

**MEMORANDUM OF AGREEMENT**

**TEXAS DEPARTMENT OF STATE HEALTH SERVICES  
AND  
CITY OF EL PASO  
FOR  
ASPR CHEMPACK PROGRAM FOR TEXAS  
  
DSHS CONTRACT NO. HHS001395100071**

This Memorandum of Agreement (“MOA”) is entered into between the **TEXAS DEPARTMENT OF STATE HEALTH SERVICES** (“DSHS”) and **THE CITY OF EL PASO** (“Facility”), by and through the Fire Department each referred to in this MOA as a “Party” and collectively as the “Parties,” to receive and maintain a nerve agent antidote (“CHEMPACK”) stored in a Drug Enforcement Agency-approved container(s) (“CHEMPACK Container(s)”).

**I. Purpose**

The Health and Human Services (“HHS”) Office of the Assistant Secretary Administration for Strategic Preparedness and Response (“ASPR”) CHEMPACK Program (“CHEMPACK Program”) provides cache containers of nerve agent antidote for state and local health needs in the event of nerve agent exposure. Facility agrees to serve as a sustainable repository and location for the CHEMPACK containers.

**II. Facility Responsibilities**

Under this MOA, Facility will:

- A. Coordinate response plans with the Facility’s local public health department, regional health department, council of government, Metropolitan Medical Response System (“MMRS”) representative, regional advisory council(s), and other local response agencies (“CHEMPACK Plan”). A copy of Facility’s CHEMPACK Plan must be provided to Oscar Vasquez, the DSHS Regional CHEMPACK Coordinator, via email, to the following email address: [Oscar.Vasquez@dshs.texas.gov](mailto:Oscar.Vasquez@dshs.texas.gov) . The Facility’s CHEMPACK Plan must be submitted to the DSHS Regional CHEMPACK Coordinator no later than thirty (30) calendar days following the effective date of this MOA.
- B. Ensure any CHEMPACK container is supervised by a medical professional that is licensed by the Drug Enforcement Agency (“DEA”) to receive and possess Class IV drugs.
- C. Ensure a DEA registrant assumes custody of CHEMPACK controlled substances. The DEA registrant must possess a DEA distribution license to assume custody of

- CHEMPACK controlled substances. A practitioner DEA license is not approved for use in the CHEMPACK Program.
- D. Maintain the integrity of product cases and manufacturer labels for CHEMPACK products stored in CHEMPACK Containers. Facility will not deface or cover labels. Facility will ensure CHEMPACK products remain in their original manufacturer packaging/cases.
  - E. Store only ASPR-provided CHEMPACK products in CHEMPACK Container(s). Facility understands that storage of non-ASPR provided products in CHEMPACK Container(s), including state-owned nerve antidotes, is not permitted. Facility will ensure that no items are placed on top of CHEMPACK Container(s) that exceed one hundred (100) pounds.
  - F. Maintain CHEMPACK Container(s) in a manner that assures compliance with storage and security requirements.
  - G. Meet HHS ASPR requirements for facilities that store CHEMPACK Containers (“CHEMPACK Cache Locations”), as described in the Cache Location Checklist and the current version of the CHEMPACK Program Guidelines.
  - H. Train Facility’s response staff in appropriate use and documentation of CHEMPACK products and CHEMPACK Container maintenance.
  - I. Maintain the integrity of the CHEMPACK Container seal until an authorized state or local official determines that deployment of CHEMPACK products is warranted in response to a nerve agent release or to prevent the potential loss of life.
  - J. Notify and coordinate with the DSHS Regional CHEMPACK Coordinator immediately in the event of an emergency deployment/use of CHEMPACK products.
  - K. Notify and coordinate with the DSHS Regional CHEMPACK Coordinator within twelve (12) hours of a non-emergency use or compromise of the CHEMPACK Container(s).
  - L. Meet state and local protocols, statues, and regulations for the storage and responder use of the CHEMPACK products.
  - M. Acknowledge that the CHEMPACK Container(s) and CHEMPACK products are, and will continue to be, the property of the ASPR throughout the life of the CHEMPACK Program.
  - N. Dispose of any CHEMPACK products in accordance with instructions provided by ASPR and in conformance with federal, state, and local procedures.
  - O. Pay on-going utility fees for dedicated telephone line(s), security system(s), and back-up power.
  - P. Notify, coordinate with, and obtain approval from, the DSHS Regional CHEMPACK Coordinator at least seventy-two (72) hours prior to any non-emergency movement of the CHEMPACK Container(s).
  - Q. Provide CHEMPACK products to patients(s) free-of-charge. CHEMPACK products are supplied without charge to the Facility and will be supplied to patients without charge.
  - R. Acknowledge that once CHEMPACK products are opened, the CHEMPACK product will no longer be eligible for the ASPR Shelf-Life Extension Program and will become property of the Facility.

