

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

**DEPARTMENT:** Public Health

**AGENDA DATE:** September 1, 2020

**CONTACT PERSON/PHONE:** Angela Mora, Interim Public Health Director (915) 212-2800 *AM*  
Bruce D. Collins, Director of Purchasing (915) 212-1182

**DISTRICT(S) AFFECTED:** All

**STRATEGIC GOAL:** **NO. 8: Nurture and Promote a Healthy, Sustainable Community**

The linkage to the Strategic Plan is Subsection 8.1 – Deliver prevention, intervention and mobilization services to promote a healthy, productive and safe community. The award of this contract will provide Vasectomy Services to the citizens of El Paso.

**SUBJECT:**

That the City Manager be authorized to sign Contract No. 2020-548R Vasectomy Services-Public Health Department between the City of El Paso ("City") and Leo Lawrence Altenberg dba El Paso Men's Clinic for vasectomy services for the citizens of El Paso and Hudspeth counties through the City of El Paso Department of Public Health (CEPDPH) Title X Family Planning Program, for a thirty six (36) month term from the effective date and two (2) one (1) year options under the same terms to be exercised by the City Manager or his designee, for an estimated cost of \$90,000.00 for the first term to be compensated on a per service basis and at an estimated total cost of \$150,000.00 including the option to extend if exercised.

**BACKGROUND / DISCUSSION:**

This contract will support the Public Health Department in providing Vasectomy Services to the citizens of El Paso and surrounding regions.

**SELECTION SUMMARY:**

Solicitation was advertised on January 21, 2020 and January 28, 2020. The solicitation was posted on City website on January 21, 2020. The email (Purmail) notification was sent out on January 23, 2020. There were a total of thirty five (35) viewers online; one (1) response was received; one (1) from local supplier. An Inadequate Competition Survey was conducted.

**PROTEST:**

No protest received for this requirement.

Protest received.

**Contract Variance:**

This is a new Contract. No prior contract to compare



**COUNCIL PROJECT FORM  
(RFQ)**

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

Please place the following item on the **CONSENT AGENDA** for the Council Meeting of **September 1, 2020**.

**STRATEGIC GOAL NO. 8: Nurture and Promote a Healthy, Sustainable Community**

The linkage to the Strategic Plan is Subsection 8.1 – Deliver prevention, intervention and mobilization services to promote a healthy, productive and safe community. The award of this contract will provide Vasectomy Services to the citizens of El Paso.

**Award Summary:**

That the City Manager be authorized to sign Contract No. 2020-548R Vasectomy Services-Public Health Department between the City of El Paso (“City”) and Leo Lawrence Altenberg dba El Paso Men’s Clinic for vasectomy services for the citizens of El Paso and Hudspeth counties through the City of El Paso Department of Public Health (CEPDPH) Title X Family Planning Program, for a thirty six (36) month term from the effective date and two (2) one (1) year options under the same terms to be exercised by the City Manager or his designee, for an estimated cost of \$90,000.00 for the first term to be compensated on a per service basis and at an estimated total cost of \$150,000.00 including the option to extend if exercised.

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

**Contract Variance:**

This is a new Contract. No prior contract to compare

Contact person:

Purchasing & Strategic Sourcing, Bruce D. Collins, (915) 212-1181  
Public Health, Angela Mora, (915) 212-6564



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



**Bid Opening Date: FEBRUARY 19, 2020**

**Solicitation #:2020-548R**

**Project Name: VASECTOMY SERVICES**

**Department: HEALTH**

<b>BIDDER'S NAME:</b>	<b>LOCATION:</b>	<b>AMENDMENT(S) ACKNOWLEDGED:</b>
Mens Clinic	EL PASO, TX	N/A
<b>RFQs SOLICITED: 7 LOCAL RFQs SOLICITED: 7 RFQs RECEIVED: 1 LOCAL RFQs RECEIVED: 1 NO BIDS: 0</b>		

