

**INTERLOCAL COOPERATION CONTRACT  
DEPARTMENT OF STATE HEALTH SERVICES  
CONTRACT NO. [537-18-0162-00001]**

THE DEPARTMENT OF STATE HEALTH SERVICES (“System Agency”) and City of San Antonio (“Local Government”), each a “Party” and collectively the “Parties,” enter into the following contract for laboratory analyses of milk sampling services (the “Contract”) pursuant to the provisions of the “Interlocal Cooperation Act,” Chapter 791 of the Texas Government Code.

**I. PARTIES**

System Agency

Name: Department of State Health Services  
Address: 1100 W. 49<sup>th</sup> Street  
City and Zip: Austin, 78756  
Contact Person: Frank Rivera  
Telephone: (512) 776-3451  
Fax number: (512) 776-7391  
E-Mail Address: [frank.rivera@dshs.dshs.state.tx.us](mailto:frank.rivera@dshs.dshs.state.tx.us)  
Agency Number: 537

Local Government

Name: City of San Antonio  
Address: PO Box 839966  
City and Zip: San Antonio, 78283-3966  
Contact Person: Mark Wade  
Telephone: (210) 207-8747  
Fax number: (210) 207-2159  
E-Mail Address: [mark.wade@sanantonio.gov](mailto:mark.wade@sanantonio.gov)  
Agency Number: N/A

**II. 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 – Statement of Work.**

**III. CONTRACT PERIOD AND RENEWAL**

The Contract is effective on September 1, 2017 and terminates on August 31, 2019 unless renewed or terminated pursuant to the terms and conditions of the Contract. The Parties may extend this Contract subject to mutually agreeable terms and conditions.

**IV. AMENDMENT**

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

**V. CONTRACT AMOUNT AND PAYMENT FOR SERVICES**

The total amount of this Contract will not exceed SEVENTY-ONE THOUSAND SEVEN HUNDRED SEVENTY-ONE DOLLARS AND TWENTY-FIVE CENTS (**\$71,771.25**) per fiscal year (September 1 through August 31) for a cumulative total not to exceed ONE HUNDRED FORTY-THREE THOUSAND FIVE HUNDRED FORTY-TWO DOLLARS AND FIFTY CENTS (**\$143,542.50**) for the duration of the

contract. All expenditures under the Contract will be in accordance with **ATTACHMENT A, STATEMENT OF WORK.**

## **VI. LEGAL NOTICES**

Legal Notices under this Contract shall be deemed delivered when 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 below:

### **System Agency**

Department of State Health Services  
Attention: Lisa Hernandez  
1100 W. 49th Street, MC 1911  
Austin, TX 78756

### **Local Government**

City of San Antonio  
PO Box 839966  
San Antonio, TX 78283-3966  
Attention: Mark Wade  
[mark.wade@sanantonio.gov](mailto:mark.wade@sanantonio.gov)

Notice given in any other manner shall be deemed effective only if and when received by the Party to be notified. Either Party may change its address for receiving legal notice by notifying the other Party in writing.

## **VII. CERTIFICATIONS**

The undersigned contracting parties certify that:

- (1) 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;
- (2) Each Party executing this Contract on its behalf has full power and authority to enter into this Contract.
- (3) The proposed arrangements serve the interest of efficient and economical administration of state government; and
- (4) 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.

The System Agency further certifies that it has statutory authority to contract for the services described in this contract under DSHS Contracting Authority, which is Texas Health and Safety

Code Chapters 12 and 1001 and Texas Government Code Chapters 791 and 531, Subchapter D, to the extent applicable.

The Local Government further certifies that it has statutory authority to contract for the services described in this contract under Texas Government Code, Chapter 791, and Texas Health and Safety Code, Chapter 435.

