



# SAN FRANCISCO HEALTH SERVICE SYSTEM

Affordable, Quality Benefits & Well-Being

## REQUEST FOR PROPOSALS FOR Actuarial and Consulting Services for the San Francisco Health Service System

RFPQ#HSS2018.04

CONTACT: Michael Visconti, michael.visconti@sfgov.org, (415) 554-1711

### **Background:**

The San Francisco Health Service System (SFHSS) executes all process phases related to benefit operations and administration of benefits for approximately 119,000 individuals, including both active and retired employees of the City and County of San Francisco, the San Francisco Unified School District, the Community College of San Francisco, and the San Francisco Superior Court, and their covered dependents (SFHSS Members). SFHSS has an annual benefits budget of over \$800 million.

The San Francisco Health Service System Board (Board) oversees the operations and administration of non-pension benefits (health, dental, vision, and other benefits that may be available to Members) by SFHSS pursuant to The City and County of San Francisco Charter §§ 12.200-12.203 and A8.420-A8.432, and San Francisco Administrative Code §§ 16.700-16.703.

**Anticipated Contract Term:** Three (3) years\*

**Anticipated Contract Budget:** \$2,300,000\*\*

**Submitted FY18/19 Budget:** \$759,914

\*SFHSS intends to include at least two (2) one (1) year options to extend the term.

\*\*Contract Budget is for the original three-year contract term.

### **Schedule:\***

RFP Issued	2/9/2018
Pre-Proposal Conference	2/21/2018
<b>Deadline for RFP Questions</b>	<b>3/2/2018 (2PM PT)</b>
RFP Answers Posted	3/9/2018
<b>Deadline for Proposals</b>	<b>3/23/2018 (2PM PT)</b>
Oral Interviews	4/16 – 4/20/2018
Notice of intent to award	4/30/2018
Contract begin date	7/1/2018

\*dates subject to change

See  
<http://sfhss.org/events/ActuarialRFP.html> for latest schedule.

### **Intent of this Request for Proposals (RFP):**

SFHSS seeks proposals from Respondents demonstrating successful experience providing actuarial and benefit consulting services to large, complex, public-sector clients. It is the intent of the San Francisco Health Service System to identify the most responsible and qualified Respondent and to negotiate a contract for the actuarial and health benefit consulting services described herein. However, no Respondent is guaranteed a contract. Services under this contract are to be provided exclusively for SFHSS, and no other City Department, unless pre-approved, in writing, by SFHSS.

All actuarial, auditing, consulting, and general services must be performed under the direct supervision of a lead actuary (Supervising Actuary) who carries the designation of a Fellow in the Society of Actuaries (FSA) or meets the American Academy of Actuaries qualification standards to be an FSA.

### **Subcontracting/Sub-consulting Requirement:**

The Local Business Enterprise (LBE) sub-consulting requirement for this Request For Proposals (RFP) and resulting contract has been waived. However, the City strongly encourages responses from qualified LBEs. Pursuant to Admin Code Chapter 14B. Rating bonuses will be in effect for any Respondents who are certified as a Small- or Micro-LBE.

### **RFP Questions and Communications:**

To ensure fair and equal access to information about this RFP, any and all communications must be directed to [michael.visconti@sfgov.org](mailto:michael.visconti@sfgov.org). Unauthorized communications may be cause for disqualification and rejection of Proposal(s). Questions must be in writing and received by the Deadline for RFP Questions. No questions will be accepted after this time with the exception of City vendor requirement questions. Answers to all RFP questions will be posted on the SFHSS website <http://sfhss.org>.

# 1. Introduction

## 1.1 Glossary of Terms

ACO	Accountable Care Organizations
ASO (Plan)	Self-funded 'Administrative Services Only' plan
CCD	The Community College of San Francisco (or San Francisco Community College District)
Charter	The Charter and Municipal Codes of the City, available at <a href="http://www.amlegal.com/codes/client/san-francisco_ca/">http://www.amlegal.com/codes/client/san-francisco_ca/</a>
City	The City and County of San Francisco, established by Charter in 1850, a legal subdivision of the State of California with the governmental powers of both a city and a county under California law, with powers exercised through a Board of Supervisors serving as the legislative authority, and a Mayor and other independent elected officials serving as the executive authority.
City Department	Any department or agency of the City (a list of City departments and agencies is available at <a href="http://sfgov.org/agencies-and-social-media">http://sfgov.org/agencies-and-social-media</a> ) including officers, managers, representatives, associated board members, and employees thereof.
CMS	Centers for Medicare and Medicaid Services (United States Department of Health and Human Services)
Deadline for Proposals	<b>2:00 PM PT, March 23, 2018.</b> Proposals submitted after this time will be considered non-responsive, and will not be evaluated or eligible for award of any subsequent contract(s).
Deadline for RFP Questions	<b>2:00 PM PT, March 2, 2018.</b> Questions submitted prior to this time, via e-mail, and addressed to the contact person listed in Section 3.1 will be accepted by SFHSS. Questions submitted after this time will not be considered.
DMO	Network-only dental plan
DPO	Dental Preferred Provider Organization
FSA	Flexible Spending Account
HMO	Health Maintenance Organization
HSB	The San Francisco Health Service System Board
MAPD	Medicare Advantage with Prescription Drug Benefit
Participating Employers	City and County of San Francisco, the San Francisco Unified School District, the Community College of San Francisco, and the San Francisco Superior Court.
Proposal	Submissions to SFHSS in responses to this RFP, packaged pursuant to Section 3.2., formatted pursuant to Section 3.3., and adhering to the provisions in Section 3.4., as well as, the terms and conditions of this RFP as a whole.
Respondent	Any entity submitting a proposal in response to this RFP and may be comprised of any combination of a

	members or firms. Experience and qualifications shall be evaluated based on the combined experience and qualifications of the Respondent.
San Francisco Sunshine Ordinance	San Francisco Administrative Code §67.24(e)
SFHSS	The San Francisco Health Service System
SFHSS Members	Active and retired employees of the City and County of San Francisco, the San Francisco Unified School District (USD), the San Francisco Community College District (CCD), the San Francisco Superior Court, and their covered dependents
Trust	The Health Service System Trust Fund, established under Charter Section 12.203.
USD	The San Francisco Unified School District

## 1.2 The San Francisco Health Service System

### 1.2.1 The San Francisco Health Service System.

SFHSS is dedicated to providing outstanding health and other employee benefits to SFHSS Members, preserving and improving sustainable, quality health benefits, enhancing the well-being of employees, retirees and their families, and adhering to the highest standards of customer service, including:

- Negotiating lower premiums and maintaining or expanding benefit offerings to SFHSS Members;
- Improving benefit and claims data, analytics, and transparency in an effort to mitigate rising health care and benefit costs;
- Enhancing existing performance guarantees and establishing new performance guarantees that reflect current industry standards and benefit administration best practices; and
- Improving overall member experience, in particular with respect to the fully-funded plan and flex-funded plan experiences, including ACOs, and with our ASO plan.

SFHSS actively pursues increased transparency into aggregate non-pension benefit spend while ensuring year-to-year cost increases remain below national averages. SFHSS does so without sacrificing the quality or extent of benefit coverage, or increasing deductibles and/or co-pay amounts for SFHSS Members. SFHSS provides a broad spectrum of benefit options and coverage levels, and stands at the forefront of current health care trends, including extensive fertility coverage and infertility treatment options, mental health treatment, and gender dysphoria services. In addition, SFHSS aims to meet or exceed the coverage offered by both large public-sector employers in California and nationwide, and private-sector employers, including those headquartered here in the San Francisco Bay Area.

### 1.2.2. SFHSS Member Population.

SFHSS currently administers non-pension benefits for approximately 119,000 individuals, which includes both active and retired employees of the City, USD, CCD, the San Francisco Superior Court, and their covered dependents. Non-pension benefits are comprised of health, dental and vision benefits, as well as certain

additional benefits made available to SFHSS Members. SFHSS has an annual benefits budget of over \$800 million for our SFHSS Member population.

**1.2.3. San Francisco Health Service System Board.**

The San Francisco Health Service System Board (Board) is dedicated to making available high quality and affordable medical, dental and vision care to its active and retired members and their covered dependents, applying benefits without special favor or privilege, and administering the Trust in accordance with the Charter and solely for the benefit of SFHSS Members. The Board oversees SFHSS, the department that administers non-pension benefits: health, dental, vision, and other benefits, such as life and disability insurance, which may be available to employees of the City, USD, CCD, the San Francisco Superior Court, and their covered dependents.<sup>1</sup>

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<sup>1</sup> Charter §§ 12.200-12.203 and A8.420-A8.432; Admin. Code §§ 16.700-16.703.

## 2. Scope of Work

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This scope of work is a guide to the work SFHSS expects to be performed by the selected Respondent. It is not a complete listing of all services that may be required. Selected Respondent (Contractor) will work closely with SFHSS staff, the Board, SFHSS auditors, and our benefit providers. All services are to be performed for the exclusive benefit of SFHSS, and not the City or any other City Department.

### 2.1 Actuarial and Consulting Services

Contractor will provide actuarial and consulting services on any technical, health benefit, financial, or administrative issues for SFHSS and the Board which may arise in connection with the administration of benefits for SFHSS Members, in relation to the Trust, or in SFHSS' regular course of business, as a City Department, including, but not limited to:

#### 2.1.1. Rates and Contributions.

- Calculate health insurance premium contribution amounts for Participating Employers and SFHSS Members in accordance with current SFHSS Policies (Appendix B, "Policies and Rates and Benefits Calendar") and other policies as may be adopted from time to time.
- Calculate annual rates for medical and dental plans in accordance with current SFHSS Policies and other policies as may be adopted from time to time.
- Calculate reserves for self-insured medical and dental plans.
- Calculate 10-County Survey amount in coordination with SFHSS.<sup>2</sup>
- Provide stop-loss recommendations for self-funded plans.
- Calculate Administrative Services Only (ASO) fees and components thereof.
- Provide benchmarking for medical, dental and vision plans and copays.
- Negotiate benefit plan renewals.
- Negotiate competitive rates with outside vendors.
- Review, adhere to, and update (as needed), the Rates and Benefits Calendar (see Appendix B).
- Prepare and present accurate and quality reports and recommendations to SFHSS Staff and the Board.

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<sup>2</sup> Under City Charter Section A8.423, the Board is required to conduct a survey of the ten counties in the State of California, other than the City and County of San Francisco, having the largest populations to determine the average contribution made by each such county toward the providing of health care plans, exclusive of dental or optical care, for each employee of such county. The Board is required to certify to the Board of Supervisors "the average contribution" as determined by the ten county survey.

- Conduct retrospective rate review and analysis of claims experience as part of the annual rate-setting process.
- Review vendor underwriting assumptions and rate setting methodology, and participate in the associated vendor renewal discussions.

**2.1.2. Audits and Reporting.**

- Conduct clinical and claims auditing and reporting, including the comprehensive assessment of claim handling and payments, plan management, and customer service.
- Evaluate and report on the non-Medicare claims experience.
- Conduct a stop-loss evaluation and provide recommendations, including an assessment of reinsurance for self-funded plans.
- Collaborate with SFHSS on risk score analyses.
- Support medical plan audits.
- Evaluate new benefit offerings including providing clinical analyses.

