

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

DEPARTMENT: POLICE
AGENDA DATE: April 9, 2013
CONTACT PERSON/PHONE: Assistant Chief Feidner (915) 564 - 7309
DISTRICT (S) AFFECTED: All

SUBJECT:

That the Mayor be authorized to sign an Interlocal Agreement between the CITY OF EL PASO and UNIVERSITY MEDICAL CENTER OF EL PASO, for the collection of evidence and the handling and storage of sexual assault exam kits on behalf of the City's Police Department by Physicians and Sexual Assault Nurse Examiners from University Medical Center of El Paso for two years from the effective date of this agreement, with an option to extend by the City Manager for two additional years.

BACKGROUND / DISCUSSION:

The purpose of this Interlocal Agreement is to allow for the collection of evidence and the handling and storage of sexual assault exam kits on behalf of the City's Police Department by Physicians and Sexual Assault Nurse Examiners from the University Medical Center of El Paso.

PRIOR COUNCIL ACTION:

No.

AMOUNT AND SOURCE OF FUNDING:

Police Department General Fund

BOARD / COMMISSION ACTION:

Enter appropriate comments or N/A

N/A

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

DEPARTMENT HEAD: _____
Name: Gregory K. Allen Signature: [Signature] Date: 3/21/13

RESOLUTION

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

That the Mayor be authorized to sign an Interlocal Agreement between the CITY OF EL PASO and UNIVERSITY MEDICAL CENTER OF EL PASO, for the collection of evidence and the handling and storage of sexual assault exam kits on behalf of the City's Police Department by physicians and Sexual Assault Nurse Examiners from University Medical Center of El Paso for two years from the Effective date of this Agreement, with an option to extend by the City Manager for two additional years.

PASSED AND APPROVED this _____ day of _____, 2013.

CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:



Gregory Allen
Chief of Police

STATE OF TEXAS §
 § **INTERLOCAL GOVERNMENTAL AGREEMENT**
COUNTY OF EL PASO §

This Interlocal Agreement (“Agreement”) is entered into by and between the City of El Paso, a home rule municipal corporation (“CITY”), and the El Paso County Hospital District d/b/a University Medical Center of El Paso, a political subdivision of the State of Texas (“UMC”).

WHEREAS, UMC operates and maintains University Medical Center, which treats, cares, and accepts those involved in sexual assault traumas; and

WHEREAS, UMC would perform sexual assault examinations and collect, handle, and store sexual assault evidence for victims of sexual assaults upon request of the City; and

WHEREAS, the CITY and UMC are authorized to enter into this Agreement under the provisions of Texas Gov’t Code §791 *et. seq.*

NOW, THEREFORE, THE CITY AND UMC HEREBY ENTER INTO THIS AGREEMENT UNDER THE FOLLOWING TERMS AND CONDITIONS:

1.0 CONTRACTUAL RELATIONSHIP

1.1 No partnership or joint venture is intended to be created by this Agreement, nor any principal-agent or employer-employee relationship between the parties or any of their officers, employees, agents or representatives.

1.1-1 The UMC understands and agrees that it will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible as an employer to the UMC’s officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.1-2 The CITY understands and agrees that it will be responsible for its respective acts or omissions, and the UMC shall in no way be responsible as an employer to the CITY’s officers, employees, agents or representatives who perform any service in connection with this Agreement.

1.2 The UMC acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the CITY to any obligation other than the obligations set forth in this Agreement. The CITY also acknowledges and agrees that it does not have, and will not attempt to assert, the authority to make commitments for or to bind the UMC to any obligation other than the obligations set forth in this Agreement.

1.3 The parties acknowledge and agree that in all things relating to this Agreement, the CITY and the UMC are performing governmental functions. The parties hereby agree that the CITY and the UMC enter into this Agreement as governmental entities for the purpose of performing a governmental function.

2.0 PURPOSE AND TERM OF AGREEMENT

2.1 Purpose. The purpose of this Agreement is to establish the fiscal terms and relationship between the CITY and UMC involving the collection of evidence and the handling and storage of sexual assault exam kits by Sexual Assault Nurse Examiners at UMC on behalf of the El Paso Police Department. This action by the CITY positively affects the resources utilized by the El Paso Police Department in connection with investigation and prosecution of such offense, by becoming more efficient in the treatment of individuals involved in sexually based offenses.

