

THIS PRINT COVERS CALENDAR ITEM NO.: 10.1

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Traffic Engineering

BRIEF DESCRIPTION: Approving traffic modifications itemized below

SUMMARY:

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM

EXECUTIVE DIRECTOR

SECRETARY

ADOPTED RESOLUTION BE
RETURNED TO

Kathleen Zierolf, Traffic Engineering 701-4686

ASSIGNED MTAB CALENDAR DATE: _____

(All items were heard at the February 3, 2006 public hearing)

ITEMS:

- A. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Santa Clara Avenue, east side, from San Anselmo Avenue to 20 feet southerly. **Requested by:** Resident
- B. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Yerba Buena Avenue, north side, from the Miraloma Drive crosswalk to the projection of the west property line of Ravenwood Drive. **Requested by:** DPT
- C. ESTABLISH - PERPENDICULAR (90-DEGREE ANGLE) PARKING - Holyoke Street, west side, between Woolsey Street and Karen Court. **Requested by:** Resident
- D. RESCIND - TOW-AWAY, NO PARKING ANYTIME - Guerrero Street, east side, from 21st Street to 60 feet northerly. **Requested by:** DPT
- E. ESTABLISH - UNMETERED MOTORCYCLE PARKING -10th Avenue, east side, between the driveways of 1365 and 1371 10th Avenue (accommodating 2 unmetered motorcycle spaces). **Requested by:** Resident

**MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION No. _____

WHEREAS, The Traffic Engineering Division of the Department of Parking and Traffic has received a request, or identified a need for traffic modifications as follows:

- A. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Santa Clara Avenue, east side, from San Anselmo Avenue to 20 feet southerly.
- B. ESTABLISH - TOW-AWAY, NO STOPPING ANYTIME - Yerba Buena Avenue, north side, from the Miraloma Drive crosswalk to the projection of the west property line of Ravenwood Drive.
- C. ESTABLISH - PERPENDICULAR (90-DEGREE ANGLE) PARKING - Holyoke Street, west side, between Woolsey Street and Karen Court.
- D. RESCIND - TOW-AWAY, NO PARKING ANYTIME - Guerrero Street, east side, from 21st Street to 60 feet northerly.
- E. ESTABLISH - UNMETERED MOTORCYCLE PARKING - 10th Avenue, east side, between the driveways of 1365 and 1371 10th Avenue (accommodating 2 unmetered motorcycle spaces).

WHEREAS, The public has been notified about the proposed modifications and has been given the opportunity to comment on those modifications through the public hearing process; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors, upon recommendation of the Director of Transportation and the Deputy Director of the Department of Parking and Traffic, does hereby approve the changes as attached.

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

Secretary, Municipal Transportation Agency Board

THIS PRINT COVERS CALENDAR ITEM NO. : 10.3

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Human Resources

BRIEF DESCRIPTION: Designation of “service critical” classifications pursuant to Charter Section 8A.104.

SUMMARY:

- One of the purposes of the adoption of Article 8A of the Charter was to give the MTA greater autonomy and flexibility in hiring and managing its staff. Section 8A.104 authorized the MTA to create its own Personnel/Labor Relations Manager and, with respect to “service critical” MTA employees, authorized that manager to assume all the powers and duties given to the City’s Department of Human Resources by Articles X and XI of the Charter.
- Charter Section 8A.104 designated certain functions performed by MTA employees as service critical and also authorized the Agency to designate additional functions as service critical.
- Before designating a particular job classification as service critical, the MTA must consult with affected employee organizations. If an affected employee organization disagrees with the designation, it may request arbitration within seven days over the reasonableness of the MTA’s designation.
- Effective July 1, 2002, Charter Section 8A.112 gave the Agency all the same powers and duties with respect to the Department of Parking and Traffic that it has with respect to the Municipal Railway.
- As required by Charter Section 8A.104, the Agency has consulted with, and the employee organizations have agreed to, the service critical designations for positions at Parking and Traffic represented by the International Brotherhood of Electrical Workers, Local 6 and Automotive Machinists, Local 1414.

ENCLOSURE: MTAB Resolution

APPROVALS:

DATE

**DEPUTY OF DIVISION
PREPARING ITEM**

FINANCE

DIRECTOR

SECRETARY

**ADOPTED RESOLUTION
BE RETURNED TO**

Diana Buchbinder 554-6827

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

EXPLANATION:

Charter Section 8A.104 was adopted in order to give the MTA greater autonomy and flexibility in hiring and managing Agency personnel. To fulfill this purpose, Section 8A.104 authorized the MTA to create its own Personnel/Labor Relations Manager. It further authorized that manager, with respect to “service critical” MTA employees, to assume all the powers and duties given to the City’s Department of Human Resources by Articles X and XI of the Charter.

Charter Section 8A.104 identifies the following functions as service-critical: 1) Operating a transit vehicle, whether or not in revenue service; 2) Controlling the dispatch of, or movement of, or access to, a transit vehicle; 3) Maintaining a transit vehicle or equipment used in transit service, including both preventive maintenance and overhaul of equipment and systems, including system-related infrastructure; 4) Regularly providing information services to the public or handling complaints; and 5) Supervising or managing employees performing the above functions.

It also authorizes the Agency to designate additional functions and job classifications as service-critical subject to consultation with the affected employee organization. The affected employee organization can request immediate arbitration where it disagrees with the Agency’s designation.

The classifications utilized by the Department of Parking and Traffic (DPT) that are included in this report have not been previously designated as service critical. With the incorporation of the DPT into the Agency, effective July 1, 2002, the Agency assumed all the same powers and duties with respect to the DPT that it has with respect to the Municipal Railway. It is necessary to designate appropriate classifications at the DPT as service critical to ensure the Agency’s autonomy and flexibility in hiring and managing these positions.

The Human Resources Division has consulted with the International Brotherhood of Electrical Workers, Local 6 and the Automotive Machinists, Local 1414 about the proposed designation of the classifications included in this report as service critical. We did not receive any challenge to the proposed designation.

Positions in Class 7345 Electrician perform skilled work in installing, maintaining, and repairing the City’s traffic signal systems and related equipment. Positions in Class 7238 Electrician Supervisor I and Class 7276 Electrician Supervisor II supervise and manage those functions.

Positions in Class 7332 Maintenance Machinist perform skilled work in fabricating sleeves for parking meter posts, flange posts, and other parts for parking meters. These positions are supervised by Class 7258 Maintenance Machinist Supervisor I.

Designation of the proposed classes as service critical is consistent with the purposes of Article 8A of the Charter.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO
RESOLUTION No. _____

WHEREAS, Charter section 8A.104 gives power to the Municipal Transportation Agency to designate

as “service-critical” certain classifications used by the Agency; and,

WHEREAS, Charter Section 8A.104 defines service-critical functions as: 1) Operating a transit vehicle, whether or not in revenue service; 2) Controlling the dispatch of, or movement of, or access to, a transit vehicle; 3) Maintaining a transit vehicle or equipment used in transit service, including both preventive maintenance and overhaul of equipment and systems, including system-related infrastructure; 4) Regularly providing information services to the public or handling complaints; and 5) Supervising or managing employees performing the above functions; and,

WHEREAS, Charter section 8A.104 gives the Agency the ability to designate functions other than those listed above as service-critical, subject the provisions of Charter section 8A.104 regarding consultation with employee organizations and arbitration; and,

WHEREAS, Effective July 1, 2002, Charter section 8A.112 gives the Agency all the same duties and powers with respect to the Department of Parking and Traffic that it has with respect to the Municipal Railway; and,

WHEREAS, With respect to service-critical classes, the Agency assumes all powers and duties otherwise vested with the Department of Human Resources and the Director of Human Resources under Articles X and XI of the City Charter; and,

WHEREAS, The Division of Human Resources has consulted with the affected employee organizations regarding the service critical designation of all job classifications listed in this resolution; now, therefore be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to designate the following classifications at the Department of Parking and Traffic as service-critical:

Class	Title
7238	Electrician Supervisor I
7258	Maintenance Machinist Supervisor I
7276	Electrician Supervisor II
7332	Maintenance Machinist
7345	Electrician

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

Secretary, Municipal Transportation Agency Board

THIS PRINT COVERS CALENDAR ITEM NO. : 10.4

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Office of the Board of Directors

BRIEF DESCRIPTION:

Designating the Director of Transportation with the working titles of "Executive Director/Chief Executive Officer" of the MTA.

SUMMARY:

- Chapter 8A of the San Francisco Charter sets forth the powers and duties of the MTA, including the process for appointment and responsibilities for the Director of Transportation for the agency
- The MTA Board of Directors appointed Nathaniel Ford as the Director of Transportation on December 6, 2005
- The MTA Board of Directors desires that, in addition to the title of Director of Transportation, the Director of Transportation be given the working titles of "Executive Director/Chief Executive Officer" of the MTA for legal and other purposes including executing contracts, agreements and other documents.
- The City Attorney has reviewed this calendar item.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

CHAIRMAN	_____	_____
EXECUTIVE DIRECTOR	_____	_____
SECRETARY	_____	_____
ADOPTED RESOLUTION BE RETURNED TO	_____	

ASSIGNED MTAB CALENDAR DATE: _____

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, Proposition E, creating the Municipal Transportation Agency (the "MTA"), was adopted by the voters in November, 1999; and

WHEREAS, Chapter 8A of the San Francisco Charter sets forth the powers and duties of the MTA, including the process for appointment and responsibilities for the Director of Transportation for the agency; and

WHEREAS, The MTA Board of Directors appointed Nathaniel Ford as the Director of Transportation on December 6, 2005; and

WHEREAS, The MTA Board of Directors desires that, in addition to the title of Director of Transportation, the Director of Transportation be given the working title of "Executive Director/Chief Executive Officer" of the MTA for legal and other purposes including executing contracts, agreements and other documents; and

WHEREAS, Neither the San Francisco Charter nor any other law prohibits the MTA Board of Directors from designating the working title for the Director of Transportation such as "Executive Director/Chief Executive Officer" of the MTA; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors designates the Director of Transportation with the working title of "Executive Director/Chief Executive Officer" of the MTA; and, be it further,

RESOLVED, That the Director of Transportation may be referred to as the "Executive Director/Chief Executive Officer" of the MTA for legal and other purposes including executing contracts, agreements and other documents.

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

Secretary, Municipal Transportation Agency Board

THIS PRINT COVERS CALENDAR ITEM NO.: 10.5

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Traffic Engineering

BRIEF DESCRIPTION: Authorizing the Department of Public Works (DPW), on behalf of the Department of Parking and Traffic (DPT), to reject all bids received on December 21, 2005 for DPW Contract No. 0944J: Mission Street (14th Street to 26th Street) Traffic Signal Upgrade, and authorizing DPW, on behalf of DPT, to issue a new bid call for this contract with a new bid package.

SUMMARY:

- On November 17, 2005, bids were solicited for DPW Contract No. 0944J through public advertisements.
- On December 21, 2005, three bids were received and publicly opened for DPW Contract No. 0944J.
- The lowest responsive bid was from St. Francis Electric Inc. at \$2,699,655.25.
- The other two bids were from Phoenix Electric Company at \$1,914,326.50 and from A. Ruiz Construction Co. & Assoc., Inc. at \$4,480,796.80. However, both of these bids were deemed non-responsive because Phoenix's bid package lacked a bid bond and A. Ruiz's bid package was missing page four of the Schedule of Bid Prices.
- The original engineer's detailed cost estimate is \$1,659,271.
- The lowest responsive bid from St. Francis Electric exceeded the original engineer's detailed cost estimate by \$1,040,384.25, or 62.7 percent.
- The original completion date for this project is 240 calendar days after the Notice to Proceed date.
- DPT and DPW prepared a new bid package with revised work hours and extended contract duration to encourage lower bids.
- In the new bid package, work hours were increased in the non-commute direction to allow for a more efficient work day, and contract duration was extended, from 240 calendar days to 270 calendar days, to more time and flexibility to accommodate the heavy vehicle and pedestrian traffic in this area.
- The engineer's detailed cost estimate was updated to reflect current industry prices. The new engineer's detailed cost estimate is \$1,825,452.
- DPT staff will request authority from the MTA Board to award the contract after bids have been opened and the lowest responsible bidder has been determined.
- HRC Contract Compliance reviewed this calendar item.
- The City Attorney's Office reviewed this calendar item.

ENCLOSURES:

1. MTAB Resolution
2. List of Locations
3. Project Budget and Financial Plan

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM _____

FINANCE _____

DIRECTOR _____

SECRETARY _____

ADOPTED RESOLUTION

RETURNED TO _____ Eddie Tsui (701-4564) _____

ASSIGNED MTAB CALENDAR DATE: _____

EXPLANATION:

Background:

The Department of Parking and Traffic (DPT), utilizing Department of Public Works (DPW) Contract No. 0944J: Mission Street (14th Street to 26th Street) Traffic Signal Upgrade, proposes to upgrade existing traffic signals at thirteen intersections along Mission Street from 14th Street to 26th Street ("the Work"). The Work is designed to improve safety by providing motorists with better signal visibility and by providing pedestrians with countdown pedestrian signals.

DPT identifies existing signalized intersections where an upgrade of the current signal equipment is desirable. The improvements are funded through Proposition B Sales Tax and Proposition K Sales Tax, a half-cent sales tax approved by San Francisco voters in 1989 and 2003, respectively. The Work will be funded by sales tax dollars from fiscal years 2003/2004 and 2005/2006.

DPT staff performed the initial conceptual design for this contract. DPW staff performed the detailed electrical design and contract preparation. DPW staff will also provide contract advertising and construction management services for the Work.

The scope of the Work includes upgrading existing traffic signals at thirteen intersections along Mission Street from 14th Street to 26th Street. DPT selected these locations to improve vehicle and pedestrian safety based on the presence of public transit vehicles and heavy vehicle and pedestrian traffic. The Work involves the replacement of old and outdated signal equipment with new equipment, including wiring, conduits, poles, traffic signal controllers, vehicle signals, and pedestrian signals with countdown timers. The Work is more specifically described in "Mission Street (14th Street to 26th Street) Traffic Signal Upgrade Contract No. 0944J Project Manual" and the accompanying contract plan numbers E-0.0 to E-13.2 and miscellaneous reference drawings (which are voluminous documents and are not attached to this calendar item).

The Work is to be performed by a licensed and qualified contractor. The contract will be awarded to the lowest responsible bidder and will be subject to Human Rights Commission contract compliance.

The San Francisco County Transportation Authority (SFCTA) has already approved \$2,797,500

in design, construction, and construction support funds for this project. DPT will request and anticipates SFCTA approval of additional construction and construction support funds in the amount of \$190,101 of Proposition K Sales Tax funds.

The original engineer's detailed cost estimate for the contract is \$1,659,271. The original time allotted for substantial completion of the Work is 240 calendar days from the written Notice to Proceed. Liquidated damages are \$2,790 per day for contractor's delay that results in failure to complete the work on time.

On December 21, 2005, DPW received and publicly opened the following three bids for DPW Contract No. 0944J:

1. St. Francis Electric Inc.
601 Aladdin Avenue
San Leandro, CA 94577
\$2,699,655.25

2. Phoenix Electric Company
P.O. Box 883034
San Francisco, CA 94188
\$1,914,326.50
(non-responsive, no bid bond)

3. A. Ruiz Construction Co. & Assoc., Inc.
1601 Cortland Avenue
San Francisco, CA 94110
\$4,480,796.80
(non-responsive, missing Schedule of Bid Prices page 4)

The lowest responsive bid from St. Francis Electric Inc. exceeded the original engineer's detailed cost estimate by \$1,040,384.25, or 62.7 percent.

Since there were no responsive bids received within the estimated construction budget, DPT requests approval to reject all bids received on December 21, 2005 and authorize a new bid call for the Work.

