



**Amendment No. 1
No Fault - No Cost Termination Without Cause
Mutual Release and Settlement Agreement**

Contract No. MA-7600-PA 130000006

for

**Outreach Services for Increased Certification &
Minority Participation on City Projects**

between

U.S. Hispanic Contractors Association

and the

City of Austin

THIS NO Fault - No Cost Termination Without Cause MUTUAL RELEASE AND SETTLEMENT AGREEMENT ("Agreement") is made and entered into by and between the City of Austin, a political subdivision of the State of Texas, and Greater Texas Landscapes, Inc.

- 1.0 The City of Austin (the "City") entered into the above referenced Contract with U.S. Hispanic Contractors Association (the "Contractor"), effective December 5, 2012. The City and the Contractor have each determined that it is in their best interest to enter into a No Fault - No Cost Termination Without Cause of the Contract. The parties agree that the effective date for termination of the Contract is November 18, 2013.
- 2.0 The parties have negotiated this No Fault - No Cost Termination Without Cause Mutual Release and Settlement Agreement in the spirit of compromise and settlement of all Contract matters, and for and in consideration of the performance of the covenants and agreements contained herein, the amount and sufficiency of which are hereby acknowledged, the City and the Contractor agree as follows:
- 2.1 Except for those obligations that survive the termination of the contract in accordance with Section 4.5 of the Contract, each party expressly releases the other from all claims, liabilities, debts and/or obligations of every kind that relate to or arise out of, in whole or in part, the Contract. It is the intent of each party that this Agreement serves to fully release and settle any and all claims and/or rights against each related to the Contract.
- 2.2 Neither party acknowledges any fault or liability with respect to any claim or contention in connection with the Contractor's performance of, or the City's

performance or administration of the Contract. The City agrees that this No Fault - No Cost Termination Without Cause Mutual Release and Settlement Agreement will not adversely affect the Contractor's right or ability to bid on future City projects.

- 2.3. This Agreement is for the sole benefit of the parties hereto and shall not enure to the benefit of any third party.
- 2.4. Each of the undersigned hereby represents that he/she is fully authorized to enter into this Contract on behalf of the entity named below, as applicable.
- 2.5. This Agreement sets forth the entire agreement between the parties and there are no agreements or understandings between the parties except those set forth herein.
- 2.6. Each party warrants that they are fully informed of, and fully understand, the terms, conditions, and effects of this Agreement; that no promise or inducement has been offered or made to them except as stated in this Agreement; and that they have executed this Agreement voluntarily for the purposes and considerations set forth in this Agreement.

BY THE SIGNATURES affixed below this amendment is hereby incorporated into and made a part of the above-referenced Contract

**U.S. HISPANIC
CONTRACTORS ASSOCIATION**

BY: 

Name

Title:

Chairman

Date: 11/26/2013

CITY OF AUSTIN

BY: 

Name:

Title:

Denise Lucas
Deputy Purchasing Officer
Financial Services Department

Date: 12/4/2013



City of Austin

Financial and Administrative Services Department

Purchasing Office

P. O. Box 1088, Austin, TX 78767

(512) 974-2500

12/5/2012

Francisco Fuentes

USHCA

1106 Clayton Lane, Ste 511 W

Austin, TX 78723

Re: Solicitation No. N/A

Dear Mr. Fuentes,

The Purchasing Office has approved the execution of a contract with your company for the above-referenced item as follows:

Responsible Department:	DSMBR
Department Contact Person:	Thomas Owens
Department Contact Email Address:	Thomas.owens@austintexas.gov
Department Contact Telephone:	(512) 974-7732
Project Name:	Outreach Services
Contractor Name:	USHCA
Contract Number:	MA-7600-PA130000006
Contract Period:	12/05/2012 – 12/04/2013
Dollar Amount	NTE \$50,000.00
Extension Options:	None
Requisition Number:	RQM-7600-12110900071
Solicitation Number:	N/A
Agenda Item Number:	N/A
Council Approval Date:	N/A

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact me at (512) 974-2021

Sincerely,

Jeff Dilbert, MSIM, CPSM, CPSD, C.P.M., A.P.P.

