

January 15, 2008

AGENDA ITEM NO.

COUNCIL MEETING 01/15/08

APPROVED BY

DEPARTMENT DIRECTOR

CITY MANAGER

FROM: JERRY DYER, Chief of Police
Police Department

BY: DON GROSS, Lieutenant
Police Department

SUBJECT: APPROVE CONTRACT WITH FRESNO COMMUNITY HOSPITAL AND MEDICAL CENTER, DBA COMMUNITY REGIONAL MEDICAL CENTER, FOR SEXUAL ASSAULT FORENSIC EXAMINATION OF VICTIMS AND SUSPECTS

KEY RESULT AREA

Public Safety

RECOMMENDATIONS

It is recommended that the City Council approve a contract with Fresno Community Hospital and Medical Center, dba Community Regional Medical Center, for sexual assault forensic examination of victims and suspects.

EXECUTIVE SUMMARY

On July 23, 2007, Central California Faculty Medical Group (CCFMG) terminated their contract with the Fresno Police Department for sexual assault forensic examinations. At that time the Fresno County Sheriff's Department was in the process of issuing a Request for Proposals for this service as their contract was also expiring with CCFMG. The RFP included information regarding the Fresno Police Department needs for these services and requesting the vendor provide the same pricing and terms. The County selected Community Regional Medical Center (CRMC) as the new provider partly based on the CRMC's ability to provide Level 1 emergency room care to better serve the victims of sexual assault (Attachment I). The Police Department concurs with this recommendation as well as for additional reasons covered below. The Police Department recommends that Council approve a contract with CRMC to obtain these services as described in the attached contract (Attachment III).

KEY OBJECTIVE BALANCE

Obtaining services through the County of Fresno Agreement balances the three key objectives of prudent Financial Management, Employee Satisfaction, and Customer Satisfaction by working in collaboration with the County to seek the best proposal to best serve our customers and provide the most effective service to our agency.

BACKGROUND

In July 2003, the City of Fresno (through the Police Department), entered into a Professional Services Agreement with Central California Faculty Medical Group Inc. (CCFMG) for sexual assault nurse examinations for collection of evidence from victims and suspects of sexual assaults. This agreement was to end December 2008.

In March of 2007 the Police Department received notice that CCFMG was terminating the contract effective July 23, 2007, citing loss of revenue due to a rise in costs for the services provided in the professional services agreement. During this same time frame (July 12, 2007), the Fresno County Sheriff's Department's agreement with CCFMG was expiring for the same services. As a result of the contract ending, the County Purchasing Department issued a Request for Proposal for these services. In an effort to reduce costs and duplication of effort, information about the Fresno Police Department's needs for these services was included in the County RFP.

The County received three proposals, which were evaluated by a selection committee (see Attachment I, Report to County Board of Supervisors). The County chose and awarded a contract to Community Regional Medical Center, even though they were not the lowest proposer, because they were the only one to offer a 24-hour Level 1 emergency department. This enables the facility to treat all of the victim's injuries, which in a number of cases, can be quite severe. The Fresno Police Department has a higher volume of cases and, as a result, a larger number may require Level 1 emergency care. Therefore, the Fresno Police Department concurs with the County's selection.

In addition, the employees previously employed by CCFMG that maintained the forensic nurse program are now employed at CRMC and can continue the program without interruption. Also, CRMC was specifically designed with law enforcement needs in mind, and offer facilities designed with separate victim and suspect areas designated for sexual assault examination.

This terms and conditions of the contract have been reviewed by the City of Fresno Purchasing Department, City Attorney and Risk Management.

FISCAL IMPACT

Due to the increased cost of services it is estimated that the impact would be \$232,800 (based on fiscal 2007 figures) yearly. This cost is estimated to be double the previous year as the cost for services has doubled from the previous CCFMG cost of \$600 per victim to \$1,200. The increase in expense will come from the existing FY 08 Police Department general fund budget as well as Supplemental Law Enforcement Funds (SLESF).

DG:pgh
01/10/08

- Attachment:
- I. County Board of Supervisors Agenda Item dated October 9, 2007
 - II. Agreement between County of Fresno and CRMC for sexual assault forensic exams
 - III. Agreement between City of Fresno and CRMC for sexual assault forensic exams
 - IV. CRMC's insurance certification



Agenda Item

24

DATE: October 9, 2007

TO: Board of Supervisors

FROM: Margaret Mims, Sheriff *M. MIMS by VLSGMS*

SUBJECT: Agreement with Community Regional Medical Center for the Services of Sexual Assault Examinations

RECOMMENDED ACTION:

Approve and authorize Chairman to execute an agreement with Fresno Community Hospital and Medical Center dba Community Regional Medical Center (CRMC) for the service of sexual assault forensic examinations of victims and suspects for three years effective November 1, 2007 through August 31, 2010 not to exceed \$75,000 per year.

