

PROFESSIONAL SERVICES CONTRACT

This CONTRACT is entered into by and between the **CITY OF SAN ANTONIO** (hereinafter referred to as "**CITY**"), a Texas Municipal Corporation, acting by and through its City Manager pursuant to Ordinance No._____ passed and approved on August 4, 2016, and Davis Vision, Inc., a New York corporation (hereinafter referred to as "**VENDOR**"), both of whom may be referred to herein collectively as the "Parties".

I. PURPOSE

The purpose of this CONTRACT is to state the terms and conditions under which the **VENDOR** will provide administration and management of the city's vision insurance plan to city employees, eligible dependents and retirees.

II. SCOPE OF SERVICES

- 2.1 **VENDOR** agrees to provide the services described in this Article II entitled Scope of Services in exchange for the compensation described in Article V Consideration and Billing.
- 2.2 **VENDOR** will perform all work required under the CONTRACT to the satisfaction of Director of Human Resources. 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 CONTRACT, in accordance with Article VII. 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.
- 2.3 **VENDOR** shall provide the products and perform all the services as set forth in City's Request for Proposal (Exhibit A), and the Vendor's Proposal dated March 28, 2016 (Exhibit B), and Business Associate Agreement (Exhibit C). Exhibits A, B, and C are attached hereto and incorporated herein for all purposes.
- 2.4 **VENDOR** shall work with the Human Resources Director or designee and appropriate City officials to perform any and all related tasks required by **CITY** in order to fulfill the purposes of this CONTRACT.

2.5 PLAN DESIGN

2.5.1 **VENDOR** will provide a plan design that meets or exceeds the same level of benefits as the current vision contract and will provide annual benefits on a calendar year basis rather than a rolling 12 month period.

2.5.2 **VENDOR** will provide vision claims data with the City's medical carrier for the purposes of integrating programs and wellness initiatives if requested by **CITY**. **VENDOR** agrees to work with **CITY** and its medical carrier to implement the data exchange within the first 12 months of the CONTRACT as needed.

2.5.3 **VENDOR** will provide coverage for all eligible non-uniformed employees, COBRA participants, retirees, all eligible dependents and other individuals recognized as participants by **CITY**. **VENDOR** will administer the requested vision services according to the following tier structure:

- a. Employee/Retiree (if included) only
- b. Employee/Retiree (if included) and spouse
- c. Employee/Retiree (if included) and children
- d. Employee/Retiree (if included) and family
- e. At City's option additional tiers may be added to include other individuals recognized as participants by **CITY** upon review and approval by **VENDOR**.

2.4 **PLAN ADMINISTRATION, CLAIMS PAYMENT AND CUSTOMER SERVICE**

2.4.1 **VENDOR** will maintain both a customer call center with a dedicated 1-800 line for the **CITY** and a web-based customer portal offered in both English and Spanish to include bilingual customer service staff and voice command prompts. Additionally, all printed plan material must be provided in both English and Spanish.

2.4.2 **VENDOR** must be able to download eligibility information from the **CITY** via electronic transfer using secure server to server data transmission via HIPAA compliant transfer method utilizing.

2.4.3 **VENDOR** will log and maintain all **CITY** employee complaints and provide a quarterly report documenting receipt, response and resolution of each complaint.

2.4.4 **VENDOR** will provide the City's Employee Benefits staff with the following:

- Advanced copies of all general employee correspondence to include changes in services benefits;
- Sixty (60) day minimum notice of provider changes;

2.4.5 **VENDOR** must provide a single point-of-contact senior account manager. This person shall be available through a toll-free telephone number and a direct telephone number.

2.4.6 **VENDOR** will attend monthly meetings when deemed necessary by the **CITY** and make presentations as requested by the **CITY**.

2.4.7 **VENDOR** shall provide and maintain networks of qualified providers that provide quality services on a cost-effective basis during the term of the contract. **VENDOR** must ensure that the providers continue to meet licensing, selection, and screening criteria and that required liability insurance is maintained.

