

STATE OF NEW MEXICO
COUNTY OF BERNALILLO
SECOND JUDICIAL DISTRICT COURT

FILED
2ND JUDICIAL DISTRICT COURT
Bernalillo County
1/17/2023 3:38 PM
CLERK OF THE COURT
Catherine Chavez

Case No.: D-202-CV-2023-00316

PAUL GESSING and CARE NET OF
ALBUQUERQUE, INC.,

Plaintiffs,

v.

STEPHANIE YARA, in her official capacity as
director of finance and administration for the
City of Albuquerque; CAROL M. PIERCE, in
her official capacity as director of family and
community services of the City of
Albuquerque; and ROCKY MOUNTAIN
PLANNED PARENTHOOD, INC. d/b/a
PLANNED PARENTHOOD OF THE ROCKY
MOUNTAINS, INC.,

Defendants.

CIVIL COMPLAINT

Plaintiffs, for their claims against Defendants, allege as follows:

BACKGROUND

1. Taxpayer funds are not a piggy bank for politicians to raid for their own pet projects and political preferences. The New Mexico Constitution's anti-donation clause is a bulwark against politicians treating taxpayer funds as their own. The anti-donation clause mandates that New Mexico and its political subdivisions may only give public funds to private entities, including nonprofit organizations, under narrow circumstances wherein the nonprofit organization enters into a genuine contract for concrete services, complete with specific performance metrics.

2. On May 2, 2022, an unknown person leaked the draft of Justice Samuel Alito’s majority opinion for the U.S. Supreme Court in *Dobbs v. Jackson Women’s Health Organization*. At its next regularly scheduled meeting on May 17, the Albuquerque City Council (“the City Council”) voted to give \$250,000 in taxpayer funds as a “sponsorship” to Planned Parenthood as a sign of solidarity with the pro-choice side.

3. On August 5, 2022, the City of Albuquerque (“the City”) entered into a “social services agreement” with Planned Parenthood of the Rocky Mountains. The agreement has minimal performance expectations, no specific metrics, and no meaningful accountability. It funds staff positions rather than specific services.

4. On August 15, 2022, the City Council voted down an effort to reallocate the Planned Parenthood funds. Instead, the Council voted to retain the Planned Parenthood sponsorship.

5. Plaintiffs are an Albuquerque taxpayer and an Albuquerque social services organization that serves pregnant women. They challenge this unconstitutional targeting of taxpayer funds.

PARTIES

6. Plaintiff incorporates all allegations within paragraphs 1-5 as if more fully set forth herein.

7. Plaintiff Paul Gessing is a property owner and registered voter in the City. He pays property taxes to the City. He frequently purchases goods subject to the gross receipts tax. Plaintiff resides in and works in Bernalillo County.

8. Plaintiff Care Net of Albuquerque, Inc. is a 501(c)(3) nonprofit social services agency that serves pregnant women. Plaintiff has its primary place of business in Bernalillo County.

9. Defendant Stephanie Yara is director of finance and administration for the City and is sued in her official capacity. As such, she is responsible for overseeing all aspects of the City's finances, including its issuance of checks to grantees. Defendant has her primary place of work in Bernalillo County.

10. Defendant Carol M. Pierce is director of the Department of Family and Community Services for the City. She is sued in her official capacity. As director, she is responsible for overseeing the City's grant to Planned Parenthood of the Rocky Mountains. Her deputy director signed the City's agreement with Planned Parenthood on her behalf. Defendant has her primary place of work in Bernalillo County.

11. Planned Parenthood of the Rocky Mountains, Inc., is a non-profit organization that is the regional affiliate of the national Planned Parenthood Federation of America. It has clinics and services in several Mountain West states, including New Mexico. Defendant has a satellite location in Bernalillo County.

JURISDICTION AND VENUE

12. Plaintiff incorporates all allegations within paragraphs 1-11 as if more fully set forth herein.

13. This case seeks a declaratory judgment under N.M. Stat. Ann. § 44-6-4 because Plaintiffs' rights are affected by a municipal ordinance. *See Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 3.

14. Venue is appropriate under N.M. Stat. Ann. § 38-3-1 (2018) because the Plaintiffs all reside or operate in Bernalillo County and the Municipal Defendants all work in their official capacity in Bernalillo County, and Planned Parenthood of the Rocky Mountains has a facility in Bernalillo County.

FACTUAL ALLEGATIONS

15. Plaintiff incorporates all allegations within paragraphs 1-14 as if more fully set forth herein.

16. The anti-donation clause, article IX, Section 14 of the New Mexico Constitution, provides, in pertinent part: “Neither the state, nor any county, school district, or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit, or make any donation to or in aid of any person, association or public or private corporation. . . .”

17. The City is a municipality subject to this provision of the New Mexico Constitution.

18. At its meeting on May 16, 2022, the Albuquerque City Council voted on various provisions related to the City’s budget for fiscal year 2023.

19. On a 6 to 3 vote, the Council adopted Floor Amendment 13, which reduced \$500,000 from affordable housing and redirected half of those funds, or \$250,000, to a “council-directed sponsorship for Planned Parenthood.”ⁱ

20. The City’s final 2023 adopted budget includes \$250,000 for “Planned Parenthood NM” under the Department of Family & Community Services.ⁱⁱ

21. The day after the vote, Councilwoman Tammy Fiebelkorn put out a press release regarding Amendment 13. In that release, she is quoted as saying, “While extremists attack choice nationwide and the Supreme Court seems poised to take away women’s rights and control of their own bodies, we affirmed our respect and support for women’s reproductive freedoms. I’m proud to have sponsored this amendment to provide vital support for Planned Parenthood.”

22. The release quotes her further as saying, “Anti-women extremists have used aggression and intimidation towards Planned Parenthood clinics, staff, and patients resulting in increased costs, delays in treatment, and additional counseling and education needs. These funds support our local Planned Parenthood clinic to ensure that all Albuquerque women have access to family planning, abortion, and other reproductive health services.”ⁱⁱⁱ The release is attached and incorporated by reference as Exhibit A.

23. Subsequently, an agreement was entered into between the City’s Department of Family and Community Services and Planned Parenthood of the Rocky Mountains, Inc. A complete copy of that agreement is attached as Exhibit B to this complaint and is entirely incorporated by reference. The agreement is for services rendered from July 1, 2022 to June 30, 2023. But the agreement was not formally signed until August 5, 2022.

24. Under the terms of the agreement, the \$250,000 is paid out in partial payments spaced out over the two years of the agreement.

25. Planned Parenthood of the Rocky Mountains, Inc., is a nonprofit provider of abortions and other health services in Colorado, New Mexico, Southern Nevada, and Wyoming. It has four locations in New Mexico, including two in the City of Albuquerque.

26. At a subsequent Council meeting on Monday, August 15, a motion was made to withdraw the funding for Planned Parenthood and reallocate it to Barrett House, a local homeless shelter. Councilwoman Fiebelkorn defended the appropriation, telling one colleague, “Let me just start by saying that I am very sad that it was only \$250,000. I would love to give Planned Parenthood way, way more money. They do amazing services for our community. I have been there when I was in college. They are the only reason that I had STD testing, contraception, breast cancer screenings. It is insane to say that \$250,000 for this great organization won’t be spent in a really good manner. The reason it came about is because I am pro-choice. I am a supporter of Planned Parenthood. Period. And I was happy, proud to sponsor this budget amendment.”

27. Later in the discussion, Councilwoman Fiebelkorn said, “A gentleman asked earlier, what do we want to be known for? And let me just say, I want to be known as a Planned Parenthood supporter. I want to be known as a New Mexican where we still value women, respect women and give them control over their own bodies. That is what I want to be known for.”^{iv}

28. The motion to withdraw the \$250,000 from Planned Parenthood and reallocate it to Barrett House was amended to give \$250,000 to Planned Parenthood, and to give \$100,000 grants to Barrett House and another nonprofit group, Prosperity Works. This amended version passed.