**2.1.3. Trust Fund and Reserves.**

- Perform professional actuarial, financial, and benefits expertise, analysis and recommendations for the Trust in accordance with the American Academy of Actuaries accepted actuarial practices.
- Calculate reserves for the ASO-PPO plan and the dental DPO plan in accordance with SFHSS Policies (see Appendix B).
- Calculate and report on reserves for IBNR, claims stabilization, and contingency for self-funded and flex-funded plans.
- Provide assistance with annual external audit(s) as requested by SFHSS.
- Assist SFHSS in preparation of annual Financial Statements and provide required documents to external auditor(s) including, but not limited to, minimum contingency reserve recommendations, the flex-funded employee medical and pharmacy estimated reserve, and estimated IBNR reserve.

**2.1.4. Delivery Systems, Clinical and Pharmacy Analysis. Review data, and make recommendations on delivery systems and alternatives, and clinical and pharmacy trends, including but not limited to:**

- Complementary and/or alternative health care delivery models;
- Rebates;
- Specialty Pharmacy;

- Cost reduction and Transparency;
- Opioid Use and Analysis;
- Non-opioid pain management; and
- Best/promising practices.

#### **2.1.5. Reporting.**

- Provide creditable/non-creditable annual disclosure to Centers for Medicare and Medicaid Services (CMS);
- Compliance support for IRS 1095-B and 1095-C minimum essential coverage reporting due to employees;
- Vendor renewal letters;
- Vendor confirmation letters;
- Letter to San Francisco Board of Supervisors from SFHSS and the Board; and
- Calculate and confirm Medicare Part D creditability.

## **2.2 Research, Consulting and Advisory Services**

### **2.2.1. Research and Consulting Services.**

- Contractor will appraise, evaluate, update, and, if deemed necessary by SFHSS and the Board, research and present to SFHSS and the Board current, pending, proposed, and forecasted legislation, regulations, codes, agency actions, industry trends and developments, including long and short-term cost-saving measures, as they relate to SFHSS Member benefits.
- Contractor will update SFHSS on federal and state requirements for plan materials and membership rules to ensure current and future legislative and regulatory compliance.
- Contractor will recommend benefit design changes that represent innovation and reflect best practices in the medical, vision, dental, and related benefit industries.
- Contractor will meet with SFHSS on a weekly basis as determined by SFHSS.
- Annual planning meetings will occur in addition to weekly meetings.
- Ad-hoc meeting may occur as determined by SFHSS.

### **2.2.3. SFHSS Policies.**

Contractor will evaluate current and proposed SFHSS Policies including, but not limited to:

- SFHSS Membership Rules;

- The San Francisco Health Service System Board Governance Manual;
- SFHSS Self-funded Plans' Stabilization Policy;
- SFHSS Self-funded Plan's Contingency Policy; and
- Board Education Policy.

Contractor will evaluate and propose new policies based on industry trends, best practices, and the SFHSS Member population. At the request of SFHSS, Contractor will prepare and present such policies to SFHSS and the Board for review and adoption.

#### **2.2.4. Benefit Materials and Open Enrollment.**

Contractor may assist in the review of benefit materials including, but not limited to, member-facing materials, Open Enrollment (OE) benefit materials, Summary of Benefit (SOB) materials, Evidence of Coverage (EOC) materials, Summary of Benefits and Coverage (SBC) materials, annual notices, vendor renewals, and vendor performance guarantees. Contractor will also evaluate and propose new benefit material language based on industry trends and best practices.

#### **2.2.5. Performance Guarantees.**

Contractor will evaluate current performance guarantee measures and fees at risk (as applicable) for agreements with vendors, and propose new and/or modified performance guarantee measures for future plan years, as applicable, in coordination with SFHSS and vendor partners.

#### **2.2.6. Advising the San Francisco Health Service System Board.**

Contractor will present advice and recommendations to the Board and SFHSS staff with respect to:

- SFHSS strategy, policies and procedures;
- Plans and benefit changes and proposed changes;
- Industry<sup>3</sup> trends, analysis and best practices;
- Cost saving measures;
- Annual actuarial certification; and
- Annual rate renewal results, including assumptions and methodologies.

Contractor may be asked to present to the Board on any of the aforementioned service areas or related topics. Examples of prior reporting to the Board are located on the SFHSS website at [http://www.sfhss.org/health\\_service\\_board/](http://www.sfhss.org/health_service_board/). Contractor will be accountable to the Board, as well as SFHSS administrative staff.

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<sup>3</sup> Industry scope shall include local/state/regional and national trends for both public sector employer plans and insurance markets and private employer plans and insurance markets.



Contractor will conduct new Board member orientations, as requested by SFHSS and the Board, and recommend to, present to, and educate the Board on key industry trends, changes and concepts.

**2.2.7. Union Negotiation Support.**

As requested by SFHSS, contractor will participate in and provide advice in City negotiations with labor organizations representing various subsets of the SFHSS Member population.

**2.2.8. Benefit Vendor Procurement.**

Contractor will lead and coordinate the procurement process(es) for any new benefit offering(s), as requested by SFHSS.

**2.2.9. Transition Plan.**

Contractor will create, and update, as required by SFHSS, a comprehensive plan for the transition of actuarial services from an incumbent service provider to an incoming actuarial firm.

## **2.3 Supervising Actuary**

Services will be directly supervised by an approved actuary:

- with at least ten (10) years of experience with health benefit services for public-sector employees;
- who carries the designation of a Fellow in the Society of Actuaries (FSA) or meets the American Academy of Actuaries qualification standards to be a FSA<sup>4</sup>;
- has at least five (5) years of experience providing testimony to legislative or administrative bodies; and
- is capable of discussing actuarial theory, actuarial assumptions and the basis thereof, and general accounting and actuarial subject matter, in a language easily understood by professionals without actuarial and/or accounting experience and/or education.

## **2.4 Location of Services**

Services will be delivered through in-person meetings, the telephone, online/web-ex platforms, written correspondence, and presentations to the Board in public meetings, closed session Board meetings (if requested), as well as Board subcommittee meetings.

## **2.5 SFHSS Plans and SFHSS Member Population**

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<sup>4</sup> The American Academy of Actuaries Qualification Standards are available at <http://www.actuary.org/qualstandards/qual.pdf>.

SFHSS currently administers benefits for approximately 119,000 members as follows:<sup>5</sup>

### **2.5.1. Health Benefits.**

Medical benefits are provided to SFHSS Members through the following plan choices:

- United Healthcare (UHC) City Health Plan and Medicare Advantage (Preferred Provider Organization (PPO))
- Kaiser Foundation Health Plan (Kaiser) (Fully insured HMO)
- Blue Shield of California (flex funded plan with fully insured, capitated, and self-insured components)

Each of the above plan choices includes a vision benefit provided through Vision Service Plan (VSP).

The City Health Plan, which includes medical and prescription drug benefits, is a self-insured indemnity plan, where the risk of loss due to claims in excess of revenues is borne by the Trust. The City Health Plan is administered by United HealthCare (UHC).

In 2013, SFHSS implemented the Employer Group Waiver Plan (EGWP) for retirees with Medicare as a fully-insured pharmacy plan. SFHSS discontinued the EGWP on December 31, 2016.

In 2016, UHC offered a fully-insured Medicare Advantage PPO for retirees with Medicare.

The Kaiser HMO is a fully-insured external HMO, where the risk of loss due to excess claims for a given fiscal year is borne by the HMO.

On January 1, 2013, the Blue Shield of California Plan was converted from a fully-insured external health maintenance plan into a flex-funded plan. The flex funded plan has a fully-insured capitated component for professional services provided in physician offices. Hospital and pharmacy services are self-insured, and the risk of loss due to such claims in excess of revenues is borne by the Trust.

In 2017, Medicare coverage offered through Blue Shield of California was eliminated as an option to SFHSS Members.

### **2.5.2. Dental Benefits.**

Dental benefits are provided through three plan choices:

- Delta Dental (PPO);
- Delta Care (PMI) (DMO); and
- United Healthcare Dental (formerly known as Pacific Union) (DMO).

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<sup>5</sup> Respondents will note that SFHSS benefit offerings may change from plan year to plan year.

The Delta Dental plan provided to active employees is a self-insured indemnity plan administered by Delta Dental. Similar to the City Health Plan, the risk of loss due to claims in excess of revenues is borne by the Participating Employers.

The Delta Dental plan offered to retired employees is a fully-insured plan where the risk of loss for a given fiscal year is borne by Delta Dental.

The Delta Care (PMI) and United Healthcare Dental (DMO) dental plans are managed-care dental plans and are fully insured with respect to both active and retired employees.

**2.5.3. Premium Rates.**

Premium rates for the fully-insured plans are set through periodic competitive solicitation of carriers and an annual negotiation process that includes participation of the SFHSS' independent actuary and consultants.

Premium rates for the self-insured plans are set based on recommendations and certification of such actuaries and consultants.

**2.5.4. Flexible Spending Accounts (FSAs).**

SFHSS offers two types of FSAs for all City employees: a health care reimbursement account and a dependent care reimbursement account. Most of the administration for these accounts is provided through P&A Group, a third party administrator. Fees are paid for by Participating Employers through SFHSS. P&A Group has been the administrator since 2016.

**2.5.5. Cafeteria Plan.**

SFHSS utilizes a third party administrator to provide most of the administration for a cafeteria plan offered to employees represented by the Municipal Executives Association, elected officials, and certain unrepresented employees. The fees of this administrator are paid for by Participating Employers through SFHSS. The Cafeteria Plan administrator is Employee Benefits Specialists, Inc.

**2.5.6. Long Term Disability (LTD).**

In addition, the City provides a LTD to most of its employees. All costs of the LTD plan are paid for by contributions from Participating Employers. The current plan provider is Aetna Life and Casualty.

**2.5.7. Term Life and Accident Insurance.**

The City also provides employer paid group term life insurance to most employee groups. Voluntary accidental death and personal loss insurance is offered to most employee groups and is paid for by SFHSS members. The current plan provider is Aetna Life and Casualty.

**2.5.8. Adoption and Surrogacy Assistance Plan.**

In 2017, SFHSS offered a new adoption and surrogacy assistance plan paid for by the Trust.

**2.5.8.** Expert Medical Case Review

Expert medical case review services, provided by Best Doctors beginning January 1, 2017, is paid by SFHSS Members and the City through the Trust.

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## 3. Response Requirements

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### 3.1 Submission of Proposals and Questions

#### 3.1.1. Submission Deadline.

Proposals and all related materials must be received by **2:00 PM PT on Friday, March 23, 2018 (Deadline for Proposals)**. Proposals must be delivered to the following address:

*Michael Visconti  
Manager, Contracts Administration  
San Francisco Health Service System  
1145 Market Street, Third Floor  
San Francisco, CA 94103*

Postmarks will not be considered in judging the timeliness of submissions. Proposals submitted by e-mail will not be accepted. Late submissions will not be considered, including those submitted late due to mail or delivery service failure.

#### 3.2.2. Respondent Questions and Deadline.

Respondents shall submit any questions regarding this RFP in writing by **2:00 PM PT on Friday, March 2, 2018 (Deadline for RFP Questions)**. Questions must be delivered by e-mail to the following address:

*Michael Visconti  
Manager, Contracts Administration  
michael.visconti@sfgov.org*

Respondents shall provide specific information to enable SFHSS to identify and respond to their questions. When submitting inquiries, please reference the **RFP for Actuarial and Consulting Services** in the subject line of the e-mail.

At its discretion, SFHSS may contact an inquiring Respondent to seek clarification regarding any inquiry received.

Any Respondent that fails to report a known or suspected problem with the RFP or fails to seek clarification or correction of the RFP, shall submit a proposal at their own risk.

SFHSS will publish answers to all submitted questions on Friday, March 9, 2018 to the SFHSS website <http://sfhss.org>.

