

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Administration

BRIEF DESCRIPTION:

Authorizing the Director of Transportation to enter into an Agreement with Probe Information Services, Inc. for the provision of workers' compensation investigative services in an amount not to exceed \$2,500,000 for a term of five years following the San Francisco Municipal Transportation Agency (SFMTA) Board of Directors' approval of the Agreement; authorizing the SFMTA in its sole discretion to extend the term of the Agreement on the same terms and conditions for up to two additional years by providing written notice to Probe Information Services, Inc. not less than 90 days prior to the termination date.

SUMMARY:

- Workers' compensation costs are a significant portion of any city's or county's budget.
- The State of California requires cities and counties to use the services of a special investigations unit to increase fraud detection and reporting.
- The SFMTA issued a request for proposals (RFP) and conducted a formal selection process to identify the most qualified proposing firm to provide the service.
- Probe Information Services, Inc. was the firm selected through the RFP process.
- The cost of the Agreement shall not exceed \$2,500,000 for a term of five years following approval by the SFMTA Board of Directors.
- The SFMTA may, in its sole discretion, extend the term of the Agreement on the same terms and conditions for up to two additional years by providing written notice to Probe Information Services, Inc. not less than 90 days prior to the termination date.

ENCLOSURES:

1. SFMTAB Resolution
2. Agreement with Probe Information Services, Inc.

APPROVALS:

DATE

DIRECTOR OF DIVISION		
PREPARING ITEM _____	_____	_____
FINANCE _____	_____	_____
DIRECTOR _____	_____	_____
SECRETARY _____	_____	_____

ADOPTED RESOLUTION

BE RETURNED TO Dan Roach, Manager, Workers' Compensation Services

ASSIGNED SFMTAB CALENDAR DATE: _____

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PURPOSE

In 1991, a new anti-fraud law, SB 1218 (Presley), was enacted. The new law established stiffer penalties of up to five years imprisonment for persons filing false or fraudulent claims, and subjected physicians and attorneys who engaged in specified fraudulent activity to professional discipline including loss of state licenses.

The types of complaints or cases investigated include (1) “phony workers’ compensation claims,” including claims made by workers, medical providers, pharmacies, attorneys and others, (2) “fraudulent denial of workers’ compensation benefits,” and (3) “workers’ compensation premium fraud by employers.” There are criminal prohibitions against each of these activities, primarily under Insurance Code sections 1871.4, 11760 and 11880. The sources of Fraud Division investigations include referrals by insurance companies and self-insured employers, citizen complaints and Division-initiated cases.

Additionally, Labor Code section 3823 requires any insurer, self-insured employer, third-party administrator, workers’ compensation administrative law judge, audit unit, attorney, or other person that believes a fraudulent claim has been made by any person or entity providing workers’ compensation medical care, to report the apparent fraud to the administrative director of the Division of Workers’ Compensation.

All claims for workers’ compensation benefits are investigated to determine if they arose out of and occurred during the course of employment. Each investigation consists of identifying and gathering the relevant facts of a claim in order to establish compensability. Some claims are easily verifiable and are subject to a low level investigation, conducted jointly by the employer and claims administrator. Other claims are more vague in nature, and require a higher level of investigation.

The SFMTA Workers’ Compensation program (Agency) is self-insured and administered via a Third Party Administrator. The annual volume of claims at the Agency is approximately 700 claims per year. Of that number, approximately 25 percent require a higher level of investigation on claims “arising out of employment” (AOE) or in the “course of employment” (COE), or another type of higher level investigation.

Additionally, the Agency regularly creates video documentation of important potential evidence, and the successful proposal will need to include a process to acquire, store and make this video documentation accessible as indicated.

Agency staff review each claim filed by an Agency employee to determine compensability. Additionally, each claim is reviewed by the Agency’s third party claims administrator for compensability issues. Claims with compensability issues are subject to an investigative process, managed by Agency staff.

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In an effort to contain California municipalities' and cities' costs, the State of California requires cities and counties to use the services of a special investigations unit to increase fraud detection and reporting.

In its interest to reduce workers' compensation costs due to erroneous, false or fraudulent claims and comply with the state's requirements, the SFMTA issued an RFP and conducted a formal selection process to identify the most qualified proposing firm to provide workers' compensation investigative services. The proposed contracting firm, Probe Information Services, Inc., was selected through this process.

GOAL

In addition to complying with State of California requirements, the provision of these workers' compensation investigative services meets "Goal 4–Financial Capacity: to ensure financial stability and effective resource utilization, Objective 4.2: Ensure efficient and effective use of resources" in the Agency's *2008–2012 Strategic Plan*.

DESCRIPTION

Under the terms of the Agreement, Probe will provide comprehensive and professional workers' compensation investigative services, surveillance and special investigation unit (SIU) services to the SFMTA to establish compensability based on established referral criteria, for claims filed by persons suffering from injuries sustained in the course of, or arising out of, employment and assist the SFMTA to identify any false or fraudulent claims.

Probe's Surveillance Unit, when indicated, will conduct an initial pre-surveillance workup within 24 hours and a progress report to the SFMTA within 30 days following a delay.

Probe's Field Investigation Unit will provide, when indicated, an initial review and discussion with the examiner if needed within 24 hours. The investigation, based on established criteria, will be assigned to an investigator within 24 hours. Probe will complete all assignments pertaining to alleged injuries incurred AOE or in the COE before the 75th day following notification thereof.

Probe's SIU will provide initial review of assignment and discussion with examiner, if needed, within 24 hours, and designate an SIU Specialist to monitor the assignment.

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Probe will use its proprietary Fast-Track online referral management system to provide advanced reporting capabilities, data transfer and data management services to the SFMTA and the SFMTA's third-party workers' compensation claims administrator (currently Sedgwick Claims Management Services).

Probe's services shall include, but not be limited to, the following duties:

- Medical Records Retrieval (When Requested)
- AOE/COE Psyche/Stress Claim Investigations
- Subrogation Investigations Report
- Surveillance and Activity Checks
- Background Investigation – Database Searches / Social Networking Research
- Medical Facility Canvass
- Return to Work Investigation
- Disability Management Interview
- Primary Treating Physician Visit
- SIU Analysis, Investigation and/or Fraud Referral
- Contractor's Data Security System and Disaster Recovery Plan

All services will be provided on an as-needed basis, based on established criteria, normally requested by the SFMTA but may be requested by the SFMTA's third-party workers' compensation claims administrator, Sedgwick Claims Management Services with the SFMTA's consent.

To date, these services have been provided through Sedgwick CMS. The SFMTA has carved out these investigative services in order to select the best vendor and ensure the success of the Investigative Services Program, through an RFP process and award a contract.

The SFMTA's Contract Compliance Office (CCO) has reviewed and approved the proposed Agreement with Probe. Probe has complied with the San Francisco Human Rights Commission's (SFHRC) requirements for outreach and identification of SFHRC-certified local business enterprise (LBE) firms to comprise the minimum 20 percent in LBE subcontractors.

