

**CITY OF SAN ANTONIO
INTERDEPARTMENTAL MEMORANDUM
POLICE DEPARTMENT**

TO: Mayor and City Council

FROM: Albert A. Ortiz, Chief of Police

THROUGH: Terry M. Brechtel, City Manager

COPIES: Christopher J. Brady, Assistant City Manager; File

SUBJECT: Ordinance Request to Enter into Contracts for Sexual Assault Examination Services.

DATE: July 29, 2004

SUMMARY AND RECOMMENDATIONS

This ordinance authorizes the City Manager or her designated representative to enter into contracts with Methodist Healthcare System of San Antonio, Ltd., d/b/a Methodist Specialty and Transplant Hospital, Christus Santa Rosa Health Care, and the Alamo Children's Advocacy Center (ACAC) to provide specialized sexual assault/abuse examinations. These contracts will be effective immediately and expire September 30, 2006. Total costs for the services will be approximately \$227,175.00 per year.

Staff recommends approval.

BACKGROUND INFORMATION

The purpose of these contracts is to secure services to conduct specialized sexual assault/abuse examinations. The examinations will allow the gathering of evidence in sexual assault/abuse cases for use in the prosecution of such cases.

The contract with Christus Santa Rosa is for persons sixteen (16) years of age and younger. The contract with the Alamo Children's Advocacy Center is for persons sixteen (16) years of age and younger or persons suffering from some other type of disability such as mental illness or being unable to communicate for themselves. The contract with Methodist Healthcare System of San Antonio, Ltd., is for persons thirteen (13) years of age and older.

Based on three (3) years history of the number of exams conducted, approximately 810 complete examinations, 235 brief examinations, 129 evaluations, and 84 suspect exams will be conducted per year. Total cost for the complete exams is \$182,250 ($810 \times \$225 = \$182,250$). Total cost for the brief exams is \$26,850 ($134 \times \$125 = \$16,750$ and $101 \times \$100 = \$10,100$). Total costs for the evaluations is \$9,675 ($129 \times \$75 = \$9,675$). Total costs for the suspect exams is \$8,400 ($84 \times$

\$100 = \$8,400). Total cost for all examinations is estimated to be approximately \$227,175.00 per year.

All personnel who perform any part of the services shall meet and maintain all minimum requirements set by the federal, state, and local laws, rules and regulations, including, but not limited to, all licensing and training agreements. These exams are mandated by the Texas Code of Criminal Procedures, Article 56.06 Section (a) whereas " A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination".

Although the contract period is October 1, 2003 through September 30, 2006, contract completion was delayed in order to negotiate rates comparable to those in the previous contracts. The hospitals wanted to increase the cost of the examinations. However, current budget constraints dictated no increase, therefore, after several months of negotiating the hospitals agreed not to increase the cost for the examinations.

POLICY ANALYSIS

The proposed ordinance continues City Council's policy of obtaining specialized services by contract. This program will enhance the City's efforts in dealing with sexual assault/abuse.

FISCAL IMPACT

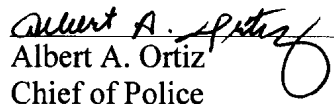
Funds are available for this expenditure in the Police Department's General Fund Budget. Expenditures for sexual assault/abuse examinations for future years will be budgeted in the Police Department's General Fund budget.

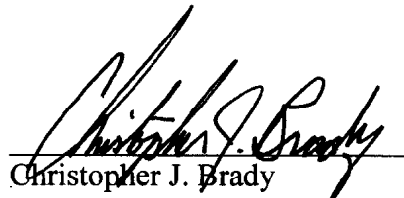
COORDINATION


This ordinance request has been coordinated with the Finance Department, City Attorney's Office, Asset Management, and the Office of Management & Budget.

SUPPLEMENTAL COMMENTS

The required City of San Antonio Ethics Ordinance Discretionary Contracts Disclosure Forms and copies of the contracts are attached.


Albert A. Ortiz
Chief of Police


Christopher J. Brady
Assistant City Manager
Approved:


Terry M. Brechtel
City Manager

City of San Antonio

Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.

* This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

None

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

Methodist Healthcare System of San Antonio, Ltd., L.L.P.

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

None

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

General Partners:

Columbia/HCA Healthcare Corporation of Central Texas
Methodist Healthcare Ministries of South Texas, Inc.

¹ A business entity means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None

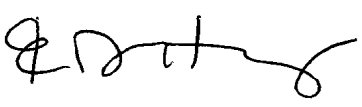
Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
None		

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

None to our knowledge.		
Signature: 	Title: <i>General Counsel</i> Company: <i>Methodist Healthcare</i>	Date: <i>7-16-04</i>

System of San Antonio, Ltd.

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

COPY

PROFESSIONAL SERVICES AGREEMENT

FOR

SEXUAL ASSAULT EXAMINATIONS

STATE OF TEXAS §
 §
COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation, hereinafter referred to as "CITY," acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 200_____ and _____ by and through Methodist Healthcare System of San Antonio, LTD, ^{LLP}~~d/b/a~~ a Methodist Specialty and Transplant Hospital, a Texas limited liability partnership, hereinafter referred to as "HOSPITAL," both of which may be referred to herein collectively as "PARTIES."

The PARTIES hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

WITNESSETH

WHEREAS, the CITY, by and through the San Antonio Police Department, hereinafter referred to as "SAPD", is in need of services for conducting specialized Sexual Assault/Abuse evidence collection for Victims of Sexual Assault/Abuse, thirteen years of age and older, and for the specific consent or warranted removal of physical evidence from suspects of Sexual Assault: and

WHEREAS, HOSPITAL, is able and willing to provide these needed services to the CITY; and

NOW THEREFORE, the PARTIES agree as follows:

ARTICLE I
PURPOSE

- 1.01 The purpose of this Agreement is to secure competent services in the conduction of specialized Sexual Assault Examinations and the gathering of evidence in Sexual

Assault cases for use in the prosecution of such cases that involve victims thirteen years of age or older. SAPD, as mandated by the Texas Code of Criminal Procedure, Art. 56.06 sec. (a) whereas "A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination," whereas under sec. (b) "This article does not require a law enforcement agency to pay any costs of treatment for injuries, "is entering into this Agreement with HOSPITAL. Services will include the collection of physical evidence from the body and clothing of arrested/detained Sexual Assault suspects, by means of consent or court ordered search warrant.

- 1.02 This Agreement is a contract for services only and is not intended to nor does it create a partnership or joint venture between the PARTIES.

ARTICLE II

TERM

- 2.01 The term of this Agreement is for a period of 36 months beginning October 1, 2003, and ending September 30, 2006. It shall become effective upon approval of all PARTIES.

ARTICLE III

DEFINITIONS

- 3.01 The following definitions shall apply in this Agreement:
- a. **Sexual Assault/Abuse Victim**: Refers to persons who present themselves to HOSPITAL and declares that they are a Victim of Sexual Assault/Abuse.
 - b. **Examination**: Refers to the physical examination and collection of physical evidence of Sexual Assault victims. The physical evidence includes, but is not limited to, semen, blood, urine, and hair, and will be secured in an approved Sexual Assault kit. Examination refers to the medical term of physically examining a victim of Sexual Assault/Abuse for physical signs of injury related to the Sexual Assault/Abuse. Collection of physical evidence from a victim is based on the victim being examined within (72) seventy-two hours after the assault. Evidence is defined as biological and trace evidence. Examinations of a victim of sexual assault/abuse after (72) seventy-two hours will be determined by Sexual Assault Nurse Examiner (hereinafter referred to as "SANE") based on the screening process to determine if physical signs of abuse are present.

- c. **Acute Sexual Assault:** Refers to a Victim of Sexual Assault that presents themselves to a facility for a Sexual Assault Examination and that assault occurred within seventy-two (72) hours of presenting themselves.
- d. **Non-acute Sexual Assault:** Refers to a Victim of Sexual Assault that presents themselves to a facility for Sexual Assault Examination and that assault has occurred more than seventy-two (72) hours prior to them presenting themselves.
- e. **Sexual Assault Collection Kit:** Refers to a pre-made kit that contains sterile packaging and articles for the actual search and removal of physical evidence of a Sexual Assault, to include, but not limited to blood vials, comb, and paper packaging for the storage of various items of physical evidence.
- a. **Sexual Assault Nurse Examiners:** (Commonly referred to as S.A.N.E. nurse.) Refers to a registered nurse that has received specialized training to perform full Sexual Assault Examinations. Partial Examinations and Evaluations, and this training meets the minimum standard set forth by the Texas State Attorney General's Office of Sexual Assault Prevention and Crisis Services. This training includes, but is not limited to the use of the Sexual Assault Kit; colposcope and the proper paperwork needed to document each type of Examination performed. HOSPITAL agrees to provide additional training of S.A.N.E. nurses as mandated by the State Attorney General's Office, as this training becomes available to HOSPITAL. HOSPITAL agrees to provide sufficient S.A.N.E. staffing to prevent an unreasonable delay in evaluating a Victim. **Unreasonable Delay** is defined as the waiting of a victim for more than one hour before the triage and evaluation process begins. Once the Triage and Evaluation begins, the process will be continuous until completed by the S.A.N.E.
- f. **Suspects:** Refers to a person suspected of committing the unlawful act of Sexual Assault or Sexual Abuse. Assailant may be referred to as a Suspect.
- g. **Victim Evaluation:** Refers to the preliminary medical evaluation (Screening) of a victim of Sexual Assault/Abuse to determine if the person is a Sexual Assault victim in need of an Examination or is a Sexual Assault Victim to be referred to the Alamo Children's Advocacy Center for an in-depth physical examination to determine if Sexual Assault/Abuse has occurred. Evaluation is defined as the screening of a victim of Sexual Assault/Abuse for any obvious injuries received during the sexual assault, i.e. bruising, cuts, scrapes, human teeth marks, contusions, missing hair, signs of physical restraint and other obvious signs as related by the victim to the examiner.

