

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

DEPARTMENT: Police

AGENDA DATE: August 31, 2010

CONTACT PERSON NAME AND PHONE NUMBER: Assistant Chief Jerome Johnson/ (915) 564-7323

DISTRICT(S) AFFECTED: All

SUBJECT:

To approve a resolution to authorize the City Manager to sign the Memorandum of Agreement ("MOA") entered into and between the HEALTH AND HUMAN SERVICES COMMISSION-OFFICE OF INSPECTOR GENERAL ("HHSC-OIG") and the City of El Paso, Texas ("City"), governmental units of the State of Texas, as contracting parties ("Party/Parties"). This MOA will allow the HHCS-OIG to receive and process incoming referrals and may request the assistance of the City in performing investigations into allegations of criminal offenses at the El Paso State Supported Living Center.

BACKGROUND / DISCUSSION:

The city's police department investigates alleged criminal offenses involving abuse, neglect, or exploitation against the elderly or disabled individuals. The city recognizes that these type offenses need highly trained individuals to investigate these crimes. This MOA allows the cooperation and resources to be used between the City and HHSC-OIG for criminal offenses that occur at the El Paso State Supported Living Center.

PRIOR COUNCIL ACTION:

None

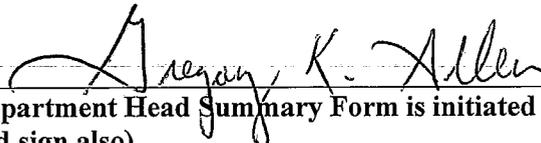
AMOUNT AND SOURCE OF FUNDING:

No costs are associated with this MOA.

BOARD / COMMISSION ACTION:

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

DEPARTMENT HEAD:



(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

Information copy to appropriate Deputy City Manager

RESOLUTION

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

That the City Manager be authorized to sign a Memorandum of Agreement between the **CITY OF EL PASO** and the **TEXAS HEALTH AND HUMAN SERVICES COMMISSION – OFFICE OF INSPECTOR GENERAL**, regarding the provision of services by a State Supported Living Center.

APPROVED this 31st day of August, 2010.

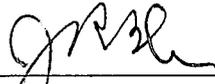
THE CITY OF EL PASO

John F. Cook
Mayor

ATTEST:

Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:



John R. Batoon
Assistant City Attorney

**MEMORANDUM OF AGREEMENT BETWEEN
TEXAS HEALTH AND HUMAN SERVICES COMMISSION –
OFFICE OF INSPECTOR GENERAL
AND
THE CITY OF EL PASO, TEXAS**

STATE OF TEXAS

COUNTY OF EL PASO

THIS Memorandum of Agreement (“MOA”) is entered into and between the HEALTH AND HUMAN SERVICES COMMISSION - OFFICE OF INSPECTOR GENERAL (“HHSC-OIG”) and The City of El Paso, Texas (“City”), governmental units of the State of Texas, as contracting parties (“Party/Parties”).

ARTICLE 1. BACKGROUND.

a) The 81st Texas Legislature enacted a series of sweeping reforms in an effort to correct instances of abuse, neglect, and exploitation in State Supported Living Centers.

b) The 81st Texas Legislature also approved a settlement agreement with the United States Department of Justice that requires, *inter alia*, investigation by law enforcement personnel who have specialized training in working with individuals with developmental disabilities or mental retardation, into allegations of abuse, neglect, and exploitation. The agreement further requires that DFPS investigations be completed within 10 days of receiving a report of abuse, neglect, or exploitation.

c) HHSC-OIG is the office within the Texas Health and Human Services Commission that is responsible for assisting with investigations of alleged criminal offenses involving a resident or client of a State Supported Living Center pursuant to TEXAS HEALTH & SAFETY CODE § 555.101. Its certified peace officers have completed specialized training in working with individuals with developmental disabilities, including persons with mental retardation.

