

**SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

477



SUBMITTAL DATE:
07/23/13

FROM: Stanley L. Sniff Jr., Sheriff-Coroner-PA

SUBJECT: Ratification of the FY 2013-14 Agreement with Eisenhower Medical Center for Sexual Assault Forensic Examinations

RECOMMENDED MOTION: Move that the Board of Supervisors ratify and authorize the Chair to execute the Agreement with Eisenhower Medical Center (EMC) to compensate it for its provision of sexual assault forensic examinations during the period from July 1, 2013 through June 30, 2014.

BACKGROUND: Penal Code Section 13823.9(b) requires that Counties with more than 100,000 residents shall arrange to have professional personnel, trained in examining sexual assault victims, conduct exams to collect forensic evidence.

BR 14-012 (Continued on Page 2)

Will Taylor

Stanley L. Sniff Jr., Sheriff-Coroner-PA
Will Taylor, Director of Administration

FINANCIAL DATA	Current F.Y. Total Cost:	\$37,800	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$7,200	Budget Adjustment:	No
	Annual Net County Cost:	\$0	For Fiscal Year:	FY 2013-14

SOURCE OF FUNDS: Department budget 19% & Contract cities 81%	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION: APPROVE

BY: *Elizabeth J. Olson*
Elizabeth J. Olson

County Executive Office Signature

- Consent
- Policy
- Consent
- Policy

2013 AUG 13 PM 5:58

RECEIVED BOARD OF SUPERVISORS

3-85

FORM APPROVED COUNTY COUNSEL
 ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
 BY: NEAL R. KIPNIS
 DATE: 7/23/13
 Departmental Concurrence

Dep't Recomm.:
Per Exec. Ofc.:

To secure an adequate service level and a consistent exam rate in the eastern area of the County, the Sheriff's Department has negotiated an Agreement with EMC in Rancho Mirage for the hospital to provide these exams for the period from July 1, 2013 through June 30, 2014. EMC has agreed to continue with its FY 2011-12 rate of \$900 per sexual assault exam during this period. As a price comparison, with the Board's approval, Riverside County Regional Medical Center also charges \$900 per exam to all law enforcement agencies. County Counsel has approved the EMC Agreement as to form.

**AN AGREEMENT CONCERNING THE PROVISION OF CERTAIN CLINICAL
SERVICES FOR THE PURPOSE OF OBTAINING CRIMINAL EVIDENCE
("AGREEMENT") BY AND BETWEEN
THE RIVERSIDE COUNTY SHERIFF'S DEPARTMENT ("LAW ENFORCEMENT")
AND EISENHOWER MEDICAL CENTER ("EMC")**

THIS AGREEMENT is made and entered into by and between the above named parties.

WHEREAS, EMC provides emergency services seven days a week, 24 hours per day and is fully credentialed by the Department of Health Services of the State of California; and

WHEREAS, Law Enforcement will need to transport persons to EMC and may authorize certain procedures for the purpose of obtaining evidence.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

1. TERM, TERMINATION

This agreement shall be effective July 1, 2013 through June 30, 2014. Either party may terminate this agreement without cause upon thirty (30) days written notice. This agreement may be extended for one (1) year successive terms (a "Term Extension"), but only through mutual written agreement of the parties.

2. SCOPE OF SERVICE FOR "SEXUAL ASSAULT EXAMINATIONS"

- a. EMC shall provide a Sexual Assault Nurse Examiner who has completed a 40-hour didactic training course and completed an orientation process, which includes EMC's required competencies to conduct forensic evidentiary examinations. EMC also agrees to provide access to the Sexual Assault Response Team, seven days a week, 24 hours per day.
 - i. In extreme cases when a Forensic Nurse is not available to conduct such exam, Law Enforcement may be referred to Riverside County Regional Medical Center for a forensic evidentiary examination and will pay the standard contract rate charged by their agency.
 - ii. EMC will contact the watch commander in the event of such circumstances.
- b. EMC represents and maintains that its personnel are skilled in the professional field necessary to perform all services, duties and obligations required by this agreement for "Sexual Assault Examinations". EMC shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. EMC further represents and warrants Law Enforcement that it has, and shall maintain throughout the term of this

agreement, all licenses, permits, qualifications and approvals of regulatory and mandatory agencies to practice medicine in the State of California.

