

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

DEPARTMENT: Police

AGENDA DATE: January 10, 2017

CONTACT PERSON/PHONE: Assistant Chief Michelle Gardner, 212-4301

DISTRICT(S) AFFECTED: All

STRATEGIC GOAL: NO. 2: Set the Standard for a Safe and Secure City

SUBJECT:

That the City Manager be authorized to sign an Agreement between the City of El Paso and the Center Against Sexual and Family Violence (CASFV), a non-profit corporation, to provide outreach emergency counseling and follow-up public health services for reported victims of sexual assault, a public health and safety function, for an annual amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00). The term of this Agreement shall start January 28, 2017 with two automatic annual renewals. The total amount of the three year period shall not exceed One Hundred and Fifty Thousand and No/100 Dollars (\$150,000).

BACKGROUND / DISCUSSION:

The City finds that the services provided by STARS is in the best interest of the residents of El Paso and such services are necessary to preserve and protect the public health and safety of the victims of sexual assault offenses occurring with the City of El Paso.

SELECTION SUMMARY: N/A

PROTEST N/A

COUNCIL REPRESENTATIVE BRIEFING:

Was a briefing provided? No / Routine
If yes, select the applicable districts.

- ☐ District 1
- ☐ District 2
- ☐ District 3
- ☐ District 4
- ☐ District 5
- ☐ District 6
- ☐ District 7
- ☐ District 8
- ☐ All Districts

PRIOR COUNCIL ACTION:

City Council approved a related consent to assignment on August 25, 2015.

AMOUNT AND SOURCE OF FUNDING:

The Agreement is for an amount not to exceed \$50,000.00 annually or \$150,000.00 for the three-year period to be paid from General Fund account number 522150 – 21100 – 321 – 1000 – P2103.

BOARD / COMMISSION ACTION: N/A

*****REQUIRED AUTHORIZATION*****

DEPARTMENT HEAD:

by Michael M Ganner

RESOLUTION

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

That the City Manager be authorized to sign an Agreement between the **CITY OF EL PASO** and Center Against Sexual and Family Violence (CASFV), a non-profit corporation, to provide outreach emergency counseling and follow-up public health services for reported victims of sexual assault, a public health and safety function, for an annual amount not to exceed Fifty Thousand and No/100 Dollars (\$50,000.00). The term of this Agreement shall start January 28, 2017 with two automatic annual renewals. The total amount of the three year period shall not exceed One Hundred and Fifty Thousand and No/100 Dollars (\$150,000).

APPROVED this _____ day of _____, 2017.

THE CITY OF EL PASO

Oscar Leaser
Mayor

ATTEST:

Richarda D. Momsen
Municipal Clerk

APPROVED AS TO FORM:

Oscar G. Gabaldón, Jr.
Assistant City Attorney

APPROVED AS TO CONTENT:

for 
Gregory K. Allen
Chief of Police

THE STATE OF TEXAS)	
)	CENTER AGAINST SEXUAL AND
)	FAMILY VIOLENCE SERVICES
)	AGREEMENT
COUNTY OF EL PASO)	

This Agreement ("AGREEMENT") is entered into on this the 28th day of January, 2017, by and between The City of El Paso, Texas ("CITY"), a home rule municipal corporation and the Center Against Sexual and Family Violence (CASFV), a non-profit corporation.

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

WHEREAS, CASFV is the sole provider of the level of services as described in Section 3.2 (A – H) of this AGREEMENT. Further, CASFV is the sole recipient of state and federal funding to provide these services in the El Paso community; and

WHEREAS, the CITY'S Police Department is the Administrator for this AGREEMENT; and

WHEREAS, the El Paso City Council finds that the services provided by CASFV is in the best interest of the residents of El Paso and such services are necessary to preserve and protect the public health and safety of the victims of sexual assault related crimes occurring within the City of El Paso;

NOW, THEREFORE, for the consideration set forth in this AGREEMENT, the CITY and CASFV (individually referred to as a "PARTY", collectively referred to as the "PARTIES"), agree, as follows:

1.0 CONTRACTUAL RELATIONSHIP.

1.1 The CITY hereby agrees to compensate CASFV in an amount specified under Section 4 of this AGREEMENT, and CASFV agrees to perform professional services relating to public health and safety sexual assault outreach services in accordance with the provisions of this AGREEMENT as set forth herein.