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29. On its website, Planned Parenthood of the Rocky Mountains thanks the Councilors who passed this earmark, saying, “The City of Albuquerque recently finalized next year’s budget and five champions stood up for access to the full spectrum of reproductive health care, including abortion care, by appropriating \$250,000 for Planned Parenthood in New Mexico!” It urges website visitors to “[s]end a message to those champions today to say thank you for ensuring that patients across our city will be able to access the full spectrum of reproductive health care, including abortion care.” The suggested message to the City Councilors reads, “Thank you for standing with Albuquerque families by appropriating \$250,000 to Planned Parenthood for reproductive health care services in our city’s budget. With access to abortion care at stake across the country, it is critical that we all stand up and make sure that people are able to access the health care they need in NM. You did just that by voting to support this critical funding for our city’s patients.”

30. Paul Gessing is a homeowner in the City of Albuquerque. He pays property taxes on his home. He also pays gross receipts taxes when he makes purchases in the City, as he frequently does.

31. Care Net is a pregnancy resource center in the City of Albuquerque. It provides pregnancy-related medical services, including free pregnancy testing, free sexually transmitted infection (STI) testing, and free parenting and pregnancy counseling and classes. In other words, it provides many of the same services covered by the agreement with Planned Parenthood. But because the agreement was a council-directed sponsorship rather than an open request for proposals (RFP), Care Net had no opportunity to apply for the funds.

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COUNT I

Defendants' sponsorship of Planned Parenthood of the Rocky Mountains violates the anti-donation clause.

32. Plaintiff incorporates all allegations within paragraphs 1-31 as if more fully set forth herein.

33. The anti-donation clause provides, “Neither the state nor any county, school district or municipality, except as otherwise provided in this constitution, shall directly or indirectly lend or pledge its credit or make any donation to or in aid of any person, association or public or private corporation or in aid of any private enterprise for the construction of any railroad; provided: (A) nothing in this section shall be construed to prohibit the state or any county or municipality from making provision for the care and maintenance of sick and indigent persons.” N.M. Const. art. IX, § 14.

34. This Court’s job is not to pass on the worthiness of the recipients of the funds: “The constitution makes no distinction as between ‘donations’, whether they be for a good cause or a questionable one. It prohibits them all.” *State ex rel. Mechem v. Hannah*, 63 N.M. 110, 120 (1957) (quoting *State ex rel. Sena v. Trujillo*, 46 N.M. 361, 369 (1942)).

35. Many attempts have been made in the past to give public funds to private charities—the courts and Attorney General have uniformly held that they violate the anti-donation clause. 1990 N.M. AG LEXIS 10, *3-4 (collecting examples).

36. Even if the City has an agreement in place with Planned Parenthood, this does not mean that it is no longer a donation.

37. First, whether something is a gift or donation must be seen “by reason of its nature and the circumstances surrounding it” such that it “take[s] on character as a donation in

substance and effect.” *Moses v. Ruszkowski*, 2019-NMSC-003, ¶ 50 (quoting *Vill. Of Deming v. Hosdreg Co.*, 62 N.M. 18, 28 (1956)).

38. Or, as the Attorney General has opined, “the anti-donation clause should be construed by reference to the ills it was intended to correct.” 1985 N.M. AG LEXIS 36, *4. That purpose is “to preclude [public entities] from making gifts or donations disguised as business transactions.” *City of Raton v. Ark. River Power Auth.*, 600 F. Supp. 2d 1130, 1161 (D.N.M. 2008) (interpreting state law).

39. Here, the circumstances surrounding the agreement make clear that the motivation and purpose is to give a gift to Planned Parenthood. The substance of the matter indicates quite clearly this is a gift, not a contract for specified services. Councilwoman Fiebelkorn’s press release following the Council vote make clear this was a political statement aimed at anti-abortion groups and their potential success in the *Dobbs* case based on the leak, not on an identified need for medical services for indigent persons in Albuquerque. And as one does after receiving a gift, Planned Parenthood has a website dedicated to saying “thank you.”

40. Put differently, the expenditures in this case commit one of the ills the anti-donation clause was intended to prevent: it is an earmark by a public official, who is directing public funds to her private charitable goals.

41. Second, an agreement for services cannot be a sham. A violation of the anti-donation clause occurs when a public body gives public funds to a private entity “with no exchange of adequate consideration.” 2019 N.M. AG LEXIS 11, *13-14. *See City of Raton*, 600 F. Supp. 2d at 1161. Numerous opinions of the Attorney General insist on the equivalency in value between the sums given and the services received. 2002 N.M. AG LEXIS 2, *10; 2019

N.M. AG LEXIS 9, *4 (quoting N.M. Att’y Gen. Advisory Letter to Honorable Mary Kay Papen, New Mexico State Senate (Mar. 30, 2011)).

42. There must be *adequate* consideration so the anti-donation clause is not circumvented by a nominal exchange that is in reality a gift. *City of Raton*, 600 F. Supp. 2d at 1161 (“to preclude them from making gifts or donations disguised as business transactions”); 2019 N.M. AG LEXIS 12, *6; 2011 N.M. AG LEXIS 15, *16; 2009 N.M. AG LEXIS 17, *5 (reaffirming 1990 N.M. AG LEXIS 10, *4-5).

43. In order to ensure adequate consideration, any contract for services must be specific. It must set specific performance targets, measurement metrics, and accountability measures to ensure it is an authentic contract for services and not a sham cover for a gift. 1989 N.M. AG LEXIS 6, *4. *See* 1966 N.M. AG LEXIS 145, *3; N.M. Att’y Gen. Advisory Letter to Shawn Lerch, Miners’ Colfax Medical Center (June 22, 2015), *2. There must be, in other words, “a real product” being purchased at the end of the day. *City of Raton*, 600 F. Supp. 2d at 1161.

44. The Planned Parenthood agreement does not guarantee “adequate consideration” for the subsidy. The agreement identifies three “outputs.” First, “offer healthcare services to New Mexican residents. Services are limited to wellness visits, breast exams, telehealth visits, health center visits and any follow-up or treatment as needed, cancer screening and prevention services, provision of birth control and testing for sexually transmitted infections. The Contractor will report on the number of clients served and the number of each service provided from the list above...” Ex. A, p. 16. In other words, Planned Parenthood could provide one wellness visit, report it, and fulfill its obligation.

45. The second output is to “expand health equity by promoting equitable access to services and care.” Planned Parenthood is to do this by “disaggregating data to assess for any difference in patient access, experience, or clinical outcomes across demographic groups, including age, race, ethnicity, income level, region of residence, etc.” Ex. A, pp. 16-17. In other words, Planned Parenthood must produce some sort of report, which could be as simple as reporting the demographic data it already collects.

46. The third output is to “provide patient education to 8,000 participants regarding healthy choices on sexuality and parenting. The agency will report numbers served; monitor strategies, outputs, and outcomes.” The output has no specifics or details—whether it covers providing information on Planned Parenthood’s website, speaking at school assemblies, or providing individual counseling. It also has no specifics on the curriculum or materials that will be used in this education.

47. A single patient visit, a report of already collected data, and 8,000 visitors to an existing website is not adequate consideration for \$250,000 of public funds. Appendix A to the agreement does not provide the specific performance targets, measurement metrics, and accountability steps necessary to show the contract is not a cover for an illegal gift.

48. The “sick and indigent persons” exception to the anti-donation clause does not apply here. First, two of the three outcomes specified in the agreement do not directly care for the sick and indigent: they require a demographic report and education on sex and parenting. Neither of these things is direct care for individual sick and indigent patients.

