

THIS PRINT COVERS CALENDAR ITEM NO. : 10.10

**SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY**

DIVISION: Human Resources

BRIEF DESCRIPTION:

Authorize the Director of Transportation to execute Contract #SFMTA 2013-39 with Mitchell International, Inc. for workers' compensation medical bill review and utilization review services for an amount not to exceed \$6,000,000, with a contract base term of three years and a two-year option to be exercised at the discretion of the Director of Transportation.

SUMMARY:

- The SFMTA's Workers' Compensation Unit has primary responsibility for the administration of workers' compensation benefits for approximately 5000 employees. The SFMTA receives approximately 24,000 medical bills annually in connection with open workers' compensation claims.
- The SFMTA submits these medical bills to a contractor for adjustment in accordance with applicable fee schedules. Total reductions per month average \$1,129,300, which equates to an average percentage savings of 62% on each bill.
- Medical cost containment services for workers' compensation claims administration include: medical bill review; medical treatment plan review – "utilization review"; and data reporting services. The SFMTA must report data on workers' compensation medical bill payments and on injury and illness.
- The SFMTA issued a request for proposals for medical cost containment services and received three proposals.
- The proposal from Intermed Cost Containment Services was non-responsive because it did not meet the 10% LBE subcontracting goal, and the proposal from EK Health Services Inc. was non-responsive because it did not meet a minimum qualification of the RFP related to auditing standards.

ENCLOSURES:

1. SFMTA Resolution
2. Agreement

APPROVALS:

DATE

DIRECTOR _____

July 8, 2014

SECRETARY _____

July 8, 2014

ASSIGNED SFMTAB CALENDAR DATE: July 15, 2014

PURPOSE

Authorize the Director of Transportation to execute Contract #SFMTA 2013-39 with Mitchell International, Inc. for workers' compensation medical bill review and utilization review services for an amount not to exceed \$6,000,000, with a contract base term of three years and a two-year option to be exercised at the discretion of the Director of Transportation.

GOAL

This contract will fulfill the following goals and objectives of the SFMTA Strategic Plan:

Goal 1: Create a safer transportation experience for everyone.

Objective 1.2 – Improve workplace safety and security.

Goal 3: Improve the environment and quality of life in San Francisco.

Objective 3.5 – Reduce capital and operating structural deficits.

Goal 4: Create a Workplace that delivers outstanding service.

Objective 4.2 – Create a collaborative and innovative workplace.

DESCRIPTION

The Workers' Compensation Unit has primary responsibility for the administration of workers' compensation benefits for approximately 5000 SFMTA employees. Claims are administered by a third-party administrator. The SFMTA currently has approximately 1650 open workers' compensation claims, and receives about 700 new claims per year. The SFMTA provides reimbursement for the cost of medical treatment incurred in connection with those claims in order to cure and relieve the effects of workplace injuries.

The SFMTA receives approximately 24,000 medical bills annually, or 2,000 medical bills per month in connection with open workers' compensation claims. The SFMTA submits these medical bills to its contractor for adjustment ("repricing") in accordance with applicable fee schedules established by the state, and in accordance with negotiated discounts available through the bill review contractor's preferred provider networks. Total reductions per month average \$1,129,300, which equates to an average percentage savings of 62% on each bill submitted. Failure to apply the fee schedules and negotiated discounts as allowed by state law would result in the SFMTA foregoing a monthly savings of well over \$1 million dollars per month.

In addition to medical bill review, the SFMTA is also required by California law to submit medical treatment plans for "utilization review" in accordance with state medical treatment guidelines. The SFMTA submits approximately 170 medical treatment plans annually to its utilization review contractor to determine whether the recommended treatment plans are medically necessary. The SFMTA's utilization review process results in average annual savings of \$2,233,416.

In the past, the SFMTA received this service through a contract with Fair Isaac. During the term of the contract, Fair Isaac sold the managed care business unit to Mitchell International. SFMTA continued to receive services directly from Mitchell International.

The SFMTA issued a request for proposals on March 29, 2013 and received three proposals. SFMTA staff determined that the proposal from Intermed Cost Containment Services was non-responsive because it did not meet the 10% LBE subcontracting goal, and that the proposal from EK Health Services Inc. was non-responsive because it did not meet a minimum qualification of the RFP related to auditing standards. Staff entered into negotiations with the Mitchell International, the only responsive proposer.

