

**SERVICES AGREEMENT
WITH UNITE US
FOR ELECTRONIC REFERRALS AND CASE MANAGEMENT
SOFTWARE, IMPLEMENTATION AND TRAINING SERVICES**

THIS AGREEMENT is made and entered into on this 9th day of December, 2019, by and between **CITY OF SANTA FE** (hereinafter the "City"), a municipality in the state of New Mexico, and **UNITE USA Inc.**, a Delaware corporation (hereinafter the "Contractor") located at 65 N. Moore St., Floor 2, New York, NY 10007.

WHEREAS, the Community Services Department (CSD) of the City has created an Accountable Health Community (AHC) to support a strong network of providers and stakeholders working together across agency lines to link residents to needed resources that will positively impact health and wellbeing; and

WHEREAS, the AHC requires a software system to allow CSD and participating nonprofit community health care providers to track and gather data on the type and scope of health and human service needs faced by the low-income residents of the City and to facilitate linkage to navigators of partnering agencies. Navigators are case managers who make referrals and assist residents to access a complex system of health and social services so that desired health outcomes are achieved for individuals and available dollars are maximized to better serve the community; and

WHEREAS, the Contractor owns a proprietary case management or network care coordination software tool that can enable organizations to provide and manage services, collaborate, and transfer specific data either intra-organizationally or across a network of several participating organizations; and

WHEREAS, the Chief Procurement Officer determined that pursuant to NMSA 1978, Sections 13-1-98.1 (B) (Hospital and Healthcare exemption) and 13-1-129 (Procurement under existing contracts) of the Procurement Code that the procurement of Contractor's services is exempt from a competitive solicitation, under the Procurement Code; and

WHEREAS, the City's access to, use of, and all rights and obligations of the parties relating to the Contractor's software system shall be governed solely and exclusive by this Agreement; and

WHEREAS, the City will also receive the benefit of having ongoing services related to the Contractor's software and other products and services offered by the Contractor; and

WHEREAS, the Contractor agrees to make available its software system and other services including training on the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties agree as follows:

1. SCOPE OF SERVICES

A. The City shall provide:

- (i) The export of electronic data for backup and archival purposes.
- (ii) All data provided to the Contractor under this Agreement and all City-provided data the Contractor may download or install into the Contractor's software shall remain the property of the City.
- (iii) A written request for a change in the Contractor's assigned personnel if the assigned personnel are not, in the opinion of the City, adequately meeting the needs of the City.

B. Contractor shall:

- (i) Analyze, design, test, tailor and deliver web-based software (the Network) to meet the needs of the AHC and the navigation partners.
 - a. Develop and provide electronic integration with Salesforce, at no additional cost to the City or navigation partners.
 - b. Develop and provide electronic integration with partner data systems identified by the City and Unit Us as appropriate for integration, at no additional cost to the City or navigation partners.
- (ii) Provide software training to City staff and navigation partners.
- (iii) Provide ongoing program strategy and community management to ensure optimization of the software platform.
- (iv) During the term of this Agreement, define key milestones and benchmark targets to keep the network performance on track to hit defined goals and objectives and manage and report against those key milestones throughout the time that the Network is operating.
- (v) Provide a communications action plan as well as ongoing support via weekly status calls and quarterly progress reviews.
- (vi) Use commercially reasonable efforts to make the network and software available, as measured over the course of each calendar month during the term, at least 99.99% of the time, excluding the time the software is not available as a result of one or more of the following:
 - a. Client's misuse of the software;
 - b. Failures of or degradation in the City's internet connectivity;
 - c. Internet or other network traffic problems other than problems arising in or from networks actually or required to be provided or controlled by the Contractor or its subcontractor(s);
 - d. Client's failure to meet any written minimum hardware or software requirements set forth by the Contractor;
 - e. Downtime or outages resulting from unplanned emergency maintenance or other force majeure; or
 - f. Scheduled downtime or outages of the software in whole or in part ("Scheduled Downtime"), as set forth in below.
 - g. "Available" as used herein means the software is available and operable without substantial degradation for access and use by the City over the Internet in