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

Approved: \_\_\_\_\_/S/  
Date: 02 / 25 / 2020

## **2020-548R Vasectomy Services**

**Spier Jeffrey MD  
7420 Remcon Circle  
El Paso, Texas 79912**

**El Paso Men's Clinic  
154 N. Festival Dr. Suite A.  
El Paso, Texas 79912**

**Dr. Michael D. Bagg, MD  
2201 N. Stanton Street  
El Paso, Texas 79902**

**Javier Arenas, MD  
1250 E. Cliff Dr. #2A  
El Paso, Texas 79902**

**Rio Grande Urology  
3100 Lee Trevino  
El Paso, Texas 79936**

**Mauricio Davalos, M.D.  
3100 Lee Trevino  
El Paso, Texas 79936**

**Dr. Javier E. Lozano, MD  
3100 Lee Trevino  
El Paso, Texas 79936**

# RESOLUTION

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

That the City Manager be authorized to sign Contract No. 2020-548R Vasectomy Services- Public Health Department between the City of El Paso (“City”) and Leo Lawrence Altenberg dba El Paso Men’s Clinic for vasectomy services for the citizens of El Paso and Hudspeth counties through the City of El Paso Department of Public Health (CEPDPH) Title X Family Planning Program, for a thirty six (36) month term from the effective date and two (2) one (1) year options under the same terms to be exercised by the City Manager or his designee, for an estimated cost of \$90,000.00 for the first term to be compensated on a per services basis and an estimated total cost of \$150,000.00 including the option to extend if exercised.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_ 2020.


THE CITY OF EL PASO:

\_\_\_\_\_  
Dee Margo,  
Mayor


ATTEST:

\_\_\_\_\_  
Laura D. Prine  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

APPROVED AS TO CONENT:

  
\_\_\_\_\_  
Angela Mora, Interim Director  
El Paso Public Health Department

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

**VASECTOMY  
SERVICES AGREEMENT  
FOR THE PUBLIC  
HEALTH DEPARTMENT  
RFQ 2020-548R**

This services agreement (this “**Agreement**”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020 (the “**Effective Date**”) by and between the City of El Paso, a home rule municipal corporation (the “**City**”), and Leo Lawrence Altenberg dba El Paso Men’s Clinic (the “**Service Provider**”).

**RECITALS**

**WHEREAS**, the City desires to engage the Service Provider to provide vasectomy services for the Public Health Department in accordance with all applicable laws and procedures; and

**WHEREAS**, the Service Provider submitted a Proposal detailing the Service Provider’s qualifications, certifications, credentials, experience, and expertise to perform said services; and

**WHEREAS**, the City believes Service Provider possesses the qualifications, certifications, credentials, experience, and expertise to perform said services for the City’s Public Health Department; and

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

**AGREEMENT**

**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 \_\_\_\_\_, 2020 and will remain in effect thereafter for three (3) years from the effective date with two (2) one (1) year options to extend the Agreement by the City Manager.

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

- A. Service Provider’s Proposal (“**Proposal**”).
- B. This Agreement.

The Proposal is incorporated herein and made part of this Agreement for all purposes; provided, however, that in case of conflict in the language the terms and conditions of this Agreement shall control where it conflicts with the Proposal.

**SECTION III. SCOPE OF SERVICES.** The Service Provider hereby agrees to perform the vasectomy services in accordance with the scope of work 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 community within the County of El Paso, Texas.

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

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

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

**SECTION VII. REPRESENTATIONS OF THE COMPANY.** The Service Provider 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 Service Provider 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 Service Provider receives notice from a licensing authority of a suspension or revocation of a license of the Service Provider’s employee(s), agent(s) or subcontractor(s), the Service Provider 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 Service Provider 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 Service Provider.

- 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 Service Provider for the purpose of securing business. For breach or violation of this warranty, the City shall have the right in addition to any other right or rights to cancel this Agreement without liability and to deduct from the Agreement price, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

**SECTION VIII. COMPENSATION AND METHOD OF PAYMENT.** The City shall pay the Service Provider for each of the services performed at the rates set forth in the *Fee Proposal* attached hereto as *Exhibit B*. The Service Provider services shall be limited to those services delineated in *Exhibit A* 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 Public Health Department 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 IX. INDEPENDENT CONTRACTOR RELATIONSHIP.** Nothing herein shall be construed as creating a relationship of employer and employee between the parties hereto. The Service Provider agrees to be responsible for its own acts and omissions and those of its subordinates and employees in the performance of any material services under this Agreement. The Service Provider is an independent Service Provider and nothing contained herein shall constitute or designate the Service Provider or any of his employees as employees of the City. Neither the Service Provider nor his employees shall be entitled to any of the benefits established for City employees, nor be covered by the City's Workers' Compensation Program.

