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

DEPARTMENT: POLICE

AGENDA DATE: **September 27, 2013**

CONTACT PERSON/PHONE: Assistant Chief Feidner (915) 564 - 7309

DISTRICT (S) AFFECTED: All

SUBJECT:

That the City Manager or designee be authorized to sign an agreement between the City of El Paso and Tenet Hospital Limited dba Sierra Medical Center to provide sexual assault examination services.

BACKGROUND / DISCUSSION:

The purpose of this agreement is to provide sexual assault examinations services for the same reimbursement rate that the Texas Attorney General reimburses the City for a two year term between the City of El Paso and El Paso Children's Hospital with an option to extend for (1) one additional two-year period at the mutual agreement of the parties and to authorize the city Manager or her designee to exercise the option to extend this agreement. .

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: Gregory K. Allen 9/30/13
Name Signature Date

RESOLUTION

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

THAT the City Manager be authorized to sign an agreement between the City and Tenet Hospitals Limited dba Sierra Medical Center to provide sexual assault examination services for the same reimbursement rate that the Texas Attorney General reimburses the City pursuant to the Texas Code of Criminal Procedure Article 56.06 for a term of two (2) years from the date this Agreement is executed and an option to extend for one (1) additional two-year period at the mutual agreement of the parties; and to authorize the City Manager or her designee to exercise the option to extend this Agreement.

ADOPTED THIS _____ day of_____2013.

THE CITY OF EL PASO

_____
Oscar Leeser,
Mayor

ATTEST:

_____
Richarda D. Momsen,
City Clerk

APPROVED AS TO FORM:

Sol M. Cortez
Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:

Gregory Allen
Gregory Allen, Chief
El Paso Police Department

13-1026-1318/PL#202089/Sierra Medical Center/SMC

STATE OF TEXAS	)	
	)	**CLINICAL SERVICES AGREEMENT BETWEEN**
	)	**CITY OF EL PASO AND TENET HOSPITALS**
COUNTY OF EL PASO	)	**LIMITED D/B/A SIERRA MEDICAL CENTER**

This Clinical Services Agreement ("Agreement") is entered into by and between the City of El Paso, a home rule municipal corporation ("CITY"), and TENET HOSPITALS LIMITED, a Texas limited partnership doing business as SIERRA MEDICAL CENTER ("HOSPITAL").

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

WHEREAS, HOSPITAL is a licensed medical facility and complies with applicable laws and ordinances; and

WHEREAS, pursuant to the Texas Code of Criminal Procedure Article 56.06, the CITY through the El Paso Police Department is a law enforcement agency that can request a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense; and

WHEREAS, pursuant to the Texas Code of Criminal Procedure Article 56.06, the law enforcement agency shall pay all costs of the examination, but on application to the attorney general, the law enforcement agency is entitled to be reimbursed for the reasonable costs of that examination, if the examination was performed by a licensed physician and licensed registered nurse or by a sexual assault nurse examiner, as defined by Section 420.003, Government Code.

WHEREAS, the HOSPITAL desires to perform sexual assault examinations, and collect, handle, and store sexual assault evidence for victims of sexual assaults ("Services") upon request and on behalf of the City for use in the investigation or prosecution of the offense; and

WHEREAS, the procurement of services for the performance of sexual assault examinations and collection, handling, and storage of sexual assault evidence for victims of sexual assault traumas for use in the investigation or prosecution of the offense is necessary to preserve or protect the public health and safety of the City's residents and falls under Section 252.022(a)(2) of the Local Government Code which exempts the procurement from the competitive bidding requirement; and

WHEREAS, the City desires that HOSPITAL perform such Services upon CITY'S request and on behalf of CITY.

NOW, THEREFORE, THE CITY AND HOSPITAL 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 HOSPITAL understands and agrees that it will be responsible for its respective acts or omissions, and that CITY shall in no way be responsible as an employer to the HOSPITAL's officers, employees, agents or representatives who perform any Service in connection with this Agreement.

1.1.2 HOSPITAL understands and agrees that it will be responsible for examination and treatment of the patients, and that the CITY shall in no way be responsible for the medical examinations other than for the payment of the services as set forth in this Agreement.

1.1.3 The CITY understands and agrees that it will be responsible for its respective acts or omissions, and HOSPITAL 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 HOSPITAL 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 HOSPITAL to any obligation other than the obligations set forth in this Agreement.

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 HOSPITAL involving the collection of evidence and the handling and storage of sexual assault exam kits by a licensed physician and licensed registered nurse or Sexual Assault Nurse Examiners ("Examiner(s)") at Sierra Medical Center on behalf of the El Paso Police Department. The Services are necessary for the CITY's El Paso Police Department's investigation and prosecution of sexually based offenses.

