

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

DEPARTMENT: Police

AGENDA DATE: February 6, 2018

CONTACT PERSON/PHONE: Greg Allen, Chief of El Paso Police Department, 212-4305
Bruce D. Collins, Director of Purchasing & Strategic Sourcing, 212-1181

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: NO. 2: Set the Standard for a Safe and Secure City

SUBJECT:

That the City Manager be authorized to sign Contract No. 2018-007R Drug Testing & Alcohol Screening Services-Police Department between the City of El Paso ("City") and Norton Medical Industries, Inc. for drug and alcohol screening services for the Police Department's employees, for a thirty six (36) months term from the effective date and a two (2) year option to extend under the same terms, which may be exercised by the City Manager or his designee administratively, to be compensated on a per screening basis, for an estimated contract amount of \$88,836.00 for the initial term and an estimated total cost of \$148,060.00 if the option to extend is exercised.

BACKGROUND / DISCUSSION:

The El Paso Police Department and Purchasing and Strategic Sourcing Department have reviewed solicitation No. 2018-007R and recommend award to Norton Medical Industries.

SELECTION SUMMARY:

Solicitation was advertised on 8/29/2017 and 9/5/2017. The solicitation was posted on City website on 8/29/2017. The email (Purmail) notification was sent out on 8/31/2017. Item had a total of sixty (60) views. Total of thirty-nine (39) bidders were solicited; twenty-eight (28) local vendors. two (2) bids were received; one (1) was a local vendor. Inadequate competition survey was conducted.

PROTEST

No protest received for this requirement.

Protest received.

COUNCIL REPRESENTATIVE BRIEFING:

Was a briefing provided? Yes or No Routine
If yes, select the applicable districts.

- District 1
- District 2
- District 3
- District 4
- District 5
- District 6

- District 7
- District 8
- All Districts

PRIOR COUNCIL ACTION:

City Council approved contract 2013-283R Drug Testing and Alcohol Screening- Police Department to DDLS Group, LLC on October 8, 2013.

AMOUNT AND SOURCE OF FUNDING:

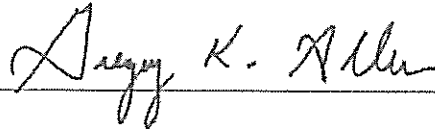
Amount: \$88,836 for an initial term of three years with an option to extend two years for an additional \$59,224.
Funding: 321-21030-1000-P2102-521120

BOARD / COMMISSION ACTION:

N/A

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

DEPARTMENT HEAD:



**COUNCIL PROJECT FORM
(RESOLUTIONS)**

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

Please place the following item on the **CONSENT** agenda (under **RESOLUTIONS**) for the Council Meeting of **FEBRUARY 6, 2018**.

STRATEGIC GOAL: NO. 2 – Set the Standard for a Safe and Secure City

That the City Manager be authorized to sign Contract No. 2018-007R Drug Testing & Alcohol Screening Services-Police Department between the City of El Paso (“City”) and Norton Medical Industries, Inc. for drug and alcohol screening services for the Police Department’s employees, for a thirty six (36) months term from the effective date and a two (2) year option to extend under the same terms, which may be exercised by the City Manager or his designee administratively, to be compensated on a per screening basis, for an estimated contract amount of \$88,836.00 for the initial term and an estimated total cost of \$148,060.00 if the option to extend is exercised.

Contract Variance:

The difference in cost, based on the comparison to the annual usage from the previous contract, is as follows: Cost per unit decreased and with the decrease of the unit pricing the City was able to add more services. The decrease resulted in an annual savings of \$1,048.00.



COMMITTEE SCORE SHEET
Request for Qualifications

SOLICITATION TITLE: DRUG TESTING AND ALCOHOL SCREENING

SOLICITATION NO: 2018-007R

EVALUATION CRITERIA

A. EXPERIENCE & QUALIFICATIONS
 (A1) Qualifications in performing specific job requirements stated
 (A2) Experience in management, technology, accounting, etc.
 (A3) Certified by the Substance Abuse and Mental Health Administration and the Department of Health and Human Services.
SUBTOTAL EVALUATION FACTOR A:

B. QUALITY OF RESPONSE
 (B1) Readability, completeness, understanding of project scope
 (B2) Adherence to response format requirements
SUBTOTAL EVALUATION FACTOR B:

C. RESSPONSE OF REFERENCES
SUBTOTAL EVALUATION FACTOR C:

D. SITES AND HOURS
 (D1) Number of collection sites available (15-point maximum) (5 Points per collection set up)
 (D2) On-site collection set up (15-point maximum) (5 Points per on-site collection set up)
SUBTOTAL EVALUATION FACTOR D:

Grand Total

| <u>WEIGHT</u> | <u>MAX POINTS</u> | DDLS GROUP, LLC | NORTON MEDICAL INDUSTRIES |
|----------------------|--------------------------|------------------------|----------------------------------|
| | | El Paso, TX | Van Nuys, CA |
| 20% | 20 | 20.00 | 20.00 |
| 15% | 15 | 14.67 | 14.67 |
| 15% | 15 | 15.00 | 15.00 |
| | 50 | 49.67 | 49.67 |
| 5% | 5 | 5.00 | 4.33 |
| 5% | 5 | 4.67 | 4.33 |
| | 10 | 9.67 | 8.67 |
| 10% | 10 | 10.00 | 6.00 |
| | 10 | 10.00 | 6.00 |
| 15% | 15 | 5.00 | 15.00 |
| 15% | 15 | 10.00 | 10.00 |
| | 30 | 15.00 | 25.00 |
| 100% | 100 | 84.33 | 89.33 |

