



TEXAS DEPARTMENT OF AGRICULTURE

GRANT AGREEMENT

GRANTEE	Test Grantee Organization
GRANT PROGRAM	Surplus Agricultural Products - 2022
PROJECT TITLE	Surplus Agriculture Grants Products Grant Program
CFDA NUMBER	N/A - State Funded
PERFORMANCE PERIOD/ AGREEMENT TERM	9/1/2021 Through 8/31/2023
AUTHORITY AND PURPOSE	
<p>Chapter 12 of the Texas Agriculture Code ("Code") provides that the Texas Department of Agriculture ("Department") shall encourage the proper development and promotion of agriculture and other industries that grow, process, or produce products in this state, and may enter into cooperative agreements with private entities and local, state, federal and other governmental entities to carry out its duties under the Code.</p> <p>Grant Recipient has submitted a request for assistance under this Grant Program, hereinafter referred to as the "Application," hereby incorporated by reference into this Grant Agreement "Agreement." This Agreement sets forth the obligations of the parties along with the terms and conditions under which the Department will provide Grant Program funds to Grant Recipient under this award. Grant Recipient agrees to administer the project as described herein ("Project"), and the Department agrees to fund the Project up to the Grant Amount.</p>	
PROJECT DESCRIPTION	
<p>two sentence summary provided by grant specialist</p> <p>Grant Recipient agrees to carry out the Project and complete all approved activities in accordance with the terms of this Agreement, including the following Exhibits which are attached hereto and kpeqtrqtcvgf"kpva"vjku"C i tgg o gpv<"Rgthqt o cpeg"Rncp"cpf"Ur gekhke"C y ct f"Eqpfkvkqpu"*Gz jkdv"C+." Project Budget (Exhibit B), General Terms and Conditions (Exhibit C), Certifications and Assurances (Exhibit D), and to comply with all statutes and regulations as applicable to this award and such regulations and procedures as the Department may prescribe.</p>	
TOTAL GRANT AMOUNT NOT TO EXCEED	\$20,000,000.00
MATCH AMOUNT (if applicable)	\$0.00

GRANTEE	GRANTOR
Test Grantee Organization	TEXAS DEPARTMENT OF AGRICULTURE Trade and Business Development
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PRINTED NAME AND TITLE OF PERSON SIGNING:	PRINTED NAME AND TITLE OF PERSON SIGNING:
DATE SIGNED:	DATE SIGNED:

SAMPLE DRAFT

Exhibit A

Performance Plan and Specific Award Conditions

A. Activities/Eligible Use of Funds

1. As a condition of receiving this award, Grant Recipient shall administer the Project funded under this Agreement and complete all activities described in this Exhibit A in accordance with the Project Schedule and performance goals outlined herein. Grant Recipient shall perform and complete all work and activities in a manner satisfactory to the Department and consistent with the terms of conditions of this Agreement and applicable statutes and regulations.

2. Grant Recipient will undertake the following activities and provide the following levels of program services.

Purchase b grade produce and transport product to 21 regional food banks

B. Prohibited Activities

Grant Recipient may only carry out the activities described in this Agreement. Grant Recipient is prohibited from charging to this award the costs of ineligible activities, and from using funds provided herein or personnel employed in the administration of activities under this Agreement for political activities, inherently religious activities, or lobbying.

C. General Administration

1. Grant Recipient will obtain and maintain the necessary records documenting its use of funds under this award and its supervision and administration of the Project per all applicable laws, regulations, and other requirements under this Agreement. Records are to include documentation verifying Project eligibility as well as financial and other administrative aspects involved in performing the Project within the Project timeline.

2. Grant Recipient understands that failure to comply with the established administrative responsibilities may lead to: (a) a cancellation of the award; (b) loss of all or part of unexpended funds; and/or (c) an obligation to repay funds disbursed to Grant Recipient under this award.

3. Grant Recipient will also comply with the Administrative Requirements identified elsewhere in this Agreement.

D. Special Conditions

1. Reimbursement Documentation. Grant Recipient shall submit to the Department, for each reimbursement request, a completed Payment Request and Budget Compliance Report on a form designated by the Department, including the following information, if applicable:

- 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 Grant Recipient 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) website. 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. The Department 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 the Department upon request during any audit conducted at Grant Recipient's premises under the Agreement.
- d. **Indirect Costs.** The Department'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 the Department's maximum obligation under this Agreement. In order to be reimbursed for indirect costs, Grant Recipient must provide an Indirect Cost Plan to the Department for approval.

2. Reporting Requirements.

- a. **Quarterly Reports.** Performance reports shall be submitted on a form prescribed by the Department. 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 report period.
- b. **Final Performance Report.** The final report shall follow the format prescribed by the Department. The Final Performance Report is due thirty days after the expiration or termination of this Agreement, whichever occurs first.
- c. **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.
- d. **Failure to Comply with Reporting Requirements.** Failure of Grant Recipient to comply with any of the reporting requirements in this Agreement may result in the revocation of a Grant, withholding of request(s) for reimbursement, requiring the repayment of Grant funds disbursed to Grant Recipient, and/or Grant Recipient's ineligibility for future Grant Program funds.