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

3.0 SCOPE OF SERVICES

3.1 CITY, through the El Paso Police Department, may request Examiners at HOSPITAL 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 CITY and HOSPITAL 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 CITY shall accomplish all State-mandated reporting of suspected sexually-based offenses involving minors on behalf of HOSPITAL pertaining to individuals examined under this Agreement.

3.4 HOSPITAL shall:

3.4.1 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.

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

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

3.4.4 Ensure that a Licensed Independent Practitioner licensed in the State of Texas shall sign all medical orders incident to the performance of this Agreement. The CITY will not pay the HOSPITAL for services for which the Office of the Attorney Genereal does not reimburse the CITY.

3.4.5 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 Examiner has received an authorization and reporting number from EPPD. HOSPITAL will not request the services of the City of El Paso Police Department until the victim has been cleared by medical personnel.

3.4.6 Ensure appropriate hospital staff 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.

3.4.7 Use best efforts to ensure that all Examiners involved in the collection of evidence and/or examination(s) shall be available 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 Examiners involved in the collection of evidence and/or examination(s).

3.4.8 Ensure that the facilities used in the performance of this contract shall be a twenty-four (24) hour per day, seven days per week facilities. 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 to the extent practicable with due consideration to the sensitive nature of the information.

3.4.9 Become familiar with any new provisions, (e.g., new policies, procedures, or requirements adopted during the term of this Agreement by the Texas State Legislature which affect this Agreement), and fully implement and support them as soon as they become effective.

4.0 CONSIDERATION

4.1 CITY will reimburse HOSPITAL for Services rendered in the collection, handling, and storage of sexual assault examinations by Examiners according to the Crime Victims' Compensation medical fees guidelines.

4.2 HOSPITAL 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. CITY will only reimburse the HOSPITAL for charges for which the CITY receives reimbursement from the Office of the Attorney General.

4.3 HOSPITAL agrees that in its submisson of the forensic evidence collection, it will not charge, submit, or require payment from CITY for medical treatment for individuals involved in sexually based offenses.

5.0 PAYMENTS

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

5.2 The invoice will be itemized and submitted for payment on the form authorized by the Texas Department 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).

HOSPITAL understands that the CITY will not be reimbursed by the Office of the Attorney General if the invoice received from HOSPITAL does not identify the victim by name. The CITY will only pay HOSPITAL for charges for which the CITY receives 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 upon in writing. Except as otherwise provided herein, all duties and obligations of the CITY and HOSPITAL shall cease upon termination or expiration of this Agreement. In the event of termination, CITY shall remain responsible for payments for Services rendered before the termination date in compliance with the terms of this Agreement.

6.2 Termination by Either Party. It is further understood and agreed by the CITY and HOSPITAL 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 HOSPITAL shall cease upon termination or expiration of this Agreement. In the event of termination, CITY shall remain responsible for payments for Services rendered before the termination date.

6.3 Limitation on Damages in the Event of Termination. The parties acknowledge and expressly warrant that no claim of damages will exist after the date of termination. The only obligation that survives in the event of Termination is the reimbursement for services rendered before the termination date.

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 and Governmental Immunity. The CITY reserves, and does not waive, its rights of sovereign and governmental immunity and similar rights and does not waive its 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 examination kits.

7.2.2 HOSPITAL shall provide any and all other equipment, supplies, and personnel in relation to the collection, handling, and storage of sexual assault examination 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 HOSPITAL (by authority of its Board of Directors).

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
Hospital:	Att: Chief Executive Officer Sierra Medical Center 1625 Medical Center Drive El Paso, Texas 79902
Copy to:	Law Department Tenet Healthcare Corporation Corporate Headquarters 1445 Ross Avenue, Suite 1400 Dallas, TX 75240

7.6 Governing Law and Venue. 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. Venue for any proceedings arising from or in connection with this Agreement shall be in El Paso, Texas.

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.

7.8 Binding Agreement. The undersigned signatories assert that they have the authority to execute this Agreement and to bind the party for which they are signing to the faithful performance of this Agreement.

Dated this _____ day of _____, 2013.

THE CITY OF EL PASO

_____
Joyce Wilson
City Manager

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

Sol M. Cortez
Sol M. Cortez
Assistant City Attorney

APPROVED AS TO CONTENT:

Gregory Allen
Gregory Allen
Chief of Police

(Signatures Continue on Following Page)

Dated this 9th day of September, 2013.

TENET HOSPITALS LIMITED
D/B/A SIERRA MEDICAL CENTER

9/18/13

J. Eric Evans (Date)
Chief Executive Officer