### 3.2 Proposal Package

The following items must be included in your Proposal and packaged in a box or envelope clearly marked “**RFP for Actuarial and Consulting Services for the San Francisco Health Service System**”.

Complete, but concise Proposals, are recommended for ease of review by the Evaluation Panel. Proposals should provide a straightforward, concise description of the Respondent’s capabilities to satisfy the requirements of the RFP. Marketing and sales type information should be excluded. All parts, pages, figures, and tables should be numbered and clearly labeled.

**3.2.1. One (1) flash disk/drive or CD-ROM containing entire contents of Proposal.**

All files should be submitted in unprotected searchable PDF or Word format. Electronic files should include signatures, where applicable.

**3.2.2. Seven (7) complete printed copies of RFP Proposal.**

The pages may be bound by a method of the Respondent’s choosing.

### **3.3 Proposal Format**

To be eligible for evaluation, Proposals must adhere to the following format:

**3.3.1. Section 1: Cover Letter.**

Respondent shall identify the firm name; corporate structure including parent company and subsidiaries, if applicable; home office and branch office(s), if any, to be providing services; office locations; as well as the name, address, email and telephone number of a principal contact for information regarding the Proposal.

**3.3.2. Section 2: Table of Contents.**

Respondent shall list all materials included in the proposal, clearly identifying the relevant sections and page numbers of the Proposal and the corresponding section(s) of this RFP.

**3.3.3. Section 3: Executive Summary.**

- Respondent shall state its understanding that the Proposal, and all supporting materials, will be used by SFHSS to evaluate whether Respondent may be considered for the Services detailed herein.
- Respondent shall include a statement that its Proposal is a firm and irrevocable offer for one hundred and twenty (120) days following the date of submission to SFHSS of its Proposal.
- Respondent shall disclose whether any proposed services will be provided by Respondents personnel, including employees and/or consultants, located outside of California, and if so, the location and names of such the out-of-state personnel.
- Respondent shall disclose engagements where Respondent, or Respondent’s personnel, is/are currently acting in the capacity of actuaries or consultants to

any SFHSS health or benefit plan, vendor or a related group, including subsidiaries thereof or parent companies thereto.

- Respondent shall disclose engagements where Respondent, or Respondent's personnel, is/are currently acting in the capacity of actuaries or consultants to the City or any City Department.
- Respondent shall provide information on the circumstances and status of any non-routine investigation, examination, complaint, disciplinary action or other proceeding commenced by any current client, prior client, state or federal regulatory body, or professional organization over the past three (3) years to which Respondent was a party, either as the principal subject or as an enjoined party.
- Respondent shall provide detailed information about Respondent's background, the services it provides, including, but not limited to, its ownership structure, recent acquisitions or mergers, or any known future acquisitions or mergers.
- Respondent shall provide a detailed description of Respondent's overall approach to the services described in Section 2 (Scope of Work) – generally described in this RFP – as well as a timeline and/or calendar of services and key administrative or regulatory dates.
- Respondent shall provide a Transition Plan, as described in Section 2.2.9.
- Respondent shall discuss its approach to a transition plan, specifically the process for making the transition to another actuary if the contract is not renewed at some time in the future.

**3.3.4. Section 4: Supervising Actuary and Key Staff.**

- Respondent shall identify the Supervising Actuary responsible for overseeing the provision of the services in Section 2 (Scope of Work), and shall identify prospective support staff performing consequential and significant actuarial and/or benefit consulting services (Key Staff).
- Respondent shall detail its proposed account team structure, including staffing levels (non-actuarial/account management, actuarial, subject-matter experts, administrative support, executives/corporate), and proposed distribution of work. Please identify if Supervising Actuary or any Key Staff are classified as independent contractors.
- Respondent shall include business addresses, emails and telephone numbers for the Supervising Actuary and Key Staff. Supervising Actuary and Key Staff background information shall be provided in detail, including total accumulated years of experience, years working with Respondent, education, professional certification and accreditation, and special areas of expertise. Experience listed shall include entities for which services were performed, the type of services performed, the length of engagement, and size and complexity of plans worked on, e.g., annual spend, membership base, number and types of benefit plans. Particular emphasis should be placed on previous experience with large public-sector employers.

- Respondent shall disclose if Supervising Actuary and/or any Key Staff is/are currently acting in the capacity of actuaries or consultants for the City or any City Department(s).
- Respondent shall disclose if Supervising Actuary and/or any Key Staff, is/are currently acting in the capacity of actuaries or consultants to any SFHSS health or benefit plan, vendor or a related group, including subsidiaries thereof or parent companies thereto.

**3.3.5. Section 5: References.**

- For Supervising Actuary and Key Staff, Respondent shall provide a client list, with contact and phone number, for each client serviced during calendar years 2015, 2016, 2017, and year-to-date 2018. Such client list should include both public-sector and private-sector clients.
- Reference checks, including, but not limited to, prior clients, may be used to confirm Respondent prior clients and years of services.

**3.3.6. Section 6: Approach/Strategy to Services**

Using the services described in Section 2 (Scope of Work) and this RFP as a guide, describe Respondents approach to providing actuarial and consulting services to SFHSS including, but not limited to:

- Account management;
- Collaborative work with SFHSS vendors;
- Approach to engaging the Board and SFHSS personnel;
- Compliance including but limited to existing regulations, proposed legislation and industry trends;
- Cost-saving measures and transparency in benefit spend and plan design;
- Pre-Medicare (Early Retiree) and Medicare Retiree benefit design; and
- Clinical and non-clinical subject-matter expertise and consulting.

**3.3.7. Section 7: Pricing for Services.**

Respondent shall provide the following:

- An individual not-to-exceed price for services listed in Section 2 (Scope of Work) for the Anticipated Contract Term of three (3) years.
- An individual not-to-exceed price for services listed in Section 2 (Scope of Work) for FY18/19 (contract year one).
- An individual not-to-exceed price should SFHSS exercise its option to extend the contract one (1) year for a total Contract Term of four (4) years.



- An individual not-to-exceed price should SFHSS exercise both its first option to extend the contract one (1) year and its second option to extend the contract one (1) year for a total Contact Term of five (5) years.
- If incidental costs are included in the not-to-exceed prices, such costs shall be clearly identified and segregated from actual engagement related costs.
- Respondent shall provide hourly rates for Supervising Actuary, Key Staff, and any billable support staff performing consequential and significant services, including, but not limited to, non-actuarial staff, account management, actuarial, subject-matter experts, administrative support, and executives.

**3.3.8. Section 8: Contract Form and Specifications.**

Appendix C contains the general form and content of the contract SFHSS anticipates using for the agreement with the selected Respondent (Contractor). Appendix D hereto is the general form and content SFHSS anticipates using for the Business Associates Agreement (BAA).

- In submitting a Proposal, the Respondent will be deemed to have reviewed each clause in Appendix C and Appendix D. Respondent’s Proposal shall identify any objection(s) and/or inclusion(s) to the terms and conditions of Appendix C and Appendix D, set forth the basis for the objection(s) and/or inclusion(s), and provides substitute language to make the clause(s) acceptable to Respondent or to address an issue Respondent feels is not addressed by Appendix C and Appendix D.
- Respondent shall address limitation of liability for services performed by the Respondent through affirmative response that no such limitations of liability will be imposed, or by responding that limitation of liability shall apply and providing proposed contract language.
- Respondent shall provide evidence of review by legal counsel in its Proposal. SFHSS reserves the right to add or delete language from Appendix C and Appendix D when preparing the final form of the contract.
- Respondent shall provide in its Proposal the amount of insurance coverage carried as defined in Appendix C, Article 5 (Insurance and Indemnity).
- Performance Guarantees. Respondent shall include in their proposal performance guarantees (PGs) that Respondent feels are most pertinent to the services solicited in this RFP and the terms and conditions of Appendix C and Appendix D. Please provide performance guarantees in the following format:

Type of Performance Guarantee	Measurement Period	Service Objective	Liquidated Damages/Fees At Risk

**3.4 Proposal Provisions**

### 3.4.1. Disposition of Proposals, Public Disclosure and Confidentiality.

Public Disclosure. Upon opening, all Proposals to this RFP shall become the exclusive property of SFHSS, and may be subject to public disclosure pursuant to the San Francisco Sunshine Ordinance (San Francisco Administrative Code §67.24(e)). In accordance with San Francisco Sunshine Ordinance, contracts, contractors' bids, responses to requests for proposals and all other records of communications between the San Francisco Health Service System Board, the officers and employees of the San Francisco Health Service System, members of the Evaluation Panel, and persons or firms seeking contracts, including but not limited to respondents, prospective bidders, and incumbent providers of actuarial services or consulting services, shall be open to inspection immediately after a contract has been awarded. Nothing in this request for proposals requires the disclosure of the net worth of a private person or organization or other proprietary financial data submitted for qualification for a contract or other benefit until, and unless, that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

Confidentiality. If a Respondent believes that any portion of its Proposal is exempt from public disclosure under the San Francisco Sunshine Ordinance, such portion may be marked "CONFIDENTIAL". SFHSS and the Board will deny public disclosure of any portions so designated. The submittal of a Proposal with portions marked CONFIDENTIAL shall constitute the Respondent's agreement, in consideration for SFHSS' willingness to receive such response, to reimburse SFHSS for, and to indemnify, defend, and hold harmless SFHSS, the Board, the City and County of San Francisco, its officers, fiduciaries, employees, and agents from and against: (a) any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses including, without limitation, attorneys' fees, expenses and court costs of any nature whatsoever (collectively, "Claims") arising from or relating to SFHSS' nondisclosure of any such designated portions of a Proposal; and (b) any and all Claims arising from or relating to SFHSS' public disclosure of any such designated portions of a Proposal if disclosure is deemed required by law or by court order.

### 3.4.2. Approval by the Board.

Be advised, for any Respondent recommended by the Evaluation Panel to be presented to the Board for approval, pursuant to the Board's Governance Manual<sup>6</sup>, such recommendation will appear on a publicly posted agenda for a public meeting of the Board, and any response or approval will be in the public record.

### 3.4.3. Conflict of Interest.

SFHSS cautions Respondents that the California Government Code Section 1090 conflict of interest prohibition pertaining to public officials and government employees has been interpreted to prohibit some independent contractors from being financially interested in any contract that they help create. It is the sole

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<sup>6</sup> The Board Governance Manual provisions regarding the Service Provider and Vendor Selection Policy states that, "[t]he role of the Board with respect to the selection of service providers is to... c) Approve the award of a contract with the following primary service providers: i) Actuary[ ]".

responsibility of each Respondent, and their employees/contractors, to determine whether they may have such a conflict of interest exists in regard to this RFP.

Respondent, and staff, will be required to agree to comply fully with and be bound by the applicable provisions of state and local laws related to conflicts of interest, including Section 15.103 of the City's Charter, Article III (Conduct of Government Officials and Employees), Chapter 2 (Conflict of Interest and Other Prohibited Activities) of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California. Respondent, Supervising Actuary, and Key Staff will be required to acknowledge that it is familiar with these laws; certify that it does not know of any facts that constitute a violation of said provisions; and agree to immediately notify the City if it becomes aware of any such potential conflicts during the term of the Agreement.

Individuals who will perform work for SFHSS on behalf of Respondent might be deemed Contractors under state and local conflict of interest laws. If so, such individuals will be required to submit a Statement of Economic Interests, California Fair Political Practices Commission Form 700, to the City within ten calendar days of the City notifying the successful Respondent that the City has selected Respondent.

