

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

AGENDA DATE: June 20, 2023

PUBLIC HEARING DATE: NA

CONTACT PERSON(S) NAME AND PHONE NUMBER:

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

K. Nicole Cote, Managing Director (915) 212-1092

DISTRICT(S) AFFECTED: ALL

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

SUBGOAL: 2.3 – Increase public safety operational efficiency

SUBJECT:

Discussion and action that the City Manager be authorized to sign an agreement to provide baseline physical exams services for the City's Fire Department between the City of El Paso ("City") and Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers; contract 2023-0117R Baseline Physical Examinations for Firefighters for a three (3) year initial term estimated award of \$3,523,200.00. The award is to include a two (2) year optional amount of \$2,348,800.00 for a total five (5) year award from the date this Agreement is approved by the City Council, for a total amount of \$5,872,000.00

BACKGROUND / DISCUSSION:

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

SELECTION SUMMARY:

Solicitation was advertised on December 20, 2022 and December 27, 2022. The solicitation was posted on City website on December 20, 2022. There were a total six (6) viewers online; Two (2) proposals were received; none from local suppliers. An Inadequate Competition Survey was conducted.

CONTRACT VARIANCE:

The difference based in comparison to the previous contract is as follows: An increase of \$2,364,160.32 for the initial term, which represents a 203.98% increase due to rising costs for services within the health care industry.

PROTEST

No protest received for this requirement.

PRIOR COUNCIL ACTION:

N/A

AMOUNT AND SOURCE OF FUNDING:

Amount: \$3,523,200.00

Funding Source: General Fund

Account: 521120-322-1000-22120-P2222

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? __X_ YES ___NO

2023-0117R Baseline Physical Examinations for Firefighters

PRIMARY DEPARTMENT: Fire Department
SECONDARY DEPARTMENT: Purchasing & Strategic Sourcing

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

DEPARTMENT HEAD:

Jonathan P. Killings, Fire Chief



**COUNCIL PROJECT FORM
(RFQ)**

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

Please place the following item on the **REGULAR** agenda for the Council Meeting of June 6,2023.

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

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

Discussion and action that the City Manager be authorized to sign an agreement to provide baseline physical exams services for the City's Fire Department between the City of El Paso ("City") and Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers; contract 2023-0117R Baseline Physical Examinations for Firefighters for a three (3) year initial term estimated award of \$3,523,200.00. The award is to include a two (2) year optional amount of \$2,348,800.00 for a total five (5) year award from the date this Agreement is approved by the City Council, for a total amount of \$5,872,000.00.

Contract Variance:

The difference based in comparison to the previous contract is as follows: An increase of \$2,364,160.32 for the initial term, which represents a 203.98% increase due to rising costs for services within the health care industry.

This is a request for qualifications, requirements contract.

The Purchasing & Strategic Sourcing and the Fire Departments recommend award as indicated to Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers, the highest ranked proposer based on the evaluation factors established for this procurement.

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

CITY OF EL PASO RFQ SCORESHEET

PROJECT: 2023-0117R Baseline Physical Examinations for Firefighters

*Evaluation of Submittal*Occupational Health
Centers of the
Southwest, P.A. dba
Concentra Medical
Centers
Addison, TXU.S. OCCMED TEXAS,
PLLC dba Nova Medical
Centers
Dallas, TX

MAX POINTS

Factor A - Staff Experience & Qualifications

30

24.80

22.80

Factor B - Scope of Services

20

16.20

12.80

Factor C - Number of psychologists available to perform examinations

15

10.00

10.00

Factor D - Location and availability of facilities

10

2.00

2.00

Factor E – Experience – Comparable Contracts

15

10.40

4.80

Factor F – References

10

10.00

0.00

TOTAL SCORE

100

73.40

52.40

Rank

1

2



CITY OF EL PASO
REQUEST FOR QUALIFICATIONS TABULATION FORM



Bid Opening Date: February 8, 2023

Solicitation #: 2023-0117R

Project Name: Baseline Physical Examinations for Firefighters

Department: Fire Department Headquarters

BIDDER'S NAME:	LOCATION:	AMENDMENT(S) ACKNOWLEDGED:
Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers	Addison, TX	Yes
U.S. OCCMED Texas, PLLC dba Nova Medical Centers	Dallas, TX	Yes
RFQs SOLICITED: 141 LOCAL RFQs SOLICITED: 45 RFQs RECEIVED: 2 LOCAL RFQs RECEIVED: 0 NO BIDS: 12		

