

AN ORDINANCE 2019-12-12-1061

AUTHORIZING AN AGREEMENT WITH THE BEXAR COUNTY HOSPITAL DISTRICT, D/B/A UNIVERSITY HEALTH SYSTEM (UHS) TO ESTABLISH THE INSTITUTE FOR TRAUMA INFORMED CARE RELATED TO THE SAN ANTONIO METROPOLITAN HEALTH DISTRICT'S ADVERSE CHILDHOOD EXPERIENCES (ACEs) PROGRAM FOR AN AMOUNT UP TO \$606,972.00, COMMENCING DECEMBER 1, 2019 THROUGH SEPTEMBER 30, 2020, WITH OPTIONS TO RENEW FOR FOUR, ONE-YEAR TERMS.

* * * * *

WHEREAS, Adverse Childhood Experiences (ACEs) are traumatic events including: abuse, neglect, exposure to mental illness and substance abuse, witnessing violence at home or in the community; and

WHEREAS, these traumatic events are shown to disrupt a child's healthy development altering the way their brains and bodies respond to stress; and

WHEREAS, a trauma informed approach, or Trauma Informed Care (TIC), recognizes the existence of trauma and the negative impact trauma has on children, youth, and adults; and

WHEREAS, TIC increases safety, improves social environment and relationships, cares for caregivers, improves service quality, reduces negative encounters and events, creates a community of hope, wellness, and recovery and increases success and satisfaction at work; and

WHEREAS, in order to become TIC certified, an organization is required to minimize perceived threats, avoid re-traumatization, and support recovery; however, an entity does not currently exist in Texas that provides the necessary technical assistance and training to prepare for TIC certification; and

WHEREAS, on September 12, 2019, the City Council authorized funding \$606,972.00 or 50% of the total cost needed to establish and operate an Institute of Trauma Informed Care (Institute); and

WHEREAS, this Institute will provide the necessary training and technical assistance to organizations and systems who wish to complete the requirements necessary for certification as a TIC entity; and

WHEREAS, this Institute will develop services and activities tailored to align with the culture and demographics of San Antonio; and

WHEREAS, by ensuring the community becomes trauma-informed through the creation of the Institute, residents of both Bexar County and San Antonio will benefit from a shared language and understanding of how to meet the needs of community members; and

agreement with the Bexar County Hospital District d/b/a University Health System to establish the Institute of Trauma Informed Care in San Antonio; **NOW THEREFORE,**

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

SECTION 1. The City Manager or designee, or the Director of the San Antonio Metropolitan Health District (Metro Health) or designee, is authorized to negotiate and execute an agreement with the Bexar County Hospital District d/b/a University Health System to establish the Institute for Trauma Informed Care (TIC) related to Metro Health's ACEs program for an amount up to \$606,972.00, commencing December 1, 2019 through September 30, 2020, with options to renew, without further Council action, for four, one-year terms with decreased funding in renewal years two through five for a total amount not exceed \$1,994,446.00 inclusive of renewals. The agreement, in substantially final form, is attached hereto and incorporated herein for all purposes as **Attachment I**. The execution authority granted by this Ordinance shall expire 60 days after the effective date.

SECTION 2. Funding in the amount of \$606,972.00 for this ordinance is available in Fund 11001000, Cost Center 3618010007, and General Ledger 5201040 as part of the Fiscal Year 2020 budget.

SECTION 3. Additional funding is contingent upon City Council approval of subsequent budgets within the term length of this contract.

SECTION 4. Payment not to exceed the budgeted amount is authorized to Bexar County Hospital District d/b/a University Health System to establish the Institute for Trauma Informed Care.

SECTION 5. The financial allocations in this Ordinance are subject to approval by the Deputy Chief Financial Officer, City of San Antonio. The Deputy Chief Financial Officer may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

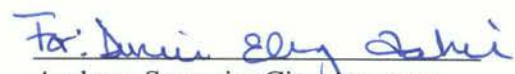
SECTION 6. This ordinance shall be effective immediately upon passage by eight affirmative votes; otherwise it shall be effective on the tenth day after passage hereof.

PASSED and APPROVED this 12th day of December, 2019.


M A Y O R
Ron Nirenberg

ATTEST:

Letecia M. Vacek, City Clerk

APPROVED AS TO FORM:

Andrew Segovia, City Attorney

Agenda Item:	34 (in consent vote: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18A, 18B, 18C, 18D, 18E, 19, 20, 21, 22, 23, 24, 25, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 39, 41A, 41B, 42A, 42B, 42C, 42D, 43, Z-1)						
Date:	12/12/2019						
Time:	09:40:36 AM						
Vote Type:	Motion to Approve						
Description:	Ordinance approving an agreement with the Bexar County Hospital District d/b/a University Health System to establish the Institute for Trauma Informed Care related to the San Antonio Metropolitan Health District's Adverse Childhood Experiences (ACEs) program for an amount up to \$606,972.00 commencing December 1, 2019 and terminating on September 30, 2020, with options to renew for four, one-year terms. [Colleen M. Bridger, MPH, PhD, Assistant City Manager; Jennifer Herriott, MPH, Interim Director, Health]						
Result:	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Ron Nirenberg	Mayor		x				
Roberto C. Treviño	District 1		x				x
Jada Andrews-Sullivan	District 2		x			x	
Rebecca Viagran	District 3		x				
Adriana Rocha Garcia	District 4		x				
Shirley Gonzales	District 5		x				
Melissa Cabello Havrda	District 6		x				
Ana E. Sandoval	District 7		x				
Manny Pelaez	District 8		x				
John Courage	District 9		x				
Clayton H. Perry	District 10		x				

DEF
12/12/2019
Item No. 34

ATTACHMENT I

**INTERLOCAL AGREEMENT
FOR
INSTITUTE FOR TRAUMA INFORMED CARE**

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This agreement is between the City of San Antonio (City), on behalf of the San Antonio Metropolitan Health District (Metro Health), acting by and through the City Manager and pursuant to Ordinance No. _____ passed and approved on the _____ day of December 2019; and the Bexar County Hospital District, d/b/a University Health System (UHS), both of which may be referred to in this agreement collectively as the Parties.

The Parties by execution of this agreement severally and collectively agree to the mutual obligations in this agreement to perform and accomplish the tasks described below.

1 DEFINITIONS

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

- 1.1 City defined in the preamble of this agreement, includes successors and assigns.
- 1.2 UHS defined in the preamble of this agreement as the Bexar County Hospital District d/b/a University Health System, and includes successors.
- 1.3 Director means the director of the City's Health Department.

2 TERM

- 2.1 Unless sooner terminated in accordance with the provisions of this agreement, the term of this agreement shall commence on December 1, 2019, and terminate on September 30, 2020.
- 2.2 If funding for the entire agreement is not appropriated at the time this agreement is entered into, the City retains the right to terminate this agreement at the expiration of each of the City's budget periods, and any additional contract period beyond the initial term set forth in 2.1, is subject to and contingent upon subsequent appropriation.
- 2.3 Term. The term of this agreement shall commence on December 1, 2019, and shall continue for a one-year period, unless terminated earlier as provided in this agreement. Upon expiration of the initial term, and at the City's sole option, this agreement shall renew for up to four successive one-year terms.

3 SCOPE OF SERVICES

UHS agrees to provide the services described below, in exchange for the compensation outlined in Article IV, Compensation.

This agreement is an ILA with UHS to develop the Institute for Trauma Informed Care. UHS will develop a set of services and activities tailored to align with the culture and demographics of San Antonio. UHS will serve as a repository for information and local data on: ACEs; trauma, TIC; and community vetted, evidence-based processes and practices. Services include: E-learning; Trauma-Informed Care Learning Opportunities; Face-to-Face Trauma-Informed Care Training and Presentations; Trauma-Informed Organizational Assessments and Follow-Up; Ongoing Technical Assistance; and Local Community-Wide Learning Events.

- 3.1.1 See Attachment I for Performance Measures
- 3.2 All work performed by UHS shall be performed to the satisfaction of the Director. The determination made by the Director shall be final, binding and conclusive on all Parties. The City shall be under no obligation to pay for any work performed by UHS, which is not satisfactory to the Director. The City shall have the right

to terminate this agreement, in accordance with Article VII, Termination, in whole or in part, should UHS's work not be satisfactory to the Director; however, the City is under no obligation to terminate. The City may withhold payment for unsatisfactory work, even in the event the City does not elect to terminate. The City shall notify UHS in writing of any decision to withhold payment. Should the City elect to terminate, it will do so in accordance with the provisions for Defaults with Opportunity for Cure outlined below.

4 COMPENSATION TO UHS

- 4.1 In consideration of UHS's performance in a satisfactory and efficient manner of all services and activities set forth in this agreement, and as determined solely by the Director, the City agrees to pay UHS an amount not to exceed \$606,972.00, as total compensation, to be paid as follows:

Year	Compensation to UHS
Year 1	\$606,972.00
Year 2	\$544,087.00
Year 3	\$416,121.00
Year 4	\$282,945.00
Year 5	\$144,321.00

- 4.2 UHS shall submit quarterly invoices to the City upon completion of quarterly performance measures, in a form acceptable to the City, which the City shall pay within 30 days of receipt and approval by the Director.

4.2.1 Invoices shall be submitted to:

The City of San Antonio Accounts Payable
P.O. Box 839976
San Antonio, Texas 78283-3976

4.2.2 With a copy to:

The City of San Antonio Health Department
P.O. Box 839966
San Antonio, Texas 78283-3966

- 4.3 The parties agree only compensable expenses detailed in section 4.1 above may be charged by UHS and paid by the City. No additional fees or expenses may be charged or paid. Total payments to UHS cannot exceed the amount set forth above without the following: approval and agreement by all parties and evidenced in writing, approval by the San Antonio City Council (City Council), and passage of an accompanying ordinance.

- 4.4 Final acceptance of work products and services require written approval by the City. The approving official shall be the Director. Following written approval by the Director of the final work products and services, payment to UHS will be made. The City shall not be obligated or liable under this agreement to any party, other than UHS, for the payment of any monies or the provision of any goods or services.

5 OWNERSHIP OF DOCUMENTS

- 5.1 Any writings, documents or information in whatsoever form and character produced by UHS pursuant to the provisions of this agreement is the exclusive property of the City without limitation; and no such writing, document or information shall be the subject of any copyright or proprietary claim by UHS.
- 5.2 UHS understands and acknowledges that as the exclusive owner of any and all such writings, documents and information, the City has the right to use all such writings, documents and information as the City desires, without restriction.

6 RECORDS RETENTION

- 6.1 UHS, including its subcontractors, shall properly, accurately and completely maintain documents, papers, records, and any other evidence pertaining to this agreement (collectively referred to as documents). During the agreement period, UHS, including its subcontractors, shall make these documents available to the City at

their offices at all reasonable times the City deems necessary. The agreement period includes extensions, renewals, as well as the record retention period detailed below, for purposes of audit, inspection, examination, and making excerpts or copies of the same by the City and its authorized representatives.

- 6.2 UHS shall retain all documents created by services provided in this agreement for a period of four years (retention period) from the date of termination of the agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided in this agreement, UHS shall retain the documents until the resolution of such litigation or other such questions. UHS acknowledges and agrees that the City shall have access to all documents at any time the City deems necessary during said retention period. At its election, the City may require UHS to return the documents to the City at UHS's expense prior to or at the conclusion of the retention period. In such event, UHS may retain a copy of the documents at its sole cost and expense.
- 6.3 In the event UHS receives requests for information from a third party pertaining to the documentation and records referenced in this agreement, UHS shall notify the City immediately. UHS understands and agrees that the City will process and handle all such requests.

7 TERMINATION

- 7.1 For purposes of this agreement, termination of this agreement means termination by expiration of the agreement term as stated in Article II, Term, or earlier termination pursuant to any of the provisions described below.
- 7.2 Termination Without Cause. The City may terminate this agreement without cause upon 30 calendar days' written notice, in accordance with Article VIII, Notice.
- 7.3 Termination For Cause. Upon written notice and in accordance with Article VIII, Notice, the City may terminate this agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one or more of the following events, each of which shall constitute an Event for Cause under this agreement:
- 7.3.1 The sale, transfer, pledge, conveyance or assignment of this agreement without prior approval, as provided in Article XII, Assignment and Subcontracting; or
- 7.3.2 Any material breach of the terms of this agreement, as determined solely by the City.
- 7.4 Defaults With Opportunity for Cure. Should UHS default in the performance of this agreement in a manner stated in this section 7.4 below, same shall be considered an event of default. The City shall deliver written notice of said default specifying such matter(s) in default. UHS shall have 30 calendar days after receipt of the written notice, in accordance with Article VIII, Notice, to cure such default. If UHS fails to cure the default within such 30-day cure period, the City shall have the right, without further notice, to terminate this agreement in whole or in part as the City deems appropriate, and to contract with another UHS to complete the work required in this agreement. The City shall also have the right to offset the cost of said new agreement with a new UHS against UHS's future or unpaid invoice(s), subject to the duty on the part of the City to mitigate its losses to the extent required by law.
- 7.4.1 Failure to comply with the terms and conditions stated in Article XIV, SBEDA;
- 7.4.2 Bankruptcy or selling substantially all of company's assets;
- 7.4.3 Failing to perform or failing to comply with any covenant required in this agreement; or
- 7.4.4 Performing unsatisfactorily.
- 7.5 Termination By Law. If any state or federal law or regulation is enacted or promulgated, which prohibits the performance of any of the duties in this agreement, or, if any law is interpreted to prohibit such performance, this agreement shall automatically terminate as of the effective date of such prohibition.
- 7.6 Regardless how this agreement is terminated, UHS shall effect an orderly transfer to the City or to such person(s) or firm(s) as the City may designate, at no additional cost to the City, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by UHS, or provided to UHS under this agreement, regardless of storage medium, if so requested by the City, or shall otherwise be retained by UHS in accordance with Article VI, Records Retention. Any record transfer shall be completed within 30 calendar days of a written

request by the City and shall be completed at UHS's sole cost and expense. Payment of compensation due or to become due to UHS is conditioned upon delivery of all such documents, if requested by the City.

- 7.7 Within 45 calendar days of the effective date of completion, or termination or expiration of this agreement, UHS shall submit to the City its claims, in detail, for the monies owed by the City for services performed under this agreement through the effective date of termination. Failure by UHS to submit its claims within said 45 calendar days shall negate any liability on the part of the City and constitute a **Waiver** by UHS of any and all right or claims to collect moneys that UHS may rightfully be otherwise entitled to for services performed pursuant to this agreement.
- 7.8 Upon the effective date of expiration or termination of this agreement, UHS shall cease all operations of work being performed by UHS or any of its subcontractors pursuant to this agreement.
- 7.9 Termination not sole remedy. In no event shall the City's action of terminating this agreement, whether for cause or otherwise, be deemed an election of the City's remedies, nor shall such termination limit, in any way, at law or at equity, the City's right to seek damages from or otherwise pursue UHS for any default under this agreement or other action.

8 NOTICE

Except where this agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this agreement shall be in writing and deemed to have been duly given if and when: delivered personally (with receipt acknowledged); three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid; upon receipt if sending the same by certified mail, return receipt requested; upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier; at the addresses set forth below, or to such other address as either party may from time to time designate in writing.

9 NON-DISCRIMINATION

Non-Discrimination. As a party to this contract, UHS understands and agrees to comply with the Non-Discrimination Policy of the City contained in Chapter 2, Article X, of the City Code and further, shall not discriminate on the basis of race, color, religion, national origin, sex, sexual orientation, gender identity, veteran status, age or disability, unless exempted by state or federal law, or as otherwise established in this agreement.

10 INSURANCE

- 10.1 Prior to the commencement of any work under this agreement, UHS shall furnish copies of all required endorsements and completed Certificate(s) of Insurance to the City's Health Department, which shall be clearly labeled, "Trauma Informed Care Certifying Entity agreement" in the Description of Operations block of the Certificate. The Certificate(s) shall be completed by an agent and signed by a person authorized by that insurer to bind coverage on its behalf. The City will not accept a Memorandum of Insurance or Binder as proof of insurance. The certificate(s) must have the agent's signature and phone number, and be mailed, with copies of all applicable endorsements, directly from the insurer's authorized representative to the City. The City shall have no duty to pay or perform under this agreement until such certificate and endorsements have been received and approved by the City's Health Department. No officer or employee, other than the City's Risk Manager, shall have authority to waive this requirement.
- 10.2 The City reserves the right to review the insurance requirements of this Article during the effective period of this agreement and any extension or renewal of this agreement and to modify insurance coverages and their limits when deemed necessary and prudent by City's Risk Manager based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. In no instance will the City allow modification where the City may incur increased risk.
- 10.3 UHS's financial integrity is of interest to the City; therefore, subject to UHS's right to maintain reasonable deductibles in such amounts as are approved by the City, UHS shall obtain and maintain in full force and effect for the duration of this agreement, and any extension of this agreement, at UHS's sole expense,

insurance coverage written on an occurrence basis, unless otherwise indicated, by companies authorized to do business in the State of Texas and with an A.M Best's rating of no less than A- (VII), in the following types and for an amount not less than the amount listed below:

<u>TYPE</u>	<u>AMOUNTS</u>
1. Workers' Compensation	Statutory
2. Employers' Liability	\$1,000,000/\$1,000,000/\$1,000,000
3. Broad Form Commercial General Liability Insurance to include coverage for the following: <ul style="list-style-type: none"> a. Premises operations b. Independent Contractors c. Products/completed operations d. Personal Injury e. Contractual Liability f. Damage to property rented by you 	For <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence; \$2,000,000 General Aggregate, or its equivalent in Umbrella or Excess Liability Coverage \$100,000
4. Business Automobile Liability <ul style="list-style-type: none"> a. Owned/leased vehicles b. Non-owned vehicles c. Hired Vehicles 	<u>Combined Single Limit</u> for <u>Bodily Injury</u> and <u>Property Damage</u> of \$1,000,000 per occurrence
5. Professional Liability (Claims Made) To be maintained and in effect for no less than two years subsequent to the completion of the professional services	\$1,000,000 per claim, to pay on behalf of the insured all sums, which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error, or omission in professional services.

10.4 UHS agrees to require, by written contract, that all subcontractors providing goods or services under this agreement obtain the same insurance coverages required of UHS in this agreement, and provide a certificate of insurance and endorsement that names UHS and the City as additional insureds. UHS shall provide the City with said certificate and endorsement prior to the commencement of any work by the subcontractor. This provision may be modified by City's Risk Manager, without subsequent City Council approval, when deemed necessary and prudent, based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. Such modification may be enacted by letter signed by City's Risk Manager, which shall become a part of the contract for all purposes.

10.5 As they apply to the limits required by the City, the City shall be entitled, upon request and without expense, to receive copies of the policies, declaration page, and all endorsements to that and may require the 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 to this agreement or the underwriter of any such policies). UHS shall be required to comply with any such requests and shall submit a copy of the replacement certificate of insurance to the City at the address provided below within 10 days of the requested change. UHS shall pay any costs incurred resulting from said changes.

City of San Antonio
 Attn: Health Department

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

- 10.6 UHS agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions:
- 10.6.1 Name the City, its officers, officials, employees, volunteers, and elected representatives as additional insureds by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation and professional liability policies;
- 10.6.2 Provide for an endorsement that the "other insurance" clause shall not apply to the City where the City is an additional insured shown on the policy;
- 10.6.3 Workers' compensation, employers' liability, general liability and automobile liability policies will provide a waiver of subrogation in favor of the City; and,
- 10.6.4 Provide advance written notice directly to the City of any suspension, cancellation, non-renewal or material change in coverage, and not less than 10 calendar days advance notice for nonpayment of premium.
- 10.7 Within five calendar days of a suspension, cancellation or non-renewal of coverage, UHS shall provide a replacement Certificate of Insurance and applicable endorsements to the City. The City shall have the option to suspend UHS's performance should there be a lapse in coverage at any time during this agreement. Failure to provide and to maintain the required insurance shall constitute a material breach of this agreement.
- 10.8 In addition to any other remedies the City has, upon UHS's failure to provide and maintain any insurance or policy endorsements to the extent and within the time required in this agreement, have the right to order UHS to stop work under this agreement, and/or withhold any payment(s), which become due under this agreement, until UHS demonstrates compliance with the requirements of this agreement.
- 10.9 Nothing in this agreement contained shall be construed as limiting in any way the extent to which UHS may be held responsible for payments of damages to persons or property resulting from UHS's or its subcontractors' performance of the work covered under this agreement.
- 10.10 It is agreed that UHS's insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the City for liability arising out of operations under this agreement.
- 10.11 It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement and that no claim or action by or on behalf of the City shall be limited to insurance coverage provided.
- 10.12 UHS and any subcontractors are responsible for all damage to their own equipment and/or property.

11 INDEMNIFICATION

- 11.1 UHS 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 UHS'S activities under this agreement, including any acts or omissions of UHS, any agent, officer, director, representative, employee, UHS or subcontractor of UHS, and their respective officers, agents employees, directors and representatives while in the exercise of the rights or performance of the duties under this agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the CITY, its officers or employees, in instances where such negligence causes personal injury, death, or property damage. IN THE EVENT UHS AND THE 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.

- 11.2 The provisions of this INDEMNITY are solely for the benefit of the parties to this agreement and not intended to create or grant any rights, contractual or otherwise, to any other person or entity. UHS shall advise the CITY in writing within 24 hours of any claim or demand against the CITY or UHS known to UHS related to or arising out of UHS's activities under this AGREEMENT and shall see to the investigation and defense of such claim or demand at UHS's cost. The CITY shall have the right, at its option and at its own expense, to participate in such defense without relieving UHS of any of its obligations under this paragraph.
- 11.3 Defense Counsel - the City shall have the right to select or to approve defense counsel to be retained by UHS in fulfilling its obligation under this agreement to defend and indemnify the City, unless such right is expressly waived by the City in writing. UHS shall retain the City approved defense counsel within seven business days of the City's written notice that the City is invoking its right to indemnification under this agreement. If UHS fails to retain Counsel within such time period, the City shall have the right to retain defense counsel on its own behalf, and UHS shall be liable for all costs incurred by the City. The City shall also have the right, at its option, to be represented by advisory counsel of its own selection and at its own expense, without waiving the foregoing.
- 11.4 Employee Litigation - In any and all claims against any party indemnified under this agreement by any employee of UHS, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation in this agreement provided shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for UHS or any subcontractor under worker's compensation or other employee benefit acts.

12 ASSIGNMENT AND SUBCONTRACTING

- 12.1 UHS shall supply qualified personnel as may be necessary to complete the work to be performed under this agreement. Persons retained to perform work pursuant to this agreement shall be the employees or subcontractors of UHS. UHS, its employees or its subcontractors shall perform all necessary work.
- 12.2 It is the City's understanding and this agreement is made in reliance that UHS intends to use the following subcontractors in the performance of this agreement: _____. Any deviation from this subcontractor list, whether in the form of deletions, additions or substitutions shall be approved by the City Council, as evidenced by passage of an ordinance, prior to the provision of any services by said subcontractor.
- 12.3 Any work or services approved for subcontracting under this agreement shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the City, shall be subject by its terms to each and every provision of this agreement. Compliance by subcontractors with this agreement shall be the responsibility of UHS. The City shall in no event be obligated to any third party, including any subcontractor of UHS, for performance of services or payment of fees. Any references in this agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.
- 12.4 Except as otherwise stated in this agreement, UHS may not sell, assign, pledge, transfer or convey any interest in this agreement, nor delegate the performance of any duties under this agreement, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, UHS shall remain liable for completion of the services outlined in this agreement in the event of default by the successor UHS, assignee, transferee or subcontractor.
- 12.5 Any attempt to transfer, pledge or otherwise assign this agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should UHS assign, transfer, convey, delegate, or otherwise dispose of any part of all or any part of its right, title or interest in this agreement, the City may, at its option, cancel this agreement and all rights, titles and interest of UHS shall immediately cease and terminate, in accordance with Article VII, Termination, notwithstanding any other remedy available to the City under this agreement. The violation of this provision by UHS shall in no event release UHS from any

obligation under the terms of this agreement, nor shall it relieve or release UHS from the payment of any damages to the City, which the City sustains as a result of such violation.

13 INDEPENDENT CONTRACTOR

UHS covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of the City; that UHS shall have exclusive control of and exclusive right to control the details of the work performed under this agreement and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, contractors, subcontractors and UHSs; that the doctrine of “respondeat superior” shall not apply as between the City and UHS, its officers, agents, employees, contractors, subcontractors and UHSs, and nothing in this agreement shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint venturers between the City and UHS. The parties to this agreement understand and agree that the City shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by UHS under this agreement and that UHS has no authority to bind the City.

14 SMALL BUSINESS ECONOMIC DEVELOPMENT ADVOCACY (SBEDA)

14.1 SBEDA Program. The CITY has adopted a Small Business Economic Development Advocacy Ordinance (Ordinance No. 2016-05-19-0367 and as amended, also referred to as SBEDA or the SBEDA Program), which is posted on the City’s Economic Development Department (EDD) website page and is also available in hard copy format upon request to the CITY. The SBEDA Ordinance Compliance Provisions contained in this section of the agreement are governed by the terms of the SBEDA 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 in this agreement, 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.

14.2 Definitions.

14.2.1 **Affirmative Procurement Initiatives (API)** – Refers to various 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). To be eligible for the benefits of race- and gender-conscious APIs as provided in the SBEDA Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined in this agreement.

14.2.2 **Annual Aspirational Goal** – a non-mandatory annual aspirational percentage goal for overall M/WBE Prime and subcontract participation in the City 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 after that time adjusted) by the Goal Setting Committee (GSC) based upon the M/WBE availability by industry in accordance with the City’s 2015 Disparity Study findings, along with relative M/WBE availability data to be collected by the City through its CVR system, and the utilization of M/WBEs. Any adjusted Annual Aspirational Goals for a given industry should not exceed the Expected Availability for award dollar weights as found in the 2015 Disparity Study. 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.

14.2.3 **Award** – the final selection of a Respondent for a specified Prime Contract or subcontract dollar amount. Contract awards are made by the City to Prime Contractors or vendors and by Prime Contractors or

vendors to Subcontractor or sub-vendors, usually pursuant to a solicitation process. (Contract awards are to be distinguished from contract payments in that they only reflect the anticipated dollar amounts instead of actual dollar amounts that are paid to a contractor under an awarded contract).

14.2.4 Best Value Contracting – a purchasing solicitation process through which the Originating Department may evaluate factors other than price. Evaluation criteria for selection may include a Respondent's previous experience and quality of product or services procured, and other factors identified in the applicable statute.

14.2.5 Centralized Vendor Registration System (CVR) – a mandatory electronic system of hardware and software programs by which the City recommends all prospective respondents and subcontractors that are ready, willing and able to sell goods or services to the City to register. All businesses awarded a City contract shall be required to register in the CVR. 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.

14.2.6 Certification – 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 may accept any firm that is certified by local government entities and other organizations identified in this agreement 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.

14.2.7 City – refers to the City of San Antonio, TX.

14.2.8 Commercially Useful Function – an S/M/WBE firm performs a Commercially Useful Function when it is responsible for execution 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.

14.2.9 Control – the authority of a person or business owner to sign responses to solicitations and contracts, make price negotiation decisions, sell or liquidate the business and have the primary authority to direct the day-to-day management and operation of a business enterprise without interference from others.

14.2.10 Economic Inclusion – efforts to promote and maximize commercial transactions within, between and among all segments of the business population, regardless of race or gender, within the Relevant Marketplace.

14.2.11 Emerging SBE (ESBE) – a certified SBE 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 whose annual revenues and

number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined in this agreement.

14.2.12 **Emerging M/WBE** – a certified M/WBE firm whose annual revenues and number of employees are no greater than 25% of the small business size standards for its industry as established by the U.S. Small Business Administration, and meets the Significant Business Presence requirements as defined in this agreement.

14.2.13 **Evaluation Preference** – an API that may be applied by the Goal Setting Committee 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 in which 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 Respondents.

14.2.14 **Formal Solicitation** – an invitation for bids, request for proposals, request for qualifications or other solicitation document issued by a City department for a contract that requires City Council approval, in accordance with the procurement rules adopted by the City Manager or designee through a memorandum issued by the City Manager or designee, an Administrative Directive or a procurement manual issued under the authority of the City Manager or designee, and/or pursuant to statutory requirements.

14.2.15 **Goal Setting Committee (GSC)** – a committee, or series of committees, appointed and chaired by the City Manager or designee from the Executive Team that includes, at a minimum, the EDD Director or designee, and the Director of Finance or Director of Transportation and Capital Improvements (TCI) or their designees, the Director or designee of the Originating Department (if the Originating Department is neither Finance nor TCI,) all without duplication of designees and two citizens appointed by City Council who are eligible to vote during the goal setting committee on contracts valued at \$3,000,000 and above. The City Manager or designee may also appoint two ex-officio members of the Small Business Advocacy Committee to serve on any GSC purely in an advisory and non-voting capacity. The GSC establishes S/M/WBE Program Goals for the City (e.g., Annual Aspirational Goals, Contract-by-Contract Subcontracting Goals, and determining which M/WBE segments are eligible for Segmented Subcontracting Goals annually) based upon Industry Categories, vendor availability, project-specific characteristics, and M/WBE utilization. The GSC also makes determinations about which Affirmative Procurement Initiatives (APIs) are to be applied to specific contracts based upon various criteria.

14.2.16 **Good Faith Efforts** – documentation of the Respondent's intent to comply with S/M/WBE Program Goals and procedures including, but not limited to, the following: (1) documentation as stated in the solicitation 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., 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 contractors that represent the interests of SBE and/or M/WBEs in order to identify qualified and available SBE or M/WBE Subcontractors.)

14.2.17 **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).]

14.2.18 **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 in this agreement 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.

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

14.2.20 **Industry Categories** – procurement groupings for the City inclusive of Construction, Architectural & Engineering, 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.

14.2.21 **Joint Venture Incentives** – an API that provides inducements for non-SBE and non-M/WBE firms to collaborate with SBE or M/WBE partners in responses to solicitations and performing a Prime Contract to supply goods to, or to perform non-Construction services on behalf of, the City. Joint ventures manifested by written agreements between two or more Independently Owned and Controlled business firms to form a third business entity solely for purposes of undertaking distinct roles and responsibilities in the completion of a given contract. Under this business arrangement, each joint venture partner shares in the management of the joint venture and shares in the profits or losses of the joint venture enterprise commensurately with its contribution to the venture. Incentives under this API may include Evaluation Preferences tied to the percentage of SBE or M/WBE participation in the joint venture, expedited issuance of building permits and extra contract option years in certain Other Services and Goods & Supplies contracts.

14.2.22 **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.

14.2.23 **M/WBE Directory** – a listing of M/WBEs that have been certified for participation in the City's M/WBE Program APIs.

14.2.24 **M/WBE Subcontracting Program** – an API in which Prime Contractors or vendors are required to make Good Faith Efforts to subcontract a specified percentage of the value of prime contract dollars to certified M/WBE firms. Such subcontracting goals may be set and applied by the GSC on a contract-by-contract basis to those types of contracts that provide subcontract opportunities for performing Commercially Useful Functions in which:

14.2.24.1 There have been ongoing disparities in the utilization of available M/WBE Subcontractors; or

14.2.24.2 Race-Neutral efforts have failed to eliminate persistent and significant disparities in the award of prime contracts to M/WBEs in a particular Industry Category or industry segment (e.g., Construction contracts, Professional Services contracts, and Architectural and Engineering contracts), and subcontract opportunities are limited outside of City contracts.

When specified by the GSC, the M/WBE Subcontracting Program may also be required to reflect Good Faith Efforts that a Prime Contractor or vendor has taken (or commits to taking in the case of solicitations that do not include a detailed scope of work or those in which price cannot be considered a factor in evaluation), toward attainment of subcontracting goals for M/WBE firms.

14.2.25 **M/WBE Evaluation Preference** – an API that the City may apply to requests for proposals or qualifications (RFPs or RFQs) on City Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts that are issued pursuant to a Best Value Contracting method or other methods of procurement in which criteria other than lowest price are factored into the selection process. M/WBEs that submit responses for these kinds of solicitations are awarded additional Points in the

scoring of their responses when evaluating and ranking their responses against those submitted by non-minority firms. Where specified in contract specifications as approved by the Goal Setting Committee, the M/WBE Evaluation Preference may be limited to Emerging M/WBE firms.

14.2.26 Minority Business Enterprise (MBE) – any legal entity, except a joint venture, that is organized to engage in for-profit transactions, which is certified 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 in this agreement. Unless otherwise stated, the term MBE as used in the SBEDA Ordinance is not inclusive of women-owned business enterprises (WBEs).

14.2.27 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 with origins in any of the black racial groups of Africa.

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.

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

14.2.29 Payment – dollars actually paid to Prime Contractors and/or Subcontractors and vendors for City contracted goods and/or services.

14.2.30 Points – the quantitative assignment of value for specific evaluation criteria in the vendor selection process used in some Construction, Architectural & Engineering, Professional Services, Other Services, and Goods & Supplies contracts (e.g., up to 20 points out of a total of 100 points assigned for S/M/WBE participation as stated in response to a Request for Proposals).

14.2.31 Prime Contractor – the vendor or contractor to whom a purchase order or contract is issued by the City for purposes of providing goods or services for the City.

14.2.32 Race-Conscious – any business classification or API in which the race or gender of business owners is taken into consideration (e.g., references to M/WBE programs and APIs that are listed in this agreement under the heading of Race-Conscious). To be eligible for the benefits of race- and gender-conscious APIs as provided in this Ordinance, M/WBE firms must also satisfy the size standards for being a Small Business Enterprise or SBE as defined in this agreement.

14.2.33 Race-Neutral – any business classification or API in which the race or gender of business owners is not taken into consideration (e.g., references to SBE programs and APIs that are listed in this agreement under the heading of Race-Neutral).

14.2.34 Relevant Marketplace – the geographic market area affecting the S/M/WBE Program as determined for purposes of collecting data for the 2015 Disparity Study, 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.

14.2.35 **Respondent** – a vendor submitting a bid, statement of qualifications, or proposal in response to a solicitation issued by the City.

14.2.36 **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.

14.2.37 **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.

14.2.38 **San Antonio Metropolitan Statistical Area (SAMSA)** – also known as the Relevant Marketplace, the geographic market area from which the City's 2015 Disparity Study analyzed contract utilization and availability data for disparity (currently including the counties of Atascosa, Bandera, Bexar, Comal, Guadalupe, Kendall, Medina and Wilson).

14.2.39 **Segmented M/WBE Goals** – the application of multiple goals for M/WBE participation within Annual Aspirational Goals or for M/WBE Subcontracting Goals on an individual City contract in which an overall combined M/WBE goal is accompanied by subsets of one or more smaller goals. Such segmented goals specifically target the participation of a particular segment of business enterprises owned and Controlled by WBEs or certain Minority Group Members (e.g., African-Americans or Hispanic-Americans) based upon relative availability and significantly greater patterns of underutilization and disparity within an industry as compared to other gender and Minority Group Member categories of M/WBEs. The application of Segmented M/WBE Goals is intended to ensure that those segments of M/WBEs that have been most significantly and persistently underutilized receive a fair measure of remedial assistance.

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

14.2.41 **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 mentioned above, with no other substantial work function, shall not be construed to constitute a significant business presence.

14.2.42 **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 in this agreement.

14.2.43 **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.

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

14.2.45 **Solicitation Incentives** – additional inducements or enhancements in the solicitation process that are designed to increase the chances for the selection of S/M/WBE firms in competition with other firms. Such inducements and enhancements may include such terms as additional contract option years, increased quantities in supply contracts, and evaluation preferences, where not prohibited by law. These solicitation incentives may be applied as appropriate to solicitations, contracts, and letter agreements for Construction, Architecture and Engineering services, Professional Services, Other Services, and Goods & Supplies contracts, including change orders and amendments.

14.2.46 **Subcontractor** – any vendor or contractor that is providing goods or services to a Prime Contractor in furtherance of the Prime Contractor’s performance under a contract or purchase order with the City. A copy of the binding agreement between the Prime Contractor and the Subcontractor shall be submitted prior to the City’s issuance of a notice to proceed.

14.2.47 **Suspension** – the temporary stoppage of an 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, or pursuant to the Penalties and Sanctions set forth in Section III.E.13.

14.2.48 **Subcontractor/Supplier Utilization Plan** – a binding part of this contract agreement which states UHS’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 UHS’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.

14.2.49 **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 in this agreement. Unless otherwise stated, the term WBE as used in this Ordinance is not inclusive of MBEs.

14.3 SBEDA Program Compliance – General Provisions

As UHS 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 UHS’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 incorporated by reference into this agreement, and are considered by the Parties to this agreement to be material terms. UHS voluntarily agrees to fully comply with these SBEDA program terms as a condition for being awarded this contract by the City. Without limitation, UHS further agrees to the following terms as part of its contract compliance responsibilities under the SBEDA Program:

14.3.1 UHS shall cooperate fully with the Small Business Office and other City departments in their data collection and monitoring efforts regarding UHS’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;

14.3.2 UHS 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 UHS or its Subcontractors or suppliers;

14.3.3 UHS 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;

14.3.4 UHS shall notify the SBO, in writing on the Change to Utilization Plan form, through the

Originating Department, of any proposed changes to UHS'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 UHS 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 UHS 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.

14.3.5 UHS 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.

14.3.6 UHS 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.

14.3.7 In instances where 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 UHS's Subcontractor / Supplier Utilization Plan, UHS 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 UHS and its listed S/M/WBE firms or HUBZone firms may be subject to sanctions and penalties in accordance with the SBEDA Ordinance.

14.3.8 UHS acknowledges that the City will not execute a contract or issue a Notice to Proceed for this project until UHS for this project has registered and/or maintained active status in the City's Centralized Vendor Registration System (CVR), and UHS has represented to the City which primary commodity codes each Subcontractor will be performing under for this contract. The City recommends all Subcontractors to be registered in the CVR.

14.4 SBEDA Program Compliance – Affirmative Procurement Initiatives. The City has applied the following contract-specific Affirmative Procurement Initiatives to this contract. UHS 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:

14.5 Commercial Nondiscrimination Policy Compliance. As a condition of entering into this agreement, UHS 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, UHS 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 UHS retaliate against any person for reporting instances of such discrimination. UHS 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. UHS 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 UHS 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. UHS's certification of its compliance with this Commercial Nondiscrimination Policy as submitted to the City pursuant to the solicitation for this contract is incorporated into the material terms of this agreement. UHS shall incorporate this clause into each of its Subcontractor and supplier agreements entered into pursuant to City contracts.

14.6 Prompt Payment. Upon execution of this contract by UHS, UHS shall be required to submit to the City

accurate progress payment information with each invoice regarding each of its Subcontractors, including HUBZone Subcontractors, to ensure that UHS's reported subcontract participation is accurate. UHS shall pay its Subcontractors in compliance with Chapter 2251, Texas Government Code (the Prompt Payment Act) within ten days of receipt of payment from the City. In the event of UHS's noncompliance with these prompt payment provisions, no final retainage on the Prime Contract shall be released to UHS, and no new City contracts shall be issued to UHS 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.

14.7 Violations, Sanctions and Penalties. In addition to the above terms, UHS acknowledges and agrees that it is a violation of the SBEDA Ordinance and a material breach of this agreement to:

14.7.1 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;

14.7.2 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;

14.7.3 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;

14.7.4 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

14.7.5 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 UHS 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).

15 CONFLICT OF INTEREST

15.1 The Charter of the City and the City Code of Ethics prohibit a City officer or employee, as defined in Section 2-52 of the Code of Ethics, from having a direct or indirect financial interest in any contract with the City. 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:

15.1.1 A City officer or employee; his or her spouse, sibling, parent, child or other family member within the first degree of consanguinity or affinity;

15.1.2 An entity in which the officer or employee, or his or her parent, child or spouse directly or indirectly owns (i) 10 percent or more of the voting stock or shares of the entity, or (ii) 10 percent or more of the fair market value of the entity; or,

15.1.3 An entity in which any individual or entity listed above is (i) a subcontractor on a City contract, (ii) a partner or (iii) a parent or subsidiary entity.