The City Attorney has reviewed and approved the Agreement as to form and has reviewed this report.

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ALTERNATIVES CONSIDERED

Due to the intermittent, as-needed nature of this work and the need for 100 percent staff availability when services are required, staff determined that it was not feasible to attempt to provide these services in-house.

Additionally, best practices dictate that investigative services be provided by an independent contractor to avoid any perceived or real conflict of interest that could occur if in-house investigators were called upon to investigate one of their own, or a member of the staff that manages these services.

FUNDING IMPACT

The estimated cost for these services under the not-to-exceed amount of \$500,000 per year, or \$2,500,000 for the [initial] five-year term of the Agreement, was based on current expenditures for these services through the SFMTA's Agreement for third-party workers' compensation claims administration provided by Sedgwick CMS. In the event that the SFMTA chooses to exercise its two, one-year options to extend the contract to a full seven years, the total cost is estimated to be \$3,500,000.

Additionally, Probe's rates for services were evaluated to be cost effective when compared to other proposed rates in the RFP selection process.

Funds for these services will be paid from the SFMTA's workers' compensation claims budget.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The SFMTA Board of Directors' approval is required to execute this Agreement. No additional legislative body must review or approve it thereafter.

RECOMMENDATION

Based on the information provided herein, the SFMTA recommends that its Board of Directors authorize the Director of Transportation to enter into an Agreement with Probe for the provision of workers' compensation investigative services in an amount not to exceed \$2,500,000 for a term of five years following this Board's approval of the Agreement. The SFMTA further recommends that the Board authorize the SFMTA in its sole discretion to extend the term of the Agreement on the same terms and conditions for up to two additional years by providing written notice to Probe not less than 90 days prior to the termination date.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, Expenditures for workers' compensation claims are a significant portion of municipalities' and counties' budgets; and,

WHEREAS, It is in the interest of the San Francisco Municipal Transportation Agency (SFMTA) to ensure that its workers' compensation payments are made legitimately to those who have been injured arising out of employment or in the course of employment; and,

WHEREAS, It is therefore in the interest of the SFMTA to ensure that its workers' compensation expenditures are not made under erroneous, false or fraudulent claims; and,

WHEREAS, The State of California requires that all municipalities and counties use the services of a special investigations unit to increase fraud detection and reporting; and,

WHEREAS, The SFMTA issued a request for proposals (RFP) and conducted a formal selection process to identify the most qualified firm to provide workers' compensation investigative services; and,

WHEREAS, Probe Information Services, Inc. (Probe) was selected through the SFMTA's RFP process; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors hereby authorizes the Director of Transportation to enter into an Agreement with Probe Investigative Services for the provision of workers' compensation investigative services in an amount not to exceed \$2,500,000 for a term of five years following this Board's approval of the Agreement; and, be it further

RESOLVED, That the SFMTA in its sole discretion may extend the term of the Agreement on the same terms and conditions for up to two additional years by providing written notice to Probe Information Services, Inc. not less than 90 days prior to the termination date.

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

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and
Probe Information Services, Inc.
for Workers' Compensation Investigative Services**

Contract No. SFMTA-2010/11-11

This Agreement is made this 24th day of August, 2011, in the City and County of San Francisco, State of California, by and between: Probe Information Services, Inc., 6375 Auburn Boulevard, Citrus Heights, CA 95621 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to secure the provision of investigative services as required for workers' compensation claims filed with the SFMTA.
- B. A Request for Proposal ("RFP") was issued on March 14, 2011, and City selected Contractor as the highest ranked proposer.
- C. Contractor represents and warrants that it is qualified to perform the services required by City as described in this contract.
- D. Authorization for this Agreement was obtained when the Civil Service Commission approved personal services contract number 4044-10/11 on November 1, 2010.

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. The term of this Agreement shall commence upon its execution by all parties and shall continue for five years, unless sooner terminated or extended as provided herein. The SFMTA in its sole and absolute discretion shall have the option to extend this Agreement by providing written notice to Contractor not less than 90 days prior to the termination date. Such extension shall be on the same terms and conditions as this Agreement. A single extension shall be for a term of one year, and total extensions cannot exceed two years.

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 last day of each month for work, as set forth in Section 4 of this Agreement, that the SFMTA's Executive Director/CEO, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed Two Million, Five Hundred Thousand Dollars (\$2,500,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA 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.

The Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of HRC Progress Payment Form. If Progress Payment Form is not submitted with Contractor's invoice, the Controller will notify the SFMTA, the Director of HRC and Contractor of the omission. If Contractor's failure to provide HRC Progress Payment Form is not explained to the Controller's satisfaction, the Controller will withhold 20% of the payment due pursuant to that invoice until HRC Progress Payment Form is provided. Following City's payment of an invoice, Contractor has ten days to file an affidavit using HRC Payment Affidavit verifying that all subcontractors have been paid and specifying the amount.

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. All amounts paid by City to Contractor shall be subject to audit by City. Payment shall be made by City to Contractor at the address specified in the section entitled “Notices to the Parties.”

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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

10. Taxes. 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.

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

16. Indemnification. Contractor shall indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, arising directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, Contractor's use of facilities or equipment provided by City or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on City, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of City and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee. The foregoing indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and City's costs of investigating any claims against the City. In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by City and continues at all times thereafter. Contractor shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

17. Incidental and Consequential Damages. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

18. Liability of City. CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

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

20. Default; Remedies. 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, | 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 |

(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.

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

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

23. Conflict of Interest. Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provision of Section 15.103 of the City’s Charter, Article III, Chapter 2 of City’s Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

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

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, or by e-mail, and shall be addressed as follows:

To City: Dan Roach
Manager, Workers' Compensation San Francisco Municipal
Transportation Agency
One South Van Ness Avenue, Sixth Floor
San Francisco, CA 94103-5417
Fax: 415-701-5001

To Contractor: Ross Stewart
President
6375 Auburn Boulevard
Citrus Heights, CA 95621
Fax: 800.373.6547
E-mail:ross.stewart@probeinfo.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. 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.

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

(1) 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.

(2) Subcontracting Goals. The LBE subcontracting participation goal for this contract is 20 percent (20%). Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

(3) Subcontract Language Requirements. Contractor shall incorporate the LBE Ordinance into each subcontract made in the fulfillment of Contractor's obligations under this Agreement and require each subcontractor to agree and comply with provisions of the ordinance applicable to subcontractors. Contractor shall include in all subcontracts with LBEs made in fulfillment of Contractor's obligations under this Agreement, a provision requiring Contractor to compensate any LBE subcontractor for damages for breach of contract or liquidated damages equal to 5% of the subcontract amount, whichever is greater, if Contractor does not fulfill its commitment to use the LBE subcontractor as specified in the bid or proposal, unless Contractor received advance approval from the Director of HRC and contract awarding authority to substitute subcontractors or to otherwise modify the commitments in the bid or proposal. Such provisions shall also state that it is enforceable in a court of competent jurisdiction. Subcontracts shall require the subcontractor to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(4) Payment of Subcontractors. Contractor shall pay its subcontractors within three working days after receiving payment from the City unless Contractor notifies the Director of HRC in writing within ten working days prior to receiving payment from the City that there is a bona fide dispute between Contractor and its subcontractor and the Director waives the three-day payment requirement, in which case Contractor may withhold the disputed amount but shall pay the undisputed amount. Contractor further agrees, within ten working days following receipt of payment from the City, to file the HRC Payment Affidavit with the Controller, under penalty of perjury, that the Contractor has paid all subcontractors. The affidavit shall provide the names and addresses of all subcontractors and the amount paid to each. Failure to provide such affidavit may subject Contractor to enforcement procedure under Administrative Code §14B.17.

