



City of Sunnyvale

Agenda Item

20-0224

Agenda Date: 2/4/2020

REPORT TO COUNCIL

SUBJECT

Approve a Memorandum of Understanding with Santa Clara County for Crime Laboratory Services Related to Department of Public Safety Major Cases

BACKGROUND

For more than four decades, the Department of Public Safety (DPS) has partnered with the Santa Clara County District Attorney's Crime Laboratory for the processing of physical evidence. The services provided by the County Crime Laboratory are essential to the successful investigation and subsequent prosecution of criminal cases.

In 1982, DPS joined a county-wide partnership under an informal agreement to equitably share the costs of the County Crime Laboratory with other law enforcement agencies in Santa Clara County. All law enforcement agencies in the county operate under the same informal agreement. The cost sharing model was re-evaluated in 1995, and police chiefs and the crime lab jointly agreed upon and adopted a billing model based on a five-year average of cases submitted, rather than a per-case basis, to stabilize costs for agencies that experience drastic shifts in case load from year to year.

Staff believes the current cost sharing arrangement is equitable and in the best interest of the City and other participating agencies. On December 31, 2019, the Memorandum of Understanding (MOU) with the County of Santa Clara expired. Staff is requesting approval of a new MOU (Attachment 1), which commences on January 1, 2020 and will be in effect for ten years, expiring on December 31, 2029.

EXISTING POLICY

Goal SN-3 Safe and Secure City: Ensure a safe and secure environment for people and property in the community by providing effective Public Safety Response and prevention and education services.

Policy SN-3.3: Provide investigative services directed toward successful prosecution and conviction of criminal offenders.

ENVIRONMENTAL REVIEW

The action being considered does not constitute a "project" within the meaning of the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines section 15378(b)(4) in that it is a fiscal activity that does not involve any commitment to any specific project which may result in a potential significant impact on the environment.

DISCUSSION

The District Attorney's County Crime Laboratory is not a contract provider of forensic services to local

20-0224

Agenda Date: 2/4/2020

law enforcement agencies; it operates as a partner with local law enforcement agencies in the investigations of crime. The Crime Laboratory provides evidence processing and analysis when requested by user agencies and recovers the associated costs from those users.

Annual billing is calculated based on the total cost of Major Cases for the calendar year, and the County Crime Laboratory has agreed to recover approximately 55% of its costs. Each agency is billed based on the percentage of cases they submitted to the crime lab over the previous five years. The MOU contains a condition that the City's cost in any given year, compared to the prior year, shall not increase by more than 3%.

All major cases submitted by DPS to the Crime Laboratory are evaluated and approved by a DPS supervisor prior to submission, to ensure that the cases submitted warrant Crime Laboratory assistance. The cost sharing model and five-year average billing process create efficiencies that result in a lower cost to the City.

The existing arrangement has proven beneficial to all participating agencies. Staff supports the approval of an additional ten-year MOU and recommends that the City continue to utilize the County Crime Laboratory for processing of evidence.

FISCAL IMPACT

The cost of Crime Lab services is currently budgeted in the Department of Public Safety Operating Budget in Program 477. The FY 2019/20 budget for this service is \$177,620. Costs for the past four years are as follows:

FY2014/15	\$168,156.00
FY2015/16	\$181,120.00
FY2016/17	\$154,216.00
FY2017/18	\$153,455.00
FY2018/19	\$173,290.00
Average:	\$166,047.00

Based on the above, there is no anticipated fiscal impact resulting from this MOU to the department's budget plan.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, at the Sunnyvale Senior Center, Community Center and Department of Public Safety; and by making the agenda and report available at the Sunnyvale Public Library, the Office of the City Clerk and on the City's website.

RECOMMENDATION

Authorize the City Manager to execute a Memorandum of Understanding between the City of Sunnyvale and Santa Clara County for services provided by Santa Clara County Crime Laboratory related to Department of Public Safety Major Cases, for a term of ten years commencing January 1, 2020.

