

**INTERLOCAL COOPERATION CONTRACT  
ENTERPRISE AGENCY CONTRACT NO.**

**THE DEPARTMENT OF STATE HEALTH SERVICES** (“Receiving Agency” or the “Enterprise Agency”) and (“Performing Agency” or “Contractor”), each a “Party” and collectively the “Parties,” enter into the following Local Mental Health Authority Performance Agreement (the “Contract”) pursuant to the provisions of "Interlocal Cooperation Contracts," Chapter 791 of the Texas Government Code and Chapters 533 and 534 of the Texas Health and Safety Code.

**I. PARTIES**

|                    |                   |  |
|--------------------|-------------------|--|
| Performing Agency: | Receiving Agency: | DEPARTMENT OF STATE HEALTH SERVICES    |
| Address:           | Address:          | Mail Code 2058<br>P.O. Box 149347      |
| City and Zip:      | City and Zip:     | Austin, 78714-9347                     |
| Contact Person:    | Contact Person:   | Assigned Contract Manager              |
| Telephone:         | Telephone:        | 512-206-5810                           |
| FAX number:        | FAX number:       | 512-206-5307                           |
| e-Mail Address:    | e-Mail Address:   | performance.contracts@dshs.state.tx.us |
| Agency Number:     | Agency Number:    | 537                                    |

**II. DEFINITIONS**

“[Data Use Agreement](#)” means the confidentiality agreement, including any attachments, which is attached hereto and incorporated herein for all purposes in its entirety as **Attachment D**.

“[Federal Assurances](#)” means Standard Form 424B (Rev. 7-97), as prescribed by OMB Circular A-102 (non-construction projects); or Standard Form 424D (Rev. 7-97), as prescribed by OMB Circular A-102 (construction projects), in **Attachment E**, attached hereto and incorporated herein for all purposes.

“[Federal Certifications](#)” means U.S. Department of Commerce Form CD-512 (12-04), “Certifications Regarding Lobbying – Lower Tier Covered Transactions,” also in **Attachment E**, attached hereto and incorporated herein for all purposes.

“[Performing Agency](#)” means the State agency or local governmental entity performing the services defined by this Contract in return for consideration or payment.

“[Project](#)” means the services described generally in Article IV and further specified in the Scope(s) of Work in **ATTACHMENT A** of this Contract.

“Work” means all services to be performed and any appurtenant actions performed and items produced, conceived, or developed, including but not limited to Deliverables, in the performance of the Project.

“Scope of Work” means an individually negotiated document authorizing a Project under this Contract, described in ATTACHMENT A.

### **III. INTERPRETIVE PROVISIONS**

- (a) The meanings of defined terms are equally applicable to the singular and plural forms of the defined terms;
- (b) The words “hereof,” “herein,” “hereunder,” and similar words refer to this Contract as a whole and not to any particular provision, section, Attachment, Scope of Work, or schedule of this Contract unless otherwise specified;
- (c) The term “including” is not limiting and means “including without limitation” and, unless otherwise expressly provided in this Contract, (i) references to contracts (including this Contract) and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto, but only to the extent that such amendments and other modifications are not prohibited by the terms of this Contract, and (ii) references to any statute or regulation are to be construed as including all statutory and regulatory provisions consolidating, amending, replacing, supplementing, or interpreting the statute or regulation;
- (d) The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract;
- (e) All Attachments within this Contract, including those incorporated by reference, and any amendments are considered part of the terms of this Contract;
- (f) This Contract may use several different limitations, regulations, or policies to regulate the same or similar matters. All such limitations, regulations, and policies are cumulative and each shall be performed in accordance with its terms;
- (g) Unless otherwise expressly provided, reference to any action of the Enterprise Agency or by the Enterprise Agency by way of consent, approval, or waiver shall be deemed modified by the phrase “in its/their sole discretion.” Notwithstanding the preceding sentence, any approval, consent, or waiver required by, or requested of, the Enterprise Agency shall not be unreasonably withheld or delayed;
- (h) Time is of the essence in this Contract.

### **IV. STATEMENT OF SERVICES TO BE PROVIDED**

The Parties agree to cooperate to provide necessary and authorized services and resources in accordance with the terms of this Contract. Specific services provided are described in **Attachment A**, which includes the following individual Scopes of Work:

| Scope of Work Number | Program ID         | Enterprise Agency Share | Performing Agency Share | Total Scope of Work Value |
|----------------------|--------------------|-------------------------|-------------------------|---------------------------|
| A01                  | MH/PCN             | \$3,213,774             | \$321,377               | \$3,535,151               |
| A02                  | MH/CMHH            | \$0                     | \$0                     | \$0                       |
| A03                  | MH/COS             | \$26,400                | \$0                     | \$26,400                  |
| A04                  | MH/MHD             | \$0                     | \$0                     | \$0                       |
| A05                  | MH/MHFA            | \$40,000                | \$0                     | \$40,000                  |
| A06                  | MH/OCR             | \$0                     | \$0                     | \$0                       |
| A07                  | MH/PESC            | \$1,179,159             | \$294,790               | \$1,473,949               |
| A08                  | MH/PPB             | \$647,460               | \$0                     | \$647,460                 |
| A09                  | MH/RTCI            | \$0                     | \$0                     | \$0                       |
| A10                  | MH/RTPCM           | \$0                     | \$0                     | \$0                       |
| A11                  | MH/SHR             | \$209,154               | \$0                     | \$209,154                 |
| A12                  | MH/VET             | \$70,000                | \$0                     | \$70,000                  |
| A13                  | MH/CMBHS PC        | \$0                     | \$0                     | \$0                       |
| A14                  | MH/YESPC           | \$0                     | \$0                     | \$0                       |
| A15                  | MH/PASRR           | \$0                     | \$0                     | \$0                       |
| A16                  | MH/RPA             | \$0                     | \$0                     | \$0                       |
| A17                  | RBI                | \$0                     | \$0                     | \$0                       |
| A18                  | Monthly Financials | \$0                     | \$0                     | \$0                       |
| <b>TOTAL</b>         |                    | <b>\$5,385,947</b>      | <b>\$616,167</b>        | <b>\$6,002,114</b>        |

NOTE: A value of \$0 in the table above signifies that either no funding is associated with the terms outlined in the Scope of Work, or that the Scope of Work is not currently applicable to this Contract.

**V. CONTRACT PERIOD AND RENEWAL**

- (a) The Contract is effective on September 1, 2015, amended on November 1, 2015, and terminates on August 31, 2016 unless terminated sooner in accordance with Article IX, Early Termination.
- (b) The Parties may extend this Contract subject to mutually agreeable terms and conditions. If renewed, all renewals shall be from September 1 and end on August 31, always coinciding with the State’s fiscal year.

## **VI. AMENDMENT**

The Parties to this Contract may modify this contract only through the execution of a written amendment signed by both parties.

## **VII. CONTRACT AMOUNT AND PAYMENT FOR SERVICES**

The total amount of the Enterprise Agency's share of this Contract, including all Scopes of Work issued under it, shall not exceed \$5,385,947. The Performing Agency's share of this Contract, including all Scopes of Work issued under it, is \$616,167. The total value of this Contract, including all Scopes of Work issued under it, shall not exceed \$6,002,114. Specific information related to budget amounts, and each Party's share, of the individual Scopes of Work included in this Contract are identified in **SECTION IV**.

## **VIII. PAYMENT FOR SERVICES**

Payment for Work will be made as described in the individual Scopes of Work included in **ATTACHMENT A**.

## **IX. TRANSFER OF RESPONSIBILITIES**

Upon expiration or termination of this Contract, the Performing Agency and Enterprise Agency shall cooperate to the fullest extent possible to ensure the orderly and safe transfer of responsibilities under this Contract to the Enterprise Agency or another entity designated by the Enterprise Agency.

## **X. FUNDING**

- (a) This Contract shall not be construed as creating any debt on behalf of the State of Texas or the Enterprise Agency in violation of Article III, Section 49, of the Texas Constitution. In compliance with Article VIII, Section 6 of the Texas Constitution, it is understood that all obligations of the Enterprise Agency hereunder are subject to the availability of state funds. If such funds are not appropriated or become unavailable, this Contract may be terminated. In that event, the Parties shall be discharged from further obligations, subject to the equitable settlement of their respective interests, accrued up to the date of termination.
- (b) Furthermore, any claim by Performing Agency for damages under this Contract may not exceed the amount of funds appropriated for payment, but not yet paid to Performing Agency, under the annual budget in effect at the time of the breach. Nothing in this provision shall be construed as a waiver of sovereign immunity.
- (c) This Contract is contingent upon the availability of sufficient and adequate funds. If funds become unavailable through lack of appropriations, budget cuts, transfer of funds between programs or agencies, amendment of the Texas General Appropriations Act, agency consolidation, or any other disruptions of current

funding for this Contract, the Enterprise Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the Enterprise Agency, if sufficient and adequate funds are not available. Contractor will have no right of action against the Enterprise Agency if the Enterprise Agency cannot perform its obligations under this Contract as a result of lack of funding for any activities or functions contained within the scope of this Contract. In the event of cancellation or termination under this Section, the Enterprise Agency shall give notice when feasible. Enterprise Agency shall not be liable for any damages or losses caused or associated with such termination or cancellation.

## **XI. NOTICES**

Any notices required under this Contract shall be deemed delivered when submitted in accordance with the instruction outlined in each individual Scope of Work, deposited either in the United States mail, postage paid, certified, return receipt requested; or with a common carrier, overnight, signature required, to the appropriate address listed in Article I.

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. The Performing Agency may change its address by written notice to the other Party as herein provided.

## **XII. PUBLIC INFORMATION AND CONFIDENTIALITY**

Information related to the performance of this Contract may be subject to the Public Information Act and will be withheld from public disclosure or released to the public only in accordance therewith. Performing Agency shall make any information required under the Public Information Act available to the Enterprise Agency in portable document file (“.pdf”) format or any other format agreed between the Parties.

To the extent permitted by law, Performing Agency and the Enterprise Agency agree to keep all information confidential, in whatever form produced, prepared, observed, or received by Performing Agency or the Enterprise Agency. The provisions of this section remain in full force and effect following termination or cessation of the services performed under this Contract.

## **XIII. DATA SECURITY**

Each Party and its Subcontractors will maintain reasonable and appropriate administrative, physical, and technical safeguards to ensure the integrity and confidentiality of information exchanged in the performance of services pursuant to this Contract and protect against any reasonably anticipated threats or hazards to the security or integrity of the information and unauthorized use or disclosure of the information in accordance with applicable federal and state laws, rules, and regulations.

Upon notice, either Party will provide, or cause its subcontractors and agents to provide, the other Party or its designee prompt access to any information security records, books, documents, and papers that relate to services provided under this Contract.

The Parties agree to comply with the terms of **Attachment D**, the Data Use Agreement.

#### **XIV. STANDARD TERMS AND CONDITIONS**

- (a) In the performance of this Contract, each Party shall comply with all applicable federal, state, and local laws, ordinances, and regulations. Each Party shall make itself familiar with and at all times shall observe and comply with all federal, state, and local laws, ordinances, and regulations that in any manner affect performance under this Contract. Each Party will be deemed to have knowledge of all applicable laws and regulations and be deemed to understand them.
- (b) All records relevant to this Contract shall be retained for a minimum of seven (7) years. The period of retention begins at the date of final payment by the Enterprise Agency, or from the date of termination of the Contract, whichever is later. The period of retention shall be extended for a period reasonably necessary to complete an audit or to complete any administrative proceeding or litigation that may ensue.
- (c) The Enterprise Agency shall own, and Performing Agency hereby assigns to the Enterprise Agency, all right, title, and interest in all tangible Work.
- (d) Performing Agency shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the Enterprise Agency, the Texas State Auditor's Office, the United States Government, and/or their authorized representatives sufficient information to determine compliance with the terms and conditions of this Contract and all state and federal rules, regulations, and statutes.
- (e) This Contract and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Contract shall be in a court of competent jurisdiction in Travis County, Texas. Performing Agency irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Contract or any document related hereto. **NOTHING IN THIS SECTION SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY EITHER PARTY.**
- (f) If any provision contained in this Contract is held to be unenforceable by a court of law or equity, this Contract shall be construed as if such provision did not exist and the non-enforceability of such provision shall not be held to render any other provision or provisions of this Contract unenforceable.

- (g) Except with respect to the obligation of payments under this Contract, if either of the Parties, after a good faith effort, is prevented from complying with any express or implied covenant of this Contract by reason of war; terrorism; rebellion; riots; strikes; acts of God; any valid order, rule, or regulation of governmental authority; or similar events that are beyond the control of the affected Party (collectively referred to as a “Force Majeure”), then, while so prevented, the affected Party’s obligation to comply with such covenant shall be suspended, and the affected Party shall not be liable for damages for failure to comply with such covenant. In any such event, the Party claiming Force Majeure shall promptly notify the other Party of the Force Majeure event in writing and, if possible, such notice shall set forth the extent and duration thereof. The Party claiming Force Majeure shall exercise due diligence to prevent, eliminate, or overcome such Force Majeure event where it is possible to do so and shall resume performance at the earliest possible date. However, if non-performance continues for more than thirty (30) days, the Enterprise Agency may terminate this Contract immediately upon written notification to Performing Agency.
- (h) This Contract, its integrated Attachment(s), and any purchase order issued in conjunction with this Contract constitute the entire agreement of the Parties and are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Any additional or conflicting terms in such Attachment(s) and/or purchase order shall be harmonized with this Contract to the extent possible. Unless such integrated Attachment or purchase order specifically displays a mutual intent to amend a particular part of this Contract, general conflicts in language shall be construed consistently with the terms of this Contract.
- (i) This Contract may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall together constitute but one and the same Contract. If the Contract is not executed by the Enterprise Agency within ninety (90) days of execution by the other Party, this Contract shall be null and void.

Pursuant to Chapter 2259 of the Texas Government Code entitled, “Self-Insurance by Governmental Units,” Each Party is self-insured and, therefore, is not required to purchase insurance.

## **XV. CERTIFICATIONS**

The undersigned contracting parties certify that:

- (a) the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the affected agencies of state government;
- (b) Each Party executing this Contract on its behalf has full power and authority to enter into this Contract.
- (c) the proposed arrangements serve the interest of efficient and economical administration of state government; and
- (d) the services contracted for are not required by Section 21, Article XVI of the Constitution of Texas to be supplied under a contract awarded to the lowest responsible bidder.

### **ATTACHMENTS TO THIS CONTRACT:**

**ATTACHMENT A – SCOPE(S) OF WORK**

**ATTACHMENT B – UNIFORM TERMS AND CONDITIONS**

**ATTACHMENT C – LOCAL MENTAL HEALTH AUTHORITY SPECIAL CONDITIONS**

**ATTACHMENT D – DATA USE AGREEMENT**

**ATTACHMENT E – ASSURANCES AND CERTIFICATIONS**