



SID MILLER, COMMISSIONER

**FARMERS' MARKET NUTRITION PROGRAM  
AGREEMENT BETWEEN**

**AND  
FARMERS' MARKET ASSOCIATION**

<b>Name of Contracting Entity (CE) and CE ID#:</b>	<b>Contracting Entity ID (CE ID) No.:</b>
<b>Name of Farmers' Market Association (FMA):</b>	<b>Name of FMA Official and Title:</b>
<b>Street Address of FMA (Street or P. O. Box, City, State, ZIP):</b>	<b>FMA Account Number:</b>
<b>Mailing Address (if different from street address):</b>	<b>E-mail Address:</b>
<b>Telephone No. (including area code):</b>	<b>Facsimile No. (including area code):</b>

**I. AGREEMENT**

This Agreement specifies the rights and responsibilities of the CE and FMA, identified above, in the Farmers' Market Nutrition Program (FMNP) as administered in Texas by the Texas Department of Agriculture (TDA) for Program Years 2022 through 2024.

By signing this Agreement, the parties are bound by its terms and conditions until its ending date, unless terminated earlier. This Agreement may be terminated under the following circumstances:

- (1) for cause by either party;
- (2) by mutual consent of both parties;
- (3) by either party upon thirty (30) days written notice to the other party, or
- (4) notwithstanding any other provision of this Agreement, if funds for the continued fulfillment of this Agreement by TDA are at any time not available or are insufficient, through failure of any entity to appropriate funds or otherwise, then CE will have the right to terminate this Agreement at no additional cost and with no penalty whatsoever by giving written notice documenting the lack of funding.

FMA's loss of certification under the TDA Farmers' Market Certification Program will also terminate this Agreement.

## II. TERM

This Agreement shall take effect upon signature by both parties, and shall expire on December 31, 2024, unless it is terminated earlier in accordance with its terms.

## III. RIGHTS AND RESPONSIBILITIES OF CONTRACTING ENTITY

1. CE agrees to operate the FMNP in accordance with all FMNP regulations in 7 CFR Part 248, as well as:
  - a. 2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*;
  - b. FNS instructions, policy memoranda, guidance, and other written directives applicable to FMNP;
  - c. Applicable Texas law, statutes, rules, and regulations;
  - d. Policy and procedures as issued and amended by TDA; and
  - e. Other laws described herein.CE further agrees to operate the FMNP as described in its application documents, policy statement(s) and supporting documents, and approved amendments to the application or this Agreement.
2. CE agrees to pay FMA for all valid FMNP vouchers upon proper submission of the State of Texas FMNP Purchase Voucher within 60 days of receipt, with the exception of an absolute voucher filing deadline of November 30 of each Program Year. Vouchers are for a one-time benefit, numbered sequentially, issued in \$30.00 increments, and are to be issued to qualifying FMNP participants for redemption at qualifying farmers' markets. Vouchers are worth \$6.00 each and are issued in booklets with five (5) vouchers with a total value of \$30.00
3. CE acknowledges that vouchers may be deemed invalid for payment for any of the following reasons:
  - a. Request for payment is made after the last day of the date by which vouchers must be redeemed.
  - b. Any signatures are missing, name not matching, or if any signatures and/or dates are missing or are determined to have been forged or improperly altered.
  - c. The FMNP voucher is accepted before or after the "Dates of Use" printed on the FMNP voucher.
  - d. Unauthorized foods, non-food items, and/or cash have been issued in exchange for the FMNP voucher.
  - e. The voucher is accepted for less than its \$6.00 value.
  - f. The individual farmer's name or vendor number is missing from the FMNP voucher, or is determined to be forged or improperly altered.
4. CE agrees to train the FMA according to FMNP requirements and offer training sessions and technical assistance at a time and place that is mutually convenient prior to the start of the FMNP.
5. CE agrees to monitor the FMA's FMNP operations during the FMA's normal hours of operation.
6. CE agrees to provide FMNP technical assistance and services to FMA.
7. CE agrees to respond to FMA inquiries promptly, in accordance with FMNP

- requirements.
8. CE agrees to ensure the confidentiality of participant information and may only share confidential participant information on a need to know basis for operation of the FMNP pursuant to the provisions of 7 CFR § 246.26.
  9. CE agrees to comply with the Civil Rights and non-discrimination requirements of the United States Department of Agriculture (USDA) as codified in 7 CFR § 248.7; in particular, to ensure that no FMNP participant shall be excluded from participation in, or denied the benefits of, the FMNP on the basis of race, color, national origin, sex, disability, or age. Pursuant to 7 CFR § 248.7, USDA “determined that the WIC data collection effort is sufficient to fulfill the racial/ethnic data collection requirement for the FMNP.” Therefore, CE’s are not required to collect additional racial/ethnic data.
  10. CE acknowledges that this Agreement is not transferable and does not constitute a license or a property interest in the FMA.
  11. CE agrees to ensure that FMAs and participating farmers set up market(s) at locations previously scheduled and agreed unless CE receives at least 15 days’ notice of a market cancellation from FMA and or farmer(s).
  12. CE agrees to ensure that all available FMNP vouchers are distributed to participants no later than September 30th of the applicable Program Year.
  13. CE agrees to submit all claims for reimbursement to TDA no later than December 15<sup>th</sup> of the applicable Program Year.
  14. CE agrees to administer program as required by FMNP regulations in 7 CFR Part 248 and any subsequent addendums or updates to this CFR.

