

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
COUNTY OF EL PASO, TEXAS  
AND  
TRIWEST GROUP**

THIS PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is entered into as of February 1, 2008 by and between County of El Paso, Texas, a political subdivision organized and existing under the laws of the state of Texas, hereinafter referred to as “COUNTY” and TriWest Group, LLC, a Colorado limited liability company, hereinafter referred to as “CONTRACTOR”.

**Recitals**

The purpose of this Agreement is for CONTRACTOR to provide evaluations for the Border Children’s Mental Health Collaborative in fulfillment of the COUNTY’s grant award from U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration (SAMHSA ).

**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 CONTRACTOR, its employees, agents and subcontractors, as described in COUNTY RFP #07-128, RFP Border Children’s Mental Health Collaborative Project Evaluations, and in Contractor’s Response and supplemental responses to the RFP. CONTRACTOR shall provide each Service as set forth in Exhibit A, attached hereto and made a part hereof as if fully set forth.

**2. Payment/Use of Funds.**

2.1 For its Services, the COUNTY shall pay CONTRACTOR in an amount not to exceed Two Hundred Sixty Two Thousand Twenty Dollars (\$262,020.00) as further set forth in Exhibit B, attached hereto and made a part hereof as if fully set forth.

2.2 CONTRACTOR will bill monthly for Services performed. CONTRACTOR shall provide the COUNTY with any additional information it shall reasonably request to verify the invoice fees and expenses.

2.3 The billing address and contact for the COUNTY is:

Project Director Roger Martinez  
Border Children's Mental Health Collaborative  
119 N. Stanton, 9<sup>th</sup> Floor  
El Paso, Texas 79901

2.4 CONTRACTOR shall be paid within forty-five (45) days after receipt by the COUNTY of the monthly invoice.

2.5 CONTRACTOR acknowledges that all the terms and conditions of this contract are contingent upon the COUNTY being awarded annual 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 CONTRACTOR, to be effective on September 30 of the then current fiscal year.

### **3. Standards; Indemnities.**

3.1 CONTRACTOR agrees that the Services performed by CONTRACTOR, its employees, agents and subcontractors, will be of a high quality and performed in a professional manner in accordance with industry standards and practice. CONTRACTOR shall comply 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 CONTRACTOR responsibilities under this Agreement and the Terms and Conditions of Award Grant applicable to SAMHSA grant.

3.2 CONTRACTOR 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 CONTRACTOR, 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 CONTRACTOR 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, including the Health Insurance Portability and Accountability Act, as amended (HIPAA). The obligations of the parties pursuant to this Section shall survive any termination or expiration of this Agreement.

**5. Taxes.** CONTRACTOR 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. CONTRACTOR 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 February 1, 2008 and shall expire on September 30, 2008 (“Term”), with the option to renew the Agreement for a one-year period.

6.2 Notwithstanding the Term, this Agreement may be terminated at any time during the Term (a) by either CONTRACTOR 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 CONTRACTOR ceases to conduct business in the normal course, becomes insolvent, enters in bankruptcy procedures; becomes subject to any other judicial proceedings that relate to insolvency or protection of creditor’s rights; or commits a material breach of the Agreement..

6.3 Upon termination or expiration of the Agreement, CONTRACTOR shall not incur any additional expenses or perform any Services without the prior written approval of the COUNTY. If the COUNTY terminates this Agreement, CONTRACTOR 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 CONTRACTOR or jointly created by both the COUNTY and CONTRACTOR for the Project (“Materials”).

7.2 The COUNTY grants CONTRACTOR 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 CONTRACTOR 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.** CONTRACTOR 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 CONTRACTOR. Subject to the terms of this Agreement, CONTRACTOR shall determine the number of days and hours of its work. CONTRACTOR 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 or arbitration, provided however, both parties must mutually agree in writing before binding arbitration can be selected as the method for resolving the dispute, claim, question or disagreement. If arbitration is the method selected by both parties, said arbitration shall be conducted in El Paso, Texas by a member of the Judicial Dispute Resolution selected by mutual agreement of the parties. The arbitrator shall apply the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction. 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, for any one of the years in the term of this contract, 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.** CONTRACTOR shall not assign its interest in or delegate the performance of its obligations under this Agreement to any other person or entity. CONTRACTOR may subcontract responsibilities under this Agreement to another person or entity with the written 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.

8.12 **Severability.** If any provision of this Agreement shall be construed to be illegal or invalid, it shall not affect the legality or validity of any other provisions hereof, and the illegal or invalid provision shall be deemed stricken and deleted herefrom to the same extent and effect as if never incorporated herein, but all other provisions shall continue to the extent that they substantially reflect the Agreement contemplated by the parties.

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

**EL PASO COUNTY**

**TRIWEST GROUP**

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

Anthony Cobos  
County Judge

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

Peter Selby  
Principal

ATTEST:

\_\_\_\_\_  
Delia Briones  
COUNTY Clerk

Approved as to form:

\_\_\_\_\_  
Assistant COUNTY Attorney

**Notice Address:**

El Paso COUNTY  
500 E. San Antonio, Suite 301  
El Paso, Texas 79901

Attn: Anthony Cobos, County Judge  
Telephone: 915-546-2098  
Facsimile: 915-543-3888  
Email: CountyJudge@epcounty.com

**Notice Address:**

TriWest Group  
4450 Arapahoe, Suite 100  
Boulder, CO 80303

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

KK- 08- 055

**Contract Description: BORDER CHILDREN'S MENTAL HEALTH  
COLLABORATIVE - PROFESSIONAL SERVICES AGREEMENT  
WITH TRIWEST GROUP FOR PROJECT EVALUATION SERVICES  
FY2008**

**COUNTY ATTORNEY ACTION\*\***

**\*\*Requested Amendments/Clarifications:** Please list any questions or comments you have regarding the terms of the contract, as well as any specific provisions to which you object, or which you want to have changed.

Approved as to Form as Submitted  
 Approved as to Form with Amendments/Modifications/Reservations  
Noted Below\*  
 Not Approved

\*1) NA

This 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.

**Josefina J. Brostrom  
Assistant County Attorney**

**Date: APRIL 2, 2008**

## EXHIBIT A

- Wraparound Fidelity Tracking – Reports (in agreed upon format and frequency) describing the extent to which service planning activities are consistent with the range of Wraparound principles described by the National Wraparound Initiative;
- Stakeholder Satisfaction - Reports (in agreed upon format and frequency) of service recipient satisfaction and experiences with the system of care development process;
- System of Care Implementation Challenges – Reporting on the results of interviews with BCMHC stakeholders, regarding perceptions of challenges, successes and possible solutions to successful implementation of the BCMHC system of care;
- Cost Effectiveness Analysis – Reports (in agreed upon format and frequency) of costs and services to supplement the more general Macro International services and costs study with information more specifically tailored to the local project (the specific questions to be addressed will be agreed upon with BCMHC leadership);
- Cultural Competency Focus Groups – A report of the steps that referring agencies and service providers have taken to modify their approaches to serve families within a culturally-appropriate System of Care context; and
- Completion of the Sustainability Tool Kit – The product here would be a completed Sustainability Tool Kit, but the content itself would be gathered from the various stakeholders for synthesis and inclusion into the tool (likely as part of the System of Care Implementation Challenges interviews), rather than making an independent determination about the future sustainability of the project.



<b>Draft Deliverable-Based Cost Estimate BCMHC Evaluation Services</b>		
<b>Deliverable</b>	<b>Cost for Deliverable</b>	<b>Total Cost by Deliverable</b>
Monthly Progress Report and Demographic Update <i>(includes all costs related to data collection and reporting for national longitudinal outcome study)</i>	\$17747.50/month	\$212,970
Wraparound Fidelity Tracking Reports <i>(includes costs related to implementing fidelity tracking and describing the extent to which service planning activities are consistent with the range of Wraparound principles described by the National Wraparound Initiative) Note: includes stipend for Parent Interviewer</i>	\$3000 - Parent Interviewer \$5000 - preliminary report \$3885 - final report	\$11,885
Stakeholder Satisfaction Reports <i>(satisfaction and experiences with the system of care development process)</i>	\$4000 - preliminary report \$2560 - final report	\$6,560
System of Care Implementation Report <i>(summary for local use of results of interviews with BCMHC stakeholders, regarding perceptions of challenges, successes and possible solutions to successful implementation of the BCMHC system of care)</i>	\$7,430	\$7,430
Cost Effectiveness Analysis Report <i>(analysis of costs and services to supplement the more general Macro International services and costs study with information more specifically tailored to the local project)</i>	\$7500 - preliminary report \$3300 - final report	\$10,800
Cultural Competency Report <i>(analysis, discussion and recommendations regarding steps that referring agencies and service providers have taken to modify their approaches to serve families within a culturally-appropriate System of Care context)</i>	\$5,815	\$5,815
Completion of the Sustainability Tool Kit <i>(completed Sustainability Tool Kit)</i>	\$6,560	\$6,560
<b>Total for 1 Year Contract Period (with all activities as specified in RFP)</b>		<b>\$262,020</b>

**EXHIBIT B**