

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

AGENDA DATE: July 30, 2024
PUBLIC HEARING DATE: NA

CONTACT PERSON(S) NAME AND PHONE NUMBER:
Margarita M. Marin, Comptroller (915) 212-1174
K. Nicole Cote, Managing Director (915) 212-1092

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: No. 6 – Set the Standard for Sound Governance & Fiscal Management

SUBGOAL: 6.6 – Ensure continued financial stability and accountability through sound financial management, budgeting and reporting

SUBJECT:

Discussion and action on the award of Solicitation No. 2024-0412R Auditing Services- Grants to Forvis Mazars, LLP for a five- year contract for auditing services in conjunction with the City's annual audit for fiscal years 2024 through 2029, for an amount of \$1,738,550.00 for the term, for a total contract amount not to exceed \$1,738,550.00 is hereby approved; and

In addition, the City Manager or designee be authorized to sign an Agreement/Letter of Engagement for Professional Auditing Services ("Agreement) for the fiscal year ending August 31, 2024 and authorize the City Manager or designee to sign an Agreement for the subsequent four fiscal years subject to review by the City Attorney's Office, provided that there is no default and there are no material changes to the scope of work and compensation.

The Purchasing & Strategic Sourcing Department and the Office of the Comptroller recommend award as indicated to Forvis Mazars, LLP the highest ranked vendor.

BACKGROUND / DISCUSSION:

Forvis Mazars, LLP was one of four respondents to the City's Request for Qualifications ("RFQ") for auditing services for the fiscal year ending August 31, 2024 and includes additional fiscal years through August 31, 2029, for a total of five (5) years. A committee comprised of representatives from Office of the Comptroller and the City's Executive Staff ranked the firms prior to discussing price based on the RFQ process. Based on the evaluations of the proposals, the committee recommends Forvis Mazars, LLP to the Council.

SELECTION SUMMARY:

Solicitation was advertised on March 26, 2024 and April 2, 2024. The solicitation was posted on City website on March 21, 2024. There were a total eighteen (18) viewers online; four (4) proposals were received; none being local.

CONTRACT VARIANCE:

The difference based in comparison to the previous contract is as follows: An increase of \$263,550.00 for the term, which represents a 17.87% increase due to current market conditions for professional auditing services.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

NA

AMOUNT AND SOURCE OF FUNDING:

Amount: \$1,738,550.00

Funding Source: 210-521000-1000-13130

Account: General Fund

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? YES NO

PRIMARY DEPARTMENT: Office of the Comptroller

SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:



Margarita M. Marin, Comptroller, Office of the Comptroller

Project Form
Request for Qualifications

*****Posting Language Below*****

Please place the following item on the Consent Agenda for the City Council Meeting of July 30, 2024.

Strategic Goal 6 - Set the Standard for Sound Governance & Fiscal Management

The linkage to the Strategic Plan is subsection: 6.6 – Ensure continued financial stability and accountability through sound financial management, budgeting and reporting

Award Summary:

Discussion and action that the City Manager be authorized to sign Contract No. 2024-0412R Auditing Services and Grants for the Office of the Comptroller between the City of El Paso (“City”) and Forvis Mazars, LLP for auditing services for Office of the Comptroller for a five (5) year term from the effective date to be exercised by the City Manager or designee, for an estimated total cost of \$1,738,550.00 for the term; and that service provider is to be paid based on the services performed.

Contract Variance:

The difference based in comparison to the previous contract is as follows: An increase of \$263,550.00 for the term, which represents a 17.87%, increase due to the current market conditions for professional services.

Department:	Office of the Comptroller
Award to:	Forvis Mazars, LLP
City & State:	Dallas, TX
Item(s):	All
Initial Term:	5 Years
Option Term:	NA
Total Contract Time:	5 Years
Annual Estimated Award:	\$ 347,710.00
Initial Term Estimated Award:	\$1,738,550.00
Option Term Estimated Award:	NA
Total Estimated Award:	\$1,738,550.00
Account(s):	210– 1000 – 13130 – 52100
Funding Source(s):	General Fund
District(s):	All

This was a Request for Qualifications Procurement service contract.

The Purchasing & Strategic Sourcing Department and the Office of the Comptroller recommend award as indicated to Forvis Mazars, LLP the highest ranked offeror based on the evaluation factors established in the evaluation criteria for this procurement.