34. Nondiscrimination; Penalties

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

b. Subcontracts. Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code (copies of which are available from 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.

43. Requiring Minimum Compensation for Covered Employees

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

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

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

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

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

f. Contractor's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage

that will be impractical or extremely difficult to determine if the Contractor fails to comply with these requirements. Contractor agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Contractor's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

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

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

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

44. Requiring Health Benefits for Covered Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

a. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.

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

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

d. Any Subcontract entered into by Contractor shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Contractor shall notify City'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. Contractor shall cooperate with the SFMTA to submit to the SFMTA Contract Compliance Office any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

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

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

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

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

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

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

55. Left blank by agreement of the parties. (Supervision of Minors)

56. Severability. Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

57. Protection of Private Information. Contractor has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, “Nondisclosure of Private Information,” and 12M.3, “Enforcement” of Administrative Code Chapter 12M, “Protection of Private Information,” which are incorporated herein as if fully set forth. Contractor agrees that any failure of 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. 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. Left blank by agreement of the parties. (Slavery Era Disclosure)

61. Cooperative Drafting. This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By:</p> <hr/> <p>Mariam Morley Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary to the SFMTA Board of Directors</p>	<p>CONTRACTOR</p> <p>Probe Information Services, Inc.</p> <p>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.</p> <p>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.</p> <hr/> <p>Ross Stewart President 6375 Auburn Boulevard Citrus Heights, CA 95621</p> <p>City vendor number: 84701</p>
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Appendices

- A: Services to be provided by Contractor
- B: Calculation of Charges

Appendix A Services to be provided by Contractor

Contractor: Probe Information Services, Inc.

1. Description of Services

Contractor agrees to perform the following services:

Probe Information Services, Inc., (Contractor) shall provide comprehensive and professional investigative, surveillance and Special Investigation Unit (SIU) services to the San Francisco Municipal Transportation Agency (SFMTA). Contractor shall provide these services through its three divisions with the following experienced and specialized Vice President over each division:

- Renea Abdin, VP of Field Investigations
- Rob Harper, VP of Surveillance
- Dalene Bartholomew, VP of SIU

Contractor shall maintain organizational capacity to provide Services to the SFMTA and complete tasks for the SFMTA within the allotted time as specified in the SFMTA's request for proposals (RFP) No. SFMTA-2010/11-11, which is attached hereto as Appendix C and incorporated by reference as though fully set forth herein.

Contractor shall enter into sub-contracts with San Francisco Human Rights Commission (HRC)-certified local business enterprises (LBE) J H Askins Company, Inc. and LBE J.P. Hibbard Investigations as indicated in its responsive HRC forms submitted as part of its proposal to the SFMTA, and its subcontractors shall utilize Contractor's on-line case management system, which shall maximize the use of technology to meet the SFMTA's requirements. Contractor shall handle the overall scope of the Services within the required time frames and meet all objectives required by the SFMTA.

CONTRACTOR'S TECHNOLOGY & ON-LINE CASE MANAGEMENT SYSTEM

Contractor shall use its Fast-Track proprietary online referral management system to provide advanced reporting capabilities, data transfer and data management services to the SFMTA. Contractor shall make available the custom web portal it has developed known as MAP (Muni Assignment Portal) for use by the SFMTA and the SFMTA's third-party administrator (TPA) for workers' compensation benefits (Sedgwick). Contractor's MAP shall be designed for the SFMTA's and its TPA's ease of use, time savings, convenience and cost-free access. All subcontractors under this Agreement shall also post to the MAP site to ensure that data on all assignments shall be available to the SFMTA and its TPA. Contractor shall ensure that the SFMTA and its TPA shall be able to perform the following functions:

- Refer and direct all investigations (to Contractor and its subcontractors)
- Check ongoing status of investigations

- View surveillance footage through video streaming
- Verify identity of the surveillance subject as the claimant
- Read reports online and/or download them to secured computers
- Download documents obtained during investigations
- Run management reports

Contractor's MAP shall have multiple levels of access with varying levels of ability as follows:

- TPA Examiners
 - Access through tables of ongoing or completed Contractor's or its subcontractor's assignments
 - Refer assignments and direct assignments
 - Check ongoing status
 - Read reports and download documents
 - View video
 - Access co-worker's referrals for coverage purposes
- TPA Management and SFMTA staff
 - All items listed above for all assignments (ongoing and completed)
 - Reports (reports can be customized at no extra charge)
 - Turn-around time
 - Cost analysis
 - Special Investigations Unit (SIU) results including arrests, convictions, restitution and results
- Defense Counsel for Claimant
 - Check assignment status.
 - Read Reports and download documents.
 - View Video.
- Contractor's Subcontractors
 - Access to assigned cases
 - Post time and activity
 - Upload documents and video
 - View documents provided by SFMTA / Sedgwick

ASSIGNMENT OF WORK – SCHEDULE & ABILITY TO COMPLETE PROJECT:

Contractor shall maintain the organizational capacity to provide Services to the SFMTA and complete the tasks within the allotted time as outlined below per unit:

- Referral intake – enter assignment into the MAP case management system
- Generate MAP auto acknowledgement to the examiner and notify the unit of a new assignment

Surveillance Unit

- Conduct initial pre-surveillance workup within 24 hours
- Notify the Supervisor that surveillance assignment is ready to be worked
- Assign surveillance to investigator for each day to be worked
- Send film from investigator to office
- Generate a report, which shall be reviewed by Contractor's Vice President of Surveillance
- Send the report to the examiner with video streaming available on the MAP within 21 days total
- Provide a progress report to the SFMTA within 30 days following a delay for any reason

Field Investigation Unit

- Provide initial review and discussion with examiner if needed within 24 hours
- Assign the investigation to an investigator within 24 hours
- Complete the investigation and return it to the office for review
- Provide the report to Contractor's Vice President of Field Investigations for review
- Provide a final report to the examiner, which shall be linked to MAP within 21 days total
- Provide a progress report within 30 days of a delay for any reason
- Complete all assignments pertaining to alleged injuries incurred arising out of employment (AOE) or in the course of employment (COE) before the 75th day following notification thereof.