#### **3.4.4. Cancelation.**

Should Respondent wish to cancel, revise, or rescind its Proposal, a written letter so stating must be received by SFHSS before the Deadline for Proposals.

Should respondent wish to revise a Proposal, the revised Proposal must be received before the Deadline for Proposals.

In no case will a statement of intent to submit a revised Proposal, or commencement of a revision process, extend the Deadline for Proposals for any Respondent.

At any time during the Proposal evaluation process, SFHSS may require a Respondent to provide oral or written clarification regarding its Proposal. Nonetheless, SFHSS reserves the right to make an award without further clarifications of Proposals received.

#### **3.4.5. Validity of Response.**

Any Proposal must remain valid for a period of not less than one hundred and twenty (120) days from the date of submission. This includes pricing, as well as the proposed staffing assignments of the Supervising Actuary and Key Staff.

#### **3.4.6. Expenses.**

There is no expressed or implied obligation for SFHSS to reimburse any Respondent for expenses incurred in preparing their Proposals. Such costs, if applicable, should not be included in the Response. SFHSS reserves the right to retain the Response and use any information or ideas contained therein.

#### **3.4.7. Communications.**

Respondents will direct all communications, in writing, to:

*Michael Visconti*  
*Manager, Contracts Administration*  
*San Francisco Health Service System*  
*Email: [michael.visconti@sfgov.org](mailto:michael.visconti@sfgov.org)*

Respondents are precluded from contacting other SFHSS staff, the Board, members of the Evaluation Board, and/or other City and County of San Francisco staff regarding the RFP or the Proposals.

**3.4.8. Rejection of Proposal.**

At its sole discretion, SFHSS reserves the right to reject any Response for reasons including, but not limited to:

- Failure to respond in the format required, both in content and sequence;
- Failure to submit the response by the specified deadline;
- Failure to answer any question in this RFP;
- Failure to meet a qualification or requirement;
- False or misleading statements; and/or
- Any other reason which, in SFHSS' opinion, the response fails to meet the conditions and requirements of this Request for Proposal, including, but not limited to a violation of Section 3.4.3 (Conflict of Interest), Section 3.4.8 (Communications) or Section 3.4.11. (Campaign Reform Ordinance).

**3.4.9. No Offer to Contract.**

Issuance of this RFP in no way constitutes a commitment by SFHSS, the Board, or the City, to award a contract. SFHSS reserves the right to reject any or all Proposals received. Acceptance of a Proposal neither commits SFHSS to award a contract to any Respondent, even if all requirements stated in this RFP are met, nor limits our right to negotiate in our best interest. SFHSS reserves the right to contract with a vendor for reasons other than lowest price.

**3.4.10. Objections to the RFP Terms.**

Should a Respondent, including a prospective Respondent, object on any ground to any provision or legal requirement set forth in this RFP, Respondent must, not more than twenty (20) calendar days before the Deadline for Proposals, provide written notice to SFHSS setting forth with specificity the grounds for the objection(s). The failure of a Respondent to object within the time allowed, and in the manner set forth in this paragraph, shall constitute a complete and irrevocable waiver of any such objection(s).

**3.4.11. Campaign Reform Ordinance.**

Respondents must comply with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which states:

No person who contracts with the City and County of San Francisco for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and the later of either (1) the termination of negotiations for such contract, or (2) three months have elapsed from the date the contract is approved by the City elective officer or the board on which that City elective officer serves.

If a Respondent is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period Respondent is prohibited from making contributions to:

- The officer's re-election campaign;
- A candidate for that officer's office; and/or
- A committee controlled by the officer or candidate.

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any City officer or employee about a particular contract, or a City officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (1) a vendor contacts a City officer or employee to promote himself or herself as a candidate for a contract; and (2) a City officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information about a particular contract, requests for documents relating to this RFP, and requests to be placed on a mailing list do not constitute negotiations.

Violation of Section 1.126 may result in the following criminal, civil, or administrative penalties:

- *Criminal.* Any person who knowingly or willfully violates Section 1.126 is subject to a fine of up to \$5,000 and a jail term of not more than six months, or both.
- *Civil.* Any person who intentionally or negligently violates Section 1.126 may be held liable in a civil action brought by the civil prosecutor for an amount up to \$5,000.
- *Administrative.* Any person who intentionally or negligently violates Section 1.126 may be held liable in an administrative proceeding before the Ethics Commission held pursuant to the Charter for an amount up to \$5,000 for each violation.

For further information, Respondents should contact the San Francisco Ethics Commission at (415) 581-2300.

### **3.4.12. Reservations of Rights by the City.**

The issuance of this RFP does not constitute an agreement by SFHSS, the Board, or the City that any contract will actually be entered into. SFHSS expressly reserves the right at any time to:

- Waive or correct any defect or informality in any response, proposal, or proposal procedure;
- Reject any or all Proposals;
- Reissue a Request for Proposals, Request for Qualifications or similar procurement;
- Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFP, or the requirements for contents or format of the proposals;
- Procure any services specified in this RFP by any other means; or
- Determine that no contract will be pursued.

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## 4. Evaluation Criteria

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This section describes the guidelines used for analyzing and evaluating Responses. SFHSS intends to select, and for the Board to approve, a Respondent that provides the best overall qualifications, inclusive of fee considerations. This RFP does not in any way limit SFHSS' right to solicit contracts for similar or identical services if, in the sole and absolute discretion of SFHSS, it determines the responses received are inadequate to satisfy its needs.

### 4.1 Evaluation Team

City representatives will serve as the Evaluation Team responsible for evaluating Respondents, rating of each and every Proposal, conducting reference checks for every Respondent, and selecting at least three (3) Respondents to be present before the Evaluation Team at in-person Oral Interviews.

### 4.2 Minimum Qualifications

Any Response that does not demonstrate that the Respondent meets these minimum qualifications by the Deadline for Proposals will be considered non-responsive, and will not be evaluated or eligible for award of any subsequent contract(s).

#### 4.2.1. Complete Response.

Respondent has submitted a Proposal for delivering services and deliverables outlined in this RFP, including but not limited to Section 2 (Scope of Work).

#### 4.2.2. Skills and Experience.

Respondent, including the Supervising Actuary and Key Staff, must have the following skills and experience:

- The Supervising Actuary must meet the standards listed in Section 2.3 (Supervising Actuary).
- The Supervising Actuary must have significant experience preparing actuarial valuations and consulting services for large group (50,000 members or greater) public-sector health benefit administrators with demonstrated knowledge of how premium rates are constructed.
- The Supervising Actuary must have performed actuarial services for the most recent three (3) consecutive years for two public sector benefit administrators, each with at least \$500 million in annual benefit spend and at least 50,000 members, including active employees, retirees and/or dependents.
- Supervising Actuary and Key Staff must have experience with analysis of demographic enrollment data to perform simulated risk adjustment analysis.

- Supervising Actuary and Key Staff must have experience with actuarial approach to benefit plan design analysis, development and evaluation for plans, including vision and dental plans.
- Supervising Actuary and Key Staff must have substantial knowledge of actuarial methods and techniques as applied to health insurance premium development and analysis.

### **4.3. Desired Qualifications**

SFHSS is seeking Respondents with the following desirable skills:

- Knowledge and experience with California health insurance markets, especially large group markets, and National health insurance markets, including both large public and large private employer markets.
- Ability to model different health and dental benefit plan designs, and to advise on cost-effective benefit plan design features without sacrificing coverage.
- Knowledge of and experience with reserve policies.
- Strong ability to communicate actuarial analyses, methods as applied to proposed premium analysis to staff in lay terms.
- Ability to coordinate SFHSS vendors on highly complex, interrelated technical projects that involve data used to support actuarial analyses.

### **4.4. Reassignment of Personnel following Award**

#### **4.4.1 Consent to Reassign Personnel.**

Contractor shall not reassign personnel assigned to the contract during the term of the contract without prior notification to SFHSS and the Board. If Contractor personnel is unable to perform duties due to illness, resignation, or other factors beyond Contractor's control, Contractor shall make every reasonable effort to provide suitable substitute personnel for review and approval by SFHSS (see 4.4.2 Substitute Personnel below).

#### **4.4.2 Substitute Personnel.**

Contractor shall coordinate with SFHSS regarding the selection of Substitute Personnel including, but not limited to in-person interviews with proposed Substitute Personnel. Substitute Personnel shall not automatically receive the hourly rate of the individual or position being replaced. SFHSS and Contractor shall negotiate the hourly rate of any substitute personnel into the contract. The hourly rate negotiated shall depend, in part, upon the experience and individual skills of the proposed substitute personnel. The negotiated rate cannot exceed the hourly rate stated in the contract.

#### **4.4.3. Removal of Personnel.**



SFHSS reserves the right to request Contractor personnel be removed from performing any services upon written notice to the Contractor including, but not limited to, for actual or perceived conflict(s) of interest. If Contractor personnel is removed, Contractor shall assign Substitute Personnel.

## 4.5. Evaluation Criteria

### 4.5.1. Proposals - Allocation of Points.

Proposals will be weighted by the Evaluation Panel as follows:

Category	Section(s)	Points
Cover Letter, Table of Contents and Executive Summary	1, 2, and 3	45
Supervising Actuary, Key Staff, Relevant Experience, Qualifications, and References	4 and 5	60
Project Approach	6	105
Pricing for Services	7	60
Contract Form and Specifications	8	30
	<b>Total:</b>	<b>300 points</b>

### 4.5.2. Selection for Oral Interviews.

Following the evaluation of the Proposals by the Evaluation Panel, SFHSS will notify Respondents of proposal ranking, and up to three (3) eligible Respondents receiving the highest scores will be invited to an oral interview.

In the event of a tie for the third place position, SFHSS may invite all tied Respondents, even if it results in more than three (3) Respondents being invited to the oral interview.

SFHSS reserves the right to select a Respondent without conducting oral interviews.

### 4.5.3. Oral Interviews.

Oral Interviews will be conducted at the San Francisco Health Service System, 1145 Market Street, 3rd Floor, San Francisco, California 94103 on or about the week of April 16 through April 20, 2018.

At least one (1) week prior to the Oral Interviews, Respondent will email the SFHSS Manager of Contracts Administration at [michael.visconti@sfgov.org](mailto:michael.visconti@sfgov.org) with the list of Respondent Personnel scheduled to be present at the Oral Interviews (Respondent Team).

SFHSS requests that at the Respondent Team be comprised of the Supervising Actuary, at least one member of the Key Staff (actuarial or non-actuarial), at least one clinical subject-matter expert and at least one regulatory compliance subject-matter expert, but should not exceed six (6) individuals.

- Respondents will prepare a brief presentation and introduce Respondent Team (5 minutes).

- There will be a problem solving or situational activity where the Respondent Team will be given a problem or situation and will then have ten (10) minutes to develop a strategy, options or approach to addressing the problem or situation.
- The Evaluation Panel will remain in the oral interview room during each ten (10) minute problem solving exercise to observe how the Respondent Team approaches problem solving, or the situational activity, and how the Respondent team works collaboratively and assigns roles and responsibilities.
- The Respondent Team will then have ten (10) minutes to present its solution to the evaluation panel.
- There will be up to three (3) problems or situations given to each Respondent Team.
- Each team will be given the same problems.
- After the first problem solution is presented, the Respondent Team will be given the next problem and the process will be repeated until all problems have been analyzed and the Respondent Team has presented its solutions to the Evaluation Panel.
- Following the problem solving and/or situational activities, the Respondent Team will have up to five (5) minutes to present a presentation wrap-up.
- SFHSS' Chief Financial Officer (CFO) will be made available to each Respondent Team during the ten (10) minute strategy sessions and may be called upon by the Respondent team to answer general questions or supply information, however, the SFHSS CFO cannot lead the discussion or offer suggestions for the response.
- The Manager for Contracts Administration for SFHSS will moderate and time the proceedings.