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

Approved: _____/s/

Date: _____

2023-0117R Baseline Physical Examinations for Firefighters
View List

<u>Number of Viewers</u>	<u>Participant Name</u>	<u>Response Date</u>	<u>Response Status</u>	<u>Contact</u>	<u>City</u>	<u>State</u>
1	Nova Medical Centers (Nova Healthcare GA, LLC)	02/08/2023	Submitted	John Turner	Houston	TX
2	Concentra Medical (Occupational Health Centers of the SW)	02/06/2023	Submitted		El Paso	TX
3	Mattingly Low Vision, Inc	01/31/2023	No Bid	Elena King	El Paso	TX
4	City of El Paso Strategic Partners		Viewed	The Great Lupe	El Paso	TX
5	Deltak		Viewed	Source Management	Herndon	VA
6	Medicaleshop Inc.		Viewed	Abbas Ajmeri	New Milford	CT

RESOLUTION

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

THAT the City Manager be authorized to sign an agreement to provide baseline physical exams services for the City's Fire Department between the City of El Paso ("City") and Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers; contract 2023-0117R Baseline Physical Examinations for Firefighters for a three (3) year initial term estimated award of \$3,523,200.00. The award is to include a two (2) year optional amount of \$2,348,800.00 for a total five (5) year award from the date this Agreement is approved by the City Council, for a total amount of \$5,872,000.00.

APPROVED THIS _____ **DAY OF** _____ 2023.

CITY OF EL PASO:

Oscar Leeser, Mayor

ATTEST:

Laura D. Prine, City Clerk

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
El Paso Fire Department

STATE OF TEXAS)
)
 COUNTY OF EL PASO) **PROFESSIONAL SERVICE AGREEMENT
 FOR BASELINE PHYSICAL EXAMS FOR
 FIREFIGHTERS FOR THE FIRE DEPARTMENT**

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

RECITALS

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

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

WHEREAS, the City selected Company to provide the professional services on the basis of Company's demonstrated competence and qualifications to perform the services for a fair and reasonable price for 2023-0117R; and

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

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

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

AGREEMENT

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

SECTION I. TERM. The effective date of this Agreement is _____, 2023 and will remain in effect thereafter for (3) years from the effective date of this Agreement. City will have an additional 2-year option which City may exercise at its discretion.

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

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

Firefighters are scheduled for their annual physicals by their respective Battalion Chiefs in the Field Operations Division and by their Division Chiefs in the 40-hour sections of the Department. This ensures that supervisors can account for full compliance with the mandatory annual baseline physicals requirement as specified in the Collective Bargaining Agreement dated December 13, 2011.

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

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

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

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

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

- A. It will comply with all applicable federal, state, and local government laws, rules, regulations and all provisions of the City of El Paso Charter and the El Paso City Code, now existing or as may be amended, in the performance of its duties under this Agreement.