The main components of the program are:

- Medical bill review and repricing services;
- Utilization review services, i.e. review of medical treatment plans to determine appropriateness under medical treatment guidelines established by state regulation;
- Data reporting; and
- Related administrative responsibilities.

SFMTA Contract Compliance office has established a 10% LBE goal for this contract.

ALTERNATIVES CONSIDERED

Use of an outside contractor to provide these services is appropriate because no current civil service class has the requisite expertise and training to perform them, and because contractors who provide these services use proprietary software. The development of such software by the SFMTA would be cost-prohibitive.

FUNDING IMPACT

This program will be funded from the Agency's FY 15 and FY16 Operating Budget.

OTHER APPROVALS RECEIVED OR STILL REQUIRED

The City Attorney's Office has approved this item.

RECOMMENDATION

SFMTA staff recommends that the San Francisco Municipal Transportation Agency Board of Directors authorize the Director of Transportation to execute Contract #SFMTA 2013-39 with Mitchell International, Inc. for workers' compensation medical bill review and utilization review services for an amount not to exceed \$6,000,000, with a contract base term of three years and a two-year option to be exercised at the discretion of the Director of Transportation.

SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION No. _____

WHEREAS, The SFMTA Workers' Compensation Unit has primary responsibility for the administration of workers' compensation benefits for approximately 5000 SFMTA employees; and

WHEREAS, The California Labor Code requires that the SFMTA provide reimbursement for the cost of medical treatment incurred in connection with accepted worker's compensation claims in order to cure and relieve the effects of workplace injuries; and

WHEREAS, The SFMTA applies both fee schedules established by the state and negotiated provider discounts to reduce the usual and customary charges of medical providers; and

WHEREAS, SFMTA reviews providers' medical treatment plans in accordance with state law to determine whether the treatments proposed are medically necessary; and

WHEREAS, Monthly savings resulting from medical bill review average \$1,129,300, and annual savings resulting from utilization review average \$2,233,416; and

WHEREAS, The SFMTA issued a request for proposals on March 29, 2013 and entered into negotiations with the only responsive proposer, Mitchell International, Inc.; and therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors authorizes the Director of Transportation to execute Contract #SFMTA 2013-39 with Mitchell International, Inc. for workers' compensation medical bill review and utilization review services for an amount not to exceed \$6,000,000, with a contract base term of three years and a two-year option to be exercised at the discretion of the Director of Transportation.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 15, 2014.

Secretary to the Board of Directors
San Francisco Municipal Transportation Agency

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

**Agreement between the City and County of San Francisco and Mitchell International Inc.
for Workers' Compensation Bill Review and Utilization Review Services**

Contract No. SFMTA 2013-39

This Agreement is made this fifteenth day of July, 2014, in the City and County of San Francisco, State of California, by and between: Mitchell International Inc., 6220 Greenwich Dr., San Diego, CA 92122 ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Municipal Transportation Agency ("SFMTA").

Recitals

- A. The SFMTA wishes to provide Workers' Compensation Bill Review and Utilization Review Services for the SFMTA's self-insured workers' compensation program.
- B. A Request for Proposals ("RFP") was issued on June 20, 2013, and City selected Contractor as the only responsive proposer.
- C. Contractor represents and warrants that it is qualified to perform the Services required by City as described in this contract.
- D. Approval for this Agreement was obtained when the Civil Service Commission approved Contract number 4087-11/12 on February 6, 2012.

Now, THEREFORE, the parties agree as follows:

Definitions

For the purpose of this Agreement the following capitalized terms shall have the meanings set forth below:

"Bill" means those medical bills rendered by medical service providers in connection with workers' compensation claims. One Bill is one (1) distinct medical record for a medical treatment relating to a specific workers' compensation claim.

"Claims Examiner Portal" or "CEP" shall mean an Application Service Provider ("ASP") portal that offers City a "real time" window into the Bill review process for the purpose of permitting City to: (i) receive and review certain reports affecting claims; and (ii) where applicable, review and alter medical payments based on the Contract Rates. The CEP can be used for utilization alerts, Bill authorization, Explanation of Review ("EOR") reprints, reports, Bill management, and provider relations.

"Contract Rates" shall mean the amount a Preferred Provider Network that has contracted with Contractor would pay for healthcare services provided to City employees in connection with a worker's compensation claim.