49. Second, “[T]his exception does not justify payments which directly benefit physicians and only incidentally benefit the poor and sick.” 1989 N.M. AG LEXIS 6, *2 n.1. The exception allows for the direct reimbursement of direct care for the sick and indigent, but does

not allow for general subsidies of operations. *Id.* (citing 1955-56 Op. Att’y Gen. No. 6426). *See* 2011 N.M. AG LEXIS 15, *15-16 (“the sick and indigent exception does not permit the state or a local government to make donations to a private or nonprofit organization that are used for the organization’s operating expenses”). *See also* 1956 N.M. AG LEXIS 81, *4-5 (interpreting implementing statute).

50. Appendix A of the agreement does not provide for direct reimbursement of direct care for the sick and indigent. Instead, it provides for a wide range of undefined potential services. It states that all \$250,000 will go to cover staff salaries and benefits, namely three nurses and three health center assistants. It may be that these nurses and health center assistants care for sick and indigent individuals, but the New Mexico Attorney General’s opinions make clear that the funds must be used to care for specific individual patients, not as general funds for operations.

51. The funds are not allocated to purchase materials like sexually transmitted disease tests, or lab work to process such tests, or for the physical products necessary for birth control.

52. The “sick and indigent persons” exception also does not apply when a contract does not lead to new or additional services beyond those already offered in the community, but “instead provides a subsidy to a private concern” that happens to operate in the medical arena. 1970 N.M. AG LEXIS 26, *5-6.

53. The agreement does not require Planned Parenthood to provide new or additional services. It is entirely possible that Planned Parenthood will use the City’s funds to supplant private funds to offer the same services, freeing up the private funds for other uses.

54. The “sick and indigent persons” exception only applies when a contractor documents that public funds have actually served “sick and indigent persons” within the city’s

responsibility. The contract should be specific, made on a reimbursement basis, and paid out with specific proof of service to named sick and indigent persons. 1961 N.M. AG LEXIS 82, *3-4.

55. The Planned Parenthood agreement states that the services must be for “New Mexican residents” but does not specify that they must be residents of Albuquerque.

56. The Planned Parenthood agreement, Exhibit B, p. 25, indicates that the first draw-down of funds will be completed on September 30, 2022, for \$62,500. The remainder will be paid out every three months in the same amount, ending on June 30, 2023.

57. Funds that are illegally appropriated in violation of the anti-donation clause must be returned by the recipients to the public fisc. *State ex rel. Callaway v. Axtell*, 393 P.2d 451, 454 (N.M. 1964) (“Public monies are trust funds belonging to the people, and must be reimbursed by the recipient if they are paid out illegally by a public official, even though in good faith; and this is particularly true in a case such as that before us, involving a donation or gratuity.”); *Chronis v. State ex rel. Rodriguez*, 670 P.2d 953, 959 (1983). See John Martinez, *Getting Back the Public’s Money: The Anti-Favoritism Norm in American Property Law*, 58 Buffalo L. Rev. 619, 648 (2010) (anti-donation clauses “have historically been interpreted to confer both an individual right and a governmental obligation to seek recapture of public funds or assets transferred to private parties in violation of the anti-favoritism norm”).

TRIAL REQUEST

58. Plaintiff incorporates all allegations within paragraphs 1-57 as if more fully set forth herein.

59. Trial by jury is not demanded.

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WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that the City's grant of \$250,000 funds to Planned Parenthood of the Rocky Mountains, Inc., is a gift or donation in violation of the anti-donation clause.
- B. Declare that the City's agreement with Planned Parenthood of the Rocky Mountains, Inc., is null and void.
- C. Enjoin Defendants from transferring funds under this appropriation to Planned Parenthood of the Rocky Mountains, Inc.
- D. Order that any funds already given to Planned Parenthood of the Rocky Mountains, Inc., be returned to the City.
- E. Award Plaintiffs their costs and attorney's fees under N.M. Stat. Ann. § 44-6-11.
- F. Award Plaintiffs any other relief to which they may be entitled.

DATED this 17th day of January, 2023.

LAW OFFICES OF TIMOTHY D. DUCAR, PLC
Electronically Filed

By /s/Matthew Lang 151110

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Pro Hac Vice Motion Forthcoming

Attorneys for Plaintiffs

ⁱ https://www.youtube.com/watch?v=NpHipNR_Q6w (Video of Albuquerque City Council Meeting - May 16, 2022), at 2:41:30 (introductory comments by Councilwoman Fiebelkorn).

ⁱⁱ The Fiscal Year 2023 approved budget for the City of Albuquerque, *available at* <https://www.cabq.gov/dfa/documents/fy23-approved-budget-numbered-w-hyperlinks-final.pdf>. The Planned Parenthood earmark is on page 36, line 5.

ⁱⁱⁱ The press release is available at <https://www.cabq.gov/council/find-your-councilor/district-7/news/city-council-funds-planned-parenthood-of-new-mexico>.

^{iv} <https://www.youtube.com/watch?v=6SiwJqSKOOQ> (Video of Albuquerque City Council Meeting – August 15, 2022), at 2:13:12.

EXHIBIT A

- ▶ [City Council Home](#)
- ▶ [Online Services](#)
- ▶ [Find Your Councilor](#)
 - ▶ [Contact Your City Councilor](#)
 - ▶ [Louie Sanchez - District 1](#)
 - ▶ [Isaac Benton - District 2](#)
 - ▶ [Klarissa J. Peña - District 3](#)
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 - ▶ [Dan Lewis - District 5](#)
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 - ▶ [Tammy Fiebelkorn - District 7](#)
 - ▶ [About the Councilor](#)
 - ▶ [District 7 Events](#)
 - ▶ [District 7 News](#)
 - ▶ [District 7 Projects](#)
 - ▶ [Trudy E. Jones - District 8](#)
 - ▶ [Renee Grout - District 9](#)
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- ▶ [Frequently Asked Questions \(FAQ\)](#)
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- ▶ [Civilian Police Oversight Agency Board Application](#)
- ▶ [Vial of Life](#)
- ▶ [Albuquerque Bernalillo County Government Commission](#)
- ▶ [Old Town Virtual Task Force](#)
- ▶ [Albuquerque NeighborWoods](#)
- ▶ [Public Improvement Districts](#)

City Council Funds Planned Parenthood of New Mexico

\$250,000 was added to City Budget for Planned Parenthood.

May 17, 2022

At last night's City Council Meeting, Albuquerque City Councilor Tammy Fiebelkorn proposed an amendment to the City of Albuquerque's Operating Budget to include \$250,000 in funding for a Council-directed sponsorship to Planned Parenthood of New Mexico. The amendment passed on a vote of 6-3.

"While extremists attack choice nationwide and the Supreme Court seems poised to take away women's rights and control of their own bodies, we affirmed our respect and support for women's reproductive freedoms. I'm proud to have sponsored this amendment to provide vital support for Planned Parenthood" said Tammy Fiebelkorn, District 7 City Councilor.

Councilor Fiebelkorn's amendment created the needed funds for this sponsorship by removing an allocation for a project for which alternative funding has been secured. The amendment then added \$250,000 for Council-directed sponsorship to Planned Parenthood of New Mexico.

"Anti-women extremists have used aggression and intimidation towards Planned Parenthood clinics, staff, and patients resulting in increased costs, delays in treatment, and additional counseling and education needs," Councilor Fiebelkorn added. "These funds support our local Planned Parenthood clinic to ensure that all Albuquerque women have access to family planning, abortion, and other reproductive health services."

Following amendments, the City Council passed the Fiscal Year 2023 Operating Budget bill R-22-24 and it will be sent to the Mayor for signature.

