



Travis County Commissioners Court Agenda Request

Meeting Date: June 17, 2014

Prepared By/Phone Number: Juanita Jackson/854-4467

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 An Interlocal Agreement with the City of Austin for the Provision of Lead Abatement Services to Travis County residents.

BACKGROUND/SUMMARY OF REQUEST AND ATTACHMENTS:

If approved, the City of Austin will implement the City's Lead Hazard Control and Lead Hazard Reduction Grant programs within the City's limited purpose annexed ("LPA") areas and extraterritorial jurisdictions ("ETJs"), allowing the City to serve households living outside the corporate city limits but within Travis County. Under this agreement, Travis County will review and approve the environmental review record for each assisted household before work proceeds.

Historically, the City has provided assistance only to properties located within the corporate city limits of Austin. With the Healthy Homes and Lead Hazard Control and Lead Hazard Reduction Grants, properties located in LPA areas and ETJs are eligible.

STAFF RECOMMENDATIONS:

Staff recommends approval of the agreement.

ISSUES AND OPPORTUNITIES:

A residence could be eligible for up to \$30,000 to apply toward repairs/lead remediation. Efforts have already helped protect many of Austin's youngest children from the dangers of lead.

All services provided by the grant are free to residents of the City's LPA areas and ETJs within Travis County who meet program qualifications:

- A child five or younger must live in the home or visit the home at least six hours a week.

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

- Federal requirements set a maximum household income of 80 percent of the area's median family income, which is currently \$60,300 for a family of four.
- Renters, homeowners, and multi-family property owners may apply.

Funds are available from grants received by the City of Austin from the Housing and Urban Development Office of Healthy Homes and Lead Hazard Control TXLHB0567-13 (\$2.5 million), and Lead Hazard Reduction TXLHDO232-11 (\$2.5 million).

FISCAL IMPACT AND SOURCE OF FUNDING:

No Fiscal Impact. There will be no transfer of grant funds to Travis County. The City will administer the programs.

REQUIRED AUTHORIZATIONS:

Mary Etta Gerhardt, Assistant County Attorney'
Leroy Nellis, Acting County Executive, Planning and Budget Office
Cyd Grimes, CPM, Travis County Purchasing Agent
Nicki Riley, CAP, CMA, Travis County Auditor
Patty Lennon, Financial Analyst, Travis County Auditor's Office
Aerin Toussaint, Analyst, Planning and Budget Office
Sherri Fleming, County Executive, HHSVS

AGENDA



Recommendation for Council Action

Austin City Council	Item ID	33365	Agenda Number	<ITEM_OUTLINE>
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Meeting Date:	6/12/2014	Department:	Neighborhood and Community Development
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Subject

Approve a resolution authorizing the negotiation and execution of an interlocal agreement with Travis County for the implementation of the City’s Lead Hazard Control and Lead Hazard Reduction Programs in the City’s limited purpose annexed areas and extraterritorial jurisdictions.

Amount and Source of Funding

Funds are available from grants received by the City of Austin from the Housing and Urban Development Office of Healthy Homes and Lead Hazard Control TXLHB0567-13 (\$2.5 million), and Lead Hazard Reduction TXLHDO232-11 (\$2.5 million).

Fiscal Note

There is no unanticipated fiscal impact. A fiscal note is not required.

Purchasing Language:	
Prior Council Action:	
For More Information:	Contact Elizabeth Spencer, Director, 512-974-3182; or Letitia Brown, Neighborhood Development Program Manager, 512-974-3132.
Boards and Commission Action:	
MBE / WBE:	
Related Items:	

Additional Backup Information

If approved, an interlocal agreement will be negotiated between the City and Travis County to implement the City's Lead Hazard Control and Lead Hazard Reduction Grant programs within the City's limited purpose annexed ("LPA") areas and extraterritorial jurisdictions ("ETJs") to allow the City to serve households living outside the corporate city limits but within Travis County. Under this agreement, Travis County will review and approve the environmental review record for each assisted household before work proceeds.