Corporate Purchasing Manager

Purchasing Office

Finance and Administrative Services Department

Enclosure

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
U.S. HISPANIC CONTRACTORS ASSOCIATION
For**

Outreach Services for Increased Certification & Minority Participation on City Projects

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and U.S. Hispanic Contractors Association ("Contractor") or ("Service Provider"), having offices at 1106 Clayton Lane, Suite 511 W, Austin, Texas 78723.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Juan Oyervides, Phone: 512-922-0507, e-mail: execdirector@ushca-austin.com. The City's Contract Manager for the engagement shall be Thomas Owens, (512) 974-7732, e-mail: thomas.owens@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

2.2 **Tasks.** In order to accomplish the work described here, the Contractor shall perform each of the following tasks in the attached Exhibit A, Scope of Work.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work, as described herein. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$50,000 for all fees and expenses.

3.1.1 Services performed as described in the Scope of Work, Exhibit A, are payable monthly in the not-to-exceed amount of \$4,166.66.

3.2 Invoices

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

	City of Austin
Department	Small & Minority Business Resources (SMBR) Department
Attn:	Thomas Owens
Address:	P.O. Box 1088
City, State, Zip Code	Austin, TX 78767

3.2.2 Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

3.2.3 Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.

3.2.4 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 Payment

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 The City may withhold or off set the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of;

3.3.3.1 delivery of defective or non-conforming deliverables by the Contractor;

3.3.3.2 third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;

3.3.3.3 failure of the Contractor to pay Subcontractors, or for labor, materials or equipment,

3.3.3.4 damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;

3.3.3.5 reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;

3.3.3.6 failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or

3.3.3.7 failure of the Contractor to comply with any material provision of the Contract Documents.

3.3.4 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.5 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Final Payment and Close-Out**

3.5.1 The making and acceptance of final payment will constitute:

3.5.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.5.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** This Contract shall become effective on the date executed by the City ("Effective Date") and shall remain in effect for a term of twelve (12) months.

4.2 **Right To Assurance:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it

may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 Termination Without Cause: The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

4.6 Fraud: Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 Insurance: The following insurance requirement applies.

5.1.1 General Requirements

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.

5.1.1.6 The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.7 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin
Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.8 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.9 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements herein, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.10 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.11 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.12 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.13 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.14 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement TE 2046A, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement TE 0202A, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement TE 9901B, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC 420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC 420601, or equivalent coverage.

If coverage is written on a claims-made basis, the retroactive data shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

5.1.2.5 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 **Equal Opportunity**

5.2.1 **Equal Employment Opportunity:** No Contractor or Contractor's agent shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Bid submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Contractor has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. The Contractor shall sign and return the Non-Discrimination Certification attached hereto as Exhibit B. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 Americans With Disabilities Act (ADA) Compliance: No Contractor, or Contractor's agent shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

5.3 Acceptance of Incomplete or Non-Conforming Deliverables: If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.4 Delays:

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.4.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

5.5 Rights to Proposal and Contractual Material: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

5.6 Publications: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

SECTION 6. WARRANTIES

6.1 Warranty – Services: The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

6.1.1 The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

6.1.2 Unless otherwise specified in the Contract, the warranty period shall be at least one year from the acceptance date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

6.1.3 If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 Workforce

7.1.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.1.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.1.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract.

7.1.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.1.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.2 **Compliance with Health, Safety, and Environmental Regulations:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.3 **Significant Event:** The Contractor shall immediately notify the Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.3.1 disposal of major assets;

7.3.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this contract;

7.3.3 any significant termination or addition of provider contracts;

7.3.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.3.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this contract;

7.3.6 reorganization, reduction and/or relocation in key personnel such as, but not limited to, customer service representatives or claims adjusters;

7.3.7 known or anticipated sale, merger, or acquisition;

7.3.8 known, planned or anticipated stock sales;

7.3.9 any litigation filed by a member against the Contractor; or

7.3.10 significant change in market share or product focus.

7.4 **Right To Audit**

7.4.1 The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

7.4.2 The Contractor shall include this provision in all subcontractor agreements entered into in connection with this Contract.

7.5 **Stop Work Notice**: The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.6 **Indemnity:**

7.6.1 Definitions:

7.6.1.1 "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:

7.6.1.1.1 damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or;

7.6.1.1.2 death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),

7.6.1.2 "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.

