

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

**SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY**

**DIVISION:** Human Resources

**BRIEF DESCRIPTION:**

Approving Contract SFMTA-2020-27, Workers' Compensation Investigative Services, with Passanisi Investigations, Inc., to provide comprehensive workers' compensation investigative services for an amount not to exceed \$3,750,000 and a term of five years, with options to extend the contract up to two years.

**SUMMARY:**

- The San Francisco Municipal Transportation Agency (SFMTA) receives 700 claims for workers compensation benefits per year; workers compensation claims benefits cost the SFMTA \$25 million annually. The SFMTA must investigate each claim to determine whether it is compensable. Approximately 25 percent of claims require in-depth investigation, which is best achieved through a professional investigation firm.
- The SFMTA issued a request for proposals (RFP) and conducted a competitive selection process that ranked proposers based on experience, expertise and cost for services. Passanisi Investigations, Inc. was the highest ranked proposer. Passanisi's rates for services were determined to be reasonable and cost effective compared to other proposers' rates.
- Passanisi will provide comprehensive workers' compensation investigative services, including background checks, return to work interviews, treating physician interviews, incident investigations, activity check and surveillance, document gathering and review services, investigation reports, and other liability investigative services.
- The cost of the contract will not exceed \$3,750,000 for a term of five years, and not to exceed \$5,250,000 if the Agency exercises its options to extend the contract for an additional two years.

**ENCLOSURES:**

1. SFMTAB Resolution
2. Contract

**APPROVALS:**

	<b>DATE</b>
DIRECTOR <u></u>	<u>July 15, 2020</u>
SECRETARY <u></u>	<u>July 14, 2020</u>

**ASSIGNED SFMTAB CALENDAR DATE:** July 21, 2020

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### **PURPOSE**

Approving Contract SFMTA-2020-27, Workers' Compensation Investigative Services, with Passanisi Investigations, Inc., to provide comprehensive workers' compensation investigative services for an amount not to exceed \$3,750,000 and a term of five years, with options to extend the contract up to two years.

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

Strategic Goal Supported:

Goal 4— Create a workplace that delivers outstanding service.

- Objective 4.5: Increase the efficiency and effectiveness of business processes and project delivery through the implementation of best practices.

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**

The SFMTA workers' compensation program is self-insured; the SFMTA has contracted with Intercare Insurance Holdings to administer the Agency's workers' compensation claims. SFMTA employees submit approximately 700 workers compensation claims per year. The SFMTA investigates every claim for workers' compensation benefits to determine if the claim arose out of and occurred during the course of employment and is therefore compensable. Approximately 25 percent of claims require in depth investigation. Utilizing the services of professional investigators to investigate workers compensation claims has provided the Agency information that has saved the SFMTA approximately \$5 million annually.

On October 4<sup>th</sup>, 2019, the SFMTA issued a request for proposals (RFP) and conducted a competitive selection process to identify the most qualified proposing firm to provide workers' compensation investigative services. Two firms, Passanisi Investigations, Inc. (Passanisi) and Probe Investigations submitted proposals. Passanisi was the highest scored proposer, scoring higher than Probe Investigations during the Panel Interviews.

This contract was initially submitted for internal consideration in March 2020, however due to significant funding issues as a result of the COVID-19 pandemic, the SFMTA undertook a review of all contracts. During this review the SFMTA determined that this contract should move forward, however the review caused an administrative delay necessitating a retroactive approval to May 1, 2020.

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Under the terms of the Agreement, Passanisi will provide to the SFMTA comprehensive workers' compensation investigative services, including background checks, return to work interviews, treating physician interviews, incident investigations, activity check and surveillance, document gathering and review services, investigation reports, and other liability investigative services for a contract amount not to exceed \$3,750,000 and a term of five years, with two one-year options to extend the term. All services will be provided on an as-needed basis, based on established criteria, as directed by the SFMTA or by Intercare.

### **STAKEHOLDER ENGAGEMENT**

Due to the sensitive nature of work to be done under this contract, stakeholder engagement was limited to discussion and updates provided to the SFMTA internal workers' compensation program, the City Attorney's Office Workers' Compensation Team, and the City Administrator's Risk Management Division. The need to contract this Investigative Services was confirmed by the stakeholders to be the best viable option for the SFMTA.

### **ALTERNATIVES CONSIDERED**

Other options considered include utilizing SFMTA and Intercare staff to investigate workers compensation claims, or not investigating claims.

Due to the intermittent, as-needed nature of this work and the need for 100 percent staff availability when investigative services are required, staff determined that it was not feasible for City staff to perform the required services. Additionally, industry best practices dictate that investigative services be provided by an independent contractor to avoid perceived or real conflict of interest or bias. Using outside investigators to assist in determining compensability of claims is cost effective and saves the SFMTA approximately \$5 million per year.

### **FUNDING IMPACT**

Based on current expenditures for investigative services provided by Probe Investigative Services, Inc., staff estimates that the annual cost of Passanisi's services will be approximately \$750,000 per year, or \$3,750,000 for the initial five-year term of the Agreement. In the event that the SFMTA chooses to exercise its two, one-year options to extend the contract to a full seven years, the total for the two-year options would be an additional \$1,500,000 for a total amount of \$5,250,000 for the full seven years.

Funds for these services will be paid from the SFMTA's Fiscal Year 2020-21 Operating budget and subsequent operating budgets.

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**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**

The SFMTA's Contract Compliance Office (CCO) has confirmed that Passanisi met the 20 percent LBE subcontracting participation requirement established for the contract. The LBE subcontractor is Immendorf and Company Investigations, who will complete background checks, return to work interviews, treating physician interviews, incident investigations, activity check and surveillance, document gathering and review services, investigation reports, and other liability investigative services. as assigned.

The City Attorney has reviewed this item.

**RECOMMENDATION**

Staff recommends that the Board retroactively approve Contract SFMTA-2020-27, Workers' Compensation Investigative Services, with Passanisi Investigations, Inc., to provide comprehensive workers' compensation investigative services for an amount not to exceed \$3,750,000 and a term of five years, with options to extend the contract up to two years.

SAN FRANCISCO  
MUNICIPAL TRANSPORTATION AGENCY  
BOARD OF DIRECTORS

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

WHEREAS, The San Francisco Municipal Transportation Agency (SFMTA) receives 700 claims for workers compensation benefits per year, which cost the SFMTA approximately \$25,000,000 annually, and staff estimates that utilizing the services of professional investigators to assist in determining whether workers compensation claims are compensable saves the SFMTA approximately \$5 million annually; and

WHEREAS, The SFMTA must investigate each claim to determine whether it is compensable, and approximately 25 percent of claims require in-depth investigation, which is best achieved through a professional investigation firm; and

WHEREAS, The SFMTA issued a request for proposals (RFP) and ranked proposers based on experience, expertise and cost for services. Passanisi Investigations, Inc. was the highest ranked proposer. Passanisi's rates for services were determined to be reasonable and cost effective compared to other proposers' rates; and

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

WHEREAS, This contract was initially submitted for internal consideration in March 2020, however due to significant funding issues the SFMTA undertook a review of all contracts. During this review the SFMTA determined that this contract should move forward, however the review caused an administrative delay necessitating a retroactive approval; and

WHEREAS, As directed by the SFMTA's workers compensation director and claims administrator, Passanisi will provide comprehensive workers' compensation investigative services, including background checks, return to work interviews, treating physician interviews, incident investigations, activity check and surveillance, document gathering and review services, investigation reports, and other liability investigative services; now, therefore, be it

