

**CONTRACT**

STATE OF TEXAS            )  
   )  
 COUNTY OF EL PASO        )     **KNOW ALL MEN BY THESE PRESENTS**

This Contract is entered into by and between THE CITY OF EL PASO, a home-rule municipal corporation of El Paso County, Texas, hereinafter referred to as "CITY", and County of El Paso, a Texas, Local Government, hereinafter referred to as "GRANTEE".

**WHEREAS**, a grant has been made to the CITY through the Department of Housing and Urban Development, Community Development Block Grant Program under the Housing and Community Development Act of 1974, as amended; hereinafter referred to as "CDBG";

**WHEREAS**, one of the national objectives of CDBG funds is to benefit low and moderate income persons;

**WHEREAS**, this is an award of federal assistance (CFDA #14.218) to CITY, and GRANTEE is considered to be a sub-recipient of federal financial assistance;

**WHEREAS**, the CDBG Program is to be administered by the CITY in accordance with the City Council adoption and HUD approval of the CDBG Program Budget and in fulfilling the above national objectives, on July 10, 2018 the City Council has authorized the City Manager to execute a Contract with GRANTEE under which CITY shall provide CDBG funds to GRANTEE to be used only to fund GRANTEE's Home Delivered Meal Program ("Program") as further described herein;

**NOW, THEREFORE**, the CITY and GRANTEE, in consideration of the terms, conditions, and covenants contained herein, hereby agree as follows:

**I. OBLIGATIONS****Section A. Term and Program Scope**

1. This Contract shall be effective from September 1, 2018, and it shall terminate on August 31, 2019, unless terminated sooner as provided herein, or extended through amendment (the "Term").
2. GRANTEE expressly agrees to comply with all of the terms and conditions of the Program Scope, further specified and detailed in Attachment 1, attached hereto and referenced herein for all purposes.
3. Beneficiaries of the services to be provided hereunder must reside in the City of El Paso and GRANTEE shall provide services exclusively to persons who meet "presumed benefit" criteria as described in the Program Scope (Attachment 1). Services must be provided directly to or on behalf of specific identified eligible clients. Eligibility documentation for each client served under this contract must be maintained, updated at least every twelve months, and made available to monitors upon request. Eligibility

documentation shall consist of a completed CD Presumed Benefit Eligibility Certification form for each client, which is attached hereto as Attachment 1A. Additions to this form are permitted.

4. Payment will be made on the basis of reimbursement of actual allowable expenditures paralleling the performance target specified herein. Failure to achieve the performance target may result in a proportional reduction of the maximum allowable reimbursement. During the term of the Contract, Grantee's expenditures must be proportional to the number of units provided. If at any time during the term of this Contract, Grantee's expenditures exceed performance under this Contract, reimbursements may be withheld by CITY until such time as the gap between expenditures and performance is closed. No additional reimbursements will be given for exceeding performance targets of this Contract.

### **Section B. Compensation, Reporting, and Program Income**

1. GRANTEE shall perform its services within the monetary limits contained in Attachment 2. In no event shall compensation to the GRANTEE exceed what is described in Program Scope (Attachment 1), nor shall the CITY pay for expenses or services which are or will be reimbursed by another funding source or for services which are not performed. However, GRANTEE may make transfers of funds between or among budget categories as contained in Attachment 2, subject to the approval of the Director of Community and Human Development, hereinafter referred to as "Director", provided that:

- a. The dollar amount of all transfers among existing categories is equal to or less than twenty percent (20%) of the total amount of this Contract. Transfer of funds that would exceed the permissible 20% cap is subject to pre-approval of the Director.
- b. The transfer will not change the scope or objective of the Program funded under this Contract and;
- c. GRANTEE submits a Budget Revision Report, Attachment 3D, to the CITY simultaneously with the submission of GRANTEE'S Reimbursement Request Report, Attachment 3A hereto. Upon determination that unexpended funds are present, the Contract budget may be adjusted to remove such amounts at the discretion of the Director.

The CITY will, at least quarterly, review the financial status of the GRANTEE's Program under this Contract. Upon determination that unexpended funds are present, the Contract budget may be adjusted to remove such amounts at the discretion of the Director.

2. The CITY agrees to reimburse the GRANTEE on a monthly basis for the costs of service provided pursuant to this Contract. Reimbursements will follow receipt of a requisition for payment. Only those costs which are allowable under the terms of this Contract and the approved Budget shall be reimbursed.

All reimbursement requests submitted by the GRANTEE must be supported by valid invoices or other supporting documentation of financial liability in the GRANTEE's files or other documentation acceptable to the CITY. All line items reported and requested for reimbursement on Attachment 3A must reconcile with the corresponding line item in the GRANTEE's general ledger accounts, on a current basis, and with year to date balances. Accounting records required to be maintained in the GRANTEE's files in relation to a requisition for payment under this Contract include, but are not limited to:

- a. Balance Sheet (both monthly and year to date);
- b. Income Statement;
- c. General Ledger;
- d. Payroll Check Register, as applicable; and
- e. Spreadsheet that details the amounts requested for reimbursement which is summarized on Attachment 3A.

The following documents may be required to be submitted on a semiannual basis to the Business and Financial Services if the GRANTEE does not expend over \$750,000 in Federal Funds during the course of this Contract. If the GRANTEE expends over \$750,000 in Federal Funds, the audit requirement under Section E of this Contract will supersede the semiannual report.

- f. A combined income statement reporting all resources and uses of funds, and an income statement.
- g. A Detailed General Ledger for the period. Individual general ledger transactions must be in agreement with line item amounts requested for payment during the period.

3. GRANTEE shall provide the CITY the following verified monthly reports:

- Attachment 3A: Reimbursement Request Report - An accurate financial account of the use of the funds requested for reimbursement under this Contract;
- Attachment 3B: Units of Service Report - A report of the Program's monthly service activities, progress and number of persons served, accurately reporting information pertaining to the scope of services and units of service delivered in each individual service area;
- Attachment 3B-1: Supporting Worksheet - A detail report of all funds requested for reimbursement under this contract;
- Attachment 3C: Ethnicity Report - Ongoing report updated monthly reflecting Grantee's clients' ethnicity;

- Attachment 3D: Employee Monthly Time Sheet – An accounting of the hours worked by Grantee's personnel being paid with the funds provided in this Contract (as applicable);
- Attachment 3D-1: Employee Bi-Weekly Time Report – An hourly accounting with funding distribution of the work hours of Grantee's personnel being paid with the funds provided in this Agreement (as applicable);
- Attachment 3E: Budget Revision Report - A request for alteration of budget line items; (This report should only be submitted when a transfer is needed.) and
- Attachment 3F: Units of Service Revision Report - A request for alteration of units of service previously reported. (This report should only be submitted when corrections to reported units are needed.)
- Attachment 3G: Outcomes Report. An end of the year report detailing final project Outcomes.