Agreement

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

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

2. Term of the Agreement. Subject to Section 1, the term of this Agreement shall be from July 15, 2014 through May 31, 2017. In addition, the City has the option to extend this Agreement for an additional two-year period at the sole, absolute discretion of the SFMTA.

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

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

5. Compensation. Compensation shall be made in monthly payments on or before the first day of each month for work, as set forth in Section 4 of this Agreement, that the SFMTA's Director of Transportation, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed Six Million Dollars and no cents (\$6,000,000.00). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, Services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall City be liable for interest or late charges for any late payments.

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

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

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

8. Submitting False Claims; Monetary Penalties. Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. The text of Section 21.35, along with the entire San Francisco Administrative Code, is available on the web at [http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates\\$fn=default.htm\\$3.0\\$vid=amlegal:sanfrancisco_ca\\$sync=1](http://www.amlegal.com/nxt/gateway.dll/California/administrative/administrativecode?f=templates$fn=default.htm$3.0$vid=amlegal:sanfrancisco_ca$sync=1). A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim.

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

10. Taxes. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the Services delivered pursuant hereto, shall be the obligation of Contractor. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of City property for private gain. If such a possessory interest is created, then the following shall apply:

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

(2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may

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

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

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

11. Payment Does Not Imply Acceptance of Work. The granting of any payment by City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced by Contractor without delay.

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

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

14. Independent Contractor; Payment of Taxes and Other Expenses

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

City and Contractor or any agent or employee of Contractor. Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained. City does not retain the right to control the means or the method by which Contractor performs work under this Agreement.

b. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority. Should a relevant taxing authority determine a liability for past Services performed by Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in City's financial liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

15. Insurance.

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

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

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

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

(4) Technology Errors and Omissions Liability. Contractor shall obtain and maintain throughout the duration of the contract technology errors and omissions liability coverage with limits of \$5,000,000 per occurrence/loss, and \$10,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of Services defined in the contract and shall also provide coverage for the following risks:

1) Liability arising from theft, dissemination, and/or use of confidential information,

including but not limited to, bank and credit card account information, medical information, and other personal information such as name, address, social security number, stored or transmitted in electronic form.

2) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.

3) Liability arising from the introduction of a computer virus into, or otherwise causing damage to the City's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.

If coverage is maintained on a claims-made basis, Contractor shall maintain such coverage for an additional period of three (3) years following termination of the contract.

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

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

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

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

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

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

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

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

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

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

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

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

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

17. Liability of Contractor. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, CONTRACTOR SHALL BE RESPONSIBLE FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES RESULTING IN WHOLE OR IN PART FROM CONTRACTOR'S ACTS OR OMISSIONS, BUT CONTRACTOR'S CUMULATIVE LIABILITY UNDER THIS AGREEMENT, INCLUDING INCIDENTAL AND

CONSEQUENTIAL DAMAGES, SHALL BE LIMITED TO SIX MILLION DOLLARS (\$6,000,000); PROVIDED, HOWEVER, THAT CONTRACTOR'S CUMULATIVE LIABILITY LIMIT SHALL NOT APPLY TO: (1) DAMAGES CAUSED BY CONTRACTOR'S GROSS NEGLIGENCE; RECKLESS CONDUCT OR WILLFUL ACTS OR OMISSIONS; (2) CLAIMS OR DAMAGES THAT FALL WITHIN THE INSURANCE COVERAGE OF THIS AGREEMENT; (3) STATUTORY DAMAGES SPECIFIED IN THIS AGREEMENT; (4) CONTRACTOR'S OBLIGATION TO INDEMNIFY AND DEFEND CITY PURSUANT TO THE GENERAL INDEMNIFICATION CLAUSE AND FOR INTELLECTUAL PROPERTY INFRINGEMENT; AND (5) WRONGFUL DEATH CAUSED BY CONTRACTOR.

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

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

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

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

8. Submitting False Claims; 10. Taxes; 15. Insurance; 24. Proprietary or Confidential Information of City; 30. Assignment; 37. Drug-Free Workplace Policy; 53. Compliance with Laws; 55. Supervision of Minors; and 57. Protection of Private Information.

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

(3) Contractor (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (e) takes action for the purpose of any of the foregoing.

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for

liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Contractor.

