

Texas Department of Agriculture

Attachment B— Terms and Conditions

- 1.1 **Application.** Grantor and Grantee (the Parties) agree to the following terms and conditions, which are applicable unless a term of the Award Specific Provisions clearly indicates otherwise.

2. Definitions

- 2.1 **“Act”** – The Texas Public Information Act, Chapter 552 of the Texas Government Code.
- 2.2 **“Agreement”** – The Grant Agreement and all attachments thereto.
- 2.3 **“Authorized Official”** – Grantee’s representative authorized to bind the Grantee and take action on its behalf.
- 2.4 **“Commissioner”** – The Commissioner of Agriculture.
- 2.5 **“Department”** – The Texas Department of Agriculture.
- 2.6 **“Deputy Commissioner”** – The Deputy Commissioner of Agriculture.
- 2.7 **“Fiscal Officer”** – Grantee’s designated representative responsible for all financial and budget reporting functions related to the administration of the grant, as required by the Agreement.
- 2.8 **“Government”** – the federal awarding agency, the State of Texas, and/or the Texas Department of Agriculture, singularly or in any combination.
- 2.9 **“Grant Coordinator”** – Grantor’s designee responsible for and authorized to coordinate the Grant Program.
- 2.10 **“Grant Project”** – Specific activities or plan that have been approved by Grantor in Attachment C to be completed by Grantee in a specified amount of time.
- 2.11 **“Grantor”** – The Texas Department of Agriculture
- 2.12 **“Intellectual Property”** – Shall include data, documents, inventions, material and similar that are subject to or have been the subject of copyright, patent and trademark.
- 2.13 **“Non-Expendable Personal Property”** – Tangible personal property having a useful life of more than one year and an acquisition cost of \$5,000.00 or more per unit.
- 2.14 **“Project Manager”** – Grantee’s designated representative responsible for day-to-day project management and coordination.

- 2.15 **“Proprietary Information”** – Grantee’s Intellectual Property or other confidential information submitted to Grantor which Grantee has designated as proprietary or confidential and requests exception from disclosure to the public by Grantor.
- 2.16 **“Subject Invention”** – Any invention of Grantee conceived or first actually reduced to practice in the performance of work under this Agreement. “Invention” means any invention or discovery that is or may be patentable or otherwise protectable under Title 35 of the U.S. Code.

3 Reporting Requirements.

3.1 Performance Reports.

~~A. **Quarterly Reports Required.** Performance reports shall be submitted on a form prescribed by Grantor. These reports shall be in a narrative format, from one to three pages in length, and detail the accomplishments of the project objectives for the previous three-month period. The due dates for reports are thirty days after the end of each reporting period set in Section 3.2 of this Attachment B. (Intentionally deleted by the parties; please refer to Attachment A, Sec. 2.1.)~~

~~B. **Final Performance Report.** The final report shall follow the format prescribed by Grantor. The Final Performance Report is due thirty days after the expiration or termination of this Agreement, whichever occurs first. (Intentionally deleted by the parties; please refer to Attachment A, Sec. 2.1.)~~

~~3.2 **Quarterly Reporting Periods.** Unless otherwise agreed to by the parties in writing, quarterly reports must be submitted no later than thirty days after the end of the following reporting periods:~~

- ~~• September 1 thru November 30;~~
- ~~• December 1 thru February 28;~~
- ~~• March 1 thru May 31; and~~
- ~~• June 1 thru August 31. (Intentionally deleted by the parties; please refer to Attachment A, Sec. 2.1.)~~

~~3.3 **Annual Inventory of Property.** Grantee’s Project Manager or Fiscal Officer shall provide to Grantor an Annual Inventory of Grantor Non-Expendable Personal Property detailing the items’ location and condition on the form prescribed by Grantor. (Intentionally deleted by the parties)~~

3.4 **Failure to Comply with Reporting Requirements.** Failure of Grantee to comply with any of the reporting requirements in this Agreement may result in: (i) the revocation of a Grant; (ii) withholding of request(s) for reimbursement; (iii) requiring repayment of Grant funds previously disbursed to Grantee; and/or (iv) a determination that Grantee is ineligible for future Program funds.

