

**Health & Human Services Commission
Office of Inspector General
Agreement with Local Prosecuting Authority**

Name:	Wise County District Attorney	HHSC Contract No. 529-11-0064-00071
County:	Wise	

GENERAL CONDITIONS:

1. **Parties.** The **Texas Health and Human Services Commission - Office of Inspector General** ("HHSC-OIG"), and **Wise County District Attorney**, ("the Local Prosecuting Authority"), and **Wise County** ("the County"), hereinafter referred to as "the parties", do hereby make and enter into this agreement ("Agreement"). This Agreement constitutes the entire agreement between the parties. The parties agree that, for the purposes of this Agreement, all references to "**Health and Human Services Commission**" or "**HHSC**" mean the administrative agency within the executive department of Texas state government established under Chapter 531, Texas Government Code or its designee. All references to "Health and Human Services Commission – Office of Inspector General," "HHSC-OIG," or "OIG" mean the Office within HHSC as established in section 531.008(c) and described in 531.101, *et seq*, Texas Government Code.
2. **Authority to enter Agreement.** This Agreement is entered into as authorized under Texas Government Code § 531.039 and Texas Government Code § 41.004. HHSC-OIG is acting pursuant to a duly authorized delegation of contracting authority.
3. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Unless otherwise mutually agreed in writing, venue for suit against HHSC-OIG will be in state District Court, Travis County, Texas.
4. **Term.** The term of this Agreement becomes effective upon signatures of both parties, and continues until and unless revoked by the parties.
5. **Purpose.** The purpose of the Local Prosecuting Authority Agreement is to establish the terms and conditions for the purpose of assisting to defray the costs of prosecutions, as authorized by Texas Government Code section 41.004(b) in the course of the referral of cases from HHSC-OIG to the Local Prosecuting Authority.

CONTRACTED COMPONENTS OF SERVICES:

6. HHSC-OIG Responsibilities.

- A) OIG shall investigate allegations of fraud, waste, and abuse in the following programs: Temporary Assistance to Needy Families (TANF), Food Stamps (FS), Supplemental Nutrition Assistance Program (SNAP), Medicaid, Women, Infants, and Children (WIC), and Children's Health Insurance Program (CHIP).
- B) If OIG discovers criminal conduct may have been committed, OIG shall complete and submit written reports and relevant evidence to the Local Prosecuting Authority to facilitate its prosecutorial decision.
- C) OIG shall provide the necessary records and staff as resources to the Local Prosecuting Authority at such time cases are prosecuted.
- D) As provided for in 1 TAC 357.661, HHSC shall pay the County and the Local Prosecuting Attorney in which the Local Prosecuting Authority has jurisdiction, the following amounts in accordance with this Agreement:
 - 1) \$280 for each case in which a Defendant is sentenced following an uncontested plea in a court of appropriate jurisdiction.

- 2) \$678 for each case in which a verdict is rendered in favor or against a Defendant in a contested trial before a court of competent jurisdiction.

7. Local Prosecuting Authority Responsibilities.

- A) The Local Prosecuting Authority shall review and evaluate cases referred by OIG for appropriate judicial action.
- B) The Local Prosecuting Authority shall prepare complaints, information or indictments in cases it accepts for prosecution.
- C) If community supervision is to be granted in a case, the Local Prosecuting Authority shall (to the extent it finds them to be appropriate in its sole legal and policy judgment) recommend the following actions be taken in addition to any other conditions of community supervision:
 - 1) The individual be disqualified from participation in the TANF, and SNAP program as provided in Section 6(b) of the Federal Food Stamp Act of 1977 and from participation in the WIC program as provided in Title 7 Code of Federal Regulations 246.9 and 246.12(u).
 - 2) The individual be ordered to make restitution to the Texas Health and Human Services Commission, Office of the Inspector General for the amount of benefits unlawfully obtained.
 - 3) Take appropriate action against individuals who fail to comply with court ordered restitution upon notification from the Department.
- D) The Local Prosecuting Authority shall make available at reasonable times and for reasonable periods, books, records, and supporting documents kept current by the Local Prosecuting Authority pertaining to this Agreement, for purposes of inspecting, monitoring, auditing, or evaluating by HHSC-OIG, its representatives, the U.S. Department of Agriculture, or the U.S. Department of Health and Human Services.