On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. City shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor all damages, losses, costs or expenses incurred by City as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

21. Termination for Convenience

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

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

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

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

(3) Terminating all existing orders and subcontracts.

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

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

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

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

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

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

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

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

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

d. In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, City may deduct: (1) all payments previously made by City for work or other Services covered by Contractor's final invoice; (2) any claim which City may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services or other work in compliance with the requirements of this Agreement.

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

22. Rights and Duties upon Termination or Expiration. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement:

8. Submitting False Claims; 10. Taxes; 11. Payment Does Not Imply Acceptance of Work; 13. Responsibility for Equipment; 14. Independent Contractor; Payment of Taxes and Other Expenses; 15. Insurance; 16. Indemnification; 17. Incidental and Consequential Damages;

18. Liability of City; 24. Proprietary or Confidential Information of City; 26. Ownership of Results; 27. Works for Hire; 28. Audit and Inspection of Records; 48. Modification of Agreement; 49. Administrative Remedy for Agreement Interpretation; 50. Agreement Made in California; Venue; 51. Construction; 52. Entire Agreement; 56. Severability; and 57. Protection of Private Information.

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

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

24. Proprietary or Confidential Information of Parties

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

b. Proprietary Information of Contractor. City understands and agrees that during Contractor's performance of the work or Services under this Agreement, or in contemplation thereof, City may have access to proprietary information owned by Contractor, the disclosure of which to third parties may be damaging to Contractor. City agrees, to the extent consistent with its obligations under the federal Freedom of Information Act, the state Public Records Act, and San Francisco's Sunshine Ordinance, that information disclosed by Contractor to City shall be held in confidence and used only in performance of the Agreement. City shall exercise the same standard of care to protect Contractor's proprietary information as a reasonably prudent contractor would use to protect its own proprietary data.

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

To City: Dan Roach
SFMTA Human Resources
1 South Van Ness Ave., 6th Floor
San Francisco, CA 94103

E-mail: dan.roach@sfmta.com

To Contractor:
Mitchell International Inc.
6220 Greenwich Drive.
San Diego, CA 92122 Alpine, UT 84004

E-mail: kyle.devereaux@mitchell.com

Any notice of default must be sent by registered mail.

26. Ownership of Results. Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for City as part of the Services to be performed under this Agreement, which shall not include software developed by Contractor, shall become the property of and will be transmitted to City. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

27. Works for Hire. If, as part of the Services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the City. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the City, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the City, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

28. Audit and Inspection of Records. Contractor agrees to maintain and make available to the City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

29. Subcontracting. Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by City in writing. Neither party shall, on the

basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

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

31. Non-Waiver of Rights. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

32. License Granted to City for Claims Examiner Portal. Subject to the terms and conditions of this Agreement, Contractor hereby grants to City, effective during the Term of this Agreement, a non-exclusive, non-transferable, sublicensable (as provided for herein), limited, revocable (as provided herein) copyright license to access, use, perform and display that portion of the services accessible via the CEP only via a secured link or telecommunications line approved by Contractor, only for the benefit of City, and only for the purpose of reviewing and altering medical payments, receiving and reviewing reports affecting claims, and reviewing and altering medical payments based on the Contract Rates. City may allow its third party administrator (“TPA”), Intercare Holdings Insurance Services, Inc., to use and access CEP only for the benefit of City. If City wants to permit other TPAs or contractors to access and use CEP, City must request Contractor’s approval, in writing, at least thirty (30) days prior to such replacement TPA’s or other contractor’s access is to commence, and Contractor will not unreasonably condition, delay or withhold such approval; provided that the parties agree that it is reasonable for Mitchell to disapprove the following TPA: Corvel Corporation, or any of its affiliates or subsidiaries. The license granted to City by Contractor herein shall be revocable only upon expiration or termination of this Agreement, or upon City’s failure to cure its breach of this Agreement within 30 days’ of notice by Contractor that City is in breach.

33. Local Business Enterprise Utilization; Liquidated Damages

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

b. Compliance and Enforcement

(1) Enforcement. If Contractor willfully fails to comply with any of the provisions of the LBE Ordinance, the rules and regulations implementing the LBE Ordinance, or the provisions of this Agreement pertaining to LBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or 10% of the total amount of this Agreement, or \$1,000, whichever is greatest. The Director of the City's Human Rights Commission or any other public official authorized to enforce the LBE Ordinance (separately and collectively, the "Director of HRC") may also impose other sanctions against Contractor authorized in the LBE Ordinance, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's LBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to Administrative Code §14B.17.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with the LBE Ordinance for a period of three years following termination or expiration of this Agreement, and shall make such records available for audit and inspection by the Director of HRC or the Controller upon request.

