



**COMMISSIONERS COURT
COMMUNICATION**

AGENDA DATE : 12-17-12

CONSENT OR REGULAR: Consent

CONTRACT REFERENCE NO
(IF APPLICABLE): 2012-0247

SUBJECT:

Lease agreement with Emergence Health Network for office space at the Family Youth Services Center.

BACKGROUND/DISCUSSION OF TOPIC: To include statutory requirement, operational impact, or performance goal.

This lease agreement with Emergence Health Network is directly in-line with Mental Health Support Services Mission, which states, "The department works with other entities to maximize resources in a cost effective manner, prevent duplication of efforts, and provide a continuum of care for those involved in multiple systems". Emergence Health Network will occupy 731 square feet of the facility and cover their cost for furniture in the amount of \$9,260.27. Their monthly lease will be \$1,382.08 which is a total annual amount of \$16,585.00.

FISCAL IMPACT:

The lease agreement will have a positive fiscal impact to offset County building costs based on the square footage Emergence Health Network will be occupying. Attachment A in this lease agreement shows the detailed monthly lease cost that will be collected from tenant of \$1,382.08 which totals to \$16,585.00 per year.

PRIOR COMMISSIONERS COURT ACTION (IF ANY):

N/A

RECOMMENDATION:

Approve and authorize the County Judge to sign lease agreement 2012-0247 with Emergence Health Network for office space at the Family Youth Services Center with a positive annual fiscal impact of \$16,585.00 and a one-time payment from Emergence Health Network of \$9,260.27 for furnishing. This lease agreement with Emergence Health Network is directly in-line with Mental Health Support Services Mission.

COUNTY ATTORNEY APPROVAL

The attached document has been given legal review by the El Paso County Attorney's Office on behalf of the County of El Paso, its officers, and employees. Said legal review should not be relied upon by any person or entity other than the County of El Paso, its officers, and employees.

COUNTY ATTORNEY:

LEGAL REVIEW:

LEGAL REVIEW NOTES (If Applicable):

DATE:

SUBMITTED BY:

Rita Ruelas- Director- Mental Health Support Services 915-546-2275 carmarquez@epcounty.com

**LEASE AGREEMENT BETWEEN THE COUNTY OF EL PASO, TEXAS
("LANDLORD"), AND EMERGENCE HEALTH NETWORK-EL PASO CENTER
FOR MENTAL HEALTH/INTELLECTUAL DISABILITIES ("TENANT")**

LANDLORD: County of El Paso, Texas ("LANDLORD")
C/O County Judge
500 East San Antonio, Suite 301
El Paso, Texas 79901

TENANT: Emergence Health Network – El Paso Center for Mental
Health/Intellectual Disabilities ("TENANT")
1600 Montana St.
El Paso, TX 79902

PREMISES: A portion the El Paso County Family Youth Services Center
6400 Delta Drive
El Paso, TX 79905

APPROXIMATE TOTAL SQUARE FEET LEASED TO TENANT:

The Premises shall contain a Total of Approximately 1,437 square feet, including:
Approximately 731 square feet of office space; and,
Approximately 706 square feet of shared common areas.

COMMENCEMENT DATE: **First day of the month following the completion of installation of furniture, fixtures, and equipment within the Premises, with said date being no later than September 1, 2013.**

ENDING DATE: September 30, 2014, subject to option to renew provided for in paragraph 17.

MONTHLY COST: A total of \$ **1,382.08** as broken down in **Attachment A.**

UTILITIES: Basic utilities including, water, heat/HVAC, electricity, at least 1 phone-line, and internet connectivity are included.

FURNITURE: A one-time, lump-sum payment of **\$9,260.27**, partially refundable as described in paragraph 2.5.

1. PREMISES

The County of El Paso, Texas (“Landlord”) in consideration of the covenants, agreements, and costs, paid by tenant contained in this Lease Agreement to be kept and performed by the parties, hereby leases to Emergence Health Network – El Paso Center for Mental Health/Intellectual Disabilities (“Tenant”) a portion of the property located at 6400 Delta Drive, El Paso, Texas to include the use of specified parking areas, hallways, and other common areas (the “Premises”) as more specifically described in **Attachment A** to have and to hold for the duration of the term described above.