For the re-bid, DPT and DPW revised the work hours and extended the contract duration to encourage lower bids. The work hours were increased in the non-commute direction to allow for a more efficient work day. The contract duration was extended, from 240 calendar days to 270 calendar days, to provide more time and flexibility to accommodate the heavy vehicle and pedestrian traffic in this area. The engineer's detailed cost estimate was updated to reflect current industry prices. The new engineer's detailed cost estimate is \$1,825,452.

DPT staff will request authority from the MTA Board to award the contract after bids have been opened and the lowest responsible bidder has been determined.

The City Attorney reviewed this calendar item.

Recommendation:

DPT staff requests that the MTA Board approve the enclosed resolution to authorize DPW, on behalf of DPT, to reject all bids received on December 21, 2005 for DPW Contract No. 0944J: Mission Street (14th Street to 26th Street) Traffic Signal Upgrade, and to authorize DPW, on behalf of DPT, to issue a new bid call for this contract with a new bid package.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, The Department of Parking and Traffic ("DPT") identifies intersections for traffic signal upgrades to be funded by Proposition B Sales Tax and Proposition K Sales Tax, a half-cent sales tax approved by the City and County of San Francisco voters in 1989 and 2003, respectively; and,

WHEREAS, The DPT has identified thirteen intersections along Mission Street from 14th Street to 26th Street, as described in the enclosed charts, for signal upgrades to improve vehicle and pedestrian safety based on the presence of public transit vehicles, and heavy vehicle and pedestrian traffic ("the Work"); and,

WHEREAS, The DPT proposes to perform the Work under the Department of Public Works ("DPW") Contract No. 0944J: Mission Street (14th Street to 26th Street) Traffic Signal Upgrade; and,

WHEREAS, The Work is designed to improve safety by providing motorists with better signal visibility and by providing pedestrians with countdown pedestrian signals; and,

WHEREAS, The Work involves the replacement of old and outdated signal equipment with new equipment, including wiring, conduits, poles, traffic signal controllers, vehicle signals, and pedestrian signals with countdown timers; and,

WHEREAS, The Work for this project is to be performed by a qualified contractor and the contract will be awarded to the lowest responsible bidder and will be subject to Human Rights Commission contract compliance; and,

WHEREAS, The original engineer's detailed cost estimate for the contract is \$1,659,271; and,

WHEREAS, The original time allowed for completion of the work under the contract is 240 calendar days from the written Notice to Proceed; and,

WHEREAS, The contract was advertised on November 17, 2005, and three bids were received and publicly opened on December 21, 2005; and,

WHEREAS, The lowest responsive bid of \$2,699,655.25 from St. Francis Electric Inc. exceeded the original engineer's detailed cost estimate by \$1,040,384.25, or 62.7 percent; and,

WHEREAS, The remaining two bids from Phoenix Electric Company and A. Ruiz Construction Co. & Assoc., Inc. were deemed non-responsive due to missing documents; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors authorizes DPW, on behalf of DPT, to reject all bids received on December 21, 2005 for DPW Contract No. 0944J: Mission Street (14th Street to 26th Street) Traffic Signal Upgrade, and authorizes DPW, on behalf of DPT, to issue a new bid call for DPW Contract No. 0944J: Mission Street (14th Street to 26th Street) Traffic Signal Upgrade with a new bid package.

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

Secretary, Municipal Transportation Agency Board

Enclosure 2

Department of Public Works Contract No. 0944J: Mission Street (14th Street to 26th Street) Traffic Signal Upgrade

Intersections included in the Mission Street (14th Street to 26th Street) Traffic Signal Upgrade Contract

Intersections	
1	14 th Street and Mission Street
2	15 th Street and Mission Street
3	16 th Street and Mission Street
4	17 th Street and Mission Street
5	18 th Street and Mission Street
6	19 th Street and Mission Street
7	20 th Street and Mission Street
8	21 st Street and Mission Street
9	22 nd Street and Mission Street
10	23 rd Street and Mission Street
11	24 th Street and Mission Street
12	25 th Street and Mission Street
13	26 th Street and Mission Street

Enclosure 3

Department of Public Works Contract No. 0944J: Mission Street (14th Street to 26th Street) Traffic Signal Upgrade

Project Budget and Financial Plan

PROJECT BUDGET	
Category	Budget Amount
DPW Bureau of Engineering (Detailed Electrical and Civil Design)	\$255,044
DPW Bureau of Engineering and Bureau of Construction Management (Contract Preparation, Construction Support, Inspection and Public Affairs)	\$358,877
Other Direct Costs (PG&E, DTIS)	\$55,000
DPT Traffic Engineering (Design plus Signal, Paint and Sign Shops Work)	\$310,683
Detailed Engineering Estimate for Construction Contract Cost	\$1,825,452
10% Construction Cost Contingency	\$182,545
TOTAL	\$2,987,601

FINANCIAL PLAN		
Funding Source	Amount	Percentage
Local Half Cent Sales Tax - Proposition B (2003/2004) and Proposition K (2005/2006)	\$2,987,601	100%

THIS PRINT COVERS CALENDAR ITEM NO. : 13

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Human Resources/Workers' Compensation Division

BRIEF DESCRIPTION: Requesting authorization for the Executive Director to negotiate and execute a contract for Workers' Compensation Bill Review Services and Medical Treatment Utilization Review Services for a term of five years, with options for two one-year extensions, and for an amount not to exceed \$4,725,000.

SUMMARY:

- Under the authority granted by Charter section 8A.104(C) (Proposition E), the MTA assumed responsibility for management of its Workers' Compensation claims as of July 1, 2000.
- Since March 26, 2002, a subcontractor to the Municipal Railway's Third Party Claims Administrator ("TPA") provided Bill Review Services.
- For calendar year 2004, the MTA realized 55% savings on medical bills using the current provider.
- The MTA issued an RFP for these services in March 2005.
- Based on the competitive bid, the MTA selected Fair Isaac Company as the service provider.
- Staff is seeking authority to negotiate and execute a five-year contract with Fair Isaac Corporation with two possible one-year extensions, for a total amount not to exceed \$4,725,000.

ENCLOSURES:

1. MTAB Resolution
2. Bill Review Contract

APPROVALS:

DATE

DEPUTY OF DIVISION PREPARING ITEM _____

FINANCE _____

DIRECTOR _____

SECRETARY _____

ADOPTED RESOLUTION _____ Jeffery L. Gary _____
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

History

Under the authority granted by Charter Section 8A.104 (C), the MTA assumed responsibility for management of its Workers' Compensation claims as of July 1, 2000.

As part of the management of its Workers' Compensation claims, the MTA has utilized the services of a contracted bill review provider to review and make recommendations as to the correct payment of medical bills. These services require specially trained personnel and proprietary software applications.

The MTA previously utilized the City's contract for these services. The City's contract expired at the end of 2004. At that time, the MTA had expected to be included in the city's new RFP/contract for these services, however a last minute change by the City prompted the MTA to issue its own RFP for bill review and utilization review services. Although the City's contract expired in 2004, the MTA was able to utilize the existing contract with Sedgwick Claims Management Services to provide bill review and utilization review services. Sedgwick is the Workers' Compensation Third Party Administrator for the MTA.

The MTA Board authorized the issuance of an RFP for Workers' Compensation Bill Review and Utilization Review Services, which was subsequently released on March 11, 2005.

Bill Review and Utilization Review Services

A bill review company receives medical bills submitted by medical services providers (such as PPO's, physicians, physical therapists, and psychologists) for medical evaluation and treatment services provided to MTA employees who have incurred work related injuries. The bill review company reviews the medical bills and reduces the amounts charged by service providers by applying State-mandated Official Medical Fee Schedules ("OMFS"). Where the bill review provider cannot reduce a charge based on State or PPO fee schedules, the bill review consultant negotiates directly with the medical provider on behalf of the MTA.

A Medical Treatment Utilization Review ("UR") company reviews medical bills and medical treatment providers' requests for authorization in order to determine whether the treatment provided or requested meets medical treatment guidelines for the type of illness, the length/duration of treatment (including hospitalization), and whether the medical treatment provider is medically qualified to provide the treatment. The MTA must contract for these services due to recent reforms to state workers' compensation laws, which require all California employers to apply nationally recognized American College of Environmental and Occupational Medicine (ACOEM) UR guidelines for workers' compensation medical treatment.

PAGE 3.

RFP Process

We received six proposals that were deemed responsive to the RFP. Scoring and evaluation

of the proposals was performed using the proprietary scoring protocols provided by our managed care consultant, David Donn Consulting, Inc. (The contract with David Donn Consulting was authorized by former Executive Director Michael T. Burns under his contracting authority. The original cost of the contract was less than \$100,000.)

The six bidders were: Fair Isaac Corporation, Genex, Intermed, CID/Comp IQ, Hazelrigg and Sedgwick/Intracorp. All were deemed responsive.

In addition to the scoring protocols, the RFP required an analysis of the total payments made by each bidder for medical facilities commonly utilized for MTA workers' compensation claims. This analysis enabled the selection committee to determine which bidder would provide the greatest dollar savings to the MTA.

The winning bidder was Fair Isaac Corporation. Fair Isaac is a national provider of managed care and are considered to be the market leader for bill review services.

Contract Negotiation and Payment

With the assistance of the MTA's managed care consultant, David Donn Consulting, MTA staff negotiated a contract that exceeds industry standards for medical bill review. Based on past performance and billing, staff anticipates that medical bill reductions under the proposed agreement will save the MTA more than \$400,000 per month. If Fair Isaac is able to further maximize savings to the MTA, the proposed contract provides incentive payments based on a percentage of savings to the MTA.

Fair Isaac will be using a proprietary business model and fee review process that will be licensed to the MTA by David Donn Consulting. By a separate calendar item, staff is requesting authorization by the Board of Directors to execute a license agreement and contract with David Donn Consulting for the use of their proprietary business model for workers' compensation bill review. In addition to the ability to use their proprietary business mode and fee review process, David Donn Consulting will also monitor the recommendations of Fair Isaacs and will provide input to staff regarding how to maximize savings on worker's compensation medical bills.

Fair Isaac will be paid a flat fee for some services and a percentage of savings for other services by the MTA's third party claims administrator, Sedgwick Claims Services. Fair Isaac's fees are dependent upon both the number of medical bills that Fair Isaac's reviews and the amount of medical care required for each claimant. In addition, Fair Isaac can increase

PAGE 4.

its fees if it increases the MTA's savings. Based on recent workers' compensation claims, and assuming that Fair Isaac maximizes savings to the MTA, thereby maximizing their own

fees, staff estimates that Fair Isaac's fees for bill review and utilization review services will total approximately \$675,000 per year.

The term of the proposed contract will be five years, with two one-year extension options. The total estimated value of the contract, including extensions, is approximately \$4,725,000.

The estimated savings for workers compensation medical costs that the MTA should realize over the seven-year term of the proposed contract, including extensions, exceeds \$42,000,000. The term of the proposed Fair Isaac contract mirrors the term of the MTA's current contract with Sedgwick, the MTA's third party claims administrator, to better insure consistency of service and savings.

Funding for this proposed contract is provided for in the fiscal year 2006 MTA Workers' Compensation budget and will be budgeted on an annual basis thereafter.

Civil Service Commission approval of this contract was granted on November 7, 2005.

Due to the specialized nature of bill review and utilization review services, a waiver was obtained from the Human Rights Commission exempting this contract from requirements under Administrative Code 14A.

The City Attorney has reviewed this calendar item.

Staff requests that the MTA Board authorize the Executive Director to award and execute the proposed contract for Workers' Compensation Bill Review and Utilization Review Services with Fair Isaac Corporation for a term not to exceed five years with two one-year extensions, and for an amount not to exceed \$4,725,000.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, The Municipal Transportation Agency ("MTA") assumed responsibility for administration of its Workers' Compensation claims as of July 1, 2000 under authority granted to the MTA under the San Francisco Charter section 8A.104(C) (Proposition E); and,

WHEREAS, Through the use of Workers' Compensation Medical Bill Review, the MTA has been able to reduce workers' compensation treatment costs by more than 50 percent, resulting in annual savings of more than six million dollars; and,

WHEREAS, The MTA requires the services of an experienced medical bill review provider to continue to control workers' compensation medical expenses; and,

WHEREAS, State law requires that all California employers implement Utilization Review for review and control of medical treatment for work related injuries; and,

WHEREAS, The MTA issued an RFP for Workers' Compensation Bill Review and Utilization Review Services; and

WHEREAS, Fair Isaac Company was chosen through competitive selection process as the proposer most able to maximize savings to the MTA; and,

WHEREAS, Approval was granted by the Civil Service Commission for PSC# 4043-05/06 at its regular meeting of November 7, 2005; and,

WHEREAS, Staff has negotiated a contract with Fair Isaac Company to provide Workers' Compensation Bill Review Services and Medical Treatment Utilization Review Services; now therefore be it;

RESOLVED, That the Municipal Transportation Agency Board authorizes the Executive Director to execute a contract with Fair Isaac Company for Workers' Compensation Bill Review Services and Medical Treatment Utilization Review Services for five years, plus two one-year extensions, for an amount not to exceed \$675,000 per year.

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

Secretary, Municipal Transportation Agency Board

**AGREEMENT BETWEEN THE MUNICIPAL TRANSPORTATION AGENCY
OF THE CITY AND COUNTY OF SAN FRANCISCO
AND
FAIR ISAAC CORPORATION
FOR WORKERS COMPENSATION MEDICAL BILL REVIEW
AND UTILIZATION REVIEW SERVICES**

This Agreement is made this 30th day of September, 2005, in the City and County of San Francisco, State of California, by and between: Fair Isaac Corporation, hereinafter referred to as "Contractor," and the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency, hereinafter referred to as "City" or "MTA."

RECITALS

WHEREAS, the Municipal Transportation Agency wishes to obtain workers' compensation Medical Bill review services, as specifically described in this Agreement; and,

WHEREAS, a Request for Proposal ("RFP") was issued on March 11, 2005, and City selected Contractor as the highest qualified scorer pursuant to the RFP; and

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

WHEREAS, approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 4043-05/06 on November 11, 2005;

Now, THEREFORE, the parties agree as follows:

1. Definitions

For purposes of this Agreement, the following capitalized terms have the meanings set out below:

"CITY" means the Municipal Transportation Agency of the City and County of San Francisco. For purposes of this Agreement, the terms "MTA," "City" and "Department" are interchangeable and equally denote the Municipal Transportation Agency of the City and County of San Francisco, which for purposes of this Agreement is separate and distinct from the City and County of San Francisco's Department of Human Resources, Workers Compensation Division.

"CITY DATA" collectively means the Medical Bills (defined below), claim, medical information, content, data and any other information that is: (a) provided to Contractor to enable Contractor to perform the Services; (b) disclosed to Contractor through use of the Services; or (c) results from City's use of the Services.

"CLAIMANT" means an MTA employee seeking workers compensation benefits.

"CONTRACT RATE" means that amount of payment for a Medical Bill that a PPO Network will provide the healthcare services and which is provided to Contractor, subject to Appendix A, Section 4(A).

"DDC MODEL" means Services review guidelines prepared by the City's agent, David Donn Consulting, Inc. ("**DDC**").

“CONFIDENTIAL OR PROPRIETARY INFORMATION” collectively means business information, processes, models, algorithms, technology, software, documentation, hardware components, or products that a reasonable person would consider of commercial or competitive value or information from which a business derives economic value, actual or potential, and that a reasonable business person would seek to safeguard and keep from not being generally known to and not being readily ascertainable by proper means by other persons and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

“INNOVATIONS” means any and all improvement, modification, invention, derivative work, development, copyright, Trade Secret, patent, know-how, or other innovation that may be conceived, created, developed, used, reduced to practice, or acquired by Contractor.