RESOLVED, That the San Francisco Municipal Transportation Agency Board of Directors approves Contract SFMTA-2020-27, Workers' Compensation Investigative Services, with Passanisi Investigations, Inc., to provide comprehensive workers' compensation investigative services for an amount not to exceed \$3,750,000 and a term of five years, with options to extend the contract up to two years.; and, be it further

RESOLVED, That approval of this Contract SFMTA-2020-27 is retroactive to May 1, 2020.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of July 21, 2020

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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**

**Contract between the City and County of San Francisco and**

**Passanisi Investigations, Inc.**

**for Workers Compensation Claims Investigative Services**

**SFMTA Contract No. 2020-27**

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**City and County of San Francisco  
Municipal Transportation Agency  
One South Van Ness Ave., 7<sup>th</sup> Floor  
San Francisco, California 94103**

**Agreement between the City and County of San Francisco and  
Passanisi Investigations, Inc. for Workers Compensation Claims Investigative Services  
Contract No. SFMTA-2020-27**

This Agreement between the City and County of San Francisco and Passanisi Investigations, Inc. for Workers Compensation Claims Investigative Services Contract No. SFMTA-2020-27 (Agreement) is dated for convenience as April 30, 2020, in the City and County of San Francisco (City), State of California, by and between Passanisi Investigations Inc (Contractor) and City, a municipal corporation, acting by and through its Municipal Transportation Agency (SFMTA).

**Recitals**

The SFMTA wishes to provide comprehensive investigative, surveillance and reporting services pertaining to workers' compensation claims filed with the SFMTA.

This Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Proposals (RFP) issued on October 4, 2019, pursuant to which City selected Contractor as the highest-qualified scorer.

The Local Business Entity (LBE) subcontracting participation requirement for this Agreement is 20 percent.

Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement.

Due to administrative delay caused by COVID-19, formal approval of this Agreement was delayed. Contractor commenced services on May 1, 2020, which services are subject to the terms and conditions of this Agreement, effective retroactively to that date.

The City's Civil Service Commission approved Contract No. 46367-17/18 for this Agreement on 7/16/2018.

Now, THEREFORE, the parties agree as follows:

**Article 1 Definitions**

The following definitions apply to this Agreement. Where any word or phrase defined below, or a pronoun in place of the word or phrase, is used in any part of this Agreement, it shall have the meaning set forth below:

**1.1** “**Agreement**” or “**Contract**” means this contract document, including all attached appendices, any future amendments, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

**1.2** “**CCO**” means the SFMTA Contract Compliance Office.

**1.3** “**City**” or “**the City**” means the City and County of San Francisco, a municipal corporation, acting by and through its Municipal Transportation Agency.

**1.4** “**City Data**” or “**Data**” means all data given to Contractor by City in the performance of this Agreement.

**1.5** “**CMD**” means the Contract Monitoring Division of the City.

**1.6** “**Confidential Information**” means confidential City information including, but not limited to, personally-identifiable information (PII), protected health information (PHI), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information, including, but not limited to, Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.); the California Confidentiality of Medical Information Act (Civil Code § 56 et seq.); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the privacy and information security aspects of the Administrative Simplification provisions of the federal Health Insurance Portability and Accountability Act (45 CFR Part 160 and Subparts A, C, and E of part 164); and San Francisco Administrative Code Chapter 12M (Chapter 12M).

**1.7** “**Contract Administrator**” means the contract administrator assigned to the Contract by the SFMTA, or his or her designated agent.

**1.8** “**Contractor**” or “**Consultant**” means Passanisi Investigation Inc. 4228 18th Street San Francisco, CA 94114.

**1.9** “**C&P**” means SFMTA Contracts and Procurement.

**1.10** “**Day**” (whether or not capitalized) means a calendar day, unless otherwise designated.

**1.11** “**Deliverables**” means Contractor’s work product resulting from the Services provided by Contractor to City during the course of Contractor’s performance of the Agreement, including without limitation, the work product described in the “Scope of Services” attached as Appendix A.

**1.12** “**Director**” means the Director of Transportation of the SFMTA or his or her designee.

**1.13** “**Effective Date**” means May 1, 2020, the date when this Agreement becomes enforceable, contingent upon the City’s Controller certification of the availability of funds for this Agreement as provided in Section 3.1.

**1.14** “**Mandatory City Requirements**” means those City laws set forth in the San Francisco Municipal Code that impose specific duties and obligations upon Contractor, including the duly authorized rules, regulations, and guidelines implementing such laws.

**1.15** “**Party**” and “**Parties**” mean the City and Contractor either collectively or individually.

**1.16** “**Project Manager**” means the project manager assigned to the Contract for the SFMTA, or his or her designated agent.

**1.17** “**Purchase Order**” means the written order issued by the City to the Contractor, authorizing the Effective Date as provided in Section 2.1.

**1.18** “**San Francisco Municipal Transportation Agency**” or “**SFMTA**” means the agency of City with jurisdiction over surface transportation in San Francisco, as provided under Article VIIIA of the City’s Charter.

**1.19** “**Services**” means the work performed by Contractor under this Agreement as specifically described in the “Scope of Services” attached as Appendix A, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

## **Article 2 Term of the Agreement**

**2.1** The term of this Agreement commenced on May 1, 2020 and will expire on April 30, 2025, unless earlier terminated as otherwise provided herein. All services rendered after May 1, 2020 are covered under the terms and conditions of this Agreement irrespective to the date the Agreement is formally approved.

**2.2** The City has two options to renew the Agreement for a period of one year each, for a cost not to exceed \$1,000,050 per year of extension. The City may exercise an option to extend by notice from the Director of Transportation to Contractor and issuing a contract modification memorializing the term extension.

## **Article 3      Financial Matters**

**3.1      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 in the form of a Purchase Order, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated. City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

**3.2      Guaranteed Maximum Costs.** The City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized Emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is the City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the Parties having modified this Agreement as provided in Section 11.5 (Modification of this Agreement).

### **3.3      Compensation.**

**3.3.1      Payment.** Contractor shall provide an invoice to the SFMTA on a monthly basis for Services completed in the immediately preceding month, unless a different schedule is set out in Appendix B (Calculation of Charges). Compensation shall be made for Services identified in the invoice that the Director of Transportation, or his or her designee, in his or her sole discretion, concludes have been satisfactorily performed. Payment shall be made within 30 Days of receipt of the invoice, unless the City notifies the Contractor that a dispute as to the invoice exists. In no event shall the amount of this Agreement for the base five-year term exceed Five Million Two Hundred and Fifty Thousand Dollars. If the City exercises the two one-year options to extend the term of the Agreement, the total contract amount shall not exceed \$7,350,000. The breakdown of charges associated with this Agreement appears in Appendix B. The City may withhold a portion of payment as retention, as described in Appendix B. In no event shall City be liable for interest or late charges for any late payments.

**3.3.2 Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments from City until the SFMTA approves Services, including any furnished Deliverables, as satisfying all of the requirements of this Agreement. Payments to Contractor by City shall not excuse Contractor from its obligation to replace unsatisfactory Deliverables, including equipment, components, materials, or Services even if the unsatisfactory character of such Deliverables, equipment, components, materials, or Services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and Services 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 at no cost to the City.

**3.3.3 Withhold Payments.** If Contractor fails to provide Services in accordance with Contractor's obligations under this Agreement, the City may withhold any and all payments due Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

**3.3.4 Invoice Format.** Invoices furnished by Contractor under this Agreement must be in a form acceptable to the City's Controller and the SFMTA, and must include a unique invoice number. City will make payment as specified in Section 3.3.6, or in such alternate manner as the Parties have mutually agreed upon in writing.

