

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

CITY CLERK DEPT.  
07 DEC -5 PM 3:38

DEPARTMENT: EL PASO POLICE DEPARTMENT

AGENDA DATE: December 11, 2007

CONTACT PERSON/PHONE: Assistant Chief Paul Cross/564-7323

DISTRICT(S) AFFECTED: N/A

**SUBJECT:**

Approve a resolution authorizing the Mayor to sign an Agreement between the City of El Paso and Sexual Trauma and Assault Response Services to provide outreach emergency counseling and follow-up public health services for the reported victims of sexual assault in the annual amount not to exceed \$70,000.00 annually from September 1, 2007 through August 31, 2010, as funding is budgeted and available.

**BACKGROUND / DISCUSSION:**

To assist victims of sexual assault by providing them services through the Sexual Trauma and Assault Response Services (STARS).

**PRIOR COUNCIL ACTION:**

Contract was previously approved by City Council and signed by the Mayor for the period September 1, 2004 through August 31, 2007.

**AMOUNT AND SOURCE OF FUNDING:**

\$70,000.00 was budgeted within the Police Department operational budget in FY 2008 under Department ID 21010061, Account 502215, Class 21000, Fund 01101. The contract is effective through FY 2010 and will be paid out of future appropriations.

**BOARD / COMMISSION ACTION:**

Enter appropriate comments or N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) \_\_\_\_\_ **FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_  
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:** \_\_\_\_\_

**CITY MANAGER:** \_\_\_\_\_

**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 of El Paso and Sexual Trauma and Assault Response Services to provide outreach emergency counseling and follow-up public health services for the reported victims of sexual assault in the annual amount of Seventy Thousand and No/100 Dollars (\$70,000.00). The term of this Agreement shall be from September 1, 2007 through August 31, 2010.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

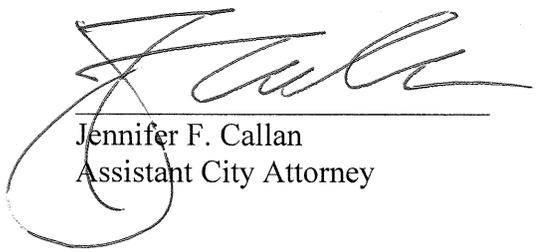
CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Jennifer F. Callan  
Assistant City Attorney

**THE STATE OF TEXAS** )  
 )  
**COUNTY OF EL PASO** )

**AGREEMENT**

CITY CLERK DEPT.  
07 DEC -4 PM 3:40

This Agreement ("Agreement") is entered into on this the \_\_\_\_ day of \_\_\_\_\_, 2007, by and between The City of El Paso, Texas, a home rule municipal corporation ("CITY") and the Sexual Trauma and Assault Response Services, a non-profit corporation ("STARS").

**WHEREAS**, STARS is a non-profit corporation that is qualified to provide public health and safety sexual assault outreach services;

**WHEREAS**, STARS is the sole provider of the level of services as described in Section 3 A. through G of this Agreement. Further, STARS is the sole recipient of state and federal funding to provide these services in the El Paso community;

**WHEREAS**, the CITY's Police Department is the Agreement Administrator for this Agreement; and

**WHEREAS**, the El Paso City Council finds it in the best interest of the citizens of El Paso that the services to be provided by STARS is necessary to preserve and protect the public health and safety;

**NOW, THEREFORE**, for the consideration set forth in this Agreement, the CITY and STARS agree as follows:

**1.0 CONTRACTUAL RELATIONSHIP.**

1.1 The CITY hereby agrees to retain STARS and STARS agrees to perform professional services relating to public health and safety assault outreach in accordance with the provisions of this Agreement as set forth herein.

1.2 STARS is an independent contractor. Except as may be expressly and unambiguously provided in this Agreement, 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 sub-consultants.

(A) As an independent contractor, STARS 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 STARS' officers, employees, agents, representatives or sub-contractors who perform any service in connection with this Agreement.

1.3 STARS shall not receive any compensation or benefits from the CITY, other than as expressly set forth in this Agreement.

1.4 STARS 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 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.

1.5 STARS understands and expressly agrees that, in all things relating to this Agreement, the CITY is performing a governmental function, as defined by the Texas Tort Claims Act. The parties hereby agree that the CITY enters into this Agreement as a governmental entity for the purpose of performing a governmental function.

1.6 STARS understands and expressly agrees that the CITY shall not be obligated or liable hereunder to any person other than STARS.