- c. Any services authorized by Law Enforcement or designee are intended solely for the purpose of medical information and evidence, and will not cover the medical treatment of any person.
- d. Law Enforcement will order a Sexual Assault Examination (“SAE”) for the documentation and collection of evidence at EMC.
- e. The requesting officer or other designee of the police ordering the SAE shall be Law Enforcement’s authorization for such services to commence and to reimburse EMC at the agreed upon service rate.
- f. The EMC Sexual Assault Nurse Examiner (“SANE”) will conduct a full forensic evidentiary exam based on patient history, in accordance with EMC’s policies and procedures.
- g. Law Enforcement will be responsible for transporting the victim to and from EMC, unless the patient has arranged their own transportation.
- h. Proper chain of custody will be maintained throughout the examination process.
- i. The officer taking custody of the evidence will sign the chain of custody form and any other forms that may be require an official’s signature.
- j. The case report and photographic evidence will be submitted to law enforcement within 48 hours via our encrypted server following a case review process.

3. SERVICES RATE FOR “SEXUAL ASSAULT EXAMINATIONS”

The service rate shall include the Registered Nurses salaries, and benefits, nurses stand-by pay, nurses training, nurses education and competency validation, clerical support, quality improvement training and supplies. The Service Rate for the “Sexual Assault Examination” for this contract has been established at \$900 per exam.

4. NON-INVESTIGATIVE REPORTING EXAMS (“NIRE”)

The Violence Against Women and Department of Justice Re-authorization Act of 2005 (“VAWA”) mandates that states may not require a victim of sexual assault to participate in the criminal justice system or cooperate with law enforcement in order to be provided with a forensic medical exam.

5. PROCESS

Patients who wish to have a forensic exam without law enforcement involvement will be seen as a scheduled appointment seven days a week between the hours of 9:00 am to 5:00 pm when an examiner is on site, unless there are special circumstances. NIREs will be scheduled via the forensic controller. If the patient requests a NIRE and it is after hours, a medical screening will be conducted per EMC protocol. The forensic Controller and/or designee will schedule and exam for the following day between the hours of 9:00 am to 5:00 pm. The patient will be instructed to return for exam at scheduled time. The patient will be provided take home literature to assure no additional evidence is lost.

6. SCHEDULED EXAM

- a. The EMC SANE will contact 911 or call the appropriate phone number for Law Enforcement to obtain an Incident Report (“IR”) or NIRE number. The IR or NIRE number will serve as the patient identifier.
- b. The Forensic Exam Report Form will have the victim’s name, demographic data and IR or NIRE number as well as EMC’s report number. The original of this form will be kept in the standard confidential manner by the program coordinator and/or designee
 - i. Report will be released to law enforcement upon patients request to move forward with a standard investigation.
- c. An abbreviated exam will be conducted unless law enforcement specifies otherwise. The forensic exam will be conducted per CalEMA's Abbreviated Adolescent Adult exam process.
 - i. Photographic evidence will be marked and kept in the standard confidential manner by the program coordinator and/or designee.
 - ii. The Evidence or Sexual Assault Evidence kits, blood and urine kits and clothing will be marked with the IR number and released to the appropriate law enforcement agency having jurisdiction.
 - iii. The evidence destruction date will be noted on the kits.
 - iv. Destruction date 2 years from the initial exam date.
 - v. Patient will be notified by law enforcement ninety days prior to evidence destruction date.
- d. Additional medical documentation by hospital personnel will follow the standard hospital protocols and will not be released without signed authorization from the patient.

7. EXCEPTIONS TO THE NIRE

The NIRE option is not applicable to the following patient population:

- a. Patient who has a mental disability and/or has a medical conservator.
- b. Spousal Abuse/Domestic Violence patients.
- c. Event occurred in a home where minors may be living where the known assailant is residing.

8. RELEASE OF EVIDENCE/CLOTHING

If the patient decides prior to the 2 year mark that they *do not wish to move forward with standard reporting* and would like their evidence/clothing returned, the patient **must** return to the emergency department and sign a termination of NIRE Form. The patient will be referred to the agency storing the evidence and present a copy of the form.

- a. The original IR or NIRE number will be documented on the form to ease locating the evidence being stored.
- b. The patient will not be able to obtain biological samples collected at the time of exam (blood, urine, etc.).