“INTELLECTUAL PROPERTY” OR “INTELLECTUAL PROPERTY RIGHTS” collectively means all of the following legal rights, title, or interest in or arising under the laws of the United States, any state, any other country or international treaty regime, whether or not filed, perfected, registered or recorded and whether now or hereafter existing, filed, issued or acquired, including all renewals thereof: (i) patents, patent applications and patent rights, including any such rights granted upon any reissue, reexamination, division, extension, provisional, continuation or continuation-in-part applications, and equivalent or similar rights anywhere in the world in inventions and discoveries; (ii) rights associated with works of authorship and literary property rights, including but not limited to copyrights, copyright applications and copyright registrations, and moral rights; (iii) rights relating to know-how or Trade Secrets, including but not limited to rights in industrial property, customer, vendor and prospect lists and all associated information or databases and other confidential or proprietary information; (iv) industrial designs, industrial models, utility models, certificates of invention and other indicia of invention ownership; (v) trademarks, service marks, logos, trade dress, trade names and service names; and (vi) any rights analogous to those set forth in the preceding clauses and any other proprietary rights relating to intangible property anywhere in the world.

“MEDICAL BILL” means those medical bills rendered by Medical Service Providers in connection with workers’ compensation and auto liability claims. One Bill means one (1) distinct medical record for a medical treatment relating to a specific workers’ compensation or auto liability claim.

“MEDICAL SERVICE PROVIDER” means any third party entity or individual including physicians, physician groups, IPAs, hospitals, clinics, laboratories, ancillary providers and other health care providers that provide health care services to individuals.

“PARTICIPATING PROVIDER” means a Provider which has entered into an agreement for Contract Rates with a PPO Network of the City or Contractor to provide covered services to Claimants in accordance with the procedures established by the City or Contractor at the Contract Rates negotiated between the City or Contractor with such PPO Network. Such Participating Provider is subject to changes, additions and deletions to the then current list of Participating Providers published by any particular organization of Participating Providers.

“PPO NETWORK” means an organization that has established a network of preferred Medical Service Providers and that has obtained from them an agreement to provide such Providers health care services in one or more geographic areas or medical fields (e.g., treatment of workers’ compensation or auto liability injuries at reduced Contract Rates (defined above) to those payers of the services who subscribe to such network or who are otherwise entitled to access such network.

“SERVICES” collectively means the medical bill review services, set-up services, and any additional services described in Appendix A herein, or in any Order Form or Statement of Work.

“**WORK PRODUCT**” collectively means the format of the Explanation of Review Report (“EOR” or “EOR Report”), Management Report, Claim Detail Report, Non-PPO Providers Report, Provider Type Summary, Bill Turnaround Report, and all other FIC Reports provided to Client. Work Product does not include any City Data related to City’s workers’ compensation program.

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

This Agreement is subject to the budget and fiscal provisions of the City’s Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor’s assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

3. Term of the Agreement

Subject to Section 1, the term of this Agreement shall be from September 30, 2005 to September 30, 2010 (“**Initial Term**”). This Agreement may be renewed for two additional successive one (1) year terms (“**Renewal Term**”) upon the mutual written agreement of the parties.. As used herein, “**Term**” means the Initial Term and any subsequent Renewal Terms agreed to by the parties.

4. Effective Date of Agreement

This Agreement shall become effective on September 30, 2005.

5. 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.

6. Compensation

Contractor shall be paid for its services from the claims account administered by the MTA’s Third Party Administrator (“TPA”), Sedgwick Insurance Claims Services, Inc (“Sedgwick”), as authorized by the MTA’s Workers’ Compensation Manager. Compensation is due sixty (60) days after Contractor transmits its invoice for Services. The specific breakdown of Contractor’s charges for the Services it performs under this Agreement are set out in Appendix B, “Calculation of Charges,” attached hereto and incorporated by reference as though fully set forth herein.

7. Guaranteed Maximum Costs

a. 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.

b. 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.

c. 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.

d. 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.

8. Payment; Invoice Format

Invoices furnished by Contractor under this Agreement for Services not paid by the MTA's TPA through the claims files must be in a form mutually acceptable to the City's Controller and Contractor, and must include the Contract Progress Payment Authorization number. All amounts paid by the MTA to Contractor, whether paid directly by MTA or through the TPA claim account, shall be subject to audit by City, pursuant to Section 28 herein. Payment shall be made by City to Contractor at the address specified in the section entitled "Notices to the Parties."

9. 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 three times the amount of damages which the City sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the City for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the City for a civil penalty of up to \$10,000 for each false claim. 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.

10. Warranties.

a. **Services Warranty.** Contractor warrants that the Services performed hereunder including adherence to the applicable DDC Model (defined below) guidelines shall be performed in a professional and workmanlike manner consistent with generally accepted industry practices. City must report any breach of the foregoing warranty within sixty (60) days of said breach. For any breach of this warranty, Contractor shall be entitled to re-perform the Service that formed the basis of such breach at no additional cost to the City. The provisions of this Section 10 shall not limit the City's remedies for Contractor's

breach of this Agreement.

b. **Warranty Disclaimer.** EXCEPT FOR THE EXPRESSED WARRANTIES STATED HEREIN, CONTRACTOR DOES NOT MAKE ANY FURTHER WARRANTIES AND HEREBY DISCLAIMS ANY AND ALL EXPRESS OR IMPLIED WARRANTIES, REPRESENTATIONS OR CONDITIONS, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

c. **City Warranties.** City represents and warrants to Contractor that it:

- (i) Has sufficient ownership rights in the City Data;
- (ii) Has obtained from all individuals, persons and third parties all consents and authorizations, and has provided all required notices with respect to the disclosure and use of the City Data and the DDC Model as contemplated hereunder;
- (iii) Has full right and authority to provide to Contractor all City Data, for all purposes contemplated in this Agreement, and shall not provide any City Data that infringes or violates any Intellectual Property Rights, publicity, privacy, confidentiality, contractual or other rights, or any foreign, federal, state or local law or regulation, including but not limited to the Health Insurance Portability and Accountability Act (“HIPAA”), including any HIPAA regulations, and all other requirements regarding patient confidentiality;
- (iv) Has obtained a valid license from DDC for the DDC Model;
- (v) Under the authority granted to the MTA by the license issued to the MTA by DDC for the use of the DDC Model, Contractor, as a service provider to the MTA, is granted the right to use the DDC Model solely for the purposes and benefit of this Agreement and only for the Term of this Agreement; Contractor’s right to use the DDC Model is entirely derivative from the City’s license to use the DDC Model and this warranty is thereby limited to those rights specifically granted by DDC to the City.

11. Taxes

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

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

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

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a “change in ownership” for purposes of real property taxes, and therefore may result in a revaluation of

any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as it may be 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.

12. Payment Does Not Imply Acceptance of Work

Subject to Section 9 herein, 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 does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

13. 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.

14. 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.

15. 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.

16. 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; 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.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

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

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

c. All policies shall provide thirty days' advance written notice to City of cancellation mailed to the following address:

Jeff Gary
Workers Compensation Manager
Municipal Transportation Agency
1 South Van Ness Avenue, Third Floor
San Francisco, CA 94103

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

e. Should any 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.

f. 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.

g. Before commencing any operations under this Agreement, Contractor shall do the following: (a) furnish to City certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A-, VII 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, and (b) furnish complete copies of policies promptly upon City request.

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

17. Indemnification

a. 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 by any third party for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by City or others, 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.

b. 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.

c. 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

d. Contractor's indemnification obligations under this Section are conditioned upon: (a) City promptly notifying Contractor in writing of such action; (b) City giving Contractor sole control of the defense thereof and any related settlement negotiations; (c) City's compliance with license grant and confidentiality Sections hereof; and (d) City cooperating with Contractor in such defense (including without limitation, by making available to Contractor all documents and information in City's possession or control that are relevant to the infringement or misappropriation claims, and by making City's personnel available to testify or consult with Contractor or its attorneys in connection with such defense).

e. If the Work Product becomes, or in Contractor's opinion is likely to become, the subject of an infringement or misappropriation claim, Contractor may at its option and expense either: (a) procure for the City the right to continue to exercise the Work Product license under the license grant Section hereof; (b) replace or modify the Work Product so that it becomes non-infringing; or (c) if neither option (a) or (b) is available, terminate this Agreement.

f. Notwithstanding the foregoing, Contractor shall have no obligation or otherwise with respect to any infringement or misappropriation claim based upon: (a) any violation of the licenses granted under this Agreement or any Statement of Work or for use of Contractor Intellectual Property and/or Innovations for any purpose not intended by Contractor; (b) any combination of the Contractor Work Product and/or Services with other products, equipment, software, or data not supplied or approved in writing by Contractor; or (c) any modification of the Work Product and/or Services made by any entity other than Contractor.

18. Limits on Liability

a. Except for breach of Contractor's Confidential Information, or breach of Contractor's Intellectual Property rights, the City's payment obligations and total liability under this Agreement shall be limited to the payment of the compensation provided for in Section 5 of this agreement.

b. Except as set out in Section 17, above, Contractor's total aggregate and cumulative liability to the City under this Agreement shall not exceed one million five hundred thousand dollars (\$1,500,000) or the amount paid by the City for the Services during the twelve months immediately preceding the date that gave rise to such liability, whichever amount is greater.

c. Notwithstanding any other provision of this agreement, in no event shall either party 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, the performance of this Agreement, or the services performed in connection with this Agreement.

d. City acknowledges and agrees that Contractor accepts no liability for or in connection with (i) medical provider fraud; and (ii) any City Data or City Materials unless directly due to Contractor's breach of its duties and obligations under this Agreement; (iii) use of and/or adherence to the DDC Model except for Contractor's obligations in rendering its Services as contemplated hereunder; and (iv) disputes, claims or litigation by, from or involving the City's acts or omissions with respect submitted claims, requests for eligibility status or benefit verification of a patient, requests for a referral or authorization, or denial of

coverage, or payment or non-payment of any claim. The parties agree that notwithstanding any of Contractor's obligations to perform any of the Services on behalf of City under this Agreement, City retains the sole responsibility and authority to accept or reject claims, and to make benefit and coverage-related decisions. City is solely responsible for the results obtained from the use of the Services and for conclusions drawn therefrom, unless solely due to Contractor's breach of this Agreement.

19. Default; Remedies

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

(1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 9 (False Claims), 11 (Taxes), 16 (Insurance), 23 (Proprietary and Confidential Information), 29 (Assignment/Delegation), 36 (Drug Free Workplace Policy), 52 (Compliance with Laws).

(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.

(5) Either party may terminate this Agreement for a breach by the other party of any material terms of the Agreement or numerous serious breaches of duties or obligations hereunder that cumulatively constitute a material breach of the Agreement, and the breaching party fails to cure such breach(es) or object in writing setting out the issues in dispute within ninety (90) days from receipt of written notice from the non-breaching party identifying such breach(es); or

(6) Either party may immediately terminate this Agreement, without a cure period, if the other party violates any terms of the license provisions set forth in Section 26 herein. Either party may terminate this Agreement, without a cure period, if the other party violates any terms of the confidentiality provisions set forth in Section 24 herein.

b. On and after any Event of Default, the non-defaulting party 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, except as provided above; 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.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

20. Termination for Convenience

a. Either party shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause upon at least one hundred twenty (120) days prior written notice to the other party. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of a notice of termination for convenience from the City, 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. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors due to City's exercise of its right to terminate for convenience pursuant to the terms of this Section 20. 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 by the City.

d. In no event shall Contractor be liable for costs incurred by the City by Contractor's exercise of its right to terminate for convenience pursuant to the terms of this Section 20. Such non-recoverable costs include, but are not limited to, the costs of issuing a Request for Proposal, bid processing costs, staff overhead, and other incidental costs. If Contractor terminates this Agreement for convenience, it shall bear all costs associated with returning unprocessed medical bills to the MTA's TPA.

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.

g. In the event that either party exercises its rights under this Section 20 to terminate for convenience, the terminating party shall cooperate with the non-terminating party to facilitate a smooth transition to another services provider and to reduce as much as possible the costs of such transfer to the non-terminating party.

21. Rights and Duties Upon Termination or Expiration

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 1 (Definitions) and any other definitions provided elsewhere in this Agreement, 9 (False Claims), 10(b) (Warranty Disclaimer), 11 (Taxes), 12 (Payment Is Not Acceptance), 14 (Responsibility for Equipment), 15 (Independent Contractor – Payment of Taxes), 16 (Insurance), 17 (Indemnification), 18 (Limits on Liability), 21 (Rights and Duties Upon Termination or Expiration), 23 (Proprietary and Confidential Information), 25 (Ownership of Results), 26 (Works for Hire), 27 (Audit), 47 (Modification of Contract), 48 (Administrative Remedy), 49 (California Law/Venue), 50 (Construction), 51 (Entire Agreement), 55 (Severability), and 56 (Non-Disclosure of Private Information).

b. Subject to the immediately preceding subsection (a), 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 to the MTA or to the MTA's TPA (at the MTA's direction) all claims data, in an electronic format to be agreed upon by the parties, for all Medical Bills reviewed as of the date of termination or expiration of this Agreement, and return all Medical Bills not processed. This subsection shall survive termination of this Agreement.

22. 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 the San Francisco 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.

23. Proprietary or Confidential Information

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

b. Non-Proprietary Information. Nothing contained herein will be construed to restrict or impair in any way the right of the parties to disclose or communicate any information which: (i) is at the time of its disclosure hereunder generally available to the public; (ii) becomes generally available to the public through no fault of the receiving party; (iii) is, prior to its initial disclosure hereunder, in the lawful possession of the receiving party as evidences in documentary form; or (iv) is acquired by the receiving

party from any third party having a right to disclose to the receiving party without breach of any confidentiality obligations. Either party may disclose Confidential or Proprietary Information in accordance with a judicial or other governmental order, provided that the receiving party will provide the disclosing party with prompt notice of such request(s) so that it may seek an appropriate protective order or other remedy and/or waive the receiving party's compliance with these provisions.

c. Requests for Public Information. City agrees that it will make its best efforts to provide notice to Contractor prior to release of documents concerning this Agreement that are made pursuant to a request for records made under and in accordance with the Public Records Act or the San Francisco Sunshine Ordinance.

d. DDC Model. The DDC Model is Confidential Information to and licensed by the City from DDC. Contractor is authorized, as a service provider to the MTA, to utilize the DDC Model for purposes of this Agreement only and for the Term of this Agreement only.

24. Notices to the Parties

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

To City: Jeff Gary
Workers Compensation Manager
Municipal Transportation Agency
1 South Van Ness Avenue
San Francisco, CA 94103
Fax: 415-701-4360
email: jeff.gary@sfmta.com

To Contractor: Fair Isaac Corporation
Attention: Contracts Administration
3661 Valley Centre Drive
San Diego, CA 92130
Fax: 858-523-4450
email: ContractsDesk@fairisaac.com

Any notice of default must be sent by registered mail.