It is requested that the City Manager be authorized to establish the funding sources and make any necessary budget transfers and execute any and all documents necessary for execution of this award.

In accordance with this award, the City Manager or designee is authorized to exercise future options if needed

CITY OF EL PASO RFQ SCORESHEET

PROJECT: 2024-0412R Auditing Services- Grants

Evaluation of Submittal

	MAX POINTS	Forvis, LLP Springfield, MO	Carr, Riggs & Ingram, LLC Enterprise, AL	Weaver & Tidewell, LLP Fort Worth, TX	Moss Adams, LLP Seattle, WA
Factor A -General Overview of Firm and Services	20.00	17.75	17.75	17.50	18.00
Factor B - Experience in Professional Auditing Services	25.00	22.75	21.50	21.25	20.75
Factor C - Capacity and Capability of Firm's Resources	20.00	18.50	16.25	17.00	17.00
Factor D – Timeliness of Deliverables	10.00	9.50	8.50	8.00	7.75
Factor E – Number of hours dedicated to Engagement	10.00	9.75	8.00	8.00	8.00
Factor F – Comparable Contracts	10.00	9.00	9.50	10.00	0.00
Factor G – References	5.00	5.00	5.00	10.00	0.00
TOTAL SCORE	100	83.25	77.00	76.75	71.50
Rank		1	2	3	4



**CITY OF EL PASO
REQUEST FOR QUALIFICATIONS TABULATION FORM**



Bid Opening Date: May 1, 2024

Solicitation #: 2024-0412R

Project Name: Auditing Services - Grants

Department: OTC

OFFEROR'S NAME:	LOCATION:	AMENDMENT(S) ACKNOWLEDGED:
Carr, Riggs & Ingram, LLC	Enterprise, AL	YES
Forvis, LLP	Springfield, MO	YES
Moss Adams LLP	Seattle, WA	YES
Weaver and Tidwell LLP	Fort Worth, TX	YES
RFQs SOLICITED: 0 LOCAL RFQs SOLICITED: 0 RFQs RECEIVED: 4 LOCAL RFQs RECEIVED: 0 NO BIDS: 0		

NOTE: The information contained in this RFQ tabulation is for information only and does not constitute actual award/execution of contract.

Approved: /s/
Date: 5/2/2024

2024-0412R Auditng Services - Grants

<u>No</u>	<u>Participant Name</u>	<u>Response Date</u>	<u>Response Status</u>	<u>City</u>	<u>State</u>
1	Paso-Tex Industries LLC	04/16/2024	No Bid	El Paso	TX
2	Baker Tilly US, LLP		Viewed	Plano	TX
3	BerryDunn (Berry, Dunn, McN		Viewed	Portland	ME
4	Cabrillo Partners, LLP		Viewed	San Diego	CA
5	Carr, Riggs & Ingram LLC		Unsubmitted	Albuquerque	NM
6	CohnReznick LLP		Viewed	Bethesda	MD
7	ConstructConnect		Viewed	Cincinnati	OH
8	Employbridge		Viewed	Duluth	GA
9	Enigma Advisory		Viewed	Pflugerville	TX
10	FORVIS, LLP		Viewed	Dallas	TX
11	Hankins Eastup		Viewed	Denton	TX
12	In.Tune & Associates Inc.		Viewed	El Paso	TX
13	Macias Gini & O'Connell LLP		Viewed	Sacramento	CA
14	Pattillo, Brown & Hill, L.L.P.		Viewed	Waco	TX
15	Pwxpress		Viewed	Jacksonville	FL
16	Tidal Basin Government Const		Viewed	Utica	NY
17	Vander Weele Group		Viewed	Bannockburn	IL
18	Ximalli Security Solutions		Viewed	El Paso	TX

RESOLUTION

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

That the City Manager be authorized to sign Contract No. 2024-0412R Auditing Services - Grants for the Office of the Comptroller between the City of El Paso ("City") and Forvis Mazars, LLP for auditing services for the City of El Paso for a five (5) year term from the effective date, for an estimated, aggregated total cost of \$1,738,550; and that service provider is to be paid based on the services performed.

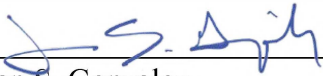
APPROVED this _____ day of _____ 2024.