**SIGNATURE PAGE FOLLOWS**

**SIGNATURE PAGE FOR SYSTEM AGENCY CONTRACT NO. [537-18-0162-00001]**

**DEPARTMENT OF STATE HEALTH SERVICES**

**LOCAL GOVERNMENT**

DocuSigned by:  
*Jonathan R. Huss*  
8216266A189345B...  
\_\_\_\_\_  
Signature

DocuSigned by:  
*Vincent Nathan*  
EDD2460745394C4...  
\_\_\_\_\_  
Signature

Jonathan R.Huss  
Printed Name

vincent Nathan  
\_\_\_\_\_  
Printed Name

Interim Associate Commissioner,  
Division of Regulatory Services  
Title

Director of Public Health  
\_\_\_\_\_  
Title

3/6/2017  
\_\_\_\_\_  
Date

3/2/2017  
\_\_\_\_\_  
Date

**THE FOLLOWING ATTACHMENTS TO SYSTEM AGENCY CONTRACT NO. 537-18-0162-00001 ARE HEREBY INCORPORATED BY REFERENCE:**

- |                       |  |
|-----------------------|--|
| <b>ATTACHMENT A -</b> | <b>STATEMENT OF WORK</b>                     |
| <b>ATTACHMENT B -</b> | <b>UNIFORM TERMS AND CONDITIONS</b>          |
| <b>ATTACHMENT C -</b> | <b>SUPPLEMENTAL &amp; SPECIAL CONDITIONS</b> |

## **ATTACHMENT A STATEMENT OF WORK**

### **I. LOCAL GOVERNMENT RESPONSIBILITIES**

- A. System Agency will submit milk samples to Local Government, who will provide accurate laboratory analyses of each submitted milk sample submit the results of the laboratory analyses to System Agency.
- B. Local Government will ensure that analyses of the milk samples submitted by System Agency will meet laboratory proficiency standards as set by the National Conference of Interstate Milk Shipments and the current U.S. Public Health Service Grade "A" Pasteurized Milk Ordinance.
- C. Local Government will comply with Texas Health and Safety Code Chapter 435, on Dairy Products.
- D. Local Government will comply with Texas Health and Safety Code Chapter 440, the Frozen Dessert Manufacturer Licensing Act.
- E. Local Government will comply with Texas Administrative Code Title 25, Chapter 217, on Milk and Dairy
- F. Local Government will immediately notify designated System Agency staff when a sample is in violation of the set limits.
- G. Local Government will perform the tests requested by System Agency for each sample submitted and will transmit by mail, fax, or email the final results of each test within 48 hours from the date and time the sample is received by the Local Government's laboratory or the close of the next business day, whichever is later, to:

Department of State Health Services  
Environmental and Consumer Safety  
Section Policy/Standards/QA Unit, Milk  
Group  
PO Box 149347, MC 1987  
Austin, Texas 78714-9347  
Fax: (512) 834-6756

### **II. PERFORMANCE MEASURES**

The System Agency will monitor the Performing Agency's performance of the requirements in Attachment A and compliance with the Contract's terms and conditions.

### **III. INVOICE AND PAYMENT**

- A. Performing Agency will request payments using the State of Texas Purchase Voucher (Form B-13) at <http://www.SystemAgency.state.tx.us/grants/forms/b13form.doc>. Voucher and any supporting documentation will be mailed or submitted by fax or electronic mail to the address/number below.

Department of State Health Services  
Claims Processing Unit, MC 1940  
1100 West 49<sup>th</sup> Street  
P.O. Box 149347

## ATTACHMENT A STATEMENT OF WORK

Austin, TX 78714-9347  
 FAX: (512) 458-7442  
 EMAIL: [invoices@dshs.state.tx.us](mailto:invoices@dshs.state.tx.us)

- B. Performing Agency will be paid on a fee-for-service/unit rate basis and in accordance with the fee schedule listed in Section III.C. of this Attachment A, Statement of Work. System Agency will make these payments from their current revenues.
- C. Laboratory analyses will be performed at a rate per test not to exceed the following schedule:

<b>Analysis</b>	<b>Test or Method</b>	<b>Max. Price</b>
Standard Plate Count	SPC/PCA	\$11.25
Direct Microscopic Somatic Cell Count	DMSCC	\$15.00
Electronic Somatic Cell Count	ESCC	\$15.00
Added Water	Cryoscope	\$3.75
Antibiotics Inhibitor (Disk Assay)	Disc/Inhibitor (Delvo)	\$8.43
Antibiotics Confirmation Rapid Test	Charm I, II, SNAP, etc.	\$45.00
Aflatoxin	Aflatoxin	\$45.00
Phosphatase	Fluorophos	\$14.06
Coliform	Coli	\$10.31
Water Supply	Water	\$28.12
Cooling Water	Glycol-Sweet Water	\$28.12