Prepared by: Elaine Ketell, Senior Management Analyst

Reviewed by: Hyun (Jim) Choi, Deputy Chief, Special Operations

Reviewed by: Phan S. Ngo, Director, Department of Public Safety

20-0224

Agenda Date: 2/4/2020

Reviewed by: Teri Silva, Assistant City Manager
Approved by: Kent Steffens, City Manager

ATTACHMENTS

1. Memorandum of Understanding with Santa Clara County for Crime Laboratory Services Related to Department of Public Safety Major Cases

**MEMORANDUM OF UNDERSTANDING BETWEEN THE
COUNTY OF SANTA CLARA AND THE CITY OF SUNNYVALE FOR CRIME
LABORATORY MAJOR CASE WORK**

This Memorandum of Understanding (MOU) is made and entered into by and between the CITY OF SUNNYVALE (CITY), a municipal corporation, and the COUNTY OF SANTA CLARA (COUNTY), a political subdivision of the State of California (each a Party and collectively the Parties). CITY and COUNTY are agencies that work together to provide services related to the investigation and prosecution of criminal cases in Santa Clara County. The District Attorney's Crime Laboratory provides services related to this activity. The services related to major cases would otherwise need to be procured by CITY through other sources. As a result, and pursuant to Government Code § 51350, both parties desire to set forth this agreement defining CITY's payments to COUNTY for Crime Laboratory services related to Major Case Work, as defined below.

Term: This agreement shall commence on January 1, 2020 and expire on December 31, 2029.

Crime Laboratory Major Case Work shall include and be defined as cases requiring review and analysis of any of the following:

- Audio Analysis
- Bloodstain Pattern Analysis
- DNA/Forensic Biology
- Computer Forensics (including Cell Phones)
- Impression Evidence
- Latent Print Processing
- Trace Evidence
- Video Analysis

COUNTY and CITY both acknowledge that the Crime Laboratory calculates the costs of its Major Case services billed to CITY as follows:

Each calendar year, the total cost of working Major Cases is calculated. The cost includes Crime Laboratory personnel salaries and benefits, supplies, and other operating costs (including equipment and maintenance) associated with providing services to non-County law enforcement agencies. The calculated total amount does not include the cost of working Toxicology and Controlled Substances cases, or the cost of working Major Cases for County entities, like the Santa Clara County Sheriff's Office.

Also, each calendar year, statistics are generated on the total number of Major Case submissions to the Crime Laboratory, and these are broken down by each law enforcement agency. (Note: A Major Case submission is considered any agency case that is assigned a single laboratory "M" number, and as such different Major Cases may have widely different numbers of individual evidence items.) The number of Major Case submissions by each law enforcement agency is expressed as a percentage of the total number submitted by all city agencies, and excludes County entities, like the Santa Clara County Sheriff's Office.

This percentage is used to calculate the dollar amount to bill CITY based upon the total cost of working all non-County law enforcement agency Major Cases. As the parties have a mutual interest in the performance of services related to major cases, COUNTY agrees to recover approximately 55% of its costs (based on actual costs for the prior year) for these services. In order to minimize the impact of a sudden spike in Major Case submissions, the percentage used each year is an average of five prior years. In addition, so that CITY can budget for the upcoming fiscal year, CITY is billed for a dollar amount calculated one year prior.

As an example, in January 2020, CITY will receive a bill based upon the average number of Major Case submissions from 2014-2018 and calculated in January 2019. Each annual invoice will detail the dollar amount due, and the dollar amount to budget for in the next fiscal year.

Notwithstanding the above procedures, the increase of CITY's costs in any given year as compared to the prior year shall not exceed 3%.

A. ENTIRE MOU

This MOU and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the parties. It incorporates and supersedes all the agreements, covenants and understandings between the parties concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this MOU. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this MOU.

B. AMENDMENTS

This MOU may only be amended by a written instrument signed by the Parties.

C. CONFLICTS OF INTEREST

CITY shall comply, and require its subcontractors to comply, with all applicable (i) requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code section 1090 et. seq., the California Political Reform Act (California Government Code section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations section 18700 et. seq.). Failure to do so constitutes a material breach of this MOU and is grounds for immediate termination of this MOU by COUNTY.

In accepting this MOU, CITY covenants that it presently has no interest, and will not acquire any interest, direct or indirect, financial or otherwise, which would conflict in any manner or degree with the performance of this MOU.