- h. **Suspect Evaluation**: Refers to a person under the control of the SAPD that is presented in person to the HOSPITAL, and is there for the HOSPITAL to examine the Suspect for physical evidence involving a Sexual Assault/Abuse. Examination of the suspect refers to the removal of biological/trace evidence from the suspect by the HOSPITAL, including the screening of the suspect for other physical signs of assault i.e., cuts, scrapes, bruises, transfer of human body fluids such as blood, but not limited to blood, and any other physical injuries as determined at the time of the Examination.
- i. **Fees for Service**: Refers to the fee assessed for the actual examination and screening of the victim or a suspect/assailant conducted to collect physical evidence of a Sexual Assault/Abuse.

ARTICLE IV

OBLIGATIONS AND RESPONSIBILITIES

- 4.01 The HOSPITAL agrees to provide the services described in this **ARTICLE IV**, entitled "**OBLIGATIONS AND RESPONSIBILITIES**" in exchange for the compensation described in **ARTICLE V**, "**COST OF SERVICES**".
- 4.02 The HOSPITAL agrees to conduct screening and evidence collection as it pertains to suspect/assailants as requested and directed by the CITY under the terms and conditions of this Agreement.
- 4.03 The HOSPITAL acknowledges its understand that information it gathers under this Agreement may be used in criminal prosecutions and agrees that it will gather all evidence for use in criminal prosecutions in accordance with the procedures, policies, and parameters from time to time given by the CITY to HOSPITAL in order to comply with all applicable rules, regulations, and laws including, but not limited to, the Texas Code of Criminal Procedure and the Texas Penal Code as it relates to the admissibility of evidence in the prosecution of criminal defendants.
- 4.04 The HOSPITAL agrees to conduct only the examinations required by the CITY for Sexual Assault Victims, and any medical screening examination required by State or Federal law.
- 4.05 The HOSPITAL represents and agrees that any and all of its personnel who perform any part of the services under this Agreement shall meet and maintain all minimum requirements set by the Federal, State, and local laws, rules, and regulations during the term of this Agreement, including, but not limited to, all licensing and training requirements. The HOSPITAL agrees to having all

personnel assigned to conduct victim Examinations/Evaluations and suspect evidence collection, certified as SANE (Sexual Assault Nurse Examiners), and will be required to insure all SANE personnel maintain an on-going certification program as mandated by the State of Texas. The HOSPITAL agrees to remove any personnel assigned to the SANE program who fail to maintain a level of certification or if personnel assigned to SANE Examinations befall confirmed instances of professional misconduct as it pertains to the rights of a victim of Sexual Assault/Abuse, or as it pertains to the screening and evidence evaluation of a suspect/assailant.

- 4.06 The HOSPITAL agrees to provide the victim of Sexual Assault/Abuse or the guardian of a victim of Sexual Assault/Abuse with a release of medical records affidavit, on a form which complies with laws regarding release of confidential patient information, and, to assist in providing SAPD with a complete medical report regarding the Victim of Sexual Assault/Abuse.
- 4.07 The HOSPITAL agrees to perform a medical screening exam on all victims of Sexual Assault/Abuse regardless of the age of the victim even if the victim shows to be under the age of contract with HOSPITAL. HOSPITAL agrees to refer all non-acute victims of Sexual Assault/Abuse under the age of 17 to the Alamo Children's Advocacy Center, hereinafter called "ACAC".
- 4.08 All work performed by HOSPITAL hereunder shall be performed to the satisfaction of the Office of ~~Chief of Police~~, City of San Antonio Police Department. The determination made by the "~~Chief of Police~~" shall be final, binding and conclusive on all PARTIES hereto. CITY shall be under no obligation to pay for any work performed by HOSPITAL that is not satisfactory to the Chief of Police. CITY shall have the right to terminate this Agreement or withhold payment in whole or in part, in accordance with **Article V, "COST OF SERVICES"**, should "HOSPITAL'S" work not be satisfactory to the Chief of Police

ARTICLE V **COST OF SERVICE**

- 5.01 In consideration of HOSPITAL'S performance in a satisfactory and efficient manner, as determined solely by the Chief of Police, of all services and activities set forth in this Agreement, CITY agrees to pay and HOSPITAL agrees to accept, as its fee for services rendered, in the Examination of a Sexual Assault/Abuse Victims, the total sum of **TWO HUNDRED AND TWENTY FIVE and 00/100 Dollars (\$225.00)**. The CITY agrees to pay and the HOSPITAL agrees to accept, as its fee for services rendered in the Examination of Suspects, the total sum of **ONE HUNDRED and 00/100 DOLLARS (\$100.00)**.

- 5.02 "No additional fees or expenses of HOSPITAL shall be charged by "HOSPITAL" nor be payable by CITY. The PARTIES hereby agree that all compensated expenses of HOSPITAL have been provided for in the total payment to HOSPITAL as specified in section 5.01 above. Total payments to HOSPITAL cannot exceed that amount set forth in section 5.01 above, without prior approval and agreement of all PARTIES, evidence in writing and approved by the San Antonio City Council by passage of an ordinance therefore.
- 5.03 The HOSPITAL agrees to submit a monthly invoice to the CITY on or before the 10th day of the month following the rendition of the service. The HOSPITAL agrees to provide a separate statement of billing for victims and suspects.
- 5.04 The CITY agrees to pay all undisputed sums due and owing under this Agreement within forty-five (45) business days. For all amounts in dispute, the CITY, within fifteen days (15) of the receipt of the report required under **Article IX STATISTICS AND DOCUMENTATION** under Section 9.02 of this Agreement, will notify HOSPITAL in writing of the amount in dispute and the basis for the dispute.
- 5.05 Final acceptance of work products and services require written approval by CITY. The approval official shall be "Chief of Police". Payment will be made to "HOSPITAL" following written approval of the services rendered. CITY shall not be obligated or liable under this Agreement to any party, other than HOSPITAL, for the payment of any monies or the provision of any goods or services.

ARTICLE VI

RECORDS RETENTION

- 6.01 HOSPITAL shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the Agreement period, including any extension or renewal thereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives."
- 6.02 HOSPITAL shall retain any and all documents produced as a result of services provided hereunder, indefinitely, (hereafter referred to as "retention period") from the date of termination of this Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning

this documentation or the services provided hereunder, HOSPITAL shall retain the records until the resolution of such litigation or other such questions. HOSPITAL acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period.

- 6.03 HOSPITAL shall notify CITY, immediately, in the event HOSPITAL receives any requests for information from a third party, which pertain to the documentation and records referenced herein. HOSPITAL understands and agrees that CITY will process and handle all such requests.”

ARTICLE VII

TERMINATION

- 7.01 For purposes of this Agreement, “**Termination**” of this Agreement shall mean termination by expiration of the Agreement term as stated in **Article II TERM**, or earlier termination pursuant to any of the provisions hereof.
- 7.02 **Termination Without Cause.** This Agreement may be terminated by either the City of San Antonio or HOSPITAL, upon 60 (sixty) calendar days with prior written notice, which notice shall be provided in accordance with **Article VIII NOTICE**.
- 7.03 **Termination for Cause.** Upon written notice, which notice shall be provided in accordance with **Article VIII, NOTICE**, CITY may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement.
- 7.03.1 Failure to comply with the terms and conditions stated in **Article IV, OBLIGATIONS AND RESPONSIBILITIES**.
- 7.03.2 Failure to comply with any covenant herein required.
- 7.03.3 Performing unsatisfactorily.
- 7.04 **Termination By Law** - If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.

- 7.05 Regardless of how this Agreement is terminated, HOSPITAL shall affect any orderly transfer to CITY or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by HOSPITAL, or provided to HOSPITAL, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by HOSPITAL in accordance with **Article VI, RECORDS RETENTION**. Any record transfer shall be completed within thirty (30) calendar days of a written request by CITY and shall be completed at HOSPITAL'S sole cost and expense. Payment of compensation due or to become due to HOSPITAL is conditioned upon delivery of all such documents, if requested.
- 7.06 Upon the effective date of expiration or termination of this Agreement, HOSPITAL shall cease all operations of work being performed by HOSPITAL pursuant to this Agreement.
- 7.07 **Termination not sole remedy.** In no event shall CITY'S action of terminating this Agreement, whether for cause or otherwise, be deemed an election of CITY'S remedies, nor shall such termination limit, in any way, at law or at equity, CITY'S right to seek damages from or otherwise pursue HOSPITAL for any default hereunder or other action.

ARTICLE VIII **NOTICES AND ADDRESSES**

- 8.01 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

CITY: San Antonio Police Department
 Sex Crimes Unit
 Attention: Ronnie Torres-Contract Coordinator
 214 W. Nueva
 San Antonio, Texas 78207

HOSPITAL: Methodist Healthcare System of San Antonio, LTD, L.L.P.
Methodist Specialty and Transplant Hospital
Attention: Vice President of Nursing
8026 Floyd Curl Drive
San Antonio, Texas 78229

- 8.02 Within (10) ten days from the date this Agreement is approved, each "PARTY" agrees to appoint a representative to act as liaison for oversight and implementing the provisions of this Agreement. The name(s) of such representative(s) shall be duly noted in writing and notice shall be forwarded to the appropriate representatives for each party at the stated address in Section 8.01 of this Agreement.