Filed under:

- [Council District 7](#)



City Councilor Tammy Fiebelkorn

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Albuquerque City Council
@ABQCityCouncil

With no further business, this meeting is adjourned.

Aug 15, 2022

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EMERGENCIES

For emergencies, call 911 immediately.

For non-emergency police calls, call 505-242-COPS

TWITTER FEED

CABQ Twitter Accounts ⓘ

A Twitter list by [@cabq](#)

Official Twitter accounts of City of Albuquerque Departments, Offices, and Programs.

CABQACS
@cabqacs

Replying to @cabqacs

She has worked with COA Environment Health Department Epidemiology Division. She has also been GM at several restaurants in the Sunport. Currently she is the Executive Assistant at ACS working with field and Admin staff ensuring the department runs smoothly. [#OneAlbuquerque](#)

21m

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311 COMMUNITY CONTACT CENTER

The 311 Community Contact Center is a centralized call center for the City of Albuquerque. The 311 service is a single telephone number for all non-emergency City of Albuquerque inquiries and services.

Dial 311 or 505-768-2000

ccc@cabq.gov

EXHIBIT B

AGREEMENT

THIS AGREEMENT is made and entered into upon the date of the last signature below, by and between the City of Albuquerque, New Mexico, a municipal corporation (the "City"), and Rocky Mountain Planned Parenthood, Inc, dba Planned Parenthood of the Rocky Mountains, Inc. 7155 E. 38th Avenue; Denver, Colorado, 80207 ("Contractor").

RECITALS

WHEREAS, the City has determined that it will provide basic social services to ensure that its residents are afforded access to basic services required to maintain a reasonable quality of life; and

WHEREAS, these services enhance the health, wellness, education and public safety of the City of Albuquerque; and

WHEREAS, the City has appropriated funds ("City Funds") for this purpose; and

WHEREAS, the City desires to engage the Contractor to render certain social services as described herein; and

WHEREAS, the Contractor represents that it has the expertise and resources necessary to render such social services; and

WHEREAS, there was a delay in the execution of the Agreement, causing a gap between July 1, 2022 and the execution of the Agreement; and

WHEREAS, the City and the Contractor wish to ratify all actions taken by the parties consistent with this Agreement, from July 1, 2022 through to the date of execution of this Agreement.

NOW THEREFORE, in consideration of the premises and mutual obligations herein, the parties hereto do mutually agree as follows:

1. Goals and Objectives: The Contractor agrees to accomplish the goals and objectives set out in Exhibit A to this Agreement in a satisfactory and proper manner, as determined by the City and within the financial resources provided.
2. Scope of Services: The Contractor shall perform the services set out in Exhibit A ("Services") in a satisfactory and proper manner as determined by the City and within the financial resources provided.
3. Time of Performance: Services of the Contractor designated herein are to commence July 1, 2022, and shall be undertaken and completed in such sequence as to assure their expeditious completion in light of the purposes of this Agreement but, in any event, all of the Services required hereunder shall be completed by June 30, 2023. By signing this

Agreement, the parties ratify all actions taken from July 1, 2022 through to the execution of this Agreement. Further, the parties explicitly agree that all of the terms and conditions of this Agreement, including but not limited to insurance requirements and indemnification, are applicable continuously commencing on July 1, 2022.

4. Compensation and Method of Payment:

A. Maximum Compensation: For performing the Services specified in Section 2 of this Agreement, the City agrees to pay the Contractor a total amount not to exceed **TWO HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$250,000.00)**, which amount includes any applicable gross receipts taxes and which amount shall constitute full and complete compensation for the Contractor's Services under this Agreement, including all expenditures made and expenses incurred by the Contractor in performing the Services per the "City Budgets" attached hereto and made a part hereof as Exhibit B.

B. Method of Payment:

- (1) The City agrees to pay such sum to the Contractor on a cost reimbursement basis at no more than bi-weekly but no less than quarterly intervals, and subsequent to receipt of a requisition for payment in compliance with the budgetary and fiscal guidelines of the City. Only those costs which are allowable under the terms of this Agreement and Exhibit B shall be reimbursed. The City shall withhold reimbursement to the Contractor for failure to perform the Services described in this Agreement and for failure to meet any other requirements of this Agreement. Payment will be withheld until such time as the Contractor is in full compliance with all the terms of this Agreement.
- (2) All requisitions for payment submitted by the Contractor must be supported by documentation of Services provided in the Contractor's files and indicate pay now.
- (3) Checks issued by the Contractor to pay obligations incurred under this Agreement shall be made payable to the vendor for services or materials and not to cash.
- (4) The funds received by the Contractor under this Agreement shall be spent by the Contractor within three (3) days of the receipt of said funds unless such funds are for the reimbursement of costs for which Contractor funds have already been spent.
- (5) The City and the Contractor specifically agree that although the default payment schedule for the City is "net 30," under this Agreement the Contractor will be "pay now." This Agreement authorizes that invoices may

be paid immediately upon receipt by the City, rather than 30 days after the invoice date.

- C. **Program Income:** Program Income refers to the gross income earned by the Contractor from City-supported activities. Program Income shall be treated as described in the *Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program*, Section 13.B. Accounting for Program Income, as amended.
 - D. **Responsibility to Monitor Contract:** Contractor shall be responsible for ensuring that the Contractor does not bill for Services in an amount that exceeds the total contract amount. With each invoice submitted to the City, the Contractor shall include a ledger report that identifies the total amount the Contractor has billed for Services under this Agreement and any Supplements to this Agreement. If at any time the Contractor determines that payment for Services may or will exceed the total amount provided in this Agreement and any Supplements to this Agreement, the Contractor shall notify the City in writing, as soon as possible after making that determination. If the Contractor's billing exceeds the amount of this Agreement and any Supplements, the City may stop or delay payment, or the Services may be ceased or delayed at the City's request.
5. **Budget Revisions:** The Contractor shall inform the City of any "line item" revisions to the City Budgets, within the Maximum Compensation shown in this Agreement and shall obtain the City's prior written approval of any budget line item change that represents at least Five Hundred Dollars (\$500) or five percent (5%) or more of the line item amount, whichever is greater, pursuant to the latest approved budget. Provided, however, that any budget revisions must be eligible expenditures under this Agreement.
6. **Amendment to Agreement:** Amendments to this Agreement shall be in writing and signed by both parties.
7. **Fiscal Agent, Purchasing Agent, and Personnel Agent:**
- A. The Contractor shall serve as its own fiscal agent, purchasing agent, and personnel agent.
 - B. The Contractor shall have and maintain financial policies and procedures, an accounting system, purchasing policies and procedures (including bid requirements) and personnel policies and procedures that adhere to generally accepted accounting and management standards and practices.
8. **Performance Monitoring:** The Contractor will from time to time provide assistance and information needed by staff of the City's Department of Family and Community Services to monitor and evaluate the performance of the above mentioned Scope of Services. It is understood that the City's Department of Family and Community Services staff, at its discretion, may perform periodic fiscal and program monitoring reviews on dates to be

arranged. It is also understood that reviews by other officials may be required on dates to be arranged.

9. Restrictions on Use of Funds:

A. The Contractor must establish and use a set of written accounting policies which meet the minimum standards established by the City for contract accounting.

B. The funds provided by this Agreement are primarily intended to provide the Services called for by this Agreement to low and moderate income residents, defined as residents having 80% or below of the median income of the Albuquerque Standard Metropolitan Statistical Area (SMSA).

10. Reversion of Assets: Upon the expiration of this Agreement, the Contractor shall transfer to the City any City Funds on hand at the time of expiration and any accounts receivable attributed to the use of City Funds. The Contractor shall ensure that any property that was acquired or improved in whole or in part with City Funds complies with the Scope of Services Section of this Agreement and must adhere to the Property Management Section of the *Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program*, as amended.