- S. Accept the scheduled delivery from APSR, conduct and verify product replacement, sign applicable documentation, and return such CHEMPACK products and associated records as described in the CHEMPACK drop ship receive and return instructions included by ASPR in each shipment.
- T. Return expiring CHEMPACK products from a drop shipment to an ASPR warehouse within ten (10) business days of receipt of replacement CHEMPACK product. If unable to return expiring CHEMPACK products within ASPR's recommended timeframe, Facility will contact the DSHS Regional CHEMPACK Coordinator for guidance.

### **III. DSHS Responsibilities**

Under this MOA, and contingent upon continued coordination and use of Facility as a CHEMPACK Cache Location, DSHS will:

- A. Provide any information that it maintains in the ordinary course of business that Facility needs to meet the requirements in **SECTION II, FACILITY RESPONSIBILITIES**, of this MOA.
- B. Provide oversight and coordination, with ASPR, in CHEMPACK products deployment and maintenance.
- C. Provide training on the ASPR CHEMPACK Program for Texas.

### **IV. Term of the MOA**

This MOA will become effective on the signature date of the latter of the Parties to sign this MOA and remains in effect for five (5) years, unless terminated earlier pursuant to the terms and conditions of the MOA. There are no renewal periods under this MOA.

### **V. Early Termination**

This MOA may be terminated under the following circumstances:

- A. Termination for Convenience
  - 1. DSHS may terminate this MOA, in whole or in part, at any time when, in its sole discretion, DSHS determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in DSHS's notice of termination.
  - 2. Facility may terminate this MOA, upon written notification to the DSHS Regional CHEMPACK Coordinator a minimum of ninety (90) calendar days prior to the proposed termination date.
- B. Termination for Cause
  - 1. Except as otherwise provided by the U.S. Bankruptcy Code, or any successor law, DSHS may terminate the MOA, in whole or in part, upon either of the following conditions:

- i. Material Breach - DSHS will have the right to terminate the MOA in whole or in part if DSHS determines, in its sole discretion, that Facility has materially breached the MOA or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Facility's duties under the MOA.
  - ii. Failure to Maintain Financial Viability - DSHS may terminate the MOA if, in its sole discretion, DSHS has a good faith belief that Facility no longer maintains the financial viability required to fully perform its responsibilities under **SECTION II, FACILITY RESPONSIBILITIES**, of this MOA.
2. Either Party may terminate the MOA should the ASPR CHEMPACK Program expire.

## **VI. MOA Remedies**

To ensure Facility's full performance of the MOA and compliance with applicable law, DSHS reserves the right to hold Facility accountable for breach of contract or substandard performance and may take remedial or corrective actions, including, but not limited to:

- i. suspending all or part of the MOA;
- ii. requiring Facility to take specific actions in order to remain in compliance with the MOA;
- iii. suspending, limiting, or placing conditions on the Facility's continued performance of its responsibilities under the MOA; or
- iv. imposing any other remedies, sanctions, or penalties authorized under this MOA or permitted by federal or state law.

## **VII. Liability**

As Facility is a local government entity, this MOA is an interlocal contract under Chapter 791 of the Texas Government Code. Under this MOA, Facility will provide a service related to a homeland security activity, and to the extent provided by Texas Gov't Code § 421.062, neither DSHS nor Facility is responsible for any civil liability which arises from furnishing this service.