**3.3.5 LBE Payment and Compliance Tracking System.** Contractor must submit Form 7: CMD Progress Payment Form with each invoice to enable CCO to monitor Contractor's compliance with the LBE subcontracting commitments in this Agreement. Contractor shall pay its LBE subcontractors within three working days after receiving payment from the SFMTA, except as otherwise authorized by the LBE Ordinance. Following the SFMTA's payment of an invoice, Contractor shall submit, electronically, satisfactory evidence that it has promptly paid subcontractors for the work they have performed via the B2GNow System (<https://sfmta.diversitycompliance.com/>). The City's Controller is not authorized to pay invoices submitted by Contractor prior to Contractor's submission of all required LBE payment information. Failure to submit all required LBE payment information may result in the Controller or the SFMTA withholding 20% of the payment due under that invoice until the required payment information is provided.

**3.3.6 Getting Paid by the City for Goods and/or Services.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through the City's Automated Clearing House (ACH) payments service/provider. Electronic payments are processed every business day and are safe and secure. To sign up for electronic payments, visit [www.sfgov.org/ach](http://www.sfgov.org/ach).

(b) The following information is required to sign up: (i) The enroller must be their company's authorized financial representative, (ii) the company's legal name, main telephone number and all physical and remittance addresses used by the company, (iii) the company's U.S. federal employer identification number (EIN) or Social Security number (if they are a sole proprietor), and (iv) the company's bank account information, including routing and account numbers.

**3.4 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 Services. 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 fewer 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 as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

**3.5 Submitting False Claims.** The full text of San Francisco Administrative Code Chapter 21, Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Pursuant to San Francisco Administrative Code §21.35, any contractor or subcontractor who submits a false claim shall be liable to the City for the statutory penalties set forth in that section. A contractor or subcontractor will be deemed to have submitted a false claim to the City if the contractor or subcontractor: (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.

**3.6 Reserved. (Payment of Prevailing Wages).**

## **Article 4 Services and Resources**

**4.1 Services Contractor Agrees to Perform.** Contractor agrees to perform the Services stated in Appendix A (Scope of Services). Officers and employees of the City are not authorized to request, and the City is not required to reimburse the Contractor for, Services

beyond the Scope of Services listed in Appendix A, unless Appendix A is modified as provided in Section 11.5 (Modification of this Agreement).

**4.2 Qualified Personnel.** Contractor shall use only competent personnel under the supervision of, and in the employment of, Contractor (or Contractor's authorized subcontractors) to perform the Services. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit adequate resources to allow timely completion within the project schedule specified in this Agreement.

**4.3 Subcontracting.**

**4.3.1** Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 (Additional Requirements Incorporated by Reference) of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void.

**4.3.2** City's execution of this Agreement constitutes its approval of the subcontractors listed below:

- Immendorf and Company Investigations

**4.4 Independent Contractor; Payment of Employment Taxes and Other Expenses.**

**4.4.1 Independent Contractor.** For the purposes of this Article 4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, 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, its agents, and employees will not represent or hold themselves out to be employees of the City at any time. 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. Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with this section. Should City determine that Contractor, or any agent or employee of Contractor, is not performing in accordance with the requirements of this Agreement, City shall provide Contractor with written notice of such failure. Within five business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor, or any agent or employee of Contractor, warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

**4.4.2 Payment of Employment 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 this Section 4.4 shall be solely limited to 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, Contractor agrees to indemnify and save harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from this section.

**4.5 Assignment.** The Services to be performed by Contractor are personal in character. Neither this Agreement, nor any duties or obligations hereunder, may be directly or indirectly assigned, novated, hypothecated, transferred, or delegated by Contractor, or, where the Contractor is a joint venture, a joint venture partner, (collectively referred to as an "Assignment") unless first approved by City by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. The City's approval of any such Assignment is subject to the Contractor demonstrating to City's reasonable satisfaction that the proposed transferee is: (a) reputable and capable, financially and otherwise,

of performing each of Contractor's obligations under this Agreement and any other documents to be assigned, (b) not forbidden by applicable law from transacting business or entering into contracts with City; and (c) subject to the jurisdiction of the courts of the State of California. A change of ownership or control of Contractor or a sale or transfer of substantially all of the assets of Contractor shall be deemed an Assignment for purposes of this Agreement. Contractor shall immediately notify City about any Assignment. Any purported Assignment made in violation of this provision shall be null and void.

**4.6 Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

## **Article 5 Insurance and Indemnity**

### **5.1 Insurance.**

**5.1.1 Required Coverages.** 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:

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

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

(c) 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.

(d) Professional Liability Insurance, applicable to Contractor's profession, with limits not less than \$1,000,000 for each claim with respect to negligent acts, errors or omissions in connection with the Services.

(e) Technology Errors and Omissions Liability coverage, with limits of \$1,000,000 for each claim and each loss. 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:

(i) Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks; and

(ii) Liability arising from the introduction of any form of malicious software including computer viruses 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.

**(f) Reserved. (Cyber and Privacy Coverage).**

**5.1.2** Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees.

**5.1.3** Contractor's Commercial General Liability and Commercial Automobile Liability Insurance policies shall 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

**5.1.4** All policies shall be endorsed to provide 30 days' advance written notice to the City of cancellation for any reason, intended non-renewal, or reduction in coverages. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties). All notices, certificates and endorsements shall include the SFMTA contract number and title on the cover page. Contractor shall provide 30 days' advance written notice to the City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment, for which no less than 10 days' notice shall be provided to City. Notices shall be sent to the City address set forth in Section 11.1 (Notices to the Parties).

**5.1.5** 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.

**5.1.6** 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.

**5.1.7** 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.

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

**5.1.9** The Workers' Compensation policy(ies) shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

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

**5.2 Indemnification.** Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all claims, demands, losses, damages, costs, expenses, and liability (legal, contractual, or otherwise) arising from or in any way connected with any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personally identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; so long as such injury, violation, loss, or strict liability (as set forth in subsections (i) – (v) above) arises 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, 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 arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

## **Article 6 Liability of the Parties**

**6.1 Liability of City.** CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1 (PAYMENT) 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.

**6.2 Liability for Use of Equipment.** City shall not be liable for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

**6.3 Liability for Incidental and Consequential Damages.** Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

## **Article 7 Payment of Taxes**

**7.1 Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by the City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

**7.2 Possessory Interest Taxes.** Contractor acknowledges 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:

**7.2.1** 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.

**7.2.2** 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.

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

**7.2.4** 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.

**Withholding.** Contractor agrees that it is obligated to pay all amounts due to the City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to the City under the San Francisco Business and Tax Regulations Code. The City will pay Contractor any monies withheld under this paragraph, without interest, when Contractor comes into compliance with its obligations.

## **Article 8 Termination and Default**

### **8.1 Termination for Convenience**

**8.1.1** 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.

**8.1.2** Upon receipt of the notice of termination, 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 may include any of the following, without limitation:

(a) Halting the performance of all Services under this Agreement on the date(s) and in the manner specified by the SFMTA.

(b) Terminating all existing orders and subcontracts, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

(c) At the SFMTA's direction, assigning to City any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, the SFMTA 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.

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

(e) Completing performance of any Services that the SFMTA designates to be completed prior to the date of termination specified by the SFMTA.

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

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

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services the SFMTA 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. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

(b) A reasonable allowance for profit on the cost of the Services described in the immediately preceding subsection (a), provided that Contractor can establish, to the satisfaction of the SFMTA, that Contractor would have made a profit had all Services under

this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5% of such cost.