3. Payment Requests.
 - a. Grant Recipient must submit payment requests in a manner as prescribed by the Department at least quarterly, with no greater frequency than monthly.
 - b. The final payment request must be received no later than sixty (60) days following the completion of the Grant Project or after the expiration or termination of the Agreement, whichever occurs first.
4. 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.
 - 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 clause D.1 of this Exhibit.
 - 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 the Grantor (if applicable).
5. Annual Inventory of Property. Grant Recipient's Project Manager or Fiscal Officer shall provide to the Department an Annual Inventory of Non-Expendable Personal Property detailing the items' location and condition on the form prescribed by the Department.
6. Property Vested in Grant Recipient. When personal property is acquired by Grant Recipient with grant funds, title shall be vested in Grant Recipient, subject to the Agreement.
7. Personal Property Used in Accordance with the Agreement. During the Agreement Term, such personal property shall be used in accordance with the Agreement to accomplish the public purposes served by the Grant Project.
8. Maintenance of Property Records. Grant Recipient 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 the Department.
9. Physical Inventory. A physical inventory of the property shall be taken and the results reconciled with the property records at least once every two years, or prior to termination of the Agreement, as applicable.
10. Non-Expendable Personal Property. After the termination of the Agreement, Grant Recipient 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, Grant Recipient may sell the property and reinvest the proceeds in the Grant Project.

Exhibit B

Budget

A. Approved Budget

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Cost Category	Awarded Amount	Match Amount
Total	\$20,000,000.00	\$0.00

Exhibit C

General Terms and Conditions of State Grant

SECTION 1. COMPLIANCE WITH APPLICABLE LAWS

Grant Recipient agrees to administer the award and carry out the Project in compliance with all of the obligations described in this Agreement and shall ensure that the Project is financed, constructed, operated and maintained in accordance with all federal, state and local laws, ordinances, regulations, and published program guidance/Project Implementation Manual that are in any manner applicable to the activities performed by Grant Recipient under this award, its agents, employees, subgrantees, contractors and subcontractors pursuant to this Agreement. Failure to comply with such laws, ordinances, regulations and guidance shall be grounds for termination of this Agreement for cause.

SECTION 2. AVAILABILITY OF FUNDS

Grant Recipient shall recognize and agree that both the initial provision of funding and the continuation of such funding under the Agreement is expressly dependent upon the actual receipt by the Department of funds appropriated to the Department by the State Legislature from State and/or Federal revenue or unavailable, the Department may immediately terminate this Agreement or reduce the Grant Amount, and perform any condition on its part to be performed under the Agreement as a result of the failure of the Legislature to appropriate shall not in any manner constitute a breach of the Agreement by the Department or an event of default under the Agreement and the Department shall not be held liable for

SECTION 3. ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES AND ACCOUNTING STANDARDS

Grant Recipient shall comply with, to the extent applicable, the provisions of the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), and the Texas Grant Management Standards promulgated by the Texas Comptroller of Public Accounts pursuant to the Uniform Grant and Contract Management Act (Tex. Govt. Code Chapter 783). Grant Recipient agrees to adhere to the administrative requirements, accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred under the award

SECTION 4. METHOD OF PAYMENT

A. Funds will be disbursed for actual eligible costs incurred by Grant Recipient in connection with this Agreement. Determination of allowable costs shall be made in accordance with applicable government-wide cost principles under the TxGMS, this Agreement, and the provisions of such regulations and procedures as the Department may prescribe.

B. Payment requests shall be submitted to the Department in the manner and on the form required by the Department. Payment shall be made on an eligible cost reimbursement basis only and in such amounts and increments approved by the Department for various phases of work following submission by Grant Recipient of a proper request for payment, including applicable, accurate and complete supporting documentation that substantiates the payment request in accordance with the Performance Plan and the Project Budget.

C. The Department shall pay to Grant Recipient funds available under this Agreement based upon information submitted by Grant Recipient for allowable costs permitted under the Agreement and consistent with the Project Budget. The Department will notify Grant Recipient if there are concerns about the project and shall not make disbursement of any such payment until the issues of concern are resolved and the Department has reviewed and approved such payment request. The Department may deny a payment request if the Department determines that the request is not supported by sufficient documentation.

D. The Department will not reimburse Grant Recipient for any costs incurred either prior to the effective date of the Agreement or after the termination or expiration date of the Agreement, unless otherwise stated herein or agreed to in writing by the Department.

E. The Department will not make final payment to Grant Recipient until all reports, unexpended program income and other deliverables required under the Agreement have been submitted to the Department in acceptable form.