CITY OF EL PASO:

Cary Westin
Interim City Manager

Linda D. Prine
City Clerk

APPROVED AS TO CONTENT:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing Department



Margarita M. Marin, Comptroller
Office of the Comptroller

STATE OF TEXAS)
)
)
)
COUNTY OF EL PASO)

**AGREEMENT FOR AUDITING SERVICES
FOR THE OFFICE OF THE COMPTROLLER WITH
FORVIS MAZARS, LLP.**

This Agreement for Auditing Services for the City of El Paso Office of the Comptroller (the “Agreement”) is entered into this ____ day of _____, 2024 (“**Effective Date**”), by and between the CITY OF EL PASO, a home rule municipal corporation of the State of Texas, (the “**City**”) and FORVIS MAZARS, LLP, a Delaware limited liability partnership, (the “**Service Provider**”).

WHEREAS, pursuant to the requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) and the State of Texas Uniform Grant Management Standards issued by the Texas Comptroller of Public Accounts, the City shall engage the service of an expert in auditing services to make available a single audit program to the Comptroller’s personnel covered by the conformity with Generally Accepted Auditing Standards in the United States of America (GAAS) and Governmental Accounting Standards Board (GASB) Standards; and

WHEREAS, the City solicited proposals for the services of auditing services for the City’s Office of the Comptroller Department through a request for qualifications (“**RFQ**”) No. 2024-0412R Auditing Services - Grants; and

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

WHEREAS, the City desires to engage the Service Provider to provide auditing services for the Office of the Comptroller Department personnel according to the specification of the RFQ and the Generally Accepted Auditing Standards in the United States of America (GAAS) and GASB Standards.

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 as stated above and will remain in effect thereafter for sixty (60) months from the effective date.

SECTION II. OTHER DOCUMENTS; CONFLICT. The following documents comprise this Agreement:

- A. City’s Request for Qualifications No. 2024-0412R (“**RFQ**”).
- B. Service Provider’s Proposal and Proposal Cost (“**Proposal**”).

- C. This Supplemental Agreement including all exhibits attached and incorporated to this Agreement.
- D. Service Provider's annual Engagement Letter.

The Engagement Letter(s), RFQ, and the Proposal are incorporated herein and made part of this Agreement for all purposes; provided, however, that in case of conflict in the language of the RFQ, the Proposal, and this Agreement, the terms and conditions of this Agreement shall control where they conflict with the Engagement Letters(s), RFQ, and Proposal, and the terms and conditions of the RFQ shall control where they conflict with the Proposal.

SECTION III. SCOPE OF SERVICES. The Service Provider hereby agrees to perform the requested auditing services in accordance with the specifications of the City's RFQ, (attached and incorporated hereto as *Exhibit A*), the Proposal submitted by the Service Provider in response to the RFQ (attached and incorporated hereto as *Exhibit B*), and Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) and the State of Texas Uniform Grant Management Standards issued by the Texas Comptroller of Public Accounts (attached and incorporated hereto as *Exhibit C*) pursuant to the terms and conditions set forth in the Contract Clauses of such RFQ and this Agreement. The scope of services identified within the RFQ 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 perform single audit services and reporting and Provide technical support to the City related to the implementation of new GASB standards or grant requirements to include training before implementing a new standard or grant requirement and direct access to expert opinions and guidance during the implementation. To meet the requirements of this request for qualifications, the audit shall be performed in accordance with generally accepted governmental auditing standards. The City intends to send the Comprehensive Annual Financial Report to the Government Finance Officers Association ("GFOA") to qualify for the Certificate of Achievement for Excellence in Financial Reporting no later than 180 days following the end of the fiscal year end. The CPA Firm shall review the comments from the previous year's submission to ensure the responses and corrective action are appropriate and provide comments to the City prior to issuing the audit opinion.

The scope of work outlines the requirements of the City for auditing services and reporting that is to be performed. The City will give notice in writing to the Service Provider of the changes of scope. The Service Provider and the City shall first agree in writing to the amendments to the scope of services before the amendment becomes part of this Agreement.