HHSC Uniform Terms and Conditions Version 2.12  
Published and Effective: November 30, 2015  
Responsible Office: Chief Counsel



**Health and Human Services Commission**  
**HHSC Uniform Terms and Conditions -**  
**Local Governmental Body**  
**Version 2.12**

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## ARTICLE I DEFINITIONS AND INTERPRETIVE PROVISIONS

### 1.01 Definitions

As used in this Contract, unless the context clearly indicates otherwise or defined in the Signature Document, the following terms and conditions have the meanings assigned below:

“Amendment” means a written agreement, signed by the parties hereto, which documents changes to the Contract other than those permitted by Technical Guidance Letters, as herein defined.

“Attachment” means documents, terms, conditions, or additional information physically added to this Contract following the execution page or included by reference, as if physically, within the body of this Contract.

“Contract” means the Signature Document, these Uniform Terms and Conditions, along with any Attachments, and any Amendments, purchase orders, or Technical Guidance Letters that may be issued by the System Agency, to be incorporated by reference herein for all purposes if issued.

“Deliverables” means any item, report, data, document, photograph, or other submission required to be delivered under the terms of this Contract, in whatever form.

“Effective Date” means the date agreed to by the Parties as the date on which the Contract takes effect.

“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).

“Federal Certifications” means U.S. Department of Commerce Form CD-512 (12-04), “Certifications Regarding Lobbying – Lower Tier Covered Transactions.”

“Federal Fiscal Year” means the period beginning October 1 and ending September 30 each year, which is the annual accounting period for the United States government.

“GAAP” means Generally Accepted Accounting Principles.

“GASB” means the Governmental Accounting Standards Board.

“Health and Human Services Commission” or “HHSC” means the administrative agency established under Chapter 531, Texas Government Code or its designee.

“Intellectual Property” means patents, rights to apply for patents, trademarks, trade names, service marks, domain names, copyrights and all applications and worldwide registration of such, schematics, industrial models, inventions, know-how, trade secrets, computer software programs, and other intangible proprietary information.

“Local Government” means the Party to this Contract that meets the definition of this term under Tex. Gov't Code § 791.003(4).

“Parties” means the System Agency and Local Government, collectively.

“Party” means either the System Agency or Performing Agency, individually.

“Project” means the goods and/or Services described in the Signature Document or an Attachment to this Contract.

“[Public Information Act](#)” or “[PIA](#)” means Chapter 552 of the Texas Government Code.

“[Services](#)” means the tasks, functions, and responsibilities assigned and delegated to Local Government under the Contract.

“[Signature Document](#)” means the document executed by both Parties that specifically sets forth all of the documents that constitute the Contract.

“[System Agency](#)” means HHSC or any of the agencies of the State of Texas that are overseen by HHSC under authority granted under State law and the officers, employees, and designees of those agencies. These agencies include: the Department of Aging and Disability Services, the Department of Assistive and Rehabilitative Services, the Department of Family and Protective Services, and the Department of State Health Services.

“[State Fiscal Year](#)” means the period beginning September 1 and ending August 31 each year, which is the annual accounting period for the State of Texas.

“[State of Texas Textravel](#)” means Texas Administrative Code, Title 34, Part 1, Chapter 5, Subchapter C, Section 5.22, relative to travel reimbursements under this Contract, if any.

“[Subcontractor](#)” means an individual or business that performs part or all of the obligations of Local Government under this Contract.

“[Technical Guidance Letter](#)” or “[TGL](#)” means an instruction, clarification, or interpretation of the requirements of the Contract, issued by the System Agency to the Local Government.

“[Work](#)” means all Services to be performed, goods to be delivered, and any appurtenant actions performed and items produced, conceived, or developed, including Deliverables.