(2) Subcontracting Goals. The LBE subcontracting participation goal for this contract is 10%. Contractor shall fulfill the subcontracting commitment made in its bid or proposal. Each invoice submitted to City for payment shall include the information required in the HRC Progress Payment Form and the HRC Payment Affidavit. Failure to provide the HRC Progress Payment Form and the HRC Payment Affidavit with each invoice submitted by Contractor shall entitle City to withhold 20% of the amount of that invoice until the HRC Payment Form and the HRC Subcontractor Payment Affidavit are provided by Contractor. Contractor shall not participate in any back contracting to the Contractor or lower-tier subcontractors, as defined in the LBE Ordinance, for any purpose inconsistent with the provisions of the LBE Ordinance, its implementing rules and regulations, or this Section.

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

Ordinance for a period of three years following termination of this contract and to make such records available for audit and inspection by the Director of HRC or the Controller upon request.

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

34. Nondiscrimination; Penalties

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

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

c. Nondiscrimination in Benefits. Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

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

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

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

36. Left blank by agreement of the parties. (Tropical Hardwood and Virgin Redwood Ban)

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

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

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

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

41. Public Access to Meetings and Records. If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

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

43. Requiring Minimum Compensation for Covered Employees

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

b. The MCO requires Contractor to pay Contractor's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Contractor is obligated to keep

informed of the then-current requirements. Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Contractor.

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

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

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

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

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

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

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

44. Requiring Health Benefits for Covered Employees

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

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

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

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

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

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

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

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

- h. Contractor shall keep itself informed of the current requirements of the HCAO.
- i. Contractor shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Contractor shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.
- k. Contractor shall allow City to inspect Contractor's job sites and have access to Contractor's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Contractor to ascertain its compliance with HCAO. Contractor agrees to cooperate with City when it conducts such audits.
- m. If Contractor is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause Contractor's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Contractor and the City to be equal to or greater than \$75,000 in the fiscal year.

45. First Source Hiring Program

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

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

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

(2) Set first source interviewing, recruitment and hiring requirements, which will provide the San Francisco Workforce Development System with the first opportunity to

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

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

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

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

(6) Set the term of the requirements.

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

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

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

c. Hiring Decisions. Contractor shall make the final determination of whether an Economically Disadvantaged Individual referred by the System is “qualified” for the position.

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

e. Liquidated Damages. Contractor agrees:

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

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

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

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

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

- A. The average length of stay on public assistance in San Francisco’s County Adult Assistance Program is approximately 41 months at an average monthly grant of \$348 per month, totaling approximately \$14,379; and

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

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

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

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

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

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

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

48. Modification of Agreement. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with the SFMTA to submit to the SFMTA Contract Compliance Office any amendment, modification, supplement or change order that

would result in a cumulative increase of the original amount of this Agreement by more than 20% (HRC Contract Modification Form).

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

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

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

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

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

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

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

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

57. Protection of Private Information.

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

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

Contractor also understands and agrees that the private and confidential information concerning City employees to which Contractor will have access in the performance of this Agreement may constitute Protected Health Information within the meaning of the Healthcare Insurance Portability and Accountability Act of 1996 ("HIPAA"), and may be protected from disclosure by HIPAA and other federal state and local laws, including but not limited to the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"). Contractor agrees that Contractor is responsible for compliance with all applicable laws, including but not limited to HIPAA and HITECH, that protect the Protected Health Information and any other confidential medical or other information of City employees that Contractor obtains in the performance of its duties under this Agreement. Contractor agrees that any failure of Contractor to comply with such laws 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, City may terminate this Agreement, bring a false claim action against Contractor pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar Contractor.