2.4.8 **VENDOR** will work with **CITY** to include additional qualified providers in network.

2.5 **ELIGIBILITY, BILLING, PAYMENT AND RECONCILIATION**

2.7.1 It is understood that **CITY** does not guarantee a minimum participation in the plan since this is a voluntary plan.

2.7.2 **CITY** shall remit payment for active employees and dependents based on the monthly enrollment in accordance with the four tiered rate structure. **CITY** will not handle billing or premium collection for retirees. **VENDOR** will be responsible for retiree billing and collection. **CITY** does not make any employer contributions for vision insurance.

2.7.3 **CITY** considers premium payment as follows:

- Premium is paid on an employee for that month only if the employee is enrolled on the first of that month.
- For new hires and life events, effective dates of coverage are based on the dates of the event, while premium will be paid based on the first of the following month (if the event did not fall on the first of the month.)
- In all cases, **VENDOR** is expected to extend coverage through the period for which premium is paid even though the employee and/or dependent may not otherwise be eligible for coverage.

2.7.4 **CITY** will submit remittance check for active employee and dependent premium payments within 30 days from the first of each month. A corresponding self-bill will be sent via secure email to **VENDOR** showing the total premium and eligibility counts for coverage tier. **VENDOR** will provide to **CITY** a secure email address for **VENDOR** to receive the reports. The **CITY** shall be deemed to have paid **VENDOR** in full for any given calendar quarter if the paid premium equals that due for the employee 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 **VENDOR**'s records reflect for such quarter. In any month the carrier 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.

2.7.5 **VENDOR** must grant the **CITY** a ten (10) day grace period beyond the fifteen (15) working days to submit payment to allow for potential computer, mail, or other system malfunctions.

2.8 PLAN PERFORMANCE, MONITORING AND RENEWAL

2.8.1 All reports, information and other data given to, prepared or assembled by **VENDOR** under this CONTRACT is the property of the City and not the **VENDOR**'s property or any of **VENDOR**'S employees or subcontractors as outlined in Section VII Ownership of Product. **VENDOR** shall ensure the confidentiality of all information contained in their files, including but not limited to, medical information.

2.8.2 **VENDOR** will attend quarterly review meetings as well as new employee orientation meetings, health and wellness meetings, and all open enrollment meetings at the City's desired location in San Antonio, Texas. **VENDOR** may also be required to attend periodic meetings with employee benefit sub-committees.

2.8.3 All management reports shall track claims data by employee sub-totals, retiree sub-totals, COBRA sub-totals, and grand totals for each plan/product offered. There shall also be no charge to **CITY** for any standard management report or performance guarantee report.

2.8.4 **VENDOR** shall conduct an annual member satisfaction survey with results to be provided during annual plan review meetings.

2.8.5 **CITY**, at their option, will have the right to have a claims audit performed annually or on an “as needed” basis if circumstances warrant, including but not limited to:

- Compliance with contractual obligations;

2.8.6 **VENDOR** acknowledges the following is a list of reports required by **VENDOR**. Aggregate and individual plan reports sorted by Active, Retired and COBRA participant classifications should be provided on a monthly and quarterly basis for the following:

- Dollar amount of claims paid by group and summary of all groups will be required for each type of plan administered.
- Claims vs. premium by group and summary of all groups will be required for each type of plan administered.

III. PERFORMANCE STANDARDS

3.1 **VENDOR** acknowledges and agrees that **VENDOR** shall provide services under this CONTRACT at a certain level with a certain degree of accuracy and timeliness. Therefore, as part of this professional services contract with **CITY**, **VENDOR** agrees to the following performance standards and administrative fee adjustments:

Performance compliance audits may be conducted at the discretion of **CITY**, but are limited to one (1) per Experience Period. If **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. Performance-related fee adjustments will then be based on the combined results. The definition of an error in these audits is subject to a good faith review by the parties to this CONTRACT. The cost of the first audit conducted by the **CITY** in any Experience Period will be paid by **CITY**. Should **VENDOR** fail to meet any performance expectation, **VENDOR** will pay the cost for all subsequent audits until **VENDOR** is meeting expected performance levels.

