

ATTACHMENT D
LOCAL MENTAL HEALTH AUTHORITY (LMHA) SPECIAL CONDITIONS, VERSION 1

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ARTICLE I FORMS

1.01 Manuals, Reports, Exhibits and Forms

Manuals, reports, exhibits and forms referenced in this Contract are located at <https://hhs.texas.gov/doing-business-hhs/provider-portals/behavioral-health-services-providers/behavioral-health-provider-resources/community-mental-health-contracts>. Performing Agency shall use the reports and forms required by this Contract as they now exist and as they may be revised. System Agency will notify Performing Agency of revisions to the reports and forms. All manuals, reports, exhibits and forms are incorporated by reference into this contract.

1.02 Information Items

Information Items referenced in this Contract are located at <https://hhs.texas.gov/doing-business-hhs/provider-portals/behavioral-health-services-providers/behavioral-health-provider-resources/community-mental-health-contracts>. These items provide instructions regarding service delivery, reporting requirements and report preparation for this Contract. Nothing in such instructions shall be interpreted as changing or superseding the terms of this Contract. All information items are incorporated by reference into this contract

1.03 Submission Calendar

Information Item S (Submission Calendar) is located at <https://hhs.texas.gov/doing-business-hhs/provider-portals/behavioral-health-services-providers/behavioral-health-provider-resources/community-mental-health-contracts>. The Submission Calendar is a listing of due dates applicable to the submission and reporting requirements of this Contract. Performing Agency shall submit all reports and information required under this Contract in accordance with the Submission Calendar.

1.04 Uniform Grant Management Standards

The Uniform Grant and Contract Management Act of 1981 (UGMA), Tex. Gov't Code Ch. 783, and the Texas Grant Management Standards (TxGMS) referenced in this Contract are located on the Internet at <https://statutes.capitol.texas.gov/> and <https://comptroller.texas.gov/purchasing/grant-management/>, respectively.

ARTICLE II FUNDING

2.01 Budget

Performing Agency shall maintain a system of budget control that complies with TxGMS. Performing Agency shall earn and expend funds according to a budget, in the format of Report III.

2.02 Program Income

Program Income shall be reported on the appropriate form and shall offset expenditures within general revenue. Any program income funds will be used to within the program/area where the funds are earned. Program Income may be used as part of the required local match.

2.03 Use of Funds.

- 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.

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- b. Performing Agency will spend funds provided under a Statement of Work, including Local Match Funds, solely for reasonable and allowable expenses directly related to the functions provided pursuant to that Statement of Work.
- c. Performing Agency will expend funds appropriated for adult and child mental health services as specified in the Statement of Work.
- d. Performing Agency will expend at least ten percent (10%) of mental health block grant funds for children's services identified in the Statement of Work.
- e. Performing Agency will expend funds as directed under the Statement of Work for services to individuals identified in the "Populations Served" section of the Statement of Work, as applicable, or to any person to determined eligible based on screening and assessment.
- f. Performing Agency will limit use of funds allocated for Community Mental Health Crisis Services to the development, expansion, and delivery of crisis services.
- g. Performing Agency will maintain funding levels in the use of General Funds allocated to Adult Services and Children's Services for support and delivery of crisis services and shall not use funds allocated for Community Mental Health Crisis Services to supplant funds historically expended for the delivery of crisis services.

2.04 Use for Match Prohibited

Performing Agency will not use the same local match funds required under this Contract to satisfy any local match requirement of another System Agency.

2.05 Non-Supplanting

Performing Agency will not use funds received under this Contract to supplant state or local funds. Federal block grant funds may be used to increase state or local funds currently available for a particular activity. A good faith effort shall be made maintain a current level of funding. The System Agency may require Performing Agency to submit evidence that a reduction in local funding, if any, resulted for reasons other than receipt or expected receipt of block grant funding under this Contract.

2.06 Return of Funds

Funds allocated that have not been encumbered for purposes authorized by this Contract shall be returned to the System Agency within thirty (30) days of submission of each fiscal year's independent audit.

2.07 Directed Payment Program for Behavioral Health Services (DPP-BHS)

Performing Agency may expend general revenue to obtain federal financial participation under the DPP-BHS for activities in accordance with this agreement and applicable state regulations. Performing Agency will report such expenditures on the form provided by the System Agency.

2.08 Limitation of Liability

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.

ARTICLE III ALLOWABLE COSTS AND AUDIT REQUIREMENTS

3.01 Allowable Costs

Only those costs allowable under TxGMS and 2 CFR 200 are allowable costs under this Contract.