## **1.02 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, 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. Any references to “sections,” “appendices,” or “attachments” are references to sections, appendices, or attachments of the Contract.
- E. Any references to agreements, contracts, statutes, or administrative rules or regulations in the Contract are references to these documents as amended, modified, or supplemented from time to time during the term of the Contract.
- F. The captions and headings of this Contract are for convenience of reference only and shall not affect the interpretation of this Contract.

- G. All Attachments within this Contract, including those incorporated by reference, and any Amendments are considered part of the terms of this Contract.
- H. 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.
- I. Unless otherwise expressly provided, reference to any action of the System Agency or by the System Agency by way of consent, approval, or waiver shall be deemed modified by the phrase "in its sole discretion."
- J. Time is of the essence in this Contract.

## ARTICLE II CONSIDERATION

### 2.01 Expenses

Except as otherwise provided in the Contract, no ancillary expenses incurred by the Local Government in connection with its provision of the Services or Deliverables will be reimbursed by the System Agency. Ancillary expenses include, but are not limited to costs associated with transportation, delivery, and insurance for each Deliverable.

When the reimbursement of travel expenses is authorized by the Contract, all such expenses shall be reimbursed in accordance with the rates set by the State of Texas *Textravel*.

### 2.02 Funding

- A. This Contract shall not be construed as creating any debt on behalf of the State of Texas or the System 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 System 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 Local Government for damages under this Contract may not exceed the amount of funds appropriated for payment, but not yet paid to Local Government, 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 System Agency may restrict, reduce, or terminate funding under this Contract. This Contract is also subject to immediate cancellation or termination, without penalty to the System Agency, if sufficient and adequate funds are not available. Contractor will have no right of action against the System Agency if the System 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 System Agency shall not be required to give notice and shall not be liable for any damages or losses caused or associated with such termination or cancellation.

### **ARTICLE III WARRANTY, AFFIRMATIONS, ASSURANCES AND CERTIFICATIONS**

#### **3.01 Federal Assurances**

Local Government further certifies that, to the extent Federal Assurances are incorporated into the Contract under the Signature Document, the Federal Assurances have been reviewed and that Local Government is in compliance with each of the requirements reflected therein.

#### **3.02 Federal Certifications**

Local Government further certifies, to the extent Federal Certifications are incorporated into the Contract under the Signature Document, that the Federal Certifications have been reviewed, and that Local Government is in compliance with each of the requirements reflected therein. **In addition, Local Government certifies that it is in compliance with all applicable federal laws, rules, or regulations, as they may pertain to this Contract.**

### **ARTICLE IV INTELLECTUAL PROPERTY**

#### **4.01 Intellectual Property**

- A. To the extent any Work results in the creation of Intellectual Property, all right, title, and interest in and to such Intellectual Property shall vest in the System Agency upon creation and shall be deemed to be a “work made for hire” and made in the course of the services rendered pursuant to this Contract.
- B. To the extent that title to any such Intellectual Property may not by law vest in the System Agency, or such Intellectual Property may not be considered a “work made for hire,” all rights, title, and interest therein are hereby irrevocably assigned to the System Agency. The System Agency shall have the right to obtain and to hold in its name any and all patents, copyrights, trademarks, service marks, registrations, or such other protection as may be appropriate to the subject matter, including extensions and renewals thereof.
- C. Local Government must give the System Agency and the State of Texas, as well as any person designated by the System Agency or the State of Texas, all assistance required to perfect the rights defined herein without any charge or expense beyond the stated amount payable to Local Government for the services authorized under this Contract.

### **ARTICLE V RECORDS, AUDIT, AND DISCLOSURE**

#### **5.01 Access to records, books, and documents**

In addition to any right of access arising by operation of law, Local Government and any of Local Government’s affiliate or subsidiary organizations, or Subcontractors shall permit the System Agency or any of its duly authorized representatives, as well as duly authorized federal, state or local authorities, unrestricted access to and the right to examine any site where business is conducted or Services are performed, and all records, which includes but is not limited to financial, client and patient records, books, papers or documents related to this Contract. If the Contract includes federal funds, federal agencies that shall have a right of access to records as described in this section include: the federal agency providing the funds, the Comptroller General of the United

