RER/jlm
01/30/14
Item No. 7

AN ORDINANCE 2014-01-30-0048

AUTHORIZING A CONTRACT WITH MORNING PRIDE MANUFACTURING, LLC, D/B/A HONEYWELL FIRST RESPONDER PRODUCTS FOR THE PURCHASE, CLEANING, AND REPAIR OF FIREFIGHTING BUNKER GEAR FOR THE SAN ANTONIO FIRE DEPARTMENT FOR AN ESTIMATED ANNUAL AMOUNT OF $500,000.00, FUNDED WITH THE FIRE DEPARTMENT'S FY2014 ADOPTED GENERAL FUND OPERATING BUDGET.

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WHEREAS, the current Fire Collective Bargaining Agreement and the Texas Commission on Fire Protection provide that each firefighter be provided with personal protective equipment (bunker gear) by the SAFD; and

WHEREAS, the City wishes to enter into a contract with Morning Pride Manufacturing, LLC, d/b/a Honeywell First Responder Products for the purchase, cleaning, and repair of firefighting bunker gear for SAFD firefighters; and

WHEREAS, the estimated annual amount of said contract would be $500,000.00; and

WHEREAS, the contract term will be for an initial period from February 1, 2014 to September 30, 2018, with two one-year extensions; **NOW THEREFORE:**

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Manager and her designee are hereby authorized to execute a contract with Morning Pride Manufacturing, LLC, d/b/a Honeywell First Responder Products for the purchase, cleaning, and repair of firefighting bunker gear for the San Antonio Fire Department for an estimated annual amount of $500,000.00. The terms and conditions of the contract shall be substantially the same as those set out in the draft contract attached hereto as **Exhibit I**. Should the parties fail to execute a contract that contains substantially the same terms and conditions as those set out in the attached draft contract, further City Council authorization shall be required.

SECTION 2. Funding for this Ordinance in the annual amount of $500,000.00 is available as part of the Fiscal Year 2014 Budget. Future funding through the term of this contract is contingent upon City Council approval of subsequent years. Payment not to exceed the budgeted amount is authorized to Morning Pride Manufacturing, LLC, and should be encumbered with a purchase order.

SECTION 3. The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts, as necessary to carry out the purpose of this Ordinance.

SECTION 4. This Ordinance is effective immediately upon the receipt of eight affirmative votes; otherwise, it is effective ten days after passage.

PASSED AND APPROVED this 30th day of January, 2014.

M A Y O R
Julián Castro

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Robert F. Greenblum, City Attorney

Agenda Item:	**7 (in consent vote: 6, 7, 8, 10, 11, 12, 14, 15, 16, 17, 18, 19, 22, 23, 24, 25, 26, 27, 27A, 27B)**
Date:	01/30/2014
Time:	11:49:00 AM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a contract with Morning Pride Manufacturing, LLC, d/b/a Honeywell First Responder Products for the purchase, cleaning, and repair of firefighting bunker gear for the San Antonio Fire Department for an estimated annual amount of $500,000.00, funded with the Fire Department's FY2014 Adopted General Fund Operating Budget. [Ben Gorzell, Chief Financial Officer; Troy Elliott, Director, Finance]
Result:	Passed

Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5		x				
Ray Lopez	District 6		x				
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				x
Joe Krier	District 9		x			x	
Michael Gallagher	District 10		x				

PERSONAL PROTECTIVE CLOTHING CONTRACT

STATE OF TEXAS)(

COUNTY OF BEXAR)(

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas Municipal Corporation, acting by and through its City Manager, Sheryl Sculley, pursuant to Ordinance No. _____, passed and approved on _____, 2014, and MORNING PRIDE MANUFACTURING LLC, (hereinafter referred to as "**VENDOR**"), a Delaware limited liability company.

I. DEFINITIONS

1.1 "*Active/Issued Gear*" means a set of Bunker Gear that is issued to an individual firefighter and is in active use.

1.2 "*Bunker Gear*" means turnout coat, turnout pants and includes the outer shell, moisture barrier and thermal liner purchased and in use by SAFD under this or a prior contract with MORNING PRIDE MANUFACTURING LLC or one of it's predecessors.

1.3 "*City*" means the City of San Antonio.

1.4 "*Chapter 143 of the Local Government Code*" means Vernon's Texas Code Annotated, Local Government Code, Title 5, Matters Affecting Public Officers and Employees, Chapter 143, Municipal Civil Service.

1.5 "*Cure Period*" means the period of time during which **VENDOR** must remedy certain defaults.

1.6 "*Fiscal Analyst*" means the SAFD representative designated by the Fire Chief to monitor and administer this Contract and act as a liaison with **VENDOR**.

1.7 "*Employee*" means any full time, permanent, paid employee who has been hired in substantial compliance with Chapter 143 of the Texas Local Government Code. Cadets are not considered an "employee" under this definition.

1.8 "*Inactive/Reissue/Loaner Bunker Gear*" means Bunker Gear that is not in active use, not issued to an individual firefighter and is currently stored at the service facility.

1.9 "*Initial term*" means February 1, 2014, through September 30, 2018.

Exhibit I

1.10 *"Personal protective clothing (PPC)"* means Bunker Gear, , harnesses, , protective hood, boots, gloves and suspenders purchased and in use by SAFD under this or a prior contract with MORNING PRIDE MANUFACTURING LLC or one of its predecessors and manufactured by Morning Pride or its affiliates, all of which are protective clothing used for conventional structural fire fighting to protect the body against temperature extremes, steam, hot water, hot particles, and other hazards encountered during fires and related emergencies.

1.11 *"Quality"* means an acceptable level of quality to **CITY** and which is at least equal to comparable products manufactured and marketed by **VENDOR**.

1.12 *"SAFD"* means the San Antonio Fire Department.

1.13 *"Service Facility"* means **VENDOR'S** (or Service Provider's) local facility approved by **CITY** for the provision of cleaning and care services on PPC.

1.14 *"Service Provider"* means **VENDOR'S** designated subcontractor to provide cleaning and care services to Bunker Gear hereunder.

II. SALE OF PPC and SCOPE OF SERVICES

2.1 **VENDOR** shall provide **CITY** with PPC that meet the current SAFD standards, specifications contained in Attachment II, policies in effect as of August 12, 2013 (the "Specifications"), and must be in compliance with current NFPA 1851 rules, regulations, guidelines and standards. Prices for new PPC shall remain as stated in Attachment I for the first two years of this contract, and shall be adjusted annually thereafter for the duration of the contract and any extensions as provided for herein to account for any annual increases in the PPI as set out in this contract or its attachments.