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

(d) 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 the SFMTA, and any other appropriate credits to the SFMTA against the cost of the Services or other work.

**8.1.4** In no event shall the City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by the SFMTA, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under 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 Section 8.1.3.

**8.1.5** In arriving at the amount due to Contractor under this Section, the SFMTA may deduct: (i) all payments previously made by the SFMTA for Services covered by Contractor's final invoice; (ii) any claim which the SFMTA may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of the SFMTA, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and the SFMTA's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

**8.1.6** The City's payment obligation under this Section shall survive termination of this Agreement.

## **8.2 Termination for Default; Remedies.**

**8.2.1** Each of the following shall constitute an immediate event of default (Event of Default) under this Agreement:

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

- 3.5 Submitting False Claims
- 4.5 Assignment

Article 5	Insurance and Indemnity
Article 7	Payment of Taxes
10.10	Alcohol and Drug-Free Workplace
10.13	Working with Minors
11.10	Compliance with Laws
Article 13	Data and Security

**(b)** Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within 10 days after written notice thereof from the SFMTA to Contractor. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, the SFMTA may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

**(c)** Contractor (i) is generally not paying its debts as they become due; (ii) 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; (iii) makes an assignment for the benefit of its creditors; (iv) 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 (v) takes action for the purpose of any of the foregoing.

**(d)** A court or government authority enters an order (i) 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, (ii) 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

**8.2.2** 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, where applicable, 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: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and

(iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with the City.

**8.2.3** 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. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

**8.2.4** Any notice of default must be sent to the address set forth in Article 11, and in the manner prescribed in Article 11.

**8.3 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.

**8.4 Rights and Duties upon Termination or Expiration.**

**8.4.1** This Section and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

3.3.2	Payment Limited to Satisfactory Services
3.4	Audit and Inspection of Records
3.5	Submitting False Claims
Article 5	Insurance and Indemnity
6.1	Liability of City
6.3	Liability for Incidental and Consequential Damages
Article 7	Payment of Taxes
8.1.6	Payment Obligation
9.1	Ownership of Results
9.2	Works for Hire
11.6	Dispute Resolution Procedure
11.7	Agreement Made in California; Venue
11.8	Construction
11.9	Entire Agreement
11.10	Compliance with Laws
11.11	Severability
Article 13	Data and Security

**8.4.2** Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this

Agreement shall 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.

## **Article 9 Rights In Deliverables**

**9.1 Ownership of Results.** Any interest of Contractor or its subcontractors, in the Deliverables, including any drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors for the purposes of this Agreement, shall become the property of and will be transmitted to City. However, unless expressly prohibited elsewhere in this Agreement, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**9.2 Works for Hire.** If, in connection with Services, Contractor or its subcontractors creates Deliverables including, without limitation, artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes, or any other original works of authorship, whether in digital or any other format, 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 shall be the property of the City. If any Deliverables created by Contractor or its subcontractor(s) under this Agreement are ever determined not to be works for hire under U.S. law, Contractor hereby assigns all Contractor's copyrights to such Deliverables to the City, agrees to provide any material and execute any documents necessary to effectuate such assignment, and agrees to include a clause in every subcontract imposing the same duties upon subcontractor(s). With City's prior written approval, Contractor and its subcontractor(s) may retain and use copies of such works for reference and as documentation of their respective experience and capabilities.

## **Article 10 Additional Requirements Incorporated by Reference**

**10.1 Laws Incorporated by Reference.** The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement (Mandatory City Requirements) are available at [http://www.amlegal.com/codes/client/san-francisco\\_ca](http://www.amlegal.com/codes/client/san-francisco_ca).

**10.2 Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of

the California Government Code (Section 87100 *et seq.*), or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify the City if it becomes aware of any such fact during the term of this Agreement.

**10.3 Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by the City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

**10.4 Consideration of Salary History.** Contractor shall comply with San Francisco Administrative Code Chapter 12K, the Consideration of Salary History Ordinance or "Pay Parity Act." Contractor is prohibited from considering current or past salary of an applicant in determining whether to hire the applicant or what salary to offer the applicant to the extent that such applicant is applying for employment to be performed on this Agreement or in furtherance of this Agreement, and whose application, in whole or part, will be solicited, received, processed or considered, whether or not through an interview, in the City or on City property. The ordinance also prohibits employers from (a) asking such applicants about their current or past salary or (b) disclosing a current or former employee's salary history without that employee's authorization unless the salary history is publicly available. Contractor is subject to the enforcement and penalty provisions in Chapter 12K. Information about and the text of Chapter 12K is available on the web at <https://sfgov.org/olse/consideration-salary-history>. Contractor is required to comply with all of the applicable provisions of 12K, irrespective of the listing of obligations in this Section.

### **10.5 Nondiscrimination Requirements**

**10.5.1 Non Discrimination in Contracts.** Contractor shall comply with the provisions of Chapters 12B and 12C of the San Francisco Administrative Code. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Chapters 12B and 12C.

**10.5.2 Nondiscrimination in the Provision of Employee Benefits.** San Francisco Administrative Code 12B.2. 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 employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in San Francisco Administrative Code Section 12B.2.

**10.6 Local Business Enterprise and Non-Discrimination in Contracting**

**Ordinance.** Contractor shall comply with all applicable provisions of Chapter 14B (LBE Ordinance). Contractor is subject to the enforcement and penalty provisions in Chapter 14B. Contractor shall utilize LBE Subcontractors for at least 20 percent of the Services except as otherwise authorized in writing by the CCO. Contractor shall incorporate the requirements of the LBE Ordinance in each subcontract made in the fulfillment of Contractor’s LBE subcontracting commitments.

**10.7 Minimum Compensation Ordinance.**

If Administrative Code Chapter 12P applies to this contract, Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. Information about and the text of the Chapter 12P is available on the web at <http://sfgov.org/olse/mco>. Contractor is required to comply with all of the applicable provisions of 12P, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Chapter 12P.

**10.8 Health Care Accountability Ordinance.**

If Administrative Code Chapter 12Q applies to this contract, Contractor shall comply with the requirements of Chapter 12Q. 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. Information about and the text of Chapter 12Q, as well as the Health Commission’s minimum standards, is available on the web at <http://sfgov.org/olse/hcao>. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

**10.9 First Source Hiring Program.**

Contractor must comply with all of the provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement, and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

**10.10 Alcohol and Drug-Free Workplace.**

City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City’s ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering,

purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

**10.11 Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (a) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves, (c) a candidate for that City elective office, or (b) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve months after the date the City approves the contract. 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 10% in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract, and has provided the names of the persons required to be informed to the City department with whom it is contracting.

**10.12 Reserved. (Slavery Era Disclosure).**

**10.13 Reserved. (Working with Minors).**

**10.14 Consideration of Criminal History in Hiring and Employment Decisions**

**10.14.1** Contractor agrees to comply fully with and be bound by all of the provisions of Chapter 12T (City Contractor/Subcontractor Consideration of Criminal History in Hiring and Employment Decisions) of the San Francisco Administrative Code (Chapter 12T), including the remedies provided, and implementing regulations, as may be amended from time to time. The provisions of Chapter 12T are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the Chapter 12T is available on the web at <http://sfgov.org/olse/fco>. Contractor is required to comply with all of the applicable provisions of 12T, irrespective of the listing of obligations in this Section. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12T.