Additional informative materials may be attached to the above reports by GRANTEE.

4. GRANTEE further understands that any payment or contribution by beneficiaries for services supported or subsidized by this contract shall be used for payment of operating costs of the program. Income directly generated by this program, not including other grant funding or community fund-raising, shall be considered Program Income subject to all the requirements of this Contract and Title 24 CFR 570.500 (a) and other Federal regulations. Program Income shall only be used by Grantee to provide payment for eligible program expenses for services in accordance with this contract. If Grantee generates Program Income for a project only partially assisted by the CITY, such income is prorated to reflect the actual percentage of Program Income attributable to the CITY's portion of the project. The City's share of Program Income shall be reported on a monthly basis and shall be shown on the monthly Reimbursement Request Report as a deduction from the GRANTEE's reimbursable expenses for the month.

5. GRANTEE further understands that this funding is contingent upon the City receiving funds from the Federal Government. If Federal funding should be increased, decreased or terminated, the City may amend or terminate the Contract.

The CITY shall be entitled to a pro rata share of Program Income generated proportionate to the contribution of CDBG funds to the GRANTEE's overall Program budget.

Program Income shall only be used by GRANTEE to provide payment for eligible Program expenses for services in accordance with this Contract, unless otherwise instructed in writing by the CITY. The CITY's share of Program Income shall be reported as it is generated and shall be shown on the monthly Reimbursement Request Report as a deduction from the GRANTEE's reimbursable expenses for the month.

**Section C. Suspension, Termination or Amendment**

1. In accordance with Title 24 CFR Section 85.43, the CITY may suspend or terminate this Contract should GRANTEE materially fail to comply with the terms of this Contract. The CITY shall give the GRANTEE ten (10) days' written notice of the suspension or termination with the understanding that all services being performed under this Contract shall cease upon the date specified in such notice. GRANTEE shall invoice CITY for all services completed and shall be compensated in accordance with the terms of this Contract for services performed prior to the date specified in such notice.

The CITY and GRANTEE may also, in accordance with Title 24 CFR Section 85.44, may terminate this Contract for convenience.

2. If GRANTEE breaches any term or condition of this Contract, or if any change of circumstances renders it unlikely that the GRANTEE will perform the services required hereunder, the CITY may take one or more of the following actions:

- a. Withhold further cash payments, either pending corrective action by the GRANTEE, or permanently, if there is inadequate or no corrective action by the GRANTEE;
- b. Disallow costs for all or part of the activity or action not in compliance;
- c. Wholly or partly suspend or terminate this Contract; or
- d. Withhold further Contracts to the GRANTEE;
- e. Pursue any other remedies that are available at law or equity.

3. Amendments to this agreement requested by GRANTEE must be in writing and accompanied by all necessary supporting documents. GRANTEE may not submit requests for amendment during the last 45 days of the contract period.

4. If the Liability Insurance required under Article II. (Additional Grantee Obligations) Section A of this Contract should cease to be in effect for any reason, this Contract shall be automatically and immediately suspended without notice. While this Contract is suspended, all services being performed under this Contract shall cease and the City shall not be subject to any obligations, expenses or liabilities incurred by the Grantee during this period. If the Grantee has not secured and submitted proof of Liability Insurance meeting the requirement of Article II. (Additional Grantee Obligations) Section A. of this Contract within 30 days of cancellation, this Contract shall be automatically and immediately terminated without advance notice. GRANTEE shall invoice CITY for all services completed and shall be compensated in accordance with the terms of this Contract for services performed prior to the date specified in such notice.

**Section D. Reversion of Assets**

Upon the expiration or termination of this Contract, the GRANTEE shall promptly transfer to the CITY (1) any CDBG funds on hand at the time of the expiration or termination; all the accounts receivable attributable to the use of CDBG funds; (3) the share of unexpended Program Income generated during the term of the Contract proportionate to the contribution of CDBG funds to the GRANTEE's overall budget; (4) any claims against third parties based upon CDBG funds; and (5) any funds which CITY determines have not been expended in accordance with the terms of this Contract. Such refund shall be made by GRANTEE to CITY within ten (10) working days after such refund is requested by CITY.

**Section E. Form, Access to and Retention of Records**

1. GRANTEE shall prepare and maintain proper files, books, and records in accordance with all applicable United States Department of Housing and Urban Development, herein after referred to as "HUD", requirements including 2 CFR 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards - 2 CFR 215, 2 CFR 220, 2 CFR 225 and 2 CFR 230 as applicable; Title 24 CFR Section 570.502(b); Title 24 CFR Sections 570.503, 570.506, and 570.507 as they pertain to costs incurred, audits, program income, administration, activities and functions, and all of the relevant matters contained in said publications. These records shall be maintained for a period of four (4) years after the termination or expiration of this Contract.

2. The CITY, HUD and/or their designees shall have a right of access to make copies of and a right to audit all of the GRANTEE's files, books and records which are deemed pertinent to the performance of this Contract, as determined solely in the reasonable exercise of the CITY's, HUD's and/or their designee's discretion. Copying and auditing will be performed at a reasonable time and place, such as during the GRANTEE's usual business hours, and at GRANTEE's principal place of business or office. This right shall continue for four (4) years after termination or expiration of this Contract. The CITY, HUD and/or their designees may additionally request the copying, mailing and/or electronic transmission of records by Grantee.

3. GRANTEE agrees that at all times prior to and after termination of this Contract, all papers, books, files, correspondence and records relative to the performance of services under this Contract are owned by and are the sole property of the CITY. The GRANTEE will hold and possess the papers, books, files, correspondence and records as the property of the CITY and shall relinquish them to the CITY upon its request during the term of this Contract and at any time during the four (4) years immediately following the term of this Contract. GRANTEE will not be required to relinquish those documents which are deemed confidential by Federal, State or local law.

4. GRANTEE shall conduct, through an independent auditor acceptable to the CITY, a single audit of its activities hereunder when GRANTEE expends \$750,000 or more in a year in Federal awards, in compliance with 2 CFR 200 - Uniform Administrative

Requirements, Cost Principles, and Audit Requirements for Federal Awards. Such Single Audit, along with the corresponding management letter and Grantee's responses thereto, must be submitted within nine months after the end of the GRANTEE's fiscal year. Failure of GRANTEE to provide the required Single Audit to the CITY within the time period required shall constitute a breach of this Contract and cause for termination of this Contract; or if all Contract funds are spent before the nine-month period, will render the GRANTEE ineligible to apply for future federal funds administered by the CITY's Community and Human Development Department.

