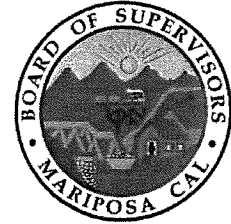




MARIPOSA COUNTY

Sheriff's Office • (209) 966-3615



RESOLUTION - ACTION REQUESTED 2018-274

MEETING: June 12, 2018

TO: The Board of Supervisors

FROM: Doug Binnewies, Sheriff-Coroner-Public Administrator

RE: 2018-2021 Forensic Nurse Specialist of Central California Agreement

RECOMMENDATION AND JUSTIFICATION:

Approve a three year Agreement with Forensic Nurse Specialists of Central California, Inc. for Sexual Assault Examination Services for Mariposa County Sheriff's Office Investigations; and Authorize the Board of Supervisors Chair to Sign the Agreement.

A current Agreement exists and is due to expire June 30, 2018. Forensic Nurse Specialists Of Central California has expressed interest in a three year agreement to align with the State's Fiscal Year. Minor expenditures have been identified on Attachment "A" of the Agreement, however should have little or no effect of the overall expense. The Agreement has a not to exceed amount of \$40,000.

Due to the technical and medical expertise required as part of a sexual assault investigation, it is desirable to utilize medical professionals who possess the skills and equipment to perform and record the examination process.

Forensic Nurse Specialists of Central California possesses both the personnel and equipment necessary to perform these crucial forensic examinations. Forensic Nurse Specialists is able to perform the examinations at the Sexual Assault Response Team (SART) Center in Fresno California.

BACKGROUND AND HISTORY OF BOARD ACTIONS:

A contract between the Sheriff's Office and Forensic Nurse Specialists of Central California has been in place since 2008. Both parties have recently been working together to continue the Agreement and are in consensus a three year Agreement to align with the State's Fiscal Year would benefit both entities.

ALTERNATIVES AND CONSEQUENCES OF NEGATIVE ACTION:

If the new contract is not approved, Forensic Nurse Specialists of Central California will continue to provide services to the Sheriff's Office; However, the contract will ensure that the new services being provided will remain unchanged as agreed upon for the duration of the contract.

FINANCIAL IMPACT:

Sufficient funding for Fiscal Year 2018-19 has been requested in the proposed budget for expenses related to this Agreement.

Resolution - Action Requested 2018-274

ATTACHMENTS:
2018 SART (PDF)

RESULT: ADOPTED BY CONSENT VOTE [UNANIMOUS]

MOVER: Merlin Jones, District II Supervisor

SECONDER: Marshall Long, District III Supervisor

AYES: Smallcombe, Jones, Long, Cann, Menetrey

AGREEMENT FOR Forensic Nurse Specialists' of Central California

THIS AGREEMENT ("Agreement") is made and entered into this 1st day of May, 2018, by and between the County of Mariposa, a political subdivision of the State of California, ("County"), and Forensic Nurse Specialists of Central California, a ("Contractor"), pursuant to the following terms and conditions.

WITNESSETH:**1. TERM**

The term of this Agreement shall commence on July 1, 2018 and terminate on June 30, 2021 unless extended as provided by this Agreement.

2. SERVICES

Contractor shall perform forensic evidence collection and examinations of victims of sexual assault and forensic evidence collection from suspects as described in Exhibit A, "Scope of Work," which is attached hereto and incorporated herein by reference. Contractor shall provide all staffing and materials necessary to perform the Scope of Work.

3. COMPENSATION

Contractor shall be compensated for services performed in an amount not to exceed \$40,000.00. The Contractor's rates are listed in Exhibit B, "Cost Proposal." The County shall pay Contractor within thirty (30) days of receipt of an approved invoice.

4. INSURANCE

Contractor shall procure and maintain for the duration of the agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

(1) Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.

(2) Automobile Liability: ISO Form Number CA 00 01 covering any auto, (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with limits no less than \$1,000,000 per accident for bodily injury and property damage.

(3) Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(4) Professional Liability (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit no less than \$2,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, the County requires and shall be entitled to the broader coverage and/or higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. OTHER INSURANCE PROVISIONS

The insurance policies are to contain, or be endorsed to contain, the following provision:

(1) Additional Insured Status: The County, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 forms if a later edition is used).

(2) Primary Coverage: For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.

(3) Notice of Cancellation: Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the County.

(4) Waiver of Subrogation: Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.

(5) Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability

to pay losses and related investigations, claim administration, and defense expenses within the retention.

(6) Acceptability of Insurers: Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the County.

(7) Verification of Coverage: Contractor shall furnish the County with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

(8) Subcontractors: Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.

(9) Special Risks or Circumstances: County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

5. HOLD HARMLESS/INDEMNIFICATION

To the fullest extent permitted by law, Contractor shall hold harmless, defend at its own expense, and indemnify County and its officers, employees, agents, and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions Contractor or its officers, agents, or employees in rendering services under this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from sole negligence or willful acts.

6. INDEPENDENT CONTRACTOR

It is the expressed intention of the parties that Contractor is an independent contractor and not an employee, agent, joint venturer or partner of County. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between County and Contractor or any employee or agent of Contractor. Both parties acknowledge that Contractor is not an employee for state or federal tax purposes. Contractor shall retain the right to perform services for others during the term of this Agreement.

7. PUBLIC EMPLOYEES RETIREMENT SYSTEM (CALPERS)

In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement is determined by a court of competent jurisdiction or the Public Employees Retirement System (CalPERS) to be eligible for enrollment in CalPERS as an employee of the County, Contractor shall indemnify, defend, and hold harmless County for the payment of any employee and/or employer contributions for CalPERS benefits on behalf of

Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of County.

8. STATE AND FEDERAL TAXES

As Contractor is not County's employee, Contractor is responsible for paying all required state and federal taxes. In particular:

- a. County will not withhold FICA (Social Security) from Contractor's payments;
- b. County will not make state or federal unemployment insurance contributions on behalf of Contractor;
- c. County will not withhold state or federal income tax from payment to Contractor;
- d. County will not make disability insurance contributions on behalf of Contractor;
- e. County will not obtain workers' compensation insurance on behalf of Contractor.

9. ASSIGNMENT

It is understood and agreed that this Agreement contemplates personal performance by the Contractor and is based upon a determination of its unique personal competence and experience and upon its specialized personal knowledge. Assignments of any or all rights, duties or obligations of the Contractor under this Agreement will be permitted only with the express written consent of the County.

10. NOTICE

Any and all notices, reports or other communications to be given to County or Contractor shall be given to the persons representing the respective parties at the following addresses:

CONTRACTOR:

Forensic Nurse Specialist's
of Central California
Po Box 25423 Fresno, Ca 93729

COUNTY:

Mariposa County Sheriff's Office
County of Mariposa
P.O. Box 276
Mariposa, CA 95338
Fax: (209) 742-5090

11. COMPLIANCE

Contractor shall comply with all federal, state and local laws, codes, ordinance and regulations applicable to Contractor's performance under this Agreement, including, but not limited to, laws related to prevailing wages. Specifically, Contractor shall not engage in unlawful employment discrimination, including, but not limited to, discrimination based upon a person's race, religion,

color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship or sexual orientation, as prohibited by state or federal law.

12. PUBLIC RECORDS ACT

Contractor is aware that this Agreement and any documents provided to the County may be subject to the California Public Records Act and may be disclosed to members of the public upon request. It is the responsibility of the Contractor to clearly identify information in those documents that it considers to be confidential under the California Public Records Act. To the extent that the County agrees with that designation, such information will be held in confidence whenever possible. All other information will be considered public.

13. ENTIRE AGREEMENT AND MODIFICATION

This Agreement contains the entire agreement of the parties relating to the subject matter of this Agreement and supersedes all prior agreements and representations with respect to the subject matter hereof. This Agreement may only be modified by a written amendment hereto, executed by both parties; however, matters concerning the scope of services which do not affect the agreed price may be modified by mutual written consent of the Contractor and Sheriff Doug Binnewies. If there are exhibits attached hereto, and a conflict exists between the terms of this Agreement and any exhibit, the terms of this Agreement shall control.

14. ENFORCEABILITY AND SEVERABILITY

The invalidity or enforceability of any term or provisions of this Agreement shall not, unless otherwise specified, affect the validity or enforceability of any other term or provision, which shall remain in full force and effect.

15. TERMINATION AND RIGHTS UPON TERMINATION

A. This Agreement may be terminated upon mutual written consent of the parties, or as a remedy available at law or in equity. In the event of the termination of this Agreement, Contractor shall immediately be paid all fees earned as of the effective date of termination.

B. Either party may terminate this Agreement for convenience upon ten (30) calendar days' written notice to the other party. Upon termination for convenience, Contractor shall be entitled to compensation for services performed acceptably up to the effective date of termination, as set forth in Exhibit B.

C. Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County, at its option, may terminate this Agreement by giving written notification to Contractor. The termination date shall be the effective date of the notice. For the purposes of this subsection, default or material breach of this Agreement shall include, but not be limited to, any of the following: failure to perform required services in a timely manner, willful destruction of County property, dishonesty, or theft.

16. NO WAIVER

The failure to exercise any right to enforce any remedy contained in this Agreement shall not operate as to be construed to be a waiver or relinquishment of the exercise of such right or remedy, or of any other right or remedy herein contained.

17. DISPUTES

Should it become necessary for a party to this Agreement to bring an action in connection with this Agreement, the prevailing party in any claim or action shall be entitled to reimbursement for all expenses so incurred, including reasonable attorney's fees.

It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Mariposa, State of California.

18. CAPTIONS

The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

19. NUMBER AND GENDER

In this Agreement, the neutral gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

20. MANDATORY AND PERMISSIVE

"Shall" is mandatory. "May" is permissive.

21. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

22. COUNTERPARTS

This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

23. OTHER DOCUMENTS

The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

24. CONTROLLING LAW

The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

25. AUTHORITY

Each party and each party's signatory warrant and represent that each has full authority and capacity to enter into this Agreement in accordance with all requirements of law. The parties also warrant that any signed amendment or modification to the agreement shall comply with all requirements of law, including capacity and authority to amend or modify the Agreement.

26. NEGOTIATED AGREEMENT

This Agreement has been arrived at through negotiation between the parties. Neither party is to be deemed the party which prepared this Agreement within the meaning of California Civil Code section 1654. Each party represents and warrants that in executing this Agreement it does so with full knowledge of the rights and duties it may have with respect to the other party. Each party also warrants and represents that it has received independent legal advice from its attorney with respect to the matters set forth in this Agreement and the rights and duties arising out of this Agreement, or that such party willingly foregoes any such consultation.

27. NO RELIANCE ON REPRESENTATIONS

Each party warrants and represents that it is not relying and has not relied upon any representation or statement made by the other party with respect to the facts involved or its rights or duties. Each party understands and agrees that the facts relevant, or believed to be relevant to this Agreement, have been independently verified. Each party further understands that it is responsible for verifying the representations of law or fact provided by the other party.

28. WARRANTY

County has relied upon the professional ability and training of Contractor as a material inducement to enter into this Agreement. Contractor hereby warrants that all work shall be performed in accordance with generally accepted professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Contractor's work by County shall not operate as a waiver or release.

29. FUNDING AVAILABILITY

It is mutually agreed that if the County budget of the current fiscal year and/or any subsequent fiscal years covered under this Agreement does not appropriate sufficient funds for this Agreement, this Agreement shall terminate and be of no further force and effect upon the day notice is provided by County to Contractor of such event. Upon termination of this Agreement, the County shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement except for services rendered prior to such termination and Contractor shall not be obligated to perform any provisions of this Agreement. Contractor's

assumption of risk of possible non-appropriation is part of the consideration for this Agreement. County budget decisions are subject to the discretion of the Board of Supervisors.