9. ACCESSING EVIDENCE FOR FUTURE REPORTING

Patients will be advised that should they decide to move forward with a standard report to law enforcement, they should contact the SART Program to avoid multiple IR or NIRE numbers being assigned. The patient's evidence and documentation will be accessed using said number through the SART Program. An updated authorization form will be signed by the patient and submitted to the law enforcement agency with jurisdiction over the case, and where the evidence is currently being stored.

- a. In the event the patient reports to law enforcement directly, law enforcement may contact the SANE Coordinator and obtain the initial number assigned to the patient.
- b. The SANE Coordinator will track names of alleged perpetrators if known. Victims will be given the option of being contacted by the SART program if the alleged perpetrator is reported by another victim.

10. PERMANENT EVIDENCE DESTRUCTION

Before a law enforcement agency destroys any evidence held for an NIRE, they will contact the patient ninety days before the kit destruction date. The patient will be advised of the pending evidence destruction using the contact information provided on the suspicious injury report form.

- a. If a victim notifies the SART Program that they *do not wish to have the evidence held any longer*, the Program Coordinator will request the victim present to the emergency room to sign an evidence release form. The Program Coordinator and/or designee will notify the appropriate law enforcement agency where the evidence is being stored, and request that the evidence be destroyed per local protocol. If clothing items were obtained upon initial exam, the patient will be referred to the agency storing the clothing evidence.
- b. Law enforcement agencies storing the evidence may choose to hold the evidence for longer than 2 years.

11. CHANGING TO A STANDARD REPORT

The law enforcement agency with legal jurisdiction will be notified of the patient's desire to move forward with an investigation and the patient will be referred to the jurisdictional law enforcement agency for interview.

12. SERVICE RATE FOR ABBREVIATED EXAM

The fee for service for the abbreviated anonymous exams is \$300. The standard MOU rate applies for all victims who are cooperating with law enforcement. Law Enforcement Agencies have the option of conducting a full 923 forensic evidentiary exam as noted prior; however, they will be charged the full MOU contract rate and are not able to submit an invoice to CalEMA for the \$300 reimbursement.

The standard rate of \$900.00 will be charged to Law Enforcement if the victim chooses to move from a NIRE to a standard investigation. If \$300.00 has been paid to Eisenhower Medical Center, an invoice will be submitted for the outstanding balance of \$600.00.

13. SCOPE OF SERVICE FOR "SUSPECT EXAMINATIONS"

- a. EMC shall provide a Registered Nurse or a Licensed Vocational Nurse who has completed orientation process, which includes EMC's required competencies to conduct "Suspect Examinations". EMC also agrees to provide access to the Registered Nurse or Licensed Vocational Nurse, seven days a week, 24 hours per day.

- b. EMC represent and maintains that its personnel are skilled in the professional field necessary to perform all services, duties, and obligations required by this agreement for “Suspect Examinations.” EMC shall perform the services and duties in conformance to and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. EMC further represents and warrants to the Law Enforcement, that it has and shall maintain throughout the term of this Agreement, all licenses, permits, qualifications and approvals of regulatory and mandatory agencies to practice medicine in the State of California.
- c. The presenting officer or designee of Law Enforcement shall remain with the patient until all medical procedures are completed. At no time shall an arrestee be left unattended by Law Enforcement. In addition, the presenting officer or designee must provide 30 minutes advance notice when bringing in an arrestee and check in with EMC’s security department upon arrival at EMC. This will be accomplished by, a Law Enforcement dispatcher or police officer calling EMC’s Emergency Department and asking to speak with the “Charge Nurse.” The Charge Nurse will alert security personnel assigned to the ER to be expecting Law Enforcement at the ambulance entrance within 30 minutes, and will direct the officer to the assigned room.
- d. Presenting officer or designee must comply with facility’s security protocols at all times. Facility Security Personnel will orient the Law Enforcement official to emergency and communication procedures outline as follows:
 - i. Law Enforcement official is responsible for providing security for the custody patient.
 - ii. Law Enforcement official must arrange for break relief of their officers
 - iii. Law Enforcement official will communicate with Security Personnel, the degree of security required
 - iv. Upon arrival to EMC, the Law Enforcement officials will provide Nursing Services and /or Security with appropriate identification.
- e. Presenting officer or designee of Law Enforcement will sign the “Forensic Orientation Guidelines and Acknowledgment Form (EMC 2010)”. A copy of signed form will be provided to the law enforcement official and the original will remain with EMC.
- f. Any service authorized by Law Enforcement or designed are intended solely for the collection of medical information and evidence, and will not cover the medical treatment of any person