5. If GRANTEE expends less than \$750,000 in a year in Federal awards, no single audit of GRANTEE's activities hereunder shall be required by the CITY, and the funds received under this Contract shall not be utilized for this purpose. However, Grantee must still have an external audit of their financial statements conducted to ensure ability to demonstrate fiscal responsibility to the CITY.

#### **Section F. Monitoring**

1. CITY reserves the right on its behalf, and on behalf of HUD, to perform, or have their designees perform, a periodic on-site and desk audit monitoring of GRANTEE's compliance with the provisions of this Contract. The monitoring shall be conducted in a reasonable time, place and manner by the CITY. The GRANTEE shall provide the assistance and information needed by the CITY in monitoring and evaluating the performance of the above mentioned areas of accountability. It is understood that the CITY, or its designee, will perform periodic fiscal and programmatic monitoring reviews, including a review of the audit conducted by the GRANTEE. The CITY, HUD, and/or their designees may request the copying, mailing, and/or electronic transmission of GRANTEE's records in connection with an on-site or desk audit monitoring.

2. Monitoring reviews will include a written report to the GRANTEE documenting findings and concerns that will require a written response to the CITY. An acceptable response must be received by the CITY within 30 days from the GRANTEE's receipt of the monitoring report or audit review letter, or otherwise future payments will be withheld under this Contract.

3. Failure of the GRANTEE to take all actions necessary to resolve and close monitoring or audit findings within 60 days of receipt of the monitoring report or audit review letter shall be considered a breach of this Contract and cause for termination of this Contract by the CITY.

4. The Director shall have the discretion to extend the 60-day period for reasons the Director may judge to be extenuating circumstances.

#### **Section G. Compliance with Laws**

1. GRANTEE understands that it will be reimbursed under this Contract with CDBG funds received from HUD and agrees to comply with all applicable local, State, and Federal Laws, CDBG regulations, and all other regulations of HUD and other federal

agencies, including but not limited to 2 CFR 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards-, 2CFR 215, 2 CFR 225 and 2CFR 230 as applicable, and Title 24 CFR Part 570.

2. GRANTEE understands and agrees that:

a. No appropriated funds may be expended by the recipient of a Federal contract, grant, loan or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan or cooperative agreement.

b. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a certification, set forth in Addendum A, attached hereto and made a part hereof, that the person has not made, and will not make, any payment prohibited by subparagraph (a) of this Section.

c. Each person who requests or receives from an agency a Federal contract, grant, loan, or cooperative agreement shall file with that agency a disclosure form, set forth in Addendum A, attached hereto and made a part hereof, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph (a) of this section if paid for with appropriated funds.

3. GRANTEE understands and agrees to comply with the following:

a. DRUG-FREE WORKPLACE ACT OF 1988. The GRANTEE affirms by signing this Contract that it is implementing the Drug-Free Workplace Act of 1988.

b. LIMITED ENGLISH PROFICIENCY (LEP). GRANTEE must provide program applications, forms, and educational materials in English, Spanish, and any appropriate language, based on the needs of the service area and in compliance with the requirements in Executive Order 13166 of August 11, 2000. To ensure compliance, the GRANTEE must take reasonable steps to insure that persons with Limited English Proficiency have meaningful access to the program. Meaningful access may entail provide language assistance services, including oral and written translation, where necessary.

c. REHABILITATION ACT OF 1973. Section 504 of the Rehabilitation Act of 1973 and HUD regulation 24 CFR Part 8 apply to all applicants and GRANTEES of financial assistance in the operation of programs or activities.



d. **PROTECTED HEALTH INFORMATION.** If GRANTEE collects or receives documentation for disability, medical records or any other medical information in the course of administering a program, GRANTEE shall comply with the Protected Health Information state and federal laws and regulations, as applicable, under 10 TAC §1.24, Chapter 181 of the Texas Health and Safety Code, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub.L. 104-191, 110 Stat. 1936, enacted August 21, 1996) the HIPAA Privacy Rules (45 CFR Part 160 and Subparts A and E of 45 CFR Part 164) by Executing a "HIPAA Business Associate Agreement" attached hereto as Attachment 3H.

e. **TITLE VI.** GRANTEE agrees to comply with the provisions of Title VI of the Civil Rights Act of 1964 and related statutes, ensuring that no person shall; on the grounds of race, religion (where the primary objective of the financial assistance is to provide employment per 42 U.S.C. § 2000d-3), color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under this Program.

#### **Section H. Non-Religious Activities**

1. Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in the Program. Neither the Federal government nor a State or local government receiving funds under Program shall discriminate against an organization on the basis of the organization's religious character or affiliation.

2. Organizations that are directly funded under the Program may not engage in inherently religious activities, such as worship, religious instruction, or proselytization, as part of the assistance funded under the applicable Code sections for this Program. If an organization conducts such activities, the activities must be offered separately, in time or location, from the assistance funded under the applicable Code sections for this Program, and participation must be voluntary for the beneficiaries of the assistance provided.

3. A religious organization that participates in the Program will retain its independence from Federal, State, and local governments, and may continue to carry out its mission, including the definition, practice, and expression of its religious beliefs, provided that it does not use direct Program funds to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities, without removing religious art, icons, scriptures, or other religious symbols. In addition, a Program-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members on a religious basis, and include religious references in its organization's mission statements and other governing documents.

4. An organization that participates in the Program shall not, in providing program assistance, discriminate against a Program beneficiary or prospective Program beneficiary on the basis of religion or religious belief.

5. Program funds may not be used for the acquisition, construction, or rehabilitation of structures to the extent that those structures are used for inherently religious activities. To the extent allowed by applicable Code sections for the Program, and to the extent allowed by this Contract, Program funds may be used for the acquisition, construction, or rehabilitation of structures only to the extent that those structures are used for conducting eligible activities under the applicable Code sections for this Program. Where a structure is used for both eligible and inherently religious activities, Program funds may not exceed the cost of those portions of the acquisition, construction, or rehabilitation that are attributable to eligible activities in accordance with the cost accounting requirements applicable to Program funds under the Code. Sanctuaries, chapels, or other rooms that a Program-funded religious congregation uses as its principal place of worship, however, are ineligible for Program-funded improvements. Disposition of real property after the term of the grant, or any change in use of the property during the term of the grant, is subject to government-wide regulations governing real property disposition (see 24 CFR parts 84 and 85 and 2 CFR 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). Nothing contained in this section authorizes a Contractor to use Program Funds under a Community Development Program for acquisition or construction activities.

6. If a State or local government voluntarily contributes its own funds to supplement federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, these requirements apply to all of the commingled funds.