2.2 Term. The term of this Agreement shall be two years from the date of execution. The term of the agreement may be extended by the City Manager for a term of an additional two years ("Option Term") under the same terms of this Agreement upon approval by UMC.

3.0 SCOPE OF SERVICES

3.1 The CITY, through the El Paso Police Department, shall allow Sexual Assault Nurse Examiners at UMC to perform forensic examinations and to collect, handle and store evidence collected during such examinations when such practice is prudent and advantageous to the individuals involved or to the investigation and prosecution of the sexually based offense.

3.2 The CITY and UMC shall abide by Articles 56.06 and 56.065 of the Texas Code of Criminal Procedure and Title 1, Chapter 61, Subchapter I of the Texas Administrative Code.

3.3 UMC shall:

3.3.1 Abide by the established protocol for the collection of evidence as prescribed by the Attorney General of Texas, Sexual Assault Prevention and Crisis Services as provided by Articles 56.06 and 56.065 of the Texas Code of Criminal Procedure and Chapter 323 of the Texas Health and Safety Code.

3.3.2 Make all results of forensic examinations available to the investigating unit no later than seventy-two (72) hours after the examination.

3.3.3 Be responsible for ensuring that all results of the examinations are kept strictly confidential and secure.

3.3.4 Ensure that a Licensed Independent Practitioner licensed in the State of Texas or Sexual Assault Nurse Examiner shall sign all medical orders and forms incident to the performance of this Contract as required by the Office of the Attorney General. The CITY will not pay UMC for services for which the Office of the Attorney General does not reimburse the CITY.

3.3.5 With respect to the priority of medical emergencies, assign the highest category practicable to sexual assault victims to minimize delay in examinations. In any case, the victim medical examination activities shall be initiated and completed within three (3) hours after the victim has been treated and cleared by the medical personnel, and the Sexual Assault Nurse Examiner has received an authorization and reporting number from EPPD. UMC will not request the City Police Department services until the victim has been cleared by medical personnel and City Police will respond promptly.

3.3.6 Ensure appropriate hospital personnel receive training in the proper use of the Victim Sexual Assault Evidence Collection Kit and general evidence collection as it relates to collection of body fluids and clothing through mandatory training as required by the Office of the Attorney General.

3.3.7 Ensure that all Sexual Assault Nurse Examiners involved in the collection of evidence and/or examination(s) shall be prepared to testify in court as expert witnesses in regard to the chain of custody and/or their findings. The facility will request a three (3) year post examination date availability commitment from all Sexual Assault Nurse Examiners involved in the collection of evidence and/or examination(s).

3.3.8 Ensure that the facility (ies) used in the performance of this contract shall be a twenty-four (24) hour per day, seven days per week facility(ies). To the extent possible, ensure private waiting areas separated by sight and sound from the public for each victim of sexual assault. To assure the privacy of victims, necessary administrative tasks such as, but not limited to, admissions are to be conducted in a private area.

3.3.9 Become familiar with any new provisions, (should new policies, procedures, or requirements be adopted at any time during the term of this contract by the Texas State Legislature), and fully implement and support them as soon as they become effective.

4.0 CONSIDERATION

4.1 UMC will be reimbursed by CITY for services rendered in the collection, handling, and storage of sexual assault exams by Sexual Assault Nurse Examiners according to the Crime Victims' Compensation medical fees guidelines.

4.2 UMC will only be reimbursed for services reimbursed by Crime Victims' Compensation pursuant to to Article 56.06(a) of the Texas Code of Criminal Procedure. If the victim's injuries are so severe that it requires more than one nurse to obtain evidence there may be additional charges. UMC understands that the CITY will not pay for charges for which the CITY does not receive reimbursement from the Office of the Attorney General.

4.3 The UMC agrees that in their submission of the evidence, that it will not charge, submit, or require payment from the City of El Paso for medical treatment for individuals involved in sexually based offenses.