As an interim measurement, **VENDOR** will share a copy of its annual internal audit results on City Plans with **CITY**. If **CITY** waives its right to an independent audit in any plan year, it retains the right to audit in all subsequent years.

3.2 **CITY** shall monitor, review and evaluate **VENDOR**'s performance in accordance with the Performance Standards established in this CONTRACT and set forth as follows:

Performance Standard	Guarantees	Penalty
ID Cards	ID Cards delivered to 98% of enrollees prior to effective date of plan contingent on receipt of clean enrollment files within 10 days prior to the effective date. Clean files are defined as 100 % accurate information that will not cause a transaction to pend within VENDOR's processing system.	\$1,500 annual for failure to meet this guarantee
Communication	All communication materials must be reviewed and approved by the City prior to distribution to employees.	\$250 per occurrence for failure to meet this guarantee
Customer Service	Provide prompt, knowledgeable, consistent and courteous customer service with not less than 90% of all City enrollees' calls answered by a live voice within 30 seconds.	\$250 per month for failure to meet this guarantee
Claims Administration	90% of clean claims will be paid a maximum of 15 calendar days from receipt date.	\$250 per month for failure to meet this guarantee
Administration	Enrollment data provided by the City will be loaded into the carrier's enrollment system within 48 hours of receipt and an eligibility discrepancy report must be provided to the City within five (5) days following receipt of enrollment data.	\$250 per month for failure to meet this guarantee
Administration	95% of all enrollees/providers' appeals shall be resolved within 30 days of receipt.	\$250 per occurrence for failure to meet this guarantee
Reporting	Accurate management reports and all other requested reports will be delivered no later than the agreed upon due date.	\$250 per occurrence for failure to meet this guarantee
Customer Satisfaction Survey	CITY participant customer satisfaction will be at 80% overall satisfaction based on VENDOR survey. VENDOR will provide city specific survey.	\$2,000 annual for failure to meet this guarantee

* Performance Reports will be no later than forty-five days after the end of the quarter.

IV. GENERAL ASSURANCES

4.1 **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.

4.2 **VENDOR** agrees to assign a dedicated unit including, but not limited to, a Supervisor/Manager who shall be responsible for the task administration and work performance for this CONTRACT.

4.3 **VENDOR** agrees to employ, at its own expense, all personnel required to perform the services described in this CONTRACT. Personnel employed by **VENDOR** shall neither be employees of nor have any contractual relationship with **CITY**. All **VENDOR** personnel engaged in providing services under this CONTRACT shall be fully qualified and shall be authorized or licensed to perform such work as required.

V. CONSIDERATION & BILLING

5.1 In consideration of **VENDOR**'s performance hereunder, **CITY** shall pay to **VENDOR** as follows:

	<u>Base Period</u>	<u>Option Period</u>	<u>Option Period</u>
Employee Only	January 2017 –Dec 2019	Year 4	Year 5
Employee +Spouse	\$ 7.84/monthly	\$ 7.84/monthly	\$ 7.84/monthly
Employee + Children	\$14.01/monthly	\$14.01/monthly	\$14.01/monthly
Employee +Family	\$14.01/monthly	\$14.01/monthly	\$14.01/monthly
	\$20.75/monthly	\$20.75/monthly	\$20.75/monthly

Retiree Vision Rates

	<u>Base Period</u>	<u>Option Period</u>	<u>Option Period</u>
Retiree Only	January 2017-Dec 2019	Year 4	Year 5
Retiree +1	\$9.75/monthly	\$9.75/monthly	\$9.75/monthly
Retiree +2 (or more)	\$17.41/monthly	\$17.41/monthly	\$17.41/monthly
	\$25.80/monthly	\$25.80/monthly	\$25.80/monthly

CITY reserves option to add Retirees upon written notice to **VENDOR** during term of CONTRACT including option periods at the retiree rates as reflected in 5.1 above.