CONCENTRA MEDICAL CENTERS
ATTN: CARLOS M RAMIREZ MD
6320 GATEWAY EAST BLVD
EL PASO TX 79925

TRICORE REFERENCE LABORATORIES
1001 WOODWARD PLACE NE
ALBUQUERQUE, NM 87102

OCCUPATIONAL TESTING CENTERS
ATTN: DR. HICKS
24326 MISSION BLVD. SUITE 3
HAYWARD, CA 94544

GATEWAY IND MEDICAL CLINIC
ATTN: BUSINESS OFFICE
6320 GATEWAY EAST BLVD
EL PASO TX 79905

ABMC
ATTN: ANNE BECKNELL
7680 VILLAGE ROAD
PARKER, CO 80134

PROVIDENCE MEMORIAL HOSPITAL
ATTN: BUSINESS OFFICE
2110 N OREGON STREET
EL PASO TX 79902

RIO VISTA REHABILITATION
ATTN: BUSINESS OFFICE HOSPITAL
1740 CURIE DRIVE
EL PASO TX 79902

PRINCETON BIOMEDICAL LABROATORIES
ATTN: PAUL CENTOFANTI
2921 NEW RODGERS ROAD
BRISTOL, PA 19007

EL PASO MEDICAL LABORATORY
ATTN: BUSINESS OFFICE
2616 N OREGON STREET
EL PASO TX 79902

ADVANCED TOXICOLOGY NETWORK
ATTN: HOLLY KULP
3560 AIR CENTR COVE SUITE 101
MEMPHIS, TN 38117

DDS
ATTN: JIM PATTERSON
7618 17TH AVENUE
BROOKLYN, NY 11214

INSTANT TECHNOLOGIES, INC.
ATTN: MARY HANAK
1121 ALSDORF ROAD
ENNIS, TX 75119

GENESIS DRUG SCREENS INC.
ATTN: SAMUEL ROMAN
P. O. BOX 13381
EL PASO TX 79913

RICHARD LABORATORIES INC.
ATTN: BUSINESS OFFICE
1601 BROWN STREET
EL PASO TX 79902

PATHOLOGY ASSOCIATES OF EP
ATTN: BUSINESS OFFICE
P. O. BOX 13405
EL PASO TX 79912

COMMUNITY MEDICAL CLINIC
9955 DYER STREET
EL PASO TX 79924

CONFIDENTIAL DRUG TESTING
ATTN: RICHARD ARGUELLES
2727 Wyoming Ave
EL PASO, TX 79903

DEL SOL LIFECARE CENTER
ATTN: DORIS ARCHER
10712 SAM SNEAD
EL PASO, TX 79935

HEALTH SCIENCES CENTER
TEXAS TECH INTERNAL CLINIC
4800 ALBERTA AVENUE
EL PASO TX 79905

FEAGIN, INC.
DBA DRUG TESTING CENTER
ATTN: DARRELL L. FEAGIN
P. O. BOX 4326
TALLAHASSEE, FL 32315

MEDICAL EXPRESS CORPORATION
ATTN: TAMMY SWAIN
3372 NE 17TH TERRACE
OCALA, FL 34479

SIERRA PROVIDENCE MEMORIAL
2001 N OREGON STREET
EL PASO TX 79902

BUS OFF LAB CLEARANCE GUIDES
AMERICAN DRUG TESTING
10137 MILAN STREET
EL PASO TX 79924

KROLL LABORATORY SPECIALISTS
ATTN: DOMINIQUE DELAGNES
2412 CRUISE DRIVE
GRAND PRAIRIE, TX 75054

FRANKLIN MEDICAL CENTER
836 E REDD ROAD
EL PASO TX 79932

MESA MEDICAL CLINIC
2030 N MESA STREET
EL PASO TX 79902

WESTSIDE URGENT CARE CENTER
ATTN: RENE R FLORES
601 SUNLAND PARK DRIVE
EL PASO TX 79912

LAS PALMAS LIFECARE CENTER
ATTN: DAVID TURNER
3333 N MESA
EL PASO, TX 79902

DENVER OCCUPATIONAL & AVIATION
MEDICINE CLINIC, PC
ATTN: SEAN TWEED
3700 HAVANA SUITE 200
DENVER, CO 80239

UNIVERSITY MEDICAL CENTER OF EL PASO
ATTN: LES RANKIN, DIRECTOR
4824 ALBERTA, 2ND FLOOR ANNEX
EL PASO, TX 79905

UNIVERSITY MEDICAL CENTER OF EL PASO
ATTN: JESUS MEDRANO, DIRECTOR
4824 ALBERTA, 2ND FLOOR ANNEX
EL PASO, TX 79905

FASTEST EL PASO
5734 TROWBRIDGE
EL PASO, TX 79925

GENESIS SUBSTANCE TESTING
7400 VISCOUNT
EL PASO, TX 79925

ACTDT
7501 LOCKHEED DR. SUITE D
EL PASO, TX 79925

RI-TECH DRUG & DNA TESTING
11551 CHITO SAMANIEGO
EL PASO, TX 79936

QUEST DIAGNOSTICS ELP
1810 MURCHISON DR. SUITE 240
EL PASO, TX 79902

TEXLAB DRUG TESTING
11501 CEDAR OAK
EL PASO, TX 79936

LABCORP
1700 E. CLIFF DR.
EL PASO, TX 79902

NOVA MEDICAL CENTERS
10961 GATEWAY BLVD. SUITE 100
EL PASO, TX 79935

RESOLUTION

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

That the City Manager be authorized to sign Contract No. 2018-007R Drug Testing & Alcohol Screening Services-Police Department between the City of El Paso ("City") and Norton Medical Industries, Inc. for drug and alcohol screening services for the Police Department's employees, for a thirty six (36) months term from the effective date and a two (2) year option to extend under the same terms, which may be exercised by the City Manager or his designee administratively, to be compensated on a per screening basis, for an estimated contract amount of \$88,836.00 for the initial term and an estimated total cost of \$148,060.00 if the option to extend is exercised.

ADOPTED this _____ day of _____ 2018.


THE CITY OF EL PASO

ATTEST:

Dee Margo,
Mayor

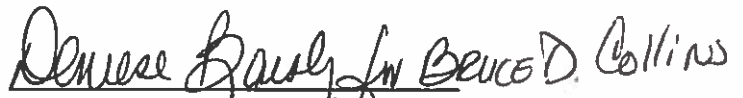
Laura D. Prine
Interim City Clerk

APPROVED AS TO FORM:




Leslie B. Jean-Pierre
Assistant City Attorney

APPROVED AS TO CONENT:



Bruce D. Collins, Director
Purchasing and Strategic Sourcing Dept.



Greg Allen, Chief of Police
El Paso Police Department

STATE OF TEXAS)
)
COUNTY OF EL PASO)

**DRUG TESTING AND ALCOHOL
SCREENING SERVICES AGREEMENT
FOR THE POLICE DEPARTMENT**

This drug testing and alcohol screening services agreement (this "*Agreement*") is entered into this _____ day of _____, 2018 (the "*Effective Date*") by and between the City of El Paso, a home rule municipal corporation (the "*City*"), and Norton Medical Industries, Inc. a California Corporation (the "*Company*").

RECITALS

WHEREAS, the City solicited qualifications for the provision of drug and alcohol screenings services of police department employees through a request for qualifications ("*RFQ*") No. 2018-007R Drug Testing & Alcohol Screening- Police Department; and

WHEREAS, the Company submitted a Proposal detailing the Company's qualifications, certifications, credentials, experience, and expertise to perform said testing services; and

WHEREAS, the City believes Company possesses the qualifications, certifications, credentials, experience, and expertise to perform said certification training services for the Police Department; and

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

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

AGREEMENT

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 _____, 2018 and will remain in effect thereafter for thirty six (36) months from the effective date with a two (2) year option to extend the Agreement by the City Manager.

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

- A. City's Request for Qualifications No. 2018-007R ("**RFQ**")
- B. Service Provider's Proposal ("**Proposal**").
- C. This Agreement.