Special Investigations Unit (SIU)

- Provide initial review of assignment and discussion with examiner if needed within 24 hours
- Designate an SIU Specialist to monitor the assignment
- Assign tasks to investigators as needed
- Generate a report for review by Contractor's Vice President of the SIU
- Send the report to the examiner and link it to the MAP
- Provide a progress report within 30 days for a delay of any type

Field Investigations (AOE/COE & Subrogation)

Contractor's Vice President of Field Investigations, Renea Abdin, or her successor, shall oversee and direct all AOE/COE and Subrogation. Contractor's and its subcontractors' Field Investigators shall obtain information through personal interviews, research, and written documents. Contractor shall report, without personal opinion, comment, or prejudice, factual information as it is provided to us. Contractor shall ensure that its investigators are knowledgeable in identifying and gathering the relevant facts and information regarding potential affirmative defenses in order to establish compensability. Contractor's cases shall be assigned to the Field Investigator by the Vice President of Field Investigations or Senior Field Analyst.

The investigator shall initiate contact with injured workers, employers, supervisors, coworkers and third party witnesses. All completed investigative tasks shall be documented on MAP.

Entries shall include relevant details regarding the efforts made and the progression of the investigation. Photographs, audio recordings, and document evidence shall be preserved digitally and maintained in electronic case file folders. All documents shall have extensive backup for evidence preservation.

Field Investigators shall digitally record their in-person interviews and, if directed to do so, their telephonic interviews. Contractor shall verify an injured worker's identity and photograph their driver's license or another official form of identification.

Upon completion of the interviews and all other assigned investigative tasks, the investigator shall compile, download and submit the report, digital audio recordings, photographs, and accompanying attachments electronically to Contractor's office for review. All reports shall be reviewed by Contractor's Vice President of Field Investigations or their designee for thoroughness, completion of the specific task or tasks, and spelling/punctuation/grammar. Contractor shall provide all forms and releases needed such as medical authorizations and retractions. Investigations shall be completed and reports submitted to the client within 21 days or less of the assignment receipt, and shall pay particular attention to the claims administrator's statutory presumption deadline under LC 5402 (b).

Contractor shall place one on-site AOE/COE Investigator at the SFMTA's Workers' Compensation office located at One South Van Ness Avenue, Sixth Floor, San Francisco, CA 94103. This investigator shall be available to the SFMTA's Workers' Compensation Manager for time sensitive assignments. The SFMTA shall provide the on-site AOE/COE Investigator with a PC work station and network connection. Contractor's on-site investigator shall be paid exclusively at the rates for Services indicated in Appendix B of this Agreement.

➤ **AOE/COE Reports**

At the top of each report Contractor shall outline the assignment with which they have been tasked, and complete a summary of their ability to complete those tasks. Contractor shall provide a concise summary of the information obtained from those interviewed, and outline any issues of note or "Red Flags."

Contractor shall provide information on the location of the incident and the date of notice to the employer. Contractor shall provide background information including aliases, vehicle description, languages spoken, dominant upper extremity, and the injured worker's physical description. Contractor shall take photographs and measurements of worksites, outline scene diagrams, accident sites, and equipment. Contractor shall have the ability to provide accurate weights of objects and decibel readings. Contractor shall provide a factual impression of the injured worker such as their ability to recall dates, details, and their willingness to answer questions posed. Contractor shall note and report conflicting information between what is told to them and information Contractor may observe.

Contractor shall obtain information including, but not limited to:

- Injury Information and Claimant Allegations
- Witnesses

- Concurrent employment and any supplemental income
- Previous and/or Subsequent Employment
- All Doctors Seen for this specific injury
- The injured worker's current medical status and treatment
- The effects of the injury-what the injured worker says they can and cannot do since the injury
- Any previous similar injuries; both industrial or non-industrial
- Any other workers' compensation claims, including any settlements received
- Personal Physician & Personal Insurance
- All Doctors seen within the past 10 years
- Automobile accidents, hospitalizations, surgeries, or broken bones
- MPN information-does the injured worker know how to file a claim and where to go for treatment
- All sports/hobbies/outside interests
- General information regarding personal habits, family issues, conflicts at work or personnel issues

In each report Contractor shall clearly outline any potential third party for subrogation consideration. Contractor shall outline all physical evidence obtained; signed medical history forms, medical releases, personnel files, photographs, recordings, police reports, and any equipment Contractor may have secured. In each report, Contractor shall include recommendations for further investigation. Depending on the information obtained, Contractor may recommend consideration for additional statements, surveillance, medical canvasses, or background checks and each report includes a Photo Sheet with relevant photographs and description of each.

➤ **Medical Records Retrieval**

If medical records are desired by the examiner, Contractor shall coordinate the copying of those records. Upon request, Contractor shall review and summarize the medical records with a focus on possible apportionment and/or fraud.

➤ **AOE/COE-Psyche/Stress**

In psyche/stress claim investigations, Contractor's investigators shall obtain information from the injured worker, employer, and witnesses with particular attention to affirmative defenses under LC 3208:

Predominate cause/actual events of employment

- Six month rule
- Post termination
- Good faith personnel actions

Contractor shall interview all parties and ask detailed, personal questions about the injured worker's health, personal habits, financial difficulties, marital difficulties, criminal and legal issues, issues or difficulty with children, parents or siblings, alcohol abuse, illegal or prescription drug usage, and any and all work or personnel issues. Contractor shall obtain specific signed releases for psychiatric records from the injured worker.

➤ **Subrogation Investigations/Reports**

As part of an AOE/COE investigation or as a specific assignment, Contractor's Field Investigative staff shall obtain information for the claims administrator as it pertains to potential subrogation. Triggers for potential subrogation shall include injuries from the following:

- Slip/trip/fall
 - Secure property owner names, addresses, and insurance information
 - Measure, photograph, diagram, and describe the location
 - Document weather conditions
 - Secure photos and descriptions of shoes worn at the time of the incident
 - Obtain information regarding leaks, spills, hazards, warnings
 - Obtain copies of in-house surveillance film
 - Secure information regarding lighting and time of day the incident occurred

- Automobile accidents
 - Obtain police/CHP/Fire Department reports
 - Measure, photograph, diagram, and provide internet mapping of the accident location
 - Obtain and report third party insurance policy/claim information
 - Secure information regarding road hazards, construction, obstructions and information on the responsible public or private entity

- Injuries involving equipment
 - Obtain all information regarding employee training on usage of equipment
 - Obtain make/model/age/purchase receipts/and maintenance records of the equipment
 - Inquire and report if any modifications have been done to the equipment
 - Measure, photograph, diagram and describe the equipment
 - Conduct internet research for recalls or complaints regarding the equipment involved
 - Staff the assignment with the claims administrator and secure the equipment for storage at Contractor's office, or shipping to the claims administrator
 - Obtain copies of in-house surveillance film

All information regarding potential third parties shall be included in each investigative report that Contractor completes.

Surveillance & Activity Checks

Contractor's surveillance investigation shall begin with a convenient referral process, followed by thoughtful execution of the action plan and end with the timely reporting of facts. It is what happens in between those steps that dictates a successful outcome. Early and continued communication shall be Contractor's primary methodology in remaining current with case objectives.