There will be no transfer of grant funds to Travis County. The City will administer the programs.

Historically, the City has provided assistance only to properties located within the corporate city limits of Austin. With the Healthy Homes and Lead Hazard Control and Lead Hazard Reduction Grants, properties located in LPA areas and ETJs are eligible.

General features of the grant program

A residence could be eligible for up to \$30,000 to apply toward repairs/lead remediation. Efforts have already helped protect many of Austin's youngest children from the dangers of lead.

Services for residents

The available grant funds will service approximately 200 housing units, with services such as:

- Free home health and safety inspection.
- Free lead poisoning tests for children.
- Free lead removal and home repair.
- Pest management and mold remediation.
- Installation of smoke detectors and carbon monoxide detectors.
- Free hotel stay in the event of major repairs.

Who is eligible?

All services provided by the grant are free to residents of the City's LPA areas and ETJs within Travis County who meet program qualifications:

- A child five or younger must live in the home or visit the home at least six hours a week.
- Federal requirements set a maximum household income of 80 percent of the area's median family income, which is currently \$60,300 for a family of four.
- Renters, homeowners, and multi-family property owners may apply.

**INTERLOCAL AGREEMENT
BETWEEN TRAVIS COUNTY AND CITY OF AUSTIN
FOR SERVICES RELATED TO LEAD REMEDIATION IN TRAVIS COUNTY**

This Interlocal Agreement ("Agreement") is entered into by the following parties: Travis County, a political subdivision of the State of Texas ("County"), and the City of Austin, a Texas home-rule municipal corporation and political subdivision of the State of Texas ("City") to establish the terms and conditions under which the City and County will coordinate services and responsibilities related to lead remediation activities ("Activities").

RECITALS

City has received funds under the Office of Healthy Homes Lead Hazard Control Grant (OOHHLCHC) and Lead Hazard Reduction Demonstration Grant ("the Grants") to facilitate the provision of services related to lead remediation and City desires to expand the Grants program to serve economically disadvantaged homeowners/renters in the unincorporated areas of Travis County.

NOW, THEREFORE, in consideration of the agreements and covenants set forth in this Agreement, the sufficiency of which are acknowledged, County and City mutually agree to the following terms and conditions:

AGREEMENT

1.0 DEFINITIONS. In this Agreement,

- 1.01 "Agreement Term" means the Initial Term and/or any subsequent Renewal Term(s) or any other period of time designated in writing as an Agreement Term by the Parties.
- 1.02 "City Council" means City Council of the City of Austin.
- 1.03 "City Department" means the City of Austin, Neighborhood Housing and Community Development Office.
- 1.04 "City Manager" means the City Manager of the City of Austin.
- 1.05 "City Purchasing Officer" means City Purchasing Agent or a designated representative.
- 1.06 "Commissioners Court" means the Travis County Commissioners Court.
- 1.07 "County Executive" means the County Executive of the Travis County Health and Human Services & Veterans Service Department.
- 1.08 "County Purchasing Agent" means the County Purchasing Agent or her designated representative.
- 1.09 "Director" means the Director of the City of Austin, Neighborhood Housing and Community Development Office.
- 1.10 "Party" and/or "Parties" means the County and/or City.
- 1.11 "NHCD" or "City Department" means City of Austin, Neighborhood Housing and Community Development Office.
- 1.12 "TCHHSVS" or "County Department" means Travis County Health and Human Services & Veterans Services.

2.0 TERM

2.01 **Initial Term.** This Agreement shall continue in full force for the Agreement period which commences on June 1, 2014, and terminates on September 30, 2015.

2.02 **Renewal Term(s).** Upon approval by the City Council of the City Department budget and by the Commissioners Court of the County Department budget, and continuation of the respective Grants, this Agreement shall automatically renew on October 1, 2015 for a term of one year; and shall automatically renew for terms of one year thereafter for an additional five (5) years unless sooner terminated pursuant to this Agreement. The terms and conditions of the Agreement in any Renewal Term will remain the same as those in the previous term unless and until amended in writing pursuant to the terms of this Agreement.

