

**THIS PRINT COVERS CALENDAR ITEM NO.: 10.5**

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Human Resources

**BRIEF DESCRIPTION:**

Retroactively approving Amendment #3 to SFMTA Contract #2010/11-11, Workers' Compensation Investigative Services with Probe Information Services, Inc. for the provision of workers' compensation investigation services to increase the contract amount \$360,000 for a total contract amount not to exceed \$3,845,000 and extend the term by six months to May 1, 2019 to allow SFMTA time to put the investigative services out for competitive bid.

**SUMMARY:**

- State law requires cities and counties to use the services of special workers' compensation fraud investigators to increase detection and reporting of workers' compensation claims fraud.
- On August 24, 2011, the SFMTA contracted with Probe Information Services, for an amount not to exceed \$2,500,000 and a term of five years, with two one-year options to extend the Contract term.
- The SFMTA exercised the first option to extend the Contract term under Amendment No. 1, dated October 27, 2016 and which also increased the contract amount by \$625,000 for a total not to exceed \$3,125,000. Under Contract Amendment No. 2, the SFMTA exercised the second option to extend on November 29, 2017, which extended the term to November 1, 2018 and increased the contract amount by \$360,000 for a total contract amount not-to-exceed \$3,485,000.
- The SFMTA will release a Request for Proposals on March 29<sup>th</sup>, 2019 putting workers' compensation investigative services out to competitive bid.

**ENCLOSURES:**

1. SFMTA Resolution
2. Third Contract Amendment

**APPROVALS:**

DIRECTOR 

**DATE**

February 11, 2019

SECRETARY 

February 11, 2019

**ASSIGNED SFMTAB CALENDAR DATE:** February 19, 2019

## **PAGE 2.**

### **PURPOSE**

Approving Amendment #3 to SFMTA Contract #2010/11-11, Workers' Compensation Investigative Services with Probe Information Services, Inc. for the provision of workers' compensation investigation services to increase the contract amount \$360,000 for a total contract amount not to exceed \$3,845,000 and extend the term by six months to May 1, 2019 to allow SFMTA time to put the investigative services out for competitive bid.

### **STRATEGIC PLAN GOALS AND TRANSIT FIRST POLICY PRINCIPLES**

Strategic Goal Supported:

Goal 4: Create a workplace that delivers outstanding service.

- Objective 4.1: Strengthen morale and wellness through enhanced employee engagement, support, and development.
- Objective 4.2: Improve the safety, security, and functionality of SFMTA work environments.

Transit First Policy Supported:

1. To ensure quality of life and economic health in San Francisco, the primary objective of the transportation system must be the safe and efficient movement of people and goods.

### **DESCRIPTION**

On August 24, 2011, the SFMTA contracted with Probe Information Services, Inc., (Probe) Contract No. SFMTA-2010/11-11 to provide investigation services to assist in determining compensability of SFMTA workers' compensation claims, for a contract amount not to exceed \$2,500,000 and a term of five years, with two one-year options to extend the term. All workers' compensation claims filed are evaluated to determine if they are compensable or not per the California Labor Code. When issues are identified, claims are referred to Probe for additional discovery and evaluation. In addition, Probe provides Fraud detection services including referral for prosecution, as well as investigating cases of third party liability for recovery.

Probe has provided the following services on this contract:

- Claim Investigations (including compensability, surveillance, third party liability, fraud and background)- 53/month.
- Special Investigative Unit (Fraud)- average of five open cases per month.
- Special Investigative Unit (Fraud)- two convictions with restitution recoveries.

## **PAGE 3.**

The 53 investigations per month not only gather evidence on the compensability of claims but also includes gathering medical histories and records for evaluations, conducting activity checks on injured workers off work for prolonged periods of time, background checks to determine if injured workers are participating in activities precluded by the current effects of their injuries as well as potential employee and/or medical provider fraud. The investigation reports have allowed the third party administrator, Intercare, to make substantial determinations on the compensability of claims to facilitate the payment of benefits due while enabling Intercare to deny what is not due. As such, an average of 13 claims per month are denied by Intercare.

The average cost of a claim is \$31,207. The denial of 13 claims per month saves the program an average of \$405,691 per month. The program averages \$31,123 per month in third party liability recoveries, or \$373,476 per year. Directed by the SFMTA or the Agency's claims administrator, Probe provides workers' compensation investigation services, surveillance and Special Investigation Unit (SIU) services to the SFMTA to investigate compensability of SFMTA employees' workers compensation claims based on established referral criteria, and to assist the SFMTA in identifying false or fraudulent claims. Probe also gathers information and documentation to support third party liability lawsuits brought by the City to recover monies paid as workers compensation benefits where a third party may be liable for an employee's injury.

