



# Travis County Commissioners Court Agenda Request

**Meeting Date:** September 11, 2012

**Prepared By/Phone Number:** David A. Salazar 854-4107

**Elected/Appointed Official/Dept. Head:** Sherri E. Fleming,  
County Executive for Health and Human Services and Veterans Service

**Commissioners Court Sponsor:** Judge Samuel T. Biscoe

**AGENDA LANGUAGE:**

Consider and Take Appropriate Action on the Amended and Restated Interlocal Agreement Between Travis County Healthcare District, D/B/A Central Health, and Travis County.

**BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:**

Please see attached documentation.

**STAFF RECOMMENDATIONS:**

Please see attached documentation.

**ISSUES AND OPPORTUNITIES:**

Please see attached documentation.

**FISCAL IMPACT AND SOURCE OF FUNDING:**

Please see attached documentation.

**REQUIRED AUTHORIZATIONS:**

- John Hille, Assistant County Attorney
- Beth Devry, Assistant County Attorney
- Leslie Browder, County Executive, Planning and Budget Office
- Jessica Rio, Planning and Budget Office
- Deborah Ann Laudermilk, Planning and Budget Office

AGENDA REQUEST DEADLINE: All agenda requests and supporting materials must be submitted as a pdf to Cheryl Aker in the County Judge's office, [Cheryl.Aker@co.travis.tx.us](mailto:Cheryl.Aker@co.travis.tx.us) by Tuesdays at 5:00 p.m. for the next week's meeting.



**TRAVIS COUNTY HEALTH and HUMAN SERVICES  
and VETERANS SERVICE**  
502 E. Highland Mall Blvd.  
P. O. Box 1748  
Austin, Texas 78767

**Sherri E. Fleming**  
County Executive for HHS/VS  
(512) 854-4100  
Fax (512) 279-1608

**DATE:** September 6, 2012

**TO:** MEMBERS OF THE COMMISSIONERS COURT

**FROM:** \_\_\_\_\_  
Sherri E. Fleming, County Executive for  
Health and Human Services and Veterans Service

**SUBJECT:** Amended and Restated Central Health Interlocal

**Proposed Motion:**

Consider and Take Appropriate Action on the Amended and Restated Interlocal Agreement Between Travis County Healthcare District, D/B/A Central Health, and Travis County.

**Summary and Staff Recommendations:**

Since the creation of the Travis County Healthcare District, now doing business as Central Health, Travis County has provided and continues to provide support to Central Health pursuant to the provisions of an Interlocal Agreement. Services currently provided by Travis County to Central Health include case management/ investment management services, risk management services, assistance processing Tobacco Settlement distributions, limited media services, legal services, use of certain facilities, and other support services in accordance with provisions of the Interlocal Agreement.

The Central Health Board of Managers was expected to approve moving forward with this version of the Interlocal at their September 6, 2012, Board Meeting.

Staff recommends that the Court approve the Amended and Restated Interlocal Agreement attached.



# CENTRAL HEALTH

## MEMORANDUM

To: Travis County Commissioners Court

From: Patricia A. Young Brown, President and CEO

Date: September 4, 2012

Re: Consider and take appropriate action on the Amended and Restated Interlocal Agreement between Travis County Healthcare District d/b/a Central Health and Travis County.

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During the time of the creation of the Travis County Healthcare District (“Central Health”), and subsequent to its creation, Travis County (“County”) provided certain support services to Central Health pursuant to an Interlocal Agreement. Over the years, the County and Central Health have entered into multiple amendments and renewals to that Agreement. The County continues to provide limited support services to Central Health. To incorporate the numerous amendments over the years and create a more current and updated document, the Agreement was amended and restated to its current form.

The services currently provided by Travis County to Central Health include cash management/investment management services; certain risk management services upon request; assistance with processing the Tobacco Settlement distributions; limited media services; legal services; the use of certain facilities; and other support services that may be agreed upon by the parties. A copy of the Interlocal Agreement is included in the backup.

The Interlocal Agreement is expected to be approved by Central Health during the September 5, 2012 board meeting.

**AMENDED AND RESTATED INTERLOCAL AGREEMENT BETWEEN  
TRAVIS COUNTY HEALTHCARE DISTRICT AND TRAVIS COUNTY,  
TEXAS**

This Amended and Restated Interlocal Agreement (this "Agreement") is entered into between the Travis County Healthcare District d/b/a Central Health ("Central Health"), a hospital district created under Chapter 281 of the Texas Health & Safety Code, as amended (the "Act"), and Travis County, Texas (the "County"), a political subdivision of the State of Texas.