2.2 **VENDOR or Vendor through its Service Provider** shall provide all labor, materials, equipment, inventory, repairs, alterations, cleaning and computer hardware and software to supply a complete PPC program. Other than with respect to a force majeure event, if **VENDOR** is unable to abide by the terms and conditions in fulfilling this contract, **VENDOR** must provide approved service or supplies from its Service Provider or other sources at the contract price. If **VENDOR** fails to provide the service or supplies as indicated above at the timeframes established in this contract, **CITY** reserves the right to purchase on the open market and charge **VENDOR** the difference between the contract price and the purchase price. **VENDOR** understands that payment by **CITY** shall be made as products and services are delivered to **CITY** as set forth below.

2.3 **VENDOR** shall correct any deviation from the Specifications at no additional cost to **CITY**.

2.4 New orders for PPC shall be filled within sixty (60) days, at an agreed upon price as indicated in Attachment I attached hereto. The **VENDOR'S** turn-around time

as listed herein shall be calculated from the date of receipt of voucher issued by **CITY**. **CITY** acknowledges that **VENDOR'S** turnaround time may be subject to documented delays caused by NFPA certification requirements and such delays shall not be subject to liquidated damages.

2.5 Unannounced inspections by **CITY** will take place on a regular basis to confirm the established turn-around times. Any revision to the established turn-around times may only be done by a signed writing executed by the Fiscal Analyst. Failure to provide the PPC within the established turn-around times will be considered a default and may be subject to the provisions of Section IV. Liquidated Damages.

2.6 In the event **CITY** decides to provide employees PPC items not listed in Attachment I, **CITY** reserves the right to acquire said PPC items from **VENDOR** or from another entity and disburse the items independently of the PPC program. Subject to the requirements of the Texas Local Government Code, Chapter 252, **CITY** agrees to acquire said items from **VENDOR**, if legally permissible. Except as specifically set forth herein, **VENDOR** is not responsible under this Contract for any PPC not manufactured by **VENDOR.**

2.7 **Inventory Changes.** Other than with respect to any items of PPC that are specially labeled for the SAFD which may not be cancelled once the order is made, the SAFD may add, modify, substitute or delete items of Personal Protective Clothing in whole or in part. SAFD shall endeavor to provide thirty (30) days notice in advance of any such action. Such action shall not give rise to any claim against the **CITY** or SAFD for any such charges or compensation in addition to that provided hereunder. **VENDOR** shall have sixty (60) days to supply the new items.

2.8 **Balance of Inventory.** Any inventory of PPC in **VENDOR'S** possession, not previously purchased by the **CITY** shall remain the property of the **VENDOR** at the end of the term of the contract.

2.9 **Quality Control.** The **CITY** reserves the right to inspect all PPC for quality. The program shall include, but will not be limited to the following in accordance with the provisions listed herein:

A. **VENDOR** shall provide and maintain a quality assurance program that includes a documented inspection and recall system.

B. **VENDOR** shall maintain written inspection and testing instructions.

C. **VENDOR** shall, as part of the quality assurance program, maintain a calibration program of all instruments used to ensure

proper control of testing.

D. **VENDOR** shall be responsible for the monitoring and inspection of all services performed hereunder to ensure compliance with the Contract requirements. **VENDOR** shall be responsible for responding to all **VENDOR** deficiencies within four (4) calendar days after written or oral notification from the Fiscal Analyst or a designated representative.

II.A. CLEANING AND CARE SERVICES

2.10 **Tailoring, Alterations and Repair.** **VENDOR** or its Service Provider shall not issue or repair, alter or tailor any items without prior authorization of the **CITY** ("Repair Authorization"). **VENDOR** or its Service Provider shall institute security measures to control the distribution of PPC. **VENDOR** or its Service Provider must not accept any PPC item for repair, altering or tailoring unless **VENDOR** or its Service Provider is presented by the employee with a voucher signed by the employee's Commanding Officer of the **CITY**. **VENDOR** or its Service Provider shall work jointly with the **CITY** to develop the voucher that will be used to request repairs and replacements and shall be responsible for printing, updating, and stocking the request voucher. Service Provider must have the capability to receive the voucher via electronic mail.

2.11 All PPC repairs shall be performed according to manufacturer's recommendations. Retro-reflective trim repair on bunker coats and bunker pants shall be performed according to manufacturer's recommendations. Repair shall not exceed 6" X 6" square for any repair. An exception to the 6" X 6" limitation exists if the entire bunker coat sleeve is replaced. Moisture barriers and thermal barriers shall only be repaired by individuals certified by the manufacturer to perform repairs according to manufacturer's specifications. Fasteners, such as snaps, hook and pile tape, zippers, hooks and rings shall be repaired on PPC according to manufacturer's recommendations.

2.12 Repairs, tailoring, and alterations must be accomplished within the following turn-around times and all repairs, replacements, and alterations must be in compliance with NFPA 1851 rules, regulations, guidelines and standards.

2.12.1 Minor alterations and repairs as agreed upon by **VENDOR** and **CITY** must be done locally within two weekdays (48 hours), excluding holidays from the time the items are dropped off at the Service facility. This time frame includes the cleaning process prior to repairs and alterations.

2.12.2 Major factory repairs must be available for pick up at the Service Facility within 10 working days of the Repair Authorization being signed and

received by **VENDOR**. This time frame includes the cleaning process prior to repairs and alterations. Repairs are listed as "local" or "factory" on Attachment III and include the cost of shipping. Example: **CITY** elects size alteration and / or modification of existing Loaner or Reissue Bunker Gear in lieu of new coat or pant purchase.

2.13 Failure to meet the established time periods herein required shall be considered a default subject to the provisions of Section IV, Liquidated Damages.

2.14 **Cleaning of Personal Protective Clothing.** During the term of the CONTRACT, **VENDOR** or its Service Provider shall pick up, track, inspect, clean, dry and deliver Bunker Gear purchased under this CONTRACT and Bunker Gear already in service as long as the bunker gear remains in active service, in the reissuance pool or in the loaner pool. **VENDOR** or its Service Provider shall pick up Bunker Gear from and deliver Bunker Gear to each **CITY** Fire Station and the Training Academy such that the Bunker Gear is returned to the place of pickup prior to the beginning of the next regularly scheduled duty shift for the employee assigned the Bunker Gear. For Bunker Gear assigned to Training employees, the Bunker Gear must be delivered within three (3) business days. When Loaner or Re-issue gear is returned by an employee, it must be appropriately cleaned and stored at Service Facility. Upon request of **CITY**, **VENDOR** or its Service Provider shall provide a checklist for the inspection and cleaning process required by NFPA 1851 stating that a certified technician will perform once Bunker Gear is picked up and before it is returned to the fire station. The checklist shall include but is not limited to details of pick up, inspection for damage and cleaning process. The checklist shall be subject to the SAFD's approval. In the event that the certified technician determines that PPC must be condemned or retired, the **CITY** shall be notified to begin the process set forth in Section 2.4. The cleaning procedures and process must be in compliance with NFPA 1851 rules, regulations, guidelines, and standards

2.15 **VENDOR** shall not be liable under Section 8.2, Warranty-Guaranteed Wear Life, if **CITY** fails to timely make available said Bunker Gear for cleaning unless **VENDOR** fails to provide the notification under this section. In the event **VENDOR** fails to comply with this section, such failure shall not result in the invalidation of the five year guaranteed wear life warranty. **VENDOR** shall provide **CITY** in a timely manner a notice containing a list of bunker gear that has not been cleaned within the previous six (6) month period. Said notice shall be considered to have been delivered by email delivery of the report captioned "PPC firefighter non-participation list" as part of the monthly reporting provided to City and described in Section 2.29 below. Should any loss or damage occur to the Bunker Gear while in the possession of **VENDOR**, **VENDOR** shall be liable for any loss or damage to said bunker gear.