7.6.2 **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL**

INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.

7.7 **Claims**: If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.8 **Notices**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:	To the Contractor:
City of Austin, Purchasing Office	U.S. Hispanic Contractors Association
ATTN: David Kucko, Contract Administrator	ATTN: Juan Oyervides , Contract Manager
P O Box 1088	319 Congress Ave, Suite 250 W
Austin, TX 78767	Austin, TX. 78701

7.9 **Confidentiality**: In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.10 **Advertising**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.11 **No Contingent Fees**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without

liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.12 **Gratuities**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.13 **Prohibition Against Personal Interest in Contracts**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.14 **Independent Contractor**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.15 **Assignment-Delegation**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.16 **Waiver**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.17 **Modifications**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.18 **Interpretation**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.19 **Dispute Resolution**

7.19.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after

receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.19.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.20 Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program:

7.20.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.20.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.20.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.21 Subcontractors

7.21.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly

Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.21.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.21.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.21.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;

7.21.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.21.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.21.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.21.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.21.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten days after receipt of payment from the City.

7.22 Living Wages and Benefits (applicable to procurements involving the use of labor)

7.22.1 In order to help assure low employee turnover, quality services, and to reduce costs for health care provided to uninsured citizens, the Austin City Council is committed to ensuring fair compensation for City employees and those persons employed elsewhere in Austin. This commitment has been supported by actions to establish a "living wage" and affordable health care protection. Currently, the minimum wage for City employees is \$11.00 per hour. This minimum wage is required for any Contractor employee directly assigned to this City Contract, unless Published Wage Rates are included in this solicitation. In addition, the City may stipulate higher wage rates in certain contracts in order to assure quality and continuity of service.

7.22.2 Additionally, the City provides health insurance for its employees, and for a nominal rate, employees may obtain coverage for their family members. Contractors must offer health insurance with optional family coverage for all Contractor employees directly assigned to this contract. Proof of the health care plan shall be provided prior to award of a Contract. In addition, an insurance certificate for Workers' Compensation Insurance Coverage must be provided if required by the solicitation.

7.22.3 The City requires Contractors to provide a signed certification within five (5) calendar days of contract execution certifying that all employees directly assigned to this City Contract will be paid a minimum living wage equal to or greater than \$11.00 per hour and are offered a health care plan (see Exhibit C, Living

Wages and Benefits Contractor Certification). The certification shall include a list of all employees directly assigned to providing services under the resultant contract including their name and job title. The list shall be updated and provided to the City as necessary throughout the term of the Contract.

7.22.4 The Contractor shall maintain throughout the term of the resultant contract basic employment and wage information for each employee as required by the Fair Labor Standards Act (FLSA). Basic employment records shall at a minimum include:

7.22.4.1 employee's full name, as used for social security purposes, and on the same record, the employee's identifying symbol or number if such is used in place of name on any time, work, or payroll records;

7.22.4.2 time and date of week when employee's workweek begins;

7.22.4.3 hours worked each day and total hours worked each workweek;

7.22.4.4 basis on which employee's wages are paid;

7.22.4.5 regular hourly pay rate;

7.22.4.6 total daily or weekly straight-time earnings;

7.22.4.7 total overtime earnings for the workweek;

7.22.4.8 all additions to or deductions from the employee's wages;

7.22.4.9 total wages paid each pay period; and

7.22.4.10 date of payment and the pay period covered by the payment.

7.22.5 The Contractor shall provide with the first invoice and as requested by the Department's Contract Manager, individual Employee Certifications for all employees directly assigned to the contract containing (see Exhibit D, Living Wages and Benefits Employee Certification):

7.22.5.1 the employee's name and job title;

7.22.5.2 a statement certifying that the employee is paid at a rate equal to or greater than the Living Wage of \$11.00 per hour;

7.22.5.3 a statement certifying that the employee is offered a health care plan with optional family coverage.

7.22.6 The employee certifications shall be signed by each employee directly assigned to the contract.

7.22.7 Contractor shall submit employee certifications quarterly with the respective invoice to verify that employees are paid the Living Wage throughout the term of the Contract.