## **II. ADDITIONAL GRANTEE OBLIGATIONS**

### **Section A. Indemnification and Insurance**

**THE CITY SHALL NOT BE SUBJECT TO ANY OBLIGATIONS OR LIABILITIES OF THE GRANTEE INCURRED IN THE PERFORMANCE OF THIS CONTRACT. THE GRANTEE, AND/OR ITS INSURER, TO THE EXTENT PERMITTED BY LAW, EXPRESSLY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY, ITS OFFICERS, AGENTS, AND EMPLOYEES FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, DEMANDS, LIABILITIES AND OBLIGATIONS OF ANY KIND AND NATURE, INCLUDING INJURY OR DEATH OR PROPERTY DAMAGE MADE UPON THE CITY, INCIDENT TO, OR ARISING OUT OF, OR IN CONNECTION WITH THE GRANTEE'S PERFORMANCE UNDER THIS CONTRACT, INCURRED DUE TO GRANTEE'S NEGLIGENCE, ANY OF GRANTEE'S NEGLIGENT ACTS, OR ANY OMISSION TO ACT, ANY BREACH OF CONTRACT, INCLUDING ANY ACT OR OMISSION OR NEGLIGENCE BY THE GRANTEE'S AGENTS, EMPLOYEES OR SUBCONTRACTORS WHILE THIS CONTRACT EXISTS, ALL WITHOUT HOWEVER WAIVING ANY GOVERNMENT IMMUNITY AVAILABLE TO THE CITY AND GRANTEE UNDER TEXAS LAW. THIS INDEMNITY SHALL COVER REASONABLE ATTORNEY'S FEES, COURT COSTS, WITNESS EXPENSES, AND ALL OTHER REASONABLE RELATED COSTS.**

Initials

2. GRANTEE agrees to be self-insured or maintain for the life of this Contract, a liability insurance policy from an insurance company authorized to do business in the State of Texas in the minimum coverage amounts of not less than \$1,000,000 for each person and \$2,000,000 for each single occurrence covering bodily injury or death and \$1,000,000 for each single occurrence of damage to or destruction of property. Further, the insurance policy must contain an endorsement which names the CITY as an additional insured on the policy with regard to all suits, actions, demands, claims and liabilities arising out of, occasioned by or relating to this Contract or the activities carried out hereunder. It shall also contain an endorsement which includes the City, as additional insured, under its cancellation clause, thereby providing thirty (30) days prior written notice of cancellation or non-renewal to all insured, except for cancellation for non-payment of premium. GRANTEE shall produce a copy of its liability insurance policy and endorsements, which shall be completed by an agent authorized to bind the named underwriter(s) to the coverage limits, and terms and provisions shown thereon, incorporating the above requirements, to CITY prior to the effective date of this Contract. GRANTEE shall pay, in a prompt and timely manner, the premiums on all insurance hereinabove required.

Initials

a. **CITY SHALL HAVE NO DUTY TO PAY OR PERFORM UNDER THIS CONTRACT UNTIL SUCH CERTIFICATE HAS BEEN DELIVERED TO THE DIRECTOR, AND NO OFFICER OR EMPLOYEE SHALL HAVE AUTHORITY TO WAIVE THIS REQUIREMENT.**

b. The CITY reserves the right to review the insurance requirements of this section during the effective term of this Contract and to adjust with reasonable prior notice insurance coverages and their limits when deemed necessary and prudent based upon changes in statutory law, court decisions, or the claims history of the industry, if applicable, as well as the claims history of the GRANTEE.

c. CITY shall be entitled, upon request, and without expense, to receive copies of the policies and all endorsements thereto and may make any reasonable request for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions (except where policy provisions are established by law or regulation binding upon either of the parties thereto or the underwriter of any such policies). Upon such request by CITY, GRANTEE shall exercise reasonable efforts to accomplish such changes in policy coverages, and shall pay the cost thereof. GRANTEE remains responsible for procuring any other types of insurance not listed above, but required by law, necessary for performing its duties.

3. Notwithstanding any suspension or termination hereof, GRANTEE shall not be relieved of any liability to CITY for damages or indemnification due to CITY by virtue of breach of this Contract by GRANTEE or this Section.

Initials

**Section B. Independent Contractor**

CITY and GRANTEE understand that GRANTEE is an independent contractor and that no term or provision hereof or act of GRANTEE in performance of this Contract shall be construed as making GRANTEE an agent or employee of the CITY. All officers and employees of GRANTEE shall be solely responsible to GRANTEE, and the CITY shall not have any authority, responsibility, or liability with respect thereto.

**Section C. Authority to Contract**

GRANTEE represents and warrants that the person executing this Contract and all documents related hereto has the authority to commit the GRANTEE to the obligations, financial and otherwise, required by this Contract.

**Section D. Discrimination Prohibited**

1. No person in the United States shall, on the grounds of race, color, national origin (including immigration status where an alien holds proper work authorization), religion, sex, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to segregation or discrimination in any way, shape or form in employment or under projects or activities funded in whole or in part with funds made available to the GRANTEE pursuant to this Contract, as set forth in Title 24 CFR Section 570.602. Furthermore, GRANTEE shall comply with all the equal opportunity requirements attached to this Contract and incorporated by reference as Attachment 4.
2. GRANTEE must file the Assurance required under City Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Contract.

**Section E. Conflict of Interest**

1. GRANTEE covenants that during the term of this Contract, GRANTEE, its associates, officers and employees shall have no interest, direct or indirect, which will conflict in any manner with the performance of the services under this Contract and that none of its paid personnel shall be employees of the CITY or have any Contractual relationship with the CITY.
2. In the procurement of supplies, equipment, construction and services by GRANTEE, the conflict of interest provisions in Title 24 CFR Section 85.36 2 CFR 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards- 2 CFR 215 respectfully, shall apply.
3. In all cases not governed by Title 24 CFR Section 85.36 and 2 CFR 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards – 2 CFR 215 the provisions of Title 24 CFR Section 570.611 shall apply.

4. Under Title 24 CFR Section 570.611, the general rule is that no persons described in paragraph 5. below who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this part or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a CDBG-assisted activity, or have a financial interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one (1) year thereafter.

5. The conflict of interest provisions of paragraph 4 above apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the CITY, or of any designated public agencies, or sub-recipients (GRANTEE) which are receiving CDBG funds.

#### **Section F. Hatch Act**

Neither the funds advanced pursuant to this Contract, nor any personnel who may be employed by the GRANTEE with funds advanced pursuant to this Contract shall be in any way or to any extent engaged in any conduct or political activity in contravention of Chapter 15 of Title 5 of the United States Code.

