

PROFESSIONAL SERVICES AGREEMENT
Between
EL PASO COUNTY
(65TH DISTRICT COURT FAMILY DRUG TREATMENT COURT PROGRAM)
AND
TRIWEST GROUP, LLC

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into by and between El Paso County, a political subdivision organized and existing under the laws of the state of Texas, on behalf of the 65th District Court Family Drug Treatment Court Program, hereinafter referred to as “County” and TriWest Group, LLC, a Colorado limited liability company (“TriWest”).

Recitals

The purpose of this Agreement is for TriWest to conduct independent process and outcome evaluations for the 65th Family District Court Expanded Family Drug Court.

Agreement

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions expressed in this Agreement, the parties hereto agree as follows:

1. Services.

“Services” means the services, including written reports and other documentation, to be provided by TriWest, its employees, agents and subcontractors, as described in the County Request for Proposal #09-016, Drug Court Evaluations for the Family Drug Court Program (RPF#09-016), and TriWest’s Proposal for Drug Court Evaluations for the Family Drug Court Program, dated February 27, 2009, and TriWest’s Best and Final Offer dated April 1, 2009 (collectively, TriWest Response to RFP#09-016), and as provided in Schedule 1, attached hereto and incorporated herein as though fully set forth.

2. Payment.

2.1 TriWest shall provide each Service by the applicable date set forth in Schedule 1 and payment shall be made upon the completion of each evaluation as indicated therein.

2.2 The billing address and contact for the County is:

County of El Paso
Family District Court, 65th District Court
Drug Model Court Coordinator Ruth Fierro
500 East San Antonio 11th Floor, Room 1105
El Paso, Texas 79901

2.3 TriWest shall be paid within forty-five (45) days after receipt by the County of the TriWest invoice.

2.4 TriWest acknowledges that all the terms and conditions of this contract are

contingent upon the County being awarded funding from the Substance Abuse and Mental Health Services Administration. In the event that the County does not receive funding in any fiscal year during the term of this Agreement, the County may terminate this Agreement without penalty or further payment, upon 30 days written notice to TriWest, to be effective on September 30 of the then current fiscal year

3. Standards; Indemnities.

3.1 TriWest agrees that the Services performed by TriWest, its employees, agents and subcontractors, will be of a high quality and performed in a professional manner in accordance with industry standards and practice, and in compliance with all relevant federal, state and local laws and regulations to include but not limited to complying with all requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) relating to TriWest's responsibilities under this Agreement.

3.2 TriWest shall, to the extent allowed by law, indemnify, defend and hold harmless the County for all losses, damages, claims, actions, and costs (including attorneys' fees) caused by or arising from the negligence or willful misconduct of TriWest, its employees, agents or subcontractors, related to the Services provided under this Agreement, including a breach of Section 3.1.

3.3 The County represents that any and all work of the County, and all other material provided to TriWest relating to this Agreement, if not expressly licensed to the County or reprinted with permission, shall be its original work, has been developed by the County, its employees, agents and subcontractors, and does not infringe upon or misappropriate any third party's copyrights, patents, trade secrets or other intellectual property rights or the terms of any license or contract applicable to the County.

4. Confidential Information. In the course of the Project, the parties and their employees, agents and subcontractors may receive Confidential Information. "Confidential Information" means proprietary financial and other information of either party to this Agreement and information about persons, including names, addresses, mental and physical health data, family history and other like information of a private or confidential nature. Each party and its respective officers, directors, employees, contractors and agents (as applicable) shall hold Confidential Information of the other party in strict confidence and shall maintain Confidential Information of others in confidence in accordance with applicable state and federal law. The obligations of the parties pursuant to this Section shall survive any termination or expiration of this Agreement.

5. Taxes. TriWest shall be solely liable for and shall pay all applicable sales, use, and other taxes or charges incurred in connection with the Services provided by it. TriWest shall be solely liable for and shall pay all costs of conducting its business, including but not limited to any applicable city, county, state or federal licenses, permits, taxes or assessments of any kind.

6. Term and Termination.

6.1 The term of this Agreement shall commence on June 22, 2009 and shall expire on September 29, 2009. (“Term”).

6.2 Notwithstanding the Term, this Agreement may be terminated at any time during the Term (a) by either TriWest or the County by providing thirty (30) business days’ written notice to the other party; or (b) immediately by the County by giving notice if TriWest ceases to conduct business in the normal course, becomes insolvent, enters in bankruptcy procedures or becomes subject to any other judicial proceedings that relate to insolvency or protection of creditor’s rights.

6.3 Upon termination or expiration of the Agreement, TriWest shall not incur any additional expenses or perform any Services without the prior written approval of the County. If the County terminates this Agreement, TriWest shall be entitled to payment for Services performed by it to the date of termination.