SECTION IV. NON-EXCLUSIVE AGREEMENT. This Agreement is non-exclusive. The City shall be entitled to enter into stress management service agreements with other properly selected individuals or businesses that qualify to provide stress management 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. REPRESENTATIONS OF THE SERVICE PROVIDER. In addition to the prerequisite qualifications required prior to entering into this Agreement, the Service Provider also agrees to comply with the following requirements:

- 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 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.
- C.** The City shall be informed of any changes to the Service Provider's personnel 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 VII. 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 VIII. COMPENSATION AND INVOICES. The City shall pay the Service Provider for each session of services at the rates set forth in the *Proposal Cost* attached hereto as *Exhibit D*. 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 and compliance with applicable competitive bidding laws and City policies. Said approval must be obtained in writing 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 Office of the Comptroller Department for each month in which auditing services are performed according to this Agreement. Invoices shall not be submitted more frequently than once per month. All invoices shall be made in writing and shall specify the number of sessions conducted by the type of services as provided in Section A of the RFQ. Invoices shall be delivered to the Comptroller.

SECTION IX. CONFIDENTIALITY OF RECORDS

The Service provider recognizes that it will receive health information as a result of this Agreement. Health information is defined as information provided and or made available by the City to the Service Provider and has the definition in 45C.F.R. 160.102. The Service Provider shall comply with 45 C.F.R. §164.502(e) and §164.504(e) governing protected health information 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 enter into the Business Associate Agreement with the City attached as *Exhibit E*. The Business Associate Agreement in Exhibit E shall govern the use and disclosure of the health information. Upon termination of this Agreement the Service Provider shall have the obligations with respect to the protected health information received from the City found in Section B.3 of Exhibit E.

SECTION X. INSPECTIONS AND AUDITS. The City reserves the right to inspect and audit the Service Provider's records. The Service Provider's records subject to review shall include but not be limited to records which, in the City's discretion, are connected with the Service Provider's work for the City and shall be open to inspection and subject to review and/or reproduction by the City's agent or its authorized representative to the extent necessary to adequately permit evaluation and verification of the Service Provider's compliance with Agreement requirements and to evaluate and verify all costs associated with services of this Agreement. The Service Provider agrees to provide the City with extracts of data files in computer readable format upon request by the City. Records review as described herein may require inspection and photocopying of selected documents from time to time at reasonable times and places. The Service Provider shall be required to keep such books and records available for such purposes **for at least five (5) years** after the 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 XI. REPORTS. The Service Provider shall provide written reports (“Utilization Reports”) to the Office of the Comptroller for the services rendered pursuant to this Agreement. The Utilization Report shall provide an analysis of the progress of the program and recommendations. Oral reports detailing the progress of the results of the financial and grants audits to the Finance Oversight and Audit Committee (FOAC), recommendations or suggestions from the FOAC shall be incorporated into the on-site presentation to the City Council. The presentation to City Council is generally scheduled within 4 weeks of the presentation to the FOAC. The presentations shall include professionally prepared reports. Reports for audits will be provided as outlined within the Scope of Work for this contract.

SECTION XII. INSURANCE REQUIREMENTS. With no intent to limit the Service Provider’s liability or the indemnification provisions set forth hereinafter, the Service Provider 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 Service Provider 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 Service Provider and the Service Provider’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 Service Provider or by anyone directly employed by the Service Provider. 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 Service Provider shall procure and maintain, at the Service Provider'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 Service Provider, 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, Errors and Omissions, 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. The Service Provider shall give written notice to the City's Purchasing Manager within fifteen (15) days of the date upon which total claims by any party against the Service Provider 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 Service Provider with the City's Purchasing Manager 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 & Strategic Sourcing Department
Attn: Managing Director
300 N. Campbell
El Paso, TX 79901

Notwithstanding the termination notice provisions in this Agreement, the failure of the Service Provider to provide the City's Purchasing Manager 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 Service Provider entitling the City, upon three (3) days written notice to the Service Provider 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 Service Provider, throughout the term of this Agreement, continuously and without interruption, maintain in force the required insurance coverage set forth above. Failure of the Service Provider to comply with this requirement shall constitute a default of the Service Provider allowing the City, at its option, to terminate this Agreement as referenced above.

SECTION XIII. TERMINATION OF AGREEMENT. In addition to those termination provisions otherwise provided herein, this Agreement may be terminated under any one of the following circumstances:

A. TERMINATION FOR CONVENIENCE: This Agreement may be terminated by the City 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 Service Provider shall cease all services under this Agreement. Upon such termination, the Service Provider shall provide a final invoice for all work completed prior to the City's notice of termination. The City shall compensate the Service Provider in accordance with this Agreement; however, the City may withhold any payment to the Service Provider for the purpose of set off until such time as the exact amount of damages due the City from the Service Provider 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 Service Provider 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, or as Service Provider determines its professional standards require. 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 Service Provider fails to maintain its licenses, certifications and other standards required to be a qualified Service Provider 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 Service Provider for the purpose of set off until such time as the exact amount of damages due the City from the Service Provider is determined.

SECTION XIV. INDEMNIFICATION. Service Provider or its insurer will INDEMNIFY, AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL THIRD- PARTY CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO THE EXTENT CAUSED BY SERVICE PROVIDER'S NEGLIGENT OR WILLFUL ACT OR OMISSION WHICH RESULT FROM SERVICES PERFORMED BY SERVICE PROVIDER PURSUANT TO THIS AGREEMENT. The City will not be responsible for any loss of or damage to the Service Provider's property from any cause.

SECTION XV. GENERAL PROVISIONS.

A. TIME IS OF THE ESSENCE. The Service Provider 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. SUCCESSOR AND ASSIGNS. The Service Provider 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 Service Provider if the Service Provider shall attempt to assign without prior written consent.

C. 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.

D. 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 her designee.

E. COMPLIANCE WITH LAW. The Service Provider shall comply with all Federal, State and local laws and ordinances applicable to the work contemplated herein.

F. 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: Office of the Comptroller
Attn: Comptroller
300 N Campbell
El Paso, Texas 79901

SERVICE PROVIDER: FORVIS, LLP
Attn: Rachel Ormsby
14241 Dallas Parkway, suite 1100
International Plaza 3
Dallas, TX 75254

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

G. FORCE MAJEURE. The Service Provider 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.

H. 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.


(Signatures Begin on Following Page)

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

CITY OF EL PASO:

Cary Westin
Interim City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing Department

APPROVED AS TO CONTENT:



Margarita M. Marin, Comptroller
Office of the Comptroller

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
 §
COUNTY OF EL PASO §

This instrument was acknowledged before me on this _____ day of _____, 2024,
by **Cary Westin**, as **Interim City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

(Signatures Continue on Following Page)

SERVICE PROVIDER

FORVIS MAZARS, LLP, a Delaware limited liability partnership

By: Rachel Ornsby
Printed Name: Rachel Ornsby
Title: Partner

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
 §
COUNTY OF Dallas §

This instrument was acknowledged before me on this 25th day of July, 2024, by Rachel Ornsby as Partner (title) of FORVIS MAZARS, LLP, a Delaware limited liability partnership.

Leigh A Phillips
Notary Public, State of Texas

My commission expires:
July 26, 2024



EXHIBIT A

RFQ NO. 2024-0412R

Auditing Services- Grants

A. SCOPE OF WORK:

I- SCOPE OF SERVICES

The City of El Paso is seeking a CPA Firm to audit the financial statements and express an opinion on the fair presentation of its basic financial statements in conformity with Auditing Standards Generally Accepted in the United States of America (GAAS) and GASB Standards. The auditor is required to perform a Single Audit of its grants in accordance with the requirements of Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance) and the State of Texas Uniform Grant Management Standards issued by the Texas Comptroller of Public Accounts.

The CPA Firm shall also:

- Provide technical support to the City related to the implementation of new GASB standards or grant requirements to include training before implementing a new standard or grant requirement and direct access to expert opinions and guidance during the implementation.
- Provide guidance on accounting and grant reporting matters not related to new implementations.
- 75% of the audit team must have 3 years or more experience auditing municipalities or governmental entities.
- Provide an audit plan no later than July 5 prior to the close of the fiscal year to be audited.
- Conduct and complete interim work by August 31 of the closing year.
- Provide the audit opinion no later than February 20th of each year being audited or 170 days after the year end.
- Produce the bound copies of the ACFR and SEFA/SESA reports utilizing the content delivered by City staff no later than 180 days after the year end. (minimum 20 copies)
- Upload the SEFA/SESA report to the Federal Audit Clearinghouse (FAC) no later than 170 days after the year end being audited.

- Submit all Agreed Upon Procedures and Compliance Audit to the City no later than 170 days after the close of the year.
- Spend no less than one month on site.
- Review bond documentation such Official Statements before any bond issuance as requested by the City.