If funding for any fiscal year is reduced or deleted by the County budget for purposes of this Agreement, the County shall have the option to either cancel this Agreement with no liability occurring to the County, except County must reimburse Contractor for services rendered prior to such reduction or modification of the County budget, or offer an Agreement amendment to Contractor to reflect the reduced amount.

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

COUNTY OF MARIPOSA

CONTRACTOR

Rosemarie Smallcombe, Chair
Board of Supervisors

Dr. Margie Jessen DNP, FNP
Owner/ Director
Forensic Nurse Specialist, Inc.

ATTEST:

APPROVED AS TO FORM:

Tracy Bauthin, Deputy
Rene LaRoche
Clerk of the Board

Steven W. Dahlem
County Counsel

Exhibit A
SCOPE OF WORK

Forensic Nurse Specialists of Central Ca, Inc. (FNSCC, Inc.) and Mariposa Sheriff's Office agree as follows:

- FNSCC, Inc. agrees to provide forensic evidence collection and examinations of victims of sexual assault and forensic evidence collection from suspects.
- Suspect exams at the same time as victim exams will be discounted.
- Victim "no show or cancelled" after FNSCC, Inc. nurse is called out will be subject to a "dry run" fee.
- Additional follow up examination for victims at law enforcement request.
- Expert Witness testimony is a contracted negotiated amount between FNSCC, Inc. and the District Attorney's Office.

SPECIAL PROVISIONS:

1. Law enforcement officers agree to call the 24 hour FNSCC, Inc. answering service prior to transporting victim to FNSCC, Inc. examination site located within the Family Healing Center, located at 7025 N. Chestnut, #102, Fresno, CA 93720.
2. FNSCC, Inc. agrees to collect forensic evidence from sexual assault victims in accordance with OES state protocols by qualified forensic examiners. All examinations will utilize a Cannon Digital Camera for photography when injuries are present. Copies of photographs will be made available to contracting law enforcement agency upon request. Discussion of findings will be provided at the conclusion of the exam.
3. FNSCC, Inc. agrees to provide competent expert witness testimony in court when subpoenaed to be present.
4. All evidence collected will be relinquished by FNSCC, Inc. to the police officer ordering the examination at the conclusion of the examination with a completed copy of the OES 923/925/930/950 medical report.
5. FNSCC, Inc. agrees to make results of and evidence from examination available to law enforcement personnel at any time subsequent to the date of examination upon request.
6. This agreement is not meant to prohibit law enforcement agency from utilizing the services of other hospitals.

Exhibit B
COST PROPOSAL

Forensic Nurse Specialists of Central Ca, Inc. (FNSSCC, Inc.) and Mariposa Sheriff's Office agree as follows:

- Charge per case, to be paid for by Mariposa Sheriff's Office, is \$1,000.00.
- Suspect exams at the same time as victim exam are \$600.00.
- Suspect examination after initial victim examination will be \$700.00.
- Victim "no show or cancelled" after FNSSCC, Inc. nurse is called out will be subject to a \$150.00 "dry run" fee.
- Additional follow up examination for victims at law enforcement request will be subject to a \$550.00 fee.
- Expert Witness testimony is a contracted negotiated amount between FNSSCC, Inc. and the District Attorney's Office.
- FNSSCC nurse time and travel, mobile cases will be an extra \$300.00 per case.
- Pediatric Sexual Assault Evidence Collection-Acute examinations within 72 hrs \$100.00 per exam and one follow up included if needed.
- Pediatric Sexual Assault Evidence Collection- Non-Acute after 72 hrs \$100.00 per exam.
- Domestic Violence Forensic Examination \$500.00 per exam.
- Pediatric Physical Abuse Examination \$500.00 per exam and one follow up included if needed.
- DNA Forensic Evidence Collection \$500.00 per exam
- Death Investigation-(Go to morgue) \$1,200.00 (2 experienced death investigation forensic RN's).
- All training is included in price annually for patrol briefings, and 1 hour detective training or as needed.