7. Ownership and License Rights to Materials and Information.

7.1 The County shall hold and retain all intellectual property rights, including copyright and moral rights, in all materials created for the project by the County or TriWest or jointly created by both the County and TriWest for the Project (“Materials”).

7.2 The County grants TriWest a nonexclusive, perpetual, royalty-free, worldwide and irrevocable license to use the Materials, provided that such use is consistent with the terms of this Agreement, including its confidentiality provisions.

7.3 The data collected during the Term of this Agreement in connection with the Services may be recorded in a database. If so, the County shall own all right in the database, provided, however, that the County shall grant TriWest, a nonexclusive, perpetual, royalty-free worldwide and irrevocable license to use the database for purposes consistent with this Agreement, including its confidentiality provisions.

8. General.

8.1 Independent Contractor. TriWest is an independent contractor of the County. This Agreement shall not create the relationship of employer and employee, a partnership, or a joint venture between the County and TriWest. Subject to the terms of this Agreement, TriWest shall determine the number of days and hours of its work. TriWest shall be solely liable for the wages, employment taxes, fringe benefits, work schedules, and work conditions of its employees, agents, and subcontractors.

8.2 Applicable Law/Venue/Dispute Resolution.

(a) This Agreement shall be governed by and construed under the laws of the state of Texas without reference to its conflicts of law principles. Venue shall lie in El Paso County,

Texas.

(b) If a dispute, claim, question or disagreement arises from or relates to this Agreement or any breach thereof, the parties agree to use their best efforts to resolve the dispute, claim, question or disagreement. If the parties are unable to reach a solution within a period of sixty days, the dispute, claim, question or disagreement shall be referred to an alternate dispute resolution process, which may include mediation. Costs for the use of an alternate dispute resolution process shall be shared equally between the parties.

8.3 Entire Agreement; Counterparts. This document contains the entire agreement of the parties regarding the subject matter described in this Agreement, and all other promises, representations, understandings, arrangements and prior agreements are merged into and superseded by this Agreement.

8.4 Modification. The parties acknowledge that the requirements of the project described in the Recitals may change over time. Modification of the Services in Schedule 1, and in the payment provisions in Schedule 2, may be suggested by either party; however, this Agreement may only be modified by a written agreement of the parties signed by an authorized representative of each party.

8.5 Notices. All notices or other communications shall be in writing and delivered to the addresses below the signatures to this Agreement. Such addresses may be changed by notice to the other party in accordance with this Section.

8.6 Third Parties. Nothing in this Agreement, express or implied, is intended to nor shall be construed to confer upon any person, firm, or corporation, other than the parties to this Agreement, any remedy or claim under or by reason of this Agreement as third-party beneficiaries or otherwise. The terms and conditions of this Agreement are for the sole and exclusive benefit of the parties to this Agreement.

8.7 Assignment/Subcontract. TriWest shall not assign its interest in or delegate the performance of its obligations under this Agreement to any other person or entity. TriWest may subcontract responsibilities under this Agreement to another person or entity with the express consent of the County, and such subcontractor's agreement to be bound by the terms of this Agreement.

8.8 Remedies. Except as otherwise provided for herein, no remedy conferred by any of the specific provisions of the Agreement or available to a party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by a party shall not constitute a waiver of the right to pursue other available remedies.

8.9 Force Majeure. Notwithstanding any other provision of this Agreement, no party to this Agreement shall be deemed in default or breach of this Agreement or liable for any loss or damages or for any delay or failure in performance due to any cause beyond its reasonable

control.

8.10 Waiver of Breach. The waiver by any party of any breach by any other party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by the nonbreaching party or parties.

8.11 Survival. The terms and conditions of this Agreement evidently intended to have continuing effect, shall survive the completion of the performance and the expiration or termination of the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement to be effective as of the Effective Date.

EL PASO COUNTY

TRIWEST GROUP, LLC

By: _____
Anthony Cobos
County Judge

By: _____
Peter Selby
Principal

Approved as to form:

Assistant County Attorney

Notice Address:
El Paso County
500 E. San Antonio, Suite 301
El Paso, Texas 79901

With a copy to
Family District Court, 65th District Court
Drug Model Court Coordinator Ruth Fierro
500 East San Antonio 11th Floor, Room 1105
El Paso, Texas 79901

Notice Address:
TriWest Group
4450 Arapahoe, # 100
Boulder, CO 80303

Attn: Peter Selby
Telephone: 206-612- 8564 or 303-544-0509
Email: pselby@trivestgroup.org
Facsimile: 303 544 0510
EIN: 84-1504098