## 2.0 TERM OF AGREEMENT

2.1 This Agreement, regardless of the date of execution, shall become effective on **September 1, 2007**, and shall be for a primary term of three (3) years. Said Agreement shall automatically terminate on **August 31, 2010**, unless terminated as hereinafter provided in Section 7.0 of this Agreement.

## 3.0 SCOPE OF SERVICES

3.1 STARS shall provide in a professional manner, services designed to preserve and protect the public health and safety of the citizens and/or residents of the City of El Paso, to include but not be limited to the outreach emergency counseling and follow-up health services for the reported victims of sexual assault.

3.2 STARS shall coordinate its activities with those of the Crimes Against Persons or Crimes Against Children units of the El Paso Police Department. These public health and safety services shall be provided to the citizens and/or residents of the City of El Paso or the victims of crimes occurring within the City of El Paso and shall include, but not be limited to the following:

(A) 24 hour response to the hospital emergency room to assist reported victims with the mental and physical trauma and other mental health issues relating to a sexual assault.

(B) Emergency and follow-up counseling services to victims of sexual assault.

(C) Assistance and accompaniment for medical follow-up examinations to include testing for sexually transmitted diseases.

(D) Counseling to and accompaniment with the victim throughout the legal process and prosecution of the sexual offender.

(E) Continual counseling services for sexual assault victims.

(F) Providing public education and training regarding the crime of sexual assault to include prevention, protective and safety measures for the community.

(G) Providing sensitivity training to law enforcement, dispatchers, emergency medical services and hospital staff as part of STARS's services to protect the mental health of victims of sexual assault.

(H) Any and all other services that are necessary to promote public health and safety sexual assault outreach services to the citizens and/or residents of the City of El Paso.

3.3 Reporting by STARS. On or before September 30 of the year 2008, 2009 and 2010, STARS will provide an annual report to the Director of Administrative Services for the Police Department that provides information regarding the number of individuals who received the above-defined services during the term of this Agreement.

#### 4.0 CONSIDERATION

4.1 In consideration for the public health and safety sexual assault outreach services to be provided by STARS pursuant to the terms of this Agreement, the CITY agrees to pay STARS an amount not to exceed SEVENTY THOUSAND AND NO/100 DOLLARS (\$70,000.00) for all professional services performed pursuant to this Agreement.

(A) Payment to STARS shall be made on or by September 1 of each year for a three year period as outlined in Section 2.1 above.

(B) The parties acknowledge and agree that the awarding of this Agreement is dependent upon the availability of funding. In the event that funds do not become available, the Agreement may be terminated, with a 30-day written notice to STARS by the CITY. In such an event, the CITY shall incur no penalty or charge.

#### 5.0 INDEMNIFICATION

5.1 Indemnification by STARS. STARS UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF STARS, ITS AGENTS, SUBAGREEMENTORS,

**EMPLOYEES, OR REPRESENTATIVES IN RENDERING THE SERVICES UNDER THIS AGREEMENT.**

(A) Without modifying the conditions of preserving, asserting or enforcing any legal liability against the CITY as required by the City Charter or any law, the CITY will promptly forward to STARS every demand, notice, summons or other process received by the CITY in any claim or legal proceeding contemplated herein.

(B) In addition, STARS shall promptly advise the CITY in writing of any claim or demand against the CITY or STARS known to STARS related to or arising out of STARS' activities under this Agreement.

(C) STARS understands and agrees that it will 1) investigate or cause - the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as STARS may deem expedient; and 3) defend or cause to be defended on behalf of the CITY all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages.

(D) STARS understands and agrees that it will pay all final judgments establishing liability of the CITY in actions defended by STARS pursuant to this section along with all attorneys' fees and costs incurred by the CITY including interest accruing to the date of payment by STARS, and premiums on any appeal bonds.

(E) The CITY, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest without relieving STARS of any of its obligations under this paragraph.

**6.0 LIABILITY INSURANCE**

6.1 STARS agrees to purchase public liability insurance and property damage insurance naming the CITY as an Additional Insured in an amount no less than \$250,000 for each person and \$500,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property.

(A) Upon execution hereof, STARS shall file with the Director of Administrative Services for the El Paso Police Department, a copy of the Certificate of Insurance showing that such insurance coverage is in effect during the terms of this Agreement.

(B) Issuers of Policies. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. Each issuer shall be subject to approval by the CITY's Purchasing Director in his or her sole discretion as to conformance with these requirements.

