



SID MILLER, COMMISSIONER

**SENIOR FARMERS' MARKET NUTRITION PROGRAM
 AGREEMENT BETWEEN**

_____ **CONTRACTING ENTITY AND**
 _____ **SUB-DISTRIBUTING AGENCY**

Name of Contracting Entity (CE):	Contracting Entity ID# (CE ID):
Name of Sub-Distributing Agency:	Name of Sub-Distributing Agency Official and Title:
Street Address of Sub-Distributing Agency (Street or P. O. Box, City, State, ZIP):	Telephone No. (including area code):
Mailing Address (if different from street address):	Facsimile No. (including area code):
	E-mail Address:

I. AGREEMENT

This Agreement specifies the rights and responsibilities of the Contracting Entity (or CE) and Sub-Distributing Agency (or SDA) (collectively, the parties), identified above, in the Senior Farmers' Market Nutrition Program (SFMNP) 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 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 CE 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 prior written notice documenting the lack of funding.

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 (CE)

CE agrees to:

1. Operate the SFMNP in accordance with the provisions of 7 Code of Federal Regulations (CFR) Part 249, 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 SFMNP;
 - c. Applicable Texas statutes, laws, rules, and regulations;
 - d. Policies and procedures issued and amended by TDA; and
 - e. Other laws described herein.CE further agrees to operate the SFMNP as described in its application documents, policy statement(s) and supporting documents, and approved amendments to the application or this Agreement.
2. Distribute to SDA TDA-issued SFMNP vouchers. Individual vouchers will have a \$4.00 value, be numbered sequentially, and be issued in booklets of five (5) vouchers for a total value of \$20.00 to individual qualifying SFMNP participants for redemption at qualifying farmers' markets.
3. Train the SDA and offer training sessions and technical assistance at a time and place that is mutually convenient prior to the start of the SFMNP.
4. Ensure that all vouchers are distributed to eligible participants without regard to race, color, national origin, sex, age, or disability.
5. Monitor the SDA's issuance of vouchers and do so during the SDA's normal hours of operation.
6. Notify the SDA, in writing, when terminating this Agreement to participate in the SFMNP.
7. Respond to SDA inquiries promptly.
8. Provide written notification when the CE denies an application to participate as a SDA in the SFMNP or denies an application to renew the contract. The written notice shall state the basis for the denial.
9. Provide the SDA with written notice when the CE proposes to take an adverse action against an SDA with whom CE has a contract. The written notice shall: (1) state the cause for the action; (2) state the effective date of the action; and (3) state the procedure for requesting a hearing. This written notification of the adverse action must be provided to the SDA not less than fifteen (15) calendar days in advance of the effective date of the action.

IV. RIGHTS AND RESPONSIBILITIES OF THE SUB-DISTRIBUTING AGENCY (SDA)

SDA agrees to:

1. Operate the SFMNP in accordance with the provisions of 7 CFR Part 249, TDA-issued SFMNP policies and procedures, and the terms of this Agreement.

2. Distribute to qualified individual SFMNP participants official SFMNP vouchers. Individual vouchers will have a \$4.00 value, be numbered sequentially, and be issued in booklets of five (5) (vouchers) for a total value of \$20.00 to qualifying participants for redemption at qualifying farmers' markets.
3. Comply with all SFMNP requirements for receiving, handling, distributing and redemption of vouchers.
4. Ensure that all vouchers are distributed to eligible participants without regard to race, color, national origin, sex, age, or disability.
5. Certify the eligibility of seniors who apply for SFMNP, as applicable.
6. Maintain the confidentiality of applicant and participant information/records to the extent required by law.
7. Record, in writing, the following information for each voucher distributed: (1) voucher serial number; (2) recipient name; (3) date of distribution; and (4) location of distribution.
8. Notify SFMNP applicants and participants of their right to a fair hearing, as applicable.
9. Allow representatives of TDA, CE, and the United States Department of Agriculture to review its site operations and records.
10. Maintain full and complete records concerning SFMNP operations for a minimum of three (3) years following the date of submission of the final expenditure report for the period to which the report pertains, or until all issues involving litigation, claim, negotiation, audit or other action are resolved, whichever is later, as required by 7 CFR Part 249 and applicable state and federal regulations.
11. Attend SFMNP training sessions required by CE.
12. Provide SFMNP training to qualified farmers' markets, as required by CE and TDA.
13. Provide SFMNP technical assistance to farmers' markets, as requested.
14. Notify CE, in writing and in accordance with termination terms, if terminating this Agreement to participate in the SFMNP.
15. Upon CE's request, provide all available information through surveys and other methods of feedback, reasonably related to tracking the impact of SFMNP on senior citizens and/or farmers' markets.
16. Upon CE's request, provide all available information which may assist CE in compilation of annual reports to United States Department of Agriculture, Food and Nutrition Services (USDA-FNS).
17. Cooperate with compliance monitoring as conducted by CE, TDA, and/or USDA staff.
18. Report any suspected abuse of or non-compliance with SFMNP requirements promptly to either CE or TDA and cooperate fully in any resulting monitoring or investigation.
19. Comply with the Civil Rights and nondiscrimination requirements of the USDA as set forth in 7 CFR § 249.7 to ensure that no SFMNP participant is excluded from participation in, or denied the benefits of, the SFMNP on the basis of race, color, national origin, sex, disability, or age.