The 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 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 Company hereby agrees to perform the drug and alcohol testing services in accordance with the scope of work and attached herein as *Exhibit A* and incorporated herein by reference. The scope of services shall be referred to collectively as "**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 Services shall be conducted in accordance with Substance Abuse & Mental Health Services and the College of American Pathologists and Forensic Drug Testing.

The alcohol and drug testing shall be performed in a laboratory certified by the Substance Abuse and Mental Health Services Administration College of American Pathologists and Forensic Drug Testing. At least one of the collection sites for the provision of Services shall be available on a twenty four (24) hour basis within the El Paso city limits. A Medical Review Officer ("**MRO**") shall review and report the test results to the City. The MRO shall be a licensed physician who is certified by the American Association of Medical Review Officers.

Service Provider shall provide the City's Police Department's Human Resources Division with training materials on substance and alcohol abuse as more fully described in Exhibit A.

SECTION IV. COMPLETION OF SERVICES. The Service Provider understands that time is of the essence in completing the Services. Unreasonable wait time for receipt of Services may be cause for termination pursuant to Section XVI of this Agreement. The parties agree that the City will not assess liquidated damages for the Service provided pursuant to this Agreement. Additionally, the Services provider shall report all test results in accordance with the procedure described in Exhibit A.

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

- A. It will comply with all applicable federal, state and local governmental laws, rules, regulations and all provisions of the City of El Paso Charter and the El Paso City Code, now existing or as may be amended, in the performance of its duties under this Agreement.
- B. It shall obtain and pay for all licenses, permits and certificates required by any applicable statute, ordinance, rule or regulation of any regulatory body having jurisdiction over the conduct of its operations hereunder. The Company warrants that it is duly authorized and licensed to perform its duties hereunder in each jurisdiction in which it will act. It further warrants that its employees, agents and subcontractors shall maintain all required professional licenses during the term of this Agreement. If the Company receives notice from a licensing authority of a suspension or revocation of a license of the Company's employee(s), agent(s) or subcontractor(s), the Company shall immediately remove such employee, agent or subcontractor from performing any further services under this Agreement until such license is reinstated and in good standing. If the Company fails to maintain such licenses or fails to remove any employee, agent or subcontractor who performs services under this Agreement whose license has expired or been revoked or suspended, the City shall be entitled, in its sole discretion, to immediately terminate this Agreement upon written notice to the Company.
- C. It warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Company for the purpose of securing business. For breach or violation of this warranty, the City shall have the right in addition to any other right or rights to cancel this Agreement without liability and to deduct from the Agreement price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

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

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

SECTION XI. 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 XII. 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 XIII. 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. All medical records produced or obtained as a product of this Agreement shall be delivered to the City if the term of this Agreement ends or is terminated pursuant to Section XVI of this Agreement.

SECTION XIV. 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**

\$1,000,000.00 Per Occurrence
\$2,000,000.00 General Aggregate
\$2,000,000.00 Products/Completed Operations Aggregate
\$1,000,000.00 Personal and Advertising Injury

Personal Injury or Death & Property Damage

\$1,000,000.00 per occurrence combined single limit for bodily injury and property damage.

General Aggregate

\$1,000,000.00
\$1,000,000.00 per occurrence

b) **AUTOMOBILE LIABILITY**

Combined Single Limit
\$1,000,000.00 per accident

B. ERRORS AND OMISSIONS LIABILITY INSURANCE. The Company shall procure and maintain, at the Company's sole expense, Professional Liability Insurance (Such as errors and omissions insurance) for the benefit of the City to cover the errors and omissions of the Company,

its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000) on a claims made basis.

C. FORM OF POLICIES. The insurance required herein may be in one or more policies of insurance, the form of which must be approved by the City's Risk Manager.

D. ISSUERS OF POLICIES. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the City's Risk Manager in his sole discretion as to conformance with these requirements.

E. INSURED PARTIES. Each policy, except those for Workers' Compensation and Employer's Liability, must name the City of El Paso (and their elected and appointed officials, officers, agents and employees) as Additional Insured parties on the original policy and all renewals or replacements during the term of this Agreement.

F. MATERIAL CHANGE IN POLICY(IES). Prior to any material change in any policy required herein, the City will be given sixty (60) days advance written notice by registered mail. Further, the City will be immediately notified of any reduction or possible reduction in aggregate limits of any such policy where such reduction, when added to any previous reductions, would exceed twenty-five percent (25%) of the aggregate limits.

H. CANCELLATION. Each policy must expressly state that it may not be canceled or non-renewed unless sixty (60) days advance notice of cancellation or intent not to renew is given in writing to the City's Purchasing Director by the insurance company. The Company shall also give written notice to the City's Purchasing Director within fifteen (15) days of the date upon which total claims by any party against the Company reduce the aggregate amount of coverage below the amounts required by this Agreement.

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

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

Notwithstanding the termination notice provisions in this Agreement, the failure of the Company to provide the City's Purchasing Director with the above proof of insurance prior to beginning work and thereafter prior to the beginning of each year of the term of this Agreement, shall constitute a default on the part of the Company entitling the City, upon three (3) days written notice to the Company to terminate this Agreement. This default provision shall also apply to the proof of

insurance requirements under circumstances where a policy is canceled or expires during a given year of the Agreement. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that the Company, throughout the term of this Agreement, continuously and without interruption, maintain in force the required insurance coverage set forth above. Failure of the Company to comply with this requirement shall constitute a default of the Company allowing the City, at its option, to terminate this Agreement as referenced above.

SECTION XV. INDEMNIFICATION. The Company or its insurer shall indemnify, hold harmless, and defend the City, its elected officials, agents, employees, officers, directors and representatives of the City, individually or collective, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal injury or death of property damage, made upon the City directly arising out of, resulting from or related to the Company's activities under this Agreement for Third Party Claims Administration and Medical Cost Containment, including any act or omission by the Company, its agents, employees or subcontractors while in the exercise of performance of the rights or duties under this Agreement, all, without however, waiving and governmental immunity available to the City. The provisions of this indemnification are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity. Without modifying the conditions of preserving, asserting, or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to the Company every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. In addition, the Company shall promptly advise the City in writing of any claim or demand against the City or the Company known to the Company related to or arising out of the Company's activities under this Agreement. The Company will: 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Company may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. The Company will pay all judgments finally establishing liability of the City in actions defended by the Company pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by the Company, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving Company of any of its obligations under this paragraph. The City will not be responsible for any loss of or damage to the Company's property from any cause.

SECTION XVI. 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 and the Company 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 XVII. 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: El Paso Police Department
Attn: Chief of Police
P.O. Box 1890
El Paso, Texas 79950-1890

COMPANY: Norton Medical Industries Inc.
Attn: President
6265 Sepulveda Boulevard Suite 13
Van Nuys, CA 91411

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]

**EXHIBIT A
SCOPE OF WORK**

SCOPE OF WORK

Scope of Work and Minimum Requirements

The City of El Paso is soliciting request for qualifications to provide drug and alcohol testing for Police Personnel. The Police Department will require urine, blood & hair drug screens as well as breath alcohol tests conducted in accordance with Substance Abuse & Mental Health Service Administration College of American Pathologists and Forensic Drug Testing (SAMHSA/CAP FUDT).