Contractor shall identify new opportunities and follow the ever-changing path of an investigation. Contractor's team of supervisors and support staff shall work concurrently with field investigators to uncover every possible lead. Contractor shall pursue every practical opportunity in order to document the overall subject activity while remaining in complete legal compliance as mandated through California Civil Code 1708.8. Contractor shall provide consideration the entire perspective of assisting the SFMTA and its TPA with claim containment, while protecting them from vicarious liability or undesirable scrutiny and public opinion. Therefore, Contractor shall adhere to a standard that strictly prohibits unethical tactics such as trespassing, entrapment or invasion of privacy. Furthermore, the safety and welfare of Contractor's employees shall be a key value to retain its experienced and tenured staff.

A typical surveillance investigation shall include, but not be limited to:

- Initiation: Same-day preliminary surveillance database and California Department of Motor Vehicles (DMV) work-up
- Same day coordination and strategic calendaring
- Assigned to supervisor for client contact within first 24 hours of receipt of assignment
- First day handling between one and five days or as directed.
- Local investigators on staff to handle emergency rush requests
- Progress report sent via e-mail after each day of surveillance
- Continued case coordination between claims examiner and Contractor's supervisor
- 3iD Criteria® to support positive identification of subject
- Instant ID photo capabilities – delivery to client contact for confirmation
- Evidentiary film delivered to Contractor's headquarters within 24 hours
- Video viewing available on-line through Fast Track
- Turn-around: Fully documented case completion within 21 days
- Report delivered electronically and also accessible on-line through MAP
- Investigators trained on court testimony and available indefinitely for trial

Surveillance shall be defined as an effort exceeding four hours on-site. The surveillance effort shall not terminate until there is no longer subject activity or reason to believe that activity will occur in the near future. Contractor may terminate an investigation when Contractor is unable to confirm the presence of the subject within the first four hours, saving valuable budget resources for future efforts. All reasonable attempts to confirm the subject's presence shall be made and the investigation shall continue to the sixth hour when confirmed. If there is no activity by the end of the sixth hour, all efforts shall be terminated unless there is a logical reason to believe that the subject will become active. If, at any point during the investigation the claimant is active and captured on video, a full eight-hour surveillance day may be initiated to increase the probability of capturing significant evidence. Exceptions to this rule shall be when a claimant is lost in pursuit or circumstances make it impractical to continue the investigations; i.e. fractured integrity of investigation, dangerous conditions, and/or natural limitations such as weather or lighting.

An **activity check** shall differ from surveillance in both objective and time on site. The purpose of an activity check is often to deem a case practical for surveillance. It is customarily requested to locate a subject, spot check activity, identify an *articulable suspicion* as outlined in CC

1708.8, and determine if the area is reasonable to setup for an extended investigation. Upon special request, a neighborhood canvas may also be conducted to uncover subject activity level as observed by others. Contractor shall strive to complete an activity check within four hours, however it is possible that the effort exceed that amount where there is present any claimant activity or reason to believe the claimant may engage in immediate future activity. In the case of the latter, communication with the claims administrator shall be initiated and approval for surveillance shall be requested. The work flow and reporting shall be identical to Surveillance.

Background Investigation - Database Searches / Social Networking Research

Contractor's Background Investigations inclusive of Database Searches shall be an effective and inexpensive investigative tool to learn about the claimant including prior claims, Workers' Compensation Appeals Board (WCAB) records, civil litigation, criminal activity and other public court records including restraining orders, traffic citations, etc. Background investigations shall confirm identifying information of the subject including other names used and confirmation of date of birth, Social Security Number, address and address history. Financial information shall be researched including real estate ownership, bankruptcy records, judgment, liens and Uniform Commercial Code (UCC) filings. Contractor shall also include Department of Motor Vehicles driving records and registered sex offender searches in its background investigation report. Contractor's background specialists shall run a wide range of database searches including IRB, Merlin, Accurint, Copernick, LexisNexis, and others to search and verify data.

Contractor's Background Investigations shall also include Social Network Research, which may provide the opportunity to glean information about the claimant, their interests and activity level. Contractor's Social networking research shall be included in its background investigation and provide a legal and ethic approach to gather on-line data. Contractor shall search the internet including social networking sites, electronic media and conduct a "web crawler" search to search the web for the subject's name included in such information as newspaper articles, periodicals, social networking sites, professional networking sites, sport teams, associations, web pages, business advertisements and other connections to the subject. Contractor affirms that its philosophy that only information that is "public" should be gathered as evidence in an insurance claim investigation and, consequently, Contractor shall not infringe on anyone's expectation of privacy or mislead anyone in order to gain entrance into a private website.

Medical Facility Canvass

Contractor's Medical Facility Canvasses shall serve as an effective and inexpensive investigative tool to locate previous medical records and/or pharmaceutical records to determine if the subject has a pre-existing injury. This information can be beneficial for determination of compensability, apportionment and/or fraud. Contractor may conduct medical facility canvasses to search for medical records at a flat-rate of \$295 for a search of up to 25 facilities that can include hospitals, emergency rooms, clinics, urgent cares and pharmacies.

Contractor shall protect the SFMTA and respect the claimant's rights. Contractor's medical facility canvasses shall not utilize any type of pretext, and shall utilize the claimant's information properly. Contractor's agents and employees shall canvass medical facilities including hospitals, clinics, medical treatment facilities, urgent care facilities and pharmacies by identifying themselves and explaining that they are calling to determine if records exist for their subject at

their facility which would be obtained through a signed Medical Release or subpoena. Contractor's Medical Facility Canvass reports shall provide three sections: 1) the identity and contact information for all facilities that confirmed having records pertaining to the subject; 2) the identity of all facilities that denied having records pertaining to the subject; and 3) the identity of facilities contacted that declined to confirm or deny if they have records with regard to the subject. Contractor's reports shall not provide information about what is contained in the medical records.

Upon request, Contractor's SIU experts shall review the records and provide a summary and analysis regarding possible apportionment as well as any misrepresentations and/or omissions made by the claimant with regard to prior injuries, treatment, symptoms or diagnostic testing.

Contractor shall be able to schedule and complete assignments for background investigations and medical facility canvasses within 21 days (obtaining court records or other public records may take longer due to government agencies and would be provided in a supplemental report). The assignment of background investigations and medical facility canvasses shall be conducted within Contractor's SIU team by its SIU Background Specialists.

Return to Work Investigation

Contractor's Return to Work Investigation shall be an effective tool to assist with malingerers. Contractor's SIU investigator shall meet with the unrepresented claimant to determine what they can and cannot do with a focus on returning to work. Contractor's SIU shall strategize the claimant's deposition with the defense attorney regarding a represented claimant. Contractor's SIU shall compare what the claimant states they can and cannot do to the job description, available modified duty, medical records, objective findings and other evidence to determine a plan of action with the objective of getting the claimant released to work. Contractor's SIU shall analyze applicable evidence including surveillance video, background investigation results, prior medical records and social networking research results to determine if evidence should be presented to the PTP to obtain a release to work. Contractor's SIU may recommend an in-person meeting with the PTP with the objective of getting the claimant released to work.