4 Agreement Modifications

- 4.1 Agreement Modifications.** The Agreement cannot be changed, terminated or modified in any manner other than as provided for herein. Grantor is not obligated to approve requests for modification.
- 4.2 Requested Agreement Changes by Grantee.** Grantee may request changes to the Agreement, budget or objectives and deliverables by submitting the requested change to Grantor in writing. Except as otherwise provided in the Agreement, requested changes shall only become effective upon written approval of Grantor. Written notice of approval or denial of Grantee's request will be sent to the requestor.
- 4.3 Time for Requesting Agreement Changes.** Grantee may request changes to the Agreement by submitting the requested change, in a format prescribed by Grantor, including justification for the request, to the Grant Coordinator no later than thirty (30) days prior to the end of the term of Agreement. Requests for Agreement changes may be submitted for approval within thirty (30) days prior to the end of the term of Agreement, but only for good cause as determined by Grantor based on the justification submitted with the request.

The following requests shall be considered:

- A. Material Budgetary Changes.** If a budgetary change for an amount exceeding ten percent (10%) of the grant award is needed, it must include:
- 1) A statement explaining the need for the change; and
 - 2) Documentation indicating the line items and amounts to be changed.
- B. Programmatic Change.** If a programmatic change is requested, such as the scope, target, or focus of the Grant Project, the request shall include a detailed explanation and a statement for the change.
- C. Agreement Extension.** Grantee shall submit to Grantor written request with an explanation, for an extension of the Agreement not less than thirty days prior to the end of the term of Agreement. The explanation should demonstrate that the extension is necessary due to unforeseeable circumstances preventing completion of the Grant Project.
- 4.4 Budgetary Revisions.** Grantee is allowed to make one or more budgetary revisions without prior approval for up to a total of ten percent (10%) of the grant award. Budget revisions are cumulative, and together may not exceed ten percent (10%) of the total amount of the grant award. Grant and/or matching funds may only be reallocated to eligible and previously approved line items, excluding indirect costs and equipment purchases. Notification of any revisions must be submitted to Grantor in writing within ten (10) business days prior to the subsequent payment request.
- 4.5 Amendment.** The parties may alter, amend, change, modify, revise or supplement the terms of the Agreement via a written amendment signed by the parties.

- 4.6 Approved Changes Become Part of Agreement.** Once approved in accordance with this Attachment B, approved changes become a part of the Agreement, superseding all provisions that are inconsistent herein.
- 4.7 Lack of Approval for Budget Transfers.** Lack of prior approval for the following will be grounds for denial of reimbursement requests for the following items:
- A. Budget transfers exceeding ten percent (10%) of the grant award;
 - B. Indirect costs; and/or
 - C. Equipment purchases.
- 4.8 Grantee Project Manager Change.** Grantee shall notify Grantor in writing within seven (7) days of Grantee's Project Manager separation from, or notice of intent to separate from, the Grant during the term of the Agreement. Such notice shall include the date of termination of the Project Manager's affiliation.
- 4.9 Grantor's Approval of Proposed Project Manager Change.** Grantor shall review Grantee's request and provide written approval or denial of the proposed change within ten (10) business days after receiving such notice from Grantee. Provided, however, approval of proposed change shall not be unreasonably withheld. If Grantor does not approve such substitution, then the Agreement shall be temporarily suspended until an alternative Project Manager is approved or the Agreement is terminated in accordance with Section 9.1 of this Attachment B.
- 4.10 Reimbursement After Project Manager Separation.** Unless Grantor has approved the Project Manager change under Section 4.9 above, Grantor will not reimburse Grantee for any expenditure directly associated with the Project Manager under the Agreement that is incurred after the effective date of termination provided in the written notice under Section 4.8 of this Attachment B. Such expenditures include, but are not limited to the Project Manager's salary, incidentals, and/or travel. In the event of any conflict between Sections 4.10 and 9.5 of this Attachment B, Section 9.5 will prevail.

5 Compliance

- 5.1 Access to Records.** During the Term of Agreement and for at least three (3) years after termination of the Agreement, Grantee shall allow representatives of Grantor and/or the State Auditor's Office upon request by such, access to and the right to examine the premises, books, accounts, records, files and other papers or property belonging to or in use by Grantee and pertaining to the Agreement. Such records shall be maintained by Grantee at a location that is readily accessible to Grantor and/or the State Auditor's Office.
- 5.2 Authority to Audit and Investigate.** Grantee understands that acceptance of grant funds under the Agreement acts as acceptance of the authority of the State Auditor's Office, its successor agency, and any representative of Grantor to conduct an audit or investigation in

connection with such funds. Grantee further agrees to cooperate fully with the State Auditor's Office, its successor or any representative of Grantor in the conduct of the audit or investigation, including providing all records requested and providing the State Auditor or any representative of Grantor with access to any information they consider relevant to the investigation or audit. Grantee shall ensure that the clause concerning the authority to audit funds received indirectly by any subcontractors used by Grantee and their requirement to cooperate is included in any subcontracted awards.