SECTION 5. MATCHING AND COST SHARING REQUIREMENTS

Grant Recipient shall demonstrate to the satisfaction of the Department that it has complied with all matching and cost sharing requirements, if any, of this Agreement. Requests for reimbursement will only be paid after Grant Recipient provides documented minimum expenditure of matching funds in an amount proportionate to the reimbursement request.

SECTION 6. FINANCIAL MANAGEMENT

A. Grant Recipient shall maintain a financial management system that meets the standards for fund control and accountability as established in the TxGMS and this Agreement. Grant Recipient agrees to keep all project accounts and records that fully disclose the amount and disposition by Grant Recipient of the proceeds of the award, the total cost of the project in connection with which the award is given or used, the amount or nature of that portion of the cost of the project supplied by other sources, and such other financial records pertinent to the Project. Grant Recipient's failure to comply with these requirements may result in termination of the award.

B. Grant Recipient shall maintain a financial management system that provides:

- (1) Accurate, current and complete disclosure of all financial activities related to this Agreement, in accordance with Generally Accepted Accounting Principles;
- (2) Records that clearly identify the source and application of all funds used for the purposes described in the approved grant application, attached hereto and made a part hereof which is part of the Agreement. These records shall, at a minimum, contain information pertaining to Agreement awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and program income;

- (3) Grant Recipient shall have in place a system for safeguarding all such assets and shall assure that they
- (4) Grant Recipient shall ensure that the funds provided by the Department to Grant Recipient under this Agreement are not misappropriated or misdirected to any other account, need, project, line-item, or unrelated activity.

SECTION 7. PROCUREMENT STANDARDS

Grant Recipient shall procure property, supplies, equipment, and services with funds provided under this Agreement in a manner consistent with (1) current program policy, (2) federal, state and local laws, and (3) the TxGMS, as applicable. The Department assumes no responsibility for contractual and administrative matters associated with Grant Recipient's procurement of such property, supplies, equipment, and services. No provider of property, supplies, equipment, and services to Grant Recipient shall be deemed a third-party beneficiary of this Agreement.

SECTION 8. PROPERTY MANAGEMENT STANDARDS

Grant Recipient shall use and dispose of property in a manner consistent with the TxGMS, if such property has been furnished by the Department or acquired or improved in whole or in part with federal or state funds or if the cost of such property was charged to a project supported by federal or state funds.

SECTION 9. REPORTING REQUIREMENTS

- A. Grant Recipient shall submit timely, complete, and accurate progress/performance/financial reports in the manner and form specified by the Department. These reports shall be submitted to the Department on a periodic basis, as prescribed in the Specific Award Conditions (Exhibit A).
- B. Agreement obligations will remain in force until all final reports are reviewed and approved by the Department. The final report shall include a comparison of actual expenditures with the budget line items shown in the Project Budget.
- C. Extensions to the reporting due dates prescribed in the Specific Award Conditions may be granted by the Department upon receipt of a written request from Grant Recipient.
- D. If reports are not submitted by Grant Recipient as required, the Department may, in its sole discretion, withhold payments under this Agreement or any other grant agreement entered into between the Department and Grant Recipient, terminate this award, or initiate other remedies for noncompliance as appropriate and permitted under this Agreement or the TxGMS.

SECTION 10. RECORD RETENTION

A. Grant Recipient shall maintain and retain all records relating to the performance of the grant award including supporting fiscal documents adequate to ensure that claims for Project Funds are in accordance with applicable State of Texas requirements. These records will be maintained and retained by Grant Recipient for a period of four (4) years after the grant expiration date or until all audit, claim, and litigation matters are resolved, whichever is later.

B. The preceding record retention requirement is subject to the following exception: Records pertaining to nonexpendable property acquired with award funds shall be retained for three years after final disposition of such property.

C. The Department reserves the right to direct Grant Recipient to retain documents for a longer period of time or transfer certain records to Department custody when it is determined the records possess longer term retention value.

D. Grant Recipient shall include the substance of this Section in all subawards and subcontracts.

SECTION 11. INSPECTIONS AND MONITORING

A. Grant Recipient shall monitor the performance of all activities undertaken pursuant to this Agreement to assure that time schedules are being met, projected work and tasks are being accomplished and other performance goals are being achieved. Grant Recipient is accountable to the Department for the use of the funds provided and shall assure the award is administered in compliance with applicable requirements. Responsibilities include the accounting of receipts and expenditures, cash management, maintaining adequate financial records, and refunding disallowed expenditures.

B. Grant Recipient agrees to notify the Department in writing of any circumstances or conditions that may negatively affect or are negatively affecting program objectives or performance as soon as they are known. These conditions include but are not limited to circumstances and problems that prevent the meeting of time schedules and goals or preclude the attainment of project work within established time periods. In its notification, Grant Recipient shall include a statement of the action taken or contemplated by Grant Recipient to correct the problems and the time frame within which corrective action will be taken.