d) The City of El Paso, Texas is the governmental entity with territorial jurisdiction over the State Supported Living Center located at 6700 Delta Drive, El Paso, Texas 79905. As such, the City of El Paso, Texas provides local law enforcement services to the State Supported Living Center located at 6700 Delta Drive, El Paso, Texas 79905, and is responsible for investigating criminal offenses occurring at that location. Law enforcement services are provided by the El Paso Police Department.

e) The El Paso Police Department may not have the resources, specialized training, or experience to investigate allegations of criminal abuse, neglect, or exploitation in State Supported Living Centers. Accordingly, the City of El Paso, Texas

requests the assistance of HHSC-OIG in performing investigations into allegations of criminal offenses occurring at the El Paso State Supported Living Center.

f) The El Paso Police Department is a law enforcement agency for purposes of disclosing and exchanging information pursuant to TEXAS GOVERNMENT CODE §§ 531.1021(g),(h).

ARTICLE 2. TERM OF AGREEMENT

This MOA shall commence on _____, and shall continue until terminated in writing by either Party. In the event of such written notification, this agreement will terminate at midnight on the 30th day following the date of such written notification.

ARTICLE 3. STATUTORY AND REGULATORY COMPLIANCE

3.01. Safeguarding Information.

a) Each Party will safeguard the confidentiality of any information in its possession that is related to investigations of alleged criminal offenses involving a resident or client of a State Supported Living Center Medicaid recipients or applicants. Each Party will take care not to disclose confidential information except as authorized by law.

b) Confidential information that is shared under this MOA remains subject to the same confidentiality requirements that are imposed by law upon the releasing Party. The sharing of information under this MOA in compliance with TEXAS GOVERNMENT CODE §§ 531.1021(g),(h) does not affect whether the information is subject to disclosure under Texas Government Code Chapter 552.

ARTICLE 4. DUTIES AND OBLIGATIONS OF THE PARTIES

4.01. Duties and Obligations of HHSC-OIG.

HHSC-OIG agrees to:

- a) Receive and process incoming referrals alleging criminal offenses involving a resident or client of the El Paso State Supported Living Center;
- b) Notify the El Paso Police Department upon receiving notice of allegations of criminal offenses involving a resident or client of the El Paso State Supported Living Center;
- c) Advise the El Paso Police Department if HHSC-OIG will be assisting the Office of Attorney General in conducting the investigation;

- d) Begin investigative efforts within 48 hours of receiving the referral;
- e) Coordinate with El Paso Police Department to the extent desired by local authorities and work in collaboration with the El Paso Police Department;
- f) Discontinue any specific investigations and allow the El Paso Police Department to act as the sole investigating authority upon request. Provided, however, that the Office of Attorney General may elect to continue as lead law enforcement agency in a particular investigation;
- g) Provide the El Paso Police Department with copies of all investigative files and reports, and share information as requested;
- h) Assist other local prosecuting and judicial authorities as needed to support indictment and prosecution of the case;
- i) Contact the El Paso Police Department prior to execution of any search or arrest warrants;
- j) Notify the El Paso Police Department of any other major enforcement activity within the territorial jurisdiction.

4.02. Duties and Obligations of the El Paso Police Department:

The El Paso Police Department agrees to:

- a) Review incoming case referrals submitted by HHSC-OIG;
- b) Notify HHSC-OIG at the earliest practicable opportunity if the El Paso Police Department elects to investigate a particular case as the sole investigative authority or to coordinate investigative efforts;
- c) If the El Paso Police Department seeks to work in cooperation with HHSC-OIG, it will notify HHSC-OIG of the level of assistance being requested for that investigation;
- d) Share relevant law enforcement information upon request by HHSC-OIG peace officers, which may include investigative reports on other cases within the jurisdiction of the Parties;
- e) Provide resources for completing the execution of arrest warrants, including but not limited to the transportation of arrested persons, book-in and incarceration facilities, and provision of Magistrate warnings and arraignment;

- f) Provide resources for completing the execution of search warrants, ensuring return of a proper Return to the Magistrate;
- g) Provide specialists as needed to properly seize and secure trace evidence, narcotics, latent fingerprints, biological materials, perishable items, hazardous materials, explosive or chemical weapons, or contraband;
- h) Provide secure evidence room facilities for proper storage of physical evidence and original records; and
- i) Provide a copy of all local policies and procedures relevant to criminal investigations.