As directed by the SFMTA's claims administrator, Probe investigates claims and provides investigation reports, including field investigations and surveillance, so that claims investigators may timely determine whether an employee's claims are related to employment with the SFMTA. For more complex or difficult claims, Probe may assign a claims to its Special Investigations Unit and designates an SIU Specialist to monitor the assignment.

Probe uses a proprietary online referral management system to provide advanced reporting capabilities, data transfer and data management services to the SFMTA, which include:

- Medical Records Retrieval (When Requested)
- Compensability Investigations for Psyche/Stress Claims
- Third-party Liability Investigations Reports
- Surveillance and Activity Checks
- Background Investigation – Database Searches / Social Networking Research
- Medical Facility Canvass
- Return to Work Investigations
- Disability Management Interviews
- Primary Treating Physician Visits
- SIU Analysis, Investigation and/or Fraud Referrals
- Contractor's Data Security System and Disaster Recovery Plan

## **PAGE 4.**

All services are provided on an as-needed basis, as directed by workers compensation claims managers, based on established claims management criteria. The SFMTA or Intercare may request a claims investigation from Probe.

On August 24, 2011, the SFMTA contracted with Probe Information Services, for an amount not to exceed \$2,500,000 and a term of five years, with two one-year options to extend the Contract term.

The SFMTA exercised the first option to extend the Contract term under Amendment No. 1, dated October 27, 2016 and which also increased the contract amount by \$625,000 for a total not to exceed \$3,125,000. Under Contract Amendment No. 2, the SFMTA exercised the second option to extend on November 29, 2017, which extended the term to November 1, 2018 and increased the contract amount by \$360,000 for a total contract amount not-to-exceed \$3,485,000.

The SFMTA will release a Request for Proposals on March 29, 2019 putting workers' compensation investigative services out to competitive bid.

The SFMTA's Contract Compliance Office (CCO) has confirmed that Probe is meeting the 20 percent Local Business Enterprise participation goals provided in the Contract.

### **ALTERNATIVES CONSIDERED**

Other options considered include:

- Utilization of In-house staff to perform these requirements
- Manage claims without complete discovery as indicated

Due to the intermittent, as-needed nature of this work and the need that an investigator be available immediately when services are required, SFMTA staff determined that it was not practical to use existing workers compensation administrative staff for investigation services. Also, industry best practices direct that investigation services should be provided by an independent contractor to avoid perceived or real conflicts of interest.

### **FUNDING IMPACT**

When the Contract was awarded, the SFMTA estimated that the cost for workers compensation claims investigation services would be \$500,000 per year, or \$2,500,000 for the initial five-year term of the Agreement, based on prior expenditures for those services. The SFMTA exercised two, one-year options to extend the contract term to seven years, with total costs estimated to be \$3,500,000. But due to an increase in the cost of investigations, as well as an increase in the total volume of investigations of nearly 100% conducted during the term of the Contract, costs have exceeded the SFMTA's initial estimates. An additional \$360,000 is requested to compensate

## **PAGE 5.**

Probe for the services staff anticipates will be required through the end of the contract term, which is a 10.3 percent increase of the original contract amount.

Funds for these services are included in the SFMTA's Fiscal Year 2019 Operating Budget.

## **ENVIRONMENTAL REVIEW**

On January 21, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the additional funding and contract extension for workers' compensation services is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b).

A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference.

## **OTHER APPROVALS RECEIVED OR STILL REQUIRED**

None.

The City Attorney has reviewed this calendar item.

## **RECOMMENDATION**

Staff recommends that the SFMTA Board retroactively approve Amendment #3 to SFMTA Contract #2010/11-11, Workers' Compensation Investigative Services with Probe Information Services, Inc. for the provision of workers' compensation investigation services to increase the contract amount \$360,000 for a total contract amount not to exceed \$3,845,000 and extend the term by six months to May 1, 201 to allow SFMTA time to put the investigative services out for competitive bid.