General

I. Scope of Services

- A. Testing shall be conducted for reasonable suspicion, critical incident, random, post-fire arm discharge and post-accident, as requested by the City of El Paso. Attached is the El Paso Police Department Drug & Alcohol Testing Policy.

Students and Trainees of the Contractor are forbidden to work on company specimens.

Charge to include all data management, collection, chain of custody, testing, and storage procedures, Medical Review Officer (MRO), and any other services, materials, equipment or other expense, duty or obligation of the Contractor, its assignees, delegates, independent contractors, or other parties acting on behalf of the Contractor, in the performance of drug and alcohol screening.

Contractor shall provide alcohol and drug testing on a twenty-four (24) hour basis. Contractor must have the ability to drive to a specific site to conduct breathalyzer test(s)/obtain urine samples, hair samples; as well as provide a site an employee can be transported to. Contractor shall also specify the time from the arrival of the employee to the time the breathalyzer test is conducted, i.e. 10 minutes, 20 minutes, etc.

1. Certified Laboratory - The testing laboratory must be certified by the Substance Abuse and Mental Health Service Administration College of American Pathologists and Forensic Drug Testing (SAMHSA/CAP FUDT).
2. EMIT Test
 - a. The FDA approved EMIT TEST (Enzyme-Multiplied Immunoassay Method) must be used to test participants' urine sample
 - b. All positive (EMIT) results must be confirmed with the Gas Chromatography/Mass Spectrometry Test (GC/MS).
3. Collection Sites and Hours - Contractor shall furnish at least one collection site within the El Paso City limits which must be available on

a twenty-four (24) hour basis. The locations and hours of all collection sites must be provided. Changes to hours of operation or the location of such sites must be available to the City within twenty-four (24) hours. Contractor must have the ability to drive to a specific site to conduct breathalyzer test(s)/obtain urine samples, blood, and hair samples, if requested.

a. Contractor shall furnish a certified Medical Review Officer (MRO) review and reporting service. Medical Review Officer must be a licensed physician who is certified by the American Association of Medical Review Officers.

b. Contractor shall guarantee a maximum waiting time of no longer than fifteen (15) minutes. Additionally, continuous delays in the time it takes to test employees may result in termination of the contract.

4. Testing

Testing may entail 10 or 5 panel testing, anabolic steroid testing and alcohol testing and may consist of hair follicle, breath, urine or blood analysis as indicated in the attached El Paso Police Department Drug & Alcohol Testing Policy for reasonable suspicion, critical incident, random, post-firearm discharge and post-accident. The El Paso Police Department Drug & Alcohol Testing Policy is subject to changes.

5. Training

Contractor shall provide to the Police Department's Human Resources Division, training materials on substance and alcohol abuse, the method of drug/alcohol testing to be conducted by Contractor and the supervisor's role. All training materials must meet SAMHSA training requirements and specifications.

Additionally, contractor shall provide training and information on Federal SAMHSA updates and changes to Drug and Alcohol testing program requirements. Contractor shall conduct said training bi-annually or as deemed necessary by the Police Department's Human Resources Division.

6. Contractor shall furnish all supplies needed for the collection kits and shipping material to include SAMHSA Custody and Control Form.

7. Contractor shall furnish transportation of specimen to the SAMHSA certified laboratory.

8. Contractor shall furnish a computer generated unbiased random testing and record maintenance program.

9. Contractor shall provide records/results storage and administration of test.

10. Contractor shall provide storage of sample for one year from date of administration of the test

11. Reports - Contractor shall provide all required SAMHSA reporting to include annual statistical report, (Monthly, quarterly and annual reports).

12. Updates and Management - Contractor shall also provide regulation compliance updates and management.

13. Reporting of Test Results

- a. The Contractor shall report all test results using a signed and dated legible photocopy of Copy 2 of the Custody and Control Form (CCF). All negative test results verified by the MRO shall be reported on the same day or next business day of said verification. All other results (including positive test results, adulterated or substituted specimen results, and refusal to test) shall be reported on the same day or next business day of verification by the MRO. Additionally, positive results shall follow the proper procedures using MRO and DOT. A hard copy of all results shall be transmitted to the City of El Paso within two days of verification. Transmission of results may occur by fax, courier, mail or electronic form. The Contractor shall report positive results only to the Police Department's Human Resources Manager or designated employer representative.
- b. If a drug analysis indicates the positive presence of a controlled substance, the MRO or his/hers designee will be responsible for contacting the employee in person or by telephone and conducting an interview with the employee to determine if there is an alternative medical explanation for the drugs found in the employee's urine specimen. If the employee provides appropriate documentation and the MRO or his/her designee determines that it is legitimate medical use of the prohibited drug, the drug test results should be reported as negative to the employer. Supporting documentation must support such results.
- c. If an alcohol screening indicates a confirmed positive presence of alcohol in accordance with SAMHSA regulations, the contractor shall inform the Police Department's Human Resources Manager or designated representative of the results in accordance with SAMHSA & DOT regulations.

14. Method of Random Selection - Contractor shall be able to provide the City with a computer generated unbiased, non-discriminatory computerized method of randomly selecting employees; such information must be described in detail as to method of random selection and method of providing employees selected, to the City.

15. Confidentiality - At all times, Contractor shall be solely responsible for ensuring that all results of the drug/alcohol screening procedures are kept strictly confidential and secure.

16. Qualification and References

1. Experience - Provide company name, address and contact person of at least three present entities for who similar services are being performed by the contractor.
2. References – Provide educational background and experience of persons involved in this contract.
3. MRO References – Name and qualifications of MRO(s) being used must be submitted with the proposal. Medical Review Officer must

be a licensed physician who is certified by the American Association of Medical Review Officers.

4. Licenses and Certifications - A complete list of the laboratory's licenses and certifications for the performance of drug and alcohol testing must be submitted with proposal.
5. Background Checks- Contractor shall allow the El Paso Police Department Human Resources Division to conduct a background check on employees who collect or handle unsealed samples. Contractor employees who have been arrested by the EPPD, convicted of a felony or misdemeanor involving dishonest conduct or possession of illegal drugs shall not be involved with any step of the collection or handling of an unsealed sample.
6. Collection Sites and Availability- Contractor shall provide a list of collection sites, collection times, and resources available for collecting urine samples on site.