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

**10.15 Reserved. (Public Access to Nonprofit Records and Meetings).**

**10.16 Reserved. (Food Service Waste Reduction Requirements).**

**10.17 Distribution of Beverages and Water.**

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

**10.17.2 Packaged Water Prohibition.** Contractor agrees that it shall not sell, provide, or otherwise distribute Packaged Water, as defined by San Francisco Environment Code Chapter 24, as part of its performance of this Agreement.

**10.18 Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), the City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**10.19 Reserved. (Preservative Treated Wood Products).**

## **Article 11 General Provisions**

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

To City:

Dan Roach  
Manager Workers' Compensation  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 6th floor  
San Francisco, CA 94103  
[Dan.Roach@sfmta.com](mailto:Dan.Roach@sfmta.com)  
415-701-4351

To Contractor:

Passanisi Investigations  
Anthony J. Passanisi  
4228 18th Street  
San Francisco, CA 94114  
[tony@passanisi.com](mailto:tony@passanisi.com)  
415-703-9888

Any notice of default must be sent by overnight delivery service or courier, with a signature obtained at delivery. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party. If email notification is used, the sender must specify a receipt notice.

**11.2 Compliance with Americans with Disabilities Act.** Contractor shall provide the Services in a manner that complies with the Americans with Disabilities Act (ADA), including but not limited to Title II's program access requirements, and all other applicable federal, state and local disability rights legislation.

**11.3 Incorporation of Recitals.** The Recitals are incorporated into and made part of this Agreement.

**11.4 Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

**11.5 Modification of this Agreement.** This Agreement may not be modified, nor may compliance with any of its terms be waived, except as noted in Section 11.1 (Notices to Parties) regarding change in personnel or place, and except by written instrument executed and approved as required under City law and under the policy of the SFMTA Board of Directors. Contractor shall cooperate with the SFMTA to submit to the CCO 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% (CMD Contract Modification Form).

## **11.6 Dispute Resolution Procedure.**

**11.6.1 Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. If the Parties are unable to resolve the dispute, then, pursuant to San Francisco Administrative Code Section 21.36, Contractor may submit to the Contract Administrator a written request for administrative review and documentation of the Contractor's

claim(s). Upon such request, the Contract Administrator shall promptly issue an administrative decision in writing, stating the reasons for the action taken and informing the Contractor of its right to judicial review. If agreed by both Parties in writing, disputes may be resolved by a mutually agreed-upon alternative dispute resolution process. If the parties do not mutually agree to an alternative dispute resolution process or such efforts do not resolve the dispute, then either Party may pursue any remedy available under California law. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of the City. Neither Party will be entitled to legal fees or costs for matters resolved under this section.

**11.6.2 Government Code Claim Requirement.** No suit for money or damages may be brought against the City until a written claim therefor has been presented to and rejected by the City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

**11.7 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.

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

**11.9 Entire Agreement.** This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. All appendices to this Agreement are incorporated by reference as though fully set forth. This Agreement may be modified only as provided in Section 11.5 (Modification of this Agreement).

**11.10 Compliance with Laws.** Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and duly adopted rules 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.

**11.11 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.

**11.12 Cooperative Drafting.** This Agreement has been drafted through a cooperative effort of City and Contractor, 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.

**11.13 Order of Precedence.** Contractor agrees to perform the services described below in accordance with the terms and conditions of this Agreement, implementing task orders, the RFP, and Contractor's proposal dated October 4, 2019. The RFP and Contractor's proposal are incorporated by reference as though fully set forth herein. Should there be a conflict of terms or conditions, this Agreement, implementing task orders shall control over the RFP, and the Contractor's proposal. If the Appendices to this Agreement include any standard printed terms from the Contractor, Contractor agrees that in the event of discrepancy, inconsistency, gap, ambiguity, or conflicting language between the City's terms and Contractor's printed terms attached, the City's terms shall take precedence, followed by the procurement issued by the department, Contractor's proposal, and Contractor's printed terms, respectively.

**11.14 Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests, and other legal requests (Legal Requests) related to City Data, or which in any way might reasonably require access to City's Data, and in no event later than 24 hours after it receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with the City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by the City to Contractor, independent of where the City Data is stored.

## **Article 12 SFMTA Specific Terms**

### **12.1 Large Vehicle Driver Safety Training Requirements.**

**12.1.1** Contractor agrees that before any of its employees and subcontractors drive large vehicles within the City and County of San Francisco, those employees and subcontractors shall successfully complete either (a) the SFMTA's Large Vehicle Urban Driving Safety training program or (b) a training program that meets the SFMTA's approved standards for large vehicle urban driving safety. The SFMTA's approved standards for large vehicle urban driving safety is available for download at [www.SFMTA.com/largevehicletrainingstandards](http://www.SFMTA.com/largevehicletrainingstandards). This requirement does not apply to drivers providing delivery services who are not employees or subcontractors of the Contractor. For purposes of this section, "large vehicle" means any single

vehicle or combination of vehicle and trailer with an unladen weight of 10,000 pounds or more, or a van designed to carry 10 or more people.

**12.1.2** By entering into this Agreement, Contractor agrees that in the event the Contractor fails to comply with the Large Vehicle Driver Safety Training Requirements, the City will suffer actual damages that will be impractical or extremely difficult to determine; further, Contractor agrees that the sum of up to One Thousand Dollars (\$1,000) per employee or subcontractor who is permitted to drive a large vehicle in violation of these requirements is not a penalty, but is a reasonable estimate of the loss that City will incur based on the Contractor's failure to comply with this requirement, established in light of the circumstances existing at the time this Contract was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor. Such deductions shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Contractor's failure to comply.

## **Article 13 Data and Security**

### **13.1 Nondisclosure of Private, Proprietary or Confidential Information.**

**13.1.1 Protection of Private Information .** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

**13.1.2 Confidential Information .** In the performance of Services, Contractor may have access to City's proprietary or Confidential Information, the disclosure of which to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, such information must be held by Contractor in confidence and used only in performing 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 or Confidential Information.

### **13.2 Reserved. (Payment Card Industry (PCI) Requirements).**

**13.3 Business Associate Agreement.** This Agreement may require the exchange of information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 (HIPAA).A Business Associate Agreement (BAA) executed by the Parties is attached as Appendix C.

### **13.4 Management of City Data and Confidential Information.**

**13.4.1 Access to City Data.** City shall at all times have access to and control of City Data, and shall be able to retrieve it in a readable format, in electronic form and/or print, at any time, at no additional cost.

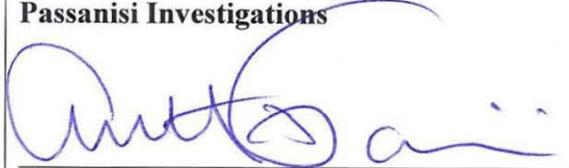
**13.4.2 Use of City Data and Confidential Information.** Contractor agrees to hold City's Confidential Information received from or created on behalf of the City in strictest confidence. Contractor shall not use or disclose City's Data or Confidential Information except as permitted or required by the Agreement or as otherwise authorized in writing by the City. Any work using, or sharing or storage of, City's Confidential Information outside the United States is subject to prior written authorization by the City. Access to City's Confidential Information must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. Contractor is provided a limited non-exclusive license to use the City Data or Confidential Information solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use. Nothing herein shall be construed to confer any license or right to the City Data or Confidential Information, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third party. Unauthorized use of City Data or Confidential Information by Contractor, subcontractors or other third parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data, stored or transmitted by the service, for commercial purposes, advertising or advertising-related purposes, or for any purpose other than security or service delivery analysis that is not explicitly authorized.