7.22.8 The Department's Contract Manager will periodically review the employee data submitted by the Contractor to verify compliance with this Living Wage provision. The City retains the right to review employee records identified above in this paragraph verify compliance with this provision.

7.23 Jurisdiction And Venue: The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be

construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity**: The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays**: The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations**: All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Non-Suspension or Debarment Certification**: The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

Incorporation of Documents: Section 0100, Standard Purchase Definitions, is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address: <http://www.austintexas.gov/sites/default/files/files/Finance/Purchasing/standard-purchase-definitions.pdf>.

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

U.S. HISPANIC CONTRACTORS ASSOCIATION

By: [Signature]
Signature

Name: FRANK FUENTES
Printed Name

Title: Chairman

Date: 10/31/12

CITY OF AUSTIN

By: [Signature]
Signature

Name: JEFF DILBERT
Printed Name

Title: CORP. Purch. Mgr

Date: 12-5-12

List of Exhibits

- | | |
|-----------|--|
| Exhibit A | USHCA Scope of Work |
| Exhibit B | Non Discrimination Certification |
| Exhibit C | Living Wages and Benefits Contractor Certification |
| Exhibit D | Living Wages and Benefits Employee Certification |

Scope of Work (FY 2013)
Outreach Services for Increased Certifications & Minority Participation on City Projects
(Maximum funding \$50,000.00)

Organization Specific Services

1. Service Provider shall conduct Certification Outreach activities aimed at increasing the number of firms certified by the City as follows:
 - 1.1 A target of thirty-six (36) new/lapsing Hispanic firms during the contract period shall be personally contacted to encourage them to apply for certification. For this objective a new firm is defined as any minority or woman-owned firm in the construction and related industries that is not currently certified and has not been previously certified within the last 3 years. A form letter, fax, or email may be used for the contact with the new firms, followed by a personal telephone contact. Those firms expressing interest in becoming certified will be directed to the certification division of the City of Austin's Small and Minority Business Resources (SMBR) Department, or will be offered an opportunity to visit with the Service Provider representative in their offices. City of Austin Certification staff will provide the Service Provider the key information and materials regarding the requirements and process for obtaining certification. As new firms are contacted throughout the contract period provide to the SMBR Contract Manager a report that lists the firms contacted including their name, address, telephone number, fax, and email address. The report will also specify the results achieved (i.e. referred to city, provided application, etc.).
 - 1.2 On a quarterly basis conduct follow up with those Hispanic firms whose Minority-Owned and Women-Owned Business Enterprises (MBE/WBE) Certification has expired to encourage them to apply for recertification. The City of Austin will provide on a quarterly basis a listing of those Hispanic firms whose certification has expired. All firms on the list will be contacted by the Service Provider. These firms will be referred to the certification division of SMBR for recertification assistance. At the end of the quarter provide a report to the SMBR Contract Manager that lists the firms contacted including their name, address, telephone number, fax, and email address. The report will also specify the results achieved (i.e. referred to city, firm declined recertification, etc.).
 - 1.3 The Service Provider shall host a Certification 101 session conducted by SMBR staff. Certification application packets, provided by SMBR, will be

available for participants who wish to begin the application process. Submit to the SMBR Contract Manager the event agenda, sign-in sheets, and any handouts that were distributed to attendees. The sign-in sheets will include the name, address, telephone number, fax, and email address for each attendee. Documentation is due with the next monthly activity report and invoice.

2. Contractor shall conduct Procurement Opportunity Outreach activities aimed at increasing minority firm participation on City projects as follows:
 - 2.1 Host two (2) networking events with Hispanic businesses who are potential subcontractors and General Contractors/Prime bidders who are bidding on City of Austin projects to promote and encourage minority bidding on key city projects. Submit to the SMBR Contract Manager the sign in list of attendees. The list will include their name, address, telephone number, fax, and email address for each attendee. The above documentation is due with the next monthly activity report and invoice.
3. Contractor shall provide Contractor Support services aimed at increasing firms in Construction and related industries participation on City projects as follows:
 - 3.1 Operate a Plans Room to receive plans and specifications regarding construction projects for Construction Contractors to review, check-out, use for bidding purposes, and distributing project information to requestors once a week. The Plans Room will be open for a minimum of 20 hours per week. The hours and days of operation will be published. For each of the firms receiving the service submit to the SMBR Contract Manager the name of the project(s) reviewed, name of the firm, address, telephone number, fax, and email address. The above documentation is due with the next monthly activity report and invoice.
 - 3.2 Publish a Quarterly Trade Association Newsletter to be emailed to organization membership and interested parties. The newsletter will be specific to the trade association and provide information to members and potential members that market the services of the organization, includes a message from the President, provides helpful tips, and an update on the association's activities. The newsletter will be available on the USHCA website. Submit to the SMBR Contract Manager a copy of the newsletter.
 - 3.3 The Service Provider shall develop and maintain web site information. The Service Provider shall publish on its web site information about the trade association and its services, and information of interest and relevance to the construction industry. The website will include a link to the SMBR website. Further, they shall select and highlight at least six (6) Hispanic contractors at this web site during the contract period.