25. Ownership of Results

a. License Grant to Contractor for City Data. Subject to the terms and conditions of this Agreement, City hereby grants to Contractor an irrevocable, perpetual, worldwide, royalty free, non-exclusive limited license to use City Data, solely for the purpose of (i) providing the Services in accordance with this Agreement, and (ii) developing generic benchmarks of Medical Bill review services generally incorporating the City Data with other data to develop fraud, risk and related Contractor models, and other research and development activities; provided, however, Contractor shall not disclose to any other person or entity any portion of the City Data which specifically identifies the City, the MTA, the City's or MTA's employees or Claimants, or any specific individual's name without the written consent of the MTA or such individual.

b. License Grant to Work Product. Subject to the terms and conditions of this Agreement, Contractor grants to City an irrevocable, perpetual, worldwide, royalty free, non-exclusive limited license to use copyright license to use the Work Product in the Territory; only by

authorized employees or agents of City; only for the benefit of City's internal business. The parties agree that Contractor will use applicable Medical Bill review guidelines (hereafter collectively referred to as the "DDC Model" attached to the DDC Model License Agreement prepared by the City's agent, David Donn Consulting, Inc. ("DDC"), to assist Contractor in providing the City Medical Bill review Services, and that these guidelines will be used only for clients of DDC. Neither Contractor nor the City makes any representations or warranties to each other pertaining to the contents contained in the DDC Model.

c. City Data. Each party agrees to require that all City Data be used and handled in a manner in compliance with all applicable federal, state and local laws and regulations. Contractor agrees to keep confidential and not to disclose to any third party any City Data except as permitted or required under this Agreement or applicable federal, state and local laws and regulations.

d. Reservation of Rights Not Granted. Contractor reserves all rights to its intellectual property that are not expressly granted to the City under this Agreement. Without limiting the foregoing, Contractor retains and reserves sole and exclusive worldwide rights, title, ownership and interest in and to all Contractor Innovations, Work Product, User Guide, and Contractor Proprietary Information (defined herein), including any Intellectual Property Rights arising from or related to any of the foregoing, subject to only the limited, non-exclusive, license right granted to City above. Nothing in this Agreement shall limit in any way Contractor's right to develop, use, license, create derivative works of, or otherwise exploit Contractor's Services, Innovations, Work Product, User Guide, and its Proprietary Information, including any Intellectual Property Rights arising from or related to any of the foregoing, or to permit third parties to do so. In any event, Contractor shall continue to be free to perform similar services for other clients and customers, using general knowledge, skills and experience.

26. Works for Hire

Subject to Section 24, if, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, Medical 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.

27. 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. Upon fifteen (15) prior written notice, Contractor will permit City, at its own expense, 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 three 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. Unless City notifies Contractor of its written objection to any item within One Hundred

Eighty (180) days after furnishing the requested information, such information shall be considered as final and accepted by the City. The provisions of this Section 27 shall not limit the City's remedies for Contractor's breach of this Agreement. Except as required by law, City agrees to treat Contractor's procedures and processes disclosed during the audit as Contractor's Confidential Information.

28. Subcontracting

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing (which shall not be unreasonably or arbitrarily withheld). 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. Contractor shall be wholly responsible for the acts of its subcontractors and shall ensure said subcontractors' adherence to the requirements of this Agreement.

29. Assignment/ Delegation

a. 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 (which shall not be unreasonably or arbitrarily withheld).

b. City acknowledges and agrees that Contractor may (i) delegate the performance of this Agreement, in whole or in part, to its wholly-owned subsidiaries or affiliates in which Contractors has a controlling interest that are located within the continental United States subject to following conditions: (i) Contractor shall remain wholly and solely responsible for the acts of its delegate pursuant to the terms of this Agreement; (ii) Contractor may disclose to such subsidiaries or affiliates any data received from or through City that Contractor deems necessary for the performance of such delegated activities, including, but not limited to, personally identifiable information about the City's employees provided, however, that Contractor will require any such subsidiary or affiliate to adhere to the confidentiality provisions set forth in this Agreement; and (iii) Contractor shall provide the City notice no less than 90 days prior to effecting such delegation.

30. 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.

31. Earned Income Credit (EIC) Forms

Administrative Code section 120 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.

a. 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.

b. 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.

c. 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.

d. 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.

32. Minority/Women/Local Business Utilization; Liquidated Damages

a. Compliance

Contractor understands and agrees to comply fully with all provisions of Chapter 14.A (“Minority/Women/ Local Business Utilization Ordinance--IV”) of the San Francisco Administrative Code and agrees to include this paragraph in all subcontracts made in fulfillment of the Contractor’s obligations under this Agreement. Said provisions are incorporated herein by reference and made a part of this Agreement as though fully set forth. Contractor’s willful failure to comply with Chapter 14.A is a material breach of contract.

b.Enforcement

If Contractor willfully fails to comply with any of the provisions of Chapter 14.A, the rules and regulations implementing Chapter 14.A, or the provisions of this Agreement pertaining to DBE 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 (HRC) may also impose other sanctions against Contractor authorized in Chapter 14.A, 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 DBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to §14.A.16(B).

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 Chapter 14.A for a period of three years following termination of this contract, and shall make such records available for audit and inspection by HRC or the Controller upon request.

33. 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) 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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 or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer of the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

42. Requiring Minimum Compensation for Covered Employees

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 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 <http://www.sfgov.org/oca/lwlh.htm>. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

a. For each hour worked by a Covered Employee during a Pay Period on work funded under the City contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, Contractor shall increase the hourly gross compensation to \$10.00 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the City makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

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

c. Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Contracting Department, shall determine whether such a breach has occurred.

d. 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, acting through the Contracting Department, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

- (1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;
- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the City for three years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

e. 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.

f. Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the City, which communications are marked to indicate that they are to be distributed to Covered Employees.

g. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

h. The Contractor shall provide the City with access to pertinent records after receiving a written request from the City to do so and being provided at least five (5) business days to respond.

i. The City may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the City from investigating any report of an alleged violation of the MCO.

j. 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. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the

obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. 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.

k. Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

l. 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 (\$50,000 for nonprofits), 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 (\$50,000 for nonprofits) in the fiscal year.

43. Requiring Health Benefits for Covered Employees

Unless exempt, 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 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 <http://www.sfgov.org/oca/lwlh.htm>. 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(d) 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(f)(1-5). 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 keep itself informed of the current requirements of the HCAO.

h. 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.

i. 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 five business days to respond.

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

k. 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.

44. 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

(1) Contractor will comply with First Source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the exclusive opportunity to initially provide Qualified Economically Disadvantaged Individuals for consideration for employment for Entry Level Positions. The duration of the First Source interviewing requirement shall be ten (10) days, unless business necessity requires a shorter period of time.;

(2) Contractor will comply with requirements for providing timely, appropriate 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;

(3) Contractor agrees to use good faith efforts to comply with the First Source hiring requirements. A Contractor may establish its good faith efforts by filling: 1) its first available Entry Level Position with a job applicant referred through the First Source Program; and, 2) fifty percent (50%) of its subsequent available Entry Level Positions with job applicants referred through the San Francisco Workforce Development System. Failure to meet this target, while not imputing bad faith, may result in a review of the Contractor's employment records.

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

Violation of the requirements of Chapter 83 is subject to an assessment of liquidated damages in the amount of \$2,070 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.

45. 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.

46. 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.

47. 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 a lawful manner. Contractor shall cooperate with Department to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

48. 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 Director of Transportation who shall decide the true meaning and intent of the Agreement.

49. 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.

50. Construction

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

51. 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.

52. Compliance with Laws

Contractor shall keep itself fully informed of the City’s applicable 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 applicable local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

53. 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.

54. Trainee Program

- A. During the Term of the Agreement, Contractor shall make good faith efforts to hire and retain entry level persons who are economically disadvantaged as defined by the qualifications standards established and implemented by the Private Industry Council (PIC) and other similar programs that work with low-income individuals. Qualified candidates shall not have had more than one year’s continuous work experience in the United States in the last five years in a related field of the proposer. A person who has a recognized college degree in a related field of the proposer and has no previous experience other than a displaced worker is eligible to be a trainee
- B. The City will provide Contractor contacts with local Community Based Organizations and other resources to assist Contractor in locating qualified candidates for Trainee positions.
- C. Contractor shall no less than every six months provide the City a written report documenting its good faith efforts to comply with the provisions of this Section 54.
- D. Contractor may utilize trainees in performance of this Agreement or in any other commercially useful capacity from and in which the trainees will learn job skills and derive experience in the workplace.
- E. Contractor shall hire trainees without regard to race or gender. The City requests that Contractor particularly consider Trainee candidates from San Francisco, but the City does not impose any geographic limitations on Contractor’s hiring of Trainees.

55. Chapter 12B –Non-Discrimination

A. Compliance with Administrative Code Chapter 12B.

Contractor shall not discriminate in the hiring and promotion of its employees, and Contractor shall comply with all provisions of Administrative Code section 12B. Contractor’s failure to adhere to the requirements of Administrative Code section 12B shall be a material breach of this Agreement

B. Non-Compliance with Chapter 12B:

- (1) A complaint of discrimination or non-compliance in employment initiated by any party after Agreement award shall be processed in accordance with the HRC Rules of Procedure, adopted pursuant to Chapter 12B of the San Francisco Administrative Code.
- (2) A finding of non-compliance may result in imposition of appropriate sanctions, including:
 - (a) There may be deducted from the amount payable to the consultant or subconsultant under this Agreement a penalty of \$50 for each person for each calendar day the person was discriminated against in violation of the provisions of the Agreement.
 - (b) The Agreement may be canceled, terminated, or suspended in part by the Agreement awarding authority.
 - (c) The consultant or subconsultant may be determined ineligible to perform work or supply products on any City Agreement for a period not to exceed two years.

56. Substitution or Addition of Subcontractors.

MTA's Contract Compliance office must be informed by the prime consultant of any subconsultant that is replaced or added during performance of the Agreement. Contractor must obtain the approval of the MTA Board prior to the replacement of a subconsultant that qualifies as a Disadvantaged Business Enterprise, as defined by the San Francisco Human Right Commission. All new subconsultants with contracts of \$25,000 or more must submit HRC Form 5 to MTA's Contract Compliance office within 15 days of award of the subcontract.

57. 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.

58. Nondisclosure of Private Information

As of March 5, 2005, Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this section and not defined in this Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, Contractor agrees to all of the following:

(a) Neither Contractor nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (i) The disclosure is authorized by this Agreement;
- (ii) The Contractor received advance written approval from the Contracting Department to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

(c) Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

(d) Any failure of Contractor to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar Contractor, or bring a false claim action against Contractor.

59. 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.

60. Counterparts; Facsimile

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. This Agreement may be delivered by executed facsimile transmission, which shall be deemed an original.

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

MTA

Recommended by:

Jeff Gary
Workers' Compensation Manager

Approved:

Stuart Sunshine
Acting Executive Director

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robert K. Stone
Deputy City Attorney

AUTHORIZED BY:

**MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS**

Resolution No. _____

Adopted: _____

Attest: _____
Roberta Boomer
Secretary
MTA Board of Directors

FAIR ISAAC CORPORATION

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

Authorized Signature
Fair Isaac Corporation
Address 3661 Valley Centre Drive
City, State, ZIP San Diego, CA 92130
Phone Number (858) 369-8259
Fed. Employer ID No. 94-1499887

INCLUDED APPENDICES

- A. Services to be Provided by Contractor
- B. Compensation
- C. Contractor Employee Confidentiality Agreement

APPENDIX A

SERVICES TO BE PROVIDED BY CONTRACTOR

A. CONTRACTOR OBLIGATIONS

1. Medical Bill Review Services.

Contractor agrees to provide the following Medical Bill Review Services on behalf of The City:

- (a) Make adjustments to Provider Medical Bills as appropriate pursuant to (i) applicable fee schedules of prevailing rates of a particular states and/or PPO Network Contract Rates, (ii) for Provider charges that exceed usual and customary charges, (iii) for services that are not medically necessary, and (iv) for fraud and other problems, such as inappropriate Medical Billing practices and miscoding of Medical Bills that require adjustments.
- (b) Process all Medical Bills after receiving all necessary information from the City including, but not limited to, office notes, medical/operative reports, hospital records, and managed care organization pricing arrangements with a Participating Provider.
- (c) Provide a procedure for investigating complaints, resolving disputes and for handling grievances related to the Medical Bill Review Services.
- (d) Provide monthly reports to the City on Contractor's activity.

.DDC Model. In addition to all service requirements outline in this Appendix, Contractor agrees to provide services in compliance with all applicable specifications listed in the DDC Operating Model licensed by the MTA.

2. **Coverage and Eligibility Decisions.** It is expressly understood that the MTA has final authority over all coverage and eligibility decisions pertaining to the provision of workers' compensation benefits to Claimants under this Agreement. The City acknowledges and agrees Contractor shall have no authority and shall incur no liability whatsoever to determine, acknowledge, or deny the compensability of any individual injury, and that Contractor is not responsible for investigation of compensability issues. Medical Bill Review Services stated in this Section are a prerequisite that must be rendered prior to the Complex Medical Bill Review Services, ASC, or Negotiated reviews that may take place subsequently.

3. **Complex Medical Bill Review Services.** In addition to Medical Bill Review Services stated above, Contractor agrees to provide appropriate analysis from a specialist for Medical Bills relating to:

- (a) Catastrophic injuries;
- (b) Surgeries;
- (c) Multiple anesthesia codes;
- (d) Extensive diagnostic testing;
- (e) Medical-legal evaluations; or
- (f) By reporting ("BR") and relatively not established ("RNE") codes.

5. **Specialty Review Services.** Contractor agrees to provide analyses of specific, specialty and complex medical service Medical Bills which may include Ambulatory Surgical

Center (“ASC”) provider Medical Billings, inpatient services, emergency room services, Durable Medical Equipment (“DME”) reviews and other such specialized Medical Billings..

6. Bill Processing.

- (a) MTA and its TPA will attach chart notes or reports to all Medical Bills that contain one or more of the procedure codes specified for Level of Service review in the DDC model licensed by MTA and referenced in §§ 6. This list may be modified by mutual agreement of MTA and Contractor throughout the term of this agreement.
- (b) Contractor will be responsible for monitoring and “flagging” duplicate Medical Billings of Medical Bills. Any Medical Bills previously audited will be returned to MTA or the TPA with a reprint of Contractor’s Explanation of Benefit (“EOB”). There will be no charge to MTA for total duplicate Medical Bills. If the Medical Bill contains both duplicate and new charges, Contractor will process the Medical Bill as a “partial duplicate.” The charge to MTA for Contractor’s processing of a “partial duplicate” Medical Bill will be fees charged at applicable rates on the amount Medical Billed for new dates of service only. Disallowance of payment for duplicated charges will not be considered a “savings” for purposes of computing savings achieved by the Contractor, the Contractor fee, or performance-based adjustments to the Contractor fee.
- (c) Any conflicts or complaints from Medical Providers concerning Medical Bill review recommendations completed by Contractor will be handled directly by Contractor. All phone requests will receive an initial response within one business day of receipt of the complaint by Contractor. Contractor shall notify MTA of any provider requests for additional payment recommendations by providing the claim administrator with a copy of the written response and/or EOB within five working days.
- (d) During the first 30 days following contract inception, any conflicts or requests from medical providers concerning Medical Bill review recommendations by the prior Medical Bill review contractor will be handled by prior Medical Bill review contractor. After 30 days, Contractor and MTA shall jointly determine how to handle subsequent requests for reconsideration of prior Medical Bill review contractor determinations.
- (e) If for any reason the processing of a Medical Bill is delayed by the actions or the failure to act by Contractor, any and all penalties and/or interest charges that become due and payable on a delayed Medical Bill under Section 4622 or 4603.2 of the California Labor Code shall be the sole responsibility of Contractor. Contractor shall make the penalty and/or interest payments directly to MTA at no additional cost to MTA.
- (f) Contractor agrees to provide systems compatibility with the MTA’s claims and check-writing systems, which are currently provided by the MTA’s TPA. Contractor agrees to bear the cost of maintaining these systems and any electronic data interfaces necessary for the ongoing exchange of data with the MTA and the MTA’s TPA. Should MTA decide to replace the current claims and/or check writing technology at some future time, Contractor will cooperate with the successor in converting data and accomplishing a similar electronic data interface as needed. Contractor agrees to bear the cost of completing any such data conversion and electronic data interface construction.