- 5.3 Records Retention.** All records under the Agreement are required to be maintained by Grantee for three (3) years after the expiration or termination of the Agreement, or any litigation or audit is completed, whichever is longer.
- 5.4 Copies of Financial Audit.** If Grantee has a financial audit performed in any year during which Grantee receives funds from Grantor, and if Grantor requests information about the audit, Grantee shall provide such information to Grantor or provide information as to where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which Grantor's funds are included.
- 5.5 Notification Regarding Grantee's Fiscal Officer or Authorized Individual Changes.** Grantee shall immediately notify Grantor if Grantee's Fiscal Officer or Authorized Official leaves or otherwise changes during the term of Agreement. Grantor shall not process grant payments during any period of time for which Grantee has failed to designate a Fiscal Officer or Authorized Official.
- 5.6 Notification of Subcontract/Assignment.** Any delegation by Grantee to a third party of any of the duties and responsibilities under the Agreement shall not relieve Grantee of its responsibility to Grantor for its proper performance under the Agreement. Grantee cannot subcontract or assign any of its duties under the Agreement without advance written notice to Grantor and prior written approval of Grantor, which shall not be unreasonably withheld. Lack of notice may be grounds for termination of the Agreement.

6 Disclosures and Reporting

6.1 Copies of Materials to Grantor; Non-Disclosure.

A. Grantee shall provide to Grantor any information, data, conclusions, or reports as it may develop or produce as a result of the Agreement at least thirty (30) days prior to its publication, release, or dissemination, in any form, for Grantor's review, comment, and approval, if appropriate. To the extent permitted under the Constitution and laws of the State of Texas, Grantor agrees to maintain the confidentiality of such information, data, conclusions, or reports to the extent allowed by law.

B. Grantee shall provide to Grantor copies of all printed or recorded materials which describe or publicize the project, including brochures, press clippings, audio and video tapes, and photographs of sites and signs. Grantor shall have the right to publicize the Grant Project and to use and disseminate the information, data, conclusions, articles, reports, brochures, audio and videotapes, photographs, and other items provided by Grantee that are

not identified as confidential, proprietary, or intellectual property by Grantee.

- 6.2 Reports to Grantor.** If Grantee creates a Subject Invention, it shall report that fact to Government and Grantor. Grantee's report to Grantor shall be treated as Proprietary Information in order to protect such information from being treated as a public disclosure.
- 6.3 Funding Statement.** All materials produced as a result of the Grant Project must include a statement that the work was funded, in whole or in part, by the Program as administered by the Texas Department of Agriculture.
- 6.4 Grantee's Responsibilities.** In performing work under the Agreement, Grantee shall comply with all laws, rules, and regulations relating to intellectual property, and shall not infringe on any third party's intellectual property rights. It shall hold Grantor harmless from, and to the extent permitted by the laws and Constitution of the State of Texas, defend and indemnify Grantor against, any claims for infringement related to its work under the Agreement.
- 6.5 Subcontract Provisions.** Grantee shall include provisions adequate to effectuate the purposes of Section 6 of this Attachment B in all subcontracts under the Agreement.

7 Intellectual Property

- 7.1 Subject Inventions.** Grantee shall retain ownership of the entire right, title, and interest in and to each Subject Invention throughout the world in accordance with the provisions of this Agreement. Grantor shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on its behalf, the Subject Invention throughout the world.
- 7.2 Copyright.** Grantee shall retain ownership of any copyright in any work of authorship first produced in the performance of this Agreement. For works of authorship other than computer software first produced in the performance of this Agreement, Grantee grants to the Government and others acting on behalf of the Government, a paid-up, nonexclusive, irrevocable, worldwide license for all such works of authorship to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, by or on behalf of the Government. Grantee grants to Grantor an irrevocable, royalty-free, non-transferable, nonexclusive, non-commercial right and license to use, reproduce, display publicly and perform publicly (to the extent not prohibited by applicable law) any works of authorship first developed under this Agreement (other than computer software, which includes both source and executable code, its documentation, and/or programmers' notes).
- 7.3 Publications.** Any publication or description of the results obtained under this Grant must give due acknowledgment and credit to Grantor as funding party and Grantee as performing party. Publication may be joint or independent, as may be agreed upon by the Parties, always giving due credit to other cooperating parties, and recognizing within proper limits the rights of the individuals doing the work.

