

GRANT AGREEMENT
Texas Department of Agriculture
Home-Delivered Meal Grant Program

I. RECITALS

- 1.1 **WHEREAS**, Grantor has established the Home-Delivered Meal Grant Program (“Program”) to distribute grant funds to eligible organizations that provide home-delivered meals to Homebound persons who are Elderly and/or have a Disability; and
- 1.2 **WHEREAS**, Grantee has applied for a grant from the Program and has met all requirements for receiving the Grant.
- 1.3 **NOW, THEREFORE**, in consideration of the mutual promises and consideration contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

II. DEFINITIONS

- 2.1 **“Agreement”** means this Grant Agreement and all attachments hereto.
- 2.2 **“Department”** means the Texas Department of Agriculture.
- 2.3 **“Disability”** means a physical, mental or developmental impairment, temporarily or permanently limiting an individual’s capacity to adequately perform one or more essential activities of daily living, which include, but are not limited to, personal and health care, moving around, communicating, and housekeeping.
- 2.4 **“Elderly”** means an individual who is 60 years of age or older.
- 2.5 **“Grant”** means the funds awarded to Grantee by Grantor, subject to the requirements of this Agreement, Texas Administrative Code Title 4, Part 1, Sections 1.950 et seq. and other Program requirements, in the amount of \$[GRANT AMOUNT] to be used in [COUNTY] County.
- 2.6 **“Grantee”** means [APPLICANT], [APPLICANT ADDRESS], [CITY], [STATE] [ZIP CODE].
- 2.7 **“Grantor”** means the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.
- 2.8 **“Grant Coordinator”** means Grantor’s representative responsible for coordinating the Program.
- 2.9 **“Homebound”** means a person who is unable to leave his or her residence without aid or assistance or whose ability to travel from his or her residence is substantially impaired.
- 2.10 **“Program”** means Grantor’s Home-Delivered Meal Grant Program.
- 2.11 **“Term of Agreement”** is February 1, 2012 through January 31, 2013.

III. GRANTOR AND GRANTEE OBLIGATIONS

- 3.1 **Award by Grantor.** Subject to the provisions of this Agreement and Texas Administrative Code Title 4, Part 1, Sections 1.950 et seq., Grantor hereby awards to Grantee the Grant, which Grantee shall use only to supplement and extend existing services related directly to the delivery of meals to Homebound persons that are Elderly and/or have a Disability.
- 3.1.1 The Department shall make a grant award not later than February 1 of each calendar year to each Grantee. Fifty percent (50%) of such grant awarded shall be allocated and distributed to each Grantee on or before February 1 of each calendar year. The remaining fifty percent (50%) of such grant award shall be allocated and distributed to each Grantee on or before

August 1 of each calendar year. Notwithstanding any other provision of this subchapter, the Department may deny, revoke, suspend, or withhold a grant award for misuse of grant funds, or failure to comply with any requirement or section of subchapter O, including, without limitation, Texas Administrative Code Title 4, Part 1, Sections 1.950 et seq.

- 3.2 Performance by Grantee.** Grantee shall use Grant in accordance with the terms of this Agreement and Texas Administrative Code Title 4, Part 1, Sections 1.950 et seq.
- 3.3 Grantee's Menu and Substitution Procedure.** Grantee shall have all menus and meal substitution procedures approved by a registered dietician or a person with a baccalaureate degree that majored in food and nutrition, dietetics, or food service management, who is currently employed by a home-delivered meal organization on an annual basis. Grantee shall maintain documentation of such approval.
- 3.4 Grantee Meal Delivery and Temperature Standards and Procedures.** Grantee shall maintain policies to ensure compliance with meal temperature standards and the Program's four-hour delivery requirement at each meal preparation location. Grantee shall also maintain records demonstrating compliance with Grantee's policies. If Grantee does not comply with meal temperature standards and the four-hour delivery requirement due to exceptional circumstances the Grantee should seek written waiver from Grantor as soon as practicable following the occurrence of the exceptional event or circumstances. If Grantee fails to comply with the Program's four-hour delivery requirement, Grantee will be required to implement corrective action, as determined by TDA, prior to applying for future funds.
- 3.5 Food Establishment Permits.** Simultaneously with execution of this Agreement, Grantee must provide Grantor with a copy of its food establishment permit by August 31 of the grant year, as issued by the applicable governmental permitting authority, whether that authority is a municipality, county, public health district, or the Texas Department of State Health Services ("DSHS").
- 3.6 Exempt Grantee.** If a grantee claims exemption from the requirement to obtain a food establishment permit, the grantee must provide all necessary documentation to establish entitlement to such exemption, in a form satisfactory to Grantor. Pursuant to 25 TAC §229.372(c) (relating to DSHS permit requirements), only a nonprofit organization is exempt from payment of a permit fee. A "nonprofit organization" is as a civic or fraternal organization, charity, lodge, association, proprietorship or corporation possessing a 501(c) exemption under the Internal Revenue Code; or a religious organization meeting the definition of "church" as defined by the Internal Revenue Service.
- 3.7 Inspection of Exempt Grantees.** If Grantor, in its sole discretion, determines that Grantee is exempt from the requirement to obtain a food establishment permit, Grantee must provide a current inspection report from a kitchen sanitation expert who is approved by the department, that reflects Grantee is in full compliance with the Texas Food Establishment Rules ("TFER") promulgated by DSHS. Such inspection report must have been issued and signed by the kitchen sanitation expert within the 12 month period preceding the date of the award of the Program Grant.
- 3.8 Failure to Obtain a Food Establishment Permit or Comply with TFER.** If it is determined that Grantee failed to obtain a required food establishment permit, or that Grantee failed to comply with TFER, Grantor, at its sole discretion, may exercise the remedies set forth in sections 6.1 and 7.1 of this Agreement, including, without limitation, termination of the Agreement and taking legal action to obtain full reimbursement of the Grant.