#### **Section G. Interest of Certain Federal Officials**

No member of or delegate to the Congress of the United States, and no Resident Commissioners, shall be entitled to any share or part of this Contract between CITY and GRANTEE or to any benefits arising there from.

#### **Section H. Political and Lobbying Activities Prohibited**

1. None of the funds, materials, property or services provided directly or indirectly under this Contract shall be used for any partisan political activity or to further the election or defeat of any candidate for public office, or for publicity, lobbying, and/or propaganda purposes designed to support or defeat legislation pending before the Congress of the United States of America, the Legislature of the State of Texas, or the City Council of the City of El Paso.

2. Employees of GRANTEE connected with any activity which is financed in whole or in part by funds provided to GRANTEE under this Contract may not during the term of this Contract:

- a. uses their official position or influence to affect the outcome of an election or nomination;
- b. solicit contributions for political purposes; or
- c. takes an active part in political management or in political campaigns.

3. GRANTEE hereby agrees to sign the Certification Regarding Lobbying, attached hereto and made a part of this Contract as Addendum A, and if necessary, the Disclosure of Lobbying Activities, attached hereto and made a part of the Certification

Regarding Lobbying as Addendum A, and return said signed Certification and, if necessary, the completed Disclosure of Lobbying Activities, to CITY. GRANTEE shall require the language of the Certification and Disclosure be included in all subcontracts and that all subcontractors shall certify and disclose accordingly.

#### **Section I. Grantee's Composition**

GRANTEE shall notify the CITY in writing within thirty (30) days in the event of any change in GRANTEE's ownership, organization, control, and management and non-profit or tax status. GRANTEE shall periodically, if applicable, at least annually, submit to the CITY a list of its current membership and board of directors with their appropriate titles.

#### **Section J. Assignment**

GRANTEE may not assign or otherwise transfer this Contract either as to obligations or benefit without the prior written consent of the CITY.

#### **Section K. Required Documentation**

GRANTEE hereby agrees to provide any and all documentation necessary to fulfill any and all grants (federal, state, or local) requirements pertaining hereto.

#### **Section L. Warranty**

GRANTEE represents that the information furnished to the CITY, upon which CITY relied to make this grant, is correct and true.

#### **Section M. Liability**

GRANTEE shall be liable to the CITY for the full amount of any funds received pursuant to the terms of this Contract which GRANTEE knowingly accepts or disburses in violation of the terms and conditions herein.

#### **Section N. Acknowledgment in Printed Materials**

GRANTEE is encouraged to acknowledge the CITY for its support of the provision of services under this Contract in all appropriate printed materials. However, the CITY reserves the right to approve, in whole or in part, the form of such acknowledgments which GRANTEE proposes to include in any printed materials.

#### **Section O. Copyrights and Patents**

1. If this Contract results in a book or other copyrightable material, the CITY's approval must be obtained to copyright the work. Additionally, the CITY reserves a royalty fee along with a nonexclusive and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use the work for government purposes.

2. Any discovery or invention arising out of or developed in the course of the services aided by this Contract shall be promptly and fully reported to the CITY for a determination as to whether patent protection on such invention or discovery shall be

sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest.

### III. GENERAL PROVISIONS

#### **Section A. Texas Corporation and Venue**

GRANTEE warrants that it is a Political Subdivision of the State of Texas, ~~as a non-profit corporation~~. If GRANTEE is doing business under an assumed name, a copy of the "Assumed Name Certificate" filed with the El Paso County Clerk must be provided to the CITY. This Contract is entered into in the City and County of El Paso, Texas, and shall be governed and construed under the laws of Texas. Venue shall be in El Paso County, Texas.

INITIAL

#### **Section B. Waiver**

Failure by either party on one or more occasions to exercise one or more of its rights hereunder shall not be construed as a waiver of such right or rights, and rights granted hereunder are in addition to those available under law and equity.

#### **Section C. Severability**

All agreements, covenants or provisions contained herein are severable, and in the event any of them shall be held to be invalid by any competent court, this Contract shall be interpreted as though such invalid agreement, covenant or provision was not contained herein.

#### **Section D. Captions**

The captions of various sections of the Contract are for convenience of reference only, and shall not alter the terms and conditions of this Contract.

#### **Section E. Survival**

GRANTEE shall remain obligated to the CITY under all clauses of this Contract that expressly or by their nature extend beyond the expiration or termination of this Contract.

#### **Section F. Notices**

All notices, communications and reports under this Contract shall be either hand delivered or mailed, postage prepaid in the United States Postal Service, to the respective parties at the respective addresses shown below, unless and until either party is notified in writing:

**CITY:** City of El Paso  
Department of Community and Human  
Development Attention: Grants & Program  
Administration Division  
801 Texas Avenue, Building 3  
El Paso, Texas 79901

**GRANTEE: County of El Paso**  
6314 Delta Dr.  
El Paso, TX 79905-5406

**Section G. Entire Contract**

This Contract reflects the final, complete and exclusive understandings of the parties hereto, and may not be waived, altered or modified except by written agreement of both parties.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

**THE CITY OF EL PASO**

\_\_\_\_\_  
Tomás González City Manager

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Omar A. De La Rosa  
Assistant City Attorney

**APPROVED AS TO CONTENT:**

  
\_\_\_\_\_  
Nicole Ferrini, Director  
Community and Human Development

**GRANTEE: County of El Paso**

By: \_\_\_\_\_  
Ruben J. Vogt  
County Judge

*(The foregoing representative of GRANTEE expressly represents that execution of this Contract has been lawfully authorized by the GRANTEE.)*



**Attachment 1: Program Scope**

**Grantee Legal Name and Address:** County of El Paso  
6314 Delta Dr.  
El Paso, TX 79905-5406

1. The Scope of Services under this Contract shall be as follows: Grantee will provide nutritious, well balanced, noon time meals at home to adults who are severely disabled and persons who are 62 years of age or older, who are homebound. Under this agreement, Grantee is permitted to report unsuccessful meal delivery attempts as units of service for up to two meals per month per client.

2. A unit of service will be the tool by which the CITY and the GRANTEE can measure performance under this Contract. A unit of service shall be defined as one noontime hot meal delivered, five meals per week, to eligible clients of 62 years of age or older or a person with disabilities. One meal is considered a unit of service. The meal meets the 1/3 RDI requirement and is prepared in accordance with the established nutrition standards. Meal = 1 Unit.

3. Outcome Statement. At least 35 CD eligible clients what are 62 years of age or older and/ or persons with a disability will receive access to a suitable living environment through the availability of five nutritious, well balanced, home delivered meals each week to maintain their independence and avoid premature institutionalization. The goal is to enable 90% of the 35 eligible CD clients to remain in community-dwelling by the end of the fiscal year as measured by our annual risk assessment. Additional funds from other sources in the amount of \$2,050,830. The GRANTEE shall provide not less than 9,113 units of service. The Outcome Statement and the total number of units of service required under this Contract constitute the performance target for the Contract.