3.0 GENERAL REQUIREMENTS

3.01 **City Administration.** City herein designates NHCD as the department responsible for the City's administration of this Agreement and all matters pertaining hereto. City Contract Administrator(s) are as follows:

Letitia Brown, Program Manager
P. O. Box 1088
Austin, Texas 78767-1088

3.02 **County Administration.** County designates TCHHSVS as the department responsible for County's administration of this Agreement. It is acknowledged that no officer, agent, employee or representative of County has the authority to change the terms of this Agreement unless expressly granted that authority by the Commissioners Court. County Agreement administrators are as follows:

Christy Copeland Moffett, Project Manager
P. O. Box 1748
Austin, Texas 78767

3.03 **Authorized Representatives.** City and County agree that, unless otherwise designated specifically in any provision, all communication, requests, questions or other inquiries related to this Agreement shall initially be presented by and through the County Executive for the County and the Director for the City.

3.04 **Grant Requirements.** Both Parties agree to perform the services required of that Party, and to require all subcontractors/ subrecipients to perform, all services and activities under this Agreement in compliance with applicable requirements of the Grants. City will advise County of any specific Grant requirements related to County participation under this Agreement.

3.05 **Insurance.** City and County acknowledge and agree that each Party is self-insured and will maintain such coverage at a level sufficient to cover the needs of City and County, respectively, pursuant to applicable generally accepted business standards. Each Party shall require all subcontractors providing services under this Agreement to have insurance coverage sufficient to cover the needs of the Parties and/or subcontractor pursuant to applicable generally accepted business standards.

3.06 **Monitoring.** Each Party shall allow the regular monitoring of operation of any services provided pursuant to this Agreement by the other Party; and each Party shall have the right to conduct periodic on-site monitoring of the other's compliance with the terms of this Agreement. Monitoring by either Party shall be accomplished with as little disruption to the operations of the other Party as possible. After any monitoring visit, a written report shall be provided if any deficiencies are noted, with provision for correction of such deficiencies within thirty (30) days of receipt of such notice.

3.07 **Agreement Services.** The Parties agree that the expectation is that services in the form of lead remediation will be provided by City to approximately 207 properties under this Agreement.

4.0 SCOPE OF AGREEMENT

4.01 **City Obligations.**

4.01.1 City will be responsible for implementation, administration and program compliance pursuant to the requirements of the Grants and all applicable laws, rules and regulations.

4.01.2 If the City encounters potential clients for any County programs, those clients will be referred to the County for eligible home rehabilitation work.

4.01.3 City will prepare all paperwork and necessary documentation to complete the necessary environmental reviews.

4.01.4 City will submit all necessary documentation to the County, including the Rehabilitation Environmental Review (RER) and the Request for Release of Funds and Certification.

4.01.5 City will provide required publications and notices in English and in Spanish.

4.02 **County Obligations.**

4.02.1 If the County (or its Subrecipient for Home Rehabilitation) encounters potential clients for any City programs, those clients will be referred to the City for eligible home rehabilitation work.

4.02.2 Environmental Reviews.

a. City will provide County with appropriate and necessary documentation, as determined by County, in a timely manner to allow County to place Tier 1 Environmental Reviews (Tier 1 Review) on the Commissioners Court's agenda for approval and signature by the County Judge (the County's Certifying Official) and to allow timely review by County staff of all Tier 2 Site Specific Determinations (Tier 2 Review) submissions. If documentation submitted by City to County is determined by County to be insufficient, County will advise City of any deficiencies and City will provide County with completed documentation.

b. County staff will review documentation submitted for individual sites and submit to the designated individual for signature for properties located in the unincorporated areas of Travis County and submitted to County for services to be provided by City under this Agreement.

c. In the approval of the Tier 1 Review submission, the County Judge will be requested to delegate signatory authority to the County Executive for Tier 2 Review submissions for specific site proposals.

d. County will work with City to mutually agree to all forms and documentation to be utilized in the activities provided under this Agreement.