5.2 Payments to **VENDOR** shall be in the amount shown by **CITY'S** monthly self-billing statements and other documentation. All services shall be performed to **CITY'S** satisfaction, and **CITY** shall not be liable for any payment under this CONTRACT for services which are unsatisfactory and which have not been approved by **CITY**. The final payment due herein will not be paid until the reports, data, and documents required under this CONTRACT have been received and approved by the **CITY**. No additional fee or charge will be assessed against the **CITY** for late payment of any amount due to the **VENDOR** under this CONTRACT.

5.3 **CITY** shall not be liable to **VENDOR** for costs incurred or performances rendered by **VENDOR** prior to the commencement of this CONTRACT or after its termination.

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

VI. TERM

- 6.1 This CONTRACT shall commence on January 1, 2017, and shall terminate on December 31, 2019.
- 6.2 With at least 60 days written notice prior to expiration of the term, **CITY** may, at its sole option have the right to extend the term of this CONTRACT, under the same terms and conditions, for two (2) additional one (1) year periods subject to the same notice requirement. All renewals shall be in writing and signed by the Director of Human Resources, or her designee, without further action by the San Antonio City Council, subject to appropriation of funds.
- 6.3 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.

VII. OWNERSHIP OF PRODUCT

- 7.1 **VENDOR** recognizes that **CITY** shall own exclusively any and all information in whatsoever form and character produced and/or maintained in accordance with this CONTRACT and shall be used as **CITY** desires without restriction. **VENDOR** may utilize the information produced as a result of this CONTRACT for statistical purposes only as allowed by federal or state law.

VIII. RETENTION AND ACCESSIBILITY OF RECORDS

- 8.1 **VENDOR** shall maintain at its principal administrative office adequate books and records of all transactions including electronic and manual claims data in which **VENDOR** engages with **CITY**.
- 8.2 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.
- 8.3 **VENDOR** shall maintain the books and records in accordance with prudent standards of insurance recordkeeping and all requirements of federal or state law.
- 8.4 **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 examination, audit, or inspection as permitted by federal or state law.
- 8.5 Trade secrets, including the identity and address of policyholders and certificate holders, are confidential, except that the TDI Commissioner may use such information in proceedings instituted against the **VENDOR**.
- 8.6 **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.

IX. HIPAA COMPLIANCE

- 9.1 **VENDOR** will maintain the confidentiality of any 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.
- 9.2 **VENDOR** shall comply with the electronic transmission standards, and with all other regulations as might be adopted by HIPAA.
- 9.3 The parties acknowledge that they are "Business Associates" as defined in Title 45, Section 160.103, of the Code of Federal Regulations. **VENDOR** shall abide by the terms of the Business Associate Agreement executed by the parties, attached hereto as Exhibit C and incorporated herein by reference.

X. PUBLICATION

- 10.1 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.

XI. NOTICE OF VENDOR'S CAPACITY

- 11.1 **VENDOR** shall give notice to Plan Participants of the identity of **VENDOR** and the relationship between **VENDOR** and **CITY** and the plan participant. The notice must be approved by **CITY** at least ten (10) business days prior to such distribution.

XII. AMENDMENT

- 12.1 This CONTRACT, together with its authorizing ordinance and its exhibits, constitutes the entire agreement between the parties. No amendment, modification or alteration of the terms of this CONTRACT shall be binding unless the same be in writing, dated subsequent to the date hereof and duly executed by the parties hereto.

XIII. ASSIGNING INTEREST

- 13.1 **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.

If approved, **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.

- 13.2 **VENDOR** agrees to notify **CITY** of any changes in **VENDOR'S** 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**.
- 13.3 In no event shall such written consent for a change of subcontractor if obtained, relieve **VENDOR** from any and all obligations hereunder or change the terms of this CONTRACT.
- 13.4 **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.