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3.02 Purchases with Contract Funds

Performing Agency may expend Contract Funds without prior approval by the System Agency in the following circumstances:

- a. expenditures up to **ONE HUNDRED THOUSAND DOLLARS (\$100,000)** during the Contract term for the acquisition of automatic data processing, which includes computer hardware and software, whether by outright purchase, rental-purchase agreement, or other method of purchase;
- b. rental or lease expenditures on buildings and related facilities up to the market value of the lease space;
- c. reconversion costs incurred in the restoration or rehabilitation of Performing Agency's rental or lease property in an amount equal to the greater of twenty-five percent (25%) of the annual lease or rental expense or **FIFTY THOUSAND DOLLARS (\$50,000)**;
- d. expenditures for insurance, up to the following coverage limits:
 - 1) workers compensation, up to the statutory limit;
 - 2) public official's error and omissions, up to **ONE MILLION DOLLARS (\$1,000,000.00)** per claim and **ONE MILLION DOLLARS (\$1,000,000.00)** annual aggregate;
 - 3) professional liability, up to **ONE MILLION DOLLARS (\$1,000,000.00)/THREE MILLION DOLLARS (\$3,000,000.00)** annual aggregate;
 - 4) general liability, up to **ONE MILLION DOLLARS (\$1,000,000.00)** per occurrence;
 - 5) automobile liability, up to **ONE MILLION DOLLARS (\$1,000,000.00)** per occurrence;
 - 6) automobile physical damage, up to the actual cash value of the vehicles;
 - 7) property, up to the replacement cost value of properties;
 - 8) flood coverage; and
 - 9) windstorm coverage;
- e. Expenditures up to **ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)** of Performing Agency's operating budget for management studies by third parties to improve the effectiveness and efficiency of Performing Agency; and
- f. Costs of contracted professional services.

ALL OTHER EXPENDITURES REQUIRE PRIOR APPROVAL.

3.03 Indirect Costs

Performing Agency will expend no more than Performing Agency's System Agency-acknowledged or approved indirect cost rate (ICR), incorporated as Attachment I, on indirect costs under this Contract.

3.04 Disallowance of Costs

The System Agency will reject all requests for approval of expenditures that are inconsistent with the Statement of Work.

3.05 Independent Audit

Performing Agency will conduct, or cause to be conducted, a comprehensive financial and compliance audit for the previous state fiscal year. This audit will be prepared in accordance with the provisions outlined below and will be submitted in accordance with the Submission Calendar.

- a. Tex. Health & Safety Code § 534.068;
- b. 25 Tex. Admin. Code Chapter 411, Subchapter G; and
- c. HHSC's *Guidelines for Annual Financial and Compliance Audits of Community MHMR Centers* (21st Revision - February 2005) (the "Audit Guidelines"). HHSC's Audit Guidelines, Part 1 Annual Financial Audit, Section III. Engagement of External Auditors, Letter C. Selection of Auditor is deleted in its entirety and replaced with the following language:

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C. Selection of Auditor

The Board of Trustees is required to obtain a single audit each year and must competitively procure single audit services once every six (6) years.

HHSC may require Performing Agency to complete a single audit or program-specific audit. To the extent directed by HHSC, Local Government will complete the Single Audit Status Registration Form located at:

https://hhsportal.hhs.state.tx.us/heartwebextr/public/project_hhsc_sau?methodToCall=loadExternalProject.

If the Single Audit Status Registration Form is not completed within thirty (30) days after notification by HHSC to do so, the Performing Agency may be subject to sanctions and remedies for non-compliance with the Contract.

3.06 Interest Earned

Interest earned in excess of \$250 on General Funds allocated to Adult Services, Children's Services, or Community Mental Health Crisis Services may be used only for the services described, and during the term, of this Contract. Interest earned on funds received from the federal government must be handled in accordance with federal law.

ARTICLE IV CLIENT ASSIGNMENT AND REGISTRATION (CARE)

4.01 Compliance

Performing Agency shall use CARE to collect and record information, electronically submit information to System Agency, and generate reports concerning performance under this Contract, in accordance with System Agency's CARE Reference Manual, which can be accessed at https://hhsportal.hhs.state.tx.us/publicHelpGuide/Content/16_CARE/CAREWebCARE%20Reference%20Manual.htm.