(C) Deductibles. A policy may contain deductible amounts only if the CITY's Purchasing Director approves the amount and scope of the deductible. STARS shall assume and bear any claims or losses to the extent of such deductible amount and waives any claim it may ever have for the same against the CITY, its officers, agents or employees.

(D) Cancellation. Each policy must expressly state that it may not be canceled or non-renewed unless **thirty (30) days advance notice of cancellation or intent not to renew** is given in writing to the Director of Administrative Services for the El Paso Police Department by the insurance company. STARS shall give written notice to the Director of Administrative Services for the El Paso Police Department **within five (5) business days** of the date upon which total claims by any party against STARS reduce the aggregate amount of coverage below the amounts required by this Agreement.

(E) Subrogation. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the CITY, its elected and appointed officials, officers, agents or employees.

(F) Endorsement of Primary Insurance. Each policy must contain an endorsement that such policy is primary insurance, so long as it is customary in the industry and under Texas law for such insurance to be primary, to any other insurance available to the CITY, the Additional Insured, with respect to claims arising hereunder and that the insurance applies separately to each insured.

(G) Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look only to STARS for any further premium payment and has no right to recover any premiums from the CITY.

**7.0 TERMINATION.** This Agreement may be terminated as provided herein.

7.1 Termination by Default or Breach. The CITY shall have the right to cancel for default or breach all or any part of this Agreement if STARS breaches any of the terms hereof or if the STARS becomes insolvent or commits acts of bankruptcy and fails to cure or commence to diligently prosecute to cure any such breach **within thirty (30) days of receipt of written notice by CITY** alleging such breach. Such right of cancellation is in addition to and not in lieu of any other remedies that the CITY may have in law or equity.

(A) Default or breach shall occur if a party fails to observe or perform any of its duties under this Agreement. Should such a default or breach occur, the injured party may deliver a written notice to the defaulting party describing such default and the proposed date of termination. Such proposed date of termination may not be sooner than the 30<sup>th</sup> day following receipt of the notice. The injured party, at its sole option, may extend the proposed date of termination to a later date. If prior to the proposed date of

termination, the defaulting or breaching party cures or diligently and continuously prosecutes to cure such default or breach, then the proposed termination shall be ineffective. If the defaulting or breaching party fails to cure or diligently and continuously prosecutes to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this Agreement as of such date.

7.2 Termination by Mutual Consent. The parties may terminate this Agreement by mutual consent upon such terms as they may agree in writing.

7.3 Termination by Either Party. It is further understood and agreed by STARS and the CITY that either party may terminate this Agreement in whole or in part upon written notice and in accordance with the terms set forth in this Agreement.

(A) Such termination may be made for failure of one party to substantially fulfill its contractual obligations, pursuant to this Agreement, and through on fault of the other party. No such termination shall be made, unless the other party being terminated is granted (a) written notice of intent to terminate enumerating the failures for which the termination is being sought; (b) a minimum of **thirty (30) consecutive calendar days** to cure such failures; and (c) an opportunity for consultation with the terminating party prior to such termination. However, the CITY retains the right to immediately terminate this Agreement for default if STARS violates any local, state or federal laws, rules or regulations that relate to the performance of this Agreement. In the event of termination by the CITY pursuant to this subsection, STARS shall be entitled to compensation for services performed and approved expenses incurred, prior to the termination. Nothing contained herein, or elsewhere in this Agreement shall require the CITY to pay for any services that are not in compliance with the terms of this Agreement.

(B) It is also understood and agreed that upon such notice of termination, STARS shall cease the performance of services under this Agreement.

7.4 Time of Performance Termination – Force Majeure. The Services shall be undertaken and completed as appropriate to carry out the purposes of this Agreement. Except as otherwise provided, neither party shall be liable to the other for any delay in, or failure of performance, of any requirement contained in this Agreement caused by *Force Majeure*.

(A) The term *Force Majeure* as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquake, fires, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. By reason of *Force Majeure*, if either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall

give notice and full particulars of such *Force Majeure* in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such *Force Majeure*, shall be suspended for only **thirty (30) days** during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

7.5 Termination Shall Not Be Construed as Release. Termination by either party shall not be construed as a release of any claims that the terminating party may be lawfully entitled to assert against the terminating party. Further, the terminated party shall not be relieved of any liability for damages sustained by the terminating party by virtue of any breach of this Agreement.