2.16 **Service Facility Requirement.** **VENDOR** on its own or through its Service Provider shall provide a Service Facility which is centrally located in Bexar County, Texas within 15 miles of **CITY'S** City Hall. Any and all Service Facilities shall have disability access in accordance with all Federal, State and

local laws, rules and regulations, and comply with all applicable building and health codes. Any change in current Service Facility location shall require prior written approval of **CITY**. The Service Facility must be appropriately stocked to meet operational and service requirements. Any additional Service Facility locations shall require prior written approval of **CITY**.

2.17 **VENDOR** on its own or through its Service Provider must meet and comply with all building and health codes and all applicable Federal, State, and local laws governing the operation of the Service Facility.

2.18 **Service Facility Operating Requirements. VENDOR'S** Service Facility shall be open for service on February 1, 2014. Service Facility must be open for service a minimum of five (5) days per week, Monday through Friday, from 7:15 A.M. to 5:00 P.M; except for the TWELVE (12) approved City holidays (approved annually). Service Facility staff shall provide prompt, courteous service to all SAFD personnel. The Service Facility shall operate, at no additional cost to **CITY**, for additional hours on an as-needed basis as reasonably requested by the Fire Chief or designated representative and shall remain in operation until verbal notification is given by **CITY** that such emergency has been addressed and ceases to exist. A (cell phone) mechanism must be established to provide for operation in the event of an emergency.

2.19 **VENDOR** or Service Provider must establish a local telephone inquiry line upon project initiation to handle program inquiries and emergency requests for PPC or services. In case of emergency, an employee of the **VENDOR** or Service Provider who is capable of opening and operating the Service Facility after normal business hours as outlined above, must be available by cellular telephone or pager at all times.

2.20 **VENDOR** must develop and maintain a general design and standard operating procedure manual on its own or through its Service Provider based on the functional requirements for all phases of the Service Facility operation. The manual shall include, but is not limited to, sections defining the employee tracking procedures, inventory control procedures, daily management, inspection procedures, and repair procedures. The manual shall serve as a point of reference and guide for the SAFD and the **VENDOR'S** and Service Provider's personnel to resolve operations requirements and functional relationships as required hereunder. The general design and standard operating procedures manual shall be subject to the approval of the Fiscal Analyst.

2.21 **Loaner Pool. VENDOR** or Service Provider shall administer the Department's PPC loaner/reissue pool for the issuance of PPC and reporting on the return of PPC. **Vendor** will not be responsible for ensuring an Employee's returned PPC to the Loaner pool. **VENDOR** shall take over the existing loaner pool and work towards maintaining the sizes listed on Attachment IV. No additional Bunker Gear for the loaner pool will need to be manufactured. This pool shall only be provided to outfit an Employee while Employee's Bunker Gear is being repaired, replaced, or on order as a result of division change, or when contamination or

other unforeseen circumstances occur. In the instance where items are needed from and not available in the Loaner pool, Bunker Gear from the Re-issuance pool will be used as Loaner Bunker Gear. **VENDOR** shall use the computerized inventory system in accordance with Section II.B, to track the location and condition of all PPC assigned to the Loaner pool.

2.22 **Re-issuance Pool.** All Bunker Gear that is still usable when an employee separates or terminates from **CITY** employment, changes assignments, or requires re-sizing will be returned to stock and re-issued. **VENDOR** shall utilize the computerized inventory system to track the location and condition of all Bunker Gear whether in the Re-issuance pool or re-issued to an employee. All Bunker Gear returned to the Loaner and Re-issue pools must be in compliance with NFPA 1851 rules, regulations, guidelines, and standards.

2.23 **Cadet Fittings.** **VENDOR** shall size new cadets for Bunker Gear at the Fire Training Academy within the first month of the start of a new class. A certified technician must perform the appropriate measurements. Cadets will first be fitted for Bunker Gear from the Re-issue pool. Alterations to Bunker Gear in the Re-issue pool will occur before any new sets are ordered. Alteration prices are listed in Attachment III. All coats, pants, boots, harnesses, gloves and suspenders must be ready for distribution seven weeks after sizing. All hoods must be distributed to the new cadets within the first week of the start of a new class. The San Antonio Fire Department will notify **VENDOR** as early as possible, but not less than thirty (30) days in advance of when a new class will commence.

2.24 **Storage of Personal Protective Clothing.** The storage of all PPC at Service Facility shall be in compliance with NFPA 1851 rules, regulations, guidelines and standards.

2.25 **Retirement of Personal Protective Clothing.** Prior to any PPC being condemned or retired, the City of San Antonio Fire Department's Safety Officer and **VENDOR'S** certified technician shall inspect and concur on the disposition of said PPC. In the event that agreement cannot be reached, the PPC must be sent to a third party for testing and final determination. All costs associated with third party testing shall be the responsibility of **CITY**. Retirement of all Personal Protective Clothing shall be in compliance with NFPA 1851 rules, regulations, guidelines and standards.

II.B. INVENTORY SYSTEM

2.26 **Inventory System.** **VENDOR** on its own or through its Service Provider shall provide a web-based computerized inventory system ("System") to track and maintain the information as set forth below. This tracking system will be utilized for distribution, inventory control, tracking of repairs and replacements of PPC, tracking of PPC cleanings and invoicing of items and services throughout the history of the PPC that is active or in the loaner and re-issue pool. **VENDOR** on its own or through its Service Provider shall maintain a web based computerized

inventory system on which it will track all PPC issued, returned, loaned and re-issued from the Service Facility. **VENDOR** warrants that the system software is compliant with **CITY'S** current operating system which is [Windows XP, and has the potential to interface with [Oracle or MSSQL] databases. All transactions done on the application must provide real time updates of inventory availability, location and status. **VENDOR** shall maintain all such records, information and reports in a compatible format acceptable to **CITY**. **CITY** reserves the right to access the Inventory System and to audit the system at any time during the contract period.