**RECITALS**

**WHEREAS**, Central Health and the County, in November of 2005, entered into a previous Interlocal Agreement regarding services the County would provide Central Health; and

**WHEREAS**, Central Health and the County had multiple amendments and renewals to the Agreement; and

**WHEREAS**, Central Health and County desire to reflect their current contractual relationship;

**WHEREAS**, Central Health and County desire to continue the contractual relationship to ensure that efficient delivery of healthcare to indigent and needy residents of the County continues;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements set forth herein, the amount and sufficiency of which are acknowledged, Central Health and County agree as follows:

**SECTION 1. COUNTY SERVICES**

1.0 The County shall provide services to be rendered by the County through the relevant County departments pursuant to this Agreement ("Services") subject to early termination or extension as provided in the Agreement and subject in all cases to the terms, limitations and conditions of this Agreement. Upon agreement of the County and Central Health and under terms and conditions similar to those in this Agreement, the County may in the future provide Services to Sendero Health Plans, Inc., a non-profit organization formed by Central Health with Central Health as the sole member, if such an arrangement complies with all applicable statutes, regulations and policy as determined by the County and Central Health.

1.1 County shall provide cash management and investment services through the Travis County Cash/Investment Management Division of the Planning and Budget Office ("Cash/Investment Management") and through the Travis County Treasurer's Office in compliance with (A), (B) and (C);

- (A) County, through Cash/Investment Management shall provide the following Cash Management Services related to daily cash management, selection of securities and completion of buy orders, record-keeping, and reports:
- (I) Manage Central Health resources in accounts established so that the balances in the operating account for each day are approximately \$25,000.00 by using transfers to and withdrawals from local government investment pools;
  - (II) Inform Central Health if the total balances in the accounts at Central Health's Depository Bank and local government investment pools fall below \$25,000.00;
  - (III) Comply with the Investment Policy approved for Central Health Board of Managers ("Board"), including the highest ethical standards and disclosures required by the Texas Public Funds Investment Act;
  - (IV) When purchasing individual securities, make purchases from Broker/Dealers on the list of Broker/Dealers approved by the Commissioners Court and adopted by the Board and purchase notes so that the maturity of the various investments match the timing of the anticipated large payments throughout the contract period such as payment for services on contracts and payroll;
  - (V) Use the procedures and controls currently in place within Travis County between Cash/Investment Management and the County Treasurer's Office to improve the accuracy of cash management and to provide checks and balances in the investment and cash management processes;
  - (VI) Keep accurate records of all investments and make these available to the Board and Central Health President and CEO ("Administrator") for examination and copying upon request;
  - (VII) Prepare and provide the following reports to the Administrator and the Board:
    - a) a monthly report of new investments and current portfolio composition, and
    - b) a Quarterly Report as required by the Texas Public Funds Investment Act and the Investment Policy approved by the Board;
  - (VIII) Keep a record of daily deposits, payroll expenses, and other expenses to provide historical information for future cash flow estimates;

- (IX) Remain informed about the financial markets to optimize the return on any purchases of Treasury Discount Notes;
  - (X) Require the Investment Officers to participate in appropriate investment training as required by the Texas Public Funds Investment Act;
  - (XI) Coordinate with Central Health in an annual review and revision as necessary of the Central Health Investment and Collateral Policies and Procedures;
  - (XII) Compile a list of Broker/Dealers, approved by Travis County Commissioners Court, who are interested in doing business with Central Health and have signed Central Health's Certification, and present recommendations to Central Health Board for approval;
  - (XIII) Monitor the adequacy of collateral on a regular basis; and
  - (XIV) Audit the accuracy of the Depository Bank's Account Analysis, including the calculation of bank charges and earnings credit each month, and communicate variances with the Bank to ensure Central Health pays accurate bank fees.
- (B) During the contract period, the County, through the County Treasurer shall provide the following Services related to payment for investment purchases and settlement of securities:
- (I) Wire funds to local government investment pools and to Broker/Dealers via Central Health's Safekeeping Agent, as appropriate for investment and cash management purposes;
  - (II) Deposit principal and interest of individual securities at maturity to Central Health Depository Bank account directed by the Investment Manager;
  - (III) Prepare reports that are needed to provide cash management services based on information obtained from the electronic information systems provided by Central Health's Depository Bank about daily bank account balances, debit and credit details, controlled disbursement and Automated Clearing House transactions, and provide a copy to Cash/Investment Management;
  - (IV) Analyze the collateral needs of Central Health and be responsible for purchasing adequate collateral, monitoring adequacy of collateral, substitution of collateral, and safekeeping of collateral;

- (V) Provide accurate records of all allocation of staff work time used to provide the Services in the contract period in order to determine appropriate charges for the next contract year, if necessary;
  - (VI) Work in collaboration with Central Health's Depository Bank to provide the technology that is required to insure the security and integrity of all banking transactions and implement up to date software and hardware to provide the Services as stated in the contract; and
  - (VII) Perform internal audit of all transactions to provide the essential audit trail for all transactions.
- (C) In exchange for the Services described in 1.1 (A) and (B), Central Health agrees to pay County the total sum of \$80,771.67, paid in monthly payments of \$6,730.97. The County Executive for Travis County Planning and Budget Office, and Central Health's President and CEO may amend the amounts of the total sum and monthly payments set forth in this section by an instrument in writing that is signed by both parties.