States, the General Accounting Office, the Office of the Inspector General, and any of their authorized representatives. In addition, agencies of the State of Texas that shall have a right of access to records as described in this section include: the System Agency, HHSC, HHSC's contracted examiners, the State Auditor's Office, the Texas Attorney General's Office, and any successor agencies. Each of these entities may be a duly authorized authority. If deemed necessary by the System Agency or any duly authorized authority, for the purpose of investigation or hearing, Local Government shall produce original documents related to this Contract. The System Agency and any duly authorized authority shall have the right to audit billings both before and after payment, and all documentation that substantiates the billings. Local Government shall include this provision concerning the right of access to, and examination of, sites and information related to this Contract in any Subcontract it awards.

**5.02 Response/compliance with audit or inspection findings**

- A. At Local Government's sole expense, Local Government must take action to ensure its or a Subcontractor's compliance with a correction of any finding of noncompliance with any law, regulation, audit requirement, or generally accepted accounting principle relating to the Services and Deliverables or any other deficiency contained in any audit, review, or inspection conducted under the Contract. Whether Local Government's action corrects the noncompliance shall be solely the decision of the System Agency.
- B. As part of the Services, Local Government must provide to HHSC upon request a copy of those portions of Local Government's and its Subcontractors' internal audit reports relating to the Services and Deliverables provided to the State under the Contract.

**5.03 SAO Audit**

Local Government understands that acceptance of funds directly under the Contract or indirectly through a Subcontract under the Contract acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, an entity that is the subject of an audit or investigation by the SAO must provide the SAO with access to any information the SAO considers relevant to the investigation or audit. Local Government agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. Local Government will ensure that this clause concerning the authority to audit funds received indirectly by Subcontractors through Local Government and the requirement to cooperate is included in any Subcontract it awards.

**5.04 Recapture of Funds**

The System Agency may withhold all or part of any payments to Local Government to offset overpayments made to the Local Government. Overpayments as used in this Section include payments (i) made by the System Agency that exceed the maximum allowable rates; (ii) that are not allowed under applicable laws, rules, or regulations; or (iii) that are otherwise inconsistent with this Contract, including any unapproved expenditures. Local Government understands and agrees that it shall be liable to the System Agency for any costs disallowed pursuant to financial and compliance audit(s) of funds received under this Contract. Local Government further understands and agrees that reimbursement of such disallowed costs shall be paid by Local Government from funds which were not provided or otherwise made available to Local Government under this Contract.

### **5.05 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. Local Government shall make any information required under the Public Information Act available to the System Agency in portable document file (“.pdf”) format or any other format agreed between the Parties.

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

### **5.06 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.

## **ARTICLE VI CONTRACT MANAGEMENT AND EARLY TERMINATION**

### **6.01 Contract Management**

To ensure full performance of the Contract and compliance with applicable law, the System Agency may take actions including:

- A. suspending all or part of the Contract;
- B. requiring the Local Government to take specific corrective actions in order to remain in compliance with term of the Contract;
- C. recouping payments made to the Local Government found to be in error;
- D. suspending and/or limiting any services and placing conditions on any such suspensions and/or limitations of services;
- E. imposing any other remedies authorized under this Contract; and
- F. imposing any other remedies, sanctions or penalties permitted by federal or state statute, law, regulation, rule.

### **6.02 Termination for Convenience**

The System Agency may terminate the Contract at any time when, in its sole discretion, the System Agency determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in HHSC’s notice of termination.

### **6.03 Termination for Cause**

The System Agency will have the right to terminate the Contract in whole or in part if the System Agency determines, at its sole discretion, that Local Government has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Local Government's duties under the Contract.

### **6.04 Equitable Settlement**

Any early termination under this Article shall be subject to the equitable settlement of the respective interests of the Parties up to the date of termination.

## **ARTICLE VII MISCELLANEOUS PROVISIONS**

### **7.01 Technical Guidance Letters**

In the sole discretion of the System Agency, and in conformance with federal and state law, the System Agency may issue instructions, clarifications, or interpretations as may be required during Work performance in the form of a Technical Guidance Letter. A TGL must be in writing, and may be delivered by regular mail, electronic mail, or facsimile transmission. Any TGL issued by the System Agency shall be incorporated into the Contract by reference herein for all purposes when it is issued.