5.0 PAYMENTS

5.1 The UMC will invoice the CITY monthly for the Services performed through written invoices. Invoices shall not be submitted to the CITY by the UMC more frequently than once per month. All invoices are due and payable by the CITY within thirty (30) days of receipt.

5.2 The invoice will be itemized and submitted for payment on the form authorized by the Texas Dept of Public Safety and the Office of the Texas Attorney General for use by SANE nurses (NRSA-FRM-2 Rev.00(07-03-09) or current version). UMC understands that the CITY will not be reimbursed if the invoice does not identify the victim by name, although the invoice will reflect all applicable charges. The City will not pay UMC for charges for which the CITY does not receive reimbursement from the Office of the Attorney General.

6.0 TERMINATION

This Agreement may be terminated as provided herein:

6.1 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing. Except as otherwise provided herein, all duties and obligations of the CITY and the UMC shall cease upon termination or expiration of this Agreement.

6.2 Termination by Either Party. It is further understood and agreed by the CITY and the UMC that either party may terminate this Agreement by giving thirty (30) days written notice to the other party. Except as otherwise provided herein, all duties and obligations of the CITY and the UMC shall cease upon termination or expiration of this Agreement.

6.3 Limitation on Damages in the Event of Termination. Termination by either party shall not be construed as a release of any claims that the non-terminating party may be lawfully entitled to assert against the terminating party prior to the date of termination. The parties acknowledge and expressly warrant that no claim of damages will exist after the date of termination.

7.0 GENERAL PROVISIONS

7.1 Liability. This Agreement is not intended to alter or reallocate any defense or immunity authorized or available to either party by law.

7.1.1 Sovereign Immunity. The CITY and UMC reserve, and do not waive, their respective rights of sovereign immunity and similar rights and do not waive their rights under the Texas Tort Claims Act or any applicable statute. No provision of this Agreement that imposes an obligation or restriction on either party not permitted by applicable law shall be enforceable.

7.2 Equipment.

7.2.1 The CITY shall provide any and all sexual assault exam kits.

7.2.2 The UMC shall provide any and all equipment, supplies, and personnel in relation to the collection, handling, and storage of sexual assault exam kits.

7.3 Amendments and Waiver. The parties may amend this Agreement at any time by mutual consent. Unless otherwise provided herein, this Agreement may be amended only by written instrument duly executed on behalf of the CITY (by authority of the City Council) and the UMC (by authority of the Board of Managers). No claim or right arising out of a breach of contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing by the aggrieved party.

7.4 Severability. All agreements and covenants contained in this Agreement are severable. Should any term or provision of this Agreement be declared invalid by a court of competent jurisdiction, the parties intend that all other terms and provisions of this Agreement should be valid and binding and have full force and effect as if the invalid portion had not been included.

7.5 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service certified mail, return receipt requested addressed to the respective other party at the address provided below:

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

Copy to: Chief of Police
911 N. Raynor Street
El Paso, Texas 79903

UMC: UMC President & Chief Executive Officer
4815 Alameda Avenue, 8th Floor
El Paso, Texas 79905

Copy to: Crime Victims' Services
4815 Alameda Avenue
El Paso, Texas 79905

7.6 Governing Law. This Agreement shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law.

7.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of this Agreement. Further, this Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement, which is not contained herein, shall be valid or binding.

Dated this _____ day of _____, 2013.

THE CITY OF EL PASO

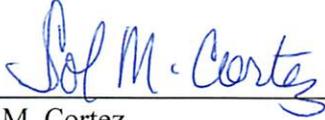
John F. Cook, Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

(Signatures Continue on Following Page)

APPROVED AS TO FORM:



Sol M. Cortez
Assistant City Attorney

Date: 3/14/2013

APPROVED AS TO CONTENT:



Gregory Allen *For*
Chief of Police

Date: 3-14-13

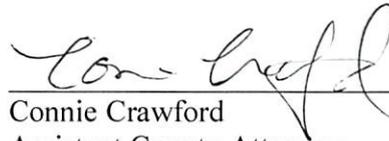
El Paso County Hospital District



James N. Valenti
President & Chief Executive Officer

Date: 3-19-13

APPROVED AS TO FORM:



Connie Crawford
Assistant County Attorney

Date: 03/19/13