KC
10/29 /15
Item No. 24

AN ORDINANCE 2015-10-29-0931

APPROVING A CONTRACT WITH DEARBORN NATIONAL LIFE INSURANCE COMPANY, IN AN ESTIMATED ANNUAL AMOUNT OF $1,555,474.00 TO PROVIDE GROUP TERM LIFE, ACCIDENTAL DEATH AND DISMEMBERMENT (AD&D), AND VOLUNTARY TERM LIFE INSURANCE COVERAGE UNDER THE CITY'S SELF-FUNDED HEALTH BENEFITS PROGRAM, FOR A TERM OF THREE (3) YEARS, WITH TWO RENEWAL TERMS OF ONE YEAR EACH AT THE CITY'S OPTION.

* * * *

WHEREAS, the City's Employee Benefits program provides employees with Group Term Life Insurance, Accidental Death and Dismemberment, and Voluntary Term Life Insurances services; and

WHEREAS, the Human Resources Department issued a Request for Proposals (RFP) for companies to provide the insurance and evaluated the responses; and

WHEREAS, as a result of the RFP process, the staff recommends that Dearborn National Life Insurance Company be awarded the contract; 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 $1,555,474.00; **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 a Contract with Dearborn National Life Insurance Company, as set forth in Attachment I. The terms of the Contract are hereby approved.

SECTION 2. Funding for this ordinance in the amount up to $862,542.00 is available as part of the Fiscal Year 2016 budget in Fund 75002000, Cost Center 1002010020 and General Ledger 5201040.

SECTION 3. Funding for this ordinance in the amount up to $304,063.00 is available as part of the Fiscal Year 2016 budget in Fund 75002000, multiple cost centers within this fund and General Ledger 5103010.

SECTION 4. Funding for this ordinance in the amount up to $388,869.00 is contingent upon City Council approval of the Fiscal Year 2017 budget in Fund 75002000.

SECTION 5. Payment not to exceed the budgeted amount is authorized to Dearborn National Life Insurance Company and should be encumbered with a purchase order.

SECTION 6. 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 7. 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 29th 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:	**24 (in consent vote: 5, 6, 7, 8, 9A, 10, 12A, 12B, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25A, 25B)**
Date:	10/29/2015
Time:	10:27:24 AM
Vote Type:	Motion to Approve
Description:	An Ordinance approving a contract with Dearborn National Life Insurance Company, in an estimated annual amount of $1,555,474.00, to provide Group Basic Term Life, Accidental Death and Dismemberment (AD&D), and Voluntary Term Life Insurance coverage under the City's Self-Funded Health Benefits Program, for a term of three (3) years, with two renewal terms of one year each at the City's option. [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				x
Alan Warrick	District 2		x			x	
Rebecca Viagran	District 3		x				
Rey Saldaña	District 4		x				
Shirley Gonzales	District 5	x					
Ray Lopez	District 6	x					
Cris Medina	District 7		x				
Ron Nirenberg	District 8		x				
Joe Krier	District 9		x				
Michael Gallagher	District 10		x				

Attachment I

ADMINISTRATIVE SERVICES CONTRACT

STATE OF TEXAS §
§
COUNTY OF BEXAR §

This CONTRACT 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 29th, 2015, and **DEARBORN NATIONAL LIFE INSURANCE COMPANY** having its principal place of business at 1020 31ST, Downers Grove, Illinois 60515 (hereinafter referred to as "**VENDOR**"), acting by and through Gregory Benesh, President & CEO.

I. PURPOSE

1.1 The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** shall provide Group Term Life, Accidental Death & Dismemberment and Voluntary Term Life Insurance for the **CITY**.

II. SCOPE OF SERVICES

2.1 **VENDOR** shall provide GROUP LIFE COVERAGE according to the terms and conditions set forth in the Group Life Insurance Policy which is attached hereto as Exhibit "C" and incorporated and made a part hereof as if fully set forth herein. VENDOR shall administer the Group Life Insurance Policy to the employees of the CITY.

2.2. **VENDOR** shall perform all the services as set forth in the **CITY'S** Request for Proposal attached hereto as Exhibit "A", and **VENDOR'S** proposal dated May 25, 2007 attached hereto as Exhibit "B", both of which are made a part of this CONTRACT for all purposes provided; however, should there be any conflict between the terms of the Request for Proposal, **VENDOR'S** proposal, and terms of this CONTRACT, the terms of this CONTRACT shall be final and binding and the **CITY'S** Request for Proposal shall control where it conflicts with **VENDOR'S** proposal. **VENDOR** understands and agrees that Exhibits A and B are a part of this CONTRACT, as though fully set out herein, and that all obligations, conditions, tasks, products, and representations set forth in said documents are required to be fulfilled by VENDOR as completely and fully as are the obligations, conditions, tasks, products and representations imposed by this CONTRACT.