1.2 County may provide the following risk management consulting services through the Risk Management Division of the Travis County Human Resources and Management Department upon written request by Central Health;

- (A) identify the risks and assess the level of risk;
- (B) recommend the appropriate type of risk control;
- (C) assist in determining the best method of financing losses and assist in implementing that method either through retention or purchase of insurance.

1.3 County, through the Planning and Budget Office, shall provide Central Health assistance with the preparation and processing of the claim for a pro rata share of the Tobacco Settlement Distribution for Hospital District Expenditures incurred in Travis County by providing Central Health with the amount of unreimbursed Inmate Health Care incurred by County each year within a reasonable time after the end of the period covered by the claims and within a reasonable time before the date on which the claim forms must be submitted.

1.4 County shall provide media services through Travis County TV. Central Health shall provide to County an electronic format of the recorded meeting of the 2<sup>nd</sup> regularly scheduled meeting of Central Health's Board of Managers each month. County shall televise on Travis County TV Channel 17 the recorded meeting one time during the week following receipt of the electronic format from Central Health. Central Health shall reimburse County for actual cost, including labor, for converting the electronic recording into a format that can be broadcast on Travis County TV, if needed. County shall invoice Central Health on a quarterly basis. Central Health shall pay the invoice within thirty (30) days of receipt.

1.5 County shall provide legal advice and counsel through the Travis County Attorney's Office in compliance with Texas Health and Safety Code Section 281.056, reimbursable to County up to a cost not-to-exceed amount of \$405,880 for Fiscal Year 2012 and each fiscal year thereafter, until amended as allowed by this Agreement. The County Attorney's Office will invoice Central Health monthly for the cost of services. Central Health shall pay the invoice within 30 days of receipt.

1.6 County shall maintain a functional link on its web page to the Central Health website.

1.7 The County will maintain records of time spent in providing Services during the contract period to determine appropriate charges for the following year.

1.8 County shall perform all Services in a professional manner, at a standard acceptable for similar services in Travis County and in a reasonable and efficient manner. Services will be provided upon request, as resources are available.

1.9 County shall conform to all laws, regulations and ordinances applicable to the performance of this contract.

1.10 In performing Services, the County shall utilize its own human resources, procurement and payment policies and procedures to employ, terminate, manage, contract with, purchase from, supervise and pay any supplier, service provider, employee, contractor or other person as the County may deem appropriate in its sole discretion. The County may enter into such arrangements and contracts to provide Services. If there are such contracts, then the County shall enter into them in its own name, provided, however, that in entering into or renewing any contract with a third party (excluding employee arrangements for employees of the County), the County shall provide in the contract that the contract may be assigned to Central Health at the option of the County and Central Health. It is acknowledged that this paragraph does not apply to purchase and sale agreements for the investment of Central Health funds and that the Cash/Investment Manager shall enter into purchase and sale agreements for the investment of Central Health funds in the name of Central Health.

1.11 The County shall maintain books and records of its operations under this Agreement in accordance with the financial policies of the County and in a manner that allows the County to provide to Central Health the information required to be provided under this Agreement. The County and Central Health may establish, and the County will comply with, a mutually acceptable format and schedule for monthly reports to Central Health on the County's activities under this Agreement.

1.12 Use of Mixed Use Facilities.

(A) The parties acknowledge that certain Central Health employees will provide eligibility services upon County property. County grants to Central Health a License for Central Health employees utilizing space in the County Mixed Use Facilities as identified in Exhibit A as of the Effective Date to continue to utilize such spaces in the same locations and approximately the same square footage of space as provided upon the Effective Date of the Agreement, for so long as Central Health continues its current



staffing levels, unless otherwise agreed upon by both parties. The services delivered by Central Health staff will remain the same, as well as the number of employees delivering the services provided prior to the Effective Date, and any changes to this arrangement shall be mutually agreed upon by both parties.

(B) Central Health will provide the necessary supplies and equipment, including computer and network connections for its employees on County property, other than furniture and other fixtures provided by the County on the Effective Date. Central Health shall retain responsibility for the health and safety requirements for its employees. Central Health will maintain workers compensation insurance coverage for its employees on County property. Central Health employees will follow Central Health procedures and respond to Central Health supervisors. At no time will Central Health employees attain County rights or benefits.

(C) The County has elected to retain ownership of County Mixed Use Facilities owned by the County. However, should Central Health and the County agree to transfer or lease some or all of the Mixed Use Facilities from the County to Central Health, the balance of this paragraph shall be the base provisions of such an agreement. This paragraph is only intended to address such a transfer. It is not intended to address a sale/leaseback, or any type of transaction with a third party. Any transfer of title or Lease must comply with applicable FQHC requirements. FQHC Requirements refers to the rules and health center program expectations specified in law and regulation as applicable to federally qualified health centers including the Bureau of Primary Healthcare Policy Information Notice 98-23: Health Center Program Expectations. Any transfer to Central Health by the County shall be initiated by written notice to the other to cause negotiating of a lease, and shall be in the form of a lease to Central Health of the portion of each such facility used in the operation of the Services for a suggested term ending on September 30, 2024, subject to earlier termination by either party for breach of a lease, and failure to cure such breach in accordance with the provisions set forth in the lease, and subject to earlier termination by the County as set forth below if the County transfers such facility to a third party. Subject to any applicable legal restrictions, the County shall give Central Health at least one hundred eighty (180) days advance written notice of any such transfer and provide Central Health an opportunity for the first ninety (90) days of such period to negotiate the purchase of the entire facility for its appraised market value. The County shall charge Central Health rent, for the portion of each facility leased to Central Health, equal to the portion of operating, maintenance and utility costs allocable to the space leased by Central Health; provided that: (1) Central Health may at any time elect to perform its own maintenance and/or operations and/or to purchase directly its own utilities in which event the County will not charge for applicable items; (2) the rent specified in this section shall constitute the only rent or charge made by the County to Central Health with respect to Central Health's occupancy of the space during the term of the lease; and (3) Central Health may terminate any such lease on not less than 180 days prior written notice to the County. Any lease executed between Central Health and the County in accordance with this Section shall contain the terms set forth above and other commercially reasonable terms not inconsistent with the same or any other provision of this Agreement.

(E) Except as expressly provided herein, the County shall not be responsible for repairing, replacing or renovating any Central Health facility, whether or not owned or leased by the County. Similarly, Central Health is not required to repair, replace or renovate any such facility. The County will maintain or procure property insurance covering each County Clinic as identified in Exhibit A during the Agreement Term with reasonable coverage terms. Before any renewal of any such policy during such coverage period, the County will consult with Central Health and, subject to cost impact and related adjustments, work with Central Health to modify coverages. The County may terminate coverage of any County Mixed Use Facility when Central Health (or the County or other contractor to Central Health) is no longer occupying space in the facility. The County will comply at Central Health's cost with reasonable directives of Central Health regarding installing or enhancing security or fire detection/suppression systems in Central Health facilities. The parties agree that in the event of any casualty loss or condemnation of any such facilities that impairs the ability of the City to operate such facility, the parties will confer to determine promptly the most appropriate action. In the case of a County Mixed Use Facility, if the County determines to repair or replace the facility, it will permit Central Health to reoccupy the portion of the facility that it formerly occupied (or an equivalent portion) under the lease terms described in this Subsection. In the case of a County Mixed Use Facility, if the County determines not to repair or replace the facility, Central Health may determine whether to do so or whether to terminate the use, lease or sublease, as applicable, of the same.

## **SECTION 2. CENTRAL HEALTH OBLIGATIONS**

2.0 For the performance of Cash/Investment Management Services, Central Health is required to perform Central Health Obligations and waives any claims that Central Health might be able to make due to the rate of return on its investments during the contract period except for claims resulting from fraud, malfeasance or other illegal activity.

2.1 Central Health and Cash/Investment Management will collaboratively amend Central Health's existing Investment Policy, subject to approval of Central Health Board and the Commissioners Court. If additional changes are desired by Central Health, it shall consult with the County Cash/Investment Management Manager for acceptability to both County and Central Health.

2.3 Central Health will maintain the delegation of investment authority of Central Health Board to the Investment Officers for the contract period.

2.4 Central Health will adopt, from the lists of Broker/Dealers approved by the Travis County Commissioners Court for the contract period, those Broker/Dealers who have signed a Certification on behalf of the Travis County Hospital Central Health as the Broker/Dealers approved for transactions on behalf of Central Health during the contract period.

2.5 Central Health will coordinate opening of any new bank account with Cash/Investment Management prior to such opening to ensure that Cash/Investment Management can provide the necessary services related to that new account.

2.6 Central Health will maintain an account with the safekeeping department at Central Health's Depository Bank to facilitate the purchase and maturation of investment securities.

2.7 Central Health will maintain the authorization of the staff members in the Treasurer's Office who are authorized to perform repetitive wire transfers for Travis County to perform repetitive wire transfers for investment purposes for Central Health.

2.8 Central Health will maintain the authorization of the Treasurer's Office to access information related to the Controlled Disbursement account at Central Health's Depository Bank through electronic information systems provided by Central Health's Depository Bank.

2.9 Central Health will maintain the authorization of the Treasurer's Office to access the daily bank account balance(s) and debit and credit detail information through electronic information systems provided by Central Health's Depository Bank.