2. COSTS

2.1 Landlord leases the premises solely for the estimated costs of utilities and maintenance, janitorial services, administrative staff, and building use fee (“Costs”). Tenant shall pay its share of the costs, described in **Attachment A**, no later than the tenth (10th) day of each month. If the commencement date is not the first day of a month, a pro-rated monthly installment shall be paid for the fraction of the month during which the Lease commences, computed as a 30 day month and a 360 day year. Costs are payable by Tenant without notice, demand, abatement, deduction or setoff except as expressly specified in this Lease. Tenant’s obligation to pay costs is independent of any obligation of Landlord under this lease. **Payments shall be made to:**

**El Paso County, Texas
Office of the County Auditor
800 East Overland, Room 406
El Paso, Texas 79901**

2.2 If any installment of rent is not paid within 30 days after it is due, Tenant shall pay a late charge in an amount equal to the rates described in the Texas Prompt Payment Act contained in Chapter 2251 of the Texas Government Code, unless Landlord agrees otherwise, in writing.

2.3 All payments by Tenant under this Lease are payable only out of current Tenant revenues. In the event that funds relating to this Agreement do not become available, such as by Tenant’s governing board non-appropriating the funds, Tenant shall have no obligation to pay or perform any services herein for Tenant’s fiscal year during which such funding is not appropriated. Provided, however, that Tenant shall immediately provide notice to Landlord of such non-appropriation or funds unavailability. Should Tenant experience a funding unavailability as described in this paragraph, either party may choose to terminate the Agreement subject to its terms.

2.4 **Cost Increases.** Beginning on October 1, 2013, Landlord may raise Tenant’s share of its costs for utilities and maintenance, janitorial services, administrative staff, and/or the building use fee, as described in **Attachment A**, by providing Tenant with 30 days’ written notice. The increase in Tenant’s costs shall not exceed Landlord’s actual costs for the then-current fiscal year or 5%, whichever is less. Landlord may only

institute such an increase once per fiscal year. The fiscal year runs from October 1st through September 30th of each year.

2.5 **Furniture.** In exchange for a single lump-sum payment of \$9,260.27, LANDLORD shall install and affix new furniture in the Premises. The furniture shall be installed in accordance with LANDLORD's design plan(s). If either Party terminates this lease in accordance with paragraph 20, TENANT shall be entitled to a partial refund, up to September 30, 2022, as follows:

Termination on or after:	Furniture Cost Refund
October 1, 2013	\$7,408.22
October 1, 2014	\$6,667.39
October 1, 2015	\$6,000.65
October 1, 2016	\$5,400.59
October 1, 2017	\$4,860.53
October 1, 2018	\$4,374.48
October 1, 2019	\$3,937.03
October 1, 2020	\$3,543.33
October 1, 2021	\$3,188.99
October 1, 2022	\$2,870.09
October 1, 2023	\$0.00

Under no circumstances may Tenant remove the furniture from the Premises without Landlord's prior written consent. The title to the furniture shall remain with Landlord at all times. In the event of early termination of this Lease, Tenant's sole remedy shall be a partial refund as outlined in this paragraph.

3. USE

Tenant has inspected the Premises and acknowledges that they are suitable for Tenant's intended purposes as stated in this paragraph. Tenant shall use the Premises exclusively for offices and for providing patient consultations and for no other purposes without express, prior written consent of Landlord. Tenant shall not use the Premises or permit anything to be done in or about the Premises, which will in any way conflict with any law, statute, zoning restriction, or any ordinance or governmental rule, regulation or requirement. Failure to comply with this requirement shall be considered a breach of the terms of this Agreement. By execution, of this Lease Agreement, Tenant represents that the use of the property for the described purposes, and all equipment and devices possessed, used, owned, maintained or otherwise utilized by Tenant currently and in the course of this lease shall comply with all local state, and federal regulations, and are properly licensed and/or permitted as may be required. Upon request by Landlord, Tenant shall, within 3 business days of such request, provide written confirmation of current and on-going compliance.