4.02 CARE Entry

Accurate and timely information using CARE shall be entered, as follows:

- a. Upon submission of this Contract:
 - 1) the budget developed in accordance with this Contract; and
 - 2) projected in-kind local match for the term of this Contract, in the format required by the System Agency.
- b. Information necessary to accurately calculate number of persons served by type of service and information necessary to complete all reports required under this Contract; and
- c. Family size and income shall be reported in CARE.

ARTICLE V REPORTS AND OTHER SUBMISSION REQUIREMENTS

5.01 Financial Reports

- a. Performing Agency will submit a quarterly financial report on the form provided by the System Agency and in accordance with the Submission Calendar. Copies of Performing Agency's quarterly financial statements for the general fund account groups, including the balance sheet, income statement and general fund balance for Performing Agency in total, as prepared for presentation to Performing Agency's governing body, and a certification of the accuracy of such statements, shall also be submitted on the form provided.

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- b. In addition to the quarterly financial reporting required above, System Agency may require Performing Agency to submit monthly financial statements in accordance with the Submission Calendar. System Agency will notify Performing Agency, through technical guidance correspondence, of its requirement to submit, or no longer submit, monthly financial statements. If System Agency requires submission of monthly financial statements, then copies of Performing Agency's statements shall include a balance sheet, statement of revenues and expenditures, and projected cash flow. A certification of the accuracy of such statements is not required for the monthly financial statement submission.

5.02 Program and Progress Reports

Performing Agency shall submit program and progress reports requested by the System Agency in the format required by the System Agency.

5.03 Significant Incidents

Performing Agency will report any incidents that result in substantial disruption of program operation involving or potentially affecting persons served to the System Agency Contract Manager within seventy-two (72) hours.

5.04 Other Submissions

Performing Agency will submit accurate and timely information to the System Agency in accordance with the Submission Calendar or in the timelines below, as follows:

- a. comprehensive monthly encounter data for all Services, including all required data fields and values in the current version of the HHSC Community Mental Health Service Array. The HHSC Community Mental Health Service Array is incorporated by reference and is found within the General Warehouse Information, Specifications subfolder using the following link: <https://hhsc4svpop1.hhsc.txnet.state.tx.us/DataWarehousePage/>;
- b. supporting reports, data, work papers and information, as requested by the System Agency;
- c. within ten business days after request:
 - 1) data and information required for reporting to the Center for Mental Health Services' Inventory of Mental Health Organizations;
 - 2) data and information regarding Performing Agency's efforts to use the most cost-effective medication purchasing arrangements possible; and
 - 3) affidavits of the members of Performing Agency's governing body and of the executive director on the forms provided by the System Agency.
- d. within five business days following a request by the System Agency, copies of the minutes of Performing Agency's board meetings;
- e. within one business day after completion of a Client Abuse and Neglect Report required under 25 Tex. Admin. Code § 414.558, the information contained in or a copy of the completed form;
- f. CAM report information according to the procedures, instructions and schedule established by the System Agency;
- g. if applicable, Historically Underutilized Businesses (HUB) Subcontracting Plan Prime Contractor Progress Assessment Report located at <https://comptroller.texas.gov/purchasing/docs/hub-forms/ProgressAssessmentReportForm.xls> to the HHSC HUB Coordinator to HHSCHUB@hhs.texas.gov;
- h. expenditures for Title XX and TANF transfer to Title XX intended use, on the form provided by the System Agency; and
- i. as necessary and as requested by System Agency, all other submissions.

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5.05 Child Abuse Reporting Requirement

Performing Agency shall comply with child abuse reporting guidelines and requirements in Texas Family Code Chapter 261 relating to investigations of reports of child abuse and neglect. Performing Agency shall develop, implement, and enforce a written child abuse reporting policy, and shall train all staff on reporting requirements.

ARTICLE VI RETENTION OF PHI

6.01 Retention of PHI and Service Data

Performing Agency shall retain for six years following the later date of the expiration or termination of this Contract or the termination of Services, or for a longer period if required by statute or regulation, PHI and all records, reports, and source documentation related to service event data sufficient to support an audit concerning contracted expenses and services, including work papers used to calculate individual costs.