XIV. INSURANCE AND BONDING

- 14.1 Prior to the commencement of any work under this CONTRACT, **VENDOR** shall furnish copies of all required endorsements and a completed Certificate(s) of Insurance to the City's Human Resources Department, Employee Benefits Division, which shall be clearly labeled "**Voluntary Vision Insurance**" 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 Memorandum of Insurance or Binders as proof of insurance. The certificate(s) or form must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the **CITY**. The **CITY** shall have no duty to pay or perform under this CONTRACT until such certificate and endorsements have been received and approved by the City's Human Resources Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 14.2 **CITY** reserves the right to review the insurance requirements of this section during the effective period of this CONTRACT and any extension or renewal hereof and to modify insurance coverages 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 this CONTRACT, but in no instance will **CITY** allow modification whereupon **CITY** may incur increased risk.
- 14.3 **VENDOR'S** financial integrity is of interest to **CITY**. Therefore, subject to **VENDOR'S** right to maintain reasonable deductibles in such amounts as are approved by

CITY, VENDOR shall obtain and maintain in full force and effect for the duration of this CONTRACT, 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 rated A- (VII) or better by A.M. Best Company and/or otherwise acceptable to **CITY**, in the following types and for an amount not less than the amount listed below:

1. Workers' Compensation ** 2. Employers' Liability **	Statutory \$500,000/\$500,000/\$500,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury	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 (Claims Made Basis)	\$2,000,000 per claim, \$5,000,000 aggregate 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.
6. Commercial Crime Coverage (Policy shall be endorsed to name City as a joint loss payee).	\$5,000,000 per claim

14.4 As they may 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 endorsements thereto as they apply to the limits required by **CITY** and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by **CITY**, **VENDOR** shall exercise reasonable efforts to accomplish such changes in policy coverage and shall pay the cost thereof.

14.5 **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** and its officers, employees, and elected representatives as additional insureds, by endorsement, as respects operations and activities of, or on behalf of, the named insured and performed under this 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;
- **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 its operations under this CONTRACT with **CITY**; and
- Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of **CITY**.

14.6 **VENDOR** provide advance, written notice directly to **CITY** of any suspension, cancellation, non-renewal or material change in coverage, and shall give such notice not less than ten (10) calendar days for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement Certificate of Insurance. All notices shall be given to **CITY** at the following addresses:

City of San Antonio
Human Resources Department
Employee Benefits Division
P.O. Box 839966
San Antonio, Texas 78283-3966

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

14.8 In addition to any other remedies **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, **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.

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

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

14.11 **VENDOR** and any subcontractors are responsible for all damage to their own equipment and/or property

XV. INDEMNITY

15.1 **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 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 **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.

15.2 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.

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

XVI. INDEPENDENT CONTRACTOR

16.1 **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**.

- 16.2 Any and all of the employees of the **VENDOR**, wherever located, while engaged in the performance of any work 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**.
- 16.3 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**.

XVII. SMALL ECONOMIC DEVELOPMENT ADVOCACY (SBEDA) ORDINANCE COMPLIANCE PROVISIONS

17.1 Solicitation Response and Contract Requirements and Commitment

VENDOR understands and agrees that the following provisions shall be requirements of this **CONTRACT** and **VENDOR** commits to comply with these requirements.

17.2 SBEDA Program

The **CITY** has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2010-06-17-0531, also referred to as "SBEDA" or "the SBEDA Program"), which is posted on the City's International and Economic Development (IEDD) 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.

17.3 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.)

Annual Aspirational Goal – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in City of San Antonio contracts is established each year for Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contract Industry Categories. This Annual Aspirational Goal is to be set (and thereafter adjusted) by the Goal Setting Committee (GSC) on an annual basis based upon relative M/WBE availability data to be collected by the **CITY** through its Centralized Vendor Registration (“CVR”) system. Annual Aspirational Goals are not to be routinely applied to individual contracts, but are intended to serve as a benchmark against which to measure the overall effectiveness of the S/M/WBE Program on an annual basis, and to gauge the need for future adjustments to the mix and to the aggressiveness of remedies being applied under the Program. Percentage Goals for S/M/WBE participation may be established by the GSC on a contract-by-contract basis based upon similar data and analysis for the particular goods and services being purchased in a given contract. The M/WBE Annual Aspirational Goals for 2016 are:

Construction -26%
Architecture and Engineering -22%
Professional Services -17%
Other Services – 20%
Goods and Supplies –9%

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.