### **7.02 Survivability**

All obligations and duties of the Local Government not fully performed as of the expiration or termination of this Contract will survive the expiration or termination of the Contract.

### **7.03 No Waiver**

Neither failure to enforce any provision of this Contract nor payment for services provided under it constitute waiver of any provision of the Contract.

### **7.04 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 System 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 System Agency shall own, and Local Government hereby assigns to the System Agency, all right, title, and interest in all tangible Work.
- D. Local Government shall keep and maintain under GAAP or GASB, as applicable, full, true, and complete records necessary to fully disclose to the System 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. Local Government 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 THE SYSTEM AGENCY.**
- 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 System Agency may terminate this Contract immediately upon written notification to Local Government.
- 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. Neither party shall assign or subcontract the whole nor any part of the contract, including any right or duty required under it, without the other party's prior written consent. Any assignment made contrary to this shall be void.
- J. 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 System Agency within thirty (30) days of execution by the other Party, this Contract shall be null and void.
- K. 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.

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## SUPPLEMENTAL CONDITIONS

### **THE FOLLOWING SUPPLEMENTAL CONDITIONS APPLY TO THIS CONTRACT AND MODIFY THE HHS UNIFORM TERMS AND CONDITIONS:**

**Section 6.02**, Termination for Convenience, shall be deleted in its entirety and replaced with the following:

#### **6.02 Termination for Convenience**

Either Local Government or System Agency may terminate the Contract at any time when, in the party's sole discretion, it determines that termination is in the best interests of the State of Texas. The termination will be effective on the date specified in the terminating party's notice of termination.

**Section 6.03**, Termination for Cause, shall be deleted in its entirety and replaced with the following:

#### **6.03 Termination for Cause**

Local Government and System Agency will each have the right to terminate the Contract in whole or in part if either agency determines, in its sole discretion, that the other Party has materially breached the Contract or has failed to adhere to any laws, ordinances, rules, regulations or orders of any public authority having jurisdiction and such violation prevents or substantially impairs performance of Local Government's or System Agency's duties under the Contract.

## SPECIAL CONDITIONS

### SECTION 1.01 NOTICE OF CONTRACT ACTION

Local Government shall notify their assigned contract manager if Local Government has had any contract suspended or terminated for cause by any local, state or federal department or agency or nonprofit entity within five days of becoming aware of the action and include the following:

- a. Reason for such action;
- b. Name and contact information of the local, state or federal department or agency or entity;
- c. Date of the contract;
- d. Date of suspension or termination; and
- e. Contract or case reference number.

### SECTION 1.02 NOTICE OF CRIMINAL ACTIVITY AND DISCIPLINARY ACTIONS

- a. Local Government shall immediately report in writing to their contract manager when Local Government has knowledge or any reason to believe that they or any person with ownership or controlling interest in the organization/business, or their agent, employee, contractor or volunteer that is providing services under this Contract has:

1. Engaged in any activity that could constitute a criminal offense equal to or greater than a Class A misdemeanor or grounds for disciplinary action by a state or federal regulatory authority; or
  2. Been placed on community supervision, received deferred adjudication, or been indicted for or convicted of a criminal offense relating to involvement in any financial matter, federal or state program or felony sex crime.
- b. Local Government shall not permit any person who engaged, or was alleged to have engaged, in any activity subject to reporting under this section to perform direct client services or have direct contact with clients, unless otherwise directed in writing by the System Agency.

**SECTION 1.03 PERFORMING AGENCY’S NOTIFICATION OF CHANGE OF CONTACT PERSON OR KEY PERSONNEL**

Local Government shall notify in writing their contract manager assigned within ten days of any change to the Local Government's Contact Person or Key Personnel.

**SECTION 1.14 ELECTRONIC AND INFORMATION RESOURCES ACCESSIBILITY AND SECURITY STANDARDS**

- a. Applicability:

The following Electronic and Information Resources (EIR) requirements apply to the Contract because Local Government performs services that include EIR that the System Agency's employees are required or permitted to access or members of the public are required or permitted to access.