- (g) Contractor shall not transmit payment records for Medical Bills for which the MTA's payment system has no matching provider record or claim record. These shall be processed as "exceptions" as follows:
- (h) Medical Bills for which there are no matching providers shall be forwarded to MTA's TPA via courier. After TPA enters the vendor record on its system, TPA will forward the Medical Bill to the appropriate administrator for review and release to payment.
- (i) Medical Bills for which there are no matching claim records shall be held for three days. If no claim record is received in three days, the Medical Bill shall be returned to the appropriate administrator.
- (j) Contractor shall hold confidential the MTA employee and medical provider data supplied by MTA. Contractor agrees to indemnify MTA for any liability caused by Contractor's misuse of MTA employee and provider data.
- (k) Contractor agrees that upon notice of termination of this agreement, Contractor shall furnish complete copies of all MTA claim data, Medical Bill data, and Medical Bill review savings and fee data to MTA or another third party specified by MTA. All data shall be furnished within a time frame specified by MTA. Contractor agrees to provide any and all data related to MTA claims, Medical Bills, and Medical Bill review results, as specified by MTA.

7. Utilization Review.

- (a) Contractor will provide prospective, concurrent and retrospective review for medical necessity of various treatments and medical services in accordance with Contractor's Utilization Review Plan and within the state mandated timelines. The State mandated Utilization Review criteria and referral triggers will be adhered to by both parties.
- (b) "Utilization Review" is defined as the review for medical necessity, appropriateness and duration of medical treatment requests.
- (c) All requests for Utilization Review services will be channeled to Contractor through the MTA's TPA, in accordance with the referral criteria specified in the DDC Model licensed by MTA and referenced in §§ 6. Contractor will return all requests for Utilization Review services which it receives from other sources to the requestor with notice that referrals must be directed through the City's TPA.
- (d) The Contractor hospital pre-admission certification program is a review service which verifies the medical necessity of proposed hospital admissions and determines the appropriate length of stay. The Contractor staff of Utilization Review nurses and reviewers, assisted by an automated medical rules/protocols system and backed up by physician consultants, will evaluate hospital admissions requests and out-patient procedures upon receipt of specific requests from the MTA's TPA. If treatment is approved, Contractor will notify the provider of the authorized treatment scope, length of treatment, and/or number of visits, and will send a copy of the certification letter to the appropriate MTA claims adjuster or TPA claims examiner.
- (e) Hospital and non-hospital pre-certification objectives include the following:

- (i) determine appropriateness of proposed treatment plan.
 - (ii) determine the medical necessity for hospital admission/inpatient care.
 - (iii) explore alternatives to inpatient treatment.
 - (iv) prevent unnecessary inpatient hospitalizations and save customer dollars.
 - (v) if inpatient care is required, determine the appropriate length of stay and monitor the patient's condition throughout the hospitalization to prevent unnecessary inpatient days.
 - (vi) channel the patient to a Contractor PPO provider/facility.
 - (vii) develop and implement a timely discharge plan.
 - (viii) educate the employer and employees regarding physicians and services available, the claims process, and how Utilization Review is implemented so that good decisions regarding medical care and services can be made at the time of injury.
- (f) Documentation of all Utilization Review activities in the form of written correspondence shall be communicated to the referring claim professional. All Medical Bills for Utilization Review services will be accompanied by a copy of the review determination letter. Monthly reports will be provided summarizing Utilization Review activity as specified in the DDC Model licensed by MTA and referenced in §§ 6.
- (g) All Utilization Review services, determinations, and corresponding documentation shall be provided by Contractor within the time frames and specifications dictated under Section 9792 of the California Code of Regulations, Title 8, and Section 4600.4 of the California Labor Code.

8. Reporting Requirements.

- (a) Contractor agrees to supply MTA, on a daily basis, at no additional cost, and in accordance with MTA's specifications, a data transmission in the manner and format specified by MTA reflecting the results of its Medical Bill review activities which would permit MTA to automatically generate provider reimbursements with an appropriate EOB. Such data shall be provided as to further allow for the application of Contractor fees to the individual claim files, the preparation of department-specific savings reports and the reimbursement of Contractor fees, or other applications at MTA's discretion.
- (b) The reports, when submitted in hard copy format and including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.
- (c) In addition to reports specified elsewhere in this document and in the DDC Model licensed by MTA and referenced in §§ 6, Contractor agrees to provide the following reports:
- (d) Turnaround Report

Contractor will provide a listing of Medical Bills processed for which the elapsed time between the MTA Received Date and the Contractor Process Date exceeded 45 days. This report may be combined with the Daily Batch Control Report. The report shall cover the following subjects

- i. **Sort by:**

- (1) Claims Administrator (Separate reports for TPA and MTA)
- (2) Contractor Process Date

ii. Data fields to sort:

- (3) Claim Number
- (4) Claimant Name
- (5) Provider Name
- (6) Provider Tax I.D.
- (7) Invoice Date
- (8) MTA/TPA Received Date
- (9) Contractor Received Date
- (10) Contractor Process Date
- (11) EOB (Batch-Sheet) Number
- (12) Allowance

(e) Ad-hoc reporting. Ad-hoc reporting will be available to the MTA at no additional charge. Ad-hoc reports shall be processed and delivered by Contractor at the request of the MTA's liaison.

(f) Contractor agrees to provide MTA, upon request, with its raw data to enable the MTA to create its own reports. Format may be flat file, Excel or Access database, as dictated by the MTA's needs and the size of the data set provided.

9. WCAB Appearances.

a. Should a matter or an issue concerning medical billing, payment or payment reduction come before the Workers' Compensation Appeals Board (WCAB) for trial, Contractor agrees to provide a representative to assist the MTA and its legal counsel who is able to testify before the WCAB. Contractor shall not receive additional reimbursement for WCAB appearances, other than mileage reimbursement and reimbursement for fair and reasonable travel expenses as set out in Appendix B to this Agreement. Such representation shall include, but not be limited to, providing expert witness representation and other associated services.

b. Should a matter or an issue concerning medical billing, payment or payment reduction come before the Workers' Compensation Appeals Board (WCAB) for pre-trial hearing or Mandatory Settlement Conference, Contractor shall provide written explanation of reductions or rejections of disputed medical bills and shall also provide a representative by telephone to assist the MTA and its legal counsel during such hearing or conference. Contractor shall not receive additional reimbursement for said services.

c. MTA shall have the right, in its sole discretion, but not the obligation, to interject itself into the dispute between Contractor and a medical provider at any time in order to assist in the resolution of the dispute in a manner acceptable to the MTA. However, the parties agree that notwithstanding any of Contractor's obligations to perform its Services under this Agreement, the MTA retains sole responsibility to accept, reject, or settle any such claim. Contractor shall have no liability to the MTA if the MTA elects to resolve a dispute with a medical provider, including when such a decision is contrary to Contractor's recommendations.

10. Occupational Medical Management Services.

Contractor will provide the following Occupational Medical Management Services to the MTA on an as-needed basis when requested by the MTA's TPA:

- a. Case Management. Contractor will provide the Occupational Medical Management Services as outlined in the Policies and Procedures Manual which may include, but are not limited to the following:
 - (i) Perform initial medical case management evaluation of each claim received and referred to Contractor by the City.
 - (ii) Authorize initial ICD-9 code assignments.
 - (iii) Act or remain (on behalf of the City) as the focal point of managed care contact with Providers, Employers and employees for Enrolled Accounts.
 - (iv) Review and certify initial Treatment Plans proposed by Participating Providers and non-PPO Network Providers.
 - (v) Review and certify subsequent Treatment Plan updates requesting medical authorization for services which (i) are not included in the initial pre-established Treatment Plan submitted by Providers, or (ii) do not fall within the City's pre-established treatment protocols.
 - (vi) Establish appropriate Treatment Plan update intervals for concurrent review of services provided by Providers.
 - (vii) Assist with referral to Participating Providers for the provision of medically necessary services not provided by Provider requesting the referral.
 - (viii) For Claimants receiving care from non-Participating Providers, Contractor will, where possible, review Treatment Plans and return to work dates, negotiate Provider discount amounts, or arrange for patient transfers to Participating Providers.
 - (ix) Work with Participating Providers or non-Participating Providers, Employers, and injured workers in order to facilitate an early light duty, modified duty, transitional duty, or full duty return to work.
- b. Patient Transfers. Contractor will assist Claimants in coordinating any patient transfer requests with the appropriate Participating Physician as further described in the Policies and Procedures Manual.
- c. Management of Care Rendered by Non-Participating Providers. If a Claimant seeks or receives care from a non-Participating Provider, The City will assist Contractor in obtaining all medical and other information necessary for Contractor to provide these Utilization Review Services.
- d. Catastrophic Case Management. The parties understand and agree that the City shall be entitled to refer Catastrophic Claims to a specialized third party rehabilitation management vendor for rehabilitation management services. In such event, Contractor may provide concurrent these Occupational Medical Management Services at the direction of the City's Claims Handler.

11. Access to PPO Network.

- a. The City acknowledges and agrees that access to PPO Network Contract Rates (defined below) through the Hosting Services is subject to a definitive written access agreement between Contractor and the PPO Network, and that conditions and availability of access are subject to such agreement. Contractor does not warrant or guarantee continued access to any PPO Network Contract Rates. Access to the PPO Networks provided hereunder can be terminated by the PPO Network for any or no reason and without any notice, including but not limited to expiration of the term of the Contractor-PPO Network access agreement, a PPO Network's refusal to extend the existing access agreement, or a decision not to maintain the PPO Network. Contractor shall have no obligation to provide access to The City to any

such PPO Network that does not have an effective and valid agreement and/or finalized Contract Rates with Contractor. If The City requests that one or more additional PPO Networks be included in the Services, Contractor in its sole determination will investigate the feasibility of doing so and will add such additional PPO Network to the Services, as determined in Contractor's sole discretion, only if: (i) it is technically feasible to automate the PPO Network, (ii) the terms of the PPO Network's access agreement are acceptable to Contractor, and (iii) in Contractor's sole business judgment, the costs of adding, distributing and maintaining the additional PPO Network is justified. The fee for any additional PPO Network shall be negotiated between the parties before any additional PPO Network is added, and The City acknowledges that such fees may be different than what is currently provided in Appendix B herein. "Contract Rate" means that amount of payment for a Bill that a PPO Network Provider is obligated to accept payment under the terms of that Provider's Network Contract with the PPO Network and which is provided to Contractor, subject to the foregoing paragraph. The City acknowledges and agrees that the Medical Service Providers within any PPO Network may be added, deleted or changed from time to time, with or without notice, and when directing care to a Provider listed on a PPO Network website, it shall be the City's sole obligation and responsibility to confirm that status of any such Medical Service Provider with the applicable PPO Network, based on information available to the MTA, including information provided by Contractor and/or a PPO Network.

- b. Contractor will be responsible for managing all requests for reconsideration, with its applicable PPO Network partner, arising from Medical Service Provider inquiries that result from re-pricing of Medical Bills when applying PPO Network contract discounts.
- c. If the City elects the Blue Cross of California Network ("Blue Cross of California", or "BC Life & Health Insurance Company"), the City agrees and acknowledges to the following: (a) Blue Cross of California shall be the City's primary provider network in California. That is, if a Network Provider renders services to a Network User, the Contract Rates shall apply even if the Network Provider also participates in another network that the City may also access pursuant to another agreement allowing access to that network. (b) Reasonable good faith efforts shall be used to actively encourage covered workers to use Blue Cross of California Providers under the PPO Network, through distribution in California of current listings of providers, employer direction, claims examiner direction, utilization review activities and other activities consistent with California Insurance Code Section 10178.3(b)(2)(B) and/or Labor Code Section 4609, as applicable. (c) **Blue Cross of California's written approval must be obtained in advance for any the City's use of a BC Life service mark, trademark, trade name, logo type or similar intellectual property belonging to BC Life or an Affiliate of BC Life. The City shall submit any such requests to Contractor, who will forward them to BC Life. The City acknowledges and agrees that Contractor has no authority to grant such approval, and that only BC Life may do so.** (d) In some circumstances, rates with Blue Cross of California Providers may be higher than the State Workers' Compensation Fee Schedule, in which case the Provider may be entitled to payment in excess of the State Workers' Compensation Fee Schedule. (e) Contract Rates and other benefits of Blue Cross of California may be denied to the City forty-five (45) days after receiving a written demand for delinquent Blue Cross of California Fees if such fees are not paid in full, or twenty (20) days after the City has received a written notice that it is conducting itself in a manner inconsistent with provisions of this Change Request and the Contractor Agreement related to Blue Cross of California and/or to its Payor Agreement with Blue Cross of California. (f) Any Blue Cross of California Confidential Information of

which the City becomes aware due to its access to Blue Cross of California through the Services shall not be divulged. "Blue Cross of California Confidential Information" shall mean any financial information, negotiated contract rates, technical data, programs, customer lists, lists of employees and agents, sales and marketing plans, operating procedures and provider agreements and related information relating to Blue Cross of California. (g) Blue Cross of California does not assume any risk or responsibility for payment to providers or the signing of a direct agreement with Blue Cross of California. Blue Cross of California is not a guarantor of the performance by any provider of any of the terms or conditions set forth in any provider agreement. (i) Blue Cross of California may offer its services to entities which do not use the services of the City, provided that proprietary or Confidential Information of the City shall not be used in the development and implementation of any such the City without the written permission of the City.

- d. If City elects the First Health® Network, City agrees and acknowledges to the following: (a) City will offer the First Health® Network to eligible workers of employers for which City has selected First Health and within the geographic areas City has specified for access to First Health; (b) all Medical Bills for medical services incurred by claimants in the jurisdictions specified in this Agreement and for which PPO Contract Rate application by any PPO is desired by City for employers for which City has selected First Health Network shall be submitted to Contractor for First Health Network services prior to review or submission related to any other PPO services; (c) City will pay each contract Provider for all compensable services at the Contract Rate within the time period mandated by the applicable Worker's Compensation Act or 30 days from receipt of the Medical Bill, whichever is earlier; for Medical Bills being disputed for reasons of compensability, these time frames will begin after the disputed Medical Bill has been resolved; (d) Contract Rates are valid only if compensable services are paid for within such time frames; (e) a contract Provider may refuse to honor the Contract Rates if it does not receive payment within such time frames; (f) City will keep confidential and not disclose information, including but not limited to Contract Rate data and re-priced Medical Bills from which a Contract Rate might be derived, without the express written approval of First Health, except that such confidential information may be used by City for the purpose of paying First Health Network Providers according to First Health Network Contract Rates, and also may be disclosed as required by law or by a government agency, and also may be disclosed to parties with interests in the services for which such payment is made; (g) except for marketing information provided by First Health for distribution, no marketing information regarding First Health or the Network Services provided by First Health may be disseminated without the approval of First Health; (h) the explanation of payment to the contract Provider shall indicate that reimbursement is being made pursuant to the First Health Network Contract Rates; (i) City agrees and authorizes Contractor to make Medical Bill payment information available on a monthly basis to allow Contractor to identify First Health Network Savings realized for that month, and as necessary to adjust invoiced fees to reflect Savings realized. Medical Bill payment information shall include at a minimum for each Medical Bill the Internal Control Number (ICN), total billed charges, and the total amount paid to the Provider; and (j) Contractor shall invoice City fees based upon Savings calculated from Medical Bill payment information supplied to Contractor by First Health, or, in the event that Medical Bill payment information is not supplied, on First Health Network payment recommendation information obtained by Contractor. Further City agrees and acknowledges to (a) encourage claimants to use services of contract Providers through use of work place posters, provision of directories and educational material, or other means chosen by City, unless prohibited by applicable law, and (b) maintain or cause to be maintained a procedure during normal business hours for

verification by a contract Provider of a claimant's eligibility under the Worker's Compensation Act for medical services. City's compliance with all of the above shall also be a condition of City receiving the First Health® PPO Network Services.