- B. The Service Provider, including each individual physician and all other healthcare providers employed by the Service Provider and performing the services for the City, shall at all times during the performance of this Agreement maintain the licenses, certifications required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Service Provider warrants that it is duly authorized and licensed to perform its duties hereunder in the jurisdiction in which it will act. It further warrants that its employees shall maintain all required professional licenses during the term of this Agreement. If the Service Provider receives notice from a licensing authority of a suspension or revocation of a license of the Service Provider's employee(s), the Service Provider shall immediately remove such employee from performing any further services under this Agreement until such license is reinstated and in good standing and within 72 hours, notify the City of such actions. If the Service Provider fails to maintain such licenses or fails to remove any employee who performs services under this Agreement whose license has expired or been revoked or suspended, the City shall be entitled, at its sole discretion, to immediately terminate this Agreement upon written notice to the Service Provider. It further warrants that its employees shall maintain all required professional licenses and/or certifications during the term of this Agreement. If the Service Provider receives notice from a licensing or certification authority of a suspension or revocation of a license or certification of the Service Provider's employee(s), the Service Provider shall immediately remove such employee from performing any further services under this Agreement until such license or certification is reinstated and in good standing and within 72 hours, notify the City of such actions. If the Service Provider fails to maintain such licenses or certifications or fails to remove any employee who performs services under this Agreement whose license or certification has expired or been revoked or suspended, the City shall be entitled, at its sole discretion, to immediately terminate this Agreement upon written notice to the Service Provider.
- C. All individual physicians who will perform the examination services and physiologist clinicians or healthcare providers who will administer the physical fitness program under this Agreement shall have knowledge of the fire service job requirements and fit-for-duty expectations according to Section 4.2 of the National Fire Protection Association's publication NFPA 1582: Standard on Comprehensive Occupational Medical Program/or Fire Departments and NFPA 1583: Standard on Health Related Fitness Programs for Fire Department Members. The Service Provider's Organizational Chart is attached hereto as Exhibit D. The City shall be informed of any changes to the Organizational Chart so that the City Manager may approve the qualifications of the different or additional Service Provider's personnel. Despite the City Manager's approval, the City shall in no event be obligated to any third party.
- D. The Service Provider shall not in any fashion discriminate in the performance of this Agreement against any person because of race, color, religion, national origin, sex, age, disability, political belief, sexual orientation or affiliation.

SECTION VIII. COMPENSATION AND METHOD OF PAYMENT. The City shall pay the Service Provider for each test and rehabilitation session conducted at the rates set forth in the

Proposal Cost attached hereto as Exhibit B. The Service Provider services shall be limited to those services delineated in the Section III of this Agreement. It is understood and agreed that the City shall not be liable for any costs that exceed the amount of this Agreement without the prior written approval of the City Manager and compliance with applicable competitive bidding laws and City policies. Said approval must be obtained prior to the Service Provider commencing the services that will result in the cost overrun.

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

The Service Provider shall submit a monthly invoice to the Fire Department for each month in which a baseline physical, general fitness assessments, and rehabilitation sessions are conducted according to this Agreement. Invoices shall not be submitted more frequently than once per month. The services are to be provided according to schedule in Exhibit C and Section III. All invoices shall be made in writing and shall specify the number of physicals and assessments conducted. Invoices shall be delivered to the Chief of Fire.

Compensation associated with the initial, 3-year term shall not exceed \$3,523,200. Should City exercise the 2-year option; the total amount of payments for this time period shall not exceed \$2,348,800. The maximum, aggregated amount of this Agreement shall not exceed \$5,872,000.

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

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

SECTION XI. INSPECTIONS & AUDITS. The City shall have the right to perform, or cause to be performed: (1) audits of the books and records of the Company; and (2) inspections of all places where work is undertaken in connection with this Agreement. The Company shall be

required to keep such books and records available for such purpose for at least five (5) years after its performance under this Agreement ceases. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

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

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

A. INSURANCES

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

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

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

\$1,000,000 for each person

\$1,000,000 in the aggregate

Property Damage

\$1,000,000 for each occurrence

\$1,000,000 in the aggregate

b) **Vehicle Liability Combined Single Limit**

\$1,000,000 per accident

B. PROFESSIONAL MEDICAL MALPRACTICE LIABILITY INSURANCE. The Company shall procure and maintain, at the Company's sole expense, Professional Medical Malpractice Liability Insurance for the benefit of the City to cover the professional medical malpractice 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, Professional Medical Malpractice, and Employer's Liability, must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.
- F. **MATERIAL CHANGE IN POLICY(IES).** Prior to any material change in any policy required herein, the City will be given sixty (60) days advance written notice by registered mail. Further, the City will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.
- H. **CANCELLATION.** Each policy must expressly state that it may not be canceled or non-renewed unless sixty (60) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Director by the insurance company. The Company shall also give written notice to the City's Purchasing Director within fifteen (15) days of the date upon which total claims by any party against the Company reduce the aggregate amount of coverage below the amounts required by this Agreement.
- I. **DELIVERY OF POLICIES.** The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by the Company with the City's Purchasing Director prior to beginning work under this Agreement, and thereafter before the beginning of each subsequent year of the term of this Agreement. Notices and Certificates required by this clause shall be provided to:

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

Notwithstanding the termination notice provisions in this Agreement, the failure of the Company to provide the City's Purchasing Director with the above proof of insurance prior to beginning work and thereafter prior to the beginning of each year of the term of

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

SECTION XIV. INDEMNIFICATION. THE COMPANY OR ITS INSURER SHALL INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS ELECTED OFFICIALS, AGENTS, EMPLOYEES, OFFICERS, DIRECTORS AND REPRESENTATIVES OF THE CITY, INDIVIDUALLY OR COLLECTIVE, FROM AND AGAINST ANY AND ALL COSTS, CLAIMS, LIENS, DAMAGES, LOSSES, EXPENSES, FEES, FINES, PENALTIES, PROCEEDINGS, ACTIONS, DEMANDS, CAUSES OF ACTION, LIABILITY AND SUITS OF ANY KIND AND NATURE, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR DEATH OF PROPERTY DAMAGE, MADE UPON THE CITY DIRECTLY ARISING OUT OF, RESULTING FROM OR RELATED TO THE COMPANY'S ACTIVITIES UNDER THIS AGREEMENT, 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, BROUGHT BECAUSE OF SUCH INJURIES OR DAMAGES RELATED TO OR ARISING OUT OF THE COMPANY'S ACTIVITIES UNDER THIS AGREEMENT. THE CITY, AT ITS ELECTION WILL HAVE THE RIGHT TO PARTICIPATE IN ANY SUCH NEGOTIATIONS OR LEGAL PROCEEDINGS TO THE EXTENT OF ITS INTEREST WITHOUT RELIEVING COMPANY OF ANY OF ITS OBLIGATIONS UNDER THIS PARAGRAPH. THE CITY WILL NOT BE RESPONSIBLE FOR ANY LOSS OF OR DAMAGE TO THE COMPANY'S PROPERTY FROM ANY CAUSE.

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

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

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

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

SECTION XVI. GENERAL PROVISIONS.

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

B. ADVERTISING. Neither party will advertise or publish, without the other party's consent, the fact that the City has entered into this contract, except to comply with proper requests for information from an authorized representative of the federal, state, or local government.

C. SUCCESSOR AND ASSIGNS. The Company shall not assign or attempt to convey an interest in this Agreement without the prior written consent of the City. This Agreement shall be terminable, at the discretion of the City, without notice to the Company if the Company shall attempt to assign without prior written consent.

D. VENUE. For purpose of determining place of Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and

shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, Texas.

- E. LEGAL CONSTRUCTION.** Every provision of this Agreement is severable, and if any term or provision hereof is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement. Where the context of the Agreement require, the singular shall include the plural and the masculine gender shall include feminine. Any reference to the City Manager in this Agreement shall mean the City Manager of the City of El Paso or his designee.
- F. COMPLIANCE WITH LAW.** The Company shall comply with all Federal, State and local laws and ordinances applicable to the work contemplated herein.
- G. NOTICE.** Any notice, demand, request, consent or approval that either party may or is required to provide to the other party be in writing and either personally delivered or sent via certified mail, return receipt requested, postage prepaid, to the following addresses:

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

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

COMPANY: Occupational Health Centers of the Southwest, P.A.
dba Concentra Medical Centers
Attn: Bianca Barrett
6320 Gateway East
El Paso, TX 79905
legalcontracts@concentra.com

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

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

I. COMPLETE AGREEMENT. This Agreement constitutes and expresses the entire agreement between the parties hereto in reference to the services described in this Agreement for the City, and

in reference to any of the matters or things herein provided for, or hereinbefore discussed or

mentioned in reference to such services, all promises, representations and understanding relative thereto herein being merged.

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

[Signature page to follow]

STATE OF TEXAS)
)
COUNTY OF EL PASO) **PROFESSIONAL SERVICE AGREEMENT
FOR BASELINE PHYSICAL EXAMS FOR
FIREFIGHTERS FOR THE FIRE DEPARTMENT**

IN WITNESS WHEREOF, the parties have hereunto set their hands this ____ day of

_____, 2023.

CITY:

CITY OF EL PASO:


Tomás González 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

APPROVED AS TO CONTENT:



Jonathan Killings, Fire Chief
El Paso Fire Department

COMPANY:

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

By:  Robert G. Hassett, DO, MPH _____
DocuSigned by:
6D1189CF35924C5...