II. Service Features

1. All regulated results will be returned to the MRO by the laboratory. The MRO will transmit results to the Police Department's Human Resources Manager or his/her designee. Contractor expressly understands and agrees that all results from the test performed by the Contractor under the terms and conditions of this contract shall at all times remain strictly confidential.
2. Contractor shall provide a clinical and private environment in which such participant shall produce a specimen for drug/alcohol screening. Contractor shall provide participant with a clinical and private setting in which to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the urine specimen. The Contractor shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments. Contractor shall provide an observer of the same sex as employee to remain in the restroom, but outside the closed door of the restroom stall. The observer shall allow the employee no more than 4 hours to provide a sample and shall note any unusual behavior, unwillingness or inability to provide a sample as well as the appearance on the urine custody and control form.
3. Contractor shall instruct the observer to reject an unusually hot or cold sample provided by participant. In the event of such a rejection, Contractor shall request further instructions from the Police Department's Human Resources Manager, or designee, as to how to proceed before taking any further action.

4. After participant has urinated into the specimen collection container, and has provided such container to the observer, the observer shall transfer the urine into (2) two separate containers. One container holding 30 ml as the primary sample and the other container holding 15 ml as the secondary sample. (Spit sample procedures shall be followed as set by SAMHSA). The transfer of the urine into the specimen bottles shall be in full view of the participant. While still in full view of the participant, the observer shall then place caps securely on the specimen bottles, seal the caps with tamper-evident tape, and complete the specimen labels, have the participant initial the specimen labels in the appropriate place and affix the labels to the specimen bottles in the presence of the participant.
5. The observer shall then complete the requisition/chain of custody form in the presence of the participant and have the participant initial the chain of custody portion in the appropriate area.
 - a. The Contractor must keep a detailed and accurate chain of custody which shows the following:
 - 1) Where the specimen has been
 - 2) Who has had access to the specimen
 - 3) What tests were performed on the specimen
 - 4) When those test were performed
 - 5) What individual performed those these
 - b. In addition, a collection log must be kept that indicates the path of the specimen and contains the signatures of the individuals who handled the specimen, including the individual who collects the specimen.
6. All sample containers must have a label which is keyed to the participant's name, a unique I.D. number, the date the sample was taken, the initials of the individual who observed and the initials of any individual who has handled the sample or tested the sample and the collection site. Contractor must insure that these labels are firmly attached to each bottle and that such labels are standardized so that each item is clearly understood.
7. The observer while still in the presence of the participant shall then place both sample containers into one tamper-evident bag, remove the protective paper strips from the adhesive area of the bag and seal the bag. Finally, the observer shall require the participant to initial the seal in the appropriate area. When specimens have been collected exactly as specified, Contractor shall transport the sealed, tamper-evident bag to the laboratory for testing. The laboratory must then follow all requirements to ensure the chain of custody and proper test procedures are carried out. The Contractor shall forward the sample for testing within twenty-four (24) hours of collection via express mail service.

III. General Information

- A. City shall not pay for any additional testing done without City's prior authorization.
- B. At the termination of the contract, all medical records produced or obtained as a product of the contract shall be forwarded to the City or such other place as the City may designate. All records shall be forwarded within twenty-four (24) hours of contract termination.
- C. Confidential Material: Any material that is to be considered as confidential in nature must be clearly marked as such and will be treated as confidential by the City of El Paso.
- D. The City may, at its option, conduct a site visit of respondent's facility.
- E. All proposals and related data shall become the property of the City of El Paso.

IV. Invoicing

- A. The Contractor shall submit monthly invoices, in single copy, on each contract, within fifteen (15) days after the end of the billing cycle, to the El Paso Police Human Resources Division; Attention: Carlos H. Ramirez. Invoices covering more than one contract will not be accepted.
- B. Invoices shall be itemized and transportation charges, if any, shall be listed separately.
- C. Invoices shall reflect the Contract Number and Purchase Order Number.
- D. Contractor shall designate a contact person to address billing issues.
- E. The Contact person will respond to billing issues within twenty-four (24) hours, and shall have the authority to respond by taking corrective action or making necessary adjustments, if needed.
- F. Do not include federal, state, or City sales tax. City shall furnish tax exemption certificate if requested.
- G. Discounts will be taken from the date of receipt of services or date or invoice, whichever is later.
- H. The City's obligation is payable only and solely from funds available for the purpose of this service. Lack of funds shall render this contract null and void to the extent funds are not available and any delivered but unpaid for goods will be returned to the Contractor by the City.
- I. Contractor shall advise the City of any changes in its remittance addresses.

El Paso Police Department Drug & Alcohol Testing Policy

Purpose and Scope: The El Paso Police Department (EPPD) believes employees have a right to work in a drug and alcohol free environment. Persons under the influence of drugs and alcohol on the job may pose serious safety, health and security risks to the public and to other Department employees. In addition to the City's Drug-Free Work Place Policy, this policy provides directives to all sworn employees of the EPPD concerning procedures for drug and alcohol testing. Nothing herein shall replace or supersede any provision of the Drug and Alcohol Testing article in the Collective Bargaining Agreement between the City of El Paso, Texas and the El Paso Municipal Police Officers' Association (hereinafter referred to as the "CBA").

I. Random Testing:

Random drug testing (through urine or blood) will entail the 5 panel testing and include the following drugs: Marijuana, Cocaine, Opiates, Amphetamines, Phencyclidine

All sworn employees of the El Paso Police Department (hereinafter referred to in this policy as "employee" or "employees") are subject to random drug testing. Thirty percent (30%) of police officers of all ranks, including the Chief of Police, shall be subject to mandatory random drug testing during each calendar year in accordance with the Collective Bargaining Agreement (CBA).

A. Selection of Employees for Random Testing:

Employees shall be subject to random testing on a fair and impartial statistical basis. The fair and impartial statistical basis (in which each police officer has an equal chance of being selected) shall be by a non-discriminatory computerized program operated and certified as non-discriminatory by an independent firm hired by the City, and the employee shall be tested upon being selected by the computer. The firm shall generate a list upon request by the EPPD Human Resources Manager (HRM)

1. The random list will be delivered to the HRM or designee by email, or hand delivered letter.
2. The HRM or designee will issue a written directive to each employee on the list, ordering them to submit to drug testing at the specified date, time, and location, and will provide the reason for the test (post-accident, random or reasonable suspicion).
3. Except when in actual use, possession of and access to the list of names will be limited to the HRM and/or designee.

B. Notification to and Reporting by Employees for Random Testing

The El Paso Police Department HRM will coordinate with the testing vendor concerning the date, time, location, and number of employees to be tested. The collection dates will not be announced to the affected employee(s) in advance.

1. The HRM will provide the respective Commanders or designee with a list of names of those employees selected for testing. The *Notification to Report Form (Form #__)* will be utilized.
2. The Commander or a Special Point of Contact (SPOC) will ensure that all selected employees are ordered both orally, and in written directive using the *Notification to Report Form (Form #__)*.

a. The use of the *Notification to Report Form (Form # ___)* serves as a direct order by authority of the HRM on behalf of the Chief of Police to provide the necessary sample at the specified location.

b. This notice also instructs the selected personnel to report to the specified collection location within two hours of being served with the notice.