11. Special Provisions: The availability of funds for the activities covered by the Scope of Services outlined herein and for performance of this Agreement, depends solely on the provision of said funds to the City, and the allocation of said funds to the Department of Family and Community Services. The City assumes the responsibility for payment of the compensation due to the Contractor under Sections 4A and 4B herein, to the extent funds for such compensation are made available to the City, and are allocated for use by the Department of Family and Community Services.

12. Independent Contractor:

A. Neither the Contractor nor its employees are considered to be employees of the City of Albuquerque for any purpose whatsoever. The Contractor is considered to be an independent contractor at all times in the performance of the Scope of Services described herein.

B. The Contractor further agrees that neither it nor its employees are entitled to any benefits from the City under the provisions of the Workers' Compensation Act of the State of New Mexico, or to any of the benefits granted to employees of the City under the provisions of the Merit System Ordinance as now enacted or hereafter amended.

C. The Contractor certifies that it will establish, publish and post a statement of its policies and requirements on maintaining a drug free workplace which complies with the Drug-Free Workplace Act of 1988 (P.L. 100-690), and shall require all

providers of Services under this Agreement to comply with the workplace requirements of the Act.

13. Personnel:

- A. The Contractor represents that it has, or will secure, all personnel required in performing all of the Services required under this Agreement. Such personnel shall not be employees of or have any contractual relationships with the City. Personnel salaries, benefits and other related costs may be paid for from City Funds as authorized in the City Budgets.
- B. All the Services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under state and local law to perform such Services.
- C. None of the work or the Services covered by this Agreement shall be subcontracted without prior written approval of the City. Any work or Services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.
- D. The Contractor shall have in its possession a documented set of personnel policies and procedures, including fringe benefits, if any, available to the Contractor's employees and which has been formally adopted by its governing board. Such a document shall be made available for inspection and determination by the City as to its acceptability.
- E. If the Services under this Agreement require the Contractor to work with or be in proximity to children or other vulnerable populations, the Contractor will comply with all applicable requirements contained in the *Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program*, as amended.

14. Indemnity: The Contractor agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from and against any and all claims, actions, suits or proceedings of any kind brought against said parties because of any injury or damage received or sustained by any person, persons or property arising out of or resulting from the Services performed by the Contractor under this Agreement or by reason of any asserted act or omission, neglect or misconduct of the Contractor or Contractor's agents or employees or any subcontractor or its agents or employees, direct or indirect. The defense and indemnity required hereunder shall not be limited by reason of the specification of any particular insurance coverage in this Agreement.

15. Insurance: The Contractor shall procure and maintain at its own expense until final payment by the City for Services covered by this Agreement, insurance in the kinds and amounts hereinafter provided with insurance companies authorized to do business in the State of New Mexico, covering all operations under this Agreement, whether performed

by the Contractor or its agents. Before commencing the Services, and on the renewal of all coverages, the Contractor shall furnish to the City a certificate or certificates in form satisfactory to the City showing that it has complied with this Section. All certificates of insurance shall provide that thirty (30) days written notice be given to the Risk Manager, Department of Finance and Administrative Services, City of Albuquerque, P.O. Box 470, Albuquerque, New Mexico, 87103, before a policy is canceled, materially changed, or not renewed. Various types of required insurance may be written in one or more policies. With respect to all applicable coverages, the City shall be named an additional insured by endorsement onto the policy. Proof of this additional insured relationship shall be evidenced on the Certificate of Insurance (COI) and on the insurance endorsement. All coverages afforded shall be primary with respect to operations provided. Kinds and amounts of insurance required are as follows:

- A. Commercial General Liability Insurance: A commercial general liability insurance policy with combined limits of liability for bodily injury or property damage as follows:

- \$2,000,000 Per Occurrence (or \$1,000,000.00 plus \$1,000,000.00 Umbrella Coverage)
 - \$2,000,000 Policy Aggregate
 - \$1,000,000 Products Liability/Completed Operations
 - \$1,000,000 Personal and Advertising Injury
 - \$ 5,000 Medical Payments

Said policy of insurance must include coverage for all operations performed for the City by the Contractor and contractual liability coverage shall specifically insure the hold harmless provisions of this Agreement.

- B. Commercial Automobile Liability Insurance (“CAL”): A CAL policy with not less than a \$1,000,000 combined single limit of liability for bodily injury, including death, and property damage in any one occurrence. The CAL policy must include coverage for the use of all owned, non-owned, and hired automobiles, vehicles and other equipment both on and off work. This CAL policy cannot be a personal automobile liability insurance policy as most personal automobile liability policies exclude coverage for work related losses.
- C. Workers' Compensation Insurance: Workers' Compensation Insurance for the Contractor’s employees when required by, and in accordance with, the provisions of the Workers' Compensation Act of the State of New Mexico (“Act”). The Contractor must have three (3) or more employees to trigger the Act’s workers’ compensation insurance requirement. Per the Act, this number includes the owner of the business.
- D. Professional Liability (Errors and Omissions) Insurance: Professional liability (errors and omissions) insurance in an amount not less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.

- E. Sexual Abuse Molestation Coverage: Sexual abuse molestation insurance in an amount not less than \$1,000,000 combined single limit of liability per occurrence with a general aggregate of \$1,000,000.
- F. Cyber Liability Coverage: Cyber liability insurance in an amount not less than \$2,000,000 combined single limit of liability per occurrence with a general aggregate of \$2,000,000. This coverage should be required, unless specific circumstances that eliminate potential risks indicate otherwise, if the Contractor may have cybernetic access to the City's confidential information, taxpayer data, information technology, personnel, healthcare, accounting, or finance systems.
- G. Increased Limits: If, during the term of this Agreement, the City requires the Contractor to increase the maximum limits of any insurance required herein, an appropriate adjustment in the Contractor's compensation will be made.

16. Other Attachments: The Contractor must have on file with the City current copies of:

- A. its certificate of nonprofit incorporation;
- B. the Contractor's articles of incorporation approved by the New Mexico Secretary of State Corporations Bureau;
- C. a copy of the Contractor's corporate bylaws;
- D. any license applicable to the Contractor's proposed activities;
- E. a listing of the current governing board members;
- F. a current organizational chart;
- G. the Contractor's written personnel policies;
- H. the Contractor's written accounting policies and procedures;
- I. the Contractor's written procurement policies and procedures; and
- J. a work plan which is based on the project narrative in Sections 1 and 2 of this Agreement and which specifies:
 - (1) the major tasks or activities to be performed under this Agreement;
 - (2) the measurable objectives for each task; and
 - (3) the time frame within which the tasks will be accomplished.

17. Representations in Proposal: The City has relied on all representations in the Contractor's proposal relevant to this Agreement in making its award, and the Contractor warrants the accuracy of all representations made by the Contractor in said proposal. Misrepresentation in the proposal shall be cause to terminate the contract and the Contractor shall owe all amounts paid to it as liquidated damages.
18. Notices, Addresses: Any notice hand-delivered or sent by mail (with a return receipt which indicates delivery) to the addresses below shall be deemed received for any purposes arising out of this Agreement, regardless of whether personally received by the Contractor.