#### **IV. RIGHTS AND RESPONSIBILITIES OF FARMERS’ MARKET ASSOCIATION**

1. Provide only fresh, nutritious, unprepared fruits and vegetables grown by farmer in Texas, New Mexico, Oklahoma, Arkansas, or Louisiana. Fruits and vegetables allowed under the FMNP are identified in the list of eligible fruits and vegetables provided by TDA.
2. Ensure that individual farmers prominently display a sign stating that they are authorized to redeem FMNP vouchers and that individual farmers display prices for FMNP eligible foods.
3. Assign each member of the FMA participating in the FMNP a numerical designator as a vendor identification measure. This vendor number is to be entered by the farmer on the prescribed lines on the front of each FMNP voucher redeemed by that farmer. A stamp may be used for this purpose.
4. Accept only valid FMNP vouchers. A valid voucher will state the “Dates of Use,” and must have the signature of the participant or authorized proxy and date of signature.
5. Ensure participating farmers have the person receiving the foods sign and date the FMNP voucher on the lines designated “Signature of Participant or Authorized Proxy and Date.”
6. Remain accountable for actions of farmers and employees in the use of FMNP vouchers or provision of authorized foods.
7. Accept FMNP vouchers only during the valid period printed on the face of the voucher.
8. Enter the date on the FMNP voucher as the day on which the voucher was accepted in exchange for food.
9. Provide fruits and vegetables to FMNP participants that are of the same quality and cost charged as that sold to other customers. Charging a higher price for eligible foods than

that charged to other customers for the same foods may result in sanctions, up to and including termination of this Agreement.

10. Offer FMNP participants the same courtesies as offered to other customers.
11. Submit vouchers/claims for reimbursement of FMNP vouchers in the manner prescribed by TDA no later than the last day to redeem vouchers as stated on the face of the voucher. The FMA is responsible for the safe delivery of FMNP vouchers and claims to a CE for payment.
12. Ensure that farmers participating in the FMNP actually grow some of the FMNP eligible foods to sell at market. Persons who exclusively sell produce grown by someone else, or purchased at a terminal or grocery store may not participate in the FMNP.
13. Ensure that when farmers sell both FMNP eligible and ineligible produce, the ineligible produce is displayed separately and marked as not eligible for FMNP purchases.
14. Do not accept FMNP vouchers before or after the "Dates of Use" stated on the FMNP voucher.
15. Do not redeem FMNP vouchers for less than their value and do not provide cash change for purchases.
16. Do not charge sales tax on purchases made with FMNP vouchers.
17. Do not bill or attempt to collect from FMNP participants any charges from any FMNP vouchers submitted to TDA for reimbursement but not paid by TDA.
18. Indemnify and hold harmless TDA as well as officers, agents, and employees of TDA from all claims, losses, or suits accruing or resulting from personal injury caused by a defect, and/or illegal tampering with foods purchased with FMNP vouchers.
19. Enter into a written agreement with each farmer within the FMA that is participating in the FMNP. A copy of the FMA's agreement with each farmer must be submitted to TDA along with this Agreement.
20. Submit claims to CE for reimbursement of FMNP vouchers within 30 days of the last day of the "Dates of Use" printed on the FMNP voucher. The absolute deadline for submission of all vouchers to the CE is November 30th of each Program Year.
21. Submit a Farmers' Voucher Redemption List with FMNP vouchers to CE for payment.
22. Obtain written approval from TDA for all market locations where FMNP vouchers will be accepted prior to the acceptance of such vouchers at these locations. Submit a schedule of the FMA's market dates, times and location(s) along with this Agreement.
23. Notify TDA if any farmer or farmers' market ceases operation prior to the end of the authorization period.
24. Notify CE and/or TDA of any market cancellation at least 15 days before market day.
25. Abide by FMNP policies included as addenda to this Agreement, and all revisions made to the FMNP policies through written notice that are incorporated into this Agreement by reference. The FMA has a duty to become familiar with the contents of this Agreement, the FMNP policies, and all revisions thereto.
26. Upon CE's request, provide all information that may be relevant to TDA's compilation of required periodic reports to TDA or the USDA.
27. Cooperate with periodic compliance monitoring, as conducted by CE, TDA, and/or USDA. Provide access to FMNP records, including vouchers, upon request by any monitoring agency.
28. Ensure confidentiality of participant information and FMAs may only share confidential participant information on a need to know basis for operation of the FMNP pursuant to the provisions of 7 CFR § 246.26.
29. Comply with the Civil Rights and non-discrimination requirements of the USDA as codified in 7 CFR § 248.7; in particular, to ensure that no FMNP participant shall be excluded from participation in, or denied the benefits of, the FMNP on the basis of race,