C. Grant Recipient's progress will be monitored periodically by the Department to ensure that the Project goals, objectives, performance requirements, timelines, milestone completion, budgets, and other related program criteria are being met. Monitoring will be accomplished through a combination of office-based reviews and onsite monitoring visits. Monitoring will involve the review and analysis of the financial, programmatic, performance and administrative issues relative to each program and will identify areas where technical assistance and other support may be needed.

D. The Department may, at any time, require that Grant Recipient provide such other information as is deemed necessary by the Department to enable it to fully monitor the Agreement and award.

E. The Department may issue management decisions and may consider taking enforcement actions if noncompliance is detected during audits, inspections or monitoring reviews. The Department may require Grant Recipient to take timely and appropriate action on all deficiencies pertaining to the award detected through audits, on-site reviews, and other means. In response to audit deficiencies or other findings of noncompliance with this Agreement, the Department may impose additional conditions on the use of funds to ensure future compliance. Failure of Grant Recipient to take timely and appropriate action on all deficiencies may result in the withholding or suspension of funds under the Agreement, termination of the award, or any other remedy which may be available to the Department.

F. Grant Recipient understands and agrees that it shall repay funds disbursed to Grant Recipient under this Agreement for disallowed costs identified through audits, inspections or monitoring reviews, and the repayment of such disallowed costs shall be paid by Grant Recipient from non-grant funds. Disallowed costs are those charges determined to not be allowed in accordance with the applicable cost principles or other conditions contained in this Agreement.

SECTION 12. AUDITS, INVESTIGATIONS AND ACCESS TO RECORDS

A. Grant Recipient agrees to make available to the Department, the State Auditor's Office, any other appropriate unit or agency of the State, and any of their duly authorized representatives, for purposes of audit and examination, all accounting records, books, documents, files and other papers that are pertinent to the award as may be necessary to facility the review and audit of Grant Recipient's operations, administration, receipt and use of funds under this award. Such authority to audit and right to access shall continue as long as the records are retained by Grant Recipient. Grant Recipient agrees to cooperate fully with such agencies in the conduct of the audit or investigation. Grant Recipient shall ensure that the substance of this clause concerning the authority to audit funds and the requirement to cooperate is included in all subawards and contracts it awards.

B. When reasonable and practical to do so, the Department shall provide prior notice of all visits entailing inspections, audits and other reviews. However, the Department retains the right to make unannounced visits, inspections and audits as deemed necessary.

C. All audit reports shall be promptly delivered to Grant Recipient for review. Grant Recipient shall cooperate with the Department to assure timely and appropriate resolution of audit findings and recommendations.

D. When audits disclose overpayments to Grant Recipient, the Department may, at its option, either require Grant Recipient to repay the overpayment or deduct the amount of overpayment from monies due the Grant Recipient under the Agreement. Any overpayments not repaid through actual repayment or by deduction within thirty (30) days of notice to Grant Recipient shall be charged simple interest at ten percent (10%) per annum. The thirty (30) day notice of repayment or deduction shall commence upon sending, either by United States postal service or electronic mail, of written notice to Grant Recipient.

SECTION 13. AUDIT REQUIREMENTS

A. If Grant Recipient expends more than \$750,000 during its fiscal year in state awards, Grant Recipient shall have either a financial audit or program-specific audit conducted for that year in accordance with applicable state and local laws, regulations and the TxGMS. If Grant Recipient is exempt from state audit requirements, Grant Recipient shall keep its records available for review or audit by appropriate officials of the Department and the State Auditor's Office.

B. All audits shall be conducted in accordance with the Generally Accepted Government Auditing Standards (GAGAS).

C. If Grant Recipient has a financial audit performed during the term of this Agreement, Grant Recipient shall provide to the Department, upon request, information about the audit or information regarding where the audit report can be publicly viewed, including the audit transmittal letter, management letter, and any schedules in which award funds are included.

D. Failure to comply with audit requirements may adversely affect this award, other grant agreements between Grant Recipient and the Department, and future awards to Grant Recipient.

SECTION 14. MODIFICATIONS AND AMENDMENTS

A. Any alterations, additions, or deletions to the terms of this Agreement shall be by amendment in writing and executed by the parties to the Agreement.

B. Amendments will generally be required when any of the following are anticipated: (1) a change to the scope, location, or objectives of the Project, including purpose or beneficiaries; (2) revision to the Project Budget, including budget category expenditure variances and transfer of expenditures to an unbudgeted line item; and (3) a need to extend the availability of Grant funds or Performance Period.

C. A request for modification or amendment to the Agreement shall be submitted to the Department in writing, including an explanation or justification for the request, no later than thirty (30) days prior to the end of the agreement term. A request for an extension must be supported by documentation of extenuating or unforeseeable circumstances beyond Grant Recipient's control which prevented completion of the Project within the agreement term and include a revised performance plan and schedule showing when major milestones will be completed for each activity. Requests may be submitted to the Department for approval less than thirty (30) days prior to the end of the agreement term but only for good cause as determined by the Department based on the justification submitted with the request.