- 3.4 Service Provider shall publish electronically on a monthly basis the BID ALERT\$ document to members, prime contractors, City of Austin certified firms in construction related industries, and other interested parties. This document will publish subcontracting opportunities received from Prime Contractors seeking subcontractors on various private and public projects. A subscriber list of firms receiving the BID ALERT\$ shall be submitted to the SMBR Contract Manager.
- 3.5 Prepare and update a minimum of eight (8) Company Profile Resumes for City of Austin certified Hispanic Construction Contractors to use at pre-bid conferences and networking sessions. Four (4) of the Company Profile Resumes will be updates of previous resumes, and four (4) will be new Company Profile Resumes for certified firms. The profiles shall include a basic statement of qualifications including name of firm, principal owner, address, telephone and fax numbers, email address, areas of qualification, and relevant project experience. For each of the firms receiving the service submit to the SMBR Contract Manager the name, address, telephone number, fax, and email address.
- 3.6 Distribute a Spanish language resource document (electronic) that shall include construction related helpful tips and information of relevance to a firm's Spanish speaking workforce. Updates will be translated and incorporated into the document as needed. The resource document shall be distributed to City certified Hispanic firms who are working in the construction industry. For each of the firms receiving the publication submit to the SMBR Contract Manager the name, address, telephone number, fax, and email address.
4. On a semi annual basis (twice a year) Service Provider shall participate in a meeting with City of Austin Project Managers and SMBR staff to discuss relevant program initiatives, process issues and possible solutions. These meetings will be scheduled for the end of the second quarter (March, 2013), and the end of the fourth quarter (September, 2013). The results of these meetings will be used by staff to identify possible process improvements.
5. The Service Provider shall distribute informational brochures and flyers for upcoming SMBR open houses at the organization's membership events. These informational materials will be provided by SMBR.

Exhibit B
City of Austin, Texas
EQUAL EMPLOYMENT/FAIR HOUSING OFFICE
NON-DISCRIMINATION CERTIFICATION

City of Austin, Texas
Human Rights Commission

To: City of Austin, Texas, ("OWNER")

I hereby certify that our firm conforms to the Code of the City of Austin, Section 5-4-2 as reiterated below:

Chapter 5-4. Discrimination in Employment by City Contractors.

Sec. 4-2 Discriminatory Employment Practices Prohibited. As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations and agrees:

- (B) (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter. Such affirmative action shall include, but not be limited to: all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising; selection for training and apprenticeship, rates of pay or other form of compensation, and layoff or termination.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by OWNER setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, veteran status, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with OWNER's Human Rights Commission in connection with any investigation or conciliation effort of said Human Rights Commission to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require compliance with provisions of this chapter by all subcontractors having fifteen or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with OWNER subject to the terms of this chapter.

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Nondiscrimination Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination in Employment Policy:

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE A COPY TO THE CITY OF THE CONTRACTOR'S NON-DISCRIMINATION POLICY ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION POLICY, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES (THE FORM OF WHICH HAS BEEN APPROVED BY THE CITY'S EQUAL EMPLOYMENT/FAIR HOUSING OFFICE), WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination Certificate or the Contractor's separate conforming policy, which the Contractor has executed and filed with the Owner, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payments, the Contractor's Non-Discrimination Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 31st day of OCTOBER, 2012

CONTRACTOR

Authorized Signature

Title

U.S. Hispanic Contractors Assn
[Signature]
CHAIRMAN

EXHIBIT C

CITY OF AUSTIN, TEXAS
LIVING WAGES AND BENEFITS CONTRACTOR CERTIFICATION
(Please duplicate as needed)

SOLICITATION NO.