#### 4.5.4. Oral Interviews - Allocation of Points.

Each member of the Evaluation Panel will individually evaluate and assign rating points to the Oral Interview using the following evaluation criteria.

<b>Criteria</b>	<b>Points</b>
<u>Approach to Problem Solving:</u>  Respondent Team's approach to understanding a problem and methodology of developing a solution.	75
<u>Communication and Collaboration:</u>  How clearly the Respondent Team communicates with one another and how well the team works together in a collaborative way to solve problems.	75
<u>Subject-Matter and Management Expertise:</u>	100

Each Respondent Team member's technical and/or management expertise and strengths.	
Opening and Closing Presentation	50
<b>Total:</b>	<b>300</b>

Following the Oral Interview, SFHSS will combine the scores achieved from the Proposal and the Oral Interview for each Respondent selected to participated in the Oral Interviews to determine the final rankings.

## 4.6. Schedule

### 4.6.1. Pre-proposal Conference.

A Pre-Proposal conference will be held on Wednesday, February 21, 2018 at 10:00 AM PT at the San Francisco Health Service System, 1145 Market Street, 3rd Floor, San Francisco, California 94103. The conference will be held to answer questions or requests for clarification on any items in the RFP.

### 4.6.2. Deadline for RFP Questions.

All written questions and requests for information/clarifications must be received by 2:00 PM PT on Friday, March 2, 2018. Written responses will be available as an addendum to this RFP, posted on the San Francisco Health Service System website <http://sfhss.org>.

Requests for information/clarification and questions shall be in writing and submitted via email **only**. The email subject line shall include, at a minimum, "RFP for Actuarial and Consulting Services".

Submit all correspondence to:

*Michael Visconti*  
 Manager, Contracts Administration  
 San Francisco Health Service System  
 Email: [michael.visconti@sfgov.org](mailto:michael.visconti@sfgov.org)

### 4.6.3. Deadline for Proposals.

Proposals must be delivered to and received by the Manager for Contracts Administration for the San Francisco Health Service System before **2:00 PM PT, Friday, March 23, 2018**.

Proposals shall be delivered to:

*Michael Visconti*  
 Manager, Contracts Administration  
 San Francisco Health Service System  
 1145 Market Street, Third Floor  
 San Francisco, CA 94103

**SFHSS WILL REJECT UNTIMELY RESPONSES AND PROPOSALS NOT DELIVERED TO THE CORRECT ADDRESS.**

POSTMARKS WILL NOT BE CONSIDERED IN JUDGING TIMELINESS OF SUBMISSIONS.

**4.6.4. Notice of intent to award.**

SFHSS will announce its intent to award following review of the Oral Interviews on or about Monday, April 30, 2018. SFHSS will present its intent to award to the highest-ranked Respondent to the Board for approval pursuant to the HSB Governance Manual.

**4.6.5. Award and Approval.**

SFHSS intends to award this Contract to the highest-ranked Respondent which SFHSS determines will provide the best overall actuarial and consulting services.

SFHSS reserves the right to accept other than the highest scored Respondent, and to reject any proposals that are not responsive to this request.

Following the completion of the RFP evaluation process, and notification to the Respondents of the final ranking, SFHSS will commence contract negotiations with the highest-ranked Respondent. The selection of any Proposal shall not imply acceptance by SFHSS of all terms of the proposal, which may be subject to further negotiations and approvals before SFHSS may be legally bound. If SFHSS is unable to negotiate a satisfactory contract with the highest-ranked Respondent within a reasonable time, SFHSS, in its sole discretion, may terminate negotiations with the highest ranked Respondent and begin contract negotiations with the next highest ranked Respondent, following approval by the Board pursuant to the HSB Governance Manual.

Upon successful contract negotiations, SFHSS will submit to the Board the agreement for actuarial and consulting services. Notwithstanding, SFHSS reserves the right to reject all Proposals without incurring any liability to any Respondent.

**4.7. Other Terms and Conditions**

4.7.1. The selection of any Respondent for contract negotiations shall not imply acceptance by SFHSS of all terms of the response, which may be subject to further negotiation and approvals before SFHSS may be legally bound thereby.

4.7.2. Respondents agree to become an approved city vendor within (10) days of award. Vendors can apply without having a SF City Vendor ID (see <http://sfgov.org/oca/qualify-do-business>).

4.7.3. Respondents agree to meet the applicable terms of the City-approved service contract (Appendix C) and the Business Associates Agreement (Appendix D). If a satisfactory contract cannot be negotiated in a reasonable time with the selected Respondent, then the City and HSS, in its sole discretion, may terminate negotiations and begin contract negotiations with any other remaining Respondents, or reissue a subsequent RFP, a Request for Quote, a Request for Qualifications, or a mini-RFP, or it may determine that the project will not be pursued.

**4.8. Protest Procedures**

**4.8.1. Protest of Non-Responsiveness Determination.**

Within five (5) working days of SFHSS' issuance of a notice of non-responsiveness, any Respondent that has submitted a Proposal and believes that SFHSS has incorrectly determined that its proposal is non-responsive may submit a written notice of protest. Such notice of protest must be received by SFHSS on or before the fifth working day following SFHSS' issuance of the notice of non-responsiveness. The notice of protest must include a written statement specifying in detail each and every ground asserted for the protest. The protest must be signed by an individual authorized to represent Respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify all facts and evidence that would support and/or justify the protest.

**4.8.2. Protest of Contract Award.**

Within five (5) working days of approval by the Board contract, any firm that has submitted a responsive proposal and believes that SFHSS has incorrectly selected another Respondent for award may submit a written notice of protest. Such notice of protest must be received by SFHSS on or before the fifth working day after approval by the Board.

The notice of protest must include a written statement specifying in detail each and every one of the grounds asserted for the protest. The protest must be signed by an individual authorized to represent Respondent, and must cite the law, rule, local ordinance, procedure or RFP provision on which the protest is based. In addition, the protestor must specify all facts and evidence that would support and/or justify the protest.

**4.8.3. Delivery of Protests.**

Respondents are responsible for delivery to, and confirm receipt by, SFHSS of any protest by the deadlines specified in Section 4.8 (Protest Procedures). If a protest is mailed, the protesting Respondent bears the risk of non-delivery within the deadlines specified herein. Protests should be transmitted by a means that will objectively establish the date SFHSS received the protest. Protests or notice of protests made orally, e.g., by telephone, will not be considered.

Protests must be delivered to:

*Michael Visconti  
Manager, Contracts Administration  
San Francisco Health Service System  
1145 Market Street, 3rd Floor  
San Francisco, CA 94103*

## Appendix A

### Proposal Outline

#### Actuarial and Consulting Services for the San Francisco Health Service System

**1) Does Respondent meet the qualifications listed in Section 4.2 (Minimum Qualifications):**

Put an "X" next to one:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

**2) Does Respondent meet the qualifications listed in Section 4.3 (Desired Qualifications):**

Put an "X" next to one:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

**3) Respondent certifies to become an approved city Contractor within ten (10) days post award:**

Put an "X" next to one:

Yes: \_\_\_\_\_ No: \_\_\_\_\_

Respondents are not required to have an SF City Contractor ID (Vendor ID) at the time of bid. Find out how to become a SF City Contractor at <http://sfgov.org/oca/qualify-do-business>.

**4) Respondent certifies that it has read, understands, and agrees to all terms, conditions, and specifications set forth in the Request for Proposal, including all appendices and addenda:**

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Date

Title:

Company/Organization:

#### Contact, Tax & Contractor Information Page

**a) Company/Organization:**

- Name:
- Address:
  - Physical:
  - Website:
- Federal Tax ID:
- SF City Contractor ID:

**b) Primary Contact:**

- Name:
- Email:
- Telephone:

## Appendix B

### SFHSS Policies and Rates and Benefits Calendar

#### B.1. SFHSS Policies

The following SFHSS Policies are listed at <http://sfhss.org/events/ActuarialRFP.html>.

B.1.1. Contingency Reserve Policy and Methodology

B.1.2. Governance Manual (San Francisco Health Service System Board)

B.1.3. IBNR Reserve Policy and Methodology

B.1.4. Self-Funded Plans' Stabilization Policy

B.1.5. SFHSS Strategic Plan

B.1.6. Plan information and member-facing materials for the 2018 plan year are located on the SFHSS Website at <http://sfhss.org>.

#### B.2. 2017 Rates and Benefits Calendar for Plan Year 2018

Meeting Date	Topics to be Addressed or Outcomes to be Achieved
February 9, 2017 1:00 pm Room 416, City Hall	<ul style="list-style-type: none"> <li>• Black out Notice – Rates and Benefits</li> <li>• City Plan: Administrative fees</li> <li>• City Plan               <ul style="list-style-type: none"> <li>○ Review of claims experience</li> <li>○ Review of Stabilization Reserve</li> </ul> </li> <li>• Copay benchmarking</li> </ul>
March 9, 2017 1:00 pm Room 416, City Hall	<ul style="list-style-type: none"> <li>• Presentation of 10-County amount</li> <li>• Stop loss recommendation for self-funded plans</li> <li>• Blue Shield Flex-Funded Non-Medicare review of claims experience, benefit design</li> <li>• Blue Shield Claims Stabilization Reserve</li> </ul>
April 13, 2017 1:00 pm Room 416, City Hall	<ul style="list-style-type: none"> <li>• Risk scores</li> <li>• Vision buy-up option</li> <li>• Aetna renewal</li> <li>• Dental renewal</li> <li>• Kaiser multi-region plan</li> <li>• Gender Dysphoria</li> <li>• Healthcare Value Initiative (“HVI”)</li> <li>• SimpleTherapy personalized pain recovery</li> </ul>

<p>May 11, 2017 1:00 pm Room 416, City Hall</p>	<ul style="list-style-type: none"> <li>• Kaiser Permanente actives/early retirees: review of claims experience, approve premium contributions for 2018</li> <li>• Blue Shield Flex-Funded Non-Medicare: approve benefits and premium contributions for 2018</li> <li>• City Plan actives and early retirees (self-insured): approve benefits and premium contributions for 2018</li> <li>• VSP rate confirmation and buy-up option</li> <li>• Best Doctors YTD report and renewal</li> <li>• Kaiser multi-region plan</li> </ul>
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<p>June 8, 2017 1:00 pm Room 416, City Hall</p>	<ul style="list-style-type: none"> <li>• VSP rate confirmation – frame allowance</li> <li>• UHC (City Plan) employee and early retiree rates and premium contributions for 2018</li> <li>• UHC Medicare Advantage (fully-insured) retiree rates and premium contributions for 2018</li> <li>• Kaiser Permanente Senior Advantage fully-insured retiree rates and premium contributions for 2018</li> <li>• Dental renewal</li> <li>• Kaiser Permanente multi-region plan approval</li> </ul>
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**END OF RATES AND BENEFITS PROCESS**

**Board of Supervisors (“BOS”) Schedule for 2018 Rates and Benefits**

June 20, 2017 – 2018 Rates package introduced by Supervisor Farrell to BOS and assigned to Budget and Finance Committee

June 29, 2017 – BOS Budget and Finance Committee review of rates package

July 11, 2017 – First reading by full BOS

July 18, 2017 – Second reading by full BOS



**Appendix C – Agreement**

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division  
City Hall, Room 430  
1 Dr. Carlton B. Goodlett Place  
San Francisco, California 94102-4685**

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

**[Vendor]**

This Agreement is made this [day] day of [month], [year], in the City and County of San Francisco, State of California, by and between [Vendor name and address] (“Contractor”) and City.