- material conformity with this Scope of Services.
- (vii) Provide to the City the number and type of software licenses set forth below:
 - a. 24 months- Coordinated Care Network License: 20
 - (viii) License Support Summary: Full access to the Contractor's platform and full training on-call and in-app support including twice annual in-person sessions with the City and all network partners/ participants.
 - (ix) Comply with the standards of: the Federal Health Insurance Portability Accountability Act of 1996 ("HIPAA"), The Family Educational Rights and Privacy Act (FERPA), and Code of Federal Regulations (CFR) 42 Part 2.
 - (x) Provide software that functions as a tool for CSD AHC staff and participating nonprofit community health care and human services organizations to use to ensure referrals and linkages to needed services have been made successfully, and to track outcomes, both for individuals, and for particular programs.
 - (xi) Host the software.
 - (xii) Ensure that the web-based software allows the City and partners to:
 - a. Maintain a HIPAA, FERPA, and CFR 42 compliant electronic records system.
 - b. Receive/capture and track screenings for social determinants.
 - c. Track the types of referrals made to a wide range of community services.
 - d. Track the receipt, response and outcome of these referrals.
 - e. Track demographics, including by zip code, ethnicity, and age group, on the referrals and related services.
 - f. Share client and referral information as appropriate to coordinate care.
 - g. Track health and human services needs via referrals made on behalf of individual City residents to health and social services agencies.
 - h. Track health insurance, whether Medicaid, Medicare or other, of individuals.
 - i. Provide detailed reporting on the determinants, referrals and outcomes.

2. DELIVERABLES

Contractor will provide a detailed written plan or schedule for implementation of the services under this Agreement including target dates for network planning, network design, software configuration and training. Contractor will:

- A. Build the network infrastructure to reflect a hub and spoke network with network assessments, service types, and organizational profile structures. The network will be completed within eight weeks from the date City supplies final specifications for the configuration.
- B. Build an online network registration configuration form and disseminate such online form for access by participating providers identified by the City. Registration data will be used to configure the provider profiles and network configuration of the software. The online network registration will be completed within three weeks after the software configuration, or within three weeks of when users are identified by the City and are prepared to register online.
- C. Provide network-specific training for all users prior to the launch of the network. Contractor will work with the City to schedule training for all participating providers.

First credentials will be provided within five business days of the City requesting credentials for first users. Additional credentials will be provided on an as needed basis within five business days of each request by the City.

- D. Train providers registered for training as requested by the City. Once pilot providers have been trained, Contractor will send an email invitation to join the network. In-person training will be completed prior to network launch for those providers identified by the City. Other trainings will be provided on an ongoing basis as requested by the City.

3. ADDITIONAL SERVICES

- A. The parties agree that all tasks set forth in above shall be completed in full, to the satisfaction of the City, in accordance with professional standards and for the amount set forth in Section 3 (Compensation, Invoicing and Set-off), of this Agreement, and for no other cost, amount, fee or expense.
- B. The City may from time to time request changes in the Scope of Services to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation, which are mutually agreed upon by and between the City, and the Contractor, shall be incorporated in an amendment to this Agreement.

4. COMPENSATION, INVOICING, AND SET-OFF

In consideration of its obligations under this Agreement the Contractor shall be compensated as follows:

- A. Reimbursable Travel Expenses: The contractor is including reimbursable travel expenses in the Deliverable fees.
- B. Total cost for 20 licenses during a 24 month period is \$40,000.00 for the care coordination software.
- C. Due in two installments of \$20,000.00, the first of which will be invoiced upon execution of this Agreement, and the second at the end of the first 12 month period of the contract.

The total amount payable to the Contractor for all services performed during the initial Term of this Agreement shall not exceed **\$40,000.00**, *exclusive* of NM gross receipts tax.

- D. The Contractor shall submit a written request for payment to the City when payment is due under this Agreement. Upon the City's receipt of the written request, the City shall issue a written certification of complete or partial acceptance or rejection of the contractual items or services for which payment is sought. The Contractor acknowledges and agrees that the City may not make any payment hereunder unless and until it has issued a written certification accepting the contractual items or services.

Within 30 days of the issuance of a written certification accepting the contractual items or services, the City shall tender payment for the accepted items or services. In the event the City fails to tender payment within thirty (30) days of the written certification accepting the items or services, the City shall pay late payment charges of 1.5% per month, until the amount due is paid in full.