**13.4.3 Disposition of Confidential Information.** Upon termination of Agreement or request of City, Contractor shall within 48 hours return all Confidential Information, including all original media. Once Contractor has received written confirmation from City that Confidential Information has been successfully transferred to City, Contractor shall, within 10 business days, purge all Confidential Information from its servers, any hosted environment Contractor has used in performance of this Agreement, work stations that were used to process the Data or for production of the Data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such purge occurred within five business days of the purge.

## **Article 14 MacBride Principles And Signature**

**14.1 MacBride Principles -Northern Ireland.** The provisions of San Francisco Administrative Code §12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that the City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles, and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

<p><b>CITY</b></p> <p><b>San Francisco Municipal Transportation Agency</b></p> <hr/> <p>Thomas G. Maguire Interim Director of Transportation</p> <p>Authorized By:</p> <p>Municipal Transportation Agency Board of Directors</p> <p>Resolution No: _____</p> <p>Adopted: _____</p> <p>Attest: _____ Roberta Boomer, Secretary</p> <p>Approved as to Form:</p> <p>Dennis J. Herrera City Attorney</p> <p>By: _____ Robert K. Stone Deputy City Attorney</p>	<p><b>CONTRACTOR</b></p> <p><b>Passanisi Investigations</b></p>  <hr/> <p>Anthony J. Passanisi 4228 18th Street San Francisco, CA 94114 tony@passanisi.com 415-703-9888</p> <p><u>Acknowledgement of Large Vehicle Driver Safety Training Requirements:</u></p> <p>By signing this Agreement, Contractor acknowledges that it has read and understands Section 12.1: Large Vehicle Driver Safety Training Requirements.</p> <p>City Supplier Number: 0000013479</p>
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**Appendices**

- A: Scope of Services
- B: Calculation of Charges
- C: HIPPA Business Associate Agreement

## **Appendix A Scope of Services**

### **1. Description of Services**

Contractor agrees to perform the following services:

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

Field Investigations:            Bill Fletcher (Head)  
   Emilio Trujillo  
   James Filomeo  
   Shelley Clarke  
   Alana Barrueto

Surveillance:            Tony Passanisi (Head)  
   Roberto Estes  
   Buddy Jones  
   Dan Bauwens  
   Deborah Marquez  
   Jim Cole  
   James Filomeo  
   Markl Brown  
   Richard Hohmann  
   Todd Clarke  
   Mark Splinter

SIU:                            Bill Fletcher (Head)

Contractor shall maintain organizational capacity to provide Services to the SFMTA and complete tasks for the SFMTA within the allotted time as specified in the SFMTA's request for proposals (RFP) No. SFMTA-2020-27 and incorporated by reference as though fully set forth herein.

Contractor shall enter into sub-contract with:

#### **Immendorf and Company Investigations**

Subconsultant:            Gene Immendorf

Field Investigations: Jamie Haugh

Surveillance: Ken Gibbons  
Roberto Beltran  
Martin Illingworth

All subcontractor investigations will be paid at \$80 per hour and \$.58 per mile for both AOE/COE and surveillance.

As indicated in its responsive CMD forms submitted as part of its proposal to the SFMTA, and its subcontractors shall utilize Contractor's on-line case management system, which shall maximize the use of technology to meet the SFMTA's requirements. Contractor shall handle the overall scope of the Services within the required time frames and meet all objectives required by the SFMTA.

### **CONTRACTOR'S TECHNOLOGY & ON-LINE CASE MANAGEMENT SYSTEM**

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

- Refer and direct all investigations (to Contractor and its subcontractors)
- Check ongoing status of investigations
- View surveillance footage through video streaming
- Verify identity of the surveillance subject as the claimant
- Read reports online and/or download them to secured computers
- Download documents obtained during investigations
- Run management reports

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

- TPA Examiners
  - Access through tables of ongoing or completed Contractor's or its subcontractor's assignments
  - Refer assignments and direct assignments
  - Check ongoing status
  - Read reports and download documents
  - View video
  - Access co-worker's referrals for coverage purposes
- TPA Management and SFMTA staff

- All items listed above for all assignments (ongoing and completed)
  - Reports (reports can be customized at no extra charge)
  - Turn-around time
  - Cost analysis
  - Special Investigations Unit (SIU) results including arrests, convictions, restitution and results
- Defense Counsel for Claimant
  - Check assignment status.
  - Read Reports and download documents.
  - View Video.
  -
- Contractor's Subcontractors
  - Access to assigned cases
  - Post time and activity
  - Upload documents and video
  - View documents provided by SFMTA / Intercare

**ASSIGNMENT OF WORK – SCHEDULE & ABILITY TO COMPLETE PROJECT:**

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

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

**Surveillance Unit**

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

**Field Investigation Unit**

- Provide initial review and discussion with examiner if needed within 24 hours
- Assign the investigation to an investigator within 24 hours
- Complete the investigation and return it to the office for review
- Provide the report to Contractor's Vice President of Field Investigations for review

- Provide a final report to the examiner, which shall be linked to MAP within 21 days total
- Provide a progress report within 30 days of a delay for any reason
- Complete all assignments pertaining to alleged injuries incurred arising out of employment (AOE) or in the course of employment (COE) before the 75<sup>th</sup> day following notification thereof.

#### **Special Investigations Unit (SIU)**

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

#### **Field Investigations (AOE/COE & Subrogation)**

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

The investigator shall initiate contact with injured workers, employers, supervisors, coworkers and third party witnesses. All completed investigative tasks shall be documented on MAP. Entries shall include relevant details regarding the efforts made and the progression of the investigation. Photographs, audio recordings, and document evidence shall be preserved digitally and maintained in electronic case file folders. All documents shall have extensive backup for evidence preservation.

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

Upon completion of the interviews and all other assigned investigative tasks, the investigator shall compile, download and submit the report, digital audio recordings, photographs, and accompanying attachments electronically to Contractor's office for review. All reports shall be reviewed by Contractor's Vice President of Field Investigations or their designee for thoroughness, completion of the specific task or tasks, and spelling/punctuation/grammar.

Contractor shall provide all forms and releases needed such as medical authorizations and retractions. Investigations shall be completed and reports submitted to the client within 21 days

or less of the assignment receipt, and shall pay particular attention to the claims administrator's statutory presumption deadline under LC 5402 (b).

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

> **AOE/COE Reports**

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

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

Contractor shall obtain information including, but not limited to:

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

- General information regarding personal habits, family issues, conflicts at work or personnel issues

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

➤ **Medical Records Retrieval**

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

➤ **AOE/COE-Psyche/Stress**

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

Predominate cause/actual events of employment

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

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

➤ **Subrogation Investigations/Reports**

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

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

- Obtain copies of in-house surveillance film
- Secure information regarding lighting and time of day the incident occurred
  
- Automobile accidents
  - Obtain police/CHP/Fire Department reports
  - Measure, photograph, diagram, and provide internet mapping of the accident location
  - Obtain and report third party insurance policy/claim information
  - Secure information regarding road hazards, construction, obstructions and information on the responsible public or private entity
  
- Injuries involving equipment
  - Obtain all information regarding employee training on usage of equipment
  - Obtain make/model/age/purchase receipts/and maintenance records of the equipment
  - Inquire and report if any modifications have been done to the equipment
  - Measure, photograph, diagram and describe the equipment
  - Conduct internet research for recalls or complaints regarding the equipment involved
  - Staff the assignment with the claims administrator and secure the equipment for storage at Contractor's office, or shipping to the claims administrator
  - Obtain copies of in-house surveillance film

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

### **Surveillance & Activity Checks**

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

Contractor shall identify new opportunities and follow the ever-changing path of an investigation. Contractor's team of supervisors and support staff shall work concurrently with field investigators to uncover every possible lead. Contractor shall pursue every practical opportunity in order to document the overall subject activity while remaining in complete legal compliance as mandated through California Civil Code 1708.8. Contractor shall provide consideration the entire perspective of assisting the SFMTA and its TPA with claim containment, while protecting them from vicarious liability or undesirable scrutiny and public opinion.