**Recitals**

WHEREAS, the San Francisco Health Service System (“Department”) wishes to obtain actuarial and consulting services; and,

WHEREAS, a Request for Proposals (“RFP”) was issued on [date], and City selected Contractor pursuant to the RFP; and

WHEREAS, there is no Local Business Entity (“LBE”) subcontracting participation requirement for this Agreement; and

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

WHEREAS, approval for this Agreement was obtained when the Civil Service Commission approved Contract number 42585-15/16 on June 6, 2016;

Now, THEREFORE, the parties agree as follows:

**Article 1 Definitions**

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements which are specifically incorporated into this Agreement by reference as provided herein.

1.2 "City" or "the City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director’s designated agent, hereinafter referred to as “Purchasing” and “San Francisco Health Service System.”

1.3 "CMD" means the Contract Monitoring Division of the City.

1.4 "Contractor" or "Consultant" means [Vendor name and address].

1.5 "Deliverables" means Contractor's work product resulting from the Services that are 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.

1.6 "Effective Date" means the date upon which the City's Controller certifies the availability of funds for this Agreement as provided in Section 3.1.

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

1.8 "Party" and "Parties" mean the City and Contractor either collectively or individually.

1.9 "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 shall commence on the latter of: (i) [Vendor start date]; or (ii) the Effective Date and expire on [expiration date], unless earlier terminated as otherwise provided herein.

2.2 The City has [two (2) options] options to renew the Agreement for a period of [one year] each. The City may extend this Agreement beyond the expiration date by exercising an option at the City's sole and absolute discretion and by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement."

## **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, 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 City on a monthly basis for Services completed in the immediate 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 the San Francisco Health Service System, in his or her sole discretion, concludes has been satisfactorily performed. Payment shall be made within 30 calendar 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 exceed \$####,### (whole dollar amount). The breakdown of charges associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein. 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 San Francisco Health Service System 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 Controller and City, and must include a unique invoice number. Payment shall be made by City to Contractor at the address specified in Section 11.1, "Notices to the Parties," or in such alternate manner as the Parties have mutually agreed upon in writing.

3.3.5 **Reserved. (“LBE Payment and Utilization Tracking System”)**

3.3.6 **Getting paid for goods and/or services from the City.**

(a) All City vendors receiving new contracts, contract renewals, or contract extensions must sign up to receive electronic payments through Paymode-X, the City's third party service that provides Automated Clearing House (ACH) payments. 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.

**Article 4 Services and Resources**

4.1 **Services Contractor Agrees to Perform.** Contractor agrees to perform the Services provided for 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 utilize 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: / Contractor will not employ subcontractors.]

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 (5) 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 the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, 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 and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by Contractor unless first approved by City by written instrument executed and approved in the same manner as this Agreement. 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.

**4.7 Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in

Appendix A, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of ['amount' [[\$#,###]]] per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

## **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 and \$2,000,000 general aggregate 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 \$5,000,000 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 each occurrence and each loss, and \$2,000,000 general aggregate. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage for the following risks:
  - (i) Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form;

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

(iii) 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) Contractor shall maintain in force during the full life of the agreement Cyber and Privacy Insurance with limits of not less than \$20,000,000 per occurrence. Such insurance shall include coverage for liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personal information, such as name, address, social security numbers, protected health information or other personally identifying information, stored or transmitted in electronic form.

5.1.2 Commercial General Liability and Commercial Automobile Liability Insurance policies must be endorsed to provide:

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

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

5.1.3 All policies shall be endorsed to provide thirty (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, entitled "Notices to the Parties."

5.1.4 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.

5.1.5 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.

5.1.6 Before commencing any Services, Contractor shall furnish to City certificates of insurance and additional insured policy endorsements with insurers with ratings



comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

5.1.7 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.

5.1.8 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.

5.1.9 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.

5.1.10 Notwithstanding the foregoing, the following insurance requirements are waived or modified in accordance with the terms and conditions stated in Appendix E, "Insurance".

**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** 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** 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.

## **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 shall include, without limitation:

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

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

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

(d) Subject to City'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 City designates to be completed prior to the date of termination specified by City.

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

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

(a) The reasonable cost to Contractor, without profit, for all Services prior to the specified termination date, for which Services City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. 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 City, 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 City or otherwise disposed of as directed by the City.

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

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in 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, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City 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 City, 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 City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 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.	10.4	Nondisclosure of Private, Proprietary or Confidential Information
4.5	Assignment	10.10	Alcohol and Drug-Free Workplace
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	13.1	Nondisclosure of Private, Proprietary or Confidential Information

(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 continues for a period of ten days after written notice thereof from City to Contractor.

(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 by registered mail to the address set forth 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	9.2	Works for Hire
3.4	Audit and Inspection of Records	10.4	Nondisclosure of Private, Proprietary or Confidential Information
3.5	Submitting False Claims	11.6	Dispute Resolution Procedure
Article 5	Insurance and Indemnity	11.7	Agreement Made in California; Venue
6.1	Liability of City	11.8	Construction
6.3	Liability for Incidental and Consequential Damages	11.9	Entire Agreement
Article 7	Payment of Taxes	11.10	Compliance with Laws
8.1.6	Payment Obligation	11.11	Severability
9.1	Ownership of Results	13.1	Nondisclosure of Private, Proprietary or Confidential Information

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, 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 [www.sfgov.org](http://www.sfgov.org) under "Government."

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 Nondisclosure of Private, Proprietary or Confidential Information.**

10.4.1 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.

10.4.2 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.

## 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.

10.7 **Minimum Compensation Ordinance.** Contractor shall pay covered employees no less than the minimum compensation required by San Francisco Administrative Code Chapter 12P. Contractor is subject to the enforcement and penalty provisions in Chapter 12P. By signing and executing this Agreement, Contractor certifies that it is in compliance with Chapter 12P.

10.8 **Health Care Accountability Ordinance.** Contractor shall comply with San Francisco Administrative Code Chapter 12Q. Contractor shall choose and perform one of the Health Care Accountability options set forth in San Francisco Administrative Code Chapter 12Q.3. Contractor is subject to the enforcement and penalty provisions in Chapter 12Q.

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 that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor must inform each such person of the limitation on contributions imposed by Section 1.126 and provide the names of the persons required to be informed to City.

**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>. A partial listing of some of Contractor's obligations under Chapter 12T is set forth in this Section. 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 **Reserved (“Sugar-Sweetened Beverage Prohibition”).**

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.

10.18.1 Contractor shall comply with San Francisco Environment Code Chapter 8, which provides that except as expressly permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Contractor shall not provide any items to the City in performance of this contract which are tropical hardwoods, tropical hardwood wood products, virgin redwood or virgin redwood wood products. Contractor is subject to the penalty and enforcement provisions of Chapter 8.

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:           **[Department contact person, mailing address, and e-mail address]**

To Contractor: **[Contractor contact person, mailing address, and e-mail address]**

Any notice of default must be sent by registered mail. 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 Reserved. (“Payment Card Industry (“PCI”) Requirements”)**

**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 in the same manner as this Agreement. Contractor shall cooperate with Department to submit to the Director of CMD 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 21.35, Contractor may submit to the Contracting Officer a written request for administrative review and documentation of the Contractor's claim(s). Upon such request, the Contracting Officer 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. 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 [Date of Proposal]. 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 and any implementing task orders shall control over the RFP and the Contractor's proposal.

## **Article 12 Department Specific Terms**

### **12.1 Reserved.**

## **Article 13 Data and Security**

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

13.1.1 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 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.** With respect to information covered by the U.S. Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), a Business Associate Agreement (“BAA”) is attached as Appendix D.

#### **Article 14 MacBride 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.

*The remainder of this page intentionally left blank*

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

**CITY**

**CONTRACTOR**

Recommended by:

[Vendor name]

\_\_\_\_\_  
[SFHSS]  
[SFHSS]  
[SFHSS]

\_\_\_\_\_  
[authorized representative]  
[title]  
[optional: address]  
[optional: city, state, ZIP]

Approved as to Form:

City vendor number: [vendor number]

Dennis J. Herrera  
City Attorney

By: \_\_\_\_\_  
[name of Deputy City Attorney]  
Deputy City Attorney

## Appendix D – Business Associates Agreement

### HIPAA Requirements-Business Associate Agreement

**THIS BUSINESS ASSOCIATE AGREEMENT** ("BAA") is entered into on this X day of MONTH, YEAR by and between Health Service System for the City and County of San Francisco as Plan Administrator of the Health Plan(s) ("Covered Entity") and COMPANY NAME ("Business Associate").

#### RECITALS

Covered Entity has engaged Business Associate to provide certain functions, activities, and services (collectively "Services") to Covered Entity, as described in the Agreement between the City and County of San Francisco and COMPANY NAME dated MONTH, DAY, YEAR ("Service Agreement"). In order for Business Associate to perform the Services required by the Service Agreement, Covered Entity will make available and/or transfer to Business Associate certain Protected Health Information and Electronic Health Information (collectively, "PHI") that is confidential and must be afforded special treatment and protection pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and its implementing regulations, the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule (collectively "HIPAA Rules"), found in Part 160 and Part 164 of title 45 of the Code of Federal Regulations ("CFR").

Business Associate will have access to and/or receive from Covered Entity certain PHI created or received by Covered Entity that can be used or disclosed only in accordance with this BAA and the HIPAA Rules.

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to this BAA in compliance with HIPAA, the HIPAA Rules, and other applicable laws.

As part of the Privacy Rule, Covered Entity must enter into a contract with Business Associate containing specific requirements as set forth in, but not limited to, 45 CFR §§ 164.308(b), 164.314(a), 164.502(e) and 164.504(e) and contained in this BAA, prior to the disclosure of PHI.

**NOW, THEREFORE**, Covered Entity and Business Associate agree as follows:

#### ARTICLE I.

##### Definitions

**1.1 Meaning of Terms.** The following terms shall have the meaning ascribed to them in this Section:

- A. Administrator** shall mean Health Service System of the City and County of San Francisco.
- A. Breach** shall have the same meaning as the term "breach" at 45 CFR § 164.402, and generally means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information.
- B. Business Associate** shall have the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the party to this BAA, shall mean COMPANY NAME.
- C. Covered Entity** shall have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this BAA, shall mean the Health Plan.
- D. Designated Record Set** shall mean a group of records maintained by or for Covered Entity that is: (a) the medical records and billing records about Individuals maintained by or for a

- covered health care provider; (b) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (c) used in whole or in part, by or for Covered Entity to make decisions about Individuals. For these purposes, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.
- E. Electronic Health Information** means Protected Health Information that is transmitted or maintained by or in electronic media, as defined by 45 CFR § 160.103.
- F. Health Plans** shall mean the health plans that may be administered, from time to time, by Administrator to which Business Associate provides Services or to which Business Associate will provide Services during the term of this BAA, and which are covered entities as defined by 45 CFR § 160.103.
- G. HHS** shall mean the United States Department of Health and Human Services.
- H. HIPAA** shall mean the Health Insurance Portability and Accountability Act of 1996, as amended or modified applicable laws or regulations.
- I. HIPAA Rules** shall mean the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule at 45 CFR Part 160 and Part 164.
- J. Individual** shall mean the person who is the subject of the PHI, and shall have the same meaning as the term "individual" at 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- K. Limited Data Set** shall have the same meaning as the term "limited data set" at 45 CFR § 164.514(e)(2).
- L. Parties** shall mean Business Associate and Covered Entity.
- M. Protected Health Information ("PHI")** shall have the same meaning as the term "protected health information" at 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- N. Required By Law** shall have the same meaning as the term "required by law" at 45 CFR § 164.103.
- O. Secretary** shall mean the Secretary of HHS or his or her designee.
- P. Security Incident** shall have the same meaning as the term "security incident" at 45 CFR § 164.304, which generally means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.
- Q. Subcontractor** shall have the same meaning at the term "subcontractor" at 45 CFR § 160.103, which generally means a person to whom a Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such Business Associate.
- R. Transaction Standards** shall mean the standards adopted by the Secretary under 45 CFR Part 162.
- S. Unsecured Protected Health Information ("Unsecured PHI")** shall have the meaning set forth at 45 CFR § 164.402, as amended, and generally means PHI that is not secured through the use of technologies and methodologies that render such PHI unusable, unreadable, or



indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in guidance.