8. Performance Measures. The Parties shall use their best efforts to perform the responsibilities of this Agreement and the Parties agree:

- A) Referrals of cases from OIG to the Local Prosecuting Authority shall be made as soon as practical after any investigation is completed.
- B) The Local Prosecuting Authority shall utilize its own independent legal judgment in the manner which it conducts any criminal proceedings involving Defendants.

FINANCIAL REQUIREMENTS:

9. Conditions of Payment. All payments shall be made to the County and Local Prosecuting Authority after deducting any known previous overpayment made by HHSC-OIG. HHSC-OIG is not obligated to pay for unauthorized services or to pay more than is consistent with federal and state regulations and this agreement.

- A) The rates listed in paragraph 6(D) above are set by the Code of Federal Regulations and shall be in effect until amended or modified by Congress, in which event HHSC shall notify the County and the Local Prosecuting Authority of such rates and the County and the Local Prosecuting Authority shall have thirty days to agree to the new rates or to terminate this Agreement.
- B) Local Prosecuting Authority represents that it has sufficient resources to enable the Local Prosecuting Authority to carry out the terms of this Agreement.
- C) The Local Prosecuting Authority shall recover only once for the services delivered under this Agreement. The Local Prosecuting Authority shall not bill for or retain any additional compensation for such services from HHSC or any other entity.
- D) HHSC-OIG shall pay the County and the Local Prosecuting Authority the service unit rate as indicated herein.

10. Billing Process.

- A) The Local Prosecuting Authority shall submit a Health and Human Services Commission State of Texas Purchase Voucher for payment. The Local Prosecuting Authority shall contact the local HHSC-OIG Case

Investigator for instructions on how to prepare and where to mail the voucher.

- B) HHSC-OIG reserves the right to review any/all services for compliance with performance measures and adherence to agreed billing rates. OIG staff will make a determination on the sufficiency of the services. Upon final approval, OIG will authorize payment and process all necessary warrant requests.

11. Accounting Records.

- A) The Local Prosecuting Authority shall adhere to Generally Accepted Accounting Principles promulgated by the Financial Accounting Standards Advisory Board and follow Department fiscal management policies and procedures in maintaining financial records. (<http://www.fasab.gov/accepted.html>).

12. Notifications.

The Local Prosecuting Authority shall:

- A) Maintain at all times at least one active electronic mail (email) address for the receipt of agreement-related communications from HHSC-OIG. It is the Local Prosecuting Authority's responsibility to monitor this email address for Agreement-related information.
- B) Maintain current licensure in good standing with the State Bar of Texas and maintain all necessary license requirements.
- C) Notify HHSC-OIG within ten (10) days of receiving notice of any change in the status of a professional license or board certification, and/or of a complaint that has been filed against his/her license, and/or that an investigation of his/her license or board certification has been initiated.
- D) Notify the HHSC Civil Rights Office of any civil rights complaints received relating to its performance under this Agreement. This notice must be delivered no more than ten (10) calendar days after receipt of a complaint. Notice provided pursuant to this section shall be directed to:

HHSC Civil Rights Office
701 W. 51st Street, Mail Code W206
Austin, Texas 78751
Phone Toll Free: (888) 388-6332
Phone: (512) 438-4313
TTY Toll Free: (877) 432-7232
Fax: (512) 438-5885