For the City, notices may be sent to:

Director, Department of Family and Community Services
P.O. Box 1293
Albuquerque, NM 87103

or for hand delivery:

Director, Department of Family and Community Services
400 Marquette NW, 5th Floor, Room 504
Albuquerque, NM 87102

For the Contractor, notices may be sent to:

Chief Executive Officer
7155 E. 38th Avenue
Denver, Co. 80207

19. Required Assurances: During the performance of this Agreement, the Contractor agrees as follows:
 - A. Non-Discrimination; Americans with Disabilities Act:
 - (1) In performing the Services required hereunder, the Contractor shall not discriminate against any person on the basis of race, color, religion, gender, sexual preference, sexual orientation, gender identity, national origin or ancestry, age, physical handicap or disability as defined in the Americans with Disabilities Act of 1990, as now enacted or hereafter amended.
 - (2) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, gender, sexual preference, sexual orientation, gender identity, age, national origin or ancestry, physical or mental handicap, disability, or Vietnam era or disabled veteran status.
 - (3) In performing the Services required hereunder, Contractor agrees to meet all the requirements of the Americans with Disabilities Act of 1990, as

amended, and all applicable rules and regulations, which are imposed directly on the Contractor or which would be imposed on the City as a public entity. The Contractor will make reasonable accommodation to the known physical or mental handicap or disability of an otherwise qualified employee or applicant for employment.

- (4) The Contractor shall ensure and maintain a working environment free of sexual harassment and other unlawful forms of harassment, intimidation, and coercion in all facilities at which the Contractor's employees are assigned to work.
- (5) The Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, sexual preference, sexual orientation, gender identity, age, national origin or ancestry, or physical or mental handicap or disability.

B. Use of Funds for Sectarian Religious Purposes: The Contractor covenants and agrees that no funds awarded through this program will be used for sectarian religious purposes, and specifically that:

- (1) there will be no religious test for admission for services;
- (2) there will be no requirement for attendance at religious services;
- (3) there will be no inquiry as to a client's religious preference or affiliation;
- (4) there will be no proselytizing; and
- (5) the Services provided will be essentially secular.

C. Lobbying: The Contractor understands that utilization of any federally appropriated funds provided to the Contractor by the City pursuant hereto to influence or attempt to influence any member or employee of the Executive or Legislative branches of the federal government with respect to a covered federal action is prohibited. The Contractor further agrees that it shall comply with the certification and disclosure requirements of the applicable regulations. *See Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program*, as amended, for certifications and applicable rules.

D. Accountability in Government: The Contractor understands and will comply with the City's Accountability in Government Ordinance, §2-10-1 *et seq.* ROA 1994 and Inspector General Ordinance, §2-17-1 *et seq.* ROA 1994.

- E. No Collusion: The Contractor covenants and warrants that this Agreement is entered into by the Contractor without collusion on the part of the Contractor with any person or firm, without fraud and in good faith. The Contractor also covenants and warrants that no gratuities, in the form of entertainment, gifts or otherwise, were, or during the term of this Agreement, will be offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view towards securing this Agreement or for securing more favorable treatment with respect to making any determinations regarding the performance of this Agreement.

20. Reports and Information:

- A. At such times and in such forms as the City and/or the appropriate funding entity may require, there shall be furnished to the Department of Family and Community Services of the City of Albuquerque, such statements, records, data and information as the appropriate funding entity or the City may request pertaining to matters covered by this Agreement. Unless authorized by the City, the Contractor will not release any information concerning any work product including any reports or other documents prepared pursuant to this Agreement until the final product is submitted to the City.
- B. The Contractor will provide to the Department of Family and Community Services cumulative quarterly program performance reports covering the Services provided under this Agreement. Reports are due no later than fifteen (15) days after the end of the reporting quarter, and shall be in accordance with City of Albuquerque reporting instructions.
- C. The Contractor will cooperate with any City, State or federal program data collection and evaluation efforts by providing the requested information for Services delivered. Failure to do so will result in the suspension and/or termination of this Agreement.

21. Open Meetings Requirements: Any nonprofit organization in the City which receives funds appropriated by the City, or which has as a member of its governing body an elected official, or appointed administrative official, as a representative of the City, is subject to the requirements of §2-5-1 *et seq.* ROA 1994, Public Interest Organizations. The Contractor agrees to comply with all such requirements, if applicable.

22. Active Board:

- A. The non-profit Contractor must document that its governing board is constituted in compliance with approved bylaws and that it actively fulfills its responsibilities for policy direction, including regularly scheduled meetings for which minutes are kept.

- B. Project progress reports submitted by non-profit agencies must be approved and signed by the presiding officer of the board of directors. Reports submitted by a public agency must be reviewed and signed by an authorized official of that agency.
23. Debarment, Suspension, Ineligibility and Exclusion Compliance:
- A. The Contractor certifies that it has not been debarred, suspended or otherwise found ineligible to receive funds by any agency of the executive branch of the federal government.
 - B. The Contractor agrees that should any notice of debarment, suspension, ineligibility or exclusion be received by the Contractor, the Contractor will notify the City immediately.
24. Establishment and Maintenance of Records: Records shall be maintained in accordance with requirements prescribed by the City with respect to all matters covered by this Agreement. Except as otherwise authorized by the Department of Family and Community Services of the City, such records shall be maintained for a period of five (5) years after the receipt of final payment under this Agreement.
25. Audits and Inspections:
- A. At any time during normal business hours and as often as the City and/or the appropriate funding entity may deem necessary, there shall be made available to the City for examination, all of the Contractor's records with respect to all matters covered by this Agreement. The Contractor shall permit the City and/or the appropriate funding entity to audit, examine, and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment, and other data relating to all matters covered by this Agreement.
 - B. Contractors who expend \$750,000 or more of federal funds during the year shall have an audit conducted in accordance with the federal government's Office of Management and Budget Circular A-133 as amended. The audit shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial and compliance audits on funds provided under this Agreement. Contractors who receive \$25,000 or more in funding from the City, and do not fall under A-133, shall have a financial statement audit conducted by an independent auditor in accordance with generally accepted government auditing standards.
26. Publication, Reproduction and Use of Material: No material produced in whole or in part under this Agreement shall be subject to copyright in the United States or in any other country. The City shall have unrestricted authority to publish, disclose, distribute and otherwise use, in whole or in part, any reports, data or other materials prepared under this Agreement.

27. Identification of Documents: All reports, maps, and other documents completed as a part of this Agreement, other than documents exclusively for internal use within the City, shall contain the following information on the front cover or title page (or in the case of maps, in an appropriate block): Name of the City, month and year of the preparation, name of the Contractor and descriptive title.
28. Conflict of Interest: No member, officer, or employee of the Contractor, or any other person who exercises any functions or responsibilities with respect to the programs of the Contractor during his/her tenure, or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the program assisted under this Agreement. The Contractor shall incorporate, or cause to be incorporated in all such subsequent agreements or sub-agreements, a provision prohibiting such interest pursuant to the purposes of this Section.
29. Compliance with Laws: In performing the Services required hereunder, the Contractor shall comply with all applicable laws, ordinances, and codes of the federal, State and local governments. In addition, the Contractor shall comply with the *Administrative Requirements for Contracts Awarded Under the City of Albuquerque, Department of Family and Community Services, Social Services Program*, as amended, and understands that failure to comply with the *Administrative Requirements* shall constitute grounds for termination of this Agreement.
30. Assignability: The Contractor shall not assign any interest in this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the City thereto.
31. Termination for Cause:
 - A. If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner its obligations under this Agreement or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Agreement, including all Exhibits thereto, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, maps, studies, surveys, drawings, models, photographs and reports prepared by the Contractor under this Agreement shall, at the option of the City, become its property, and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder.
 - B. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Contractor, and the City may withhold any payments to the Contractor for the purposes of set-off until such time as the exact amount of damages due the City from the Contractor is determined.