Name: Robert G. Hassett, DO, MPH

Title: President, Treasurer & Corporate Secretary

EXHIBIT A

EXHIBIT B



Purchasing & Strategic Sourcing

MAYOR

Oscar Leaser

ELECTRONIC SUBMITTAL

April 27, 2023

CITY COUNCIL

District 1

Brian Kennedy

District 2

Alexsandra Anello

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Tommy Gonzalez

Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers Attn: Gary Beck

6320 Gateway East
El Paso, TX 79905

RE: Negotiation Letter – 2023-0259R Physical Examinations for Firefighters

Dear Mr. Beck,

The City of El Paso has evaluated the proposal that your company submitted in response to RFQ Number 2023-0259R Physical Examinations for Firefighters. It is my pleasure to inform you that, after the evaluation of proposals, we have selected Occupational Health Centers of the Southwest, P.A. dba Concentra Medical Centers, as the offeror to proceed to the "Negotiation Letter" phase of the contractor selection process.

Therefore, in accordance with Attribute 17 Evaluation and Award Process, Item #7 of the RFQ, we invite you to submit a Proposal Cost to the City of El Paso. Specific lists of requested items are shown on the following page. You must submit the Proposal Cost to the City of El Paso by e-mail or facsimile, on or before Friday April 28, 2023 by 5:00 p.m. MST to be considered for selection for the award of the contract.

This letter is an invitation to participate further in the RFQ process. This letter is intended to be a binding commitment to contract with your company, and the City of El Paso will be obligated in any manner until the City Council takes formal action to award a contract. Accordingly, all activities in furtherance of this process, including your compliance with the conditions set forth in this letter, are considered to be at your sole cost. Sincerely,

K. Nicole Cote

Managing Director, Purchasing & Strategic Sourcing

cc: Jesus E. Garcia, Fire Department
Bid File

(RNE:KNC)



Purchasing & Strategic Sourcing

MAYOR

Oscar Leaser

May 17, 2023

RE: Negotiation Letter 2 – 2023-0117R Baseline Physical Examinations for Firefighters
Page 2 of 8

CITY COUNCIL**District 1**

Brian Kennedy

District 2

Alexsandra Anello

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Tommy Gonzalez

PROPOSAL COST

- A. Baseline Screenings and General Assessment Fitness – Level I: Contractor will devise, implement, and operate a program for performing Baseline Screenings and General Assessment for El Paso Firefighters.

ITEM #	TYPE OF SERVICE	ANNUAL ESTIMATED NUMBER OF LAB TESTS (A)	UNIT COST PER TEST (B)	TOTAL ANNUAL COST (A X B = C)
1.	Health Risk Assessment (HRA)	1000	\$60	\$60,000
2.	Fire Fighter Physical - Analysis of Personal and Family Health History and Lifestyle Risk Factors • Personal & Family Health History Analysis To Include "The Heart Test" ACSM Guidelines with Details and Cost on how Principles will be applied	1000	\$75	\$75,000
3.	Blood Test • SMAC-20 • SMAC-24 • Lipid Profile • Complete Blood Count (CBC) • CRP	1000	\$130	\$130,000
4.	Urinalysis (Routine)	1000	\$37	\$37,000



Purchasing & Strategic Sourcing

MAYOR

Oscar Leaser

May 17, 2023

RE: Negotiation Letter 2 – 2023-0117R Baseline Physical Examinations for Firefighters
Page 3 of 8

CITY COUNCIL**District 1**

Brian Kennedy

District 2

Alexsandra Annello

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Tommy Gonzalez

ITEM #	TYPE OF SERVICE	ANNUAL ESTIMATED NUMBER OF LAB TESTS (A)	UNIT COST PER TEST (B)	TOTAL ANNUAL COST (A X B = C)
5.	Spirometry/Lung/Function Screening (to include Physical Interpretation/ Radiologist's Interpretation) Includes OSHA Questionnaire.	1000	\$70	\$70,000
6.	Resting Electrocardiogram	1000	\$48	\$48,000
7.	Hearing Test	1000	\$41.50	\$41,500
8.	Colorectal Screening (Over 40)	450	\$58.50	\$26,325
9.	Eye Test	1000	\$43	\$43,000
10.	Pap Smear Counseling (Females)	15	\$0.00	\$0.00
	Annual Estimated Total for Part A (Level 1) (Items 1-10)			\$530,825