14. SERVICE RATE FOR SUSPECT EXAMINATION

The service rate shall include the Registered Nurse or Licensed Vocational Nurses salaries and benefits, nurse's stand-by pay, nursing training, education and competency validation, clerical support, quality improvement training and supplies. The Service Rate for the "Suspect Examination" for this contract has been established at \$450.

15. BILLING PROCEDURES

EMC will bill Law Enforcement on a monthly basis. Law Enforcement will remit all payments for services within 90 days after services have been provided.

16. INDEPENDENT CONTRACTOR

- a. EMC is, for the purpose arising out of this Agreement, an Independent Contractor, and shall not be deemed an employee of Law Enforcement. It is expressly understood and agreed that EMC and its employees shall in no event, as a result of the Agreement, be entitled to any benefits to which Law Enforcement employees are entitled, including but not limited to overtime, retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. EMC hereby holds Law Enforcement harmless from any and all claims that may be made against Law Enforcement based upon any contention by any third party that an employer-employee relationship exists by reason of the Agreement.
- b. It is further understood and agreed by the parties hereto that EMC in the performance of its obligation hereunder is subject to the control or direction of Law Enforcement merely as to the result to be accomplished by the services and not the methods for accomplishing the results.

17. HOLD HARMLESS

EMC agrees to and shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Departments and Special Districts, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (hereinafter individually and collectively referred to as Indemnitees) from all liability whatsoever, based or asserted upon any services of EMC, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever arising from the performance of EMC, its officers, employees, subcontractors, agents or representatives, save and except claims or litigation based upon any actions of the Indemnitees or which arise through the negligence or misconduct of the Indemnitees, which claims or litigation shall be the sole responsibility of the Indemnitees.

With respect to any action or claim subject to indemnification herein by EMC, EMC shall at their sole cost, have the right to use counsel of their choice and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the

Indemnitees; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes EMC's indemnification to Indemnitees as set forth herein. EMC's obligation to indemnify hereunder shall survive the term of this agreement and will remain in force for as long as the law allows. EMC's obligation hereunder shall be satisfied when EMC has provided to Indemnitees the appropriate form of dismissal relieving Indemnitees from any liability for the action or claim involved.

The specified insurance limits required in this Agreement shall in no way limit or circumscribe EMC's obligations to indemnify and hold harmless the Indemnitees herein from third party claims.

In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve the EMC from indemnifying the Indemnitees to the fullest extent allowed by law.

18. INSURANCE

EMC shall procure and maintain or cause to be maintained, at its sole cost and expense, insurance coverage's during the term of this Agreement.

- a. **Workers' Compensation** EMC shall maintain statutory Worker's Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) Including Occupational Disease with limits not less than **\$1,000,000** per person per accident.
- b. **Commercial General Liability** Commercial General Liability insurance coverage, including but not limited to , premises liability, contractual liability, products and completed operations liability, personal and advertising injury, cross liability coverage and employment practices liability covering claims which may arise from or out of EMC's performance of its obligations hereunder. Policy shall name Law Enforcement as the additional insured. Policy limits of liability shall not be less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, shall apply separately to this Agreement or be no less than two (2) times the occurrence limit.

c. **Professional Liability Insurance** EMC shall maintain Professional Liability Insurance providing coverage for EMC's performance of work included within this Agreement, with a limit of liability not less than **\$1,000,000** per occurrence and **\$2,000,000** annual aggregate. If EMC's Professional Liability Insurance is written on a "claims made" basis rather than an occurrence basis, such insurance shall continue through the term of the Agreement and EMC shall purchase at its sole expense either 1) an Extended Reporting Endorsement (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that EMC has maintained continuous coverage with the same or original insurer. Coverage provided under item 1), 2), 3) will continue for a period of five (5) years beyond the termination of Agreement.