A. Auditing Standards To Be Followed:

To meet the requirements of this request for qualifications, the audit shall be performed in accordance with generally accepted governmental auditing standards. The City intends to send the Comprehensive Annual Financial Report to the Government Finance Officers Association ("GFOA") to qualify for the Certificate of Achievement for Excellence in Financial Reporting no later than 180 days following the end of the fiscal year end. The CPA Firm shall review the comments from the previous year's submission to ensure the responses and corrective action are appropriate and provide comments to the City prior to issuing the audit opinion.

B. Reports To Be Issued:

The CPA Firm shall issue the ACFR, SEFA/SESA, and all other reports including the reports for the Agreed-Upon Procedures (AUP) and compliance audit, no later than 170 days following the close of the fiscal year.

On-site Presentations

The CPA Firm shall be onsite to present the results of the financial and grants audits to the Finance Oversight and Audit Committee (FOAC). Recommendations or suggestions from the FOAC shall be incorporated into the on-site presentation to the City Council. The presentation to City Council is generally scheduled within 4 weeks of the presentation to the FOAC. The presentations shall include professionally prepared reports.

Special Considerations

Irregularities and Illegal Acts

The CPA Firm shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the following parties:

- Chief Financial Officer
- Comptroller
- Internal Auditor
- City Attorney
- City Manager

Debt Issues

The City of El Paso currently anticipates it will prepare one or more official statements in connection with the sale of debt securities which will contain the general-purpose financial statements and the auditor's report thereon. The CPA Firm shall be required, if requested by the fiscal advisor and/or the underwriter, to issue a "consent and citation of expertise" as the auditor and any necessary "comfort letters."

Working Paper Access

A copy of any or all working papers will be provided to the City of El Paso - Office of the Comptroller upon request. Any requests from outside parties will be routed through the Office of the Comptroller and working papers may not be disclosed unless so approved by the Comptroller.

In addition, the firm shall respond to the reasonable inquiries of successor auditors and allow successor auditors to review work papers relating to matters of continuing accounting significance.

II ADDITIONAL REQUIREMENTS

In addition to the previous information described, the selected CPA Firm shall consider the following, based on their assessment, to further satisfy the needs of the OTC. In general, the CPA Firm shall submit to the City a brief description of the CPA firm, how it is organized, and how its resources will be utilized on behalf of the City. Additionally, the overview should include how the CPA Firm will approach the services that the firm may provide as the CPA Firm of the City.

The overview should also include, but not be limited to:

- Relevant experience of the firm and the individuals assigned to the engagement; Identification of the individual in charge of day-to-day management and the percentage of time committed for each individual on the engagement;
- The CPA's overall audit approach to the engagement, including the use of any outside entities upon whose work will be relied upon to complete the engagement;
- The percentage, if any, of the use of any outside entities upon whose work will be relied upon to complete the engagement;
- The availability of sources of information to assist the City in determining specific accounting and reporting issues that may arise during the engagement;
- The level and types of insurance carried, including the deductible amount, to cover errors and omissions, improper judgments, or negligence;

- Disclosure of any issues that could present a real or perceived conflict of interest, as well as any pending investigation of the CPA Firm or enforcement or disciplinary actions taken within the past three years by-the any regulatory bodies; and
- Include a copy of the CPA Firm’s most recent Peer Review.

All interested respondents must demonstrate the proven ability to provide a comprehensive description of the proposed establishment’s capabilities and strategies for conducting requested audit Agreed-Upon Procedures. The City of El Paso intends to enter into a formal agreement with a firm that proves to be the most qualified and has adequate experience in this type of service. The City of El Paso reserves the right to accept or reject any and all qualifications if it is in the best interest of the City.

The objectives as noted in the agreed upon procedures section are requested by the City of El Paso and shall be agreed upon and included in the proposals. These objectives, methods and logistics shall be reviewed by the Comptroller.

C. Working Paper Access

a. Request for Assistance

As requested by the Office of the Comptroller, the CPA Firm will provide assistance and information as necessary during the preparation of the audit of a fiscal year and during the course of the subsequent fiscal year as audit or accounting issues arise. In addition, the CPA Firm may be requested to respond to queries from outside agencies, such as granting agencies, and such requests may be responses in written form. Such assistance shall be provided to the City and should be taken into consideration at the time of price negotiation.

b. Audit Schedule

The Comptroller shall determine the audit schedule with assistance from the CPA Firm; however, a proposed audit schedule is provided in Attachment C for initial review in order to determine the CPA's firm resource capability. Deadlines shall be mutually agreed upon in order to deliver the auditor’s reports on the financial statements, grants audit, AUP’s and compliance audit no later than required as specified:

- Provide an audit plan no later than July 5th prior to the close of the fiscal year to be audited.
- Conduct and complete interim work by August 31 of the closing year.
- Provide the audit opinion no later than February 20th of each year being audited or 170 days after the year end.