58. Disclosure of Confidentiality Medical Information to City. Contractor agrees that in performance of the Agreement, it will comply with and abide by California Labor Code section 3762(c), which states:

- i. An insurer, third-party administrator retained by a self-insured employer pursuant to Section 3702.1 to administer the employer's workers' compensation claims, and those employees and agents specified by a self-insured employer to administer the employer's workers' compensation claims, are prohibited from disclosing or causing to be disclosed to an employer, any medical information, as defined in subdivision (b) of Section 56.05 of the Civil Code, about an employee who has filed a workers' compensation claim, except as follows: 1) Medical information limited to the diagnosis of the mental or physical condition for which workers' compensation is claimed, and the treatment provided for this condition, and 2) Medical information regarding the injury for which workers' compensation is claimed that is necessary for the employer to have in order for the employer to modify the employee's work duties.

Contractor shall provide to the SFMTA's Worker's Compensation Manager, such other City employees as SFMTA's Worker's Compensation Manager may designate, to Deputy City Attorneys representing the City before the Workers' Compensation Appeals Board, and other persons working on a claim with a need to know such information, full access to all information,

files, documents, and reports in Contractor's possession concerning the medical status or condition of a City employee. Contractor shall not disclose or otherwise discuss any City employee's medical condition with any other persons or provide any persons with documents pertaining to a City employee's medical condition, unless specifically directed to do so by City's Departmental Liaisons, or a court of competent jurisdiction.

59. Left blank by agreement of the parties. (Food Service Waste Reduction Requirements)

60. Slavery Era Disclosure

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

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

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

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

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

<p>CITY</p> <p>San Francisco Municipal Transportation Agency</p> <hr/> <p>Edward D. Reiskin Director of Transportation</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Mariam Morley Deputy City Attorney</p> <p>AUTHORIZED BY:</p> <p>MUNICIPAL TRANSPORTATION AGENCY BOARD OF DIRECTORS Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary SFMTA Board of Directors</p>	<p>CONTRACTOR</p> <p>Mitchell International Inc.</p> <p>By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.</p> <p>I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.</p> <hr/> <p>Nina Smith Executive Vice President Mitchell International Inc. 6220 Greenwich Dr. San Diego, CA 92122</p> <p>City Vendor Number: 51655-01</p>
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Appendices

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

Appendix A
Services to be provided by Contractor

Description of Services

The Services for Bill review and utilization review include, but are not limited to:

1. Medical Bill Review and Repricing Services

- a. Scanning of all medical Bills and reports into digital format on a daily basis that will provide an interface with the SFMTA's Workers' Compensation Claims Management Information software application for accessing, processing and storing.
- b. Indexing of all medical Bills and reports.
- c. Requesting needed documents for incomplete Bills from providers.
- d. Verifying that all billing Current Procedural Terminology (CPT) codes comply with actual treatment provided.
- e. Identifying treatment that is not appropriate under the AMA guidelines.
- f. Monitoring and identifying duplicate Bills. Sending previously reviewed Bill(s) to providers along with Explanation of Review (EOR) marked "duplicate." Send zero payment EOR to provider and provide justification for zero payment.
- g. Repricing of Bills in accordance with State fee schedules and/or Preferred Provider Organization (PPO) contracts.
- h. Completing the review process for all medical providers' Bills within 5 working days of Contractor's receipt of Bills; and for all hospital Bills within 10 working days of Contractor's receipt of Bills.
- i. Reviewing appeals of medical Bills from providers and making recommendations to SFMTA.
- j. Assisting with testimony and/or other professional services on all medical Bill issues on litigated cases, including justification of payment and payment amount, up-coding or down-coding, and any other required Services related to this contract and requested by SFMTA.
- k. Investigating all medical liens, including any previous payments and cause of liens; determining liability and amount of liability, if any, assisting with negotiation of liens, and assisting SFMTA if a lien requires court appearance.
- l. Providing, on a monthly basis, all scanned documents in PDF format, including medical Bills and reports to SFMTA.

2. Utilization Review Services of targeted medical services for medical necessity, appropriateness and duration, including, but not limited to:

- a. Pre-authorization to verify the medical necessity, appropriateness, and duration of prescribed treatments.

- b. Concurrent management of hospitalizations.
- c. Retrospective review of medical treatment not previously reviewed.
- d. All utilization review is subject to American College of Occupational and Environmental Medicine Occupational Medicine Practice Guidelines as stated in Labor Code Sections 4600 and 4604.5 and other, standard, evidence-based guidelines as allowed under California law.
- e. Utilization Review Services must be performed and completed within the time limits and in the manner as set forth in California Labor Code Sections 4062 and 4610, and any other applicable laws.

