

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: November 22, 2022
PUBLIC HEARING DATE: NA

CONTACT PERSON(S) NAME AND PHONE NUMBER:

Jonathan P. Killings, Interim Fire Chief, (915) 493-5609
Claudia A. Garcia, Interim Director of Purchasing & Strategic Sourcing, (915) 212-1218

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: 2 – Set the Standard for a Safe and Secure City

SUBGOAL: 2.3 – Increase public safety operational efficiency.

SUBJECT:

Request that the City Manager be authorized to sign an agreement to provide baseline physical exam services for the City's Fire Department between the City of El Paso ("City") and Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers; contract 2023-0183 Baseline Physical Exams for Firefighters for a six (6) month term from the date this Agreement is approved by the City Council, for a total amount of \$645,862.50.

BACKGROUND / DISCUSSION:

The Baseline Physical Exams are for uniformed fire department employees in accordance with guidelines established in the CBA, and the Fire Service Joint Labor Management Wellness-Fitness Initiative, and NFPA 1582 Standard on Comprehensive Occupational Medical Program for Fire Departments.

SELECTION SUMMARY:

This is a non-competitive procurement pursuant to Section 252.022(a)(2) a procurement necessary to preserve or protect the public health or safety of the municipality's residents. These services are essential to the public safety of our community to continue providing services to EPFD uniformed employees.

CONTRACT VARIANCE:

The difference based in comparison to the previous contract for a six month period is as follows: An increase of \$285,951.96, which represents a 79.45% increase due to higher rates for testing.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

NA

AMOUNT AND SOURCE OF FUNDING:

Amount: \$645,862.50

Funding Source: 322-1000-521120-22120-P2222

Account: General Funds

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES ___ NO

PRIMARY DEPARTMENT: Fire
SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:



Jonathan P. Killings, Interim Fire Chief, (915) 493-5609

**COUNCIL PROJECT FORM
(Non-competitive)**

*******POSTING LANGUAGE BELOW*******

Please place the following item on the **CONSENT** agenda for the Council Meeting of November 22, 2022.

Strategic Goal 2: Set the Standard for a Safe and Secure City

The linkage to the Strategic Plan is subsection: 2.3 – Increase public safety operational efficiency.

Request that the City Manager be authorized to sign an agreement to provide baseline physical exams services for the City’s Fire Department between the City of El Paso (“City”) and Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers; contract 2023-0183 Baseline Physical Exams for Firefighters for a six (6) month term from the date this Agreement is approved by the City Council, for a total amount of \$645,862.50.

Contract Variance:

The difference based in comparison to the previous contract for a six month period is as follows: An increase of \$285,951.96, which represents a 79.45% increase due to higher rates for testing.

This is a Non-competitive, service contract.

The Purchasing & Strategic Sourcing and the Police Departments recommend award as indicated to Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers.

Additionally, it is requested that the City Attorney's Office review and that the City Manager be authorized to execute any related contract documents and agreements necessary to effectuate this award.

RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager be authorized to sign an agreement to provide baseline physical exams services for the City's Fire Department between the City of El Paso ("City") and Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers; contract 2023-0183 Baseline Physical Exams for Firefighters for a six (6) month term from the date this Agreement is approved by the City Council, for a total amount of \$645,862.50.

APPROVED THIS _____ DAY OF _____ 2022.

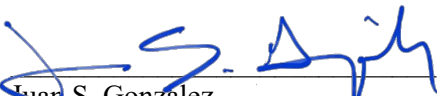
CITY OF EL PASO:

Oscar Leeser, Mayor

ATTEST:

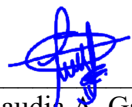
Laura D. Prine, City Clerk

APPROVED AS TO FORM:



Juan S. Gonzalez
Assistant City Attorney

APPROVED AS TO CONTENT



Claudja A. Garcia, Interim Director
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT



Jonathan P. Killings, Interim Fire Chief
Fire Department

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**PROFESSIONAL SERVICE AGREEMENT
FOR BASELINE PHYSICAL EXAMS FOR
FIREFIGHTERS FOR THE FIRE DEPARTMENT**

This physical exams and drug testing screening services agreement (this "**Agreement**") is entered into this _____ day of _____, 20__ (the "**Effective Date**") by and between the City of El Paso, a home rule municipal corporation (the "**City**"), and Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers a Texas Company (the "**Company**").

RECITALS

WHEREAS, pursuant to Article XXIV, Section 1b. of the Collective Bargaining Agreement dated December 13, 2011 between the City and Local 51, International Association of Fire Fighters, Inc. the City shall provide mandatory baseline physicals for employees annually; and

WHEREAS, National Fire Protection Association's publication NFPA 1582: Standard 011 Comprehensive Occupational Medical Program for Fire Departments recommends that the schedules for baseline physicals be organized by firefighters' age groups; and

WHEREAS, the City selected Company to provide the professional services on the basis of Company's demonstrated competence and qualifications to perform the services for a fair and reasonable price for 2023-0183; and

WHEREAS, the Service Provider possesses the qualifications, certifications, credentials, experience, and expertise to perform said baseline physical exam services for the City; and

WHEREAS, the City desires to engage the Service Provider to provide baseline physical exams for Fire Department firefighters according to the schedules provided by the City.

IN CONSIDERATION of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

SECTION I. TERM. The effective date of this Agreement is _____, 2022 and will remain in effect thereafter for six (6) months from the effective date of this Agreement.

SECTION II. SCOPE OF SERVICES. The Service Provider hereby agrees to perform baseline physical services in accordance with the specifications (Exhibit A) and the Proposal submitted by the Service Provider. The scope of services identified and Proposal and clarified by this Agreement shall be referred to collectively as the "Services." All services shall be performed with reasonable care, skill, and diligence as would be practiced by the medical and scientific community within the County of El Paso,

Texas.

The Service Provider will devise, implement, and operate a program for performing Baseline Screenings and General Fitness Assessments for the City's Firefighters according to the schedule for examinations by age group, attached hereto as Exhibit C. The Service Provider will provide the following services to the Fire Department's firefighters as described in the specifications based on the schedule for examinations: Level I. Baseline Screenings; Level II. Comprehensive Examinations; and Level III General Fitness Assessments. The Service Provider shall also assist the Fire Department Peer Fitness Trainers for Fire Department personnel in the design, administration, and monitoring of fitness programs. In the case of an injury or long-term illness the Service Provider shall prescribe and provide fitness or rehabilitation services.