There is an estimated \$27,475 increase in County cost associated with this action. On June 7, 2007, a Request for Proposal (RFP) was released. Per Chapter 6 of the Purchasing Manual, Bid Requirements and Procedures, an evaluation and award committee was established. Although the recommended vendor did not submit the lowest bid, it is recommended the services be awarded to CRMC due to the unique service needs associated with this contract. In retrospect, these services should not have been competitively bid for these reasons.

FISCAL IMPACT:

There is an estimated \$27,475 increase in County cost associated with the recommended action due to an increase in the cost per exam and court testimony. The cost for the victim exam is increasing from \$603 to \$1,200, the suspect exam is increasing for \$300 to \$1,000, and court testimony is increasing from \$150 to \$500. The Department allocated \$75,000 for these services since the initial agreement. Although the total amount has not been utilized in prior years (\$22,225 in 2006-07; \$38,650 in 2005-06; and \$35,362 in 2004-05), the Department has budgeted a consistent amount of \$75,000 due to the unforeseen amount of cases that might arise. As such, although the prices per service for this agreement have increased, it is estimated that the budgeted amount of \$75,000 included in the FY 2007-08 adopted budget for Sheriff Org 3111 will be sufficient.

ADMINISTRATIVE OFFICE REVIEW

Jeanie Figueroa

Page 1 of 2

BOARD ACTION: DATE _____

APPROVED AS RECOMMENDED _____

OTHER _____

UNANIMOUS _____ ANDERSON _____ CASE _____ LARSON _____ PEREA _____ WATERSTON _____

IMPACTS ON JOB CREATION:

None

DISCUSSION:

The current agreement with Central California Faculty Medical Group (CCFMG) for these services expired on July 12, 2007. On June 7, 2007, a Request for Proposal for a Complete Sexual Assault Examination Nurse was released. On June 18, 2007 three proposals were received from three bidders. The three bids received were from Community Regional Medical Center, Saint Agnes Medical Center, and Forensic Nurse Specialists of Central California. An evaluation committee was formed chaired by Purchasing Department staff and consisted of a Sheriff Sergeant from the Sexual Assault team, a Sheriff's Lieutenant, a member of the Sheriff's Business Office, and a Registered Nurse from the Health Department. The Evaluation Committee considered the needs of the victim and the value to the County and what would best meet those needs. Based on the first evaluation of the proposals, it was determined by the committee that Forensic Nurse Specialists of Central California did not meet the bid requirements and as such was eliminated from further review.

Although not required in the RFP, having sexual assault examinations conducted at a Level 1 Trauma Center such as CRMC with a 24-hr Level I emergency department enables them to treat all of the victim's injuries, which in a small number of cases, can be quite severe. Saint Agnes is not a Level 1 Trauma Center. The Level 1 Trauma Center is a necessary requirement by the Sheriff's Department to better serve the victims. Due to these needs, CRMC was selected as the recommended bidder. In retrospect these services should not have been competitively bid due to these unique service needs.

A short-term agreement between CRMC and the County was executed by Purchasing for the period of July 13, 2007 through October 31, 2007 to cover the time lapse between the expiration of the CCFMG contract to the time when a new agreement with CRMC could be considered by the Board. Upon Board approval, the new agreement will be in effect November 1, 2007 through August 31, 2010.

The recommended agreement will remain in force for three years and shall not exceed \$75,000.00 per year.

OTHER REVIEWING AGENCIES:

General Services has reviewed this agenda item and concurs with the recommended action. County Counsel and Risk Management have reviewed this agreement.

1 **A G R E E M E N T**

2
3 THIS AGREEMENT is made and entered into this ____ day of November, 2007, by
4 and between the COUNTY OF FRESNO, a Political Subdivision of the State of California,
5 hereinafter referred to as "COUNTY", and FRESNO COMMUNITY HOSPITAL AND MEDICAL
6 CENTER dba COMMUNITY REGIONAL MEDICAL CENTER whose address is 2823 Fresno
7 Street, Fresno, CA 93721, hereinafter referred to as "CONTRACTOR".