4. GRANTEE shall perform its services in accordance to Attachment 2 titled "Budget" attached hereto and incorporated by reference herein. The City shall contribute \$43,396 ("Grant Amount") for the performance of the services under this Contract. However, if the Grantee does not complete the services within the Term of this Contract, then the City shall reduce the Grant Amount to reflect the lesser of the number of units of services actually provided or the number of people actually served by the Grantee under this Contract.

5. Beneficiaries of the services to be provided hereunder must reside in the City of El Paso and GRANTEE shall provide services who are adults meeting the Census' Current Population Reports definition of "severely disabled" or who are elderly (aged 62 or older). To accomplish this eligibility requirement under the CDBG regulations for "Presumed Benefit" criteria, the GRANTEE shall maintain records of documentation establishing that this service is used by persons who are disabled or elderly. Eligibility documentation must be included in each client's file and updated every twelve months. Eligibility documentation for each client served under this contract must be maintained, updated at least every twelve months, and made available to monitors upon request. Eligibility

documentation shall consist of a fully completed CD Presumed Benefit Eligibility Certification for each client, which is attached hereto as Attachment 1A. Additions to this form are permitted.

The GRANTEE shall maintain records to prove compliance with the above-mentioned prerequisites of the Program Scope. The City's Community and Human Development Department shall make a determination as to whether or not the services provided, as stipulated above, are being satisfactorily provided.

All required reports shall be submitted to the CITY by the 20<sup>th</sup> day of each month, with the exception of the close-out report for the month of August, which is due on or before September 10th. Reasonable extensions may be granted if the Director determines that an extension is warranted. After verification and review by the CITY, GRANTEE shall be paid for services provided, in accordance with this Contract. Failure to provide this information by the due date may be treated by the CITY as a breach of this Contract.

## ATTACHMENT 3H

STATE OF TEXAS                    )  
   )  
 COUNTY OF EL PASO            )      **HIPAA BUSINESS ASSOCIATE AGREEMENT**

**THIS AGREEMENT** is entered into on \_\_\_\_\_, 2018 by and between the CITY OF EL PASO, TEXAS ("CITY"), as the Covered Entity, and **County of El Paso** ("BUSINESS ASSOCIATE") by and through their duly authorized officials, in order to comply with 45 C.F.R. §164.502(e) and §164.504(e), governing protected health information ("PHI") and business associates under the Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191), 42 U.S.C. Section 1320d, et. seq., and regulations promulgated thereunder, as amended from time to time (statute and regulations hereafter collectively referred to as "HIPAA"). Covered Entity and Business Associate may be referred to herein individually as a "Party" or collectively as the "Parties".

**RECITALS**

**WHEREAS**, CITY has engaged BUSINESS ASSOCIATE to perform services or provide goods, or both;

**WHEREAS**, CITY possesses individually identifiable health information that is defined in and protected under HIPAA, and is permitted to use or disclose such information only in accordance with HIPAA;

**WHEREAS**, BUSINESS ASSOCIATE may receive such information from CITY, or create and receive such information on behalf of CITY, in order to perform certain of the services or provide certain of the goods, or both; and

**WHEREAS**, CITY wishes to ensure that BUSINESS ASSOCIATE will appropriately safeguard individually identifiable health information;

**NOW THEREFORE**, CITY and BUSINESS ASSOCIATE agree as follows:

**A. HIPAA Terms**

1. **Definitions.** The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear, or as provided in (1)(h) to this Section.

- a. **Agreement** shall refer to this document.
- b. **Business Associate** means **County of El Paso**
- c. **HHS Privacy Regulations** shall mean the Code of Federal Regulations ("C.F.R.") at Title 45, Sections 160 and 164, in effect, or as amended.

d. **Individual** shall mean the person who is the subject of the Information, and has the same meaning as the term "individual" is defined in 45 C.F.R. 164.501.

e. **Information** shall mean any "health information" provided and/or made available by the CITY to BUSINESS ASSOCIATE, and has the same meaning as the term "health information" as defined by 45 C.F.R. 160.102.

f. **Parties** shall mean the CITY and BUSINESS ASSOCIATE.

g. **Secretary** shall mean the Secretary of the Department of Health and Human Services ("HHS") and any other officer or employee of HHS to whom the authority involved has been delegated.

h. **Catch-all definition:** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Privacy, Security, Breach Notification and Enforcement Rules at 45 C.F.R. Part 160 and 164, in effect, or as amended: breach, data aggregation, designated record set, disclosure, health care operations, protected health information, required by law, subcontractor, and use.

**2. Limits on Use and Disclosure Established by Terms of Agreement.**

BUSINESS ASSOCIATE hereby agrees that it shall be prohibited from using or disclosing the Information provided or made available by the CITY for any other purpose other than as expressly permitted or required by this Agreement (ref. 45 C.F.R. 164.504(e)(2)(i).)

**3. Stated Purposes for which BUSINESS ASSOCIATE May Use or Disclose Information.** The Parties hereby agree that BUSINESS ASSOCIATE shall be permitted to use and/or disclose Information provided or made available from CITY for the following stated purposes: To provide public health, research, and related support services (service) to the community of the CITY for the mutual benefit and general welfare of BUSINESS ASSOCIATE and the CITY (ref. 45 C.F.R. 164.504(e)(2)(i); 65 Fed. Reg. 82505.)

**4. Use of Information for Management, Administrative and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to use Information if necessary for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE. (ref. 45 C.F.R. 164.504(e)(4)(i)(A-B)).

**5. Disclosure of Information for Management, Administration and Legal Responsibilities.** BUSINESS ASSOCIATE is permitted to disclose Information received from CITY for the proper management and administration of BUSINESS ASSOCIATE or to carry out legal responsibilities of BUSINESS ASSOCIATE, provided:

a. The disclosure is required by law; or

b. The BUSINESS ASSOCIATE obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person immediately notifies the BUSINESS ASSOCIATE of any instance of which it is aware in which the confidentiality of the information has been breached. (ref. 45 C.F.R. 164.504(e)(4)(ii)).

6. **Data Aggregation Services.** BUSINESS ASSOCIATE is also permitted to use or disclose Information to provide data aggregation services, as that term is defined by 45 C.F.R. 164.501, relating to the health care operations of CITY. (ref. 45 C.F.R. 164.504(e)(2)(i)(B)).