2.27 The System shall maintain information on each **CITY** Firefighter including, but not limited to, employee PIN number; work location; rank; size; item type; size and quantity of items distributed; cost; date distributed; repairs; replacements requested; and alterations. On each item, the System will track the date distributed, dates of PPC cleanings, person distributed to, item cost, repairs performed, date PPC items were ordered through the System and when items are ready for delivery. The System shall track the **CITY** Fire Department employees' PPC transactions through the life of the Contract. SAFD shall provide **VENDOR** with monthly roster updates as a condition of **VENDOR** complying with the requirements of this section 2.26.

2.28 **VENDOR** agrees to allow access to all information maintained on the System to **CITY** via an internet website. **CITY** shall provide **VENDOR** the list of electronic mail addresses for creation of user account(s) to receive said information.

2.29 **VENDOR** shall provide **CITY** monthly reports, each and every month for the term of this Contract, no later than the tenth (10th) day of every month which provides the following: (1) the Employee's statistical information on usage and services; (2) inventory levels; (3) item costs; (4) item locations; (5) Loaner Inventory On Loan; (6) PPC repairs and replacements; (7) PPC firefighter non-participation list (which shall include relevant information as to firefighter gear that has not been serviced in the prior six month period); and (8) billing and payments. Up-to-date billing and monthly invoices which are to be supplied to the Fiscal Analyst or his or her designee, should include the employee's name, PIN, station, shift, rank, date of transaction, description of service, and unit cost. A voucher from the Employee's Commanding Officer requesting the service (repair or alteration) and a signed receipt by the firefighter from **VENDOR** (when services are rendered) are required for all transactions to be paid. All items or services must be invoiced within thirty (30) days of purchase. Said monthly reports shall be at no additional cost to **CITY** and shall be forwarded to **CITY**, via regular mail, hand delivery or by other means approved by **CITY**, addressed to City of San Antonio, Attention: Fiscal Analyst, 315 S. Santa Rosa San Antonio, Texas 78207. **CITY** may, to the extent reasonable, request additional reports be provided by **VENDOR** at no additional cost to **CITY**.

2.30 The **VENDOR** must grant to the SAFD a non-transferable right to use the object code in an executable file format version of the **VENDOR'S** software utilized for

the system.

2.31 When requested by the SAFD, or within two months prior to the expiration or termination of the proposed Contract, **VENDOR** shall deliver to the SAFD all software developed exclusively for the SAFD, and all data files developed pursuant to, related to, or resulting from this contract in an accessible form at no additional cost. All web-based tracking information must be in compliance with NFPA 1851 rules, regulations, standards and guidelines.

2.32 **CITY** shall have fifteen (15) days from receipt of said text file to review the information to ensure that appropriate header information is contained in order to convert said information to a usable format by **CITY**. In the event said appropriate header information or other information necessary to convert said text file to usable information by **CITY**, **CITY** shall advise **VENDOR** of such. **VENDOR** shall take any and all actions necessary to provide the information required as advised by **CITY**.

III. TERM AND RENEWAL

3.1 **Initial Term of CONTRACT.** This CONTRACT shall commence February 1, 2014 and shall terminate September 30, 2018 unless extension or earlier termination shall occur pursuant to any of the provisions of this CONTRACT. However, continuation of this CONTRACT beyond September 30, 2018, is subject to and contingent upon annual appropriation by City Council as evidenced by passage of the City's annual budget ordinance.

3.2 **Renewal. CITY**, at its sole discretion, shall have the option to renew and extend this CONTRACT for up to two (2) one (1) year periods under the same terms and conditions as herein established.

3.3 Prices hereunder shall be fixed through September 30, 2015. After September 30, 2015, the unit cost may be revised annually to increase prices in an amount not to exceed the greater of (i) the average percentage increase in the PPI or (ii) 5%. PPI shall be calculated with reference to the Bureau of Labor Statistics' Producers Price Index (PPI). Calculations will be based on multiplying the percentages of change in the index to the current contract pricing. For all PPC items, the PPI commodity code WPU15710505 for Protective Clothing will be utilized. Reference http://data.bls.gov/cgi-bin/srgate.

To calculate changes in the PPI, two formulas are used.

To determine the index point change, use the following formula:

Current PPI – Previous PPI = Index Point Change

To determine the percent change represented by the index, use the

following formula:

Index Point Change / Previous PPI X 100 = Percent Change

Any price increase in excess of PPI will require proof of said increases and must be agreed to by the parties, with approval by **CITY** not to be unreasonably withheld. Increase notice must be provided by **VENDOR** sixty (60) days prior to such annual renewal period for the **CITY** approval.

3.3.1 The same pricing practices shall be followed for repair, alteration, tailoring and cleaning of the PPC items.

3.4 In the event **CITY** shall elect not to renew the CONTRACT, **CITY** shall give notice of such election within sixty (60) days of the expiration of the then-current term to **VENDOR**.

IV. LIQUIDATED DAMAGES

4.1 Other than with respect to an event of force majeure described below herein, if the **VENDOR** fails to have a fit line of bunker boots and an appropriate number of suspenders and hoods available for immediate issue, replacement or exchange or any new bunker coat, pants or boot order within 60 (sixty) days from receipt of order, **VENDOR** may be subject to fixed and liquidated damages of 5% of the Unit Cost for each item delivered late. This shall be assessed on a one-time only basis per occurrence so that once VENDOR has failed to deliver within the timescales noted above, CITY may assess liquidated damages of 5% of the Unit Cost for each item delivered late and no other assessments may be made.

4.2 If the **VENDOR** fails to complete alterations, repairs, cleaning and services within the time frames established herein, then the **VENDOR** may be subject to fixed and liquidated damages of five dollars ($5.00) per day with a maximum of forty dollars ($40.00) per occurrence that the **VENDOR** fails to complete the work required.

4.3 **VENDOR** may be subject to fixed and liquidated damages of one hundred dollars ($100.00) per day, for failure to maintain operating hours and/or a distinct area for servicing SAFD uniformed personnel.

4.4 Unannounced inspections by **CITY** will take place on a regular basis to confirm that NFPA 1851 rules and regulations are followed properly. If **VENDOR** fails to comply with NFPA 1851 rules and regulations, **VENDOR** may be subject to fixed and liquidated damages of one hundred dollars ($100.00) per calendar day until compliance is attained.

4.5 In the event that the performance by either party of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence and not occasioned by the conduct of either party hereto, whether such occurrence be an Act of God or the common enemy or the result of war, riot, civil commotion,

sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto (provided, however, that Vendor shall be responsible for the acts of its Service Provider), then such party shall be excused from performance, and associated liquidated damages, for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof, and each party shall bear the cost of any expense it may incur due to the occurrence. In the event that the performance by Vendor of any of its obligations or undertakings hereunder shall be interrupted or delayed by Vendor's suppliers, the acts or omissions of the City or compliance with NFPA or similar regulatory requirements, Vendor shall be excused from performance, and associated liquidated damages, for a period of time as is reasonably necessary after such occurrence to remedy the effects thereof.

V. GENERAL ASSURANCES

5.1 **VENDOR** covenants and agrees to perform their respective services described in this CONTRACT or assure they are performed by their designated Service Provider in a good and workmanlike manner to ensure accuracy and timeliness.

5.2 **VENDOR** agrees to have in its employ, at all times and at its own expense, a sufficient number of capable and qualified personnel or in the employ of their Service Provider to comply, as applicable, with the requirements of this Contract. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. **VENDOR** warrants and certifies that **VENDOR** and any other person designated to provide service hereunder has the requisite training, license and/or certification to provide said services.

5.3 **VENDOR** shall pay, on or before their respective due dates, to the appropriate collecting authority, all Federal, State, and local taxes and fees, that are now or may hereafter be levied upon its property, or upon **VENDOR**, or upon the business conducted on its property, or upon any of **VENDOR'S** property used in connection therewith; and shall maintain in current status all Federal, State, and local licenses and permits, required for the operation of the business conducted by **VENDOR**. Failure to comply with the foregoing provisions shall constitute grounds for termination or an Event for Cause of this CONTRACT by **CITY**.

5.4 **VENDOR** acknowledges and agrees that any local government records created or received in the transaction of official business made pursuant to this Contract and which were paid for by public funds are declared to be public property and are subject to the provisions of Chapter 201 of the Texas Local Government Code and Subchapter J, Chapter 441, Texas Government Code. **VENDOR** agrees to abide by said provisions.

VI. COSTS AND INVOICING

6.1 **Cost. VENDOR** acknowledges and agrees that the unit prices provided for herein shall include unit cost, reports, profit, shipping, delivery, discount, storage and any and all other costs associated with PPC, unless otherwise noted herein.

6.2 **CITY** shall neither be required to order or use any specific quantity of PPC nor request any specific amount or type of repairs and alterations. In the event **CITY** decides to provide to its Employees PPC items not listed in Attachment I, **CITY** reserves the right to acquire said goods from another entity and disburse the items independently. In the event of an emergency declared by **CITY'S** Fire Chief, unlimited additional cleanings may be done at a fixed unit cost as stated in Section 6.4 below.

6.3 **Cost of PPC Items.** The parties agree to the fixed unit cost for each PPC item as shown in Attachment I, attached hereto and incorporated herein for all purposes.

6.4 **Cost of Cleaning of Bunker Gear.** During the term of the CONTRACT and all subsequent renewals, if any, the parties agree that pricing will be set according to section 3.2 for a fixed unit cost for cleaning on a bi-annual basis of all bunker gear currently in the **CITY'S** possession as follows:

Bunker Pants (per cleaning)	$18.50 each
Bunker Coat (per cleaning)	$18.50 each

6.5 **Cost of regular inspection.** During the term of the CONTRACT and all subsequent renewals, if any, the parties agree that pricing will be set according to section 3.2 for a fixed unit cost for inspection on an annual basis of all bunker gear currently in the **CITY'S** possession as follows:

Bunker Pants (per inspection)	$7.25 each
Bunker Coats (per inspection)	$7.25 each

6.6 **Cost of Advance Testing of Bunker Gear.** The advanced testing charges are in addition to the regular inspection fees stated above in section 6.5. During the term of the **CONTRACT** and all subsequent renewals, if any, the parties agree that pricing will be set according to section 3.2 for a fixed unit cost for advance testing on an annual basis of all bunker gear currently in the **CITY'S** possession as follows:

Bunker Pants	$7.75 each
Bunker Coats	$7.75 each

6.7 **Costs of Repairs to Bunker Gear.** During the term of the CONTRACT the parties agree that pricing will be set according to section 3.2.1 for a fixed repair cost for all bunker gear purchased under this CONTRACT and gear already in service for the first 5 years of wear life as follows:

Fixed rate per month per set for active/issued gear	$7.25
Fixed rate per month per set for inactive/reissue/loaner gear	$3.25

6.8 The parties agree that the fixed repair cost contained in Section 6.7 above covers all Bunker Gear for the first 5 years of wear life through and shall cover all normal wear and tear, including but not limited to, cuff and knee reinforcements, torn or worn trim and Velcro, tears, and any other damage resulting from normal use. The repair of Bunker Gear over 5 years old is subject to pricing on Attachment V.

VII. OWNERSHIP OF PRODUCT

7.1 **VENDOR** agrees and covenants to protect any and all proprietary rights of **CITY** in any materials provided to **VENDOR by CITY**. Such protection of proprietary rights by **VENDOR** shall include, but are not limited to, the inclusion in any copy intended for publication of copyright mark reserving all rights to **CITY**. Additionally, any materials provided to **VENDOR** by **CITY** shall not be released to any third party, with the exception of **Vendor** suppliers providing services to **CITY**, without the express written consent of **CITY** and shall be returned intact to **CITY** upon termination of this CONTRACT. Any material provided by **CITY** to **VENDOR** which is deemed to contain proprietary or confidential material shall be clearly designated as such in writing by **CITY**.

7.2 No information in whatsoever form and character produced and/or maintained in accordance with, pursuant to, or as a result of this CONTRACT shall be the subject of any copyright or proprietary claim by **VENDOR**, save and except any software or intellectual property developed at **VENDOR'S** expense, and any and all intellectual property rights of Vendor with respect to any of the PPC supplied hereunder and **VENDOR'S** proprietary software as acknowledged in Section 2.26, Inventory System.

VIII. WARRANTIES

8.1 **Warranty on Personal Protective Clothing.** **VENDOR** hereby warrants that all PPC purchased by **CITY** from **VENDOR** hereunder, and under prior contracts with **VENDOR** or **VENDOR'S** predecessors, is free from any defects in material or workmanship for the lifetime of the PPC. **VENDOR** shall be obligated under this warranty to repair, or at **CITY'S** option, replace any defective PPC item. **CITY** acknowledges that **VENDOR'S** warranty does not cover accidental damage, intentional abuse, and normal wear; there are no other exclusions. If the parties disagree as to whether these conditions exist or have occurred, **CITY** and **VENDOR** will designate a mutually acceptable third party to determine whether the PPC item is defective. The parties acknowledge and agree that, under this warranty, if it is determined that a PPC item is defective, **VENDOR** shall replace

any such PPC item at no additional cost to **CITY**. Any and all costs required to meet the obligations under this warranty shall be borne solely by **VENDOR.**