D. Such amendments shall not invalidate the Agreement, nor relieve or release the Department or Grant Recipient from its obligations under the Agreement except as specifically set out therein.

E. Any alterations, additions, or deletions to the terms of this Agreement which are required by changes in Federal or State laws or regulations are automatically incorporated into this Agreement without written amendment and shall become effective on the date designated by such law or regulation.

SECTION 15. INDEMNIFICATION

A. To the extent allowed by law and the Constitution of the State of Texas, Grant Recipient and the Department shall each be responsible for the acts or omissions of their respective agents and employees.

B. Grant Recipient shall, to the extent allowed by law and the Constitution of the State of Texas, indemnify and hold harmless the Department, its officers, agents, employees and representatives from any and all liability, actions, claims, demands or suits, and all related costs, attorney fees and expenses arising out of or related to (1) the work, services, or materials provided under this Agreement; (2) any failure of Grant Recipient to perform its obligations under this Agreement; or (3) any improper or deficient performance of such contractual obligations. The Department shall not be responsible or liable for any damage to property or any injury to persons that may arise from, or be incident to, performance or compliance with this Agreement.

C. This Section shall survive the expiration or termination of the Agreement.

SECTION 16. AWARD CLOSEOUT

A. Closeout of the award shall be based upon a determination that all applicable administrative actions and all required Project-related activities have been completed in accordance with the terms of this Agreement and all applicable laws and regulations.

B. Upon the Department's review of all financial, performance, and other reports required, the Department may make upward or downward adjustments to the allowable costs, within the limits of the Grant Amount, on the basis of the information contained in the reports.

C. Whether or not audits were conducted during the agreement term, a final financial and compliance audit may be initiated up to three years after the agreement completion date beginning with the date Grant Recipient submits the final reports.

D. Any award funds not expended by Grant Recipient in conjunction with the Project prior to the end of the Agreement Term, including any authorized extensions, shall be forfeited.

SECTION 17. SUSPENSION AND TERMINATION

A. Termination for Cause: If the Department determines that Grant Recipient has committed a material breach or default of any covenant, warranty, obligation or agreement under this Agreement, failed to fulfill or perform any obligation under this Agreement, or failed to comply with any of the terms or conditions of this Agreement, in whole or in part, and such breach, default or failure is not cured within fourteen (14) days after the Department's notice or such longer period as the Department may specify in such notice, the Department may place Grant Recipient in default status and take any or all of the following actions:

- (1) Suspend activities under the Agreement upon thirty (30) days advance written notice by the Department, the effective date of the suspension, the corrective action that must be taken and the

- (1) Failure to comply with any of the rules, regulations or provisions referred to herein, or such statutes, regulations, executive orders, and guidelines, policies or directives as may become applicable at any time;
- (2) Failure, for any reason, of Grant Recipient to fulfill in a timely and proper manner its obligations under this Agreement;
- (3) Ineffective or improper use of funds provided under this Agreement; or
- (4) Submission by Grant Recipient to the Department reports that are incorrect or incomplete in any material respect.

C. The Department reserves the right to immediately cancel this Agreement, in whole or in part, without penalty and without an opportunity for Grant Recipient to cure if:

- (1) award funds are misused;
- (2) Grant Recipient commits fraud through intentional, reckless or grossly negligent conduct; or
- (3) Grant Recipient knowingly made any false statements or misrepresentations in the Application or any certification, report or other information submitted to the Department under this Agreement.

D. In the case of a cancellation, suspension or termination, monies already received by Grant Recipient under this Agreement may be owed back to the Department and the Department may also declare Grant Recipient ineligible to receive any further awards until the entire obligation has been repaid to the Department.

SECTION 19. ASSIGNABILITY OF AGREEMENT, SUCCESSORS IN INTEREST

A. Grant Recipient shall not assign or transfer this Agreement, or any part thereof, without prior written consent of the Department. Any such assignment or transfer, if approved, is subject to such conditions and provisions required by the Department. No approval by the Department of any assignment or transfer shall be deemed to create any obligation of the Department in addition to those set forth in this Agreement.

B. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their respective representatives, successors and permitted assigns.

SECTION 20. SUBAWARDS/SUBCONTRACTS

A. Approvals: Whenever Grant Recipient intends to subcontract any work or services under this Agreement, Grant Recipient shall not enter into any contracts with any agency or individual in the performance of this Agreement without the written consent of the Department prior to the execution of such contract. It is understood that consent of the Department to subcontract in no way relieves Grant Recipient of any of its duties or obligations under this Agreement nor precludes the Department from taking any action which may be available to it under this Agreement or otherwise in law.

B. Monitoring: Grant Recipient shall monitor all work and services on a regular basis to assure they are carried out in accordance with this Agreement. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

C. Content: With any subgrantee or subcontractor, Grant Recipient must have a written contract that complies with applicable requirements and regulations. All work or services covered under this Agreement which is contracted by Grant Recipient shall be subject to all provisions of this Agreement. Grant Recipient shall cause all of the provisions of this Agreement in its entirety to be included in and made a part of any subcontract executed in the performance of this Agreement.