ARTICLE IX **STATISTICS AND DOCUMENTATION**

- 9.01 The HOSPITAL shall maintain records for each Victim for whom the HOSPITAL conducts an Examination/Evaluation under this Agreement. Subject to restriction, limitation under applicable laws protecting the confidentiality of patient medical records and similar records, conducted and fee charged under this Agreement, the HOSPITAL shall allow any authorized representative of the CITY, at all reasonable times, to have access to and the right to inspect, copy, audit and examine all books, records and/or other documents representing the services provided hereunder.
- 9.02 The HOSPITAL agrees to provide the CITY with a monthly report regarding services rendered, to be received by the CITY on or before the 10th day of the month following the month that the services were performed. A report under this section shall include the following for each Victim.
- a. Date of Examination/Evaluation,
 - b. Case number or other identifier,
 - c. Victim's last name, first name date of birth, race, and sex,
 - d. Name of the Examiner,
 - e. Fee charged for the Examination/Evaluation.

A report will be provided under this section that shall include the following for each Suspect:

- a. Date of the Examination/Evaluation,
- b. Case number or other identifier,
- c. Suspect's last name, first name, date of birth, race, and sex,
- d. Name of Examiner,
- e. Fee charged for the Examination.

ARTICLE X

LIABILITY

- 10.01 Each PARTY shall be liable for any and all costs, claims, liens, damages, causes of action, liability, and suits of any kind and nature arising out of, resulting from, or related to the acts or omissions of all such PARTY'S agents, officers, directors, representatives, employees, consultants, or subcontractors. In the event HOSPITAL and CITY are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively as determined by a court of competent jurisdiction in accordance with the laws of the state of Texas, without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defenses of the PARTIES under Texas law.
- 10.02 HOSPITAL shall promptly advise the CITY in writing of any claim or demand against the CITY or HOSPITAL known to HOSPITAL relating to or arising out of HOSPITAL'S or CITY'S activities under this Agreement, and CITY shall also promptly advise HOSPITAL in writing of any claim or demand against HOSPITAL or CITY known to CITY relating to or arising out of CITY'S or HOSPITAL'S activities under this Agreement.

ARTICLE XI

INSURANCE

- 11.01 Prior to commencement of any work under this contract, HOSPITAL shall furnish to CITY an original completed certificate of insurance or CITY'S standard certificate of insurance form. Said form shall be completed by an agent authorized to bind the named underwriter and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this contract until such certificate shall have been delivered, and no officer or employee, other than the city of San Antonio's risk manager, shall have authority to waive this requirement.
- 11.02 HOSPITAL'S financial integrity is of interest to CITY; therefore, subject to HOSPITAL'S right to maintain reasonable deductibles in such amounts as are approved by CITY, HOSPITAL shall obtain and maintain in full force and effect for the duration of this contract, and any extension thereof, at HOSPITAL'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the state of Texas and rated A or better

by A.M. Best Company and/or otherwise acceptable to CITY in the following types and amounts:

Insurance Type	Liability Limits
Professional Liability	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
Commercial General (Public) Liability: a. premises operations b. independent contractors* c. products/completed operations d. personal injury e. contractual liability f. explosion, collapse, underground* g. broad form property damage, to include fire legal liability*	For bodily injury and property damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage.
Workers Compensation**	Statutory
Employers Liability**	\$1 million/\$1 million/\$1 million
* if applicable	** alternate plans must be approved by CITY's Risk Management

- 11.03 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, HOSPITAL shall exercise reasonable efforts to accomplish such changes in policy, and shall pay the cost thereof.
- 11.04 HOSPITAL agrees that with respect to the above required insurance, all insurance contracts and the certificate of insurance will contain a provision that HOSPITAL'S insurance shall be deemed primary with respect to any collectible insurance or self insurance carried by CITY for liability arising out of operations under the contract with CITY.
- 11.05 HOSPITAL will notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than

thirty days prior to the change, or ten days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement certificate of insurance. All notices shall be given to CITY at the address set out in article XIII.

- 11.06 If HOSPITAL fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the contract; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have and is not the exclusive remedy for failure of HOSPITAL to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon HOSPITAL'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order HOSPITAL to stop work hereunder and/or withhold any payment which becomes due to HOSPITAL hereunder until HOSPITAL demonstrates compliance with the requirements hereof.

ARTICLE XII

ASSIGNMENT AND SUBCONTRACTING

- 12.01 HOSPITAL shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of HOSPITAL. HOSPITAL, its employees or its subcontractors shall perform all necessary work as outlined in **Article IV, OBLIGATIONS AND RESPONSIBILITIES** under Section 4.05.
- 12.02 Any work or services approved for subcontracting hereunder shall be subcontracted only by written contract and, unless specific waiver is granted in writing by the CITY, shall be subject by its terms to each and every provision of this Agreement. Compliance by subcontractors with this Agreement shall be the responsibility of HOSPITAL. CITY shall in no event be obligated to any third party, including any subcontractor of HOSPITAL, for performance of services or payment of fees. Any references in this Agreement to an assignee, transferee, or subcontractor, indicate only such an entity as has been approved by the City Council.
- 12.03 Except as otherwise stated herein, HOSPITAL may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, HOSPITAL shall remain

liable for completion of the services outlined in this Agreement in the event of default by the successor of HOSPITAL, assignee, transferee or subcontractor.

- 12.04 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should HOSPITAL assign, transfer, convey, delegate, or otherwise dispose of any part or all of its rights, title or interest in this Agreement, CITY may, at its option, cancel this Agreement and all rights, titles and interest of HOSPITAL shall thereupon cease and terminate, in accordance with **Article VII, TERMINATION**, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by HOSPITAL shall in no event release HOSPITAL from any obligation under the terms of this Agreement, nor shall it relieve or release HOSPITAL from the payment of any damages to CITY, which CITY sustains as a result of such violation.

ARTICLE XIII **INDEPENDENT CONTRACTOR**

- 13.01 HOSPITAL covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of CITY; that HOSPITAL shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, consultants, subcontractors and contractors; that the doctrine of respondent superior shall not apply as between CITY and HOSPITAL, its officers, agents, employees, consultants, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and HOSPITAL. The PARTIES hereto understand and agree that the CITY shall not be liable for any claims, which may be asserted by any third party occurring in connection with the services to be performed by the HOSPITAL under this Agreement, and that the HOSPITAL has no authority to bind the CITY.

ARTICLE XIV **CONFLICT OF INTEREST**

- 14.01 HOSPITAL acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY

or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

- 14.02 Pursuant to the subsection above, HOSPITAL warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. HOSPITAL further warrants and certifies that it has tendered to the CITY a Confidentiality Contract Disclosure Statement in compliance with the CITY's Ethics Code.

ARTICLE XV AMENDMENTS

- 15.01 This Agreement shall not be deemed waived, amended or modified by either PARTY unless and until such waiver, amendment, or modification is in writing and executed subsequent to the date of this Agreement by the PARTY against whom it is sought to be enforced.

ARTICLE XVI LEGAL CONSTRUCTION

- 16.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE XVII NONWAIVER OF PERFORMANCE

- 17.01 Unless otherwise specifically provided for in this Agreement, a waiver by either PARTY of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held

to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either PARTY to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either PARTY hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the PARTY to be charged. In case of CITY, such changes must be approved by the City Council, as described in **Article XV, AMENDMENTS**. No act or omission by a PARTY shall in any manner impair or prejudice any right, power, privilege, or remedy available to that PARTY hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

ARTICLE XVIII **GOVERNING LAW**

- 18.01 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the PARTIES hereunder, shall be governed by the laws of the State of Texas. This Agreement shall be enforceable in Bexar County, Texas and if legal action is necessary by either PARTY with respect to the enforcement of any or all of the terms and conditions herein, exclusive venue for same shall be in Bexar County, Texas.

ARTICLE XIX **PARTIES BOUND**

- 19.01 This Agreement shall be binding on and inure to the benefit of the PARTIES hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

ARTICLE XX **LEGAL AUTHORITY**

- 20.01 The signer of this Agreement for HOSPITAL represents, warrants, assures, and guarantees that he/she has full legal authority to execute this Agreement on behalf of HOSPITAL and to bind HOSPITAL to all the terms, conditions, provision, and obligations herein contained.

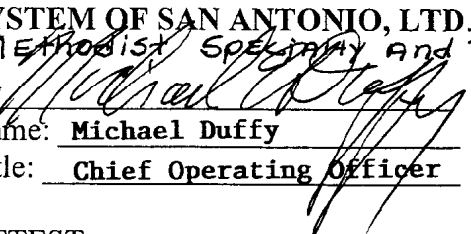
ARTICLE XXI
ENTIRE AGREEMENT

21.01 This Agreement supersedes any and all other Agreements, either oral or in writing, between the PARTIES hereto with respect to the subject matter thereof, and no other Agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

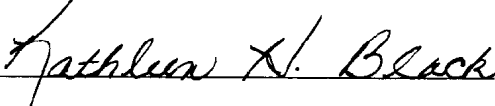
EXECUTED and AGREED TO in duplicate originals on this the _____ day of _____, 2004, to be effective October 1, 2003.