8 W I T N E S S E T H:

9 1. O B L I G A T I O N S O F T H E C O N T R A C T O R

10 A. CONTRACTOR will conduct complete sexual assault nurse examinations
11 services related to the collection of evidence and completion of the Office of Emergency Services
12 (OES) paperwork (State of California Form O.E.S. 923, 930, and 950) pertaining to the gathering
13 of evidence for victims and suspects that are involved or believed to be involved in sexual assault
14 crimes. CONTRACTOR shall also make medical doctors available to consult with victims of
15 sexual assault crimes upon a victim's request. The exams shall be conducted at Community
16 Regional Medical Center whose address is 2823 Fresno Street, Fresno, CA 93721.

17 B. The services will be available on a 24-hour basis with a response time of
18 approximately one (1) hour after the authorization of the exam by the COUNTY. For those
19 victims under the age of twelve (12), acute case exams will be performed at Community
20 Regional Medical Center. Follow-up exams and appointments will be performed at the
21 Children's Health Clinic located on the grounds of University Medical Center, with a Pediatric
22 Resident. Pediatric doctors are preferred due to special medical problems that are related to
23 victims under twelve (12).

24 C. The staff who conducted the examination may be required to provide
25 expert testimony in all court proceedings and will be subpoenaed by the Court when needed.

26 D. Provide training to Sheriff's Department personnel (as needed) in the
27 dynamics of sexual assault, types of sexual assaults, myths and facts about sexual assaults,
28 post traumatic stress and rape trauma syndrome, reactions of survivors and significant others,

1 and the importance of a victim-centered, cooperative, interdisciplinary approach in the
2 treatment of sexual assault survivors. CONTRACTOR shall provide two, four hour classes
3 containing 15 people annually.

4 2. OBLIGATIONS OF THE COUNTY

5 A. The COUNTY shall compensate CONTRACTOR according to the terms
6 set forth in section 5 of this agreement entitled Compensation/Invoicing.

7 3. TERM

8 This Agreement shall become effective on the 1st day of November, 2007 and
9 shall terminate on the 31st day of October, 2010.

10 4. TERMINATION

11 A. Non-Allocation of Funds - The terms of this Agreement, and the services to
12 be provided thereunder, are contingent on the approval of funds by the appropriating government
13 agency. Should sufficient funds not be allocated, the services provided may be modified, or this
14 Agreement terminated, at any time by giving the CONTRACTOR thirty (30) days advance written
15 notice.

16 B. Breach of Contract - The COUNTY may immediately suspend or terminate
17 this Agreement in whole or in part, where in the determination of the COUNTY there is:

- 18 1) An illegal or improper use of funds;
19 2) A failure to comply with any term of this Agreement;
20 3) A substantially incorrect or incomplete report submitted to the
21 COUNTY;
22 4) Improperly performed service.

23 In no event shall any payment by the COUNTY constitute a waiver by the COUNTY
24 of any breach of this Agreement or any default which may then exist on the part of the
25 CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to the
26 COUNTY with respect to the breach or default. The COUNTY shall have the right to demand of
27 the CONTRACTOR the repayment to the COUNTY of any funds disbursed to the CONTRACTOR
28 under this Agreement, which in the judgment of the COUNTY were not expended in accordance

1 with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon
2 demand.

3 C. Without Cause - Under circumstances other than those set forth above,
4 this Agreement may be terminated by COUNTY upon the giving of thirty (30) days advance written
5 notice of an intention to terminate to CONTRACTOR.

6 5. COMPENSATION/INVOICING:

7 COUNTY agrees to pay CONTRACTOR and CONTRACTOR agrees to
8 receive compensation as follows:

9 A. For each examination of a suspected victim of sexual assault by
10 CONTRACTOR, COUNTY shall pay CONTRACTOR \$1,200.00.

11 B. For each examination of a suspect of sexual assault by CONTRACTOR,
12 COUNTY shall pay CONTRACTOR \$1,000.00.

13 C. CONTRACTOR shall charge, and COUNTY shall pay, a cancellation fee
14 of \$100.00 in the event that:

15 1) A forensic nurse examiner is dispatched for to perform an examination of a
16 suspected victim of sexual assault, and the suspected victim refuses to be
17 examined.

18 2) A Deputy Sheriff prematurely authorizes an exam without appropriate
19 elements to a crime.

20 CONTRACTOR shall submit monthly invoices in triplicate to the County of
21 Fresno Sheriff's Department. The invoice should include the case number of each individual
22 service.

23 In no event shall services performed under this Agreement be in excess of
24 \$75,000.00 per year during the term of this Agreement. It is understood that all expenses
25 incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by
26 CONTRACTOR.