1.2 CASFV is an independent contractor. Except as may be expressly and unambiguously provided in this AGREEMENT, no partnership or joint venture is intended to be created between the PARTIES by this AGREEMENT, nor any principal-agent or employer-employee relationship between the PARTIES or any of their officers, employees, agents, representatives or sub-contractors.

(A) As an independent contractor, CASFV understands and agrees that CASFV will be responsible for its respective acts or omissions, and the CITY shall in no way be responsible for the acts or omissions of CASFV's officers, employees, agents, representatives or sub-contractors who perform any service in connection with this AGREEMENT.

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

1.4 CASFV does not have, and will not attempt to assert, the authority to make commitments for, or to bind the CITY to any obligation. The CITY does not have, and will not attempt to assert, the authority to make commitments for, or to bind CASFV to any obligation, other than the obligations set forth in this AGREEMENT.

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

2.0 TERM OF AGREEMENT

2.1 This AGREEMENT, regardless of the date of execution, shall become effective on **January 28, 2017**, and shall be for an initial term of one (1) year. The AGREEMENT will automatically renew on January 28, 2018 for an additional one (1) year term and will again automatically renew on January 28, 2019 for an additional one (1) year term. These two (2) renewals are automatic unless the CITY or CASFV provides written notice of non-renewal to the other PARTY stating that it does not want the AGREEMENT renewed. Notice of non-renewal must be provided at least 30 days before the automatic renewal date of the upcoming term. Upon notice of non-renewal by either PARTY, all duties and obligations of the PARTIES shall cease upon the expiration of the term. In the event of notice of non-renewal, the PARTIES shall incur no penalty or charge. If either PARTY wishes to terminate this AGREEMENT, then Section 7 of this Agreement outlines how this AGREEMENT may be terminated.

3.0 SCOPE OF SERVICES

3.1 CASFV shall provide, in a professional manner, sexual assault outreach services designed to preserve and protect the public health and safety of the residents of the CITY or the victims of crimes occurring within the CITY, to include, but not be limited to, emergency counseling and follow-up health services for the reported victims of sexual assault.

3.2 CASFV shall coordinate its activities with those of the CITY's Police Department. These public health and safety services shall be provided to the residents of the City of El Paso or the victims of crimes occurring within the CITY and shall include, but not be limited, to the following:

- (A) 24 hour response to the hospital emergency room to assist reported victims with the mental and physical trauma and other mental health issues relating to a sexual assault.
- (B) Emergency and follow-up counseling services to victims of sexual assault.

- (C) Assistance and accompaniment for medical follow-up examinations, to include testing for sexually transmitted diseases.
- (D) Counseling to and accompaniment with the victim throughout the legal process and prosecution of the sexual offender.
- (E) Continual counseling services for sexual assault victims.
- (F) Providing public education and training regarding the crime of sexual assault to include prevention, protective and safety measures for the community.
- (G) Providing sensitivity training to law enforcement, dispatchers, emergency medical service providers and hospital staff as part of CASFV's services to protect the mental health of victims of sexual assault.
- (H) Any and all other services that are necessary to promote public health and safety sexual assault outreach services to the residents of the CITY or the victims of crimes occurring within the CITY.

3.3 Reporting by CASFV. Commencing on March 10, 2017 and on or before the tenth (10th) day of each subsequent month during the term of this AGREEMENT, CASFV will provide a monthly report to the Director of Administrative Services for the CITY's Police Department summarizing the number of individuals served and in what capacity. In addition, an annual report summarizing the number of individuals served and in what capacity shall be provided to the Director of Administrative Services for the CITY's Police Department no later than 60 days after the end of each term year of this AGREEMENT.