7. **BUSINESS ASSOCIATE OBLIGATIONS:**

a. **Limits on Use and Further Disclosure Established by Agreement and Law.** BUSINESS ASSOCIATE hereby agrees that the Information provided or made available by the CITY shall not be further used or disclosed other than as permitted or required by the Agreement or as required by federal law. (ref. 45 C.F.R. 164.504(e)(2)(ii)(A)).

b. **Appropriate Safeguards.** BUSINESS ASSOCIATE will establish and maintain appropriate safeguards to prevent any use or disclosure of the Information, other than as provided for by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(B)).

c. **Reports of Improper Use or Disclosure.** BUSINESS ASSOCIATE hereby agrees that it shall report to CITY **within two (2) days of discovery** any use or disclosure of Information not provided for or allowed by this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(C)).

d. **Subcontractors and Agents.** BUSINESS ASSOCIATE hereby agrees that any time Information is provided or made available to any subcontractors or agents, BUSINESS ASSOCIATE must enter into a subcontract with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of Information as contained in this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(D)).

(i) **45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2).** In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, BUSINESS ASSOCIATE agrees to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of BUSINESS ASSOCIATE agree in writing to the same restrictions and conditions that apply through this Agreement to BUSINESS ASSOCIATE with respect to such Information.

- e. **Right of Access to Information.** BUSINESS ASSOCIATE hereby agrees to make available and provide a right of access to Information by an Individual. This right of access shall conform with and meet all of the requirements of Section 181.102 of the Texas Health and Safety Code, requiring that not later than the 15th business day after the date of the receipt of a written request from a person for the person's electronic health record, BUSINESS ASSOCIATE shall provide the requested record to the person in electronic form unless the person agrees to accept the record in another form, and with any further requirements of 45 C.F.R. 164.524, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(E)).
- f. **Correction of Health Information by Individuals.** BUSINESS ASSOCIATE shall, upon receipt of notice from the CITY, amend or correct protected health information (PHI) in its possession or under its control.
- g. **Amendment and Incorporation of Amendments.** BUSINESS ASSOCIATE agrees to make Information available for amendment and to incorporate any amendments to Information in accordance with 45 C.F.R. 164.504(e)(2)(ii)(F)).
- h. **Provide Accounting.** BUSINESS ASSOCIATE agrees to make Information available as required to provide an accounting of disclosures in accordance with 45 C.F.R. 164.528, including substitution of the words "COVERED ENTITY" with BUSINESS ASSOCIATE where appropriate. (ref. 45 C.F.R. 164.504(e)(2)(ii)(G)).
- i. **Access to Books and Records.** BUSINESS ASSOCIATE hereby agrees to make its internal practices, books, and records relating to the use or disclosure of Information received from, or created or received by BUSINESS ASSOCIATE on behalf of the CITY, available to the Secretary or the Secretary's designee for purposes of determining compliance with the HHS Privacy Regulations. (ref. 45 C.F.R. 164.504(e)(2)(ii)(H)).
- j. **Return or Destruction of Information.** At the termination of this Agreement, BUSINESS ASSOCIATE hereby agrees to adhere to Section B.3. of this Agreement. (ref. 45 C.F.R. 164.504(e)(2)(ii)(I)).
- k. **Mitigation Procedures.** BUSINESS ASSOCIATE agrees to have procedures in place for mitigating, to the maximum extent practicable, any deleterious effect from the use or disclosure of Information in a manner contrary to this Agreement or the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(f)).
- l. **Sanction Procedures.** BUSINESS ASSOCIATE agrees and understands that it must develop and implement a system of sanctions for any employee, subcontractor or agent who violates this Agreement of the HHS Privacy Regulations. (ref. 45 C.F.R. 164.530(e)(1)).

m. **Subpart E of 45 C.F.R. Part 164.** To the extent BUSINESS ASSOCIATE is to carry out one or more of CITY'S obligations under Subpart E of 45 C.F.R. Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to CITY in the performance of such obligation(s).

n. **Prohibition against the Sale of Protected Health Information.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.153, and any amendments of that section.

o. **Notice and Authorization Required for Electronic Disclosure of PHI.** The BUSINESS ASSOCIATE shall comply with the requirements of Texas Health and Safety Code Sec. 181.154, and any amendments of that section, regarding the requirement of providing notice to an Individual for whom the BUSINESS ASSOCIATE creates or receives protected health information if the Individual's PHI is subject to electronic disclosure.

p. **State Law on Medical Records Privacy.** The BUSINESS ASSOCIATE shall abide by the requirements set forth in Texas Health and Safety Code Section 181.001 et. seq., and any amendments of that chapter.

8. **Property Rights.** The Information shall be and remain the property of the CITY. BUSINESS ASSOCIATE agrees that it acquires no title or rights to the Information, including any de-identified Information, as a result of this Agreement.

9. **Modifications.** The CITY and BUSINESS ASSOCIATE agree to modify this Business Associate Agreement, in order to comply with Administrative Simplification requirements of HIPAA, as set forth in Title 45, Parts 160 and 164, (Subparts A and E the "Privacy Rule" and Subparts A and C the "Security Rule") of the Code of Federal Regulations.

10. **Automatic Amendment.** Upon the effective date of any amendment to the regulations promulgated by HHS with respect to PHI, this Business Associate Agreement shall automatically amend such that the obligations imposed on BUSINESS ASSOCIATE as a Business Associate remain in compliance with such regulations.

## **B. Term and Termination**

1. **Term.** The Term of this Agreement shall be effective as of September 1, 2018, and shall terminate on August 31, 2019 or on the date covered entity terminates for cause as authorized in paragraph (B.2.) of this Section, whichever is sooner.

2. **Termination for Cause.** Upon the CITY's knowledge of a material breach by BUSINESS ASSOCIATE, the CITY shall:

a. Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation, and terminate if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by the CITY.

b. Immediately terminate the Business Associate Agreement if BUSINESS ASSOCIATE has breached a material term of this Business Associate Agreement and cure is not possible.

c. Notify the Secretary of HHS if termination is not possible.

3. **Obligations of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, BUSINESS ASSOCIATE, with respect to protected health information received from CITY, or created, maintained, or received by BUSINESS ASSOCIATE on behalf of CITY, shall:

a. Retain only that protected health information which is necessary for BUSINESS ASSOCIATE to continue its proper management and administration or to carry out its legal responsibilities;

b. Return to CITY, or, if agreed to by CITY, destroy, the remaining protected health information that the BUSINESS ASSOCIATE still maintains in any form and BUSINESS ASSOCIATE shall certify to the CITY that the Information has been destroyed;

c. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as BUSINESS ASSOCIATE retains the protected health information;

d. Not use or disclose the protected health information retained by BUSINESS ASSOCIATE other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Section 1.e and 1.f above, which applied prior to termination; and

e. Return to CITY or, if agreed to by CITY, destroy, the protected health information retained by BUSINESS ASSOCIATE when it is no longer needed by BUSINESS ASSOCIATE for its proper management and administration or to carry out its legal responsibilities.

f. **Survival.** The obligations of BUSINESS ASSOCIATE under this Section shall survive the termination of this Agreement.