color, national origin, sex, disability, or age. Pursuant to 7 CFR § 248.7, USDA “determined that the WIC data collection effort is sufficient to fulfill the racial/ethnic data collection requirement for the FMNP.” Therefore, the FMA is not required to collect additional racial/ethnic data.

30. Agree to administer FMNP as required by FMNP regulations in 7 CFR Part 248 and any subsequent addendums/updates to this CFR.

## V. APPEAL PROCEDURES

Both Parties agree to be bound by the following appeal procedures, as defined in this section.

1. Actions subject to appeal. Pursuant to 7 CFR § 248.16, the following adverse actions are subject to appeal: (1) a recipient’s disqualification or suspension of FMNP benefits; (2) an action of TDA which disqualifies a CE from participating in the FMNP; (3) any of the following actions affecting a farmer or farmers’ market: denial of an application to participate in the FMNP; imposition of a sanction for noncompliance; or disqualification from participation in the FMNP.
2. Parties capable of taking adverse action. TDA, each CE administering the program, and each FMA have the administrative authority to take adverse action against their respective contracting parties operating the FMNP. In the event that any adverse action taken by any entity participating in the FMNP in Texas is subject to appeal, TDA will control and conduct the subsequent hearing, as defined herein.
3. Actions not subject to appeal. Pursuant to 7 CFR § 248.16, expiration of an Agreement to participate in FMNP is not subject to appeal.
4. Notice of adverse action. Any entity taking an adverse action shall issue a written notice. Such notice shall: (1) state the cause for the action; (2) state the effective date of the action; (3) state whether the adverse action will be postponed until a decision in the appeal is made, if the adverse action is appealed; and (4) state the procedure for requesting a hearing. This written notification must be provided to the entity or participant not less than fifteen (15) calendar days in advance of the effective date of the action.
5. Opportunity to reschedule. Pursuant to 7 CFR § 248.16, each appellant shall be provided at least one opportunity to reschedule the hearing date upon specific request to TDA. Only one such rescheduling opportunity will be provided.
6. Appeal procedures. A party wishing to appeal an adverse action must make a written request for appeal within ten (10) days from the date on which the notice of action is received. The written appeal request must clearly identify the action being appealed and include a photocopy of the notice of action. TDA will acknowledge the receipt of the request for an appeal within five (5) days of its receipt of the request.
7. Submission of requests for appeal:
  - 1 Requests for appeal may be mailed or faxed to: Texas Department of Agriculture, Legal Division, Attn: Docket Clerk; PO Box 12847; Austin, Texas; 78711; Fax Number (800) 909-8530.
  - 2 Requests for appeal may be sent via overnight delivery service to: Texas Department of Agriculture, Legal Division, Attn: Docket Clerk; 1700 North Congress, 11<sup>th</sup> Floor; Austin, Texas, 78701.
8. Review of record. The case record must be available for review prior to the hearing.
9. Hearing. TDA will conduct the hearing within fourteen (14) days of receiving the appeal request, unless an additional seven (7) days is needed to accommodate one permitted request to reschedule a hearing. Both parties shall be provided with the opportunity to

confront and cross-examine adverse witnesses; the opportunity to be represented by counsel, or in the case of an appeal filed by a FMNP participant, by a representative designated by the participant, if desired.

10. Postponement pending decision. Pursuant to 7 CFR § 248.16(c), an adverse action may, at TDA's option, be postponed until a decision is rendered in the appeal.
11. Decision. An impartial decision maker will render a written determination on the outcome of the appeal, such decision being based solely on the evidence presented at the hearing and the statutory and regulatory provisions governing the FMNP. TDA shall issue a written determination on the outcome of the appeal to all parties no later than sixty (60) days from the date of receipt of the request for an appeal by TDA. The determination issued by TDA is the final administrative determination to be afforded to an appellant.