D. Selection Process: Grant Recipient shall undertake to ensure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be maintained in Grant Recipient's files along with documentation concerning the selection process and made available upon request.

SECTION 21. COPYRIGHTS

Grant Recipient may exercise its rights to ownership of materials developed during the course of a grant-supported project by copyrighting the materials. However, Grant Recipient (and all subgrantees) must grant to the Department and to the federal agency providing the funds (as applicable), for governmental purposes, a royalty-free, non-exclusive and irrevocable license to reproduce, publish, or otherwise use these materials and to authorize others to do so. This license to the Department covers any and all materials developed under the grant agreement (deliverables). The license to the Department does not preclude Grant Recipient from exercising its right of ownership of the materials, or to prevent Grant Recipient from selling or licensing the materials. If the materials are to be licensed or sold by Grant Recipient, then the net proceeds constitute program income as defined, and the funds must be treated accordingly.

SECTION 22. INDEPENDENT CONTRACTOR

Nothing contained in this Agreement is intended to or shall be construed in any manner as creating or establishing the relationship of employer/employee between Grant Recipient and the Department. Grant Recipient shall at all times remain an "independent contractor" with respect to the work and services to be performed under this Agreement.

SECTION 23. CONFLICT OF INTEREST

A. In the administration of the award, the performance of activities under the Agreement, and the procurement of supplies, equipment, construction and services, Grant Recipient shall comply with all conflict of interest prohibitions and disclosure requirements required by applicable law, rules and policies, including Chapter 176 of the Texas Local Government Code. If circumstances arise during the course of the Agreement that constitute a conflict of interest, actual or potential, or reasonably creates an appearance of impropriety, Grant Recipient shall promptly notify the Department.

B. Grant Recipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts/agreements supported by award funds, which includes the following:

- (1) No employee, officer or agent of Grant Recipient shall participate in the selection, or in the award, or administration of, a contract/agreement supported by award funds if a conflict of interest, real or apparent, would be involved.

- (2) I tcpv" Tgekrkgpv" u jcm" pqv" cuuk i p" cp" g o r nq { gg" vq" v j g" R tqlge v" kh" v j g" g o r nq { gg <"
1. owns an interest in or is an officer or employee of a third-party business entity that has or may jcxg" cp" c i tgg o gpv" ykvj " I tcpv" Tgekrkgpv" t gncvki " vq" v j g" r tqlge v="
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 3. has performed services regarding the subject matter of the project for an entity that has a direct or kp fktge v" hkpcpekcn" kp vgtg uv" kp" v j g" qwveq o g" qh" v j g" r tqlge v"
- (3) Grant Recipient will maintain safeguards to address and prevent any organizational conflict of interest, and also to prohibit employees from using their positions in any manner that poses, or appears to pose, a personal or financial conflict of interest, or personal gain.

C. Grant Recipient shall include in all subawards and subcontracts any necessary provisions to eliminate or neutralize conflicts of interest.

SECTION 24. SEVERABILITY

The parties agree that if any term or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular term or provision held to be invalid. This Section shall survive expiration or termination of this Agreement.

SECTION 25. PUBLIC/CONFIDENTIAL INFORMATION

A. Public Information: Grant Recipient understands that the Department will comply with the Texas Public Information Act, Chapter 552 of the Texas Government Code *öPIAö+0"" Information, documentation, and other material in connection with this Agreement and award may be subject to public disclosure pursuant to the PIA. Grant Recipient is required to make any information created or exchanged with the Department pursuant to this Agreement, and not otherwise excepted from disclosure under the PIA, available in a format that is accessible by the public.

B. Client Data and Other Sensitive Information: Grant Recipient is required to maintain data demonstrating client eligibility for activities provided under this Agreement. Such data may include, but not be limited to, client name, address, income level or other basis for determining eligibility, and description of activities provided. Grant Recipient must comply with 2 CFR 200.303 and take reasonable measures to safeguard protected personally identifiable information, as defined in 2 CFR 200.82, and other information Grant Recipient considers sensitive consistent with applicable Federal, state, local, and tribal laws regarding privacy and obligations of confidentiality.

SECTION 26. WAIVER

The parties expressly agree that no provision of the award or Agreement is in any way intended to constitute a waiver by the Department or the State of Texas of any immunities from suit or from liability that the Department or the State of Texas may have by operation of law. Any right or remedy provided for in this Agreement shall not preclude the exercise of any other right or remedy under the Agreement or under any provision of law, nor shall any action taken by the Department in the exercise of any right or remedy be deemed a waiver of any other rights or remedies. The Department's failure to act with respect to a breach by Grant Recipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Department to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

SECTION 27. GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without regard to the conflicts of law provisions. The venue of any suit arising under this Agreement is fixed in any court of competent jurisdiction of Travis County, Texas, unless the specific venue is otherwise identified in a statute that directly names or otherwise identifies its applicability to the contracting state agency.