V. MISCELLANEOUS

1. Any delegation by SDA to a third party of any of the duties and responsibilities imposed by this Agreement shall not relieve SDA of its responsibility to CE for the proper performance thereof. SDA cannot subcontract or assign any of its duties under this Agreement without advance written notice to CE and prior written approval of CE, which shall not be unreasonably withheld. SDA will include all provisions that may be necessary to accomplish all requirements of this Agreement in its employment policies and contracts and subcontracts, and shall require its subcontractors to do the same.
2. Records, Reports, Audits, and Contract Monitoring:
 - 2.1 SDA agrees to retain all financial records, supporting documents, statistical records, and all other records pertinent to this Agreement for a period of three (3) years, which includes the current year with the following qualification: If any litigation, claim, or audit is started before the expiration of the three-year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved. The retention period starts from the date of the submission of the final expenditure report or from the date of CE's final payment under the Agreement, whichever date is later.
 - 2.2 Upon request, either party shall make all records, books, papers, documents, or recordings related to this Agreement available for inspection, audit, or reproduction during normal business hours to the Comptroller General of the United States, Texas State Auditor, and any authorized representative of the other party.
 - 2.3 CE and SDA agree that the services provided under this Agreement shall be classified as Contracted Services for financial reporting purposes.
3. SDA understands that acceptance of funds under this Agreement acts as acceptance of the authority of the State Auditor's Office (SAO), or any successor agency, to conduct an investigation in connection with those funds. SDA further agrees to cooperate fully with the SAO or its successor in the conduct of the audit or investigation, including providing all records requested. SDA will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through SDA and the requirement to cooperate is included in any subcontract it awards.
4. Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act" or "TPIA"). Client data of either party that may be provided to the other party in connection with this Agreement may be confidential by law and, therefore, excepted from disclosure under the Public Information Act. Each party is responsible for complying with the requirements of the TPIA. Information may not be withheld without seeking a determination from the Office of the Attorney General for the State of Texas (OAG). In the event either Party receives a request for information relating to this Agreement, the Party will promptly notify the other Party so that either party may assert any TPIA exception it believes applicable. The OAG determines if information is excepted from disclosure under the TPIA. If TDA receives a request under the TPIA for information provided by a third party that may be subject to exception under the act, TDA may request the OAG to make a determination of whether the information is exempt from disclosure and shall make a good faith attempt to notify the third party of the request for the OAG decision. TDA's notice to the third party will be in writing and sent within a reasonable time not later than the 10th business day after the date TDA receives the request for the information. The notice will include a copy of the written request for the information, if any, received by TDA and a statement, in the form prescribed by the OAG, that the person is entitled to

submit in writing to the OAG within a reasonable time not later than the 10th business day after the date the person receives the notice: (i) each reason the person has as to why the information should be withheld; and (ii) a letter, memorandum, or brief in support of that reason. A person who submits a letter, memorandum, or brief to the OAG shall send a copy of that letter, memorandum, or brief to the person who requested the information from TDA. If the letter, memorandum, or brief submitted to the OAG contains the substance of the information requested, the copy of the letter, memorandum, or brief may be a redacted copy.