1.2 Other Terms. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear. Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in 45 CFR Parts 160, 162, and 164. Any reference to a regulation or section in the Code of Federal Regulations ("CFR") shall include any corresponding regulation subsequently issued regardless of the date of issue.

## **ARTICLE II.** **General Terms**

2.1 Interpretation of Provisions. In the event of an inconsistency between the provisions of this BAA and the mandatory terms of the HIPAA Rules (as they may be expressly amended from time to time by HHS or as a result of final interpretations by HHS, an applicable court, or another applicable regulatory agency with authority over the Parties), the HIPAA Rules shall prevail.

2.2 Provisions Permitted by HIPAA Rules. Where provisions of this BAA are different from those mandated by the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of the BAA shall control.

## **ARTICLE III.** **Obligations and Activities of Business Associate**

3.1 Limits on Use and Disclosure. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this BAA or as Required By Law. Further, Business Associate shall use and disclose PHI in accordance with Covered Entity's Notice of Privacy Practices as provided by Covered Entity to Business Associate pursuant to Section 6.1.

3.2 Safeguards. Business Associate agrees to use reasonable and appropriate administrative, physical and technological safeguards to: (i) prevent use or disclosure of the PHI other than as provided for by this BAA; and (ii) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity as required by the Security Rule. Business Associate represents and warrants that it has implemented, and during the term of this BAA shall maintain, comprehensive written privacy and security policies and procedures and the necessary administrative, technical and physical safeguards appropriate to the size and complexity of Business Associate's operations and the nature and scope of its activities. Business Associate will comply with the Security Rule requirements set forth in Subpart C of 45 CFR Part 164, all of which are hereby incorporated into the BAA.

3.3 Application of Privacy Provisions. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure is in compliance with each applicable requirement of 45 CFR § 164.504(e), relating to business associate agreements. The HIPAA Rules that relate to privacy and that are made applicable with respect to Covered Entity and Business Associate are hereby incorporated into this BAA.

3.4 Mitigation of Harm. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate, or any agent or Subcontractor of Business Associate, in violation of the requirements of this BAA or the HIPAA Rules.

3.5 Report of Improper Use or Disclosure or of Security Incidents. Business Associate agrees promptly to report to Covered Entity any breach of security, intrusion, or unauthorized use or disclosure of the PHI not provided for by this BAA, or any Security Incident of which Business Associate (or any of its

agents or Subcontractors) becomes aware. Such report shall be in writing and shall be reported to Covered Entity as soon as practicable after Business Associate becomes aware of such use or disclosure or Security Incident, but in no event more than ten (10) days following such date. Business Associate shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

3.6 Report of Breach of Unsecured PHI. In addition to the general obligations of Business Associate under Section 3.5 regarding reporting the improper use or disclosure of PHI and Security Incidents, Business Associate shall also promptly notify Covered Entity of a Breach of Unsecured PHI within forty-eight (48) hours of when Business Associate discovers such Breach. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate. Business Associate's notification shall be in writing and shall include identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been subject to the Breach. Thereafter, Business Associate, on Covered Entity's behalf, shall carry out Covered Entity's obligations under 45 CFR §§ 164.404, 164.406, and 164.408 to notify Individuals, the media, and/or the Secretary, as applicable. Such notice shall provide all of the information required by 45 CFR § 164.404(c), which includes:

- (a) A description of the Breach, including the date of the Breach and the date of the discovery of the Breach, if known;
- (b) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, credit card numbers, diagnosis, disability code or other types of PHI were involved);
- (c) Any steps that Individuals should take to protect themselves from potential harm resulting from the Breach;
- (d) A description of what Business Associate is doing to investigate the Breach, to mitigate the harm to Individuals and to protect against further Breaches; and
- (e) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, Web site or postal address.

Business Associate shall be solely responsible for ensuring that Covered Entity's obligations under the Breach Notification Rule are satisfied with respect to notifications it makes on Covered Entity's behalf. Notwithstanding, Business Associate shall provide Covered Entity a reasonable opportunity to review any notice, notification, or posting it prepares prior to its distribution, publication or broadcasting, and Covered Entity reserves the right with respect to any specific Breach to carry out its obligations under 45 CFR §§ 164.404, 164.406, and 164.408 to the exclusion of Business Associate, in which case the following paragraph shall apply.

In the event that Covered Entity determines it will notify Individuals, the media, and/or the Secretary of a Breach of Unsecured PHI that is discovered by Business Associate or its agents or Subcontractors, Business Associate shall provide the information listed above exclusively to Covered Entity as soon as it becomes available to Business Associate, but in no event later than thirty (30) days after Business Associate discovers such Breach. Business Associate shall also provide such assistance and further information with regard to the Breach to Covered Entity as reasonably requested by Covered Entity in order for Covered Entity to timely meet its notice obligations to Individuals, the media, and/or the Secretary, as applicable, under 45 CFR §§ 164.404, 164.406, and 164.408. If a notification, notice, or posting required by the Breach Notification Rule would impede a criminal investigation or cause damage

to national security, such notification shall be delayed as required by law enforcement pursuant to 45 CFR § 164.412.

3.7 Agents and Subcontractors. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to ensure that any agent, including a Subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity, agrees in writing to the same restrictions and conditions that apply through this BAA to Business Associate with respect to PHI. Such written BAA shall also require the agent or Subcontractor to implement reasonable and appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity. Business Associate, and not Covered Entity, is solely responsible for its agents' and Subcontractors' compliance under the HIPAA Rules.

3.8 Availability of Internal Practices, Books and Records. Business Associate shall make internal practices, books, and records relating to the use and disclosure of PHI received from, or received by Business Associate on behalf of, Covered Entity available to the Secretary or Covered Entity, in a time and manner designated by Covered Entity or the Secretary, for purposes of determining Covered Entity's compliance with the HIPAA Rules. Business Associate shall notify Covered Entity, in writing, of any request by the Secretary under this Section, and shall provide Covered Entity with a copy of any practices, books, and records that Business Associate provides to the Secretary concurrently with providing such materials to the Secretary.

3.9 Access to Records.

- A. Business Associate shall provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR § 164.524 with regard to providing an Individual with a right to access the Individual's PHI.
- B. Business Associate shall, at the request of Covered Entity and in the time and manner designated by Covered Entity, make PHI maintained by Business Associate available to Covered Entity, or as directed by Covered Entity, to a person or entity other than an Individual, for use and disclosure pursuant to a valid written authorization and maintain appropriate documentation for the period, including, but not limited to, copies of any written authorization by an Individual or his or her legal representative, to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.508.
- C. If any Individual requests access to, or the release pursuant to an authorization or otherwise of, PHI directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within ten (10) days of the request. Covered Entity shall have sole authority and responsibility to approve or deny such a request, and shall notify Business Associate, in writing, of its decision to approve or deny any such request.

3.10 Amendments to PHI. Business Associate agrees, in the time and manner designated by Covered Entity, to make PHI contained in a Designated Record Set available for any amendments that Covered Entity agrees to make pursuant to 45 CFR § 164.526 or to otherwise allow Covered Entity to comply with its obligations under 45 CFR § 164.526. If any Individual requests an amendment of PHI contained in a Designated Record Set directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within ten (10) days of the request. Covered Entity shall have sole authority and responsibility to approve or deny such a request, and shall notify Business Associate, in writing, of its decision to approve or deny any such request.

3.11 Documentation of Disclosures.

- (a) Business Associate shall document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Such documentation shall be kept with regard to all disclosures of PHI except the disclosures described in 45 CFR § 164.528(a)(1). For each such disclosure, Business Associate shall document the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably states the basis for the disclosure.
- (b) Business Associate shall provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with subsection (a) of this Section of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. In the event that a request for an accounting is delivered directly to Business Associate or its agent or Subcontractor by an Individual or a party other than Covered Entity, Business Associate shall within ten (10) days of such request forward it to Covered Entity in writing. Business Associate shall, unless otherwise directed by Covered Entity or as Required By Law, supply an accounting of disclosures of PHI only to Covered Entity.

3.12 Training. Business Associate shall provide appropriate training to its workforce in security, privacy, and confidentiality issues and regulations relating to PHI.

3.13 Response to Subpoena. Business Associate shall promptly notify Covered Entity if it receives a subpoena or other legal process seeking the disclosure of PHI. Such notification shall be provided in a timeframe that allows Covered Entity a reasonable amount of time to respond to the subpoena, object to the subpoena, or to otherwise intervene in the action to which the subpoena pertains.

3.14 Notification of Claims. Business Associate shall promptly notify Covered Entity upon notification or receipt of any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions arising out of or related to this BAA or the PHI, regardless of whether Covered Entity and/or Business Associate are named as parties in such claims, demands, causes of action, lawsuits, or enforcement actions.

3.15 Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself and any Subcontractors, employees or agents assisting Business Associate in the performance of its obligations under this BAA, available to Covered Entity to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HIPAA Rules, or other laws relating to security and privacy, except where Business Associate or its Subcontractor, employee, or agent is named as an adverse party.

3.16 Recordkeeping and Document Retention. Business Associate shall retain any documentation it creates or receives relating to its duties under this BAA for the duration of this BAA. Covered Entity shall have the right to reasonably access and copy and such documentation during the term of the BAA. At the termination of this BAA, Business Associate shall, at Covered Entity's election, return or destroy all such documentation.

3.17 Transaction Standards. If Business Associate performs any transactions for Covered Entity for which a standard has been adopted by the Secretary under 45 CFR Part 162, the following shall apply:

- (a) Business Associate, its agents and Subcontractors, shall conduct all transmissions of data required under the BAA that are subject to the Transaction Standards in compliance with the Transaction Standards, as they may be amended from time to time. With respect to any such Transactions, neither Party shall: (i) change the definition, data condition, or use of a

data element or segment in a Transaction Standard; (ii) add any data elements or segments to the maximum defined data set; (iii) use any code or data elements that are either marked “not used” in the Transaction Standard’s implementation specification or are not in the Transaction Standard’s implementation specification(s); or (iv) change the meaning or intent of the Transaction Standard’s implementation specification(s).

- (b) Each Party, at its own expense, shall provide and maintain the hardware, software, services and testing necessary to effectively and reliably conduct the applicable Transaction Standards.