27 6. INDEPENDENT CONTRACTOR: In performance of the work, duties and
28 obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and

1 agreed that CONTRACTOR, including any and all of the CONTRACTOR'S officers, agents, and
2 employees will at all times be acting and performing as an independent contractor, and shall act in
3 an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or
4 associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise or
5 direct the manner or method by which CONTRACTOR shall perform its work and function.
6 However, COUNTY shall retain the right to administer this Agreement so as to verify that
7 CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

8 CONTRACTOR and COUNTY shall comply with all applicable provisions of
9 law and the rules and regulations, if any, of governmental authorities having jurisdiction over
10 matters the subject thereof.

11 Because of its status as an independent contractor, CONTRACTOR shall have
12 absolutely no right to employment rights and benefits available to COUNTY employees.
13 CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of, its
14 employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely
15 responsible and save COUNTY harmless from all matters relating to payment of
16 CONTRACTOR'S employees, including compliance with Social Security withholding and all other
17 regulations governing such matters. It is acknowledged that during the term of this Agreement,
18 CONTRACTOR may be providing services to others unrelated to the COUNTY or to this
19 Agreement.

20 7. MODIFICATION: Any matters of this Agreement may be modified from time
21 to time by the written consent of all the parties without, in any way, affecting the remainder.

22 8. NON-ASSIGNMENT: Neither party shall assign, transfer or sub-contract this
23 Agreement nor their rights or duties under this Agreement without the prior written consent of the
24 other party.

25 9. HOLD HARMLESS: CONTRACTOR agrees to indemnify, save, hold
26 harmless, and at COUNTY'S request, defend the COUNTY, its officers, agents, and employees
27 from any and all costs and expenses, damages, liabilities, claims, and losses occurring or
28 resulting to COUNTY in connection with the performance, or failure to perform, by

1 CONTRACTOR, its officers, agents, or employees under this Agreement, and from any and all
2 costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person,
3 firm, or corporation who may be injured or damaged by the performance, or failure to perform,
4 of CONTRACTOR, its officers, agents, or employees under this Agreement.

5 10. INSURANCE

6 Without limiting the COUNTY's right to obtain indemnification from
7 CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full
8 force and effect the following insurance policies throughout the term of this Agreement:

9 A. Commercial General Liability

10 Commercial General Liability Insurance with limits of not less than One
11 Million Dollars (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars
12 (\$2,000,000). This policy shall be issued on a per occurrence basis. COUNTY may require
13 specific coverages including completed operations, products liability, contractual liability,
14 Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed
15 necessary because of the nature of this contract.

16 B. Automobile Liability

17 Comprehensive Automobile Liability Insurance with limits for bodily injury of
18 not less than Two Hundred Fifty Thousand Dollars (\$250,000.00) per person, Five Hundred
19 Thousand Dollars (\$500,000.00) per accident and for property damages of not less than Fifty
20 Thousand Dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred
21 Thousand Dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used
22 in connection with this Agreement.

23 C. Professional Liability

24 If CONTRACTOR employs or contracts with licensed professional staff,
25 (e.g., Ph.D., R.N., L.C.S.W., M.F.C.C.) in providing services, Professional Liability Insurance with
26 limits of not less than One Million Dollars (\$1,000,000.00) per occurrence, Three Million Dollars
27 (\$3,000,000.00) annual aggregate.

28

1 D. Worker's Compensation

2 A policy of Worker's Compensation insurance as may be required by the
3 California Labor Code.

4 CONTRACTOR shall obtain endorsements to the Commercial General Liability
5 insurance naming the County of Fresno, its officers, agents, and employees, individually and
6 collectively, as additional insured, but only insofar as the operations under this Agreement are
7 concerned. Such coverage for additional insured shall apply as primary insurance and any other
8 insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees shall be
9 excess only and not contributing with insurance provided under CONTRACTOR's policies herein.
10 This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance
11 written notice given to COUNTY.

12 Within Thirty (30) days from the date CONTRACTOR executes this
13 Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated
14 above for all of the foregoing policies, as required herein, to the County of Fresno, (Name and
15 Address of the official who will administer this contract), stating that such insurance coverage have
16 been obtained and are in full force; that the County of Fresno, its officers, agents and employees
17 will not be responsible for any premiums on the policies; that such Commercial General Liability
18 insurance names the County of Fresno, its officers, agents and employees, individually and
19 collectively, as additional insured, but only insofar as the operations under this Agreement are
20 concerned; that such coverage for additional insured shall apply as primary insurance and any
21 other insurance, or self-insurance, maintained by COUNTY, its officers, agents and employees,
22 shall be excess only and not contributing with insurance provided under CONTRACTOR's policies
23 herein; and that this insurance shall not be cancelled or changed without a minimum of thirty (30)
24 days advance, written notice given to COUNTY.

25 In the event CONTRACTOR fails to keep in effect at all times insurance
26 coverage as herein provided, the COUNTY may, in addition to other remedies it may have,
27 suspend or terminate this Agreement upon the occurrence of such event.

28 All policies shall be with admitted insurers licensed to do business in the State

1 of California. Insurance purchased shall be purchased from companies possessing a current A.M.
2 Best, Inc. rating of A FSC VII or better.

3 11. AUDITS AND INSPECTIONS: The CONTRACTOR shall at any time during
4 business hours, and as often as the COUNTY may deem necessary, make available to the
5 COUNTY for examination all of its records and data with respect to the matters covered by this
6 Agreement. The CONTRACTOR shall, upon request by the COUNTY, permit the COUNTY to
7 audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance
8 with the terms of this Agreement.

9 If this Agreement exceeds ten thousand dollars (\$10,000.00), CONTRACTOR
10 shall be subject to the examination and audit of the Auditor General for a period of three (3) years
11 after final payment under contract (Government Code Section 8546.7).

12 12. NOTICES: The persons and their addresses having authority to give and
13 receive notices under this Agreement include the following:

| <u>COUNTY</u> | <u>CONTRACTOR</u> |
|------------------|-----------------------------------|
| COUNTY OF FRESNO | Community Regional Medical Center |
| Business Office | Phyllis Baltz |
| PO Box 1788 | 2823 Fresno Street |
| Fresno, CA 93717 | Fresno, CA 93721 |

17 Any and all notices between the COUNTY and the CONTRACTOR provided
18 for or permitted under this Agreement or by law shall be in writing and shall be deemed duly
19 served when personally delivered to one of the parties, or in lieu of such personal services, when
20 deposited in the United States Mail, postage prepaid, addressed to such party.

21 13. GOVERNING LAW: Venue for any action arising out of or related to this
22 Agreement shall only be in Fresno County, California.

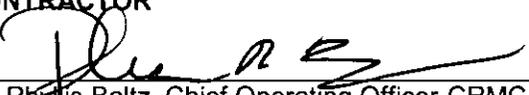
23 The rights and obligations of the parties and all interpretation and performance
24 of this Agreement shall be governed in all respects by the laws of the State of California.

25 ENTIRE AGREEMENT: This Agreement constitutes the entire agreement between
26 the CONTRACTOR and COUNTY with respect to the subject matter hereof and supersedes all
27 previous Agreement negotiations, proposals, commitments, writings, advertisements, publications,
28 and understanding of any nature whatsoever unless expressly included in this Agreement.

1 IN WITNESS WHEREOF, the parties hereto have executed this Agreement as
2 of the day and year first hereinabove written.

3 CONTRACTOR

COUNTY OF FRESNO

4 
5 Phyllis Baltz, Chief Operating Officer-CRMC

Chairman, Board of Supervisors

6 Phyllis Baltz, Chief Operating officer

7 Print Name & Title

2823 Fresno Street

8 Fresno, CA 93721

9 Mailing Address

10 DATE:

8/30/07

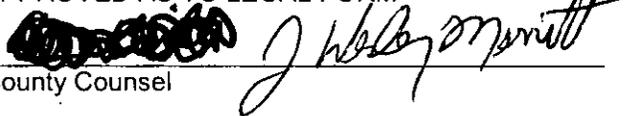
DATE:

9/19/07

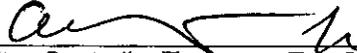
11 REVIEWED & RECOMMENDED FOR APPROVAL

12 M. MIMS 
13 Margaret Mims/ Sheriff

14 APPROVED AS TO LEGAL FORM

15 
16 County Counsel

APPROVED AS TO ACCOUNTING FORM

17 
Auditor-Controller/Treasurer-Tax Collector

17 FOR ACCOUNTING USE ONLY:

18 ORG No.: 31111301
19 Account No.: 7295
20 Requisition No.: 3117002350

21 FCMC 5/07

G:\ADMINISTRATION\BUSINESS\FINANCIAL REPORTING\BOS AGENDA\AGENDA ITEMS\FY 2007-2008\CRMC-SAFE PROGRAM AGREEMENT 10-2-07.DOC

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of November, 2007, by and between the CITY OF FRESNO, a California municipal corporation, hereinafter referred to as "CITY", and FRESNO COMMUNITY HOSPITAL AND MEDICAL CENTER, a California corporation, dba COMMUNITY REGIONAL MEDICAL CENTER whose address is 2823 Fresno Street, Fresno, CA 93721, hereinafter referred to as "CONTRACTOR".

WITNESSETH:

1. OBLIGATIONS OF THE CONTRACTOR

A. CONTRACTOR will conduct complete sexual assault nurse examination services related to the collection of evidence and completion of the Office of Emergency Services (OES) paperwork (State of California Form O.E.S. 923,930 and 950) pertaining to the gathering of evidence for victims and suspects that are involved or believed to be involved in sexual assault crimes. CONTRACTOR shall also make medical doctors available to consult with victims of sexual assault crimes upon a victim's request. The exams shall be conducted at Community Regional Medical Center whose address is 2823 Fresno Street, Fresno, CA 93721.

B. The services will be available on a 24-hour basis with a response time of approximately one (1) hour after the authorization of the exam by CITY. For those victims under the age of twelve (12), acute case exams will be performed at Community Regional Medical Center. Follow-up exams and appointments will be performed at the Children's Health Clinic located on the grounds of University Medical Center, with a Pediatric Resident. Pediatric doctors are preferred due to special medical problems that are related to victims under the age of twelve (12).

C. The staff who conducted the examination may be required to provide expert testimony in all court proceedings and will be subpoenaed by the Court when needed.

D. Provide training to Fresno Police Department personnel (as needed) in the dynamics of sexual assault, types of sexual assaults, myths and facts about sexual assaults, post traumatic stress and rape trauma syndrome, reactions of survivors and significant others, and in the importance of a victim-centered, cooperative, interdisciplinary approach in the treatment of sexual assault survivors. CONTRACTOR shall provide two, four hour classes containing 15 people annually.

E. The persons providing this service must be a California State Licensed Registered Nurse, and also possess a certificate of training as a Sexual Assault Forensic Examiner.

F. CONTRACTOR will request collection kits from the State Department of Justice (DOJ) Crime Lab. CONTRACTOR will place an order by calling the DOJ Crime Lab and requesting the quantity of kits desired. CITY will facilitate acquisition of supplies, (i.e., CITY will verify laboratory requests if required by DOJ). The kits will be delivered to CONTRACTOR at no charge. The DOJ Crime Lab's telephone number will be provided to CONTRACTOR who will be responsible for purchasing necessary items for collection that are not included in the kit. CONTRACTOR will be required to follow-up and submit to CITY the appropriate chain of possession for evidence collected.

2. OBLIGATIONS OF THE CITY

CITY shall compensate CONTRACTOR according to the terms set forth in section 5 of this Agreement entitled Compensation/Invoicing.

3. TERM

This Agreement shall become effective on the 1st day of December, 2007 and shall terminate on the 30th day of November, 2010.

4. TERMINATION

A. Non-Allocation of Funds. The terms of this Agreement, and the services to be provided thereunder, are contingent on the approval of funds by the appropriating government agency. Should sufficient funds not be allocated, the services provided may be modified, or this Agreement terminated, at any time by giving CONTRACTOR thirty (30) days advance written notice.

B. Breach of Contract. CITY may immediately suspend or terminate this Agreement in whole or in part, where in the determination of CITY there is:

- 1) An illegal or improper use of funds;
- 2) A failure to comply with any term of this Agreement;
- 3) A substantially incorrect or incomplete report submitted to CITY;
- 4) Improperly performed service.

In no event shall any payment by CITY constitute a waiver by CITY of any breach of this Agreement or any default which may then exist on the part of CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to CITY with respect to the breach or default. CITY shall have the right to demand of CONTRACTOR the repayment to CITY of any funds disbursed to CONTRACTOR under this Agreement, which in the judgment of CITY were not expended in accordance with the terms of this Agreement. CONTRACTOR shall promptly refund any such funds upon demand.

C. Without Cause. Under circumstances other than those set forth above, this Agreement may be terminated by CITY upon the giving of thirty (30) days advance written notice of an intention to terminate to CONTRACTOR.

5. COMPENSATION/INVOICING

CITY agrees to pay CONTRACTOR and CONTRACTOR agrees to receive compensation as follows:

A. For each examination by CONTRACTOR of a suspected victim of sexual assault, CITY shall pay CONTRACTOR \$1,200.00.

B. For each examination by CONTRACTOR of a suspect of sexual assault, CITY shall pay CONTRACTOR \$1,000.00.

C. CONTRACTOR shall charge, and CITY shall pay, a cancellation fee of \$100.00 in the event that:

- 1) A forensic nurse examiner is dispatched to perform an examination of a suspected victim of sexual assault, and the suspected victim refuses to be examined.
- 2) A Police Officer prematurely authorizes an exam without appropriate elements to a crime.

