

RESOLUTION

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

That the City Manager be authorized to sign a Professional Service Agreement for Psychological Examination and Services No. 2022-0545R for the Fire Department by and between the City of El Paso and Integrity Employee Assistance, Inc., dba WellConnect, a Texas Corporation for a term of 36 months from the effective date of the Agreement and an option to extend for an additional 24 months, which may be exercised by the City Manager administratively, to be compensated on a per examination basis, for an estimated contract amount of \$99,225.00 for the initial term and an estimated additional \$66,150.00 if the option to extend is exercised.

APPROVED THIS 3rd DAY OF Jan. 2023



ATTEST:

Laura D. Prine

Laura D. Prine, City Clerk

APPROVED AS TO FORM:

J. S. Gonzalez

Juan S. Gonzalez
Senior Assistant City Attorney

CITY OF EL PASO:

Oscar Leeser

Oscar Leeser, Mayor

APPROVED AS TO CONTENT:

K. Nicole Cote

K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:

Jonathan P. Killings

Jonathan P. Killings, Fire Chief
Fire Department

STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

**PROFESSIONAL SERVICE AGREEMENT
FOR PSYCHOLOGICAL EXAMINATION
SERVICES FOR THE FIRE
DEPARTMENT**

This psychological examination services agreement (this "*Agreement*") is entered into this 3rd day of January, 2023 (the "*Effective Date*") by and between the City of El Paso, a home rule municipal corporation (the "*City*"), and Integrity Employee Assistance, Inc., dba WellConnect, a Texas Corporation, (the "*Company*" or "*Contractor*").

RECITALS

WHEREAS, the City desires to engage the Company to provide professional psychological examination services in accordance with all applicable laws and procedures; and

WHEREAS, psychological examination services are considered as professional services pursuant to Chapter 2254 of the Texas Government Code;

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 through request for qualifications No. 2022-0545R.

WHEREAS, Company is willing and able to perform said psychological examination services for the Fire department; and

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

SECTION I. TERM. The effective date of this Agreement is 3rd January 2023 and will remain in effect thereafter for 36 months from the effective date of this Agreement. The term has an option to extend for an additional 24 months pursuant the same terms and conditions, which may be extended by the City Manager.

SECTION II. SCOPE OF SERVICES. The Company hereby agrees to perform the psychological examination services in accordance with the scope of work and attached herein as *Exhibit A* and incorporated herein by reference on an as needed basis. The scope of services shall be referred to collectively as "*Services*." The Services shall include, but are not limited to, pre-employment, reinstatement psychological exams and new relicensing requirement psychological exams for the Fire department.

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 Services shall be conducted by a state licensed doctoral level psychologist or psychiatrist.

SECTION III. COMPLETION OF SERVICES. The Service Provider understands that time is of the essence in completing the Services. Results of the psychological examination shall be reported to the Departmental Human Resources Manager, within two (2) business days upon completion of the examination date and shall not be disclosed to the examinee at the time of examination. Provider expressly understands and agrees that all results from the tests to be performed by the Provider under the terms and conditions of this contract shall at all times remain strictly confidential.

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 governmental 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. It shall obtain and pay for all licenses, permits and certificates required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Company warrants that it is duly authorized and licensed to perform its duties hereunder in each jurisdiction in which it will act. It further warrants that its employees, agents and subcontractors shall maintain all required profession licenses during the term of this Agreement. If the Company receives notice from a licensing authority of a suspension or revocation of a license of the Company's employee(s), agent(s) or subcontractor(s), the Company shall immediately remove such employee, agent or subcontractor from performing any further services under this Agreement until such license is reinstated and in good standing. If the Company fails to maintain such licenses or fails to remove any employee, agent or subcontractor who performs services under this Agreement whose license has expired or been revoked or suspended, the City shall be entitled, in its sole discretion, to immediately terminate this Agreement upon written notice to the Company.
- C. It warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona

fide established commercial or selling agencies maintained by the Company for the purpose of securing business. For breach or violation of this warranty, the City shall have the right in addition to any other right or rights to cancel this Agreement without liability and to deduct from the Agreement price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

SECTION VIII. COMPENSATION AND METHOD OF PAYMENT. The City shall pay the Service Provider for each psychological examination 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 Human Resources Division for each month in which Services are performed pursuant to this Agreement. Invoices shall not be submitted more frequently than once per month. All invoices, including late fee interest, shall be paid in accordance to Texas Government Code Chapter 2251. Applicants and employees in receipt of the Services shall not be invoiced for the Services.

SECTION IX. INDEPENDENT CONTRACTOR RELATIONSHIP. 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 examination records 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 XV. 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 XIV. 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 XV. 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: 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 St. #200
El Paso, TX 79901

COMPANY: Integrity Employee Assistance, Inc., dba WellConnect
Attn: Deborah Ontiveros
1600 Lee Trevino Ste C-7
El Paso, Texas 79936

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.

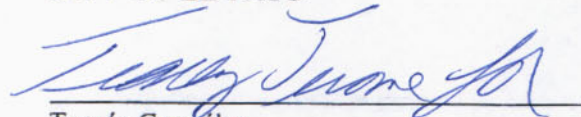
STATE OF TEXAS)
)
)
COUNTY OF EL PASO)

**PROFESSIONAL SERVICE AGREEMENT
FOR PSYCHOLOGICAL EXAMINATION
SERVICES FOR THE FIRE
DEPARTMENT**

(Signature page)

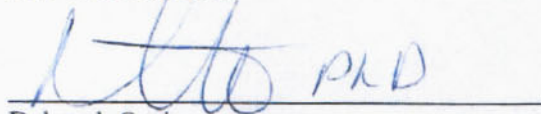
IN WITNESS WHEREOF, the parties have hereunto set their hands this 3rd day of January, 2023

CITY
CITY OF EL PASO



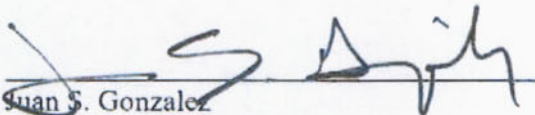
Tomás González
City Manager

Contractor
Integrity Employee Assistance, Inc.,
dba WellConnect



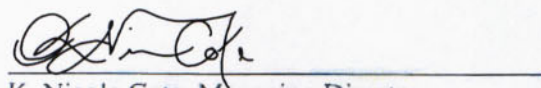
Deborah Ontiveros
President/Director

APPROVED AS TO FORM:



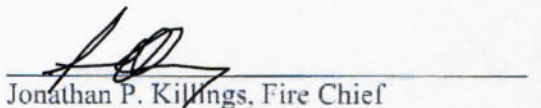
Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:



Jonathan P. Killings, Fire Chief
Fire Department

EXHIBIT A

SCOPE OF WORK

Scope of Work and Minimum Requirements

I. PSYCHOLOGICAL EXAMINATIONS

Scope of Services and Method of Compensation

- A. Provider will perform pre-employment psychological examinations (PEPE) on all candidates offered a conditional job offer, individuals being considered for reinstatement (as applicable), and candidates offered a conditional job offer for the Fire Communications Department (as applicable). Requests for exam appointments must be accommodated within fourteen (14) days of original request.
- B. The pre-employment psychological examination for Communications applicants must be sufficient to determine if the individual is in satisfactory psychological and emotional health to perform the duties, accept the responsibilities and meet the qualifications established by the El Paso Fire Department's job description (Attachment A).
- C. All psychological examinations for the El Paso Fire Department shall include:
 - a. In preparation for the clinical interview, review relevant background information which may include (but is not limited to) the duties, powers, working conditions, incidences, indiscretions, as well as other analytic information relevant to current or intended position.
 - b. Administer, supervise, and collect written test battery, which is to include an objective and job-related psychological assessment, consistent with established test administration standards. At least two instruments must be used: one which measures personality traits and one which measures psychopathology (example: MMPI-2 for FFDE, MMPI-2 and PAI for PEPE).
 - c. Retain responsibility to verify and interpret all written psychological test results in accordance with the publisher's recommendations.
 - d. A semi-structured, individual, face-to-face, clinical interview which allows sufficient time (30-minute minimum) to cover appropriate background, test results and clinical assessment.
 - e. Follow-up, referral, and/or collateral interviews with relevant third parties, if deemed necessary by the psychologist, EPFD.

Respondent should specify method and equipment to be used for written test battery and state qualifications of technicians who will administer tests. Additionally, the Respondent must guarantee that the test is administered as recommended by the manufacturer.
- D. Service Provider shall conduct evaluations, as necessary, through a counselor who is Board Certified and licensed by the State of Texas.
- E. The licensed physician conducting the pre-employment examination shall complete a L3 examination form (Attachment B) as provided by the City on each individual who passes for Fire Department, and return this form to the El Paso Fire Department's Departmental Human Resources Manager. For those individuals who do not pass, a written notice shall be submitted to the El Paso Fire Department's Departmental Human Resources Manager.

- F. Provider shall return all results of the psychological evaluation, as specified above, to the Departmental Human Resources Manager within 2 (two) business days upon completion of the examination.
- G. City shall not pay for any additional testing conducted without City's prior authorization.
- H. To uphold ethical standards of practice, the Provider will:
 - 1. Adhere to ethical principles and standards of psychological practice, throughout the totality of services with El Paso Fire Department.
 - 2. Maintain their duty to all parties in being fair, impartial, accurate and objective, along with honoring the parties' respective legal rights and interests.
 - 3. Make provisions for the security and confidentiality of all testing materials including materials that may be presented electronically. Provisions should also be made for the security of, access to psychological reports and raw data, including information stored or transmitted electronically.

Ensure informed consent by providing the examinee with:

- 1. An explanation of the nature and scope of the evaluation,
- 2. The limits of confidentiality, including any information, that may be disclosed to the employer without the examinee's authorization,
- 3. The party or parties who will receive the PEPE or FFDE report, and whether examinee will receive a report,
- 4. Other provisions consistent with legal and ethical standards for mental health evaluations conducted at the request of third parties.

Respondent shall maintain familiarity with employment law impacting the conduct of the PEPE's and FFDE's including but not limited to the American with Disabilities Act (ADA), along with other Federal, State, and Local laws applicable to employment practices.

- I. All results of psychological exams, as specified above, must be returned to the Departmental Human Resources Manager, within two (2) business days upon completion of the examination date and shall not be disclosed to the examinee at the time of examination. Provider expressly understands and agrees that all results from the tests to be performed by the Provider under the terms and conditions of this contract shall at all times remain strictly confidential.

II. GENERAL INFORMATION

- A. Form to be completed and signed by physician include Attachments B as applicable.
- B. Each applicant shall provide Provider with a waiver permitting Provider to disclose to the Departmental Human Resources Manager or her designee the results of such tests as must be as administered to such applicant under the terms and conditions of this contract.
- C. Provider 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.

- D. The City will be obligated to honor a demand for payment for services rendered by the Provider under the terms of this contract only if such demand for payment is made by the Provider, and only if such demand for payment conforms to the rates for compensation as per award.
- E. Provider shall ensure applicants and/or employees that undergo physical exams and drug screening are not in advertently billed for said exams.
- F. Provider shall perform services as per specifications and only as specified by the terms and conditions in this contract, for up to and including twenty-five (25) individuals per week upon reasonable notice from the City and send the results to the Departmental Human Resources Manager within two (2) days of the date of examination.
- G. 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 twenty-four (24) hours of contract termination.

III. ADDITIONAL REQUIREMENTS

- A. The offeror must specify the names and qualifications of all physicians who will be performing the examinations. Any additional doctors must be submitted to the City for approval prior to performing the examinations. The City will not pay for any psychological exams performed by physicians who do not have City approval.
- B. The Provider must be certified by a State, doctoral Level (PhD, PsyD) psychologist or psychiatrist, with expertise in clinical psychological assessment and testing, along with personnel evaluation using measures of normal personality characteristics, skills, and abilities. Relevant experience and training in psychological evaluations for public safety is required. Provider will provide the EPFD a copy of their documented education, training, and experience in the form of a curriculum vitae (CV).
- C. The offeror must specify how psychologists/psychiatrists will be kept fully informed of the City's standards, procedures and requirements and of any subsequent changes. Additionally, specify how doctors, if more than one, will consistently apply and interpret the City's requirements.

Should the offeror need to outsource any portion of the examinations, the bidder must first obtain City approval and ensure there is no additional cost or hardship to the City.