5. Information, documentation, and other material in connection with this Agreement may be subject to public disclosure pursuant to Chapter 552 of the Texas Government Code (the "Public Information Act"). Client data of either party that may be provided to the other party in connection with this Agreement may be confidential by law and, therefore, exempted from disclosure under the Public Information Act. Each party is responsible for complying with the requirements of the Public Information Act in regard to any request for the other party's client data. In the event either Party receives a request for information relating to this Agreement, the Party will promptly notify the other Party so that either party may assert any confidentiality privilege it believes applicable.
6. Technology Requirements for Confidentiality: The CE hereby agrees to implement the following information technology standards to ensure the confidentiality of participant information.
 - a. Network Security: CE agrees to maintain network security which includes the use of a firewall, unique user names and passwords to access network resources. CE agrees to provide maintenance of a secure processing environment, and acknowledges that this includes, but is not limited to, the timely application of patches, fixes, and updates to operating systems and applications.
 - b. Data Security: CE agrees to preserve the confidentiality, integrity, and accessibility of TDA data in motion or at rest with administrative, technical, and physical measures that conform to generally recognized industry standards and best practices.
 - c. Data Storage: CE agrees that any and all TDA data will be stored, processed, and maintained solely on designated computers/servers and that no TDA data will be transferred to any portable or laptop computing device or any portable storage medium, unless that device or storage medium is in use as part of the CE's designated backup and recovery processes and encrypted in accordance with the Data Encryption provision below.
 - d. Data Transmission: CE agrees that any and all electronic transmission or exchange of system and application data with TDA shall take place via secure means (HTTPS or SFTP or equivalent).
 - e. Data Encryption: CE agrees to store all TDA data in encrypted form, using a commercially supported encryption solution. CE further agrees that any and all TDA data defined as personally identifiable information under the regulations is likewise encrypted. Encryption solutions will be deployed with no less than a 128-bit key.
 - f. Data Re-Use: CE agrees that any and all data exchanged shall be used expressly and solely for the purposes enumerated in the Agreement. Data shall not be distributed, repurposed, or shared across other applications, environments, or business units of CE. CE further agrees that no TDA data of any kind shall be transmitted, exchanged, or otherwise passed to other vendors or interested parties except as specifically required to operate the FMNP on a need to know basis. Any other release of information requires specific agreement in writing by TDA.

- g. End of Agreement Data Handling: Notwithstanding the recordkeeping and retention requirements in Article V.2 of this Agreement, CE agrees that upon termination of the Agreement it shall erase, destroy, and render unrecoverable all TDA data and certify in writing that these actions have been completed within thirty (30) days of termination of this agreement or within seven (7) days of the request of an authorized TDA official, whichever comes first. The conditions in this paragraph apply only to TDA-provided data.
- h. Security Breach Notification:
 - i. CE agrees to comply with all applicable laws that require the notification of individuals in the event of unauthorized release of personal identification information or other event requiring notification.
 - ii. In the event of a breach of any of CE's security obligations or other event requiring notification under applicable law, CE agrees to notify the following individuals:

Information Security Officer
Financial Services Division
Texas Department of Agriculture
800-835-5832

Assistant Commissioner
Food and Nutrition Division
Texas Department of Agriculture
877-839-6325

- 7. SDA employees, interns, volunteers, subcontractors, and all other individuals involved in providing services under this Agreement do not have an employer-employee relationship with CE. CE shall not be responsible for the Federal Insurance Contribution Act (FICA) payments, federal or state unemployment taxes, income tax withholding, Workers Compensation Insurance payments, or any other insurance payments, nor will CE furnish any medical or retirement benefits, any paid vacation, any sick leave or any other benefit paid to or on behalf of SDA.
- 8. This Agreement contains the entire agreement between the parties with relation to the transaction. There have been and are no covenants, agreements, representations, warranties or restrictions between the parties with regard thereto other than those specifically set forth in this Agreement.
- 9. If one or more of the provisions of this Agreement, or the application of any provision to any party or circumstance is held invalid, unenforceable or illegal in any respect, the remainder of this Agreement and the application of the provision to other Parties or circumstances shall remain valid and in full force and effect.
- 10. Both parties represent and warrant that the persons signing this Agreement are authorized to bind the respective parties.
- 11. No waiver, whether expressed or implied, shall be construed as a continuing waiver unless it is specifically described in writing as a continuing waiver.
- 12. This Agreement shall be interpreted according to the laws of the State of Texas except as may be otherwise provided for in this Agreement.
- 13. This Agreement may be amended only by written agreement signed by CE and SDA.

VI. DISQUALIFICATIONS/SANCTIONS

1. SDA may be subject to sanctions for any SFMNP abuse or violation of SFMNP requirements. The sanction may include any one or a combination of the following: (1) disqualification; (2) repayment of funds; (3) monetary penalty.
2. CE shall notify SDA in writing, fifteen (15) calendar days prior to the disqualification effective date. CE maintains no obligation to reinstate SDA's authorization after disqualification. Once disqualified, an SDA must reapply to participate in the SFMNP.
3. An SDA who commits fraud or abuse of the SFMNP is liable for prosecution under applicable federal, state or local laws.