3. The HRM shall coordinate the testing process to coincide with an employee's regularly scheduled workday.

a. Supervisors will make every effort to ensure their employees report to the testing facility immediately upon notification.

b. An employee with a legitimate conflict (such as court or training) will immediately inform their supervisors of the conflict and must report for testing as soon as practical.

4. Supervisors will document the absence on the *Notification to Report Form (Form # __)* and forward it to the HRM when an employee is on approved leave (including calling in sick the day of the test). The form will be routed through the employee's chain-of-command to the HRM via e-mail, hand-delivery or interoffice mail.

5. Employees missing a scheduled test for any reason will be rescheduled for testing within 24 hours upon the employee's return, irrespective of any random sampling selection.

6. An employee who fails to report for testing at the specified date and time for any unapproved reason, refuses, fails or is unable to provide an adequate specimen, shall be placed on administrative leave pending review.

7. Employees who become involved in an emergency situation or police action while en route to the testing facility must notify an on-duty supervisor as soon as practical and request a second employee be dispatched to take over any necessary police functions. When relieved, the employee scheduled for testing shall continue to the testing facility.

II. Collection Procedure

Collection of the necessary samples and analyses will be conducted by a contracted qualified and independent firm/laboratory, in accordance with the CBA. After arriving at the specified collection location, employees will comply with instructions received from screening personnel. Screening will only be done for prohibited drugs and/or alcohol. No other substances will be screened, nor will any other medical tests be conducted or performed.

A. The collection dates will not be announced in advance.

B. Employees will be required to present their El Paso Police Department identification card at the collection location.

C. The samples will be provided in maximum feasible privacy.

D. Appropriate chain of custody procedures will be followed at all times at the collection facility and at the laboratory that performs the analysis.

- E. Personnel who are summoned to provide a specimen for analysis will remain at the collection location in view of collection personnel until an adequate sample can be produced.

Employees will be required to remove the following items (as applicable) and place them in a secured locker: cap, top uniform shirt, body armor, belt, sunglasses. Employees will be allowed up to 4 hours to provide an adequate sample.

III. Positive Test Results

- A. If the initial screening indicates a positive test result, a second test of this specimen will be performed.
1. A confirmed positive report will only be made after this second test also comes back positive.
 2. A confirmed positive test report will be maintained by the HRM in a secure area.
- B. Once the HRM has received the initial notification from the drug-testing vendor that an employee has a positive test result, the HRM will notify a supervisor in the employee's immediate chain of command.
- C. Upon notification of a positive test result, a notice of termination will be initiated and served on the employee by his Department Director
- D. Within two working days after receiving notification from his/her department director of the initial positive test result, the employee will have the opportunity, at his own expense, to request that a re-test be performed manually, utilizing the original split sample.
- E. The sample will be maintained for a period of one (1) year.
- F. Drug tests results will be made available to the affected employee upon written request, subject to applicable rules, regulations and legal considerations.
- G. In accordance with applicable privacy laws, drug test results and documentation about drug testing results, other than disciplinary reports, shall be maintained in a secured (locked) cabinet in the office of the HRM. A separate, confidential file will be maintained for each employee who submits to drug or alcohol testing.

Disciplinary Actions

- a) *A verified, confirmed, positive test result which indicates illegal drug use – will result in termination of the sworn member.*
- b) *A verified, confirmed, positive test result which indicates controlled substance abuse or presence of alcohol may result in disciplinary action up to and including termination of the sworn member.*
- c) *A verified, confirmed, positive test result which indicates illicit anabolic steroid abuse may result in disciplinary action up to and including termination of the sworn members.*

IV. Reasonable Suspicion Testing

Reasonable suspicion testing (through urine or blood) will entail 10 panel testing, anabolic steroid testing and alcohol testing. A violation will occur when the employee has a breath alcohol concentration confirmation test level of 0.01 or greater. The 10 panel testing will be analyzed for at least the following drugs and any adulterants: Marijuana (THC metabolite), Cocaine, Amphetamines, Opiates (including heroin), Phencyclidine (PCP), Barbiturates, Benzodiazepines, Methadone, Methaqualone, Propoxyphene

Steroids (Anabolic Steroids) include: Bolasterone, Boldenone, Clostebol, Dehydrochloromethyl testosterone, Fluoxymesterone, Mesterolone, Methyltestosterone, Nandrolone, Oxandrolone, Oxymetholone, Probenecid, Stanozolol, Testosterone

A. "Reasonable Suspicion" shall be defined in accordance with the CBA.

B. Procedures for Reasonable Suspicion Testing

If a supervisor reasonably suspects that an employee subject to this policy is under the influence of a prohibited drug, prohibited inhalant, alcohol, or appears impaired due to the abuse of a prescription drug, the supervisor will:

1. Immediately remove the employee from performing regular duties, and, when possible, bring the employee to a private area away from the observation of coworkers and/or the public.
2. Document in a supervisor's log to the employee's chain of command with a copy to the HRM all observations leading to the suspicion.

Supervisor will contact the on - call HR Supervisor via Communications to make notification.

3. Immediately request that the employee's chain of command be contacted to authorize the employee be relieved of duty.
4. If there is probable cause to believe a crime has been committed, then the appropriate arrest procedures will be followed.
5. If there is no probable cause at this point to believe a crime has been committed, the supervisor shall:
 - a. Notify the chain of command and the HRM.
 - b. Make arrangements for the employee to be taken home, and placed on administrative leave unless a decision is made to immediately conduct a drug and/or test, in accordance with this policy.
 - i. Collection procedures defined in Section II above will be followed with the following condition: the affected employee will be escorted to the collection site and will not be permitted to operate a vehicle.

V. Post- Accident/Firearm Discharge Testing

Conditions for Post- Accident/Firearm Discharge:

- A. In accordance with the City's Drug Free Policy, any sworn employee that is involved in a motor vehicle accident or firearm discharge may be subject to a mandatory drug test.

- B. Collection procedures defined in Section II above will be followed with the following condition: the affected employee will be escorted to the collection site and will not be permitted to operate a vehicle.

Supervisor will contact the on - call HR Supervisor via Communications to make notification.

Critical Incident Testing (for either post- firearm discharge or post- accident situations) may consist of hair follicle, breath, urine or blood analysis.

- 1. Should the employee have at least 90 to 120 strands of 1.5 inches of hair available, the drug and alcohol testing may be done within 72 hours. If the employee removes any hair during the 72 hours following the critical incident, employee will be disciplined.*
- 2. Should the employee be hospitalized, the employee may also choose to authorize the HRM to conduct drug and alcohol tests on the blood tests obtained from the hospital; provided hospital policy allows for it.*
- 3. If neither option 1 or 2 are available, the HRM will coordinate drug and/or alcohol testing within 48 hours after the following incidents:*

Post-Firearm Discharge testing will be conducted under either of the circumstances listed below and will entail 10 panel testing, anabolic steroid testing and alcohol testing.