- e. Contractor shall provide all of its Preferred Provider Organization (PPO) Networks as an integrated component of Medical Bill review for the benefit of MTA during the term of this Agreement as outlined in Contractor service descriptions. A Preferred Provider Organization ("PPO") is defined as a network of Providers who have entered into agreements with either Contractor, business partners of Contractor, or MTA to provide services at discounted rates.
- f. As Contractor continues to expand its PPOs through the development of proprietary networks, MTA and its TPA will be notified of their availability in writing and shall be provided immediate access to them, replacing the then-current PPO, if applicable.
- g. Contractor recognizes and agrees that the MTA's TPA directs medical care and selects medical providers within the provisions and limits of California law on behalf of the MTA. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, THE CITY SHALL NOT BE OBLIGATED TO PROVIDE POSTERS, BROCHURES, OR OTHER MATERIALS IN ITS WORK PLACES OR TO ITS EMPLOYEES THAT IN THE SOLE DISCRETION AND OPINION OF THE CITY CONSTITUTE MARKETING OR ADVERTISING MATERIALS. However, the City agrees that if required by a selected PPO Network, the City will encourage use of any such PPO Participating Providers where such activity is permitted under applicable California and local law.

12. Medical Bill Review Processing Standards

- a. Contractor will review and process Medical Bills within five (5) business days of Contractor's receipt of the properly coded Medical Bill, unless Contractor requires additional time due to information deficiencies as described in Appendix A, Section
- b. Contractor shall have the additional time listed below for the following types of bills:
 - (i) Surgery Medical Bills 5 business days
 - (ii) Hospital Medical Bills 5 business days
 - (iii) Complex med-legals 5 business days
 - (iv) Utilization Review 5 business days
 - (v) Out-of-State Medical Bills 5 business days
- c. Medical Bills will not be returned to the administrator until they have been processed by Contractor, except as allowed under Appendix A, Section 1.2 and its related sub-sections.
- d. The MTA requires Contractor to capture and transmit to MTA's TPA, in the manner and format designated by MTA, the following dates for each Medical Bill processed by Contractor:
 - (i) Date MTA (or MTA's TPA) received the Medical Bill (MTA received date)
 - (ii) Date Contractor received the Medical Bill from the administrator (Contractor received date)
 - (iii) Date Contractor audited the Medical Bill (Contractor audit date) and transmitted payment and notice information to the MTA's check and notice-writing system.

- e. Elapsed time between Contractor received date (1.3.2) and Contractor audit date (1.3.3) will not exceed five (5) business days for Medical Bills received with all information required in Appendix A, Section 1.2 and its related subsections, unless additional time is allowed under § 1.1 of Appendix C.
- f. Processed Medical Bills with Explanations of Benefit (EOBs) attached will be returned to the appropriate administrator daily.
- g. Data will be transmitted daily to the MTA's TPA, in the manner and format designated by MTA.
- h. Every Medical Bill will be returned.

13. Customer Service Standards:

- a. The Contractor customer service unit "Provider Relations Department" will respond to provider complaints within one business day.
- b. Contractor will keep MTA apprized of complaints it receives and the responses given by transmitting copies of each to MTA and the TPA daily.
- c. If an unresolved complaint results in a lien, the administrator shall notify Contractor as soon as the Declaration of Readiness is received. Contractor shall assist the claims examiner and the MTA Attorney to prepare a defense and negotiate a resolution of the lien prior to the hearing. If negotiations are unsuccessful, Contractor shall appear at the hearing when requested to do so by the MTA or its authorized representative.

14. PPO Administration Standards:

- a. Contractor will notify MTA and its TPA when new Providers are added to the PPO(s) via monthly updates to the PPO Lookup software. Contractor agrees to work with the PPO networks to achieve Internet access to network provider information. MTA will have immediate access to Contractor's expanded PPO networks.
- b. Contractor will seek to enlist in its PPO networks any Providers which MTA designates, including the MTA initial medical treatment clinics, the San Francisco General Hospital, and the UCSF physician groups which provide medical staff to the MTA's designated clinics. Membership in Contractor's PPO network(s) is subject to the PPO Network's credentialing standards. The MTA shall be notified when providers are rejected or dropped from the Network based upon failure to meet the Network's credentialing standards.

15. Utilization Review Standards

- a. Utilization Review will be conducted in accordance with Labor Code 9792.6.
 - (i) Only medically-based criteria will be used in the review and decision-making process.
 - (ii) Written certification of treatment, or documentation of standardized medical criteria upon which denial of treatment is based, must be provided to the physician within fourteen days of the request for treatment, with a copy to

the claims professional who handles the case.

- b. MTA (or its TPA, as appropriate) will receive copies of all notices sent to Providers.

16. Provider Notification Standards

- a. Contractor will transmit complete EOB data to a Provider whenever:
 - (i) There is a difference between the amount Medical Billed by Provider and the amount recommended for payment;
 - (ii) The Medical Bill cannot be processed until additional information is received;
 - (iii) The Medical Billed charges duplicate charges previously Medical Billed, whether paid or not; or
 - (iv) Provider requests reconsideration and the result is either additional payment or denial.
- b. EOBs associated with payments will be transmitted to the MTA's TPA, in the manner and format designated by MTA, in a format which will permit the MTA to print the notice on the check stub.
- c. When no payment is due, Contractor will be responsible for transmitting the "No Payment" or "Zero EOB" information to the MTA's TPA, in the manner and format designated by MTA. The MTA and/or its TPA will be responsible for printing and mailing all EOB notices to the Providers.

B. CITY OBLIGATIONS.

In addition to the other conditions contained in the Agreement, performance of the following the City obligations in this Section B are conditions to Contractor performing any of the Services.

1. Responsibility for Compensability Determinations. The parties understand and agree that the City shall retain the sole responsibility for, and authority to make, all compensability determinations on behalf of its Claimants.
2. Cooperation with Contractor. The City agrees to cooperate with and assist Contractor in the performance of Contractor's obligations under this Agreement.
3. Data Transfer and Maintenance. The City shall perform the various systems implementation, transfer and maintenance duties related to its obligations under this Agreement. The City agrees to cooperate with Contractor as necessary to implement various data and claims information transfer procedures in order to ensure the timely and orderly transfer of data, files and other documents necessary for the performance of Contractor's obligations hereunder.
4. Service Coordinators. The City shall designate one or more individuals as its service coordinators ("*Service Coordinators*") to be available to Contractor during normal business hours to provide additional benefit information or clarification not available through the telephonic eligibility and claims

processing system. The City's Service Coordinator(s) shall timely respond to all Contractor requests for information; *provided, however* that the City's assigned Claims Handlers remain the primary contact with respect to any decision on or adjustment of a claim.

5. Provision of Limited Enrolled Account Information. The City agrees to provide Contractor with updated information pertaining to its Enrolled Accounts as may be necessary to perform Contractor's obligations hereunder. The City shall also provide Contractor with timely written notification of any new Enrolled Accounts to be covered by this Agreement.
6. Services Not Provided. The parties understand and agree that Contractor shall not be responsible for the provision of, or payment for, any indemnity, permanent disability or death benefits or payments, medical-legal expenses, or vocational rehabilitation costs to which a Claimant may be entitled under California workers' compensation law. All litigation costs and expenses related to the MTA's obligation to pay workers' compensation benefits, including settlements and judgments made in connection with the defense of the MTA, shall be borne and paid by, and shall remain the sole responsibility of the MTA.
7. Workers' Compensation Services Not Funded. The MTA be responsible for funding covered and compensable workers' compensation claim payments for medical, indemnity, vocational rehabilitation, permanent disability and death benefits, medical-legal expenses, legal and other allocated or unallocated expenses related to the adjustment of workers' compensation claims, as required under applicable law.
8. Audit Fees and State Assessments. The MTA shall be responsible for the payment of all applicable audit fees and assessments levied against the MTA by any state.
9. Coding. MTA will instruct the TPA to code each Medical Bill with the following information:
 - a. Claim Number
 - b. Pay Code
 - c. Coder's initials and date coded
 - d. Date of injury (by either drawing a circle around the date of injury on the Medical Bill or writing the correct date near the coding stamp)..
10. Uncoded Medical Bills. Medical Bills received without a coding stamp (i.e., Medical Bills received from provider directly) will be returned to MTA or the TPA for appropriate pre-screening and coding.
11. Department Liaison. In performing the services provided for in this Appendix, Contractor's liaison with the MTA will be the MTA Workers' Compensation Manager or his or her designee.

APPENDIX B

COMPENSATION

SERVICE RATES AND PERFORMANCE-BASED FEE INCENTIVE STRUCTURE

In addition to the fees and costs provided for elsewhere in this Agreement, the MTA shall pay Contractor the following fees and costs. All fees and costs stated herein are to be paid to Contractor as provided for under the terms of the Agreement.

Fee Schedule/UCR Medical Bill Review	Fee
Flat Rates Per Medical Bill Reviewed Medical Bill Review (With Purchase of UR Services):	\$5.95** per Medical Bill
PPO Access ^{1*}	
Blue Cross of CA ² : CompPartners CFMC: First Health Group: FOCUS: Interplan: National Choice Care (NCC):	23% of PPO Savings 16% of PPO Savings 22% of PPO Savings 18% of PPO Savings 16% of PPO Savings 18% of PPO Savings
PPO Configuration Options ³ in CA for the Above PPOs: Configuration A 1. First Health Group 2. Interplan 3. CompPartners CFMC 4. National Choice Care NCC Configuration B 1. FOCUS 2. Interplan 3. CompPartners CFMC 4. National Choice Care NCC	Configuration C² 1. Blue Cross of CA 2. Interplan 3. CompPartners CFMC 4. National Choice Care NCC
1. Fees based on percentage (%) of Savings. "Savings" means the difference between (i) the recommended payment of a Provider for a Medical Bill <u>before</u> application of the PPO Network Contract Rate and <u>after</u> the application of all available fee schedules and (ii) the recommended payment of such Medical Bill <u>after</u> the application of the PPO Network Contract Rate. All PPO Network access is subject to the terms contained in the Master Agreement, including the section entitled "Access to PPO Networks."	

2. This configuration that includes Blue Cross of CA will be made available to the Client when added as a feature to the Innovent Medical Bill review application, scheduled to occur on or about September 1, 2005. This requires an executed BCC Payer Agreement between the City and BCC.

3. The City Agrees to complete a PPO Network Change Request document prior to implementing one of the proposed PPO Network configurations. The configuration will remain in effect until such time that (a) a new Change Request is initiated and signed by the City and Contractor, or (b) a Network no longer becomes available as outlined in Section 11(a) of Appendix A (Access to PPO Networks), at which time a Change Request to implement another available network will be initiated and signed by the City.

*Original contract rates. Rates will be adjusted quarterly from performance-based incentives.

** *Some PPO Network rates for certain services may exceed the Official Medical Fee Schedule value. When this occurs, the City will be advised that Contractor will recommend payments at the Contract Rate rather than the Official Medical Fee Schedule value, but that for the purpose of calculating fees charged to the City, all available fee schedule reductions will be taken.*

Case Management Services	
Nurse Reviews & Services	
Utilization Review / Pre-Certification:	\$80 per review
Telephonic Case Management:	\$250 for first 30 days of service, \$175 for second 30 days of service, and \$80 per hour thereafter.
Field/On-site Case Management:	\$80 per hour, plus mileage at \$0.405 per mile
Physician Advisor / Peer Review:	By specialty Medical Billed in increments of no more than 0.25 hours:
Nurse:	\$75 per hour
Chiropractor:	\$125 per hour
Orthopod:	\$250 per hour
Neurologist:	\$250 per hour
Psychologist:	\$180 per hour
Psychiatrist:	\$250 per hour
Services for any specialist physician not listed herein will incur fees not to exceed:	\$250 per hour
Note: Utilization Review pricing is contingent upon Contractor being the preferred UR	

provider to SF MTA as well as the implementation and enforcement of mutually agreed upon referral criteria.

Other Services	
Specialty Repricing By Contractor	
AdvantagePlus Fee Negotiations:	16% of Savings
AdvantagePlus Hospital Desk Audits (OP Medical Bills With DOS prior to 01/01/04):	16% of Savings
Account Administration Services	
Initial History Conversion:	No Charge
Standard Reporting:	No Charge
Standard Contractor EDI Interfaces (Includes initial interface development for claim, provider and payment EDI feeds. During the term of the agreement, if City changes claim systems or Contractor alters its EDI structure, Contractor will support the building of new interfaces between the claim system and the bill review application to support claim, provider and check payment (payment interface not involving procedure/line level transactions) EDI's.):	No Charge
Custom EDI Programming (Interface changes after the initial EDI implementation that involve procedure/line level interface requirements or any EDI changes initiated by the City or their claim system vendor):	\$185 per hour, plus all actual and reasonable travel expenses
Trial Representation	
Local (within 50 miles of Contractor site):	No charge
Distance charge (greater than 50 miles):	\$85 per hour, plus actual and reasonable travel expenses.

Performance Based Pricing (Source: David Donn Consulting, Inc.):

Performance benchmark of 55.00% gross savings (exclusive of charges and savings for full and partial duplicates, bills designated by the City or its agents as “full pay,” review-only bills, and non-reviewable documents; inclusive of net savings impact of reconsiderations; exclusive of all savings related to Utilization Review including reductions based on Utilization Review determinations and reductions based on California-legislated 24 visit limits to physical therapy, occupational therapy and chiropractic treatment). Gross savings includes savings from MBR, PPO, and all negotiated discount products, but does not include savings from any medical case management products (e.g. UR, telephonic case management and field case management).

MBR, all PPO, and all negotiated discount product (for example, Advantage Plus) rates are adjusted quarterly by the same positive or negative percent by which Contractor either exceeds or falls short of the gross savings benchmark. For example, should Contractor produce gross savings of 60.5% over a quarter, this would represent a 5.5 savings point increase over the gross savings benchmark, or a 10% improvement over benchmark. Therefore, following a one-month lag between calculation and adjustment quarters, MBR, all PPO, and all negotiated discount product rates would be increased by 10% for one quarter. Rates are re-adjusted each quarter based on the previous quarter's gross savings performance, with a one month lag between the three month calculation period and the three month application period. Rates are always adjusted using the original contract rates as the baseline. Adjusted rates are rounded to the nearest \$0.01 per-bill for the MBR rate and the nearest 0.5% for all products billed at a percent of savings.

APPENDIX C

CONTRACTOR EMPLOYEE ACKNOWLEDGMENT AND CONFIDENTIALITY AGREEMENT

General Information

Your employer, Fair Isaac Corporation, has entered into a contract with the San Francisco Municipal Transit Agency ("MTA") to provide Medical Bill review and utilization review services to the MTA. Therefore, we need your signature on this employee acknowledgment and confidentiality agreement.

Employee Acknowledgment

I understand that Fair Isaac Corporation is my sole employer for purposes of this employment.

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

I understand and agree that I do not have and will not acquire any rights or benefits pursuant to any agreement between my employer, Fair Isaac Corporation, and the MTA.

Confidentiality Agreement

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

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

CONFIDENTIALITY AGREEMENT

I agree that I will not divulge to any unauthorized person, data obtained while performing work pursuant to the contract between Fair Isaac Corporation and the MTA.

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

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

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

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

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

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

Signature _____

Printed Name _____

Position/Title _____

Date _____

THIS PRINT COVERS CALENDAR ITEM NO.: 14

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Human Resources/Workers' Compensation Division

BRIEF DESCRIPTION: Requesting authorization for the Executive Director to execute an amendment to an existing consulting agreement and a separate license agreement for the use of a business model for workers' compensation bill review proprietary to David Donn Consulting, Inc. for a term of 5 years, plus two one-year extensions, with license fees based on a percentage of workers compensation medical costs savings to the MTA, total fees not to exceed \$95,000.00 per year.