Purchasing & Strategic Sourcing

MAYOR

Oscar Leaser

May 17, 2023

RE: Negotiation Letter 2 – 2023-0117R Baseline Physical Examinations for Firefighters
Page 4 of 8

CITY COUNCIL

District 1

Brian Kennedy

District 2

Alexsandra Anello

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Tommy Gonzalez

B. Comprehensive Examinations – Level II the ** on item 5-16 denotes they are to be included in the medical exam by the physician per Item 1.

ITEM #	TYPE OF SERVICE	ANNUAL ESTIMATED NUMBER OF LAB TESTS (A)	UNIT COST PER TEST (B)	TOTAL ANNUAL COST (A X B = C)
1.	Stress test-sub-maximal treadmill stress test (WFI Standard)	450	\$225	\$101,250
2.	Calcium Deposit	1000	\$0.00	\$0.00
3.	Blood test (to include PSA over age of 40)	450	\$58.50	\$26,325
4.	Mammogram counseling for females over 40	8	\$0.00	\$0.00
5.	Heavy metal blood work (per FD request)	1000	\$153	\$153,000
6.	TB Testing (T Spot) *** X-Ray Chest 1 view (Annual Chest X-Ray 1 View for TB Testing)***	1000 1000	\$157 \$59.50	<u>\$157,000</u>
7.	**Pulse	1000	\$0.00	\$0.00
8.	**Respirations	1000	\$0.00	\$0.00



Purchasing & Strategic Sourcing

MAYOR

Oscar Leaser

May 17, 2023

RE: Negotiation Letter 2 – 2023-0117R Baseline Physical Examinations for Firefighters
Page 5 of 8

CITY COUNCIL**District 1**

Brian Kennedy

District 2

Alexsandra Annello

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Tommy Gonzalez

ITEM #	TYPE OF SERVICE	ANNUAL ESTIMATED NUMBER OF LAB TESTS (A)	UNIT COST PER TEST (B)	TOTAL ANNUAL COST (C)
9.	**Temperatures ears, eyes, nose, mouth, and throat	1000	\$0.00	\$0.00
10.	**Gastrointestinal system	1000	\$0.00	\$0.00
11.	**Respiratory System	1000	\$0.00	\$0.00
12.	**Cardiovascular System	1000	\$0.00	\$0.00
13.	**Dermatological System	1000	\$0.00	\$0.00
14.	**Genitourinary System	1000	\$0.00	\$0.00
15.	**Endocrine And Metabolic System	1000	\$0.00	\$0.00
16.	**Musculoskeletal System	1000	\$0.00	\$0.00



Purchasing & Strategic Sourcing

MAYOR
Oscar Leeser

May 17, 2023

RE: Negotiation Letter 2 – 2023-0117R Baseline Physical Examinations for Firefighters Page 6 of 8

CITY COUNCIL

District 1
Brian Kennedy

District 2
Alexsandra Anello

District 3
Cassandra Hernandez

District 4
Joe Molinar

District 5
Isabel Salcido

District 6
Art Fierro

District 7
Henry Rivera

District 8
Chris Canales

CITY MANAGER
Tommy Gonzalez

ITEM #	TYPE OF SERVICE	ANNUAL ESTIMATED NUMBER OF LAB TESTS (A)	UNIT COST PER TEST (B)	TOTAL ANNUAL COST (A X B = C)
17.	**Neurological System	1000	\$0.00	\$0.00
18.	**Visual Acuity And Peripheral Vision Testing	1000	\$0.00	\$0.00
Annual Estimated Total for Part B (Level 2) (Items 1-18) ** (Items 7-18 are included in the Physical - Level 1, #2) *** Chest X-Ray 1 View for TB as directed by Clinician. Cost is not included in totals.)				<u>\$437,575</u>

C. General Fitness Assessment – Level III

ITEM #	TYPE OF SERVICE	ANNUAL ESTIMATED NUMBER OF LAB TESTS (A)	UNIT COST PER TEST (B)	TOTAL ANNUAL COST (A X B = C)
1.	Sub-maximal Exercise test	1000	\$50	\$50,000
2.	Muscular strength and endurance test <ul style="list-style-type: none"> • Push-up test • Sit-up test • Flexibility test 	1000	\$73	\$73,000
3.	Individual Exercise Prescription	1000	\$83	\$83,000