IV. GRANTEE'S REPORTING REQUIREMENTS

- 4.1 Budget.** Grantee shall provide a detailed budget for the year, attached hereto as "Attachment A", not to exceed [GRANT AMOUNT] for the Term of the Agreement, signed by the Grantee, using the budget categories by which Grantee shall be submitting Quarterly Report information.

- 4.2 Quarterly Report.** Grantee shall provide to Grantor a quarterly report in a format prescribed by Grantor. The report must track the expenditure of Grant funds in sufficient detail to assure compliance with Program rules. Report due dates are as follows:
- **June 1, 2012** for the period February 1, 2012 – April 30, 2012.
 - **September 1, 2012** for the period May 1, 2012 – July 31, 2012.
 - **December 1, 2012** for the period August 1, 2012 – October 31, 2012.
 - **March 1, 2013** for the period November 1, 2012 – January 31, 2013.
- 4.3 Failure to Comply with Reporting Requirements.** Failure of Grantee to comply with any of the reporting requirements in this Agreement may result in the withholding or revocation of a Grant, the refund of Grant funds disbursed, and/or Grantee's ineligibility for future Program funds.
- 4.4 Notice of Failure to Receive County Grant.** Grantee shall promptly notify the Department of any failure to receive or reduction in the amount of the county grant funds required by Texas Administrative Code Title 4, Part 1, Section 1.953 as reported by Grantee in its application for funds under this Program. Failure of Grantee to receive, or reduction in the amount of county grant funds may result in the withholding or revocation of a Grant or require Grantee to refund Grant funds disbursed.
- 4.5 Eligible Meals.** The Grant is based on the number of Eligible Meals served by [APPLICANT]. Eligible Meals are calculated by subtracting the meals funded by the Texas Department of Aging and Disabilities and/or Area Agency on Aging, [DADS FUNDED MEALS], from the total number of meals as delivered by [APPLICANT] in [COUNTY] County between September 1, 2010 and August 31, 2011, [APPLICANT REPORTED MEALS SERVED]. The Grant was calculated on the remaining number, or [ELIGIBLE MEALS] 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 reimburse Grantor the amount of the excess Grant funds received, on terms and conditions as may be set by Grantor.

V. RECORDKEEPING, ACCESS, INSPECTIONS, AUDITS AND INVESTIGATIONS

- 5.1 Access by Grantor and State Auditor's Office.** During the Term of Agreement and for at least three years after termination of the Agreement, Grantee shall allow Grantor and/or the State Auditor's Office 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 this Agreement or the use of funds pursuant to this Agreement, in order to ascertain complete compliance with the provisions of this Agreement and with Program guidelines. Such records shall be maintained by Grantee at a location that is readily accessible to Grantor and/or the State Auditor's Office. Grantor further has the right to make a visual inspection of any assets purchased with Grant funds.
- 5.2 Audits or Investigations by State Auditor's Office.** Grantee understands that acceptance of Grant funds under this Agreement acts as acceptance of the authority of the Department, the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with such funds. Grantee further agrees to cooperate fully with the Department and the State Auditor's Office, or their successors, in the conduct of any audit or investigation, including providing all records requested. Grantee will ensure that this clause concerning the authority to audit the funds received by Grantee is included in any subcontract it awards.
- 5.3 Disallowance of Grant Funds.** Grantee understands and agrees that Grantee shall be liable to the Department for any costs disallowed as a result of any audit, investigation or review.