Pursuant to the Living Wages and Benefits provision (reference Section 0400, Supplemental Purchase Provisions) the Contractor is required to pay to all employees directly assigned to this City contract a minimum Living Wage equal to or greater than \$11.00 per hour.

I hereby certify under penalty of perjury that all of the below listed employees of the Contractor who are directly assigned to this contract:

- (1) are compensated at wage rates equal to or greater than \$11.00 per hour; and
- (2) are offered a health care plan with optional family coverage.

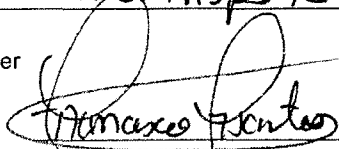
Employee Name	Employee Job Title

- (3) all future employees assigned to this Contract will be paid a minimum Living Wage equal to or greater than \$11.00 per hour and offered a health care plan with optional family coverage.
- (4) Our firm will not retaliate against any employee claiming non-compliance with the Living Wage provision.

A Contractor who violates this Living Wage provision shall pay each employee affected the amount of the deficiency for each day the violation continues. Willful or repeated violations of the provision may result in termination of this Contract for Cause and subject the firm to possible suspension or debarment.

Contractor's Name: U.S. Hispanic Contractors Association

Signature of Officer
or Authorized
Representative:



Date: NOV 1, 2012

Printed Name:

Francisco Fuentes

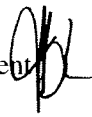
Title

Chairman



MEMORANDUM

To: Byron Johnson, Purchasing Officer

From: Veronica Briseño Lara, Director, Small & Minority Business Resources Department 

Date: September 18, 2012

Subject: Personal/Professional Service Exemption- U. S. Hispanic Contractors Association

Based on the proposed scope of work to be provided in the agreement between the City and above referenced organization, the Small and Minority Business Resources Department (SMBR) declares that this service, Outreach Services for Increased Certification and Minority Participation on City Projects, to be a personal or professional service exempt from the competitive bidding process pursuant to subsection 252.022 (a)(4) of the Texas Local Government Code. The professional services to be provided are not included within the definition of professional services under chapter 2254 of the Texas Government Code, and are not subject to such requirements.

U. S. Hispanic Contractors Association (USHCA) is the only currently active local Hispanic Trade Association providing assistance services specific to the Hispanic community engaged in the construction industry, and working to increase certification in the City's M/WBE program and participation on City agreements. Based upon this, SMBR requests that the Purchasing Office prepare this as a professional service agreement.

MA 7600 PA130000006



REQUISITION

RQS CITY MULTI

PAGE NO: 1
REFERENCE NUMBER: RQM 7600 12110900071
P.O DATE: 12/11/12

V JUAN OYERVIDES
E VC0000101286 AD001
N UNITED STATES HISPANIC CONTRACTORS ASSOCIATION DE AUSTIN
D 1106 CLAYTON LANE 511W
O
R AUSTIN TX 78723

S
H SEE COMMODITY LINE FOR
J SHIP TO INFORMATION
P
T
O

B
I SEE COMMODITY LINE FOR
L SHIP TO INFORMATION
L
T
O

Requestor: Veronica Lara, 974-2156
Buyer: See Solicitation, 512-974-2500

The City's standard purchase terms and conditions are hereby incorporated into this order by reference, with the same force and effect as if they were incorporated in full text. The full versions are available at https://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS or call the Purchasing Office at (512) 974-2500. Please include above reference number on all packages, deliveries, and invoices.

Line	Quantity	Unit	Commodity Information / Description (s)	Unit Price	Extended Amount
------	----------	------	---	------------	-----------------

1			Commodity: 91879 Minority and Small Business Consulting	\$.00	\$ 45,000.00
---	--	--	---	--------	--------------

SMBR service provider contract through September 30,2013.