CITY OF SAN ANTONIO

Terry M. Brechtel
City Manager

**METHODIST HEALTHCARE
SYSTEM OF SAN ANTONIO, LTD. L.L.P.**
METHODIST SPECIALTY AND TRANSPLANT HOSPITAL
By: 
Name: Michael Duffy
Title: Chief Operating Officer

ATTEST:

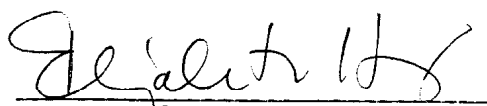


Nathan H. Black

APPROVED AS TO FORM:

APPROVED AS TO FORM:

City Attorney



MHS Legal Counsel

City of San Antonio
Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

this form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) before the discretionary contract is the subject of council action, and no later than five (5) business days after any change out which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Mark A. Carmona

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

Alamo Children's Advocacy Center

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

N/A

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

N/A

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

- (3) the identity of any *lobbyist* or *public relations firm* employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

N/A


Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any *current* or *former member* of City Council, any *candidate* for City Council, or to any *political action committee* that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
None	None	None

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

Signature: 	Title: Executive Director Company: Alamo Children's Advocacy Center	Date: 7/8/04

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

PROFESSIONAL SERVICES AGREEMENT

FOR

SEXUAL ASSAULT EXAMINATIONS

STATE OF TEXAS §

§

COUNTY OF BEXAR §

This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation, hereinafter referred to as "CITY," acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 2004_ and _____ by and through ALAMO CHILDREN'S ADVOCACY CENTER, a Texas non-profit corporation, hereinafter referred to as "ACAC," both of which may be referred to herein collectively as "PARTIES."

The PARTIES hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

WITNESSETH

WHEREAS, the CITY, by and through the San Antonio Police Department, hereinafter referred to as "SAPD", is in need of services for conducting specialized sexual abuse examinations and sexual abuse evidence collection for Victims of Sexual Assault/Abuse, sixteen years of age and younger or suffering from some other legal incapacity; and

WHEREAS, ACAC, a Texas non-profit corporation, is able and willing to provide these needed services to the CITY; and

NOW THEREFORE, the PARTIES agree as follows:

ARTICLE I
PURPOSE

- 1.01 The purpose of this Agreement is to secure competent services in the conduction of specialized sexual abuse examinations and the gathering of evidence in sexual abuse cases for use in the prosecution of such cases that involve victims as herein defined. SAPD, as mandated by the Texas Code of Criminal Procedure, Art. 56.06 sec. (a) whereas "A law enforcement agency that requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination," whereas under

sec. (b) "This article does not require a law enforcement agency to pay any costs of treatment for injuries, "is entering into this Agreement with ACAC.

- 1.02 This Agreement is a contract for services only and is not intended to nor does it create a partnership or joint venture between the PARTIES.

ARTICLE II

TERM

- 2.01 The term of this Agreement is for period beginning October 1, 2003 and ending September 30, 2006. It shall become effective upon approval of all PARTIES.

ARTICLE III

DEFINITIONS

- 3.01 The following definitions shall apply in this Agreement;
- a. **Examination:** Refers specifically to the examination of sexual assault victims that have presented themselves to ACAC, to determine if a sexual assault or sexual abuse has occurred and refers to the determination of a sexual assault as acute or non acute. Examination also refers to the forensic interview. ACAC understands and agrees to refer all acute cases to contracted medical facilities, which is Christus Santa Rosa Health Care, that examines victims 16 years of age or younger for acute sexual assault.
 - b. **Sexual Assault/AbuseVictim:** Refers to a person sixteen years of age or younger or a person suffering from some other legal incapacity that declares themselves to be the victim of sexual assault/abuse.
 - c. **Complete Medical Exam:** A complete physical examination of a victim, medical history, testing for sexually transmitted diseases and colposcopic pictures, as it pertains to the definition of non-acute. This examination is also part of the forensic interview.
 - d. **Brief Medical Exam:** A continuation of a forensic examination of sexual assault after an initial exam in a facility not operated by ACAC or if Child Protective Services is requesting the exam, or an examination conducted by ACAC as the first facility to examine a victim of Sexual Assault. This examination is also part of the forensic interview.
 - e. **Acute Sexual Assault:** Refers to a victim of Sexual Assault that presents themselves to a facility for Sexual Assault Examination and that assault occurred within 72 hours of presenting themselves and involved genital contact or penetration.

- f. **Non Acute Sexual Assault**: Refers to a victim of Sexual Assault that presents themselves to a facility for a Sexual Assault Examination and that assault has occurred more than 72 hours ago or within 72 hours but without genital contact alleged.
- g. **Fee for Service**: Refers to the fee assessed by ACAC for the services provided as defined by Brief Medical Examination and Complete Medical Examination. Fee for Service does NOT provide for the combination of services fees to be assessed. Fee for Service allows for only one service fee to be paid for, as determined by what type of assessment has been completed by ACAC.

ARTICLE IV **OBLIGATIONS AND RESPONSIBILITIES**

- 4.01 ACAC agrees to provide the services described in **ARTICLE IV** entitled, "**OBLIGATIONS AND RESPONSIBILITIES**" in exchange for the compensation described in **ARTICLE V**, "**COST OF SERVICES**".
- 4.02 ACAC acknowledges its understanding that information it gathers under this Agreement will be used in criminal prosecutions and agrees that it will gather all evidence for use in criminal prosecutions within the parameters of all applicable rules, regulations and laws including, but not limited to, the Texas Code of Criminal Procedures and the Texas Penal Code to ensure its admissibility as evidence in the prosecution of criminal defendants.
- 4.03 ACAC agrees to conduct only the necessary exam, either a Complete or a Brief Medical Exam, as defined in this Agreement, that the circumstances require for a particular victim.
- 4.04 ACAC represents and agrees that any and all of its personnel who perform any part of the services under this Agreement shall meet and maintain all minimum requirements set by the federal, state and local laws, rules and regulations, during the term of this Agreement, including, but not limited to, all licensing and training requirements.
- 4.05 ACAC agrees to provide the parent or guardian of any child victim treated with a release of medical records affidavit, on a form to be provided by the CITY, to assist in providing SAPD with a complete medical report regarding the Examination of a Victim of Sexual Abuse.

- 4.06 All work performed by ACAC hereunder shall be performed to the satisfaction of the Office of the Chief, City of San Antonio Police Department. The determination made by the Chief of Police shall be final, binding and conclusive on all PARTIES hereto. CITY shall be under no obligation to pay for any work performed by ACAC that is not satisfactory to the Chief of Police. CITY shall have the right to terminate this Agreement or withhold payment in whole or in part, in accordance with **Article V, COST OF SERVICES**, should ACAC'S work not be satisfactory to the Chief of Police.

ARTICLE V

COST OF SERVICE

- 5.01 In consideration of ACAC's performance in a satisfactory and efficient manner, as determined solely by the Chief of Police, of all services and activities set forth in this Agreement, CITY agrees to pay and ACAC agrees to accept the following fee for services:
- a. The total sum of **ONE HUNDRED AND TWENTY FIVE AND 00/100THS DOLLARS (\$125.00)** for each Brief Examination conducted; and
 - b. The total sum of **TWO HUNDRED AND TWENTY FIVE AND 00/100THS DOLLARS (\$225.00)** for each Complete Examination conducted.
- 5.02 The PARTIES agree that the fees set out under Section 5.01 are inclusive of all costs and no other sums will be charged and no other sums will be paid under this Agreement for these services. No additional fees or expenses of ACAC shall be charged by ACAC nor be payable by CITY. The PARTIES hereby agree that all compensated expenses of ACAC have been provided for in the total payment to ACAC as specified in section 5.01 above. Total payments to ACAC cannot exceed that amount set forth in section 5.01 above, without prior approval and agreement of all PARTIES, evidence in writing and approved by the San Antonio City Council by passage of an ordinance therefore.
- 5.03 ACAC agrees to submit a monthly invoice to the CITY on or before the 10th day of the month following rendition of the service.
- 5.04 CITY agrees to pay all undisputed sums due and owing under this Agreement within forty-five business days. For all amounts in dispute, the CITY, within fifteen days of the receipt of the report required in **Article IX, STATISTICS**

AND DOCUMENTATION under Section 9.02 of this Agreement, will notify ACAC in writing of the amount in dispute and the basis for the dispute.

- 5.05 Final acceptance of work products and services require written approval by CITY. The approval official shall be the Chief of Police. Payment will be made to ACAC following written approval of the services rendered. CITY shall not be obligated or liable under this Agreement to any party, other than ACAC, for the payment of any monies or the provisions of any goods or services.

ARTICLE VI

RECORDS RETENTION

- 6.01 ACAC shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such material available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the Agreement period, including any extensions or renewal thereof, and the record retention period established herein, for purposes of audit, inspection, examination, and make excerpts or copies of same by the CITY and any of its authorized representatives.
- 6.02 ACAC shall retain any and all documents produced as a result of services provided hereunder indefinitely (hereafter referred to as "retention period") from the date of termination of the Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, ACAC shall retain the records until the resolution of such litigation or other such questions. ACAC acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period.
- 6.03 ACAC shall notify CITY, immediately, in the event ACAC receives any requests for information from a third party, which pertains to the documentation and records referenced herein. ACAC understands and agrees that CITY will process and handle all such requests.

ARTICLE VII

TERMINATION

- 7.01 For purposes of this Agreement, **Termination** of this Agreement shall mean termination by expiration of the Agreement term as stated in **Article II, TERM**, or earlier termination pursuant to any of the provisions hereof.