ARTICLE VII MISCELLANEOUS PROVISIONS

7.01 Duty of Compliance

Performing Agency and its board of trustees shall bear full responsibility for the integrity of the fiscal and programmatic management of the organization. Such responsibility shall include accountability for all funds and materials received from the System Agency; compliance with the standards of administration for boards of trustees described in 25 Tex. Admin Code § 411.310, and other applicable System Agency rules, policies, procedures, and applicable federal and state laws and regulations; and correction of fiscal and program deficiencies identified through self-evaluation and System Agency's monitoring processes. Further, Performing Agency's board of trustees shall ensure a separation of powers, duties, and functions between its board members and its staff. Staff members, including the executive director, shall not serve on Performing Agency's board. Ignorance of any provisions or other requirements contained or referenced in this Contract shall not constitute a defense or basis for waiving or appealing such provisions or requirements.

7.02 Management and Control Systems

Performing Agency shall maintain an appropriate contract administration system to ensure that all Contract terms, conditions, and specifications are met. Performing Agency shall develop, implement, and maintain financial management and control systems that meet or exceed the requirements of TxGMS, and that adhere to the following requirements:

- a. budgets must adequately reflect all functions and resources necessary to carry out authorized activities and the adequate determination of costs;
- b. accounting records must be accurate, correct, and must completely identify the source and application of Contract Funds, and support the information contained in required financial reports;
- c. systems must provide for: cost source documentation; effective internal and budgetary controls; determination of reasonableness, allowability, and allocability of costs; and timely and appropriate audits and resolution of any findings; and
- d. systems must provide for billing and collection policies that comply with 25 Tex. Admin. Code, Chapter 412, Subchapter C, Charges for Community Services.

7.03 Fund Accounting

Performing Agency shall maintain accounting systems that comply with TxGMS. Performing Agency shall separately report actual expenditures and actual revenues attributable to Mental Health Adult and Mental Health Children. Performing Agency shall report expenditures by object of expense

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and method of finance in accordance with the strategies indicated in Report III. On a quarterly basis, Performing Agency shall reconcile accounting transactions from its general ledger to Report III by object of expense and method of finance.

7.04 Cost Accounting Methodology (CAM)

Performing Agency shall use the Cost Accounting Methodology Manual (CAM Manual) to provide a consistent methodology for determining the cost of services, and analysis of provider productivity. Using the CAM data, Performing Agency shall develop and implement management processes for the allocation and development of resources and the oversight of services, as required in the Statement of Work.

7.05 Productivity Benchmarks

Performing Agency shall maintain productivity benchmarks for each server type, as defined in the CAM Manual, Schedule C.

7.06 General Appropriations Act Requirements

Performing Agency shall comply with the limitations and reporting requirements specified in Article IX, § 4.04 (“Limitation on Grants to Units of Local Governments”) of the General Appropriations Act.

7.07 Real Property Acquisition and Construction

Performing Agency shall comply with the provisions of Health and Safety Code Sec. 534.020-534.022 (“Acquisition and Construction of Property and Facilities by Community Center”), Texas Health and Safety Code §534.021 (“Approval and Notification Requirements”), Title 25, Texas Administrative Code, Part 1, Chapter 411, Subchapter G, Rules §411.310, C (1-3 A-E), and Title 40, Texas Administrative Code, Part 1, Chapter 1, Subchapter G, Rules §411.310(e-f).

Performing Agency shall use Form KK - Real Property Acquisition and Construction Review Form found at this website:

<https://hhs.texas.gov/doing-business-hhs/provider-portals/behavioral-health-services-providers/behavioral-health-provider-resources/community-mental-health-contracts>

In no event shall acquisition or construction occur without prior approval, timely notification or a form notification period waiver signed by the System Agency Commissioner or designee.

7.08 References

- a. Captions contained in this Contract are for reference purposes only and do not affect the meaning of this Contract.
- b. Unless otherwise noted, all references in this Contract to “days” shall mean calendar days.
- c. All references to quarterly allocations in this Contract shall mean state fiscal quarter as follows:
 - 1) Quarter 1: September through November;
 - 2) Quarter 2: December through February;
 - 3) Quarter 3: March through May; and
 - 4) Quarter 4: June through August.

7.09 Remedies and Sanctions

Remedies and Sanctions. System Agency may, at its own discretion, impose remedies and sanctions identified below for each occurrence of noncompliance with a requirement of this Contract on a case-by-case basis.