Firefighters are scheduled for their annual physicals by their respective Battalion Chiefs in the Field Operations Division and by their Division Chiefs in the 40-hour sections of the Department. This ensures that supervisors can account for full compliance with the mandatory annual baseline physicals requirement as specified in the Collective Bargaining Agreement dated December 13, 2011. Fire Fighters will be referred to rehabilitation at the Fire Chiefs discretion or by the recommendation made by the Service Provider after an annual physical assessment. Rehabilitation will be used for incumbent Fire Fighters needing physical fitness improvement or Incumbent Fire Fighters needing rehabilitation services as they recover from on-the-job injuries. Rehabilitation services for off the job injuries are not part of the services provided under this Agreement.

SECTION III. COMPLETION OF SERVICES. The Service Provider understands that time is of the essence in completing the Services. Failure of the Service Provider to meet the specified time for completion of Services shall be cause for termination pursuant to Section XIV of this Agreement.

SECTION IV. NON-EXCLUSIVE AGREEMENT. This Agreement is non-exclusive. The City shall be entitled to enter into other agreements for the Services with other properly selected individuals or businesses that qualify to provide the Services.

SECTION V. PRE-REQUISITE TO AGREEMENT. The Service Provider shall comply with applicable state and local licenses, certifications, and other qualification requirements as a prerequisite to entering into this Agreement.

SECTION VI. LOCATION OF PERFORMANCE. The Company shall perform the Services in the City and County of El Paso, Texas or such other place(s) as may be necessary to fulfill the terms of this Agreement.

SECTION VII. REPRESENTATIONS OF THE COMPANY. The Company represents, warrants, and agrees as follows:

- A. It will comply with all applicable federal, state, and local government laws, rules, regulations and all provisions of the City of El Paso Charter and the El Paso City Code, now existing or as may be amended, in the performance of its duties under this Agreement.
- B. The Service Provider, including each individual physician and all other healthcare providers employed by the Service Provider and performing the services for the City, shall at all times during the performance of this Agreement maintain the licenses, certifications required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Service Provider warrants that it is duly authorized

and licensed to perform its duties hereunder in the jurisdiction in which it will act. It further warrants that its employees shall maintain all required professional licenses during the term of this Agreement. If the Service Provider receives notice from a licensing authority of a suspension or revocation of a license of the Service Provider's employee(s), the Service Provider shall immediately remove such employee from performing any further services under this Agreement until such license is reinstated and in good standing and within 72 hours, notify the City of such actions. If the Service Provider fails to maintain such licenses or fails to remove any employee who performs services under this Agreement whose license has expired or been revoked or suspended, the City shall be entitled, at its sole discretion, to immediately terminate this Agreement upon written notice to the Service Provider. It further warrants that its employees shall maintain all required professional licenses and/or certifications during the term of this Agreement. If the Service Provider receives notice from a licensing or certification authority of a suspension or revocation of a license or certification of the Service Provider's employee(s), the Service Provider shall immediately remove such employee from performing any further services under this Agreement until such license or certification is reinstated and in good standing and within 72 hours, notify the City of such actions. If the Service Provider fails to maintain such licenses or certifications or fails to remove any employee who performs services under this Agreement whose license or certification has expired or been revoked or suspended, the City shall be entitled, at its sole discretion, to immediately terminate this Agreement upon written notice to the Service Provider.

- C. All individual physicians who will perform the examination services and physiologist clinicians or healthcare providers who will administer the physical fitness program under this Agreement shall have knowledge of the fire service job requirements and fit-for-duty expectations according to Section 4.2 of the National Fire Protection Association's publication NFPA 1582: Standard on Comprehensive Occupational Medical Program/or Fire Departments and NFPA 1583: Standard on Health Related Fitness Programs for Fire Department Members. The Service Provider's Organizational Chart is attached hereto as Exhibit D. The City shall be informed of any changes to the Organizational Chart so that the City Manager may approve the qualifications of the different or additional Service Provider's personnel. Despite the City Manager's approval, the City shall in no event be obligated to any third party.
- D. The Service Provider shall not in any fashion discriminate in the performance of this Agreement against any person because of race, color, religion, national origin, sex, age, disability, political belief, sexual orientation or affiliation.

SECTION VIII. COMPENSATION AND METHOD OF PAYMENT. The City shall pay the Service Provider for each test and rehabilitation session conducted at the rates set forth in the Proposal Cost attached hereto as Exhibit B. The Service Provider services shall be limited to those services delineated in the Section III of this Agreement. It is understood and agreed that the City shall not be liable for any costs that exceed the amount of this Agreement without the prior written approval of the City Manager and compliance with applicable competitive bidding laws and City policies. Said approval must be obtained prior to the Service Provider commencing the services that will result in the cost overrun.

The parties acknowledge and agree that the award of this Agreement is dependent upon the availability of funding. In the event that funds do not become available, the Agreement may be terminated, with a 30-day written notice to the Service Provider by the City. In such an event, the City shall incur no penalty or charge.

The Service Provider shall submit a monthly invoice to the Fire Department for each month in which a baseline physical, general fitness assessments, and rehabilitation sessions are conducted according

to this Agreement. Invoices shall not be submitted more frequently than once per month. The services are to be provided according to schedule in Exhibit C and Section III. All invoices shall be made in writing and shall specify the number of physicals, assessments, and rehabilitation sessions conducted. Invoices shall be delivered to the Chief of Fire.

SECTION IX. INDEPENDENT SERVICE PROVIDER. Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. The Service Provider agrees to be responsible for its own acts and omissions and those of its subordinates and employees in the performance of any material services under this Agreement. The Service Provider is an independent Service Provider and nothing contained herein shall constitute or designate the Service Provider or any of his employees as employees of the City. Neither the Service Provider nor his employees shall be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

SECTION X. MEDICAL RECORDS AND CONFIDENTIALITY OF RECORDS. The Service Provider recognizes that all information and materials received in connection with this Agreement shall be kept in the strictest confidence. All medical screenings shall be City property for the life of this Agreement. The Service Provider shall keep the records for the life of this Agreement and shall follow the regulations according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all subsequent amendments. The Service Provider shall follow the Business Associate Agreement which attached hereto and incorporated to this Agreement through Exhibit C. Upon termination of this Agreement all records shall be transferred to the City within ten (10) business days of termination at the City's sole expense of such transfer.

SECTION XI. INSPECTIONS & AUDITS. The City shall have the right to perform, or cause to be performed: (1) audits of the books and records of the Company; and (2) inspections of all places where work is undertaken in connection with this Agreement. The Company shall be required to keep such books and records available for such purpose for at least five (5) years after its performance under this Agreement ceases. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

SECTION XII. OWNERSHIP. All files and documents generated by Company as a result of its activity under this Agreement shall remain at all times the property of the City.

SECTION XIII. INSURANCE REQUIREMENTS. With no intent to limit the Company's liability or the indemnification provisions set forth hereinafter, the Company shall provide and maintain the following insurance in full force and effect at all times during the term of this Agreement and any extensions thereto. The City shall be provided with certificates of insurance evidencing the required insurance prior to the Effective Date of this Agreement and thereafter with certificates evidencing renewal or replacement of said policies of insurance at least fifteen (15) days prior to the expiration or cancellation of any such policies.