CITY further covenants that, in the performance of this MOU, it will not employ any contractor or person having such an interest. CITY, including but not limited to CITY's employees and subcontractors, may be subject to the disclosure and disqualification provisions of the California Political Reform Act of 1974 (the "Act"), that (1) requires such persons to disclose economic interests that may foreseeably be materially affected by the work performed under this MOU, and (2) prohibits such persons from making or participating in making decisions that will foreseeably financially affect such interests.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this MOU, CITY shall, upon execution of this MOU, provide COUNTY with the names, description of individual duties to be performed, and email addresses of all individuals, including but not limited to CITY's employees, agents and subcontractors, that could be substantively involved in "making a governmental decision" or "serving in a staff capacity and in that capacity participating in making governmental decisions or performing duties that would be performed by an individual in a designated position," (2 CCR 18701(a)(2)), as part of CITY's service to COUNTY under this MOU. CITY shall immediately notify COUNTY of the names and email addresses of any additional individuals later assigned to provide such service to COUNTY under this MOU in such a capacity. CITY shall immediately notify COUNTY of the names of individuals working in such a capacity who, during the course of the MOU, end their service to COUNTY.

If the disclosure provisions of the Political Reform Act are applicable to any individual providing service under this MOU, CITY shall ensure that all such individuals identified pursuant to this section understand that they are subject to the Act and shall conform to all requirements of the Act and other laws and regulations listed in subsection (A) including, as required, filing of Statements of Economic Interests within 30 days of commencing service pursuant to this MOU, annually by April 1, and within 30 days of their termination of service pursuant to this MOU.

D. GOVERNING LAW, VENUE

This MOU has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this MOU shall be in the County of Santa Clara.

E. ASSIGNMENT

No assignment of this MOU or of the rights and obligations hereunder shall be valid without the prior written consent of the other Party.

F. WAIVER

No delay or failure to require performance of any provision of this MOU shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a party shall be in writing and shall apply to the specific instance expressly stated.

G. TERMINATION

COUNTY may, by 60 day written notice to CITY, terminate all or part of this MOU at any time for the convenience of COUNTY. The notice shall specify the effective date and the scope of the termination. Upon receipt of the documents, COUNTY shall be compensated based on the completion of services provided.

H. COUNTY NO-SMOKING POLICY

Contractor and its employees, agents and subcontractors, shall comply with the County's No-Smoking Policy, as set forth in the Board of Supervisors Policy Manual section 3.47 (as amended from time to time), which prohibits smoking: (1) at the Santa Clara Valley Medical Center Campus and all County-owned and operated health facilities, (2) within 30 feet surrounding County-owned buildings and leased buildings where the County is the sole occupant, and (3) in all County vehicles.

I. CALIFORNIA PUBLIC RECORDS ACT

COUNTY and CITY are public agencies subject to the disclosure requirements of the California Public Records Act ("CPRA"). In the event of a request received by one party for information or records received from the other party, the party that received the CPRA request will make best efforts to provide notice to the other party prior to disclosing the information or records. If the party that provided the information or records contends that any are exempt from the CPRA and wishes to prevent disclosure, it is required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara COUNTY before the party that received the CPRA request is required to respond to the CPRA request. If the party fails to obtain such remedy within the time the party that received the CPRA request is required to respond, the latter party may disclose the requested information.

J. THIRD PARTY BENEFICIARIES

This MOU does not, and is not intended to, confer any rights or remedies upon any person or entity other than the parties.

//

//

//

//

//

//

//

K. CONTRACT EXECUTION

Unless otherwise prohibited by law or COUNTY policy, the Parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by COUNTY.

IN WITNESS WHEREOF, COUNTY and CITY hereby agree to the terms of this MOU.

COUNTY OF SANTA CLARA

CITY OF SUNNYVALE

S. JOSEPH SIMITIAN, President
Board of Supervisors
Date: _____

(name)
(title)
Date: _____

Signed and certified that a copy of this
Document has been delivered by electronic
Or other means to the President, Board of
Supervisors

ATTEST:

MEGAN DOYLE
Clerk of the Board of Supervisors
Date: _____

APPROVED AS TO FORM AND LEGALITY:

KAVITA NARAYAN
Lead Deputy County Counsel
Date: _____