Purchasing & Strategic Sourcing

MAYOR

Oscar Leaser

May 17, 2023

RE: Negotiation Letter – 2023-0117R Baseline Physical Examinations for Firefighters
Page 7 of 8

CITY COUNCIL**District 1**

Brian Kennedy

District 2

Alexsandra Anello

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Tommy Gonzalez

ITEM #	TYPE OF SERVICE	ANNUAL ESTIMATED NUMBER OF LAB TESTS (A)	UNIT COST PER TEST (B)	TOTAL ANNUAL COST (A X B = C)
4.	Body Composition Analysis (BCA)	1000	\$0.00	\$0.00
	Annual Estimated Sub-total for Part C (Level III) (Items 1-4)			\$206,000
	Annual Estimated Total for Part A, B, and C (A+B+C)			\$1,174,400

Grand Total for Initial 3 years	\$3,523,200
---------------------------------	-------------



Purchasing & Strategic Sourcing

MAYOR

Oscar Leaser

May 17, 2023

RE: Negotiation Letter 2 – 2023-0117R Baseline Physical Examinations for Firefighters
Page 8 of 8

CITY COUNCIL**District 1**

Brian Kennedy

District 2

Alexsandra Anello

District 3

Cassandra Hernandez

District 4

Joe Molinar

District 5

Isabel Salcido

District 6

Art Fierro

District 7

Henry Rivera

District 8

Chris Canales

CITY MANAGER

Tommy Gonzalez

D. Rehabilitation Services (Section III – Additional Requirements, Item F)

TYPE OF SERVICE	
<ul style="list-style-type: none">• Fire department physician who is familiar with job requirements and for fit-for-duty expectations.• Current treatment methods for the most frequent job-related injury or illness for uniformed personnel.• Clinicians familiar with fire service job requirements and fit-for duty expectations.• A transitional duty program.• Periodic re-evaluation prior to returning to full duty.• Personalized exercise prescription that considers job requirements and the individual's past medical history.• Comprehensive injury prevention program (Provide any additional rehabilitation services offered on a separate sheet)	
Cost per Session	\$156.00

EXHIBIT C

EXHIBIT D

STATE OF TEXAS)
)
 COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

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

RECITALS

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

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

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

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

NOW THEREFORE, CITY and BUSINESS ASSOCIATE agree as follows:

A. HIPAA Terms

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

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

5. **Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from CITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:
 - a. The disclosure is required by law; or
 - b. The BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).
 6. **Data Aggregation Services.** BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of CITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).
- B. BUSINESS ASSOCIATE OBLIGATIONS:**
- a. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the CITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).
 - b. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).
 - c. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to CITY **within two (2) days of discovery** any use or disclosure of Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).
 - d. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).
- (i) 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2). **In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE** agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS

ASSOCIATE with respect to such Information.

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

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

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

C. Term and Termination

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

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

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

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

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

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

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

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

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

ii. Terminate this Agreement immediately.

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

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

D. Miscellaneous

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

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

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

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

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

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

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

5. **Non-Waiver.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
6. **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
7. **Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws, with venue in El Paso County, Texas.
8. **Compliance with Laws.** BUSINESS ASSOCIATE agrees that its obligations pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, BUSINESS ASSOCIATE reserves the right to notify CITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
9. **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.

10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than CITY and BUSINESS ASSOCIATE, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
11. **Entire Agreement; Counterparts.** This Agreement constitutes the entire Agreement between CITY and BUSINESS ASSOCIATE regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.

(Signatures follow on next page)

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

Signature Page

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the _____ day of _____, 20__.

CITY:

Tomás González City Manager

APPROVED AS TO FORM:

 _____

Juan S. Gonzalez
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

 _____

Jonathan Killings, Fire Chief
El Paso Fire Department

BUSINESS ASSOCIATE:

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

By:  _____
6D1189CF35924C5...

Name: Robert G. Hassett, DO, MPH

Title: President, Treasurer & Corporate Secretary