- 7.02 **Termination Without Cause.** This Agreement may be terminated by either the City of San Antonio or ACAC, upon 60 calendar days without prior written notice, which notice shall be provided in accordance with **Article VIII, NOTICE.**
- 7.03 **Termination for Cause.** Upon written notice, which notice shall be provided in accordance with **Article VIII, NOTICE**, CITY may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement.
- 7.03.01- Failure to comply with the terms and conditions stated in **Article IV, OBLIGATIONS AND RESPONSIBILITIES**
- 7.03.02 - Failure to comply with any covenant herein required.
- 7.03.03 - Performing unsatisfactorily.
- 7.04 **Termination By Law.** If any state, or federal law, or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.05 Regardless of how this Agreement is terminated, ACAC shall affect any orderly transfer to CITY or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts, reports and any other material or information produced as a result of or pertaining to the services rendered by ACAC, or provided to ACAC, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by ACAC in accordance with Article VI, RECORDS RETENTION. Any record transfer shall be completed within thirty (30) calendar days of a written request by CITY and shall be completed at ACAC's sole cost and expense. Payment of compensation due or to become due to ACAC is condition upon delivery of all such documents, if requested.
- 7.06 Upon the effective date of expiration or termination of this Agreement, ACAC shall cease all operations of work being performed by ACAC pursuant to this Agreement.
- 7.07 **Termination not Sole Remedy.** In no event shall CITY's action of terminating this Agreement, whether for cause or otherwise, be deemed an election of CITY's remedies, nor shall such termination limit, in any way, at law or at equity, CITY's right to seek damages from or otherwise pursue ACAC for any default hereunder or other action.

ARTICLE VIII
NOTICES AND ADDRESSES

- 8.01 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

CITY: San Antonio Police Department
Sex Crimes Unit
Attention: Ronnie Torres-Contract Coordinator
214 W. Nueva
San Antonio, Texas 78207

ACAC: Alamo Children's Advocacy Center
Attention: Mark Carmona, Executive Director
7130 U.S. Highway 90
San Antonio, Texas 78227

- 8.02 Within ten days from the date this Agreement is approved, each "PARTY" agrees to appoint a representative to act as liaison for oversight and implementing the provisions of this Agreement. The name(s) of such representative(s) shall be duly noted in writing and notice shall be forwarded to the appropriate representatives for each party at the stated address in Section 8.01 of this agreement.

ARTICLE IX
STATISTICS AND DOCUMENTATION

- 9.01 ACAC shall maintain records for each Examination conducted and fee charged under this Agreement. ACAC shall allow any authorized representative of the CITY, at all reasonable times, to have access to and the right to inspect, copy, audit and examine all books, records and/or other documents respecting the services provided hereunder.
- 9.02 ACAC agrees to provide CITY with a monthly report regarding services rendered, which is to be received by CITY on or before the 10th day of the month following

the month the service was performed. A report provided under this section shall include the following for each Examination:

- a. Date of the Examination;
- b. Type of Examination conducted;
- c. Case number or other identifier;
- d. Victim's last name, first name, date of birth, race and sex;
- e. Name of the examiner, and
- f. Fee charged for the Examination.

ARTICLE X

LIABILITY

- 10.01 Each PARTY shall be liable for any and all costs, claims, liens, damages, causes of action, liability, and suits of any kind and nature arising out of, resulting from, or related to the acts or omissions of all such PARTY'S agents, officers, directors, representatives, employees, consultants, or subcontractors. In the event ACAC and CITY are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively as determined by a court of competent jurisdiction in accordance with the laws of the state of Texas, without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defenses of the PARTIES under Texas law.
- 10.02 ACAC shall promptly advise the CITY in writing of any claim or demand against the CITY or ACAC known to ACAC relating to or arising out of ACAC'S or CITY'S activities under this Agreement, and CITY shall also promptly advise ACAC in writing of any claim or demand against ACAC or CITY known to CITY relating to or arising out of CITY'S or ACAC'S activities under this Agreement.

ARTICLE XI

INSURANCE

- 11.01 Prior to commencement of any work under this contract, ACAC shall furnish to CITY an original completed certificate of insurance or CITY'S standard certificate of insurance form. Said form shall be completed by an agent authorized to bind the named underwriter and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this contract until such certificate shall have been delivered, and no officer or employee, other than the city of San Antonio's risk manager, shall have authority to waive this requirement.

- 11.02 ACAC'S financial integrity is of interest to CITY; therefore, subject to ACAC'S right to maintain reasonable deductibles in such amounts as are approved by CITY, ACAC shall obtain and maintain in full force and effect for the duration of this contract, and any extension thereof, at ACAC'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the state of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to CITY in the following types and amounts:

Insurance Type	Liability Limits
Professional Liability	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
Commercial General (Public) Liability: a. premises operations b. independent contractors* c. products/completed operations d. personal injury e. contractual liability f. explosion, collapse, underground* g. broad form property damage, to include fire legal liability*	For bodily injury and property damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage.
Workers Compensation**	Statutory
Employers Liability**	\$1 million/\$1 million/\$1 million
* if applicable	** alternate plans must be approved by CITY's Risk Management

- 11.03 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, ACAC shall exercise reasonable efforts to accomplish such changes in policy, and shall pay the cost thereof.

- 11.04 ACAC agrees that with respect to the above required insurance, all insurance contracts and the certificate of insurance will contain a provision that ACAC'S insurance shall be deemed primary with respect to any collectible insurance or self insurance carried by CITY for liability arising out of operations under the contract with CITY.
- 11.05 ACAC will notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty days prior to the change, or ten days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement certificate of insurance. All notices shall be given to CITY at the address set out in article XIII.
- 11.06 If ACAC fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the contract; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have and is not the exclusive remedy for failure of ACAC to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon ACAC'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order ACAC to stop work hereunder and/or withhold any payment which becomes due to ACAC hereunder until ACAC demonstrates compliance with the requirements hereof.

ARTICLE XII

ASSIGNMENT AND SUBCONTRACTING

- 12.01 ACAC shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of ACAC. ACAC, its employees or its subcontractors shall perform all necessary work.
- 12.02 Except as otherwise stated herein, ACAC may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the prior written approval by the Chief of Police and final consent of the City Council, as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, ACAC shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor of ACAC, assignee, transferee or subcontractor.

- 12.03 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should ACAC assign, transfer, convey, delegate, or otherwise dispose of any part or all of its rights, title or interest in this Agreement, CITY may, at its option, cancel this Agreement and all rights, titles and interest of ACAC shall thereupon cease and terminate, in accordance with **Article VII, TERMINATION**, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by ACAC shall in no event release ACAC from any obligation under the terms of this Agreement, nor shall it relieve or release ACAC from the payment of any damages to CITY, which CITY sustains as a result of such violation.

ARTICLE XIII **INDEPENDENT CONTRACTOR**

- 13.01 ACAC covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of CITY, that ACAC shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, consultants, subcontractors and contractors; that the doctrine of respondent superior shall not apply as between CITY and ACAC, its officers, agents, employees, consultants, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and ACAC. The PARTIES hereto understand and agree that the CITY shall not be liable for any claims which may be asserted by any third party occurring in connection with the services to be performed by the ACAC under this Agreement and that the ACAC has no authority to bind the CITY.

ARTICLE XIV **CONFLICT OF INTEREST**

- 14.01 ACAC acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as CITY owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a party to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any

individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.

- 14.02 Pursuant to the subsection above, ACAC warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. ACAC further warrants and certifies that it has tendered to the CITY a Preliminary Contract Disclosure Statement in accordance with the City's Ethics Code.

ARTICLE XV

AMENDMENTS

- 15.01 This Agreement shall not be deemed waived, amended or modified by either PARTY unless and until such waiver, amendment, or modification is in writing and executed subsequent to the date of this Agreement by the PARTY against whom it is sought to be enforce.

ARTICLE XVI

LEGAL CONSTRUCTION

- 16.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provisions thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE XVII

NONWAIVER OF PERFORMANCE

- 17.01 Unless otherwise specifically provided for in this Agreement, a waiver by either PARTY of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either PARTY to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either PARTY hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the City Council, as described in **ARTICLE XV, AMENDMENTS**. No act or omission by a PARTY shall in any manner impair or prejudice any right, power, privilege, or remedy available to that PARTY

hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

ARTICLE XVIII
GOVERNING LAW

- 18.01 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the PARTIES hereunder, shall be governed by the laws of the State of Texas. This Agreement shall be enforceable in Bexar County, Texas and if legal action is necessary by either PARTY with respect to the enforcement of any or all of the terms and conditions herein, exclusive venue for same shall be in Bexar County, Texas.

ARTICLE XIX
PARTIES BOUND

- 19.01 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein

ARTICLE XX
LEGAL AUTHORITY

- 20.01 The signer of this Agreement for ACAC represents, warrants, assures, and guarantees that he/she has full legal authority to execute this Agreement on behalf of ACAC and to bind ACAC to all the terms, conditions, provisions, and obligations herein contained.

ARTICLE XXI
ENTIRE AGREEMENT

- 21.01 This Agreement supersedes any and all other Agreements, either oral or in writing, between the PARTIES hereto with respect to the subject matter thereof, and no other Agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

EXECUTED and AGREED TO, in duplicate originals, on this ____ day of _____, 2004, to be effective October 1, 2003.

**CITY OF SAN ANTONIO
CENTER**

ALAMO CHILDREN'S ADVOCACY

Terry M. Brechtel
City Manager

By: Mark
Mark Carmona
Executive Director

ATTEST:

City Clerk

ATTEST:

Herlinda Escayeda

APPROVED AS TO FORM:

City Attorney

City of San Antonio
Discretionary Contracts Disclosure*

*For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2
Attach additional sheets if space provided is not sufficient.
State "Not Applicable" for questions that do not apply.*

this form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) before the discretionary contract is the subject of council action, and no later than five (5) business days after any change out which information is required to be filed.