ARTICLE 5. RELEASE OF INFORMATION

5.01. Requests for Information.

A Party may request information regarding an individual or an investigation by written or oral request. The responding Party will provide the requesting Party with the requested information unless its release is prohibited by other law.

5.02. General Authority to Release.

HHSC-OIG may disclose information compiled or maintained in an investigation, to law enforcement agencies pursuant to TEXAS GOVERNMENT CODE § 531.1021(g). The receiving law enforcement agency may disclose the information only in accordance with this statute and in a manner that is consistent with the authorized purpose for which the recipient received the information. TEXAS GOVERNMENT CODE § 531.1021(h).

The Parties mutually acknowledge that the El Paso Police Department and the OIG State Centers Investigative Unit are both considered law enforcement agencies for purposes of confidentiality statutes. The Parties mutually acknowledge that investigations into criminal offenses involving a resident or client of a State Supported Living Center constitute a legitimate, authorized purpose.

5.03. Notice of Prohibition.

If, after receiving a request for information under Section 5.01, a Party determines that it is prohibited from releasing the requested information, that Party shall inform the requesting Party of its determination in writing within ten (10) days of receiving the request.

5.04. Additional Confidentiality Provisions.

The Parties acknowledge and understand that additional confidentiality provisions may apply to information obtained during the course of an investigation of criminal offenses involving a resident or client of a State Supported Living Center. The Parties agree to assess confidentiality requirements in good faith and to comply with all applicable laws.

5.06 Provision of Documents.

Each Party will furnish detailed information, subject to confidentiality requirements, as required by the other Party to render the performances called for in this Agreement. Each party will provide access to, and free copies of, any records or information relevant to a matter under investigation by either party or records or information kept by a party or its contractors. The Parties will develop jointly a schedule of the types and formats of information required.

ARTICLE 6. GENERAL PROVISIONS

6.01. Agency Liaisons.

The Parties will designate Agency Liaisons for this Agreement. The Agency Liaisons will be the initial points of contact between the agencies for inquiries concerning this Agreement. Either Party may change its Agency Liaison with five days written notice to the other Party. Agency Liaisons for the Parties are:

HHSC-OIG

Karen Nelson
Chief Counsel
Office of Inspector General
Health and Human Services Commission
Post Office Box 85200
Austin, TX 78708
Telephone: (512) 491-2803

El Paso Police Department

General Counsel

Telephone:

6.02. Notice.

Any notices under this Agreement will be sent by registered or certified mail, return receipt requested, or will be delivered by hand, and a receipt provided. Any notice under this Agreement will be sufficient if hand delivered, or mailed to the addresses set forth below. Either Party may change its designees or addresses upon five days written notice to the other Party. The Parties' designees and addresses for notices are as follows:

HHSC-OIG

El Paso Police Department

Karen Nelson
Chief Counsel
Health and Human Services Commission-
Office of Inspector General
Post Office Box 85200
Austin, TX 78708
Telephone: (512) 491-2803



Gregory Allen
Chief of Police
Telephone:

This agreement is executed by the Parties in their capacities as stated below.

HEALTH AND HUMAN SERVICES COMMISSION -
OFFICE OF INSPECTOR GENERAL

EL PASO POLICE DEPARTMENT

Bart Bevers
Inspector General

Joyce A. Wilson
City Manager

Date: _____

Date: _____



John R. Batoon
Assistant City Attorney