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 **VENDOR** to perform such “pass-through” or “conduit” functions that are not commercially useful shall be viewed by the **CITY** as fraudulent if **VENDOR** 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 **VENDOR** 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 **VENDOR** and S/M/WBE firm may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

Good Faith Efforts – documentation of the **VENDOR**’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 **VENDOR**’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 **VENDOR**; 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 **VENDOR**’s Good Faith Efforts documentation shall be in accordance with the SBEDA Ordinance as interpreted in the SBEDA Policy & Procedure Manual.

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 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.

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.

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 **VENDOR**.

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.

VENDOR – 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 VENDOR.

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.

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 International and Economic Development Department (IEDD) 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 IEDD 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 IEDD 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 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.

17.4 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.

17.5 SBEDA Program Compliance – Affirmative Procurement Initiatives

The **CITY** has applied the following contract-specific Affirmative Procurement Initiative to this contract:

None. There are no Affirmative Procurement Initiatives being applied to this contract.

17.6 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 attached and 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.

17.7 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.

17.8 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

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).

XVIII. NON-WAIVER

- 18.1 The granting or acceptance of extensions of time to complete the work or furnish the materials or reports required hereunder will not operate as a release to **VENDOR** from any other covenants and conditions required in this CONTRACT.

XIX. FRAUD AND ABUSE PREVENTION

- 19.1 **VENDOR** shall establish, maintain and utilize internal management procedures sufficient to protect against fraud, abuse or misappropriation of funds while in performance of obligations and duties under this CONTRACT. Any suspected fraud, abuse or misappropriation of funds shall be investigated promptly at the sole expense of **VENDOR**. Any funds that are found to be misappropriated shall be repaid to **CITY** by **VENDOR** within thirty (30) days of such finding.
- 19.2 **VENDOR** agrees to repay **CITY** for overpayments to service providers resulting from **VENDOR'S** claims system's or processors' errors within 30 days of verification of overpayments.

XX. CONFLICT OF INTEREST

- 20.1 **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.

- 20.2 **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 it has tendered to the City a Discretionary Contracts Disclosure Statement in compliance with the City’s Ethics Code.
- 20.3 **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.
- 20.4 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.

XXI. TERMINATION

- 21.1 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.
- 21.2 Termination by Notice. This 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 30 calendar days nor more than 90 calendar days after the date of receipt of the notice by the other party. If the notice does not specify a date of termination, the effective date of termination shall be 30 calendar days after receipt of the notice by the other party.
- 21.3 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 in 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 (10) day period, this CONTRACT shall terminate at 11:59:59 p.m., Central Standard Time, on the tenth (10th) day after the receipt of the notice by the defaulting party.

21.4 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.

21.5 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 **VENDOR** to **CITY** or to such person(s) or firm(s) as the **CITY** may designate. Any records transfer shall be completed within 15 calendar days of the termination date. Any such transfer of records or funds shall be completed at **VENDOR'S** sole cost and expense. 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 on the effective date of termination. Any **CITY** funds held in any escrow account(s) shall be returned to the **CITY** within 30 calendar days after the effective termination date.

21.6 Upon termination or cancellation of this CONTRACT, **CITY** may immediately commence audit of **VENDOR'S** books, accounts, and records. Within 30 calendar days after being notified by **CITY** of the results of said audit, **VENDOR** shall pay **CITY** any amount shown by said audit to be owed **CITY** or its employees. No waiver of existing default shall be deemed to waive any subsequent default.