VI. USE OF GRANT FUNDS

- 6.1 Allowable Expenditures.** Allowable expenditures include, but are not limited to, food costs and related preparation and packaging expenses, gasoline, costs for obtaining any required food

establishment permit from the applicable governmental entity or permitting authority, costs for obtaining an inspection report from a kitchen food sanitation expert, if applicable, and other operational costs, but shall not be used for the purchase of capital assets. Grant funds shall not be used for expenditures that are not made in compliance with any applicable State purchasing laws and regulations. Grantee shall not, under any circumstances, use grant funds for alcoholic beverages, entertainment or charitable or political contributions. If requested by Grantor, Grantee must be able to produce proof of payment (stamped paid invoices or receipts) of all allowable expenditures.

- 6.2 Misuse of Grant Funds.** Grantor may require a full or partial refund of the Grant if: (a) Grant funds are misused, (b) Grants funds are used for Ineligible Meals; (c) Grant funds are used in an illegal manner, (d) Grant funds are used for non-allowable expenses, (e) Grantee violates the terms and conditions of this Agreement, or (f) Grantee made any misrepresentations to Grantor in obtaining this Grant. This provision is not exclusive of other grounds for withholding or recouping of funds or any other remedy, civil or criminal, which may be available to Grantor.
- 6.3 No Duplication of Services.** Grant funds shall not be used to duplicate services provided to Grantee's clients. Grantee shall have a system in place to prevent the duplication of services to Grantee's clients.
- 6.4 Availability of State Funds.** This Agreement is subject to the availability of state funds. If such funds become unavailable during the Term of Agreement and Grantor is unable to obtain sufficient funds, this Agreement shall be reduced or terminated.

VII. TERM AND TERMINATION OF THE AGREEMENT

- 7.1 Term and Termination.** Either party may terminate this Agreement before the end of the Term of Agreement, without cause, by delivering a written notice of termination to the other party. Early termination of this Agreement shall not relieve Grantee from the reporting requirements contained in sections IV, V, and VI of this Agreement.
- 7.2 No Reimbursement Upon Termination.** In the event of termination of this Agreement, Grantor shall make no further disbursement of Grant funds to Grantee beyond those already approved at the time of termination, and Grantee specifically waives all rights to any such funds.

VIII. USE AND DISPOSITION OF PROPERTY

- 8.1 Use of Property.** During the Term of Agreement, any property acquired with Grant funds shall be used in accordance with this Agreement, to accomplish the purposes of the Program.
- 8.2 Records of Property.** Grantee shall maintain appropriate records of goods or property purchased with Grant funds and shall develop a control system to ensure adequate safeguards to prevent loss, damage, or theft of such goods or property.

IX. AGREEMENT MODIFICATIONS

- 9.1 Amending Agreement.** Except as provided in paragraph 9.6 below, this Agreement embodies the entire agreement between the parties, and there are no covenants, agreements, representations, warranties or restrictions between the parties other than those specifically set forth herein. Except as provided in paragraph 9.2 below, no modification or amendment to this Agreement is valid unless in writing and signed by the parties.
- 9.2 Notification of Change in Grantee's Address.** Grantee must notify Grantor in writing within 30 days if Grantee's address changes during the Term of Agreement. Failure to submit required notice may be grounds for termination of this Agreement.

- 9.3 Grantor Request for Amendment.** Grantor may amend this Agreement by submitting the requested change to Grantee's Agent in writing. Continued performance hereunder shall be deemed acceptance of such Amendment by Grantee.
- 9.4 Grantee Request for Amendment.** Grantee may request an amendment to the Agreement by submitting the requested change, in writing, to the Grant Coordinator. All requests for an amendment to the Agreement must include a summary of Grantee's home-delivered meal services and a statement explaining the need for the change.
- 9.5 Budgetary Revisions.** The Grantee may make a one time budget revision (not affecting the overall budget amount) without prior approval, during the program year, so long as the revision does not require an increase or decrease in any budget line item over 10% of the item's approved budget, and so long as the revision does not require any new (not previously approved) budget line items. All other budget revisions will require prior approval. The grantee shall request prior approval for a budget change by submitting a statement explaining the need for the change, specifying the amount, and identifying the expenditure categories affected by the change.
- 9.6 Changes Become Part of Agreement.** Changes approved in accordance with this section IX become a part of this Agreement, superseding all inconsistent provisions.