Under this MOA, Facility will provide a service related to a homeland security activity. DSHS is not responsible for any civil liability related to homeland security activities under this MOA.

## **Additional Terms and Conditions**

### **A. No Cost**

This is a "no cost" agreement. DSHS shall not be obligated to make any payments of any amounts to Facility as a result of this MOA. Any costs and expenses incurred

under the terms of this MOA will be paid by the Party incurring the cost or expense. No funds appropriated to either Party will be exchanged under this MOA.

B. Assignment

Facility will not assign all or any portion of its rights under or interests in this MOA or delegate any of its duties without prior written consent of DSHS. Any written request for assignment or delegation must be accompanied by written acceptance of the assignment or delegation by the assignee or delegation by the delegate. Except where otherwise agreed in writing by DSHS, any assignment or delegation will not release Facility from its obligations under this MOA.

C. Public Information Act

The Parties understand that both Parties will comply with the Texas Public Information Act (Chapter 552 of the Texas Government Code) as interpreted by judicial rulings and opinions of the Attorney General of the State of Texas.

D. Record Maintenance and Retention

1. Facility shall keep and maintain under Generally Accepted Accounting Principles (GAAP) or Governmental Accounting Standards Board (GASB), as applicable, full, true, and complete records necessary to fully disclose to DSHS, the Texas State Auditor's Office, the United States Government, and their authorized representatives' sufficient information to determine compliance with the terms and conditions of this MOA and all state and federal rules, regulations, and statutes.
2. Facility shall maintain and retain legible copies of this MOA and all records relating to the performance of the MOA. These records shall be maintained and retained by Facility for a minimum of seven (7) years after the MOA's expiration date or seven (7) years after the completion of all audits, claim, litigation, or dispute matters involving the MOA are resolved, whichever is later.

E. DSHS's Right to Audit

1. Facility shall make available at reasonable times, upon reasonable notice, and for reasonable periods, work papers, reports, books, records, and supporting documents kept current by Facility pertaining to the MOA for purposes of inspecting, monitoring, auditing, or evaluating by DSHS and the State of Texas.
2. In addition to any right of access arising by operation of law, Facility, any of Facility's affiliate or subsidiary organizations, or subcontractors, shall permit DSHS or any of its duly authorized representatives, as well as duly authorized federal, state, or local authorities, unrestricted access to and the right to examine any site where business is conducted or services are performed, and all records (including but not limited to financial, client and patient records, books, papers

or documents) related to this MOA in accordance with the law. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: DSHS, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority.

3. If deemed necessary by DSHS or any duly authorized authority, for the purpose of investigation or hearing, Facility shall produce original documents related to this MOA.
4. Facility shall include this **SUBSECTION VIII(E)** of the MOA, concerning the right of access to, and examination of, sites and information related to this MOA in any subcontract it awards.

F. Compliance with Audit or Inspection Findings

1. Facility must act to ensure its compliance and its subcontractors' compliance with all corrections necessary to address any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle, or any other deficiency identified in any audit, review, or inspection of the MOA and the services and deliverables provided. Any such correction will be at Facility's sole expense or its subcontractor's sole expense. Whether Facility's action corrects the noncompliance shall be solely DSHS's decision.
2. Upon DSHS's request, Facility must provide DSHS a copy of those portions of Facility's internal audit reports and its subcontractors' internal audit reports relating to the services provided to the State of Texas under this MOA.

G. State Auditor's Right to Audit

1. The state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under the MOA or indirectly through a subcontract under the MOA. The acceptance of funds directly under the MOA or indirectly through a subcontract under the MOA acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit.
2. The Facility shall comply with any rules and procedures of the state auditor in the implementation and enforcement of Section 2262.154 of the Texas Government Code.

H. Amendment

This MOA may only be modified by written amendment signed by the Parties.