- a) Discharge of a firearm, on or off duty, whereby a person was the intentional or accidental object of the shooting. This will include injury and non-injury shootings.*
- b) Discharge of a firearm on or off duty, while performing a law enforcement function. The following are exceptions: discharge during training, discharge during weapon maintenance, approved shooting of an animal, approved shooting of an object.*

Post- Accident testing will be conducted under any of the circumstances listed below and will entail the 5 panel testing.

- a) A sworn employee while driving a City vehicle, becomes involved in a vehicular accident which results in a human fatality.*
- b) A sworn employee while driving a City vehicle, becomes involved in a vehicular accident and the employee receives a moving traffic violation arising from the accident.*
- c) A sworn employee while driving a City vehicle, becomes involved in a vehicular accident from which any involved vehicle requires towing from the scene.*
- d) A sworn employee while driving a City vehicle, becomes involved in a vehicular accident from which any person involved is transported from the scene for medical treatment.*
- e) An event in which a sworn employee, on or off duty while performing a law enforcement function causes the death or serious injury of another person*

VI. Responsibility for Reporting Legal Prescription Drug Use & Accidental Drug Exposure

- A. If the medically approved and appropriate use of a prescription or over-the-counter drug adversely affect any El Paso Police Department employee's work performance or the safety of the employee or others, the employee must bring this fact to the attention of his/her immediate supervisor.
- B. The immediate supervisor will then inform the Commander and HRM. The HRM will make a determination whether to question the employee's fitness for duty, and whether to limit, suspend or modify the employee's work activity, or otherwise reasonably accommodate such adverse effect.

- C. As part of this process, the employee may be requested to provide medical documentation of his/her ability to safely and effectively perform the essential functions of the position.
- D. Any information about the employee's medical condition obtained by a supervisor or manager is confidential, and will be shared only on a need to know basis. Any documentation of such medical information must be kept in the employee's confidential file.
- E. Employees subjected to the accidental exposure of any illegal drug must immediately notify the supervisor on duty.
 - 1. The supervisor will handle all accidental exposures as required by departmental policy. Additional information that should be included are:
 - a. the substance the individual was exposed to;
 - b. the period of exposure; and
 - c. a brief statement explaining the necessity for exposure.
 - 2. A copy will be forwarded to the El Paso Police Department HRM who will maintain this documentation for use if needed in the drug-testing program.

VII. Drug and Alcohol Abuse Treatment

The El Paso Police Department encourages any employee who has an alcohol or other drug problem to seek treatment before the problem manifests itself in a violation of this policy and before the employee has a positive test result. To encourage employees to maintain a safe, healthy and productive work environment, the City of El Paso provides an Employee Assistance Program as an option for an employee seeking treatment. An employee may not self-refer once notification of a drug test has been made.

- A. Employees are encouraged to voluntarily seek assistance for alcohol or other drug problems.
 - 1. All inquiries about assistance will be kept strictly confidential and will be disclosed only to those persons with a legitimate business need to know.
 - 2. An employee's voluntary disclosure of an alcohol or drug problem before submitting to a drug test or being requested to submit to a drug test may be considered by the Chief of Police as a mitigating factor should the facts warrant the matter being handled as a disciplinary issue.
 - 3. Information regarding the Employee Assistance Program is available at the El Paso Police Department's HR Department located at PDHQ.
 - 4. The El Paso Police Department will maintain the confidentiality of any request for such information by an employee or family member.
- B. An employee who is being treated for an alcohol or other drug problem may:
 - 1. Be placed on a medical leave of absence when an employee has exhausted all leave balances.
 - 2. Nothing in this policy is intended to conflict with the provisions of the Family and Medical Leave Act (FMLA) or ADAAA, and in the case of any conflict, the provisions of the FMLA and ADAAA prevail.

C. An employee who seeks rehabilitation assistance must agree to the following:

1. Actively participate in an appropriate alcohol or other drug treatment program of a licensed, accredited treatment facility, and follow all rules, guidelines, and recommendations of that program or facility, including but not limited to, after-care recommendations;
2. Complete the treatment program, not reject any treatment or recommendations of the program or facility, and not leave or discontinue the treatment program before being properly discharged;
3. Upon completion of the treatment program, agree to unscheduled, periodic drug tests for a period of not less than one (1) year to be administered by the City's alcohol and drug testing contract vendor. The failure of a subsequent drug test shall result in termination or suspension of the employee; and
4. Sign all necessary authorizations and consents to allow the treatment facility to furnish copies of the employee's treatment records to El Paso Police Department's physician so that El Paso Police Department can monitor the employee's treatment program. All documentation shall be maintained in a secured (locked) cabinet in the office of the HRM. A separate, confidential file will be maintained for each employee who submits to drug or alcohol testing.

D. An employee who seeks to return to active employment while undergoing treatment or after completing treatment must make the request in writing and:

1. The employee must submit to a drug test and obtain a negative test result before returning to work;
2. El Paso Police Department's physician must determine that the employee is capable of returning to full duty status;
3. The employee must comply with all El Paso Police Department rules, policies and procedures; and
4. The employee must agree to unscheduled, periodic drug tests for a period of not less than one (1) year.

E. These guidelines apply only to one requested leave of absence. Any request for additional leave of absence under this Drug and Alcohol Abuse Treatment section will be handled on a case-by-case basis and granted only at the sole discretion of the Chief of Police, his designee, and as required by law. A return to work agreement should be prepared by the affected employee's immediate supervisor, and a copy of this agreement should be sent to the El Paso Police Department HRM.

**EXHIBIT B
COMPENSATION**

2018-007R Drug Testing and Alcohol Screening

Proposal Cost

| ITEM | DESCRIPTION | ESTIMATED ANNUAL QTY | PRICE | EXTENDED TOTAL <small>(Estimated Annual Qty X Price)</small> | 3 – Year Total <small>(Extended Total X 3)</small> |
|----------------------------|------------------------|-----------------------------|-----------------|--|--|
| 1. | 5 Panel Drug Tests | 540 | <u>\$40.45</u> | <u>\$21,843.00</u> | <u>\$65,529.00</u> |
| 2. | 10 Panel Drug Tests | 40 | <u>\$42.25</u> | <u>\$1,690.00</u> | <u>\$5,070.00</u> |
| 3. | Anabolic Steroid Tests | 40 | <u>\$100.00</u> | <u>\$4,000.00</u> | <u>\$12,000.00</u> |
| 4. | Alcohol Tests | 40 | <u>\$29.70</u> | <u>\$1,188.00</u> | <u>\$3,564.00</u> |
| 5. | Hair Follicle Test | 10 | <u>\$89.10</u> | <u>\$891.00</u> | <u>\$2,673.00</u> |
| GRAND TOTAL 3 YEARS | | | | | <u>\$88,836</u> |