d. **General Insurance Provisions – All Lines**

- i. Any insurance carrier providing insurance coverage hereunder shall be licensed by the State of California and have a rating of not less than an A, unless such requirements are waived by Law Enforcement's Risk Manager or designee. If Law Enforcement's Risk Manager waives a requirement for a particular insurer, such waiver is only valid for that specific insurer and only for one policy term.
- ii. EMC's insurance carrier(s) shall furnish Law Enforcement with either:
 - 1) properly executed original Certificate(s) or insurance and certified original copies of endorsements effecting coverage as required herein;
 - or 2) if requested to do so in writing by Law Enforcement's Risk Manager, provide original certified copies of policies including all endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to Law Enforcement prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of material modification, cancellation, expiration or reduction in coverage, the Agreement shall terminate forthwith, unless Law Enforcement receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurances required herein is in full force and effect. ***EMC shall not commence services until furnishing Law Enforcement with original Certificate(s) of Insurance and certified original copies of endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsement for each policy and the Certificate of Insurance.***

- iii. It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and Law Enforcement's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.
- iv. **Law Enforcement's Reserved Rights—Insurance.** If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services or performance of work; or there is a material change in equipment to be used in the performance of the scope of work (such as the use of aircraft or watercraft), Law Enforcement reserves the right to adjust the types of insurance required under the Agreement and the monetary limits of liability for the insurance coverage's currently require herein if, in the Law Enforcement Risk Manager's reasonable judgment, the amount or type of insurance carried by EMC has become inadequate.

19. GOVERNING LAW, JURISDICTION, SEVERABILITY

This Agreement and its construction and interpretation as to validity, performance and breach shall be construed under the laws of the State of California. Any legal Actions related to this Agreement shall be filed in the appropriate court of the State of California located in Indio, California. In the event any provision in his Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way. Should Federal Law modify or nullify any of the provisions of this Agreement, Federal Law will prevail under the doctrines of sovereign immunity and preemption.

20. CONFIDENTIALITY

- a. EMC agrees to maintain the confidentiality of all client information in accordance with all applicable federal, state and local laws and regulations. EMC shall ensure it keeps confidential the names, addresses, phone numbers and any other individually identifiable information concerning clients and the services they receive. EMC shall not divulge any client information to any unauthorized person.
- b. EMC shall maintain the confidentiality of all client records that it receives or sends to Law Enforcement. Records include, but may not be limited to, claims that include individually identifiable client information, individually identifiable health records and information and/or Management information Systems records. EMC shall use reasonable safeguards to prevent unauthorized access to records. EMC shall notify Law Enforcement immediately of any breach or suspected breach of client information via unauthorized access.

- c. Applicable confidentiality law include, but are not limited to, California Welfare & Institutions Code Sections 5328 through 5330, inclusive; 45 CFR Section 205.50; 45 CFR Parts 160 and 164, et seq. and 42 CFR-Chapter 1, Part 2. EMC shall require all its officers, employees, and agents providing services hereunder to acknowledge understanding of and agreement to fully comply with such confidentiality provisions.

21. ALTERATION OF TERMS

No addition to, or alteration of, the term of this Agreement, whether by written or verbal understanding of the parties, their officers, agents or employees, shall be valid unless made in the form of a written amendment to this Agreement, which is executed by both parties.

22. NOTICES

Any notices required or desired to be served by any party upon the other shall be addressed to the respective parties as set forth below or to such other addresses as from time to time may be designated by the respective parties:

Law Enforcement
 Stanley L. Sniff Jr., Sheriff
 Riverside County Sheriff's Department
 Post Office Box 512
 Riverside CA, 92502

EMC
 Eisenhower Medical Center
 Attn: Risk Manager
 39000 Bob Hope Drive
 Rancho Mirage, CA 92270

THE PARTIES HERETO have executed this Agreement on the dates indicated below.

COUNTY OF RIVERSIDE

By: _____

Name: John J. Benoit

Title: Chair, Riverside County Board of Supervisors

Date: _____

ATTEST:
 Kecia Harper-Ihem
 Clerk of the Board

By: _____
 Deputy

EMC

By: Ann Mostof

Name: Ann Mostof, MSN, RN NEA+BC

Title: CNO

Date: July 15/2013

FORM APPROVED COUNTY COUNSEL
 BY: Neal R. Kipnis 6/11/13
 MEAL R. KIPNIS DATE