IV. INVOICING

- a. The Provider shall submit monthly invoices, in single copy, on each contract, within 15 days after the end of the billing cycle, to the El Paso Fire Human Resources Division; Attention: Monica Ontiveros. Invoices covering more than one contract will not be accepted.
- b. Invoices shall be itemized and transportation charges, if any, shall be listed separately.
- c. Invoices shall reflect the Contract Number and Purchase Order Number.
- d. Provider shall designate a contact person to address billing issues.
- e. The Contact person will respond to billing issues within twenty-four (24) hours, and shall have the authority to respond by taking corrective action or making necessary adjustments, if needed.
- f. Do not include federal, state, or City sales tax. City shall furnish tax exemption certificate if requested.
- g. Discounts will be taken from the date of receipt of services or date of invoice, whichever is later.

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- h. The City's obligation is payable only and solely from funds available for the purpose of this service. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to the Provider by the City.
 - i. Provider shall advise the City of any changes in its remittance addresses.

EXHIBIT B
COMPENSATION

ITEM	DESCRIPTION	PRICE
1.	Pre-Employment Exam	\$ <u>245.00</u>
2.	Reinstatement Psychological Exam	\$ <u>245.00</u>
3.	Candidate Offered a Conditional Job Offer	\$ <u>245.00</u>
4.	New Licensing Requirement Psychological Exam	\$ <u>245.00</u>
5.	Fitness for Duty Examination	\$ <u>450.00</u>
Grand Total: Items 1-5		\$ <u>1,430.00</u>

**EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT**

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 Integrity Employee Assistance, Inc., dba WellConnect, a Texas Corporation, ("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 psychological examination services for the Fire Department through a Professional Service Agreement;

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;

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 Integrity Employee Assistance, Inc., dba WellConnect, a Texas Corporation.

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)).
7. **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.
8. **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.
9. **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.
10. **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.

B. Term and Termination

1. **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 Services Agreement or shall terminate on the date covered entity terminates for cause as authorized in paragraph (B.2.) of this Section, whichever is sooner.
2. **Termination for Cause.** Upon the CITY's knowledge of a material breach by BUSINESS ASSOCIATE, the CITY shall:
- a. 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.
 - b. Immediately terminate the Business Associate Agreement if BUSINESS ASSOCIATE has breached a material term of this Business Associate Agreement and cure is not possible.
 - c. Notify the Secretary of HHS if termination is not possible.
3. **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:

- a. 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;
- b. 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;
- c. 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;
- d. 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
- e. 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.
- f. Survival. The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.

C. 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:

1. Exercise any of its rights of access and inspection under Section A.7.e. of this Agreement;
2. Take any other reasonable steps that CITY, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
3. Terminate this Agreement immediately.

4. **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.
5. **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

COPY TO: City of El Paso
Fire Chief
416 N. Stanton St. #200
El Paso, TX 79901

BUSINESS ASSOCIATE: Integrity Employee Assistance, Inc., dba WellConnect
Attn: Deborah Ontiveros
1600 Lee Trevino Ste C-7
El Paso, TX 79936

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)

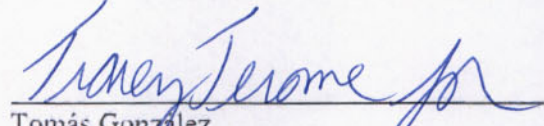
STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

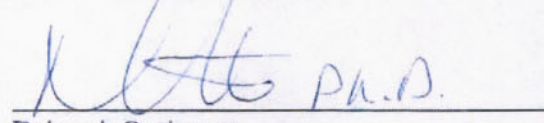
Signature Page

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the 3rd day of January, 2023

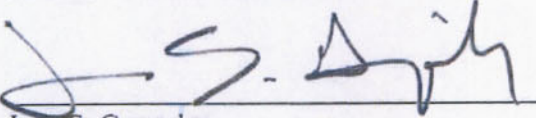
CITY OF EL PASO


Tomás González
City Manager

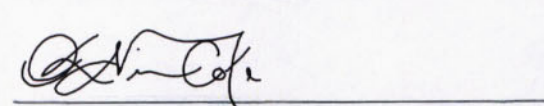
BUSINESS ASSOCIATE


Deborah Ontiveros
President/Director

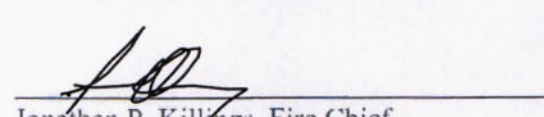
APPROVED AS TO FORM:


Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing

APPROVED AS TO CONTENT:


Jonathan P. Killings, Fire Chief
Fire Department