SECTION 28. ORAL AND WRITTEN AGREEMENTS

All oral and written agreements between the parties relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

SECTION 29. EFFECTIVE DATE

This contract is not effective unless signed by the Commissioner of the Department or by his authorized designee.

Exhibit D**Certifications and Assurances ó"State Grant**

By signature hereon, Grant Recipient hereby certifies and assures, with respect to this award and performing its responsibilities under this Agreement, that it will comply with all applicable laws, regulations, executive orders, policies, guidelines and requirements.

1. **LEGAL AUTHORITY** ó"Grant Recipient represents that it possesses legal authority to enter into the agreement, including all understandings and assurances contained therein. A resolution, motion or other similar action has been duly adopted or passed as an official act of Grant Recipient's governing body, directing and authorizing the person identified as the official representative, or the designee of Grant Recipient, to act in connection with the agreement, to provide such additional information as may be required, to sign and execute the agreement on behalf of Grant Recipient, and to validly and legally bind Grant Recipient to all of its terms, performances, and provisions.

2. **CHILD SUPPORT PAYMENTS** ó"Grant Recipient represents and warrants that it will included the following clause in the award documents for every subaward and subcontract and will require subrecipients and subcontractors to certify accordingly: "Under Section 231.006 of the Family Code, the vendor or applicant certifies that the individual or business entity named in this contract, bid or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate. A bid or an application for a contract, grant, or loan paid from state funds must include the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity submitting the bid or application."

3. **CONTRACT OVERSIGHT** ó"Grant Recipient represents and warrants that it will maintain oversight to ensure that all terms, conditions, and requirements of the agreement, including these certifications and assurances, are met and that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.

4. **COMPLIANCE WITH LAWS, RULES AND REQUIREMENTS** ó"Grant Recipient represents and warrants that it will comply, and assure the compliance of all its subrecipients and contractors, with all award requirements imposed by applicable federal and state laws, rules, regulations, and policies in effect or hereafter established. In addition, Grant Recipient represents and warrants that it will comply with all requirements imposed by the Department concerning special requirements of law, program requirements, and other administrative requirements. In instances where multiple requirements apply to Grant Recipient, the more restrictive requirement applies.

5. **CYBERSECURITY TRAINING (Local Government System)** ó"Grant Recipient represents and warrants its compliance with Section 2054.5191 of the Texas Government Code relating to the cybersecurity training program for local government employees who have access to a local government computer system or database.

6. DEBARMENT AND SUSPENSION ó"Grant Recipient certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the United States General Services Administration.

7. DEBTS AND DELINQUENCIES ó"Grant Recipient acknowledges and agrees that, to the extent Grant Recipient owes any debt including, but not limited to, delinquent taxes, delinquent student loans, and child support owed to the State of Texas, any payments or other amounts Grant Recipient is otherwise owed under the Agreement may be applied toward any debt Grant Recipient owes the State of Texas until the debt is paid in full.

8. DISASTER RECOVERY PLAN ó"Upon request of the Department, Grant Recipient shall provide the descriptions or copies of its most recent business continuity and disaster recovery plans.

9. DISCLOSURE OF PRIOR STATE EMPLOYMENT ó"In accordance with Section 2254.033 of the Texas Government Code, relating to consulting services, Grant Recipient certifies that it does not employ an individual who has been employed by the Department or another agency at any time during the two years preceding the submission of the Grant Application or, in the alternative, Grant Recipient has disclosed to the Department the following: (i) the nature of the previous employment with the Department or the other agency; (ii) the date the employment was terminated; and (iii) the annual rate of compensation for the employment at the time of its termination.

10. DISCLOSURE PROTECTIONS FOR CERTAIN CHARITABLE ORGANIZATIONS ó"Grant Recipient represents and warrants that it will comply with Section 2252.906 of the Texas Government Code, relating to disclosure protections for certain charitable organizations, charitable trusts, and private foundations.

11. DISCRIMINATION PROHIBITED ó"In accordance with Section 2105.004 of the Texas Government Code, Grant Recipient represents and warrants that it will not use block grant funds in a manner that discriminates on the basis of race, color, national origin, sex, or religion.

12. DISPUTE RESOLUTION ó"The dispute resolution process provided in Chapter 2009 of the Texas Government Code is available to the parties to resolve any dispute arising under the agreement.

13. DRUG-FREE WORKPLACE ó"Grant Recipient represents and warrants that it shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 and maintain a drug-free work environment.

14. ELIGIBILITY; FINANCIAL PARTICIPATION ó"Under Texas Government Code, Section 2155.004, no person who received compensation for participating in preparing the specifications or request for proposals on which this agreement is based has any financial interest in this agreement. Grant Recipient certifies that the individual or business entity named in this agreement, contract or application is not ineligible to receive the specified agreement, loan, award or payment and acknowledges that this agreement may be terminated and payment withheld if this certification is inaccurate.