Disability Management Interview

Contractor's Disability Management Interview (DMI) shall be an effective tool for handling problematic claims as well as suspected fraud cases. Contractor shall utilize the DMI following surveillance for unrepresented claimants to question them about physical abilities, restrictions and limitations. Contractor shall provide claimants the opportunity to meet with Contractor's investigators to explain their level of disability, restrictions, and pain, and describe what they are unable to do following the injury that they could do before. When claimants make misrepresentations during a DMI about their physical abilities or restrictions as evidenced by surveillance video, that statement shall be utilized in a meeting with the Primary Treating Physician to bring subjective complaints into question. Contractor's prosecutions may be based on material misrepresentations made during the DMI.

DMI's shall also be used to question claimant regarding prior injuries, medical treatment as well as to obtain signatures on Releases. DMIs may also serve as tools for pre-surveillance to confirm where a subject resides, their appearance and how they describe their physical abilities and restrictions.

Primary Treating Physician Visit

In the event that Contractor's SIU provides a Primary Treating Physician Visit (PTP Visit) Contractor's skilled SIU expert shall schedule an appointment with the PTP to present evidence, typically surveillance evidence but also prior medical records, social networking evidence, witness statements and/or other evidence for the PTP to consider. Contractor's investigator shall discuss the evidence with the PTP along with any inconsistencies between the evidence and claimant's statement and point out any concerns. Contractor's investigator shall be able to discuss the fact pattern and evidence in order to meet the objective, which may be to get the claimant released to work, ensure that the medical treatment is appropriate, maximum medical improvement (MMI), and/or have the surveillance evidence described in a medical report to ensure that a qualified medical examiner (QME) is aware of the surveillance (should non-medical evidence be objected to).

SIU Analysis, Investigation and/or Fraud Referral

Contractor's SIU shall review suspicious claims to determine the best course of action and make recommendations to achieve positive outcomes. Following Contractor's SIU analysis of suspicious cases, Contractor shall provide an action plan to adjust for approval. If the SIU makes a determination that a crime has been committed, Contractor shall recommend referral to law enforcement. Contractor's SIU shall provide full SIU case management and coordinate with law enforcement to its conclusion. Contractor's SIU shall communicate effectively with the adjuster and the client throughout the criminal case process to meet objectives and ensure that updates are provided every 30 days at the minimum. Contractor's SIU prepares Restitution Proposals and coordinates with all parties to facilitate collection of restitution and making the victim whole, including payment of investigation and SIU fees. Contractor's SIU shall strive to build strong relationships with District Attorneys throughout California and receives fraud training annually alongside District Attorneys, Department of Insurance and criminal investigators to facilitate the success of its referred fraud cases.

Contractor's Data Security System and Disaster Recovery Plan

Contractor affirms that it owns all of its servers, which are located in their own rack at a datacenter off-site in a secure Tier-3 data center that is monitored 24x7x365 for power, access control, and climate control. Contractor's servers and data shall be protected with a state-of-the-art uninterruptible power supply (UPS) backbone and permanent independent generators. The Data Center shall be highly secured and monitored by constant surveillance from Contractor's providers Network Operations (NOC) team. Access to the data center shall be highly secured and controlled by the NOC via access badges and video cameras. Individuals requesting access must possess an access badge with picture, which shall be displayed on the security system controlled by the NOC. If the person using the card doesn't visually match the picture on the card, access to Probe's servers shall be denied.

The SFMTA's confidential claim data shall be secure on Contractor's servers and protected by state-of-the-art firewalls and an Intrusion Prevention System. Contractor's servers shall be connected via encrypted tunnel back to Contractor's home office. Contractor shall use the latest server Virtualization technology to operate its servers in an efficient, highly redundant and secure manner. Contractor shall cluster virtual hosts to ensure that its servers remain online even if one of its virtual host servers fails. Redundant power and redundant array of independent disks (RAID) arrays shall ensure data availability in the event of a power supply or disk failure.

Contractor shall maintain a Disaster Recovery Plan inclusive of the data center, which shall provide redundant Tier-1 Internet connections to multiple backbones to prevent loss of connectivity in the unlikely event of a failure of a single backbone provider. Contractor's server backups shall be collected daily and stored at Contractor's datacenter and replicated to multiple devices to ensure the ability to recover data in case one of the backup devices fails. Workstations accessing the data on Contractor's servers shall also be protected by an edge firewall/IPS/Content control appliance that blocks malicious content from malicious websites and email "on the fly" to ensure that viruses do not infect the network. All workstations shall be protected by anti-virus / intrusion prevention software installed on all computers. No data shall be stored on workstations.

EXECUTIVE SUMMARY OF SIU SERVICES

Contractor's Special Investigation Unit (SIU) shall work in tandem with the SFMTA and its TPA's claim professionals to identify red flags that might indicate potential deception or fraud and ensure that proper actions are taken from the beginning in order to stop unwarranted benefits and obtain positive outcomes. Contractor's SIU shall be compliant and overseen by Probe's certified SIU team. Contractor shall provide efficient anti-fraud processes and effective communication to save time and money to the extent possible.

- Contractor shall utilize its proprietary technology to refer cases and obtain case updates to the extent possible.
- Contractor shall visit the claims office weekly and provide on-site consultations, answer questions and provide an expert resource for fraud
- Contractor's Medical Facility Canvass shall identify claims that are not compensable, provide records for apportionment, and provide evidence of fraud.
- Contractor's Return to Work Investigations shall get the claimant released to work when appropriate.
- Contractor's Disability Management Interviews shall help determine which claimants are good surveillance candidates and also ensure that surveillance film could create a positive impact if obtained in order to utilize it effectively and timely.
- Contractor's SIU expert shall meet with the Primary Treating Physician (PTP) to discuss the fact pattern and evidence in order to meet the objective, which may be to get the claimant released to work, ensure that the medical treatment is appropriate, Maximum Medical Improvement (MMI), and/or have the surveillance evidence described in a medical report.