4.0 CONSIDERATION

4.1 In consideration for the public health and safety sexual assault outreach services to be provided by CASFV pursuant to the terms of this AGREEMENT, the CITY agrees to pay CASFV an amount not to exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) for all professional services performed during each one (1) year term pursuant to this AGREEMENT.

(A) CASFV shall invoice the CITY in the amount of TWELVE THOUSAND FIVE HUNDRED AND NO/100 DOLLARS (\$12,500.00) within 10 business days after the conclusion of each quarter of the term year, and the CITY agrees to submit a quarterly payment within 30 days of receipt of invoice. The PARTIES agree that the first quarter of any term year is understood as starting on January 28th, the second quarter starts on April 28th, the third quarter starts on July 28th, and the fourth quarter starts on October 28th. In no way will total payments exceed FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00) in any one term year. Payments will be made unless the AGREEMENT is terminated or if one PARTY provides notice of non-renewal that the AGREEMENT will not be automatically renewed as outlined in Section 2.1 above.

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

5.0 INDEMNIFICATION

5.1 Indemnification by CASFV. CASFV UNDERSTANDS AND AGREES THAT IT SHALL INDEMNIFY AND HOLD HARMLESS THE CITY AGAINST ANY AND ALL CLAIMS, DEMANDS, DAMAGES, COSTS AND EXPENSES, INCLUDING INVESTIGATION EXPENSES AND REASONABLE ATTORNEY FEES FOR THE DEFENSE OF SUCH CLAIMS AND DEMANDS, ARISING OUT OF, RELATED OR ATTRIBUTED DIRECTLY OR INDIRECTLY TO THE NEGLIGENT, GROSS NEGLIGENT, INTENTIONAL, MALPRACTICE OR WILLFUL ACTS OR OMISSIONS OF CASFV'S OFFICERS, AGENTS, SUB-CONTRACTORS, EMPLOYEES, OR REPRESENTATIVES IN RENDERING THE SERVICES UNDER THIS AGREEMENT.

(A) The CITY will promptly forward to CASFV every demand, notice, summons or other process received by the CITY in any claim or legal proceeding arising out of or attributed to the services provided by CASFV under the AGREEMENT.

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

(C) CASFV understands and agrees that it will 1) investigate such claims or demands against the CITY or CASFV arising out of, related to or attributed to the services provided by CASFV under this AGREEMENT; 2) negotiate or cause to be negotiated the prompt resolution of such claims; and 3) defend, or cause to be defended, the CITY against all suits for damages even if such suits are groundless, false or fraudulent, brought because of injuries or damages.

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

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

6.0 LIABILITY INSURANCE

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

(A) Upon the date of execution of this AGREEMENT, CASFV shall file with the Director of Administrative Services for the CITY's Police Department, a copy of the Certificate of Insurance showing that such insurance coverage is in effect during the initial term of this AGREEMENT. Upon the automatic renewal date of successive terms, CASFV shall file the renewed Certificate of Insurance for the successive term.

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

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

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

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

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

(G) Liability for Premium. If any of the policies referred to above do not have a flat premium rate and such premium has not been paid in full, such policy must have a rider or other appropriate certificate of waiver sufficient to establish that the issuer is entitled to look

only to CASFV for any further premium payment and has no right to recover any premiums from the CITY.

7.0 TERMINATION. This AGREEMENT may be terminated as provided herein. Except as otherwise provided in this AGREEMENT, all duties and obligation of the CITY and CASFV shall cease upon termination.

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

(A) Default or breach shall occur if a PARTY fails to observe or perform any of its duties under this AGREEMENT. Should such a default or breach occur, the injured PARTY may deliver a written notice to the defaulting PARTY describing such default and the proposed date of termination. Such proposed date of termination may not be sooner than the 30th day following receipt of the notice. The injured PARTY, at its sole option, may extend the proposed date of termination to a later date. If the defaulting or breaching party fails to cure or fails to diligently and continuously prosecute to cure such default prior to the proposed date of termination, then the injured party may terminate its performance under this AGREEMENT as of such date. The CITY retains the right to immediately terminate this AGREEMENT if CASFV violates any local, state or federal laws, rules or regulations that relate to the performance of this AGREEMENT.

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

7.3 Termination for Convenience by Either PARTY. It is further understood and agreed by CASFV and the CITY that either PARTY may terminate this AGREEMENT for convenience, in whole or in part, upon written notice to the other PARTY specifying an effective date for cancellation of not less than thirty (30) calendar days from the date such notice is received. Nothing contained herein, or elsewhere in this AGREEMENT shall require the CITY to pay for any services that are not in compliance with the terms of this AGREEMENT.

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

(A) The term *Force Majeure* as employed herein, shall mean acts of God, strikes, lockouts, or other industrial disturbances, act of public enemy, orders of any kind of government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms,

floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accidents to machinery, pipelines, or canals. By reason of *Force Majeure*, if either PARTY hereto shall be rendered unable wholly or in part to carry out its obligations under this AGREEMENT, then such PARTY shall give notice and full particulars of such *Force Majeure* in writing to the other PARTY within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the PARTY giving such notice, so far as it is affected by such *Force Majeure*, shall be suspended for only **thirty (30) days** during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such PARTY shall endeavor to remove or overcome such inability with all reasonable dispatch.

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

8.0 GENERAL PROVISIONS

8.1 CASFV shall comply with all applicable federal, state and local governmental laws, rules, regulations and all provisions of the CITY's Charter and Code of Ordinances, now existing or as may be amended, in the performance of its duties under this AGREEMENT.

8.2 Conflict of Interest. CASFV will have no interest in, and shall not acquire any interest, direct or indirect, in any agreement or sub-agreement that will conflict in any manner or degree with the performance of the services to be performed under this AGREEMENT. CASFV further understands that the CITY's Charter prohibits any officer or employee of the CITY from having financial interest, direct or indirect, in any agreement with the CITY. Any violation of this paragraph, with knowledge expressed or implied by CASFV, shall render this AGREEMENT voidable by the City Manager, who is the authorized agent for the CITY.

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

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

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

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

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

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

8.9 Amendment and Waiver. The parties may amend this AGREEMENT at any time by mutual consent. Unless otherwise provided herein, this AGREEMENT may be amended only by written instrument duly executed on behalf of the CITY (by authority of the City Council) and CASFV. No claim or right arising out of a breach of this contract can be discharged in whole or in part by a waiver or renunciation of the claim or right, unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved PARTY.

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

8.11 Governing Law. This AGREEMENT shall be construed and interpreted in accordance with the laws of the State of Texas, along with any applicable provisions of the federal law, the CITY's Charter and/or ordinance.

8.12 Severability. All agreements and covenants contained in this AGREEMENT are severable. Should any term or provision of this AGREEMENT be declared invalid by a court of competent jurisdiction, the PARTIES intend that all other terms and provisions of this AGREEMENT should be valid and binding and have full force and effect as if the invalid portion had not been included.

8.13 Venue. For the purpose of determining place of this AGREEMENT and the law governing the same, this AGREEMENT is entered into in the City of El Paso, County of El Paso,

the State of Texas, and shall be governed by the laws of the State of Texas. Venue shall be in the County of El Paso, State of Texas.

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

CITY: City of El Paso
Attention: City Manager
P.O. Box 1890
El Paso, Texas 79950-1890

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

CONTRACTOR: Center Against Sexual and Family Violence
Attention: Executive Director
710 N. Campbell
El Paso, Texas 79902

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

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

(Signatures on Following Page)

THE STATE OF TEXAS

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CENTER AGAINST SEXUAL AND
FAMILY VIOLENCE SERVICES
AGREEMENT

COUNTY OF EL PASO

(Signature Page)

CENTER AGAINST SEXUAL AND FAMILY VIOLENCE

By:


Stephanie Karr
Executive Director

Dated:

12-30-16

CITY OF EL PASO

Dated:

Tomás González
City Manager

ATTEST:

Richarda D. Momsen
Municipal Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

Oscar G. Gabaldón, Jr.
Assistant City Attorney


for Gregory K. Allen
Chief of Police