32. Termination without Cause by the City: The City may terminate this Agreement without cause at any time by giving at least forty-five (45) days notice in writing to the Contractor. If the Contractor is terminated by the City as provided herein, the Contractor will be paid an amount which bears the same ratio to the total compensation as the Services actually performed bear to the total Services of the Contractor covered by this Agreement, less payments of compensation previously made. If this Agreement is terminated due to the fault of the Contractor, the preceding Section hereof relative to termination shall apply.
33. Force Majeure: The City shall not be liable for failure to perform its obligations under the Contract due to causes beyond the control and without the fault or negligence of either party. Such causes include, but are not restricted to, acts of God or the public enemy, acts of the State or federal government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather and defaults of subcontractors due to any of the above, unless City shall determine that the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit vendor to meet the required delivery scheduled. The rights and remedies of the City provided in this paragraph shall not be exclusive and are in addition to any other rights now being provided by law or under the Agreement.
34. Appropriations: Notwithstanding any provision in this Agreement to the contrary, the terms of this Agreement are contingent upon the City Council of the City of Albuquerque making the appropriations necessary for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement may be terminated at the end of the City's then current Fiscal Year upon written notice given by the City to the Contractor. Such event shall not constitute an event of default. All payment obligations of the City and all of its interest in this Agreement will cease upon the date of termination. The City's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.
35. Construction and Severability: If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
36. Enforcement: The Contractor agrees to pay to the City all costs and expenses including reasonable attorney's fees incurred by the City in exercising any of its rights or remedies in connection with the enforcement of this Agreement.
37. Entire Agreement: This Agreement contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
38. Applicable Law: This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of New Mexico, and the laws, rules and regulations of the City of Albuquerque.

39. Forum Selection: Any cause of action, claim, suit, demand, or other case or controversy arising from or related to this Agreement shall be brought only in a court located in Bernalillo County, New Mexico. The parties irrevocably submit themselves to and consent to the jurisdiction of such courts. The provisions of this Section shall survive the termination of this Agreement.
40. Ethics and Campaign Practices: The Contractor agrees to provide the Board of Ethics and Campaign Practices of the City of Albuquerque or its investigator (the “Board”) or the City of Albuquerque’s Inspector General with any records or information pertaining in any manner to this Agreement whenever such records or information are within the Contractor’s custody, are germane to an investigation authorized by the Board and are requested by the Board. The Contractor further agrees to appear as a witness before the Board as required by the Board in hearings concerning ethics or campaign practices charges heard by the Board. The Contractor agrees to require that all subcontractors or sub-consultants employed by the Contractor for any of the Services performed under the terms of this Agreement shall agree in writing to comply with the provisions of this Section. The Contractor and its sub-consultants or subcontractors shall not be compensated for its time or any costs it incurs in complying with the requirements of this Section.
41. Approval Required: This Agreement shall not become binding upon the City until approved by the highest approval authority of the City required under this Agreement.
42. Electronic Signatures: Authenticated electronic signatures are legally acceptable pursuant to Section 14-16-7 NMSA 1978. The parties agree that this agreement may be electronically signed and that the electronic signatures appearing on the agreement are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

SIGNATURES ON NEXT PAGE

IN WITNESS WHEREOF, the City and the Contractor have executed this Agreement as of the last signature date set forth below.

CONTRACTOR:

Agency Name: Rocky Mountain Planned Parenthood, Inc.

Approved By: DocuSigned by:
Julia Alvarez
C13A85CE9F92485... Date: 8/5/2022 | 8:31 AM PDT

Name: Julia Alvarez Title: Chair of the Board of Trustees

CITY OF ALBUQUERQUE:

DS
PP

Approved By: DocuSigned by:
Gilbert Ramirez
F9705DFAA0D2484... Date: 8/5/2022 | 9:41 AM MDT

Name: Gilbert Ramirez Title: Deputy Director

DS
LR

Approved By: DocuSigned by:
Lawrence Rael
B2029FDF78E649F... Date: 8/5/2022 | 10:37 AM MDT

Name: Lawrence Rael Title: Chief Administrative Officer

EXHIBIT A

FY2023 SCOPE OF SERVICES

AGENCY: PLANNED PARENTHOOD

A. Goals and Objectives:

1. To achieve the City of Albuquerque Goal Statement #1: People of all ages have the opportunity to participate in the community and economy and are well sheltered, safe, healthy, and educated.
2. To achieve the City of Albuquerque Goal Statement #2: The public is safe and secure, and shares responsibility for maintaining a safe environment.
3. To increase Individual and Family Resilience through the provision of community engagement and health services.

B. Scope of Services:

The Contractor shall perform the following services in a manner satisfactory to the City and consistent with any standards required as a condition of providing these funds and within the financial resources of this Agreement for the purpose of providing community engagement and health services.

1. **Output 1:** The Contractor will offer healthcare services to New Mexican residents. Services are limited to wellness visits, breast exams, telehealth visits, health center visits and any follow-up or treatment as needed, cancer screening and prevention services, provision of birth control and testing for sexually transmitted infections. The Contractor will report on the number of clients served and the number of each service provided from the list above and will track patient demographics to monitor social determinants of health.

Outcome 1: The Contractor will work to reduce the number of sexually transmitted infections (STI's) by testing, diagnosing and, when necessary, providing treatment as well as increase access to family planning/practice services, as evidenced by reporting the number of patients who receive these services from the health center and the number of patients who receive treatment after receiving a positive result from an STI test.

Outcome 2: The Contractor will work to provide early identification and prevention of cancer through the provision of cancer screening, HPV vaccinations, breast exams, and other preventative and screening services. The Contractor will report on the number of services provided, and the number of referrals made upon a positive screening.

2. **Output 2:** The Contractor will expand health equity by promoting equitable access to services and care.

Outcome 2: The Contractor will track progress in expanding health equity, by disaggregating data to assess for any difference in patient access, experience, or clinical outcomes across demographic groups, including age, race, ethnicity, income level, region of residence, etc.

3. **Output 3:** The agency will provide patient education to 8,000 participants regarding healthy choices on sexuality and parenting. The agency will report numbers served; monitor strategies, outputs, and outcomes.

C. Service Implementation and Reporting:

1. The Contractor shall make every effort to bill Medicaid for eligible services in order to maximize services for non-Medicaid clients or non-Medicaid covered expenses as described in the section detailing the use of Program Income in the *Administrative Requirements*.
2. The Contractor will design program in such a way as to achieve equitable service provision and equitable results among clients served. Contractor will report out on outcome rates on all outcomes among different race populations served and among different insurance types.
3. The Contractor will submit Quarterly Reports which consists of three forms: Part A includes aggregate results from agency data collection tools. Part B is a narrative highlighting connection to supportive resources, identification of barriers to serve comprehensive needs of clients, and suggested solutions to address barriers to obtaining services. Part C provides clients demographics. In conjunction with submission of quarterly reports, the Contractor will meet monthly with City staff for ongoing technical assistance and review of implementation of program.
4. The Contractor will adhere to best practices and state and federal regulations when utilizing telehealth services when such services are in the best interest of the health of the client. The Contractor is responsible for remaining current with regard to requirements surrounding telehealth. General state requirements for telehealth can be found at <https://www.hsd.state.nm.us/>, and federal requirements at <https://telehealth.hhs.gov/>.