- 7.4 Grantee's Responsibilities.** In performing work under the Agreement, Grantee shall comply with all laws, rules, and regulations relating to intellectual property, and shall not knowingly infringe on any third party's intellectual property rights. It shall hold Grantor harmless for, and to the extent permitted by the laws and Constitution of the State of Texas, defend and indemnify Grantor against, any claims for infringement related to its work under the Agreement.
- 7.5 Subcontract Provisions.** Grantee shall include provisions adequate to effectuate the purposes of Section 7 of this Attachment B in all subcontracts under the Agreement in the course of which intellectual property may be produced or acquired.

8 Payments.

- 8.1 Lack of Funding.** The Agreement is subject to the availability of state, federal or private funds. If such funds become unavailable during the term of Agreement and Grantor is unable to obtain sufficient funding for the Agreement, the Agreement will be reduced or terminated.
- 8.2 Grantee in Good Standing.** Grantee understands that in order to be eligible for payment from Grantor, Grantee must be in good standing with the Texas Comptroller of Public Accounts.
- 8.3 Reimbursement.** ~~Grantor, to the extent allowed by law, shall reimburse Grantee only for actual, reasonable and necessary expenses, in accordance with the following circulars, directives, policies and standards:~~
- ~~A. 2 CFR 200;~~
 - ~~B. The Texas Uniform Grant Management Standards ("UGMS");~~
 - ~~C. As provided for in Attachment C, and to the extent the expenditure is allowable as determined by Grantor; and~~
 - ~~D. Only to the extent such expenses have been incurred by Grantee in the fulfillment of the objectives provided for in Attachment C. (Intentionally deleted by the parties.)~~
- 8.4 Reimbursement Documentation.** ~~Grantee shall submit to Grantor, for each reimbursement request, a completed Payment Request and Budget Compliance Report on a form designated by Grantor, including the following information, if applicable: (Intentionally deleted by the parties.)~~
- ~~A. Personnel Costs. Back-up documentation for salary/wages and fringe benefits must be provided that detail personnel time billed directly to the program.~~
 - ~~B. Travel Costs. Travel costs are allowable for transportation, lodging and related expense items incurred by Grantee while traveling within Texas on official business directly related to the Grant Project. Reimbursement for travel is limited to the federal Domestic Per Diem Rates, which can be found on the U.S. General Services Administration (GSA) Web~~

~~site. For locations not listed on the GSA site, the rate will be limited to travel reimbursement rates as set by the Texas Comptroller of Public Accounts. Grantor will address exceptions on a case-by-case basis. Copies of receipts for all expenditures, regardless of the amount, must accompany the request including, but not limited to, airfare, lodging, transportation, incidentals, etc. A brief justification for the travel must also be included. Meals, or any food related items related to travel and or per diem expenses are not an allowable cost and will not be approved for reimbursement.~~

~~**C. Supplies and Other Operating Costs.** Copies of vendor invoices for purchases of \$500.00 or more and an itemized list of all invoices for purchases of less than \$500.00 must accompany the Payment Request. All backup documentation, including original copies of vendor invoices, must be made available to Grantor upon request during any audit conducted at Grantee's premises under the Agreement.~~

~~**D. Indirect Costs.** Grantor's maximum obligation also includes indirect costs of up to ten percent (10%) of actual costs. The inclusion of these indirect costs shall not change Grantor's maximum obligation under this Agreement. In order to be reimbursed for indirect costs, Grantee must provide an Indirect Cost Plan to Grantor for approval.~~

8.5 Payment Requests. ~~Grantee must submit payment requests in a manner as prescribed by Grantor at least quarterly, with no greater frequency than monthly. (Intentionally deleted by the parties.)~~

8.6 Final Payment Request. ~~The final payment request must be received no later than sixty days following the completion of the Grant Project or after the expiration or termination of the Agreement, whichever occurs first. (Intentionally deleted by the parties.)~~

8.7 Payment Schedule. ~~In order to be eligible for reimbursement of a payment request, all reporting requirements must be current. Grant funds shall be paid according to the following schedule. (Intentionally deleted by the parties.)~~

~~A. Up to 90% of the total grant award may be disbursed provided the work for which payment is requested has been completed and proper documentation to substantiate the request has been submitted pursuant to Section 8.4 of Attachment B.~~

~~B. The remaining 10% may only be disbursed if the disposition of all property purchased under the Agreement is submitted utilizing the form designated by Grantor (if applicable).~~

8.8 Payment Classification. Funds reimbursed under the Agreement must be classified as "grants" for financial reporting purposes.

8.9 Use of Funds. Quarterly reports must demonstrate the expenditure of funds in a timely manner, as well as corresponding progress towards Grantee's project objectives. Lack of progress will be considered a breach of this agreement and unless cured in the time prescribed by Grantor, will result in the termination of this agreement.

8.10 Non-expended Grant Funds. Grantee understands and acknowledges that grant funds that are not expended by Grantee prior to the end of the term of Agreement, including any authorized extensions, shall be forfeited.

8.11 Required Repayment of Grant Funds.

A. Grantor will deny any requests for reimbursement and/or require repayment of Grant funds disbursed to Grantee if:

- 1) Grant funds are misused;
- 2) Grantee commits fraud through intentional, reckless, or grossly negligent conduct;
- 3) Grantee violates any term, condition or provision of this Agreement; or
- 4) Grantee made any misrepresentations to Grantor in obtaining this Grant.

B. This provision is not exclusive of other grounds for withholding or requiring repayment of grant funds or any other remedy, civil or criminal, which may be available to Grantor.

8.12 ~~Matching Funds.~~ ~~Grantee is required to expend matching funds in an amount equal to or greater than the pledged match as outlined in Attachment C. Requests for reimbursement will only be paid after Grantee provides documented minimum expenditure of matching funds in an amount proportionate to the reimbursement request. (Intentionally deleted by the parties.)~~

9 Termination of Agreement

9.1 Agreement Termination. The Agreement may be terminated at any time by mutual consent. In addition, either party may terminate the Agreement, without cause, upon thirty (30) days' written notice via registered or certified mail, return receipt requested, to the other party. Early termination of the Agreement shall not relieve Grantee from the obligation of providing final performance and budget reports regarding the expenditure of grant funds received prior to termination. If one party terminates the Agreement, pursuant to this section, then the effective date of termination is thirty (30) days from the date that the non-terminating party receives the notice of termination.

9.2 Immediate Termination. Any default or breach of the Agreement, including but not limited to, Grantee's failure to meet reporting requirements for more than one quarter (does not have to be consecutive), or fulfill any other obligation under the Agreement, shall constitute cause for immediate termination of the Agreement. Such termination is effective upon written notification by Grantor by mailing written notice via registered or certified mail, return receipt requested, to Grantee. The effective date of termination is three (3) days after Grantor mails Grantee notice of termination.

9.3 Curable Breach. If Grantor determines that a breach by Grantee is curable, Grantor may send written notice to Grantee stating the nature of the breach. Should the breach not be cured by Grantee within thirty (30) days from the date of the notice, the Agreement will be immediately terminated. Forbearance of this section or any other termination provision by

Grantor shall not constitute a waiver of the breach.

- 9.4 Termination for Lack of Appropriate License/Permits.** Grantee's failure to obtain and maintain applicable federal, state, and local licenses and permits shall constitute cause for immediate termination of the Agreement.
- 9.5 Reimbursement upon Termination.** In the event of termination of the Agreement, Grantee shall be reimbursed for eligible, documented expenses in accordance with the Agreement up to the date of termination. Expenses incurred beyond the date of termination will not be reimbursed, and Grantee specifically waives all rights to any further funds upon termination of the Agreement.
- 9.6 Effect of Expiration or Termination.** Sections 5.1, 5.2, 5.3, 5.4, 6.1, 6.3, 6.4, 7.1, 7.2, 7.3, 7.4, 8.11, 9.1, 9.2, 10.5, and 10.6 of this Attachment B shall survive the expiration or termination of the Agreement. Notwithstanding anything to the contrary contained in the Agreement, termination of the Agreement shall not release or relieve either Grantor or Grantee from any liabilities or damages arising out of any breach of the representations and warranties made by it, or its failure to perform any of the covenants, agreements, duties or obligation arising under the Agreement.

10 Disposition of Property

- 10.1 Property Vested in Grantee.** When personal property is acquired by Grantee with grant funds, title shall be vested in Grantee, subject to the Agreement.
- 10.2 Personal Property Used in Accordance with the Agreement.** During the term of Agreement, such personal property shall be used in accordance with the Agreement to accomplish the public purposes served by the Grant Project.
- 10.3 Maintenance of Property Records.** Grantee must maintain property records that include a description of the property, a serial number or other identification number, the source of property, who holds the title, the acquisition date, and cost of the property, percentage of state participation in the cost of the property, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property, on a form prescribed by Grantor.
- 10.4 Physical Inventory.** A physical inventory of the property shall be taken and the results reconciled with the property records at least once every two (2) years, or prior to termination of the Agreement, as applicable.
- 10.5 Non-Expendable Personal Property.** After the termination of the Agreement, Grantee may continue to use any Non-Expendable Personal Property acquired under the Agreement in the Grant Project as long as needed, whether or not the project continues to be supported by grant funds. In the alternative, Grantee may sell the property and reinvest the proceeds in the Grant Project.

- 10.6 Property Disposition at Project Expiration or Termination.** If the Grant Project has terminated and the property is no longer being used for the purposes specified in the Grant Project, then the property must be disposed of as follows:
- A. If the property has a current per-unit fair market value of less than \$5,000.00, Grantee may use the property for other activities without reimbursement to Grantor or sell the property and retain the proceeds.
 - B. If the property has a current per-unit fair market value of \$5,000.00 or more, Grantee may retain the property for other activities, or sell it, but shall in either case compensate Grantor for its share. The amount of compensation shall be computed by applying the percentage of Grantor's actual participation in the cost of the original project to the current fair market value of the property.
 - C. If Grantee has no further need for and is unable to sell the property, Grantee shall request disposition instructions from Grantor.
- 10.7 Expendable Personal Property.** Expendable personal property shall vest in Grantee upon acquisition. If there is a residual inventory of such property exceeding \$5,000.00 in total aggregate fair market value upon completion of the Grant Project, Grantee may retain the property for other activities, or sell it, but must in either case compensate Grantor for its share. The amount of compensation shall be computed in the same manner as Non-Expendable Personal Property. If Grantee has no further need for and is unable to sell the property, Grantee shall request disposition instructions from Grantor.

11 General Terms and Conditions

- 11.1 Delegation to Third-Party.** Grantee is not relieved of its duties and obligations imposed by the Agreement through delegation by Grantee to a third-party.
- 11.2 Agreement Binding.** The Agreement shall be binding on and inure to the benefit of the parties and their officers, executives, administrators, legal representatives, and successors except as otherwise specified herein. Neither party may assign or transfer the Agreement without the written consent of the other party. The parties intend to be legally bound and have executed the Agreement as evidenced by their signatures on the date indicated below. The Agreement is not effective unless and until it has been signed by both parties.
- 11.3 Grantee Responsible for Compliance.** Grantee shall be solely responsible for compliance with all federal, state, and municipal laws, ordinances, regulations, and purchasing or contracting guidelines in the accomplishment of the Grant Project funded by the Agreement, and failure to comply with such shall constitute cause for immediate termination of the Agreement in accordance with Section 9.2 of this Attachment B.
- 11.4 Agreement does not Create Debt.** The Agreement shall not be construed as creating any debt on behalf of the State of Texas, and/or Grantor in violation of Article III, Section 49,

of the Texas Constitution. In compliance with Article VIII, Section 6, of the Texas Constitution, all obligations of the State of Texas or Grantor hereunder are subject to the availability of appropriations and authorization to pay by the Texas Legislature.