5.0 RETENTION AND ACCESSIBILITY OF RECORDS

5.01 **Retention.** Unless otherwise specified herein, each Party shall maintain all fiscal records and documentation for all expenditures pertaining to this Agreement in a readily available state and location until an audit in conformance with generally accepted accounting principles and procedures for governmental organizations is completed and all questions arising

from it are resolved satisfactorily or three (3) years from after the end of the Agreement period, whichever occurs later.

5.02 **Access.** Subject to applicable laws, City shall give the County and County shall give City, or any of their duly authorized representatives, access to and the right to examine all books, accounts, records, reports, files, and other papers, things, or property belonging to or in use by City/County pertaining to this Agreement at reasonable times and for reasonable periods. These rights to access shall continue as long as the records are retained by the respective entity.

5.03 **Access/Claims.**

5.03.1 **Notice.** If there is any incident in which claims are made against the City or any City employee, or County or any County employee, as a result of the activities performed under this Agreement, the Party against whom the claim is made shall give the duly authorized representative(s) of the other Party full and reasonable access to and the right to examine documentation related to this matter at reasonable times and for reasonable periods with these rights to access continuing until all claims are resolved or three years after the termination of this Agreement, whichever is later.

5.04 **Confidentiality of Records.** City and County agree to keep confidential at all times all information that identifies clients and personnel and any other information in accordance with the applicable Federal, State and local laws, rules and regulations and applicable professional ethical standards.

5.05 **Accurate Information.** Each Party warrants that all reports, data and information submitted to the other Party will be accurate, reliable and verifiable. Approval by the receiving Party shall not constitute nor be deemed a release of the responsibility and liability of the submitting Party, its employees, agents or associates for the accuracy and competency of their reports, information, documents or services, nor shall approval by the receiving Party be deemed to be the assumption of such responsibility by the receiving Party for any defect, error, omission, act or negligence or bad faith by the submitting Party, its employees, agents or associates.

6.0 AUDIT

6.01 **Agreement Audit.** Except as otherwise provided herein, each Party has the right to conduct a financial and compliance audit of the performance of this Agreement by the other Party on an annual basis. Each Party agrees to permit the other Party, or its authorized representative, or any authorized representative of any other governmental agency with a direct interest in services provided under this Agreement, to audit the records that relate to this Agreement and to obtain and make available for inspection, audit and/or reproduction any documents, materials, or information necessary to facilitate such audit. Each Party shall take whatever action is appropriate to facilitate the performance of any audits conducted pursuant to this Agreement that the other Party may require. This includes, to the extent such detail will properly reflect, all costs: direct and indirect costs of labor, material, equipment, supplies, and services and all other costs and expenses of whatever nature for which reimbursement is claimed under provisions of this Agreement or services provided under this Agreement. Each Party agrees to provide the other Party, and any of that Party's authorized representatives and representatives from any governmental agency related to Grant funds full and complete access to all records related to Grant activities as necessary to complete any audits required or requested pursuant to the Grant terms.

7.0 INDEPENDENT ENTITY AND ACKNOWLEDGEMENT OF RESPONSIBILITIES

7.01 **Independent Entities.** The Parties expressly acknowledge and agree that City and County are independent entities and each assumes all the rights, obligations, and liabilities applicable to it as an independent entity. No employee of the City shall be considered an employee, agent, or representative of the County or gain any rights against the County pursuant to the County's personnel policies. No employee of the County shall be considered an employee, agent, or representative of the City or gain any rights against the City pursuant to the City's personnel policies. The relationship of County and City under this Agreement is not and shall not be construed or interpreted to be a joint enterprise or joint venture. Neither Party shall have the authority to make any statements, representations or commitments of any kind, or to take any action which shall be binding on the other Party or which shall hold itself out to be binding on the other Party.