Therefore, Contractor shall adhere to a standard that strictly prohibits unethical tactics such as trespassing, entrapment or invasion of privacy. Furthermore, the safety and welfare of Contractor's employees shall be a key value to retain its experienced and tenured staff.

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

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

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

An **activity check** shall differ from surveillance in both objective and time on site. The purpose of an activity check is often to deem a case practical for surveillance. It is customarily requested to locate a subject, spot check activity, identify an *articulable suspicion* as outlined in CC 1708.8, and determine if the area is reasonable to setup for an extended investigation. Upon special request, a neighborhood canvas may also be conducted to uncover subject activity level as observed by others. Contractor shall strive to complete an activity check within four hours, however it is possible that the effort exceed that amount where there is present any claimant activity or reason to believe the claimant may engage in immediate future activity. In the case of the latter, communication with the claims administrator shall be initiated and approval for surveillance shall be requested. The work flow and reporting shall be identical to Surveillance.

### **Background Investigation - Database Searches / Social Networking Research**

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

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

### **Medical Facility Canvass**

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

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

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

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

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

### **Return to Work Investigation**

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

### **Disability Management Interview**

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

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

### **Primary Treating Physician Visit**

In the event that Contractor's SIU provides a Primary Treating Physician Visit (PTP Visit) Contractor's skilled SIU expert shall schedule an appointment with the PTP to present evidence, typically surveillance evidence but also prior medical records, social networking evidence, witness statements and/or other evidence for the PTP to consider. Contractor's investigator shall discuss the evidence with the PTP along with any inconsistencies between the evidence and claimant's statement and point out any concerns. Contractor's investigator shall be able to discuss the fact

pattern and evidence in order to meet the objective, which may be to get the claimant released to work, ensure that the medical treatment is appropriate, maximum medical improvement (MMI), and/or have the surveillance evidence described in a medical report to ensure that a qualified medical examiner (QME) is aware of the surveillance (should non- medical evidence be objected to).

### **SIU Analysis, Investigation and/or Fraud Referral**

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

### **Contractor's Data Security System and Disaster Recovery Plan**

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

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

Contractor shall maintain a Disaster Recovery Plan inclusive of the data center, which shall provide redundant Tier-1 Internet connections to multiple backbones to prevent loss of connectivity in the unlikely event of a failure of a single backbone provider. Contractor's server backups shall be collected daily and stored at Contractor's datacenter and replicated to multiple devices to ensure the ability to recover data in case one of the backup devices fails.

Workstations accessing the data on Contractor's servers shall also be protected by an edge firewall/IPS/Content control appliance that blocks malicious content from malicious websites and email "on the fly" to ensure that viruses do not infect the network. All workstations shall be protected by anti-virus / intrusion prevention software installed on all computers. No data shall be stored on workstations.

### **EXECUTIVE SUMMARY OF SIU SERVICES**

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

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

#### **Contractor's SIU partnership program shall provide the following:**

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

- SIU staff shall attend the Fraud Assessment Committee meetings to stay current on the fraud industry.
- SIU staff shall attend Department of Insurance & National Insurance Crime Bureau monthly meetings.
- Contractor's SIU staff shall receive over 120 hours of anti-fraud training annually

**Contractor's SIU partnership program shall combine the following:**

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

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

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

**BACKGROUND INVESTIGATION / SOCIAL NETWORKING RESEARCH**

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

**MEDICAL FACILITY CANVASS**

Medical Facility Canvasses shall be an effective and inexpensive investigative tool to locate previous medical records and/or pharmaceutical records to determine if the subject has a pre-existing injury. This information can be beneficial for determination of compensability, apportionment and/or fraud.

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

### **RETURN TO WORK INVESTIGATION**

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

### **DISABILITY MANAGEMENT INTERVIEW**

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

DMIs shall also be used to question a claimant regarding prior injuries, medical treatment as well as to obtain signatures on Releases. Further, DMIs shall be used for pre-surveillance to confirm where a subject resides, their appearance and how they describe their physical abilities and restrictions. Contractor shall use the DMI to determine which claimants are good surveillance candidates and also ensure that surveillance film could create a positive impact if obtained.

### **PRIMARY TREATING PHYSICIAN VISIT**

Contractor's SIU shall provide a Primary Treating Physician Visit (PTP Visit). Contractor's skilled SIU expert shall schedule an appointment with the PTP to present evidence, typically surveillance evidence but also prior medical records, social networking evidence, witness statements and/or other evidence for the PTP to consider. Contractor's investigator shall discuss the evidence with the PTP along with any inconsistencies between the evidence and claimant's

statement and point out any concerns. Contractor's investigator shall be able to discuss the fact pattern and evidence in order to meet the objective, which may be to get the claimant released to work, ensure that the medical treatment is appropriate, establish maximum medical improvement (MMI), and/or have the surveillance evidence described in a medical report to ensure that a qualified medical examiner (QME) is aware of the surveillance (should there be objection to non-medical evidence).

### **SIU ANALYSIS, INVESTIGATION and/or FRAUD REFERRAL**

Contractor's SIU recognizes that most insurance claims are legitimate; however there are a small percentage of claims that do indeed involve fraud or misrepresentation. Contractor shall respond to those claims that are suspicious in nature to ensure they are thoroughly investigated for validity and veracity.

Contractor's SIU shall review suspicious claims to determine the best course of action and make recommendations to achieve positive outcomes. Following Contractor's SIU analysis of suspicious cases, Contractor shall provide an action plan to the adjuster for approval. If the SIU makes a determination that a crime has been committed, Contractor shall recommend a referral to law enforcement. Contractor's SIU shall provide full SIU case management and coordinate with law enforcement to conclusion.

Contractor's SIU shall be trained to identify and refer workers' compensation (WC) fraud, including preparation of Suspected Fraud Referral forms (FD-1) and Documented Referrals and presentation of fraud cases to District Attorneys. Contractor's SIU shall communicate effectively with the adjuster and the SFMTA throughout the criminal case process to meet objectives and ensure that updates are provided every 30 days at the minimum. Contractor's SIU shall prepare Restitution Proposals and coordinate with all parties to facilitate collection of restitution. Contractor's goal shall be to make the victim whole through the collection of restitution, including payment to the SFMTA of not only the theft of benefits but also the costs to prove the fraud including investigation, surveillance and SIU fees.