**SECTION X. MEDICAL RECORDS AND CONFIDENTIALITY OF RECORDS** The Service Provider recognizes that all information and materials received in connection with this Agreement shall be kept in the strictest confidence. All 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 is attached hereto and incorporated to this Agreement through **Exhibit C**. Upon termination of this Agreement all records shall be transferred to the City within ten (10) business days of termination at the City's sole expense of such transfer.

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

**SECTION XII. OWNERSHIP.** All files and documents generated by Service Provider 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. However, Service Provider shall retain medical records necessary for billing purposes for said services as appropriate and consistent with the negotiated rates.

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

#### **A. INSURANCES**

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

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

a) **COMMERCIAL GENERAL LIABILITY**

\$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 Service Provider shall procure and maintain, at the Service Provider's sole expense, Professional Liability Insurance (Such as errors and omissions insurance) for the benefit of the City to cover the errors and omissions of the Service Provider, its principals or officers, agents or employees in the performance of this Agreement with a limit of ONE MILLION AND 00/100 DOLLARS (\$1,000,000) on a claims made basis.

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

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

**E. INSURED PARTIES.** Each policy, except those for Workers' Compensation 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 Service Provider 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 Service Provider reduce the aggregate amount of coverage below the amounts required by this Agreement.

**I. DELIVERY OF POLICIES.** The originals of all policies referred to above, or copies thereof certified by the agent or attorney-in-fact issuing them together with written proof that the premiums have been paid, shall be deposited by the Service Provider with the City's Purchasing 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 Service Provider 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 Service Provider entitling the City, upon three (3) days written notice to the Service Provider to terminate this Agreement. This default provision shall also apply to the proof of insurance requirements under circumstances where a policy is canceled or expires during a given year of the Agreement. Notwithstanding the proof of insurance requirements set forth above, it is the intention of the parties hereto that the Service Provider, throughout the term of this Agreement, continuously and without interruption, maintain in force the required insurance coverage set forth above. Failure of the Service Provider to comply with this requirement shall constitute a default of the Service Provider allowing the City, at its option, to terminate this Agreement as referenced above.

**SECTION XIV. INDEMNIFICATION.** The Service Provider 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 Service Provider's activities under this Agreement for Third Party Claims Administration and Medical Cost Containment, including any act or omission by the Service Provider, 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 Service Provider every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. In addition, the Service Provider shall promptly advise the City in writing of any claim or demand against the City or the Service Provider known to the Service

**Provider related to or arising out of the Service Provider's activities under this Agreement. The Service Provider 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 Service Provider 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 Service Provider will pay all judgments finally establishing liability of the City in actions defended by the Service Provider 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 Service Provider, 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 Service Provider of any of its obligations under this paragraph. The City will not be responsible for any loss of or damage to the Service Provider's property from any cause.**

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

- A. TERMINATION FOR CONVENIENCE.** Either party may terminate this Agreement for any reason by sending a written notice to the non-terminating party at least 30 calendar days before termination. The Contractor will halt all Work upon receiving a termination notice under this provision from the City. Upon such termination, the Contractor will provide one final invoice for all Work completed and reimbursable expenses incurred prior to the notice of termination. Reimbursable expenses means any expenses that the Contractor can provide a receipt for and that were necessary for providing Work to the City. The City may withhold payment to the Contractor if there is any dispute in the amount until the City determines the exact amount that is owed to the Contractor by the City. The City is not required to pay for any Work that does not comply with the provisions of this Agreement. If the Contractor terminates this Agreement under this provision, then the Contractor will return all payments made by the City prior to the notice of termination.
- B. TERMINATION BY EITHER PARTY FOR CAUSE.** Either party may terminate this Agreement if one party fails to fulfill the obligations set out in this Agreement. Before terminating this Agreement pursuant to this provision the terminating party will provide written notice of intent to terminate enumerating the failures for which the termination is being sought and provide at least 30 calendar days to the non-terminating party to cure such failure. If the City terminated this Agreement pursuant to this provision, then the City may withhold any payments to the Contractor until the exact amount owed to the Contractor by the City is determined.
- C. NON-APPROPRIATION OF FUNDS.** If funds are not appropriated by the City to cover payment obligation(s) under this Agreement, then the City may terminate this Agreement. If the City terminates this Agreement under this provision, then the City is not obligated to make any payments described in this Agreement.
- D. TERMINATION FOR FAILURE TO COMPLY WITH THE GOVERNMENT CODE.** The requirements of Subchapter J, Chapter 552, Government Code, may apply to