I. Change in Law and Compliance with Laws

Facility shall comply with all laws, regulations, requirements, and guidelines applicable to a vendor providing services required by this MOA to an agency of the State of Texas, as these laws, regulations, requirements, and guidelines currently exist and as amended throughout the term of the MOA. DSHS reserves the right, in its sole discretion, to unilaterally amend the MOA to incorporate any modifications necessary for DSHS's compliance, as an agency of the State of Texas, with all applicable state and federal laws, regulations, requirements, and guidelines.

J. Governing Law and Venue

This MOA shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under this MOA is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute which directly names or otherwise identifies its applicability to DSHS.

K. Dispute Resolution.

1. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code must be used to attempt to resolve any dispute arising under the MOA. If the Facility's claim for breach of contract cannot be resolved informally with DSHS, the claim shall be submitted to the negotiation process provided in Chapter 2260. To initiate the process, the Facility shall submit written notice, as required by Chapter 2260, to the individual identified in the MOA for receipt of notices. Any informal resolution efforts shall in no way modify the requirements or toll the timing of the formal written notice of a claim for breach of contract required under Section 2260.051 of the Texas Government Code. Compliance by Facility with Chapter 2260 is a condition precedent to the filing of a contested case proceeding under Chapter 2260.
2. The contested case process provided in Chapter 2260 is Facility's sole and exclusive process for seeking a remedy for an alleged breach of contract by DSHS if the Parties are unable to resolve their disputes as described above.
3. Notwithstanding any other provision of the MOA to the contrary, unless otherwise requested or approved in writing by the DSHS, Facility shall continue performance and shall not be excused from performance during the period of any breach of contract claim or while the dispute is pending.

L. Limitation on Authority.

1. Any authority granted to Facility by DSHS is limited to the terms of this MOA.
2. Facility shall not have any authority to act for or on behalf of the DSHS or the State of Texas except as expressly provided for in the MOA; no other authority, power, or use is granted or implied. Facility may not incur any debt, obligation, expense, or liability of any kind on behalf of DSHS or the State of Texas.
3. Facility may not rely on implied authority and is not granted authority under the MOA to:

- i. Make public policy on behalf of DSHS.
- ii. Promulgate, amend, or disregard administrative regulations of program policy decisions made by state and federal agencies responsible for administration of a DSHS program; or
- iii. Unilaterally communicate or negotiate with any federal or state agency or Texas Legislature on behalf of DSHS regarding DSHS programs or this MOA.

M. Severability

If any provision of the MOA is held to be illegal, invalid, or unenforceable by a court of law or equity, such construction will not affect the legality, validity, or enforceability of any other provision or provisions of this MOA. It is the intent and agreement of the Parties that this MOA shall be deemed amended by modifying such provision to the extent necessary to render it valid, legal, and enforceable while preserving its intent or, if such modification is not possible, by substituting another provision that is valid, legal, and enforceable and that achieves the same objective. All other provisions of this MOA will continue in full force and effect.

N. Force Majeure

Neither Party shall be liable to the other for any delay in, or failure of performance of, any requirement included in the MOA caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as acts of God, war, fires, explosions, hurricanes, floods, failure of transportation, or other causes that are beyond the reasonable control of either Party and that by exercise of due foresight such Party could not reasonably have been expected to avoid, and which, by the exercise of all reasonable due diligence, such Party is unable to overcome.

O. No Implied Waiver of Provisions

The failure of either Party to object to or to take affirmative action with respect to any conduct of the other Party that is in violation or breach of the terms of the Contract shall not be construed as a waiver of the violation or breach, or of any future violation or breach.

P. Sovereign Immunity

Nothing in the MOA shall be construed as a waiver of DSHS's or the State of Texas's sovereign immunity. This MOA shall not constitute or be construed as a waiver of any of the privileges, rights, defenses, remedies, or immunities available to DSHS or the State of Texas. The failure to enforce, or any delay in the enforcement of, any privileges, rights, defenses, remedies, or immunities available to DSHS or the State of Texas under the MOA or under applicable law shall not

constitute a waiver of such privileges, rights, defenses, remedies, or immunities or be considered as a basis for estoppel. DSHS does not waive any privileges, rights, defenses, or immunities available to DSHS by entering into the MOA or by its conduct prior to or subsequent to entering into the MOA.