(A) Upon termination of this Agreement, all duties and obligations of the CITY and STARS shall cease upon termination or expiration of this Agreement.

## 8.0 GENERAL PROVISIONS

8.1 STARS shall comply with all applicable federal, state and local governmental laws, rules, regulations and all provisions of the City of El Paso Charter and Code of Ordinances, now existing or as may be amended, in the performance of its duties under this Agreement.

8.2 Conflict of Interest. STARS will have no interest in, and shall not acquire any interest, direct or indirect, in any Agreement or subAgreement that will conflict in any manner or degree with the performance of the services to be performed under this Agreement. STARS further understands that the Charter of the City of El Paso prohibits any officer or employee of the CITY from having financial interest, direct or indirect, in any Agreement with the CITY. Any violation of this paragraph, with knowledge express or implied, by STARS shall render this Agreement voidable by the City Manager, who is the authorized person for the CITY.

8.3 Accessibility Standards. STARS will comply with the Americans for Disabilities Act and will file the Assurance required under City Ordinance No. 9779 prohibiting discrimination against disabled persons.

8.4 No Assignment Without Consent. STARS shall not assign or attempt to so convey an interest in this Agreement without the prior written consent of the CITY. This Agreement shall be terminable, at the discretion of the CITY, without notice to STARS if STARS shall attempt to assign without consent.

8.5 Religious Activities. STARS will provide the services under this Agreement in a manner that is exclusively non-religious in nature and scope, there will be no religious services, proselytizing, instruction, or any other religious influences in connection with the stated services; there will be no religious discrimination in terms of employment or benefits under the stated services.

8.6 Inspections. The CITY shall have the right to perform, or cause to be performed, (1) inspections of the books and records of STARS related to the performance of services provided under this Agreement, and (2) inspections of all places where work is undertaken in connection with this Agreement. STARS shall be required to keep such books and records available for such purpose for **at least five (5) years** after its performance under this Agreement ceases. Nothing in this provision shall affect the time for bringing a cause of action nor the applicable statute of limitations.

8.7 Right to Assurance. Whenever one party to this Agreement in good faith has reason to question the other party's intent to perform, said party may demand that the other party give written assurance of its intent to perform. In the event that a demand is made and no assurance is given **within five (5) business days** the demanding party may treat this failure as an anticipatory repudiation of the Agreement.

8.8 Survival. Each party shall remain obligated to the other under all clauses of this Agreement that expressly or by their nature extend beyond the expiration or termination of this Agreement, including but not limited to the Indemnification provisions hereof.

8.9 Amendment 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 by the City Council) and STARS. No claim or right arising out of a breach of this 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 signed by the aggrieved party.

8.10 Complete Agreement. This Agreement constitutes the entire agreement between the parties relating to the terms and conditions of the Agreement. The parties expressly acknowledge and warrant that there exists no other written or oral understanding, agreements or assurances with respect to such matters except as are set forth herein. Unless expressly stated, this Agreement confers no rights on any person(s) or business entity(s) that is not a party hereto. This Agreement shall not be construed against or unfavorably to any party because of such party's involvement in the preparation or drafting of this Agreement.

8.11 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, the City Charter and/or any ordinance of the City of El Paso.

8.12 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

8.13 Venue. For the purpose of determining place of this Agreement and the law governing the same, this Agreement is entered into in the City and County of El Paso, the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

8.14 Notices. All notices required or permitted hereunder shall be in writing and shall be deemed delivered when actually received via United States Postal Service post office or certified mail, return receipt requested addressed to the respective other party at the address prescribed below or at such other address as the receiving party may have theretofore prescribed by written notice to the sending party:

CITY: City of El Paso  
Attention: Mayor's Office  
Two Civic Center Plaza, 10<sup>th</sup> Floor  
El Paso, Texas 79901-1196

COPY TO: El Paso Police Department  
Attention: Director of Administrative Services  
911 N. Raynor  
El Paso, TX 79903

CONTRACTOR: Sexual Trauma and Assault Response Services  
Attention: Executive Director  
710 N. Campbell  
El Paso, Texas 79902

8.15 Warranty of Capacity to Execute Contract. The person signing this Agreement on behalf of STARS warrants that he/she has the authority to do so and to bind STARS to this Agreement and all the terms and conditions contained herein.

Each person signing below represents that he or she has read this Agreement in its entirety; understands its terms; and agrees on behalf of such party that such party will be bound by those terms.

**(Signatures On Following Page)**