- E. In the event the Contractor breaches this Agreement, the City may, without penalty, withhold any payments due the Contractor for the purpose of set-off until such time as the City determines the exact amount of damages it suffered as a result of the breach.
- F. Payment under this Agreement shall not foreclose the right of the City to recover excessive or illegal payment.

5. EFFECTIVE DATE AND TERM

This Agreement shall become effective on the date of last signature by the parties hereto (Effective Date). The initial Term of this Agreement will be two years from the Effective Date.

Unless earlier terminated pursuant to Article 7 (Appropriations and Authorizations), the City may opt-out of this Agreement at the end of the initial term (year 2) of this Agreement. Such opt-out must be clearly stated in writing to Contractor Unite Us CEO, President, or CFO, and must be made 60 days prior to the conclusion of either year of the initial Term. Opt-out by the City may be made for convenience. If the City opts out of this Agreement, this Agreement will terminate upon conclusion of the initial Term. The City will be under no obligation to issue the further payment, and Contractor will have no obligation to continue performance. Should such opt-out not be timely both parties will continue to perform as provided in this Agreement.

If the City does not affirmatively opt-out of this Agreement either under this Article or Article 7, prior to the expiration of the initial Term, a second 2-year Term will automatically begin, during which the City will continue to be granted access to 20 user licenses on the Unite Us platform, and will be responsible for annual payments of \$20,000 to be invoiced annually.

6. TERMINATION

- A. Termination of Agreement for Cause. Either party may terminate the Agreement based upon any material breach of this Agreement by the other party. The non-breaching party shall give the breaching party written notice of termination specifying the grounds for the termination. The termination shall be effective 30 days from the breaching party's receipt of the notice of termination, during which time the breaching party shall have the right to cure the breach. If, however, the breach cannot with due diligence be cured within 30 days, the breaching party shall have a reasonable time to cure the breach, provided that, within 30 days of its receipt of the written notice of termination, the breaching party began to cure the breach and advised the non-breaching party in writing that it intended to cure.
- B. Termination for Convenience of the City. The City may, in its discretion, terminate this Agreement at any time for any reason by giving the Contractor written notice of

termination. The notice shall specify the effective date of termination, which shall not be less than 90 days from the Contractor's receipt of the notice. The City shall pay the Contractor for acceptable work, determined in accordance with the specifications and standards set forth in this Agreement, performed before the effective date of termination but shall not be liable for any work performed after the effective date of termination.

7. APPROPRIATIONS AND AUTHORIZATIONS

This Agreement is contingent upon sufficient appropriations and authorizations being made for performance of this Agreement by the Governing Body of the City and/or, if state funds are involved, the Legislature of the State of New Mexico. If sufficient appropriations and authorizations are not made in this or future fiscal years, this Agreement shall terminate upon written notice by the City to the Contractor. Such termination shall be without penalty to the City, and the City shall have no duty to reimburse the Contractor for expenditures made in the performance of this Agreement. The City is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered and approved for expenditure by the City. The City's decision as to whether sufficient appropriations and authorizations have been made for the fulfillment of this Agreement shall be final and not subject to challenge by the Contractor in any way or forum, including a lawsuit.

8. INDEPENDENT CONTRACTOR

The Contractor and its agents and employees are independent contractors and are not employees or agents of the City. Accordingly, the Contractor and its agents and employees shall not accrue leave, participate in retirement plans, insurance plans, or liability bonding, use City vehicles, or participate in any other benefits afforded to employees of the City. Except as may be expressly authorized elsewhere in this Agreement, the Contractor has no authority to bind, represent, or otherwise act on behalf of the City and agrees not to purport to do so.

9. ASSIGNMENT

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the advance written approval of the City. Any attempted assignment or transfer without the City's advance written approval shall be null and void and without any legal effect.

10. SUBCONTRACTING

The Contractor shall not subcontract or delegate any portion of the services to be performed under this Agreement without the advance written approval of the City. Any attempted subcontracting or delegating without the City's advance written approval shall be null and void and without any legal effect.