CONTRACTOR'S SIU PARTNERSHIP SHALL PROVIDE THE FOLLOWING:

- Successful and comprehensive SIU program with superior and proven results
- Fully compliant SIU per the Department of Insurance Regulations
- Anti-fraud training quarterly for the SFMTA's TPA and as requested for the SFMTA
- Contractor's SIU expert shall visit the SFMTA's Claim Professionals at the SFMTA's TPA weekly to provide SIU consultation and strategizing of suspicious claims with implementation of pro-active and innovative solutions
- Reports and statistics of SIU referrals and results per the SFMTA's specifications
- Prosecution packaging, coordination with law enforcement and restitution recovery
- Contractor's SIU staffing shall be experienced, specialized, highly skilled and knowledgeable:
 - Probe's SIU staffing is adequate per the Department of Insurance (DOI) regulations
 - Certified Fraud Examiner & Certified Insurance Fraud Investigator
 - Prior Workers' Compensation Claims Senior Examiner
 - SIU staff shall attend the Fraud Assessment Committee meetings to stay current on the fraud industry.
 - SIU staff shall attend Department of Insurance & National Insurance Crime Bureau monthly meetings.
 - Contractor's SIU staff shall receive over 120 hours of anti-fraud training annually

Contractor's SIU partnership program shall combine the following:

- Effective SIU training to help claim professionals identify suspicious claims
- SIU experts to visit the claim professionals weekly
- Pro-active approach to suspicious claims and effective use of Contractor's cost-effective and innovative investigative tools
- Maintain a strong relationship with law enforcement and a positive reputation with District Attorneys and Criminal Investigators throughout California

Contractor's SIU shall be available to the SFMTA and its TPA claim professionals for no-cost initial consultation of files to determine how the SIU can assist in providing a positive outcome and/or if there is a reasonable belief of fraud. Contractor's SIU shall provide recommendations and, following authorization from the SFMTA, open an SIU assignment. Contractor SIU's recommendations shall involve any number of strategies or use of Contractor's innovative investigative tools including, but not limited to:

- Surveillance
- Background Investigation / Social Networking Research
- Medical and Pharmaceutical Canvass
- Return-to-Work Investigation
- Disability Management Interview
- Primary Treating Physician visit
- SIU Analysis and Investigation
- Referral for suspected fraud and coordination with law enforcement
- Professional testimony in criminal proceedings and restitution hearings as required

BACKGROUND INVESTIGATION / SOCIAL NETWORKING RESEARCH

Background investigations shall be an effective and inexpensive tool to learn about the claimant

including prior claims, WCAB records, DMV record, sexual predator search, financial records, business records, civil litigation and criminal activity. Social Network Investigations provide the opportunity to glean information about the claimant, their interests and activity level. These investigative results shall be analyzed by Probe's SIU professionals to determine how they can benefit the claim to save SFMTA money and/or for evidence of fraud.

MEDICAL FACILITY CANVASS

Medical Facility Canvasses shall be an effective and inexpensive investigative tool to locate previous medical records and/or pharmaceutical records to determine if the subject has a pre-existing injury. This information can be beneficial for determination of compensability, apportionment and/or fraud. Contractor shall canvass medical facilities including hospitals, clinics, medical treatment facilities, urgent care facilities and pharmacies by advising who they are and explaining that they are calling to determine if records exist for our subject at their facility which would be obtained through a signed Medical Release or subpoena. Upon request, Contractor's SIU experts shall review the records and provide a summary and analysis regarding any misrepresentations and/or omissions made by the claimant with regard to prior injuries, treatment, symptoms or diagnostic testing. Contractor's Medical Facility Canvasses shall provide savings by identifying claims that are not compensable, providing records for apportionment, and can provide evidence of fraud.

RETURN TO WORK INVESTIGATION

Contractor's Return to Work Investigation shall be an effective tool to assist with malingerers and save the SFMTA money by stopping unwarranted TTD benefits. Contractor's SIU investigator shall meet with the unrepresented claimant to obtain their statement and question them to determine what they allege they can and cannot do with a focus on returning to work. In regard to a represented claimant, Contractor's SIU shall strategize the claimant's deposition with the defense attorney to develop a plan of action to include questions for claims handling as well as potential fraud. Contractor's SIU shall compare what the claimant states they can and cannot do to the job description, available modified duty, medical records, objective findings and other evidence to determine a plan of action with the objective of getting the claimant released to work. Contractor's SIU shall analyze applicable evidence including surveillance video, background investigation results, prior medical records and social networking research results to determine if evidence should be presented to the PTP with the objective of obtaining a release to work. Contractor's SIU may recommend an in-person meeting with the PTP with the objective of getting the claimant released to work, thereby saving the SFMTA money on unwarranted benefits or an unwarranted modified position.

DISABILITY MANAGEMENT INTERVIEW

Contractor's Disability Management Interview (DMI) shall be an effective tool for the handling of problematic claims as well as suspected fraud cases. Contractor shall utilize the DMI following surveillance for unrepresented claimants to question them about physical abilities, restrictions and limitations. When claimants make misrepresentations during a DMI about their physical abilities or restrictions as evidenced by surveillance video, Contractor shall utilize that statement in a meeting with the PTP to bring subjective complaints into question.

DMIs shall also be used to question a claimant regarding prior injuries, medical treatment as well as to obtain signatures on Releases. Further, DMIs shall be used for pre-surveillance to confirm

where a subject resides, their appearance and how they describe their physical abilities and restrictions. Contractor shall use the DMI to determine which claimants are good surveillance candidates and also ensure that surveillance film could create a positive impact if obtained.

PRIMARY TREATING PHYSICIAN VISIT

Contractor's SIU shall provide a Primary Treating Physician Visit (PTP Visit). Contractor's skilled SIU expert shall schedule an appointment with the PTP to present evidence, typically surveillance evidence but also prior medical records, social networking evidence, witness statements and/or other evidence for the PTP to consider. Contractor's investigator shall discuss the evidence with the PTP along with any inconsistencies between the evidence and claimant's statement and point out any concerns. Contractor's investigator shall be able to discuss the fact pattern and evidence in order to meet the objective, which may be to get the claimant released to work, ensure that the medical treatment is appropriate, establish maximum medical improvement (MMI), and/or have the surveillance evidence described in a medical report to ensure that a qualified medical examiner (QME) is aware of the surveillance (should there be objection to non-medical evidence).

SIU ANALYSIS, INVESTIGATION and/or FRAUD REFERRAL

Contractor's SIU recognizes that most insurance claims are legitimate; however there are a small percentage of claims that do indeed involve fraud or misrepresentation. Contractor shall respond to those claims that are suspicious in nature to ensure they are thoroughly investigated for validity and veracity. Contractor's SIU shall review suspicious claims to determine the best course of action and make recommendations to achieve positive outcomes. Following Contractor's SIU analysis of suspicious cases, Contractor shall provide an action plan to the adjuster for approval. If the SIU makes a determination that a crime has been committed, Contractor shall recommend a referral to law enforcement. Contractor's SIU shall provide full SIU case management and coordinate with law enforcement to conclusion. Contractor's SIU shall be trained to identify and refer workers' compensation (WC) fraud, including preparation of Suspected Fraud Referral forms (FD-1) and Documented Referrals and presentation of fraud cases to District Attorneys. Contractor's SIU shall communicate effectively with the adjuster and the SFMTA throughout the criminal case process to meet objectives and ensure that updates are provided every 30 days at the minimum. Contractor's SIU shall prepare Restitution Proposals and coordinate with all parties to facilitate collection of restitution. Contractor's goal shall be to make the victim whole through the collection of restitution, including payment to the SFMTA of not only the theft of benefits but also the costs to prove the fraud including investigation, surveillance and SIU fees.