2.3 **VENDOR** shall work with the Human Resources Director or designee and appropriate **CITY** officials to perform any and all related tasks required by the **CITY** in order to fulfill the purposes of this CONTRACT. **VENDOR** shall meet with representatives of the **CITY** as often as deemed necessary to fulfill the purpose of this CONTRACT.

2.4 **VENDOR** shall deliver all data, reports and documents which result from its services to the **CITY** in such form as is satisfactory to the **CITY**. **VENDOR** shall provide the CITY monthly reports of the individual claims experience for the **CITY'S** accounts.

2.5 In the event of any written complaint to the State Department of Insurance, the **CITY** requires **VENDOR** to provide a copy of all written correspondence regarding the complaint within two (2) business days of receipt

2.6 **VENDOR** will develop and oversee a detailed transition plan to be used at commencement of the CONTRACT; such a plan will result in no additional cost to the **CITY**. Such a plan will include preparation, distribution and cost of plan certificates for all new plan participants on an annual basis.

2.7 Plan certificates for Group Term Life and Accidental Death and Dismemberment Insurance Coverage will be issued to each **CITY** plan participant; plan certificates for Supplemental Life Insurance Coverage will be issued to each City plan participant selecting such coverage. An adequate amount of any and all forms or documentation required by **VENDOR** for coverage under any part of the group life coverage plan shall be provided to the **CITY** for open enrollment and to new City employees during the year.

2.8 **VENDOR** warrants and certifies that **VENDOR** and any other person designated by it to provide services herein has the requisite training, license and/or certification to provide said service.

2.9 **VENDOR** covenants and agrees to perform all services described in this CONTRACT in a workmanlike manner with a high degree of care to ensure accuracy and timeliness. **VENDOR** shall perform its services in accordance with the ordinary, reasonable standard of care and diligence normally practiced by recognized professional firms in performing services of a similar nature, in the San Antonio, Texas area, under similar circumstances. This includes the knowledge and experience ordinarily required of a member of that profession, and includes performing the skills necessary to adequately cope with problems that arise in performing its services, which skills are not possessed by ordinary laymen.

III. PERFORMANCE MEASURES

3.1 **VENDOR** acknowledges and agrees that **VENDOR** shall provide timely services under this CONTRACT with a certain degree of accuracy and timeliness.

Category	Measure	Annual Financial Penalty
Claim Performance		
▪ Turnaround time	Claims processed within 5 – 7 business days of receiving all necessary information	$3,000
▪ Accuracy	Financial accuracy of at least 98%	$3,000
▪ Waiver of Premium Notification	Notification of receipt of Waiver of Premium claim within 5 – 7 business days of receipt	$2,000
Customer Service		
▪ Average Speed to Answer	Customer Service phone calls are answered within 50 seconds	$2,000
▪ Abandonment Rate	Less than 5% of the calls to Customer Service are abandoned	$2,000
Evidence of Insurability (EOI) Processing		
▪ EOI Processing	90% of EOI Applications processed within 7 business days of receiving all necessary information	$3,000

Performance results will be provided to the **CITY** on a quarterly basis. Customer Service metrics are based on **VENDOR's** total block of business. All other items will be measured based on the **CITY's** metrics only. Financial penalties, if any, will be paid on an annual basis.

3.2 Performance compliance audits may be conducted at the discretion of the **CITY** using an independent auditor of its choice and are limited to one (1) per year and to claims processed in that year, regardless of incurred date. If the **CITY** conducts a performance audit, either party to this CONTRACT may conduct a second audit at its own expense, by the same or another independent auditor using a different claim sample of at least equal size. The definition of an error in these audits is subject to a good faith review by the parties to this CONTRACT. The **CITY** will pay the cost of the first independent audit in any year. Should **VENDOR** fail to meet any performance expectations, **VENDOR** will pay the cost of all subsequent audits while the contract until it is meeting expected performance levels.

3.3. If the **CITY** waives its right to an independent audit in any plan year, the **CITY** retains the right to audit in all subsequent years so long as the contract is in force.