13. Agreement Contingencies.

- A) The undersigned Parties certify that: the services specified above are necessary and essential for activities that are properly within the statutory functions and programs of the HHSC-OIG; the proposed arrangements serve the interest of efficient and economical administration of state government; 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; and, the selection and award of this contract was made on the basis of demonstrated competence and qualifications to perform the services for a fair and reasonable price.
- B) **Limits on Compensation.** This Agreement is **expressly conditioned** on the availability of appropriated funds. All compensation hereunder is contingent upon that availability.
- C) This Agreement is at all times contingent upon the availability and receipt by the Texas Legislature of appropriate funds; Enactment of superseding law or adoption of a superseding rule or policy; and, if funds for this Agreement become unavailable during any budget period, this Agreement may be immediately terminated or reduced by the HHSC-OIG in its sole determination. HHSC-OIG shall notify the Local Prosecuting Authority when it knows that funds for this Agreement will be reduced or eliminated. The Local Prosecuting Authority may terminate the Agreement based upon such notification. If the Local Prosecuting Authority terminates this Agreement based on HHSC-OIG's notice to reduce or eliminate funding, the Local Prosecuting Authority shall notify HHSC-OIG in writing of its intent to terminate the Agreement within fifteen (15) calendar days of receipt of HHSC-OIG's notification. The notice shall contain the actual date of termination and the Local Prosecuting Authority's date of termination shall not be less than ten (10) calendar days from HHSC-OIG's receipt of such notice and it shall not exceed ninety (90) calendar days from the date HHSC-OIG receives such notice.

D) The Local Prosecuting Authority agrees to comply with state and federal anti-discrimination laws, including without limitation:

- (1) Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d *et seq.*);
- (2) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794);
- (3) Americans with Disabilities Act of 1990 (42 U.S.C. §12101 *et seq.*);
- (4) Age Discrimination Act of 1975 (42 U.S.C. §§6101-6107);
- (5) Title IX of the Education Amendments of 1972 (20 U.S.C. §§1681-1688);
- (6) Health Insurance Portability and Accountability Act of 1996;
- (7) Food Stamp Act of 1977 (7 U.S.C. §200 *et seq.*);
- (8) The HHS agency's administrative rules, as set forth in the Texas Administrative Code, to the extent applicable to this Agreement; and
- (9) Discovery of a disqualifying debt (state franchise tax, child support, or debt to HHSC or the State of Texas).

14. Agreement Changes, Amendments and Renewals.

- A) **Changes and Amendments.** No change, modification, or amendment to the agreement will be effective until approved in writing by the Parties. This agreement together with any approved amendment(s) to this agreement shall be the controlling instrument in case of any dispute relating to the wording of any portion of the agreement or amendment. In the event of any conflict or contradiction between or among the agreement terms and attachments, the documents shall control in the following order of precedence: (1) The final executed Agreement and all amendments thereto; (2) The Agreement Exhibits or Attachments, and all amendments thereto.
- B) **Unilateral Amendments.**
- i. HHSC-OIG reserves the right to make unilateral amendments to this agreement when necessary to:
 - a. Incorporate new or revised Federal, State, or Department laws, regulations, rules, or policies;
 - b. Update service level descriptions or unit rates; or
 - c. Comply with a court order or judgment.
 - ii. The unilateral amendment shall be effective upon the Local Prosecuting Authority's receipt of a copy of the amendment signed by HHSC-OIG.