3.18 Restrictions on Remuneration, Marketing, and Fundraising. To the extent the BAA would otherwise allow Business Associate to receive remuneration for PHI, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 USC § 17935(d). To the extent that Business Associate is otherwise authorized under this BAA to communicate about a product or service, it shall not make or cause to be made any communication about a product or service that is prohibited by 42 USC § 17936(a). To the extent that Business Associate is otherwise authorized under this Business Associate Agreement to make a fundraising communication, it shall not make or cause to be made any written fundraising communication that is prohibited by 42 USC § 17936(b) and 45 CFR § 164.514(f).

#### **ARTICLE IV.** **Permitted Uses and Disclosures by Business Associate**

- 4.1 Use or Disclosure to Perform Functions, Activities, or Services. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform the Services described in the Service Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity, except for the specific uses and disclosures set forth below in Sections 4.4 and 4.5. Any such use or disclosure shall be limited to those reasons and those individuals as necessary to meet Business Associate's obligations.
- 4.2 Minimum Necessary. Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures, as provided by Covered Entity to Business Associate.
- 4.3 Disclosures to Workforce. Business Associate shall not disclose PHI to any member of its workforce unless necessary to fulfill a purpose described in Section 4.1 and unless Business Associate has advised such person of Business Associate's obligations under this BAA and of the consequences for such person and for Business Associate of violating this BAA. Business Associate shall take appropriate disciplinary action against any member of its workforce who uses or discloses PHI in contravention of this BAA or the Privacy Rule.
- 4.4 Appropriate Uses of PHI. Except as otherwise limited in this BAA, Business Associate may use PHI for the following purposes: (a) the proper management and administration of Business Associate; (b) to carry out the legal responsibilities of Business Associate; (c) to report violations of law to appropriate Federal and State authorities, consistent with 42 CFR § 164.502(j)(1); or (d) as Required By Law.
- 4.5 Appropriate Disclosures of PHI; Confidentiality Assurances and Notification. Except as otherwise limited in this BAA, Business Associate may disclose PHI to a third party to carry out the functions described in Section 4.1 or for the proper management and administration of Business Associate, or to carry out the legal responsibilities of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose 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.

**ARTICLE V.**  
**Indemnification and Insurance**

5.1 **Indemnification.** In addition to Business Associate's obligations under Section X of the YEAR "Agreement Between the City and County of San Francisco and COMPANY NAME", Business Associate shall indemnify and hold harmless Covered Entity against, and reimburse Covered Entity for, any expense, loss, damages, legal fees, or costs arising out of or related to any civil or criminal claims, demands, causes of action, lawsuits, or governmental enforcement actions, whether brought by a third party or asserted by Business Associate, arising out of or related to Business Associate's actual or alleged acts and omissions (or those of its agents or Subcontractors) associated with Business Associate's or its agents' or Subcontractors' obligations under this BAA or their use or disclosure of PHI. Such indemnification shall include, but not be limited to, the payment of all reasonable attorney fees associated with any claim, demand, action, cause of action, or lawsuit arising out of or related to such acts or omissions. In addition to the foregoing, in the event of a Breach of Unsecured PHI or similar breach or wrongful disclosure as defined by an applicable law or regulation requiring notification or other remedial action due to the breach or wrongful disclosure of PHI or other personal or financial information ("Other Breach Law") that arose out of or related to Business Associate's actual or alleged acts and omissions (or those of its agents or Subcontractors), Business Associate shall indemnify Covered Entity against all costs and expenses incurred by Covered Entity that are associated with complying with the notification requirements under the Breach Notification Rule or Other Breach Law. Such indemnification shall include all costs related to notifying Covered Entity, Individuals, HHS, or any other entity required to be notified by an Other Breach Law, any remediation necessitated by the Breach, any fines or penalties arising out of the Breach, and any other actions required to be taken pursuant to the Breach Notification Rule or Other Breach Law.

**ARTICLE VI.**  
**Obligations of Covered Entity**

6.1 **Notice of Privacy Practices.** Covered Entity shall provide Business Associate with the Notice of Privacy Practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

6.2 **Change or Revocation of Permission.** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate shall comply with any such changes or revocations.

6.3 **Restrictions on Use or Disclosure.** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522. Business Associate shall comply with any such restriction.

6.4 **No Request to Use or Disclose in Impermissible Manner.** Except as necessary for the management and administrative activities of Business Associate as allowed in Sections 4.4 and 4.5, Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

**ARTICLE VII.**  
**Term and Termination**

7.1 Term. The Term of this BAA shall be effective as of the date set forth above, and shall terminate when all PHI provided by Covered Entity to Business Associate, or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity.

7.2 Termination with Cause. Upon either Party's knowledge of a material breach by the other Party, the non-breaching Party, in its discretion, may take either or both of the following actions:

- (a) Provide an opportunity (in a time frame to be determined by the non-breaching Party) for the breaching Party to cure the breach or end the violation, and if the breaching Party does not cure the breach or end the violation, terminate this BAA; or
- (b) Immediately terminate this BAA if the breaching Party, in the non-breaching Party's discretion, has breached a material term of this BAA and cure is not possible.

If termination of this BAA is not feasible, the non-breaching Party shall report the breach to the Secretary.

7.3 Judicial or Administrative Proceedings. Covered Entity may terminate this BAA and any other agreement or relationship between the Parties related to the Services by written notice to the Business Associate, effective immediately, if: (a) the Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HIPAA Rules, or other security or privacy laws; or (b) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HIPAA Rules, or any other security or privacy laws is made in any administrative or civil proceeding in which the Business Associate has been joined.

7.4 Changes in Law. In the event of passage of a law or promulgation of a regulation or an action or investigation by any regulatory body which would prohibit the relationship between the Parties, or the operations of either Party with regard to the subject of this BAA, the Parties shall attempt in good faith to renegotiate the BAA to delete the unlawful provision(s) so that the BAA can continue. If the Parties are unable to renegotiate the BAA within thirty (30) days, the BAA and any other agreement or relationship between the Parties related to the Services shall terminate immediately, upon written notice of either Party.

7.5 Effect of Termination.

- (a) Except as provided in paragraph (b) of this Section 7.5, upon termination of this BAA for any reason, Business Associate shall return or destroy (at Covered Entity's election and in a time frame to be determined by Covered Entity) all PHI received from Covered Entity, or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. If Business Associate is directed to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.
- (b) In the event that Business Associate determines that it is necessary to retain some or all of the PHI to continue its proper management and administration or to carry out its legal responsibilities, Business Associate shall provide to Covered Entity written notification of such need. Upon Covered Entity's approval, which shall not be unreasonably withheld, Business Associate may retain only the PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities, but Business Associate shall return or destroy (at Covered Entity's election and in a time frame to be determined by Covered Entity) all other PHI pursuant to Section 7.5(a). With regard to any retained PHI, Business Associate shall not use or disclose such PHI other than for the purposes for which the PHI was retained and subject to the same conditions set forth in this BAA that applied prior to this BAA's termination. Business Associate shall return or destroy (at Covered Entity's election and in a time frame to be determined by Covered Entity) the retained PHI pursuant to Section 7.5(a) when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

**ARTICLE VIII.**  
**Miscellaneous**

8.1 Assignment. This BAA shall be binding upon and inure to the benefit of the respective legal successors of the Parties. Neither this BAA nor any rights or obligations hereunder may be assigned, in whole or in part, without the prior written consent of the other Party.

8.2 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, or the HIPAA Rules will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

8.3 Property Rights. All PHI shall be and remain the exclusive property of Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of this BAA.

8.4 Preemption of Other Agreements and Liability Limitations/Exclusions. Any limitations on liabilities or exclusions from liability previously agreed upon by the Parties, whether written or oral, shall not be applicable to breaches of this BAA, HIPAA, the HIPAA Rules, and other confidentiality and privacy requirements regarding PHI under this BAA. To the extent that any provision of this BAA conflicts with the Service Agreement or any other agreement between the Parties, whether written or oral, the provisions of this BAA shall govern. Furthermore, and by way of example and not limitation, the termination provisions of this BAA shall supersede the termination provisions of any other agreement, including, but not limited to, any limitations on terminating the Service Agreement or any other agreement (such as notice periods) or any provisions requiring a period to cure.

8.5 Right to Cure. Business Associate agrees that Covered Entity has the right, but not the obligation, to cure any and all breaches of Business Associate's privacy, security and confidentiality obligations under this BAA. Any expenses or costs associated with Covered Entity's cure of Business Associate's breach(es) shall be borne solely by Business Associate. The exercise by Covered Entity of its rights under this Section shall not act as a waiver of any remedies, whether at law or in equity, that Covered Entity may seek against Business Associate for any breach by Business Associate of its privacy, security, and confidentiality obligations under this BAA.

8.6 Injunctive Relief. Business Associate agrees that breach of the terms and conditions of this BAA shall cause irreparable harm and there exists no adequate remedy of law. Covered Entity retains all rights to seek injunctive relief to prevent or stop any breach of the terms of this BAA, including, but not limited to the unauthorized use or disclosure of PHI by Business Associate or any agent, contractor or third party that received PHI from Business Associate. The exercise by Covered Entity of its rights under this Section shall not act as a waiver of any remedies, whether at law or in equity, that Covered Entity may seek against Business Associate for any breach by Business Associate of its privacy, security, and confidentiality obligations under this BAA.

8.7 Survival. The respective rights and obligations of Business Associate under Sections 5.1, 5.2, and 7.5 of this BAA shall survive the termination of this BAA.

8.8 Amendment. The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA and the HIPAA Rules.

8.9 Regulatory References. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.



8.10 Severability. The Parties agree that if a court determines, contrary to the intent of the Parties, that any of the provisions or terms of this BAA are unreasonable or contrary to public policy, or invalid or unenforceable for any reason in fact, law, or equity, such unenforceability or validity shall not affect the enforceability or validity of the remaining provisions and terms of this BAA. Should any particular provision of this BAA be held unreasonable or unenforceable for any reason, then such provision shall be given effect and enforced to the fullest extent that would be reasonable and enforceable.

8.11 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California to the extent that the provisions of HIPAA and the HIPAA Rules do not preempt the laws of the State of California. Venue shall be in Superior Court of California, County of San Francisco.

8.12 Waiver of Breach. No failure or delay by either Party in exercising its rights under this BAA shall operate as a waiver of such rights, and no waiver of any breach shall constitute a waiver of any prior, concurrent, or subsequent breach.

8.13 Titles. Titles or headings are used in this BAA for reference only and shall not have any effect on the construction or legal effect of this BAA.

8.14 Independent Contractors. For purposes of this BAA, Covered Entity and Business Associate are and will act at all times as independent contractors. None of the provisions of this BAA are intended to create, nor shall be deemed or construed to create, any relationship other than that of independent entities contracting with each other for the purpose of effecting this BAA. None of the provisions of this BAA shall establish or be deemed or construed to establish any partnership, agency, employment agreement or joint venture between the Parties.

8.15 No Third Party Beneficiaries. It is the intent of the Parties that this BAA is to be effective only in regards to their rights and obligations with respect to each other. It is expressly not the intent of the Parties to create any independent rights in any third party or to make any third-party beneficiary of this BAA and no privity of contract shall exist between third parties and each Party.

**Each Party to this BAA warrants that it has full power and authority to enter into this BAA, and the person signing this BAA on behalf of either Party warrants that he/she has been duly authorized and empowered to enter into this BAA.**

COVERED ENTITY

BUSINESS ASSOCIATE

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**APPROVED AS TO FORM:**

Dennis J. Herrera  
City Attorney

\_\_\_\_\_  
GUSTIN R. GUIBERT  
Deputy City Attorney