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- a. Remedies may include any one or more of the following:
 - 1) limit general revenue allocations to monthly distributions;
 - 2) require removal of any officer or employee of Performing Agency who has been convicted of the misuse of state or federal funds, fraud or illegal acts that are a contraindication to continued performance of obligations under this Contract;
 - 3) require Performing Agency to retain a consultant or to obtain technical, training, or managerial assistance in the areas of concern;
 - 4) suspend all or part of this Contract. Suspension is, depending on the context, either (a) the temporary withdrawal of Performing Agency's authority to obligate Contract funds pending corrective action or pending a decision to terminate or amend the Contract, or (b) an action taken to immediately exclude a person from participating in Contract transactions for a period, pending completion of an investigation and such legal or debarment proceedings as may ensue. Performing Agency costs resulting from obligations incurred during a suspension are not allowable unless expressly authorized by the notice of suspension;
 - 5) deny additional or future contracts or renewals;
 - 6) designate Performing Agency as High Risk;
 - 7) establish additional prior approvals for expenditure of Contract funds;
 - 8) require submission of additional, more detailed, financial and/or programmatic reports; and/or
 - 9) impose other remedies provided by law.
- b. Sanctions may include any one or more of the following:
 - 1) Recoupments for Service Targets, and Performance Measures. For failing to meet a service target or performance measure as outlined in the Statement of Work.
 - 2) Liquidated Damages. Performing Agency agrees that noncompliance with the requirements specified in this section causes damages that are difficult to ascertain and quantify. Performing Agency must use funds allocated for allowable administrative costs to cover liquidated damages imposed by System Agency. For failing to comply with any of the Contract requirements identified below in this section without prior System Agency approval, System Agency may impose liquidated damages of \$3,000 for the first occurrence of noncompliance during a fiscal year; \$3,000 for the second occurrence of noncompliance with the same requirement during the same fiscal year, and \$6,000 for the third and subsequent occurrence(s) of noncompliance with the same requirement during the same fiscal year:
 - a. ensuring the provision of a required service indicated in the Statement of Work;
 - b. submitting reports, forms, or other required information by the due date outlined in Information Item S (Submission Calendar), or in its required format as follows:
 - i. a rate of 95% of all submissions, other than Report III-IV, by state fiscal year half (*i.e.*, First Half: September through February, and Second Half: March through August); and
 - ii. each instance of Report III-IV.
 - c. retaining records as required;
 - d. providing unrestricted access to and allowing inspection of information as required;
 - e. responding to deficiencies as required;
 - f. failing to implement a Corrective Action Plan (CAP) in response to a quality assurance review in the manner and within the timeframe stated in the CAP. This includes, but is not limited to, providing training, developing policies and procedures, and/or correcting specific records. System agency will consider noncompliance during previous quality assurance reviews when imposing under this provision;
 - g. complying with each rule as required; or

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- h. complying with any other requirement, outside of submission of reports, forms, or other required information, or meeting a service target or performance measure within this Contract.
- 3) Temporarily withhold allocated funds, pending resolution of issues of noncompliance with Contract requirements or indebtedness to the United States or to the State of Texas.
- 4) Permanently withhold allocated funds or require Performing Agency to return allocated funds for:
 - a. unallowable, undocumented, inaccurate, or improper expenditures;
 - b. failure to comply with Contract requirements; or
 - c. indebtedness to the United States or to the State of Texas.
- 5) Recoup improper payments when it is verified that Performing Agency has been overpaid because of improper billing or accounting practices or failure to comply with Contract terms.
- 6) Reduce allocated funds for failure to achieve local match.
- 7) Reduce allocated funds for failure to expend funds at a rate that will make full use of the allocation.
- 8) Reducing the term of this Contract.
- c. Notice of Remedies and Sanctions. System Agency will formally notify Performing Agency in writing when a remedy or sanction is imposed, stating the nature of the remedy or sanction, the reasons for imposing it, and the method of appealing the remedy or sanction imposed. Performing Agency may file, within ten (10) days of receipt of the notice, a written appeal, which must demonstrate that the findings on which the remedy or sanction is based are either invalid or do not warrant the remedy or sanction. A properly filed appeal of the imposition of a remedy or sanction for failure to submit information in accordance with the Submission Calendar shall include written proof that Performing Agency submitted the information by the due date. If System Agency determines that a remedy or sanction is warranted, System Agency's decision is final, and the remedy or sanction shall be imposed.
- d. Emergency Action. In an emergency, System Agency may immediately impose a sanction by delivering written notice, by any verifiable method, when the Performing Agency's act or omission is likely to endanger or does endanger the life, health, welfare, or safety of a Client.

System Agency may withhold any payments to satisfy any sanction imposed. System Agency may also withhold funds available under this Contract, active or expired, in amounts necessary to fulfill Performing Agency's repayment obligations.