C. **Remedies.** If CITY determines that BUSINESS ASSOCIATE has breached or violated a material term of this Agreement, CITY may, at its option, pursue any and all of the following remedies:

1. Exercise any of its rights of access and inspection under Section A.7.e. of this Agreement;

2. Take any other reasonable steps that CITY, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or



3. Terminate this Agreement immediately.

4. Injunction. CITY and BUSINESS ASSOCIATE agree that any violation of the provisions of this Agreement may cause irreparable harm to CITY. Accordingly, in addition to any other remedies available to CITY at law, in equity, or under this Agreement, in the event of any violation by BUSINESS ASSOCIATE of any of the provisions of this Agreement, or any explicit threat thereof, CITY shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, with the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section C.4. shall survive termination of the Agreement.

**5. INDEMNIFICATION. ONLY TO THE EXTENT ALLOWED BY LAW, BUSINESS ASSOCIATE SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND CITY FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, LIABILITIES, COSTS AND OTHER EXPENSES RESULTING FROM, OR RELATING TO, THE ACTS OR OMISSIONS OF BUSINESS ASSOCIATE IN CONNECTION WITH THE REPRESENTATIONS, DUTIES AND OBLIGATIONS OF BUSINESS ASSOCIATE UNDER THIS AGREEMENT. THE PARTIES' RESPECTIVE RIGHTS AND OBLIGATIONS UNDER THIS SECTION 5 SHALL SURVIVE TERMINATION OF THE AGREEMENT. BUSINESS ASSOCIATE DOES NOT WAIVE ITS GOVERNMENTAL IMMUNITY.**

**D. Miscellaneous**

1. **Regulatory References.** A reference in this Agreement to a HIPAA section means the section as in effect or as amended.

2. **Amendment.** CITY and BUSINESS ASSOCIATE agree that amendment of this Agreement may be required to ensure that CITY and BUSINESS ASSOCIATE comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of protected health information. CITY may terminate this Agreement upon 60 days' written notice in the event that BUSINESS ASSOCIATE does not promptly enter into an amendment that CITY, in its sole discretion, deems sufficient to ensure that CITY will be able to comply with such laws and regulations.

This Agreement may not otherwise be amended except by written agreement between the parties and signed by duly authorized representatives of both parties.

3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

4. **Notices.** Any notice or demand required under this Agreement will be in writing; will be personally served or sent by certified mail, return receipt requested, postage prepaid, or by a recognized overnight carrier which provides proof of receipt; and will be sent to the addresses below. Either party may change the address to which notices are sent by sending written notice of such change of address to the other party.

CITY: City of El Paso Attn: City Manager  
P. O. Box 1890  
El Paso, Texas 79950-1890

COPY TO: City of El Paso  
Community and Human Development  
Attention: Director  
801 Texas Ave.  
El Paso, TX 79901

**BUSINESS ASSOCIATE:**

County of El Paso  
Attn: Ruben J. Vogt, County Judge  
El Paso, TX 79905-5406

5. **Non-Waiver.** No failure by any Party to insist upon strict compliance with any term or provision of this Agreement, to exercise any option, to enforce any right, or to seek any remedy upon any default of any other Party shall affect, or constitute a waiver of, any Party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default or any prior, contemporaneous, or subsequent default. No custom or practice of the Parties at variance with any provision of this Agreement shall affect or constitute a waiver of, any Party's right to demand strict compliance with all provisions of this Agreement.

6. **Headings.** The headings of sections and subsections of this Agreement are for reference only and will not affect in any way the meaning or interpretation of this Agreement.

7. **Governing Law. Jurisdiction.** This Agreement will be governed by and construed in accordance with the laws of the State of Texas, without regard to its principles of conflict of laws, with venue in El Paso County, Texas.

8. **Compliance with Laws.** BUSINESS ASSOCIATE agrees that its obligations pursuant to this Agreement shall be performed in compliance with all applicable federal, state, and/or local rules and regulations. In the event that applicable federal, state or local laws and regulations or applicable accrediting body standards are modified, BUSINESS ASSOCIATE reserves the right to notify CITY in writing of any modifications to the Agreement in order to remain in compliance with such law, rule or regulation.

9. **Severability.** In the event that one or more provision(s) of this Agreement is deemed invalid, unlawful and/or unenforceable, then only that provision will be omitted, and will not affect the validity or enforceability of any other provision; the remaining provisions will be deemed to continue in full force and effect.

10. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than CITY and BUSINESS ASSOCIATE, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

11. **Entire Agreement; Counterparts.** This Agreement constitutes the entire Agreement between CITY and BUSINESS ASSOCIATE regarding the services to be provided hereunder. Any agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force or effect. This Agreement may be executed in any number of counterparts, each of which will be deemed to be the original, but all of which shall constitute one and the same document.

STATE OF TEXAS )

COUNTY OF EL PASO )

## HIPAA BUSINESS ASSOCIATE AGREEMENT

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the \_\_\_ day of \_\_\_\_\_, 2018.

## CITY OF EL PASO

\_\_\_\_\_  
Tomás González  
City Manager

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Omar De La Rosa  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Nicole Ferrini, Director  
Community and Human Development

BUSINESS ASSOCIATE  
County of El Paso

By:

\_\_\_\_\_  
Ruben J. Vogt  
County Judge

# ATTACHMENT 2

**Outcome Statement:** At least 35 CDBG eligible clients who are 62 years of age or older or a person with a disability will receive access to a suitable living environment through the availability of five nutritious home delivered meals each week to maintain independence and delay or avoid premature institutionalization. 90% of the 63 CD eligible clients will remain in community-dwelling at the end of the fiscal year as measured by our annual risk assessment. Initial case-line and subsequent annual appraisals of functional stability in activities of daily living and nutritional risk factors are used to document meeting our clients' needs to remain independent in the community in the least restrictive environment.

|  |    |           |
|--|----|-----------|
| Outcome Report - Total Non-CD Funds Leveraged: | \$ | 2,050,830 |
|--|----|-----------|

[illegible][illegible][illegible]

| QTR OPS REPORT: |              |        |        |
|-----------------|--------------|--------|--------|
|                 | Money Spent: |        |        |
| Clients:        |              |        |        |
|                 | \$0.00       | \$0.00 | \$0.00 |
|                 | 0.00         | 0.00   | 0.00   |
|                 | 0.00         | 0.00   | 0.00   |