Exhibit B

APPENDIX #2: Expense Summary Form in Word

1. Applicant Agency: Planned Parenthood of the Rocky Mountains
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2. Project Title: Albuquerque Reproductive Health Access Project
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Expenditure Category	Program Total	City Funding Requested	Percent Requested
Personnel Costs			
Salaries & Wages	\$ 1,076,285.62	\$187,500	17%
Payroll Taxes and Employee Benefits	\$269,071.49	\$62,500	23%
Total Personnel Costs	\$1,345,358	\$250,000	19%
Operating Costs - Direct			
Contractual Services	\$255,485.52		
Audit Costs			
Consumable Supplies	\$822,066		
Telephone	\$480		
Postage and Shipping	\$13,688		
Occupancy	\$115,889		
a. Rent			
b. Utilities			
c. Other			
Equipment Lease	\$25,000		
Equipment Maintenance	\$48,055		
Printing & Publications			
Travel	\$21,390.25		
a. Local Travel			
b. Out of Town Travel			
Conferences, Meetings, Etc.	\$2,200		
Direct Assistance to Beneficiaries	\$21,225		
Membership Dues	\$2,200		
Equipment, Land, Buildings			
Insurance	\$45,000		
Fuel and Vehicle Maintenance			
Other Expense	\$1,588,322		
Total Operating Costs	\$2,961,000.77	\$0	0%
Total Direct Costs (Personnel & Operating)	\$4,306,359	\$250,000	6%
Indirect Costs	0	0	

(%; attach Rate Letter)			
			NA
TOTAL PROGRAM EXPENSES	\$4,306,359*	\$250,000	

*Total expenses include both Albuquerque health centers but not Public Affairs, HIV Program, and Education. Total NM budget is much higher.

INSTRUCTIONS - APPENDIX #4: Project Budget Detail Form – Personnel Expenses
Submit this form in EITHER *Word* (next page) OR *Excel* in Separate Attachment

- Section 1. Enter the name of the agency submitting the proposal.
- Section 2. Enter the project title as shown on the Proposal Summary and Certification form.
- Section 3. Detail each staff member included in Personnel Costs in the Expense Summary Form in APPENDIX #2. **Use one line per staff member working on the project. Add rows and use additional sheets as necessary.** The following illustration is provided for clarification purposes only.

Sample Illustration

FTE on Project	Position Title	Salary for the Project	Amount Requested From the City	Percent Requested (Amount Requested / Salary to the Project)
1.0	Case Manager	\$40,000	\$20,000	50%
This individual is dedicated full-time to this project, however their salary is covered 50% by the City and 50% by other funding sources.				
.50	Case Manager	\$20,000	\$15,000	75%
This individual works full time but splits time 50/50 between this project and unrelated projects. Their salary is covered 75% by City funds and 25% by another funding source.				
.50	Case Manager	\$20,000	\$20,000	100%
This individual works half time. They dedicate all their time to this project, and the agency seeks 100% coverage by City funds – no other funding sources.				

APPENDIX #3: Revenue Summary Form in Word

1. Applicant Agency: Planned Parenthood of the Rocky Mountains in New Mexico (PPRM-NM)

2. Project Title: Albuquerque Reproductive Health Access Project

Revenue Source	Agency Total (NM)	% of Agency Budget (All States)
Government Revenues		
Revenues from Federal Government <i>(On separate lines, list each Federal Agency providing fees/funding and the amount of funding)</i>		
Fees from Federal Government Agencies other than Medicaid Reimbursement:	\$0	
Grants from Federal Government Agencies:	\$0	
Medicaid Reimbursements:	\$2,240,203.92	
Subtotal Federal Agencies	\$2,240,203.92	4.3 %
Revenues from State Government <i>(On separate lines, list each State Agency providing fees/funding and the amount of funding)</i>		
Fees from State Government Agencies:	\$0	
Grants from State Government Agencies:		
NM Department of Health – BCCP – CDC Pass-through	\$17,168	
NM Dept of Health NM HIV Prevention – CDC Pass-through	\$102,200	
Subtotal State Agencies	\$119,368	.2%
Revenues from County Government	\$0	
Revenues from the City of Albuquerque (including this proposal or contract) <i>(On separate lines, list each City funded project and the amount of funding)</i>	\$250,000	

City of Albuquerque City Council Grant	\$250,000	.4%
Other Municipal Government Revenues	\$0	
Subtotal Local Government	\$250,000	.4%
TOTAL GOVERNMENT REVENUES FROM ALL SOURCES	\$2,609,571	5%
Other Revenue:		
Contributions	\$2,638,105	
United Way Revenue	\$72,761	
Other Revenue		
Subtotal Other Revenues	\$2,710,866	5.1%
TOTAL REVENUE FROM ALL SOURCES:	\$5,320,437	10.2%

*Total agency budget in FY21 was \$51,998,877. This is a regional budget, with NM representing a portion of these expenses.

APPENDIX #4: Program Budget Detail Form – Personnel Expenses in *Word*

1. Applicant Agency: Planned Parenthood of the Rocky Mountains

2. Proposal Title: Albuquerque Reproductive Health Access Project

Personnel costs: Use this form to justify all salaries, wages, payroll taxes and fringe benefits shown on the Expense Summary Form. Add additional rows as necessary.

FTE on Project	Position Title	Salary for the Project	Amount Requested from the City	Percent Requested (Amount Requested / Salary for the Project)
1.0	Registered Nurse 1	\$64,350	\$24,132	38%
1.0	Registered Nurse 1	\$64,350	\$24,132	38%
1.0	Health Center Assistant 3	\$36,563	\$27,422	75%
1.0	Health Center Assistant 3	\$36,563	\$27,422	75%
1.0	Health Center Assistant 3	\$36,563	\$27,422	75%
1.0	Advanced Practice Nurse 2	\$92,625	\$56,970	62%
4.	Salaries & Wages	\$331,014	\$187,500	57%
5.	Payroll Taxes & Employee Benefits*	\$82,753	\$62,500	76%
6.	Total Personnel Costs	\$413,767	\$250,000	60%*

7. *Payroll Taxes: FICA @ 6_____% Unemployment Insurance @ 1.7_____%
 Employee Benefits: Health Insurance @ variable ____% Retirement @ variable ____%
 Other: _____@ _____% Other: _____@ _____%

*While the request is 60% of the project budget (as we divided it), it is also 6% of the total program budget across the Albuquerque region.

APPENDIX #5: Program Budget Detail Form – Operating Expenses in *Word*

1. Applicant Agency: Planned Parenthood of the Rocky Mountains

2. Project Title: Albuquerque Reproductive Health Access Project (SEE BELOW)

3. Direct and Indirect Costs:				
Line Item and Basis (Non-Personnel)	Project Total	Amount Requested	Amount Other Sources	Percent Requested
Contractual Services	NA	NA	NA	NA
List all costs and assumptions in this area (e.g., 50% of Contractor #1 costs @ \$150 per month for 12 months)				
Audit Costs				
Consumable Supplies				
Telephone				
Postage and Shipping				
Occupancy				
a. Rent				
b. Utilities				
c. Other				
Equipment Lease/Purchase				
Equipment Maintenance				
Printing & Publications				
Travel				
Conferences, Meetings, Etc.				
Direct Assistance to Beneficiaries				
List all costs and assumptions in this area e.g., Rental assistance for 50 clients at \$700 per month)				

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Membership Dues				
Equipment, Land, Buildings				
Insurance				
Fuel and Vehicle Maintenance				
Total Operating Costs	NA	NA	NA	NA

As applicable, attach cost allocation plan

*Expense budget is personnel only – did not include additional operating expenses. PPRM will cover additional costs.

APPENDIX #6: Budget Detail Form: Projected Drawdown Schedule

1. Applicant Agency: Planned Parenthood of the Rocky Mountains

2. Proposal Title: Albuquerque Reproductive Health Access Project

3. Amount and percent of total requested funds on a quarterly basis:

Quarter Ending	Amount to be Requested	Percent of Total
9/30/22	\$62,500	25%
12/31/22	\$62,500	25%
3/31/23	\$62,500	25%
6/30/23	\$62,500	25%
TOTAL		

Explanation if any projected drawdowns exceed 25% of the total requested funds:

NA

4. As applicable: Reimbursement Rate – only applicable to unit of service contracts:

Rate: \$ _____ per _____ (hour, client, etc.)

Annual units: _____

5. As applicable: Rate Justification – only applicable to unit of service contracts: