

THE STATE OF TEXAS §
 § SECOND AMENDMENT TO
COUNTY OF EL PASO § INTERLOCAL AGREEMENT

THIS SECOND AMENDMENT TO INTERLOCAL AGREEMENT is entered into on the last date written below by and between the COUNTY OF EL PASO (hereinafter referred to as the "County") and the EL PASO COUNTY HOSPITAL DISTRICT (hereinafter referred to as "the Hospital District") collectively to be known as the "sponsoring agencies".

WITNESSETH:

WHEREAS, the County, the City of El Paso, and the Hospital District established a community mental health and mental retardation center in 2001 in accordance with the authority granted by Texas Health & Safety Code, Chapter 534; and

WHEREAS, the City of El Paso has withdrawn its participation in the governance and operation of the community mental health and mental retardation center so established in 2001 by termination of its participation in the 2001 interlocal agreement by the execution of the First Amendment to Interlocal Agreement by the parties; and

WHEREAS, said undersigned agencies desire to amend the Interlocal Agreement in its entirety to insure the continued existence and operation of the community mental health and mental retardation center, to deal with the withdrawal of the City of El Paso from the Interlocal, reduce the number of trustees, establish new procedures for the selection of trustees for the Board of Trustees as provided by Section 534.003(c), Texas Health and Safety Code, and make new provisions for the removal of trustees; and

WHEREAS, the making of this amendment shall not constitute a termination or dissolution of the community center created in 2001; and

WHEREAS, all of the sponsoring agencies that have signed this Agreement continue to

agree that local contributions are necessary to maintain the community mental health and mental retardation center.

NOW THEREFORE, be it known that the County and the Hospital District enter into this Second Amendment to Interlocal Agreement to amend and replace the 2001 Interlocal Agreement by and between the City of El Paso, the County, and the Hospital District.

I.
Establishment of Community Center

The County and the Hospital District hereby mutually acknowledge the establishment of the community mental health and mental retardation center in 2001, which provides mental health and mental retardation services, and is named the El Paso Mental Health and Mental Retardation Center (EPMHMR Center).

II
Board of Trustees

The El Paso Mental Health and Mental Retardation Center shall be administered by a Board of Trustees. The Board of Trustees, hereinafter “the Board” shall consist of seven (7) persons appointed pursuant to this Agreement by the County and the Hospital District, from among the members of the governing bodies of the sponsoring agencies or from among the qualified voters of El Paso County. Each entity will be entitled to three appointments to the seven-member board. The seventh member will be jointly nominated by the County Judge and the Chair of the Hospital District Board of Managers. Said nominee must be approved by the governing bodies of the County and the Hospital District to be effective.

The term of office of a trustee shall be two years except for the appointments made in the transition year of this agreement. The terms shall be staggered so that complete turnover on the

Board of Trustees does not occur. Each trustee's term will begin on January 1 of the year of appointment and end on December 31st of the year the term ends.

A. Appointment

The regular appointment of trustees by the sponsoring agencies shall occur during the month of December before each year when appropriate vacancies occur by expiration of a term. The appointment for the fulfillment of an unexpired term will occur within a reasonable time after any vacancy has occurred but in no event later than 60 days after the board has given a notice of a vacancy to the appointing sponsoring agency.

B. Transition Year

The sponsoring entities shall make their new board appointments as soon as possible after the effective date of this agreement. The terms of office for all trustees in office on the existing nine-member board on the effective date of this agreement shall terminate on the 1st day of March, 2011. Each sponsoring agency shall designate one of their new appointees to serve until December 31, 2012, and the nominee of the County Judge and Chair of the Hospital District Board shall serve until December 31, 2012. All other new appointees shall serve until December 31, 2013.

C. Notice and Filling of Vacancies

- 1) Upon the anticipated expiration of a term or in the event of a vacancy, the Board shall notify the chief executive officer of the appropriate appointing sponsoring agency, or the County Judge and the Chair of the Hospital District Board of Managers if the terminating trustee was nominated by them, of the pending vacancy.
- 2) The appointing agencies shall post the notice of vacancy to solicit applications from interested qualified individuals on their websites. Such notice shall direct the applicants to forward their application to the office of the chief executive officer of the appointing agency by a deadline set in the notice. The sponsoring entities may also send a press release to the media advising the public of the vacancy.
- 3) Interested persons shall complete a form to be approved by each sponsoring entity for its own use to be entitled "Application for El Paso Mental Health and Mental Retardation Center Board of Trustees Appointment" and submit it to the office of the chief executive officer of the appointing sponsoring agency.
- 4) An appointment must be made by the appropriate sponsoring agency by January 1 for a position beginning its new term or within 60 days after notice of a vacancy for an unexpired term.

5) No trustee can serve more than three (3) consecutive full two-year terms. A vacancy on the Board of Trustees is filled by appointment for the remainder of the unexpired term. It is understood that if an individual is appointed to fill a vacancy in an unexpired term, the person could be re-appointed to serve three (3) full terms in addition to the period of the unexpired term.

6) Each trustee appointed must sign and file any required oath of office with the sponsoring agency prior to the beginning of the trustee's tenure and fulfill all requirements mandated by law and the bylaws of the El Paso Mental Health and Mental Retardation Center including the training required by Section 534.006 of the Texas Health and Safety Code. Additionally, not later than the date on which a member of the board of trustees takes office and not later than the anniversary of that date, each member shall annually execute and file with the EPMHMR Center an affidavit acknowledging that the member has read the requirements for qualification, conflict of interest, and removal as required by Chapter 534 of the Texas Health and Safety Code.

D. Criteria for Selection

Each sponsoring agency shall develop criteria for selection of Board of Trustee members so as to fairly analyze the interests, abilities, character and professionalism of the applicant. Board appointments must reflect the ethnic and geographical diversity of the service area. As stated above, members of the governing bodies of the sponsoring agencies may be appointed to the Board. Additionally, at least one appointee of each sponsoring agency shall have expertise in areas such as education, administration, fiscal management, healthcare, medicine or law. The qualifications of the remaining appointees will be left to the discretion of each sponsoring agency. The appointee jointly nominated by the County Judge and the Chair of the Hospital District Board of Managers must be a consumer or family member of a consumer of the types of services offered by the community center, but shall not receive those services from the EPMHMR Center.

Under no circumstances shall any person be eligible to be appointed to the Board who owns or controls or whose spouse owns or controls, directly or indirectly, more than a 10% interest in a business entity or organization receiving funds from the community mental health and mental retardation center by contract or other method. Nor shall any person be eligible to be appointed to the Board of Trustees who works for or is affiliated with, or whose spouse works for or is affiliated with, any organization that receives tangible goods or funds from the EPMHMR Center, or the person or their spouse uses or receives tangible goods or funds from the EPMHMR Center. Reimbursements authorized by law for Board membership, attendance, or expenses are expressly excepted from this prohibition.

E. Removal of a Member from the Board of Trustees

1. Removal by the Board:

(a) A trustee shall be removed from the Board by majority vote of the Board of Trustees as then legally constituted and serving for the following reasons:

(1) The loss of residency in El Paso County, Texas, or the trustee's status as a qualified voter of El Paso County, Texas.

(2) Conviction of any offense classified as a felony, or a misdemeanor offense involving moral turpitude, or violation of any of the Rules of the Texas Department of State Health Services.

(3) Failure to divest him or herself from a conflicting interest as described in section D within a reasonable time after its discovery.

(4) For any of the reasons outlined under § 534.0065 of the Texas Health & Safety Code.

(b) A trustee may be removed from the Board by a 2/3 majority vote of the Board, as then legally constituted and serving, for the following reasons:

(1) Failure to maintain an acceptable standard of attendance at meetings, as determined by the Board of Trustees.

(2) Violation of any by-laws adopted by the Board of Trustees.

(c) A member subject to removal shall have a right to have an open hearing before the Board of Trustees if he so desires. The sponsoring agency that initially appointed the individual removed by the Board may not reverse the decision of the Board.

2. Removal by the Appointing Sponsoring Agency:

Should the Board of Trustees fail to remove a member of the Board pursuant to Section (E)(1)(a) above, the member may be removed by the appointing sponsoring agency. In this instance, the member subject to removal shall have a right to have an open hearing before the sponsoring agency if he so desires. A sponsoring entity may also remove, without cause, its appointed trustee who is a member of the governing body upon vacation from office with the governing body by the trustee.

F. The Board of Trustees shall adopt bylaws that set forth procedures to assure that the Board timely and expediently accomplishes all tasks in accordance with this Section.

III.
Powers and Duties

The El Paso Mental Health and Mental Retardation Center shall have the responsibility and duty to ensure a continuum of comprehensive mental health and mental retardation services in El Paso County. The EPMHMR Center shall have all the powers, duties, responsibilities and authority of a community mental health and mental retardation center under state law. The Board of Trustees shall be responsible for the administration of the EPMHMR Center. The Board of Trustees shall adopt bylaws for the operation of the Board and the EPMHMR Center consistent with state law and this agreement. Except as otherwise specified in this Agreement, the EPMHMR Center and the Board of Trustees shall exist as a separate body politic, agency of the state and unit of government; autonomous and independent of the County and the Hospital District pursuant to Texas Health & Safety Code § 534.001(c)

The Board of Trustees meetings shall be open to the public and in accordance with Chapter 551 of the Texas Government Code. The Board of Trustees shall send to each sponsoring agency a copy of the approved Minutes of each Board meeting.

IV.
Budget and Funding

The County and the Hospital District shall make contributions, which have an ascertainable market value, to the El Paso Mental Health and Mental Retardation Center in accordance with and during their respective fiscal years, and in accordance with their accounting and budget procedures and this agreement. Each sponsoring agency shall contribute not less than \$100,000 per fiscal year. Each agency may contribute land, buildings, facilities, services, personal property, personnel, and funds to the EPMHMR Center in satisfaction of this Agreement. All contracts for services or for the use of land, buildings, facilities or personal

property must be directly with the EPMHMR Center for a sponsoring agency to receive credit towards its annual contribution amount, and such contract shall specifically provide for the agreed-upon value of the services or uses provided.

Within thirty days after each sponsoring entity adopts its budget for each fiscal year during the term of this Agreement, each sponsoring agency shall provide written notice to the other sponsoring entities and to the EPMHMR Center detailing the nature and extent of its intended contribution to the EPMHMR Center for the fiscal year.

V.
Independent Audit

The Board shall enlist an independent certified public accountant to perform an annual audit and prepare certified financial statements that shall be presented to the Board and the sponsoring agencies within thirty days of completion of the audit. The fiscal year of the EPMHMR Center shall be from October 1 through September 30.

VI.
Period of Contract

This agreement shall become effective when signed by all parties and shall continue in effect until dissolved and terminated by either party. A party wishing to effectuate a termination of its participation under this contract must give 90 days written notice to the other parties and the Texas Department of State Health Services. On the effective date of the termination, that party's appointees to the Board of Trustees shall be removed from the Board. The remaining party may continue operation of the EPMHMR Center pursuant to Texas Health and Safety Code, Sections 534.001 and 534.002.

VII
Compliance with Law

The El Paso Mental Health and Mental Retardation Center shall comply with all applicable rules and regulations of the Texas Department of State Health Services, federal and state statutes, and the ordinances of the City of El Paso.

VIII.
Records and Reports

The El Paso Mental Health and Mental Retardation Center shall present to each sponsoring agency records and a report relating to its operation and budget on a semi-annual basis at a posted meeting of each sponsoring agency.

In addition, the EPMHMR Center shall furnish to the sponsoring agencies by December 31st of each year during the term of this Agreement a report analyzing the effectiveness of joint administration of mental health services and mental retardation services under one community center as created pursuant to this agreement. If a need is shown to separate the joint administration of these services, the sponsoring agencies may jointly consider separating the mental health and mental retardation services.

The County and the Hospital District shall, for the purpose of audit and examination, be permitted to inspect all work, materials, payrolls, and other data and records of the EPMHMR Center during normal business hours and in a reasonable manner.

IX.
Visits

Representatives from the sponsoring agencies may visit any of the EPMHMR Center's facilities at any time.

X
No Employer-Employee Relationship Created

Nothing contained herein shall be construed as creating the relationship of employer and employee between the County or the Hospital District and the El Paso Mental Health and Mental Retardation Center, its officers, agents, servants or employees.

XI.
Law Governing Contract –Venue

For the purpose of determining place of contract and the law governing same, this contract is entered into in the City and County of El Paso, State of Texas, and shall be governed by the laws of the State of Texas. Venue for any cause of action related to this contract shall be in El Paso County, State of Texas.

XII.
Severability Clause

If any word, phrase, clause, paragraph, sentence, part or provision of this agreement or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the agreement shall nevertheless be valid.

XIII.
Entire Agreement

This contract constitutes and expresses the entire agreement between the parties; it supersedes any prior agreement relating to the operation of the El Paso Mental Health and Mental Retardation Center, and shall not be amended or modified except by written instrument signed by all parties.

IN WITNESS WHEREOF, the County of El Paso and the El Paso County Hospital District have executed this contract as of the date last written below.

ATTEST:

THE COUNTY OF EL PASO

County Clerk

By _____
County Judge Veronica Escobar
Date: January 24, 2011

ATTEST:

EL PASO COUNTY HOSPITAL DISTRICT

Secretary

By _____
Dr. Jose Luna
Chair
Hospital District Board of Managers
Date: _____

Approved as to form:

Assistant County Attorney

Approved as to form:

Chief Legal Officer
El Paso County Hospital District