VII. 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 § 249.16, the following adverse actions are subject to appeal: (1) denial of certification of SFMNP benefits, unless certification is denied solely because of the lack of sufficient funding to provide SFMNP benefits to all eligible applicants; and (2) disqualification/suspension of SFMNP benefits. A CE may appeal an action of TDA disqualifying it from participating in the SFMNP. A farmer or farmers' market may appeal a TDA action denying its application to participate, imposing a sanction, or disqualifying it from participating in the SFMNP.
2. Parties capable of taking adverse action. TDA, each CE administering the SFMNP, each sub-distributing agency, and each FMA have the administrative authority to take adverse actions against their respective contracting parties operating the SFMNP. In the event that any adverse action taken by any entity participating in the SFMNP in Texas is subject to appeal, TDA will control and conduct the subsequent hearing, as defined here.
3. Actions not subject to appeal. Pursuant to 7 CFR § 249.16, expiration of a contract or Agreement to participate in SFMNP 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 of the adverse action 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 § 249.16, 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 by TDA.
6. Appeal procedures. A party wishing to appeal an adverse action must make a written request for appeal within thirty (30) 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 adverse action. TDA will acknowledge the receipt of the request for an appeal within ten (10) days of its receipt of the appeal request and state in this written notice TDA's determination of whether the action shall be postponed pending outcome of the appeal.

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, 11th 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 thirty (30) 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 an SFMNP participant, by a representative designated by the participant, if desired.
10. Postponement pending decision. Pursuant to the provisions of 7 CFR § 249.16(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 SFMNP. 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.

VIII. ACKNOWLEDGEMENTS AND CERTIFICATIONS

SDA acknowledges and certifies:

1. Annual payment of Texas franchise taxes is current, if SDA 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 SDA's delinquent franchise tax is paid in full.
2. 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. SDA shall immediately provide written notice to the CE if at any time the SDA learns that this certification was erroneous when submitted or has become erroneous by reason of changed circumstances. SDA 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.

SDA 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 SDA's status will be treated as a material breach of this contract and may be grounds for termination of this Agreement at the option of TDA.

3. 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 SDA, 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 SDA shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The SDA 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. SDA 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.
4. Committing fraud or abuse of the SFMNP may subject the SDA to criminal prosecution under applicable federal, state or local laws, in addition to sanctions imposed by the State.
5. The SDA's suspension or disqualification from any other Food and Nutrition Service Program may result in an automatic suspension or disqualification from the SFMNP.
6. Compliance with drug-free workplace requirements in 2 CFR part 421, which adopts the Governmentwide 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).
7. SDA agrees to use any information that is received in its capacity as a contractor to the CE – whether written or oral, formal or informal – for the following purposes only:
 - a. To provide services and/or deliverables required or requested under this Agreement;
 - b. To provide advice, opinion or recommendation requested by the CE in the course of fulfilling the duties prescribed under this Agreement;
 - c. To assist the CE in developing any documents, reports, working papers, evaluations, schedules, or instructions necessary to fulfill the requirements of this Agreement.

SDA further agrees to regard any such information as confidential and shall not disclose, reveal, communicate, impart or divulge the information of any summary or synopsis of the information in any manner or any form whatsoever, except under the following circumstances:

- a. When authorized in writing by the CE;
- b. When required by court order, subpoena, or ruling of the Attorney General of Texas;
- c. When advised by legal counsel that disclosure is required by law or legal process;
- d. When the information has previously been released to the general public by the CE;

- e. When required to brief or inform a superior, provided the superior is informed of nondisclosure requirements.
- 8. Compliance 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 § 249.7.

We, the undersigned, do hereby make and enter into this Agreement. This Agreement contains all the terms and conditions agreed upon by the parties. SDA 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. SDA agrees to comply with the SFMNP federal regulations, and state policies and procedures as issued and amended by TDA. SDA understands that the deliberate misrepresentation or withholding of information may result in prosecution under applicable state and federal statutes.

Name of Sub-Distributing Official:		Title of Sub-Distributing Official:
Signature of Sub-Distributing Official:		Date:
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied	Denial Justification:
Name of Contracting Entity Representative:		Title of Contracting Entity Representative:
Signature of Contracting Entity Representative:		Date: