KMC
10/1 /15
Item No. 14

AN ORDINANCE 2015-10-01-0845

AUTHORIZING A PROFESSIONAL SERVICES CONTRACT WITH AETNA LIFE INSURANCE COMPANY TO PROVIDE OR ARRANGE HEALTH SERVICES FOR MEDICARE-ELIGIBLE RETIREES AND ELIGIBLE DEPENDENTS FOR A THREE YEAR TERM BEGINNING JANUARY 1, 2016 AND ENDING DECEMBER 31, 2018, WITH TWO RENEWAL TERMS OF ONE YEAR EACH, AT THE CITY'S OPTION, FOR AN ESTIMATED ANNUAL COST OF $2.2 MILLION

* * * * *

WHEREAS, the City issued a Request for Proposals (RFP) for retiree health services; and

WHEREAS, a committee representing various City departments, including the City Manager's Office, Human Resources, Finance, as well as a retiree representative evaluated the proposals received, and recommends Aetna Life Insurance Company as the best able to provide the requested services based on the following criteria: experience/qualifications, proposed plan, proposed price, and Small Business Economic Development Advocacy Program (SBEDA) participation; financial stability; and

WHEREAS, as a result of this process, a contract will be recommended that provides for Medicare health services for retirees through a Preferred Provider Organization (PPO); and

WHEREAS, said Contract provides for an initial 36 month term, expiring on December 31, 2018; and

WHEREAS, the estimated annual cost of this contract is $2.2 million; **NOW THEREFORE:**

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

SECTION 1. The City Manager or her designee is hereby authorized to execute the PPO contract with Aetna Life Insurance Company to provide retirees and their eligible dependents with Medicare health services at an estimated annual cost of $2.2 million. A copy of the Medicare PPO Contract in final form is attached hereto and incorporated herein as Exhibit "A". The terms of the Contract are hereby approved.

SECTION 2. Funding for this ordinance in the amount of $1,633,157.00 is contingent upon approval of the Fiscal Year 2016 Budget, per the table below:

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Amount	General Ledger	Cost Center	Fund
$1,442,719.00	5201040	1002060012	75002000
$190,438.00	5201040	1002060011	75002000
Total Amt $1,633,157.00			

SECTION 3. Additional funding in the amount of $9,366,843.00 for this Ordinance is contingent upon City Council approval of subsequent fiscal year budgets.

SECTION 4. If approved by council, payment not to exceed the budgeted amount is authorized to Aetna Life Insurance Company and should be encumbered with a purchase order.

SECTION 5. 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 6. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise, it shall be effective on the tenth day after passage hereof.

PASSED AND APPROVED this 1st day of October, 2015.

M A Y O R
Ivy R. Taylor

ATTEST:

Leticia M. Vacek, City Clerk

APPROVED AS TO FORM:

Martha G. Sepeda, Acting City Attorney

Agenda Item:	**14 (in consent vote: 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16)**
Date:	10/01/2015
Time:	03:32:10 PM
Vote Type:	Motion to Approve
Description:	An Ordinance authorizing a professional services contract with Aetna Life Insurance Company to provide or arrange health services for Medicare-eligible retirees and eligible dependents for a three year term beginning January 1, 2016 and ending December 31, 2018, with two renewal terms of one year each at the City's option, in an estimated annual cost of $2.2 million. [Ben Gorzell, Chief Financial Officer; Lori Steward, Director, Human Resources]
Result:	Passed

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

EXHIBIT A

PROFESSIONAL SERVICE AGREEMENT
FOR
ADMINISTRATION OF MEDICARE PREFERRED PROVIDER PROGRAM

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This Agreement is made and 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 pursuant to Ordinance No. _____, passed and approved on October 1, 2015, and Aetna (hereinafter referred to as "Vendor"), both of which may be referred to herein collectively as the "Parties".

NOW THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto collectively agree and by the execution hereof are bound to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

I. DEFINITIONS

As used in this Agreement, the following terms shall have meanings as set out below:

"City" is defined in the preamble of this Agreement and includes its successors and assigns.

CMS" means the Centers for Medicare and Medicaid Services.

"CMS Contract" means the contract between Vendor and CMS under which Vendor offers the Plan.

"Vendor" is defined in the preamble of this Agreement and includes its successors.

"Director" shall mean the Director, or Acting Director, or designee of City's Human Resource Department.

"Mandates" means applicable laws, regulations and other government requirements in effect during the Term of this Group Agreement including, without limitation, applicable Medicare laws, regulations and CMS requirements.

"Member" is a Medicare beneficiary who (1) has enrolled in Our Plan and whose enrollment in the Plan has been confirmed by CMS, and (2) is eligible to receive coverage under the Plan, subject to the terms and conditions of the EOC and Schedule of Copayments/Coinsurance and this Group Agreement.

Plan Participants" are eligible City retirees, and their dependents for whom the Medicare Advantage Employer Preferred Provider Organization (PPO) is provided.

II. PURPOSE

2.1 The purpose of this Contract is to state the terms and conditions under which the Vendor shall provide or arrange health services as a Medicare Advantage Preferred Provider Organization Plan with Prescription Drug Plan and a Preferred Provider Organization Hybrid Plan with Prescription Drug Plan for Medicare-eligible retirees of the City and their dependents ("Plan Participants").

III. SCOPE OF SERVICES

3.1 Vendor agrees to provide the services described in this Article III entitled Scope of Services and Request For Proposals (RFP) in exchange for the compensation described in Article V. Compensation.

3.2 Vendor shall work with the Director to ensure that all work performed by Vendor hereunder shall be performed to the satisfaction of Director. The determination made by Director shall be final, binding and conclusive on all Parties hereto. City shall be under no obligation to pay for any work performed by Vendor, which is not satisfactory to Director. City shall have the right to terminate this Agreement, in accordance with Article XVII. Termination, in whole or in part, should Vendor's work not be satisfactory to Director; however, City shall have no obligation to terminate and may withhold payment for any unsatisfactory work, as stated herein, even should City elect not to terminate.

3.3 Vendor shall provide City retirees enrolled in Vendor's plan access to all health services and other special programs offered through the Vendor's Medicare Employer PPO Plan Preferred Provider Organization.

3.4 Vendor will make coverage available for all eligible Medicare Retirees and their eligible Medicare dependents.

3.5 Vendor will assist in plan communication and enrollment. The Vendor will attend all retiree open enrollment meetings.

3.5.1 Vendor will develop, print and mail to the participant's home address all CMS-required information at enrollment and on an annual basis to include: Annual Notice of Change/Evidence of Coverage, Summary of Benefits, Evidence of Coverage, Comprehensive Formulary, ID Card and Provider/Pharmacy Directory. The Vendor will provide materials in English and Spanish. The Vendor will provide a supply of materials to the City Employee Benefit office to be used for new retiree orientations and to respond to retiree requests throughout the plan term as needed.

3.5.2 The identification (ID) cards and directories, etc. for the initial enrollment must be mailed to each participant at their home address not later than two weeks prior to the effective date of the contract (January 1, 2016). Thereafter, ID cards must be provided to a participant immediately via self-service web access or within five (5) working days of receiving any change request and two weeks prior to the start of each new plan year. The CMS Summary of Benefits must be developed and mailed to each participant no later than March 1, 2016 unless another date has been agreed upon by the City.

3.5.3 Vendor will dedicate a local account management team and provide a local medical director available to the City. These persons shall be available to the City Employee Benefits office personnel through a direct, local telephone number.

3.5.4 Vendor will have in place a plan for continuation of current treatment during transition.

3.5.5 Properly staffed and supervised customer service representatives will be available to plan participants via a toll-free number. This number will be available by a live voice from minimum hours of 8:00 a.m. to 9:00 p.m. E.S.T. Monday through Friday.

3.6 Vendor will provide and maintain networks of qualified providers that provide quality services on a cost-effective basis for the Medicare Advantage plans during the term of the contract. The Vendor will ensure that the providers continue to meet licensing, selection, and screening criteria and that required liability insurance is maintained. The Vendor will maintain a provider network with minimal changes throughout the life of agreement. Subsequent to submission, any material changes must be brought to the City's attention immediately.

3.7 City requires that for each type of plan administered, the benefits must be interpreted and claims processed in accordance with the Evidence of Coverage.

3.8 Vendor's services include participant access to a 24/7 nurse advice line.

3.9 Vendor will notify service providers of the effective date of the contract award of the City business and provide the billing address for claim submission relating to City retiree participants for services rendered after the effective date of this change. This will ensure a smooth transition for claims processing and payments.

3.10 Vendor will maintain all electronic and manual claims data in accordance with the Texas state-mandated record retention schedule.

3.11 Vendor will provide the City advance copies of any correspondence sent to the general City retiree population or the covered Plan Participants.

3.12 No subcontractors or other service providers will be hired by the Vendor exclusively to support this contract with the City, without specific written approval of the City. The Vendor shall add no fees, charges or premiums for any subcontractors' services. Despite City approval of a subcontract, the City shall in no event be obligated to any third party, including any subcontractor of the Vendor for performance of work service.

3.13 In coordination with City staff, the Vendor shall develop and oversee a detailed transition plan to be used at commencement of the contract; such plan shall result in no additional cost to the City.

3.14 When requested by the City, the Vendor must agree to attend monthly update and quarterly review meetings as well as new retiree orientations and all open enrollment meetings at the City's desired location in San Antonio, Texas. The Vendor may also be required to attend periodic key-stakeholder meetings.

3.15 Vendor will provide the City with specific comprehensive experience reports quarterly and summary reports annually. In addition to standard reports, the Vendor will provide additional reports for data analysis purposes.

3.16 All management reports shall track claims data by retiree sub-totals, dependent sub-totals,

and grand totals for each plan/product offered. There shall also be no charge to the City for any standard management report.

3.17 Vendor will provide a report reflecting Vendor's Star Reimbursement amount issued by the federal government. Vendor will not pass on costs of a lowered reimbursement amount resulting from loss of Vendor's Star Reimbursement during any year of the contract.

3.18 Vendor will conduct an annual City member satisfaction survey and provide the results to the City no later than March 31 of the following calendar year.

3.19 Vendor shall ensure the confidentiality of all information contained in their files, including but not limited to medical information.

3.20 Vendor will make available to the City its reporting package. Aggregate and individual plan reports should be provided on a monthly and quarterly basis in paper format and electronic access for ad hoc reporting will be available to the City at all times.

3.21 Vendor agrees to the following performance guarantees in connection with the implementation of services and for those services that are to be provided on an ongoing basis for the life of the contract. Vendor will conduct quarterly internal audits and report the results to the City for use in enforcing performance guarantees. Performance Guarantee results will be based on our book of business and measured on an annual basis.

3.21.1 Nonconformity to any specific guarantee will result in an annual penalty of $2,000 per guarantee.

3.21.2 I. D. Cards: Accurate I.D. cards will be mailed by December 15, 2015, for complete enrollment data submitted by City by December 1, 2015. Clean claims only on initial submission.

3.21.3 Claims Processing: 95% or greater of claims will be processed in 30 calendar days measured from the date a clean claim is received to the date it is processed.

3.21.4 Claims Payment Accuracy: Aetna agrees to a financial accuracy rate of 97% or greater. Financial accuracy rate is defined as the percentage of dollars paid correctly, calculated by dividing the total claim dollars paid less the absolute value of overpayments and underpayments by the total claims dollars paid. Data should be obtained through ongoing random audits based on a statistically valid sampling of all claims represented for payment.

3.21.5 Telephone Response Time: 85% or greater of calls will be answered in 30 seconds.

3.21.6 Abandonment Rate: 3% or less of calls will be hung up or ended before reaching Customer Service.

3.22 Vendor shall allow at the City's request, City or its designee to audit, examine and make reports and/or copies of all or any financial and eligibility records maintained by Vendor related to this contract.

3.23 Vendor shall offer the SilverSneakers® program from Healthways. Under this program Members get a monthly membership at any one of thousands of participating fitness clubs and facilities nationwide. Plan members that don't live near a participating facility or who prefer to exercise at home may order a SilverSneakers Steps at-home kit. Members are also entitled to SilverSneakers-specific classes and social programs.

IV. TERM

4.1 Unless sooner terminated in accordance with the provisions of this Agreement, the term of this Agreement shall commence 12:01 a.m. Central Standard Time on January 1, 2016 and terminate at 11:59 p.m. Central Standard Time on December 31, 2018.

4.2 City shall have the option to renew this Agreement on the same terms and conditions for two additional one (1) year periods. Renewal with renewal rates shall be in writing and signed by the City's Director of Human Resources without further action by the San Antonio City Council, subject to and contingent upon appropriation of funds therefore. Renewal rates will be provided for year 2 and beyond will be calculated in part on City's actual claims experience.

4.3 If funding for the entire Agreement is not appropriated at the time this Agreement is entered into, City retains the right to terminate this Agreement at the expiration of each of City's budget periods, and any subsequent contract period is subject to and contingent upon such appropriation.

V. COMPENSATION TO VENDOR

5.1 In consideration of Vendor's performance in a satisfactory and efficient manner, as determined solely by Director, of all services and activities set forth in this Agreement, City agrees to pay Vendor the monthly premiums for each covered City plan participant in accordance with the following premium fee schedule:

Rate PPO W/PDP	Rate PPO (Hybrid) W/ PDP	Standalone PD Rate
All Locations $199.88 Per Individual	All Locations $188.87 Per Individual	All Locations $110.98 Per Individual

Plan option $10/$20/$40/25% Rx. Rates for year 2 and beyond will be calculated in part on City's actual claims experience.

5.2 Vendor acknowledges and agrees the City does not guarantee a minimum participation in the plan. Retirees may transfer between plans during annual enrollment with an effective date of January 1st <u>with no pre-existing condition clause</u>.

5.3 Vendor acknowledges and agrees the City considers premiums due as follows:

- Premium is paid on a retiree for that month only if the retiree is enrolled on the first of that month.

- Coverage terminates on the last day of the month for which the retiree pays the retiree contribution for coverage.
- The City pays City contributions in arrears within 15 business days from the end of the month.
- In all cases, the Vendor will extend coverage through the period for which premium is paid based on the above termination rules even though the retiree and/or dependent may not otherwise be eligible for coverage.

5.4 City shall remit City contribution payments based on the monthly enrollment in accordance with the above rate structure as provided for in 5.1.

5.5 Vendor will accept eligibility files from the City via electronic transfer using an FTP server. All data transfers will be completed in compliance with HIPAA standards.

5.6 The City will remit via wire transfer City contributions within 15 days from the end of each month. A corresponding self-bill will be sent via email to the Respondent showing the total premium and eligibility counts for each plan and coverage tier. The City shall be deemed to have paid the Vendor in full for any given calendar quarter if the paid premium equals that due for the enrollee count calculated by the City for such plan for such quarter, provided such count is within three percent variance (higher or lower) of the employee enrollee count the Respondent's records reflect for such plan for such quarter. In any month the Vendor believes the variance exceeds the 3% threshold, a discrepancy report should be provided to The City within 15 days of receipt of the City's payment that month. The City shall have 15 days from the date of receipt to evaluate and respond to the discrepancy report.

5.7 Within 45 days after the end of each calendar quarter, the Vendor must provide the City with a Consolidated Account Summary Statement showing the status of the City account as Paid in Full, Overpaid or Underpaid. Statements, which are not deemed Paid in Full, should be accompanied by a detailed discrepancy report.

5.8 Vendor may not use any City-provided eligibility files for the purposes of marketing, solicitation or any other communication to City retirees not necessary for the effective administration of the specific plan provided to City retirees by the Vendor.

5.9 Enrollment forms must be generic forms and a supply must be available to the COSA benefit office staff at all times. The City will not be required to provide Vendor with a listing of City retirees eligible for benefits.

5.10 City subsidizes different amounts based on retirees' years of service to the City. The City does not consider any retiree's eligibility for the Part D Low-Income Subsidy when setting or administering City contribution subsidies. The premiums quoted by Vendor for this Contract are inclusive of Medicare Part C and D coverage. There is no separate Part D contribution. Vendor will be responsible for applying any direct subsidy payments received by CMS for a City retiree to reduce the amount that the retiree pays. City will coordinate with Vendor for distribution of any direct CMS subsidies received.

VI. CHANGE IN SERVICES

6.1 Except when the terms of this Contract expressly provide otherwise, any alterations, additions, or deletions to the terms hereof shall be by amendment in writing and executed by both the Director and the Vendor, dated subsequent to the date hereof and without the need for further council action.

6.2 It is understood and agreed by the parties hereto, that changes in local, state and federal rules, regulations or laws applicable hereto, may occur during the term of this Contract and that any such changes shall be automatically incorporated into this Contract without written amendment hereto and shall become a part hereof as of the effective date of the rule, regulation or law. The Vendor expressly agrees to comply with all applicable federal state and local laws.

VII. RIGHT OF REVIEW AND AUDIT

7.1 The Vendor and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to financial and eligibility records for work performed under this Contract and shall make such materials available at their respective offices once annually at mutually agreeable times during the Contract period and any extension or renewal hereof for the purpose of accounting and audit inspections by the City and any of its authorized representatives to audit, and examine such materials. This provision shall not be construed as providing or permitting the City or any of its authorized representatives access to audit, examine, inspect or make copies of any books or records, or portions thereof, of Vendor's records containing individually identifiable medical or health care information pertaining to plan participants.

VIII. SUBCONTRACTING

8.1 Any other clause of this Contract to the contrary notwithstanding, neither this Contract nor any of the work or services covered by this Contract shall be subcontracted to another health maintenance organization or insurance carrier without the City's prior written approval unless such health maintenance organization or insurance carrier is an affiliate of the Vendor. However, Vendor may in its discretion utilize appropriate subcontractors to perform certain work or services covered by this Contract, provided that any work or services shall be subcontracted only by written contract that shall be subject by its terms to each and every applicable provision of this Contract. Compliance by subcontractors with this Contract shall be Vendor's responsibility.

8.2 Despite the City's approval of a subcontractor, the City shall in no event be obligated to any third party, including any subcontractor of the Vendor, for performance of work or services, nor shall City funds ever be used for payment of work or services performed prior to the date of Contract execution or extending beyond the expiration date of this Contract.

IX. CONFIDENTIAL WORK

9.1 No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by, or assembled by the Vendor in connection with or in the course of performance of this Contract shall be disclosed or made available to any individual or organization by the Vendor without the express prior written approval of the City or unless such disclosure is required or permitted by law or accreditation standards; provided, however, Vendor may disclose such information to a subcontractor or affiliate of Vendor to the extent necessary for Vendor or its subcontractor or affiliate to perform the work and services required under this Contract.

9.2 In order to use any advertising relating to business underwritten and/or developed for City, Vendor must obtain approval by City at least ten (10) business days prior to such use.

9.3 The Vendor shall establish a method to secure the confidentiality of records and information, including, but not limited to, records and information of the City and medical records of plan participants, to which the Vendor may have access in accordance with the applicable federal, state, and local laws and regulations. The City acknowledges and agrees that the City shall not be given access by Vendor to any confidential medical records and information of plan participants unless such access or disclosure is expressly authorized in writing by the plan participants. This provision shall not be construed as limiting the City's or its authorized representatives' right of access to records concerning eligibility or financial information under Section 3.21 of this Contract.

X. RETENTION OF RECORDS

10.1 Vendor acknowledges that City is subject to the Texas Public Information Act and agrees that if the Vendor receives any request from any third party for documents or information within its possession pertaining to performance of this Contract which falls within the Texas Public Information Act, the Vendor shall immediately forward such request to the City for disposition.

10.2 Vendor shall retain all records, reports, documents, information and other data developed by, given to, prepared or assembled by the Vendor in connection with the performance of this Contract and/or which are owned by or to which the City has access, for the retention periods set forth in the Texas Public Information Act and other applicable state and federal laws, including but not limited to HIPAA.

XI. OWNERSHIP OF DOCUMENTS

11.1 Any and all Customized writings, documents or information in whatsoever form and character produced by Vendor, or pursuant to the provisions of this Agreement, excluding claims or patient management information, is the exclusive property of City, and no such writing, document or information shall be the subject of any copyright or proprietary claim by Vendor. For purposes of this agreement, "Customized" means (i) based on the City's written specifications, (ii) paid for separately by the City to Vendor, and (iii) pursuant to a written statement of work signed by both parties.

XII. NON-WAIVER

12.1 The waiver by City of any one or more defaults by Vendor shall not be construed as a waiver of any other or future defaults, under the same or different terms, conditions or covenants contained in this Contract.

XIII. INSURANCE REQUIREMENTS

A) 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 Risk Management Department, which shall be clearly labeled "*Aetna Medicare Retiree Contract*" in the Description of Operations block of the Certificate. 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 be signed by the Authorized Representative of the carrier, and list the agent's signature and phone number. The certificate shall 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 Risk Management Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.

B) 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.

C) 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 $1,000,000/$1,000,000/$1,000,000
3. Commercial General Liability Insurance to include coverage for the following: a. Premises/Operations b. Products/Completed Operations c. Personal/Advertising Injury	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

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
5. Professional Liability [Managed Care Errors and Omissions] (Claims-made basis) To be maintained and in effect for no less than two years subsequent to the completion of the professional service.	$1,000,000 per claim, to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.
*Alternate plans must be approved by City's Risk Manager	
**Required if company-owned vehicles are employed in course of project	

D) Vendor agrees to require, by written contract, that all subcontractors providing goods or services hereunder obtain the same categories of insurance coverage required of Vendor herein, and provide a certificate of insurance and endorsement that names the Vendor and the CITY as additional insureds. Policy limits of the coverages carried by subcontractors will be determined as a business decision of Vendor. 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.

E) As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all required endorsements. Vendor shall be required to comply with any such requests and shall submit requested documents to City at the address provided below within 10 days. Vendor shall pay any costs incurred resulting from provision of said documents.

City of San Antonio
Attn: Risk Management
P.O. Box 839966
San Antonio, Texas 78283-3966

F) 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 or non-renewal in coverage, and not less than ten (10) calendar days advance notice for nonpayment of premium.

G) 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.

H) 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.

I) 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.

J) 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.

K) 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..

L) Vendor and any Subcontractors are responsible for all damage to their own equipment and/or property.

M) Any and all employees, representatives, agents or volunteers of Vendor, while engaged in the performance of any work required by City in relation to this Agreement, shall be considered employees, representatives, agents or volunteers of Vendor only and not of City. Any and all claims that may result from any obligation for which Vendor may be held liable under any Workers' Compensation, Unemployment Compensation or Disability Benefits law or under any similar law on behalf of said employees, representatives, agents or volunteers shall be the sole obligation and responsibility of Vendor.

XIV. INDEMNIFICATION

14.1 **VENDOR covenants and agrees to FULLY INDEMNIFY, DEFEND 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 CONTRACT, including any acts or omissions of VENDOR, any agent, officer, director, representative, employee, Contractor or subcontractor of VENDOR, and their respective officers, agents, employees, directors and representatives while in the exercise of performance of the rights or duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of CITY arising out of or related to its activities under this CONTRACT, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. 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.**

14.2 **The provisions of this INDEMNIFICATION 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.**

14.3 **VENDOR shall advise the CITY in writing within 10 days of any claim or demand against the CITY or CONTRACTOR known to VENDOR related to or arising out of VENDOR'S activities under this contract.**

XV. INDEPENDENT CONTRACTOR

15.1 It is expressly understood and agreed that the Vendor is and shall be deemed to be an independent contractor, responsible for its respective acts or omissions and that the 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 venture, or any other similar such relationship, between the parties hereto.

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

15.4 The Vendor indemnifies, saves, and holds harmless the City against all claims, demands, actions or causes of action of whatsoever nature or character, as permitted by law, arising

out of or by reason of the execution or performance of the work provided for herein in accordance with the provisions of Article XIV hereof and further agrees to defend, at its sole cost and expense, any action or proceeding commenced for the purpose of asserting any Workers' Compensation claim of whatsoever character arising herein.

XVI. HIPAA COMPLIANCE

16.1 Vendor will maintain the confidentiality of all patient-identifiable health information specifically relating to Plan Participants ("Patient Health Information") in accordance with all applicable federal and state laws and regulations, including the Privacy Rule and the Security Rule of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time.

XVII. TERMINATION

17.1 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.

17.2 TERMINATION BY NOTICE: The Contract may be canceled by written notice from the Vendor pursuant to state and federal laws; it may be canceled by the City upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (60) calendar days nor more than ninety (90) calendar days from the date such notice is received by the other party. If the notice does not specify a date of termination, the effective date of termination shall be not less than thirty (60) calendar days after receipt of the notice by the other party. Any City funds held in any escrow account(s) shall be returned to the City within thirty (30) calendar days after the effective termination date.

17.3 TERMINATION FOR CAUSE: In all cases, other than non-payment of premium by the City, should either party default in the performance of any of the terms or conditions of this Contract, the other party shall deliver to the defaulting party written notice thereof specifying the matters on default. The defaulting party shall have thirty (30) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such thirty (30) day period, this Contract shall terminate at 11:59 p.m. on the thirtieth day after the receipt of the notice by the defaulting party.

17.4 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.

17.5 EFFECT OF TERMINATION: The period between notice of termination and the effective date of termination shall be used to affect an orderly transfer of records and funds, if any, from the Vendor to the City or to such person(s) or firm(s) as the City may designate. Any records transfer shall be completed within fifteen (15) calendar days of the termination date. Any such transfer of records or funds shall be completed at the Vendor's sole cost and expense.

17.6 Within thirty (30) calendar days of the effective date of termination (unless an extension is authorized in writing by the City), the Vendor shall submit to the City, its claim, in detail, for the monies owed by the City for services performed under this Contract through the effective date of termination.

17.7 Upon termination or cancellation of this Contract, the City may immediately commence audit of the Vendor's books, accounts, and records pertaining to eligibility and financial information. Within thirty (30) calendar days after being notified by the City of the results of said audit, the Vendor shall pay the City any amount shown by said audit to be owed the City or its employees. No waiver of existing default shall be deemed to waive any subsequent default. This provision shall not be construed as permitting the City or any of its authorized representatives access to audit or review any of Vendor's books or records, or portions thereof, containing individually identifiable medical or health care information pertaining to plan participants.

XVIII. CONFLICT OF INTEREST

18.1 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 in Section 2-52 of the Ethics Code, from having a financial interest in any contract with the 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.

18.2 Pursuant to the subsection above, Vendor warrants and certifies, and this contract is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the City. Vendor further warrants and certifies that is has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City's Ethics Code.

XIX. NOTICE

19.1 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 the City or to the 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
Human Resources Department
Employee
Benefits Division

111 Soledad
San Antonio, Texas 78205

AND

City Clerk
City of San Antonio
P. O. Box 839966
San Antonio, Texas 78283-3966

VENDOR

Aetna Life Insurance Company
1425 Union Meeting Road
Blue Bell, PA 19422

XX. CAPTIONS

20.1 The captions to the various clauses of this Contract are for convenience or reference purposes only and shall in no way limit, enlarge or alter the substance of the terms and conditions of this Contract.

XXI. SUCCESSORS AND ASSIGNS

21.1 This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors and their assigns, except as otherwise expressly provided for herein.

XXII. VENUE AND GOVERNING LAW

22.1 Venue of any court action brought directly or indirectly by reason of this Contract shall be in Bexar County, Texas. This Contract is made and is to be performed in Bexar County, Texas, and is governed by the laws of the State of Texas.

XXIII. SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

A. SBEDA Program

The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531 and as amended, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's Economic Development (EDD) website page and is also available in hard copy form upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the Agreement are governed by the terms of this Ordinance, as well as by the terms of the SBEDA Ordinance Policy & Procedure Manual established by the CITY pursuant to this Ordinance, and any subsequent amendments to this referenced SBEDA Ordinance and SBEDA Policy & Procedure Manual that are effective as of the date of the execution of this Agreement. Unless defined in a contrary manner herein, terms used in this section of the Agreement shall be subject to the same expanded definitions and

meanings as given those terms in the SBEDA Ordinance and as further interpreted in the SBEDA Policy & Procedure Manual.

B. Definitions

Affirmative Procurement Initiatives (API) – Refers to various Small Business Enterprise, Minority Business Enterprise, and/or Women Business Enterprise ("S/M/WBE") Program tools and Solicitation Incentives that are used to encourage greater Prime and subcontract participation by S/M/WBE firms, including bonding assistance, evaluation preferences, subcontracting goals and joint venture incentives. (For full descriptions of these and other S/M/WBE program tools, see Section III. D. of Attachment A to the SBEDA Ordinance.)

Certification or "Certified" – the process by which the Small Business Office (SBO) staff determines a firm to be a bona-fide small, minority-, women-owned, or emerging small business enterprise. Emerging Small Business Enterprises (ESBEs) are automatically eligible for Certification as SBEs. Any firm may apply for multiple Certifications that cover each and every status category (e.g., SBE, ESBE, MBE, or WBE) for which it is able to satisfy eligibility standards. The SBO staff may contract these services to a regional Certification agency or other entity. For purposes of Certification, the City accepts any firm that is certified by local government entities and other organizations identified herein that have adopted Certification standards and procedures similar to those followed by the SBO, provided the prospective firm satisfies the eligibility requirements set forth in this Ordinance in Section III.E.6 of Attachment A.

Centralized Vendor Registration System (CVR) – a mandatory electronic system wherein the City requires all prospective Respondents and Subcontractors that are ready, willing and able to sell goods or services to the City to register. The CVR system assigns a unique identifier to each registrant that is then required for the purpose of submitting solicitation responses and invoices, and for receiving payments from the City. The CVR-assigned identifiers are also used by the Goal Setting Committee for measuring relative availability and tracking utilization of SBE and M/WBE firms by Industry or commodity codes, and for establishing Annual Aspirational Goals and Contract-by-Contract Subcontracting Goals.

Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, staffing, managing and supervising the work involved. To perform a Commercially Useful Function, the S/M/WBE firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quantity and quality, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether an S/M/WBE firm is performing a Commercially Useful Function, an evaluation must be performed of the amount of work subcontracted, normal industry practices, whether the amount the S/M/WBE firm is to be paid under the contract is commensurate with the work it is actually performing and the S/M/WBE credit claimed for its performance of the work, and other relevant factors. Specifically, an S/M/WBE firm does not perform a Commercially Useful Function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of meaningful and useful S/M/WBE participation, when in similar transactions in which S/M/WBE firms do not participate, there is no such role performed. The use of S/M/WBE firms by CONTRACTOR to perform such "pass-through" or "conduit" functions that are not commercially useful shall be viewed by the CITY as fraudulent if CONTRACTOR attempts to obtain credit for such S/M/WBE participation towards the

satisfaction of S/M/WBE participation goals or other API participation requirements. As such, under such circumstances where a commercially useful function is not actually performed by the S/M/WBE firm, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE subcontractor or joint venture partner towards attainment of S/M/WBE utilization goals, and the CONTRACTOR and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Evaluation Preference – an API that may be applied by the Goal Setting Committee ("GSC") to Construction, Architectural & Engineering, Professional Services, Other Services, and Goods and Supplies contracts that are to be awarded on a basis that includes factors other than lowest price, and wherein responses that are submitted to the City by S/M/WBE firms may be awarded additional Points in the evaluation process in the scoring and ranking of their proposals against those submitted by other prime CONTRACTORs or Respondents.

Good Faith Efforts – documentation of the CONTRACTOR's or Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation within a solicitation response reflecting the Respondent's commitment to comply with SBE or M/WBE Program Goals as established by the GSC for a particular contract; or (2) documentation of efforts made toward achieving the SBE or M/WBE Program Goals (e.g., timely advertisements in appropriate trade publications and publications of wide general circulation; timely posting of SBE or M/WBE subcontract opportunities on the City of San Antonio website; solicitations of bids/proposals/qualification statements from all qualified SBE or M/WBE firms listed in the Small Business Office's directory of certified SBE or M/WBE firms; correspondence from qualified SBE or M/WBE firms documenting their unavailability to perform SBE or M/WBE contracts; documentation of efforts to subdivide work into smaller quantities for subcontracting purposes to enhance opportunities for SBE or M/WBE firms; documentation of a Prime Contractor's posting of a bond covering the work of SBE or M/WBE Subcontractors; documentation of efforts to assist SBE or M/WBE firms with obtaining financing, bonding or insurance required by the Respondent; and documentation of consultations with trade associations and consultants that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.) The appropriate form and content of CONTRACTOR's Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

HUBZone Firm – a business that has been certified by U.S. Small Business Administration for participation in the federal HUBZone Program, as established under the 1997 Small Business Reauthorization Act. To qualify as a HUBZone firm, a small business must meet the following criteria: (1) it must be owned and Controlled by U.S. citizens; (2) at least 35 percent of its employees must reside in a HUBZone; and (3) its Principal Place of Business must be located in a HUBZone within the San Antonio Metropolitan Statistical Area. [See 13 C.F.R. 126.200 (1999).]

Independently Owned and Operated – ownership of an SBE firm must be direct, independent and by Individuals only. Ownership of an M/WBE firm may be by Individuals and/or by other businesses provided the ownership interests in the M/WBE firm can satisfy the M/WBE eligibility requirements for ownership and Control as specified herein in Section III.E.6. The M/WBE firm must also be Independently Owned and Operated in the sense that it cannot be the subsidiary of another firm that does not itself (and in combination with the certified M/WBE firm) satisfy the eligibility requirements for M/WBE Certification.

Individual – an adult person that is of legal majority age.

Industry Categories – procurement groupings for the City of San Antonio inclusive of Construction, Architectural & Engineering (A&E), Professional Services, Other Services, and Goods & Supplies (i.e., manufacturing, wholesale and retail distribution of commodities). This term may sometimes be referred to as "business categories."

Minority/Women Business Enterprise (M/WBE) – firm that is certified as a Small Business Enterprise and also as either a Minority Business Enterprise or as a Women Business Enterprise, and which is at least fifty-one percent (51%) owned, managed and Controlled by one or more Minority Group Members and/or women, and that is ready, willing and able to sell goods or services that are purchased by the City of San Antonio.

M/WBE Directory – a listing of minority- and women-owned businesses that have been certified for participation in the City's M/WBE Program APIs.

Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified a Small Business Enterprise and also as being at least fifty-one percent (51%) owned, managed and controlled by one or more Minority Group Members, and that is ready, willing and able to sell goods or services that are purchased by the CITY. To qualify as an MBE, the enterprise shall meet the Significant Business Presence requirement as defined herein. Unless otherwise stated, the term "MBE" as used in this Ordinance is not inclusive of women-owned business enterprises (WBEs).

Minority Group Members – African-Americans, Hispanic Americans, Asian Americans and Native Americans legally residing in, or that are citizens of, the United States or its territories, as defined below:

- African-Americans: Persons having origins in any of the black racial groups of Africa as well as those identified as Jamaican, Trinidadian, or West Indian.

  Hispanic-Americans: Persons of Mexican, Puerto Rican, Cuban, Spanish or Central and South American origin.

  Asian-Americans: Persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands.

  Native Americans: Persons having no less than 1/16th percentage origin in any of the Native American Tribes, as recognized by the U.S. Department of the Interior, Bureau of Indian Affairs and as demonstrated by possession of personal tribal role documents.

Originating Department – the CITY department or authorized representative of the CITY which issues solicitations or for which a solicitation is issued.

Payment – dollars actually paid to CONTRACTORS and/or Subcontractors and vendors for CITY contracted goods and/or services.

Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, and Other Services contracts (e.g., up to 10 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City of San Antonio for purposes of providing goods or services for the City. For purposes of this agreement, this term refers to the CONTRACTOR.

Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the MGT Studies, and for determining eligibility for participation under various programs established by the SBEDA Ordinance, is defined as the San Antonio Metropolitan Statistical Area (SAMSA), currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson.

Respondent – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City. For purposes of this agreement, CONTRACTOR is the Respondent.

Responsible – a firm which is capable in all respects to fully perform the contract requirements and has the integrity and reliability which will assure good faith performance of contract specifications.

Responsive – a firm's submittal (bid, response or proposal) conforms in all material respects to the solicitation (Invitation for Bid, Request for Qualifications, or Request for Proposal) and shall include compliance with S/M/WBE Program requirements.

San Antonio Metropolitan Statistical Area (SAMSA) – also known as the Relevant Marketplace, the geographic market area from which the CITY's MGT Studies analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

SBE Directory - a listing of small businesses that have been certified for participation in the City's SBE Program APIs.

Significant Business Presence – to qualify for this Program, a S/M/WBE must be headquartered or have a *significant business presence* for at least one year within the Relevant Marketplace, defined as: an established place of business in one or more of the eight counties that make up the San Antonio Metropolitan Statistical Area (SAMSA), from which 20% of its full-time, part-time and contract employees are regularly based, and from which a substantial role in the S/M/WBE's performance of a Commercially Useful Function is conducted. A location utilized solely as a post office box, mail drop or telephone message center or any combination thereof, with no other substantial work function, shall not be construed to constitute a significant business presence.

Small Business Enterprise (SBE) – a corporation, partnership, sole proprietorship or other legal entity for the purpose of making a profit, which is Independently Owned and Operated by Individuals legally residing in, or that are citizens of, the United States or its territories, and which meets the U.S. Small Business Administration (SBA) size standard for a small business in its particular industry(ies) and meets the Significant Business Presence requirements as defined herein.

Small Business Office (SBO) – the office within the Economic Development Department (EDD) of the CITY that is primarily responsible for general oversight and administration of the S/M/WBE Program.

Small Business Office Manager – the Assistant Director of the EDD of the CITY that is responsible for the management of the SBO and ultimately responsible for oversight, tracking,

monitoring, administration, implementation and reporting of the S/M/WBE Program. The SBO Manager is also responsible for enforcement of contractor and vendor compliance with contract participation requirements, and ensuring that overall Program goals and objectives are met.

Small Minority Women Business Enterprise Program (S/M/WBE Program) – the combination of SBE Program and M/WBE Program features contained in the SBEDA Ordinance.

Subcontractor – any vendor or contractor that is providing goods or services to a Prime Contractor or CONTRACTOR in furtherance of the Prime Contractor's performance under a contract or purchase order with the City. A copy of each binding agreement between the CONTRACTOR and its subcontractors shall be submitted to the CITY prior to execution of this contract agreement and any contract modification agreement.

Suspension – the temporary stoppage of the SBE or M/WBE firm's beneficial participation in the CITY's S/M/WBE Program for a finite period of time due to cumulative contract payments the S/M/WBE firm received during a fiscal year that exceed a certain dollar threshold as set forth in Section III.E.7 of Attachment A to the SBEDA Ordinance, or the temporary stoppage of CONTRACTOR's and/or S/M/WBE firm's performance and payment under CITY contracts due to the CITY's imposition of Penalties and Sanctions set forth in Section III.E.13 of Attachment A to the SBEDA Ordinance.

Subcontractor/Supplier Utilization Plan – a binding part of this contract agreement which states the CONTRACTOR's commitment for the use of Joint Venture Partners and / or Subcontractors/Suppliers in the performance of this contract agreement, and states the name, scope of work, and dollar value of work to be performed by each of CONTRACTOR's Joint Venture partners and Subcontractors/Suppliers in the course of the performance of this contract, specifying the S/M/WBE Certification category for each Joint Venture partner and Subcontractor/Supplier, as approved by the SBO Manager. Additions, deletions or modifications of the Joint Venture partner or Subcontractor/Supplier names, scopes of work, of dollar values of work to be performed requires an amendment to this agreement to be approved by the EDD Director or designee.

Women Business Enterprises (WBEs) - any legal entity, except a joint venture, that is organized to engage in for-profit transactions, that is certified for purposes of the SBEDA Ordinance as being a Small Business Enterprise and that is at least fifty-one percent (51%) owned, managed and Controlled by one or more non-minority women Individuals that are lawfully residing in, or are citizens of, the United States or its territories, that is ready, willing and able to sell goods or services that are purchased by the City and that meets the Significant Business Presence requirements as defined herein. Unless otherwise stated, the term "WBE" as used in this Agreement is not inclusive of MBEs.

C. <u>SBEDA Program Compliance – General Provisions</u>

As CONTRACTOR acknowledges that the terms of the CITY's SBEDA Ordinance, as amended, together with all requirements, guidelines, and procedures set forth in the CITY's SBEDA Policy & Procedure Manual are in furtherance of the CITY's efforts at economic inclusion and, moreover, that such terms are part of CONTRACTOR's scope of work as referenced in the CITY's formal solicitation that formed the basis for contract award and subsequent execution of this Agreement, these SBEDA Ordinance requirements, guidelines and procedures are hereby incorporated by reference into this Agreement, and are considered by the Parties to this

Agreement to be material terms. CONTRACTOR voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the CITY. Without limitation, CONTRACTOR further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

1. CONTRACTOR shall cooperate fully with the Small Business Office and other CITY departments in their data collection and monitoring efforts regarding CONTRACTOR's utilization and payment of Subcontractors, S/M/WBE firms, and HUBZone firms, as applicable, for their performance of Commercially Useful Functions on this contract including, but not limited to, the timely submission of completed forms and/or documentation promulgated by SBO, through the Originating Department, pursuant to the SBEDA Policy & Procedure Manual, timely entry of data into monitoring systems, and ensuring the timely compliance of its Subcontractors with this term;

2. CONTRACTOR shall cooperate fully with any CITY or SBO investigation (and shall also respond truthfully and promptly to any CITY or SBO inquiry) regarding possible non-compliance with SBEDA requirements on the part of CONTRACTOR or its Subcontractors or suppliers;

3. CONTRACTOR shall permit the SBO, upon reasonable notice, to undertake inspections as necessary including, but not limited to, contract-related correspondence, records, documents, payroll records, daily logs, invoices, bills, cancelled checks, and work product, and to interview Subcontractors and workers to determine whether there has been a violation of the terms of this Agreement;

4. CONTRACTOR shall immediately notify the SBO, in writing on the Change to Utilization Plan form, through the Originating Department, of any proposed changes to CONTRACTOR's Subcontractor / Supplier Utilization Plan for this contract, with an explanation of the necessity for such proposed changes, including documentation of Good Faith Efforts made by CONTRACTOR to replace the Subcontractor / Supplier in accordance with the applicable Affirmative Procurement Initiative. All proposed changes to the Subcontractor / Supplier Utilization Plan including, but not limited to, proposed self-performance of work by CONTRACTOR of work previously designated for performance by Subcontractor or supplier, substitutions of new Subcontractors, terminations of previously designated Subcontractors, or reductions in the scope of work and value of work awarded to Subcontractors or suppliers, shall be subject to advanced written approval by the Originating Department and the SBO.

5. CONTRACTOR shall immediately notify the Originating Department and SBO of any transfer or assignment of its contract with the CITY, as well as any transfer or change in its ownership or business structure.

6. CONTRACTOR shall retain all records of its Subcontractor payments for this contract for a minimum of four years or as required by state law, following the conclusion of this contract or, in the event of litigation concerning this contract, for a minimum of four years or as required by state law following the final determination of litigation, whichever is later.

7. In instances wherein the SBO determines that a Commercially Useful Function is not actually being performed by the applicable S/M/WBE or HUBZone firms listed in a CONTRACTOR's Subcontractor / Supplier Utilization Plan, the CONTRACTOR shall not be given credit for the participation of its S/M/WBE or HUBZone subcontractor(s) or joint venture partner(s) toward attainment of S/M/WBE or HUBZone firm utilization goals, and the CONTRACTOR and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

8. CONTRACTOR acknowledges that the CITY will not execute a contract or issue a Notice to Proceed for this project until the CONTRACTOR and each of its Subcontractors for this project have registered and/or maintained active status in the CITY's Centralized Vendor Registration System, and CONTRACTOR has represented to CITY which primary commodity codes each registered Subcontractor will be performing under for this contract.

D. SBEDA Program Compliance – Affirmative Procurement Initiatives

The CITY has applied the following contract-specific Affirmative Procurement Initiatives to this contract. CONTRACTOR hereby acknowledges and agrees that the selected API requirement shall also be extended to any change order or subsequent contract modification and, absent SBO's granting of a waiver, that its full compliance with the following API terms and conditions are material to its satisfactory performance under this Agreement:

SBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 5. (d), this contract is being awarded pursuant to the SBE Prime Contract Program, and as such, CONTRACTOR affirms that if it is presently certified as an SBE, CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-SBE firm;

M/WBE Prime Contract Program. In accordance with the SBEDA Ordinance, Section III. D. 6. (d), this contract is being awarded pursuant to the M/WBE Prime Contract Program and as such, CONTRACTOR affirms that if it is presently certified as an M/WBE (see *Minority/Women Business Enterprise* definition), CONTRACTOR agrees not to subcontract more than 49% of the contract value to a non-M/WBE firm;

M/WBE Subcontracting Program. In accordance with SBEDA Ordinance Section III. D. 6. (b), this contract is being awarded pursuant to the M/WBE Subcontracting Program. CONTRACTOR agrees to subcontract at least ***fifteen percent (15%)*** of its prime contract value to certified M/WBE firms headquartered or having a significant business presence within the San Antonio Metropolitan Statistical Area (SAMSA). The Subcontractor / Supplier Utilization Plan

that CONTRACTOR submitted to CITY with its response for this contract (or, as appropriate, that it agrees to submit during the price proposal negotiation phase of this contract), and that contains the names of the certified M/WBE Subcontractors to be used by CONTRACTOR on this contract, the respective percentages of the total prime contract dollar value to be awarded and performed by each M/WBE Subcontractor, and documentation including a description of each M/WBE Subcontractor's scope of work and confirmation of each M/WBE Subcontractor's commitment to perform such scope of work for an agreed upon dollar amount is hereby attached and incorporated by reference into the material terms of this Agreement. In the absence of a waiver granted by the SBO, the failure of CONTRACTOR to attain this subcontracting goal for M/WBE firm participation in the performance of a Commercially Useful Function under the terms of its contract shall be a material breach and grounds for termination of the contract with the CITY, and may result in debarment from performing future CITY contracts, withholding of payment for retainage equal to the dollar amount of the underutilization below the agreed upon M/WBE subcontracting goal, and/or shall be subject to any other remedies available under the terms of this Agreement for violations of the SBEDA Ordinance, or under any other law.

Subcontracting Diversity: The City of San Antonio strongly encourages each bidder to be as inclusive as possible, and to reach out to all segments of the M/WBE community in its efforts to exercise good faith in achieving the M/WBE subcontracting goal of 15% that has been established for this contract. While the relative availability of ready, willing, and able firms within various ethnic and gender categories will vary significantly from contract to contract based upon the particular trades that are involved, overall in the San Antonio Professional Services industry, as reflected in the City's Centralized Vendor Registration system for the month of November 2013, African-American owned firms represent approximately 2.62% of available subcontractors, Hispanic-American firms represent approximately 8.77%, Asian-American firms represent approximately 0.97%, Native American firms represent approximately 0.05%, and Women-owned firms represent approximately 5.03% of available professional services subcontractors.

E. Commercial Nondiscrimination Policy Compliance

As a condition of entering into this Agreement, the CONTRACTOR represents and warrants that it has complied with throughout the course of this solicitation and contract award process, and will continue to comply with, the CITY's Commercial Nondiscrimination Policy, as described under Section III. C. 1. of the SBEDA Ordinance. As part of such compliance, CONTRACTOR shall not discriminate on the basis of race, color, religion, ancestry or national origin, sex, age, marital status, sexual orientation or, on the basis of disability or other unlawful forms of discrimination in the solicitation, selection, hiring or commercial treatment of Subcontractors, vendors, suppliers, or commercial customers, nor shall the company retaliate against any person for reporting instances of such discrimination. The company shall provide equal opportunity for Subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the CITY's Relevant Marketplace. The company understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of the company from participating in CITY contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. CONTRACTOR's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the CITY pursuant to the solicitation for this contract is hereby incorporated into the material terms of this

Agreement. CONTRACTOR shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to CITY contracts.

F. Prompt Payment

Upon execution of this contract by CONTRACTOR, CONTRACTOR shall be required to submit to CITY accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that the CONTRACTOR's reported subcontract participation is accurate. CONTRACTOR shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the "Prompt Payment Act") within ten days of receipt of payment from CITY. In the event of CONTRACTOR's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to CONTRACTOR, and no new CITY contracts shall be issued to the CONTRACTOR until the CITY's audit of previous subcontract payments is complete and payments are verified to be in accordance with the specifications of the contract.

G. Violations, Sanctions and Penalties

In addition to the above terms, CONTRACTOR acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this Agreement to:

1. Fraudulently obtain, retain, or attempt to obtain, or aid another in fraudulently obtaining, retaining, or attempting to obtain or retain Certification status as an SBE, MBE, WBE, M/WBE, HUBZone firm, Emerging M/WBE, or ESBE for purposes of benefitting from the SBEDA Ordinance;

2. Willfully falsify, conceal or cover up by a trick, scheme or device, a material fact or make any false, fictitious or fraudulent statements or representations, or make use of any false writing or document, knowing the same to contain any false, fictitious or fraudulent statement or entry pursuant to the terms of the SBEDA Ordinance;

3. Willfully obstruct, impede or attempt to obstruct or impede any authorized official or employee who is investigating the qualifications of a business entity which has requested Certification as an S/M/WBE or HUBZone firm;

4. Fraudulently obtain, attempt to obtain or aid another person fraudulently obtaining or attempting to obtain public monies to which the person is not entitled under the terms of the SBEDA Ordinance; and

5. Make false statements to any entity that any other entity is, or is not, certified as an S/M/WBE for purposes of the SBEDA Ordinance.

Any person who violates the provisions of this section shall be subject to the provisions of Section III. E. 13. of the SBEDA Ordinance and any other penalties, sanctions and remedies available under law including, but not limited to:

1. Suspension of contract;

2. Withholding of funds;

3. Rescission of contract based upon a material breach of contract pertaining to S/M/WBE Program compliance;

4. Refusal to accept a response or proposal; and

5. Disqualification of CONTRACTOR or other business firm from eligibility for providing goods or services to the City for a period not to exceed two years (upon City Council approval).

XXIV. INTELLECTUAL PROPERTY

24.1 Vendor shall pay all royalties and licensing fees. Vendor shall hold City harmless and indemnify the City from the payment of any royalties, damages, losses or expenses including attorney's fees for suits, claims or otherwise, growing out of infringement or alleged infringement of copyrights, U.S. patents, materials and methods used in the project (collectively, "Intellectual Property Rights"). It shall defend all suits for infringement of any Intellectual Property rights. Further, if Vendor has reason to believe that the design, service, process or product specified is an infringement of an Intellectual Property right, it shall promptly give such information to City.

24.2 Upon receipt of notification that a third party claims that the program(s), hardware or both the program(s) and the hardware infringe upon any United States patent or copyright, Vendor will immediately obtain at Vendor's sole expense, the necessary license(s) or rights that would allow the City to continue using the programs, hardware, or both the programs and hardware, as the case may be.

24.3 Vendor further agrees to assume the defense and costs of any claim, suit, or proceeding brought against the City for infringement of any United States patent or copyright arising from the use and/or sale of the equipment or software under this agreement and will indemnify the City against any monetary damages awarded in such suit

XXV. ENTIRE AGREEMENT

25.1 This Contract, including the Exhibits, embodies the final and entire agreement of 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, verbal or otherwise, regarding the matters of this Contract shall be deemed to exist or to bind the parties hereto unless same be in writing, dated subsequent to the date hereof, and executed by the parties hereto.

XXVI. INCORPORATION OF EXHIBITS

26.1 Each of the Exhibits listed below is an essential part of this Contract, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A – City's Request for Proposals
Exhibit B- Vendor's Proposal
Exhibit C- Schedule of Copayments/Coinsurance

In the event of conflict between this contract and the exhibits listed above, the provisions of this contract shall govern.

XXVII. LEGAL AUTHORITY

27.1 The signer of this Contract for the Vendor represents, warrants, assures, and guarantees full legal authority to execute this Contract on behalf of the Vendor and to bind the Vendor to all the terms, conditions, provisions and obligations herein contained.

XXVIII. GENDER

28.1 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 and construed to include plural, unless the context otherwise requires.

XXIX. SEVERABILITY

29.1 If any clause or provision of this Contract is held invalid, illegal, 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 hereto that in lieu of each clause or provision of this Contract that is invalid, illegal or unenforceable, there be added as part of the Contract, a clause or provision as similar in terms to such invalid, illegal or unenforceable clause or provision as may be possible, legal, valid and enforceable.

XXX. CENTERS FOR MEDICARE AND MEDICAID SERVICES (CMS) REQUIREMENTS

30.1 Vendor and City will abide by all applicable Federal and State laws and regulations and CMS instructions. All of the information City agrees that it will submit to Vendor for submission to CMS under this program shall be accurate, complete, and truthful.

30.2 Vendor and City will abide by State and Federal privacy and security requirements, including the confidentiality and security provisions stated in the Medicare regulations for this program.

30.3 Vendor and City will ensure that Enrolled Members are not held liable for fees that are the responsibility of Vendor or City.

30.4 City and Vendor agree that any delegated activity under this Contact shall be in accordance with all Medicare requirements; and any books, contracts, records, including medical records and documentation relating to the Part D program will be provided directly to CMS or its designees. In the event that Vendor or CMS determines that City or Vendor has not performed satisfactorily under this contract, the non

breaching party or CMS may revoke any of the activities or reporting responsibilities delegated under this Contract.

30.5 **Records.** (A) Furnish to Vendor on a monthly basis (or as otherwise required), on Vendor form (or such other form as Vendor may reasonably approve) by facsimile (or such other means as Vendor may reasonably approve), such information as Vendor may reasonably require to administer this Contract. This includes, but is not limited to, information needed to enroll Members of the City, process terminations, and effect changes in family status and transfer of employment of Members.

City certifies, based on best knowledge, information and belief, that all enrollment and eligibility information that has been or will be supplied to Vendor is accurate and complete. City acknowledges that Vendor can and will rely on such enrollment and eligibility information in determining whether an individual is eligible for Covered Benefits under this Contract. To the extent such information is supplied to Vendor by City (in electronic or hard copy format), City agrees to:

(B) **Maintenance of Information and Records.** City agrees to maintain Information and Records (as those terms are defined in the Access to Information and Records Section below) in a current, detailed, organized and comprehensive manner and in accordance with Mandates, and to maintain such Information and Records for the longer of: (i) a period of ten (10) years from the end of the final contract period of any government contract of Aetna to offer an Aetna Medicare PPO plan, (ii) the date the U.S. Department of Health and Human Services, the Comptroller General or their designees complete an audit, or (iii) the period required by Mandates. This Provision shall survive the termination of this Contract, regardless of the cause of the termination.

(C) **Access to Information and Records.** City agrees to provide Vendor and federal, state and local governmental authorities having jurisdiction, directly or through their designated agents (collectively "Government Officials"), upon request, access to all books, records and other papers, documents, materials and other information (including, but not limited to, contracts and financial records), whether in paper or electronic format, relating to the arrangement described in this Group Agreement ("Information and Records"). City agrees to provide Aetna and Government Officials with access to Information and Records for as long as it is maintained as provided in "Information and Records" Section above. City agrees to supply copies of Information and Records within fourteen (14) calendar days of City's receipt of the request, where practicable, and in no event later than the date required by Mandates. This provision shall survive termination of this Contract, regardless of the cause of termination.

30.6 Vendor and City will ensure that Enrolled Members are not held liable for fees that are the responsibility of City. City agrees that in no event, including, but not limited to, nonpayment by City, City's insolvency, or breach of the Contract with Vendor, shall City, or its subcontractors, bill, charge, or collect a deposit from, seek compensation, remuneration, reimbursement or payment from, or have recourse against, Enrolled Members for covered services provided pursuant to this Contract.

30.7 Vendor retains ultimate responsibility with complying with the term of its contract with CMS.

30.8 Vendor retains the right to approve, suspend, or terminate any arrangement with a participating provider.

30.9 City shall not employ or contract for the provisions of services under this Contract with any individual with whom City is aware of or has knowledge of that is excluded from participation in the Medicare and Medicaid program under Section 1128 or 1128A of The Social Security Act.

30.10 City is on notice that payments under the Medicare Advantage Contract with CMS to Vendor are made, in whole or in part, from Federal funds.

30.11 City agrees that its activities under the Contract, after identification by Vendor of such specific duties, will be consistent and comply with Vendor's contractual obligations Vendor has with CMS to the extent applicable under the law and as mutually agreed upon by Parties.

30.12 The provisions of this section shall be automatically amended to conform with the requirements of applicable law, regulations and CMS instructions.

30.13 **Membership Adjustments.** Vendor may, at Vendor discretion, make retroactive adjustments to the City's billings for the termination of Members not posted to previous billings. However, City may only receive a maximum of 1 billing period credit for Member terminations that occurred more than 30 days before the date City notified Vendor of the termination. City is not obligated for retroactive payment for circumstances for which the City had no knowledge of coverage termination.