SUMMARY:

- Under a consulting contract dated August 29, 2003, David Donn Consulting, Inc., (DDC) has provided advice and assistance in drafting a Request for Proposals (RFP) for Workers' Compensation Bill Review and Utilization Review Services, evaluating the proposals, and negotiating a contract with the selected bidder. The proposed amendment will extend the term of the consulting agreement to September 30, 2010, and will convert the consulting fees to a license fee that is calculated as ten percent of additional savings improvements to the MTA, with total fees not to exceed \$95,000.
- DDC assisted the MTA in negotiating a contract with Fair Isaac Corporation (the highest ranked proposer) for bill review and utilization review services. (That contract is on the MTA Board's current agenda for approval under a separate agenda item.)
- Fair Isaac will use a proprietary business model licensed from DDC to the MTA to achieve maximum savings of workers' compensation medical bills.
- Under the proposed amended consulting agreement, DDC will provide expanded consulting and bill review monitoring services to the MTA to ensure that the MTA receives maximum cost savings on workers' compensation medical costs through aggressive repricing of medical bills. MTA estimates annual savings through the use of the DDC Model to be \$510,000.
- Staff requests that the MTA Board authorize the Director of Transportation to execute the proposed License Agreement and Second Amendment to the consulting agreement with DDC for a term not to exceed seven years and for an amount not to exceed \$95,000 per year.

ENCLOSURES:

3. MTAB Resolution
4. Bill Review License Agreement
5. Third Amendment to David Donn Consulting, Inc. Managed Care Consulting Contract

APPROVALS:

DATE

DEPUTY OF DIVISION PREPARING ITEM _____

FINANCE _____

DIRECTOR _____

SECRETARY _____

ADOPTED RESOLUTION _____ Jeffery L. Gary _____
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

PAGE 2.

BACKGROUND

Under the authority granted by Charter Section 8A.104 (C), the MTA assumed responsibility for management of its Workers' Compensation claims as of July 1, 2000. As part of the management of Workers' Compensation claims, the MTA utilizes the services of a bill review services provider to reduce medical bills to state mandated fee schedules and negotiated fee schedules under preferred provider agreements.

The MTA previously utilized the City's contract for bill review services. That contract expired at the end of 2004, prompting the MTA to issue its own RFP for bill review and utilization review services. Throughout 2005, the MTA utilized the existing contract with Sedgwick Claims Management Services to provide bill review services. In 2003, the MTA engaged the services of a managed care consultant, David Donn Consulting, Inc. (DDC) to assist with the evaluation of proposals for bill review and utilization review services and to negotiate terms and fee arrangements favorable to the MTA.

DDC provides consulting services to municipalities and large private self-insured employers in California to increase savings of workers compensation medical costs. DDC is a sole-source provider of managed care consulting services to the MTA. Former Director of Transportation, Michael T. Burns authorized the execution of the contract with David Donn Consulting under his contracting authority. The cost of the contract was less than \$100,000. Acting Executive Director Stuart Sunshine authorized the execution of a first amendment to the agreement with David Donn Consulting to extend the term of the agreement. This allowed staff to continue to use DDC while completing contract negotiations with Fair Isaac.

DDC employs a proprietary medical bill review and monitoring model ("the DDC Model") that maximizes savings in medical bill reductions and medical bill review provider service fees. By using DDC's model, the MTA has realized a ten percent increase in savings over the past year, totaling approximately \$510,000 in additional savings in workers' compensation costs. The DDC Model is proprietary and therefore, not discussed in this public document.

Concurrent with this calendar item, staff is submitting for the MTA Board's approval a proposed contract with Fair Isaac Corporation who will use David Donn Consulting's proprietary business model to provide MTA workers' compensation bill review and medical utilization review services.

In addition to a license agreement for DDC's proprietary business model, the MTA is seeking authorization to extend the term of the agreement with David Donn Consulting to allow DDC to monitor the recommendations of Fair Isaac and provide input to MTA staff regarding how to maximize savings on worker's compensation medical bills.

To insure that the Agency continues to receive maximum savings on this service, staff elected to incorporate the DDC Model as a requirement for the bill review contract. Use of the DDC savings model will insure that the Agency continues to maximize cost savings for duration of the Fair Isaac contract.

The expected annual cost for the consulting and license fees will be seven percent of the workers' compensation cost savings the MTA's receives from use of the DDC savings model. Staff

estimates, based on current savings, that the license fees to DDC will total approximately \$80,000 per year. While \$80,000 is an estimate based on last year's savings, savings that occur as a result of using the DDC model are expected to increase, so staff has budgeted \$95,000 in the FY07 Workers' Compensation budget for this agreement. Fees for this agreement are not to expected to exceed \$95,000 per year.

The term of the amended consulting agreement and license agreement is five years which mirrors the term of the proposed Fair Isaac bill review contract.

This is a sole-source agreement, for which HRC has granted approval. No DBE goals have been assigned to this contract, because the scope of work does not present sub-consulting opportunities, due to the unique nature of the service.

The City Attorney has reviewed this calendar item.

Staff requests that the MTA Board authorize the Director of Transportation to execute the Second Amendment to the Consulting Agreement and License Agreement for Workers' Compensation Bill Review and Utilization Review monitoring with David Donn Consulting.

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO

RESOLUTION No. _____

WHEREAS, The Municipal Transportation Agency ("MTA") assumed responsibility for administration of its Workers' Compensation claims as of July 1, 2000 under authority granted to MTA under the San Francisco Charter; and,

WHEREAS, Through the use of Workers' Compensation Medical Bill Review, the MTA has been able to reduce workers' compensation treatment costs by more than 50 percent, resulting in annual savings of more than six million dollars; and,

WHEREAS, David Donn Consulting, Inc. (DDC) is a sole source provider of Workers' Compensation Managed Care consulting services and is currently under contract with the MTA; and,

WHEREAS, Staff has negotiated a license agreement with David Donn Consulting, Inc., to use DDC's proprietary pricing and monitoring model to reduce Workers' Compensation Bill Review Services and Medical Treatment Utilization Review charges, through which the Agency expects to capture additional savings and,

WHEREAS, The MTA issued an Request for Proposals for Workers' Compensation Bill Review and Utilization Review Services; and has negotiated a contract with Fair Isaac who will utilize David Donn Consulting's proprietary business model to provide MTA workers' compensation bill review and medical utilization review services and;

WHEREAS, In addition to a license agreement for DDC's proprietary business model, the MTA is seeking authorization to extend the term of the agreement with David Donn Consulting to allow DDC to monitor the recommendations of Fair Isaacs and provide input to

MTA staff regarding how to maximize savings on worker's compensation medical bills.; now therefore be it;

RESOLVED, That the Municipal Transportation Agency Board authorizes the Director of Transportation to execute the Second Amendment to a Consulting Agreement and a License Agreement with David Donn Consulting, Inc for the use of a proprietary business model for workers' compensation bill review for an amount not to exceed \$95,000 per year and a term of five years.

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

Secretary, Municipal Transportation Agency Board

**LICENSE AGREEMENT
BETWEEN THE MUNICIPAL TRANSPORTATION AGENCY OF THE CITY AND
COUNTY OF SAN FRANCISCO AND DAVID DONN CONSULTING, INC.**

This License Agreement, dated for convenience as June 30, 2005, made in the City and County of San Francisco, State of California, by and between: David Donn Consulting, Inc. ("DDC"), a California corporation, and the City and County of San Francisco, a municipal corporation, by and through its Municipal Transportation Agency ("City" or "MTA").

RECITALS

WHEREAS, the MTA and DDC have entered into a professional services agreement (the "Consulting Contract") under which DDC provides the MTA with consulting services related to workers compensation bill review and related matters; and,

WHEREAS, the MTA and Fair Isaac, Inc., a bill review services provider, have negotiated a professional services agreement, dated for convenience as June 30, 2005, by which Fair Isaac, Inc. will provide the MTA with workers' compensation medical bill review services ("Bill Review Contract"); and,

WHEREAS, DDC assisted the MTA in negotiating some of the terms of the Bill Review Contract; and,

WHEREAS, the MTA desires that in performing the Bill Review Contract that Fair Isaac utilize a business model and workers' compensation medical bill review process that is proprietary to DDC (the "DDC Model"); and,

WHEREAS, Fair Isaac will utilize the DDC Model on behalf of the MTA pursuant to the Bill Review Contract; and,

WHEREAS, DDC represents that it is legally entitled to license the DDC Model to the MTA for the MTA's and Fair Isaac's use in reviewing MTA's workers' compensation medical bills for the benefit of the MTA;

Now, THEREFORE, the parties agree as follows:

1. Definitions

LICENSE AGREEMENT This document and any attached appendices and exhibits, including any future written and legally executed amendments.

BILL REVIEW CONTRACT The services agreement dated for convenience June 30, 2005 between the MTA and Fair Isaac for workers' compensation medical bill review.

CONSULTING CONTRACT The agreement dated August 29, 2003 between DDC and the MTA under which DDC provides to MTA professional consulting services regarding workers' compensation medical bill review and related matters.

DDC MODEL The business model and bill review process described in the document titled "Managed Care Program Specifications," attached as Appendix A to this License Agreement, which is hereby incorporated by reference, that is proprietary to DDC, and that Fair Isaac will utilize in medical bill review, PPO and case management operations; account management and reporting services Fair Isaac will perform for the MTA under the Bill Review Contract.

LICENSORS David Donn Consulting, Inc.

LICENSEE The MTA.

Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the MTA. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the MTA, unless otherwise indicated by the context.

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

This License 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 License Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds for the Bill Review Contract are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this License Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated for the Bill Review Contract.

City has no obligation to make appropriations for this License 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. DDC's assumption of risk of possible non-appropriation is part of the consideration of this Agreement.

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

3. Term of the Agreement

Subject to Section 4, the license granted under this License Agreement shall commence upon the execution of the Bill Review Contract and shall continue for as long as the Bill Review Contract is in effect; unless this License Agreement is sooner terminated in accordance with the

provisions set out herein or is otherwise extended or modified as allowed by law. This License Agreement may be extended by agreement of the parties for a period not to exceed ten years measured from the date of execution of the Bill Review Contract.

4. License

a. Grant of License. Subject to the terms and conditions of this License Agreement, DDC grants the MTA a non-exclusive and non-transferable limited term license to use the DDC Model. City acknowledges and agrees that the DDC Model is the proprietary information of DDC and that this License Agreement grants City no title or right of ownership in the DDC Model.

b. Restrictions on Use. City is authorized to use the DDC Model only for MTA's internal purposes as specified in this Agreement. City agrees that it will, through its best efforts, not use or permit the DDC Model to be used in any manner, whether directly or indirectly, that would enable any other person or entity to use the DDC Model.

5. License Fee.

Consideration for the use of the DDC Model is provided under the Consulting Contract by fees paid for consulting services to DDC by the MTA. (Set out at Appendix B, Section A to the Consulting Agreement.) During the term of the Bill Review Contract, DDC shall not charge the MTA or Fair Isaac any other or additional fee for the use of the DDC Model to review and process the MTA's workers' compensation medical bills.

6. Warranties

a. Right to Grant License. DDC hereby warrants that it has title to and/or the authority to grant a license of the DDC Model to the licensee(s).

b. Warranty Disclaimer. Except as set forth herein and to the maximum extent permitted by applicable law, the DDC Model is provided "as is" and on an "as available" basis without any warranty of any kind including, without limitation, any warranty of merchantability or fitness for a particular purpose.

7. Indemnification

If notified promptly in writing of any judicial action brought against the City or Fair Isaac based on an allegation that City's or Fair Isaac's use of the DDC Model infringes a patent, copyright, or any right of a third party or constitutes misuse or misappropriation of a trade secret or any other right in intellectual property (Infringement), DDC will hold City and Fair Isaac harmless and defend such action at its own expense. DDC will pay the costs and damages awarded in any such action or the cost of settling such action, provided that DDC shall have sole control of the defense of any such action and all negotiations or its settlement or compromise. If notified promptly in writing of any informal claim (other than a judicial action) brought against City or Fair Isaac based on an allegation that City's or Fair Isaac's use of the DDC Model constitutes Infringement, DDC will pay the costs associated with resolving such claim and will pay the settlement amount (if any), provided that DDC shall have sole control of the resolution of any such claim and all negotiations for its settlement.

In the event a final injunction is obtained against City's or Fair Isaac's use of the DDC Model by reason of Infringement, or in DDC's opinion City's or Fair Isaac's use of the DDC Model is likely to become the subject of Infringement, DDC may at its option and expense: (a) procure for City and Fair Isaac the right to continue to use the DDC Model as contemplated hereunder, (b) replace the DDC Model with a non-infringing, functionally equivalent substitute DDC Model, or (c) suitably modify the DDC Model to make its use hereunder non-infringing while retaining functional equivalency to the unmodified version of the DDC Model. If none of these options is reasonably available to DDC, then the applicable License Agreement or relevant

part of such License Agreement may be terminated at the option of any party hereto and DDC shall refund to City all amounts paid under this License Agreement for the license of such infringing software or business model.

8. Guaranteed Maximum Costs

a. The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the Consulting Contract for the purpose and period stated in such certification.

b. Except as may be provided by City ordinances governing emergency conditions, the City and its employees and officers are not authorized to request DDC to perform services or to provide materials, equipment and supplies that would result in DDC performing services or providing materials, equipment and supplies that are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract unless the License Agreement is amended in writing and approved as required by law to authorize additional services, materials, equipment or supplies. The City is not required to reimburse DDC for services, materials, equipment or supplies that are provided by DDC which are beyond the scope of the services, materials, equipment and supplies agreed upon in the contract and which were not approved by a written amendment to the having been lawfully executed by the parties.

c. The City and its employees and officers are not authorized to offer or promise to DDC additional funding for the contract which would exceed the maximum amount of funding provided for in the contract for DDC's performance under the contract. Additional funding for the contract in excess of the maximum provided in the contract shall require lawful approval and certification by the Controller of the City and County of San Francisco. The City is not required to honor any offered or promised additional funding for a contract which exceeds the maximum provided in the contract which requires lawful approval and certification of the Controller when the lawful approval and certification by the Controller has not been obtained.

d. The City's 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.

9. Taxes

Payment of any taxes, including possessory interest taxes, and California sales and use taxes, levied upon this License Agreement, the transaction, or the services delivered pursuant hereto, shall be the obligation of DDC.

10. Independent Consultant

DDC or any agent or employee of DDC 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 License Agreement. DDC or any agent or employee of DDC 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. DDC or any agent or employee of DDC is liable for the acts and omissions of itself, its employees and its agents. DDC 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 DDC's performing services and work, or any agent or employee of DDC providing same. Nothing in this License Agreement shall be construed as creating an employment or agency relationship between City and DDC or any agent or employee of DDC.

Any terms in this referring to direction from City shall be construed as providing for direction as to policy and the result of DDC'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 DDC performs work under this License Agreement.

11. 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 DDC is an employee for purposes of collection of any employment taxes, the amounts payable under this License 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 DDC 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 DDC for City, upon notification of such fact by City, DDC shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to DDC under this License Agreement (again, offsetting any amounts already paid by DDC 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, DDC shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that DDC is an employee for any other purpose, then DDC agrees to a reduction in City's financial liability so that City's total expenses under this License Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that DDC was not an employee.

12. Limitation of Liability

LICENSEE'S RESPECTIVE AND COLLECTIVE PAYMENT OBLIGATIONS UNDER THIS LICENSE AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR AND AS LIMITED BY THE CONSULTING CONTRACT.