3. Reporting. Submit to the Worker's Compensation Manager periodic electronic reports that shall include, but not be limited to, the following information:

- a. Reports for Bill review
 - i. Turnaround Time Report by Date Received - monthly
 - ii. Turnaround Time Report by Examiner - monthly
 - iii. Turnaround Detail of Bills Beyond 45 Days - monthly
 - iv. Savings Summary - Top 100 Billers - monthly
 - iv. Savings Summary - Duplicate Bills - quarterly
 - v. Objection Credits - monthly
 - vi. Savings Summary for Review Only - monthly
 - vii. Management Report by Department - monthly
 - ix. Management Report by Bill Type - monthly
 - x. Management Report - Total Savings - monthly
 - xi. Savings Summary Invoice Report - monthly
 - xii. Bills Greater than \$50,000 – monthly
 - xiii. Penalty Report - Cause and Payment Status - monthly
- b. Reports for Utilization Review (all monthly)
 - ii. UR Savings
 - iii. UR Follow-up Savings
 - iv. Peer Review Savings
 - v. Peer Review Follow-up Savings
 - vi. UR Summary report

4. Administrative Services. Contractor shall also perform the following:

- a. Provide all necessary services needed to coordinate, oversee, and communicate with all medical providers, SFMTA employees and their legal representatives, staff of the Workers' Compensation Unit (WCU), and the Third Party Administrator (TPA).
- b. Provide periodic on-site training for the WCU staff, as needed, including but not limited to how to interface with the contractor's bill review software, utilization review legal requirements, and other programmatic updates/changes. The training will be conducted at the request of the WCU and will be held on-site at the WCU or at the TPA at no cost. A minimum of 10 hours of training is to be provided per calendar year.
- c. Develop interface with the Valley Oak System (to be converted from Portal to iVOS) for payment processing.
- d. Respond to and resolve conflicts with or complaints from medical providers concerning Bill review and Utilization Review recommendations in an expeditious and satisfactory manner. Respond to appeals of Bill review decisions within 20 working days of notice of appeal. Respond to utilization review appeals within the time periods set forth in the California Labor Code Sections 4062 and 4610 and any other applicable laws. Contractor shall also assist SFMTA in any litigation arising from its Bill review and utilization review recommendations, including testifying before the Workers' Compensation Appeals Board or in court when requested by the SFMTA or City Attorney.
- e. Notify the SFMTA within 24 hours when the Contractor's backlog of Bill review or utilization review exceeds 5 working days, and state the reason for the delay.
- f. Reimburse SFMTA for any/all penalties for which the SFMTA may be found liable as a result of Contractor's failure to comply with regulatory timeframes set forth in California Labor Code Sections 4062, 4610, and 4603.2 any other applicable laws, including but not limited to penalties imposed under California Labor Code Section 5814.6.
- g. Provide WCU staff and TPA staff online access to all Bill review and utilization review databases to review status of recommendation and Explanation of Review (EOR).
- h. Transmit all Bills and associated medical reports electronically to the TPA.

Contractor's staff shall have current certification and/or licensure for the services they are performing as required by the State of California. For all Services to be provided to the SFMTA, the Contractor shall be expected to provide proper documentation of all activities and proper communication to the SFMTA.

The parties agree that notwithstanding Contractor's obligation to perform the Services under this Agreement in a good and workmanlike manner and in accordance with industry standards, and City's reasonable reliance on the Services to be provided by Contractor, City retains the responsibility and ultimate authority to accept or reject claims, and to make other benefit and coverage-related decisions.