15. EXCLUDED PARTIES ó"Grant Recipient certifies that it is not listed in the prohibited vendors list authorized by Executive Order No. 13224, öBlocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,ö"published by the United States Department of the Treasury, Office of Foreign Assets Control.

16. EXECUTIVE HEAD OF STATE AGENCY ó"Under Section 669.003, Texas Government Code, Grant Recipient represents that no person who served as an executive of the Department or any other state agency, in the past four years, was involved with or has any interest in the agreement or grant. If Grant Recipient employs or has used the services of a former executive head of the Department or any other state agency, then Grant Recipient shall provide the following information to the Department: name of former executive; name of the state agency; date of separation from the state agency; position held with Grant Recipient; and date of employment with Grant Recipient.

17. FELONY ó"Sections 2155.006 and 2261.053, Texas Government Code, prohibit the Department from awarding a contract to any person who, in the past five years, has been convicted of violating a federal law or assessed a penalty in connection with a contract involving relief for Hurricane Rita, Hurricane Katrina, or any other disaster occurring after September 24, 2005. Grant Recipient certifies that the individual or business entity named in this agreement, contract or application is not ineligible to receive the specified agreement, loan, award or payment and acknowledges that the agreement may be terminated and payment withheld if this certification is inaccurate.

18. LAW ENFORCEMENT AGENCY GRANT RESTRICTION ó"If Grant Recipient is a law enforcement agency regulated by Chapter 1701 of the Texas Occupations Code, Grant Recipient represents and warrants that it will not use appropriated money unless the law enforcement agency is in compliance with all rules adopted by the Texas Commission on Law Enforcement (TCOLE), or TCOLE certifies that it is in the process of achieving compliance with such rules.

19. LOBBYING EXPENDITURE RESTRICTION ó"Grant Recipient represents and warrants that the Department's payments to Grant Recipient and Grant Recipient's receipt of appropriated or other funds under the agreement or grant are not prohibited by Sections 403.1067 or 556.0055 of the Texas Government Code which restrict lobbying expenditures.

20. NONDISCRIMINATION ó"Grant Recipient certifies that it will comply with all state and federal statutes relating to nondiscrimination, including the following:

- g The Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.)
- g Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794)
- g The Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.)
- g The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.)

21. OPEN MEETINGS ó"If Grant Recipient is a governmental entity, Grant Recipient represents and warrants that it will comply with Texas Government Code, Chapter 551, which requires all regular, special or called meetings of a governmental body to be open to the public, except as otherwise provided by law or specifically permitted in the Texas Constitution.

22. POLITICAL POLLING PROHIBITION ó"Grant Recipient represents and warrant that it does not perform political polling and acknowledges that appropriated funds may not be granted to, or expended by, any entity which performs political polling.

23. REPORTING SUSPECTED FRAUD AND UNLAWFUL CONDUCT ó"Grant Recipient represents and warrants that it will comply with Section 321.022 of the Texas Government Code, which requires that suspected fraud and unlawful conduct be reported to the State Auditor's Office.

24. STATE AUDITOR'S RIGHT TO AUDIT ó"Pursuant to Section 2262.154 of the Texas Government Code, the state auditor may conduct an audit or investigation of any entity receiving funds from the state directly under any contract or indirectly through a subcontract under the contract. The acceptance of funds by Grant Recipient or any other entity or person directly under this agreement or indirectly through a subcontract under the agreement acts as acceptance of the authority of the state auditor, under the direction of the legislative audit committee, to conduct an audit or investigation in connection with those funds. Under the direction of the legislative audit committee, Grant Recipient or other entity that is the subject of an audit or investigation by the state auditor must provide the state auditor with access to any information the state auditor considers relevant to the investigation or audit. Grant Recipient shall ensure that this paragraph concerning the authority to audit funds received indirectly by subcontractors through the contract and the requirement to cooperate is included in any subcontract it awards.

25. SUSPECTED CHILD ABUSE ó"Grant Recipient will comply with the Texas Family Code, Section 261.101, which requires reporting of all suspected cases of child abuse to local law enforcement authorities and to the Texas Department of Child Protective and Regulatory Services. Grant Recipient shall also ensure that all program personnel are properly trained and aware of this requirement.

26. WORKPLACE GUIDELINES ó"Grant Recipient will adopt and implement applicable provisions of the model HIV/AIDS workplace guidelines of the Texas Department of Health, as required by the Texas Health and Safety Code, Sec. 85.001 et seq.

Failure to comply with applicable assurances may result in the withholding or suspension of funds, termination of the award, or other available remedies, and Grant Recipient may be ineligible for future awards if the Department determines that any of the following has occurred: (1) Grant Recipient has made false certification, or (2) Grant Recipient violated the certification by failing to carry out the requirements as noted above.