- Produce the bound copies of the ACFR and SEFA/SESA reports utilizing the content delivered by City staff no later than 180 days after the year end. (minimum 20 copies)
- Upload the SEFA/SESA report to the Federal Audit Clearinghouse (FAC) no later than 170 days after the year end being audited.
- Submit all Agreed Upon Procedures and Compliance Audit to the City no later than 170 days after the close of the year.

II-B SERVICES OVERVIEW

State in succinct terms the firm's understanding of the services to be provided and the approach as presented in this document.

II-C PROPOSED AUDIT PLAN

Include a brief narrative description of the firm's organization and how the organization anticipates best being able to meet the specifications outlined herein in terms of methodology and solutions in performing the services described. The work plan should address the Additional Requirements requested in Part II.

II-D FEE SCHEDULES

Submittal must include a proposed fee schedule for providing the services outlined in the RFQ. For each year of professional services, the fee schedule shall include the annual cost of each component separately – the cost of the financial audit, cost of the grants audit, and cost of each AUP or compliance audit.

II-E OTHER DELIVERABLES

Provide a high quality, written document to illustrate a presentation to City Council or other governing body that the CPA Firm has prepared and presented.

Listing of no less than three (3) references of other engagements for which the CPA firm has performed similar auditing services for municipalities of comparable size and complexity.

Final proposal shall consist of five bound original copies for the review committee.

II-F CPA FIRM'S EXPERIENCE, PAST PERFORMANCE, FINANCIAL CAPABILITY AND LITIGATIONS

In addition to the information requested in Part I - E, describe any other experiences related to the work described in this RFQ. Describe any prior or pending litigation, either civil or criminal, involving a governmental agency or which may affect the performances of the services to be rendered in which the CPA Firm any of its employees or subcontractors or sub-consultants is or has been involved within the last three years.

EXHIBIT B

**FORVIS, LLP
PROPOSAL**

(See Solicitation)

EXHIBIT C

**Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements,
Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance)**

and

**State of Texas Uniform Grant Management Standards issued by the Texas Comptroller of
Public Accounts**

EXHIBIT D

Proposal Cost (See attached Negotiation Letter)

EXHIBIT E
BUSINESS ASSOCIATE AGREEMENT

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into on _____, 2024 by and between the CITY OF EL PASO, TEXAS (“CITY”), as the Covered Entity, and FORVIS MAZARS, LLP, a Delaware limited liability partnership (“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 provide Auditing Services - Grants through Contract No. 2024-0412R;

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 Forvis Mazars, LLP.

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 cooperate with Covered Entity 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 notify Covered Entity of the requested to 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 of Contract No. 2024-0412R, and shall terminate on the same date Contract No. 2024-0412R or 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, comply with its professional standards, 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 seek 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. BUSINESS ASSOCIATE shall indemnify, hold harmless and defend CITY from and against any and all third-party claims, losses, liabilities, costs and other expenses resulting from, or relating to, the negligent or willful 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
Attn: Office of the Comptroller
300 N. Campbell Street
El Paso, Texas 79901

BUSINESS ASSOCIATE: FORVIS MAZARS, LLP
Attn: Rachel Ormsby
14241 Dallas Parkway, suite 1100
International Plaza 3
Dallas, TX 75254

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)

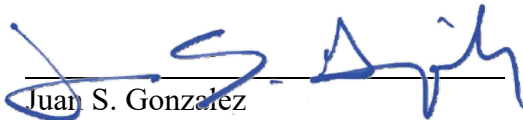
HIPAA BUSINESS ASSOCIATE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the _____ day of _____, 2024.

CITY OF EL PASO:

Cary Westin
Interim City Manager

APPROVED AS TO FORM:



Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:



K. Nicole Cote, Managing Director
Purchasing & Strategic Sourcing Department



Margarita M. Marin, Comptroller
Office of the Comptroller

SERVICE PROVIDER

FORVIS MAZARS, LLP, a Delaware limited liability partnership

By: Rachel Ormsby
Printed Name : Rachel Ormsby
Title: Partner