3.4 **VENDOR** will address all grievances within ten (10) business days of receipt. **VENDOR** shall fully investigate and facilitate resolution of any and all complaints received from **CITY** Plan Participant with regard to services.

3.5 **VENDOR** will log and maintain all **CITY** Plan Participants complaints. **VENDOR** shall make available to the **CITY** statistical information regarding **VENDOR's** grievance log.

IV. RIGHT OF REVIEW AND AUDIT

4.1 The **VENDOR** and its subcontractors, if any, shall properly, accurately, and completely maintain all books, documents, papers, accounting records, and other evidence pertaining to this CONTRACT and shall make such materials available at their respective offices at all reasonable times and as often as the **CITY** may deem necessary, 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, examine and make excerpts and/or copies of same.

V. SUBCONTRACTING

5.1 Any other clause of this CONTRACT to the contrary notwithstanding, none of the work or services covered by this CONTRACT, shall be subcontracted without the **CITY'S** prior written approval. Any work or services approved for subcontracting herein, however, shall be subcontracted only by written contract or agreement and, unless specific waiver is granted in writing by the **CITY**, shall be subject by its terms to each and every provision of this CONTRACT. Compliance by subcontractors with this CONTRACT shall be the **VENDOR'S** responsibility.

5.2 Despite the **CITY'S** 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 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.

VI. TERM

6.1 This CONTRACT shall commence on January 1, 2016, and shall terminate on December 31, 2018. With at least 60 days written notice prior to December 31, 2018, **CITY** may, at its sole option, have the right to extend the term of this CONTRACT without further council action for up to two (2) one (1) year extensions, with each one (1) year extension subject to the same notice requirement. 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. However, **CITY** may terminate this CONTRACT at any time if funds are restricted, withdrawn, not approved or service is unsatisfactory; it being understood that funds for each calendar year covered by any resulting contract will be requested and, if approved, will be provided as part of **CITY'S** budget for each fiscal year.

6.2 Should this contract be extended as provided in this section, then by August 31, 2018, the parties hereto shall determine the premium fee schedule to be in effect for the entire year beginning January 1, 2019, and ending December 31, 2019. Should the **CITY** and the **VENDOR** mutually agree on a premium fee schedule, the terms of this CONTRACT

remain in effect, subject to the agreed-upon premium fee schedule. However, the **CITY** may terminate this CONTRACT if a mutually agreeable premium fee schedule cannot be reached. The same procedure shall be followed, if the Contract is extended, for the second extension year.

VII. PREMIUMS FOR POLICY SERVICES

7.1 In consideration of the professional services to be performed by the **VENDOR,** premiums due for the coverage(s) provided by the Policies will be paid to the **VENDOR** according to the terms of the Policies and as reflected in the Price Schedule below and Exhibit A.

PRICE SCHEDULE

GROUP TERM LIFE/ACCIDENTIAL DEATH & DISMEMBERMENT (AD&D) **MONTHLY RATE PER $1000**	
Group Term Life/AD&D Benefit: *Based on Average monthly payroll* *$553,034,417 for CY 2014*	**Basic Life: $0.04** **AD&D: $0.02**
Conversion/Portability	See Exhibit A

7.2 Payments to the **VENDOR** shall be in the amount shown by the monthly billings and other documentation submitted and shall be subject to the **CITY'S** approval. All services shall be performed to the **CITY'S** satisfaction, and the **CITY** shall not be liable for any payment under this CONTRACT for services which are unsatisfactory and which have not been approved by the **CITY**. The final payment due herein will not be paid until the reports, data, and documents have been received and approved by the **CITY**.

7.3 The **CITY** shall not be obligated or liable under this CONTRACT to any party, other than the **VENDOR** for payment of any monies or provision of any goods or services.

VIII. ASSIGNING INTEREST

8.1 Any subcontracts or assignments on interests entered into by **VENDOR** concerning work tasks for this CONTRACT shall be communicated in writing to **CITY** prior to the effective date of this CONTRACT and prior to commencement of any work subsequent to this CONTRACT'S effective date. **VENDOR** shall not assign, sell, pledge, transfer or convey any interest in this CONTRACT, nor delegate the performance of any duties hereunder, by transfer, by subcontracting, or by any other means, to any other party without prior written consent of **CITY**, evidenced by passage of an ordinance to that effect by the San Antonio City Council. Any such

attempt at an assignment will be void *ab inito*, and shall confer no rights on the purported assignee. Should **VENDOR** assign, transfer, convey, delegate or otherwise dispose of any part of, or all of, its right, title or interest in this CONTRACT, the **CITY** may, at its option, cancel this contract and all rights, titles and interest of **VENDOR** shall thereupon cease and terminate, notwithstanding any other remedy available to **CITY** under this CONTRACT. The violation of this provision by **VENDOR** shall in no event release **VENDOR** from any obligation under the terms of this CONTRACT, nor shall it relieve or release **VENDOR** from the payment of any damages to **CITY** which **CITY** sustains as a result of such violation.

8.2 **VENDOR'S** subcontractors may not voluntarily assign, transfer, subcontract or pledge, in whole or in part, any contract with **VENDOR** arising from or in relation to this CONTRACT, nor shall any involuntary transfer or assignment result in a transfer of any rights conferred by this CONTRACT. **VENDOR** shall indicate this limitation in all contracts with approved subcontractors.

8.3 **VENDOR** agrees to notify **CITY** any changes in ownership interest greater than 10%, or control of its business entity, not less than sixty (60) days in advance of the effective date of such change. Notwithstanding any other remedies that are available to **CITY** under this CONTRACT, any such change of ownership interest or control of its business entity may be grounds for termination of this CONTRACT at the sole discretion of the **CITY**.

8.4 In no event shall such written consent, if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.

8.5 **CITY** must approve all substitutions of subcontractors to determine if the disadvantaged business enterprise goal will be decreased by substitution of a disadvantaged subcontractor with a non-disadvantaged subcontractor.

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** under 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**.

9.2 The **VENDOR** shall establish a method to secure the confidentiality of records and information that the **VENDOR** may have access to in accordance with the applicable federal, state, and local laws and regulations. This provision shall not be construed as limiting the **CITY'S** or its authorized representatives, right of access to records or other information under this CONTRACT.

9.3 If the **VENDOR** receives inquiries regarding documents within their possession pursuant to this CONTRACT, the **VENDOR** shall immediately forward such request to the **CITY** for disposition.

X. OWNERSHIP OF DOCUMENTS

10.1 All reports, information and other data given to, prepared or assembled by the **VENDOR** under this CONTRACT, and any other related documents or items shall become the sole property of the **CITY** and shall be delivered at no cost to the **CITY** upon request or termination of this CONTRACT without restriction on future use. The **VENDOR** may make copies of any and all documents for its files, at its sole cost and expense. However, **VENDOR** may use certain proprietary material in the ordinary course of business without the consent of the policyholder, such as, by way of example, historical tracking of underwriting information and/or statistical information purposes. When **VENDOR** uses the material, **VENDOR** will de-identify and keep such material confidential.

XI. NON-WAIVER

11.1 Grant or acceptance of extensions of time to complete the work or furnish the materials or reports required herein will not operate as a release to the **VENDOR** from any covenants and conditions required in this CONTRACT.

XII. INSURANCE REQUIREMENTS

12.1 Prior to approval of a CONTRACT by the City Council, the **VENDOR** shall furnish Certificate of Insurance ACORD form, to the Finance Department, Attention: Risk Management, 111 Soledad, San Antonio, Texas 78205, which shall be completed by an agent authorized to bind the named underwriter(s) and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The **CITY** shall have no duty to pay or perform under this CONTRACT until such certificate has been delivered, and no officer or employee shall have authority to waive this requirement.

12.2 The **CITY** reserves the right to review the insurance requirements of this section during the effective period of the CONTRACT and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the **CITY'S** Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding the CONTRACT, but in no instance will the **CITY** allow modification whereupon the **CITY** may incur increased risk. Any agreed to changes / modifcations will be added by addendum to this agreement.

12.3 A **VENDOR'S** financial integrity is of interest to the **CITY**, therefore, subject to the **VENDOR'S** right to maintain deductibles, the **VENDOR** shall obtain and maintain in full force and effect for the duration of the CONTRACT, and any extension hereof, at the **VENDOR'S** sole expense, insurance coverage written by companies authorized and admitted to do business in the State of Texas and rated A-(VII) or better by A.M. Best Company in the following types and amounts:

1. Workers' Compensation Employers' Liability	Statutory Limits $1,000,000/$1,000,000/$1,000,000
2. Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability	$1,000,000 per occurrence, with a $2,000,000 aggregate or its equivalent in umbrella or excess liability coverage.
3. Business Automobile Liability a. Hired autos b. Non-owned autos c. Owned/leased autos	Combined single limit coverage for bodily injury and property damage of $1,000,000 per occurrence
4. Professional Liability	$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, error or omission in professional services.
5. Umbrella/Excess*	**Umbrella Liability Insurance during the Contract term, insuring Vendor for an amount of not less than $5,000,000 per occurrence combined limit Bodily Injury (including death) and Property Damage.**

12.4 The **VENDOR** agrees that with respect to the above required insurance, all insurance Contracts and Certificate(s) of Insurance will contain the following required provisions.

- Name **CITY** and its officers, employees, agents and elected representatives as additional insureds (as the interests of each insured may appear on the Commercial General Liability and Auto Liability policies.
- Commercial General Liability: Policy shall be primary and non contributory to any insurance obtained by **CITY**.
- Workers' Compensation and Employer's Liability: Policy will provide a waiver of subrogation in favor of the **CITY**.

12.5 The **VENDOR** shall notify the **CITY** in the event of any notice of cancellation, non-renewal and not renewed or replaced or material change in coverage. If **VENDOR** fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned policies, 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.

12.6 Nothing herein 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.

XIII. INDEMNITY

13.1 **CONTRACTOR 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 CONTRACTOR'S activities under this CONTRACT, including any acts or omissions of CONTRACTOR, any agent, officer, director, representative, employee, Contractor or subcontractor of CONTRACTOR, and their respective officers, agents employees, directors and representatives while in the exercise the rights or performance of the duties under this CONTRACT. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of 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 CONTRACTOR 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.**

13.2 **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.**

13.3 **A Party shall advise the other within within 10 days of any claim or demand against the other related to or arising out of this contract.**

XIV. INDEPENDENT CONTRACTOR

14.1 **VENDOR** covenants and agrees that it is an independent contractor and not an officer, agent, servant or employee of **CITY**; that **VENDOR** shall have exclusive right to control the details of the work performed hereunder and all person performing the same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors; that the doctrine of *respondeat superior* shall not apply as between **CITY** and **VENDOR**, its officers, agents, employees, contractors and subcontractors, and nothing herein shall be construed as creating a partnership or joint enterprise between **CITY** and **VENDOR**.

14.2 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.**

14.3 No Third Party Beneficiaries: For purposes of this CONTRACT, including its intended operation and effect, the parties specifically agree and contract that (1) this CONTRACT only affects matters/disputes between the parties to this CONTRACT and is in no way intended by the parties to benefit or otherwise affect any third person or entity, notwithstanding the fact that such third person or entity may benefit incidentally by this CONTRACT; and (2) the terms of this CONTRACT are not intended to release, either by contract or operation of law, any third person or entity from obligations owing by them to either **CITY** or **VENDOR.**

XV. TERMINATION

15.1 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. Certain regulatory agencies governing the provision of insurance and insurance services have jurisdiction over the **VENDOR** on matters affecting Policy termination and shall take precedence over the provisions of this section.

15.2 TERMINATION BY NOTICE: The CONTRACT may be canceled by either party upon written notice, provided such notice specifies an effective date of termination, which shall be not less than thirty (30) calendar days nor more than ninety (90) 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 thirty (30) days after receipt of the notice by the other party. All files are the property of the **CITY** and at the **CITY'S** request will be delivered at no cost to the **CITY** or its designated recipient at the effective date of termination. 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.

15.3 TERMINATION FOR CAUSE: 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 ten (10) calendar days after its receipt of the written notice to cure such default. If the defaulting party fails to cure the default within such ten-day period, this CONTRACT shall terminate at 11:59 p.m. on the tenth day after the receipt of the notice by the defaulting party.

15.4 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.

15.5 EFFECT OF TERMINATION: The period between notice of termination and the effective date of termination shall be used to effect 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.

15.6 Within 30 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 premiums owed by the **CITY** for services performed under this CONTRACT through the effective date of termination, provided however, that such amount does not exceed the maximum amount set out in Section VII hereof.

15.7 Upon termination or cancellation of this CONTRACT, the **CITY** may immediately commence audit of the **VENDOR'S** books, accounts, and records. Within thirty (30) 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.

XVI. CONFLICT OF INTEREST

16.1 **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 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.

16.2 **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.

16.3 **VENDOR** warrants that no person or selling agency has been employed or retained to solicit or secure this CONTRACT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by **VENDOR** for the purpose of securing business. For breach or violation of this warranty, **CITY** shall have the right to rescind this CONTRACT without liability or, at its discretion, to deduct from the CONTRACT price or consideration or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

16.4 If at any time it shall be found that the person, firm or corporation to whom a CONTRACT has been awarded has, in presenting any proposal, colluded with any other party or parties, then the contract so awarded shall be voidable at **CITY'S** option, and **VENDOR** shall be liable to **CITY** for all loss or damage that **CITY** may suffer thereby.

XVII. NOTICE

17.1 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
111 Soledad St. Suite 100
San Antonio, Texas 78205

VENDOR

Dearborn National Life Insurance Company
Gregory S. Benesh
President and CEO
1020 31st Street
Downers Grove, Illinois 60515

With copy to:
Dearborn National Life Insurance Company
William R. Barnes
V.P., General Counsel
1020 31st Street
Downers Grove, Illinois 60515

XVIII. CAPTIONS

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

XIX. SUCCESSORS AND ASSIGNS

19.1 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.

XX. VENUE AND GOVERNING LAW

20.1 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.

20.2 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.

XXI. ENTIRE AGREEMENT

21.1 This CONTRACT, including all exhibits attached hereto and/or incorporated herein by reference, including, but not limited to the insurance policy(ies) underwritten and issued to the **CITY** by the **VENDOR** ("Policies"), the RFP and the Proposal shall collectively be referred to as and shall constitute the entire understanding between the **CITY** and **VENDOR**, and supersedes all prior written or oral statements between the parties relating to the subject matter hereof, except as specifically provided herein. Notwithstanding the foregoing, **CITY** and **VENDOR** acknowledge and agree that the Policies stand alone as evidence of the insurance coverage provided to **CITY** and its eligible employees and, along with any amendments or riders, contain the entire understanding between **CITY** and **VENDOR** with respect to the terms and requirements of the Policies. Therefore, if it is determined that there is a conflict among any of the provisions of this CONTRACT and a Policy(ies), then the terms and requirements of the Policy shall control over the CONTRACT and the CONTRACT shall control over the Request of Proposal and VENDOR'S Response to Proposal.

XXII. LEGAL AUTHORITY

22.1 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.

XXIII. GENDER

23.1 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.

XXIV. 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. SBEDA Program Compliance – General Provisions

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; **and**

SBE Mentor Protégé Program. In accordance with the SBEDA Ordinance, Section III. D. 7. (c), this contract is being awarded pursuant to the SBE Mentor Protégé Program and, if included in the CONTRACTOR'S proposal, CONTRACTOR shall comply with all requirements of the Program in accordance with CONTRACTOR's signed Mentorship Commitment Form; **and**

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.

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).

XXV. RETENTION AND ACCESSIBILITY OF RECORDS

25.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions in which **VENDOR** engages with **CITY**.

25.2 The books and records must be maintained for the term of this CONTRACT to which they relate and for the five (5) year period following the end of this CONTRACT's term unless federal or state laws governing the record retention of insurance policies requires a different period of time.

25.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.

25.4 **CITY**, the Texas Department of Insurance (TDI) Commissioner, the United States Department of Health and Human Services, and their designated agents shall be given access to those books and records for the purpose of either examination, audit, or inspection as permitted by federal or state law.

25.5 **CITY** is entitled to continuing access to these books and records.

25.6 **VENDOR** may, at **CITY'S** option, fulfill the requirements of this Section of this CONTRACT by delivering to **CITY**, the books and records and by giving written notice to the TDI Commissioner of the location of the books and records.

XXVI. PUBLICATION

26.1 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. **CITY** shall not publish, distribute, or otherwise use any document or material, whether in hard copy or electronic form, bearing the trademark, service mark license, copyright, or other intellectual property ("Marks") of **VENDOR** without receiving the prior consent of the **VENDOR**.

XXVII. SEVERABILITY

27.1 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.

EXECUTED this the _____th day of October, 2015, by the **CITY**, signing by and through its City Manager, duly authorized to execute same by Ordinance No. _____, adopted by the City Council on October 29, 2015, and by the **VENDOR**, acting through its duly authorized officials.

CITY OF SAN ANTONIO

_____
Sheryl Sculley
City Manager

Approved as to Form

_____
Krista Cover
Assistant City Attorney

DEARBORN NATIONAL LIFE INSURANCE COMPANY

Gregory S. Benesh 10/23/15

_____
Gregory S. Benesh
President and CEO