4. TAXATION

Landlord pays no taxes as it is a tax-exempt entity. Tenant pays no taxes as it is a tax exempt entity. In the event Tenant should be required to pay any tax, fee, penalty or similar assessment related to its use and occupancy of the premises, Tenant shall be solely liable for such payment.

5. UTILITIES

Electric and internet connectivity; provided however, that any technical support will be subject to Tenant's previous agreements with El Paso County Information Technology Department.

6. INSURANCE

Landlord shall, at Landlord's expense and as Landlord deems appropriate, maintain at all times during the term of this Lease a policy or policies of insurance covering loss or damage to the Premises in the amount of the full replacement value thereof (**exclusive of Tenant's trade fixtures, equipment, and contents**), providing protection against perils included within the classification of fire, extended coverage, vandalism, mischief, sprinkler leakage and special extended peril (all-risk insurance). **LANDLORD MAY SELF-INSURE. Tenant shall self-insure or carry, at Tenant's expense, general liability insurance.**

7. FIRE EQUIPMENT

Landlord agrees to supply and maintain at its own expense any fire extinguishers, or other fire prevention equipment required by law, rules, orders, ordinances and regulations of the City of El Paso, Texas, and/or any required by any insurance carrier, underwriters association or other similar body having jurisdiction involving the use and/or occupancy of the Premises; Landlord shall be responsible for any fines, penalties, or similar assessments which are assessed for malfunctioning of, or non-compliance of, Landlord's equipment. Notwithstanding the foregoing, if Tenant becomes aware of any fire prevention equipment malfunction, Tenant shall immediately notify Landlord, in writing.

Landlord shall provide and maintain a fire protection system, including sprinkler and smoke detectors in accordance with the applicable requirements for such fire safety equipment. Landlord shall be responsible for any fines or penalties assessed for malfunctioning of or non-compliance of Landlord's fire safety equipment referenced in this paragraph. Notwithstanding the foregoing, if Tenant becomes aware of any fire protection system malfunction, Tenant shall immediately notify Landlord, in writing.

8. SECURITY

Notwithstanding the foregoing, nothing in this Lease shall obligate the Landlord to maintain or provide any security services or systems for the Premises other than lock and key devices. Tenant agrees that Landlord shall not be liable to Tenant for, and Tenant shall waive any claim against Landlord with respect to any loss by theft or any other damage suffered or incurred by Tenant in connection with any unauthorized entry into the Premises or other criminal or willful

acts of third parties, unless such loss, theft, or damage is caused by intentional acts by Landlord or Landlord's employees or agents.

9. Maintenance and Repairs, Alterations and Additions

- a. Landlord's Obligations: Except for damage caused by negligent or intentional acts or omissions of Tenants and Tenant's agents, employees, or invitees, Landlord, at Landlord's expense, shall keep in good condition and repair: all interior and exterior heating, ventilation, air-conditioning equipment, glass, parking areas, driveways, sidewalks, fences, landscaped areas, roof, foundation, and plumbing. Fixed equipment, such as air conditioning, heating, and water heaters, which have been installed and are owned by Landlord, are to be maintained by Landlord, along with electrical power sources, except for public power lines.
- b. Landlord shall commence required repairs as soon as reasonably practical after receiving written notice from Tenant.
- c. In exchange for the consideration described in paragraph 2, Landlord, in its discretion, shall provide basic janitorial services on a daily basis. Janitorial services may include vacuuming of carpet, sweeping and mopping tile floors, cleaning restrooms, dusting blinds, vents and open desk-space. Some janitorial services may only be provided on a weekly basis.
- d. Notwithstanding subparagraph (c), Tenant shall reasonably and properly maintain and repair any equipment which Tenant installs or has previously installed or which has been installed on behalf of Tenant. Tenant shall keep and maintain the interior of the Premises reasonably neat and clean and in good order. If Tenant fails to reasonably maintain the leased Premises, in good order, Landlord may, but is not required to, repair and correct the damages caused by such failure upon 15 days' notice to Tenant. Any costs incurred by Landlord for repair or corrections for which Tenant is responsible under this section are payable by Tenant to Landlord for as additional costs on the next installment date.
- e. Upon request, Tenant shall furnish to Landlord copies of any records or manifests demonstrating that Tenant has made any repairs or alterations under this Lease, including assurance that the use or installation of such does not impair or threaten the soundness of the Premises in any way.
- f. Alterations and additions: Landlord shall not make any changes to the Premises which materially impair the size or dimensions of the demised premises without prior consent of the Tenant which consent shall not be unreasonably withheld. Landlord shall consult with Tenant as to potential effect of newly installed equipment and renovated areas, allowing Tenant to comment, provide feedback, and make any necessary adjustments in its use of the Premises. If Tenant's square footage is reduced from that set forth in this Lease, Tenant shall have the option to either accept a

reduced rental rate adjusted in proportion to the reduction in the square footage of the leased Premises, or terminate this Lease with sixty (60) days' notice to Landlord.

- g. Tenant shall not, without Landlord's prior written consent, make any alterations, additions, improvements or utility installations in, on or about the Premises, except for non-structural alterations. All alterations, additions, or improvements made to the structure by the Tenant shall be made in a professional and workmanlike manner and become the property of the Landlord at the termination of this Lease, except for unattached movable fixtures; provided however that Landlord may reject such alterations, additions, or improvements in which case Tenant shall restore the Premises to their original or similar condition as received.
- h. Upon expiration of this Lease, Tenant shall surrender the Premises in the same condition as received, ordinary wear and tear, and damage by fire, earthquake, act of God, unavoidable casualty, or the elements alone excepted. Tenant, at its sole cost and expense, agrees to repair any damage to the Premises caused by or in connection with the removal of any articles of personal property, business or trade fixtures, machinery equipment, cabinetwork, furniture, movable partition, or permanent improvements or additions made by on or on behalf of Tenant, including repairing the floor, roof, or ceiling, and patching and painting the walls where required to Landlord's reasonable satisfaction.

10. Damage and Destruction

- a. Landlord shall not be responsible for loss or damage to Tenant's fixtures, equipment or other property so installed or placed by Tenant on the Premises, except where such damage is due to Landlord's willful failure to make repairs required to be made under this Lease.
- b. Partial Damage-Insured: In the event improvements on the Premises are damaged by any casualty covered under an insurance policy maintained by Landlord, then Landlord shall repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. For purposes of this provision, minor repairs shall be completed within thirty (30) days and major repairs shall be completed within ninety (90) days of the damage.

11. Hazardous Materials

- a. Hazardous Material. As used in this Lease, "Hazardous Material" shall be defined as pollutants, toxic substances, regulated substances, oil, hydrocarbons, asbestos, or similar materials as defined in or pursuant to the Resource Conservation and Recovery Act, as amended, the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, the federal Clean Water Act, as amended, the Texas Water Code, as amended, the Texas Solid Waste Disposal Act, as

amended, and any other federal, state, or local environmental or health and safety related law, or regulation.

- b. Use of Hazardous Materials Tenant represents, and Landlord acknowledges that Tenant's intended use of the premises is as stated in Paragraph 3, above. Tenant shall not cause or permit any Hazardous Material to be stored or used upon the premises

12. ENTRY BY LANDLORD

Landlord shall have the right at reasonable times to enter the Premises to inspect the same or to maintain or repair, make alterations or additions to the Premises on any portion of the premises or to show the Premises to prospective purchasers and other persons. Landlord shall make reasonable efforts to notify Tenant of the need to enter upon the premises prior to entering upon the Premises. Rent shall not abate during such entry. Additionally, during any such entry Landlord, its employees, and/or agents may enter the premises forcibly without liability and without in any manner affecting Tenant's obligations under this lease. Prior to entering the premises for emergency purposes, Landlord shall endeavor to contact Tenant to advise Tenant of the emergency with such notice as is reasonable under the circumstances, to coordinate with Tenant and allow Tenant the opportunity to resolve the emergency.