15.2 Pursuant to the subsection above, UHS warrants and certifies, and this agreement is made in reliance on, that

by contracting with the City, UHS does not cause a City employee or officer to have a prohibited financial interest in the Contract. UHS further warrants and certifies that it has tendered to the City a Contracts Disclosure Statement in compliance with the City's Ethics Code.

16 AMENDMENTS

Except where the terms of this agreement expressly provide otherwise, any alterations, additions, or deletions to the terms of this agreement, shall be effected by amendment, in writing, executed by both the City and UHS. The Director shall have authority to execute amendments on behalf of the City without further action by the City Council, subject to and contingent upon appropriation of funds for any increase in expenditures by the City.

17 SEVERABILITY

If any clause or provision of this agreement 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, then and in that event it is the intention of the parties to this agreement that such invalidity, illegality or unenforceability shall not affect any other clause or provision of this agreement and that the remainder of this agreement shall be construed as if such invalid, illegal or unenforceable clause or provision was never contained in this agreement; it is also the intention of the parties to this agreement that in lieu of each clause or provision of this agreement that is invalid, illegal, or unenforceable, there be added as a part of the agreement 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.

18 LICENSES/CERTIFICATIONS

UHS warrants and certifies that UHS and any other person designated to provide services under this agreement has the requisite training, license and/or certification to provide said services, and meets all competence standards promulgated by all other authoritative bodies, as applicable to the services provided in this agreement.

19 COMPLIANCE

UHS shall provide and perform all services required under this agreement in compliance with all applicable federal, state and local laws, rules and regulations.

20 NONWAIVER OF PERFORMANCE

Unless otherwise specifically provided for in this agreement, a waiver by either Party of a breach of any of the terms, conditions, covenants or guarantees of this agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee in this agreement contained. Further, any failure of either Party to insist in any one or more cases upon the strict performance of any of the covenants of this agreement, or to exercise any option in this agreement contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party to this agreement of any provision of this agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of the City, such changes must be approved by the City Council, as described in Article XVI, Amendments. No act or omission by a Party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party under this agreement or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved by this agreement.

21 LAW APPLICABLE & LEGAL FEES

- 21.1 **THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND ALL OBLIGATIONS OF THE PARTIES CREATED UNDER THIS AGREEMENT ARE PERFORMABLE IN BEXAR COUNTY, TEXAS.**
- 21.2 Any legal action or proceeding brought or maintained, directly or indirectly, as a result of this agreement shall be heard and determined in the City of San Antonio, Bexar County, Texas.
- 21.3 The Parties to this agreement expressly agree that, in the event of litigation, each party by this agreement waives its right to payment of attorneys' fees.

22 LEGAL AUTHORITY

The signer of this agreement for UHS represents, warrants, assures and guarantees that he has full legal authority to execute this agreement on behalf of UHS and to bind UHS to all of the terms, conditions, provisions and obligations in this agreement contained.

23 PARTIES BOUND

This agreement shall be binding on and inure to the benefit of the parties to this agreement and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for in this agreement.

24 CAPTIONS

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

25 INCORPORATION OF ATTACHMENTS

Each of the attachments listed below is an essential part of the agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below, with this document taking priority over all attachments:

26 ENTIRE AGREEMENT

This agreement, together with its authorizing ordinance and its exhibits, if any, constitute the final and entire agreement between the parties to this agreement and contain all of the terms and conditions agreed upon. No other agreements, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind the parties to this agreement, unless same be in writing, dated subsequent to the date to this agreement, and duly executed by the parties, in accordance with Article XVI, Amendments.

27 PROHIBITION ON CONTRACTS WITH COMPANIES BOYCOTTING ISRAEL

- 27.1 Texas Government Code §2270.002 provides that a governmental entity may not enter into a contract with a company for goods or services, unless the contract contains a written verification from the company that it:
- 27.1.1 Does not boycott Israel; and,
 - 27.1.2 Will not boycott Israel during the term of the contract.
- 27.2 "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.
- 27.3 "Company" means a for-profit sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit.
- 27.4 By submitting an offer to or executing contract documents with the City, UHS by this agreement verifies that it does not boycott Israel, and will not boycott Israel during the term of the contract. The City's by this agreement relies on UHS's verification. If found to be false, the City may terminate the contract for material breach.

28 PROHIBITED CONTRIBUTIONS

- 28.1 UHS acknowledges that City Code Section 2-309 provides that any person acting as a legal signatory for a proposed contractual relationship that applies for a "high-profile" discretionary contract, as defined by the City Contracting Policy and Process Manual, may not make a campaign contribution to any councilmember or candidate at any time from the time the person submits the response to the Request for Proposal (RFP) or Request for Qualifications (RFQ) until 30 calendar days following the contract award. UHS understands that if the legal signatory entering the contract has made such a contribution, the City may not award the contract to that contributor or to that contributor's business entity. Any legal signatory for a proposed high-profile contract must be identified within the response to the RFP or RFQ, if the identity of the signatory will be

different from the individual submitting the response.

28.2 UHS acknowledges that the City has identified this agreement as high profile.

28.3 UHS warrants and certifies, and this agreement is made in reliance that the individual signing this agreement has not made any contributions in violation of the City Code section 2-309, and will not do so for 30 calendar days following the award of this agreement. Should the signor of this agreement violate this provision, the City Council may, in its discretion, declare this agreement void.

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

CITY OF SAN ANTONIO

UHS

(Signature)

(Signature)

Printed Name: _____
Title: _____
Date: _____

Printed Name: _____
Title: _____
Date: _____

Approved as to Form:

Assistant City Attorney