7.02 **Responsibilities.** City shall not be liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of the County or its employees in relation to this Agreement. County shall not be liable for any claims, damages or attorney fees arising from any negligence or unlawful acts of City or its employees in relation to this Agreement. City and County acknowledge that each entity is otherwise responsible for any claims or losses from personal injury or death or property damages that were caused by the acts or omissions of that entity, its agents, employees, or representatives in the performance of the services and activities under this Agreement; and that each entity will be responsible for the handling of the portion of any claim which is based solely on the assertion that a policy of that entity is illegal or unenforceable in any way.

7.03 **Claims Notification.** If any claim, or other action, including proceedings before an administrative agency, is made or brought by any person, firm, corporation, or other entity against City or County; the party against whom the claim or other action is made shall give written notice to the other party of the claim, or other action within three (3) working days after being notified of it or the threat of it. Such notice shall include 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 15.0 of this Agreement. Except as otherwise directed, the party against whom the claim has been made shall furnish to County copies of all pertinent papers received by that party with respect to these claims or actions.

8.0 TERMINATION

8.01 **Termination.** Unless otherwise specified herein, either party shall have the right to terminate this Agreement, in whole or in part, at any time before the date of termination for the following reasons:

8.01.1 During the budget planning and adoption process, Commissioners Court or City Council, respectively, fails to provide funding for the Agreement during the next Agreement period;

8.01.2 Either party has failed to comply with any term or condition of this Agreement.

8.01.3 Grant funding upon which services under this Agreement are being provided ceases to be available to either or both Parties.

8.01.4 Either Party is unable to conform to changes required by federal, state or local laws or regulations.

8.02 **Mutual Termination.** Either party has the right to terminate this Agreement, in whole or in part, when both parties agree that the continuation of the activities funded under this Agreement would not produce beneficial results commensurate with the further expenditure of funds; provided that both parties agree, in writing, upon the termination conditions, including the effective date of the termination and, in the case of partial termination, the portion of the contract to be terminated.

8.03 **Termination Procedure.** At least thirty (30) days prior to the effective date of termination, the party seeking termination shall notify the other Party of the reasons for termination, the effective date of termination, and, in the case of a partial termination, the portion of the agreement to be terminated. The other Party may avoid termination if that Party corrects the cause(s) for termination to the satisfaction of the termination Party prior to the effective date of termination.

8.04 **Continued Liability.** Notwithstanding any exercise by County of its right of termination, City shall not be relieved of any liability to County for damages due to County by virtue of any breach of this Agreement by City. Notwithstanding any exercise by City of its right of termination, County shall not be relieved of any liability to City for damages due to City by virtue of any breach of this Agreement by County.

8.05 **Rights Surviving Termination.** If either party terminates this Agreement in whole or in part, City has the right to receive payment for all purchases provided before the date of termination and not previously paid.

8.06 **Right to Assurance.** Whenever one Party this Agreement in good faith has reason to question the other's intent to perform, the Party may demand that the other Party provide written assurance of their intent to perform. In the event a demand is made under this Section 8.06, and the other Party gives no such written assurance within thirty (30) days of receipt of the written notice of such demand, the demanding Party may treat this failure as an anticipatory repudiation of this Agreement.

9.0 MISCELLANEOUS PROVISIONS

9.01 **Civil Rights/ADA Compliance.** City and County shall each provide, or contract to provide, all services and activities under 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, the Rehabilitation Act of 1973, Public Law 93-1122, Section 504 (29 U.S.C., Section 794), the provisions of the Americans With Disabilities Act of 1990, Public Law 101-336 [S.933], Chapter 73, Texas Administrative Code, Section 85.113 (relating to workplace and confidentiality guidelines regarding AIDS and HIV), and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Neither City nor County shall discriminate against any employee, applicant for employment, or Client based on race, religion, color, sex, national origin, age or handicapped condition.