13. Move-Out Requirements, Holdover

Except as otherwise provided in this Lease, if Tenant intends to vacate the premises or terminate the lease, Tenant shall provide ninety (90) days' written notice to the Landlord. Payment of consideration will continue until all keys to the Premises are turned over to Landlord. No payments of money by Tenant to the Landlord after the termination of this Lease shall reinstate, continue, or extend this Lease term and no extension of this Lease after termination or expiration is valid unless it is reduced to writing and signed by both the Landlord and the Tenant. Nothing in this Lease may be construed to give Tenant the right to hold over beyond any expiration date or any earlier termination of this Lease or preclude Landlord from having the right to dispossess or otherwise terminate Tenant's right of possession. Any month-to-month tenancy is terminable upon notice from the Landlord.

14. Notices

All notices or demands to be given by Landlord or Tenant hereunder shall be in writing and shall be deemed delivered a) the date of actual hand-delivery; or b) two (2) days after depositing the notice or demand in the US mail, certified or registered, postage pre-paid, addressed to the party at the addresses listed on the first page of this Agreement.

15. Condemnation

If the Premises or any part thereof are condemned for any public purpose to the extent that the remainder of the Premises is, in Landlord's opinion, not reasonably suitable for occupancy and Tenant's specific use, the Landlord may at its election terminate the Lease. All proceeds from any taking or condemnation of the Premises shall belong to the Landlord, except that Landlord

shall not be entitled to any award part made to Tenant for loss of business, depreciation to or cost of removal of Tenant's personal property.

16. Liens

Tenant shall keep the Premises free from any liens arising out of work performed, materials furnished or obligations incurred by Tenant.

17. Option to Renew

Tenant is hereby granted an option to renew this lease subject to approval by Landlord. Tenant shall be granted the option of five (5) consecutive one (1) year extensions of this Lease pursuant to the same terms and conditions. In order to exercise the option to renew, no fewer than ninety (90) days prior to the expiration of the initial term or the then current term, Tenant must provide a written notice to Landlord of the Tenant's desire to exercise the option to renew. Within thirty (30) days' after receipt thereof, Landlord shall deliver to Tenant a notice of confirmation or denial of the lease renewal. Failure to do so shall not act as an automatic approval.

In the event that the term of this lease expires, and Tenant neither exercises its renewal option nor gives notice to terminate its right of occupancy hereunder, this Lease shall continue on a month-to month basis.

18. Default

In the event that Tenant defaults in the timely payment or rent, or violates or fails to perform any of the provisions of this Lease, Landlord shall send written notice of such default, violation or omission to the Tenant, and unless Tenant shall have completely cured or removed said default within thirty (30) days after receiving notice from Landlord, or upon such reasonable cure time as the parties mutually agree upon. Landlord may thereupon re-enter the Premises, by summary proceedings or take possession of said Premises and remove all persons and property, and may elect to either cancel Lease or re-let the Premises as agent for the Tenant or otherwise, and receive costs, applying the same to the payment of the cost balance under this Lease and the fulfillment or Tenant's covenants hereunder, the balance (if any) to be paid by Tenant, who shall remain liable for any deficiency.

If Landlord breaches this Lease, Tenant may exercise its rights and remedies as it may be entitled to under law or equity.

19. Americans with Disabilities Act

Landlord shall make necessary interior and exterior modifications to the Premises agreed upon to make the Premises accessible for disabled persons. Tenant and Landlord covenant to make reasonable, mutual efforts to make accommodation for matters on the Premises related to the Americans with Disabilities Act (ADA).

Tenant and Landlord shall comply with all applicable laws, ordinances, orders, rules, and regulations of all governmental bodies (including municipal, state, and federal) applicable to, or having jurisdiction over the use, occupancy, operation, and maintenance of the Premises and the non-leased parts of Landlord's building located at the address of the Premises, including without limitation, all applicable environmental and hazardous materials/substance laws.

20. Termination

This lease may be terminated by either party, with or without cause, upon 90 days' written notice to the non-terminating party. Upon termination, there shall not exist any further obligations or rights of either party except for any refund due to Tenant under Section 2.4, above. Tenant shall not be responsible for any rent, fees, or costs following termination which had not been incurred prior to the date of termination.

21. Miscellaneous

- a. **Signs:** Tenant may not install signs without the prior, written approval of Landlord. All signs shall be removed at the termination of this lease. Sign work shall be done in such a manner to avoid injury, defacement, or overloading of the building.
- b. **Parking:** Landlord shall provide outside, paved parking on a first-come, first-served basis at no additional charge to Tenant. Landlord does not warrant or guarantee the availability of such parking. Tenant and Tenant's invitees use such parking at their own risk.
- c. **Severability:** If any provision of this Lease shall, to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Lease shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the extent permitted by law.
- d. **Assignment and Subletting:** Tenant shall not assign sublet, transfer, pledge, or encumber this Lease or any interest therein without the prior written consent of Landlord.
- e. **Amendment:** No amendment, modification, or alteration of the terms hereof shall be binding unless it is in writing, dated subsequent to the date hereof and duly executed by the parties.
- f. **Landlord covenants and agrees that,** upon payment by Tenant of the rent and upon Tenant's observance of the covenants and agreements provided for in this Lease, Tenant shall at all times have peaceable and quiet enjoyment and possession of the demised premises.
- g. **Neither Landlord nor Tenant is required to perform any term or covenant of this Lease so long as performance is delayed or prevented by *force majeure*, which**

includes acts of god, strikes, civil riot, floods, and any other causes not reasonably within Landlord's or Tenant's control and that Landlord or Tenant, by exercising due diligence and paying money, cannot prevent or overcome if said building housing the Premises and/or the Premises become so damaged as to render the Premises unfit for occupancy, then, and from the date of such damage, this Lease shall terminate rent and other obligations hereunder shall be due and payable only to the date of such damage.

- h. This Lease shall be construed under the law of the State of Texas and venue for all legal matters is in El Paso County, Texas. All obligations of the parties created by this Lease are performable in El Paso County, Texas.
- i. No construction against drafter. This Lease Agreement is the product of arms-length negotiations between the Parties. Each Party has had an opportunity to contribute to, and negotiate, the terms of this Lease. Each Party has also had an opportunity to consult with an attorney of its choosing and has done so. Any law or rule of construction that would otherwise construe this agreement against the drafter(s) is hereby waived. This Lease shall be construed equally as to each Party.
- j. Entire Agreement: This instrument, and any attachments to it, constitutes the entire agreement between Landlord and Tenant relative to the Premises and this Agreement and the exhibits and attachments may be altered, amended or revoked only by an instrument in writing signed by both Landlord and Tenant.

[SIGNATURES ON NEXT PAGE]

Executed this ___ day of December 2012.

<p>EL PASO COUNTY, TEXAS,</p> <p>Landlord</p> <hr/> <p>Veronica Escobar</p> <p>El Paso County Judge</p> <p>APPROVED AS TO FORM:</p> <hr/> <p><u>Attorney for Landlord</u></p>	<p>EMERGENCE HEALTH NETWORK,</p> <p>Tenant</p> <hr/> <p>Micheal Wendt</p> <p>Chair, Emergence Health Network</p> <p>Date: _____</p> <p>ATTEST:</p> <hr/> <p>Jacob Cintron</p> <p>Secretary, Emergence Health Network</p> <p>Date: _____</p> <hr/> <p>Kristen D. Daugherty, LISW, LCSW</p> <p>CEO</p> <p>APPROVED AS TO FORM:</p> <hr/> <p>Attorney for Tenant</p>
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Family Youth Services Center
Emergency Health Network Cost Detail

Square Footage	EHN
Office Space	731
Shared Common Areas	706
Total	1,437
Building Cost	
Utilities and Maintenance	445.03
Janitorial	132.43
Front Reception	189.24
Sheriff	
Building Use Fee	615.38
Monthly Cost	1,382.08 **
Annual Cost	16,585.00 **

EHN		Square Feet
169	INTAKE INTERVIEW	124
170	WAITING AREA	389
171	CARE MANAGER	113
172	DATA ENTRY	105
	Total	731

Furniture Cost		
169	Intake	\$ 3,077.96
171	Care Manager	\$ 2,896.94
172	Data Entry	\$ 3,285.37
Total		\$ 9,260.27

** Costs are based on % of office and shared square footage
These are tentative amounts which may change and do not include cost of furniture.