- (A) Central Health will maintain at least one account at TexPool.
- (B) Central Health will maintain the authorization of Investment Officers to make deposits to the accounts at TexPool and to use repetitive wires to withdraw funds from the accounts at TexPool for deposit to Central Health's operating account at Central Health's Depository Bank.
- (C) Central Health will maintain at least one account with at least one other local government investment pool that has been created to function as a money market mutual fund such as TexasDAILY.
- (D) Central Health will maintain the authorization of Investment Officers to make deposits to all accounts established at other local government investment pools and to use repetitive wires to withdrawal funds from the accounts established at other local government investment pools for deposit to Central Health's operating account at Central Health's Depository Bank.

2.10 Central Health shall perform the following obligations throughout the contract period:

- (A) If Central Health desires access to the information related to investment deposits and withdrawals at all times, authorize a Central Health employee as an additional Authorized Representative for Central Health's Depository Bank and each local government investment pool to perform inquiry only of selected information;
- (B) In compliance with the Texas Public Funds Investment Act, review Central Health Investment Policy annually to determine whether the changing needs of Central Health are still being met by the policy, including the apportionment of

the total portfolio that may be invested in a single investment if the need for liquidity in the initial year does not continue;

- (C) Use the “prudent investor rule” as described in the Travis County Investment Policy to determine whether Investment Officers have exercised prudence with respect to any investment decision;
- (D) Inform the Treasurer of all funds initiated by or deposited by Central Health staff in Central Health’s Depository Bank and follow the recommendation of the Treasurer about collateralization of Central Health’s deposits at Central Health’s Depository Bank that are in excess of the current dollar amount that is insured by the Federal Deposit Insurance Corporation; and
- (E) Require Central Health staff responsible for supervision of the investment function to complete the appropriate investment training as required by the Texas Public Funds Investment Act.

2.11 Central Health acknowledges that County is unable to perform its responsibilities related to each Service unless Central Health has performed its obligations related to the Service.

2.12 Central Health is required to reimburse County an amount equal to the Unreimbursed Inmate Health Care multiplied by the percentage of reimbursement of the Total Allocable Expenditures received by Central Health for the claim for each calendar year expenditures this Agreement is in effect. Within 30 days after receipt of Central Health’s pro rata share of the Tobacco Settlement Distribution for Hospital District Expenditures incurred in Travis County for each calendar year, Central Health shall forward County’s share to County.

2.13 For all Services provided by County under this Agreement for Section 1.1(A), County shall serve as the custodian of the records that are associated with such Services on Central Health’s behalf. For all other Services provided by County under this Agreement, County agrees to transmit to Central Health monthly all records related to such Services and the provision of such Services.

2.14 To the extent that any activity contemplated by this Agreement (including any transfer if a contract, lease or license to Central Health) requires the consent of a third party, Central Health and the County shall cooperate to obtain such consent and, if such consent cannot be obtained, to identify a fair and equitable resolution of such issue within the constraints of applicable law.

2.15 Central Health acknowledges that any payment to be made by Central Health pursuant to this Agreement shall be with current revenues available to Central Health.

### **SECTION 3. TERM AND TERMINATION**

3.0 Initial Term. This Agreement shall become effective on October 1, 2012, and shall terminate on September 30, 2013 (the “Initial Term”).

3.1 Renewal Term. This Agreement automatically renews for five (5) additional twelve (12) month periods (each a “Renewal Term”), until either party desires to terminate the Agreement, with the final term expiring on September 30, 2018. The Initial Term and any Renewal Term shall be referred to as an “Agreement Term.” All provisions of this Agreement shall remain unchanged and in full force and effect unless otherwise amended in writing by the parties pursuant to the terms of the Agreement.

3.2 Budget Notice. Unless the County or Central Health has earlier elected to terminate the County’s obligation to provide Services (with such termination effective prior to the commencement of the next fiscal year), the County Planning and Budget Office will furnish to Central Health its draft proposed budget for departments providing services to Central Health, for each fiscal year on or before May 31 of the immediately preceding fiscal year. Notwithstanding the foregoing, either party may, by written notice to the other party terminate the obligation of the County to provide Services as of a date specified in such notice that is not earlier than one year after the date such notice is furnished. The County and Central Health may prepare Amendments to this Agreement to annually address cost changes.

3.3 Upon termination of this Agreement to provide Services to Central Health, the County shall, subject to the rights of third parties, assign to Central Health all contracts used by the County solely in the performance of the Services, and shall cooperate with Central Health in obtaining for Central Health, at Central Health’s cost, rights under or replacements for multi-purpose contracts that the County has used in performing the services. Central Health, and not the County, shall be responsible for all obligations accruing from and after the date of assignment under any such contract.

3.4 Termination for Default. The County may by written notice to Central Health, terminate some or all of the County’s obligation to provide Services under this Agreement if Central Health defaults in the performance of its obligations (including compliance with any covenants) under this Agreement and such default is not cured within thirty (30) days of the receipt of written notice thereof. Central Health may by written notice to the County, terminate some or all of the County’s obligation to provides Services if the County defaults in the performance of its obligations (including compliance with any covenants) under this Agreement and such default is not cured within thirty (30) days of receipt of notice thereof.

3.5 Turnover. Upon termination of the obligations of the County to perform Services, the parties shall cooperate to effect a turnover by the County of the related responsibilities and assets to Central Health or Central Health’s designee.

3.6 Termination for Convenience. In addition to, and without restricting any other legal, contractual, or equitable remedies otherwise available, either party may terminate some or all of the Services provided under the Agreement without cause by giving the other party at least sixty (60) days written notice. Upon the expiration of the sixty (60) day notice period, the County will no longer have the obligation to provide the terminated service(s) and Central Health will no longer have an obligation to make monthly payment for the service(s). The Parties agree to work together in good faith to facilitate the transition of the terminated service.

3.7 Termination for Gratuities. Central Health may terminate this Agreement if it is found that gratuities of any kind, including entertainment or gifts, were offered or given by the County or any agent or representative of the County to any Central Health official or employee with a view toward securing favorable treatment with respect to this Agreement. If this Agreement is terminated by Central Health pursuant to this provision, Central Health shall be entitled, in addition to any other rights and remedies, to recover from the County at least three times the cost incurred by the County in providing the gratuities.

3.8 Funding Out. Despite anything to the contrary in this Agreement, if, during Central Health budget planning and adoption, Central Health fails to provide funding for this Agreement for the following Central Health fiscal year, Central Health may terminate this Agreement after giving County written notice that this Agreement is terminated due to the failure to fund it.

#### SECTION 4. MISCELLANEOUS

4.0 Notices. Any notice required or permitted by this Agreement shall be sufficient for all purposes if delivered in writing to the applicable party at its address set forth below or such other address as may be designated by such party in writing.

County:

Honorable Samuel T. Biscoe (or his successor)  
County Judge  
P.O. Box 1748  
Austin, Texas 78767-1748

With a copy to:

Honorable David Escamilla (or his successor)  
County Attorney  
P.O. Box 1748  
Austin, Texas 78767-1748  
Attn: File No. 188.164

Central Health:

Patricia A. Young Brown (or her successor)  
President and CEO  
Travis County Hospital District  
1111 E. Caesar Chavez St.  
Austin, Texas 78702

With a copy to:

Honorable David Escamilla (or his successor)  
County Attorney  
P.O. Box 1748  
Austin, Texas 78767-1748  
Attn: File No. 231.19

4.1 Change of Address. Each party may change the address for notice to it by giving notice of the change in compliance with this section.

4.2 Relationship of Parties. The parties expressly acknowledge and agree that County is an independent contractor, operating solely in that capacity, and assumes all of the rights, obligations and liabilities applicable as an independent contractor. No employee of County shall be considered an employee of Central Health, or gain any rights against Central Health pursuant to Central Health's personnel policies.

4.3 Force Majeure. With the exception of the obligation to make payments hereunder, each party shall be relieved of any obligation to the extent that its ability to perform the same is prevented or impaired by any act of a third party or other event or occurrence outside of its control, including without limitation:

- (a) strike, work stoppage, or slow down;
- (b) illness, death or disability of key employees;
- (c) fire, earthquake, flood, ice storm, tornado, hurricane, or other severe weather conditions;
- (d) criminal acts, acts of war, riot, vandalism, terrorism and the like;
- (e) failure or disruption in the operation of the Internet, any other telecommunications systems or hardware, any software program, or any equipment, or any outage of power, water or other utilities; and
- (f) any injunction or other court order, administrative order, administrative decision or similar action by any governmental authority that prohibits, restricts or increases the risk or cost to the County of performing the services.

4.4 Limitation on Damages. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR SPECIAL, CONSEQUENTIAL, INDIRECT, ENHANCED, PUNITIVE, OR SIMILAR DAMAGES (INCLUDING LOST PROFITS) HOWSOEVER CAUSED, WHETHER AS A CONSEQUENCE OF NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR INTENTIONAL MISCONDUCT, EVEN IF THE PARTY AGAINST WHOM SUCH DAMAGES ARE SOUGHT HAD REASON TO KNOW OF THE POSSIBLE EXISTENCE OR INCURRENCE OF SUCH DAMAGES.

4.5 Each party represents to the other that it is duly authorized to enter into and perform this Agreement in accordance with its terms. Central Health represents and warrants to the County that the Board of Managers of Central Health has authorized and directed the President and CEO of Central Health so that the President and CEO has full authority and direction, without any further approval or authorization from any entity or individual, to make when due any payment in accordance with the terms of this Agreement.

4.6 Claims Notification. If County receives notice or becomes aware of any claim, or other action, including proceedings before an administrative agency, which is made or brought by any person, firm, corporation, or other entity against County or Central Health in relation to the services provided under this Agreement, County shall give written notice to Central Health of: the claim, or other action within five (5) working days after being notified of it or the threat of it; the name and address of the person, firm, corporation or other entity that made or threatened to make a claim, or that instituted or threatened to institute any type of action or proceeding; the basis of the claim, action or proceeding; the court or administrative tribunal, if any, where the claim, action or proceeding was instituted; and the name or names of any person against whom this claim is being made or threatened. This written notice shall be given in the manner provided in Section 4.0 of this Agreement. Except as otherwise directed, County shall furnish to Central Health copies of all pertinent papers received by Consultant with respect to these claims or actions.

4.7 Entire Agreement; Full Satisfaction of Obligations. This Agreement represents the full and final agreement between the parties hereto and supersedes any and all prior written and verbal communications, understandings and/or agreements.

4.8 No Third Party Beneficiaries. No provision of this Agreement is intended to benefit any person or entity, nor shall any person or entity not a party to this Agreement have any right to seek to enforce or recover any right or remedy with respect hereto.

4.9 No Waiver; Amendments. No course of conduct or verbal waiver or consent shall be deemed a waiver by either party of its rights hereunder. No amendment to this Agreement shall be binding on the parties unless set forth in writing and signed by the party sought to be bound. Each party is on notice as to the legal requirements relating to authorizing waivers or amendments by the other party.

4.10 Dispute Resolution.

- (A) Definition of Dispute. "Dispute" means any and all disagreements, questions, claims, or controversies arising out of or relating to this Agreement, including the validity, construction, meaning, performance, effect, or breach of the Agreement.
- (B) Negotiation. In the event of a Dispute between the parties, the parties shall promptly, amicably, and in good faith attempt to resolve the Dispute through informal negotiations. A disputing party shall give written notice of the Dispute to the other party that shall contain a brief statement of the nature of the Dispute. If the parties are unable to resolve the Dispute within thirty (30) days of the receipt by the adverse party of the written notice of Dispute, the parties may submit to mediation as set forth herein.
- (C) Mediation. If a Dispute arises between the parties that cannot be resolved through negotiation, the parties may submit that Dispute to mediation. The parties agree to use a mutually agreed upon mediator, or someone appointed by the Court having jurisdiction, as the provider of mediators for mediation as described in Section 154.023 of the Texas Civil Practice and Remedies Code. Unless both



parties are satisfied with the result of the mediation, the mediation will not constitute a final and binding resolution of the dispute. All communications within the scope of the mediation shall remain confidential as described in Section 154.073 of the Texas Civil Practice and Remedies Code, unless both parties agree, in writing, to waive the confidentiality.

4.11 Amendments. This Agreement may be amended only by an instrument in writing that is signed by both parties. Amendments to this Agreement shall be effective as of the date stipulated therein. County acknowledges that no Central Health officer, agent, employee, or representative has any authority to amend this Agreement unless expressly granted that specific authority by the Central Health Board of Managers. Central Health acknowledges that no County officer, agent, employee, or representative has any authority to amend this Agreement unless expressly granted that specific authority by the Travis County Commissioners Court.

4.12 Assignment. Either party may assign any of its obligations under this Agreement only with the prior written consent of the other party. No official, employee, representative, or agent of Central Health has the authority to approve any assignment under this Agreement unless that specific authority is expressly granted by Central Health Board of Managers. No official, employee, representative, or agent of County has the authority to approve any assignment under this Agreement unless that specific authority is expressly granted by the Travis County Commissioners Court.

4.13 Attachments. The attachments enumerated and denominated below are hereby made a part of this Agreement: Exhibit A: County Mixed Use Facilities

4.14 Waiver of Default or Breach. No waiver by either of the parties hereto of any failure by the other party to keep or perform any provisions, covenant, or condition of this Agreement shall be deemed to be a waiver of any preceding or succeeding breach of the same or any other provision, covenant, or condition.

4.15 Compliance with Federal, State, and Local Laws. Each party shall provide the services and activities to be performed under the terms of this Agreement in compliance with the Constitutions of the United States and Texas and with all applicable federal, state, and local orders, laws, regulations, rules, policies, and certifications governing any activities undertaken during the performance of this Agreement, including, but not limited to: Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Section 794); the Americans With Disabilities Act of 1990, Public Law 101-336 [S.993] (“ADA”), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations. No party shall discriminate against any employee, applicant for employment, based on race, religion, color, gender, national origin, age, or handicapped condition. In performance of all Agreement services and activities, each party will comply with applicable state and federal licensing and certification requirements, health and safety standards, and regulations prescribed by the U. S. Department of Health and Human Services, the Texas Department of State Health Services, or any other state regulatory agency.

4.16 Law and Venue. The laws of the State of Texas (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates, including, without limitation, its validity, interpretation, construction, performance, and enforcement. Venue for any dispute arising out of this Agreement is in Travis County, Texas.

4.17 Severability. If any portion of this Agreement is ruled invalid, illegal, or unenforceable in any respect by a court of competent jurisdiction, the remainder of the Agreement shall remain valid and binding.

4.18 Headings. Headings and titles at the beginning of the various provisions of this Agreement have been included only to make it easier to locate the subject matter covered by the provision or subsection and shall not be used in construing this Agreement.

4.19 Computation of Time. When any period of time is stated in this Agreement, the time shall be computed to exclude the first day and include the last day of period. If the last day of any period falls on a Saturday, Sunday, or a day that Central Health has declared a holiday for its employees, the last day is the next business day that is not a Central Health holiday.

4.20 Gender and Number. Words of any gender in this Agreement shall be construed to include any other gender, and words in either number shall be construed to include the other unless the context in the Agreement clearly requires otherwise.

4.21 Entire Contract. All exhibits and attachments to this Agreement are expressly made a part of this Agreement and are incorporated herein by reference.

4.22 Public Information Act. The parties acknowledge and each is subject to the provisions of the Texas Public Information Act ("PIA"). If either party receives a request for disclosure of any information related to the goods or services provided under this Agreement or for information provided to the party's obligations under this Agreement or for information provided to either party under this Agreement that constitutes a record under the PIA, that party will utilize its best efforts to comply with PIA. Each party authorizes the other to submit any information provided under the Agreement or otherwise requested to be disclosed, including information that the other party has labeled as confidential or proprietary, to the Office of the Attorney General for a determination as to whether any such information may be excepted from public disclosure under the PIA. It is each party's responsibility and obligation to make any legal argument to the Attorney General or court of competent jurisdiction regarding the exception of the information in question from disclosure. The Parties waives any claim against and releases from liability each other, their officers, board members, employees, agents, and attorneys with respect to disclosure of information provided under this Agreement or otherwise created, assembled, maintained, or held by the Parties, including that information marked as confidential or proprietary and determined by the Attorney General or a court of competent jurisdiction to be subject to disclosure under the Act. This section shall survive the termination of this Agreement.

4.23 Debarment, Suspension and Other Responsibility Matters. County, by signing this Agreement, hereby certifies that, to the best of its knowledge and belief, it:

- (a) is not presently debarred suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) has not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal of State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction or records, making false statements, or receiving stolen property;
- (c) is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b); and
- (d) has not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.

Where County is unable to certify to any of the statements in this Section, County shall provide an explanation of such inability prior to the Effective Date of this Agreement for Central Health's consideration and evaluation, with the understanding that such may result in termination of this Agreement by Central Health.

4.24 Audit. During the term of this Agreement and for a period of four (4) years following termination of this Agreement, Central Health maintains the right to review and audit any of the books and records of the County relating to the County's receipt of payments under this Agreement. Central Health may conduct its review or audit through its own employees, agents, or representatives or through independent external auditors or representatives retained by Central Health. Central Health will conduct such review or audit upon reasonable notice to the County, at its own expense, and during regular business hours. The records shall be retained beyond the fourth year if an audit is in progress, the findings of a completed audit have not been resolved satisfactorily, or litigation involving this Agreement is not finally resolved.

4.25 Inspection. County shall maintain and make available for inspection, audit, and/or reproduction by any authorized representative of Central Health or any other governmental agency books, documents, and other evidence pertinent to the costs and expenses of this Agreement. Within seventy-two (72) hours of the receipt of notification that an audit will be made, all materials requested shall be made available to Central Health's authorized representatives.

4.26 Subcontracting. County shall not enter into any subcontracts for any service or activity relating to the performance of this Agreement without the prior written approval or the prior written waiver of this right of approval from Central Health. To the extent that County has

existing subcontracts as of the Effective Date of this Agreement, those subcontracts are hereby approved.

4.27 HUB Subcontracting. If a subcontract is approved, County must make a “good faith” effort to take all necessary and reasonable steps to insure that HUBs (Historically Underutilized Business, as defined in Texas Government Code, Section 2161.001), have a maximum opportunity to be subcontractors under this Agreement. County must obtain Central Health approval of all proposed HUB subcontractors. Failure by County to make a good faith effort to employ HUBs as subcontractors constitutes a breach of this Agreement and may result in termination of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed and delivered on behalf of Central Health and the County as of the date set forth below by their duly authorized representatives in one or more counterparts, which together shall constitute one agreement.

TRAVIS COUNTY, TEXAS

TRAVIS COUNTY HOSPITAL DISTRICT

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

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

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

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### COUNTY MIXED USE FACILITIES

Clinic owned by County and located at 3518 FM 973, Del Valle, Texas 78617

Clinic owned by County and located at 15822 Foothill Farm Loop, Pflugerville, Texas 78660

Clinic owned by County and located at 600 W. Carrie Manor Rd., Manor, Texas 78653

Clinic owned by County and located at 8656-A Highway 71 West, Suite C, Austin, Texas 78735