supervisors  
1 Dr. Carlton B. Goodlett Place, Room 244  
San Francisco, CA 94102-4689

Dear Ms. Calvillo:

Please find attached a proposed resolution for Board of Supervisors approval of original agreement to a contract agreement with Health Advocates LLC in the amount of \$18,014,546.

This original agreement requires Board of Supervisors approval under San Francisco Charter Section 9.118.

The following is a list of accompanying documents:

- o Adopted resolution and original agreement;
- o Proposed resolution and amendment;
- o Form SFEC-126 for the Board of Supervisors and Mayor.

For questions on this matter, please contact me at (415) 255-3508, [Jacquie.Hale@SFDPH.org](mailto:Jacquie.Hale@SFDPH.org).

Thank you for your time and consideration.

Sincerely,

Jacquie Hale  
Manager, Office of Contracts Management and Compliance  
DPH Business Office

cc: Mario C. Moreno, Director, DPH Office of Contracts Management and Compliance, DPH Business Office

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2018 OCT -1 AM 11:46

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The mission of the San Francisco Department of Public Health is to protect and promote the health of all San Franciscans.

We shall ~ Assess and research the health of the community ~ Develop and enforce health policy ~ Prevent disease and injury ~  
~ Educate the public and train health care providers ~ Provide quality, comprehensive, culturally-proficient health services ~ Ensure equal access to all ~

Jacquie.Hale@SFDPH.org – office 415-255-3508 – fax 415 252-3088

1380 Howard Street, Room 421B, San Francisco, CA 94103

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