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

CHRISTUS Santa Rosa HealthCare

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

CHRISTUS Health

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.

COPY

PROFESSIONAL SERVICES AGREEMENT

FOR

SEXUAL ASSAULT EXAMINATIONS

STATE OF TEXAS §

§

COUNTY OF BEXAR §

"This Agreement is entered into by and between the City of San Antonio, a Texas Municipal Corporation, hereinafter referred to as "CITY," acting by and through its City Manager, pursuant to Ordinance No. _____ passed and approved on the _____ day of _____, 200 _____ and _____ by and through Christus Santa Rosa Health Care, a non profit corporation, hereinafter referred to as "HOSPITAL," both of which may be referred to herein collectively as "PARTIES."

The parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described.

WITNESSETH

WHEREAS, the CITY, by and through the San Antonio Police Department, hereinafter referred to as "SAPD", is in need of services for conducting specialized sexual assault examination collection for Victims of Sexual Assault/Abuse, sixteen years of age and younger; and

WHEREAS, the HOSPITAL, a non-profit corporation, is able and willing to provide these services to the SAPD; and

NOW THEREFORE, the PARTIES agree as follows:

ARTICLE I
PURPOSE

- 1.01 The purpose of this Agreement is to secure assessment capabilities and competent Sexual Assault Examination services for the purposes of prosecution for victims of sexual assault age 16 years or younger. SAPD, as mandated by the Texas Code of Criminal Procedure, Art. 56.06 sec. (a) whereas "A law enforcement agency that

requests a medical examination of a victim of an alleged sexual assault for use in the investigation or prosecution of the offense shall pay all costs of the examination,” whereas under sec. (b) “This article does not require a law enforcement agency to pay any costs of treatment for injuries, “is entering into this Agreement with HOSPITAL.

- 1.02 This Agreement is a contract for services only and is not intended to, nor does it create a partnership or joint venture between the PARTIES.

ARTICLE II

TERM

- 2.01 The term of this Agreement is for a 36-month period beginning October 1, 2003, and ending September 30, 2006. It shall become effective upon approval of all PARTIES.

ARTICLE III

DEFINITIONS

- 3.01 The following definitions shall apply in this agreement;
- a. **Sexual Assault/Abuse Victim**: Refers to persons who present themselves to HOSPITAL and declares that they are a Victim of Sexual Assault/Abuse.
 - b. **Full Sexual Assault Examination**: Refers to the use of a Sexual Assault Examination Kit designed for the purpose of gathering biological and trace evidence from a victim that is deemed to have been sexually assaulted within seventy-two (72) hours of presenting themselves to HOSPITAL, and, after evaluation and interview, it is deemed necessary to utilize a Sexual Assault Examination Kit. This Examination MAY include the use of a colposcope and the testing of sexually transmitted diseases (STD). This examination would include the laboratory results of any STD examination, and the presentation of any photographs obtained by use of the colposcope, including any written interview documents, graphs, charts or opinions, and the packaged evidence included inside the Sexual Assault Kit.
 - c. **Sexual Assault Collection Kit**: Refers to a pre-made kit that contains sterile packaging and articles for the actual search and removal of physical evidence of a Sexual Assault, to include, but not limited to blood vials, comb, and paper packaging for the storage of various items of physical evidence.

- d. **Evaluation**: Refers to the preliminary interview and triaging of any person that presents themselves to the HOSPITAL declaring that they are the Victim of Sexual Assault/Abuse. The Evaluation process includes any documentation of the interview and triaging to determine if Sexual Assault/Abuse has or may have occurred. The evaluation will determine if a Partial Examination or a Full Sexual Assault Examination will be conducted, or if no additional Examination is required. This Examination will determine if the Victim is an acute or non-acute Sexual Assault Victim.
- e. **Partial Examination**: Refers to the additional Examination of a Victim of Sexual Assault/Abuse after the Evaluation process has determined that further Examination for forensic evidence is needed, and may include the use of a colposcope and the testing for STDS. This examination may also determine if the Victim is determined to be an acute or non-acute Victim of Sexual Assault.
- f. **Fee for Service**: Refers to the fee assessed by HOSPITAL for the services provided as defined by Evaluation, Partial Evaluation, and Full Sexual Assault Examination. Fee for Service does NOT provide for the combination of services fees to be assessed. Fee for Service allows for only one service fee to be paid for, as determined by what type of assessment has been completed by HOSPITAL.
- g. **Assessment Capability**: Refers to the ability of HOSPITAL to provide complete Examinations for Victims of Sexual Assault/Abuse in one location, known as Christus Santa Rosa Children's Hospital. Complete ability is defined as the ability to provide Examination, Partial Examination and Full Sexual Assault Examination for the law enforcement investigation and prosecution. This includes the ability to provide any medical treatment needed by the Victim from injuries sustained as a result of the Sexual Assault.
- h. **Medical Referral**: Refers to the procedure utilized by HOSPITAL to refer a Victim of Sexual Assault/Abuse to another medical facility, physicians group or personal physician to obtain further medical treatment for injuries received as a result of Sexual Assault/Abuse. Medical referral is not included in the Fee for Services definition and will not be billed to CITY. HOSPITAL understands and agrees to refer all non-acute Victims of Sexual Assault/Abuse to the Alamo Children's Advocacy Center, after initial evaluation and a determination is made with the approval of the victim or legal guardian.
- i. **Sexual Assault Nurse Examiners**: (Commonly referred to as S.A.N.E. nurse.) Refers to a registered nurse that has received specialized training to perform full Sexual Assault Examinations. Partial Examinations and Evaluations, and this training meets the minimum standard set forth by the Texas State Attorney General's Office of Sexual Assault Prevention and Crisis Services. This training includes, but is not limited to the use of the Sexual Assault Kit; colposcope and the proper paperwork needed to document each

type of Examination performed. HOSPITAL agrees to provide additional training of S.A.N.E nurses as mandated by the State Attorney General's Office, as this training becomes available to HOSPITAL. HOSPITAL agrees to provide sufficient S.A.N.E. staffing to prevent an unreasonable delay in evaluating a Victim. **Unreasonable Delay** is defined as the waiting of a victim for more than one hour before the triage and evaluation process begins. Once the Triage and Evaluation begins, the process will be continuous until completed by the S.A.N.E.

- j. **Acute Sexual Assault**: Refers to a Victim of Sexual Assault that presents themselves to a facility for a Sexual Assault Examination and that assault occurred within seventy-two (72) hours of presenting themselves.
- k. **Non-acute Sexual Assault**: Refers to a Victim of Sexual Assault that presents themselves to a facility for Sexual Assault Examination and that assault has occurred more than seventy-two (72) hours prior to them presenting themselves.

ARTICLE IV **OBLIGATIONS AND RESPONSIBILITIES**

- 4.01 The HOSPITAL agrees to conduct Full Sexual Assault Examinations, Partial Examinations and Evaluations of Victims of Sexual Assault/Abuse as requested and directed by the CITY. Under the terms and conditions of this Agreement. HOSPITAL also agrees to on a routine basis, conduct Sexual Assault Examination of Acute Sexual Assault Victims. HOSPITAL agrees to recommend that all non-acute Victims of Sexual Assault proceed to the Alamo Children's Advocacy Center, hereinafter called "ACAC", for Examinations or Evaluation.

The HOSPITAL agrees to provide the services described in this **ARTICLE IV**, entitled "**OBLIGATIONS AND RESPONSIBILITIES**" in exchange for the compensation described in **ARTICLE V**, "**COST OF SERVICES**".

- 4.02 The HOSPITAL acknowledges its understanding that information it gathers under this Agreement may be used in criminal prosecutions and agrees that it will gather all evidence for use in criminal prosecutions in accordance with the procedures, policies, and parameters from time to time given by the CITY to HOSPITAL to ensure compliance with all applicable rules, regulations and laws including, but not limited to, the Texas Code of Criminal Procedure and the Texas Penal Code as it relates to the admissibility of evidence in the prosecution of criminal defendants.

- 4.03 The HOSPITAL agrees to conduct only the Examinations/Evaluations required by the CITY for Sexual Assault Victims, and any medical screening examination required by State or Federal Law.
- 4.04 The HOSPITAL represents and agrees that any and all of its personnel who perform any part of the services under this Agreement shall meet and maintain all minimum requirements set by the Federal, State, and local laws, rules, and regulations during the term of this Agreement, including, but not limited to, all licensing and training requirements. The HOSPITAL agrees to having all personnel assigned to conduct victim Examinations/Evaluations, certified as SANE (Sexual Assault Nurse Examiners), and will be required to insure all SANE personnel maintain an on-going certification program as mandated by the State of Texas. The HOSPITAL agrees to remove any personnel assigned to the SANE program who fail to maintain a level of certification or if personnel assigned to SANE Examinations befall confirmed instances of professional misconduct as it pertains to the rights of a victim of Sexual Assault/Abuse.
- 4.05 The HOSPITAL agrees the medical records of any child Victim who is examined by HOSPITAL will include a form in which the parents or guardian of the child acknowledge that the medical records of the Sexual Assault/Abuse Examination may be released to law enforcement agencies as required.
- 4.06 All work performed by HOSPITAL hereunder shall be performed to the satisfaction of the Office of Chief, City of San Antonio Police Department. The determination made by the "Chief of Police" shall be final, binding and conclusive on all PARTIES hereto. CITY shall be under no obligation to pay for any work performed by HOSPITAL that is not satisfactory to the Chief of Police. CITY shall have the right to terminate this Agreement or withhold payment in whole or in part, in accordance with **Article V, "COST OF SERVICES"**, should "HOSPITAL'S" work not be satisfactory to the Chief of Police.