With Copy to: El Paso Public Health Department  
Attn: Director  
P.O. Box 1890  
El Paso, Texas 79950-1890

SERVICE PROVIDER: Leo Lawrence Altenberg dba El Paso Men's Clinic

Attn: Leo Lawrence Altenberg  
154 N. Festival Drive, Ste. A  
El Paso, Texas 79912

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

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

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

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

*(Signature page to follow)*

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

VASECTOMY  
SERVICES AGREEMENT  
FOR THE PUBLIC HEALTH  
DEPARTMENT  
CONTRACT NO. 2020-548R


IN WITNESS WHEREOF, the parties have hereunto set their hands this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**THE CITY OF EL PASO:**


\_\_\_\_\_  
Tomás González  
City Manager

**SERVICE PROVIDER:**


Leo Lawrence Altenberg dba  
El Paso Men's Clinic

  
Name: Leo L. Altenberg MD  
Title: owner

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Angela Mora, Interim Director  
El Paso Public Health Department

**EXHIBIT A**  
**SCOPE OF WORK**

## **Scope of Work**

Routine Outpatient Vasectomy Procedure performed under local anesthesia to include any ancillary services. The administration of any injection or medication is included in the office visit, but the medication itself will be billed as a separate charge. Applies to medications and injections administered.

Under contract, the selected medical provider(s) will accept candidates from the City of El Paso Department of Public Health (CEPDPH) for vasectomies. Respondents must be able to provide the service based on Medicaid rates and describe how clients will be served, the location of which vasectomies will be performed, the counseling provided to clients, and the aftercare to ensure the successful completion of vasectomy services. Respondents must have an adequate system for billing for approved services and for tracking and confirming the services provided to the clients approved for vasectomies.

The City of El Paso will reimburse the cost of the vasectomies performed. Other services provided to the clients are not the responsibility of the City of El Paso and must be clearly communicated with each client.

**EXHIBIT B  
COMPENSATION**

**Fee Proposal Cost**

**FEE PROPOSAL**

<b><u>ITEM</u></b>	<b><u>DESCRIPTION</u></b>	<b><u>RATE</u></b>
1	FIX RATE ROUTINE OFFICE VISIT	\$ <u>150</u>
2	FIX RATE VASECTOMY PROCEDURE	\$ <u>750</u>
3	FIX RATE FOLLOW UP OFFICE VISIT	\$ <u>90</u>

**EXHIBIT C**  
**BUSINESS ASSOCIATE AGREEMENT**

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

**THIS AGREEMENT** is entered into on \_\_\_\_\_, 2020 by and between the CITY OF EL PASO, TEXAS (“CITY”), as the Covered Entity, and Leo Lawrence Altenberg dba El Paso Men’s Clinic (“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 routine outpatient vasectomy procedures through Contract No. 2020-548R;

**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 Leo Lawrence Altenberg dba El Paso Men’s Clinic

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  
Public Health Department  
Attention: Director  
P.O. Box 1890  
El Paso, TX 79950-1890

BUSINESS ASSOCIATE: Leo Lawrence Altenberg  
dba El Paso Men's Clinic  
ATTN: Leo Lawrence  
154 N. Festival Drive, Suite A  
El Paso, Texas 79912

5. **Non-Waiver.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.
6. **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.
7. **Governing Law, Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws, with venue in El Paso County, Texas.

8. **Compliance with Laws.** BUSINESS ASSOCIATE agrees that its obligations pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, BUSINESS ASSOCIATE reserves the right to notify CITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.
9. **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.
10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than CITY and BUSINESS ASSOCIATE, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
11. **Entire Agreement; Counterparts.** This Agreement constitutes the entire Agreement between CITY and BUSINESS ASSOCIATE regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.

*(Signatures follow on next page)*

STATE OF TEXAS        )  
                                  )  
COUNTY OF EL PASO    )

**HIPAA BUSINESS ASSOCIATE AGREEMENT**

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**THE CITY OF EL PASO:**

\_\_\_\_\_  
Tomás González  
City Manager

**BUSINESS ASSOCIATE:**

Signature: \_\_\_\_\_  
Name Printed: Leo L. Altenberg MD  
Title: owner

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Leslie B. Jean-Pierre  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

\_\_\_\_\_  
Angela Mora, Interim Director  
El Paso Public Health Department

**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.