This Section does not apply to incidental uses of EIR in the performance of the Agreement, unless the Parties agree that the EIR will become property of the State of Texas or will be used by HHSC’s clients or recipients after completion of the Agreement.

Nothing in this section is intended to prescribe the use of particular designs or technologies or to prevent the use of alternative technologies, provided they result in substantially equivalent or greater access to and use of a Product.

- b. Definitions:

**“Accessibility Standards”** means accessibility standards and specifications for Texas agency and institution of higher education websites and EIR set forth in 1 TAC Chapter 206 and/or Chapter 213.

**“Electronic and Information Resources”** means information resources, including information resources technologies, and any equipment or interconnected system of equipment that is used in the creation, conversion, duplication, or delivery of data or information. The term includes telephones and other telecommunications products,

information kiosks, transaction machines, Internet websites, multimedia resources, and office equipment, including copy machines and fax machines.

**“Electronic and Information Resources Accessibility Standards”** means the accessibility standards for electronic and information resources contained in 1 Texas Administrative Code Chapter 213.

**“Product”** means information resources technology that is, or is related to EIR.

**“Web Site Accessibility Standards/ Specifications”** means standards contained in Volume 1 Tex. Admin. Code Chapter 206(c) Accessibility Requirements.

Under Tex. Gov’t Code Chapter 2054, Subchapter M, and implementing rules of the Texas Department of Information Resources, the System Agency must procure Products and services that comply with the Accessibility Standards when those Products are available in the commercial marketplace or when those Products are developed in response to a procurement solicitation. Accordingly, Performing Agency must provide electronic and information resources and associated Product documentation and technical support that comply with the Accessibility Standards.

c. Evaluation, Testing, and Monitoring

1. The System Agency may review, test, evaluate and monitor Local Government's Products and services, as well as associated documentation and technical support for compliance with the Accessibility Standards. Review, testing, evaluation and monitoring may be conducted before and after the award of a contract. Testing and monitoring may include user acceptance testing. Neither the review, testing (including acceptance testing), evaluation or monitoring of any Product or service, nor the absence of review, testing, evaluation or monitoring, will result in a waiver of the State’s right to contest Local Government's assertion of compliance with the Accessibility Standards.
2. Local Government agrees to cooperate fully and provide the System Agency and its representatives timely access to Products, records, and other items and information needed to conduct such review, evaluation, testing, and monitoring.

d. Representations and Warranties

1. Local Government represents and warrants that:
  - i. As of the Effective Date of the Contract, the Products and associated documentation and technical support comply with the Accessibility Standards as they exist at the time of entering the Agreement, unless and to the extent the Parties otherwise expressly agree in writing; and
  - ii. If the Products will be in the custody of the state or a System Agency's client or recipient after the Contract expiration or termination, the Products will continue

to comply with Accessibility Standards after the expiration or termination of the Contract Term, unless the System Agency or its clients or recipients, as applicable, use the Products in a manner that renders it noncompliant.

2. In the event Local Government becomes aware, or is notified that the Product or service and associated documentation and technical support do not comply with the Accessibility Standards, Local Government represents and warrants that it will, in a timely manner and at no cost to the System Agency, perform all necessary steps to satisfy the Accessibility Standards, including remediation, replacement, and upgrading of the Product or service, or providing a suitable substitute.
3. Local Government acknowledges and agrees that these representations and warranties are essential inducements on which the System Agency relies in awarding this Contract.
4. Local Government's representations and warranties under this subsection will survive the termination or expiration of the Contract and will remain in full force and effect throughout the useful life of the Product.

e. Remedies

1. Under Tex. Gov't Code § 2054.465, neither Local Government nor any other person has cause of action against the System Agency for a claim of a failure to comply with Tex. Gov't Code Chapter 2054, Subchapter M, and rules of the Department of Information Resources.
2. In the event of a breach of Local Government's representations and warranties, Local Government will be liable for direct, consequential, indirect, special, or liquidated damages and any other remedies to which the System Agency may be entitled under this Contract and other applicable law. This remedy is cumulative of any other remedies to which the System Agency may be entitled under this Contract and other applicable law.