- 11.5 Delivery Methods.** Unless specifically provided herein, any required notice to be given by either party to the other party must be affected by personal delivery in writing or by mailing same via registered or certified mail, return receipt requested. All notices shall be addressed to the parties at the address stated in the Agreement unless a change of address has been given in the manner provided for in this section.
- 11.6 Inspection by Grantor.** During the term of Agreement, Grantor may inspect Grantee's premises, accounting records, property records, and other records, to monitor Grantee's performance of the work and expenditures of the grant funds. Grantor further has the right to make a visual inspection of any assets purchased or constructed with grant funds.
- 11.7 Indemnification.** Grantee shall indemnify and hold harmless, to the extent allowed by the laws and Constitution of the State of Texas, Grantor, its executives, officers, agents and employees, from any and all claims, demands, and causes of action arising from or related to Grantee's performance under the Agreement, including reasonable attorney's fees and settlement costs incurred in defending or settling any such claims.
- 11.8 Grantee Not Employee of Grantor.** Grantee, its employees, contractors, and/or subcontractors shall not present themselves as or be construed as employees or agents of Grantor. Neither Grantee nor its employees have an employer-employee relationship with Grantor.
- 11.9 Representations and Warranties of Grantee.** Grantee represents and warrants that: it has the full right and authority to enter into the Agreement and to bestow on Grantor the rights and privileges set forth in the Agreement; it has obtained all necessary approvals prior to execution of the Agreement; it is in good standing with the Texas Comptroller of Public Accounts, and in all other jurisdictions in which it is required to be so qualified for performance of the Agreement; and it has paid all necessary fees, and it has obtained all necessary certifications, registrations, approvals and licenses necessary to perform the Agreement.
- 11.10 Applicable Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of Texas. Exclusive venue shall lie in the District Courts of Travis County, Texas.
- 11.11 Dispute Resolution.** The Agreement is subject to the dispute resolution procedures set forth in Chapter 2260 of the Texas Government Code.
- 11.12 Uniform Grant Management Standards.** The Agreement shall comply in all respects with the Uniform Grant Management Standards (UGMS), Texas Government Code, §783.007. In the case of any conflicts between UGMS and the Agreement, UGMS shall control.

- 11.13 Texas Public Information Act.** Grantee acknowledges that all information provided by Grantee pursuant to the Agreement, attachments or amendments, including information and material identified in accordance with Section 7 -- Intellectual Property, is subject to the Act and may be subject to disclosure to the public. Section 11.20 of this Attachment shall apply to Confidential Information as it is identified in the Agreement.
- 11.14 Headings.** Captions and headings of the sections or paragraphs of the Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of the Agreement, nor shall they be employed to interpret or aid in the construction of the Agreement.
- 11.15 Severability.** If any part of the Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from the Agreement and the remaining part shall remain in full force and effect, and the parties shall promptly negotiate to replace invalid or unenforceable provisions that are essential parts of the Agreement.
- 11.16 Waiver.** A waiver by Grantor of any provision hereunder shall not operate as a waiver of any other provision, or a continuing waiver of the same provision in the future.
- 11.17 Antitrust.** Grantee represents and warrants that neither Grantee nor any firm, corporation, partnership, or institution represented by Grantee, or anyone acting for such firm, corporation or institution has (1) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (2) communicated directly or indirectly the Grantee's proposal to any competitor or any other person engaged in such activities or projects during the procurement process for this grant award.
- 11.18 Force Majeure.** Neither Grantee nor Grantor shall be liable to the other for any delay in, or failure of performance, of any requirement included in the contract caused by force majeure. The existence of such causes of delay or failure shall extend the period of performance until after the causes of delay or failure have been removed provided the non-performing party exercises all reasonable due diligence to perform. Force majeure is defined as: (A) acts of God, acts or failure of government or governmental authorities, war, fires, explosions, hurricanes, tornadoes, floods, extreme weather, strikes, riots, civil disturbance or unrest, failure of transportation, or disruption of supply chain(s); or (B) acts, causes, circumstances, events and matters related to public health, whether local, state, regional, national or worldwide, including, without limitation, disease, epidemic, pandemic, viral or bacterial outbreaks, or contamination of or disruption to food or water supply. To constitute an event of force majeure, the act, cause, circumstance, event or matter must: (i) directly result in damage, loss, harm, destruction, disruption or calamity to the party declaring an event of force majeure of such magnitude that a reasonably competent and prepared entity or individual could not be expected to continue operations or perform services under such circumstances; (ii) be beyond the reasonable control of the party declaring a force majeure; and (iii) be of such a nature that by exercise of due foresight the party declaring a force majeure could not be reasonably have been expected to avoid, and

which, by the exercise of all reasonable diligence, such party is unable to overcome. The party declaring a force majeure shall provide at least seven (7) days written notice to the nondeclaring party of the force majeure and the actions or remedies it is taking as a result of the force majeure. If either party is unable to continue operations or provide services as a result of a force majeure, only after providing notice of a force majeure as required by this section and making a legitimate effort to continue operations and/or provide services, such party may terminate this contract by providing written notice to the nondeclaring party. If this contract is terminated because of an event of force majeure, Grantor shall be responsible for payment of only reasonable and customary charges for necessary services actually provided by Grantee up to the date of termination, not to exceed the sums specified in the contract.