ARTICLE V

COST OF SERVICE

- 5.01 In consideration of HOSPITAL'S performance in a satisfactory and efficient manner, as determined solely by the Chief of Police, of all services and activities set forth in this Agreement, CITY agrees to pay and HOSPITAL agrees to accept the following fee for services:
- a. Full Sexual Assault Examination the sum of **TWO HUNDRED AND TWENTY FIVE DOLLARS AND 00/100ths (\$225.00)**.

- b. Partial Examination the sum of **ONE HUNDRED AND 00/100ths DOLLARS (\$100.00).**
 - c. Evaluation the sum of **SEVENTY-FIVE and 00/100ths DOLLARS (\$75.00).**
- 5.02 The PARTIES agree that in the month of June of each contract year, they will conduct a performance review of the contract and discuss any recommended changes or update to the contract for the new contract term.
- 5.03 The PARTIES agree that the fees set out under Section 5.01 are inclusive of all costs and no other sums will be charged and no other sums will be paid under this Agreement.
- 5.04 The HOSPITAL agrees to submit a monthly invoice to the SAPD on or before the 10th day of the month following the rendition of service.
- 5.05 CITY agrees to pay all undisputed sums due and owing under this Agreement within forty-five (45) business days. For all amounts in dispute, the CITY, within fifteen (15) business days of the receipt of the report required under **Article IX STATISTICS AND DOCUMENTATION Section 9.02** of this Agreement, will notify HOSPITAL in writing of the amount in dispute and the basis for the dispute.
- 5.06 Both PARTIES understand and agree that the State of Texas, possibly by and through the Crime Victim's Compensation Act, may begin to pay for the services described in this Agreement during the term of this Agreement. In the event this occurs, and such payment is not less than provided for in Section 5.01 of this Agreement, HOSPITAL agrees to accept payment from the State of Texas as full and final payment for services rendered, relieving the CITY from it's duty to pay as described herein. The performance section of this contract will remain intact.
- 5.07 Final acceptance of work products and services require written approval by CITY. The approval official shall be Chief of Police. Payment will be made to "HOSPITAL" following written approval of the services rendered. CITY shall not be obligated or liable under this Agreement to any party, other than HOSPITAL, for the payment of any monies or the provision of any goods or services.

ARTICLE VI

RECORDS RETENTION

- 6.01 HOSPITAL shall properly, accurately and completely maintain all documents, papers, and records, and other evidence pertaining to the services rendered hereunder (hereafter referred to as "documents"), and shall make such materials available to the CITY at their respective offices, at all reasonable times and as often as CITY may deem necessary during the Agreement period, including any

extension or renewal thereof, and the record retention period established herein, for purposes of audit, inspection, examination, and making excerpts or copies of same by CITY and any of its authorized representatives.”

- 6.02 HOSPITAL shall retain any and all documents produced as a result of services provided hereunder, indefinitely, (hereafter referred to as “retention period”) from the date of termination of this Agreement. If, at the end of the retention period, there is litigation or other questions arising from, involving or concerning this documentation or the services provided hereunder, HOSPITAL shall retain the records until the resolution of such litigation or other such questions. HOSPITAL acknowledges and agrees that CITY shall have access to any and all such documents at any and all times, as deemed necessary by CITY, during said retention period.
- 6.03 HOSPITAL shall notify CITY, immediately, in the event HOSPITAL receives any requests for information from a third party, which pertain to the documentation and records referenced herein. HOSPITAL understands and agrees that CITY will process and handle all such requests.”

ARTICLE VII

TERMINATION

- 7.01 For purposes of this Agreement, “**Termination**” of this Agreement shall mean termination by expiration of the Agreement term as stated in **Article II TERM**, or earlier termination pursuant to any of the provisions hereof.
- 7.02 **Termination without Cause.** This Agreement may be terminated by either the City of San Antonio or HOSPITAL, upon 60 (sixty) calendar days with prior written notice, which notice shall be provided in accordance with **Article VIII NOTICE**.
- 7.03 **Termination for Cause.** Upon written notice, which notice shall be provided in accordance with **Article VIII, NOTICE**, CITY may terminate this Agreement as of the date provided in the notice, in whole or in part, upon the occurrence of one (1) or more of the following events, each of which shall constitute an Event for Cause under this Agreement.
- 7.03.1 Failure to comply with the terms and conditions stated in **Article IV, OBLIGATIONS AND RESPONSIBILITIES**.
- 7.03.2 Failure to comply with any covenant herein required.

7.03.3 Performing unsatisfactorily.

- 7.04 **Termination By Law** - If any state or federal law or regulation is enacted or promulgated which prohibits the performance of any of the duties herein, or, if any law is interpreted to prohibit such performance, this Agreement shall automatically terminate as of the effective date of such prohibition.
- 7.05 Regardless of how this Agreement is terminated, HOSPITAL shall affect an orderly transfer to CITY or to such person(s) or firm(s) as the CITY may designate, at no additional cost to CITY, all completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced as a result of or pertaining to the services rendered by HOSPITAL, or provided to HOSPITAL, hereunder, regardless of storage medium, if so requested by CITY, or shall otherwise be retained by HOSPITAL in accordance with **Article VI, RECORDS RETENTION**. Any record transfer shall be completed within thirty (30) calendar days of a written request by CITY and shall be completed at HOSPITAL'S sole cost and expense. Payment of compensation due or to become due to HOSPITAL is conditioned upon delivery of all such documents, if requested.
- 7.06 Upon the effective date of expiration or termination of this Agreement, HOSPITAL shall cease all operations of work being performed by HOSPITAL pursuant to this Agreement.
- 7.07 **Termination not sole remedy.** In no event shall CITY'S action of terminating this Agreement, whether for cause or otherwise, be deemed an election of CITY'S remedies, nor shall such termination limit, in any way, at law or at equity, CITY'S right to seek damages from or otherwise pursue HOSPITAL for any default hereunder or other action.

ARTICLE VIII
NOTICES AND ADDRESSES

- 8.01 Except where the terms of this Agreement expressly provide otherwise, any election, notice or communication required or permitted to be given under this Agreement shall be in writing and deemed to have been duly given if and when delivered personally (with receipt acknowledged), or three (3) days after depositing same in the U.S. mail, first class, with proper postage prepaid, or upon receipt if sending the same by certified mail, return receipt requested, or upon receipt when sent by a commercial courier service (such as Federal Express or DHL Worldwide Express) for expedited delivery to be confirmed in writing by such courier, at the addresses set forth below or to such other address as either party may from time to time designate in writing.

CITY: San Antonio Police Department
Sex Crimes Unit
Attention: Ronnie Torres, Contract Coordinator
214 W. Nueva
San Antonio, Texas 78207

HOSPITAL: Christus Santa Rosa Health Care
Attention: Margaret Eckhardt, Contracts Management
~~519 W. Houston St.~~ **333 N. Santa Rosa Street**
San Antonio, Texas 78207

- 8.02 Within ten (10) days from the date this Agreement is approved, each "PARTY" agrees to appoint a representative to act as liaison for oversight and implementing the provisions of this Agreement. The name(s) of such representative(s) shall be duly noted in writing and notice shall be forwarded to the appropriate representatives for each party at the stated address in Section 8.01 of this Agreement.

ARTICLE IX

STATISTICS AND DOCUMENTATION

- 9.01 The HOSPITAL shall maintain records for each victim for whom HOSPITAL conducts an Evaluation and Examination under this Agreement. Subject to restrictions and limitations under applicable laws protecting the confidentiality of patient medical records and similar records, conducted and fee charged under this Agreement, HOSPITAL shall allow any authorized representative of the CITY, at all reasonable times, to have access to and the right to inspect, copy, audit and examine all books, records and/or other documents respecting the services provided hereunder.
- 9.02 The HOSPITAL agrees to provide the CITY with a monthly report regarding services rendered, to be received by the CITY on or before the 10th day of the month following the month service was performed. A report provided under this section shall include the following for each victim:
- a. Date of Evaluation/Examination,
 - b. Police Case number or other identifier,
 - c. Victim's last name, first name, date of birth, race, and sex,
 - d. Name of the Examiner, and
 - e. Fee charged for the Evaluation or Examination.

ARTICLE X

LIABILITY

- 10.01 Each PARTY shall be liable for any and all costs, claims, liens, damages, causes of action, liability, and suits of any kind and nature arising out of, resulting from, or related to the acts or omissions of all such PARTY'S agents, officers, directors, representatives, employees, consultants, or subcontractors. In the event HOSPITAL and CITY are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively as determined by a court of competent jurisdiction in accordance with the laws of the state of Texas, without, however, waiving any governmental immunity available to CITY under Texas law and without waiving any defenses of the PARTIES under Texas law.
- 10.02 HOSPITAL shall promptly advise the CITY in writing of any claim or demand against the CITY or HOSPITAL known to HOSPITAL relating to or arising out of HOSPITAL'S or CITY'S activities under this Agreement, and CITY shall also promptly advise HOSPITAL in writing of any claim or demand against HOSPITAL or CITY known to CITY relating to or arising out of CITY'S or HOSPITAL'S activities under this Agreement.