8.2 **Warranty – Guaranteed Wear Life.** **VENDOR** hereby guarantees a five (5) year wear life for all Bunker Gear from the date the Bunker Gear was purchased, provided such Bunker Gear is made available for regularly scheduled cleaning by **VENDOR** and the proper notification is received from **VENDOR** as required by Section 2.14, Cleaning of Personal Protective Clothing. Costs of such warranty shall be in accordance with Section 6.4, Cost of Cleaning Bunker Gear and Section 6.6, Cost of Repairs to Bunker Gear, and shall include pick-up and delivery of Bunker Gear at fifty-one (51) locations around **CITY**. **CITY** acknowledges that **VENDOR'S** guaranteed wear life warranty does not cover intentional abuse not caused by **VENDOR**; there are no other exclusions. In the event of "accidental and/or extra-ordinary exposure" such as flashover, acid exposure, UV, etc., **VENDOR** agrees to cover each item up to one-half (1/2) of the depreciated value of the garment, based on a straight 5 year depreciation schedule as indicated on Attachment IV. If the parties disagree as to whether these conditions exist or have occurred, the parties will designate a mutually acceptable third party to determine whether these conditions exist or have occurred. The parties acknowledge and agree that, under this warranty, if it is determined that accidental damage or intentional abuse does not exist or has not occurred, **VENDOR** shall replace or repair such Bunker Gear at no additional cost to **CITY**. Any and all costs required to meet the obligations under this warrant shall be borne solely by **VENDOR.**

8.3 **VENDOR** hereby warrants that all PPC shall meet all requirements of NFPA Specification 1971, Current Edition or the current newer edition in future years, OSHA 1910, Subpart L, and Cal-OSHA Title 8, Article 10.1, Paragraph 3406, as the same are in effect at the time of purchase of such items of PPC. Further, **VENDOR** shall warrant all PPC shall comply with the Performance Requirements and Protective Garment Design as set forth in NFPA 1971, Current Edition, and in Attachment II.

IX. INSURANCE

9.1 Prior to the commencement of any work under this Agreement, **VENDOR** shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Fire Department. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The **CITY** will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this Agreement until such certificate and endorsements have been received and approved by the City's Fire Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

9.2 The **CITY** reserves the right to review the insurance requirements of this Article during the effective period of this Agreement and any extension or renewal hereof and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this Agreement. In no instance will **CITY** allow modification whereby **CITY** may incur increased risk. In the event that VENDOR cannot reasonably comply with such modifications, City may terminate this Agreement without cause at its discretion.

9.3 A **VENDOR'S** financial integrity is of interest to the **City**; therefore, subject to **VENDOR'S** right to maintain reasonable deductibles in such amounts as are approved by the **CITY**, **VENDOR** shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at **VENDOR'S** sole expense, insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

TYPE	AMOUNTS
1. Workers' Compensation 2. Employers' Liability	Statutory $500,000/$500,000/$500,000
3. Broad form Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations *b. Independent Contractors c. Products/Completed Operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you	For Bodily Injury and Property Damage of $1,000,000 per occurrence; $2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage f. $100,000
4. Business Automobile Liability a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles	Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence

9.4 **VENDOR** agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same insurance coverages required of **VENDOR** herein, and provide a certificate of insurance and endorsement that names the **VENDOR** and the **CITY** as additional insureds. Respondent shall provide the **CITY** with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by **CITY'S** Risk Manager, without subsequent City Council approval,

when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by **CITY'S** Risk Manager, which shall become a part of the contract for all purposes.

9.5 **VENDOR** shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to **CITY** at the address provided below within 10 days of the requested change. **VENDOR** shall pay any costs incurred resulting from said changes.

City of San Antonio
Attn: Fire Department
315 S. Santa Rosa
San Antonio, Texas 78207

9.6 **VENDOR** agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:

- Name the **CITY**, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the **CITY**, with the exception of the workers' compensation and professional liability policies;

- Provide for an endorsement that the "other insurance" clause shall not apply to the **CITY** of San Antonio where the **CITY** is an additional insured shown on the policy;

- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the **CITY**.

- Provide advance written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

9.7 Within five (5) calendar days of a suspension, cancellation or non-renewal of coverage, **VENDOR** shall provide a replacement Certificate of Insurance and applicable endorsements to **CITY**. **CITY** shall have the option to suspend **VENDOR'S** performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this Agreement.

9.8 In addition to any other remedies the **CITY** may have upon **VENDOR'S** failure to provide and maintain any insurance or policy endorsements to the extent and

within the time herein required, the **CITY** shall have the right to order **VENDOR** to stop work hereunder, and/or withhold any payment(s) which become due to **VENDOR** hereunder until **VENDOR** demonstrates compliance with the requirements hereof.

9.9 Nothing herein contained shall be construed as limiting in any way the extent to which **VENDOR** may be held responsible for payments of damages to persons or property resulting from **VENDOR'S** or its subcontractors' performance of the work covered under this Agreement.

9.10 It is agreed that **VENDOR'S** insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of San Antonio for liability arising out of operations under this Agreement.

9.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this Agreement and that no claim or action by or on behalf of the **CITY** shall be limited to insurance coverage provided..

9.12 **VENDOR** and any Subcontractors are responsible for all damage to their own equipment and/or property.

X. INDEMNITY

10.1 **VENDOR covenants and agrees to FULLY INDEMNIFY and HOLD HARMLESS, the CITY and the elected officials, employees, officers, directors, volunteers and representatives of the CITY, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the CITY directly or indirectly arising out of, resulting from or related to VENDOR'S activities under this Agreement, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, consultant or subcontractor of VENDOR, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the CITY, it's officers or employees, in instances where such negligence causes personal injury, death, or property damage. This indemnity is limited to the insurance coverage provided by VENDOR above herein.**

10.2 **IN THE EVENT VENDOR AND CITY ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE**

APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS FOR THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW.

10.3 **The provisions of this INDEMNITY are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.**

10.4 **VENDOR shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or VENDOR known to VENDOR related to or arising out of VENDOR'S activities under this Contract and shall see to the investigation and defense of such claim or demand at VENDOR'S cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving VENDOR of any of its obligations under this paragraph.**

In no event will **VENDOR** be liable for any incidental, indirect, consequential or special damages, lost revenues, lost profits or loss of use, even if informed of the possibility of such damages. **VENDOR'S** liability to **CITY** for direct damages shall be limited to the amounts set forth in Section 9.3 hereof.

XI. SUBCONTRACTING

11.1 It is **CITY'S** understanding, and this CONTRACT is made in reliance thereon, that **VENDOR**, in the performance of services required hereunder, will use the following Service Provider: Cowboy Cleaners, Inc.

Any deviation from this Service Provider, in the form of deletions, additions or substitutions, shal. be approved by **CITY**.

Compliance by Service Provider with the provisions of this CONTRACT shall be the responsibility of **VENDOR**

CITY shall in no event be obligated to any third party, including, any subcontractor of **VENDOR**, for performance of services or payment of fees.