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

### **FULLY COMPLIANT SIU PER CA DEPARTMENT OF INSURANCE REGULATIONS**

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

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

## **PERFORMANCE GUARANTEE**

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

### **2. Reports**

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

### **3. SFMTA Liaison**

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

## **Appendix B Calculation of Charges**

### **Surveillance & Activity Checks:**

- Surveillance & Activity Checks: \$90 per investigator hour
- Plus pass through costs:
  - Pre surveillance databases (includes address verification) \$51 per hour
  - Parking, tolls, and similar items passed through at cost
  - Mileage at IRS approved rate of \$0.58 per mile
  - CA DMV Costs:
    - DL \$18
    - VR \$12
    - ANI \$15
- Report prep: \$50 per hour
- Contractor shall not charge a secretarial, administrative and/or file set up fee
- Court appearances by the reporting investigator: \$150 per hour

### **Field Investigation:**

- AOE/COE Investigation: \$90 per hour
- Includes 3 interviews (typically employee, employer and witness)
- \$90 per hour for each additional interview
  
- AOE/COE inclusive of Subrogation Investigation: \$150 per hour
- Includes 3 interviews (typically employee, employer and witness)
- \$150 per hour for each additional interview
  
- Background Investigation (including Database Search / Internet Research / Social Networking Search): \$90 per hour
- Plus any applicable court search and copy fees
  
- Medical Canvass / Pharmaceutical Canvass: \$90 per hour
- Includes up to 25 medical and/or pharmaceutical facilities
  
- Medical Records Retrieval Coordination: Pass through at cost
- Plus fee for copying records (copy service invoice provided at cost)
  
- Court appearances by the reporting investigator: \$150 per hour
- Report prep \$50 per hour
- Mileage at IRS approved rate of \$0.58 per mile
- Parking, tolls, and similar items passed through at cost
- Contractor shall not charge a secretarial, administrative and/or file set up fee

**Special Investigation Unit (SIU):**

- Special Investigations Unit (SIU) Investigations: \$150 per hour
- Initial consultations with examiners at no charge
- Contractor shall not charge a secretarial, administrative and/or file set up fee
  - Criminal court appearances by the SIU investigator: \$150 per hour

**Other Services:**

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

**Contractor’s No-Charge Value Added Benefits:**

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

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

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

**Rates for SIU Partnership Program**

<u>SIU Partnership Program</u>	<u>Hours</u>	<u>Miles</u>	<u>Total</u>	<u>Total</u>	<u>Rate</u>	<u>Total</u>
Weekly Visit	1		52	52	\$90/hr	\$4,680.00

Weekly Visit		120	52	6,240	\$0.58/mile	\$3,619.20
SIU Training	4		4	4	\$90/hr	\$360.00
Training		120	1	120	\$0.58/mile	\$69.60
Weekly Calls From Examiners	1		52	52	\$90/hr	\$4,680
SIU Review of Surveillance Film	1		52	52	\$90/hr	\$4,680
<b>Total</b>						<b>\$18,019.20</b>

**Fee At Risk Arrangement:**

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

**COLA Adjustment:**

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

**Mileage Adjustment:**

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

## Appendix C

# HIPAA BUSINESS ASSOCIATE AGREEMENT

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This HIPAA Business Associate Agreement (“Agreement”) is made effective as of March 17, 2020, by and between SFMTA (“Covered Entity”), of City and County of San Francisco, and Passanisi Investigations, Inc. (“Business Associate”), of SFMTA (collectively, the “Parties”).

WHEREAS, Business Associate, in connection with its services, may maintain, transmit, create or receive data for or from Covered Entity that constitutes Protected Health Information (“PHI”);

WHEREAS, Covered Entity is or may be subject to the requirements of the Federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and related regulations;

WHEREAS, with respect to the foregoing, Business Associate is or may be subject to the requirements of HIPAA, HITECH and related regulations;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereby agree as follows:

### 1. Definitions.

**a. General.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Electronic Protected Health Information, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

### b. Specific.

**i. Business Associate.** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean Passanisi Investigations, Inc..

**ii. Covered Entity.** “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean SFMTA / CCSF.

**iii. Electronic Health Record.** “Electronic Health Record” shall have the same meaning as the term “electronic health record” in the HITECH Act, Section 13400.

- iv. HIPAA.** “HIPAA” collectively refers to the HIPAA Statute, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, the HITECH Act, and any associated Regulations, as such may be amended from time to time.

**2. Obligations and Activities of Business Associate.**

- a.** Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as required by law.
- b.** Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement.
- c.** Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware.
- d.** In accordance with 45 CFR 164.502(e)(1) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.
- e.** In accordance with 45 CFR 164.524, Business Associate agrees to make available PHI in a designated record set to the Covered Entity within two days of a request by Covered Entity for access to PHI about an individual. In the event that any individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within two days of receiving such request.
- f.** In accordance with 45 CFR 164.526, Business Associate agrees to make any amendment(s) to PHI in a designated record within two days of a request by Covered Entity. Business Associate shall provide such information to Covered Entity for amendment and incorporate any amendments in the PHI as required by 45 CFR 164.526. In the event a request for an amendment is delivered directly to Business Associate, Business Associate shall forward such request to Covered Entity within two days of receiving such request.
- g.** Except for disclosures of PHI by Business Associate that are excluded from the accounting obligation as set forth in 45 CFR 164.528 or regulations issued pursuant to HITECH, Business Associate shall record for each disclosure the information

required to be recorded by Covered Entities pursuant to 45 CFR 164.528. Within two days of notice by Covered Entity to Business Associate that it has received a request for an account of disclosures of PHI, Business Associate shall make available to Covered Entity, or if requested by Covered Entity, to the individual, the information required to be maintained pursuant to this Agreement. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward such request to Covered Entity within two days of receiving such request.

- h.** To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).
- i.** Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining compliance with HIPAA.

### **3. Permitted Uses and Disclosures by Business Associate**

- a.** Business Associate may use or disclose PHI for the following purposes:
- b.** Business Associate may only de-identify PHI if permitted by Covered Entity and in any event may only de-identify PHI in accordance with 45 CFR 164.514(a)-(c).
- c.** Business Associate may use or disclose PHI as required by law or where Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- d.** Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity except for the specific uses and disclosures set forth herein.

### **4. Permissible Requests by Covered Entity**

- a.** Except as otherwise permitted by this Agreement, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

### **5. Term and Termination**

- a. Term. The Term of this Agreement shall be effective as of March 17, 2020, and shall terminate on the date the business relationship, or any services agreements, between the Parties end or are terminated or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section.
- b. Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the breach or ended the violation within 30 days written notice. If it is determined by Covered Entity that cure is not possible, Covered Entity may immediately terminate this Agreement. The termination of this Agreement shall automatically terminate the business relationship and any services agreements between the Parties.
- c. Obligations of Business Associate Upon Termination. Upon termination of this Agreement, Business Associate shall either return or destroy all PHI that Business Associate still maintains in any form. Business Associate shall not retain any copies of such PHI. In the event Business Associate determines that returning or destroying the PHI is infeasible, the terms of this Agreement shall survive termination with respect to such PHI and limit further uses and disclosures of such PHI for so long as Business Associate maintains such PHI. In addition, Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI for as long as business associate retains the PHI.
- d. Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

## **6. General Provisions.**

- a. This agreement sets forth the entire understanding of the Parties. Any amendments must be in writing and signed by both Parties. This Agreement shall be construed under the laws of the State of California, without regard to conflict of law provisions. Any ambiguity in the terms of this Agreement shall be resolved to permit compliance with HIPAA. Any references in this Agreement to a section in HIPAA means the section as in effect or as may be amended. This Agreement may be modified or amended from time to time as is necessary for compliance with the requirements of HIPAA and other applicable law. Amendments must be made in writing and signed by the Parties. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement. The

terms of this Agreement are hereby incorporated into any service or business agreement that may be entered into between the Parties with the intent to form a business relationship. In the event of a conflict of terms between this Agreement and any such service or business agreement the terms of this Agreement shall prevail.

Signatures on following page.

  
Passanisi Investigations, Inc.  
By: Anthony Passanisi

IN WITNESS WHEREOF, I have hereunto set my hand to this HIPAA Business Associate Agreement as of the date set forth above.

Covered Entity

SFMTA / CCSF

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Business Associate

Passanisi Investigations, Inc.  
Title: President / CEO