ARTICLE XI

INSURANCE

- 11.01 Prior to commencement of any work under this contract, HOSPITAL shall furnish to CITY an original completed certificate of insurance or CITY'S standard certificate of insurance form. Said form shall be completed by an agent authorized to bind the named underwriter and their company to the coverage, limits, and termination provisions shown thereon, and which shall furnish and contain all required information referenced or indicated thereon. The original certificate or form must have the agent's original signature, including the signer's company affiliation, title and phone number, and be mailed directly from the agent to CITY. CITY shall have no duty to pay or perform under this contract until such certificate shall have been delivered, and no officer or employee, other than the city of San Antonio's risk manager, shall have authority to waive this requirement.
- 11.02 HOSPITAL'S financial integrity is of interest to CITY; therefore, subject to HOSPITAL'S right to maintain reasonable deductibles in such amounts as are approved by CITY, HOSPITAL shall obtain and maintain in full force and effect for the duration of this contract, and any extension thereof, at HOSPITAL'S sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the state of Texas and rated A or better by A.M. Best Company and/or otherwise acceptable to CITY in the following types and amounts:

Insurance Type	Liability Limits
Professional Liability	\$1,000,000 per claim to pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages by reason of any act, malpractice, error or omission in professional services.
Commercial General (Public) Liability: a. premises operations b. independent contractors* c. products/completed operations d. personal injury e. contractual liability f. explosion, collapse, underground* g. broad form property damage, to include fire legal liability*	For bodily injury and property damage of \$1,000,000 per occurrence; \$2,000,000 general aggregate, or its equivalent in umbrella or excess liability coverage.
Workers Compensation**	Statutory
Employers Liability**	\$1 million/\$1 million/\$1 million
* if applicable	** alternate plans must be approved by CITY's Risk Management

- 11.03 CITY shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by CITY and may make a reasonable request for deletion, revision, or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties hereto or the underwriter of any such policies). Upon such request by CITY, HOSPITAL shall exercise reasonable efforts to accomplish such changes in policy, and shall pay the cost thereof.
- 11.04 HOSPITAL agrees that with respect to the above required insurance, all insurance contracts and the certificate of insurance will contain a provision that HOSPITAL'S insurance shall be deemed primary with respect to any collectible insurance or self insurance carried by CITY for liability arising out of operations under the contract with CITY.
- 11.05 HOSPITAL will notify CITY in the event of any notice of cancellation, non-renewal or material change in coverage and shall give such notices not less than thirty days prior to the change, or ten days notice for cancellation due to non-payment of premiums, which notice must be accompanied by a replacement

certificate of insurance. All notices shall be given to CITY at the address set out in article XIII.

- 11.06 If HOSPITAL fails to maintain the aforementioned insurance, or fails to secure and maintain the aforementioned endorsements, CITY may obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the contract; however, procuring of said insurance by CITY is an alternative to other remedies CITY may have and is not the exclusive remedy for failure of HOSPITAL to maintain said insurance or secure such endorsement. In addition to any other remedies CITY may have upon HOSPITAL'S failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, CITY shall have the right to order HOSPITAL to stop work hereunder and/or withhold any payment which becomes due to HOSPITAL hereunder until HOSPITAL demonstrates compliance with the requirements hereof.

ARTICLE XII

ASSIGNMENT AND SUBCONTRACTING

- 12.01 HOSPITAL shall supply qualified personnel as may be necessary to complete the work to be performed under this Agreement. Persons retained to perform work pursuant to this Agreement shall be the employees or subcontractors of HOSPITAL. HOSPITAL, its employees or its subcontractors shall perform all necessary work, as outlined in **Article IV OBLIGATIONS AND RESPONSIBILITIES**.
- 12.02 Except as otherwise stated herein, HOSPITAL may not sell, assign, pledge, transfer or convey any interest in this Agreement, nor delegate the performance of any duties hereunder, by transfer, by subcontracting or any other means, without the consent of the City Council as evidenced by passage of an ordinance. As a condition of such consent, if such consent is granted, HOSPITAL shall remain liable for completion of the services outlined in this Agreement in the event of default by the successor HOSPITAL, assignee, transferee or subcontractor.
- 12.03 Any attempt to transfer, pledge or otherwise assign this Agreement without said written approval, shall be void ab initio and shall confer no rights upon any third person. Should HOSPITAL assign, transfer, convey, delegate, or otherwise dispose of any part or all of its rights, title or interest in this Agreement, CITY may, at its option, cancel this Agreement and all rights, titles and interest of HOSPITAL shall thereupon cease and terminate, in accordance with **Article VII, TERMINATION**, notwithstanding any other remedy available to CITY under this Agreement. The violation of this provision by HOSPITAL shall in no event release HOSPITAL from any obligation under the terms of this Agreement, nor shall it relieve or release HOSPITAL from the payment of any damages to CITY, which CITY sustains as a result of such violation.

ARTICLE XIII
INDEPENDENT CONTRACTOR

- 13.01 HOSPITAL covenants and agrees that he or she is an independent contractor and not an officer, agent, servant or employee of CITY; that HOSPITAL shall have exclusive control of and exclusive right to control the details of the work performed hereunder and all persons performing same, and shall be responsible for the acts and omissions of its officers, agents, employees, consultants, subcontractors and contractors; that the doctrine of respondent superior shall not apply as between CITY and HOSPITAL, its officers, agents, employees, consultants, subcontractors and contractors, and nothing herein shall be construed as creating the relationship of employer-employee, principal-agent, partners or joint ventures between CITY and HOSPITAL. The PARTIES hereto understand and agree that the CITY shall not be liable for any claims, which may be asserted by any third party occurring in connection with the services to be performed by the HOSPITAL under this Agreement, and that the HOSPITAL has no authority to bind the CITY.

ARTICLE XIV
CONFLICT OF INTEREST

- 14.01 HOSPITAL acknowledges that it is informed that the Charter of the City of San Antonio and its Ethics Code prohibit a City officer or employee, as those terms are defined in Part B, Section 10 of the Ethics Code, from having a financial interest in any contract with the CITY or any CITY agency such as city owned utilities. An officer or employee has a "prohibited financial interest" in a contract with the CITY or in the sale to the CITY of land, materials, supplies or service, if any of the following individual(s) or entities is a PARTY to the contract or sale: a CITY officer or employee; his parent, child or spouse; a business entity in which the officer or employee, or his parent, child or spouse owns ten (10) percent or more of the voting stock or shares of the business entity, or ten (10) percent or more of the fair market value of the business entity; a business entity in which any individual or entity above listed is a subcontractor on a CITY contract, a partner or a parent or subsidiary business entity.
- 14.02 Pursuant to the subsection above, HOSPITAL warrants and certifies, and this Agreement is made in reliance thereon, that it, its officers, employees and agents are neither officers nor employees of the CITY. HOSPITAL further warrants and certifies that it has tendered to the CITY a Discretionary Contracts Disclosure Statement in compliance with the CITY'S Ethics Code.

ARTICLE XV
AMENDMENTS

- 15.01 This Agreement shall not be deemed waived, amended or modified by either PARTY unless and until such waiver, amendment, or modification is in writing and upon approval by the City council and executed subsequent to the date of this Agreement by the PARTY against whom it is sought to be enforced.

ARTICLE XVI
LEGAL CONSTRUCTION

- 16.01 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions thereof, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.

ARTICLE XVII
NONWAIVER OF PERFORMANCE

- 17.01 Unless otherwise specifically provided for in this Agreement, a waiver by either PARTY of a breach of any of the terms, conditions, covenants or guarantees of this Agreement shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either PARTY to insist in any one or more cases upon the strict performance of any of the covenants of this Agreement, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. In fact, no waiver, change, modification or discharge by either party hereto of any provision of this Agreement shall be deemed to have been made or shall be effective unless expressed in writing and signed by the party to be charged. In case of CITY, such changes must be approved by the City Council, as described in **Article XV, AMENDMENTS**. No act or omission by a PARTY shall in any manner impair or prejudice any right, power, privilege, or remedy available to that Party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

ARTICLE XIX
GOVERNING LAW

- 19.01 The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the PARTIES hereunder, shall be governed by the laws of the State of Texas. This Agreement shall be enforceable in Bexar County, Texas and if legal action is necessary by either PARTY with respect to the enforcement of any or all of the terms and conditions herein, exclusive venue for same shall be in Bexar County, Texas.

ARTICLE XX
PARTIES BOUND

- 20.01 This Agreement shall be binding on and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, and successors and assigns, except as otherwise expressly provided for herein.

ARTICLE XXI
LEGAL AUTHORITY

- 21.01 The signer of this Agreement for HOSPITAL represents, warrants, assures, and guarantees that he/she has full legal authority to execute this Agreement on behalf of HOSPITAL and to bind HOSPITAL to all the terms, conditions, provision, and obligations herein contained.

ARTICLE XXII
ENTIRE AGREEMENT

- 22.01 This Agreement supersedes any and all other Agreements, either oral or in writing, between the PARTIES hereto with respect to the subject matter thereof, and no other Agreement, statement or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.

EXECUTED and **AGREED TO**, in duplicate originals, on this ____ day of _____, 2004, to be effective October 1, 2003.

CITY OF SAN ANTONIO

Terry M. Brechtel
City Manger

ATTEST:

APPROVED AS TO FORM:

City Attorney

CHRISTUS SANTA ROSA HEALTH CARE

By: _____
Name: DON A. BEELER
Title: Regional President & CEO
CHRISTUS Santa Rosa Health Care

ATTEST:

WILLIAM M. PACK
Regional Vice President & CFO
CHRISTUS Santa Rosa Health Care