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS**

RESOLUTION No. \_\_\_\_\_

WHEREAS, State law requires cities and counties to use the services of special workers' compensation fraud investigators to increase detection and reporting of workers' compensation claims fraud; and,

WHEREAS, It is in the interest of the San Francisco Municipal Transportation Agency (SFMTA) to ensure that its workers' compensation payments are made to SFMTA employees who have legitimate injury claims that arise out of or occurred in the course of their employment, and that payment is not made for erroneous, false or fraudulent claims; and,

WHEREAS, On August 24, 2011, the SFMTA contracted with Probe Information Services, Inc., Contract No. SFMTA-2010/11-11 (Contract) for as-needed workers compensation claims investigation services, for an amount not to exceed \$2,500,00 and a term of five years, with two one-year options to extend the term; and,

WHEREAS, Under Contract Amendment No. 1, dated October 27, 2016, the SFMTA exercised the first option to extend the term of the Contract and increased the contract amount by \$625,000 for a contract amount not to exceed \$3,125,000; and the SFMTA exercised the second option to extend the term by written notice to Contractor on November 29, 2017, extending the contract term to November 1, 2018; and,

WHEREAS, Due to an increase in the number of workers compensation claims and increases in the costs of investigations, the SFMTA has expended more for workers compensation claims investigation services than originally anticipated; and,

WHEREAS, Amendment No. 2 would increase the contract amount by \$360,000 for a total contract amount not-to-exceed \$3,485,000 to compensate the Probe Information Services, Inc. for additional as-needed services that the SFMTA anticipates that the SFMTA will require through the end of the Contract; and,

WHEREAS, The SFMTA will release a Request for Proposals on March 29<sup>th</sup>, 2019 putting workers' compensation investigative services out to competitive bid; and,

**PAGE 7.**

WHEREAS, On January 21, 2018, the SFMTA, under authority delegated by the Planning Department, determined that the additional funding and contract extension for workers' compensation services is not defined as a "project" under the California Environmental Quality Act (CEQA) pursuant to Title 14 of the California Code of Regulations Sections 15060(c) and 15378(b); and,

WHEREAS, A copy of the CEQA determination is on file with the Secretary to the SFMTA Board of Directors and is incorporated herein by reference; and, now, therefore be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors retroactively approves Amendment #3 to SFMTA Contract #2010/11-11, Workers' Compensation Investigative Services with Probe Information Services, Inc. for the provision of workers' compensation investigation services to increase the contract amount \$360,000 for a total contract amount not to exceed \$3,845,000 and extend the term by six months to May 1, 2019 to allow SFMTA time to put the investigative services out for competitive bid.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of February 19, 2019.

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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., 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Third Amendment**

**Contract No. SFMTA-2010/11-11**

THIS AMENDMENT (Amendment) is made as of November 1, 2018, in San Francisco, California, by and between **Probe Information Services, Inc.** (Contractor), and the City and County of San Francisco, a municipal corporation (City), acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

- A. City and Contractor have entered into the Agreement (as defined below).
- B. City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the contract amount by an additional \$360,000 and extend the contract term six months to compensate Contractor for the Additional Work it will perform.
- C. The Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposal issued on March 14, 2011 and this modification is consistent with the procurement process.
- D. Approval for this Amendment was obtained when the Civil Service Commission approved Contract number PSC 46367-17/18, on July 16, 2018.

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

**Article 1        Definitions**

The following definitions shall apply to this Amendment:

1.1 **Agreement.** The term “Agreement” shall mean the Agreement dated August, 24, 2011 between Contractor and City, as amended by the:

- a. First Amendment, dated October 27, 2016,
- b. Written Notice to Contractor, dated November 29, 2017 (exercising City’s option to extend the Contract one year), and
- c. Second Amendment, dated June 1, 2018.

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

## **Article 2** Modifications to the Agreement

The Agreement is modified as follows:

**2.1** Section 2. Section 2 (Term) of the Agreement is replaced in its entirety to read as follows:

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

**2.2** Section 5. Section 5 (Compensation) of the Agreement is replaced in its entirety to read as follows:

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the SFMTA's Executive Director/CEO, in his or her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed Three Million, Eight Hundred Forty Five Thousand Dollars (\$3,845,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by SFMTA as being in accordance with this Agreement. City may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

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

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

### **Article 3      Effective Date**

Each of the modifications set forth in Section 2 shall be effective on and after the effective date.

### **Article 4      Legal Effect**

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

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

<b>CITY</b>	<b>CONTRACTOR</b>
<b>San Francisco Municipal Transportation Agency</b>	<b>Probe Information Services, Inc.</b>
Edward D. Reiskin Director of Transportation	Ross Stewart President 6375 Auburn Boulevard Citrus Heights, CA 95621
Authorized By:	City Supplier number: 0000012860
Municipal Transportation Agency Board of Directors	
Resolution No: _____	
Adopted: _____	
Attest: _____ Roberta Boomer, Secretary	
Approved as to Form:	
Dennis J. Herrera City Attorney	
By: _____ Robert K. Stone Deputy City Attorney	

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