## VI. CONFIDENTIAL INFORMATION OF APPLICANTS AND PARTICIPANTS

Pursuant to 7 CFR § 246.26, any information about a participant in the WIC program which identifies a participant and/or a family member, is confidential, regardless of the original source and exclusive of previously applicable confidentiality provided in accordance with other federal, State or local law. **TDA expressly restricts the use and disclosure of confidential participant information ONLY to persons directly connected with the administration or enforcement of the FMNP whom TDA determines have a need to know the information for program purposes.**

## VII. ACKNOWLEDGMENTS AND CERTIFICATIONS

The FMA acknowledges and certifies:

1. This Agreement allows inspection of the production site(s) of farmers participating in the FMNP through their association upon request of the CE or TDA.
2. An authorized agent of the FMA has received training on FMNP policies and procedures from CE, and has informed and trained farmers and employees on FMNP requirements, and the proper acceptance and processing of FMNP vouchers.
3. Annual payment of Texas franchise taxes is current, if the FMA is subject to the State of Texas franchise tax. A false statement regarding franchise tax status shall be treated as a material breach of this Agreement and may be grounds for termination of this Agreement at the option of CE. If franchise tax payments become delinquent during the Agreement term, payments under this Agreement will be held until the FMA's delinquent franchise tax is paid in full.
4. That neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency or by the State of Texas. FMA shall immediately provide written notice to CE and TDA if at any time the FMA learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. FMA may rely upon a certification of a subcontractor that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered contract, unless it knows or has reason to know that the certification is erroneous.

FMA also specifically asserts that it does not owe a single substantial debt or a number of outstanding debts to a federal or state agency. A false statement regarding the FMA's status will be treated as a material breach of this Agreement and may be grounds for termination of this Agreement at the option of TDA.

5. Understanding of and compliance with the following:
  - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the FMA, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
  - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of a Member of Congress in connection with this federal contract, contract, grant, loan, or cooperative agreement, the FMA shall complete and submit Standard Form-LLL, "*Disclosure Form to Report Lobbying*," in accordance with its instructions.
  - c. The FMA shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
  - d. CE understands that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
6. Committing fraud or abuse of the FMNP may subject the FMA to criminal prosecution under applicable federal, state or local laws, in addition to sanctions imposed by the State.
7. The FMA's suspension or disqualification from any other Food and Nutrition Service Program may result in an automatic suspension or disqualification from the FMNP.
8. Compliance with drug-free workplace requirements in 2 CFR Part 421, which adopts the Government wide implementation (2 CFR Part 182) of sec. 5152-5158 of the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D; 41 U.S.C. 701-707).
9. No conflict of interest with the state, contracting entity, or participating farmer exists as a result of the execution of this Agreement.
10. Authorized FMAs and farmers shall comply with the requirements of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, Department of Agriculture nondiscrimination regulations (7 CFR Parts 15, 15a and 15b), and FNS Instructions as outlined in 7 CFR § 248.7.
11. If the FMA or any farmer neglects or refuses to perform any of the conditions herein according to the terms specified herein, then the FMA and/or farmer so failing, neglecting, or refusing to do so shall forfeit and pay to CE as liquidated damages:
  - a. The full amount of the farmer's reimbursement from TDA for cash, unauthorized foods, or other items of value provided to recipients in lieu of authorized foods;
  - b. The difference between the face amount of the FMNP voucher and the selling price of the food provided when the farmer provides food priced less than the face value;

- c. The difference between the farmer's customary price and the price charged to the FMNP participant when the farmer charges the recipient more for foods than is charged to other customers;
  - d. Reasonable administrative costs of recovery for the above items.
12. CE may disqualify either an FMA or a farmer with a minimum of fifteen (15) days written notice for reasons of Program abuse and/or no longer meeting FMNP qualification criteria. FMNP qualification criteria include, but are not limited to, certification of a market under the TDA Farmers' Market Certification Program and previous compliance with FMNP procedures, policies, and regulations. This action is subject to appeal by the FMA, pursuant to the appeal procedures defined in this Agreement.
13. The FMA and its member farmers acknowledge that all other breaches of this Agreement which result in injury to CE shall be liquidated in a like manner, and will include as damages the reasonable administrative cost of recovery.

FMA acknowledges receipt, review, and acceptance of conditions and terms in listed items by initialing below.			
Initial	Item	Initial	Item
	20__ FMNP Association Profile		Current List of Eligible Fruits and Vegetables (H1442)
	20__ Texas Farmer's Profile and Agreement (FNMP-03)		Farmers' Market Nutrition Program Handbook FY 20__
	FMNP Foods Calendar FY 20__ (H1443)		

We, the undersigned, do hereby make and enter into this Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. CE certifies that the information contained in this document is true and correct to the best of its knowledge and is provided for the purpose of obtaining federal assistance. CE agrees to comply with the FMNP federal regulations, and state policies and procedures as issued and amended by TDA. CE understands that the deliberate misrepresentation or withholding of information may result in prosecution under applicable state and federal statutes.

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Signature of Authorized Farmers' Market Association Agent Date

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Signature of Authorized Contracting Entity Agent Date