11.19 Buy Texas. Grantee shall purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials produced outside the state.

11.20 Confidential Information.

A. If it is necessary for Grantee to include confidential, proprietary, trade secret or privileged information (the "Proprietary Information") in its proposal or other submitted information, Grantee must clearly mark and label all Proprietary Information in fourteen (14) point or higher bold font on each page as it appears, and identify the specific exception to disclosure in the Act for each specific piece of Proprietary Information. Additionally, all Proprietary Information must be segregated in a separate and discrete section of the proposal or other submitted information, which must be able to be conveniently separated and detached from the other sections of the proposal. Failure to properly label, identify and segregate any Proprietary Information in the proposal or other submitted information may result in all such information or material being disclosed as public information. Merely making a blanket claim that the entire proposal or other submitted information is protected from disclosure because it contains any amount of confidential, proprietary, trade secret or privileged information is not acceptable.

B. In the event Grantor receives a request for Proprietary Information under this Agreement, Grantor shall submit a request for opinion from the Office of the Attorney General to withhold the responsive information. Grantor shall provide notice of such requests to Grantee in accordance with Section 552.305 of the Texas Government Code. In order to initiate the process of seeking an Attorney General opinion on the release of Proprietary Information, the specific provisions of the proposal or other submitted information that are considered by Grantee to be confidential, proprietary, trade secret or privileged and confidential must be clearly labeled and segregated as described above. Any information which is not clearly identified as Proprietary Information shall be deemed to be subject to disclosure pursuant to the Act. Grantee must comply with requirements of Section 552.305 of the Texas Government Code in submitting a response to the Office of the Attorney General and shall be responsible for citing judicial or statutory authority for exception to disclosure. Grantor shall work with Grantee during the process of seeking an Attorney General opinion on the release of the

Proprietary Information.

TEXAS DEPARTMENT OF AGRICULTURE
ATTACHMENT C –BUDGET

Name of Grantee: **El Paso County**

As stated in Attachment A, this Grant is based on the number of Eligible Meals served by Grantee. Eligible Meals are calculated by subtracting the meals funded by Texas Health and Human Services (TXHHS) (successor agency to TXDADS)/Areas Agency on Aging (AAA) from the total number of meals delivered as reported by Grantee in a county between September 1, 2019 and August 31, 2020. The Grant is calculated on the remaining number of meals. For purposes of this Grant, any meals that are not Eligible Meals are classified as Ineligible Meals. If an audit or review of the Grant reveals that Grantee has received Grant funds based on Ineligible Meals, Grantee will be required to repay Grantor the amount of the excess Grant funds received, on terms and conditions set by Grantor.

COMPLETE THE TABLE BELOW. Please estimate, to the best of your ability, how Texans Feeding Texans: Home Delivered Meal Grant Program funds will be expended for your organization during the grant period.

County	El Paso
Application Number	HDM-21-6220
County Grant as stated in approved resolution	\$27,071.25
Total # Meals Delivered (as reported by Grantee in Grant Application)	561122
Total # Meals Funded by TXHHS/AAA (Ineligible and verified by TXHHS/AAA)	507626
Remaining Eligible Meals	53,496
TDA Calculated Grant Amount	\$84,843.96
Expenditure Category	Estimated Amount
Personnel	\$
Food/Meals	\$ 84,843.96
Equipment	\$
Building Occupancy	\$
Transportation	\$
Office Supplies and Services	\$
Other: Please specify exactly	
a.	\$
b.	\$
c.	\$
d.	\$
Total Budgeted Grant Amount for TDA Award (must equal calculated grant amount)	\$ 84,843.96

During the grant year, Grantee must demonstrate that HDM grant funds were used to directly supplement or extend existing home delivered meal services to homebound persons that are elderly and/or have a disability.

By signing, I certify that the information entered on this form is true and correct to the best of my knowledge.

Authorized official signature:

Ricardo A. Samaniego, County Judge

Date: _____