9.02 **Non-Waiver.** No payment, act or omission by County may constitute or be construed as a waiver of any breach or default of City which then exists or may subsequently exist. No payment, act or omission by City may constitute or be construed as a waiver of any breach or default of County which then exists or may subsequently exist. The failure of either Party to exercise any right or privilege granted in this Agreement shall not be construed as a waiver of that right or privilege.

9.03 **Reservation of Rights and Remedies.** All rights of County under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to County under it. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. All rights of City under this Agreement are specifically reserved and any payment, act or omission shall not impair or prejudice any remedy or right to City under it. Any right or remedy in this Agreement shall not preclude the exercise of any other right or remedy under this Agreement or under any law, nor shall any action taken in the exercise of any right or remedy be deemed a waiver of any other rights or remedies.

9.04 **Binding Agreement.** This Agreement shall be binding upon the successors, assigns, administrators, and legal representatives of the parties to this Agreement.

9.05 **Entire Agreement.** All oral and written agreements between the parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

9.06 **Law and Venue.** This Agreement is governed by the laws of the State of Texas and all obligations under this Agreement shall be performable in Travis County, Texas. Venue for any dispute arising out of this Agreement will lie in the appropriate Courts of Travis County, Texas.

9.07 **Severability.** If any portion of this Agreement is ruled invalid by a court of competent jurisdiction, the remainder of it shall remain valid and binding, and shall continue to have full force and effect and shall in no way be impaired or invalidated by that holding.

9.08 **Political Activity.** Neither County nor City shall use any of the performance under this Agreement or any portion of the Agreement funds for any activity related to the result of an election for public office or any election, or the passage or defeat of any legislative measure. This prohibition shall not be construed to prevent any official or employee of either Party

from furnishing to any member of its governing body upon request or to any other local or state official or employee, or to any citizen, information in the hands of the employee or official not considered under law to be confidential. No Agreement Funds can be used directly or indirectly to hire employees or in any other way fund or support candidates for the legislative, executive or judicial branches of the government of City, County, the State of Texas or the government of the United States.

9.09 **Sectarian Activity.** County and City shall ensure that activities performed under this Agreement shall be carried on in a manner free from religious influence. Neither County nor City shall execute any agreement with any primarily religious organization to receive Agreement funds from City unless the agreement includes provisions, as provided by County, to effectuate this assurance. Each party shall submit such agreements to the other party prior to the release of Agreement funds. Neither City's nor County's selection of a Subcontractor nor expenditure of funds under this Agreement is an endorsement of the Subcontractor's charitable or religious character, practices or expressions. No expenditures have as their objective the funding of sectarian worship, instruction or proselytization. City and County agree to be bound by the provisions of Section 702 of the Civil Rights Act [42 U.S.C., Section 2000E-1(a)] regarding employment practices and Section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (8 U.S.C., Section 604a) regarding additional rights and responsibilities for charitable and faith-based providers of social services, assisted individuals and providers of such services.

9.10 **Publicity.** When appropriate, County and City shall publicize the services and activities of County and City under this Agreement. In any publicity prepared or distributed by or for County or City, the funding through County and City shall be mentioned as having made the project possible.

9.11 **Interpretational Guidelines**

9.11.1 **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 the period. If the last day of any period falls on a Saturday, Sunday or a day that County or City has declared a holiday for its employees these days shall be omitted from the computation.

9.11.2 **Number and Gender.** 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.

9.11.3 **Headings.** The headings 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 that section or subsection and are not to be used in construing this Agreement.

9.12 **Compliance With Applicable Law.** In the performance of the services required of each party pursuant to this Agreement, City and County agree to comply with all applicable federal, state, county and city statutes, ordinances, rules and regulations.