30.14. **Written Notice to Members.** City will provide Members with written notice describing any changes made to Premiums at least thirty (30) days prior to the effective date of such change(s) or as required under Mandates. City will provide Members with any written notice required under Mandates or Policies and Procedures. The written notices described in this Section are hereinafter collectively referred to as the "Written Notices". If City does not distribute Written Notices to Members as required under this Section, City will be liable for payment of all Premiums or other costs incurred by Vendor as a result of City's failure to distribute the Written Notices. If City does not distribute the Written Notices as required under this Section, Vendor may, in its discretion, distribute such Written Notices to Members, and City shall reimburse Vendor for any expenses incurred by Vendor in connection with such distribution.

City acknowledges that CMS requires that all Members receive from Vendor a combined ANOC and EOC no later than the sooner of: (1) fifteen (15) days prior to the Open Enrollment Period, (2) September 30th of each calendar year, or (3) such shorter timeframe required under Mandates.

30.15 **Enrollment & Disenrollments Transactions.**

(A) **Generally.** To the extent that City directly accepts enrollment and/or disenrollment requests from Members that City forwards to Vendor for processing and submission to CMS, City agrees to comply with all Mandates that relate to the handling and processing of enrollment and disenrollment requests that apply to the Plan

("Enrollment/Disenrollment Requirements"), including, without limitation, all Enrollment/Disenrollment Requirements that relate to the timeframes that apply to handling, processing and submission of enrollment and disenrollment requests for the Plan. City agrees to forward enrollment and disenrollment forms completed by Members to Vendor no later than ninety (90) days after the Member's coverage effective date. City acknowledges that if there is a delay between the time a Member submits an enrollment/disenrollment request to City and when the enrollment/disenrollment request is received by Vendor, the enrollment/disenrollment transaction may not be processed by CMS, unless Vendor requests and CMS approves a retroactive enrollment/disenrollment transaction for the Member. City further acknowledges that Vendor, in its sole discretion and judgment, will determine whether to submit retroactive enrollment and disenrollment transaction requests to CMS, and will make such determinations in accordance with Mandates.

City acknowledges that, per Enrollment/Disenrollment Requirements, the effective date of enrollments and disenrollments in the Plan cannot be earlier than the date the enrollment or disenrollment request was completed by a Member. If approved by CMS, the effective date of an enrollment or disenrollment may be retroactive up to, but may not exceed, ninety (90) days from the date that Aetna received the enrollment or disenrollment request from City, and the enrollment or disenrollment form must be completed and signed by the Member prior to the requested enrollment or disenrollment effective date.

City acknowledges that CMS does not permit City to retroactively terminate a Member's coverage under the Plan if the Member no longer meets City's eligibility criteria to remain enrolled in the Plan. To meet these CMS requirements, City agrees to provide Vendor with advanced written notice if City chooses to terminate a Member's coverage under the Plan based on loss of eligibility, and City acknowledges that the Member's coverage termination effective date will be determined in accordance with Mandates.

All of the requirements described in this Section also apply equally to any third party administrator or other entity retained by City to accept and/or process enrollment/disenrollment requests for the Plan from Members on City's behalf.

(B) Notice to Members. CMS requires that Vendor provide written notice to all Members confirming their enrollment in or disenrollment from the Plan from Aetna. The written notice sent by Aetna confirming a Member's disenrollment from the Plan must describe how the Member can contact Medicare for information about other Medicare Advantage or Medicare Prescription Drug plan options that may be available to the Member.

If City elects to change the Plan coverage offered to a Member or terminate a Member's coverage under the Plan, the City must provide written notice to the Member at least twenty-one (21) calendar days prior to the effective date of the change in the Member's coverage or disenrollment from the Plan, as applicable. This written notice to Members must include a description of how the Member can contact Medicare to obtain information regarding other Medicare Advantage plans or Medicare Prescription Drug plan options that may be available to the Member.

We reserve the right to notify Members of the involuntary termination of their coverage under this Contract for failure to pay premiums.

30.16 **Claim Determinations and Administration of Covered Benefits.** We have complete authority to review all claims for Covered Benefits as defined in the EOC and Schedule of Copayments/Coinsurance under this Contract. In exercising such responsibility, Vendor shall have discretionary authority to determine whether and to what extent eligible individuals and beneficiaries are entitled to coverage and to construe any disputed or doubtful terms under this Contract, the EOC and Schedule of Copayments/Coinsurance or any other document incorporated herein. We shall be deemed to have properly exercised such authority unless Vendor abuse Vendor discretion by acting arbitrarily and capriciously. Vendor's review of claims may include the use of commercial software (including Claim Check) and other tools to take into account factors such as an individual's claims history, a provider's billing patterns, complexity of the service or treatment, amount of time and degree of skill needed and the manner of billing. The administration of Covered Benefits and of any appeals filed by Members related to the processing of claims for Covered Benefits shall be conducted in accordance with the EOC and any Mandates.

30.17 **Medicare Secondary Payer Requirements.**

- Generally. Vendor and City agree to comply with all Medicare Secondary Payer ("MSP") Mandates that apply to City, the Plan and Vendor ("MSP Requirements").

- MSP Requirements Applicable to Medicare Beneficiaries Diagnosed with End Stage Renal Disease ("ESRD"). Vendor and City agree to comply with all MSP Requirements applicable to City's active employees and retirees and their dependents who are Medicare beneficiaries diagnosed with ESRD ("ESRD Beneficiaries" or "ESRD Beneficiary"), including, without limitation, those MSP Requirements set forth in 42 U.S.C. § 1395y(b)(1)(C), 42 C.F.R. §§ 411.102(a), 411.161, and 411.162 and 42 C.F.R. §§ 422.106 and 422.108 ("ESRD MSP Requirements").

- City acknowledges and agrees that if an ESRD Beneficiary is eligible for or entitled to Medicare based on ESRD, the MSP Requirements require the commercial group health plan offered by Contract Holder ("GHP") to be the primary payer for the first thirty (30) months of the ESRD Beneficiary's Medicare eligibility or entitlement ("30-month coordination period"), regardless of the number of employees employed by City and regardless of whether the ESRD Beneficiary is a current employee or retiree.

- In furtherance of Vendor's and City's compliance with ESRD MSP Requirements, City agrees to confirm to Vendor whether ESRD Beneficiaries are in their 30-month coordination period, and not seek to enroll ESRD Beneficiaries in the Plan during their 30-month coordination period unless coverage under the GHP is maintained for such ESRD Beneficiaries for that period. If City seeks to enroll an ESRD Beneficiary in the Plan, City agrees to provide Vendor, upon request, with information or documentation to verify compliance with ESRD MSP Requirements, including any MSP reporting or other requirements established by CMS.

30.18 **Service Area Extension & Network Adequacy for Plan.** To enable employers/unions to offer group Medicare Advantage ("MA") plans to all of their Medicare-eligible retirees/dependents wherever they reside, CMS has established a waiver of service area

requirements ("Waiver") for organizations that are approved by CMS to offer MA plans ("MAOs"). Under this Waiver, MAOs offering a group MA plan in a given service area, as defined by CMS ("Service Area"), can extend coverage to an employer/union sponsor's Medicare-eligible retirees/dependents residing outside of that Service Area, even if the MAO does not offer a provider network for the group MA plan ("Provider Network") that meets CMS network adequacy requirements in that Service Area ("Extended Service Area").

Vendor and City agree that Vendor will use this Waiver to offer the Plan to Members who reside in an Extended Service Area. The Parties acknowledge that Vendor must meet certain CMS requirements to offer the Plan in an Extended Service Area, and these requirements include, but are not limited to, the following:

- all Members must receive the same Covered Benefits at the preferred in-network cost-sharing for all Covered Benefits.

The Parties agree to comply with all Mandates that apply to use of this Waiver. Further, Contract Holder acknowledges and agrees that: (1) Members who reside in an Extended Service Area do not have access to a Provider Network that meets CMS network adequacy requirements, and (2) health care providers and suppliers that are not contracted with Aetna to participate in the Provider Network are not required to accept the Plan and furnish Covered Benefits to Members who reside inside or outside of an Extended Service Area, except as required under Mandates. Failure to meet CMS requirements of this Waiver may result in termination of the Plan in Extended Service Areas.

EXECUTED and **AGREED** to as of the dates indicated below.

CITY OF SAN ANTONIO	**AETNA LIFE INSURANCE COMPANY**
	Michael Copeck
Sheryl Sculley City Manager	Michael Copeck Assistant vice president + Actuary

Approved as to Form:

Krista Cover
Assistant City Attorney