11. PERSONNEL

- A. All work performed under this Agreement shall be performed by the Contractor or under its supervision.
- B. The Contractor represents that it has, or will secure at its own expense, all personnel required to discharge its obligations under this Agreement. Such personnel: (i) shall not be employees of or have any contractual relationships with the City; and, (ii) shall be fully qualified and licensed or otherwise authorized or permitted under federal, state, and local law to perform such work.

12. RELEASE

Upon its receipt of all payments due under this Agreement, the Contractor releases the City, its elected officials, officers, agents and employees from all liabilities, claims, and obligations whatsoever arising from or under or relating to this Agreement.

13. LICENSE AND USE OF MATERIAL; COPYRIGHT

Contractor grants the City use of the network system, including all rights therein, except for any right to Contractor's intellectual property including (i) service software or other Unite US software; (ii) Unite US names, logos or trademarks; or (iii) third party materials or content that is incorporated into the network website created by the Contractor.

14. CONFLICT OF INTEREST

The Contractor represents that it has no and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of its obligations under this Agreement.

15. NO ORAL MODIFICATIONS; WRITTEN AMENDMENTS REQUIRED

This Agreement may not be modified, altered, changed, or amended orally but, rather, only by an instrument in writing executed by the parties hereto. The Contractor specifically acknowledges and agrees that the City shall not be responsible for any changes to Section 1 (Scope of Services), of this Agreement unless such changes are set forth in an amendment to this Agreement.

16. ENTIRE AGREEMENT; INTEGRATION

This Agreement incorporates all of the agreements, covenants, and understandings between the Contractor and City concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this written Agreement. No prior or contemporaneous agreement, document, covenant or understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

17. NOTICE OF PENALTIES

The Procurement Code, NMSA 1978, Sections 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

18. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

- A. The Contractor agrees to abide by all federal, state, and local laws, ordinances, and rules and regulations pertaining to equal employment opportunity and unlawful discrimination. Without in any way limiting the foregoing general obligation, the Contractor specifically agrees not to discriminate against any person with regard to employment with the Contractor or participation in any program or activity offered pursuant to this Agreement on the grounds of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap, serious medical condition, spousal affiliation, sexual orientation, or gender identity.
- B. The Contractor acknowledges and agrees that failure to comply with this Section shall constitute a material breach of this Agreement.

19. COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW

- A. In performing its obligations hereunder, the Contractor shall comply with all applicable laws, ordinances, and regulations.
- B. Contractor shall comply with the requirements of the City of Santa Fe Living Wage Ordinance, Santa Fe City Code (SFCC) Sections 28-1.1 et seq.
- C. This Agreement shall be construed in accordance with the substantive laws of the State of New Mexico, without regard to its choice of law rules. Contractor and the City agree that the exclusive forum for any litigation between them arising out of or related to this Agreement shall be state district courts of New Mexico, located in Santa Fe City.

20. RECORDS AND INSPECTIONS

- A. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to the City as part of the procurement process, the Contractor agrees to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under this Agreement; (ii) allow the City or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with generally accepted accounting principles (GAAP).
- B. To the extent its books and records relate to (i) its performance of this Agreement or any subcontract entered into pursuant to it or (ii) cost or pricing data (if any) set forth in this Agreement or that was required to be submitted to City as part of the procurement process, the Contractor also agrees to require any subcontractor it may

hire to perform its obligations under this Agreement to (i) maintain such books and records during the term of this Agreement and for a period of six years from the date of final payment under the subcontract; (ii) to allow the City or its designee to audit such books and records at reasonable times and upon reasonable notice; and (iii) to keep such books and records in accordance with GAAP.

21. INDEMNIFICATION

- A. The Contractor shall defend, indemnify, and hold harmless the City and its elected officials, agents, and employees from any losses, liabilities, damages, demands, suits, causes of action, judgments, costs or expenses (including but not limited to court costs and attorneys' fees) resulting from or directly arising out of the services provided by Contractor under this Agreement and the City's use of the Contractor's software, including but not limited to the Contractor's breach of any representation or warranty made herein.
- B. The Contractor agrees that the City shall have the right to participate in the defense of any such demand, suit, or cause of action concerning matters that relate to the City and that such suit, unless it results solely in monetary damages payable by Contractor, will not be settled without the City's consent, such consent not to be unreasonably withheld. If a conflict exists between the interests of the City and the Contractor in such demand, suit, or cause of action, the City may retain its own counsel to represent the City's interest.
- C. The Contractor's obligations under this section shall not be limited by the provisions of any insurance policy the Contractor is required to maintain under this Agreement.