15. Provisions for Termination of Agreement and Dispute Resolution.

- A) If the Local Prosecuting Authority fails to provide services according to the terms and conditions of this agreement, HHSC-OIG may, upon written notice of default to the Local Prosecuting Authority, terminate all or any part of the agreement. Termination is cumulative of any other rights and remedies provided by law, agency regulations, or under this agreement excluding pending claims for work performed prior to the termination date.
- B) This agreement may be terminated at any time by mutual written consent. In addition, any party may terminate this agreement by giving thirty (30) calendar days written notice to the other parties. This agreement shall be terminated at the end of the thirty (30) calendar day notice period. Nothing in this subsection shall be construed to prohibit immediate termination of the agreement pursuant to subsection A of this section, above.
- C) At the end of the agreement term or other agreement termination, the Local Prosecuting Authority shall in good faith and in reasonable cooperation with HHSC-OIG, aid in the transition to any new arrangement or provider of services, including the orderly transition of case files/reviews and all other documentation prepared by the Local Prosecuting Authority. The respective accrued interests or obligations incurred to date of termination must be settled equitably.
- D) **Dispute Resolution.**
- i. The dispute resolution process provided for in Chapter 2260 of the Texas Government Code shall be used by HHSC-OIG and the parties to attempt to resolve any claim for breach of agreement.
 - ii. A Local Prosecuting Authority's claim for breach of this agreement that the parties cannot resolve in the ordinary course of business shall be submitted to the negotiation process provided in Texas Government Code §§ 2260.051-2260.056. To initiate the process, the Local Prosecuting Authority shall submit timely written notice to the agreement liaison described in Paragraph 9, *supra*, with a copy to the

HHSC Executive Commissioner or his designee. Said notice shall specifically state that the provisions of Chapter 2260, subchapter B, Government Code, are being invoked. A copy of the notice shall also be given to all other representatives of HHSC-OIG and the Local Prosecuting Authority otherwise entitled to notice under this agreement.

- iii. Compliance by the Local Prosecuting Authority with subchapter B is a jurisdictional condition precedent to the filing of a contested case proceeding under Chapter 2260, subchapter C, of the Government Code. The contested case process provided in Chapter 2260, subchapter C, of the Government Code is the Local Prosecuting Authority's sole and exclusive process for seeking a remedy for any and all alleged breaches of agreement by HHSC-OIG if the parties are unable to resolve their disputes through negotiation or mediation.
- iv. Compliance with the contested case process provided in subchapter C is a condition precedent to seeking consent to sue from the Legislature under Chapter 107 of the Civil Practices and Remedies Code. Neither the execution of this agreement by HHSC-OIG nor any other conduct of any representative of HHSC or HHSC-OIG relating to the agreement shall be considered a waiver of sovereign immunity to suit.
- v. The submission, processing and resolution of the Local Prosecuting Authority's claim is governed by the administrative rules adopted by HHSC pursuant to Chapter 2260, Government Code, as currently effective, hereafter enacted or subsequently amended. The parties shall use the specific procedures set forth in 1 Texas Administrative Code Chapters and 394.
- vi. Neither the occurrence of an event nor the pendency of a claim constitutes grounds for the suspension of performance by the Local Prosecuting Authority, in whole or in part.

16. Use of Information. The Local Prosecuting Authority, pursuant to its responsibilities under this Agreement, may use or disclose information referred by HHSC-OIG in compliance with applicable statutes, rules and regulations governing the use and disclosure of information relating to cases handled under this Agreement. Such use or disclosure shall be by Local Prosecuting Authority personnel who are personally and directly engaged in, and only to the extent necessary for judicial or administrative proceeding participation or preparation, any investigation which may result in such proceeding or any grand jury proceeding, unless expressly authorized in writing in advance by HHSC-OIG.

- A) It is expressly understood and agreed that no party waives, nor shall be deemed to have waived, any immunity or defense otherwise available to it under the law.
- B) This Agreement is not intended, nor shall it be construed, to confer any benefits, rights, or remedies upon any person or entity not a party hereto.

17. Cooperation with HHSC and state administrative agencies. The Local Prosecuting Authority agrees to reasonably cooperate with and work with the State's contractors, subcontractors and third-party representatives as requested by HHSC or OIG. To the extent permitted by OIG's financial and personnel resources, OIG agrees to reasonably cooperate with Local Prosecuting Authority.

Texas Department of Health and Human
Services Commission:

Signature

Douglas Wilson
Printed Name:

Inspector General
Printed Title:

Date:

5/24/11

Local Prosecuting Authority:

Signature

Greg Lowery
Printed Name:

District Attorney
Printed Title:

Date:

5/11/11

Approved:

BY

Bill McElhenny

BILL M^CELHENNY County Judge

Wise County, Texas

05/14/11