CONTRACTOR shall submit monthly invoices in triplicate to the City of Fresno Police Department. The invoice shall include the case number of each individual service.

In no event shall services performed under this Agreement be in excess of \$232,800.00 per year during the term of this Agreement. It is understood that all expenses incidental to CONTRACTOR'S performance of services under this Agreement shall be borne by CONTRACTOR.

6. INDEPENDENT CONTRACTOR

In performance of the work, duties and obligations assumed by CONTRACTOR under this Agreement, it is mutually understood and agreed that CONTRACTOR, including any and all of CONTRACTOR'S officers, agents, and employees will at all times be acting and performing as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer, partner, or associate of CITY. Furthermore, CITY shall have no right to control, supervise or direct the manner or method by which CONTRACTOR shall perform its work and function. However, CITY shall retain the right to administer this Agreement so as to verify that CONTRACTOR is performing its obligations in accordance with the terms and conditions thereof.

CONTRACTOR and CITY shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters the subject thereof.

Because of its status as an independent contractor, CONTRACTOR shall have absolutely no right to employment rights and benefits available to CITY employees. CONTRACTOR shall be solely liable and responsible for providing to, or on behalf of its employees all legally-required employee benefits. In addition, CONTRACTOR shall be solely responsible and save CITY harmless from all matters relating to payment of CONTRACTOR'S employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, CONTRACTOR may be providing services to others unrelated to CITY or to this Agreement.

7. MODIFICATION

Any matters of this Agreement may be modified from time to time by the written consent of all the parties without, in any way, affecting the remainder.

8. NON-ASSIGNMENT

Neither party shall assign, transfer or sub-contract this Agreement nor their rights or duties under this Agreement without the prior written consent of the other party.

9. HOLD HARMLESS

CONTRACTOR agrees to indemnify, save, hold harmless, and at CITY'S request, defend CITY, its officers, agents, and employees from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to CITY in connection with the performance, or failure to perform, by CONTRACTOR, its officers, agents or employees under this Agreement, and from any and all costs and expenses, damages, liabilities, claims, and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the performance, or failure to perform, of CONTRACTOR, its officers, agents, or employees under this Agreement.

10. INSURANCE

Without limiting CITY'S right to obtain indemnification from CONTRACTOR or any third parties, CONTRACTOR, at its sole expense, shall maintain in full force and effect the following insurance policies throughout the term of this Agreement:

A. Commercial General Liability. Commercial General Liability Insurance with limits of not less than One Million dollars (\$1,000,000.00) per occurrence and an annual aggregate of Two Million dollars (\$2,000,000.00). This policy shall be issued on a per occurrence basis. CITY may require specific coverages including completed operations, products liability, contractual liability, Explosion-Collapse-Underground, fire legal liability or any other liability insurance deemed necessary because of the nature of this Agreement.

B. Automobile Liability. Comprehensive Automobile Liability Insurance with limits for bodily injury of not less than Two Hundred Fifty Thousand dollars (\$250,000.00) per person, Five Hundred Thousand dollars (\$500,000.00) per accident and for property damage of not less than Fifty Thousand dollars (\$50,000.00), or such coverage with a combined single limit of Five Hundred Thousand dollars (\$500,000.00). Coverage should include owned and non-owned vehicles used in connection with this Agreement.

C. Professional Liability. If CONTRACTOR employs or contracts with licensed professional staff (e.g., Ph.D., R.N., L.C.S.W. or, M.F.C.C.) in providing services, Professional Liability Insurance with limits of not less than One Million dollars (\$1,000,000.00) per occurrence, Three Million dollars (\$3,000,000.00) annual aggregate.

D. Worker's Compensation. A policy of Worker's Compensation insurance as may be required by the California Labor Code.

CONTRACTOR shall obtain endorsements to the Commercial General Liability insurance naming CITY, its officers, agents, and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned. Such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by CITY, its officers, agents and employees shall be excess only and not contributing with insurance provided under CONTRACTOR'S policies

herein. This insurance shall not be cancelled or changed without a minimum of thirty (30) days advance written notice given to CITY.

Within thirty (30) days from the date CITY executes this Agreement, CONTRACTOR shall provide certificates of insurance and endorsement as stated above for all of the foregoing policies, as required herein, to the City of Fresno, (name and address of the official who will administer this Agreement), stating that such insurance coverage have been obtained and are in full force; that the City of Fresno, its officers, agents and employees will not be responsible for any premiums on the policies; that such Commercial General Liability insurance names the City of Fresno, its officers, agents and employees, individually and collectively, as additional insured, but only insofar as the operations under this Agreement are concerned; that such coverage for additional insured shall apply as primary insurance and any other insurance, or self-insurance, maintained by CITY, its officers, agents and employees, shall be excess only and not contributing with insurance provided under CONTRACTOR'S policies herein; and that this insurance shall be not be cancelled or changed without a minimum of thirty (30) days in advance, written notice given to CITY.

In the event CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, CITY may, in addition to other remedies it may have, suspend or terminate this Agreement upon the occurrence of such event.

All policies shall be with admitted insurers licensed to do business in the State of California. Insurance purchased shall be purchased from companies possessing a current A.M. Best, Inc. rating of A FSC VII or better.

11. AUDITS AND INSPECTIONS

CONTRACTOR shall at any time during business hours, and as often as CITY may deem necessary, make available to CITY for examination all of its records and data with respect to the matters covered by this Agreement. CONTRACTOR shall, upon request by CITY, permit CITY to audit and inspect all of such records and data necessary to ensure CONTRACTOR'S compliance with the terms of this Agreement.

If this Agreement exceeds Ten Thousand dollars (\$10,000.00), CONTRACTOR shall be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code Section 8546.7).

12. NOTICES

The persons and their addresses having authority to give and receive notices under this Agreement include the following:

CITY

Fresno Police Department
Attn. Chief Jerry Dyer
2323 Mariposa Mall
Fresno, CA 93721

CONTRACTOR

Community Regional Medical Center
Phyllis Baltz
2823 Fresno Street
Fresno, CA 93721

Any and all notices between CITY and CONTRACTOR provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly served when personally delivered to one of the parties, or in lieu of such personal services, when deposited in the United States Mail, postage prepaid, addressed to such party.

13. GOVERNING LAW

Venue for any action arising out of or related to this Agreement shall only be in Fresno County, California.

The rights and obligations of the parties and all interpretations and performance of this Agreement shall be governed in all respects by the laws of the State of California.

14. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between CONTRACTOR and CITY with respect to the subject matter hereof and supersedes all previous Agreement negotiations, proposals, commitments, writings, advertisements, publications, and understanding of any nature whatsoever unless expressly included in this Agreement.

15. CONFIDENTIALITY

A. All services performed by CONTRACTOR shall be in strict conformance with all applicable Federal, State of California and local laws and regulations relating to confidentiality, including but not limited to, California Civil Code, California Welfare and Institutions Code, California Health and Safety Code, California Code of Regulations, Code of Federal Regulations.

B. CONTRACTOR shall submit to CITY'S monitoring of said compliance.

C. CONTRACTOR may be a business associate of CITY, as that term is defined in the "Privacy Rule" enacted by the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). As a HIPAA Business Associate, CONTRACTOR may use or disclose protected health information ("PHI") to perform functions, activities or services for or on behalf of CITY as specified by CITY, provided that such use or disclosure shall not violate HIPAA and its implementing regulations. The uses and disclosures of PHI may not be more expansive than those applicable to CITY, as the "Covered Entity" under HIPAA'S Privacy Rule, except as authorized for management, administrative or legal responsibilities of the Business Associate.

D. CONTRACTOR shall not use or further disclose PHI other than as permitted or required by CITY, or as required by law without written notice to CITY.

E. CONTRACTOR shall ensure that any agent, including any subcontractor, to which CONTRACTOR provides PHI received from, or created or received by CONTRACTOR on behalf of CITY, shall comply with the same restrictions and conditions with respect to such information.

16. COMPLIANCE WITH LAW

CONTRACTOR warrants on behalf of itself and all subcontractors engaged for the performance of the Agreement that only persons authorized to work in the United States pursuant to the Immigration Reform and Control Act of 1986 and other applicable laws shall be employed in the performance of the work hereunder.

CONTRACTOR shall obey all applicable Federal, State, local and special district laws, ordinances and regulations.

17. SEVERABILITY

The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first hereinabove written.

FRESNO COMMUNITY HOSPITAL AND
MEDICAL CENTER, a California corporation,
dba COMMUNITY REGIONAL MEDICAL
CENTER

CITY OF FRESNO,
a California municipal corporation

By: _____
Phylis Baltz, Manager
Chief Operating Officer-CRMC

By: _____
Janet Smith, Purchasing Manager

ATTEST:
Rebecca E. Klisch
City Clerk, City of Fresno

BY: _____
Deputy

APPROVED AS TO FORM:
JAMES C. SANCHEZ
City Attorney

By: _____
Nancy A. Algier Date
Senior Deputy

NAA:sz[43027sz/agt] 11/13/07