9.13 **Immunity or Defense.** It is expressly understood and agreed by all Parties that neither the execution of this Agreement, nor any conduct of any representative of City or County relating to this Agreement, shall be considered to waive, nor shall it be deemed to have waived, any immunity or defense that would otherwise be available to that entity against claims arising in the exercise of its governmental powers and functions, nor shall it be considered a waiver of sovereign immunity to suit. It is understood and agreed that a decision by one Party to waive immunity or to compensate a claim for which immunity would have been a defense and would have operated to prevent payment does not operate as a waiver or decision to compensate by the other Party; nor will such action by one Party operate to incur any expense or charge to the other Party.

9.14 **Agreement Limitation.** This Agreement sets out the agreements and obligations between County and City only, and does not obligate either Party to the other Party's subcontractors or to any third party. This Agreement creates no third party beneficiary rights.

9.15 **Survival of Conditions.** Applicable provisions of this Agreement shall survive beyond termination or

expiration of this Agreement until full and complete compliance with all aspects of these provisions has been achieved where the Parties have expressly agreed that those provisions should survive any such termination or expiration or where those provisions remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

9.16 **Dispute Resolution/Mediation.** Initial disputes and unresolved questions or issues of City or County shall initially be presented by City to County by submission in writing to TCHHSVS with a copy to the County Purchasing Agent and by County to City by submission in writing to the Director. If satisfactory resolution cannot be achieved between the Parties within a reasonable time, and should mediation be acceptable to both Parties in resolving a dispute arising under this Agreement, the Parties agree to use the Dispute Resolution Center of Austin, Texas, as the provider of mediators for mediation as described in the TEX. CIV. PRAC. AND REM. CODE, Section 154.023. 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 TEX. CIV. PRAC. AND REM. CODE, Sec. 154.073, unless both Parties agree, in writing, to waive the confidentiality.

9.17 **County Public Purpose.** By execution of this Agreement, the Commissioners Court hereby finds that the needs to be addressed by the services to be provided under the terms of this Agreement and specifically set forth in the attached Work Statements, constitute a significant public concern impacting members of the population which the County serves. The Commissioners Court further finds that the provision of services to be provided by City pursuant to this Agreement will further the public purpose of addressing those health and human services issues, problems and needs identified in this Agreement for identified individuals.

10.0 AMENDMENTS

10.01 **Written Amendments.** Unless specifically provided otherwise in this Agreement, any change to the terms of this Agreement or any attachments to it shall be made in writing and signed by all parties. It is acknowledged by City that no officer, agent, employee or representative of County has any authority to change the terms of this Agreement or any attachments to it unless expressly granted that authority by the Commissioners Court.

10.02 **Submission of Amendment.** City shall submit all requests for alterations, additions or deletions of the terms of this Agreement or any attachment to it to the County Purchasing Agent, with a copy to the County Executive Manager for consideration. Requests for alterations, additions or deletions of the terms of this Agreement by County shall be submitted to the City Manager and City Director, with a copy to the Purchasing Officer.

11.0 NOTICES

11.01 Any notice required or permitted to be given under this Agreement by one party to the other shall be in writing and shall be given and deemed to have been given immediately if delivered in person to the address set forth in this Section 15.0 for the party to whom the notice is given, or on the third day following mailing if placed in the United States Mail, postage prepaid, by registered or certified mail with return receipt requested, addressed to the party at the address hereinafter specified.

11.02 **Address.** The address of County for all purposes under this Agreement shall be:

Cyd Grimes, Purchasing Agent
P. O. Box 1748
Austin, Texas 78767

With copies to (registered or certified mail with return receipt is not required):

Honorable David Escamilla (or his successor in office)
Travis County Attorney
P. O. Box 1748

Austin, Texas 78767

and

Sherri Fleming
County Executive, TCHHSVS
P. O. Box 1748
Austin, Texas 78767

11.03 **City Address.** The address of the City for all purposes under this Agreement and for all notices hereunder shall be as set forth in Section 3.01.1.

11.04 **Change of Address.** Each party may change the address for notice to it by giving notice of the change in compliance with Section 15.0 and delivering a copy of the notice to the County Clerk and City Clerk for attachment to this Agreement no later than ten (10) days after the effective date of the notice.