22. SEVERABILITY

If any term or condition of this Agreement shall be held invalid or non-enforceable by any court of competent jurisdiction, the remainder of this Agreement shall not be affected and shall be valid and enforceable to the fullest extent of the law.

23. NOTICES

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the City:	Santa Fe City Community Services Department Attention: Kyra Ochoa P.O. Box 909 Santa Fe, NM 87504-0909
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To the Contractor: Unite Us
Attention: Dan Brillman, CEO
65 N. Moore St., Floor 2
New York, NY 10007

24. CONTRACTOR'S REPRESENTATIONS AND WARRANTIES

The Contractor hereby represents and warrants that:

- A. This Agreement has been duly authorized by the Contractor, the person executing this Agreement has authority to do so, and, once executed by the Contractor, this Agreement shall constitute a binding obligation of the Contractor.
- B. This Agreement and Contractor's obligations hereunder do not conflict with Contractor's corporate agreement or any statement filed with the New Mexico Secretary of State on Contractor's behalf.
- C. Contractor is legally registered and is properly licensed by the State of New Mexico to provide the services anticipated by this Agreement and shall maintain such registration and licensure in good standing throughout the duration of the Agreement.

25. FACSIMILE SIGNATURES

The parties hereto agree that a facsimile signature has the same force and effect as an original for all purposes.

26. NO THIRD-PARTY BENEFICIARIES

This Agreement was not intended to and does not create any rights in any persons not a party hereto.

27. INSURANCE

- A. General Conditions. The Contractor shall submit evidence of insurance as is required herein. Policies of insurance shall be written by companies authorized to write such insurance in New Mexico.
- B. General Liability Insurance, Including Automobile. The Contractor shall procure and maintain during the life of this Agreement a comprehensive general liability and automobile insurance policy with liability limits in amounts not less than \$1,000,000.00 combined single limits of liability for bodily injury, including death, and property damage for any one occurrence. Said policies of insurance shall include coverage for all operations performed for the City by the Contractor; coverage for the use of all owned, non-owned, hired automobiles, vehicles and other equipment, both on and off work; and contractual liability coverage under which this Agreement is an insured contract. Santa Fe City shall be a named additional insured on the policy.

C. Increased Limits. If, during the life of this Agreement, the Legislature of the State of New Mexico increases the maximum limits of liability under the Tort Claims Act (NMSA 1978, Sections 41-4-1 through 41-4-29), the Contractor shall increase the maximum limits of any insurance required herein.

28. PERMITS, FEES, AND LICENSES

Contractor shall procure all permits and licenses, pay all charges, fees, and royalties, and give all notices necessary and incidental to the due and lawful performance of its obligations hereunder.

29. NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement modifies or waives any sovereign immunity or limitation of liability enjoyed by City or its "public employees" at common law or under the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

30. SURVIVAL

The provisions of following paragraphs shall survive termination of this Agreement: INDEMNIFICATION; RECORDS AND INSPECTION; RELEASE, CONFIDENTIALITY, PUBLICATION, REPRODUCTION, AND USE OF MATERIAL; COMPLIANCE WITH APPLICABLE LAW; CHOICE OF LAW; NO THIRD-PARTY BENEFICIARIES; SURVIVAL.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of last signature by the parties hereto.

CITY OF SANTA FE

BY: Jarel Lapan Hill

Jarel Lapan Hill, Interim City Manager

12/5/19
Date Executed

Attest:

Yolanda Y. Vigil
Yolanda Y. Vigil, City Clerk

UNITE USA INC.

BY: Taylor Justice


Authorized signature

25 OCT 19
Date Executed

Taylor Justice
Name

President & Co-Founder
Title

Approved as to Form:

Erin K. McSherry 
Erin K. McSherry, City Attorney

Approved:

Mary McCoy 
Mary McCoy, Finance Director

Business Unit/Line Item: 2400122.510400