**EXHIBIT C
BUSINESS ASSOCIATE AGREEMENT**

STATE OF TEXAS)
)
COUNTY OF EL PASO)

HIPAA BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into on _____, 2018 by and between the CITY OF EL PASO, TEXAS (“CITY”), as the Covered Entity, and Norton Medical Industries, Inc. a California Corporation (“BUSINESS ASSOCIATE”) by and through their duly authorized officials, in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information (“PHI”) and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as “HIPAA”). Covered Entity and Business Associate may be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, CITY has engaged BUSINESS ASSOCIATE to perform drug testing and alcohol screening services through Contract No. 2018-007R;

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 Norton Medical Industries, Inc.

c. **HHS Privacy Regulations** shall mean the Code of Federal Regulations (“C.F.R.”) at Title 45, Sections 160 and 164, in effect, or as amended.

d. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term “individual” is defined in 45 C.F.R. 164.501.

e. **Information** shall mean any “health information” provided and/or made available by the CITY to BUSINESS ASSOCIATE, and has the same meaning as the term “health information” as defined by 45 C.F.R. 160.102.

f. **Parties** shall mean the CITY and BUSINESS ASSOCIATE.

g. **Secretary** shall mean the Secretary of the Department of Health and Human Services (“HHS”) and any other officer or employee of HHS to whom the authority involved has been delegated.

h. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164, in effect, or as amended: breach, data aggregation, designated record set, disclosure, health care operations, protected health information, required by law, subcontractor, and use.

2. **Limits on Use and Disclosure Established by Terms of Agreement.** BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2)(i).)
3. **Stated Purposes for which BUSINESS ASSOCIATE May Use or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from CITY for the following stated purposes: To provide public health, research, and related support services (service) to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)
4. **Use of Information for Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).

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

any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).

(i) **45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2).** In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such Information.

- e. **Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).
- f. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the CITY, amend or correct protected health information (PHI) in its possession or under its control.
- g. **Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F)).
- h. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words "COVERED ENTITY" with BUSINESS

ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(G)).

- i. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the CITY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).
- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Section B.3. of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).
- k. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(f)).
- l. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement of the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(e)(1)).
- m. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out one or more of CITY'S obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY in the performance of such obligation(s).
- n. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.

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

B. Term and Termination

1. **Term.** The Term of this Agreement shall be effective as of the date of Contract No. 2018-007/R, and shall terminate on the same date Contract No.2018-007R 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 or to carry out its legal responsibilities;
 - b. Return to CITY, or, if agreed to by CITY, destroy, the remaining protected health information that the BUSINESS ASSOCIATE still maintains in any form and BUSINESS ASSOCIATE shall certify to the CITY that the Information has been destroyed;
 - c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as BUSINESS ASSOCIATE retains the protected health information;
 - d. Not use or disclose the protected health information retained by BUSINESS ASSOCIATE other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section 1.e and 1.f above, which applied prior to termination; and
 - e. Return to CITY or, if agreed to by CITY, destroy, the protected health information retained by BUSINESS ASSOCIATE when it is no longer needed by BUSINESS ASSOCIATE for its proper management and administration or to carry out its legal responsibilities.
 - f. Survival. The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.

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

1. Exercise any of its rights of access and inspection under Section A.7.e. of this Agreement;
2. Take any other reasonable steps that CITY, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or
3. Terminate this Agreement immediately.
4. **Injunction.** CITY and BUSINESS ASSOCIATE agree that any violation of the provisions of this Agreement may cause irreparable harm to CITY. Accordingly, in addition to any other remedies available to CITY at law, in equity, or under this Agreement, in the event of any violation by BUSINESS ASSOCIATE of any of the provisions of this Agreement, or any explicit threat thereof, CITY shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section C.4. shall survive termination of the Agreement.
5. **Indemnification.** BUSINESS ASSOCIATE shall indemnify, hold harmless and defend CITY from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of BUSINESS ASSOCIATE in connection with the representations, duties and obligations of BUSINESS ASSOCIATE under this Agreement. The parties' respective rights and obligations under this Section 5 shall survive termination of the Agreement.

D. Miscellaneous

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

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

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

COPY TO: City of El Paso
Police Department
Attention: Chief of Police
P.O. Box 1890
El Paso, TX 79950-1890

BUSINESS ASSOCIATE: Norton Medical Industries Inc.
ATTN: President
6265 Sepulveda Boulevard Suite 13
Van Nuys, CA 91411

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)

EXHIBIT D
TITLE VI OF THE CIVIL RIGHTS ACT OF 1964,
78 STAT. 252, 42 U.S.C. 2000D TO 2000D-4 AND TITLE 49,
CODE OF FEDERAL REGULATIONS,
DEPARTMENT OF TRANSPORTATION.

During the performance of this contract, Company, for itself, its assignees and successors in interest (hereinafter referred to as the "Company") agrees as follows:

- (1) **Compliance with Regulations:** Company shall comply with the Regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
- (2) **Nondiscrimination:** Company, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. Company shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
- (3) **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Company for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Company of Company's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
- (4) **Information and Reports:** Company shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts other sources of information, and its facilities as may be determined by Client to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of Company is in the exclusive possession of another who fails or refuses to furnish this information Company shall so certify to Client, as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of Company's noncompliance with the nondiscrimination provisions of this contract, the Client shall impose such contract sanctions as it may determine to be appropriate, including but not limited to:
 - a. Withholding of payments to the Company under the contract until the Company complies, and / or
 - b. Cancellation, termination or suspension of the contract in whole or in part.
- (6) **Incorporation of Provisions:** Company shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directive issued pursuant thereto. Company shall take such action with respect to any subcontract or procurement as Client may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that in the event Company becomes involved in, or is threatened with litigation with a subcontractor or supplier as a result of such direction, the Company may request Client to enter into such litigation to protect the interests of Client and in addition, Company may request the United States to enter into such litigation to protect the interests of the United States.

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 _____, 2018.

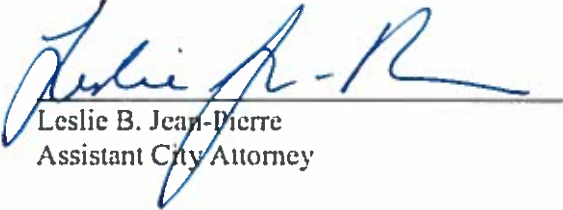
CITY OF EL PASO

Tomás González
City Manager

BUSINESS ASSOCIATES

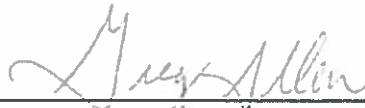
Signature: _____
Name Printed: _____
Title: _____

APPROVED AS TO FORM:



Leslie B. Jean-Dierre
Assistant City Attorney

APPROVED AS TO CONTENT:



Greg Allen, Chief of Police
El Paso Police Department