12.0 LEGAL AUTHORITY

12.01. **Legal Authority to Enter Agreement.** Each Party guarantees that the Party possesses the legal authority to enter into this Agreement, receive any funds authorized by this Agreement, and to perform the services that Party has obligated itself to perform under this Agreement. It is acknowledged by City that no officer, agent, employee or representative of County has any authority to modify, alter or amend this Agreement unless expressly granted that authority by the Commissioners Court.

12.02 **Signors.** The person or persons signing this Agreement on behalf of City and County, respectively, or representing themselves as signing this Agreement on behalf of City and County, respectively, do hereby warrant and guarantee that he, she or they have been duly authorized by that entity to sign this Agreement on behalf of that entity and to bind that entity validly and legally to all terms, performances, and provisions in this Agreement.

13.0 PROHIBITIONS

13.01 **Conflict of Interest.** In performing duties under this Agreement, City employees shall comply with the conflict of interest requirements and ethics provisions set forth in the Austin City Code, Article 4 (a copy of which has been provided to County). Both Parties shall comply with the conflict of interest provisions in Chapter 171 of the Texas Local Government Code and other applicable laws.

13.02 **Solicitation.** Both Parties warrant that no persons or selling agency was or has been retained to solicit this Agreement upon an understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial selling agencies maintained by that Party to secure business. For breach or violation of this warranty, the non-breaching Party shall have the right to terminate this Agreement without liability, or, in its discretion, to, as applicable, add or to or deduct from the Agreement price for consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.

13.03 **Gratuities.** Either Party may cancel this Agreement if it is found that gratuities in the form of entertainment, gifts, or otherwise were offered or given by the other Party or any agent or representative to any official or employee with a view toward securing favorable treatment with respect to the performing of this Agreement. In the event this Agreement is cancelled pursuant to this provision, the canceling Party shall be entitled, in addition to any other rights and remedies, to recover from the other Party a sum equal in amount to the cost incurred by the offending Party in providing such gratuities. Neither Party's employees, officers nor agents shall solicit nor accept gratuities, favors or anything of monetary value from Subcontractors or potential Subcontractors.

13.04 **Nepotism.** City and County agree that they will comply with TEX. GOVERNMENT CODE ANN., Ch. 573, by ensuring that no officer, employee or member of the governing body of that Party shall vote or confirm the employment of any person related within the second degree by affinity or third degree by consanguinity to any member of the governing body

or to any other officer or employee authorized to employ or supervise such person.

14.0 ASSIGNABILITY

14.01 No party may assign any of the rights or duties created by this Agreement without the prior written approval of the other parties. It is acknowledged by City that no officer, agency, employee or representative of County has any authority to grant such assignment unless expressly granted that authority by the Commissioners Court.

15.0 FORCE MAJEURE.

15.01 Neither Party shall be financially liable to the other Party for delays or failures to perform under the Agreement where such failure is caused by force majeure (i.e. those causes generally recognized under Texas law as constituting impossible conditions). Such delays or failures to perform shall extend the period of performance until these exigencies have been removed. The Party seeking to avail itself of this clause shall notify the other Party within five (5) business days or otherwise waive the right as a defense, unless notification is impractical under the circumstances, in which case notification shall be done in as timely a manner as possible. City agrees that breach of this provision entitles County to reduce or stop payments or immediately terminate this Agreement.

EXECUTED in duplicate originals this the __ day of ____, 2014.

TRAVIS COUNTY

By: _____
Samuel T. Biscoe, County Judge Date: _____

APPROVALS:

Approved as to Form: _____ Date: _____
Assistant County Attorney

Approved By: _____ Date: _____
Cyd Grimes, Purchasing Agent

Funds Verified By: _____ Date: _____
Nicki Riley, County Auditor

CITY OF AUSTIN

By: _____
Marc Ott, City Manager Date: _____

Approved as to Form: _____ Date: _____
Assistant City Attorney