WITH THE EXCEPTION OF DDC'S LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT, DDC'S TOTAL LIABILITY UNDER THIS LICENSE AGREEMENT SHALL BE LIMITED TO THE TOTAL AMOUNT PAID TO DDC BY THE CITY.

OTHER THAN THE PARTIES' CONFIDENTIALITY OBLIGATIONS IN SECTIONS 13 AND 14 BELOW IN NO EVENT SHALL ANY PARTY 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 LICENSE AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS LICENSE AGREEMENT.

13. Nondisclosure

a. City agrees that it shall treat the DDC Model with the same degree of care as it treats like information of its own, which it does not wish to disclose to the public. Each party ("receiving party") acknowledges that it may be furnished or may otherwise receive or have access to the other party's ("disclosing party") Proprietary Information (defined below). The receiving party agrees to preserve and protect the confidentiality of the disclosing party's Proprietary Information and all physical forms thereof, whether disclosed before this License Agreement is signed or afterward. The receiving party shall not disclose or disseminate the disclosing party's Proprietary Information to any third party without the written consent of disclosing party except as required by law, and except as provided for in this License Agreement shall not use the Proprietary Information for the receiving party's own benefit or for the benefit of any third party. Upon request by the disclosing party or upon termination of the License Agreement, the receiving party shall return to it all copies of the Proprietary Information. The

City shall inform its employees who will have access to the Model that the Model is proprietary and a trade secret of DDC.

b. All rights, title and interest in the DDC Model developed by DDC shall remain the sole property of DDC. DDC shall retain the right to use all knowledge, experience and know-how acquired in the course of performing its obligations hereunder to provide services and develop deliverables for its other customers, irrespective of any similarity to the services and/or deliverables provided under the Agreement.

c. The obligations of the City set forth above, however, shall not apply to the DDC Model, or any portion thereof, which:

- (i) is now or hereafter becomes publicly known;
- (ii) is disclosed to the City or Fair Isaac by a third party which the City has no reason to believe is not legally entitled to disclose such information;
- (iii) is known to the City or Fair Isaac prior to its receipt of the DDC Model;
- (iv) is subsequently developed by the City or Fair Isaac independently of any disclosures made hereunder by DDC.

14. Nondisclosure of Private Information

As of March 5, 2005, DDC agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "Nondisclosure of Private Information Ordinance"), including the remedies provided. The provisions of the Nondisclosure of Private Information Ordinance are incorporated herein by reference and made a part of this License Agreement as though fully set forth. Capitalized terms used in this section and not defined in this License Agreement shall have the meanings assigned to such terms in the Nondisclosure of Private Information Ordinance. Consistent with the requirements of the Nondisclosure of Private Information Ordinance, DDC agrees to all of the following:

a. Neither DDC nor any of its Subcontractors shall disclose Private Information obtained from the City in the performance of this License Agreement to any other Subcontractor, person, or other entity, unless one of the following is true:

- (i) The disclosure is authorized by this Agreement;
- (ii) DDC received advance written approval from the Contracting Department to disclose the information; or
- (iii) The disclosure is required by law or judicial order.

b. Any disclosure or use of Private Information authorized by this License Agreement shall be in accordance with any conditions or restrictions stated in this License Agreement. Any disclosure or use of Private Information authorized by a Contracting Department shall be in accordance with any conditions or restrictions stated in the approval.

c. Private Information shall mean any information that: (1) could be used to identify an individual, including without limitation, name, address, social security number, medical information, financial information, date and location of birth, and names of relatives; or (2) the law forbids any person from disclosing.

d. Any failure of DDC to comply with the Nondisclosure of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate this Agreement, debar DDC, or bring a false claim action against DDC.

15. Termination

a. Basis for Termination by DDC. DDC shall have the right to terminate this

License Agreement immediately if the City or MTA terminates their relationship with DDC or the City is delinquent in making payment due under the Consulting Contract and continues to be delinquent for a period of ninety days after the last day payment is due; provided, however, that written notice is given to City by DDC of the expiration date of the ninety-day delinquency period at least ten days prior to the expiration date or, to terminate this License Agreement if City commits any other material breach of this License Agreement and fails to remedy such breach within thirty days after receipt of written notice by DDC of such breach.

b. Basis for Termination by City. City shall have the right, without further obligation or liability to DDC (except as specified in Sections 14 (Nondisclosure) and 15(D) (Disposition of DDC Model on Termination) hereof): (1) to immediately terminate this License Agreement or the applicable License Agreement if DDC commits any breach of this License Agreement and fails to remedy such breach within thirty (30) days after written notice by City of such breach, in which event, DDC shall reimburse City in the same manner as for the removal of the DDC Model due to infringement under Section 7 to terminate this License Agreement or the applicable License Agreement upon ninety (90) days prior written notice for any reason.

c. Disposition of DDC Model on Termination. Upon the expiration or termination of this License Agreement or an applicable License Agreement for any reason other than as provided for in Section 5(A) (Grant of License), Licensees shall immediately: (1) return the DDC Model to DDC together with all Documentation; (2) purge all copies of the DDC Model or any portion thereof from all CPU's and from any computer storage medium or device on which City has placed or permitted others to place the DDC Model; and (3) give DDC written certification that through its best efforts and to the best of its knowledge, Licensees have complied with all of their obligations under Section 15(D).

d. Survival. This section and the following sections of this License Agreement shall survive termination or expiration of this Agreement: 6-14, 19 through 27.

16. Notice to the Parties

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

To City: Jeff Gary
Workers' Compensation Manager
Municipal Transportation Agency
One South Van Ness Avenue, Third Floor
San Francisco, CA 94103
tel: 415-701-4351; fax: 415-701-4360

To DDC: David Donn
David Donn Consulting, Inc.
1255 Post Street, Suite 733
San Francisco, CA 94109
tel: 415-409-3666
fax: 415-409-3667

Any party may change the address to which notice is to be sent by giving written notice thereof to the other party. If e-mail notification is used, the sender must specify a Receipt notice. **Any notice of default must be sent by registered mail.**

17. Bankruptcy

In the event that any party shall cease conducting business in the normal course, become insolvent, make a general assignment for the benefit of creditors, suffer or permit the appointment of a receiver for its business or assets or shall avail itself of, or become subject to,

any proceeding under the Federal Bankruptcy Act or any other statute of any state relating to insolvency or the protection of rights of creditors, then at the option of the other party this License Agreement shall terminate and be of no further force and effect.

18. Compliance with Americans with Disabilities Act

DDC 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. DDC shall provide the services specified in this License Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. DDC agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this License Agreement and further agrees that any violation of this prohibition on the part of DDC, its employees, agents or assigns will constitute a material breach of this Agreement.

19. Sunshine Ordinance

In accordance with San Francisco Administrative Code Section 67.24(e), contracts, contractors' bids, responses to requests for proposals 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.

20. Limitations on Contributions

Through execution of this Agreement, DDC 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 or for the furnishing of any material, supplies or equipment to the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations of the contract until the later of either (1) the termination of negotiations for such contract or (2) three months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

21. Conflict of Interest

Through its execution of this Agreement, DDC acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of the City's Campaign and Governmental 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.

22. Non-Waiver of Rights

The omission by any 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.

23. Modification of Agreement

This License Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved as required by law.

24. Administrative Remedy for License Agreement Interpretation

Should any question arise as to the meaning and intent of this License Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the Director of Transportation who shall decide the true meaning and intent of the License Agreement.

25. License Agreement Made in California; Venue

The formation, interpretation and performance of this License 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 License Agreement shall be in San Francisco.

26. Construction

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

27. Related Agreements

This License Agreement sets forth the entire License Agreement between the parties as to the licensing of the DDC Model for the MTA's and Fair Isaac's respective uses of the DDC Model in the course of and for Fair Isaac's review of the MTA's workers compensation medical bills. As to and limited to issues concerning the licensing of the DDC Model, this License Agreement supersedes all other oral or written provisions. Should any part of this License Agreement conflict with any provision of the Bill Review Contract, then for purposes of establishing the respective rights and obligations of the MTA and Fair Isaac, then the Bill Review Contract shall govern. Should any part of this License Agreement conflict with any provision of the Consulting Contract, then for purposes of establishing the respective rights and obligations of the MTA and DDC, then the Consulting Contract shall govern. If any provision of this License Agreement is held to be unenforceable, this License Agreement shall be construed without such provision.

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

CITY

City Attorney

Recommended by:

By _____
Robert Stone
Deputy City Attorney

Jeffery Gary
MTA Workers Compensation Manager
1 South Van Ness, Third Floor
San Francisco, CA 94103

Included Appendices:

- 1. Appendix A – DDC Model

Approved:

Nathaniel A. Ford
Director of Transportation
Municipal Transportation Agency

Approved as to Form:

Dennis J. Herrera

DAVID DONN CONSULTING, INC.

By:

David Donn
David Donn Consulting, Inc.
1255 Post Street, Suite 733
San Francisco, CA 94109
Fed. Emp. ID No. 03-0373997

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

Resolution No. _____

Adopted: _____

Attest: _____

Roberta Boomer
Secretary
MTA Board of Directors

**Second Amendment
to Agreement between the City and County of San Francisco and
David Donn Consulting, Inc.**

This Second Amendment to the Agreement by and between David Donn Consulting, Inc., (“Contractor”) and the City and County of San Francisco (“City”), a municipal corporation, acting by and through the San Francisco Municipal Transportation Agency (“MTA”), an agency of the City for professional and consulting services is dated for convenience as executed on October 17, 2005 in San Francisco, California.

By mutual agreement and in exchange for real and valuable consideration, receipt of which is hereby acknowledged, as set out herein, City and Contractor hereby modify the Agreement between the parties dated August 29, 2003 (the "Original Agreement") for managed care and bill review consulting services, and as modified under the First Amendment to Agreement, dated on or about June 3, 2005. Except as modified herein, all other provisions and requirements of the Agreement remain in full force and effect, which the parties reaffirm by their signatures to this document.

I. MODIFICATIONS

The Agreement is modified as follows:

A. Section 5 ("Compensation") is deleted and replaced with the following language:

5. Compensation

Compensation shall be made monthly no later than 30 days from presentation of the appropriate invoice with supporting documents for the prior month, based on Appendix A and Appendix B to this agreement thereafter and as set forth in Section 4 of this Agreement, that the MTA Workers’ Compensation Manager, in his or her sole discretion, concludes has been performed as of the approval of this agreement. In no event shall the amount of this Agreement exceed \$95,000 per year. 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.

Contractor shall be compensated for all performed services described in Appendix B, which is attached hereto and incorporated by reference as if fully set forth herein. Should any provision of appendix A or B conflict with the provisions in this document, the provisions of this document shall govern.

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 the MTA' Worker's Compensation Manager 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 Savings Improvement Fee and Fee Improvement Fee set out in Appendix B ("Calculation of Charges") to the Agreement shall constitute a license fee as consideration for the MTA's licensed use of the DDC Model. The MTA shall continue to pay Contractor said fees, as provided in the Agreement, for as long as the License Agreement between the MTA and Contractor is in effect. A copy of the License Agreement, dated for convenience as October 17, 2005, is attached hereto and incorporated by reference as if fully set out here.

B. The following Section 57 is added to the agreement:

57. Counterparts; Facsimile

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. This Agreement may be delivered by executed facsimile transmission, which shall be deemed an original.

C. Appendix A

Appendix A, Section 3, "Contractor Services", is modified with addition of the following Section 3.1:

1. The parties have discovered that Fair Issac may have failed to refund to the MTA the difference between bill review fees based on initial bill reductions and fees that should have been calculated on a lower bill reduction, where medical providers have protested an initial bill reduction and Fair Issac has then renegotiated the reduction, resulting in a higher payment by the MTA and lower cost savings. For the purpose of seeking refunds from Fair Issac to the MTA of the Unrefunded Difference between fees based on initial bill reductions and fees based on higher renegotiated charges ("the Unrefunded Difference"), Contractor shall review the bill reductions and performance fees charged to the MTA by Fair Issac prior to November 1, 2005. Contractor shall be compensated a percentage of the refunds received by the MTA of the Unrefunded Difference, as provided in Appendix B, Section 4.

Appendix B

1. Appendix B, Section A, "Fees and Price Discount", is modified as follows:

Appendix B, Section A, "Fees and Price Discount," is amended to increase the fee and savings improvement fee from seven (7) percent to ten (10) percent. Said fee is a license fee for the MTA's use of the DDC Model. No other provisions of Section A are modified.

2. Appendix B, Section B, "Structure of Performance Fees", is modified with the addition of the following Section B.4.:

4. The MTA shall pay Contractor for performance of services described in Appendix A, Section 3.1 a fee of seven (7) percent of refunds received by the MTA from Fair Issac Corporation of the Unrefunded Difference for improper fees charges that Contractor

identified prior to November 7, 2005. Should Contractor discover any additional or other improper charges or fees paid by the MTA to Fair Isaac prior to November 1, 2005 for which Contractor negotiates and the MTA receives a refund, the MTA shall pay to Contractor a fee of fifteen (15) percent of said additional refunds. No fees for recovery of the Unrefunded Difference or other improperly charged fees shall be due Contractor until the MTA actually receives the refund.

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

MTA

Recommended by:

Jeffery L. Gary
Workers' Compensation Manager

Approved By:

Nathaniel A. Ford
Director of Transportation

Approved as to Form:

Dennis J. Herrera
City Attorney

By _____
Robert K. Stone
Deputy City Attorney

CONTRACTOR

David A. Donn
President
David Donn Consulting, Inc.
1255 Post Street , Suite 733
San Francisco, CA 94109
415-409-3666
Fed. Employer ID No. 03-0373997

Included Attachment:

License Agreement, dated October 17, 2005

AUTHORIZED BY:

MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS

Resolution No. _____

Adopted: _____

Attest: _____

Roberta Boomer
Secretary
MTA Board of Directors

THIS PRINT COVERS CALENDAR ITEM NO. : 17

**MUNICIPAL TRANSPORTATION AGENCY
City and County of San Francisco**

DIVISION: Office of the Board of Directors

BRIEF DESCRIPTION:

Public Hearing and possible action regarding the start time of the meetings of the MTA Board of Directors.

SUMMARY:

- On April 19, 2005, the MTA Board of Directors amended their Rules of Order to establish a regular meeting time of 2:00 p.m.
- With respect to public comment, Chairman Cleopatra Vaughns suggested that this change in meeting time be tested on a trial basis and that the matter be revisited at the end of the year.
- On February 7, 2006, the MTA Board of Directors will hold a public hearing to consider the public's input on the start time of MTA Board of Director's meetings.
- The City Attorney has reviewed this calendar item.

ENCLOSURES:

1. MTAB Resolution

APPROVALS:

DATE

DEPUTY OF DIVISION
PREPARING ITEM
FINANCE
DIRECTOR
SECRETARY
ADOPTED RESOLUTION
BE RETURNED TO

ASSIGNED MTAB CALENDAR DATE: _____

**MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION No. _____

WHEREAS, On April 19, 2005, the MTA Board of Directors amended their Rules of Order to establish a regular meeting time of 2:00 p.m. on the first and third Tuesday of each month; and

WHEREAS, At the April 19, 2005 meeting, with respect to public comment, Chairman Cleopatra Vaughns suggested that this change in meeting time be tested on a trial basis and that the matter be revisited at the end of the year; and

WHEREAS, On February 7, 2006, the MTA Board of Directors held a public hearing to consider the public's input on the start time of MTA Board of Director's meetings; now, therefore, be it

RESOLVED, That the Municipal Transportation Agency Board of Directors shall continue to meet at 2:00 p.m. on the first and third Tuesday of each month.

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

Secretary, Municipal Transportation Agency Board