Ship To: Small & Minority Bus Resources
SMALL BUSINESS ASSISTANCE CTR
4100 ED BLUESTEIN BLVD
Austin, TX 78721

Bill To: Small & Minority Bus Resources
PO BOX 1088
Austin, TX 78767-8865

Order Total: \$ 45,000.00

VENDOR INSTRUCTIONS:

1. SEND ORIGINAL INVOICE WITH DUPLICATE COPY TO THE CITY DEPARTMENT TO WHICH THE GOOD(S) WERE DELIVERED.
2. SHIPPING INSTRUCTIONS: F.O.B. DESTINATION UNLESS OTHERWISE SPECIFIED.
3. NO FEDERAL OR STATE SALES TAX SHALL BE INCLUDED IN PRICES BILLED. LIMITED SALES TAX #74-6000085.

Authorized Agent for City Manager

By acceptance of this purchase order, you agree to comply with the terms and conditions incorporated herein by reference and made a part of this order.

Date

View All 1 of 1 | Document submitted successfully

Master Agreement(MA) Dept: 7600 ID: PA130000006 Ver.: 1 Function: New Phase: Final Modified by dilbertj , 12/11/2012

Commodity		No. of Lines: 1	Commodity Line: 1	Commodity: 91879		
Commodity Line	Commodity	CL Description	Unit	Unit Price	Service Contract Amount	Discount Percentage
1	91879	Minority and Small Business Consulting		\$0.00	\$50,000.00	0.00%
From 1 to 1 Total: 1						

General Information Reference Information Additional Information Shipping & Billing Specifications Tolerance Information

Worksites

CL Description:

Minority and Small Business Consulting

Commodity:

91879

Minority and Small Business Consulting

Line Type:

Service

Quantity:

0.00000

Unit:**Unit Price:**

\$0.00

Catalog:**Discount Percentage:**

0.00%

List Unit Price:

\$0.00

Discounted Unit Price:

\$0.00

Discount Effective From:**Discount Effective To:****Maintenance:****Lock Catalog List Price:****Lock Order Specs:****Fixed Asset:****Allow Promotional Pricing:****Inactive Line:****Vendor Preference Level:**

99

Comm Line Discontinued:**Commodity Specs:****Extended Description:**

SMBR service provider contract through September 30,2013.

Service Contract Amount:

\$50,000.00

Service From:

12/05/2012

Service To:

12/04/2013

T & C Template:**Tax Profile:****Total Tax Amount:**

\$0.00

Line Total Amount:

\$50,000.00

Item Sub Total Amount:

\$50,000.00

Number of Attachments:

0


View All 1 of 1 | 1 Document submitted successfully

Master Agreement(MA) Dept: 7600 ID: PA130000006 Ver.: 1 Function: New Phase: Final Modified by dilbertj , 12/11/2012

Header

General Information Contract Details Modification Requestor Issuer Buyer Thresholds Extended Description
 Default Shipping/Billing Reporting Document Information

Tracking Number:	Award Status: Active
Document Name:	Procurement Folder: 1959621
Record Date: 12/11/2012	Procurement Type ID: 5 Master Agreement (MA)
Budget FY: 2013	Cited Authority:
Fiscal Year: 2013	Effective Begin Date: 12/05/2012
Period: 3	Expiration Date: 12/04/2013
Document Description: USHCA service provider contract for SMBR FY 2013	Hearing Date:
Calculated Document Total: \$50,000.00	Authorization Date:
Total Ordered Amount: \$0.00	Procurement Initiation Date:
Total Expended Amount: \$0.00	Internal Award Number: ADMIN
Available Amount: \$50,000.00	Internal Award Date:
Replaces Award Doc Code:	T & C Template:
Replaces Award Doc Dept:	Allow Partial Payment: <input type="checkbox"/>
Replaces Award ID:	Allow Partial Receipts: <input type="checkbox"/>
Replaced By Award Doc Code:	Default Form:
Replaced By Award Doc Dept:	Total of Header Attachments: 0
Replaced By Award ID:	Total of All Attachments: 0
Base Agreement ID: MA 7600 PA130000006	
Agreement Period: 0	

[View All](#) 1 of 1 |  Document submitted successfully

Master Agreement(MA) Dept: 7600 ID: PA130000006 Ver.: 1 Function: New Phase: Final Modified by dilbertj , 12/11/2012