A. INSURANCES

1. **Worker's Compensation.** A third-party policy of Workers' Compensation insurance coverage providing Statutory Benefits according to the Workers Compensation Act of the State of Texas and/or any other state or federal law as may be applicable to the work and shall cover all of the persons engaged in the work.

2. **Commercial Liability, Property Damage Liability and Vehicle Liability Insurance.** The

Company shall procure and shall maintain during the life of this Agreement such Commercial General Liability, Property Damage Liability and Vehicle Liability Insurance as shall protect the Company and the Company's employees performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from services performed under this Agreement, whether such services be performed by the Company or by anyone directly employed by the Company. The minimum limits of liability and coverage shall be as follows:

a) **Commercial General Liability Personal Injury or Death**

\$1,000,000 for each person

\$1,000,000 in the aggregate

Property Damage

\$1,000,000 for each occurrence

\$1,000,000 in the aggregate

b) **Vehicle Liability Combined Single Limit**

\$1,000,000 per accident

- B. ERRORS AND OMISSIONS LIABILITY INSURANCE.** The Company shall procure and maintain, at the Company's sole expense, Professional Liability Insurance (Such as errors and omissions insurance) for the benefit of the City to cover the errors and omissions of the Company, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000) on a claims made basis.
- C. FORM OF POLICIES.** The insurance required herein may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager.
- D. ISSUERS OF POLICIES.** The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the City's Risk Manager in his sole discretion as to conformance with these requirements.
- E. INSURED PARTIES.** Each policy, except those for Workers' Compensation and Employer's Liability, must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
- F. MATERIAL CHANGE IN POLICY(IES).** Prior to any material change in any policy required herein, the City will be given sixty (60) days advance written notice by registered mail. Further, the City will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.
- H. CANCELLATION.** Each policy must expressly state that it may not be canceled or non-renewed unless sixty (60) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Director by the insurance company. The Company shall also give written notice to the City's Purchasing Director within fifteen (15) days of the date upon which total claims by any party against the Company reduce the aggregate amount of coverage

below the amounts required by this Agreement.

- I. DELIVERY OF POLICIES.** The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by the Company with the City's Purchasing Director prior to beginning work under this Agreement, and thereafter before the beginning of each subsequent year of the term of this Agreement. Notices and Certificates required by this clause shall be provided to:

City of El Paso
Purchasing and Strategic Sourcing Department
Attn: Purchasing Director
300 N. Campbell
El Paso, Texas 79901

Notwithstanding the termination notice provisions in this Agreement, the failure of the Company to provide the City's Purchasing Director with the above proof of insurance prior to beginning work and thereafter prior to the beginning of each year of the term of this Agreement, shall constitute a default on the part of the Company entitling the City, upon three (3) days written notice to the Company to terminate this Agreement. This default provision shall also apply to the proof of insurance requirements under circumstances where a policy is canceled or expires during a given year of the Agreement. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that the Company, throughout the term of this Agreement, continuously and without interruption, maintain in force the required insurance coverage set forth above. Failure of the Company to comply with this requirement shall constitute a default of the Company allowing the City, at its option, to terminate this Agreement as referenced above.

SECTION XIV. INDEMNIFICATION. THE COMPANY OR ITS INSURER SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS ELECTED OFFICIALS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVE, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH OF PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE COMPANY'S ACTIVITIES UNDER THIS AGREEMENT FOR THIRD PARTY CLAIMS ADMINISTRATION AND MEDICAL COST CONTAINMENT, INCLUDING ANY ACT OR OMISSION BY THE COMPANY, ITS AGENTS, EMPLOYEES OR SUBCONTRACTORS WHILE IN THE EXERCISE OF PERFORMANCE OF THE RIGHTS OR DUTIES UNDER THIS AGREEMENT, ALL, WITHOUT HOWEVER, WAIVING AND GOVERNMENTAL IMMUNITY AVAILABLE TO THE CITY. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY PERSON OR ENTITY. WITHOUT MODIFYING THE CONDITIONS OF PRESERVING, ASSERTING, OR ENFORCING ANY LEGAL LIABILITY AGAINST THE CITY AS REQUIRED BY THE CITY CHARTER OR ANY LAW, THE CITY WILL PROMPTLY FORWARD TO THE COMPANY EVERY DEMAND, NOTICE, SUMMONS OR OTHER PROCESS RECEIVED BY THE CITY IN ANY CLAIM OR LEGAL PROCEEDING CONTEMPLATED HEREIN. IN ADDITION, THE COMPANY SHALL PROMPTLY ADVISE THE CITY IN WRITING OF ANY CLAIM OR DEMAND AGAINST THE CITY OR THE COMPANY KNOWN TO THE COMPANY RELATED TO OR ARISING OUT OF THE COMPANY'S ACTIVITIES UNDER THIS AGREEMENT. THE COMPANY WILL: 1) INVESTIGATE

OR CAUSE THE INVESTIGATION OF ACCIDENTS OR OCCURRENCES INVOLVING SUCH INJURIES OR DAMAGES; 2) NEGOTIATE OR CAUSE TO BE NEGOTIATED THE CLAIM AS THE COMPANY MAY DEEM EXPEDIENT; AND 3) DEFEND OR CAUSE TO BE DEFENDED ON BEHALF OF THE CITY ALL SUITS FOR DAMAGES EVEN IF GROUNDLESS, FALSE OR FRAUDULENT, BROUGHT BECAUSE OF SUCH INJURIES OR DAMAGES. THE COMPANY WILL PAY ALL JUDGMENTS FINALLY ESTABLISHING LIABILITY OF THE CITY IN ACTIONS DEFENDED BY THE COMPANY PURSUANT TO THIS SECTION ALONG WITH ALL ATTORNEYS' FEES AND COSTS INCURRED BY THE CITY INCLUDING INTEREST ACCRUING TO THE DATE OF PAYMENT BY THE COMPANY, AND PREMIUMS ON ANY APPEAL BONDS. THE CITY, AT ITS ELECTION WILL HAVE THE RIGHT TO PARTICIPATE IN ANY SUCH NEGOTIATIONS OR LEGAL PROCEEDINGS TO THE EXTENT OF ITS INTEREST WITHOUT RELIEVING COMPANY OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH. THE CITY WILL NOT BE RESPONSIBLE FOR ANY LOSS OF OR DAMAGE TO THE COMPANY'S PROPERTY FROM ANY CAUSE.

SECTION XV. TERMINATION OF AGREEMENT. This Agreement may be terminated under any one of the following circumstances:

A. TERMINATION FOR CONVENIENCE: This Agreement may be terminated by City for convenience upon written notice, provided such notice specifies an effective date for cancellation of not less than thirty (30) calendar days from the date such notice is received. It is also understood and agreed that upon such notice of termination, the Company shall cease all services under this Agreement. Upon such termination, the Company shall provide a final invoice for all work completed prior to the City's notice of termination. The City shall compensate the Company in accordance with this Agreement; however, the City may withhold any payment to the Company for the purpose of set off until such time as the exact amount of damages due the City from the Company is determined. Nothing contained herein, or elsewhere in this Agreement, shall require the City to pay for any work which is unsatisfactory, incomplete or not in compliance with the terms of this Agreement and its attachments.

B. TERMINATION FOR DEFAULT: It is further understood and agreed by the Company and the City that either party may terminate this Agreement for cause. Such a termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through no fault of the other party. No such termination shall be made, unless the other party being terminated is granted: a) written notice of intent to terminate after thirty (30) consecutive calendar days, enumerating the failures for which the termination is being sought; b) a minimum of fifteen (15) consecutive calendar days to cure such failures; and c) an opportunity for consultation with the terminating party prior to such termination.

However, the City retains the right to immediately terminate this Agreement for default if the Company fails to maintain its licenses, certifications and other standards required to be a qualified Company pursuant and the laws of the State of Texas or violates any local, state or federal laws. In the event of termination by the City pursuant to this subsection, the City may withhold payments to the Company for the purpose of set off until such time as the exact amount of damages due the City from the Company is determined.

SECTION XVI. GENERAL PROVISIONS.

A. TIME IS OF THE ESSENCE. The Company understands and agrees that time is of the essence for all services and deliverables requested herein and that all tasks of this Agreement are to be completed as expeditiously as possible.

- B. ADVERTISING.** Neither party will advertise or publish, without the other party's consent, the fact that the City has entered into this contract, except to comply with proper requests for information from an authorized representative of the federal, state, or local government.
- C. SUCCESSOR AND ASSIGNS.** The Company shall not assign or attempt to convey an interest in this Agreement without the prior written consent of the City. This Agreement shall be terminable, at the discretion of the City, without notice to the Company if the Company shall attempt to assign without prior written consent.
- D. VENUE.** For purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.
- E. LEGAL CONSTRUCTION.** Every provision of this Agreement is severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. Where the context of the Agreement require, the singular shall include the plural and the masculine gender shall include feminine. Any reference to the City Manager in this Agreement shall mean the City Manager of the City of El Paso or his designee.
- F. COMPLIANCE WITH LAW.** The Company shall comply with all Federal, State and local laws and ordinances applicable to the work contemplated herein.
- G. NOTICE.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other party be in writing and either personally delivered or sent via certified mail, return receipt requested, postage prepaid, to the following addresses:

City of El Paso
 Attn: City Manager
 P.O. Box 1890
 El Paso, Texas 79950-1890

With Copy to:

City of El Paso Fire Chief
 416 N. Stanton, Suite 200
 El Paso, TX 79901-1242

COMPANY:

Occupational Health Centers of the Southwest, P.A. dba
 Concentra Medical Centers
 Bianca Barrett
 6320 Gateway East
 El Paso, TX 79905

Changes may be made to the names and addresses noted herein through timely written notice to the other party.

- H. FORCE MAJEURE.** The Company shall not be responsible or liable for any loss, damages or delay caused by force majeure which is beyond the control of the parties to this Agreement, including but not limited to riot, insurrection, embargo, fire or explosion, the elements, acts of nature, epidemic, war, earthquake, flood or the official act of any government.

I. COMPLETE AGREEMENT. This Agreement constitutes and expresses the entire agreement between the parties hereto in reference to the services described in this Agreement for the City, and in reference to any of the matters or things herein provided for, or hereinbefore discussed or mentioned in reference to such services, all promises, representations and understanding relative thereto herein being merged.

IN WITNESS WHEREOF the parties hereto have executed this Agreement in El Paso, Texas effective as of the first date appearing heretofore.

[Signature page to follow]

STATE OF TEXAS)
)
COUNTY OF EL PASO)

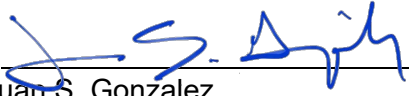
**PROFESSIONAL SERVICE AGREEMENT
FOR BASELINE PHYSICAL EXAMS FOR
FIREFIGHTERS FOR THE FIRE DEPARTMENT**

IN WITNESS WHEREOF, the parties have hereunto set their hands this _____ day of _____, 20__.

CITY:
CITY OF EL PASO:


Tomás González City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:



Claudia A. Garcia,
Interim Director

APPROVED AS TO CONTENT:



Jonathan Killings, Interim Fire Chief
El Paso Fire Department

COMPANY:

Occupational Health Centers of the Southwest,
P.A. dba Concentra Medical Centers

Name: _____

Title: _____

EXHIBIT A

Scope of Work

Background Information

The City of El Paso and International Association of Firefighters (IAFF), Local 51 agree it is in the best interest of its members to maintain the highest standards of safety and health possible in order to minimize accidents, injuries, illness, and death to fire fighters. The Collective Bargaining Agreement (CBA) entered into by the City of El Paso and the International Association of Firefighters, Local 51 provides for the establishment of mandatory annual baseline physicals for every uniformed employee of the fire department.

Purpose

The City of El Paso is soliciting proposals for Baseline Physical Exams for uniformed fire department employees. It is the desire of the City of El Paso to solicit proposals for baseline physicals in accordance with guidelines established in the CBA, and the Fire Service Joint Labor Management Wellness-Fitness Initiative, and NFPA 1582 Standard on Comprehensive Occupational Medical Program for Fire Departments. The City shall order all of its supplies and/or services from one or more successful bidders (contractors) from time to time as needed. Only personnel from the fire department are authorized to directly place orders against this Contract. Personnel from other City departments may only utilize this contract with expressed written authorization from the fire department and only if the additional usage is within reasonableness given the total awarded amount of the Contract.

Scope of Work and Minimum Requirements

I. Scope of Services

Baseline Screening and General Fitness Assessment

Contractor will devise, implement, and operate a program for performing Baseline Screenings and General Assessment for El Paso Firefighters.

VOLUME: The annual baseline screenings shall include a medical examination according to the following schedule:

- a) Ages 18-39: Every two (2) years (estimated number of participants = (496)
- b) Ages 40 and above: Every year (estimated number of participants = *(426)

LEVELS: Participants in age group "a" above, will be administered the Baseline Screening and General Fitness Assessment (Level I and III) annually. Participants in age group "b" above, will be administered the Baseline Screening, Comprehensive Examinations and General Fitness Assessment (Level I, II and III) annually.

*Included in this age group will be members of the Hazardous Materials Entry Team (estimated number of participants is forty-five (45) and persons that a physician deems Level II Examinations).

A. Baseline Screening (LEVEL I): The Contractor shall perform the following tasks in conducting Baseline Screening.

1. Health Risk Assessment (HRA)

A computerized analysis of personal and family health history and life styles habits. Each firefighter will receive a personalized HRA report to indicate his/her risk for coronary heart disease, diabetes, and other lifestyle diseases. This report must include a personal profile on the following:

- Blood Pressure
- Cholesterol – HDL= LDL= Total/HDL Ratio
- Triglycerides
- Glucose
- Cancer Risk

- Diabetes Risk
- Stress and Depression inventory/guidelines for improvement
- Cardiovascular assessment
- Strength profile and strength training tips
- Flexibility profile
- Body composition analysis
- Personal program goals for improving health and fitness
- Nutrition habits analysis/guidelines for improvement
- Exercise planner – (prescription)
 - To indicate recommended sessions per week and duration
 - Warm up and cool down
 - Cardiovascular – with target heart rate
 - Strength Training
 - Recreational activities
- A Management Summary Report: Aggregate report will be prepared on a quarterly basis and include an annual summary to be submitted to the Fire Chief within ten (10) days of the end of quarter and within twenty (20) days of the end of the year, respectively.
- A chest X-ray of personnel. This will be an optional “for use only” item by Fire Department Administration referral only.

2. Analysis of Personal and Family Health History and Lifestyle Risk Factors

Each firefighter will receive a complete analysis of personal and family health history and lifestyle habits. This report called, “The Heart Test” will list each firefighter’s risk for coronary heart diseases. A management summary report with a spreadsheet will be prepared on a quarterly and annual basis and submitted to the Fire Chief. The spreadsheet shall include the following:

- Data identifying the membership by gender and age categories (i.e. 29 and under, 30-39, 40 and over)
 - Body composition
 - VO2 max
 - Flexibility
 - Muscular endurance
- Phase I and Phase II status summaries shall be provided for each reporting period.

3. Blood Test

- SMAC-20
- Lipid Profile
- Complete Blood Count (CBC)
- A blood test will be performed for each firefighter utilizing SMA24 and such test shall include a Lipid Profile and a Complete Blood Count (CBC). PSA for male persons over the age of 40.
- CRP (C-reactive protein test)

4. Urinalysis (Routine)

Urinalysis will be performed for each firefighter, which will include the following test attributes:

Tests for specific gravity, PH, protein, glucose, blood, ketones, bilirubin, and urobilinogen.

5. Spirometry/Lung Function Screening

Spirometry/Lung Function Screening: A spirometry test will be performed for each firefighter to ascertain the measurement of lung volumes and capacities.

6. Resting Electrocardiogram (ECG)

Electrocardiogram (EKG): An EKG will be performed for each firefighter using twelve (12) leads to measure heart experiences during times of rest. This test will be monitored by a physician or exercise physiologist and compared to previous years ECGs.

7. Hearing Test

A hearing test will be performed for each firefighter. Contractor is responsible for the adequacy of the hearing test performed. The hearing test performed for each firefighter shall consist of the ear conduction screening for each ear.

8. Colorectal Screening

A colorectal screening kit will be provided to each firefighter forty (40) and over at the time of their baseline screening.

9. Eye Test

An eye test will be performed for each firefighter. The Contractor is responsible for the adequacy of the eye test performed. The eye test performed for each firefighter shall consist of visual Acuity screening for both far vision acuity and near vision acuity; eyes must be tested separately; color vision testing must be assessed using color plates, such as Ishihara plates; when peripheral vision evaluations are indicated, protocol specific to the test apparatus, not objects in the field, must be utilized.

10. Pap Smear Counseling (Females)

Female employees will be counseled on the importance of scheduling pap smears with their OB/GYN to screen for cervical inflammation or cervical cancer.

B. Comprehensive Examination (LEVEL II): The Contractor shall provide a licensed physician to monitor and prescribe the following as necessary (to include all elements in Basic Screening (Level I) and must be familiar with fire service job requirements and fit-for-duty expectations:

1. Medical examination by a physician (include all elements from Level I). Physician will go over all testing and exams with employee (to include blood test from Level I).
2. The stress test from Level III will be performed and supervised by a Physician.
 - a. Stress tests that result in abnormalities and fit the criteria for referral to a Coronary Calcium scan shall be handled by the physician monitoring the exam.
 - i. Attending physician shall work with a local hospital to expedite the results of the calcium screen.
 1. Estimated number of participants- 10 per year
3. Perform Blood Test: PSA (over age of 40)
4. Mammogram counseling for females over age 40. Female employees will be counseled on the importance of annual mammogram screening over the age of 40.

5. Heavy metal blood work. Optional “for use only” item by Fire Department Administration referral only. Contractor shall provide for this test upon request by the Fire Chief or his designee. Contractor may be required to test for Lead, Mercury, Cadmium, Arsenic and Antimony as the top five heavy metals encountered by firefighters leading to cardiac and respiratory events. Contractor may however, be required to test for Bismuth, Beryllium, Platinum, Nickel, Thallium, Thorium, Tin, Tungsten, and Uranium as well.
6. Interferon-Gamma Release Assays. Optional “for use only” item by Fire Department Administration referral only. Contractor shall provide for this test upon request by the Fire Chief or his designee following personnel exposure or suspicion of exposure to TB.
 - a. Vendor will administer Chest X-Ray to personnel who test positive on IGRA to confirm presence/ status of TB.

C. General Fitness Assessment (LEVEL III):

1. Submaximal Exercise Test, on treadmill, to evaluate cardiovascular endurance. This test must be heart rate monitored using at a minimum Wellness Fitness Initiative protocols (protocol will be provided to vendor).

The test shall determine:

- a) The estimated maximum oxygen uptake;
- b) The individual firefighter’s response to exercise;
- c) Percentage ranking by age group of the firefighter’s performance;
- d) The basis for a cardiovascular exercise prescription; and
- e) The basis for measuring improved aerobic capacity and the comparison to previous performance levels.

This test either will be monitored by an exercise physiologist or licensed physician.

2. Muscular Strength and Endurance Test: Each firefighter will be requested to perform a push up test, sit-up test and a flexibility test. These tests will provide an additional basis for the exercise prescription and compared to previous performance levels.
 - a) Push-Up Test: Each firefighter will perform their maximum number of push-ups, to fatigue, to determine upper body muscular strength and endurance. Each firefighter shall receive a percentage ranking by age of his or her test performance.
 - b) Sit-up Test: This test will be performed using YMCA protocol. Each firefighter will be requested to perform as many modified sit-ups as possible in a one-minute period. This test will provide an estimate of general muscular endurance. Each firefighter shall receive a percentage ranking by age of his or her test performance.
 - c) Flexibility Test: Each firefighter will be requested to complete a “sit and reach test”. The test is intended to provide an objective measure of flexibility for lumbar, hip and hamstring motion. Each firefighter shall receive a percentage ranking by age of his or her test performance.
3. At the completion of aforementioned testing, each firefighter shall receive an individual exercise prescription. The exercise prescription will be based on information and tests completed by each firefighter. The exercise prescription will suggest various exercises for each firefighter and suggest frequency, intensity, duration, and mode of exercise for improving cardiovascular endurance, muscular strength, and flexibility.

4. Additional tests, to be performed in order to more fully ascertain an individual firefighter's physical fitness, are delineated as follows:

Body Composition Analysis (BCA): to measure total body water, the BCA will provide a measurement of percentage of body fat, percentage of lean body weight, the individual's estimated metabolic rate, the ideal body fat range according to age, sex, height, weight, frame size, and activity level, and an estimate of caloric requirements.

5. All test results will be returned to each individual firefighter within two weeks after each task/test has been completed.

II. General Information

- A. Contractor shall perform all duties as specified under this contract with such reasonable care, skill and diligence as would be practiced by the medical and scientific community, as applicable, within the county of El Paso, Texas.
- B. The City will be obligated to honor a demand for payment for services rendered by the Contractor under the terms of this contract only if such demand for payment is made by the Contractor, and only if such demand for payment conforms to the rates for compensation as per award.
- C. At the termination of the contract, all medical records produced or obtained as a product of the contract will be forwarded to the City or such other place as the City may designate. All records will be forwarded within thirty (30) business days of contract termination.

III. Additional Requirements

- A. The proposer must specify the names and qualifications of all physicians who will be performing the examinations and shall be familiar with fire service job requirements and fit-for-duty expectations. Any additional doctors must be submitted to the City for approval prior to performing the examinations. The City will not pay for any physicals performed by physicians who do not have City approval.
- B. The contractor must be certified by the College of American Pathology or equivalent industry-sponsored board or governmental agency. Medical technicians must be directly supervised by an individual with a Ph.D. in chemistry. All other physiologists clinicians or healthcare providers contracted for administering the department's physical fitness program shall be familiar with fire service job requirements and fit-for-duty expectations
- C. The contractor must provide a minimum of two (2) parking spaces capable of accommodating two (2) fire trucks. Each space must be a minimum of 11 feet wide by 45 feet long.
- D. The contractor must provide examination rooms that are separate from other patients visiting for illnesses or other medical needs.
- E. Based on results obtained by the physicians, the exercise physiologist shall help design, administer, and monitor appropriate fitness programs in conjunction with fire department Peer Fitness Trainers for fire department personnel.
- F. Based on the physician's evaluation or upon referral by the Fire Chief, the contractor shall evaluate firefighters for a recommendation on fitness for duty or re-entry into the workforce from a significant injury or long term illness. Physicians shall prescribe a fitness or rehabilitation program utilizing the contractor's facilities incorporating the established criteria in NFPA 1582 and 1583.
 - a. Medical and Fitness Alerts:
 1. Type A (Yellow Flag Alert) – requires further intervention and may be referred to the individual's Personal Care Physician (PCP). The firefighter may seek a fitness prescription from the Contractor's physician or the PCP. Yellow Flag indicates the Firefighter has a health issue but

does not need to be taken off active duty. The Contractor under the direction of the licensed physician shall keep track of these Firefighters and make notification to the Fire Chief or his designee.

2. Type B (Red Flag Alert) – Immediate health threat to the Firefighter. Requires recommendation by the licensed physician that the Firefighter be pulled from active duty immediately. The Fire Chief or his designee shall be notified immediately.
- b. Firefighters receiving a Type A or B alert shall be provided a fitness prescription to be administered and monitored by the Contractor’s physiologist or the Department’s Peer Fitness Trainers.
 - c. By the 10th day of each month, a roster of all firefighters who received physicals the month prior will be e-mailed to the fire department’s Health and Safety Division. This roster will be alphabetized in EXCEL format (or other acceptable format) and will include personnel evaluated at all facilities. Additionally, the report will include the type (level) of physical that was performed.

IV. Confidentiality of Information

- A. All conversations between the firefighter and the Contractor in connection with the program and records maintained by the program shall be considered privileged as to the employee. When however, the Contractor has concluded that the firefighter constitutes a clear danger to himself/herself or others, Contractor shall immediately notify the Fire Chief or designee of such danger.
- B. This program shall not be construed as preventing the Fire Chief from requiring independent evaluation of a firefighter by an appropriate expert of the Fire Chief’s choice.
- C. Records regarding baseline physical shall be available to other physicians if the treated firefighter is involved in an emergency.
- D. The proposer shall keep the records for the life of the contract at which time they shall transfer all records back to the City. All physicals and tests are property of the City of El Paso and shall be treated as such throughout the life of the contract and during the transfer of such information upon termination of the contract.
- E. Proposers must follow regulations according to the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Proposer must sign the City’s HIPAA Business Associate Agreement.

EXHIBIT B

COMPENSATION

[ATTACHED]

A. Baseline Screenings and General Assessment Fitness - Level 1

ITEM #	TYPE OF SERVICE	ESTIMATED NUMBER OF LAB TESTS	UNIT PRICE PER TEST	TOTAL EXTENDED PRICE (NUMBER OF LAB TESTS X UNIT PRICE)
1	Health Risk Assessment (HRA)	450	\$53.50	\$24,075.00
2	Analysis of Personal and Family Health History and Lifestyle Risk Factors * Personal & Family Health History Analysis To Include "The Heart Test" ACSM Guidelines with Details and Cost on how Principles will be applied	450	\$0.00	\$0.00
3	Blood Test - * SMAC-20: * SMAC-24: * Lipid Profile: * Complete Blood Count (CBC): * CRP:	450	\$130.00	\$58,500.00
4	Urinalysis (Routine)	450	\$37.00	\$16,650.00
5	Spirometry/Lung/Function Screening (to include Physical Interpretation/Radiologist's Interpretation)	450	\$29.00	\$13,050.00
6	Resting Electrocardiogram	450	\$47.00	\$21,150.00
7	Hearing Test	450	\$30.00	\$13,500.00
8	Hemocult (In Center)	450	\$58.50	\$26,325.00
9	Eye Test	450	\$43.00	\$19,350.00
10	Pap Smear Counseling (Females)	10	\$0.00	\$0.00
11	Fire Fighter Physical	450	\$75.00	\$33,750.00
Six-month Estimated Total for Part A (Level1) (Items 1-10)			\$503.00	\$226,350.00

#2 - Included in the cost of the physical or Concentra will perform those services at no cost to the City.
 #10 - Pap smear counseling is considered part of the conversation during physical exam.
 Concentra will not perform the PAP exams at their facility.

B. Comprehensive Examinations - Level II

ITEM #	TYPE OF SERVICE	ESTIMATED NUMBER OF LAB TESTS	UNIT PRICE PER TEST	TOTAL EXTENDED PRICE (NUMBER OF LAB TESTS X UNIT PRICE)
1	Medical Exams performed by Licensed Physicians, (Include all elements from Level I – (consultation) <ul style="list-style-type: none"> • Health Risk Assessment (HRA) listed on Item 1, Page 12 & 13 • Analysis of personal and Family Health History and Lifestyle Risk Factors listed on Item 2, Page 13 • Blood Test, Item 3, Page 13 • Urinalysis, Item 4, Page 13 • Spirometry/Lung Function Screening, Item 5, Page 13 • Resting Electrocardiogram (ECG), Item 6, Page 14 • Hearing Test, Item 7, Page 14 • Colorectal Screening, Item 8, Page 14 • Eye Test, Item 9, Page 14 • Pap Smear Counseling (Females), Item 10, Page 14 	450	\$503.00	\$226,350.00
2	**Stress test-submaximal treadmill stress test (WFI Standard)	225		\$0.00
3	Calcium (included in CMP)	450	\$0.00	\$0.00
4	Blood Test (to include PSA over age of 40)	225	\$58.50	\$13,162.50
5	Mammogram Counseling for females over 40	6	\$0.00	\$0.00
6	Heavy Metal blood work (per FD Request)	450	\$153.00	\$68,850.00
7	TB Testing	450	\$66.00	\$29,700.00
8	Pulse	450	\$0.00	\$0.00
9	Respirations	450	\$0.00	\$0.00
10	**temperatures ears, eyes, nose, mouth, and throat	450	\$0.00	\$0.00
11	**Gastrointestinal system	450	\$0.00	\$0.00
12	**Respiratory System	45	\$0.00	\$0.00
13	**Cardiovascular System	450	\$0.00	\$0.00
14	**Dermatological System	450	\$0.00	\$0.00
15	**Genitourinary System	450	\$0.00	\$0.00

16	**Endocrine and Metabolic System	450	\$0.00	\$0.00
17	**Musculoskeletal System	450	\$0.00	\$0.00
18	**Neurological System	450	\$0.00	\$0.00
19	**Visual Acuity and Peripheral Vision Testing	450	\$0.00	\$0.00
Six-month Estimated Total for Part B (Level 2) (Items 1-19)			\$780.50	\$338,062.50

** Item 2 To be contract directly/Separately with El Paso Cardiology.

Items 5-19 - Included in the cost of the physical or Concentra will perform those services at no cost to the City.

C. General Fitness Assessment - Level III

ITEM #	TYPE OF SERVICE	ESTIMATED NUMBER OF LAB TESTS	UNIT PRICE PER TEST	TOTAL EXTENDED PRICE (NUMBER OF LAB TESTS X UNIT PRICE)
1	Sub-Maximal Exercise Test	<u>225</u>	<u>\$50.00</u>	<u>\$11,250.00</u>
2	Muscular strength and endurance test • Push-up test • Sit-up test • Flexibility test	<u>450</u>	<u>\$73.00</u>	<u>\$32,850.00</u>
3	Individual Exercise Prescription	<u>450</u>	<u>\$83.00</u>	<u>\$37,350.00</u>
4	Body Composition Analysis		<u>\$0.00</u>	<u>\$0.00</u>
Six-month Estimated Total for Part C (Level III) (Items 1-4)			<u>\$206.00</u>	<u>\$81,450.00</u>
Six-month Estimated Total for Part A, B and C			<u>\$1,489.50</u>	<u>\$645,862.50</u>

Item #4 - Included in the cost of the physical or Concentra will perform those services at no cost to the City.

TYPE OF SERVICE	
Rehabilitation Services (Section III - Additional requirements. Part F) • Fire department physician who is familiar with job requirements and for fit-for-duty expectations. • Current treatment methods for the most frequent job-related injury or illness for uniformed personnel. • Clinicians familiar with fire service job requirements and fit-for-duty expectations. • A transitional duty program. • Periodic re-evaluation prior to returning to full duty. • Personalized exercise prescription that considers job requirements and the individual's past medical history. • Comprehensive injury prevention program (Provide any additional rehabilitation services offered on a separate sheet)	
Cost Per Session	\$156.00

EXHIBIT C

BUSINESS ASSOCIATE AGREEMENT

[ATTACHED]

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into on _____, 20__ by and between the CITY OF EL PASO, TEXAS (“CITY”), as the Covered Entity, and Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers, (“BUSINESS ASSOCIATE”) by and through their duly authorized officials, in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information (“PHI”) and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as “HIPAA”). Covered Entity and Business Associate may be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, CITY has engaged BUSINESS ASSOCIATE to perform physical examinations and drug screenings on all police academy applicants, Police Department employees considered for reinstatement, and Police Department employees considered for admittance to the Hazardous Devices School; and

WHEREAS, CITY possesses individually identifiable health information that is defined in and protected under HIPAA, and is permitted to use or disclose such information only in accordance with HIPAA; and

WHEREAS, BUSINESS ASSOCIATE may receive such information from CITY, or create and receive such information on behalf of CITY, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, CITY wishes to ensure that BUSINESS ASSOCIATE will appropriately safeguard individually identifiable health information;

NOW THEREFORE, CITY and BUSINESS ASSOCIATE agree as follows:

A. HIPAA Terms

1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear, or as provided in (1)(h) to this Section.
 - a. **Agreement** shall refer to this document.
 - b. **Business Associate** means Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers

- c. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Sections 160 and 164, in effect, or as amended.
 - d. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined in 45 C.F.R. 164.501.
 - e. **Information** shall mean any “health information” provided and/or made available by the CITY to BUSINESS ASSOCIATE, and has the same meaning as the term “health information” as defined by 45 C.F.R. 160.102.
 - f. **Parties** shall mean the CITY and BUSINESS ASSOCIATE.
 - g. **Secretary** shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.
 - h. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164, in effect, or as amended: breach, data aggregation, designated record set, disclosure, health care operations, protected health information, required by law, subcontractor, and use.
2. **Limits on Use and Disclosure Established by Terms of Agreement.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2)(i).)
3. **Stated Purposes for which BUSINESS ASSOCIATE May Use or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from CITY for the following stated purposes: To provide public health, research, and related support services (service) to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)
4. **Use of Information for Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).

5. **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from CITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:
- a. The disclosure is required by law; or
 - b. The BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).
6. **Data Aggregation Services.** BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of CITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).

B. BUSINESS ASSOCIATE OBLIGATIONS:

- a. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the CITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
- b. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).
- c. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to CITY **within two (2) days of discovery** any use or disclosure of Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).
- d. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).
 - (i) 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2). In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS

ASSOCIATE with respect to such Information.

- e. **Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).
- f. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the CITY, amend or correct protected health information (PHI) in its possession or under its control.
- g. **Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F)).
- h. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(G)).
- i. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the CITY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).
- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Section B.3. of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).
- k. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(f)).
- l. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement of the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(e)(1)).
- m. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out

one or more of CITY'S obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY in the performance of such obligation(s).

- n. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.
- o. **Notice and Authorization Required for Electronic Disclosure of PHI.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.154, and any amendments of that section, regarding the requirement of providing notice to an Individual for whom the BUSINESS ASSOCIATE creates or receives protected health information if the Individual's PHI is subject to electronic disclosure.
- p. **State Law on Medical Records Privacy.** The BUSINESS ASSOCIATE shall abide by the requirements set forth in Texas Health and Safety Code Section 181.001 et. seq., and any amendments of that chapter.
- q. **Property Rights.** The Information shall be and remain the property of the CITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified Information, as a result of this Agreement.
- r. **Modifications.** The CITY and BUSINESS ASSOCIATE agree to modify this Business Associate Agreement, in order to comply with Administrative Simplification requirements of HIPAA, as set forth in Title 45, Parts 160 and 164, (Subparts A and E the "Privacy Rule" and Subparts A and C the "Security Rule") of the Code of Federal Regulations.
- s. **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Agreement shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

C. Term and Termination

- a. **Term.** The Term of this Agreement shall be effective as of the date this Agreement is executed and shall remain in effect for the same term as the Professional Service Agreement with Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers for services for the fire department or shall terminate on the date covered entity terminates for cause as authorized in paragraph (B.2.) of this Section, whichever is sooner.
- b. **Termination for Cause.** Upon the CITY's knowledge of a material breach by BUSINESS ASSOCIATE, the CITY shall:
 - i. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate if BUSINESS ASSOCIATE does not cure the breach

or end the violation within the time specified by the CITY.

- ii. Immediately terminate the Business Associate Agreement if BUSINESS ASSOCIATE has breached a material term of this Business Associate Agreement and cure is not possible.
- iii. Notify the Secretary of HHS if termination is not possible.

c. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, BUSINESS ASSOCIATE, with respect to protected health information received from CITY, or created, maintained, or received by BUSINESS ASSOCIATE on behalf of CITY, shall:

- i. Retain only that protected health information which is necessary for BUSINESS ASSOCIATE to continue its proper management and administration or to carry out its legal responsibilities;
- ii. Return to CITY, or, if agreed to by CITY, destroy, the remaining protected health information that the BUSINESS ASSOCIATE still maintains in any form and BUSINESS ASSOCIATE shall certify to the CITY that the Information has been destroyed;
- iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as BUSINESS ASSOCIATE retains the protected health information;
- iv. Not use or disclose the protected health information retained by BUSINESS ASSOCIATE other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section 1.e and 1.f above, which applied prior to termination; and
- v. Return to CITY or, if agreed to by CITY, destroy, the protected health information retained by BUSINESS ASSOCIATE when it is no longer needed by BUSINESS ASSOCIATE for its proper management and administration or to carry out its legal responsibilities.

d. **Survival.** The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.

e. **Remedies.** If CITY determines that BUSINESS ASSOCIATE has breached or violated a material term of this Agreement, CITY may, at its option, pursue any and all of the following remedies:

- i. Exercise any of its rights of access and inspection under Section A.7.e. of this Agreement;

Take any other reasonable steps that CITY, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or

ii. Terminate this Agreement immediately.

f. Injunction. CITY and BUSINESS ASSOCIATE agree that any violation of the provisions of this Agreement may cause irreparable harm to CITY. Accordingly, in addition to any other remedies available to CITY at law, in equity, or under this Agreement, in the event of any violation by BUSINESS ASSOCIATE of any of the provisions of this Agreement, or any explicit threat thereof, CITY shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section C.4. shall survive termination of the Agreement.

g. Indemnification. To the extent allowed and not otherwise prohibited by Texas law, BUSINESS ASSOCIATE shall indemnify, hold harmless and defend CITY from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of BUSINESS ASSOCIATE in connection with the representations, duties and obligations of BUSINESS ASSOCIATE under this Agreement. The parties' respective rights and obligations under this Section 5 shall survive termination of the Agreement.

D. Miscellaneous

1. Regulatory References. A reference in this Agreement to a HIPAA section means the section as in effect or as amended.

2. Amendment. CITY and BUSINESS ASSOCIATE agree that amendment of this Agreement may be required to ensure that CITY and BUSINESS ASSOCIATE comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of protected health information. CITY may terminate this Agreement upon 60 days written notice in the event that BUSINESS ASSOCIATE does not promptly enter into an amendment that CITY, in its sole discretion, deems sufficient to ensure that CITY will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between the parties and signed by duly authorized representatives of both parties.

3. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

4. Notices. Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party.

CITY: City of El Paso
Attn: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

With Copy to: City of El Paso
Attn: Fire Chief
416 N. Stanton, Suite 200
El Paso, TX 79901-1242

BUSINESS ASSOCIATE: Occupational Health Centers of the Southwest, P.A.
dba Concentra Medical Centers
Attn: Bianca Barrett
6320 Gateway East
El Paso, TX 79905

5. **Non-Waiver.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
6. **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
7. **Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws, with venue in El Paso County, Texas.
8. **Compliance with Laws.** BUSINESS ASSOCIATE agrees that its obligations pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, BUSINESS ASSOCIATE reserves the right to notify CITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
9. **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than CITY and BUSINESS

ASSOCIATE, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

11. **Entire Agreement; Counterparts.** This Agreement constitutes the entire Agreement between CITY and BUSINESS ASSOCIATE regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.

(Signatures follow on next page)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

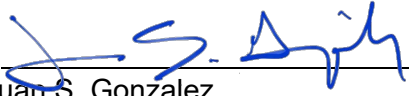
**PROFESSIONAL SERVICE AGREEMENT
FOR BASELINE PHYSICAL EXAMS FOR
FIREFIGHTERS FOR THE FIRE DEPARTMENT**

IN WITNESS WHEREOF, the parties have hereunto set their hands this _____ day of _____, 20__.

CITY:
CITY OF EL PASO:

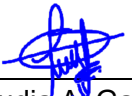
Tomás González City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:



Claudia A. Garcia,
Interim Director

APPROVED AS TO CONTENT:



Jonathan Killings, Interim Fire Chief
El Paso Fire Department

COMPANY:

Occupational Health Centers of the Southwest,
P.A. dba Concentra Medical Centers

Name: _____

Title: _____