Q. Entire MOA and Modification

This MOA constitutes the entire agreement of the Parties and is intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in any future document incorporated into the MOA will be harmonized with this MOA to the extent possible.

**VIII. Authorized Representatives**

The following individual will act as the designated representative (“MOA Representative”) authorized to administer activities including, but not limited to, notices, consents, approvals or other general communications to the maximum extent possible. The designated Party MOA Representatives are as follows:

**DSHS**

Oscar Vasquez  
Regional MCM Coordinator  
401 E. Franklin, Suite 210  
El Paso, Texas 79901  
(915) 834-7851  
[Oscar.Vasquez@dshs.texas.gov](mailto:Oscar.Vasquez@dshs.texas.gov)

**Facility**

Jonathan P. Killings, Fire Chief  
City of El Paso, Fire Department  
416 N. Stanton, Ste. 200  
El Paso, Texas, 79901  
915-212-5665  
[KillingsJP@elpasotexas.gov](mailto:KillingsJP@elpasotexas.gov)

Dionne Mack, City Manager  
City of El Paso, City Manager  
P.O. Box 1890  
El Paso, Texas 79950  
915-212-1064  
[MackDX@elpasotexas.gov](mailto:MackDX@elpasotexas.gov)

**IX. Notice Requirements**

A. All notices given by Facility shall be in writing, include the DSHS contract number, comply with all terms and conditions of the MOA, and be delivered to DSHS’s MOA Representative identified above.

- B. Facility shall send legal notices to DSHS at the address below and provide a copy to DSHS's MOA Representative:

Health and Human Services Commission  
Attn: Office of Chief Counsel  
4601 W. Guadalupe, Mail Code 1100  
Austin, Texas 78751

*With copy to:*  
Department of State Health Services  
Attn: Office of General Counsel  
1100 W. 49<sup>th</sup> Street, Mail Code 1919  
Austin, Texas 78756

Notices given by DSHS to Facility may be emailed, mailed, or sent by common carrier. Email notices shall be deemed delivered when sent by DSHS. Notices sent by mail shall be deemed delivered when deposited by DSHS in the United States mail, postage paid, certified, return receipt requested. Notices sent by common carrier shall be deemed delivered when deposited by DSHS with a common carrier, overnight, signature required.

City of El Paso, c/o Fire Chief  
Attn: Jonathan P. Killings  
Fire Department  
416 N. Stanton, Ste. 200  
El Paso, Texas, 79901

With a copy to:  
City of El Paso  
Attn: City Manager  
P.O. Box 1890  
El Paso, Texas 79950

- C. Notices given by Facility to DSHS shall be deemed delivered when received by DSHS.
- D. Either Party may change its MOA Representative or Legal Notice contact by providing written notice to the other Party.

**X. Legal Authority**

DSHS enters into this MOA under the authority of the following: Texas Health & Safety Code Chapters 12, 81, 771, 1001; and Texas Government Code, Chapters 418 and 531.

Facility enters into this MOA under the authority of the following: the Interlocal Cooperation Act, 791.001, Texas Government Code.

## **XI. Authorized Signatures**

By signing, Parties acknowledge that they have read the MOA in its entirety and agree to its terms. The individuals whose signatures appear below have the requisite authority to execute this MOA on behalf of the named Party.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE**  
**DSHS CONTRACT NO. HHS00395100071**

**FACILITY- CITY OF EL PASO**

\_\_\_\_\_  
**Renard U. Johnson, Mayor**

\_\_\_\_\_  
**Date Signed**


ATTEST:

\_\_\_\_\_  
Laura D. Prine  
City Clerk

APPROVED AS TO CONTENT:

APPROVED AS TO FORM:

*Jonathan Killings*  
\_\_\_\_\_  
Jonathan P. Killings  
Fire Chief

  
\_\_\_\_\_  
Carlos L. Armendariz  
Assistant City Attorney

**DEPARTMENT OF STATE HEALTH SERVICES**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date of Execution: \_\_\_\_\_