X. GENERAL TERMS AND CONDITIONS

- 10.1 Delegation to Third-Party.** Grantee is not relieved of its duties and obligations imposed by this Agreement through delegation by Grantee to a third-party.
- 10.2 Agreement Binding.** This Agreement shall be binding on and inure to the benefit of the parties and their officers, administrators, legal representatives, and successors except as otherwise expressly provided herein. Neither party may assign or transfer this Agreement without the written consent of the other party. The parties intend to be legally bound and have executed this Agreement as evidenced by their signatures on the date indicated below. This Agreement is not effective unless and until it has been signed by both parties.
- 10.3 No Creation of Debt.** This Agreement shall not be construed as creating any debt on behalf of the State of Texas, and/or Grantor in violation of Section 49 Article III of the Texas Constitution. In compliance with Section 6 Article VIII 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.
- 10.4 Delivery Methods.** Unless specifically provided herein, any notice, tender, or delivery to be given hereunder by any party to another party must be affected by personal delivery in writing or by mailing the same by 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 paragraph.
- 10.5 Authorized Representative.** Each person signing expressly represents that he or she is duly authorized to do so and to bind the party on whose behalf they are signing. All legal documents prepared for Grantee's signature must be executed by an individual with the authority to legally bind Grantee.
- 10.6 Indemnification.** Grantee shall indemnify and hold harmless Grantor, its agents and employees, from any and all claims, demands, and causes of action arising from or related to Grantee's performance under this Agreement, including reasonable attorneys' fees incurred in defending or settling any such claims.
- 10.7 No Employer Relationship.** Grantee and Grantee's employees and agents have no employer-employee relationship with Grantor.

- 10.8 Representations and Warranties of Grantor and Grantee.** Grantor and Grantee each represent and warrant that it has full right and authority to enter into this Agreement and to grant the other party the rights set forth in this Agreement and that all necessary approvals have been obtained. Each party represents and warrants that it is in good standing in all jurisdictions in which it is required to be so qualified for performance of this Agreement, and all necessary certifications, registrations, approvals and licenses have been obtained, and all necessary fees paid.
- 10.9 Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas. If any legal action is necessary to enforce this Agreement, or for any dispute arising out of the operations or actions contemplated herein, exclusive venue shall lie in the District Courts of Travis County, Texas.
- 10.10 Headings.** Captions and headings of the sections or paragraphs of this Agreement are for convenience and reference only and shall not affect, modify or amplify the provisions of this Agreement, nor shall they be employed to interpret or aid in the construction of this Agreement.
- 10.11 Severability.** If any part of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, such portion shall be deemed severed from this Agreement and the remaining part shall remain in full force and effect, and the parties shall promptly negotiate to replace invalid or unenforceable portions that are essential parts of this Agreement.
- 10.12 Waiver.** A waiver by Grantor of any provision hereunder shall not operate as a waiver of any other provision, or continuing waiver of the same provision in the future.
- 10.13 Construction of Agreement.** Both parties hereby agree that they participated in the creation of this Agreement, and the terms hereof are a product of the negotiation between the parties. In the event there is a dispute regarding the meaning of any provision of this Agreement, no provision shall be construed in favor of or against any party's position on the grounds that said Party was the drafter of this Agreement.
- 10.14 Exhibits.** The following instruments are incorporated into this Agreement as attachments:
Attachment A – Grant Budget
Attachment B – W-9 Form
- 10.15 Uniform Grant Management Standards (UGMS).** In accordance with Texas Government Code §783.007, this Agreement shall comply in all respects with the Uniform Grant Management Standards (UGMS). In the case of any conflicts between UGMS and this Agreement, the UGMS shall control.

XI. TEXAS PUBLIC INFORMATION ACT NOTICE

- 11.1 ALL INFORMATION PROVIDED BY GRANTEE PURSUANT TO THIS AGREEMENT IS SUBJECT TO THE TEXAS PUBLIC INFORMATION ACT, TEX. GOV'T CODE. CHAPTER 552, AND MAY BE SUBJECT TO DISCLOSURE TO THE PUBLIC.**

By their signatures below, the parties do hereby agree to the terms of this Agreement.

Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

[APPLICANT]
[APPLICANT ADDRESS]
[CITY], [STATE] [ZIP CODE]

By: _____
Drew DeBerry
Deputy Commissioner

By: _____
[AGENT FOR ORGANIZATION]
[TITLE]

Date: _____

Date: _____

ATTACHMENT A

HOME DELIVERED MEAL GRANT BUDGET

Name of grantee: «Org»

TDA Application No. «App_No»

County in which meals are provided: «County»

Total grant amount: «TOTAL_GRANT»

Please estimate, to the best of your ability, how TDA Grant funds will be expended.

Expenditure Category	Amount
<i>Personnel</i>	
<i>Food/Meals</i>	
<i>Equipment</i>	
<i>Building Occupancy</i>	
<i>Transportation</i>	
<i>Office Supplies and Services</i>	
<i>Other: Please specify exactly</i>	
<i>a.</i>	
<i>b.</i>	
<i>c.</i>	
<i>d.</i>	
Total Grant Amount	<u>«TOTAL_GRANT»</u>

During the Grant Year, Grantee must demonstrate that TDA grant funds were used to directly supplement or extend existing 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.

Signature: _____

Date: _____