Contractor's SIU shall continuously build strong relationships with District Attorneys throughout California and receive fraud training annually alongside District Attorneys and criminal investigators through the California District Attorney Association (CDAA) and National Insurance Crime Bureau (NICB). Contractor's SIU shall also participate in meetings with the Fraud Assessment Commission, the Department of Insurance Fraud Division and the Northern CA Fraud Investigators' Association (NCFIA) to build strong relationships, stay updated regarding fraud trends and solutions, and further facilitate the success of our referred fraud cases.

FULLY COMPLIANT SIU PER CA DEPARTMENT OF INSURANCE REGULATIONS

Contractor's SIU shall be fully compliant per the DOI Fraud Division Regulations and Contractor's SIU shall abide by all of the California SIU Regulations as well as the Insurance Fraud Protection Act (IFPA).

Contractor's proposal, dated April 7, 2011, is incorporated by reference as though fully set forth. In the event of any conflict, the documents making up the Agreement between the parties shall govern in the following order of precedence: 1) this Agreement and its appendices, 2) the Request for Proposals dated March 14, 2011, 3) Contractor's Proposal, dated April 7, 2011.

PERFORMANCE GUARANTEE

- Contractor commits to the following Performance Guarantee items:
 - Assignments shall be acknowledged within 24 hours (business hours)
 - AOE/COE and Subrogation shall be assigned to an investigator within 24 hours (business hours)
 - AOE/COE and Subrogation reports shall be completed within 21 days
 - unless extension granted
 - Surveillance assignments shall be completed within 21 days
 - unless extension is granted

- Outcomes shall be reported to the SFMTA quarterly.

2. Reports

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

3. SFMTA Liaison

In performing the services provided for in this Agreement, Contractor's liaison with the SFMTA will be Dan Roach, Manager, Workers' Compensation Services or his designee.

Appendix B Calculation of Charges

Contractor: Probe Information Services, Inc.

Surveillance & Activity Checks:

- Surveillance & Activity Checks: \$74 per investigator hour
- Plus pass through costs:
 - Pre surveillance databases (includes address verification) \$39
 - Parking, tolls, and similar items passed through at cost
 - Mileage at IRS approved rate of 51 cents per mile
 - CA DMV Costs:
 - DL \$9.50
 - VR \$9.50
 - ANI \$15.00
- Report prep: \$4 per page
- Contractor shall not charge a secretarial, administrative and/or file set up fee
- Court appearances by the reporting investigator: \$74 per hour

Field Investigation:

- AOE/COE Investigation: \$795 flat rate
 - Includes 3 interviews (typically employee, employer and witness)
 - \$150 each additional interview
- AOE/COE inclusive of Subrogation Investigation: \$795 flat rate
 - Includes 3 interviews (typically employee, employer and witness)
 - \$150 each additional interview
- Background Investigation (including Database Search / Internet Research / Social Networking Search): \$295 Flat Rate
 - Plus any applicable court search and copy fees
- Medical Canvass / Pharmaceutical Canvass: \$295 Flat Rate
 - Includes up to 25 medical and/or pharmaceutical facilities
- Medical Records Retrieval Coordination: \$74 per investigative hour
 - Plus fee for copying records (copy service invoice provided at cost)
- Court appearances by the reporting investigator: \$74 per hour
- Report prep \$4 per page
- Mileage at IRS approved rate of 51 cents per mile
- Parking, tolls, and similar items passed through at cost
- Contractor shall not charge a secretarial, administrative and/or file set up fee

Special Investigation Unit (SIU):

- Special Investigations Unit (SIU) Investigations: \$89 per hour
 - Initial consultations with examiners at no charge
- Contractor shall not charge a secretarial, administrative and/or file set up fee
- Criminal court appearances by the SIU investigator: \$89 per hour

Other Services:

- Vendor management of referrals sent to subcontractors \$75 per referral
 - Assignments shall be managed through MAP providing one portal for examiners
 - Online status of assignments
 - Streaming video
 - Reports and documents
- Prices indicated will be for cases in the greater San Francisco Bay Area where most SFMTA employees are anticipated to reside. Assignments in remote areas (over 90 miles round trip from San Francisco) will be discussed with the examiner for a budget prior to initiating the investigation.

Contractor's No-Charge Value Added Benefits:

Contractor's SIU Partnership shall include value added benefits to the SFMTA by providing SIU Professionals to consult with the TPA at no charge. Contractor shall provide examiners at the location of SFMTA's third party administrator (TPA) of workers' compensation claims and at the San Francisco Municipal Transportation Agency (SFMTA) location to provide TPA and SFMTA employees the opportunity to discuss investigative and fraud concerns with Probe's SIU Specialists any time at no extra cost. This no-charge SIU consultation shall include Contractor's weekly on-site visits to the TPA by Contractor's SIU professionals who shall be available to strategize investigations, review suspicious claims, and assist in being pro-active and saving time and money. The TPA weekly office visits shall be conducted by SIU Specialists who can answer investigative and SIU questions.

An additional value added benefit to SFMTA is that there is no charge for use of Contractor's technology including our online referral management system and the custom page created for SFMTA and Sedgwick known as MAP (MUNI Assignment Portal). Further, Contractor provides quarterly training for Sedgwick and training upon request for SFMTA employees at no charge.

Contractor shall ensure that the most cost-effective investigative tools are utilized and also ensure that investigative outcomes are properly leveraged to provide positive outcomes, assist with claims handling and, if warranted, the prosecution of fraud. This brings about substantial savings through appropriate and pro-active utilization of surveillance film and other investigative results.

SIU Partnership Program	Hours	Mile s	Total	Total	Rate	Total
Weekly Visit	1		52	52	\$89.00	\$4,628
Weekly Visit		9	52	468	\$0.51	\$239
Training	1		4	4	\$89.00	\$356
Training		9	4	36	\$0.51	\$18
Weekly Calls From Examiners	1		52	52	\$89.00	\$4,628
SIU Review of Surveillance Film	1		52	52	\$89.00	\$4,628
Total						\$14,497

Fee At Risk Arrangement:

- Contractor commits to the following:
 - If Contractor misses a requested calendar day of surveillance, the fee for that day of surveillance will be waived.
 - If Contractor fails to complete a background investigation within 21 days, the fee for that background investigation will be waived.
 - If Contractor fails to complete a medical canvass within 21 days, the fee for that medical canvass will be waved.
 - If Contractor fails to complete an AOE/COE by the 80th day, the fee for that AOE/COE investigation will be waived
 - ✓ As long as the request to Contractor for the investigation was made by the 60th day.

COLA Adjustment:

- Rates will be adjusted at each anniversary date of the contract (beginning with year 3^{of} the contract by the Cost of Living Adjustment (COLA) for the prior calendar year based on the Social Security online site at <http://www.ssa.gov/oact/cola/colaseries.html>.

Mileage Adjustment:

- Mileage will be adjusted at each anniversary date to the approved IRS mileage rate.