Header

General Information Contract Details Modification **Requestor Issuer Buyer** Thresholds Extended Description
Default Shipping/Billing Reporting Document Information

Issuer ID:

dilbertj
Jeffery Dilbert
974-2021
jeffery.dilbert@austintexas.gov

Requestor ID:

larav

Name:

Veronica Lara

Phone Number:

974-2156

Email:

veronica.lara@austintexas.gov

Requesting Dept:

7600

Team ID:**Buyer:**

fasdcentral
See Solicitation
512-974-2500
purchinfo@austintexas.gov

Award Officer Name:**Award Officer Phone Number:****Award Officer Phone Extension:****Award Officer Email:**

View All 1 of 1 | 1 Document submitted successfully

Master Agreement(MA) Dept: 7600 ID: PA130000006 Ver.: 1 Function: New Phase: Final Modified by dilbertj , 12/11/2012

Header

General Information Contract Details Modification Requestor Issuer Buyer **Thresholds** Extended Description
Default Shipping/Billing Reporting Document Information

Minimum Order Amount: Minimum Order Value:

Maximum Order Amount: Maximum Order Value:

Not to Exceed Amount: Not to Exceed:

\$50,000.00

View All 1 of 1 | 1 Document submitted successfully

Master Agreement(MA) Dept: 7600 ID: PA130000006 Ver.: 1 Function: New Phase: Final Modified by dilbertj , 12/11/2012

Renewal Period		No. of Lines: 1	Line Number: 1	
Line Number	Renewal Period Length	Renewal Period Unit		
1	1	Days		
From 1 to 1 Total: 1				

General Information

Renewal Period Length:

1

Renewal Period Unit:

Days

Notification Days Prior to Expiration:

120

Effective Date:

12/05/2013

Expiration Date:

12/05/2013

Inactive Line:

☐

View All 1 of 1 | 1 Document submitted successfully

Master Agreement(MA) Dept: 7600 ID: PA130000006 Ver.: 1 Function: New Phase: Final Modified by dilbertj , 12/11/2012

Authorized Department		No. of Lines: 1	Line Number: 1	Department: 7600	Department Name: Small & Minority Business Rsrc	
Line Number	Department	Department Name		Spending Limit	Total Ordered Amount	
1	7600	Small & Minority Business Rsrc		\$0.00	\$0.00	
From 1 to 1 Total: 1						

General Information	
Department:	No Limit:
7600	<input checked="" type="checkbox"/>
Small & Minority Business Rsrc	
Spending Limit:	Active:
\$0.00	<input checked="" type="checkbox"/>
Total Ordered Amount:	Exclude Department:
\$0.00	<input type="checkbox"/>
Total Expended Amount:	
\$0.00	
Available Amount:	

View All 1 of 1 | 1 Document submitted successfully

Master Agreement(MA) Dept: 7600 ID: PA130000006 Ver.: 1 Function: New Phase: Final Modified by dilbertj , 12/11/2012

Vendor		No. of Lines: 1	Vendor Line: 1	Vendor Customer: VC0000101286	Legal Name:
		UNITED STATES HISPANIC CONTRACTORS ASSOCIATION DE AUSTIN			
Vendor Line	Vendor Customer	Legal Name		Not to Exceed Amount	Total Ordered Amount
1	VC0000101286	UNITED STATES HISPANIC CONTRACTORS ASSOCIATION DE AUSTIN			\$0.00
From 1 to 1 Total: 1					

General Information Thresholds Discount Information

Vendor Customer:

VC0000101286

Legal Name:

UNITED STATES HISPANIC CONTRACTORS ASSOCIATION DE AUSTIN

Alias/DBA:

USHCA DE AUSTIN; US HISPANIC CONTRACTORS ASSOCIATION

Address Code:

AD001

319 Congress Ave, Ste 250

AUSTIN

TX

78701

US

Vendor Preference Level:

99

Vendor Line Discontinued:**Vendor Contact ID:**

PC001

Vendor Contact Name:

JUAN OYERVIDES

Vendor Contact Phone:

512-922-0507

Vendor Contact Phone Ext.:**Vendor Contact Email:**

INFO@USHCA-AUSTIN.

Vendor Type:

Primary

Master Agreement Code:

MA

Master Agreement Department:

7600

Master Agreement ID:

PA130000006