XII. CONFLICT OF INTEREST

12.1 **VENDOR** acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a **CITY** officer or employee, as those terms are defined therein, from having a financial interest in any contract with **CITY** or any **CITY** agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the **CITY** or in the sale to the **CITY** of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a **CITY** officer or employee; his

parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a **CITY** contract, a partner or a parent or subsidiary business entity. **VENDOR** warrants and certifies that it, its officers, employees and agents are neither officers nor employees of the **CITY** or any of its agencies such as **CITY** owned utilities.

XIII. SBEDA

(Waived)

XIV. TERMINATION

14.1 For purposes of this CONTRACT, termination of this CONTRACT shall mean termination by expiration of the CONTRACT term or earlier termination pursuant to any of the provisions hereof.

14.2 **Termination Without Cause.** This CONTRACT may be terminated by either party upon written notice in accordance with Section XIX, Notice. Such notice must specify an effective date of termination, which shall be not less than one hundred eighty (180) days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be one hundred eighty (180) days calendar days after receipt of the notice by the other party.

14.3 **Defaults With Opportunity for Cure.**

14.3.1 Should **VENDOR** fail to meet the established turn-around times as required herein, same shall be considered a default. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **VENDOR** shall have thirty (30) days after receipt of the written notice, in accordance with Section XIX, Notice, to cure such default. If **VENDOR** fails to cure the default within such ten-day cure period, **CITY** shall have the right, without further notice, to terminate this Agreement,

14.3.2 Should **VENDOR** or its Service Provider fail to tailor, alter, repair or replace the PPC within the established time periods in accordance with Section 2.12, Tailoring, Alterations and Repair, same shall be considered a default. **CITY** shall deliver written notice of said default specifying such matter(s) in default. **VENDOR** shall have thirty (30) days after receipt of the written notice, in accordance with Section XIX, Notice, to cure such default.

14.4 **Termination For Cause.** Upon written notice, **CITY** may terminate this CONTRACT upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this CONTRACT:

14.4.1 **VENDOR** makes or allows to be made any material misrepresentation or provides any materially misleading information in connection with this CONTRACT, including, but not limited to, **VENDOR'S** proposal, or any covenant, obligation, term or condition contained in this CONTRACT; or

14.4.2 **VENDOR** violates or fails to perform any covenant, provision, obligation, term or condition of a material nature contained in this CONTRACT, except those events of default for which an opportunity to cure is provided herein; however, if such default as provided in Section 14.3, Defaults with Opportunity for Cure, exceeds the following, same shall be considered an Event for Cause, subject to the remedies as provided herein:

(A) If **VENDOR** fails to maintain the established time periods as required herein, twelve (12) times within any consecutive twelve (12) month period during the term of this CONTRACT; or

(B) If **VENDOR** fails to repair, tailor, or alter PPC item within the established time periods as required herein, twelve (12) times within any consecutive twelve (12) month period during the term of this CONTRACT; or

14.4.3 **VENDOR** assigns this CONTRACT contrary to the terms hereof; or

14.4.4 **VENDOR** ceases to do business as a going concern; makes an assignment for the benefit of creditors; admits in writing its inability to pay debts as they become due; files a petition in bankruptcy or has an involuntary bankruptcy petition filed against it (except in connection with a reorganization under which the business of such party is continued and performance of all its obligations under this CONTRACT shall continue); or if a receiver, trustee or liquidator is appointed for it or any substantial part of **VENDOR'S** assets or properties; or

14.4.5 **VENDOR** fails to comply in any respect with the insurance requirements set forth in this CONTRACT; or

14.4.6 **VENDOR** violates any rule, regulation or law by which **VENDOR** is bound or shall be bound while and in performing the services required under this CONTRACT; or

14.4.7 **VENDOR** materially breaches the terms this CONTRACT

14.5 **Termination By Law.** If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this CONTRACT shall automatically terminate as of the effective date of such prohibition.

14.6 Effect of Termination. Notwithstanding Section 14.3, Defaults with Opportunity for Cure, upon a decision to terminate by **CITY**, written notice of such shall be immediately provided to **VENDOR** specifying the effective date of termination, notice of which shall be given in accordance with Section XIX, Notice.

14.6.1 Subject to 14.6.2, **VENDOR** shall affect an orderly transfer to **CITY** or to such person(s) or firm(s) as the **CITY** may designate, at no additional cost to **CITY**, all documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by **VENDOR** hereunder in accordance with Section XVIII, Record Retention and Accessibility of Records. Any record transfer shall be completed within thirty (30) days of the termination date and shall be completed at **VENDOR'S** sole cost and expense.

14.6.2 Within (30) days of the date of termination of this CONTRACT, **VENDOR** agrees to deliver to **CITY** all data files developed pursuant to, related to, or resulting from this CONTRACT in a comma delimited text file, with appropriate header information, at no additional cost to **CITY**. **CITY** shall have the right to review said information as provided herein.

14.6.3 Within thirty (30) days of the effective date of termination or expiration of this CONTRACT, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services performed under this CONTRACT through the effective date of termination; however, failure by **VENDOR** to submit its claims within said thirty (30) days shall not negate any liability on the part of **CITY** unless **CITY** has been materially prejudiced by any such delay, but in no event shall **VENDOR** submit its claims any later than 180 days after the effective date of termination or expiration of this CONTRACT.

14.6.4 Upon the effective date of expiration or termination of this CONTRACT, **VENDOR** shall cease all operations of the **CITY'S** PPC program. Upon receipt of notice termination, **VENDOR** shall provide **CITY** a listing of all PPC items held by **VENDOR** for repair, tailoring, alterations, or cleaning held by **VENDOR**. **CITY** shall, at its sole option and discretion, allow **VENDOR** to complete any such repairs, alteration, tailoring, or cleaning. **CITY** shall give notice to **VENDOR** of its decision regarding these issues in writing.

14.6.5 Upon expiration or termination of this CONTRACT, all rights granted to **VENDOR** hereunder shall cease.

14.6.6 Termination not sole remedy. In no event shall **CITY'S** action of terminating this CONTRACT, whether for cause or otherwise, be deemed an election of **CITY'S** remedies, nor shall such termination limit, in any way, at law or at equity, **CITY'S** rights to seek damages from or otherwise pursue **VENDOR** for any default hereunder or other action.

XV. INDEPENDENT CONTRACTOR

15.1 It is expressly understood and agreed by both parties hereto that **VENDOR** is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that **CITY** shall in no way be responsible therefore, and that neither party hereto has authority to bind the other or to hold out to third parties that it has the authority to bind the other.

15.2 Nothing contained herein shall be deemed or construed by the parties hereto or by any third party as creating the relationship of employer-employee, principal-agent, partners, joint ventures or other similar such relationship between the parties hereto.

15.3 Any and all of the employees of **VENDOR**, wherever located, while engaged in the performance of any work required by **CITY** under this CONTRACT shall be considered employees of **VENDOR** only and not of **CITY**. Any and all claims that may arise from the Worker's Compensation Act on behalf of said employees while so engaged shall be the sole obligation and responsibility of **VENDOR**.

XVI. CONFIDENTIAL INFORMATION

16.1 **VENDOR** shall secure the confidentiality of all **CITY** records and information that **VENDOR** may have access to in accordance with the applicable Federal, State, and local laws and regulations. This provision shall not be construed as limiting **CITY'S** or its authorized representative's right of access to records or other information under this CONTRACT.

XVII. RECORD RETENTION AND ACCESSIBILITY OF RECORDS

17.1 **VENDOR** and its subcontractor(s) shall, during the term of this CONTRACT, maintain at its Service Facility adequate books and records of all transactions in which **VENDOR** engages with **CITY**.

17.2 **VENDOR** and its subcontractor(s), if any, shall properly, accurately and completely maintain all books, documents, papers, accounting records, computer records, software system, and other evidence pertaining to the services provided hereunder and shall make such materials available at its respective offices, at all reasonable times and as often as **CITY** may reasonably deem necessary, during the CONTRACT period for the purposes of accounting, auditing, or making copies by **CITY** and/or its authorized representatives.

17.3 Upon termination of this CONTRACT, **VENDOR** agrees to transfer to **CITY** at no cost to **CITY**, all documents, papers, records, charts, reports, and data produced as a result of or pertaining to the services rendered by **VENDOR** hereunder, according to the terms herein established in accordance with the

provisions contained herein. **VENDOR** may retain a copy of all such papers and documents as are described above.

17.4 **VENDOR** agrees to notify **CITY** immediately if a request is made by third person for information produced and/or maintained by **VENDOR** as a result of the provision of services under this CONTRACT. **VENDOR** shall immediately forward said request to **CITY** for response.

XVIII. MONITORING PROJECT PERFORMANCE

18.1 **CITY'S** SAFD staff will administer this CONTRACT and will monitor and evaluate **VENDOR** pursuant to the provisions hereof. **VENDOR** shall establish and maintain appropriate documentation to verify performance and shall submit such documentation to **CITY'S** Fire Department staff when requested, as often as reasonably deemed necessary by **CITY**, upon written notice thereof. **VENDOR** further agrees to reasonable on-site monitoring by representatives of **CITY**.

XIX. NOTICE

Unless specified otherwise. any notice required or permitted to be given under this CONTRACT shall be sufficient if given in writing and sent by certified mail, return receipt requested, postage prepaid to **CITY**, or to **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

City of San Antonio
Fire Department
ATTN: Fiscal Analyst
315 S. Santa Rosa,
San Antonio, TX 78207

VENDOR

Morning Pride Manufacturing
Attn: Jeff Morris, President
1 Innovation Court
Dayton, OH 45414-3967

XX. ATTACHMENTS

20.1 **VENDOR** understands and agrees that all attachments referred to in this CONTRACT are intended to be and hereby are, specifically made a part of this CONTRACT. Said attachments are as follows:

Annual Usage and Cost Sheet	Attachment I
General Specifications	Attachment II
List of Local Repairs vs. Factory Repairs	Attachment III
List of Loan Pool Sizes	Attachment IV
Accidental and/or Extra-Ordinary Exposure Depreciation Schedule	Attachment V

20.2 **VENDOR** understands and agrees that all such Attachments are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by **VENDOR** as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

XXI. GOVERNING LAW AND VENUE

21.1 Venue of any court action brought directly or indirectly by reason of this CONTRACT shall be in Bexar County, Texas. This CONTRACT shall be construed under and in accordance with the laws of the State of Texas and all obligations of the parties created hereunder are to be performed in Bexar County, Texas.

XXII. COMPLIANCE WITH ALL APPLICABLE LAWS

22.1 **VENDOR** hereby agrees to provide all services required by this CONTRACT in compliance with all applicable Federal, State and local laws.

XXIII. NON-ASSIGNABILITY

23.1 Notwithstanding Section XI., Subcontracting, **VENDOR** shall not assign any interest in this CONTRACT to any other party without the prior written consent of the **CITY**. Any such assignment of interest by **VENDOR** is subject to City Council approval as evidenced by passage of an ordinance.

XXIV. GENDER

24.1 Words of any gender used in this CONTRACT shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires.

XXV. CAPTIONS

25.1 The captions contained in this CONTRACT are for convenience or reference only and shall in no way limit, enlarge or alter the terms and/or conditions of this CONTRACT.

XXVI. AMENDMENTS

26.1 This CONTRACT, together with its authorizing ordinance and its attachments, constitute the entire agreement between the parties. No amendment, modification or alteration of the terms of this CONTRACT, unless otherwise expressly provided for herein, shall be binding unless the same be in writing, dated subsequent to the date hereof, duly executed by the parties hereto, and subject to City Council approval as evidenced by passage of an ordinance.

XXVII. NON-WAIVER

27.1 Neither party granting or acceptance of extensions of time to comply with any CONTRACT covenant or condition will neither act as a release of the other party nor constitute a waiver of that or any other covenant or condition required in the CONTRACT. Therefore, each of the parties retains the ability to exercise its rights or remedies authorized under this CONTRACT.

XXVIII. SEVERABILITY

28.1 If any clause or provision of this CONTRACT is illegal, invalid or unenforceable under present or future federal, state or local laws, including, but not limited to, the City Charter, City Code or Ordinances of the City of San Antonio, Texas, then, and, in that event, it is the intention of the parties hereto that such invalidity, illegality or unenforceability shall not affect any other clause or provision hereof and that the remainder of this CONTRACT shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained herein. It is also the intention of the parties to this CONTRACT that, in lieu of each clause or provision of this CONTRACT that is illegal, invalid or unenforceable, there be added as part of this CONTRACT a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

XXIX. ENTIRE AGREEMENT

29.1 This CONTRACT, its attachments and its authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the

parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereto, duly executed by the parties hereto and subject to City Council approval, as applicable and required herein.

XXX. ACKNOWLEDGMENT AND AUTHORITY

30.1 Each of the parties hereto acknowledges that it has read this CONTRACT, understands its contents and has the requisite authority to execute this CONTRACT voluntarily.

EXECUTED this the _____ day of _____, 2014

CITY **CITY OF SAN ANTONIO**	**VENDOR** **MORNING PRIDE MANUFACTURING, LLC.**
_____	_____ 1-13-2014
Sheryl L. Sculley City Manager	Jeff Morris, President Morning Pride Manufacturing, LLC.

Approved as to form:

_____
Robert F. Greenblum
City Attorney