**Appendix B
Calculation of Charges**

	<ul style="list-style-type: none"> • Medical • Bill Review – • Fee Schedules 	<ul style="list-style-type: none"> • Estimated Annual Volume 	<ul style="list-style-type: none"> • Charge 	<ul style="list-style-type: none"> • Estimated Annual Fee • (volume x charge)
• 1	<ul style="list-style-type: none"> • Official Medical Fee Schedule 	<ul style="list-style-type: none"> • 21,607 	<ul style="list-style-type: none"> • \$ 6.25 per Bill 	<ul style="list-style-type: none"> • \$135,044
• 2	<ul style="list-style-type: none"> • Medical/Legal Fee Schedule 	<ul style="list-style-type: none"> • 600 	<ul style="list-style-type: none"> • \$ 6.25 per Bill 	<ul style="list-style-type: none"> • \$3,750
• 3	<ul style="list-style-type: none"> • Preferred Provider Network 	<ul style="list-style-type: none"> • 13,126 	<ul style="list-style-type: none"> • Charge depends on % of savings as correlated to applicable PPO network. (See new PPO Lineup Table on page C-2.) 	<ul style="list-style-type: none"> • \$100,380
• 4	<ul style="list-style-type: none"> • Negotiated Fee When No Schedule is Applicable 	<ul style="list-style-type: none"> • 600 	<ul style="list-style-type: none"> • Please See New PPO Lineup Table on page C-2. 	<ul style="list-style-type: none"> • Included in PPO estimate
• 5	<ul style="list-style-type: none"> • Utilization Review 	<ul style="list-style-type: none"> • 2,258 	<ul style="list-style-type: none"> • \$110 per case 	<ul style="list-style-type: none"> • \$248,380
• 6	<ul style="list-style-type: none"> • Peer Review 	<ul style="list-style-type: none"> • 1,002 	<ul style="list-style-type: none"> • \$300.00 per hour 	<ul style="list-style-type: none"> • \$300,600
<ul style="list-style-type: none"> • Total Billing not to exceed \$3,600,000 for the three year contract. Not to exceed \$6,000,000 over five years if the two year option is exercised. • 				

Additional Services:

- **Bills Sent Electronically (SBI):**
No Charge – fees to be waived
- **CA E-Billing:**
 - **Implementation: \$185 per hour plus a one time \$5,000 flat fee.**
 - **Per Bill fee: \$1.50**
 - **Complex Bill Review (performed by a nurse): 20% of savings**

- **New PPO Lineup**

Order	Network	Rate % Of Savings
1	One Call Medical (Retro)	14%
2	Align (Retro)	14%
3	Cypress DME360 (Retro)	14%
4	Anthem (Blue Cross) Primary PPO	23%
5	Qmedtrix Specialty Repricing	21%
6	NHQ (Negotiations) Fee Negotiations	18%
7	Prime Health Network (2)	18%
8	Multiplan Network (3)	18%
9	Three Rivers Network (4)	18%
10	Stratose Network (5)	18%

- **Field Case Management:**

- **Field Case Management (FCM):** Cost = \$130 per hour, plus mileage at published federal rates and expenses (parking, tolls).

- **Pharmacy Intervention Program:**

- **Fees:**

•	• Fees
• TCM Nurse:	• \$95 per hr.
• Physician Pharmacy Interface Review	• \$300 per hr.

- **Lien Trial Support:**

- **Fees:**

• Lien Trial Support:	• Fees
• Hearing Preparation (Lien File Review)	• \$185 per hr.
• Appearance Services	•
• Bay Area Counties	•
• Half Day	• \$1,100
• Full Day	• \$1,815
• ALL FEES ARE PLUS TRAVEL at GSA per diem Rate	

- **On-site/Additional Training or Support:**

- **Fees:**

• Additional:	• Fees
• By request, additional training or support	• \$100 per hr.
• Fees are plus travel at GSA per diem rate	•

Appendix C
Confidentiality Agreement

CITY AND COUNTY OF SAN FRANCISCO (“CITY”)
CONTRACTOR EMPLOYEE ACKNOWLEDGMENT
AND CONFIDENTIALITY AGREEMENT

GENERAL INFORMATION

Your employer, Mitchell International, Inc. has entered into a contract with the City and County of San Francisco (“City”) to provide worker’s compensation medical bill review utilization review services to City. Therefore, we need your signature on this employee acknowledgment and confidentiality agreement.

EMPLOYEE ACKNOWLEDGMENT

I understand that Mitchell International, Inc. is my sole employer for purposes of this employment.

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

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

CONFIDENTIALITY AGREEMENT

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

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

CONFIDENTIALITY AGREEMENT

I agree that I will not divulge to any unauthorized person, data obtained while performing work pursuant to the contract between Mitchell International, Inc., and the City and County of San Francisco (“City”).

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

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

“It is unlawful 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 City Attorney for City. I agree to return all confidential materials to my immediate supervisor upon termination of my employment with Mitchell International, Inc., or upon completion of the presently assigned work task, whichever occurs first.

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

Signature_____

Printed Name_____

Position/Title_____

Date_____