21.7 If **CITY** conducts an audit, either party to this CONTRACT may conduct a second audit, at their own expense, by the same or another independent auditor. If the results from the second audit are different, a third audit may be conducted with the costs of said audit to be shared equally between **VENDOR** and **CITY**. The results from said third audit shall be final.

21.8 Upon termination of this CONTRACT, in whole or in part, and/or its non-renewal, in entirety or of any major operating subsidiary, entity or portion thereof, **CITY** shall have the option to:

21.8.1 Assume all open claims pending for the terminated or non-renewed portion of the CONTRACT, as of the effective date of termination or non-renewal, provided however, that **VENDOR** shall be entitled to receive its full fee for all claims processed to completion into its data files prior to the effective date of termination or non-renewal; or,

21.8.2 Upon agreement of a rate of compensation by both parties, **CITY** requires **VENDOR** to continue administration, to conclusion, all incurred claims associated with that portion of the services terminated or non-renewed.

21.8.3 In the event **CITY** requests **VENDOR** to provide post-termination or non-renewal claims administration, upon agreement of a rate of compensation by both parties, **CITY** may continue to purchase on-line data services. Such rate of compensation shall thereafter be reviewed by the parties on an annual basis and continued on-line data services shall be the subject of a written agreement between the parties, subject to funding and approval of the City Council.

21.9 Within 30 calendar days of the effective date of termination or cancellation, **VENDOR** shall submit to **CITY** its claims, in detail, for the monies owed by **CITY** for services

performed under this CONTRACT through the effective date of termination, except for monies owed for processing of claims incurred prior to the termination date and submitted for processing after the termination date.

XXII. COMPLIANCE WITH LAWS

22.1 **VENDOR** hereby agrees to provide services hereunder in compliance with all applicable Federal, State and local laws, regulations, policies and procedures.

XXIII. SUCCESSORS AND ASSIGNS

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

XXIV. NOTICES

24.1 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 **CITY**, or to **VENDOR** at the addresses set forth below or to any other address of which written notice of change is given:

CITY

**City of San Antonio
Human Resources Department
Employee Benefits Division
111 Soledad Suite 200
San Antonio, TX 78205**

VENDOR
**Davis Vision, Inc.
Legal Department
175 E. Houston Street
San Antonio, Texas 78205**

XXV. EXHIBITS

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

CITY's Request for Proposal	Exhibit A
VENDOR'S Proposal	Exhibit B
HIPAA Business Associate Agreement	Exhibit C

25.2 **VENDOR** understands and agrees that Exhibits A, B, and C 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.

25.3 The terms of this CONTRACT shall be final and binding where there is any conflict between the terms of CITY'S Request for Proposal, **VENDOR'S** Proposal and the terms of this CONTRACT; CITY'S Request for Proposal shall control where it conflicts with **VENDOR'S** Proposal.

XXVI. LEGAL AUTHORITY

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

XXVII. VENUE AND GOVERNING LAW

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

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 to include the plural, unless the context otherwise requires.

XXIX. CAPTIONS

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

XXX. ENTIRE AGREEMENT

30.1 This CONTRACT, its exhibits and the authorizing ordinance constitute the final and entire agreement between the parties hereto, superseding all verbal or written agreements, previous and/or contemporaneous agreements between the parties and relating to matters in this CONTRACT. No other agreements, oral or otherwise, regarding the matters of this CONTRACT shall be deemed to exist or to bind the parties hereto unless same is in writing, dated subsequent to the date hereto, and duly executed by the parties hereto.

XXXI. SEVERABILITY

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

XXXII. ACKNOWLEDGMENT

32.1 Each of the parties acknowledges that it has read this CONTRACT, understands its contents and executes this CONTRACT voluntarily.

EXECUTED this the _____ day of _____, 2016.

CITY OF SAN ANTONIO

Sheryl Sculley
City Manager

DAVIS VISION. INC.


C. Scott Hamey
Chief Financial Officer

APPROVED AS TO FORM:

Krista Cover
Assistant City Attorney